Oral History of Nathan Lewin

This interview is being conducted on behalf of the Oral History Project of The Historical Society of the District of Columbia Circuit. The interviewer is Susan McMahon, and the interviewee is Nathan Lewin. The interview took place at the law office of Lewin & Lewin in Washington, D.C., on December 13, 2017. This is the first interview.

MS. McMAHON: My name is Susan McMahon, I'm here with Nathan Lewin. This is our first interview as part of the oral history project for the Historical Society of the D.C. Circuit. It is now around 2:15 on December 13, and we're at the offices of Lewin and Lewin. Mr. Lewin, again thank you taking the time to have the conversation. I thought we would start by talking about the beginning. Where and when were you born?

MR. LEWIN: I was born in Poland in Lodz, which is the second largest city in Poland in January of 1936. My father was the oldest male child of a leading rabbi in Poland who was elected twice to the Polish legislature. He was the chief rabbi of the town called Rzeszow and well known to the entire Jewish community in Poland and beyond that, I mean various other parts of the world, because he was a great scholar.

My parents were really kind of a long-distance marriage. My mother was raised in Amsterdam, which becomes relevant later in the story. She was raised in Amsterdam and was a Dutch citizen and the marriage was essentially an arranged marriage between my father, who was raised in southern Poland as the son of Rabbi Lewin, Aaron Lewin, pronounced LEVINE in Polish but spelled LEWIN,

and he was a very rising young man well known in the Jewish community in Poland. My father at a very young age wrote articles in Polish and Hebrew and Yiddish for various Jewish publications, was an up-and-coming star in the Polish-Jewish world and my mother was the daughter of a very successful Jewish businessman in Amsterdam. When a leading rabbi from Poland visited Amsterdam to collect funds for his rabbinical school he met my grandfather, and my grandfather had known of my father and his father, my grandfather, and suggested that it would be nice if his daughter married my father. And this rabbi brought the suggestion back. He knew my grandfather very well. The recommendation was approved, and my parents met just a couple of times before they got married. Since my grandfather was a successful businessman who had connections in Poland and owned textile mills in Poland, my parents moved to the city where these textile mills were located, which was the city of Lodz. I was born there in January 1936.

My mother, having been raised in Amsterdam and educated at the University of Berlin, was very secularly knowledgeable. My father got a law degree from the University of Lvov and spoke Polish, but my mother was the one who was really attuned to what was going on in the world. Hitler and his policies became known. I was my parents' only child. My mother, living in Lodz, was concerned that if

Hitler did invade Poland, which was certainly said to be a possibility, we might be trapped in Poland under Hitler.

My father was well known, and within a couple of months after he settled in Lodz, he was elected to the city council of the city of Lodz because of substantial Jewish voting power. On the city council, during the years between the time that he moved there in 1935 and 1939. he was a very active spokesman for the Jewish community in Lodz. He was the target, I might say, of very vicious anti-Semitic statements made by anti-Semitic members of the Lodz city council. The transcripts of debates in the Lodz City Council, which my father had are still available today, and my father quoted some of them in articles that he wrote in the United States. They are virulently anti-Semitic. My father would get up and speak, and members of the Lodz City Council would interrupt him and say, "Go to Palestine, leave Poland." They would tell him they did not want to have the Jewish community in Lodz, and my father would speak up for the rights of the Jewish community.

My mother was the one who was most concerned about Hitler coming into Poland. She got my father to promise that they would leave Poland if Hitler invaded, even though he was on the city council. On September 1, 1939, Hitler invaded Poland. Not only were we, the three of us, my parents and myself, at our home in Lodz but my mother's family was visiting as well. Her parents and her younger brother were in Lodz. When Hitler invaded my mother insisted to my father that we had to

leave immediately, and he agreed. He planned to come back to serve to be on an emergency committee of the city council. My mother's father was really a resident of Amsterdam and citizen of Holland. He felt that he had the time to probably fly back to Amsterdam and get some valuable diamonds and other things that he had in Amsterdam. So he flew on a commercial flight from Warsaw to Amsterdam in September of '39. My father, my mother, myself, my maternal grandmother, my maternal grandmother, and my uncle, my mother's brother, all made our way by train to the border between Lithuania and Poland. There was a dispute at the time about who owned what territory, but we crossed the border. I don't personally recall it, but I was told many times as I grew up that they carried me through the forest as a three-year-old smuggling across the border into Lithuania. And we made our way to Vilna.

My maternal grandfather flew back to Amsterdam and did get his diamonds. Relatives told me subsequently that they witnessed how these diamonds were being sewn into the inside of his coat because he was planning to take a train and be smuggled into Switzerland. The Jews knew there was apparently a stop on the train where there were people who, for a price, would smuggle you across into Switzerland. My grandfather took that train but never made it. The speculation was that maybe he either fell asleep or missed the stop where he should get off. Instead, he got off at the next stop, was found, was caught by the Swiss guards.

The Swiss guards handed the Jews over to the Nazis, to the Germans, and my grandfather was murdered in Auschwitz, so I don't recall him at all.

We made our way to Vilna. My mother still insisted it was not safe to stay in Lithuania because Hitler was marching across Europe. So she looked for a way to get out of Vilna and go to some safer place. Mother had been a Dutch citizen until she married my father, because under the rules then governing citizenship in the European countries and I think probably elsewhere in the world, a woman who married took on her husband's citizenship. So she lost her Dutch citizenship and became a Polish citizen because she married a Polish man. But she had been a Dutch citizen, and her mother and her brother were with us, and they were still Dutch citizens. So she looked for a way to get out of Vilna and go someplace. She thought that since she had been a Dutch citizen, and her mother and brother were still Dutch citizens maybe they could go to the Dutch East Indies – to Java or Sumatra – and be safe from Hitler. So she went to the Dutch consul in the major city in Lithuania, which was Kaunus, known to the Jews as Kovno. She asked the Dutch consul there whether she could get a visa to go to for herself and my father and myself and her mother and her brother for the Dutch East Indies. The Dutch government had decided they would not issue visas to the Dutch East Indies. Holland had been overrun by Hitler already in1940, so the Dutch consul (named Jan Zwartendyk) said there are no visas being issued to any non-Dutch citizen.

Any Dutch citizen has the right to go to the Dutch East Indies, but if you are no longer a Dutch citizen you can't go to the Dutch East Indies.

My mother didn't take no for an answer. She wrote a letter to the Dutch ambassador in Riga, a man by the name of de Decker. In the letter she said, "I used to be a Dutch citizen, my mother and brother are still Dutch citizens, and we would like to go to the Dutch East Indies." He wrote back and said, "We issue no visas to the Dutch East Indies, but you can go to the Dutch West Indies to Surinam or Curacao [which are off South America]. You can go there because you don't need a visa to enter. The governor can allow you in if you show up on a ship and want to come in." My mother was not interested in going to the Dutch West Indies, but nonetheless she wrote back to him and said, "Okay, here is my Polish passport, can you write into the Polish passport that you don't need a visa to go to Surinam or Curacao?" He did that. He wrote that into her Polish passport. Her Polish passport was no longer valid because Poland was no longer a country and was not recognized any longer in 1940. We did have a Lithuanian safe conduct document issued by the Republic of Lithuania which allowed you to travel (called a "Leidimas". My mother used that and that's me.

