

## INTERVIEW WITH JUSTICE GARY STEIN

APRIL 7, 2017

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### **PART 1 OF 9**

#### **Chasing the American Dream: A Childhood in Working-Class New Jersey**

*Justice Stein describes his youth in Newark and Irvington, New Jersey. He discusses the impact of the Great Depression and World War II on his early life, as well as the resonant influence of his family, religion and early job experiences. After graduating from Irvington High School (1946-50), he went on to attend Duke University (1950-53).*

**Illingworth:** All right. Well, this begins an interview with Justice Gary Stein in Hackensack, New Jersey, on April 6, 2017. My name is Shaun Illingworth. I'm with the Rutgers Oral History Archives and this is the first session for the New Jersey Supreme Court Oral History Program, sponsored by the Administration of the Courts. And thank you very much for sitting down with us.

**Justice Stein:** My pleasure, Shaun, glad to be doing it.

**SI:** Thank you. To begin, can you tell me where and when you were born?

**Justice Stein:** June 13, 1933. I was born in Beth Israel Hospital in Newark, New Jersey.

**SI:** Now, what were your parents' names?

**Justice Stein:** My mom was named Mollie Goldfarb. Her maiden name was Goldfarb. My dad was Morris Stein. They were both children of Russian immigrants. My dad's parents, Nathan and Rachel, had four children. My dad was the oldest. My mom's parents, Bessie and Louis Goldfarb, I believe had eight children, two of whom died either in childbirth or very young.

My mom was, I think, the youngest in her family. Her parents owned a six-family house in Newark, at 540 South 17th Street, and she went to Central High School in Newark. My dad went to South Side High School. Dad had to leave high school in order to raise some money to help support the family. My mom finished Central High School. Neither of them went to college. That was not unusual for their generation, but it has always occurred to me, over the years, that their lives would've been different had they had the same opportunity they offered to me.

**SI:** Do you know anything about how the families came to the US, if it was just economic opportunity or were they facing *pogroms* [violent, anti-Semitic riots]?

**Justice Stein:** I don't know in detail, but they were part of the generation that left Russia. I think their homes were near the Polish border, but I don't know any of the details. My father's father, Nathan, was a paperhanger. He also wrote Yiddish poetry. And my mom's father, Louis, had a horse and cart and collected scrap in Newark and supported his family that way, and then, with his savings, bought this six-family house on South 17th Street, which I think was their source of income.

My mother's parents were Orthodox Jewish folks and my dad's parents were not, although my grandfather Nathan was quite learned about the Jewish faith, but was not a regular temple-goer. My mother's parents, however, did go to temple, observed all the High Holy Days. And one of my childhood memories is not only visiting them at the temple, which was something that was customary for kids to do with their grandparents in those days, but, also, because they were Orthodox and wouldn't drive on Yom Kippur or Rosh Hashanah, I would walk home with them in every kind of weather. And I vividly remember the slow walk back from the temple on Avon Avenue, at least a mile-and-a-half, two miles, to their home on the other side of Newark, but they were very observant.

And it's sort of funny. [laughter] Because they were so observant, my own parents were not at all observant, but my mom thought that, out of respect for her parents, it was important for me to have a comprehensive Hebrew education. So, from the age of eight, I attended a synagogue in Irvington, where we lived. It was on the second floor over an auto body shop. It was Congregation Ahavat Achim Bikur Cholim and I went five days a week for five years, out of respect for my grandparents. In retrospect, I think I learned the same thing every year for five years, although I became a fairly proficient

Hebrew reader. But, I diligently attended for five years until my *bar mitzvah* at the age of thirteen, when I was cut loose and allowed to resume a regular life. But, five days meant that, after school, every weekday except Friday, I would go to Hebrew school classes for an hour, as well as on Sunday morning.

The rewards in those days were, if you were the fastest reader in the class, you would get from the rabbi a chit that would entitle you to an ice cream soda across the street at Katz's Drug Store. And, because I attended for so many years, I was the recipient of many free ice cream sodas during those years. [laughter]

**SI:** When you were growing up, was the family already in Irvington?

**Justice Stein:** We moved to Irvington in 1940. My earliest memory--I think my parents lived in East Orange when I was born and I'm the oldest of two boys. My brother Robert, also a lawyer, is twelve years younger, I think. His birthday's tomorrow. So, my earliest memory was that I was living, as a kid, maybe three years old, on the corner of Madison Avenue and 15th Street in Newark, in a little apartment behind a grocery store that my parents were running then. And I think I was there for, perhaps, three or four years, say from the age of three maybe until five-and-a-half or six, and we had, I think, two rooms behind the grocery store. And I thought it was a great place to live, because, whenever we sat down for dinner at night, if I needed to have a bottle of soda with my dinner, I was allowed to go into the grocery store and pluck a bottle of Hoffman's Soda from under the counter. And so, we lived there until around 1939, when the grocery store went belly up and my parents and I moved in with my mother's parents for a year, year-and-a-half.

And my dad embarked on a new career selling television sets. This was the eve of television as we know it today and my vivid recollection is that he was selling large television sets to taverns in the Newark area. And, one day, I remember a big commotion in the kitchen in my grandparents' house and, apparently, my father had successfully convinced *two* tavern owners to buy big television sets. And, with the commission from that sale, that enabled us to leave my grandparents' home and to move to an apartment in Irvington at 7 Robert Place, which is where I lived from the age of seven until I left in 1950 to attend Duke University. So, I was there right through my grade school years, starting with third grade, through grade school and through Irvington High School.

**SI:** Did you start going to school in Newark when you were living there?

**Justice Stein:** Sure, sure. I attended a grade school, I think on South 16th Street or South 18th Street, I'm not sure which, and I also had attended Madison Avenue School in Newark when we had the grocery store. So, I did a little bit of public school in Newark on Madison Avenue, then, a little bit, maybe a year or so, near my grandparents' house. And then, when we moved to Irvington, I entered the third grade in the Union Avenue School in Irvington and attended Union Avenue School right through to the eighth grade, graduated, and then, went to Irvington High School.

Irvington High School, in those days, was overcrowded, had a split schedule. Of course, it was a very different community than it is today. Today, Irvington's probably eighty-five percent black, maybe fourteen percent Latino, with a smattering of Asian and white. Back in the days that I was there, from 1946 to 1950, it was all-white. It was a middle-income, lower-income community, blue-collar community, not a great school system, but an adequate school system. And, because it was overcrowded, it had a split schedule, which meant that ninth and tenth grades, I attended school from one o'clock to five-thirty; eleventh and twelfth grades, I attended school from eight to twelve-thirty.

The good part about that was, I was able to have a part-time job to save some money for college. And, for most of the four years in high school, I delivered prescriptions for a pharmacy in Hillside, which I got to on my bicycle from Irvington to Hillside. It was the Maple Pharmacy at the corner of Maple Avenue and Williamson Avenue. And it was no accident that they called the community in which that pharmacy was located Hillside, because it was built on the side of a hill, which meant that either way, either delivering the prescription or coming back, you were going uphill and that was a very steep hill. But, I enjoyed the work. I made fifty cents an hour, probably worked something like twenty-five, thirty hours a week. So, I made twelve to fifteen bucks a week and faithfully saved the money, so [that] I could use it when I went to college.

**SI:** College was always your goal from early in your life.

**Justice Stein:** Yes, and it was just a wonderful motivation that my parents gave me. They realized what they had missed and they very much wanted me to go to college. And so, I always assumed that, one way or the other, I would get to college. I didn't know how I'd pay for it, but, anyhow, when I went to begin looking at colleges to apply to, I applied to Rutgers in New Brunswick, because I thought that would be the least expensive. I applied to the University of Pennsylvania.

There was a fellow in my high school, his name was Alan Max and he was applying to Duke because his father, Charlie Max, had gone to Duke back in the '30s. So, Alan said to me one day, "Why don't you apply to Duke?" and I said, "Where's that?" He told me, "It's in North Carolina, Durham." I said, "I can't afford to go to a school like that." He said, "No, you'd be surprised. Look at the catalog--the tuition is only 350 dollars a year." So, I looked at the catalog and I spoke to my parents. They were not thrilled at the idea that I would go so far away, but they said, "If you want to apply, go ahead." So, I did, but I never heard back.

So, one day, I was walking on Webster Street, where this friend Alan Max lived, and I saw his father Charlie on the front porch. And Charlie said to me, "Gary, are you going to go to Duke with my son Alan?" I said, "No, I'm not, Mr. Max. I'm going to go to Rutgers." I said, "I applied to Duke, but I never got a response." He said, "That's strange." He said, "Come on in the house with me." So, I walked into his house and he took me into his office. And he made a call and he got a guy named Witherspoon on the phone. Turned out Witherspoon was the Dean of Admissions at Duke and he and Charlie Max had been on the Duke Boxing Team together in the '30s. So, they were

buddies. So, he asked Witherspoon about me. He said, "I've got this smart kid here." He said, "He's smarter than my son Alan, but he said he never got an answer from his application." And so, Witherspoon said something to him, and then, Mr. Max asked me to step out of the room, which I did. And then, when I came back in, he said, "You're probably going to hear from Duke in a couple of days," and I did and I was accepted.

And the explanation was that Duke had a Jewish quota in those days, probably something like two percent, and it must've been used up when they got my application. And so, had it not been for Charlie Max, I would've gone to Rutgers and, hopefully, done just as well, but that intervention is what got me to Duke. And I told that story at the sixtieth Law School reunion a year or so ago, when the first black man to attend Duke Law School told his story about how he got admitted to Duke and I thought he would be interested in my story. So, we exchanged stories about our [experiences], about Duke's admission practices back in those days. Duke has come a long way since then.

**SI:** That was rather common in those days, the Jewish quota.

**Justice Stein:** Sure.

**SI:** Were you aware of that?

**Justice Stein:** No.

**SI:** No, okay. All right.

**Justice Stein:** No, nor was I aware that Duke was segregated and Durham was segregated. And, when I got to Durham in 1950, I was horrified to learn that blacks had to ride in the back of the bus, that they had separate bathrooms, separate water fountains, that black public school students were bussed to black schools as a matter of North Carolina law. I simply had no idea, until I got there, that that was the situation, bothered me very much. I got into trouble many times by riding in the back of public buses going downtown to Durham and having bus drivers holler at me. But, it just seemed like just a terrible practice and I didn't like it.

**SI:** Before we talk more about Duke, I wanted to step back a bit. As you grew up, you were born in the Great Depression, you moved to Irvington kind of at its height, just before World War II, and then, of course, the war would have been a big part of your early teens, that period.

**Justice Stein:** Sure.

**SI:** Do you remember in any way that those events impacted your family life, your life growing up?

**Justice Stein:** Sure, sure. I remember vividly walking up the street on Sunday, December 7th and hearing people shout out their windows about the Japanese bombing Pearl Harbor and running home and listening to President Roosevelt on the radio. [Editor's Note: Japanese forces attacked the American naval base at Pearl

Harbor, Hawaii, on December 7, 1941, thrusting the United States into the Second World War.] My recollection is vague, but there was rationing of gasoline and I remember every family would have a specific letter coupon pasted on the back of their car, which indicated how much gasoline they were entitled to.

My dad was a little too old to be drafted, but he was required to go to work in a defense factory, which was difficult for him. He was in his mid-thirties at the time and it was hard, physical work. It's important to understand that, back in those days, there were no fitness centers. People didn't jog or ride bikes outside. Adults didn't commonly engage in physical exercise, so that people lost their physical resilience at much younger ages than occurs today. So, for my dad to go work in a factory was difficult, because he had been accustomed to being a salesman.

I certainly remember various drives in support of the war effort. I remember the air raid drills that we would be required to participate in at grade school, which sometimes involved lying down under your desk in case a plane dropped a bomb. There was great awareness. The movies would always be preceded by a newsreel that showed the events of the Second World War. It was a very difficult time for the country, but there was tremendous cohesiveness in the country. That is, everybody was allied with the war effort. Everybody had family members somehow involved in the war. I had a couple of cousins who were in the military. And so, it was, you know, the '40s--let's see, I was probably twelve when the war ended, around seven or eight when it started--but it was a very dramatic time to be a kid. And, certainly, it wasn't a time of great luxury or plenty. We were just a poor family struggling to get along like everybody else on the block was.

Robert Place was a street with probably, oh, twelve or fifteen four-family houses on each side of the street. So, it was an enormous number of families lived on the block, loads of kids my age, older and younger, and it was a very typical, blue-collar neighborhood in those days. And the war was a very powerful factor for all of us as kids and, of course, I have memories of my family gathering around the radio when President Roosevelt would deliver his Fireside Chats. It was a time when the country was unified, certainly. Nothing like the political division we have today.

**SI:** I noticed, on the wall in your office, you have Roosevelt's picture, if I'm correct.

**Justice Stein:** Sure.

**SI:** Franklin, yes.

**Justice Stein:** Sure--both Roosevelts.

**SI:** You have both Roosevelts.

**Justice Stein:** Both Teddy and Franklin, yes. My late wife had found the picture; I think she found both of them. My late wife's name was Et, E-T. It was not her given name, but she made me change it legally, because she didn't like her given name. Her

maiden name was Tilchin. And she loved antique stores, and so, she picked out both of those photos on one of our trips. During the last occasion when there was somebody that knew how to hang pictures in the office, I had both of them hung there.

**SI:** I was going to ask, how did your family feel about FDR?

**Justice Stein:** They were devoted to him. It was characteristic of all of the members of my family, aunts and uncles. The lower middle-class children of immigrants, certainly the Jewish community, that was growing up at that time and raising families were absolutely devoted to President Roosevelt, because he was instrumental in passing the Social Security law and other legislation that benefited working families. He was considered to be a friend of the working man and there was great support and respect for him.

You know, my parents were not sophisticated observers of history and, certainly, I wasn't at that stage in my life. So, whatever mistakes he made, like the court-packing plan and things like that, were not anything that I knew anything about. All I knew was that he was the President and my parents thought he was great, and so did I. [Editor's Note: President Roosevelt, in response to the Supreme Court ruling against his New Deal agenda in several cases, attempted to pass the Judicial Procedures Reform Bill of 1937, which would have allowed the President to appoint additional justices to that body. This move met with opposition from both parties, who viewed it as "court-packing," leading to its defeat.]

**SI:** After the family grocery store closed, did your mother work outside the home at all?

**Justice Stein:** She did. She worked [in] downtown Newark. My recollection is, in her years right after high school, she worked for the Prudential Insurance Company, which was one of the big employers in Newark. She worked in retail for Bamberger's Department Store, which was part of the Macy's chain, and she worked for the Lerner Shops, which is a dress shop still in existence [as New York & Company]. And so, for most of the years that I was growing up, she was working in retail, stopped working when my brother was born in 1945. And then, much later in life, after I graduated law school, she actually opened her own store in Newark, which was a half-size shop catering to women who wore larger size clothes. And she ran that store with a partner in Newark, then, moved it to Millburn and was modestly successful. I think that chapter of my parents' life was probably the easiest economically, because she was able to supplement my dad's income and it enabled them to go on some vacations that were a little more upscale than they had experienced before. They went on a few cruises, and so, that was a very nice evolution for my mom.

Regrettably, my mom died of breast cancer at the age of sixty-seven. She died in 1976. So, obviously, she had to cut short her time with my five children, whom she loved dearly, but I would, on reflection, say this--she had an indomitable spirit. She was a wonderfully optimistic person, even though she and my dad went through some very tough years. And I've often thought that I was so fortunate because I share her optimism and I'm sure it was passed on to me from her. She was someone who always

found the glass to be half full. We used to sing together on family road trips. She was easy to talk to and I think she shared a lot of her innermost thoughts with me, because, during the years my dad was in the retail business--there was a period in the '40s when he had his own retail store in Millburn, selling appliances, and the '40s was not a good time to be in the appliance business.

So, that was a very difficult time for him and I think, as an older person, I can appreciate that he was probably frustrated, because he was a bright man, but untrained and unschooled. He was a championship chess player and checker player. And I can only infer from his ability in those activities that he had a fine mind and, if he had had the opportunity to be educated, his life would've been different. But, he experienced a lot of economic frustration. His store in Millburn, which he owned for four years, he eventually had to sell in the mid-'40s. And most of his business career he spent working as an employee for large retail appliance chains, like Two Guys from Harrison and Jersey Tire. And those were tough jobs. They were six days a week, you know, typically nine to six, if not longer, and so, it was hard for him to come home cheerful. That was just a tough gig.

And so, I think the relationship I had with my mom was influenced by the fact that it was harder for her to talk at length with him about her feelings, because he had his own pile of frustrations with the work he was doing. And so, I think my mom was a profound influence on me, especially urging me to do well in school and get an education. My father, on the other hand, was equally determined to see me educated, because he had a rule that he wouldn't affix the required parental signature on my report card if I had any grades other than "As." So, my mother typically signed my report card, [laughter] because it was a rare occasion when I'd come home with straight "As," although sometimes I did. I remember being rewarded at the age of eight with bringing home a report card with straight "As" and winding up with the red Schwinn bicycle that I rode during the years at Irvington High School delivering prescriptions.

So, both of my parents were determined to see me get the chance in life that they had missed and I'm eternally grateful to both of them for that. And they did the same for my brother Robert, who went to Franklin & Marshall College and NYU Law School and had a wonderful career as an attorney, both in New York as a partner with a major law firm and, more recently, as general counsel to an Italian and Swiss steel company, where he commuted between Lugano, Switzerland, and New York City, where he lives. So, they succeeded. They were successful in raising their two kids, making sure their kids got the education they were denied. And, of course, we, in turn, have done the same for our children and behind me up there are my sixteen grandchildren, all of whom are following the same path.

So, the American experience, which starts out for so many families with immigrants who come here, forced to learn the language, forced to do menial work, raising families, and then, seeing, in a generation or two later, the fruits of their labor, so, the American dream is alive and well, at least in the Stein Family.

**INTERVIEW WITH JUSTICE GARY STEIN**  
**APRIL 7, 2017**  
**PART 2 OF 9**

**Studying at Duke University: Undergraduate and Law School Experiences**

*Justice Stein elaborates on his educational experiences at Irvington High School and Duke University. He describes how he took advantage of an opportunity to advance his transition into the Duke School of Law (1953-56). On both the undergraduate and law school levels, he details his need to work his way through school and the influence of several Duke professors.*

**Illingworth:** Looking at Irvington High School, what interested you the most academically?

**Justice Stein:** You know, Shaun, I don't really remember anything except a fairly sharp interest in current events and political affairs, but even that was not particularly emphasized in my high school curriculum. I don't recall anything in my high school curriculum standing out. I had, you know, a variety of teachers, some good, some not so good. It was not an exceptionally strong high school. And so, whatever interests I might have developed in that period of my life, had I been at a different institution, simply didn't get developed. I sort of glided through high school, spending a lot of time working on the side, a fair amount of time playing basketball, not much of a social life in Irvington High School, you know, following sports teams like the Yankees and the Giants. But, it was not a particularly intellectual center of my life. I would say that I got an adequate education, was required to take a language. I took Spanish. I generally recall, you know, taking the standard English and math and science courses that were required, but it was not a particularly significant period in my life academically.

I think I graduated, you know, in the top ten percent of my class and I don't remember being highly motivated about grades in those days. I felt that grades were important. I wanted to do well, but I wasn't excited about the courses I was taking and I wasn't highly motivated. And so, I would sort of describe that as kind of a grey area in my life. That is, I got through the four years of high school like everybody else, thought I would go to college. College admissions were not nearly as competitive as they are today, where kids are doing everything they can to build up their résumé, so [that] they can get into the best possible school. My opportunities to go to college were financially limited. So, I had no illusions that I was going to wind up at Harvard or Yale and I didn't have the academic record that would have supported that kind of an application. I expected to go to Rutgers.

I was surprised when I wound up at Duke, but, truth be told, Duke was not a strong academic institution in those days. I mean, today, it's one of the better colleges in the country. Back in the '50s, I thought the undergraduate school was mediocre. And Duke as well had its dose of requirements. I remember having to take courses in religion, in zoology, at which I was an abysmal failure. I remember getting the lowest grade in my freshman class in the zoology lab practical. I got a twenty-six, which may still be a

record down there. [laughter] So, I didn't get excited academically until I got to Duke Law School, but we'll get to that soon enough. But, that was when I first began to feel that perhaps I had some intellectual potential that I had not been aware of before.

**SI:** You mentioned before that it was a real culture shock going down to Durham. What do you remember about those first few weeks and months down there, getting acclimated to North Carolina?

**Justice Stein:** I remember feeling very much like a fish out of water. In those days, it was permitted in most undergraduate schools for freshmen to be somehow distinguished or set apart. I think we had to wear a special hat to distinguish the fact that we were in the Class of 1954. I lived in a dormitory with two other guys. One was Alan Max, the other was a guy named Bob Treibus, both from Irvington, and the room that we lived in was probably a little smaller than my office here and there were three of us. And they would take naps in the afternoon, and so, I would have to go somewhere else to get work done. [laughter]

Early on at Duke, I decided I needed to earn some money, because the money I had saved at the pharmacy was going to run out. So, not long into my freshman year, I got a job down in Durham at the S. H. Kress Five-and-Ten-Cent Store, which was one of the first lunch counters that was the scene of protests by young black college students in the late '50s who were denied the privilege of ordering a cup of coffee at the lunch counter. But, that didn't occur while I was there. I worked upstairs, sort of in the warehouse part of the store, providing merchandise to the counters downstairs.

