

**ORAL HISTORY OF
JOAN Z. BERNSTEIN - SIXTH INTERVIEW
JULY 8, 1999**

Professor Jackson: This is July 8, 1999 and I am interviewing Jodie Bernstein in the continuing series of oral history interviews, and I am going to hand to Jodie right now transcripts, rough draft transcripts, of our meeting of February 11, which I wasn't sure I had given you before, and of our last meeting of May 12 for your review and correction. And I just wanted to say on the tape since I grabbed these as I ran out of the office last night and didn't have time to do a cover letter to you, so we have that record.

Professor Jackson: My notes reflect that in our last discussion we had discussed, concluded, our discussion of your work in three different government agencies, important government agencies in the 1970s, and you had reflected on that. I wanted to ask if you had anything further to add to those reflections since we last talked or whether we should proceed on into the 1980s.

Ms. Bernstein: I think that we probably covered that although just to emphasize the importance of that time for me, this week I talked to, at his request, a *Wall Street Journal* reporter who is focusing on my leadership of the bureau in connection with our role on the Internet in terms of the way we've gone about positioning the commission in terms of the principal agency really that applies existing law to the Internet, which is an interesting theme. Whether he'll ever write the story or not I don't know. But it was his idea and you know how they sort of want to personalize a story rather than institutionalize it, and he asked me about how I felt about coming back to the commission. One of the things I said was because of my experience in the '80s at two other agencies, I felt as if I had much better experience, much better

understanding of how to do this job when I came back because of having been at two other places and had much more experience with the risks of regulatory decision-making than I previously had.

Professor Jackson: In terms of the risks of regulatory decision-making?

Ms. Bernstein: I mean political risks; I'm not talking about risk benefit.

Professor Jackson: Oh okay, I was wondering whether when you talked about risks of regulatory decision-making you were influenced or affected as well by your experience at Waste Management in the '80s at being an in-house general counsel.

Ms. Bernstein: I certainly was because at that point I really had to. It gets deep down into your psyche of how a regulatory decision can affect 60,000 people in a company and your ability to influence its application or lack of the agency's ability to make a decision, which was what I feared was the most troublesome to me. Certainly added to what I consider to be a sort of base of business experience and knowledge that I brought back here.

Professor Jackson: It's an interesting reflection on what is often referred to critically as revolving door but the suggestion that you just make is there is a real benefit to regulators to kind of being on the receiving end.

Ms. Bernstein: I've always believed that, it's more than useful, it's absolutely critical to really understanding what you're doing when you come back into government than if you've never been in the private sector. It makes all the difference in the world to me.

Professor Jackson: That's really quite interesting to me. It makes a lot of sense to me as well. Let me try and bring up to the end of your first prolonged period of government service, which roughly coincided with 1980 election. So I want to get us to the beginning of the 1980s when you were doing, I think you went into private practice at Wald.

Ms. Bernstein: Wald Harkrader.

Professor Jackson: And was that in '81?

Ms. Bernstein: '81, right after the inauguration in, January 1981, the new administration was sworn in, and I think it was January 20th or 21st that we resigned from the government, and I guess the first of February or so I became a partner at Wald, Harkrader & Ross.

Professor Jackson: What was your practice like at Wald?

Ms. Bernstein: Interesting. First, of course, since I hadn't been in practice for such a long time and only very briefly had I been in this kind of practice before, I was frantically concerned and worried that I would not have any business and I would be a total failure because who knew how you develop business. And at that level, when you're a partner, you're expected to develop business. Bob Wald was absolutely wonderful. He said to me, "Look, nobody ever knows where business develops from. The things you think might usually don't develop and totally unexpected things occur and you just can't anticipate it. So just, here's what you should do: just get busy accepting invitations to speak and if there's travel involved where you could go and make sure you visit with old colleagues at the same time, that's the most useful thing to do." And so I started doing that and also, of course, I had accepted the appointment to the Commission on Wartime Relocation and Internment of Civilians, which occurred before the end of the Carter administration. I wasn't yet at the law firm. I was still at HHS, and the Carter administration was making some last-minute appointments that they should have made much before and didn't get around to. There were three appointments that the President had to make, then three from the Senate, and three from the House, which was an unusual arrangement because that meant there would be nine commissioners. And they called me just sort out of the

blue. By that time I knew the people in the personnel office and they were sort of handing out what they thought were interesting appointments to people who had been in their judgment successful appointees of the Carter years.

Professor Jackson: Were you appointed chair? How did you get to be chair?

Ms. Bernstein: I was selected by the commissioners or elected by my commissioners. I was not appointed. I was elected by my colleagues. My theory was, as I said at the Justice Department a few months ago, that they figured the girl would get the work done. And she did. There were eight men, very distinguished colleagues.

Professor Jackson: You wrote a very strong report. Now how long – am I right in thinking that this work got done on a relatively fast track?

Ms. Bernstein: Two years we finished the project.

Professor Jackson: That strikes me as quite fast and intense.

Ms. Bernstein: No one anticipated that we would finish that exercise in two years. I was determined to do so. In fact I remember Senator Inouye saying to me, “You finished, you finished? No one finishes these things so fast, Jodie.” I said, “Senator, I believe this is already 40 years old, that if we don't finish it now, it's not really going to. It really needs to be finished now.”

Professor Jackson: That makes sense as a reason to expedite. Did you have other reasons to try and get it done quickly?

Ms. Bernstein: Just that I always want to finish things that I undertake to do and not have them schlep along. It's one of the things that I share with Bob Pitofsky, who is even less patient in terms of have it done yesterday than I am. But it's one of the things that I just feel that when you undertake – I don't know, it's something inherent – get it done.

Professor Jackson: The political climate that yielded the legislation, was there any change in that in the early '80s or did the political climate remain pretty hospitable?

Ms. Bernstein: Well, I wouldn't say it was very hospitable. In fact, it is my view that the effort that led to the legislation was not to have a commission set up, that was a compromise. It was to have reparations enacted by the Congress. And because of the hostility to the concept of reparations, which was very hostile, that was in every sense a compromise. And I think many in Congress, including the Japanese Americans in Congress, who were really quite uncomfortable about what their role should be here, was that this would be put off for a while. And they wouldn't have to face it. I don't mean to say that they weren't very helpful to me, all three, well there were four actually: Inouye, Matsunaga, were both senators from Hawaii; Bob Matsui and Norm Minetta were congressmen from California. And all four of them were wonderfully helpful to me, wonderfully. To this day Bob and Norm both greet me extremely warmly wherever we meet and make sure I'm included in various things, such as memorials. Now last week or two weeks ago, and it was recently on television, a new documentary film called, I think, "Rabbit in the Moon," or something like that, was just released by a woman film producer, a Japanese-American woman who was 1½ years old when she went to the camp. Her sister, who was co-film producer with her, was somewhat older than that. They produced this documentary about the internment but most particularly on a subject that never would have emerged, I don't think, in the '80s and probably not until now and that is the role of the JACL, the Japanese American Citizens League, which is a mainstream Japanese-American advocacy group that they now accuse of being collaborators with the government. It's very controversial, very. Now that is not the kind of thing that has not happened in other groups, and I'm thinking of my own. Of course, Jewish groups had horrible, horrible relationships at the time of World War II of who was going to speak up, who was going to try to persuade our government, and

others that took the position, which is quite understandable (the same thing went on with Japanese), don't rock the boat, don't make waves. There are plenty of anti-Semites; they will take advantage of it, et cetera. Those kind of conflicts.

Professor Jackson: You could see a little bit in the report, I skimmed it over last night. The period there was the effort to have the voluntary evacuation and I had the sense, I don't know this is spelled out in the report, but I had the sense that some in the Japanese-American community thought it might be a good idea to try to cool things down and you can understand that.

Ms. Bernstein: Oh, absolutely you can understand it.

Professor Jackson: It strikes me as of the reasonable range of reaction that you would get in a situation of rising racism directed at a minority group.

Ms. Bernstein: And indeed this new film focuses on the several people who were resisters and went to jail and who were reviled for years afterwards as traitors to the United States.

Professor Jackson: So this is not or does this include Hirabayashi or –

Ms. Bernstein: It didn't include Hirabayashi. Hirabayashi testified at our hearings. And so did Yasui. I can't remember whether he was alive, the third one was alive or not then. I just can't remember. No there were other resisters I never heard of before. The one was in the state of Washington, one was somewhere else. And I did know, and I think it's in the report, that a number gave up their U.S. citizenship and went to Japan because of the internment.

Professor Jackson: Which may well have been pointed to by advocates of the internment as proof that they were right.

Ms. Bernstein: Afterwards, oh yeah. And we had, you know, God it was so bad, what's his name, one of the principal people in the administration who was a very prominent lawyer (I cannot think of his name, he must be in there somewhere), testified throughout as to the

justification for the internment. I was on the McNeill Leher show with him at the time we issued the report in which he was still justifying, and he was an old man by then.

Professor Jackson: This wouldn't have been Tom Clark because –

Ms. Bernstein: No, no, no. Tom Clark was – I don't know and I should know what his name is – and by that time he was a prominent lawyer and had been the head of a Wall Street law firm, maybe he still is for all I know.

