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Cohen, David M. oral history interview

Nicholas Christie

Interview with David M. Cohen by Nicholas Christie

Summary Sheet and Transcript

Interviewee
Cohen, David M.

Interviewer
Christie, Nicholas

Date
June 28, 2001

Place
Portland, Maine

ID Number
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Biographical Note

David Cohen was born to Bertha and Alexander Cohen in Manchester, New Hampshire on November 8, 1942. At the age of one, his family moved to Lewiston, Maine. During the summer between high school and college he was an intern with Senator Muskie. He attended Bowdoin College, majoring in Government. He earned his law degree from Boston College and spent a year clerking for Frank Coffin. He then began a twenty-year law career in Portland, Maine. He first worked with Berman & Berman, Wernick and Flaherty, and then with Petrocelli, Cohen, Erhler, and Cox, where he stayed until he was appointed a U.S. Magistrate Judge in 1988, the position he still held at the time of this interview.

Scope and Content Note

Interview includes discussions of: Lewiston, Maine; Bowdoin College; Cohen's internship for Senator Muskie; Cohen family political leanings; Ed Muskie; Don Nicoll; Senator Muskie's staff; pollution in Maine; Democratic Party in Maine in the 1950s and 1960s; process of being appointed as a U.S. Magistrate judge; Ed Muskie's political potential; Frank Coffin; changes in the Maine state political system since 1988; Democratic Party in Maine; Independent Party in Maine; and growth and changes in Portland since 1967.

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Transcript

Nicholas Christie: This is an interview with Magistrate Judge David M. Cohen on June 28th, 2001 at his Portland office on 156 Federal Street, Portland, Maine. Interviewer is Nick Christie. Mr. Cohen, would you please state and spell your full name for the record?

David Cohen: David Cohen, C-O-H-E-N.

NC: And where and when were you born?

DC: I was born in Manchester, New Hampshire on November 8th, 1942.

NC: What were your parents' names?

DC: Bertha and Alexander.

NC: Now, how long did you stay in Manchester?

DC: I was a little more than a year old when we moved to Lewiston, Maine.

NC: And you stayed there all through secondary school?

DC: Correct.

NC: How did your family end up living in Lewiston?

DC: My father was one of seven children, five boys, two girls. One of his brothers was very entrepreneurial and he owned and operated a fur business, wholesale and retail. And my father had been made manager of the Manchester, N.H. store, retail store. But when he was drafted, another brother was moved in to take over that store, so when my father got out of the service it became an issue of where he would go and the brother who owned the business suggested that he and my mother take a ride to Lewiston, Maine, he was contemplating opening a store there and that's, how that all happened.

NC: Were your parents political active?

DC: Politically interested, but I wouldn't say political active. I don't recall that they ever went to political events really of any sort. But they were both avid Democrats, very strong Roosevelt supporters.

NC: So you felt that you grew up with Democratic leanings?

DC: That certainly was the influence in my family.

NC: Okay. Now, what do you remember of Lewiston when you were a child or adolescent?

DC: I remember Lewiston as being a wonderful place to grow up. We lived, my parents owned and operated a children's clothing store on Lisbon Street in the very location where that fur store had been located before my uncle closed all of his retail stores. My parents were very modest economically, we lived in a modest neighborhood in a small house. I think without exception all of our neighbors were of French Canadian ancestry, very fine people who, all of whom took real pride in their homes and maintaining the neighborhood well. So I played with, of course with kids in the neighborhood, and in fact one next door neighbor, one neighbor to one

side of us, one of their kids a little younger than I but a contemporary of my younger brothers, is Larry Gilbert, the present United States marshal.

Lewiston, I just remember Lewiston as a being a very fine place to grow up, there was a real sense of community, it was, I never was aware of class distinctions. Obviously some kids came from economically advantaged backgrounds, and lots came from economically disadvantaged backgrounds but that never was anything that we were aware of growing up as kids. It certainly didn't affect who we played with and there just wasn't any kind of emphasis on that sort of thing. It wasn't until I went off to college, I went to Bowdoin, that I, that it was suggested to me that Lewiston was the kind of place one wouldn't necessarily be proud of having grown up in. I'm being facetious when I say that; that really sort of was the message. Lewiston, Bowdoin students at the time my recollection is would sort of put Lewiston in the same category that it put Brunswick, and people who lived in those communities were referred to as "townies" and so forth. But I, all these years later I really look back fondly on that period of time growing up in Lewiston.

NC: You mentioned the Franco-Americans in your neighborhood, you grew up, so you were young when you were in Lewiston but do you remember the political tensions that were in the town at all, or not particularly?

DC: I don't off-hand remember specific incidents. I certainly have a general recollection of the politics. I remember as a kid growing up we did have some mayors who were not of the caliber that I think Lewiston and communities of that kind have since had and expect to have. But people who were in city government, whether in the city clerk's office or running the police department, or any number of other things, public works, they were all very responsible and well-regarded people.

NC: Now you went to the public high school?

DC: Right.

NC: Lewiston High.

DC: Right, which at that time was just around the corner from Bates. I think it's now the junior high school.

NC: Yep, middle school. What do you remember about that education?

DC: I felt like I got a very good education at Lewiston High. Many of my teachers were Bates and Colby grads-, women who never married and whose almost sole interest was teaching, and they, they would spend hours after regular school time preparing for next day's class. It's just such a contrast to the situation today where obviously most people in the profession are married, have family responsibilities, a lot more demands of all sorts on their time. So I feel that given the size of the city and the demographics, I really was fortunate to have some very good teachers, better than might have been expected.

NC: What were your interests in high school?

DC: Government, government and history courses, I took as many of those as I could. I also loved things like math, although I don't remember a thing about any of that, algebra, geometry, calculus. I'm sure I couldn't do the simplest sort of thing but at the time I loved all of that, somehow I just found it all very stimulating. Sciences were not my strong suit.