I also remember, very vividly, feeling like I needed to spend a little time alone every day, just to make sure I didn't lose my identity here in this strange place, where half the people had Southern drawls and the food was a little unfamiliar and the culture was unfamiliar. So, every night, maybe ten o'clock, ten-thirty, I would walk out of my dorm over to the Duke Chapel, which was a beautiful chapel, and facing the chapel on the left side was a little alcove and in the alcove was a bench, probably made of cement. But, if you could picture it, it had an arch on both sides of it and there was this little bench. And the Duke Campus, many of the buildings are made with this beautiful native stone, native to North Carolina. James B. Duke, the benefactor of Duke University, it used to be called Trinity College and, when he offered it a big chunk of money in return for changing the name, the Trinity College said, "Sure." So, it was a very beautiful chapel and a beautiful little alcove. And I would go sit there at night for a half-hour and just collecting my thoughts and trying to figure out what I was doing here and what I needed to do to succeed.

And so, it was not an easy time and, of course, you couldn't call home, because it cost too much. So, to communicate with your parents, you wrote letters. I remember fondly, and I tell my kids and grandkids, that I used to eat on about a dollar-five, a dollar-ten cents a day and I can tell you the menu. This was before I got a job at the dining halls. I would have a glass of milk and a donut for breakfast. The donut was a nickel, the glass of milk was a dime. I would have two sandwiches for lunch with a Coke. The

Coke in those days was five cents and the sandwiches were a dime each. And, for dinner, I'd get the student special, which was sixty-five cents, consisting of some kind of meat, chicken, two vegetables, a beverage and a dessert. Sometimes, if I was feeling flush, at night, there would be a chow man who would come through campus selling sandwiches and snacks and I'd buy an apple for a dime. But, that first year, I didn't eat a lot and that was what motivated me to get the job at S. H. Kress.

And then, starting in my second year and continuing right through undergraduate and law school, I got a job in the dining halls, started out bussing dishes off the tables, and then, eventually, became a cashier. A cashier would receive something like thirty, thirty-five dollars a month, plus free meals. And so, in my second year at Duke, after working as a cashier for a few months, I looked in the mirror and saw that the guy in the mirror seemed to be putting on weight. And that was because I was having lunch consisting of two cheeseburgers, French fries and a milkshake and similarly unhealthy portions at breakfast and dinner. So, I finally straightened that out, but, during the rest of my time at Duke, I had other jobs, but the dining hall job was a godsend, because it enabled me to have free meals.

They weren't that healthy in those days. The Duke dining halls then used a lot of grease and a lot of bacon fat. And I remember being introduced to grits and collard greens and other Southern delicacies, but it was a great place to work. I had nice friendships with the staff, with the permanent staff, and I worked there through undergraduate school. I only stayed in the undergraduate school three years, and then, went to the Law School after my third year. And I worked there right through my three years of law school. So, that was really a godsend and it was great to have that opportunity.

**SI:** Were you able to get involved in any extracurricular activities or was it mostly work and class?

**Justice Stein:** No, no. My first year at Duke, I saw a sign at Page Auditorium put out by the Duke Players. That was the drama group and they were putting on a play that's now on Broadway called *The Front Page*, by Ben Hecht. And I was always a little bit of a ham, so, I tried out and I got a part as an Irish newspaperman named McCue, to the consternation of my parents. They said, "What are you doing going out for plays? You're supposed to be there to learn," but I assured them that it wouldn't have an impact on my academics. It probably did, but I did participate, got a part in the play. And then, in my second year, I also volunteered to do some work with the Duke Players and I was made the assistant director of a Cole Porter show by the name of *Anything Goes*. And so, for the first two years, I was fairly active there.

And I think in my second and third year at Duke, I got a job that paid a dollar a day refereeing the Duke Varsity Basketball Team practices. Now, Coach [Mike] Krzyzewski, the famous Coach K, was not at Duke then. The coach then was Harold Bradley [from 1950 to 1959]. Duke had a marvelous guard by the name of Dick Groat, who went on to play shortstop for the Pittsburgh Pirates. But, during my undergraduate years, he was

First Team All-American and he was a very hard guy to call, blocking and charging fouls around. He was a dynamic player. So, I used to go there a couple days a week in the afternoon and they'd pay me a dollar a day to referee the scrimmages.

I also had a laundry route. The laundry route consisted of me being assigned to a specific couple of dormitories on campus and, a couple of times a week, I would pick up shirts from undergraduates, who would put them in little laundry bags. And so, I would stack the little laundry bags into one big laundry bag, carry that laundry bag on my right shoulder. And then, on the other shoulder, I would stack dry cleaning, so, trousers, jackets. And I would, I remember having the hangers draped down the front of my shoulder, hooked into the hangers that were draped down the back of my shoulder. And I would stagger down the campus with the laundry bag on one shoulder and the dry cleaning in the other. I would deliver it to the Duke laundry, and then, pick it up. And I would make seven, eight bucks a week, which was big money in those days, because you could live pretty well on ten or fifteen bucks a week back in the '50s.

So, I made money with the laundry route, I made a little money refereeing varsity scrimmages. But, my main source of money, aside from what I made in the summer at summer jobs, was the money I made ...

**SI:** At the dining hall?

**Justice Stein:** At the dining halls, which provided me with free meals and a little extra cash.

**SI:** All right. We were talking about your days at Duke. Do any of the professors or classes stand out in your memory, any mentors among the faculty?

**Justice Stein:** Not in undergraduate school, no. I did sign up for an advanced writing course with a famous Duke professor. I think his name was [William M.] Blackburn or something like that, but [the] class was over my head. I do remember vividly my freshman English instructors. I don't recall his first name, his last name was Hunting. And, since I was a freshman, I was determined to make a good impression. So, he would assign an essay every week and I would take great pains to write these very ponderous, complex essays, revealing all of my innermost thoughts. And my grades from Mr. Hunting would range somewhere between a "D-" and a "C," never did any better than a "C."

And, one day in class, he asked one of the students, who had grown up on a farm in North Carolina, to read his essay, to give us all an example of what he was looking for. And this fellow, whose name was (McCue?), stood up and he said, "I grew up on a farm. My whole family were farmers. I worked on the farm every..." [laughter] At least that's how I remember his essay and he got very good grades. And the lesson that Mr. Hunting was trying to teach to his first-year English students was, you didn't have to write flowery essays. You could write simple English and get good grades. So, that was a very hard lesson. He probably made the biggest impression on me, because he

scared the hell out of me, giving me "Ds" for weeks and weeks, until I finally turned it around.

But, the undergraduate school, as I said, was really not distinctive for me. I wasn't sure what to major in. I think I started out as a psychology major, and then, switched to an economics major, but nothing clicked. And so, I was just going through the motions as an undergraduate there, making decent grades, but not great grades, you know, "Bs," a few "Cs," an occasional "A."

In my third year, I ran into a guy named Jerry Gibbons, who I had played a lot of basketball with at the Duke gym, and he said to me, "You know, I'm going over to the Law School now, because I found out that you're allowed to enroll in the Law School and, after you finish your first year, they'll give you credit for your fourth year in college." In other words, you can skip--you can combine--your fourth year of college with the first year of law school. And I said, "Really?" He said, "Yes." I said, "Boy, that sounds great." I went--I went there the next day--because I was not happy with the undergraduate experience. I thought it'd be great to save the money.

And the idea of becoming a lawyer had been put in my head years ago by a seventh grade history teacher. Her name was Jane Kahlert and we would spend a lot of time in seventh grade of grade school doing current events, because it was the time of the Second World War. And I had really become excited in her class and participated a great deal and had a lot to say and was kind of opinionated for a seventh grade kid. And, one day, she said to me, "You know, Gary Stein, you have an awful lot to say--you should be a lawyer." I think that was the only time anybody ever said that to me, but it sort of stuck.

So, when Jerry Gibbons said that, I walked over to the Law School the next day. I got the application, I signed up. I signed up for the LSATs. I wrote or called my parents and asked them how they felt about it and I applied for a scholarship at the Law School. And, as it turned out, I did exceptionally well on the LSATs, which probably reflected the fact that I had some aptitude for the law. They gave me a full-tuition scholarship, which meant I didn't have to pay the 350 bucks a year, and they accepted me. So, in 1954, when I should have been a senior in the undergraduate school, I instead became a freshman at the Law School.

I applied for a job as a housemaster at the undergraduate school, which meant that I lived in a freshman dorm and supervised the activities of freshmen at Duke, which wasn't hard to do, because you weren't allowed to have beer in your dorm in those days. So, there was not a lot of--in fact, drinking on campus was a ticket out of Duke. So, it was not hard to be a housemaster, but they paid me five hundred bucks a year and free room.

So, I had the housemaster job, I had the job at the dining halls. And, all of a sudden, I was a first-year law student, which turned out to be probably one of the best decisions I've ever made in my life. I've always said the best decision I made in my life was

marrying my wife Et, and anything else is second fiddle to that. But, going to law school was a good decision, it turned out.

**SI:** Tell us about that first year in law school. From other interviews I've done with career lawyers, that's a really difficult period.

**Justice Stein:** Yes. Well, I think it is and I think it's probably important to make the year difficult, because you're being asked to learn a different way of thinking than you've been exposed to before. And good law professors try hard to make law students understand that details matter, that facts matter, that this is a not a profession at which you can do a "once-over lightly" and get by. It's a profession in which preparation and attention to detail and being careful, as well as being thoughtful and being creative and being articulate, all matter. So, first year of law school is meant to shock you out of your sense of complacency. It's meant to jolt you into understanding you're now in a different kind of intellectual discipline. I was very lucky, because I hadn't really dug in as a high school kid or as an undergraduate in college.

I was lucky, as I said, because the first-year professor who taught the course in tort law--tort law is the law of negligence, the law of assault and battery, the law of libel and slander, the law that has to do with the rights of people to recover based on civil wrongs that are done to them by someone else--and the professor was a fellow named Douglas Blount, B-L-O-U-N-T, Maggs, M-A-G-G-S, and he was a tough guy. And, for some reason, he picked me out of the crowd and sensed that I wasn't working hard enough. And so, after about two weeks in his class, he developed the pattern of calling on me every day, often asking me to stand up. And then, he would ask me a question, the answer to which was not found in the text of the chapter that we were assigned, but invariably was found in the footnotes.

And, for the first couple of weeks, until I caught on, I rarely had the right answer. And his response to me was a scornful, "Mr. Stein, don't you read the fine print before you come to my class? Don't you read footnotes? Why are you wasting my time coming here without being prepared?" embarrassing you in front of the whole class. I wasn't the only one he singled out, but he seemed to take a particular delight in picking on me. And, of course, if you're in that position, there are just a couple of things you can do, you know, drop the course, which wasn't a good idea, or read the footnotes. And my decision was to read the footnotes and prepare for that class like I was teaching it. And so, after a few weeks, he stopped bothering me, because he realized that I'd done the work and read the footnotes and was thoroughly prepared and it taught me a great lesson. It taught me the kind of effort that was going to be required to excel in law school.

And, of course, you know the analytical issues that you're exposed to as a young law student. He would ask a question about, "Supposing you walk up to a guy and you tap him on the head to get his attention and he turns out to be the only man in the world with a paper-thin skull and you cause a cerebral hemorrhage. Are you liable?" The problems and the hypotheticals that they would present to you were creative. They

made you think outside-the-box. And they made you understand that the law was not simple, that it was analytical, that the purpose of the law was to find justice and that justice was elusive and that people had different opinions about what constituted a just result. And I was fascinated. I was intrigued, and so, I worked very hard.

I've told my kids a story that was kind of typical of the way I approached my exams in law school. After the first semester, we had only two exams, one in a course called "Legislation," taught by a professor named [Charles Harris] Livengood, [Jr.], and one in a course called "Chattels," taught by Professor [Elvin R.] Latty. The textbook in "Legislation" was a big, thick book, probably over a thousand pages, and I had probably not devoted as much time to the "Legislation" course as I had to torts and contracts and criminal law. So, two or three weeks before the exam, I decided I'd better dig in and prepare.

And I decided the best way to do that would be to summarize the textbook. Even though I had read the chapters and taken notes, I didn't feel like I had really dug in. So, I set about to summarize the textbook in "Legislation," writing longhand on legal pads. And I, you know, probably worked a couple of weeks at it. The summary was extensive. I was working many hours a day. And, a couple of days before the exam, I woke up in the morning with an excruciating pain in my right arm, I mean, so bad that I couldn't move it. And I went over to Duke Hospital and they examined me. And they asked me if I'd been doing anything unusual with my right arm and I said, "No." I said, "I've been doing a lot of writing. I've been summarizing a textbook for the past couple of weeks." They diagnosed me with acute writer's cramp and they injected me with Novocain to eliminate the pain.

But, I couldn't write on the day of the exam and I had an old Woodstock typewriter. I used to pawn it when I was short of cash and the pawnshop would give me fifteen bucks for it, but I either got it out of the pawnshop or maybe I had it. And the Law School permitted you, if you preferred--there were no computers in 1954--so, you had a choice of either writing your exams longhand or typing it in a separate room. And I elected to type my exam on the old Woodstock and I did get an "A" in "Legislation." So, the work spent summarizing that textbook was worth it.

**INTERVIEW WITH JUSTICE GARY STEIN**  
**APRIL 7, 2017**  
**PART 3 OF 9**

**Striking Out from Durham: Law School & Early Work in the Legal Profession**

*Justice Stein expands on his activities at Duke School of Law, including his work on the Duke Bar Journal (later The Duke Law Journal). He shares how he met his future wife, Et, while working as a summer law clerk in Newark and their courtship. He also details his tenure as a summer assistant to Senator Estes Kefauver (D-TN) during the Dixon-Yates power contract debate and explains how he acquired his first position in the Kramer, Marx, Greenlee & Backus law firm in New York City.*

**Justice Stein:** It was a very tough first year and I got reasonably good grades on "Legislation" and the "Chattels" exams, which were in December. But, the other five exams were in May or June and I had no idea how well I was going to do in those. I was in a class of about forty guys, no women. And so, we took our exams in June and they posted the grades on the bulletin board outside the Dean's office by letter. That is, you had a designated letter or number that told you where to look for your grade and your grades were next to it. And it turned out in my first year that I had the second-highest academic average in the class. So, I was thrilled and, you know, convinced I'd made the right choice when I went to law school.

I got a job that summer clerking for a Newark law firm that specialized in bankruptcy law. The name of the firm was Ravin & Ravin. In those days, a nine-month clerkship was a mandatory precondition of admission to the New Jersey Bar, so, it was a seller's market for law firms. They could hire young lawyers like me and pay me fifteen bucks a week, which is what I got from Ravin & Ravin, and I worked there that summer.

At night, after I finished work, I would go to the Rutgers law library and I was writing an article for *The Duke Law Journal*. I had, in my second semester, first year, submitted an article to *The Duke Law Journal* and *The Duke Law Journal* had a faculty advisor named Mel Shimm, who turned out to be a dear friend and was a very influential member of the faculty on my life. And Professor Shimm made me redraft that article at least ten times before he finally considered it acceptable for submission and publication at the law review. And so, I decided that summer of my first year to try another article, which I did. I wrote an article on an arcane subject called the use tax, which is sort of related to the sales tax [Gary S. Stein, Vitiating of the Use Tax: It Pays to Advertise, 5 *Duke Bar Journal* 45-50 (1955)]. And so, most nights that summer, I would leave Ravin & Ravin at five-thirty, six o'clock, go over to Rutgers Law School, spend a couple hours there, then, take the bus back home.

My parents probably had left Irvington by then and moved to a new apartment in Newark on Fabian Place and, of course, my brother, by that time, was probably, you know, nine or ten years old. So, I spent that summer with him and with them, but it was

a tough summer. The only bright spot of that summer was that I was invited to a wedding that summer in Irvington. A young woman named Judy Schneider, who I had gone to Irvington High School with, was getting married. Actually, Schneider was not her maiden name; that's her married name. I don't remember her maiden name. The guy she married was Jerry Schneider, who was from Paterson. And it was at that wedding that I met my late wife.

And Et was there with a couple of her friends and, I remember, we were standing in line after the ceremony to greet the bride and groom and began to talk. And I was immediately smitten, except she was engaged to another guy. So, in any event, I asked her if she would like to come out with a bunch of my friends after that wedding. We were going to a place in Livingston where they had a jukebox and you could get a cheeseburger and a beer and they had dancing. She said, "Yes, I'll come, but you have to invite my friend, Florrie." So, I did and we had a very nice time together after the wedding. And I told her how sorry I was that she was engaged and she said, "Don't worry." She said, "You know, you'll find somebody that will make you happy and nice meeting you." And so, I called the bride a few days later and I said, "Look, if Et Tilchin ever breaks up with this guy," his last name was Harribulanick. I said, "You let me know, okay?" She said she would and, sure enough, she did.

So, I guess I got the call the following December, my second year of law school, and Et and I went out that Christmas holiday. And we had dinner together and discovered that we both played chess. And so, we agreed that, when I went back to law school, she was at Fairleigh Dickinson at the time--or maybe not, maybe she had, by then, graduated Fairleigh Dickinson and was working--but, in any event, we decided we would play chess by mail, which you can do. You'd make a move, put it on a postcard. It takes a long time to play a game of chess by mail.

So, I recall distinctly that I had gone to a [conference]. By this time, I had been selected to be on *The Duke Law Journal*, not an officer yet, but a member of *The Duke Law Journal* staff. I was only in my second year. Third year, you got to be an officer. And I went to a law journal conference in Atlanta, Georgia, with two friends, one who is still with us, a dear friend named Russ Robinson [Russell M. Robinson, II], who went on to found the largest law firm in Charlotte, and another guy named Duncan McKee. And we were at this law journal conference in Atlanta. We went out to dinner and they had postcards on the table. I guess it was a place for tourists. So, they put postcards there and I took the postcard and wrote her a postcard and made the first move of a chess game--pawn to king four--and mailed it. It's a good thing I did.

So, my second year of law school was highlighted by a lot of academic work. And, because of my appointment to be a member of *The Law Journal*, I spent a lot of time working on law review articles for submission and it was a very busy, tough year. I didn't get home much. I did get home and I saw Et the springtime, spring vacation, my second year and we went out again. It was not as successful as the first time, but we still had the chess game going on. So, it was hard for her to stop communicating with me, even though she may have been inclined to, and, by the end of the second year of

law school, we still hadn't finished the game. So, that was a golden opportunity for me to call again at the end of the semester and see if I could see her again to finish the game, which we did.

I made equally good grades my second year and still ranked second in the class. The guy who was first was Russ Robinson, the guy who I mentioned before, and we're still in close touch and still good friends. And Russell has just had a marvelous career as the senior partner of a firm in Charlotte by the name of Robinson, Bradshaw & Hinson, a firm with about 140 lawyers today.

I got a job at the end of the second year in Washington as an assistant to Senator Estes Kefauver, whom you may or may not remember. He ran for Vice President with Adlai Stevenson the second time that Stevenson ran against Eisenhower [in 1956]. But, in the Summer of 1955, Senator Kefauver was engaged in an investigation of the Dixon-Yates power contract. [Editor's Note: Democrat Estes Kefauver represented Tennessee in the US Senate from 1949 to 1963. He chaired the Senate Judiciary Antitrust and Monopoly Subcommittee during its investigation into the Dixon-Yates contract in 1955.]

Dixon-Yates were utility operators in Tennessee and they were interested in generating power to supply the Tennessee Valley, which had been supplied in the past by the Tennessee Valley Authority. Senator Kefauver was not happy with that and the Dixon-Yates project, which needed financing from Wall Street, was being assisted by a well-known investment banking firm named First Boston. And a vice president of First Boston named Adolph Wenzell, who was instrumental in doing this financing for Dixon-Yates, turned out to have been an advisor to the Budget Bureau and Senator Kefauver thought that that presented a conflict of interest.

And so, he launched an investigation of the Dixon-Yates contract, based on this alleged conflict of interest, and he didn't have a big budget. So, he had one full-time "real" lawyer, a guy named Arthur John Keeffe, a professor at Catholic University Law School, and four "kids" and I was one of the kids. I was a second--I had just finished my second year--and I was there with three other guys and we worked that whole summer for Senator Kefauver. Russell Baker, the famous reporter for *The New York Times*, covered the hearings. A lot of the hearings wound up on the front page of *The New York Times* and *The Herald Tribune*. And I was commuting that summer between Washington and New Jersey, where Et was. She was working at a day camp, if I remember. We finally finished the chess game and our relationship was improving, and so, that was a very exciting summer for me.

The guy from First Boston, Adolphe Wenzell, was represented by the prestigious New York law firm of Sullivan & Cromwell and the partner in charge of representing First Boston and Wenzell was a famous lawyer named Arthur Dean, who had negotiated the peace treaty at the end of Korean War. And so, it was a very heady experience, I mean. I forget what they were paying me, maybe fifty bucks a week by this time, but it was still very exciting. There was television coverage of our hearings. I would be there every day sitting in the row behind Senator Kefauver and the other Senators on the

Committee and it was just a wonderful experience. I lived in Washington with the three other guys who were working with me on the Committee. And then, every weekend or two, I would drive home to New Jersey to see Et; once, she came down to Washington. And it was just a very exciting time.

