

California State Archives
State Government Oral History Program

Oral History Interview

with

FRANK C. NEWMAN

Professor of Law, University of California, Berkeley, 1946-present
Justice, California Supreme Court, 1977--1983

January 24, February 7, March 30, November 28, 1989;
April 16, May 7, June 10, June 18, June 24, July 11, 1991
Berkeley, California

By Carole Hicke
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None.

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PREFACE

On September 25, 1985, Governor George Deukmejian signed into law A.B. 2104 (Chapter 965 of the Statutes of 1985). This legislation established, under the administration of the California State Archives, a State Government Oral History Program "to provide through the use of oral history a continuing documentation of state policy development as reflected in California's legislative and executive history."

The following interview is one of a series of oral histories undertaken for inclusion in the state program. These interviews offer insights into the actual workings of both the legislative and executive processes and policy mechanisms. They also offer an increased understanding of the men and women who create legislation and implement state policy. Further, they provide an overview of issue development in California state government and of how both the legislative and executive branches of government deal with issues and problems facing the state.

Interviewees are chosen primarily on the basis of their contributions to and influence on the policy issues of the state of California. They include members of the legislative and executive branches of state government as well as legislative staff, advocates, members of the media, and other people who played significant roles in specific issue areas of major and continuing importance to California.

By authorizing the California State Archives to work cooperatively with oral history units at California colleges and universities to conduct interviews, this program is structured to take advantage of the resources and expertise in oral history available through California's several institutionally based programs.

Participating as cooperating institutions in the State Government Oral History Program are:

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California State University, Fullerton

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Center for California Studies
California State University, Sacramento

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Claremont Graduate School
Regional Oral History Office
The Bancroft Library
University of California, Berkeley

Oral History Program
University of California, Los Angeles

The establishment of the California State Archives State Government Oral History Program marks one of the most significant commitments made by any state toward the preservation and documentation of its governmental history. It supplements the often fragmentary historical written record by adding an organized primary source, enriching the historical information available on given topics and allowing for more thorough historical analysis. As such, the program, through the preservation and publication of interviews such as the one which follows, will be of lasting value to current and future generations of scholars, citizens, and leaders.

John F. Burns
State Archivist

July 27, 1988

This interview is printed on acid-free paper.

INTERVIEW HISTORY

Interviewer/Editor

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Interview Time and Place

January 24, 1989

Session of one hour

February 7, 1989

Session of one and a half hours

March 30, 1989

Session of one hour

November 28, 1989

Session of one hour

April 16, 1991

Session of one hour

May 7, 1991

Session of one and a half hours

June 10, 1991

Session of one and a half hours

June 18, 1991

Session of one and a half hours

June 24, 1991

Session of one and a half hours

July 11, 1991

Session of one hour

All sessions took place in Professor Newman's office in Berkeley, California

Editing

Hicke checked the verbatim manuscript of the interview against the original tape recordings; edited for punctuation, paragraphing, and spelling; verified proper names and prepared footnotes. Insertions by the editor are bracketed.

Professor Newman reviewed the transcript and approved it with minor corrections.

The editor prepared the introductory materials.

Papers

Professor Newman's publications and papers were made available to the interviewer.

Tapes and Interview Records

The original tape recordings of the interviews are in The Bancroft Library, University of California at Berkeley. Records relating to the interview are at the Regional Oral History Office. Master tapes are deposited in the California State Archives.

BIOGRAPHICAL SUMMARY

Frank C. Newman was born July 17, 1917 in Eureka, California. He attended South Pasadena, California public schools and continued his education at the following institutions: Dartmouth College (A.B., 1938); University of California, Berkeley (LL.B., 1941); Columbia University (LL.M., 1947; J.S.D., 1953); and the University of Santa Clara (LL.D., 1978).