NC: So why did you choose to go to Bowdoin?

DC: I chose to go to Bowdoin, actually over Bates because that basically was my, I only applied to three schools: Bowdoin, Bates, and B.U. I chose to go to Bowdoin because if I had gone to Bates my parents would have required me to continue to live at home. Again, they were very conscious about the expense of college, although by comparison with today's costs it wasn't expensive, but it seemed to be at the time. And I certainly understood that unless I could live on campus, I wasn't going to have a real college experience. I was fortunate to have a cousin at Bowdoin at the time who really became my advocate and persuaded my parents to let me go there.

NC: Did you continue that interest in government when you were at Bowdoin?

DC: Yes, I majored in government.

NC: At Bowdoin are there any professors that were particularly influential in your starting a career in politics?

DC: Well, there were wonderful professors in the government department. Atherton Daggert, who is unfortunately no longer with us, was just a superb teacher. Among the number of courses that I took from him was a Constitutional law course, which was the finest law course I've ever had, including in law school. He just was wonderful. There was also a professor there by the name of David Walker who left during the time that I was a student at Bowdoin. He was a very dynamic government professor. And there were a number of others in that department and in the history department.

NC: You don't know what David Walker did after he was a professor, do you?

DC: His name has come before?

NC: It sounds familiar as someone involved in Campobello Island.

DC: At what period?

NC: It would have been seventies or eighties.

DC: I don't think so. He went, this David Walker went to Washington to do some research and wound up, it was supposed to be really just a sabbatical, he wound up staying there. I can't remember the name of the organization.

NC: Socially, what did you, what's your impressions of Bowdoin?

DC: Then or now?

NC: Then.

DC: Well of course, you know, I had no other frame of reference. At the time ninety-eight percent of the student body joined and belonged to fraternities, and you pledged a fraternity within a few days of your arrival there. And so I did that, and I liked it. Bowdoin wore on me in a negative way as time passed, something that I attribute to the fact that it was an all male college at the time. But I'm a trustee at Bowdoin today, I'm very (*unintelligible word*) in Bowdoin, I love the school. And I think that it's having become a coed college has been a very important step forward for it. But as a student, I loved it, I thought the teaching, the quality of the teaching was wonderful, I enjoyed the camaraderie of fraternity life. I didn't think, as I say, as time passed that it was a particularly healthy environment, that it was in such a relatively isolated place as a single sex school.

NC: So you, as a trustee you viewed the abolishment of the fraternities in a positive way?

DC: Yes. I was a part of that decision.

NC: You're acquainted with Judith Isaacson?

DC: I certainly am.

NC: How did you first meet her?

DC: I can't remember, but I was just a kid when I first met her. And she is, you undoubtedly know, is a Holocaust survivor. When I was a kid growing up, there were a number of Holocaust survivors in Lewiston and Auburn. I didn't understand much about what the Holocaust was about. My parents didn't talk a lot about it, and the survivors themselves talked not at all about it. I think that they were still going through that extended period of time when they were not able to talk about it.

And so it was a sort of thing where you would sort of, or somebody would point to a Judith Isaacson and say, "You know, she's a survivor," and you, I'd be awestruck at some level by that although, again, at that stage of my life I don't, I certainly didn't appreciate the full import of what those people had been through. And of course I'm very familiar with what Judy has done in her life, including going back to school, getting a master's degree in math, becoming dean of students. Is that the position she held at Bates?

NC: She started as dean of women, and then she pretty much personally said that that wasn't acceptable and really changed the way the administrators that handled women were treated. She pretty much said, "Either I'm dean of students or I'm not."

DC: Right. And I see the Isaacsons, my wife and I see them every once in a while. They're both just such impressive people, but Judy, Judy is, they're both just wonderful people. Judy is a real lady, and if you haven't read her book, Seed of Sarah, I would highly recommend that you do that.

NC: I hope I get a chance to do a follow up interview with her, I've only read one of her (*unintelligible word*) transcripts. So out of Bowdoin, did you go directly to law school?

DC: Yes.

NC: Where did you go?

DC: Boston College.

NC: Why did you choose B.C.?

DC: I made the decision that I really didn't want to be in a strange city, such as Philadelphia, University of Pennsylvania, but, and would prefer to just be in Boston. That's the only law school that I applied to in, well I probably applied to B.U., I can't remember, but anyway that's, it was as much a choice connected with geography as anything.

NC: Entering B.C., did you know what type of law you were going to be studying?

DC: No, I didn't have a clue. In fact, I wasn't even sure that I wanted ever to practice law, but that I at the same time was quite sure that I wanted to go to law school. I had the sense that it was an experience that would stand me in good stead no matter what I chose to do. But frankly, fairly early on in the process I came to feel that this definitely was for me. As far as a field of practice, I really, even as of the time I got out of law school, I didn't have any sense of what I wanted because I needed exposure to various things before I could know that. The issue really became for me where to practice. Whether to go home to Lewiston, or back to Maine, somewhere else in Maine, or to stay in Boston.

NC: And how did you choose?

DC: I hadn't really made a decision. I did apply for a clerkship with Judge Coffin, Frank Coffin, whose chambers are right above where we're sitting now. And that was a clerkship opportunity that I couldn't turn down the thing, that has always been a coveted clerkship. So I was back in Maine for that next year. I lived with my parents in Lewiston that year because I wasn't sure what was going to follow, and commuted to Portland every day. But I really, I liked Portland and wound up joining a small Portland law firm.

NC: What was (*unintelligible word*)?

(*Interruption - break in taping.*)

DC: What was the question?

NC: We were talking about getting out of law school and the clerkship with Frank Coffin.

DC: Right, and the decision to join a small law, you asked the name of it. Berman, Berman, Wernick and Flaherty was the name of it, a small firm.

NC: And what year did you graduate from B.C.?