Professor Jackson: I hadn't known until I read in the report about the much more individualized process for dealing with the German Americans and Italian Americans. German Americans mostly it seemed like in the east, where you had something resembling due process and individualized opportunities and proof. And I also hadn't known about the Latin American Japanese and the transfers, that was fascinating, nor about the Aleuts, and I mean there is a part of me that is wondering how politically did the Aleuts get into the legislation because it's such a small group.

Ms. Bernstein: Very simple. Senator Stevens. That's the answer. Principal player on the committee and at the very last minute he said, "I have these Aleuts up there in Alaska, and they tell me that some things happened to them, too. I want them in." The others were saying come on, senator, this was totally different. They had to be moved because of where they were to some military installation. Mind you they had some complaints but not at all the same kind of complaints.

Professor Jackson: No, it seemed that the reason for moving them was the foreign forces were taking over their island, so –

Ms. Bernstein: That is correct. Now did the army leave a mess behind, yes, they left a mess behind. So that when the Aleuts came back, the place was a mess, but the reason was that Senator Stevens insisted upon and Senators Stevens had enough clout that it got in.

Professor Jackson: I'm glad I asked. I'm very glad I asked.

Ms. Bernstein: And then, of course, we had this Aleuts minister, priest, on the commission. He had to be on it.

Professor Jackson: Who was the Aleuts priest? I have a list that I'm showing Jodie now, the list of commissioners in the book copy that I have.

Ms. Bernstein: Right. Ishmael Cromoff, that's who it is, he's an Aleut. W. Marutani was a judge in Philadelphia, and he was obviously the only Japanese American on it. So that was the balance. Cromoff contributed absolutely nothing.

Professor Jackson: This is Ishmael Cromoff.

Ms. Bernstein: Yeah, but he came, and somebody used to come with him, a young Alaska guy had been assigned, I think, from Stevens' office to be sure his views were made known.

Professor Jackson: One question I had for you and I may not have read carefully enough all of the pieces of this wonderful work –

Ms. Bernstein: It is a wonderful work. I'm very proud of it. But I haven't looked at it either for a number of years.

Professor Jackson: My impression, and again this may be that I didn't read all of the pieces carefully enough, is that it was Angus MacBeth, who is a wonderful person (I've known him in other –) and a very good lawyer, pulled together, was it Angus who pulled together most of the report?

Ms. Bernstein: Yes.

Professor Jackson: Okay, the question I had is whether you relied at all on historians. In academic talk there is a big cleavage frequently between historians and, including legal historians, those who were trained and have PhDs in history as well as law, and lawyers who do history. The complaint of the legal historians is that, you know, what lawyers produce is so-called law office

history, which is advocate's history, and so I was wondering whether you involved professional historians in the work or relied primarily on Angus and other lawyers to do the work and what your thinking was about that.

Ms. Bernstein: The legislation allocated nine positions, I believe. And I don't know what the money was, I can't remember what it was, it was obviously quite modest given that you had nine positions, but nine positions was very generous I thought for this kind of an operation. And I think I probably mentioned to you before that I was successful in getting a budget through (this was the Reagan administration). I had to do it two times and both times I got full support. Now mind you, it was very tiny, it was like a million and a half dollars or something like that. I do recall, Vicki, and I want to tell you this just because I think it's a sort of an interesting anecdote that is political. I can't remember what the circumstances were, but it had to do with my getting some kind of approval for an increase in appropriation from the Senate, and I had mistakenly let the time lapse. I did not get up there in time to get it in the bill, whatever it was supposed to be, so I asked the staff what could I do because it wasn't as if they didn't want to, but we just hadn't gotten the paper work up, and they didn't get it done. Whether it had to be in the conference report or something like that. They said the only thing you can do is ask Senator Inouye as a favor to do it for you. So I said, "Okay please make me an appointment with the senator," and they said, "Jodie, you can't work with staff on this, it has to be the Senator," and I said, "I understand." "So you can't send any of your staff, you have to do it." I said, "I got it. I got it." And I had met with him several times and I regularly briefed the members myself. So I went up there and explained to him that it had been my fault, and it was just an oversight, and I was sorry – very briefly. He said, "You know I'll fix it for you, but this means that I have to go on the floor myself." He said that's no big deal, but it is quite a big deal for a senator to go down and write it into whatever you had to write it into himself. So there were these rules you know.

Professor Jackson: In other words he had to do it himself, just like you had to go to him yourself, he had to go and take the formal responsibility.

Ms. Bernstein: He had to go to the floor with the language that I had given him, which was like a paragraph at most, maybe three sentences, something like that, and put it into whatever it had to be put into – senatorial privilege to do this kind of action which could not have been any other way. But it got in, it got fixed, it was done. I thought it was wonderful. I learned so much you know in this process. And it wasn't as if I was really doing anything improper; it was simply an error in my neglect in not getting it done on time. But then in terms of the staffing – so I had these positions, and this is the reason Angus ended up doing what he was doing with this because of this reason. Dan Lungren was my vice chairman, I think I told you that before. Dan Lungren was then a congressman from California. He now just this year lost the governor's election in California, having been attorney general for eight years. He was the only member of Congress that was willing to sit on the commission. That gives you an idea of how controversial this business was at the time.

Professor Jackson: And he dissented on some point.

Ms. Bernstein: Dissented on one point.

Professor Jackson: The significance of the cables right?

Ms. Bernstein: The significance of the cables but more importantly on the \$25,000 payment. But everything else he concurred on. And as I probably mentioned to you before, my going in position, after I talked to a lot of people about what was important, which is something I always do especially if I'm in a relatively new area of what's most important here – how should I proceed in order to do this – and everybody said to “hold your commission together as much as you can, in terms of achieving consensus – that's the most important thing.” I said, “Even if there is only one? Maybe there will be two dissenters.” And they kept saying “as much as you can, be unanimous

at least on the findings, never mind on the remedies, but both if you could.” So I went into it as that as my principal goal. So I went to see Dan, who was very nice but of course was a very busy congressman, although he came to every hearing. He chaired some of the hearings in California because he wanted to, and I said, “That's fine.” I chaired all the rest of them. We did not go to Hawaii even though Senator Matsunaga begged me to come to Hawaii, and the reason for that was political. It just looked bad to take nine people to Hawaii in the winter like some of my colleagues wanted to do. I said, “No, no, we're not doing that. Hawaiians who want to testify can come to California to testify,” and so I made a lot of calls like that, which I was pretty comfortable doing. Anyway I went to see Dan and said, “Now we need to hire a director of the staff or executive director or whatever, and then work with him because I've got a lot of applications for other staff people but I don't want to do that until we have somebody in charge.” He agreed and we both had agreed that it probably should not be a Japanese American, it probably should be somebody else because you could not get agreement from the, you know, whoever there would be. But what happens? He comes back from a trip to California and says, “I know we agreed to that but I found this terrific Japanese-American guy who is just fabulous, and he wants to do it” and so forth. Now I cannot remember his name, but I said okay. I interviewed him, and I said, “Well okay.” Since Dan had to take on this role, I said okay. Now I won't even go into it. He was a complete disaster. He was a total disaster. In the meantime, we did hire staff. I practically did the hiring because he didn't seem to be able to do anything, and in the meantime time was passing. So we hired a few people who I happened to fall across, and I hired some very good people, one of whom was Kate Beardsley, who is now Nancy Buc's partner in a law firm, and she was just returning from raising children, out of the then women's world and had come to see me through – you know the way some women come to see other women – and said, “What should I do? I don't know what to do.” She had a fabulous resume

and all that. I said, “Come to work for me, part-time at the commission. It will give you a chance to get your feet on the ground. You're smart, you can do research, you can write.” She was fabulous. It started her career. That's just an example. Then I had to get rid of this guy.

Professor Jackson: Was the guy a lawyer?

Ms. Bernstein: No, it turned out it was just a political hack that they owed a favor to, the Republicans in California. So I had to fire him. I went up the Hill, and I told each one of them what I was doing and said I'm going to fire him. I didn't say “may I.” They all of course just did what politicians did and said, “Do what you have to do,” meaning if it goes south, it's going to be your problem. I said okay. And luckily he went quietly. He went quietly. Ended up with an appointment in the Reagan administration as the head of – in the VA, but it may be, no it's a separate commission that oversees military ceremonies in government cemeteries. It was a perfect job for him; there was nothing to do there. It was hilarious. In retrospect it was extremely aggravating to me at the time. And then I'm desperate, I'm desperate to find how am I going to get this done. Meantime my good friend Mr. Justice Goldberg and others were pressing and pressing, and we haven't got a schedule, although I had pretty much developed a schedule for hearings. And in the meantime, Bob had given me a couple associates to help me work on some of that part-time, and they loved that; they thought it was great. So I was able to get that kind of help in the interim, and they did a good job, really very good job. You know, they wrote material for me; they got research going so that I could have meetings at least with the commission and not be totally at a loss. Angus and I had worked very, very closely together during my time at EPA, as I probably mentioned. Very closely. We were very good friends, and we really had built a new and really effective relationship between Justice and EPA, the two of us and with Jim Moorman's support. It just changed the way environmental law was getting done. I know I told you it was just in disarray when we got there.