MS. McMAHON: Oh wow.

MR. LEWIN: And that's my father right there.

MS. McMAHON: Wow, can I take a picture of this?

MR. LEWIN: Sure

MS. McMAHON: Okay. I'm sorry, continue.

MR. LEWIN: She took this document, this travel document and brought it to the Dutch consul in Kovno and asked him to copy into this document what the Ambassador had written in her Polish passport, which was that you don't need a visa to go to Surinam or Curacao. That was very important because the reason that Jews were trapped in Europe was that they didn't have any country that was ready to give them a visa. The United States was not ready to issue visas to the United States, the European countries were overrun, South American countries were not issuing visas there for the Jews, and so the Jews were trapped. But if you had a destination, then maybe you could get out of Lithuania.

So the Dutch consul wrote here what the Ambassador had written in the letter to my mother and into her Polish passport – that the consulate of the Netherlands says that for strangers and others to go to Surinam and Curacao you do not need a visa, period. My mother took that and went to the Japanese consul in Kovno, a man by the name of Chiune Sugihara. The Japanese consul wrote for her a transit visa through Japan. On July 22, 1940, the Dutch consul wrote his document, and on July 26, 1940, Sugihara wrote out this transit visa.

This transit visa became very important because on the basis of my mother having gotten this several thousand Jews in Vilna who had escaped from Poland came to

the Dutch consul and then to the Japanese consul and were saved from annihilation because of this visa. The Japanese Foreign Office had rejected Sugihara's request, to issue these visas. He wrote to them, and there are documents that show that he wrote to the Japanese Foreign Office, saying "Can I issue these visas," and they said no. He decided he would do it anyway. So he is a hero, he is considered a righteous gentile in the Yad Vashem Museum in Jerusalem. The Sugihara visas are very famous in the Jewish community and are well known because it turns out he issued 2,000 of these handwritten in one month in the month of August, after the 26th of July, when ours was issued.

There is a list, I don't have it with me today, but there is a list of the visas he issued in one month, in the month of August. Even when the Japanese told him to leave and they replaced him, he would write out visas on the train. People would come up to him at the window as the train was leaving and give them their documents and he would hand write out the visas. There have been a couple of movies. The Japanese have put out a movie recently about the story of Chiune Sugihara, but it was my mother who was the first one who got this Sugihara visa.

MS. McMAHON: She was the one who figured it out.

MR. LEWIN: She was the one who figured it out. She is the one who pursued it all the way with the Ambassador in Riga, then to the consul in Kaunus,

and then to Mr. Sugihara. That's my mother and that's me at the age of four and that's my father.

MS. McMAHON: Wow.

MR. LEWIN: And on the basis of these documents the amazing thing is, not only that Sugihara issued the visas but that the government of the Soviet Union, Joseph Stalin's government where the Soviet Union was a paradise you couldn't voluntarily leave, honored the Sugihara visas and they allowed the Jews to travel to Moscow. We traveled to Moscow, and from Moscow to Vladivostok on a two-week trip on a Trans-Siberian Railroad. I was four years old when I was on the Trans-Siberian Railroad for two weeks, traveling from Moscow to Vladivostok. We took a boat to Japan to the city of Kobe where there was a welcoming Jewish community.

Because my father was an important Jewish personality in Poland, he was one of the few who were paroled to come to the United States as a refugee from Nazi persecution. There were leading rabbis on a special list that the State Department approved to be paroled to the United States. By ship we went from Kobe to San Francisco in, I think, it was March of 1941. And that is how I came to the United States at the age of five.

MS. McMAHON: Do you have any specific memories of that time?

MR. LEWIN: The only memory I have, the earliest memory I have, is in Japan, is in Kobe really being a kind of rambunctious kid running up the stairs in the home in Kobe. We had an apartment on the second floor, and in Japan when you come into the house you are supposed to take off your shoes and put on slippers. I could not get used to that. I was a little Polish kid, you know, five years old. I play out in the streets. and I opened the door, and I would run up the stairs. My earliest memory is being on the staircase and having some elderly Japanese gentleman yelling at me as I'm on the staircase, how I could come in there and run in there with my shoes on. So that's really my earliest childhood memory.

I don't remember the trip on the Trans-Siberian Railroad. I don't remember anything before that, about Vilna or even being carried through the forest when I was three years old. I kept hearing stories about it but never really knew. My father, my mother and myself were the beneficiaries of this special treatment that was given to important Jewish personalities who were allowed to come into the United States, even at the time when it was totally restricted and the United States did not allow them in. My grandmother and my uncle, who were with us on this whole trip to Kobe, did not have the permission to come to the United States. My mother stayed a couple of months in Kobe with her mother and her brother while we were trying to get permission for them to come with us. The United States did not grant that permission and my grandmother, and my uncle then went off to

where my mother originally proposed. which was the Dutch East Indies, because they were Dutch citizens. They had a right to go to Java. They went there and of course the Japanese took over that area and my grandmother ended up in a civilian camp, enemy camp which the Japanese had created there, and she spent the war in this civilian camp in the Dutch East Indies. My uncle, my mother's brother, when he got there joined the Dutch military and was killed and buried on an island off the Dutch East Indies. So he didn't survive the war.

My mother's mother did survive the war, and she came to the United States and lived with us after the war was over. She was the only grandparent I can recall because my father's parents – the famous rabbi who had been elected to the Polish parliament and his wife – and my father's older sister were all killed in the Holocaust. My grandfather was murdered in 1941 when the Russian army left the city of Lvov, and the Germans came in. The Germans repudiated the Nazi-Soviet PAC and marched into eastern Poland. When they did, there was a pogrom in the city of Lvov, and they murdered my grandfather and his brother who was also a leading rabbi. So I grew up not knowing any grandparents really until after the war. That is when my grandmother came and lived with us in New York for a couple of years until she died. We arrived in San Francisco and then ultimately went to New York, and I grew up on the west side of Manhattan.

MS. McMAHON: What impact did all of this trauma have on your family as they were making a life in New York?

MR. LEWIN: It had a very lasting impact. My father was very community minded. I guess that is something that has been conveyed to me. Almost from the time he came he was very active in trying to rescue the victims of Nazi persecution, Jews caught in the Holocaust. He did not know any English when he arrived here, but he was very bright and over the years learned English, as did my mother. My mother knew a little bit when she came here from Amsterdam and Western Europe. My father knew none of that, but my father immediately began writing and having articles published in the Yiddish newspapers because he was very fluent in Yiddish. He wrote about the persecution of the Jews in Europe and efforts to try to rescue them. He was very active in rescue efforts and organizations that were involved in rescue efforts.