DC: Sixty-seven.

NC: Sixty-seven. Okay um, did you intern for Muskie in 1963?

DC: I did, it was a summer internship in his office in Washington.

NC: How did you get in touch with that job, how did you first acquire it?

DC: My recollection is that the government department at Bowdoin had developed relationships with people in the offices of members of Maine's congressional delegation, and some others as well. For example, at that point Frank Coffin was deputy administrator of the Agency for International Development, the agency that dispersed the foreign aid money. And so that office made a clerkship available apparently to somebody from Bowdoin, as did Senator Muskie's office and some other of these offices. So I think it was essentially all done through the government department at Bowdoin. I could be mistaken about that in terms of the detail, but that's my recollection.

NC: And this job was for the whole summer?

DC: Right.

NC: What were your responsibilities as an intern?

DC: Well, they were, I didn't have many or heavy responsibilities. The, Senator Muskie's administrative assistant at that time was Don Nicoll. Don Nicoll was himself a wonderful teacher, always available to me whenever I had a question about process or what was going on in the Senate, and he appreciated the value of letting me use my time there as much as was possible the way I saw fit.

So I would attend Senate hearings of various sorts, and sometimes sessions of the Senate itself. When I was not doing those kinds of things, I would do some research in the office. I would also handle constituent mail, along with a number of other staffers who were doing that sort of thing. Then I had some menial assignments like taking the senator's shirts to the laundry, and his car to be serviced.

NC: So did you have personal contact with Senator Muskie?

DC: Very little. We had a, we meaning all of the folks from Maine colleges who were in

Washington doing internships in various places were invited to have a session with the senator one afternoon fairly late in the summer. And I remember that, I remember that event. We got, we had, that was the last of a round of visits that we had had with everybody in the congressional delegation and Frank Coffin. But I don't recall that I really saw a whole lot of the senator otherwise.

NC: But as of 1963 where did you stand politically?

DC: Oh, I was a Democrat, I mean I just seemed to be listening to my father talk about Roosevelt and the New Deal and how much he liked Adlai Stevenson and all of that. That's what I grew up with.

NC: Was this internship an eye opening experience in terms of process or did you-?

DC: Oh absolutely, it was a wonderful experience for any young person who's interested in government to see firsthand how an institution like the Senate operates. We also got to of course watch things on the other side as well, the House side. I do remember a story, because I had so relatively little, very little contact with the senator, it wasn't easy to explain that to my parents. My parents, in their own minds, and don't ask me on what basis, I'm sure came to believe early on that I must have been Muskie's right hand man. And so they, it was hard to explain to them that he was a very busy man and I really didn't see much of him.

But after this was all over and I was back in Maine, I drove my parents to the Auburn-Lewiston airport. I don't know if it still exists or if it still has that name, very small airport where everything was out in the open. There was one open room and you could hear all of the radio contact on the plane, from any plane to the base station or whatever. And I drove them to the airport because my parents were flying to New York, and these were all DC-3s, these were the small planes that had a, you know, that severe angle to them. And the plane was late and people were wondering why it's late. And all of a sudden you could hear on the radio that, the pilot explaining that they were running late because they had to wait for Senator Muskie and Ambassador Stevenson who were at Colby because Ambassador Stevenson was getting an honorary degree. And they were a little late getting to the airport in Waterville and so it held up the plane, but they felt it was important to wait for them. So they were urging the people there at the airport to, because they were already late, to get people on and off as quickly as possible when the plane landed.

So my parents looked at me and they said, "Senator Muskie's on the plane, and Ambassador Stevenson, he's obviously going to want to see you." And I said, "No, believe me, they, you heard them say the plane's late, they want people on and off." "You've got to come on the plane; Senator Muskie would want to see you." I don't know what possessed, I resisted for several minutes and I don't know what finally possessed me to agree to at least ask if I could go in the plane. They said, "Sure," so I went on the plane and my parents take a seat diagonally across the aisle and they're looking as I approach Senator Muskie who is huddled with Ambassador Stevenson. And I don't know if it's because they really didn't want anybody to bother them, or they were just so engrossed in some conversation, but they were effectively ear to ear.

And so I approached and I'm saying to myself, "This is going to be so humiliating because he will have no clue who I am, there's no reason for him to have a clue who I am." So I tapped him on the sleeve or something and I said, "Senator Muskie," and he looks at me and he says, "Dave, it's so good to see you." I couldn't believe it. And then he said, "Do you know Ambassador Stevenson?" And he introduces me, full name, that I was an intern in his office and, so this all lasted literally a minute or two and I said goodbye and I left the plane. But I never would have expected that he would have recognized me, or have remembered my name, but it worked out perfectly and obviously, you know, my parents I'm sure ever after were convinced that I had been much too modest about what I was doing there that summer.

NC: The illusion lived on.

DC: Right.

NC: That's great. What was your impression of working with Don Nicoll on a personal level?

DC: Well as I mentioned, Don is a, was and still is, you know Don, you can see from his demeanor, you can tell a lot about his, about him, about his personality. He's very patient, he's full of information, he's very willing to spend time with you to share that information, to steer you in the right direction. I, Senator Muskie was very actively involved in an effort to revitalize the Passamaquoddy Tidal Power Project. This is something that was essentially a new deal hydro project that never was done as part of the New Deal. But there was an effort in later years, during Muskie's time included, to still do a part of that on a reduced scale. It never did happen, but that was one of the efforts that was being made in the senator's office at that time, that is during that period that I was there.

And of course, that meant that Don Nicoll was totally on top of that effort and knew everything there was to know, and he would spend what seemed to me hours going over things related to that project, maps and technical information. I wound up doing my senior honor's thesis on that project and I, Don was just wonderful in the amount of time and help that he gave me in getting my arms around that.