**Illingworth:** What were you doing as part of the research team?

**Justice Stein:** Well, we were providing Senator Kefauver with legal memoranda, with summaries of evidence, with the basis on which he could challenge the validity of the Dixon-Yates contract. It was a contract, I think, with the Budget Bureau and that's where the conflict of interest arose, because Wenzell, who had consulted with the Budget Bureau, had also been helping Dixon-Yates with their financing. So, we, you know, we did whatever they asked us to do. I don't really remember clearly what we did. But, you know, I was probably twenty years old at the time and it was very exciting stuff for a second-year law student to be in Washington in the middle of a Senate hearing. I'm not sure that I made a great contribution. I have hanging on the wall a little letter of recognition from the counsel to the committee [Keeffe], acknowledging that we were there, that we showed up every day and we did, sometimes a little bleary-eyed, but we were there. And, at the end of the summer, President Eisenhower cancelled the Dixon-Yates contract. So, the effort was successful.

At the end of the summer, I was ready to go back to Duke Law School and Et was leaving New Jersey with her dear friend, Sue Behrman, and going to Miami, where she had gotten a job as the activities director at the Miami Jewish Community Center. She had done a lot of work with teenagers at summer camps and in other group activities. So, they hired her because of her experience with Jewish teenage activities and I, of course, was going back to Duke. And, in those days, it was much more common for young people to marry in their early twenties than it is today, when young people don't marry until their mid-thirties or late twenties or whatever. So, that was on my mind. It was kind of bewildering to me, because I didn't have fifty cents extra that I could call my own.

But, in any event, she went back to Miami, as I said, to take the job. I went to Duke and we wrote letters to each other on a daily basis, because our relationship had cemented during the summer. And I was absolutely flabbergasted when I got the first letter from her, because she had ordered stationery that had at the top imprinted, "Especially for Gary." Of course, I teased her that she had similar stationery for five or six other guys, but she swore she didn't.

And so, I was now in my third year. And I had to make a decision about trying to find a job and we were communicating on a regular basis. By this time, I had been named Associate Editor of the Duke law review. And so, I would go up to the law review office every night, which was on the third floor of the Law School, with my friend Russ Robinson, who because his grades were better than mine, he was named the Editor--I was the Associate Editor--and we would work together at night until midnight. And then, he would go home, because he was married, and I would stay and write Et a letter.

And, sometime in September of that year, early September, I got a letter from Et that said, "You know, I want to come up and visit you at Duke." And I wrote back, "Well, that's great, but I'm going to pay for your airfare," and she wrote back and said, "That's nuts. I'm working. I have a salary. You can't pay," and I said, "Well, you can't come unless you let me buy the ticket," and then, she sent me a telegram and said, "I've bought my ticket and I'm coming." And I had talked to the guys at the Law School about her and they had not seen me with a woman down at Duke, because she had never been there before and our connection was New Jersey. But, because they knew about her and knew that she was flying up from Florida, when I went to meet her at the airport, half the law school followed me. And so, she was greeted by about twenty guys from my law school class when she got off the plane, [laughter] which made a big impression.

And, during that weekend, which was September 1955, I proposed to Et at the Duke Football Stadium. But, I asked her to promise not to tell anybody, [laughter] because I was scared and I didn't have any money and I didn't want anybody to know. And she said, "What? Are you out of your mind? I'm going to tell everybody, including your parents." And so, we were engaged as of September 24, 1955. Of course, I didn't have money for a ring, but it was very exciting.

My parents were perhaps a little less excited, since they were wondering whether I was going to be able to get a job after law school. When we went home Christmastime to meet with my parents and talk to them about the wedding, my father had the temerity to say to Et, "You know, maybe you and Gary should go a little slower and delay the wedding." And Et turned to him and said, "Morris, we're not asking you when we should get married. We're telling you--we're getting married in June," [laughter] and that was the last time he took her on.

So, strangely enough, I was unsophisticated about job applications. I knew Duke had a placement office and I knew some law firms would be coming down, but I didn't contact any firms in New York or New Jersey in the Fall or Winter of 1956 and ...

**SI:** Before we talk about applying for the jobs, I wanted to ask, what did you kind of see for yourself in the law at that point? What had your classes really focused on or specialized in?

**Justice Stein:** Well, it isn't that you specialize. Your law school education is a generalist education, but, at that time, I wanted a job. I mean, if I had been more sophisticated, I would have applied for a judicial clerkship, because my grades were good. And I didn't even--I didn't know a lot about [it]. I didn't know that, for example, that the Justices on the New Jersey Supreme Court hired law clerks. Nobody told me, or that the federal judges hired law clerks. I mean, I may have known it generically.

But, Professors Maggs put me in touch with a Washington, DC, law firm and I went up and interviewed there, a firm called Arnold, Fortas & Porter. The Fortas was the famous

Washington lawyer who became a Justice of the Supreme Court. [Editor's Note: Abe Fortas became a US Supreme Court Justice in 1965.] But, I didn't apply to any of the New York firms until the spring of my last year of law school. And, as luck would have it, a guy I knew who had graduated Duke Law School two years before me, named Bill Kaelin, had gotten a job at a medium-sized New York law firm by the name of Kramer, Marx, Greenlee & Backus. It was an offshoot of the famous New York law firm White & Case. And Bill must've dropped me a note or called or something, but he suggested that when I came home for spring vacation that I stop in at the firm and talk to them about the possibility of working there.

I didn't have any other irons in the fire. Again, if I had been diligent and done my homework, I would've sent out twenty-five letters in the fall and tried to get interviews with a bunch of firms, because my record was good enough. But, I didn't, and so, when I went up for spring break in 1956, I went to the Kramer Marx law firm. I had an appointment and I met with the senior partners, Henry Marx and Richard Greenlee. And they offered me a job, starting at four thousand dollars a year, September--not September, no, the Summer of 1956--and I said yes.

I mean, it was a firm at the time that probably had twenty to twenty-five lawyers. They had a litigation practice, a tax practice, a very good corporate practice and they were very sophisticated lawyers. They had--as I said, the firm was an outgrowth of White & Case--and they had some very big clients. They represented General Dynamics. They represented a major construction company called the George Fuller Construction Company. And four thousand dollars a year was a little less than what was the going rate in 1956. The going rate, so-to-speak, was forty-five hundred dollars a year, but they said, "You get a generous bonus." So, they offered me a job, four thousand dollars a year, and I took it.

And then, I went back to law school, graduated in June. I went down to Florida to pick up Et. By that time, I actually had my father's old 1948 Ford in my third year of law school, first time I had a car. So, I drove down to Florida, brought her up to Durham for graduation. My parents and my grandmother on my mother's side came down for the graduation. My brother was there; graduated law school, went up to New Jersey, took the New York bar exam that June. I think I took the exam on the 29th and 30th of June.

And we got married on June 1st, I'm sorry, on July 1st, 1956, and the whole wedding cost about twenty-five bucks. We got married in a rabbi's study. We had a little garden party in the backyard of Et's sister's house in Paramus, where refreshments consisted of a scooped-out watermelon with fruit, some baked chocolate chip cookies and the big expensive items--printed matches and printed napkins. Et smoked cigarettes in those days, unfortunately. And, after the wedding, we went off for a one-week honeymoon in the Berkshires. I didn't know this at the time, but my parents were so embarrassed at the tiny wedding that we had that they took their whole family out to dinner, that is, my father's and mother's brothers and sisters, but they didn't invite Et and me. [laughter] So, we didn't hear about it until we got back.

We had gotten an apartment in the meantime in Brooklyn Heights, at 132 Joralemon Street, and got back from the Berkshires probably Saturday, July 7th; Sunday, July 8th, went to Sears and Roebuck and bought two dressers and a record cabinet, which I stained that day. And I had stain inside my fingernails, which we got off with turpentine, and started work on Monday, July 9th, 1956, at Kramer, Marx, Greenlee & Backus. That was kind of a red-letter day in my legal career.

**SI:** Do you want to take a break?

**Justice Stein:** No, I'm good.

**SI:** Okay. I just want to ask one or two more questions about Duke.

**Justice Stein:** Sure.

**SI:** You had mentioned in an interview that's actually going to be linked to this one, your interview with Eagleton on the Governor's Administration, that you were in law school at the time of the *Brown v. Board of Education*[, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954) (*Brown I*)] decision. Can you kind of describe what the reaction was to that?

**Justice Stein:** Sure. There were a lot of Southern guys in the class and some reacted very badly. Some thought it was dead wrong, thought it was intrusive, thought the Supreme Court had no business interfering with the South's longstanding practice of having separate schools. Their argument was that there was nothing wrong with that, that it was not unconstitutional, that the black schools were equal. Of course, they weren't. All you had to do was drive by one of the black schools in Durham and you would get a clear picture of the terrible inequality. The schools looked rundown, the outside athletic facilities were mediocre, crumbling. And the reaction of my Southern colleagues--not all of them, but just some of them--was that, "This is our way of life and we have a right to have our schools separate."

I thought it was a historic moment for the country and I'm not sure that I appreciated the long-term implications as much as I should've, because it wasn't as if segregation stopped cold. The court said in *Brown I* that "separate but equal" schools are unconstitutional. A year later, in *Brown II* [*Brown v. Bd. of Educ.*, 349 U.S. 294, 75 S. Ct. 753, 99 L. Ed. 1083 (1955)] they said the South has to desegregate with all deliberate speed, but nothing happened when I was in law school. And, as a matter-of-fact, nothing happened for a good ten years after that, because the Southern schools, Southern school districts, resisted, as you might imagine. And, instead of complying and integrating their schools, many Southern school districts adopted what they called "school choice plans," under which they maintained the white and black schools, but they gave to the children the choice of which school to attend. Obviously, the white kids chose to attend the white schools, but many of the black children and parents were afraid, were intimidated to choose to attend the white schools.

So, you got some movement, but not enough, not enough to make a difference, and it didn't--the desegregation movement--really didn't take root until the United States Supreme Court decided *Green* against Kent County in 1965 [*Green v. Cty. Sch. Bd. of New Kent Cty.*, 391 U.S. 430, 88 S. Ct. 1689, 20 L. Ed. 2d 716 (1968)], where they said, "This school choice system doesn't work. You're putting the burden on the children and families that have been discriminated against to take the initiative to stop the discrimination. That's not fair. You have to stop separate schools and stop segregation root-and-branch in every aspect of your school systems." And, when the Supreme Court decided the *Green* case, the Southern states began to comply, because President Johnson, to his credit, used a provision of the Civil Rights Act to threaten to withhold funding from Southern states that didn't implement desegregation as the Supreme Court had ordered.

So, while *Brown* against Board of Education was historic, I left Duke in 1956 and I think that my consciousness, while it had been raised during my time there, my focus shifted. I shifted my attention to learning the skills of my trade. I was now a lawyer being paid to practice law, to advise clients, to write documents, to do research. I wanted to be very good at it, and so, I focused my attention in that direction and put to one side the inspiration that I had felt when the Supreme Court decided *Brown*.

**SI:** Was there any reaction to the way the case was presented, the use of social science evidence, that sort of thing?

**Justice Stein:** I don't remember that, Shaun. I don't remember. Certainly, we read it, we discussed it in class, we talked about it, but I don't remember any specific reaction, except for the reaction of a couple of guys from the South who thought it was outrageous.

**SI:** While you were in Durham, do you think you faced any anti-Semitism?

**Justice Stein:** Well, except for the experience in applying, I would say no, although Duke had a typical fraternity system at the time and, on campus, there were two fraternities for members of the Jewish faith. It struck me at the time as odd, but I was invited to join one of the two fraternities and I did. And I was a member for about a year-and-a-half, lived in that fraternity's dormitory. In fact, when I had the laundry route, that was where I got my customers from, but, as soon as I left the undergraduate school for the Law School in 1954, I kind of separated myself from the fraternity. But, I would say there was not any conscious anti-Semitism.

Some of my friends and I would often travel about an hour to a college in Greensboro that had a larger number of Jewish women, undergraduates, than Duke had. Duke, you know, because of its quota system, did not have an abundance of Jewish undergraduates, and so, the odds were a little bit difficult at Duke. And so, to improve the odds, we would often go on a weekend over to a women's college in Greensboro, where there were more women of the Jewish faith. And I did date over there, but I would say there was no significant anti-Semitic experience at Duke while I was there.

It was, you know, it was a Methodist school and it was very clearly identified as a Methodist school. Church attendance was not mandatory, but it was certainly a very important part of college life. As I said, you had to take a course in religion, a full-year course, and the chapel was the dominant building on the campus. It was impossible to miss. It sat right in the center of Campus Drive. So, I would say the school, at that time, had somewhat of a religious, Methodist dominance, but it didn't affect me or bother me significantly. And it wasn't until years later that I fully appreciated the significance of my admission experience in the undergraduate school, that I fully realized what it was that made it so hard for them to accept me and how it was that Charlie Max finally got me to be accepted. I obviously didn't appreciate it at the time; I do today.

**INTERVIEW WITH JUSTICE GARY STEIN**  
**APRIL 7, 2017**  
**PART 4 OF 9**

**Man for All Seasons: Attorney, Father, Soldier, Politician**

*Justice Stein describes his career in corporate law at Kramer, Marx, Greenlee & Backus while also raising a growing family. As an Army Reservist, he served on active duty at Fort Bragg, NC, and Fort Dix, NJ, after President Kennedy called up the Reserves in response to the Berlin Crisis. He details other aspects of his Reserve commitment, including how it led to his relationship with future NJ Governor Thomas Kean. He explains how he became involved in Republican politics by running for Mayor of Paramus in 1964.*

**Illingworth:** And, also, just one question about your time with working for the Senator. That was obviously the era of the Red Scare, McCarthyism. Living in Washington and working in Washington at that time, was that palpable? Do you have any memories of the atmosphere?

**Justice Stein:** I would say no. I would say no, nothing significant. The only other members of the Committee that I remember to this day were a Senator named Joseph O'Mahoney from Wyoming and a Senator named Langer from either North or South Dakota. But, I don't remember any significant runoff from the McCarthy Era, which, as you say, was probably prevalent at that time. I just don't recall that it affected our Committee's work at all. [Editor's Note: Democrat Joseph C. O'Mahoney served Wyoming in the US Senate from 1934 to 1953 and from 1954 to 1961. Republican William Langer served North Dakota in the US Senate from 1941 to 1959.]

**More on First Job**

**SI:** So, tell me a little bit about your work. You started in July of '56, you said.

**Justice Stein:** I did.

**SI:** What kind of cases were you were working on or clients?

**Justice Stein:** Well, it was a firm that was primarily a corporate firm. There was a litigation partner named Lloyd MacMahon, who went on to become a federal judge, and I think, early on, I worked closely with him. He was very kind. He came to my swearing in when I was sworn into the Supreme Court of New Jersey. But, Lloyd MacMahon at the time, he had been the United States Attorney for the Southern District of New York. [Editor's Note: The Honorable Lloyd F. MacMahon served as Chief Assistant US Attorney of Southern District of New York from 1953 to 1955 and as US Attorney for the

District in 1955. He became a federal judge in September 1959 and served as chief judge for the United States District Court for the Southern District of New York from 1980 to 1982.]

And one of the first cases I worked on with him was a stockholders' suit against the Cuba Railroad Company, which, strangely, was a New Jersey corporation, operated the main railroad in Cuba. It was a public company and we were outside counsel. They were sued by stockholders and we hired the two Newark law firms, Pitney, Hardin & Kipp and Stryker, Tams & Dill, to help us and I worked on that case with Judge MacMahon.

There was a major lawsuit against the General Dynamics Corporation having to do with whether or not they were obligated to lease twenty-five floors in a building on Park Avenue, based on a memorandum signed by a vice president, big case that took a lot of our time. I did a lot of the research. It was a case pending in the New York courts. Because we represented the George Fuller Construction Company, a company that built the United Nations Building and the Seagram's Building and the CitiBank Building, they were also a public company, we had a stockholders' suit by a stockholder who wanted to inspect their books and records. And we represented the corporation and I recall, you know, a lot of research, a lot of work on that case. As I stayed at the firm, I branched out and the firm assigned me work in the corporate field. So, I was doing corporate registration statements in connection with public offerings and proxy statements in connection with annual stockholders' meetings.

And then, when I was about twenty-six--say I was there three years, because I started there just after my twenty-third birthday--I got a call one day from the senior partner. His name was Henry Marx, middle name was Mosler, because his mother was an heiress of the Mosler Safe Company, and Henry Marx was sort of a patrician guy. His father had made a lot of money in the South in real estate and Henry had gone to Princeton and Harvard, wore custom-made suits and custom-made shirts and a very smart man. And it was Henry Marx who passed on to me his practice of reading all kinds of sophisticated journals. He would read *Foreign Affairs*, which I still read to this day. He would read *The Economist*. He would read *The Times* in the morning and do the crossword puzzle in ink. He would read law reviews from Harvard and Yale and Columbia--very well-read, very sophisticated guy and a great lawyer.

So, his secretary called me one morning and said, "Mr. Marx wants to see you," and, in those days, when Mr. Marx wanted to see you, you went down there with your legal pad and your pen, ready to take orders. And I walked into a room full of suits, none of whom I knew, and Henry Marx said to one of the guys, whose name was Charlie Fitzmorris, "Charlie, this is Gary Stein. He's one of our brightest young men and he's going to handle this deal for you." And Charlie Fitzmorris took one look at me and he said, "Like hell he is." He said, "If you assign me to that kid, I'm going to Cravath." Cravath, Swaine & Moore was one of the great New York firms. Henry said, "Charlie, calm down. I don't mean that Gary's going to do it himself. I'll work with him every step of the way, but you know I can't be there all the time. So, I just wanted you to know that, when I'm not available, Gary's going to be doing the work," and Charlie calmed down.

And that began a, say, thirty-year relationship between me and Charlie Fitzmorris, who, with a group of friends, was buying a controlling interest in a supermarket chain in the Midwest, in Iowa, Illinois and Missouri, called the Benner Tea Company. Charlie was a mercurial Irishman, whose father had been the police commissioner of Chicago and whose mother was from the Scott Family. That was the family that owned the Carson, Pirie, Scott [& Company] Department Stores in Chicago. And Charlie was just about as ornery and difficult a client as any lawyer could possibly have.

Early on in our relationship, he called me and asked me to prepare a contract for somebody. The next day, the phone rang and I answered it and it was Charlie and he said, "Where's the contract?" I said, "Well, gee, Mr. Fitzmorris, I'm just finishing it." He said, "That's not acceptable. When I ask you for a contract, I want it here the next day." Now, there were no faxes in 1959 and there was no email or PDFs. There wasn't even a Federal Express. So, I said, "Well, Mr. Fitzmorris, how do I do that?" He said, "That's your problem." He said, "I want my stuff out here immediately, no delays." So, we used to send a messenger out to LaGuardia Airport with Charlie's contracts and he would put it on the United Airlines freight plane that went every day from LaGuardia to O'Hare Airport, so [that] Charlie could get his stuff on time. But, I learned to work with him.

I learned that there was a method to his madness. [laughter] He believed that you didn't let grass grow under your feet if you wanted to complete a transaction. I helped him with the acquisition of Benner Tea Company. The closing took place in Burlington, Iowa, where the company was headquartered and the lawyer for the Benner Tea Company, Ed Dailey, had an office on the second floor of a building on Main Street in Burlington. And, when we went upstairs for the closing, Ed said to me, "Look, Gary, could you take your clients out for a walk?" It was the middle of February. He said, "I want to read the contract out loud to my clients and, when I'm done, I'll pull the shade up. That's how you'll know to come back up." So, Charlie and I and a bunch of his stockholders went outside in the bitter Iowa cold and walked up and down Main Street until Ed Dailey pulled up the shade and we went up there and completed the closing. And I did the work for Charlie at Benner Tea Company for the next number of years that I stayed with the law firm.

I started there in 1956, I left in 1966, except in 1961, when Et and I had our first two children, Jill, my oldest daughter, and Carrie, my second daughter, I got a notice from the White House that said that President Kennedy, in response to the Russians building the Berlin Wall in 1961, and he was in his first year as President--he wanted to show President Khrushchev that he was tough--so, he called up a million Reservists. And, at that time, I was in the Reserves. [Editor's Note: In June 1961, at the Vienna Summit with President John F. Kennedy, Soviet Premier Nikita Khrushchev demanded that the Western powers pull their forces out of West Berlin by the end of 1961, leading to months of increased tensions. On August 13, 1961, East Germany sealed the border with West Berlin and began erecting the Berlin Wall. On August 30th, Kennedy ordered 148,000 National Guard and Reserve members to active duty in response.]

I have to go back to explain that I took off six months, probably in 1958, to go on active duty in Fort Dix and I joined the New Jersey National Guard, which gave me a five-and-

a-half-year Reserve obligation. And I probably need to go back after I tell you about the '61 experience, because it was in the National Guard that I met Governor Kean for the first time. But, in '61, I got a notice to report to Fort Bragg in three weeks. [Editor's Note: Republican Thomas H. Kean served as Governor of New Jersey from 1982 to 1990.]

So, I spent a year, better part of a year, away from the firm, from September '61, say, until August '62. My son, Michael, was born in Fort Bragg in May, in Fayetteville. And the law firm was really wonderful, because they made up the difference between my Army pay as a corporal and the salary that I was earning at the firm. So, whatever the difference was, they paid the difference. So, I was away from the firm then, but the earlier time I had left the firm was in, I think, '58, when I first enlisted in the New Jersey National Guard. And I went to--I had a six-month active duty requirement--I went to Fort Dix for basic training. They sent me to radio operator school and I finished my six months at Fort Dix.