I grew up knowing that there was no day and night, really. My father would be getting phone calls in the middle of the night, and the phone would ring, and he would be answering various people involved in rescue efforts. He was very much involved in all that. He never turned down any request to help refugees. We didn't have the finances to be able to provide financial support for it but in terms of his time and effort, he would be writing articles, going to meetings, advising, consulting with people and he became well known in the New York organized

Jewish community as sort of an Orthodox Jewish representative who had fled the Holocaust and managed to make it to America. He became the non-government representative to the United Nations of the Agudath Israel World Organization – a non-paying position. So he was very active. I've got a shelf of books containing speeches of his at the U.N. and elsewhere about all the efforts to rescue Jews during and after the war, questions of what to do with Jewish orphans, issues of anti-Semitism. He was very proud of the fact that he drafted and got the U.N. in those days – which is different from the U.N. today – to approve a Convention Against Religious Discrimination.

This experience had an impact on me as I was growing up. And although my father learned some English, and he spoke it with an accent, his English was not first-rate. So as I grew up, I was the one he would turn to. He would stay up all night typing up a speech for the U.N., and he would give it to me and ask me to edit it and put it into better English than he had written.

MS. McMAHON: How old were you when that would happen? When he would give you speeches?

MR. LEWIN: Certainly by the time I was in high school, but even when I was growing up on the West Side. By the time I was 12, 13, 14, he would hand me these drafts and say, "Correct the English and improve it." So I would be doing that.

MS. McMAHON: You said it had an impact. What do you mean by that more specifically?

MR. LEWIN: Well, it had an impact in the sense that growing up in a household where it was taken for granted that you should be helping Jewish efforts of various kinds. People have said to me, "Why do you do all this pro bono work?" And I say, "You know, it's something I only knew from childhood. I saw my father doing it. It didn't even occur to me that you shouldn't, that you could possibly turn it down." I never saw him turn down any request by somebody asking for legal help.

MS. McMAHON: Let's talk about some of your schooling in New York. Where did you go to school?

MR. LEWIN: I have a brother who is 16 years younger than I. He was born after my grandmother came to the United States, and after she passed away. I grew up as an only child in Manhattan. My parents were very protective of me, and they lived on the west side of Manhattan. There was a Jewish school on the east side for which there was a school bus that would pick kids up on the west side. So my mother decided that is where I've got to go. So I did go to the Ramaz School, which is a terrific school. Frankly given my father's very great Orthodoxy and the fact that there are schools in the United States and in Manhattan downtown which were much more traditional or right-wing, people were surprised that I was

being sent to this progressive school on the east side, to Ramaz. But the real reason was that they had a school bus. And that is all that my mother was ready to trust. She wasn't going to let me take the subways and travel on my own.

So I went to the east side to the Ramaz School, and I was there through the eighth grade. The interesting thing is that a good number of my classmates in that school are now in Israel. When we go to Israel, we have reunions with members of my class.

I went to Ramaz School and after eighth grade, I went to Yeshiva University High School. When my father first came to the United States he earned a living by writing Yiddish articles. That is what he did, but he was also a scholar. He had been ordained in Poland, he had gotten a doctorate in law, and he was asked to teach at Yeshiva University Graduate School where he gave classes in Polish-Jewish history, Rabbinic responsa. People come up to me to this day, including rabbis, and they say, "My God, we took your father's course at the graduate school at Yeshiva University, it was terrific." By the time I graduated elementary school, he was already employed full-time by Yeshiva University. He also became Jewish Studies principal of its girls' high schools in Brooklyn and Manhattan.

I went to Yeshiva University High School and to Yeshiva College for four years in high school and four years at Yeshiva College. Since my father was a faculty member there, it was assumed that I would go there to the high school and to the

college. I got a good education, and I became very interested in various extracurricular things.

I was president of the Student Council in high school. I was elected president of my class every year in college and only suffered an election defeat when I ran for president in college. I didn't campaign because I thought everybody knew me, and I lost. So that ended my political career. Instead, one of the things I did was write a musical together with two fellows who knew music. Yeshiva College is an all-male school, but we wrote a musical that we put on with the Yeshiva College cast at the Barbizon Plaza Theater in New York for two nights. The audience was principally people involved with Yeshiva College. It was an original musical comedy which was, believe it or not, based on a man who was not well regarded and was then vice president – a guy named Richard Nixon. I made fun of him. It was called "Choose to Run," and it was a musical, which was in various ways prophetic. He was involved with the mob. I forget all the details, but we wrote this play and put it on. My two co-authors, who are still alive, are very proud of their part in having written this production. I directed it. I also was interested in drama at the time, and I became dramatics counselor of various Jewish summer camps.

MS. McMAHON: Did you write this musical, or did you direct it?

MR. LEWIN: I wrote the script; I wrote a good part of the lyrics – I'm not musically adept. They did the music, and we co-authored the thing, worked on it together. Basically I did most of the script, I did most of the lyrics and I directed it. That was after I lost for president of the Student Council. So I felt I had a lot of extra time. But the leading character when we originally wrote the play was a man by the name of Nixhead. The faculty objected when we showed them the script. So we changed it to Pinhead. It was based on Richard Nixon, which is ironic because ultimately, I ended up representing Richard Nixon . . . that's a little bit of trivia.

MS. McMAHON: That's so interesting. What inspired you all to do that, to spend your time writing a musical?

MR. LEWIN: These two friends of mine were interested in doing it. I lost for president of the Student Council, and I used to travel up to Yeshiva every day in the morning. The day does not end at Yeshiva College until 6:00 in the evening. The morning is devoted to rabbinical studies. The college starts in the afternoon. I had the habit of staying at school until 9 or 10 at night. In those days traveling on the subway up to New York was not considered hazardous as it is today, and that neighborhood was a very fine area in terms of walking. So I would spend a lot of time up there, and we decided that the thing to do is to have this "Varsity Show." We did it. It was just a project, and we put it on, and we rented the Barbizon Plaza

Theater for two nights and sold tickets through Yeshiva College. It was a fun thing to do.

MS. McMAHON: That's great. So you said that you were very interested in drama.

MR. LEWIN: Yeah, my real dream at that point was to be like David Merrick. I figured that is what I would love to do, but it was a difficult thing. A Sabbath observer and all that. So what was I going to do after college? My father had gotten a law degree, but the truth is I had zero idea of what lawyers do. I did not have any lawyers in the family, except my father who had gotten a law degree in Poland but never practiced law. He had a J.D. – Doctor of Laws – from the University of Lviv. When people would ask me, "what are you going to do after you finish college?", I said, "I guess I'll go to law school." It's hard to believe I did not know what lawyers actually do, but other than reading Erle Stanley Gardner books about Perry Mason trials, I had no idea. I knew from the very beginning I was never going to be a trial lawyer. Of course, I ended up being a trial lawyer.

MS. McMAHON: Yeah.