He was a, from all that I could tell, a terrific manager. I think the office ran very smoothly, it did a very good job on constituent services, responding to Maine people who called or wrote with this or that kind of a problem. The people in the office for the most part were, well they were Maine people almost without exception. George Mitchell was an aide in that office at the time, and also just incredibly bright and quick and knowledgeable. And I always enjoyed the time that I got to spend with him, although I spent much more with Don than I did with George. So it was a well-run office. I knew at least one or two people in that office before I went there, one was Joanne Amnott [Hoffmann] who was Senator Muskie's personal secretary. She was the daughter of the police chief when I was growing up and his son and I were contemporaries. And Buzzy Fitzgerald's sister Gayle was also working in that office at the time.

NC: Can you tell me a little bit about the political atmosphere in 1963 in terms of what issues might have been coming in and out of Muskie's office?

DC: I don't think I can remember any specifics. Kennedy was in office and people, young people like me were of course very high on government at that point. A young, vibrant president with new ideas and all. The internship program was structured in a way so that regardless of who you interned for, whether Senate, House, agency of some sort, Republican, Democrat, none of that mattered. There was an organized effort to create a program for the interns and so at least once a week, and sometimes more often, there were things scheduled for us as a whole group. And I'm not talking just about Maine kids, I'm talking about from everywhere, kids from everywhere, college kids from everywhere.

And, for example I remember that one of the, we had a session with Jimmy Hoffa at the Teamster's headquarters which is very close to Capitol Hill, it's really just at the base of Capitol Hill. And I just remember being just fascinated by his energy, and I was very aware that at the time Bobby Kennedy was on his case investigating, looking at the Teamsters very closely and that he was, you know, repudiated to be an unsavory character. But he just had tremendous energy. That was an example of the kinds of interesting things that they would put together for us.

NC: Did you get a feeling that staff in Muskie's office was, at all levels, was very aware of the issues outside of just office dealings?

DC: Again, I have to be careful here because I, I'm not sure that I can be sure that I can distinguish between real fact at this point and what I would just assume to be the case as a matter of simple logic. They were all good people, qualified people, and I think I'm accurate in saying that, my recollection is that they were on top of the issues, the issues that he was concerned with. You know, he was working, he was at that point working on air and water, in the early stages of that.

NC: So you remember that the Clean Air Act, the '63 environment act was something that was apparent in -

DC: Well, I remember it all being worked on at the time. And, you know, having grown up in Lewiston this is something that you hopefully don't even have a clue about yourself, for example, given your age. I mean, it stunk to the high heavens in Lewiston in the summer time. And I remember my parents air conditioning their store not so much because the heat was unbearable, but because the smell was unbearable. And to the extent that that could close the door and keep that smell out, they obviously, that was the incentive for air conditioning the place. There was just a putrid smell from that, from the Androscoggin, and to look at it was absolutely disgusting. Just brown and -

NC: You mean the smell from the river.

DC: Yes.

NC: I thought you meant air from the mills.

DC: No, no, smell from the river.

NC: Oh, wow.

DC: And just a disgusting color, obviously just full of chemicals and garbage, and at the falls there was just this dirty foam all the time. And yet today, I haven't been to Lewiston in a long time now, but elsewhere where I cross the Androscoggin, it just looks absolutely beautiful.

NC: It is, it is beautiful. So skipping ahead now to '67, you graduate from B.C., right?

DC: Right.

NC: And where do you go then?

DC: Well I spent the next year clerking for Judge Coffin.

NC: That's right.

DC: Which was a real highlight.

NC: Can you tell me a little bit about what duties and responsibilities you had for Judge Coffin?

DC: The First Circuit Court of Appeals on which he sits, and which is now a, has six active judges and a number of senior judges, all of whom hear cases. By contrast with today's court the First Circuit of Appeals at that time was a three judge court. You may know that the United States Circuit Courts of Appeals sit in panels of three, and so you need at least three judges on every appellate case. Those three judges sat together all of the time. Occasionally they would have a visitor, if one of them was not available or whatever the circumstances might be. The number of cases that the court considered the year that I was there was just a fraction of the number of cases it deals with annually now.

So compared to the pace today, of course those judges today have four law clerks; I was the only law clerk the year that I clerked. We did pick up a second law clerk at some point during my clerkship year because the judge for whom that person was clerking in New Hampshire, a federal district court judge died, and in order that he not be out in the cold at that point, arrangements were made for him to join Judge Coffin's staff for the remainder of that year. But in terms of authorized law clerkships, the judges in those days only had one. So it was just the two of us, and [Mignonne] Midge Bouvier, his secretary, and it was just a real treat. I would do research, I would do some drafting, I would of course review what the judge himself had drafted and we would talk about these cases. We would talk about them before oral argument. In preparation for oral argument I would usually prepare memos for him first, and then we would talk about them, and then we would go to Boston and he would sit for oral argument. And then whatever cases were assigned to him to write the opinions on, we would come back and handle in the way I just indicated.

I feel that I learned to write for the first time that year. It was just a tremendous benefit for me, and it sharpened my mind, the experience of clerking for him sharpened my mind. I loved the kinds of issues that we dealt with that year. There were labor issues, contract issues, issues of all sorts, the kinds of things that go on in the federal system. Not to convey the impression that there wasn't enough to do, because there certainly was, but there was the luxury of being able to do it at a leisurely enough pace so that you could really invest time to come up with a quality project. I think he's always produced a quality project, but today the time line is so different that they have to turn those cases out so much faster in terms of the amount of time that you spend on each one.

NC: That would explain why four law clerks now as opposed to just only one then?

DC: Right, that's the argument. I've never been able to figure out what a judge does with four law clerks, but that's another issue. He and his family were warm and welcoming, they had me over a number of times during that clerkship year. I would not only go over to their home for dinner, but do things with them such as skiing or hiking. And they had done that with all of his law clerks, a very large family of law clerks at this point, all of whom absolutely adored them. And I think we all feel that one of the biggest benefits of having clerked with him, aside of course from the professional aspect, is the treat of becoming a member of the extended Coffin family, they're really just a wonderful, wonderful family. And I feel privileged that we've been good friends ever since, and that he's a close neighbor right here.