They were fighting with each other all the time. So I considered him. I knew what a good lawyer he was, I liked working with him, and I also knew this – that when he decided to come out of the government, which was about '82 or so, I think, I don't know, '81, he came out at the time when all environmental law seemed to be going away. And he had an awful time getting located in a law firm, and I talked with him several times through that period. It was just one of those awful times in which even a very distinguished person who ordinarily would have a dozen offers was getting nowhere. And so I called up my good friend Dan Margolis, who then had his own boutique anti-trust firm, and he had wanted me to come there to build an environmental practice at the time.

Professor Jackson: Where is Dan Margolis now? Is he at Pattons Boggs? Oh, he's a great guy. I worked with him a task force, gender task force.

Ms. Bernstein: He had been a friend of mine for years, he and his family. In fact, Tuesday night he took Sydney out for dinner for her birthday, and he had us and another good friend. We see them often. So anyway Dan I knew was looking for somebody sort of, and anyway Angus ended up going there. And he didn't have any business yet at all because it was a boutique and trying to get any environmental business then, I mean it was just dead in the water. It was absolutely dead in the water. I was busy thinking how much FTC could I get done. Maybe there wasn't any of that either, so forth. So I thought to myself, Angus is not busy; Angus could do this either part-time or three-quarter time and stay at the law firm. And my other crafty view was: and I think they've got some associates over there that aren't busy either, and he can use them to do some of this as well. And I figured there was nothing wrong with that, and I called Dan and said, "What do you think of this as an idea?" He said, "It sounds good. Sounds good." Angus thought so, too. Anyway the rest is history. Now wasn't that a clever thing to do?

Professor Jackson: Yes, and thinking about it good professional historians are unlikely

to be willing to commit to producing a report on a time frame. It's not –

Ms. Bernstein: You know what, Vicki, this may be my own limitation. It never even occurred to me to try to get an academic. First of all I had a bias that they would never get it done. I had no reason to think that, it just didn't occur to me, and because of the pressure of what I was doing. What I always do look for in people – you know what their capacity is and you know if they can get engaged and you make it possible for them to get the work done. That is what is going to be the best result.

Professor Jackson: As I said I think it is a terrific report but I dabble in projects that overlap with what legal historians do and –

Ms. Bernstein: It is part of what I consider to be my managerial skills that I've developed over the years because that's a real management challenge to organize staff, a whole new organization that has to get up, get running and produce a product in two years.

Professor Bernstein: And hold it together.

Ms. Bernstein: And hold it together.

Professor Jackson: In a setting where the appointment process is political, and –

Ms. Bernstein: Right and I didn't have any obvious influence on that.

Professor Jackson: What was the most challenging? You've told me what was the most important, which was trying to hold consensus. What was the most challenging part of this project?

Ms. Bernstein: What the recommended remedies were going to be was very challenging. In fact, the issue of reparations was still so controversial. That was one area that I didn't know if I was going to have any consensus whatsoever. And I really tried to think through if we really do that, will it just be so divisive that I'll end up with a whole Congress opposed to that except for these four poor Japanese-American guys who will also be torn to smithereens by it. It was

personally very troublesome. And it really, now it doesn't seem so controversial, and I think I told you, I guess it was last year or the year before last, I don't know, Justice finished off the ten-year process of paying out the reparations.

Professor Jackson: I didn't know that.

Ms. Bernstein: A little unit over there that was set up to do that and at the end of the ten years (they were given ten years to pay it out by the legislation that was ultimately enacted), Janet Reno had a ceremony to mark the ten years, and one of the Japanese Americans whom I got to know, a young guy, then ended up working over there. As a result I was invited to participate in the ceremony that Reno had, which was very nice, and I was even invited to speak.

Professor Jackson: That's appropriate, given your leadership of this effort, entirely appropriate. I don't find it hard to understand how that would be very controversial. I think if a proposal were made today as I think some people think it should be, to provide reparations to the families of former slaves, I am quite confident that would be at a minimum highly controversial and contested.

Ms. Bernstein: That was one of the issues in reparations for these folks – what about the slaves? And then people were saying all the civil rights laws and all that are a response to that, to make up for that and so forth. There were arguments like that being made, but that was very troublesome. Those people had been locked up for 200 years in different ways, but they had been locked up and deprived of any rights, people who were born here. So why would you do it here if you didn't do it there. So it was very divisive concept.

Professor Jackson: How did you get consensus on – well Lungren didn't go along with the reparations.

Ms. Bernstein: Lungren didn't go along but we worked and you may recall that one

of the things that we did was we split off the report from the recommendations.

Professor Jackson: The findings from the recommendations, right?

Ms. Bernstein: We decided we would do the findings first, so we really, really worked on getting the findings approved by the commission, and of course they were all were very good about coming to the hearings, all very good about it. They listened, they asked questions. They were really attentive. And of course in terms of opposition to findings, there wasn't very much, there really wasn't very much. Not now. There was at the time you know, there were. We had many, many separate sessions with just me and Angus, not the rest of the staff, that were very useful. And Bob Drinan was great, he was great. They all were. A couple of them were weaker than others. Considering we had Arthur Flemming, who was extremely capable and good; Goldberg was fabulous. I have a lot of funny stories to tell about Goldberg, of course. Some of the others were much weaker, but with their cohesive leadership with me and with Angus who was very effective in working with them and very responsive to them and would draft things for them if they could say "yes, yes, this is what I mean." He was great. He was a fabulous writer anyway. And we did hire a couple of writers. One of them I saw just the other night who was at this movie thing that we saw at the Smithsonian, the screening of this movie; she was there. I don't remember how we found her but I said to Angus at some point, "Listen, we need a professional writer editor. This stuff can't be written in legalese, it's got to be written well." And we had a couple of people who were just plain old researchers. Both Angus and Kate, for example, were the best ones, I remember, were very good writers. But I thought we needed a professional writer/editor, and we got one. And she was terrific. She was just terrific. In fact I remember a very funny episode as we were kind of finalizing the substance, and she was going to do a final edit of the draft report, and it was an executive session of the commission except for Angus. I said, "I'm bringing her because she needs to hear what the

nuances are, what the flavor of these things are.” And Goldberg, “You can't have staff here, you can't have staff here.” I said, “Arthur” (by that time I was calling him Arthur, which was a hilarious story in itself). I said, “She has to be here; she is the one who is going to try to reflect your views. Now she needs to hear it from you. So she's going to sit there and she's going to listen and she's going to take notes, that's it.” By that time I was pretty pushy with him, which you had to be with him.

Professor Jackson: How did you come to be on a first name basis?

Ms. Bernstein: Can I tell you this story? It's really quite funny. It was widely known that everybody was supposed to call him Mr. Justice Goldberg. It was rumored that Mrs. Goldberg was supposed to call him Mr. Justice Goldberg, and so I was calling him Mr. Justice Goldberg, and here I was the chair, and he's calling me Jodie, of course, and it was very uncomfortable. I felt like I just cannot do this because it's not just me personally, it's the chairmanship here, and he's either got to call me chairman or he's got to call me Ms. Bernstein or something if I have to go along with this. So one day we're over, just me and Arthur and Angus and I think one other person maybe, and we were talking about the following (I remember this vividly): For some portion of the Japanese-American group their principal aim was to overturn the Supreme Court decisions that upheld the constitutionality of the internment. We were talking about what we could do to help that happen, and the answer is nothing, basically, basically it's nothing. But we were struggling with that because if there were something that could be even explored it would be something that we should at least debate and consider and maybe have law professors come in to consider it. I said as we were discussing it, admittedly I had done a little bit of research of my own, I said, “Well, Arthur,” no I didn't say “Arthur,” I said, “Well, Mr. Justice, we could perhaps consider a writ of *error coram nobis*,” and his eyes perked up like this – then I said, “I believe that the writ of *error coram nobis* was abolished when the All Writs Act passed in 1948.” And he said to me, “That's very good, Jodie,

very, very good.” I said, “Thank you, Arthur,” and from then on I called him Arthur with no further explanation. He was Arthur, we were all on a first name basis, and I think that is so hilarious because I had gotten to him, I knew what had happened. He considered me just a girl student before that, and at that point he said, “Well I better take her seriously.” And at the end I must say that he, Arthur, was very proud of the report, and when we had our press conference, which attracted a huge amount of attention, there was a big picture of me in the *Washington Post* holding up the report. This was on the findings, not on the recommendations, and they were all coming to the press conference, all nine of them – by that time the issue was who would speak. Well they all thought they should speak, and whoever I had put up to this said, “You know you can’t have nine people speaking at a press conference. One person has to speak, others could potentially answer questions.” So I said I’m the chair, and I’m going to be the speaker. And imagine having them all sit in the back of me having to listen to me, which was horrifying to them I’m sure, at least to some, not to all. So I did that, and I answered almost all the questions. And then they asked, “Are others available to answer questions?” I said, “Yes,” and they had already been introduced, and Arthur answered a couple of questions, but afterwards he said to me, and he said it with all sincerity, he said, “That was a really fabulous job, Jodie, you did a fabulous job.” So coming from him I thought I had achieved some stature with him. He was really a piece of work.

Professor Jackson: That's a terrific story.