MR. LEWIN: When I grew up, I said, "Well, that's good for Perry Mason, it's not going to be for me." I really thought that lawyers sit in their offices, and people come to them, and they say, like they do to a rabbi, "What is the law?", and

the lawyer would say, "Okay, let me look it up" or he knew it. And he said, "Here is the law", and then gave them a bill for giving that advice. Other than that I had no idea, I had no lawyer friends, I had no relatives who were lawyers, but I said, "I'm going to go to law school."

I took the LSAT. In those days they didn't have, or at least I didn't know of, any LSAT preparatory courses. I took it and I did very well on the exam. I viewed it as sort of a game. If you think like a lawyer does, you are able to get the answers. So I took the LSAT, and I applied to Harvard and to Yale.

MS. McMAHON: What made you choose those schools?

MR. LEWIN: The year before me there was a Yeshiva College graduate who was admitted to Yale and did go to Yale Law School. Yale was very attractive because it was close to New York City. I had grown up in New York in the Orthodox Jewish environment. Sabbath or Saturdays would not be a problem because I would be able to observe Shabbat. I thought, "If I go to Yale, it's easy to take a train back to New York and be in New York almost every weekend." I applied to Yale.

There was a recent Yeshiva College graduate named Arnold Enker, who had gone to Harvard, and he had been admitted. One of the heroes in Yeshiva College was Lou Henkin, who was the son of a very famous rabbi, very well known in the Orthodox community, who had gone to Yeshiva College and from there had gone

to Harvard Law School. He made the *Harvard Law Review* and had clerked for Felix Frankfurter. When Frankfurter died, Henkin recited Kaddish at Frankfurter's funeral. So he was known among Orthodox people as having gone to Harvard Law School. So I thought, "Okay, I'll apply to Harvard as well." And I applied to Harvard, I applied to Yale, I applied to Columbia. I got admitted because of the LSAT scores and a very good college record. I was Valedictorian of the class, so I got admitted to all these law schools. In those days the tuition at the Harvard and Yale Law Schools was $1,000 a year.

MS. McMAHON: Oh, gosh.

MR. LEWIN: One thousand dollars a year. But to reserve your place at the law school you had to send in a $100.00 deposit. For my father, $100.00 was not petty cash, and once I decided I would go to Yale Law School, I told him. My father wrote out a check and sent it in to keep my place at Yale Law School. In those days admissions were still fluid even into June of the year that you were going to start. So I had not notified Harvard that I was not going but I had reserved a place at Yale.

The only lawyer I really knew was the father of a classmate of mine at Yeshiva College. He was a lawyer in Haverstraw, New York. He came to the graduation and said to me, "Nathan, it's very nice, you've done fantastically well. What are you going to do with your life?" I said to him I was going to go to law school, and

he said, “Well what law school are you going to?” And I said very proudly, “I’m going to the Yale Law School.” He looked at me, and I still remember his exact words. He said to me, “Nathan, it’s too bad you were not admitted to Harvard.” I said, “Mr. Miller, I was admitted to Harvard. As a matter of fact Harvard had offered me a total scholarship grant, a $1,000.00 scholarship, while Yale had offered me half loan, half grant.” This man, who was the only lawyer I knew, said to me, “Nathan if you were admitted to Harvard and you don’t go to Harvard you are crazy, you are crazy.” I remember him using those words, “you are crazy.” This is the only lawyer I knew, and he tells me if you don’t go to Harvard, you’re crazy.

So after the graduation I said to my father, “You know I was planning on going to Yale, but Mr. Miller says that I’m crazy if I don’t go to Harvard.” And my father said, “Well, Harvard is in Boston isn’t it.” I said yes, and he said, “You can’t keep kosher in Boston, can you? How are you going to keep kosher in Boston?” And I said let me find out.

So I checked and I discovered there was an apartment that three Yeshiva College graduates were living in in Cambridge and they were looking for a fourth roommate. They had two bedrooms, each of which had two beds. One of them was Arnold Enker who had graduated Yeshiva College, and he went on after he graduated Harvard to become the first Dean of the Bar-Ilan Law School in Israel.

He's still alive, I see him occasionally when I go to Israel. He is a very fine guy and great scholar. He was one of the roommates, one of the people in that apartment. There was also a fellow who was a graduate student in Chemistry at Harvard. He came very close to winning the Nobel Chemistry Prize. His name is Samuel Danishefsky. He became an internationally famous chemist and was a runner-up in terms of the Nobel Prize. Another fellow was getting a graduate degree in physics, at Harvard. And they were looking for a fourth roommate who would keep kosher. So I contacted them. My father said, "I already sent a $100 to Yale", and we decided he can't get that back. He sent $100 to Harvard, and I ended up going to Harvard Law School. That is how it happened. I had no idea really why, except that this man told me I'm crazy if I don't go to Harvard Law School.

MS. McMAHON: So before we talk about law school, I want to just explore a little bit more about high school and college. You said you were the Valedictorian of your class. Did you enjoy learning, were you passionate about learning?

MR. LEWIN: Both in high school and in college, half the day is Jewish learning. It's Bible, Talmud. So it was a pretty long day. I enjoyed it. Can I tell you, "Gee, you know at the time I was so intellectually curious about what I was doing, it sparked my imagination?" I don't know, I was a typical American

teenager and young adult. I was a great sports fan, I mean I had given that up years and years ago, but in those days, I was interested when I was in high school almost in nothing else but the sports pages. The rest of the world was okay, you knew things were going on but what happened in terms of the teams – I mean, in those days, it was much easier. There were eight teams in the American League, eight teams in the National League. I knew virtually all the players. I would have my parents or myself with my allowance buy these silly books which had numbers and statistics you know of all the ball players and what their averages were.

MS. McMAHON: So it was baseball that you loved.

MR. LEWIN: I loved baseball but I loved all the sports. If I could go to a hockey game at Madison Square Garden, I went. I went to a football game – a wealthy friend of mine in my class asked if I would join him and maybe his parents to some football game by a football team called the New York Yankees. They were not in the National Football League. They were in the competing league, and my hero was a fellow by the name of Spec Sanders who was a halfback. I used to follow Spec and what he would do and so this guy had, because he was well off, had seats on the fifty yard line right on the field. I still remember the day that we went. It was very exciting for me. We went to this football game, I think it was at Yankee Stadium, and when the game was over, I leaped over the barrier with the whole crowd and ran with my program to have Spec Sanders autograph the

program. I remember how crestfallen I was to see this star, the guy that I admired, taking a pencil and kind of licking it and very laboriously writing Spec S P E C on the program. He could barely write, and to me he was a hero, and all the Yankee ball players, so you know those were the things that I was interested in.

My wife has still not forgiven the fact that I did not read the traditional children's classics or all the things that you are supposed to read when you are going through elementary school and high school. I bought regularly Classics Comics. I loved reading the comics and the stories and I got so much from them. The thing she is not able to forgive me for is that on the English Regents in New York, you were able to either write an essay or a couple of essays or do short answer questions in which you took 20 of the 40 questions they asked about, classic books and you were supposed to answer those questions. And I took the short answers, and I got a 100 on the English Regents and I never read those books. I got all the answers from Classic Comics.