NC: So you get to them probably on a semi-daily basis, or?

DC: No, not on a semi-daily basis, but I do see him and I talk with him on the phone and then I actually see him in different contexts from time to time. I consider him and his wife to be very dear friends, and I certainly would describe him as my mentor.

NC: Did you get a chance to see how Frank Coffin worked with Ed Muskie at that point in time?

DC: No. But I have a sense of it, but the sense that I have of it frankly comes principally from Don Nicoll, so he would be much more of a firsthand authority than I would be about that. We did a, our court, at a conference that we put on for the Federal Practice Bar last October, did a tribute to Judge Coffin, a video tribute. And I took lead responsibility for putting that together so I refreshed myself as to a lot of that historical detail, and Don was very much a part of that.

NC: Midge Bouvier actually mentions how much she enjoyed that.

DC: And Midge, yes, and so there's a video tape on that which Don has.

NC: At what point during your early career that you've been talking about did you begin to get a feeling for how the Democratic Party had grown on state and local level in Maine, and in Portland, and Lewiston?

DC: Well, by the time Senator Muskie and Frank Coffin, by the time their efforts were bearing

fruit and Muskie had been elected governor and Coffin had become chair of the Democratic state committee and then went on himself to Congress, that was, you know, 1956. Muskie became governor in '54, Coffin was elected to Congress in '56 and '58. So I was only twelve years old in 1954 so I wasn't very aware of what was going on. By the time I was really old enough, high school let's say, to have a focused interest in those kinds of things, the Democratic Party really was on the descending scene in Maine.

NC: And Muskie was probably a senator.

DC: Muskie went to the Senate in '58. Right so, yeah, the Democrats were doing very well by then.

NC: Now how did you become a judge?

DC: Well, the position that I hold is an appointed position, it's not a presidential appointment. A magistrate judge is appointed by the district judges of the court, so there is a merit selection committee that -

End of Side A
Side B

NC: We are on side B of the interview with Judge David Cohen. You were talking about how you got appointed to judge magistrate.

DC: Right, so, a merit selection committee screened applicants and I think presented five names to the district judges. I applied for the position and then obviously was appointed, that was in October '88.

NC: So what did you do during the seventies and eighties?

DC: I practiced for twenty years in Portland, initially with that small firm of Berman & Berman, Wernick and Flaherty. A year after I joined the firm, there were only five people in the firm when I joined it, a year after I joined the firm Ed Berman, one of the original partners passed away and Sidney Wernick, one of the original partners, was appointed to the state bench. Within a year or two after that we merged with another law firm in Portland and became Preti & Flaherty. Today that firm is called something like Preti, Flaherty, Beliveau, Pachios & Haley I think it is. In 1980, four other lawyers in that firm and I left that firm and started our own firm and the name of that firm was Petrocelli, Cohen, Erhler and Cox, and I practiced with that firm until I was appointed to this position in 1988.

NC: You mentioned it was a merit committee that appointed you?

DC: Merit selection committee.

NC: How many judges was that made up by? *(unintelligible phrase)*

DC: No, the merit selection committee is, they were, they report or pass on the names of five finalists to the district judges who make the appointment. The committee itself is composed of lawyers and non-lawyers. The judges decide who sits on that committee and I think they basically just look for well-regarded lawyers and non-lawyers who do other, represent a good cross section of the community at large.

NC: So once your name got passed on to the judges to be reviewed -

DC: I was one of five finalists. The judges interviewed all of the finalists. All of the applicants were interviewed by the committee, and the five finalists were interviewed by the judges, and I was chosen.

NC: Do you remember which judges there were at that interview?

DC: Yes, Judge Carter, Judge Cyr, actually that was it at the time.

NC: Two judges.

DC: Right.

NC: What are your responsibilities as a U.S. magistrate judge?

DC: I do, my authority is much more limited than that of a district judge, an Article III judge. I can and do handle all pre-trial issues that come up both in the civil side and the criminal side. And so that may mean discovery disputes, various pre-trial motions of all sorts. But I, and would decide those issues and my decision can be reviewed, but on a deferential standard of review. There are certain things that I do only in the form of a recommendation. For example, on disposit of motion such as summary judgment motions, motions which, the disposition of which might end the case. I can't decide those, I can only do a recommended decision and so I do that and then the parties can object or not to that decision, but ultimately the district judge decides whether or not to adopt it as the decision of the court. I try cases, that is preside at trials with or without a jury, only if the parties consent, which happens regularly enough so that I've always got some number of those in the pipeline.

On the criminal side, I'm usually the first judicial officer that a defendant sees. Actually even before that stage where somebody's actually charged with something I'm usually the judicial officer to whom search warrant applications are brought, arrest warrant applications, and criminal complaints. That's one of the ways, but not the only way, to charge somebody with a crime. And in order for a person to be charged that way, a judicial officer, an independent judicial officer has to determine that, has to determine whether there is probable cause within the four corners of that complaint and any supporting affidavits to determine whether there is probable cause to believe that the person has committed the crime or crimes that he's being accused of in that document.

Then if a person is in fact charged and arrested, they're usually brought before me for what's called an initial appearance where I tell them what they've been charged with, explain their

rights to them, make sure they have counsel, deal with the issue of detention or release, in other words do they get released on some set of bail conditions or are they held pending the outcome of their trials. And there are any number of other things that can come up on the criminal side pre-trial such as dealing with issues of mental competency, whether there needs to be a mental competency evaluation, holding a hearing after psychological evaluations have been done, and deciding the issue, and things of that sort.