Governor Kean and I are unsure whether we met each other at Fort Dix, because he also did a six-month active duty stint, but both of us had a five-and-a-half-year continuing obligation with the New Jersey National Guard. That meant that you attended meetings once a week at your National Guard unit. Mine was in Jersey City. The statewide unit was the 50th Armored Division and I used to go to drills at the Jersey City Armory on Montgomery Street on Wednesday night. And that obligation included a two-week active duty assignment every summer, at Camp Drum in Watertown, New York. And so, every summer, beginning in 1959 and continuing for the next several years, I would go with the New Jersey National Guard to Camp Drum for two weeks' active duty.

I was assigned up there, probably because I was a lawyer, but not an officer, to the public information office. And there was another young corporal assigned to the public information office and his name was Tom Kean, and so, we got to know each other. We were in the same barracks several summers. There was nothing about him that made you think he was going to be Governor of New Jersey and I'm sure there was nothing about me that made him think I was going to be a Supreme Court Justice. We were just two corporals in rumpled fatigues.

The one thing that stood out about Tom Kean was that he had a hard time getting out the barracks in the morning in time for the first formation. And so, he took his combat boots into town and had them customized, so that he didn't have to lace them up. He had a zipper put in the combat boots. So, he could zip up his combat boots in the morning, while the rest of us were lacing ours up and tying them, and save a couple of minutes. But, the day that I was sworn in as a Justice of the Supreme Court, Tom spoke fondly of the times that we were at Camp Drum together, picking up cigarette butts outside of the barracks, which was a common chore assigned to young soldiers in those days. And Tom said that he and I never thought that we, when we were picking up cigarette butts outside the barracks, we would wind up where we were.

It turned out that, even though we were young guys in our twenties, we had a common interest in public affairs and I think our friendship bonded because of that. At the time, I

was working at 29 Broadway in Lower Manhattan and Tom was working for a family investment banking firm by the name of Kean-Taylor and I think he was somewhere on Wall Street. So, we were just a couple of blocks from each other. So, during the year, between our summer camp engagements, we would meet for lunch. Neither of us were thrilled with what we were doing. I didn't particularly like being a young associate at a law firm with a bunch of partners telling me what to do and he wasn't thrilled being in the family investment banking business. And we both talked about how we were going to break away. The path he took was to leave and go up to the private school that he had attended as a kid, St. Mark's, and he joined the faculty there, probably in the late '50s, early '60s. [Editor's Note: Governor Kean taught history and government at St. Mark's from 1959 to 1962.]

The way I escaped Wall Street, and you have to understand that Et and I had, oh, four children in five years. So, Jill was born in 1958, my oldest daughter, now lives in Montclair and has been a schoolteacher in North Bergen for the past thirty years. She's the mother of four of my grandchildren--Molly, Max, Julia and Emily. Carrie, my second daughter, was born in 1959. Carrie lives in Los Angeles. Two of my grandchildren are there--Nick, a baseball player, and CeCe, a budding Hollywood star, I'm sure. In 1961, Michael was born. Mike is married to Ellen and they live in Montclair. They have three children--Samantha, who's graduating college in Minnesota this June, Nicole, who goes to a school in Hoboken, Jacob, who goes to Montclair High School. My daughter, Terri, was born in 1963. She lives in Greenwich, married to David Kaplan. They have four children--Jessie, who's graduating Tulane this June, Rafe, who's a sophomore at Bucknell, Marley, who just got into Duke, and Jolie, who's a sophomore at Greenwich High, and my daughter, Jo, was born in 1969.

But, by the '60s, Et and I had our hands full and I wasn't thrilled commuting to New York an hour and fifteen minutes, an hour-and-a-half each way. Sometimes, I would go by bus, sometimes by train, worked late a lot, very demanding hours, and I was interested in other opportunities. And then, one day, Et came home from a League of Women Voters' meeting and said to me, "You know, Gary, I have a friend at the League of Women Voters named Alice Olick," who's a lady I hang out with today, "and Alice said you should run for Mayor of Paramus."

The Mayor of Paramus at the time was a guy named Fred Galda and he was a Democrat, which, under ordinary circumstances, would've been my choice of political parties. But, Fred had been the Mayor for ten years and nobody could beat him and a lot of people in Paramus were not happy with Fred as the Mayor. He had kind of authoritarian ways. He went on to become a judge and a very well-respected criminal judge across the street in Bergen County. But, Et said that Alice said to her that I should run against him, because the thought was that I would be a fresh face, untainted by local politics, [laughter] and perhaps I could beat Fred Galda. Well, the idea appealed to me, because it occurred to me that maybe that was a way that, eventually, I could set up an office for my firm in New Jersey and not commute three hours a day.

So, I began to get active in Paramus politics, which was not hard to do. I went to a couple of Mayor and Council meetings, other board meetings, joined the local Republican Club. [Editor's Note: The Honorable Fred C. Galda was elected Mayor of

Paramus in 1952 and served until 1964. Governor Richard J. Hughes appointed him to the New Jersey Superior Court in 1967, where he served until 1983.]

Now, you have to understand that the Republican Party in the mid-'60s was entirely different from the Republican Party today. There's a picture of me over on the wall with Clifford Case, who was the Republican Senator from New Jersey in those days [from 1955 to 1979], and Clifford Case would be a liberal today. He would be a left-wing, liberal Democrat, but, in those days, there were moderate and liberal Republicans, like Tom Kean's father, Robert Kean, who had been my Congressman when I lived in Irvington [represented New Jersey's Twelfth District from 1938 to 1958], [New York Governor] Nelson Rockefeller, William Scranton, the Governor of Pennsylvania, Jacob Javits, the Republican Senator from New York, John Lindsay, the Mayor of New York, George Romney, Mitt Romney's father, the Governor of Michigan. So, being a Republican in those days didn't seem to me to be uncomfortable or a betrayal of my family or my fundamental values. It just seemed to be an expedient way to run for Mayor against Fred Galda. I would've preferred to have registered as a Democrat, but it didn't strike me as a sin, and so, I joined the Republican organization.

I began to make friends and meet people there, and then, when the time came to file for the primary election in 1964, I did. And I ran in the Republican primary against an Irish policeman from Paramus named Dennis Buckley--and I won. Officer Buckley and his supporters were not happy, so, they immediately took control of the local Republican organization, putting me in an awkward position. And some very nice, dear, good friends, including Charlie Reid, who went on to be the Mayor of Paramus and a Freeholder and a Legislator later on, joined with me and we formed a new Republican organization. I got a nice editorial from *The Bergen Record* encouraging me and I ran in the general election. [Editor's Note: Charles E. Reid served as Mayor of Paramus from 1966 to 1974.]

And it turned out that Mayor Galda stepped down and he decided not to run. The Democrats nominated a lawyer from Lyndhurst named Bob Inghima, whom I know well and who was much more conservative than I was. So, we were really in the wrong parties in those days. But, 1964, if you remember, was the Goldwater-Johnson election and it was a Johnson landslide and Republican candidates all over the country got beat, and so did I, by a substantial margin, but it was a wonderful experience. It was the first time that I'd gotten on my feet to give speeches. It was the first time that I thought that maybe I had some leadership potential. It was the first time that I'd begun to take seriously policy issues, even on a local level. I voted for Lyndon Johnson. Had I had the good sense to say that, maybe I would've--maybe I would've lost by less, but I still would've lost--but that turned out to be a transitional step in my career.

**INTERVIEW WITH JUSTICE GARY STEIN**  
**APRIL 7, 2017**  
**PART 5 OF 9**

**The Path to Trenton: From Small-Town Lawyer to the Highest Court in the State**

*Justice Stein further elaborates on his expanding family. He recalls the reasons why he decided to leave the Manhattan firm in 1966 and how he established his practice in Paramus. He recalls how he became Paramus Borough Attorney, serving from 1967 to 1970, and got involved in the New Jersey Bar Association as Chair of its Committee on State Legislation. He outlines his role in local Republican politics and how he expanded his involvement by supporting Thomas Kean's candidacy for Governor in 1977 and Kean's ultimately successful 1981 campaign. This led to Justice Stein serving as Director of Policy and Planning from 1981 to 1985. He shares how Governor Kean nominated him to the New Jersey Supreme Court in 1984 and his memories of his confirmation in 1985.*

**Justice Stein:** I just want to go back, because I left out a couple of items about my grandkids. Mike's daughter, Samantha, is at Macalester College; that's where she's graduating. I forgot to mention my newest and youngest grandchild, Emilio, who is my daughter Jo's son. Jo is married to Sam Enriquez, who's a front-page editor at *The Wall Street Journal*, and Emilio just turned eleven. He goes to school in New York, the Bank Street School, where Jo teaches. Jill also has had a great career as an ESL teacher in North Bergen, where she has taught for the past 30 years. And Terri also graduated from Duke. Mike graduated from Duke undergraduate school, Terri graduated from Duke Law School and practices law, now part-time, with IBM. So, I think I've covered all of my five kids and the sixteen grandkids are a great joy in my life and I stay in close touch with all of them. Jill's children, I should've mentioned. Molly is [in] her next to last year at Westminster College in Utah. Max is a second-year student at Drexel. Julia is going to be starting college in the fall and Emily is a high school junior. She's doing a special program in Idaho.

So, they are a very big part of my life and I'm blessed, because four of my five children live within forty minutes of my house. The only one that's not nearby is Carrie, who's out in Los Angeles, but I'm going to go visit her in a couple of weeks. So, one of the very wonderful things about life today is not only working in the same law firm with Mike, but also being able to see my kids on a regular basis and the grandkids that are in town. But, anyhow, the decision to run for Mayor led me, two years later, in March of 1966, to leave Kramer, Marx, Greenlee & Backus.

**Illingworth:** I wanted to ask a couple quick questions about that race. Were there any other issues that were kind of brought to the fore, other than wanting to replace this one Mayor that had been there?

**Justice Stein:** [laughter] You know, I don't remember clearly--independence. I remember running an ad with my three running mates that said, "No strings attached,"

to emphasize our independence. There was a proposal pending at the time to build a motor vehicle inspection station in Paramus and I was opposing that. I'm not sure why. There was the usual issues about zoning and Paramus, of course, being a very major commercial center, there were issues then about taxes and zoning. But, I don't really remember any single issue that was profound, other than the fact that the Democratic organization, over the last ten years, seemed to be very closely connected to the shopping center developers and there was the sense that the Mayor and Council should be more independent of the commercial interests.

The town had a very good school system at the time and it had a pretty low tax rate, because of the tremendous commercial ratables in the town. So, the clearest issue that I can remember is whether we were going to be able to better serve the good citizens of Paramus because we were independent and new and fresh and had good ideas about how to protect the residential character of the community, because it is a very lovely residential community once you get off the highways. And, of course, there was a Sunday closing ordinance, which everybody vowed to maintain.

So, I think I, you know, ran a vigorous campaign and I was aggressive, but I was very young and very inexperienced. [laughter] And I had not a significant connection with the Jewish community in Paramus at the time, which should've been supporting me, had they realized that I was more liberal than the guy I ran against. But, I don't think I got that much support from them. It was just a good lesson. It was a good, early lesson, perhaps that I wasn't exactly geared for high public office, but, also, a lesson that demonstrated to me that I could speak on my feet if I had to, that I did have leadership qualities. And, of course, I always knew that I was willing to work hard. I walked the streets of Paramus for a year, knocking on doors and meeting people and trying to persuade people that they should vote for me. But, I didn't understand that the national political trend would have such a big impact on a local election. I just didn't get it and had I understood it, I would've spoken out more against Goldwater, because I thought he was a terrible candidate.

But, I'm glad I ran. I learned a valuable lesson. I remember asking my brother to take my mother and father home early, because I didn't want them to experience the pain of defeat. I'd worked very hard on the campaign and the law firm had been very generous. They gave me time off to run and all of that. But, at the end of the day, I think what I realized for the first time was that there was significant professional, commercial activity on this side of the river. It was not as sophisticated, it was not as high-powered as the work I was doing with a Wall Street law firm, but I didn't like the leverage at the New York law firms. By that I mean, the clients were so big and so powerful that you got the sense that the law firm was dominated by the clients, rather than the other way around. Now, maybe it's because our firm wasn't as big as some of the larger firms, although, in those days, the biggest Wall Street firm was about a hundred lawyers.

And I got to know lawyers here in Paramus and Bergen County by running for Mayor and it became clear to me that the leverage was different, because your clients were smaller businesses, people buying houses, needing wills, maybe involved in a

negligence case. Even if you were representing a municipality, it was a different leverage. A lawyer could be more independent, I felt, out here.

So, I bit the bullet. The election was in November '64 and I had a breakfast with Henry Marx in, probably, January of 1966. And I said, "Mr. Marx, I think I'm going to go set up my own law firm in Paramus," and he thought I was making a great mistake. He said, "You'll be a partner here." He said, "You'll make a lot of money." He said, "You have a bright future." I said, "You know, I thought I might, but I think I'd be happier, be happier to be closer to my family, not having to commute. And that's what I'm going to do." Charlie Fitzmorris, when I told him, he said, "Where the hell is Paramus?" I told him. He said, "Do they have telephones?" I said, "Yes." He said, "All right. I'm going to be your client in Paramus."

So, he came with me. A couple of other clients that I had done work for in New York were nice enough to come with me. Henry Marx was a little upset that Charlie was going with me, because they had gone to Princeton together. But, Charlie explained to Henry that I had done all his work for the last seven, eight years, and so, it was a natural fit. And Charlie was nice enough to give me a five thousand-dollar advance retainer, so [that] I could buy paper clips and stationery.

And I opened up a little office on Ridgewood Avenue in Paramus, East 64 Ridgewood Avenue, on March 1st, 1966, scared to death, married with four kids. And I said to Et, before I opened, that I thought I would run for Mayor again. She said, "Like hell you will." She said, "You can't do both of those things at once. You can't open a law practice and run for Mayor." So, I solicited and supported my dear friend, Charlie Reid. Charlie had been the founder of the Paramus Public Library, served as a Trustee at the library for forty years, became the President of the New Jersey Library Trustee Association, the President of the American Library Trustee Association, was awarded the Dorothy Canfield Fisher Prize as the Outstanding Library Trustee in America--never graduated high school, quit Palisades Park High School. He was a builder and just a wonderful guy and a wonderful friend and he had been President of the Board of Education in town. And he was very happy when I told him I wasn't going to run and he ran and I backed him. And, after he won, he made me the Borough Attorney, which I'll tell you about in a minute.

But, when I opened up, it was lonely. I had a one-man office. I bought a six-pack of beer the first day, I ordered a pizza the first day. No, the first day, I went home for lunch and Et said, "Do me a favor--don't come home for lunch anymore." [laughter] So, I got the hint, but I was only five minutes away from the house. So, it was wonderful and I loved not commuting. And it was a wonderful feeling to have your own office and to turn the key and open the door in the morning and, little by little, I built a practice. It took a while. The first year, I probably earned as much or a little more than I had earned in New York, because I settled a couple of negligence cases that first year. And then, in January of 1967, because Charlie had been elected Mayor in November '66--he defeated Bob Inglima, the guy that beat me--Charlie appointed me Borough Attorney.

It wasn't exactly a slam dunk. He nominated me, I think, three times and there were four Democrats on the Council, two Republicans. So, I had three votes--Charlie and the two Republicans--and the Democrats all voted "no," except one guy said--his name was Leon (Luxemburg?)--he said, "I'll support anybody the Mayor names except Gary Stein," because he still was sore at me for running for Mayor the last time. So, Charlie tried three times to appoint me and, every time, I was defeated, four to three. Finally, on the 28th of January, 1967, we gave up, because, under the law, after thirty days, the Council gets the right to appoint the Borough Attorney.

So, Charlie appointed Dick DeKorte, who's not with us anymore, but Dick DeKorte was a well-known Assemblyman [from 1967 to 1973] and they've named a very significant facility at the Meadowlands for Richard DeKorte and Dick was a lawyer in Franklin Lakes. And this fellow, (Luxemburg?), said, "Yes, I'm going to support DeKorte." So, that would've meant three Republicans, plus (Luxemburg?), that was four votes. So, he was nominated, seconded. And then, one of the Democrats, who lived on my block, (Roland Curley?), asked for a recess.

The Democrats went in the back room, along with Roger Breslin, who was the outgoing Borough Attorney. And, about an hour later--and I was in the audience with Et. We were watching, because this was a big deal, because being the Borough Attorney of Paramus, as a new lawyer without a flourishing practice, that would've been a big, big boost for me. They came back out and Charlie withdrew his nomination of Dick DeKorte, re-nominated me and Roland Curley joined with the Republicans, as did a guy named Tom Donnelly, and voted for me. And Roger Breslin told me afterwards that he told the Democrats they were crazy, that they shouldn't support DeKorte, that he would be much more partisan than I would and that they should support me. And they did and I served as Borough Attorney for four years, from '67 through '70, which probably helped to establish me as, you know, a fairly well-known lawyer in Bergen County.

I was practicing alone then, but I had, wow, maybe three full-time secretaries and two part-time secretaries, because the work for Paramus was a lot, and it was a busy time. I was somewhat active in Republican county politics. Those were days in which Nelson Gross was the Republican County Chairman and I had supported him when he ran for County Chairman, but, then, backed off, because I didn't like the way the county was being run by Gross. And so, I was kind of on the outskirts of the Republican Party, still identified as a Republican, but on the outskirts. [Editor's Note: Nelson G. Gross became Bergen County Republican Party Chairman in 1966. He became the party's State Chairman in 1969, serving until 1970.]

And so, from '66 to '70, I was the Paramus Borough Attorney. We actually moved out of Paramus in 1968, which is ten years after we had first bought a home there in '58. And we moved up to Upper Saddle River, because I found a nice piece of property that I thought would be good for the kids to grow up at. My fifth child, Jo, was born in 1969 and I ran a law practice. I continued to be somewhat active in--on the fringes of--Bergen County politics.

I got more involved in public interest matters. I suggested to the President of the State Bar Association, Marty Haines, around that time, that he form a committee on state legislation, because we had a committee like that in New York at the City Bar Association. And the function of that committee was to review state legislation that was passed by the Legislature and send comments to the Governor's Counsel before the Governor decided whether to sign it or veto it. And so, Marty Haines made me Chairman of the State Bar's Committee on State Legislation and I recruited forty of the best lawyers in the state to serve on the Committee with me. And I did that for about three years, served as Chairman. [Editor's Note: Martin L. Haines was president of the New Jersey State Bar Association from 1972 to 1973. He was appointed to the New Jersey Superior Court by Governor Brendan Byrne in 1978, and served as assignment judge in Burlington County from 1981 to 1990.]

**SI:** Was there a particular piece of legislation that prompted that?

**Justice Stein:** No. I thought that the Bar ought to be more active in the process by which bills become law. And I thought that, based on my experience in the City Bar Association, that the Governor's Counsel would benefit from memos that we could send about passed legislation, both commenting on legal issues inherent in the legislation and, you know, perhaps making editorial suggestions about how the bill could be improved, because the Governor in New Jersey has the power to either sign, veto or conditionally veto. So, they could take our recommendations and use it as a basis for a conditional veto.

And we worked on, you know, some very significant pieces of legislation. I remember Byron Baer [who served in the Assembly from 1972 to 1993 and in the State Senate from 1994 to 2005] drafting the first "right-to-know" law in New Jersey. And we helped them with that and we did a lot of good work. After I resigned as Chairman, the Committee sort of fizzled, but it was a good piece of--it was a good experience for me and my first opportunity to get more involved in public policy at the state legislative level somewhere.

And, in those years, after I finished being Borough Attorney, say from 1970 through 1982, which is when I left to join the Kean Administration, I built my law practice. I formed a law firm with a lawyer named Richard Kurland. The firm name was Stein & Kurland. One of the lawyers who works here at Pashman Stein, Scott Lippert, was a lawyer at that firm. We had three or four lawyers at the most and we had a general practice, a small-town practice. Dick represented a bunch of builders. At that time, after I stopped being Borough Attorney, I was frequently hired to represent people that had developments or commercial buildings that they wanted to build in the Borough of Paramus. So, I did a little of that work. The Town Manager of Teaneck, Werner Schmid, hired me as the Teaneck Board of Adjustment Attorney and I served there from about 1972 until I went down to Trenton.

I was playing a lot of tennis, because I didn't have to commute anymore. So, I hooked up with some guys up in Upper Saddle River at an indoor tennis court and I would play

doubles in the afternoon. Now, I play singles, but, at that time, I didn't have the time to play singles. So, it was a nice life. My kids were growing up, I was, you know, close to the family. We had moved to Upper Saddle River. It was a good time.

And I maintained a casual relationship with Governor Kean, who, by this time, had come back to New Jersey and was elected to the Assembly in 1966. I ought to mention that in the year that I became Borough Attorney--I guess that was January '67--November of '66, I had been offered an Assembly nomination by Nelson Gross, who was then the Chairman of the Bergen County Republican Party, but one of the Republican Councilmen in Paramus also coveted that opportunity. So, he said to me, "If you run for the Assembly, I can't vote for you for Borough Attorney, because I don't think you can do both," and he was probably right. And, at that time in my life, being Borough Attorney was a more important opportunity, because I had four kids and I needed to build up that law practice. So, I declined the opportunity to run for the Assembly. I think I made the right decision.