MS. McMAHON: That's so funny.

MR. LEWIN: But that is what happened. And my wife to this day says, "how did you do that?"

MS. McMAHON: So did you play sports around that time?

MR. LEWIN: I did but I can't say I was that great. After the war, my parents, being European, would frequently spend the summers going over to

Europe and they would want me to come with them on the trip to Europe. But my attitude was that I was an only child, the only opportunity I really had to play baseball was to go to summer camps, so I went to the summer camps. I told them, "No, I want to go to summer camp, I don't want to go to Europe, who wants to go to Europe?" They would go off to Europe during the summer and leave me at the summer camp because I was insisting on playing ball. That is what I wanted to do.

MS. McMAHON: Do you have any fond memories of that time?

MR. LEWIN: We have two daughters, neither one of them has ever gone to a sleepaway summer camp, and the reason is that my wife went to sleepaway Jewish summer camps and hated it. I went to sleepaway summer camps and loved it. But she had the veto so when the time came, I said, "Hey why don't we send them off to camp?" She said absolutely not. So they didn't go.

MS. McMAHON: So let's talk about law school now. You started at Harvard and moved to Boston.

MR. LEWIN: In those days Harvard was as democratic – small "d" – an institution as you could possibly imagine. When I first started, I looked around me and there were all these absolutely brilliant Ivy League graduates. They had gone to Harvard, to Princeton, to all the very fancy schools. And we sat in a class with 150 people, with the exception of a small teaching fellow program where you sat in a smaller group with someone who was going to be advising you on how to be a

lawyer. I had a very good teaching fellow, I still remember to this day, I think his name was Guttentag. I don't know whether he's still alive but he was very instrumental in doing exactly what Harvard wanted the teaching fellows to do, which is to explain and try to get people in the small groups to understand how the law worked and what you should do as a lawyer.

I sat in these big classes with 150 students, overwhelmingly male of course. The entering class at Harvard in 1957 had approximately 500 students – a total 10 women of the 500 students. The Dean, Erwin Griswold, made no secret of the fact that he thought that those 10 spaces were wasted, that the only reason that the women were going to law school was to grab a Harvard husband, and they were never going to be lawyers, they were never going to do anything significant. He was very open about that. In those days some of the professors had "ladies' days" in which they would say, okay this is going to be a day in which they would pick on and call on the few women in the class. So gender discrimination was taken for granted. Women were not seriously considered to be lawyers. We had in the class some pretty competent women. We have a reunion every month now of the Harvard Law School graduates of the class of 1960. It's a monthly lunch, attended by eight to fifteen graduates who are here in the Washington area. One of them is Zona Hostetler who was in our class, a very accomplished lawyer. One black student in a class of 500 and he didn't show up the second year. I'm not going to

go into the details as to why not, but nonetheless, he was there for one year. We graduated without a black student in the class in 1960.

So there were these brilliant people sitting there in the big class. They would raise their hands, and I was really embarrassed. I figured, who am I, I'm a Yeshiva boy from New York and these were all brilliant types. Justice Scalia and I were friends in the latter part of his life. I knew him and was friendly with him when we were in law school together, but not that close, it came late in life. But during that period of time he would say, "Oh, you know you had this great advantage. You studied Talmud when you were in college, so it was obvious you were going to be close to the top of the class because you had all this background." I disagreed with him. I thought there were various ways in which my Talmudic training made it more difficult for me to understand what was going on at the law school. In Talmud, in the Jewish tradition, there are basic rules that you don't question. You accept it. Here is a rule that the rabbis have laid down as black letter, now we can reason about the rest once you have that rule. But suddenly at the Harvard Law School everything was being questioned.

I still remember my first class, a property class. I studied the case that was assigned for that day. The professor had some poor wretch describe what the case was about. I had read it carefully and thought about it and then the professor asked this guy. It was a decision of the Supreme Judicial Court of Massachusetts issued

in 1910 or something. He asked, "Well, is that decision right?" I thought to myself, what a foolish question that is. This is the law. If that's the law we can reason from it but why are you asking this guy whether the decision is right. That's not proper, the lawyer has got to know the law, and the law is that. That is the rule, now let's work from there. So I could not understand how you could go behind some of these rulings, which was what the Harvard Law School and any good law school is trying to teach you – that you consider policy, language, whatever goes into deciding whether the decision is right.

To me it was like the Talmud, the Talmud has got the statements of the early rabbis and those are accepted. Then we can reason from those, but here is the rule. So Scalia and I disagreed about whether this was helpful or harmful. Scalia himself selected, and told me he was proud of having picked, a number of law clerks who had Talmudic background, that he thought that was helpful in terms of being a lawyer. Maybe ultimately it is because you can distinguish cases more easily and you can analyze in a certain way. But for me it was a big hurdle at the very beginning of my law school education – the whole attitude in the Harvard Law School of questioning everything and getting you to think like a lawyer. I thought like a Talmudic student. I had to un-think that, and that didn't happen. I was very fortunate that in those days Harvard did not give exams in January. The only exams were given at the end of the year.

MS. McMAHON: So all the classes were year-long.

MR. LEWIN: Yes.

MS. McMAHON: Oh wow.

MR. LEWIN: All the classes were year-long, and you didn't have any electives in the first year – just property, contracts, torts, criminal law, procedure. These were the courses that ran all year. The professors who were ready to undertake a little bit of extra effort might give you a practice exam. One memory I have is sitting in this contracts class being given by a visiting professor, John Dawson, who came I think from the University of Chicago for the year. He was considerate enough in about March or so to give a practice exam. He handed out a couple of questions. He came in the afternoon and sat there while you wrote the answers. In those days I hand wrote answers to questions. People who were advanced were able to use a typewriter, but I didn't use a typewriter, I hand wrote the answers to his practice questions. In my contracts class, you had an assigned seat. Sitting on my right all the time was a very nice guy who was a couple of years older than I was. He had been through the Marines, and he was in first year at Harvard Law School. Very nice fellow. Throughout the year until that point he was very considerate. He would come in, and he would say, "Nat, did you understand the case we got for today?" He would sort of give me a little bit of instruction. Then Professor Dawson gave this exam. A week or two later we all got together,

and he handed out the best answers to his exam questions. I still remember sitting there in the class with this fellow sitting next to me. I'm looking at the sheet that he handed out, and I said, "Hey that's my answer over there." He looked at me and said, "You wrote that?" I said yes. Well from that day on the thing was reversed. He would come in and say, "Nat, what do you think about this case?" So it turned out I wrote good exam papers, and in those days, as I say, Harvard was very democratic in the sense that nothing else counted other than how good your exam papers were. You wrote your answers, and the professors graded them. They had a very tough grading scale. Getting an 80 was phenomenal. I got I think an 82 in property. That was really unusual, 75 was an A. At the end of the year I was in the top 25 of the class, very close to the top ten as a matter of fact. That summer I had taken a job as a dramatics counselor at a summer camp and in the middle of the summer I got an invitation to go and be on the board of the *Harvard Law Review*. You didn't turn that down. It meant that I had to tell the summer camp I've got to leave a week early. They said, okay if that is what it is. So I left a week early and I went up to Cambridge and I was on the *Harvard Law Review.* I've got here, this is a picture of our *Law Review*. I have one of the second year, but this was the first year, the year that I was in 2L. There I am, there is Richard Arnold, who was chief judge of the Eighth Circuit, whom Clinton would have appointed to the Supreme Court if he didn't have cancer. This is Frank Michelman.