So there are, what I love about this job is its variety, the variety is, it seems like it's endless. And I have the advantage of dealing with lawyers on a regular basis, much of which I do over the phone by holding telephone hearings, conferences, much of which I do in the courtroom, conferences in chambers. But I also always have motions that require full blown written decisions to work on, and so in that respect it's sort of like what the court of appeals does, that is the more cerebral kind of, and quieter, more isolated kind of work. I like that. I wouldn't like to be doing that exclusively because I like the whole mix that I've described to you.

NC: So you deal with law theory on a regularly basis.

DC: Right. It's rare, though, that an issue comes up that is so abstract or novel that it hasn't been addressed, even if not squarely, that is on all fours, with, in some other case or cases. But still, much of the time what's presented to us, the context in which the issue is raised is a little bit different from the way it's come up in these other decided cases, and so we have to analyze those and determine whether there's a fit or not, or whether there's some distinguishing feature about this case that makes those cases not applicable. It's a rewarding intellectual exercise.

NC: Sounds like you enjoy it.

DC: I love it.

NC: Do you recall any specific cases that really stand out over your career? I've got a few written down that were of particular interest, the Maine Green Party vs. Secretary of State.

DC: Yeah.

NC: Can you tell just a little bit about what that case was?

DC: I'm reluctant to, I don't really want to say much if anything about cases that I've worked on because all that I should have said I've said in any written decisions that I've rendered. I can appreciate that we would mention that case, for example, you're interested as a, in it as a political science student, or at least the interest of anybody who might be parsing through the Muskie Archives might be interested in it from that point of view. But of course, from a judicial point of view, that's not the focus of the case.

NC: Let me ask a more abstract question, simply put, if someone was looking in on you and the way you go about your responsibilities as a U.S. magistrate judge, how do you think you'd be viewed?

DC: Oh, that's a terrible question. I can tell you how I would like to think I'd be viewed, but of course -

NC: Politically speaking, more than anything else.

DC: Politically speaking? I don't want to be viewed as being at all political because I'm not. You leave that at the door when you take a position like this. I hope that I'm regarded as somebody who listens, who understands the issues, who studies the papers and does the research required to fully understand the issue, and as somebody who has fairly heard all parties and has always attempted to achieve a result which is faithful to the law. And one of the interesting things about being in a position like this is, people don't usually come up to you and tell you they think you're doing a lousy job, so it's isolated in that sense, the position is.

NC: Can you explain?

DC: Yes, I mean lawyers, you can't expect a lawyer to say to you, "You know, I think you're doing a lousy job," or, "I think that you've given us short shrift on this." Lawyers are very deferential to judges, they've got appear before that same judge on another case and I guess they just don't want to go out on a limb.

Now, in this position I serve for an eight year term, so I've already been reappointed once. And in order to be reappointed I needed to indicate an interest in being reappointed. And then I needed to be evaluated by another committee that was formed specifically for the purpose of looking at the way I have done my job in the first, in my first term and then making a recommendation to the district judges as to whether I'd be reappointed or not.

So that really, that was the only structured vehicle in place that permitted people anonymously to indicate how they feel I do my job, knowing that their identities won't be disclosed to me. But I'm just making a general observation that judges don't usually hear harsh criticism. So you have to, it has to, I think about this every so often, I, you know, "Am I doing a good job, am I being considerate and respectful of others, all who I come in contact with?" And then certainly I'm mindful of that and try to do that.

NC: I understand, you were talking about that you hope no matter what you're viewed as being true to the laws above all. And I guess politically speaking was the wrong word I was looking for. It's hard to say, the philosophical leanings of a judge completely separate from politics, but -

DC: Look, you know, of course you bring to the table your life experience, and that's certainly part of what forms you. But one must be aware in a position like this that one's own personal biases, prejudices, leanings can't be indulged. And when I say faithful to the law, I mean also of course, you know, producing a just result.

You often hear on the national level the suggestion that the appointment process is very political, federal judges. And it is, it's a political process by the simple fact that senators usually recommend to the president who they would like him to appoint, and then the Senate confirms

and of course that's what gives the Senate the power even of suggesting who these appointments should be. It's a political process by its very nature. But you usually hear about it the suggestion that it's so ideological, that it is critically important who's appointed and who's not appointed.

And I'm sure that there are real ideologues out there on whichever side of the spectrum, but I must say that the judges of this court, for example, well two of them, I don't even know what the former politics, well this is a Democrat because he was a, Judge Single I guess is a Democrat because he was appointed by President Clinton. But Judges Carter and Hornby are, were appointed by Republican presidents and they were Republicans before they came on the bench. I have never seen a hint of an indication that any of those people has ever been motivated by political consideration or some ideology in the way they decided an issue. It's never even been suggested in any discussion I've ever had with them.

So to a large degree I think that all of that is really a myth, that is the suggestion that judges are very ideological and you've got to make sure you only get the right ones on the bench and keep the wrong ones off. But I'm also saying that I think that for the most part people who serve in these positions do successfully leave whatever political background or baggage they come to the position with at the door, when they put the robe on.

NC: Now, you're an advisory board member of Excel?

DC: Right.

NC: Can you tell me a little bit about that foundation?

DC: Right, that's a non-profit that's housed in the law school and its purpose is to help educate young people, pre college people to issues that involve the law. The principle effort of the organization has been a moot court program statewide in high schools and all, but it also has done some other things and apparently, as I understand it, is highly regarded for these programs. We meet twice a year.

NC: Now, you're also the branch director of the Department of Justice's commercial litigation branch? No?

DC: No.

NC: Civil division?

DC: No. What did you call it again? Branch director?

NC: Yeah, you're, I have written, a director of the Department of Justice's commercial litigation branch?

DC: That must be a different David Cohen.

NC: Okay, so how involved are you now on the development of Bowdoin College?