And so, the years from '66 to '70 were very busy when I was Borough Attorney. The years from '70 to '81 were less busy, because I was just a small-town lawyer and a father and not terribly active in politics until 19--let's see--'77, Tom Kean decided he was going to run in the Republican primary against [State Senator] Ray Bateman for Governor. And I helped him to the extent that I could in that primary. I didn't take a major role in that primary and he lost the primary, but I was on the committee and went to fundraisers and went to rallies and helped as much as I could. We were in closer touch then, because he was out of the Legislature. He had served in the Legislature from '66 to '76 and, in his last couple of years, he was the Speaker and had had a real leadership role in the Legislature. [Editor's Note: Governor Kean served in the General Assembly from 1968 to 1978 and served as Speaker from 1972 to 1973.] And we had had conversations when he left the Legislature about his interest in being Governor.

And so, in the late '70s, it might've been 1980, there was an election for Bergen County Republican Chairman. Probably one of the dumbest things I ever did, but I threw my hat in the ring and ran against a guy named John Inganamort, who was a very wealthy, powerful Republican. He was the current Chairman and it was three-way race between John, myself and [former Assemblyman, then Bergen County Freeholder] Harry Randall. And I deliberately injected myself into the race, because I thought I might be able to be more help to Tom, if he ran in '81, if I could win and I came close. I came within fifty votes, but it was a bad fit. I was not meant to be the Republican Chairman of Bergen County. I don't like fundraising, I don't like being a partisan. It was just a bad idea, maybe with a shred of good motivation. But, I shouldn't have done it, but I did and I lost, learned a lot, met a lot of people. [Editor's Note: John Inganamort served as Bergen County Republican Chairman from 1980 to 1994.]

And, when Tom announced in '81 that he was running in a Republican primary with six opponents, because of the work that I had done running for Chairman in '80, I was able to help him substantially in Bergen County. In fact, a good friend of mine named Hank Conway, who was a real estate broker, made available his real estate office to us. And

I brought Tom in to Paramus, and then, made appointments for him to meet with all of the members of the Bergen County Committee. That's like a thousand Republicans. County Committee members from every one of the seventy towns in Bergen County came in to Paramus to meet with Tom. And he stayed there for two weeks and shook a lot of hands, but it helped him enormously in the primary. He lost Bergen County, because the organization led by Inganamort was behind Pat Kramer, the Mayor of Paterson. [Editor's Note: Lawrence F. "Pat" Kramer, Jr., served as Mayor of Paterson from 1967 to 1971.] But, even though Tom lost Bergen County, he won by enough in Ocean County and Morris County and other counties to be the best, the high vote getter, in the primary. And so, he got the Republican nomination for Governor and he would be the candidate to run against Jim Florio in November of '81 and I was very active in that campaign. [Editor's Note: Democrat James J. Florio represented New Jersey in the US House of Representatives from 1975 to 1990. He later served as Governor of New Jersey from 1990 to 1994.]

I liked Tom. Tom and I were philosophically compatible. He's probably a little more conservative than I am, maybe a lot more, but we had very common views about a lot of issues. He was well-known as an environmentalist when he was in the Legislature. He had a tremendous sense of public integrity and was a very decent and not a highly partisan candidate. He got along with people from both parties. During that campaign, when he ran against Florio, Tom would frequently be way behind schedule, because he would stop to spend time with reporters and people that he'd meet along the way.

And I remember *The Wall Street Journal* ran a story by a reporter who had called Congressman Florio, because he was then a member of the House of Representatives, to ask him to have lunch with him. And the message came back, "Congressman Florio doesn't eat with people during the campaign." Well, Tom would stop and talk to anybody. It didn't matter who you were. And that characteristic, that trait that he had, of being available and taking time to answer your questions and meet with you, won him the support of so many of the reporters that covered the election and I thought was responsible for the fact that he got eighteen of the twenty-one newspaper endorsements in the 1981 election.

**SI:** Let me just stop for a second to note, for the record, that you have given this interview to Eagleton in 2009 that goes into great depth on your relationship with Governor Kean, your involvement in the campaigns, as well as your years as Director of Policy and ...

**Justice Stein:** Planning.

**SI:** ... Planning, yes. So, I don't want to rehash a lot of this stuff that's there. People can refer to that, but I do have a few questions about your time in the Kean Administration. [Editor's Note: From 1982 to 1985, Justice Stein served as Director of the Office of Policy and Planning for Governor Thomas Kean. On January 22, 2009, 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 Stein on his

experience in the Kean Administration. The interview can be accessed at <http://governors.rutgers.edu/video-library/individual-interviews/interview-with-gary-stein/>

**Justice Stein:** Sure.

**SI:** Particularly related to the Supreme Court, if it's valid. Governor Kean appointed Justices; I think Justice [Marie L.] Garibaldi was one.

**Justice Stein:** Correct. He appointed her in his first year, in 1982, when Justice [Morris] Pashman retired.

**SI:** Were you involved in that at all?

**Justice Stein:** I was not--nor was anybody else in the Administration. Tom Kean kept his counsel completely to himself and everybody in the Governor's Office was astonished when--at least to my knowledge, nobody knew in advance. Marie, at the time, was a wonderful candidate for the Court. She was the first woman President of the State Bar Association. She had been a partner at the Riker Danzig law firm. She was much beloved in the Bar. People liked her, because she was such a warm and friendly and kind and thoughtful woman and a very bright, pragmatic individual. And she had helped Tom in the campaign as well. So, I was not involved in the selection, did not know about it in advance, but was delighted for Marie when she was appointed.

**SI:** What about the process of taking a nominee through confirmation and all that? Who would handle that within the Administration?

**Justice Stein:** You know, I think Cary Edwards had more to do with that, but the truth was, there was nothing controversial about Marie's nomination. You know, she was a shoo-in. There was nobody that said anything negative about Marie Garibaldi and, to my recollection, I think she was confirmed unanimously by the State Senate. But, I think if anybody had that responsibility, it was probably Cary, who was counsel to the Governor and worked much more closely with individual legislators than I did, which was, you know, part of the definition of the jobs. Cary had been in the Legislature and the Governor had selected him to be counsel because he wanted somebody with direct experience in the Legislature in that job. My job was more of a substantive, policy-oriented job. [Editor's Note: W. Cary Edwards served in the New Jersey General Assembly from 1977 until he became chief counsel to Governor Kean in 1982. Governor Kean appointed him as New Jersey Attorney General in 1986, where he served until 1989.]

**SI:** You were nominated in 1985, or was it later in '84?

**Justice Stein:** In November--actually, it was October 1984. I got the call from one of the State Troopers who was with the Governor on Columbus Day 1984; hard to forget. I had just come back from playing a couple of sets of tennis with Hank Conway. Phone rang and it was one of the Troopers who was with the Governor, said, "The Governor

wants to talk to you." I got on the phone, we exchanged greetings and Tom asked me, "Gary, do you have a current résumé?" I said, "No." He said, "Well, could you put one together?" I said, "Sure." I said, "Why?" He said, "Well, I'd like you to bring it to the office tomorrow," because we were closed for Columbus Day, "because I want to nominate you for the Supreme Court." I said, "I could do that, Tom."

So, I did and he did. It was--it was not a shock, because other people in the Governor's Office knew I was interested in the nomination. Greg Stevens in particular, who was Tom's Chief of Staff, I think did a lot of the preparatory work, to make sure that I had a clear field. We were good friends, but I had never had a conversation about the Court with Tom during the time I served in the Administration. Whether we had talked about it earlier, I don't remember. I mean, as a kid in law school, the New Jersey Supreme Court was a very special institution. I mean, it was, in my judgment, the best state court in the country. It was a pioneering court in the common law, decided some of the most innovative cases around the country, and I'd always had a very high regard for it.

So, it was something that I thought would be a great way to cap my career as a lawyer, but it was not a subject I was going to broach. I knew there was a vacancy coming up when Justice [Sidney M.] Schreiber would reach retirement age, which was in, I think, November or December of 1960--I'm sorry, November, December of 1984. So, he sent my nomination to the Senate the day after Columbus Day in 1984. I was confirmed in December and I was sworn in, I think, maybe January 6th or January 8th, 1985. Right behind you is a picture of me and my five kids on the day of the swearing in, but that was a very exciting and special time in the life of my family and me, yes.

**INTERVIEW WITH JUSTICE GARY STEIN**  
**APRIL 7, 2017**  
**PART 6 OF 9**

**Donning the Robes: Early Experiences on the New Jersey Supreme Court**

*Justice Stein relates more about his confirmation and his opinion on what preparation a Justice needs to serve on the New Jersey Supreme Court. He describes his early experiences on the Wilentz Court, including hearing arguments in the capital cases of State v. Biegenwald and State v. Ramseur. He elaborates on the procedures the Court followed and his memories of his colleagues on the Supreme Court.*

**Illingworth:** Can you elaborate a little bit on the confirmation process, what you do to prepare before you're sworn in?

**Justice Stein:** Sure. You're interviewed by the Senate Judiciary Committee and they ask you a bunch of questions and they--you know, I knew all of the Senators, because I'd been working in the State House every day for three years. The only issue about my confirmation was there was nobody on the Supreme Court at that time from the southern part of the state. So, if I remember correctly, one or two Senators from the southern part of the state objected and they said the Governor should appoint somebody from the southern part of the state. It was not meant personally, as an objection to me; it was simply a regional objection, if you will, by a couple of guys who thought it was time that South Jersey should be represented.

Of course, South Jersey is well-represented today with Justices [Lee A.] Solomon and Justice [Faustino J.] Fernandez-Vina, but, at the time, there was nobody from south of Flemington, which is where Justice [Alan B.] Handler lived. So, that was the only issue. You know, they asked me what my judicial philosophy was and, to tell you the truth, I'm not sure I knew what it was, because I'd never been a judge. And so, it really required a little time on the bench for me to acquire a judicial philosophy, but I answered the questions as best I could and confirmation was not a big, big problem.

**SI:** Again, having not been a judge prior to this and suddenly being on the highest court in the state, how do you prepare yourself personally for that?

**Justice Stein:** Well, a lot of people have asked whether or not you need to be a judge first and I've always believed that you don't. And, in fact, the tradition in our state, going back to other Governors, I think Chief Justice Weintraub did serve a little term on the trial court before he was elevated, certainly Chief Justice Vanderbilt did not. He was the first Chief Justice and was taken by Governor Driscoll right from private practice, as were many other Justices. [Editor's Note: New Jersey's current constitution, drafted in 1947 during the term of Republican Governor Alfred E. Driscoll, united the state judicial system under the New Jersey Supreme Court. The Honorable Arthur T. Vanderbilt served as Chief Justice from 1948 to 1957. The Honorable Joseph Weintraub joined

the Supreme Court as an Associate Justice in 1956, then served as Chief Justice from 1957 to 1973.]

On the court that I joined, Justice Handler had been a judge before, Justice [Stewart G.] Pollock had not, Justice [Daniel Joseph] O'Hern had not, Justice [Robert L.] Clifford had not, Justice Garibaldi had not and Chief Justice [Robert] Wilentz had not. So, it was not uncommon for Governors--Justices Handler, Pollock and O'Hern all had served as counsel to Governor Byrne--it was not uncommon for Governors to look to their circle of close advisors to pick Justices, because they were people that the Governors knew well and trusted and believed that they had both the intellectual ability and governmental experience to serve on the Court. [Editor's Note: Democrat Brendan T. Byrne served as Governor of New Jersey from 1974 to 1982.]

And my own perspective is that I think the experience I had in the Governor's Office was more important than service as a trial judge. The roles are different. The Supreme Court, of course, as you know, doesn't try cases. We hear appeals from decisions by the Appellate Division, which, in turn, hears appeals from trial courts. So, the questions we confront are issues of law. The experience of a trial judge often is dominated by the day-to-day tasks of picking a jury and ruling on challenges to jurors, presiding over trials, which requires trial judges to have a more intimate knowledge of evidence law, because, in the course of a trial, a lawyer will offer evidence, there'll be objections. The judge has to rule on the admissibility of evidence, on limitations that apply to different items of evidence. A judge has to rule on motion practice. So, the discipline of a trial judge is significantly different.

And so, I believe that the role of a justice on a state supreme court or even on the federal Supreme Court is a role that can be filled by somebody with significant law practice experience, somebody that has a scholarly bent for the law, as well as practical experience, but I don't believe it's necessary to be a trial judge. And, perhaps, the best example would be Earl Warren, who was President Eisenhower's designation for Chief Justice. Earl Warren had been the Attorney General of California, the Governor of California, never served as a judge and, of course, presided over the famous Warren Court. He was the Chief Justice that managed to get a majority, a unanimous court, for Brown against Board of Education. And there are many other examples in our history of extraordinary Justices--Justice [William O.] Douglas comes to mind, Justice [Hugo] Black comes to mind, Justice [Felix] Frankfurter comes to mind and many others--who were chosen for service on the nation's highest court without ever serving as a trial judge. So, I thought, when I finally got my sea legs under me and began to feel comfortable on the Court, that I had been better prepared for that job by my service as an advisor to Governor Kean than I would've been had I been a trial judge.

**SI:** The Chief Justice, when you joined, was Robert Wilentz.

**Justice Stein:** Yes.

**SI:** Take us through your first experience as a member of the Court.

**Justice Stein:** Well, the day the Governor announced my nomination, Chief Justice Wilentz called me. I think there was some kind of meeting of the Judiciary and he invited me up to meet everybody. And that was a little bit awkward, because there were all these judges, many of whom didn't know me, some did, but, you know, "Who's this guy, [laughter] all of a sudden is brought into our midst as the next Justice?" But, when I got there, the Court was very welcoming. I had heard from everybody in advance. I had sat in on a couple of conferences, just to get the hang of it and see how they did things.

When, I guess, I attended my first conference, maybe before I was sworn in, Justice Handler said that he had shared a sandwich for lunch with Justice Schreiber for many years and he said, "How would you feel about sharing a sandwich with me?" Of course, I had been able to eat a whole sandwich for most of my life, but I didn't want to appear to be rude or to appear like I was an overeater. So, I said, "Sure, I'll share." "What kind of sandwich do you like?" "Well, tuna fish is good." So, for the next fifteen years, I split a tuna fish and tomato sandwich with Justice Handler. [laughter] Did we ever branch out? maybe we got a turkey sandwich sometime. But, it was funny, because, when Justice [James H.] Coleman joined the Court, he put his foot down and said, "No, I need a whole sandwich. I get hungry."

But, you know, they explained to me what the process was and it was daunting. The first set of oral arguments that I sat in as a Justice were the first set of death penalty cases, *Biegenwald* [*State v. Biegenwald*, 106 N.J. 13, 524 A.2d 130 (1987)] and *Ramseur* [*State v. Ramseur*, 106 N.J. 123, 524 A.2d 188 (1987)]. And the way you would prepare for oral argument is that the Clerk of the Court would send to your chambers the briefs. And, of course, the death penalty was so controversial, it had attracted not only the briefs for the State and from defense counsel, but the briefs of many *amici*, *amicus*, friends of the Court, who are arguing that the death penalty was unconstitutional. In addition to which, every case that we have argued before the Court has the benefit of a bench memo prepared by one clerk and that bench memo prepared by that clerk goes to all the Justices. So, you have the briefs and the bench memo and you have the trial court record, which in the death penalty cases was voluminous, because the trial record [is lengthy].

And so, I remember being flabbergasted by the volume of material. And, beginning with my first set of oral arguments and continuing until my last, I probably worked not only every day, most nights and every weekend, for all of the seventeen-and-a-half years I was a Justice. It is an enormous amount of work, just to stay even, just to stay even. You have to prepare for oral argument. And so, what good does it do you if, ten days before an oral argument, you read all the briefs and the bench memo, and then, come to oral argument ten days later and forget what you read? So, almost all of us would dictate memos to ourselves to summarize what we read, so that the day before the argument, you could go back and read your own memo and recall what conclusions you'd reached in preparation for the oral argument.

And it was a very challenging group of people to be seated among. Chief Justice Wilentz was a man of dazzling brilliance, extremely quick, a wonderful wit. And, of course, he had grown up in very sophisticated circumstances, because his father, David Wilentz, had been the State's Attorney General, had been the prosecutor of the [Charles] Lindbergh baby kidnapping and was a political powerhouse, the Democratic Chair of Middlesex County and a political leader in the state. Justice Clifford was one of the State's best trial lawyers, done defense work for years. He was Governor [William] Cahill's Commissioner of Corrections and Institutions and Agencies and one of the quickest-witted lawyers I've ever met. Justice Pollock had been on the Public Utilities Commission, had been counsel to Governor Byrne. Justice O'Hern had been the Mayor of Red Bank, counsel to Governor Byrne. Justice Handler had been counsel to Gov. Byrne, an Appellate Division and a trial court judge and a Deputy Attorney General, who had argued some of the state's most important cases, including before the United States Supreme Court. And Justice Garibaldi was a legend in her own right, because she was the first woman Chair of the State Bar [New Jersey State Bar Association]. So, it was a very impressive group.

I was the junior Justice, which meant that whenever there was a knock on the door, I got up and opened the door. And I took the conference notes for eleven years, because I was the junior Justice for ten or eleven years, how ever long it was between my arrival on the Court and the time that Chief Justice Wilentz passed away. But, it was a wonderful group of colleagues. I mean, it was absolutely a delight to have served with that particular bench. I went on to serve with other wonderful Justices afterwards and I was, I guess, the last survivor of the Wilentz Court, so-to-speak, in terms of leaving the Court. But, the ten-or-so-year run that we had with the seven of us was extremely special. We were a very cohesive court, we got along well. We respected each other's views. We agreed very often, sometimes we disagreed, but it was a court where there was never a personal--there was never an unkind comment that had a personal sting to it. We were a totally collegial court. It was just an absolute delight to have served with that group.

**SI:** I want to ask you about some of the cases, but, first, I wanted to ask, where do you think that collegiality comes from? Is it just sort of a tone set by the Chief or is it [something else]?

**Justice Stein:** I think that the Chief Justice has a great deal to do with it and Robert Wilentz was good at that, because he could be extremely funny, a very, very funny man. He could do imitations. He would often have a very light touch to the conferences and the conferences were tough days. We'd get there at nine o'clock and leave at six and we would spend the day debating cases and disagreeing with each other. So, I think he had a lot to do with it, but I think it was simply the mix, the mix of personalities and individuals on that court that made it as cordial as it was.

Justice Clifford was hilarious. Before every conference, he would put up an easel, draw a line down the middle and, on one side, put, "Plus," and, on the other side, put, "Minus." And, during the course of the conference, he would editorialize by putting

some comment you'd made in either column. If you said something that even bordered on being out of line, it would wind up in the negative column. It was just a lot of funny things went on during the conference to make the day lighter, because it wasn't a light day.

You know, we would start with deciding the cases--and I'll tell you how that worked--but it was just a very intense day of discussion about substantive issues by seven people that liked each other, but didn't always agree, and that was a phenomenon. I mean, Justice O'Hern and Justice Clifford particularly were close friends and we agreed much more than we disagreed, but there were days when we didn't agree. And it was fascinating, because we all came to the Court from different backgrounds, and so, we could look at the same set of facts, the same trial record, the same briefs, and reach opposite conclusions about how the law ought to resolve the disputes in the case. And so, sometimes, you found yourself, as I did often, probably more often than anybody else on the Court, as a lone dissenter and, sometimes, you were part of a unanimous court--and you almost never knew until you went around the table to see how everyone voted.

**INTERVIEW WITH JUSTICE GARY STEIN**  
**APRIL 7, 2017**  
**PART 7 OF 9**

**Behind the Gavel: How the New Jersey Supreme Court Worked**

*Justice Stein expounds on standard court procedure and the workload the Justices faced. He also delineates the role of law clerks in the process. He elaborates on the process of opinion writing, referencing the State v. Marshall capital case. Throughout, he notes the working relationships and mutual admiration among the Supreme Court Justices.*

**Illingworth:** I wanted to get into some of the procedure of how things happen. Maybe it would be useful if you could walk us through a case, not just what happened, but how it goes through the process of going through the Court. You mentioned the death penalty cases. That was a major case when you first joined.

**Justice Stein:** Sure, but a better way to illustrate the way the Court worked would be to take an individual case where there has been a trial and the case is decided by the trial court. And then, there's an appeal by the losing party to the Appellate Division and the Appellate Division either affirms the trial court or reverses the trial court and it raises an issue of law. Perhaps the issue of law might be something as simple as when the statute of limitations runs out in a medical malpractice case in which the surgeon left a sponge in the body of the patient. The patient didn't know about it. The ordinary statute of limitations is two years and the question might be--to take a question from a case the Court decided before I joined it--does the statute of limitations run from the time that the negligent act occurred by the doctor? Or, should the two years run from the time that the patient knew, or should have known, that the doctor left a foreign substance in her body?

So, let's say the Appellate Division ruled in the case that the statute of limitations, the two-year statute of limitations, began to run on the day that the doctor performed the operation and the patient loses the case, because she didn't file her suit within that two-year period. She filed the suit, let's say, in the third year, after she discovered that there was a sponge there. And the losing lawyer would then file with the Supreme Court what we call a petition for certification. And it's basically a legal argument that says, "Dear Supreme Court, you should take this case, because it was decided incorrectly below. It raises an issue of significant public importance that this Court has not ruled on yet and the Bar and the public need the Supreme Court of New Jersey to resolve this issue once and for all, so [that] the lower courts know how to decide it."