There is a fellow by the name of Nino Scalia. So this was our class, our *Harvard Law Review* class. I have someplace a picture of us the year that we were officers of the *Review*. This fellow was John French, who was elected President of the *Review*. This was Dave Currie, who taught at the University of Chicago, who passed away now, Fletcher Yarborough, Phil Heymann, who is deputy attorney general, Dan Mayers, who is a leading partner at WilmerHale, Alan Davis who was City Solicitor for the City of Philadelphia.

MS. McMAHON: A very distinguished crew.

MR. LEWIN: Years after we left, the class of 1960 had a reputation at Harvard as being an outstanding class. Not on the *Harvard Law Review* was Dukakis, Ruckelshaus, Paul Sarbanes, among others. It was a very distinguished class, class of 1960.

MS. McMAHON: How do you feel like you made that switch from coming in where you felt like, okay this is different than what I had been doing, I'm not sure I really have a handle on this, to being in the top ten of the class?

MR. LEWIN: I don't know. I was surprised. I had a couple of friends in the first-year class. By and large the people who were my friends viewed me as being a nice Yeshiva boy who came from New York and made it to the Harvard Law School and was going to be a practicing lawyer, and good for him, he's a bright guy. And then it turned out on the basis of these exams that I was suddenly

a kind of semi-star. I was on the *Harvard Law Review,* and I just did what I thought you ought to do. For the *Law Review* I did the work that second year editors were going to do. There was an election for president. Everybody knew I was a Sabbath observer. I could not show up between sundown on Friday and nightfall on Saturday. Yet I was elected treasurer, which is the managing editor's job. It meant that every word in the volume from the *Harvard Law Review* that year – this is Volume 73 – I had to read every word. I was the one who read the galleys and corrected them. I was the managing editor. In those days – I don't know whether it's still true today – Dean Griswold insisted that the tenth of every month he had to have on his desk a printed copy of that month's *Harvard Law Review*.

SM: Oh wow.

NL: We were under the gun in terms of putting this thing out. On the tenth of every month it had to be on Griswold's desk, and you know we had pretty respectable people writing for us. This is the masthead – John French was the President, Herbert Dym, who was at Covington and is still alive, Dan Mayers who is alive, is at WilmerHale, Frank Michelman who is up at Harvard, Scalia, note editor, Richard Arnold, who later went on be the chief judge of the Eighth Circuit, Phil Heymann who was deputy attorney general, David Currie who was a professor

at the University of Chicago, Fletcher Yarborough who was a leading lawyer in Dallas. It was a fantastic group.

There were certain advantages to being single, the time was all mine. I could set up my schedule for the day depending on what I needed. On the other hand there was a great disadvantage because most of the other people in that class, other than Nino Scalia, me and a handful of others, were married. If you are married, your wife takes care of your meals, takes care of your laundry. In those days that was what was accepted, that the wives of the guys who were on the *Law Review* didn't have careers of their own. They were there to help their husbands succeed as lawyers. I was at the age where, if I want to go out, I would generally have to go up to New York to find an Orthodox Jewish girl, there were not that many in Boston. So I had to work that out in terms of working it into the schedule.

SM: So that was kind of a time-suck as well.

NL: Now Nino and I, as I say, were bachelors. Nino married right when he graduated law school, and he was really very distinctive and unique. He did not enter the law clerkship pool. He decided he and his wife instead were going to take this traveling fellowship. He got money to travel around the world for a year, so he went off on this traveling fellowship.

SM: Oh wow. So when did you end up meeting your wife?

NL: I ended up meeting my wife when I was in Cambridge in my third year. A fellow who was a graduate of Yeshiva College was up in New York and had met her. He came back to Cambridge and gave me her phone number and said, "Hey, you are going to like this girl."

SM: And it all worked out.

NL: I called her up.

SM: That's great, and it was love at first phone call?

NL: It took a while until we got married. We didn't get married until the year after I clerked in the Supreme Court. Although she's Orthodox Jewish, her background was not from Europe. Her mother was born in Israel, her father was born in the United States. To my parents, who were still very much into the European Jewish community, it was in a certain sense a marriage outside, not because there were religious differences but because their son was not getting married to somebody who had this European background. There were some delays in terms of the whole thing working out.

SM: So while you were at Harvard were there any classes that you particularly enjoyed or felt like you learned a lot from?

NL: Oh yes, definitely. That leads to a very important and interesting situation. I did very well in the first year and so I was on the *Harvard Law Review*. There were not that many law firms that were hiring first year Harvard Law School

students. The first year I didn't think there was much possibility of getting a job in New York, which is the only place I thought I would want to go to practice law. So I took a job as a dramatics counselor for the summer, and I didn't have a summer clerkship. I guess a 1L summer clerkship is a little bit more common today, but in those days it was not that common. I couldn't apply because I had no record. The exams didn't come until the end of the year, so if I applied to a law firm in April, they wouldn't know whether I was any good in a class of 500. So I took a job as a summer counselor. Then, as I told you, I was notified I made the *Harvard Law Review*, and I came back. The question was what about the second year, second summer.

Well, in 1958, there were still a good number of New York firms that would not even consider hiring a Jewish lawyer. This was before the Civil Rights Act. It was very open that there were firms that were not going to hire Jewish lawyers, period. In those days, it was also possible for a law firm to come to interview at Harvard, and to say, "We only want to talk to the *Law Review* people." This is no longer permissible, but it used to be the rule – you could say, "We'll only interview *Law Review* people." So there were New York firms that said, okay, we're only going to interview *Law Review* folks. One law firm, I don't remember exactly which one it was, had a whole bunch of interviews with a lot of people from the *Law Review*

and gave offers only to the non-Jewish members of the *Law Review* and to one Jewish guy whose name was not Jewish.

SM: So they didn't realize he was Jewish.