DC: Hmm, well I'm a trustee as I mentioned. We meet three times a year. But most of what we do that has real meaning is done, is the committee work we do and that is work which goes on all year long. My two committee assignments right now are Student Affairs and Development. And I just, Bowdoin's been through an incredible ten years under the leadership of Bob Edwards, the president who's just now retiring. Has a very bright future.

NC: Well, I have just a few general questions about Ed Muskie and his administration over the years. Did you get a feeling for what happened in '68, and more importantly what happened in '72 in the progress he made or didn't make nationally?

DC: Well, I mean I don't know what to make of it. I'm obviously aware that, that the conventional wisdom is that he sunk himself when he showed an emotional side, a sensitive side in New Hampshire in responding to criticism directed at his wife, or some unkind things said about his wife. I happen to be one of those people who frankly thinks that sort of thing is a virtue rather than a negative, and yet I generally have never thought of Senator Muskie as being an emotional person. I don't think that is a fair characterization of him, I think he's, he was always a very strong person who had tremendous character and fortitude and resolve and focus, and certainly a powerful intellect. Somebody who obviously got as far as he got because he just won the respect of his colleagues on both sides of the aisle for being so bright and accomplished and effective. I think he would have been a wonderful president of the United States, but it's, you know, didn't work out that way.

NC: How about Frank Coffin, how have you seen his career evolve since your initial involvement with his -?

DC: Well, of course there was the disappointment years ago in 1960 when his political career, that is his elective office political career ended when he was defeated in his run for governor. And we all know the reason why he lost, he didn't lose by a whole lot but apparently the anti-Catholic vote was significant enough to do him in. And so that might have been regarded as a very, as sort of a real tragedy for him and for everyone. And yet this man has gone on to serve at the highest levels of government in all three branches, had come from the legislative branch at that point and then went on to the executive branch where he served not only as deputy administrator of the foreign aid program, but after that as United States representative to the Overseas Development Council which was where he was headquartered in Paris, and then to the Court of Appeals where he has served with real distinction and is a highly regarded national-nationally recognized figure on the federal judiciary. He is, he's just been a wonderful judge, he just has a superior intellect. He's, there isn't a pretentious bone in his body. Have you met him?

NC: No, I haven't.

DC: Not that there's ever an excuse for anybody, no matter what high office they achieve, to develop that kind of demeanor, but this is a man who has really been at the top in all of the things he's done and he just is the nicest person you ever want to meet. He's, and he is, you hear the expression 'Renaissance man' which is sometimes overused. He is truly a Renaissance man.

He's an author, he wrote a book when he left the Agency for International Development called Witness to Aid which was a well-regarded review of the foreign aid program at that the time. He has written two books while he's been on the Court of Appeals, in addition of course to the thousands of judicial opinions that he's authored. And the two books are, the second of those two is really just a, is an update of the first on, it's a primer on appellate practice, which is so highly regarded and so well read that the United States Supreme Court justices quote it. When Justice Ginsberg was here in Portland delivering the Coffin lecture a few years ago, she talked about how everybody first turns to Coffin's book on appellate practice.

He's a painter, a sculptor, and his, I'm not talking about amateur stuff, you should see what he does. His painting is wonderful, his sculpting is more than wonderful, it's incredible. He writes beautifully, he's a mentor, has been a mentor to lots of people including me. I've always thought that I've been very close to him and have known him well, and yet when I was doing this project that I mentioned I learned that he's even mentored University of Southern Maine students in various ways, and one of them who went on to law school participated in this tribute being videoed, and just had absolute delightful things to reveal about how he just has been there for her in circumstances where she was ready to just give up the whole thing, law school and becoming a lawyer and all that. He's remarkable. And, he has headed until very recently this effort to address the need for more resources to represent the needs of the poor, for legal services, with respect to legal services. And he's, and this really addresses really a state problem as opposed to a federal court problem. You won't find many of any other federal judges in the country who have spent the kind of time that he has on that kind of an effort. He's not taken with the fact that he's a federal judge. He just sees that there's a need out there and he has in a very measured way addressed that need with small building blocks, and there's now a whole structure in place which others are carrying on, and of which my wife is a part, where, you know, very positive things are being done. But all because of his efforts and the, lending his name, and this is not what he's done because he hasn't just lent his name, he has been in there, you know, toiling. But knowing that Judge Coffin is involved in something encourages lots of other good people to get involved in that effort as well, and I think that's what happened here. He's just an extraordinary human being.

NC: Over all, how have you seen the Maine judicial system change since you got involved in, say, '88?

DC: The state system?

NC: The state system.

DC: Well I'll tell you, when I was, in the early years of my practice there were always a number of very good judges on the Maine bench. I don't want to suggest, or be understood to suggest that that's not the case. But it was a different time, the caseload was very different than what it is today, it was not uncommon for court to start late, maybe nine or ten in the morning, be done by three or four in the afternoon. Judges, state judges today, carry such an incredible case load, whether it's the district court or the superior court, or the law court in terms of the number of appeals it's called upon to hear. This is, those are all very, very, very demanding jobs. And I am very impressed at the quality of the state bench. I'm not quite clear on how it is that they've

been able to gather such a talented and dedicated group of people to do that work with such limited resources as they have on the state side. We're very privileged from the federal side to have much more in the way of resources than they do. But they, they do just a tremendous job and a quality job.

NC: What about the Maine political system, have you seen that change since you were in government at Bowdoin?

DC: Yeah, what do you mean?

NC: Well, I mean even just, I mean you said that by the time you were involved in any way with, seeing politics and how they move in Maine, the Democratic Party was already -

DC: Well okay, as you know, before the Democratic Party's rebirth it was essentially gasping for air, it had been so long since any Democrat had held a significant position. And obviously the conventional wisdom is that that led to real complacency on the part of the Republican Party, and obviously once the Muskies and the Coffins of the Democratic Party emerged and won political office and performed as well as they did, and all the Democrats become really the predominant party in the state, and remained so for a number of years. Then obviously we've seen, following Joe Brennan, we've seen Jock McKernan serve as governor, and then we've had some independents, which seems to be an interesting trend in Maine, Maine people seem to like the idea of an independent in the governor's chair. I haven't seen that evidence in terms of anything else, but at least in that position there seems to be interest in that.