Ms. Bernstein: He also did the following, Vicki. When we had what was obviously going to be one of our very last meetings because it was a final, final session, and I had it at the law firm, not at the office, because it was a final session with the commissioners on the remedies, and we were about to put that to bed and were going to release that, and I needed to have them all there, I asked them all to come to lunch at the law firm, and we were going to have our usual cold buffet.

And Arthur got up and left the room – that was at the meeting where he didn't want to have the editor there but he agreed to it. He left the room for a few minutes, went down to my secretary, whom he knew by that time, Betsy, because she had done so much, and said, “Don't you think it would be wonderful if the commission would send flowers to Jodie? She's done such a good job.” Betsy said yes, and he said, “Would you order them?” And Betsy ordered them, and I paid for them, which I thought was hilarious, but it was very nice. They were delivered during the meeting, and I thanked them all cordially.

Professor Jackson: Good intentions. Now after you got the findings out, you have very strong findings, and you held Lungren on almost all the findings, because even when he dissented on the reparations, he said, “I want to emphasize that I'm not,” but how did you get to reparations, once you got the findings.

Ms. Bernstein: Oh Lord, I don't have a very vivid recollection of it. I think because it was so messy I suppose that I really don't, I just don't know. I think we finally just decided Angus and I would write a draft of recommendations and begin to circulate them among them and see what we got back and see what objections we got and see what they would never say. And nobody wanted to say exactly where they were on the money. At first we left out an amount and circulated something that said there will be a money payment or something like that and left out any amount, and when it emerged that everybody but Lungren was going to support a money payment, a reparations payment, then that, now that you ask me, that's about the way we did it. It looked as if we had a very broad consensus for that. Then we took on the question of how much. And that turned out to be fairly arbitrary because –

Professor Jackson: Any amount is going to be.

Ms. Bernstein: That's right. And we wrote in there that no amount really is a

compensation for the loss of liberty, but nonetheless it would be at least helpful. And then we had to discuss the other things, like if the person was dead, would the estate be compensated if children were there or not there, and so forth. And always considering if we did this, how much would that amount to? What would the government have to come up with? And at the time, it was at the time that the government was funding nothing; they were funding nothing. It was the Reagan administration, and they were cracking down on everything, and so was the Congress. Congress couldn't get anything through either. But in the end, my position was "well, let's try to do what we think is the right thing, and the separate issue will be the politics of whether it can be done. Let's see if we can do what we think would be at least a moderately right thing to do here and deal with it that way."

Professor Jackson: What did you decide? Forgive me for not remembering about the children and estates.

Ms. Bernstein: We said it would only be for the person who was incarcerated, who was still living. That was in order to limit what the potential exposure would be. So we did take up the politics of it, but as a subset.

Professor Jackson: Also that occurs to me that distinguishes the case of slavery, so that it may have some practical kind of –

Ms. Bernstein: You're right, it was a very practical kind of thing, and it was pretty controversial among the commissioners as I recall. But those of us, and I was on the practical side, decided that it would be something that we could use in the congressional debate to demonstrate our practicality, if you will, our knowledge that there is a limitation on how much could possibly be available, and why bring the whole thing down by making it so much money that it would be inconceivable.

Professor Jackson: How did it get through Congress during the Reagan years?

Ms. Bernstein: Interesting. It was introduced, it was still a Democratic Congress of course. I don't remember – was the Senate Republican by then? Because we worked mostly on the House side, obviously, since it was the Judiciary Committee and the Appropriations Committee, I can't remember about the Senate. I remember very little about the Senate; I remember quite a bit about the House. And until I went to Illinois, which was '85, I testified about three times, three or four times, so I probably did some before the Senate, and then I came back one year, but it never went anywhere. There would be a hearing, and it would die, and there would be another hearing, and it would die. It didn't go anywhere. It had to keep being re-introduced, and it was only when Barney Frank became the chair of whatever committee it was in the House that we had a hearing, and then he began to move the bill through the committee, through the House. It was not because of the Japanese Americans. They did testify, but they never took a leadership role getting the bill through, not in the House. Now neither one of them were on the right committees, but I think they were just as happy not to be.

Professor Jackson: It's an uncomfortable situation.

Ms. Bernstein: Extremely. Not only politically but personally.

Professor Jackson: So it was Barney Frank who really took it and moved it.

Ms. Bernstein: Not unusual, of course, but he really moved it.

Professor Jackson: It's really a very, very interesting story.

Ms. Bernstein: It's interesting also because one of the other factors was that it was said that the reason I had no difficulty getting the money through the OMB and the Reagan White House was that the Japanese Americans at that time in California were largely Republicans, and that Reagan knew them, and they had been supportive of his governor's campaign, and they didn't care

about affirmative action because they were doing fine in Berkeley and all that, or so it was said. I thought initially, “How am I ever going to get this through OMB? They are going to think this is nuts, this civil rights thing.” No problem. I had no problem. So it was obviously political from their point of view, and it was of course didley-squat money, so it wasn't a big deal.

Professor Jackson: Fascinating. Now the last question I noted to ask about this is whether –

Ms. Bernstein: They never even fussed about my being the chairman. I suppose they could have asked for my resignation. You served at the pleasure of the President. I did because we were appointed by President Carter, but by that time, – I mean I suppose they could have. I guess it would have been awkward because we had already been sworn in and all that. They probably would have had to ask for all three of us, and I guess they didn't think it was worth the trouble.

Professor Jackson: That makes sense. I wonder to what extent the work of your commission bears resemblances to the work of the truth and reconciliation commission that have developed in the last ten years in places like South Africa. I don't know if you ever reflected on this, but they are sort of a controversial approach to justice for past wrongs. Now in this case I suppose it's less controversial because the courts had been exhausted.

Ms. Bernstein: The courts really had been exhausted.

Professor Jackson: So in that sense –

Ms. Bernstein: Although there were people in the community, like Bill Hohri and others that I remember, that were trying to get a class action suit. And Ben Zelenko, who is now a partner of Bob Wald (that's how I first met him), was representing them in trying to launch some kind of class action suit. I think they did.

Professor Jackson: Who would they have sued?

Ms. Bernstein: The government. And they did.

Professor Jackson: They did? Was there a waiver of immunity?

Ms. Bernstein: No. I thought it was a ridiculous expenditure of funds that they paid for a long time. I mean they raised money and paid legal fees and stuff, but you know, I really couldn't take any position on that. If it had come to me, I wouldn't have taken it.

Professor Jackson: Now wait a second. Let me play this back. You were also a partner of Bob Wald.

Ms. Bernstein: Ben was not a partner at that time. He is now.

Professor Jackson: Okay. Let me ask how much of your time for those two years was spent on this commission?

Ms. Bernstein: Well let me think. Oh gosh, it's hard to know, Vicki. I suppose half-time at the beginning at least.

Professor Jackson: Did your private practice develop at this time in regulatory fields?

Ms. Bernstein: Yes, in fact, it began, with my recollection, I had a couple of little clients of EPA. Things like some guy in New Jersey who, what was he? Oh, he had like a half a dozen trucks that were asbestos removal vehicles; he was in the asbestos removal business. I don't remember his name or anything. He called and said, "The government took my trucks." And I said, "They what?" So I represented him getting his trucks back. That was like one of the first things I had to do over Yom Kippur, or something like that, and you know, that kind of thing which I was totally unaccustomed to, but I did it. First of all there was no authorization anywhere for them to take the trucks. They could do a lot of other things, but they could not take the trucks. So I made them give the trucks back. And then my first really major client, which became a client who I did a lot of work for and I loved working for and I have still have relationships with people there, was Pfizer in

New York. How did that come about? Principally in the following way, which I think is a wonderful little vignette about women's networks. A woman whose name is Carol Emerling had been the regional director of the Cleveland Regional Office of FTC in the '70s, and she and I became friends and colleagues. By that time she was the regional director, later in L.A., of the FTC. I was still here, I believe, when she was there, and we were in regular contact, and I went to California often. She'd cook up things for me to do out there, and I would work with both offices, and anyway we were good friends. And one day I had a call from, as I recall, Bob Pitofsky, who was by then at Arnold and Porter. He said, "Do you know anybody who would be interested in going to American Home Products in New York to be the corporate secretary? They want to hire a woman. They need a woman officer." Arnold and Porter represented American Home, and they didn't have anybody to recommend, so Bob said, "I'll call Jodie, she knows." And so I said, "I'm going to get on this, that could be a really good job." And for no particular reason, except I knew Carol was in a domestic situation that she wasn't crazy about and was probably going to be divorced, I called her up and said, "How would you like to go to New York and be the corporate secretary for American Home Products?" And she said, "Basically sounds good to me." She went there and just retired from there after a brilliant career at American Home Products. She was just here two weeks ago. We're still friends. So when I go into practice, she says, "I owe you big time. What can I do?" I said, "You got any business from American Home Products?" She said, "I can't do that because the general counsel does that and he likes Arnold and Porter so I can't get anything done from here." I said, "Well, okay. So you'll think of something else." I didn't even, and then one day she calls and says, "Pfizer is having an in-house legal counsel conference next week, and they would like to have a lunch speaker who could talk about what's happening in Washington in terms of environmental law, other regulatory issues, and so forth who really knows what the scoop is." She said, "To tell you the truth