NL: They didn't realize he was Jewish – big bulky fellow and they gave him an offer. We all commented on the fact that isn't it amazing the only offers from this law firm came to all the non-Jewish people who had interviewed. I was among those interviewed but I couldn't get a job. I couldn't get a job even with a Jewish law firm. One of the famous Jewish law firms or partly Jewish law firms at the time was Paul, Weiss, Rifkind. Judge Rifkind had formed that firm, and it had a reputation that it would have 50 percent Jews and 50 percent non-Jews, so I applied there. I had an interview. They looked at my resume and they said, "Oh, you went to Yeshiva College." I said yes. "Are you a Sabbath observer?" In those days you were allowed to ask that question, before the Civil Rights Act, and I said yes. An answer I got from more than one firm, Paul Weiss and others, was, "Well, what would happen if we had to file a brief or something with the SEC on a Jewish holiday, would you be there?" I said I can't. "Well, what would you do?" "I would be sure my work is finished before the holiday begins." "And what about a Friday afternoon in the winter, you are going to leave before we file it?" "Well, I'll try to get it done." "Well, young man, if you want to be a lawyer, you better go to a

rabbi and get a dispensation because you can't be a lawyer and have that kind of restriction."

I got that dispensation line from more than one law firm. "Get a dispensation, you've got a great record, we might be interested in hiring you, but you better get a dispensation first so you can be here if we've got to have something filed." So I did not get a job, it was very embarrassing. Of all the people on the *Harvard Law Review*, I was the only editor of the *Harvard Law Review* who could not get a job for the summer of the second year.

So what could I do? I looked around for something I could be doing up at the law school over the summer because I was going to have to come in early for the third year because I was an officer of the *Review.* Professor Benjamin Kaplan, who taught procedure and copyrights, a terrific guy, was looking for a research assistant. So I applied and he took me, and I worked for him that summer in Cambridge, and we got along famously. The man was magnificent. Ultimately he was appointed to the Massachusetts Supreme Judicial Court. I tried to keep in touch with him during the years later on. He's a very interesting guy; his wife is Felicia Lamport who was a poet and a writer. He was on the Massachusetts Supreme Judicial Court ultimately, but that summer I worked for Ben Kaplan and we got along famously. I took his copyright course the following year. I loved

copyright, it was terrific. I always thought I would be a copyright lawyer but the way it works out I have never had a copyright case.

SM: Why did you find it so interesting?

NL: Well the whole combination of literature, law and at that time copyright. This was before computers. Copyright was really a question of applying the law to various literary works. I didn't know until law school, until a copyright course, why a great tragedy had happened to me when I was a young man. I loved comics, I would go and buy Classic Comics and others, rather than reading very heavy kind of classical works that we're supposed to read. I read comics, I read Baseball Joe, this sort of stuff. One of my favorite comics was a comic about Captain Marvel. Some problem would come up, and he would say "Shazam" and he suddenly became Captain Marvel. He's able to fly, he was able to do all kinds of things. At the same time there was a guy by the name of Superman, and Superman comics came out. They were similar in a certain sense, except to those of us who were comic book aficionados. We clearly saw the difference between Captain Marvel and Superman. Even though they both could fly, and both had this amazing power, they got it differently. Clark Kent would go into a phone booth and become Superman, whereas Billy Batson would go out and say "Shazam" and he became Captain Marvel. It was so obvious they were different. I liked Captain Marvel. I didn't care that much for Superman, but I

liked Captain Marvel. I would go out and buy Captain Marvel comics, 10 cents each month when they could come out. And suddenly they disappeared. I thought, "what's going on?" I went to the newsstand, no more Captain Marvel, off the newsstands, seemingly disappeared. I was very unhappy.

It wasn't until I went to law school that I discovered that it was Learned Hand who did in Captain Marvel. He decided in a copyright case that Captain Marvel was a copyright infringement on Superman, and therefore he enjoined Captain Marvel because Learned Hand couldn't tell the difference between Captain Marvel and Superman. To all of us as we grew up, we knew there was such an obvious difference, but Learned Hand felt there was no difference and he ruled for Superman against Captain Marvel, and Captain Marvel disappeared. So that is something I learned in a copyright course taking it with Ben Kaplan.

Kaplan was fantastic, and he was really responsible for my ending up clerking on the Supreme Court. The following year I went into the clerkship pool. I ended up getting a clerkship. I wanted to be a clerk for Learned Hand, but I didn't get that. Somebody else who was on the *Law Review* got that because he was closer to the professor who decided who was going to be Learned Hand's clerk. I ended up clerking for Learned Hand for two or three weeks when this fellow went off to study for the Pennsylvania Bar exam, because I clerked for Lumbard and volunteered. I ended up for those weeks that he was away clerking for Learned

Hand. It was I think Learned Hand's last year, and it was amazing for me. Sitting in his office at a table that was just off on the side, Learned Hand would sit there, and he would handwrite his opinions. He didn't want you to give him either a draft or even a copy of the opinion. He would have the books on his desk, and he would read them, and he would talk to you as he was writing the opinion. That was what a law clerk did for Learned Hand – not draft opinions, not summarize them, not even copy them and give them to him, but sit there and talk to him while he is writing the opinion. So that is what I ended up doing for two weeks during the year that I was clerking for Lumbard because Learned Hand's clerk went off to take the Pennsylvania bar or study for the Pennsylvania bar.

I joined the clerkship pool; I wanted to clerk. In those days a couple of people in our class went straight from graduation to clerking on the Supreme Court. One was John French, who was President. He went straight to the Court to clerk for Frankfurter. Another was Phil Heymann, who went straight to the Court to clerk for Harlan. Those of us who did not make it for a Supreme Court clerkship were offered clerkships or were recommended for clerkships in the Courts of Appeals. I had applied for the Second Circuit, and I did get a clerkship with Judge Lumbard, who was the Chief Judge of the Second Circuit. It was really a combined clerkship with Lumbard and Thomas Swan who was from Connecticut and was already retired, elderly, but occasionally he would come into New York to sit. So I would

clerk for him when he would come to New York. But I was clerking for Judge Lumbard mainly.

Lumbard was a judge who was a terrific administrator. He was the Chief Judge, but frankly a terrible opinion-writer and very pro-government. He formed his conclusion and then the clerks were supposed to write the opinions. It was well known that the clerks wrote the opinions. To finish the story about Kaplan, I'm a couple of months into the Lumbard clerkship when out of the blue I get a call from a professor whose course I had not taken at Harvard, Paul Bator. I really didn't know him very well. We used to have some events at Harvard where the professors were there, and you would talk to some of the professors. I don't know whether I talked to Paul Bator any time when I was at Harvard Law School. But there was Bator on the phone. He says to me, "Would you be interested in clerking for Justice Harlan on the Supreme Court?" I said sure, of course. He says, "Well you've been very well recommended." It was clear it was from Ben Kaplan. "Why don't you go down to Washington, arrange to go down and meet Justice Harlan, and if you and he get along you will be the nominee. Harlan will always take one Harvard clerk and one clerk from somewhere else. You will be the nominee from Harvard for next year on the Supreme Court."

So I arranged to go down to Washington and meet with Justice Harlan. Frankly I was concerned because they said law clerks are supposed to work Monday through

Saturday; you can take Sunday off. But I would not be able to work on Saturday. Lumbard was terrific about that from the very beginning. He said, "Not a problem. You work your own schedule." I was worried that Harlan was going to say, "Get a dispensation we're doing important stuff."