NC: Can you, do you have any personal explanation for why that might be?

DC: No, not really.

NC: So, you've been working in this office now for thirteen years?

DC: Right, for thirteen years in October.

NC: So you've had a chance to see Portland grow. There's been some considerable changes here in the last ten years?

DC: Let me go back one step if I may. When you asked if I can explain this business about, you know, an interest in independents for governor. It looks like it may be something of a trend, but that may not be accurate, an accurate characterization. Longley certainly surprised everybody when he won as an independent. Angus King I think it can fairly be said ran as an independent out of a concern that he couldn't get the Democratic Party nomination because he had not been a traditional party Democrat. I think what you're likely to see now is probably more people, and people of talent and ability running for governor as independents who also have that same concern, that they can't get the nomination of either the traditional parties. And they may be more willing to run as independents because of the fact that Mainers have elected independents twice now, two different people. And so it may be a developing trend.

Changes in Portland in the last ten years? Actually, there certainly have been changes in the last ten years, but there have been remarkable changes longer ago than that in terms of my time in Portland. When I came here and joined that small firm, which was located at 85 Exchange Street which is above where (*unintelligible phrase*) is now, the Old Port area was in real disrepair. A lot of those buildings in the lower Exchange Street area were really boarded up and I think waiting for a wrecking ball. I think as part of an urban renewal sort of project, a lot of those buildings were targeted for destruction.

NC: The Model Cities program.

DC: Model Cities. Fortunately, well unfortunate in one respect as you know, the train station in Portland which was really a beautiful piece of architecture was lost in, as part again of this same sort of, quote, unquote, improvement, and replaced by a strip mall which by comparison just architecturally offered nothing. I think that experience, that loss, galvanized a lot of people to take an interest in what was happening in Portland and to see real value in preserving this neighborhood here that we're really a part of in terms of where the courthouse is.

When I, you know how lovely all of Exchange Street is now. When I, the first year that I was practicing at 85 Exchange Street, that block, that upper block was certainly presentable by day, it wasn't pretty but it was presentable by day. But I would go to work at, go back to work at night a lot, I was new, I was single, I was, you know, had lots of energy and I was trying to learn a lot. There were a number of bottle clubs all up and down those blocks and it would be so noisy and raucous at night and, I mean, you kind of, it was almost scary actually to go back there.

NC: What do you mean, bottle clubs?

DC: These private clubs that couldn't get liquor licenses, but its members could bring their own liquor or beer.

NC: Like social clubs.

DC: Social clubs, they called them bottle clubs. And in fact there were a couple of mornings when I came to work that my window was broken and there was, you know, broken glass and beer bottles and whatnot strewn around my office. I mean, that's a contrast with how nice it all is today. There was, for the longest time there seemed to be basically just one restaurant, Vallee's. You couldn't go to a restaurant at nine o'clock at night and get served because they either were closed or were about to close at that point. And, of course, you see what goes on in Portland today with just wonderful restaurants.

NC: So it's a drastic change.

DC: Drastic change, yeah, drastic change. I mean, this town was dead by nine o'clock at night. And years later, you know, after I was married and I just see all that goes on at night, you know, I amusingly think back about how it would have been nicer if some of that activity, whether it was theater or, you know, other things of interest to do, there just weren't available at the time.

NC: And you would probably credit, well, where would you credit the improvement in time to?

DC: Again, I think that, I think people were galvanized by the loss of Union Station. But I think that, you know, also a small, this is a very small city of course and, where so many people know each other. And I think that, you know, the, I saw the library get built, I saw theater brought in, Portland Stage Company, a dance company, the art museum project. People in Portland by and large, my sense is, are much more generous and have contributed much more per capita than is typically the case in large cities which obviously do these things and do them to, in a much grander scale because they're big cities, they've got lots more very wealthy people there. But I think that the fact that Portland has been able to do all these things speaks to a really strong sense of community and a real interest and pride in Portland. And so it has these resources that you just wouldn't expect a small city of this size to have. I think in no small part due to the fact that it is, as it turns out, the state's largest city and so there's, you know, this is sort of the seat for, I mean, you know, Maine Medical Center is a teaching hospital so there's a wonderful cadre of medical professionals in Portland. I don't have to tell you how many lawyers there are in Portland. But professionals of all sorts, and then just a host of other people doing other different things in business who take an interest and pride in the city.

NC: From what little I've seen it seems to be a great place to live.

DC: Yeah, it's great.

NC: One of the first times I've actually been here.

DC: Really?

NC: Yeah. Well this has been great. I want to ask if you have anything else you'd want to say about Muskie, Coffin, yourself, you know, your career or your own perceptions of Maine politics.

DC: Only this, I have nothing about myself other than to say that I feel extremely privileged to have had any opportunity to observe Senator Muskie in those earlier years, and certainly the privilege of knowing Judge Coffin. But I've always thought it remarkable that this small state, stuck up in the most northeast corner of the country, has produced people of the quality of Ed Muskie, Frank Coffin, George Mitchell, all of whom have become national figures and all of whom are just so well regarded for their intellect and accomplishments and, Maine's a special place. And our people who are office holders today, it's, again it's remarkable how often in the national press they're referred to as moderates, consensus builders. It certainly speaks well for Maine people. Apparently we are people who for the most part are not ideologues, who have a concern and a regard for each other, and I just consider myself extremely lucky to have been brought here as a baby actually and to have been able to make my life here.

NC: Well that's great. The archives appreciates your interview greatly, and thank you very much.

DC: Thank you.

End of Interview
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