We have a very large set of rules that govern the courts of New Jersey and the practice of law and there's a special section of the rules that govern proceedings before the Supreme Court. And those rules indicate that, in order for your appeal to be heard by the Court, you don't have an appeal as of right unless there was a dissent in the Appellate Division. The Appellate Division generally decides cases with three judges, sometimes with two, but, when there's a three-judge panel and one of the judges

dissents, then, there's an automatic right to appeal to the Supreme Court. But, if the Appellate Division was unanimous, then, litigants in the state don't have the right to appeal to the Supreme Court if they lose--and that includes criminal defendants who have been convicted and lost their appeal to the Appellate Division. Our Court rules say that in order for your appeal to be heard, the Court has to grant your petition for certification [R. 2:2-1(b) ("Appeals may be taken to the Supreme Court from final judgments on certification to the Appellate Division pursuant to R. 2:12.")].

And the way that works is that you would file your petition. Your adversary, the lawyer who won in the Appellate Division, would file his or her answering brief, and then, you would get a chance to file a short reply brief. And those papers, along with the Appellate Division decision and the trial court record, would be collected by the Clerk of the Court and distributed to the Justices. Now, because the Justices get a large number of cert [certification] petitions, the practice in our Court, when I was there, and I assume it's still the practice, is that the Justices review at a single conference and they typically have held conferences on Tuesdays every other week. The week between conferences is the week in which oral arguments are conducted, on Mondays and Tuesdays. So, a typical cycle in a month would be first week, Monday and Tuesday, oral arguments, next week, conference on a Tuesday; next week, oral arguments, next week, conference.

At the conferences, in my day, we used to consider, on average, sixty petitions for certification. Because that's a lot of paper to read, the Court's practice was to divide the sixty petitions into three sets of twenty each and we would form, within the Court, three teams of two Justices, excluding the Chief Justice. So, two Justices would read every twenty petitions. Another two would read another twenty, another two would read another twenty. At the conference, the team of two Justices that had your cert petition about the sponge would tell the Court about their twenty cert petitions. Normally, the two Justices would alternate. One would take one, one would take the next. So, one of those two Justices would tell the other five Justices about this case with the sponge.

Typically, the two Justices on a team would have consulted the day before. They would have read their twenty cert petitions. They would have asked their clerks to do whatever research they wanted to have done. And then, they would've called each other on the phone and gone over each of the twenty cert petitions and discussed whether or not they agreed on whether to recommend a grant or a denial to the Court. Most of the time, the two Justices agreed, because many of the cert petitions are routine. Many of them are criminal appeals that don't involve significant issues.

Sometimes, they disagree, but, assuming they agreed, at the conference, the one Justice, talking about this case, would say to the Court, "Joe and I recommend that the Court take this case. We think it's an important case. It involves what triggers the statute of limitations in a medical malpractice case, the date of the negligence or the date on which the patient reasonably should have discovered that there was negligence in her treatment. And we think the Court should resolve it."

The rules require three votes for a grant. [R. 2:12-10 ("A petition for certification shall be granted on the affirmative vote of 3 or more justices.")] So, it's a seven-member Court. So, even if four members don't agree and don't think the case is worth taking, don't think it's important enough or they think it's correctly decided and there's no need for the Court to write about the issue, if there are three members that vote to grant, then, the case is docketed. The petition is granted; it's docketed for oral argument.

That oral argument typically doesn't occur for three or four months, because, in the time between the grant of the cert. petition and the time of the oral argument, one of the clerks for one of the Justices is assigned by the Clerk of the Court to write a bench memo about the case. And that bench memo better be good. That bench memo is for the benefit of every member of the Court. [Editor's Note: At oral arguments, attorneys and *pro se* litigants have an opportunity to argue their positions in open court before the justices.]

And so, that law clerk--and we used to work very hard picking our law clerks. I would get sometimes two hundred applications for the three law clerk jobs and I would interview twenty or twenty-five applicants. And we would try really hard to get very, very top-flight law school graduates to serve as law clerks.

So, that law clerk would then read the briefs, read the case law, not only in New Jersey, but around the country, read any secondary sources, like articles in law reviews, read treatises, like *The Restatement of Torts*, and put together a very comprehensive memo. That includes a very detailed summary of the trial record, an explanation of how the trial court decided the case, how the Appellate Division decided the case, a summary of the arguments of counsel on both sides, a review of the case law in New Jersey and around the country, and then, finally, a recommendation to the Court about how the case should be decided--a very important part of our work, because with the caseload that the Court has, it would be redundant for every member of the Court to do that kind of research for every case that we hear arguments in. So, the fact that one law clerk--and law clerks vary in skill and in their ability to write and in their analytical ability--but one law clerk writes the bench memo.

And then, the members of the Court, the week or so before oral argument, will reread the briefs and the bench memo and, in my case, and I assume most of my colleagues did the same, dictate a little memo to prepare for oral argument. And, typically, we'd come on the oral argument day to hear the argument in that case never having discussed the case, except three or four months earlier when we voted on the cert. petition. And most of us have forgotten that discussion by the time the case is ready for argument.

And, on the day of argument, the case is called. The lawyer who lost in the Appellate Division, the appellant, argues first, presents his or her argument. The members of the Court are free to interrupt, to question. We have a rule called the "five-minute rule." And, under that rule, if you ask for an uninterrupted five minutes, your wish is granted and you can speak for five minutes. No member of the Court interrupts you. On my

Court, and I think they still have the same practice, if any Justice broke the five-minute rule, that Justice would be fined. We used to have a kitty and, on my Court, Justices Clifford and O'Hern would enforce the five-minute rule. Justice Clifford would determine how many minutes you had interrupted the lawyer for and would signal to Justice O'Hern with his fingers and Justice O'Hern would record that you owed a dollar for each minute. And, periodically, we would pay up and, at the end of the term, we would have a fund for an end of term celebration. So, that was how we enforced the five-minute rule, but you get five minutes uninterrupted if you ask for it.

You have an argument. You respond to questions. Your adversary delivers his or her argument. If you ask for it, you get a few minute rebuttal. And the Court, on an oral argument day, Monday and Tuesday typically being the oral argument days, will hear eight or nine cases and not discuss them, because you're on the bench most of the day and, by the time the arguments are over, you're tired and you want to go home. You won't discuss them until the conference the following week. That's the conference at which you review cert. petitions in the afternoon.

But, in the morning of the conference, the Chief Justice will first convene the Court to talk about the cases that were argued the prior Monday and Tuesday. And everybody comes to Court prepared to vote on how the case should be decided.

I must confess that I used to have a Monday conversation before the conference, almost always with Justice Clifford, sometimes with Justice Clifford and Justice O'Hern, just to get a sense of how they were leaning in some cases. And they would get a sense of how I was leaning and, sometimes, we'd talk about them. I'm not saying I never spoke to anybody else--I'm sure I did--but, as a matter of practice, the three of us would consult. I don't even remember if Justices Clifford and O'Hern would talk, but I would always talk to Justice Clifford and often talk to Justice O'Hern. That doesn't mean that we necessarily agreed. It just meant that we understood why we disagreed.

So, the Chief Justice would ask--they would call the case. Let's say this is the *Scully* case, because that was the name of the doctor in the sponge case that I remember, *Fernandez v. Scully* [*Fernandi v. Strully*, 35 N.J. 434, 173 A.2d 277 (1961)]. And he would select one member of the Court to start the discussion. We sit around the conference table in strict order of seniority. So, in our Court, the Chief Justice was at the head of the table. To his right was Justice Clifford, across from Justice Clifford was Justice Handler. To Justice Clifford's right was Justice Pollock, across from him was Justice O'Hern. To Justice Pollock's right was Justice--I'm getting this wrong, wait a minute. It wasn't that way. It was Clifford, Handler, Pollock on one side, O'Hern, Garibaldi and Stein on the other side of the table. I think that's how it went.

But, in any event, the Chief Justice would call on one of us at random, and then, we would go around the table in order of seniority, starting with the person that spoke. So, if Justice Handler spoke, he'd be followed by Justice Pollock and we'd go around the table. Chief Justice would speak last, except in unusual cases when he would ask to speak first, which he often did in big cases. And it was always a matter of great

laughter on the Court when the Chief Justice would speak first and nobody would agree with him. But, typically, we would go around the room and the first time around, there would usually be a consensus. You'd have seven votes to affirm or reverse or five votes to affirm and two dissenters, but you'd have a consensus. Sometimes, you'd have to go around again, because the consensus wouldn't be clear or there was still more to talk about or people had questions. And so, there would be an open discussion. At the end of the discussion, we would know how the Court was going to decide the case. We would know what the vote is--might be six to one, five to two, four to three.

The Chief Justice had the prerogative of assigning the majority opinion and he would decide who should write the opinion. Now, this is not a subject I'd ever discuss with Justice, Chief Justice, Wilentz, but I watched him for ten years and there was often a reason for an assignment. Sometimes, the reason was, well, this was an area of the law that this person knew particularly well. Or, this was a very controversial case and the result was, so-to-speak, a "liberal" result, so, it would be good to have a Republican member of the Court or a conservative member of the Court write the opinion, that kind of thing. Or, in the right-to-die cases, the assignment was to Justice Garibaldi and, although that was never discussed, it might have been prompted by the fact that she was one of the Catholic members of the Court and it was a controversial issue among the Catholic clergy.

Chief Justice Wilentz assigned to me the first death penalty opinion that resulted in an affirmance. That was the *Marshall* case. Robert Marshall was the guy who hired a killer from Louisiana to ambush his wife on the Garden State Parkway. He never told me why he assigned it to me. Our Court had reversed thirty death sentences in a row before I wrote *State v. Robert Marshall* [*State v. Marshall*, 123 N.J. 1, 586 A.2d 85 (1991), *cert. denied*, 507 U.S. 929, 113 S. Ct. 1306, 122 L. Ed. 2d 694 (1993)], but it might have been that I was coming up for reappointment. That is, my first seven years on the Court was winding down. I think I had another year to go. And there was a lot of hostility to the Court because we had been reversing death sentences left and right. We had not affirmed any and Chief Justice Wilentz might have thought that it would make my reappointment smoother if I wrote the first death penalty opinion. Do I know that that's what he was thinking? I have no idea. Is it a good bet? I think it was, but the vote in *Marshall* was five to two, so, it could have been assigned to--he could've assigned it to himself or to any one of three other Justices. He selected me.

So, the assignments sometimes were for a specific reason. Sometimes, it was a matter of your workload. One Justice might have fewer cases left to write than others. And the Chief Justice would keep track, through the Clerk of the Court, who had a heavier load and who didn't. In the course of a term, you know, there might be a couple of blockbuster opinions, where whoever got that opinion knew that they weren't going to have any free weekends for a long time. My *Marshall* opinion, I think, was more than 250 pages affirming that death sentence. And so, he would take those things into account, because the Court would try to finish its opinions by the end of the term. And some members of the Court were spectacularly efficient. I remember riding the elevator

after conference down to the parking area with Justice O'Hern and he would often have a legal pad in front of him in the elevator and he always wrote on a diagonal. And he would start writing the opinion he was assigned in the elevator and he had an incredible ability to turn out opinions promptly.

There was one occasion, that I guess I'm the only one left to remember it, but, after a conference, Justices Clifford, O'Hern and I went to Joe's Mill Hill, a bar right behind the Justice Complex that Governor Hughes used to like, I'm told. And we had a couple of beers and we got to talking about one of the cases. And the three of us agreed, after the conference, that the result that we reached at the conference may not be right and that maybe the Court ought to decide it differently. And Justice O'Hern said, "Well, let me take a crack at it. Let me see if I could write something up that makes sense," and I walked into my office the next morning at nine o'clock and the phone was ringing. And it was Justice Clifford and he said, "Just take a look at your inbox. O'Hern has produced that draft of an opinion we talked about yesterday at Joe's Mill Hill." So, he was the quickest opinion writer on the Court by far.

Justice Garibaldi also was pretty quick. Justice Clifford, sometimes, was way behind. I was somewhere in the middle. Justice Pollock was pretty quick. Justice Handler tended to write long opinions. But, all of us, all of us, were blessed because we didn't have to worry about errors in grammar and we didn't have to worry about errors in the form of citations. Judges and lawyers have the benefit of what we call *The Harvard Bluebook of Citations* [*The Bluebook: A Uniform System of Citation*] and it tells you all kinds of arcane things. For example, if you're citing ten cases in support of a proposition of law, *The Bluebook* tells you the order in which you list the cases, very definite rules. If you use a signal, like, "See," the word, "See a certain case," and it's underlined, it means one thing. If it's not underlined, it means something else. So, *The Bluebook* is sort of our Bible.

And no one knew grammar or *The Bluebook* better than Justice Clifford. And so, during all of my years on the Court, he edited, for style, for grammar, for *Bluebook* and, sometimes, for substance, but mostly for style, every member of the Court's opinions, majority and dissent. I remember the day I got back the first opinion I wrote for the Court and, on the front page, there was a little note from Justice Clifford. And it said, "Proud to join, RLC," which meant that he liked the opinion, he would join it. The rest of the pages were a sea of red marks as he went through all kinds of little style errors.

He was a nut about the proper use of the word, "only." "I only eat crackers in bed," or, "I eat crackers only in bed," and he always telling you to put the "only" later in the sentence to make sure it was clear that you don't only eat crackers in bed, because, of course, you sleep in bed and read in bed, too. He was the only member of the Court who really understood the difference between "that" and "which" and nobody could write an opinion that didn't have corrections from Justice Clifford about when you would use "that" and when you'd use "which." It's too complicated to explain now, but there's a wonderful discussion in *Fowler on English Usage* [*Fowler's Dictionary of Modern English Usage*], which he got me to memorize. But, he did it not only for me, but for

everybody, including the Chief Justice, and everybody was very appreciative, very grateful.

That probably explained why he would finish his assigned opinions latest in the term, because, in addition to writing them, he had to edit everybody else's. And that was really time-consuming and difficult and what it did for the Court was that it just raised the quality of our written work. It made our written work better and contributed to the really wonderful reputation that the Court had during those years around the country as one of the leading state courts in the country. So, it was a labor of love for him. I mean, he used to tell me that he edited *Time Magazine* when he read it at home. [laughter] That was just the way he read, but that was distinctive.

And the process didn't end with the assignment of opinions, because, as I'm explaining the process, if you got the opinion in the sponge case, and let's say it was assigned to me and I had to write it, I would circulate it. That is, when I was finished with it--my law clerks had checked it and everybody was satisfied in my chambers that it was as good as it could be--I would send it to my six colleagues. And then, I would get back, in addition to Justice Clifford's red-lines, I would get back comments, usually from everybody else on the Court. And the comments might be, "Count me in," or, "I'm with you," that kind of thing. Others might have a couple of little suggestions. Nobody ever had as many suggestions as Justice Clifford, but you always got [some].

And then, at the next conference, the author of the opinion in the sponge case would report to the Court, "I've heard from everybody. And Justices Handler and O'Hern think that the section that deals with this part of the opinion isn't clear enough, so, I'm going to recirculate the opinion. I'm going to fix it up, because it's not quite ready." Or, on the other hand, if everybody agrees with it and there's no dissenters, they might say, "File it." And then, I would write a letter to Steve Townsend, the Clerk of the Court--the current Clerk is Mark Neary--and I'd say, "Here's my opinion in the sponge case. It's ready to be filed." And then, Steve and the Clerk's Office would write a little syllabus, which meant they would write an introduction to explain what the case was about. And then, they would release it, which meant that the press would get it and it would be available for publication. *The [New Jersey] Law Journal* would get it and it'd be published in the hardcover books, the *New Jersey Reports*, that contain all of the Courts' opinions.

If, on the other hand, the opinion wasn't ready and had to be recirculated or, if there was a dissent that hadn't been circulated yet, we'd hold the opinion until the dissent was ready or until the opinion had been recirculated--until it was cooked, until everybody had had their say, until everybody had had a chance to look at it, to comment on it, to tell you whether they liked it, whether they didn't like it, what they agreed with, didn't. And the final product, the end product, really represented the collective work of the whole Court. Even though the opinion was drafted by the opinion writer, it was a collaborative effort and it had the insights and observations of every member of the Court before it got released. And, in some cases, that was a long process. You can imagine, in an

opinion that's a couple of hundred pages, you can have a lot of comments from a lot of people.

And so, it was a very deliberative, collegial, sometimes time-consuming, sometimes arduous, process to get an opinion, to get a case from the day that you grant the cert petition through oral argument, through the conference, through the assignment of opinions, through the bench memo, through the drafting of the opinions and the dissents, through the review process and the collaborative process, into the final end product that is sent out to the public. So, that's sort of the way we decided cases. I think it was a very careful and excellent process. It produced good work and it had the benefit of seven heads, which are better than one.

**INTERVIEW WITH JUSTICE GARY STEIN**  
**APRIL 7, 2017**  
**PART 8 OF 9**

**Delivering Justice: Landmark Cases & Judicial Philosophy**

*Justice Stein discusses the changes in the Court's composition over the course of his tenure, and the transition from the Wilentz Court to the Poritz Court. He explains his view on the concept of judicial activism. In the context of this discussion, he explains In re Quinlan and In re Jobes. He then describes his work on the Abbott v. Burke cases, which reshaped the education landscape in New Jersey, and the Mount Laurel series of cases, which challenged discriminatory practices in housing policies. He also details the Trantino v. N.J. State Parole Bd., In re Baby M and Morton Int'l v. Gen. Accident Ins. Co. cases.*

**Illingworth:** You were with the same colleagues for the first eleven years or so.

**Justice Stein:** About ten, ten-and-a-half, something like that, sure.

**SI:** Did the practice change as the composition of the Court changed?

**Justice Stein:** Well, not the practice. The procedures really were the same. So, what changed, of course, is, as the makeup of the Court changed, so did its perspective, because new members brought new perspectives, new orientations to the Court. So, Chief Justice Wilentz was replaced by Chief Justice [Deborah T.] Poritz, Justice Clifford was replaced by Justice Coleman. I'm not sure, I think Justice Handler left next and was replaced by Justice Virginia Long. Justice Pollock might have been replaced by Justice [Jaynee] LaVecchia, I'm not sure. Justice Garibaldi might have been replaced by Justice [Peter] Verniero. My successor was Justice [Barry T.] Albin. So, one at a time, as members of the Wilentz Court left and new members were appointed, it was understandable and appropriate that the perspective of the Court changed.

The first case decided after Chief Justice Poritz was appointed, in fact, was a case in which Chief Justice Wilentz had passed away before I could circulate the majority opinion. And so, because he passed away and his death intervened, we had to reargue the case with a new court, because we only had six members of the Wilentz Court on the case. And we reargued it and the result changed, but that was not surprising. So many of our cases were close cases. That's why they got to our Court. They involved very subtle, very sensitive policy issues on which reasonable people could disagree.

And so, I would say, perhaps as a general proposition, the Court that succeeded the Wilentz Court may have been somewhat less aggressive or maybe somewhat less activist, which are words that some people use to describe "liberal" courts, which I think the Wilentz Court was considered to be. But, the Court, even as it changed, continued to be a very strong and a very highly-regarded state supreme court in the grand scheme

of state courts around the country. And the current Court, you know, which has some new members--Justices [Walter F.] Timpone and Solomon are fairly new, Justice Fernandez-Vina's probably been there around four years--so, the current Court probably hasn't been together long enough for its judicial philosophy to be clear. We had the benefit, as I said, of ten uninterrupted years, but it isn't surprising.

Somebody once said, it might've been Emerson, that, "An institution is the lengthened shadow of a man," or a woman and what Emerson meant, I think, is that institutions don't stay the same. It depends who's running them. So, the Museum of Modern Art today is a different institution than it was fifty years ago, so is Carnegie Hall, so is the Philharmonic, so is the Metropolitan Opera, so is *The Record* newspaper. Institutions change as the people who populate them change. And so, while our Court has a great tradition of excellence and, I think, activism, it really depends on how the current Court develops and works together to determine the extent to which they're going to follow along in that, in the framework that we were recognized as a court to be.

**SI:** Just to stick with that for a second, you don't seem entirely comfortable with the term "activism." How do you feel about that term as it's used?

**Justice Stein:** Well, I'm personally comfortable with it. I think that it's overused. I think that there are so many circumstances in which courts are required to act because the other branches of government have not. A great example would be the right-to-die cases. Before the Karen Ann Quinlan case [*In re Quinlan*, 70 N.J. 10, 355 A.2d 647, cert. denied sub nom. *Garger v. New Jersey*, 429 U.S. 922, 97 S. Ct. 319, 50 L. Ed. 2d 289 (1976)], there was simply no law in New Jersey that would authorize the family of someone who was thought to be brain-dead to cut off life support, like a respirator. Karen Ann Quinlan was the first case in the country that raised that issue. And, of course, the complication is that whoever unplugs a respirator would be susceptible to a charge of some form of homicide, because they participated in the death of a live human being. But, Karen Ann Quinlan's father, who loved her more than anyone in the world and was her lawful guardian, believed that the respirator should be cut off. And so, for the New Jersey Supreme Court, under Chief Justice Hughes, former Governor Hughes, it had to decide a question that had been unresolved by the other branches of government. That is, is it permissible, under any circumstances, for a respirator to be cut off?

My Court had to decide whether it's permissible for a feeding tube to be cut off, in the case of Nancy Ellen Jobes [*In re Jobes*, 108 N.J. 394, 529 A.2d 434 (1987)], in which Ms. Jobes was in an automobile accident. She was diagnosed as being brain-dead, but she was being kept alive by a respirator and by a jejunostomy tube, by which she was fed. Her husband and her parents brought suit against the care facility in which she was taken care of and asked them to terminate the feeding tube. And the nursing home refused, said, "This is contrary to our religious faith and we're not going to do it. And, besides, we think that there are days that she can hear us and that she nods her head to give an indication that she understands that we're caring for her. So, we can't do that," and the case came to our Court and we decided that it was permissible in that

circumstance, in an opinion by Justice Garibaldi. It was permissible to terminate the feeding tube--very difficult.