it was sort of my idea that I thought that would be useful for them, and I told their general counsel that. And I think you would be great doing that.” I said, “Fine, I can do that.” And she said, “His name is Frank Duckworth, he's the general counsel, he's going to call you.” So he called me. I went up there, I gave my speech, which was excellent, they all liked it, and I thought that would be the end of it. At the end of the day, he asked me to discuss something with him. We have a matter that involves such and such and such, and I wondered if you would be free to handle it for us. We were going to use so and so, but I think we'll use you. And it was a terrific opportunity, which I handled with them very well. From then on I did nearly all of their environmental work. I got to know their environmental lawyers, one of whom had been at EPA with me. Mike Richardson had been at EPA with me, and in fact I had recommended him to Pfizer. So he was already happy to have me doing, and they were more and more involved. I didn't do their Food and Drug work. But I did their environmental work, and we had good relationships with the lawyers in their office, both “Bo” Hune and Mike. There were several things that I did for them and got very good results, and I was very happy doing that. In the meantime there were other things that were coming through the office. I represented Bristol-Myers on something, and they had, I don't know, something and said “well our ordinary lawyers can't do that, but Jodie knows something about how you get approval from the National Heart Institute” and things like that. I represented a French drug company. Somebody called up and said this French drug company wants you to do something. I said, “I don't know anything about French drugs,” and they said, “Well that isn't necessary,” blah, blah, you know, that kind of thing. And I got Joel Hoffman, who was a superb food and drug lawyer in the office, and I would take the lead role, you know, try to figure out what the company's problem was and the technical parts. So it was developing very nicely. I was quite happy.

Professor Jackson: I have notes here – Vietnam vets Agent Orange task force.

Ms. Bernstein: Oh yeah, but that was when I was at HHS though.

Professor Jackson: Oh, okay, that was still while you were in the government.

Ms. Bernstein: But I did some work for them afterwards.

Professor Jackson: Can we do that part of the story? I'm sorry to have gotten us out of order.

Ms. Bernstein: Oh no, that's all right. At HHS sometime – [END OF SIDE 1 OF TAPE]

Professor Jackson: Okay I think we're on side two of the first tape from our interview July 8 with Jodie Bernstein, that's July 8, 1999, and at the end of the last side I had asked Jodie about her involvement in Vietnam vets and the Agent Orange task force, and she had informed me that she had begun her involvement in this project while she was at HHS, and we're doing to take up the discussion now.

Ms. Bernstein: Okay. You, I expect, remember that there arose a very, very serious contentious issue as to what was the effect of spraying of Agent Orange in Vietnam. Agent Orange was sprayed as a defoliant in the Vietnam War, and it was 1978-79 that it became a major issue, that is the impact of that spraying in terms of the health of Vietnam veterans. The Veterans Administration that, in my judgment, has over the years been more or less stupid, was being extremely stupid, and they were so unresponsive and so unbelievably obtuse that veterans were literally marching on the VA. I mean there were times when you couldn't get in and out of the VA because of the marches. They were in chaos, they were absolutely in chaos. And, of course, the administrator of the VA, who is now in the Senate, never mind, was totally unable to deal with it. But he was a seriously injured Vietnam veteran, so there was no removing him. There was nobody in the organization that had two nickels worth of sense, and the President, of course, was faced with this. My God we cannot have this. It was in the paper and the news every night. And nobody was

doing anything about it. It was just a political disaster, and every other kind of disaster. Meantime, of course, the Vietnam veterans still did not have the kind of acceptance that I think they have now. I mean there was still this incredible conflict blaming the veterans for what happened in the war, which was horrendous and terrible, but there was such a different climate I think it's worth just making that point. So Secretary Harris goes over to a Cabinet meeting where the President says, "We've got to do something about this. This is terrible. The VA is in chaos. Somebody has got to take this over and do something." So he said to Secretary Harris, "You're my Secretary for Health, do something. Set up a task force, intergovernmental task force to address this and get it settled down. Get it off the front pages." So she comes back and says, "We have this job to do, and it's going to be an intergovernmental task force to address this. See what studies need to be made, try to get the VA to move responsibly, try to deal with the Congress" that was screaming its head off, et cetera. "Jodie, I want you to do this." I say, "Fine, no problem." I had a huge staff, huge. I mean there were a thousand people in the office of general counsel at HHS, but that was because there were lawyers in Food and Drug and there were lawyers in Social Security, and they all reported to me, the heads did.

Professor Jackson: It was still HEW then?

Ms. Bernstein: When we started it was HEW, but we transferred out the education part to become the Department of Education. That gives me another credential you must know about, Vicki. I'm one of the few people in government who was charged with transitioning out to another agency a portion of jurisdiction. When we were here in the '70s, the Consumer Product Safety Commission was set up, and we sent them the flammable fabrics jurisdiction, and I think they took the tobacco laboratory, but I'm not sure of that. And then we got to HHS – I was an old hand. We had to send away Education to the new Secretary Shirley Hufstedler, who was the first Secretary of Education. And Betsy Levin, who you probably know, was its general counsel.

Professor Jackson: Oh I didn't remember that.

Ms. Bernstein: She was the general counsel. I remember Pat saying, "You know, Jodie, Betsy," she already knew Betsy, I didn't yet, she said, "You know she's an academic, she's not going to have your practical experience. Help her out. Don't disadvantage her." I said, "I'll help her out anyway." So we did that.

Professor Jackson: Intergovernmental task force on vets, did you continue your involvement after –

Ms. Bernstein: Yes, let me just finish up with that. The first thing occurred after Harris announced that I was going to chair this thing, and I hired a guy to work for me who had been at HUD with her, Les Platt, who was fabulous, and he headed for me in my office. He was like deputy general counsel for doing that work, but the point I was going to make was the entire health establishment within the department were up in arms that a lawyer was going to head this task force on health effects of Agent Orange. They were up in arms. But by the time we finished, they agreed that it really didn't require anybody who was a scientist to run this task force. We needed them to be on it, and I made very, very good friends with people who subsequently ended up being at EPA and other places who were career government scientists and stuff. It was a very successful effort. We really had a very big success with that. We got done what needed to get done. We brought it down. I was, of course, saying to the administration "Why don't we just cover these illnesses? Why doesn't the VA just say we're going to take care of these boys whether we can demonstrate that the liver cancer came from the Agent Orange or not? In the end you're going to do it. In the end you're going to do it." "You mean without showing it was service-connected or whatever the existing criteria was?" I said, "It's foolishness." I said that at a hearing, at a Senate hearing, and Simpson said to me, "You mean just not spend the millions of dollars on the studies and just take care of them?" I said,

“Isn't that what the answer is, Senator?” And he said, “Well, yes.”

Professor Jackson: Were you in the administration at that time?

Ms. Bernstein: Yeah.

Professor Jackson: Was there in place at the time a system of having to clear testimony?

Ms. Bernstein: Yes.

Professor Jackson: And your testimony to that effect had been cleared?

Ms. Bernstein: No. I was just in questions and answers. I think the administration was just about over then. But I do know that every other witness at that was from the Defense Department or the Air Force. The Air Force had a big study going on because they were the ones who dumped the material, and that of course was controversial also because the Air Force was accused of conflict of interest. So what we did with that was establish an advisory board with outside scientists on it. And that settled that all down.

Professor Jackson: What ended up happening to the vets?

Ms. Bernstein: We took care of them.

Professor Jackson: The litigation was, I'm trying to remember, there was a big class action before Judge Weinstein in the Eastern District of New York.

Ms. Bernstein: And he screwed it up to a fare thee well, and it went on for years.

Professor Jackson: Very controversial I was going to say.

Ms. Bernstein: Right, same thing. I didn't follow it that closely. Then afterwards, but I think we did do a very good job in terms of what we could do at the time. And then when I left the government, and you know, I can't remember this, but by this time – you know who Bobby Muller is, I'm sure. No? He's the head of the Vietnam Veterans of America. He has been the head of the Vietnam Veterans; he's in a wheelchair. He's very articulate. The reason I thought you might

remember him because you remember just recently or in the last year or so the woman who won the Nobel Prize for leading the –

Professor Jackson: Anti-landmine effort.

Ms. Bernstein: That was really Bobby's, and he was on the television. He hired her to be the advocate for that internationally, and she's some kind of weird person who lives in a cabin by herself or something, I don't know. But Bobby was on the TV a lot and really should have won the prize. He was the creator of the Agent Orange political movement, which was a very small organization then. I mean there were like six people, and they never had any money; it was like a shoestring organization then. It was so unpopular, and the American Legion was horrible. It was too controversial, so they hardly reached out.

Professor Jackson: Was Muller head of, there are different groups with Vietnam veterans?

Ms. Bernstein: Yes, there's one called Paralyzed Veterans of America, that's not Muller's. They were also teeny weeny and have become bigger and more established now. Bobby was the Vietnam Veterans of America. I think it's become a lot larger and had a huge success with the landmine initiative, and of course the veterans are older – they are like in the Senate and things like that.

Professor Jackson: And running for President.