I went down and I had a meeting with Harlan. We got along very well. At the very end of the meeting I said to him, "I have to tell you, Justice Harlan, that I'm Orthodox and that means that I can't be here Friday afternoons or Saturdays or for that matter Jewish holidays because I'm Orthodox." He said, without a moment's hesitation, "Well, Nat are you ready to work on Sundays?" I said, "Sure." I had been looking and I ultimately took an apartment – I was still not married, I was still single – I took an apartment that was within walking distance of the Supreme Court on Capitol Hill so that there would not be any problem with my getting in or leaving very quickly, getting home on Fridays. He said, "Okay, I will have two clerks." In those days each of the Justices only had two clerks. Now they have four and they issue half as many opinions of course. But he said, "I have two clerks, and your co-clerk will be in on Saturday, and you can come in on Sundays." Fantastic.

My co-clerk, who died a couple of years ago, terrific guy, was John Rhinelander. His grandfather was the Anglican Bishop of Pennsylvania if I remember that correctly. He was my co-clerk, and he came from Virginia. He graduated from

Virginia Law School, prince of a guy, very nice. In those days he was also single, we were both single. And he agreed that he would be in on Saturdays, and I would be in on Sundays. Justice Harlan's grandfather was on the Supreme Court, the famous dissenter in *Plessy v. Ferguson*. There was a big painting of him in the Justice's chambers, I mean they had a painting of the first Justice Harlan, so he was proud of his grandfather. And he would bring guests into our room where John Rhinelander and I were sitting working on the briefs and opinions. When he wanted to introduce a guest to us, more than once he said, I recall very distinctly, "I want you to meet my law clerks. This is John Rhinelander whose grandfather is the Anglican Bishop of Pennsylvania, and this is Nat Lewin whose grandfather was a leading rabbi in pre-War Poland." That is how he would introduce us.

In those days the Court sat four days a week. Now they sit only three days a week. They used to sit Monday, Tuesday, Wednesday, Thursday morning and afternoon, and they would have a conference Friday morning. Sometimes the conference would run through lunch. The Justice would come out after conference and sit down with us to talk about how the cases had been decided. They didn't know how the opinions were going to be handed out because that generally came the next day from the Chief Justice's office. He would discuss the cases with us and what the Justices had said. So it was a good meeting that we would have after the conference. In the winter, we might start the conference at 2:00 or 2:30. Comes

3:30, Justice Harlan said to me, more than once, "Nat, you know the sun is going down, you better go home." He would say that to me. With that invitation but anyway I picked myself up and I would go home on a Friday afternoon. Harlan was so considerate that he would do that. He came to our wedding in a New York Synagogue – I got married the summer after I clerked – and Harlan was a guest at the wedding. The reception line for people who wanted to shake hands was longer for Justice Harlan than for the bride and groom. He and Mrs. Harlan came to our wedding. In the Supreme Court Journal – the historic one that comes out every month on the Supreme Court – there is a photograph I gave them of Justice Harlan and Mrs. Harlan at our wedding, with us at an Orthodox Jewish wedding.

Years later, after Harlan had died, a Congressman from Brooklyn by the name of Steve Solarz was a really very good, very bright young Congressman who unfortunately died of esophageal cancer a couple of years ago. He and I were good friends, and he was very supportive of the Orthodox Jewish community. He called me up one time and said, "I have a lot of postal workers in my district who are Orthodox Jewish, and they have to take off early on Fridays and they are off on Saturdays and they are off for Jewish holidays and they can't get a week or two weeks in which they can take a vacation with their families. What can we do to correct this?" We talked about it and I helped him draft a compensatory time

provision that says federal employees can work extra just a couple of weeks before a religious holiday or after a religious holiday and will not be charged annual leave, as it will be considered as compensatory time for leave purposes. He introduced the bill in the House and had a lot of support. Then he calls me up and says, "Nat, we're in trouble with our bill." I said, "Why?" He says, "Well" – this was 1976 I think, the Carter administration – "the Assistant Attorney General in the Office of Legal Counsel says that our bill is unconstitutional because it gives a preference to religion, it says that for religious reasons you are going to have compensatory time but it does not say for non-religious reasons. So he's issuing an opinion that says it's unconstitutional. If the administration is against this, I won't be able to get the bill passed." But he says, "They have invited me to come to a meeting of the Bureau of the Budget. It was called then, Bureau of the Budget. "There are going to be representatives of all the federal agencies to discuss this." Solarz was not a lawyer, but he said to me, "Will you come with me to be at this meeting?" I said, "Sure." So I come to the meeting. I remember it was a meeting, a huge room, people at long tables sitting there from federal agencies. The guy who was the Assistant Attorney General in the Office of Legal Counsel, whose name I think was Richman, but I'm not sure, was there.

The meeting starts and the Assistant A.G. gives his reasons. It violates the Establishment Clause. It's only religion, and that is the only ground you can get

compensatory time, so it's clearly unconstitutional. Everybody is writing and they seem to be agreeing with him. They turn to Solarz, and they say, "Now Mr. Solarz we would like to hear your side of this." Solarz was not a lawyer. So he says, "I brought with me Mr. Lewin, who clerked on the Supreme Court" – by that time I had already argued a number of cases in the Supreme Court. "He's from the office of the Solicitor General, has argued cases in the Supreme Court. So he will tell you why we think it is constitutional." I had prepared with cases and all that. I started with a very dry talk about the cases that say the Establishment Clause prohibits a preference, but you can make an accommodation. And nobody is listening. It's clear to me, as I'm looking around the table, that they don't want to hear from me at all. They've decided on the basis of the presentation that they are not going to support the bill.

I stopped in the middle of that, and I said, "Well, let me tell you what happened to me. I'm a Sabbath observer and I clerked for Justice John Harlan on the Supreme Court. Justice Harlan is not super liberal by any means. When I sat with Justice Harlan in a conference on Friday afternoons, and we would be talking about what the Court had decided in conference that morning, we would be in the middle of a conference, and Justice Harlan would say to me, 'Nat, the sun is going down you better go home.' Do you think that Justice Harlan thought he was violating the

Establishment Clause of the First Amendment when he said that?" There was silence, and I could see people sort of woke up.

The next morning Solarz calls me and says, "Nat, that story about Justice Harlan was dynamite. They called me from the Department of Justice, and they are supporting the legislation." It is now part of federal law. I can bring Solarz's autobiography, which was published after his death by his widow. He describes this whole incident, with me telling about what happened with Justice Harlan because that is why this is part of federal law. When I speak at times in public and I tell this story, it's amazing how often people come up to me and they say, "Thank you, thank you. I didn't know. I used that law last Passover or Yom Kippur, and I didn't even know what the basis of it was, but it is now part of federal law."

MS. McMAHON: That's great. Well, that might be a good stopping point for today.

MR. LEWIN: Okay.