My colleague, Justice O'Hern, who was of the Catholic faith, dissented. He did not believe it was appropriate for caregivers to terminate feeding. And he wrote a profound dissent, a couple of lines of which went like this, "These may no longer be the people we knew, but they remain the people we loved," and he was reflecting the view that this was simply an act beyond the power of humans and that the law should not sanction it. Our Court disagreed and resolved it. Is that activism? I don't think so. I think that we performed a function that no other branch of government could perform. We did it in the most humane, compassionate way that we could, imposed serious restrictions, made absolutely sure that the diagnosis of brain death had been confirmed by independent physicians, made absolutely sure that the family members were acting independently and not for an ulterior motive. But, even with those conditions, somebody had to make the call.

A similar responsibility was imposed on our Court in the school funding cases, which came before the New Jersey Supreme Court from 1970 through my tenure and after, because the other branches of government, perfectly well aware that the great cities of New Jersey that used to have the best school systems, like Newark, Jersey City, Paterson, Trenton and Camden, lost their tax base after the Second World War and could no longer afford to sustain high-quality school systems. They couldn't afford to pay teachers, because businesses and residents had moved out of the cities into the suburbs and surrounding communities and the cities no longer had the tax wealth that they needed to pay for good schools. And New Jersey funded schools through property taxes and that condition persisted from the '50s to the '90s. And, although the Weintraub Court, the Court under Chief Justice Weintraub, in 1973 or '74, held that the method of funding schools was unconstitutional and had to be fixed, the Legislature stalled and stalled and attempted to fix it. It tried and failed. [Editor's Note: Justice Stein is referring in general to the *Robinson v. Cahill* series of seven cases decided from 1973 to 1976. See Appendix II for a complete list of cases and citations.]

Eventually, in *Abbott v. Burke*, in the early '90s, my Court, in an opinion by Chief Justice Wilentz, held that the Constitution required that the children that go to urban schools be supported with resources as great as the resources provided to kids in the wealthiest suburban schools and more, because they came to school with significant limitations, many from single-parent homes, many from homes with incomes below the poverty level, many with homes where they couldn't be exposed to learning at an early age the way other children would. So, we ordered free preschool for the three and four-year olds in those urban school districts. [Editor's Note: Justice Stein is referring in general to the *Abbott* series of twenty-one cases (at the time of the interview) decided from 1985 to 2011. In particular, he is referring to *Abbott v. Burke*, 119 N.J. 287, 575 A.2d 359 (1990) (*Abbott II*), in which the Court found that inequality between affluent and deprived districts' funding violated the state constitution's provision for a "thorough and efficient" educational system, and *Abbott v. Burke*, 153 N.J. 480, 710 A.2d 450 (1998)

(*Abbott V*), in which the Court ordered preschool for lower-income students. See Appendix II for a complete list of cases and citations.

Activist?--you know, hundreds of thousands of children were deprived of adequate educations because the legislative and executive branches didn't fix the inequity in school funding that persisted in this state for four decades. And so, when people turned to the courts and said, "Look, we can't get relief from the executive or the legislative branches and this is unfair to hundreds of thousands of kids--you, the judiciary, have a responsibility to say what the Constitution requires." And how could you not conclude that the Constitution required that those kids be given a fair chance?

Regrettably, our decisions provided funding, it didn't fix the intense segregation that still exists, because New Jersey, today, has among the most segregated schools in the entire country. So many of our city schools have individual schools that are more than ninety-nine percent minority and many schools that are more than ninety percent minority. And most of those schools are populated largely by children from families whose incomes are below the poverty level. So, although the *Robinson v. Cahill* and *Abbott* cases addressed school funding, they didn't address school segregation and, today, New Jersey school segregation is worse than in any state in the South. And so, regrettably, we were not called upon to remedy that.

But, to go back to your question about activism, I think it's the responsibility of the judiciary to decide questions as fundamental as, "What constitutes a constitutionally adequate education?" And, if we are presented with evidence, as we were, that the kids in the urban districts had facilities and resources and teachers and course offerings that were demonstrably less adequate than that in the suburban schools, that we had a responsibility to intercede. And that's what we did. So, I don't think that's activism, although, certainly, many people would describe it as activism, but that's the debate.

And so, we intervened as well in the affordable housing area, because, as everybody knows, New Jersey's suburbs for decades had exclusionary zoning ordinances that said that if you want to move into that town, you had to build a single-family house and you had to have at least an acre of property. And, of course, if you don't have enough money to buy an acre of property, you can't move into that town, which is why so many minority families and poor families wound up in cities in multiple-dwelling residences, like apartment houses, and not in the suburbs. And so, finally, in the *Mount Laurel* series of cases [*S. Burlington Cty. N.A.A.C.P. v. Twp. of Mount Laurel (Mount Laurel I)*, 67 N.J. 151, 336 A.2d 713, *appeal dismissed and cert. denied*, 423 U.S. 808, 96 S. Ct. 18, 46 L. Ed. 2d 28 (1975) and *S. Burlington Cty. N.A.A.C.P. v. Twp. of Mount Laurel (Mount Laurel II)*, 92 N.J. 158, 456 A.2d 390 (1983) (*Mount Laurel II*)], our Court, before I ever got there, decided that exclusionary zoning ordinances violated the State Constitution and that every municipality in the state had a responsibility to provide for its fair share of low and moderate-income housing. Activist?--I don't think so. I think that all of the property in the State is, in the end, state property that needs to be used for the best interest of the citizens. And it's wrong for a community like Saddle River to say,

"No, you can't live here unless you can afford to buy two acres of land. Otherwise, we don't want you."

So, the function of courts, ordinarily, is to decide ordinary cases and controversies that arise from accidents, from breaches of contract, from violations of statute, but, occasionally, courts are asked to intercede in areas where the Legislature and the executive branch have stood silent. And, when that happens, it's my view that the court is obligated to do its job, do its job in a thoughtful and responsible and careful way.

**SI:** Do you want to take a break?

**Justice Stein:** No, I'm good.

**SI:** Okay. You had been on the Court for one of the longer periods, I think, in its history, written a record number of opinions. Of all the cases you dealt with, what are some of the ones that strike you as the most interesting or had the most interesting legal questions at their core?

**Justice Stein:** Yes. That's hard, Shaun. Certainly, the school funding cases were very important to me, because, as a kid who grew up in Irvington, one of the underfunded urban districts in the *Abbott* case, it was a very personal issue, because I understood how Irvington had evolved from a poor blue-collar community to a poor minority community. And I knew that, although I didn't get the best education in the world, I got an adequate education, an education that prepared me to go on to college and to law school. And I felt that the kids that were there during the years those funding cases came before us weren't getting the same opportunity I had and I thought it was wrong. So, those cases affected me very personally.

Very early on, I believed that free preschool was essential, because there was very strong corroborative information indicating that children from these urban districts were getting to kindergarten a year or two behind grade level, right at the start. That is, they didn't have the skill set that kindergarten kids in the suburbs had. And it seemed to me that if you were going to give them a fair shot at succeeding, you needed to provide them with early childhood education of a very high quality that would give them a chance to start at the same starting line as the other kids. So, I was very happy when the Court was able to assemble a majority of its members to order the State to provide free preschool for three and four-year olds in the urban districts.

And, at first, the Whitman Administration did not comply. [Editor's Note: Christine "Christie" Todd Whitman, a Republican, served as Governor of New Jersey from 1994 to 2001.] Instead of providing high-quality preschool, it provided daycare and called it preschool. And that upset me very much, because that wasn't what we had in mind. What we had in mind was high-quality preschool with a trained teacher and an aide and a class of no more than fifteen kids and a curriculum that was designed to prepare these young kids for kindergarten, for first grade, to give them a head start in basic skills that they would need to succeed in school. The evidence is overwhelmingly clear that

children who are afforded an excellent preschool opportunity do better in public school along the way.

And so, we ordered several times that the Commissioner of Education come forward with remedial programs designed to help the kids in the cities. And the Commissioner stonewalled us, until, finally, we assigned a judge, Judge King [Superior Court Judge Michael Patrick King] from the Appellate Division, to be a Special Master, to conduct a hearing to determine what extra programs and facilities were needed by the urban school districts for the kids to succeed. And then, and only then, during that hearing, did the Commissioner come forward and say, "Okay, we need preschool," and then, we were able to order that preschool be implemented. There's probably fifty thousand kids today in the cities in New Jersey that are getting free preschool. I wish it were more. I wish it were expanded throughout the State. It's expensive, probably cost ten thousand bucks a kid, but it's money well spent if the State can afford it and the kids in the urban districts benefited from it.

Other cases that I remember today, there are not a lot of them. I wrote, I don't know, five or six hundred opinions. I happened to be the Senior Justice on the Court when the *Trantino* case [*Trantino v. N.J. State Parole Bd.*, 166 N.J. 113, 764 A.2d 940 (2001)] came before us. I forget when, maybe my last year or so, 2000, 2001. And Thomas Trantino, in case you don't know it, was a guy who, as a young man, brutally shot and killed two Lodi police officers here at a bar in Lodi. He was sentenced to death, but, then, the death penalty was declared unconstitutional by the United States Supreme Court. So, his sentence was commuted to twenty-five years to life and he was the longest-serving State prisoner in our state correctional facilities. And Trantino turned out, after being a wild, vicious young man, turned out to be somewhat of a model prisoner who mentored other prisoners, became a painter, never got into trouble in prison, had a great record.

And, every time he would come up for parole, his parole would be denied and the parole board obviously didn't want to parole him. There was tremendous pressure from the family, families of the deceased policemen, from the Lodi Police Department, from other Bergen County police departments, from Legislators in Bergen County, tremendous pressure to keep Thomas Trantino in jail. And so, the parole board would turn handsprings to find a way to find an excuse, any excuse, to keep him locked up.

Case came to our Court, I forget how many times. Finally, finally, when they had run out of ways to keep him there and they were at the end of their rope and they came up with a couple of more excuses for why they couldn't parole him, the case came to my Court. Chief Justice Poritz had to disqualify herself, because she had been the Attorney General during prior appeals. [Editor's Note: Chief Justice Deborah Poritz served as the Attorney General of New Jersey from 1994 to 1996.] And that meant that, at the time, I was the Senior Associate Justice, and so, I assigned the opinion to myself. And I wrote it and made a lot of people in Bergen County unhappy, but, nevertheless, it was an opinion I felt I had to write and, to my knowledge, he's done okay. He's been out on parole, I think, I don't know, fifteen some years and I think he's done all right.

But, that was a hard one. It was a hard one because I remembered the murders. I'd lived here when they occurred. I felt they were brutal, totally unjustified. And, yet, under our parole law, it was clear that Trantino had satisfied all of the conditions of parole, and so, the law said that he had to be set free. And I understood how unhappy that would make the families of the deceased cops and the Lodi police officers. But, I had no choice but to write the opinion in the manner that the law required. So, that was one that I remember vividly.

All of the members that served on my Court remembered the *Baby M* case [*In re Baby M*, 109 N.J. 396, 537 A.2d 1227 (1988)], because it attracted international attention. I didn't get to write that opinion; Chief Justice Wilentz did. I thought his opinion was correct and I thought the Court dealt with the issue of surrogate mothers in a fair and effective way.

One of the opinions that I wrote that was among the most difficult, and one that I was reasonably proud of, involved an insurance case brought by the Morton Chemical Company [*Morton Int'l v. Gen. Accident Ins. Co.*, 134 N.J. 1, 629 A.2d 831 (1993), *cert. denied*, 512 U.S. 1245, 114 S. Ct. 2764, 129 L. Ed. 2d 878 (1994)]. And it concerned a clause that the insurance companies had developed called the "pollution exclusion clause," which, in effect, said that insurance policies that had that clause wouldn't cover any damages that a company sustained because of pollution, of property or water, unless the discharge of the pollutants was sudden and accidental. The reason the case was so significant is that when the insurance companies had written that clause, the pollution exclusion clause, and they submitted the clause to the New Jersey State Insurance Department and to insurance departments around the country, they accompanied the language with a memorandum that said, "This is not a major change in our policies. This is a minor change. It just clarifies the policy, to make it clear that there's no coverage for deliberate pollution." That was a lie. It was a major change. It was a sea change in coverage.

It changed the coverage of most environmental insurance policies from policies that would cover, for example, a company that, unbeknownst to it, had an oil leak that was contaminating adjacent property and the oil was leaking for eight years and the cost of cleanup was in the millions of dollars, but the company was unaware of it, but the leak couldn't be said to be "sudden and accidental." So, it wouldn't be covered by the pollution exclusion clause. And, when the insurance companies submitted this clause to the regulatory agencies throughout the country, they never said, "We're reducing coverage, so, we're going to cut our rates." Instead, they lied. They said, "This doesn't change coverage; it just clarifies it, to continue coverage as it is." Had they been honest, the insurance regulators would have required them to reduce the premiums, but they didn't.

And so, when this case came to our Court, there had been hundreds of cases around the country that had been affected by these clauses in insurance policies and dozens of courts had wrestled with the meaning of the terms "sudden and accidental." Was

something sudden an event that happened and ended immediately? Was that sudden? Or, could there be a leak that was sudden, but that lasted for three months afterwards? What did it mean to be accidental? And the law was so complicated around the country and we had lawyers from all kinds of insurance companies participating in the case.

And the opinion was assigned to me and my Court agreed at the conference that we wouldn't enforce the clause, because the insurance companies lied when they submitted it to regulators and misled the regulators about what it meant. And we construed the clause only to deny coverage if pollution was deliberate, intentional. Otherwise, we said, it was covered. And we, in effect, rewrote the clause to mean what the insurance companies had said it meant. So, I took a look at that opinion the other day and it was a tough one to write, because there were so many cases around the country that I had to read and review and wrestle down, but I was delighted that I had a unanimous Court behind me when I wrote it. I don't think that opinion made me particularly popular in the insurance industry and I'm sure there are insurance executives that still remember Stein as the guy that wrote that *Morton International* opinion. But, I thought that was one of the more challenging opinions I wrote.

**INTERVIEW WITH JUSTICE GARY STEIN**  
**APRIL 7, 2017**  
**PART 9 OF 9**

**Leaving a Mark on the Bench: Dissenting Opinions, Notable Cases & Retirement**

*Justice Stein describes his dissenting opinions in State v. Apprendi, Doe v. Poritz and Troth v. State, which was later adopted as a majority opinion by the Court. He also discusses his opinions in the Ayers v. Twp. of Jackson, State v. Novembrino, and State v. Rose cases. He explains his decision to step down from the bench to join the Pashman Stein law firm, co- founded by his son, Michael, and presents his reasons for speaking out publicly against the Christie Administration's decision to not re-nominate Justice Helen E. Hoens and Justice John E. Wallace Jr. He concludes by elaborating on the role his late wife, Et, and his children and grandchildren played in his life.*

**Justice Stein:** Sure. So, one of the cases I guess I have to mention is a case called *State v. Apprendi*, 159 N.J. 7, 731 A.2d 485 (1999), *rev'd and remanded sub. nom Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000)], kind of a technical criminal case. But, I was the dissenter and it turned out that the United States Supreme Court reversed my Court and agreed with my dissent. So, that's one I have to remember. And, of course, my dear friend and colleague, Justice O'Hern, wrote the majority opinion, so, we had a lot of laughs about it, but it was a simple case.

We had a statute in New Jersey that said that if you committed a criminal act and you were motivated by a racial intent, a racial hostility, that you were sentenced as if the crime you committed was a crime one degree more serious than the crime you actually committed. And so, in *Apprendi*, a guy had fired shots at a house occupied by a black family and the jury convicted him and, if I remember correctly, it was a second-degree offense. And the judge, relying on the statute, made a factual finding--not the jury, but the judge, after the jury convicted him--the judge found as a fact that he had fired the shots because he was motivated by a hostility to black people. And so, the judge sentenced him to a sentence appropriate for a crime one degree more serious than the crime that he was convicted of by the jury.

And the sentence was challenged by his lawyer in our Court. And the lawyer argued that it was improper for the judge to sentence him as if he had committed a crime one degree higher because the factual finding that was the predicate for that sentence, that he was motivated by race, was found by the judge and not by the jury. And the lawyer argued that, as a matter of due process, any factual element that had the capacity to enhance his sentence had to be found by the jury and not the judge. My Court disagreed. I wrote a dissenting opinion, joined by Justice Handler, and the United States Supreme Court agreed with my opinion [*Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000)]. I forget the vote in the United States Supreme Court, but that was kind of an unusual experience.

**Illingworth:** I know, in other levels of the court, having a decision reversed is considered very adverse to your career. How was that taken on this level?

**Justice Stein:** Oh, my goodness. In all the years I was on the Court, it might've happened one other time. I mean, there weren't that many of our cases that went to the United States Supreme Court and, in that case, you know, Justice O'Hern was not alone. He had four colleagues who agreed with him. So, it was simply the United States Supreme Court saw the issue differently. It was a close case and prior Supreme Court decisions had not resolved whether or not the fact of racial motivation was an issue that had to be decided by a jury and not a judge.

Another dissent that I was proud of had to do with a law called Megan's Law, which arose from the death penalty conviction of the murderer of Megan Kanka. [Editor's Note: On July 29, 1994, Jesse Timmendequas, a previously convicted sex offender, raped and murdered seven-year-old Megan Kanka in Hamilton Township, New Jersey. Later in the year, the New Jersey Legislature passed "Megan's Law," which became a model for federal sex-offender-registry legislation passed in 1996.] And Megan's Law was the law that required sex offenders to register and that restricted their activities and restricted where they lived. And I felt that, when the law was challenged and it came to our Court [*Doe v. Poritz*, 142 N.J. 1, 662 A.2d 367 (1995)], one of the issues was whether the law was what we call an *ex post facto* law. That is, a law that increased the punishment, but applied retroactively to people who committed their crimes before the law had been passed. And my dissent was on the basis that I thought that Megan's Law was an *ex post facto* law and no member of the Court agreed with me. The vote was six to one. *The New York Times* was very kind and wrote an editorial complimenting my dissent, but that was the only corroboration I got for that dissenting opinion. But, I thought it was the right thing to do. It was not a popular dissent when I wrote it, but I thought it was correct.

Another case that I've never forgotten had to do with a big piece of parkland in New Jersey that had a dam on it. And a husband and wife with the last name of Troth were fishing in the water that led to the spillway over the dam and it had rained for several days before they went fishing. And the State had bought the whole piece of property, with the dam and with the lake. When they bought the property, the State received an engineer's report that advised the State that the spillway was narrow and that because it was narrow, when there were heavy rains, the flow of water leading over the spillway was such that it could pose a hazard to fishermen. Anyhow, the Troths were fishing. Their boat got caught in the current near the spillway. They tried to start the motor and reverse the course of the boat, but they couldn't. The boat went over the spillway and Mr. Troth was killed. [Editor's Note: Justice Stein is referring to *Troth v. State*, 117 N.J. 258, 566 A.2d 515 (1989).]

The family, the executor of his estate, sued the State under the Tort Claims Act and the State defended on the ground that the State was immune from injuries caused as a result of unimproved property. The State argued that the dam and the spillway and the

lake were unimproved property, because the State had bought it as it is. And, at the conference, after the oral argument, the vote was six to one against the Troths and I was the one. And I said, "You know, I don't know how you can call a dam unimproved property. Somebody had to build the dam. And, in this case, they built it with a spillway that was too narrow and the State knew about it. So, I don't agree." So, the opinion was assigned to Justice Pollock for the majority and the dissent was assigned to me. I think I circulated my dissent before Justice Pollock circulated the majority, but maybe not; I don't remember. All I know is, we didn't finish the opinion before I left for the summer and went up to Martha's Vineyard where I have a summer home.

After I circulated my dissent, Justice O'Hern called me up and said, "You know what? I'm switching my vote." I said, "Thanks, Dan." So, it's five to two, and then, a week or so later, Justice Handler called and said, "Gary, I'm going to switch my vote; I'm with you." So, it was four to three. So, I hadn't heard from Chief Justice Wilentz after I circulated my dissent. So, I called him and I said, "Chief, have you read my dissent?" He said, "No, not yet." I said, "Do me a favor and read it." Another week went by, hadn't read it--I called him again. "Yes, yes, I'm going to get to it."

Right around then, *The New York Times* wrote an editorial to acknowledge the hundredth anniversary of the Johnstown flood [on May 31, 1889]. The Johnstown flood resulted in the collapse of a dam in Johnstown, Pennsylvania, that killed ten thousand people [accounts put the number at just over 2,200 people], because the eighty-acre lake that was held up by the dam, all of the water from that lake unleashed. And the current and the volume of water was so strong, it picked up railroad cars. It demolished factories. It just destroyed everything in its wake. It was one of the great tragedies. And so, the hundredth anniversary, maybe the Johnstown flood would've been 1898, something like that; I forget when I wrote *Troth*, but whatever it was--1989, so, it must've been 1889. So, *The Times*, in its editorial commemorating the hundredth anniversary, quoted from the editorial written in the Johnstown, Pennsylvania, paper right after the flood. And that editorial in the Johnstown, Pennsylvania, paper said, "This was not an act of God..."

I've got to explain--the dam in the Johnstown case was made of timbers and there had been warnings, published in the paper, in the Johnstown paper, that the timbers were rotting and that the dam was hazardous. And so, when the Johnstown paper wrote its editorial, it said, "This was not an act of God; this was an act of man," the analogy being that this was not unimproved property. This was something that man had done, and the analogy applied to our case.