Ms. Bernstein: Running for President. I did some stuff for Bobby after I was in the law firm. I don't know exactly what I did, and I really can't remember. Whether it was legislation, I believe I testified before Simpson's committee after I was out of the government on behalf of the VVA. I wrote the testimony for them. I did that pro bono. Simpson was head of the veterans committee. I guess the Senate had become Republican by then because he was the chairman.

Professor Jackson: So that was a smaller scale involvement.

Ms. Bernstein: Very small, certainly compared to the Japanese thing it was, although I spent a lot of time when I was in the government, but not after I got on the outside.

Professor Jackson: Now I have another note of the early '80s, I think this is right, my research assistant found a newspaper article that listed you as one of three or four people wanted to be president of NPR. Does that ring a bell, National Public Radio?

Ms. Bernstein: I think my name was mentioned.

Professor Jackson: Among the top candidates for the job, the *Washington Post* reported, William Sheehan, Douglas Bennett, Tom Quinn, Lester Bernstein, Joan Bernstein, a Washington lawyer and former general counsel at Department of HHS and EPA.

Ms. Bernstein: Oh yes, I had forgotten all about that. Obviously didn't go very far. No, no, I didn't run any campaign or anything. But I was, well I think I've told you this before, I think I was doing well in the practice. I never really liked it as much as I liked other kinds of work. I didn't like the uncertainty of well I'll finish with this matter and then what, then I have to figure out something else to do, over and over again. And also there were a lot of tensions within the law firm, a lot of very, very difficult tensions in the law firm, and I had the feeling at some point I was going to have to leave and the reason was that I thought that the law firm was going to go down the tubes at some point, and it did. But I thought that before that it would split in two and that my loyalties were then and ever to Bob Wald. But Bob Wald's part of the practice was not my part of the practice, and I would not go with the other side of the practice for personal reasons. So it looked to me as if – and I must say they all give me credit for seeing the handwriting on the wall a long time before anybody else did, but to me it was a Greek tragedy playing out. I knew it was going to happen. And I didn't particularly want to go to another law firm because of my loyalty to Bob although if I had to, I would.

And then we get to my relationship with Waste Management and how that came about.

Professor Jackson: How did your relationship with Waste Management come about?

Ms. Bernstein: Well in 1982, I believe, it was right after we finished the Japanese stuff, right afterwards I received a call from a lawyer in Chicago whose name is Joe Karaganis. Karaganis was a sort of public interest lawyer, sort of. He had his own law firm by now, but he had worked for a long time as special counsel to the Illinois A.G. for environmental pursuits and that's how I had gotten to know him when I was at EPA. He brought some lawsuit on behalf of Illinois against Milwaukee, and we had been involved with what position the government would take. Good lawyer. Had been in the A.G.'s office and left and started his own firm but still did some special work for the A.G. He wasn't a personal friend, but I knew him. I get a call from him one day saying Waste Management is – I did know about them but not very much; it was quite obscure until this scandal period of the '80s – they are going to need new counsel. Never had Washington counsel, and they are anticipating there is going to be some reason to have counsel, and they are expecting some difficulties. And he said I am probably going to do some independent work for them, investigative work. But I'm not going to be defense counsel. They want Washington counsel for that. Would you think about doing it? You know, I left out a major client – it just made me think of it. I got a similar call from Ira Millstein, this is before. I guess I'm getting mixed up on my timing. This turned out to be a big client, maybe it was afterwards. Millstein from New York who was a big partner as you know in Weil, Gotshal & Manges, calls up and says, "Clear your conflicts." I said, "For what?" "Westinghouse is possibly going to hire you on a huge case they have in Indiana." So I said okay, cleared, and eventually I did represent Westinghouse in a major, major case which I settled for them. The case was brought by U.S. EPA, Indiana, Bloomington, Indiana: the state, the city, and an environmental group against Westinghouse. I settled that case for them brilliantly. I did. That was

really a brilliant job for them. I don't remember what the timing was of that. But this case, Joe Karaganis calls up and says, "Waste Management is going to hire somebody. Would you be available?" And I look, clear, and I said, "I guess so," after we did and so forth. "What do they have in mind?" "Well I can't tell you what they have in mind," but the next thing I know there is a big story in the *New York Times* on the front page, an investigative reporter story about this company called Waste Management that has incredible, terrible, serious environmental problems across the country. There were going to be a series of two articles, and the first article was devastating. Stock began to plummet, and then it becomes an emergency. I can't remember about the timing, but the first thing that Joe said was, and in the meantime I have had not talked with anybody at the company, Joe is doing this. So Joe had been hired to investigate. They knew this was going to happen, I guess, or they had someone who knew it was. And so he was still advising them on who should be their defense counsel. And then he said, "Here's what they've decided. They want a really big Washington name, really big, to do their principal shmooze work in Washington and then somebody who knows how to do environmental to do the work in different law firms. They want Joe Califano to represent them as the big name, and you to be the real lawyer to do their environmental work." I said to Joe, "That is not going to work. Joe Califano has the biggest ego in the world and a big law firm, and no big law firm is going to let him do that by himself and not use their associates and stuff and let me do the real legal work. That's not going to work." "Well, that's what they want to do. Are you available?" I said, "I'll go along with this gag for a while, but I'll tell you it's not going to be effective." But it hasn't happened yet they haven't retained anybody yet.

Professor Jackson: Was Califano at Williams and Connolly at this time?

Ms. Bernstein: No, Califano was by that time – first they had Williams Connolly, he was at Williams Connolly first. Then when they first came out of government (Califano, Stan Ross,

and Ben Heineman), it was Califano, Ross & Heineman; they started a law firm. Then he went to some New York law firm, Dewey Ballentine, maybe, I don't remember which one, but then when that ended, he went there. It was supposed to be a big rainmaker, which of course I guess he was. As luck would have it, Califano could not do it. He had a conflict. Okay, so then they called me back: "Okay, you're going to be the lead Washington big person. What other law firm could help you out?" I said, "You know, I don't really need another law firm to help me out. We've got plenty of people here." "Well it's not that, they want some other person, quick as a flash." I say, "Well, Angus is at a different law firm." Angus says that you can tell them he's been at Justice, so he and I had different experience. He's got even some criminal experience, which hopefully to God this won't be criminal, but if it is, I knew I could work with Angus. Nutty as it was. I knew I could do that. So I say me and Angus.

Professor Jackson: Was Angus still at the Margolis firm?

Ms. Bernstein: Yes. He was back there. We both had finished the Japanese already. So Joe says, Oh, good idea," and calls back and says, this is Friday, "Come to Chicago Monday morning." "Okay. What we are going to do there?" "Well the company wants to really get to know you, meet you and so forth because the second article is going to come out any minute." So I call Angus and say "We're going to Chicago Monday morning. I have no idea of any of this, but we'll go." So we go in the plane, and the second article is on the front page of the *Times* with more allegations about every place in the country, and I said to Angus, "Well we've got our work cut out for us." We had never heard of any of these facilities. The first thing we did was read all we could in the *Times* about these places, and there were two things: they had both solid waste facilities around the country that was the base of their business and a newer operation, the Chemical Waste Management, was a wholly-owned subsidiary that operated within the company that had hazardous

waste landfills around the country. The article stated they were all permitted and in terrible trouble of being not in compliance.

Professor Jackson: Was Waste Management a publicly owned company?

Ms. Bernstein: Yes, publicly traded. It had been since 1969. Stock had gone from '69 on; it had gone up like this. And then came the second article and went down like this. This was such an extraordinary event. I'm telling you. So Angus and I go in the cab and we go to the headquarters in Oakbrook, Illinois, where we are ushered into a big conference room, and we meet the CEO and president of the company and the head of government and public affairs, et cetera. It's all laid out there for us. And they say we have to have a press conference. The general counsel, Steve Bergeson, said you've got to help us. And Joe Karaganis is there with his helper, too. And he's going to be principal investigator. So I say, "Well that's good. I think your CEO has to be the principal spokesperson, and he has to be able to say what we know about these allegations, if we know anything. And he has to say what steps the company is going to take in order to rectify the situation, and you have to have that in writing – his statement as well as some description of what we know, if we know anything about these allegations. You can't let them go unresponded to. We have to do it by tomorrow morning. Then we will sit here." One of the most frustrating things of all was Joe, who knew a lot more about these sites than we did at that point because he had already been working on them for a couple of weeks, elicited terrific information from the people there to say what's happening at that site, et cetera, et cetera. And he asked them questions; he was able to elicit the information. Joe Karaganis, who ended up being the most frustrated partner in lots of ways, he never could write anything down. He can speak brilliantly. One of the best advocates, he's the best litigator I've ever seen in terms of his skill with putting facts together and organizing them, and he never could write anything down. It was just awful to get a written product out of him. Angus and I

realized it about 11:30 that there was nothing on paper yet. It was maybe a little earlier than that. I said to the CEO, "Do you have a secretary that can take dictation and type up material here?" He said, "No, but I'll call her from home and I'll have her come in." I said, "Would you do that right away? And then would you get us something to eat?" since Angus and I had had nothing to eat since morning. We had no lunch. And about eight or nine o'clock we dictated to her what became the papers that were distributed the next day. They had a Washington office here that knew nothing about any of this, and that guy called me the next day and said, "That's the first time that anybody had put on paper what any response is to any of this." This was just so unbelievable. They said, "Well you know the press conference is going to be tomorrow morning." I said, "Where is going to be?" "Oh we have to get a place." "Did you call the press? Did anybody call the press to let them know?" "Oh, we have to call the press." They had never done any of these things before, never.

Professor Jackson: They did not have a public relations firm working for them.

Ms. Bernstein: Oh no.

Professor Jackson: So you were doing that for them. You were figuring out that piece.

Ms. Bernstein: Yes, figured out that piece. They had a press guy who was hilarious.

I mean he was one guy who dealt with all the press from all over the country by himself, and he was pretty good. He had been a former reporter, and he considered himself sort of an old time reporter, and he was sarcastic with reporters and stuff, things like that. However, he was helpful to me because I could say to him, listen do this, and he would do that and so forth. I ended up for weeks out there afterwards talking to reporters. I can remember saying to the CEO, "You know you're paying me. You shouldn't have to pay that amount of money for me to talk to these reporters from Wichita, and I know that's important." He said, "I haven't got anybody else. Just do it till we get through it." So I did it. And Angus and I worked together. We went to bed at about 5:30 in the

morning. Neither of us had planned to stay over. So they took us to a hotel or a motel there, and we slept for about an hour and put on our same old clothes and went to the press conference. Then I went to New York with them two days later. I came back to Washington and then met them in New York because we had a meeting with the analyst in New York to try to settle that down. And we did that. And from then, let's see, I represented them for two years and basically put together teams of lawyers from Wald, to the extent we needed other people, and we got organized, getting them to hire some other people to handle the PR. A very good friend of mine from EPA was recruited to be the vice president for environmental compliance and so forth at Chem Waste, which was the biggest problem. Walt Barber who had been a good colleague at EPA, very, very smart and very effective engineer, he came into Chem Waste. I handled all of that for them and also tried to handle for them their misbeguided – well I didn't know it was at the time – they bought two ships in Europe called the *Vulcanus I* and *II*, which had operated successfully for ten years in Europe, destroying liquid hazardous wastes. And the job was to get them a permit here, which we never did. The opposition was so that EPA finally called me up and said, “We're not going to do it.” I said, “What are your grounds for not doing it?” “We don't have any, Jodie, it's just too controversial.”

Professor Jackson: The objection was that they were dangerous in what they were doing.

Ms. Bernstein: Yes, there was a ten-year history in Europe of doing this without any harm.

Professor Jackson: One would have thought that environmental activists would have been interested in technologies for clean up.

Ms. Bernstein: They opposed everything in connection with hazardous waste. It's not their job to tell you how to do it. And at least in those years EPA was nearly totally destroyed by the scandals, and that left a residue of being able to oppose everything. In fact, Vicki, when I heard

what Waste Management was planning to do to bring their waste to Virginia – have you followed that controversy at all?

Professor Jackson: I guess I vaguely heard about it but I haven't followed it.

Ms. Bernstein: They were going to bring it down in ships from New York on barges from New York, and they were building wharves to take it into gigantic landfills that are already permitted in Virginia. Virginia has already passed legislation to ban them from using those docks to bring in New York waste.

Professor Jackson: I guess I remember Giuliani's comments.

Ms. Bernstein: They should be thrilled to take our garbage; we're the culture capital of the United States. These wars go on ad infinitum, but it's very different now than it was then. I earned every nickel I made from that company because they simply hadn't anticipated any of this. They didn't have any community support.

Professor Jackson: Forgive me for not knowing, it is not my field and I was having babies at the time, were there criminal prosecutions that resulted from the –

Ms. Bernstein: Very interesting, very interesting. There were criminal investigations of about three principal operators in Chem Waste, not of the parent company, but there were of Chem Waste. The CEO of Waste asked me to handle one of them because he was one of the founders of the company. There had been four or five Dutch families that were the founders of the company and Dean Buntrock, who was the chairman until just recently, said, "Larry Beck trusts you more than he trusts Angus" (for the most part I had Angus if they were going to criminal, I would have him handle them). We divided it up so we both had our hands full with everything, but we coordinated it very well and tried to coordinate with Joe as well. And we ended up, I think I ended up writing stuff for Joe because he never got it written up. All three of us presented to the board of directors at the end of

the first year. We reported every year but at the first time we both gave extensive reports to the board. And I was asked with Angus to give a separate report to the CEO and the president about what other steps needed to be taken that we consider management steps, and we did that as well. So I did handle Beck, but actually nobody was indicted. There were never any criminal charges, but there were criminal investigations. Now, Vicki, I would say that if it were today given where the environmental enforcement effort has gone, it's gone as others, everything has been so criminalized, that it would have been, I'm sure. And my belief is that they were civil violations. I always believed that, and there was never any proof that there could have been any intention, but by now you don't even need any intent, as you know, to have criminal charges, so they were lucky it happened then and not now. In fact the three top people are still under investigation now in connection with accounting practices recently, but it has nothing to do with environmental compliance, I'm proud to say. It had to do with accounting irregularities.

Professor Jackson: And that sounds like you did a huge amount of work for them and –

Ms. Bernstein: For three years, and then when I was at the point where I was thinking to myself, I'm at the crossroads, I've got to go some place, I've got to get out of here. I mean I was terribly concerned about how to handle my personal relationships and things, and so before I called any friends in any other law firms, I thought I better see if any of these clients will come with me or what the constraints are or what I can do. So Bergeson and I, he was the general counsel of the company, were pretty good friends by then. He was also very pleased with the work we had been able to do to get the things under control, and he knew pretty much that the top management of the company had quite a lot of confidence in us. So I called him up and said, "Listen, I'm just thinking of making a change, and I wondered if you had any view." I was trying to do it in a vague way and stuff. He said, "Would you think of coming with us?" I had never thought of that before, never. I

guess I had in mind a law firm because that was all I ever— except for these other long shot kind of things. I said yes I would, and he said, “Right away.” He said, “You mean in Washington or here?” And I had spent a lot of time out there. I also had a very firm notion that I got from experiencing both the Pfizer corporate office and the Pfizer Washington office, the Westinghouse corporate office and the Westinghouse Washington and the Waste corporate office and the Waste Washington office, and I said because of that, I would only consider the corporate office. I knew that I could not do what Washington offices have to do very happily. I could do it but an awful lot of it is trying to find out who’s killing you at the corporate office. And are they cutting you off. And do you really know what's happening. And so forth. And I always hated that sort of thing. Then I didn't want to do that. I didn't have any problem with it, I just didn't want to do it. So he said, “Well come out Friday. Frank and I will have lunch with you and we'll talk about it.” But he didn't tell me what he told me subsequently was that he ran into the CEO and said, “I think Jodie is available. How about if we make her general counsel at Chem Waste?” They had one guy there who was a total disaster, and Chem Waste was still having problems, and the relationships with the government and with the states were so terrible that nothing could get done. If you needed a permit, they wouldn't talk to anybody, it was just awful. He didn't tell me about it at the time so I say to my husband, “I think I just accepted a job in Chicago,” and he said, “Okay. Well, what is it?” I said, “I don't know exactly, but I'm going to Chicago Friday.” So I went and had lunch with them at a place, so the guy who was general counsel at Chem Waste wouldn't see us because nobody had told him, of course, that he was going to be replaced. That's the way things get done, as you know, by men. We went to lunch. Frank Kron was his good friend, deputy general counsel, whom I also liked and had a great deal of confidence in because I had worked with him too. And I knew all these people. It wasn't like, I knew what they were fundamentally. There were still allegations that the company was dominated

by the mafia. I knew that wasn't true. Nobody, not many people, did but I did. I had been out there for almost three years. I mean I knew what I was dealing with. I knew what kind of people they were at that point, and I had had tremendous support when I said, "You've got to remove these four people at these facilities because they don't know shit from shineola, they never will." Phil Rooney said to me, "You've got tremendous insight." I said, "Well, you know it's partly that I have been at that facility for two weeks, and I can see what kind of chaos it is in. You've got to remove the manager and get a different guy in there." And stuff like that. So they knew me, I knew them. So they offered me that job, and we talked about money and things like that at that very lunch and that I would have full authority and full support for building a legal staff because they didn't have one with my ability to pick the people and direct contact to the CEO if I needed it – the CEO of the parent because I already knew that the CEO of the parent made all the decisions anyway. And the president of Chem Waste could do some things but couldn't do everything. And he had already talked to them and said yeah do it. And so I said, "Okay, I'm going to do it." I didn't tell you about the big flap I had within Waste Management, I mean within Wald, about this at an earlier time and I'm not going to because it's too nasty and I don't want to go into it – doesn't have to do with Bob, it has to do with other people there.

Professor Jackson: Was it concerned with the representation of the company based on these mafia concerns or was it based on concrete conflict?

Ms. Bernstein: It was based on the fact that they didn't want me to get that big piece of business.

Professor Jackson: One of those very pleasant law firm situations.

Ms. Bernstein: Yes. Jodie will get control of the environmental practice this way. Although they put it in terms of conflict. Luckily Bob who – I mean they tried to keep me from

going to that press conference that I had described to you. They tried to. They told me I couldn't go.