So, I called Chief Justice Wilentz. I said, "Do me a favor. Read my dissent and, now, read the editorial in *The New York Times* about the Johnstown flood and tell me how you're going to vote." And he called back and switched his vote. So, my dissent became the majority in *Troth*, which was kind of satisfying.

**SI:** Was that unusual for ...

**Justice Stein:** Yes.

**SI:** ... To change votes later?

**Justice Stein:** Yes, sure, very unusual, didn't happen often. I can't see from this list, Shaun, any others. There was a case, came out of Jackson Township [*Ayers v. Twp. of Jackson*, 106 N.J. 557, 525 A.2d 287 (1987)], where a landfill had leached and destroyed the water supply in Jackson Township and a bunch of families sued. And it was a tragic situation, because they no longer had access to their well water. And the Township had to provide them with barrels and fill the barrels with fresh water every day, so [that] they could cook and shower. And the families sued and they wanted damages, because they believed that they had consumed this contaminated water. There were several people in the Township that had gotten sick and they wanted to be compensated for what they described as "an enhanced risk of cancer."

And, writing for the Court, I held that they couldn't be compensated for an enhanced risk of cancer, that, you know, if they got cancer, that would be a time for them to make the claim based on that, but that they were entitled to a very novel remedy, which we called "medical monitoring." And what we said was that the Township and its insurance company had to pay for these folks to have an annual physical exam, to make sure that they didn't contract cancer. And we felt that the cost of the medical monitoring was a fair cost to be imposed on the defendants, because these families were genuinely panicked about whether their health had been permanently affected by the Township's failure to properly close up that landfill and prevent the waste material from leaching into the water supply. So, I thought that was one of the more important opinions that I had written. There were a lot of them, but I can't remember any others.

I guess one of my probably best-recognized opinions is *State v. Novembrino*[, 105 N.J. 95, 519 A.2d 820 (1987)]. It's a Fourth Amendment opinion. And it had to do [with] whether or not New Jersey would follow the United States Supreme Court and exclude evidence that had been acquired by a police department without a proper warrant, but in cases where the officer acted in good faith, believing that the search was lawful, just that the cop was wrong. The case involved what they called "the good faith exception to the exclusionary rule." The United States Supreme Court, in a case called *State v. Leon*[, 468 U.S. 897, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984)], held, under the Fourth Amendment, that if an officer "in good faith" illegally acquires evidence that would've been excluded under the Fourth Amendment, the fact that the officer acted in good faith authorized a court to admit the evidence.

And the question in *Novembrino* was whether New Jersey would follow the United States Supreme Court and apply the good faith exception to the exclusionary rule. I wrote for the Court and said we would not apply the exception, that whether or not the evidence was acquired in good faith didn't matter, that the purpose of the exclusionary rule was to protect American citizens against the use of unlawfully-seized evidence, good faith or not. And the Court divided six to one. I think Justice Garibaldi wrote the only dissent, but that was, perhaps, one of my most remembered opinions. I wrote it

early in my career. I was happy when Chief Justice Wilentz assigned it to me. He was probably surprised that that was the way I voted, but I think that's probably why I got the opinion. But, anyhow, it was great fun.

They were hard to write. Some of the opinions were very difficult. I remember I had to write an opinion reversing the death sentence of Teddy Rose [*State v. Rose*, 112 N.J. 454, 548 A.2d 1058 (1988)], a guy who killed an Irvington cop in Irvington Center with a sawed-off shotgun. It was hard, because Irvington was my hometown and the killing was in cold blood. On the other hand, the prosecutor had committed prosecutorial misconduct in the way he summed up to the jury and it was clear as a bell that the death sentence couldn't stand. And so, I remember struggling writing that opinion, one of my last opinions of the term, and sitting in my chambers on a Saturday night, grappling with how I would explain this opinion to the good people of Irvington. But, you know, some were harder than others.

**SI:** Now, did any of these cases generate--they all generated public interest--but public backlash or things like hate mail, threats, or did you ever feel any of that?

**Justice Stein:** No. The only case that generated that kind of activity was the right-to-die cases. There were telegrams from members of the clergy, from members of the Legislature, urging us not to allow nutrition to be shut off in the *Jobes* case. I do remember that, but none--you know, we got extensive public criticism in the school funding cases, because many Legislators, many mayors, many elected officials didn't like what we were doing, that we were taking money that was tax money coming from suburban residents and applying it to help poor city kids. But, that's part of the game, part of the business. We anticipated that kind of criticism.

I will say this--the press in New Jersey has always been very supportive of our Court, especially in tough cases like that, especially in the school funding cases, in the right-to-die cases, in the affordable housing cases. The New Jersey media and their editorial pages were always very strong and very supportive and the members of the Court were grateful for that. Judges read the newspapers and it's not that we are guided by what they say, but it's reassuring when, after we decide a controversial case, we get broad press support for the decision we make. And that's one of the reasons why, when we write opinions, we write them very carefully, very methodically, very thoroughly. We want the public to understand what we're doing. And the way for the public to understand is for the press to read them, and then, write about them in a way that the public can appreciate and understand.

**SI:** You spoke earlier about Justice Wilentz and his style. What are your thoughts on Justice Poritz's style as Chief Justice?

**Justice Stein:** Chief Justice Poritz was a very collegial Chief Justice. She had served in state government as Attorney General. And she led the Court in a very effective and, I think, successful way. She had the same skillset, to be sensitive to the individual members of the Court, to bring the members of the Court together, to try to reach

consensus. And I don't know how long we served together, because I left in 2002, maybe six or seven years, though, but I thought she was a very successful Chief Justice and did wonderful work for the Court.

**SI:** As you noted earlier, you became very friendly with all of your colleagues.

**Justice Stein:** I did.

**SI:** In particular, we've seen the pictures of you and Justice Clifford. Can you tell us a little bit about that?

**Justice Stein:** Well, the pictures on the wall are from my sixty-mile bike ride on my sixtieth birthday and my sixty-five-mile bike ride on my sixty-fifth birthday. I took the ride with several of my children, some of my law clerks. And Justice Clifford, who was seven years older than I was, went on both rides. I think I've got that right; I think he was only seven years older. I may be wrong. He may have been nine years older. I don't want to be unfair to him, but he joined us.

We had designed a route, starting at my home in Upper Saddle River, throughout Bergen County, up into New York State and back again, probably took us six or seven hours both times, a little longer for the sixty-five-mile bike ride. We had four or five pit stops on the way with friends who opened up their homes, let us use their facilities, gave us drinks and bananas for potassium and whatever else we needed. And Justice Clifford did both rides start to finish. I think, at the end of the sixty-mile ride, my late wife, Et, had made half a dozen lasagnas for the riders, because there were a lot of riders and a lot of hungry guys.

I specifically remember the sixty-five-mile bike ride, because we were in the last stages on West Saddle River Road and I was riding a bike with clips, bike clips for my shoes. So I was clipped in and I got a terrible cramp in one of my legs. I had to jump off the bike and get out of the clips and I was just writhing in pain on the ground. And Clifford stopped, "What's the matter with you?" I explained I had a cramp. So, he hung out with me while everybody else was going past us and we did the last two miles together, very slowly. I did not ride up my driveway, which is eight hundred feet long and kind of steep, but he did. I walked the bike up the driveway, but I remember being very grateful for his friendship and company on the last leg of that trip. So, we took some pictures and I thought they'd be good to hang. And next to the pictures of the bike riders is a picture of a bicycle that Justice Clifford gave me when he retired. He said it had hung in his office while he was a judge.

He was the guy that actually suggested to me that I take up bike riding. And I've been riding now, probably, oh, since--I joined the Court in '85--since at least '87. So, it's thirty years and I still ride up at Martha's Vineyard in the summer. I try to do fifteen miles a day on the days I don't play tennis, but I've always been grateful for Justice Clifford for getting me on a bike. And we have very happy memories together of those rides. They were great. They were just great.

**SI:** Tell me about your decision to leave the Court.

**Justice Stein:** Sure. The State Constitution requires that judges retire at age seventy and I would've been seventy in June of 2003. And because my son, Mike, had started this law firm, where we're sitting here today, called Pashman Stein--he started it with Louis Pashman, whose father, Morris Pashman, had served on the New Jersey Supreme Court before I got there [from 1973 to 1982]. Morris Pashman had been a distinguished Mayor of Passaic and Superior Court judge, the Assignment Judge in Bergen County, and then, went on to the Supreme Court. Mike and Louis formed the firm. Justice Pashman was part of the firm when it opened.

So, it was a small firm, just finding its sea legs. And, in 2001, when--well, I actually made the decision to retire in 2002, but I made it five or six months early--and I decided that September 2002 would be a cutoff. I was about nine months before retirement, but it just seemed to me to be the right time. I just felt that I had been there a long time, time to make room for somebody else. And it would give me a chance to join Mike and help him build this law firm. As I said, I was the seventh lawyer. Today, we have, I think, about forty-five lawyers.

So, the firm has grown significantly and it's just a joy to me. I'm very close to all five of my kids. I see the four that are on the East Coast all the time, regularly, and the grandkids that are around. But, I get to see Mike every day and that's a special joy, because we share a deep interest in the law, in the public interest side of the law. Our law firm has three members on the Board of Trustees of the American Civil Liberties Union in New Jersey and we do a lot of *pro bono* work for the ACLU, for the Education Law Center. And it's just a delight to be practicing law with my son. I have him sign my paychecks, so, I'm getting even with him. [laughter] And it's just a nice place to be.

I loved the Court. It was truly the highlight of my professional life. It was a wonderful experience. I've told Governor Kean how personally grateful I am and always will be to him for giving me the opportunity to serve on the Court and I'm deeply appreciative for that opportunity. I loved the time I spent there, but I've been very happy since I left. And I consider myself very lucky to be able to be practicing law with my son, to be living near my children and grandchildren and to have a wonderful companion. Her name is *Alice Olick*. She's the lady that told my late wife that I should run for Mayor and we were both widowed at around the same time. So, we spend time together. And so, I consider myself blessed. And I was on the tennis court at 6:45 this morning, playing singles, and I don't know how long that's going to continue, but I'm grateful for every time I can get out there to do that. That's one of the joys of my life. So, I consider myself a very lucky man.

**SI:** Any other memories of your time on the Court that you want to share?

**Justice Stein:** Yes, just one little touch. When Chief Justice Wilentz was leading the Court, we had a little ceremony on the last day of the term and it was just very sweet

and very touching. He, I think, lived the good life when he wasn't with us. And so, he would bring in, on the last conference day of the term, a couple of tins of very good caviar and a couple of bottles of very good champagne. I think I may have contributed to the champagne, and the Court would partake. [laughter] This was not our regular fare, because our regular lunch fare was more like peanut butter and jelly sandwiches and tuna fish sandwiches. But, on the last day of the term, we had this delightful moment where we'd share champagne and caviar and toast the Court year. It was just a very sweet touch and one that I remember fondly.

**SI:** You've continued to be very active professionally in the years since. You did make the news a few years ago reacting to some of the issues surrounding--I'm forgetting the name of the Justice, but ...

**Justice Stein:** It was either Justice Wallace or Justice Hoens. [Editor's Note: Justice Helen E. Hoens served as an Associate Justice of the New Jersey Supreme Court from October 2006 to October 2013. Justice John E. Wallace Jr. served as an Associate Justice of the New Jersey Supreme Court from May 2003 to May 2010.]

**SI:** Yes, yes. I think it was Hoens. Do you want to comment on that at all?

**Justice Stein:** Well, it was a very upsetting event, because Governor Christie was the first Governor to refuse to reappoint a sitting Justice of the New Jersey Supreme Court and that was contrary to the constitutional intent. It was very clear from reading the minutes of the 1947 Constitution that the reason the Constitution was written the way it was, that Justices would be appointed initially for seven years, and then, upon good behavior, for life until age seventy--at that time, they thought that life ended at age seventy--but the idea was that as long as you weren't a drunk or a wife beater or something outrageous, had manifested some outrageous kind of behavior as a judge, that you would be reappointed.

The reason for the seven-year initial appointment was to make sure that you possessed the temperament and qualifications to be a judge. It was never intended to be a referendum on whether the Governor in office at the time agreed with your opinions. That was the last thing that the Constitutional framers had in mind. It was simply--as a matter-of-fact, the original draft gave Supreme Court Justices only one appointment and that was until age seventy. But, then, at the suggestion of Chief Justice Vanderbilt, it was changed to give us the same as the other judges, seven years, and then, a reappointment until age seventy.

When Justice Wallace came up for reappointment, he had been a distinguished trial judge, excellent Appellate Division judge. He was the second African-American to serve on our Court, after Justice Coleman. He had an absolutely splendid record and Governor Christie announced that he wouldn't reappoint him because he was dissatisfied with our Court's opinion in the school funding cases, cases in which Justice Wallace had never participated. So, it was crystal clear that his motivation was different, that he wanted to show his base or his constituents that he was appointing his

own Justices and was going to remake the Court, which he thought was too liberal. I thought it was outrageous. I gave a speech at the Bergen County Bar Association expressing my views.

A few years later, when Governor Christie was running for reelection as Governor, Justice Helen Hoens had come up for reappointment. Justice Hoens had been an outstanding trial judge, an outstanding Appellate Division judge. Her husband, Bob Schwaneberg, worked in the policy office of the Christie Administration. And, ironically, Justice Hoens, more than any other Justice, in cases involving the Governor's position, on cases like the Council on Affordable Housing and school funding, Justice Hoens had voted in a manner consistent with the position that Governor Christie's Administration had taken, consistently.

She came up for reappointment and Governor Christie announced that he would not reappoint her, because he wanted to protect her from an adverse, adversarial confirmation hearing. He thought the Democrats were going to be hostile to her and he wanted to protect her. And, to protect her, he would reappoint Justice Fernandez-Vina from Camden County, who happened to be Latino, and Governor Christie, some said, was anxious to appeal to the Latino vote.

The grim effect of that decision was to reduce Justice Hoens' pension on her retirement by over sixty thousand dollars a year and, ironically, we had a retirement dinner last night honoring Justice Hoens. I thought that was an outrageous, outrageously selfish, decision on the part of the Governor. I thought it was totally unjustified. His rationale that he wanted to protect Justice Hoens rang hollow to my ears and to the ears of many other people who heard it and I thought it was cruel and absolutely self-motivated.

So, I have spoken out about perhaps amending the Constitution, to make it crystal clear that reappointments are automatic, absent some evidence of conduct--absent some evidence of misconduct, put it that way. I suggested that. State Senate President Sweeney said that he didn't agree with it, and so, he would not permit it to be introduced. [Editor's Note: NJ State Senator Stephen M. Sweeney, a Gloucester County based Democrat, has served in the New Jersey Senate since 2002 and has served as Senate President since 2010.] And so, even though the State Bar Association had endorsed the amendment, as had *The New Jersey Law Journal*, it hasn't gotten any traction. And maybe it won't be needed down the road, because no Governor has ever done what Governor Christie did and I hope no Governor after him ever does the same thing. It was destabilizing to the Court. It was destabilizing to the judiciary and it was demoralizing.

And, you know, when lawyers agree to accept a judicial appointment, they have a right to assume when they give up their law practice that they're not going to be denied tenure for reasons having nothing to do with their performance as judges, with their character, with the quality of their service. And, in both these cases, these denials of reappointment seemed to me to be completely unjustified and completely inconsistent with the spirit of the 1947 Constitution. That was why I felt so strongly about it. We

have, in New Jersey, one of the best judiciaries in the entire country and it's an asset this state should treasure and preserve. And so, future Governors need to be careful not to take actions like that, that destabilize and demoralize the judiciary. We're lucky in New Jersey to have as good a judiciary as we do and I hope we can keep it for many, many decades to come.

**SI:** All right. Is there anything else you'd like to add to this record now? There's obviously many aspects of your life that we could go into. You have been working with the Education Law Center. I forget--what is the name of the group you were telling us about on Monday?

**Justice Stein:** It's a new organization called the New Jersey Coalition for Diverse and Inclusive Schools.

I guess, if there's one other thing I'd like to add, if I could, Shaun, it's that my late wife and I were married for forty-seven years. We raised five kids and have all these grandchildren. And, when I was a young father and a young lawyer, I was probably over-committed to my legal career and working very hard to learn and hone my skills as a lawyer. And, today, because of the blessings I enjoy with my five children and sixteen grandchildren, I often think about advice that my late wife, Et, gave to me when I was a young, ambitious lawyer. And she took me by the collar one day and said, "Gary, remember this: no matter what kind of success you achieve as a lawyer, if you don't succeed as a father, you're going to be a failure in life. And so, you better make sure that you look after these kids with me." And I, to this day, think that was the best advice I've ever gotten. And that's why I said that the best decision I ever made was to marry her, because, together, we built a very, very close family of five wonderful kids.

My four daughters and Mike are close to each other. They love each other, they are in close communication. I speak to my kids many times a week and my sixteen grandkids are very close. Many of them spend time at the Martha's Vineyard house in the summer. Several have jobs there, now that they're older, and I feel an extra blessing because of this tremendous family I have around me. And I really feel I owe the good fortune I have to my wife's good advice when I was a young lawyer and didn't really know what mattered. So, I just wanted to add that.

**SI:** All right. That concludes today's session. We may come back for a follow-up, but I want to thank you for today's interview. It's been fascinating to learn about your life. It's been a wonderful start to this whole effort to document the lives of retired Supreme Court Judges and thank you, I appreciate it.

**Justice Stein:** Shaun, thank you very much. Thank you for your time and for your thoughtful questions. And I've enjoyed the experience and I'm so grateful to both Rutgers and the Administrative Office of the Courts for undertaking this project. I think it's going to be wonderful for not only my colleagues and their families, but for the public and for lawyers and for people who want to study the workings of our Court and our relationships. I think it's a wonderful project and thank you for letting me kick it off.

**SI:** Thank you.

## Appendix I

During his tenure on the New Jersey Supreme Court from 1985 to 2002, Justice Gary Stein served with the following Chief and Associate Justices:

<b>Name</b>	<b>Years of Service</b>
<b>Chief Justices</b>	
Deborah T. Poritz	1996-2006
Robert Wilentz	1979-1996
<b>Associate Justices</b>	
Robert L. Clifford	1973-1994
James H. Coleman, Jr.	1994-2003
Marie L. Garibaldi	1982-2000
Alan B. Handler	1977-1999
Jayne LaVecchia	2000-Present
Virginia Long	1999-2012
Daniel Joseph O'Hern	1981-2000
Stewart G. Pollock	1979-1999
Peter Verniero	1999-2004

## Appendix II Select School Funding Case Citations

### ***Robinson v. Cahill Series***

*Robinson I*, 62 N.J. 473, 303 A.2d 273 (1973)  
*Robinson II*, 63 N.J. 196, 306 A.2d 65, cert. denied, 414 U.S. 976, 94 S. Ct. 292, 38 L. Ed. 2d 219 (1973)  
*Robinson III*, 67 N.J. 35, 335 A.2d 6 (1975)  
*Robinson IV*, 69 N.J. 133, 351 A.2d 713, cert. denied, 423 U.S. 913, 96 S. Ct. 217, 46 L. Ed. 2d 141 (1975)  
*Robinson V*, 69 N.J. 449, 355 A.2d 129 (1976)  
*Robinson VI*, 70 N.J. 155, 358 A.2d 457 (1976)  
*Robinson VII*, 70 N.J. 464, 360 A.2d 400 (1976)

### ***Abbott v. Burke Series***

*Abbott I*, 100 N.J. 269, 495 A.2d 376 (1985)  
*Abbott II*, 119 N.J. 287, 575 A.2d 359 (1990)  
*Abbott III*, 136 N.J. 444, 643 A.2d 575 (1994)  
*Abbott IV*, 149 N.J. 145, 693 A.2d 417 (1997)  
*Abbott V*, 153 N.J. 480, 710 A.2d 450 (1998)  
*Abbott VI*, 163 N.J. 95, 748 A.2d 82 (2000)  
*Abbott VII*, 164 N.J. 84, 751 A.2d 1032 (2000)  
*Abbott VIII*, 170 N.J. 537, 790 A.2d 842 (2002)  
*Abbott IX*, 172 N.J. 294, 798 A.2d 602 (2002)  
*Abbott X*, 177 N.J. 578, 832 A.2d 891 (2003)  
*Abbott XI*, 177 N.J. 596, 832 A.2d 906 (2003)  
*Abbott XII*, 180 N.J. 444, 852 A.2d 185 (2004)  
*Abbott XIII*, 182 N.J. 153, 862 A.2d 538 (2004)  
*Abbott XIV*, 185 N.J. 612, 899 A.2d 1063 (2005)  
*Abbott XV*, 187 N.J. 191, 901 A.2d 299 (2006)  
*Abbott XVI*, 196 N.J. 348, 953 A.2d 1198 (2006) (inadvertently withdrawn from bound volume but reposted at 203 N.J. 157, 1 A.3d 299 (2006))  
*Abbott XVII*, 193 N.J. 34, 935 A.2d 1152 (2007)  
*Abbott XVIII*, 196 N.J. 451, 956 A.2d 923 (2008)  
*Abbott XIX*, 196 N.J. 544, 960 A.2d 360 (2008)  
*Abbott XX*, 199 N.J. 140, 971 A.2d 989 (2009)  
*Abbott XXI*, 206 N.J. 332, 20 A.3d 1018 (2011)