Professor Jackson: On what basis?

Ms. Bernstein: Well there are conflicts.

Professor Jackson: [I thought that] conflicts were cleared before you went out.

Ms. Bernstein: I did, but suddenly they saw where I was going to be the chief defense counsel and this huge amount of work for the law firm that there were going to be conflicts and tried to stop me. I will not tell you who they were because one of them I will not speak to, to this day, and I never will. But Bob pulled himself together and tried to figure out what was happening, and I was standing in the hall at a pay phone outside going to the press conference, hung up the phone, and went into the press conference. So it was pretty dramatic at the time. So I in the meantime had produced a huge amount of work for the law firm, and people liked working for me, and we had a very good bunch of associates, very good. Anyway, so then I got selected vice president and general counsel of Chemical Waste Management, and Bob thought that was great. Lionel thought it was great, and then we went into full-time chaos while we tried to figure out how we were going to do this.

Professor Jackson: This is wonderful as I'm thinking about the story that your spouse didn't say, "What are you talking about?" and he's such a talented person in his own field, and I assume he really had a fair number of opportunities –

Ms. Bernstein: First of all we had been in Illinois. He had left the government already, and he was trying to put together a sort of entrepreneurial project of his own which had to do a medical database project, which he was way ahead of his time. Unfortunately Dr. Koop is now making a fortune with his, and Lionel was working on it then. He's always been very good about that. And I moved with him, you know, a number of times over the years, and Chicago was not

unknown to him and to me for that matter.

Professor Jackson: By the mid '80s were your children all out of high school? I've lost track a little bit.

Ms. Bernstein: Molly had gone to Putney for her three years of high school, so she was gone earlier anyway, and the other kids were gone. I guess she was in college by then.

Professor Jackson: So you moved back and –

Ms. Bernstein: I moved back first. Of course as soon as I accepted, they were on me to get there next week you know,

Professor Jackson: How long after you left Wald did it fall apart?

Ms. Bernstein: I think it was two years. I believe when it was gone entirely it was two years. Because they split, and the environmental bunch went to Piper Marbury, and Bob then took them to the Philadelphia firm, and then he ended up leaving and going with Nussbaum and – and I believe it was two years. And I was very happy not to be there then.

Professor Jackson: What did Lionel end up doing in Chicago?

Ms. Bernstein: Lionel ended up wonderfully happy there. He had been on the faculty at the University of Illinois always, the whole time we were there, even though his full-time job, his last full-time job before we left, he was head of the Department of Medicine at the Westside VA Hospital, and that was a joint appointment with Illinois, so he was a full-time clinical professor of medicine in Illinois. He went back there, and a very good friend that he had done a lot of work with when he was the National Library of Medicine, Arthur Elstein, who had a Ph.D. in, I don't know, sociology of medicine, (Arthur was then and now in the Department of Medical Education at Illinois Medical School) said, "Come back with us. You don't care about tenure." Lionel said, "Certainly not, I don't care about tenure," and Arthur said, "We don't have a physician in the department. It's a

multi-disciplinary, excellent little department and,” he said, “we sure as hell could use somebody who is an M.D. and is also interested in medical decision-making,” which was one of their fields. And another thing, Lionel had written a book with Arthur many years before basically on renal function, which was his expertise, and they did a teaching text way, way back, which was sort of a precursor to computer learning – something called machine teaching or something like that. But they did a big study and published a book on ways to present basically material on liver disease to medical students and then they tested it against the – and all that. So Arthur said come back, and Lionel came back and within a year and a half he was appointed acting head of the Department, which he served in about three years, or two years or whatever. He had a great time. He didn't have to be there all the time, but he was there four days a week. He loved it in that environment, which he always enjoyed because of his experience and a lot of people knew him. So he was downtown, he had to go downtown. I was ten minutes away from the office. When we first went out there, I didn't know if he was going to get out there or when he would get there. I knew he would get out there, but I didn't know when. So I said to him, “Listen, with Chicago winters being what they are, and my driving ability, which is fine but it ain't good in terms of being trustworthy to driving on those big highways when there is a blizzard, I want to be somewhere so that I can get home if I have to I would be able to walk.” He said, “That's unrealistic.” I said, “No it's not.” The company is in Oakbrook, Illinois, it's a little village and it has places to live, so we found this wonderful condominium that was literally ten minutes away. And I could have walked home. I really could have walked home if I had to.

Professor Jackson: It's nice to have that assurance. I found an *ABA Journal* article in which you were quoted as general counsel at Waste Management “which she claims is one thousand times better than a partnership in a major Washington law firm. She prizes,” they quote you here, “her much more sustained involvement in the decision making process in the wide range of issues. ‘It

is still not a level playing field for women in firms because it is hard to get clients'."

Ms. Bernstein: When did I say that, what year?

Professor Jackson: August of 1989.

Ms. Bernstein: That's interesting. That's probably, I was vice president of Waste Management by then, moved up. I was five years at Chemical Waste as general counsel. I built a superb legal department, small but really superb. So that we were able to manage litigation all over the country, and I managed myself a lot of that litigation, big stuff you know the – law suits and things like that, but we were not in big time regulatory problems any more.

Professor Jackson: Much before the D.C. Circuit?

Ms. Bernstein: We had some but not much. We had a little bit. The company did, but I wasn't handling that – big constitutional questions about waste and whether to be restricted by the states. That is still in issue. And then at about that time, the CEO asked me to move over to corporate. By that time, of course, one of the things we did was take Chem Waste, Walt and I and Bruce Tobecksen, the chief financial officer, took it public. I mean we were the principal spokespersons for the company at that time. We did very well. So you could see how much progress we made if we could take that company public. We were very well received by Wall Street then.

Professor Jackson: I have a question. Is WMX Technologies the same as Waste Management?

Ms. Bernstein: It's one of the numerous, numerous – every year from '95, no wait a minute, from '90 to '95 when I was at the corporate level, the first couple of years were great, and for reasons that are far too complicated to go into, it was one of those internal management problems where the CEO did not appoint a successor. The market began to question the management of the company. They really could not make decisions appropriately, and then they began to do what

companies do when they are in trouble and that is re-organize every year. They would go away to the what we call the boys' retreat in August, and they would come back reorganizing the company. It got to be really ridiculous. WMX was one of the numerous restructurings of the company. It was supposed to be like a holding company that held WMI, and we had a nuclear waste facility, low level not high level. We had been expanding internationally, and so VRAX was supposed to be sort of the holding company. No one ever understood these reorganizations, including them. They didn't work because no one knew – boy did I learn from that.

Professor Jackson: Really happy to hear from Bob.

Ms. Bernstein: Oh I was ready to retire anyway, as soon as I had my ten years in. I mean I was going to retire from them. I was close to having the ten years in. Ten years was the magic number for executive retirement.

Professor Jackson: Did you make it?

Ms. Bernstein: Yeah I did. Only because Bob's confirmation was so delayed.

Professor Jackson: Well this has been terrific, Jodie. I need to stop now because I have a 12:30 meeting. We are very close to being done. I think we need probably another hour or so to do some wrap up. Let me tell you what I have in mind. I think we could finish talking about any impressions or things you knew were going on in the courts here during – but I think for historical purposes it would be valuable to talk about the more recent periods. I also think, I know you are in the midst of your work here but you've done so much in the four years you've been here it might be interesting for you to reflect on that for the historical record. And then the other thing I want to do with you and I want to show you these now and get some sense. These are the forms that hopefully you and I will both sign. They are formal instruments prepared by, my guess is by, Steve Pollak, but they are the forms provided to us who are doing the oral history project. This is the form for me to

sign. I agree that I have no interest in this and I give it to the Society and there are a number of forms that have been prepared for the interviewee and I could, I think these may be my only copies but I could get more, I could leave these for you to look at if you would like or I could do a letter when I get back to the office and send them to you as you like. Consider what you would like to do. From the Historical Society's point of view what they most like to get are the signatures on form 1, which is you give it to them, you reserve the right to use it for anything that you want to write and you authorize the Society to make it available. Now if you, a slightly more complicated form, the same three provisions I described plus a subject to exceptions specified in schedule B, and you will see a number of possible exemptions and of course you can write your own, you're a lawyer, in the event that you want to say, for example, put a time limit, a time period for which they are not available, if you want to retain control over certain uses during your lifetime or if you want to designate other people to do so, and it would be I think we're close enough to the end here that it is appropriate to start thinking about these instruments.

Ms. Bernstein: So if you like I can have Sharon or Linda make some copies of it.

Professor Jackson: That would be great because I make my own copies at the law school generally.

Ms. Bernstein: Should I make a couple copies of these?

Professor Jackson: You can hold on to those and they can either give me or send me copies. That's great. Okay I'm going to turn the tape off now. We've been talking for a little bit over two hours and Jodie is going to be looking over the instruments to decide what forms she wants to use for our next time. I've just put the tape back on and I've asked Jodie to let us know whether it is still her intent to donate these tapes and transcripts to the Historical Society.

Ms. Bernstein: This is Jodie Bernstein. Yes, it is my intent to donate the tapes to the

Historical Society.

Professor Jackson: Terrific. Subject to reviewing the transcript and all those procedures. Thanks very much.