Professor Newman worked for the Office of Price Administration from 1942 to 1943, before serving in the U.S. Navy from 1943 to 1946. He joined the faculty of the University of California, Berkeley, School of Law in 1946 and served as dean from 1961 to 1966.

Newman served on the California Constitutional Revision Commission from 1964 to 1972. Governor Edmund G. Brown, Jr. appointed him to the California Supreme Court in 1977 where he remained until his retirement in 1982.

Since 1967, Professor Newman has traveled worldwide working on human rights issues and related matters for the United Nations and Amnesty International. He continues this work as he does his teaching at Boalt Hall.

TABLE OF CONTENTS

INTERVIEW HISTORY i

BIOGRAPHICAL SUMMARY iii

SESSION 1, January 24, 1989

[Tape 1, Side A] 1

 Background--Education, music and jobs--Dartmouth College--
 Fellowship to study federal budget--Lobbying--Boalt Hall Law
 School: roommates and professors--Earl Warren.

[Tape 1, Side B] 18

 Law school courses--Graduate school at Columbia--With the OPA--
 Naval service--Retail price control for garments--Living in
 Washington, D.C.--More on the garment trade.

SESSION 2, February 7, 1989

[Tape 2, Side A] 36

 Brian Willson--Loyalty-security issues--Void for vagueness
 doctrine--American Veterans Committee--Loyalty-security issues at
 the University of California--Tolman v. Underhill--Academic
 freedom.

[Tape 2, Side B] 55

 More on loyalty issues--Tenney Committee--Civil liberties--Pat
 Brown.

[Tape 3, Side A] 71

Right to petition--Administrative rules and regulations--American Bar Association, Administrative Law Section.

SESSION 3, March 30, 1989

[Tape 4, Side A] 77

Oakland Veterans Memorial Building--British loyalty-security--Meikeljohn Civil Liberties Institute--Warren Commission on Unemployment Compensation--Salzburg Seminar on American Studies--Dean of Boalt Hall, 1961-1966.

[Tape 4, Side B] 90

Free Speech Movement--War protests--People's Park--Earl Warren Legal Center.

SESSION 4, November 28, 1989

[Tape 5, Side A] 102

Interlude on World War II--Meeting of Association of the American Law Schools, 1964--Peace and violence on campus 1964-1972--Flag issues--Faculty Recruitment Committee--1957 committee on new campuses.

[Tape 5, Side B] 116

Hiring good law professors with help from Ford Foundation--Expansion in international and comparative law.

SESSION 5, April 16, 1991

[Tape 6, Side A] 123

Constitutional Revision Commission, 1964--Legislative salary increase in the 1950s--League of Women Voters--Judiciary article.

[Tape 6, Side B] 140

Drafting committee for constitutional revision--Bill of Rights in California constitution.

SESSION 6, May 7, 1991

[Tape 7, Side A] 145

California Supreme Court, 1977-1983--Invitation and initiation--Staff members--challenges--Wednesday conference of the seven justices--Calendar memos--Privacy of memos--Liberal member?--Election, 1978.

[Tape 7, Side B] 161

Investigation of Committee on Judicial Performance, 1978-1979--Issue of confidentiality--Legality of the hearings (issue of)--Impact of hearings--TV coverage--Famous final memo on efficiency and management of the court.

[Tape 8, Side A] 176

More on memo on efficiency--Bill of Rights and state constitutions--Fox v. LA--Robbins v. Pruneyard Shopping Center.

SESSION 7, June 10, 1991

[Tape 9, Side A] 190

People v. Jackson (1980)--California Teacher's Association--Question of statutory interpretation--Political implications of decisions--Proposition 13 (1978)--Berkeley street barriers.

[Tape 9, Side B] 208

More on barriers--Search and seizure rights--Trial juries and grand juries--selection--Other Supreme Court justices and their staffs.

[Tape 10, Side A] 225

Political Reform Act of 1974.

SESSION 8, June 18, 1991

[Tape 11, Side A] 233

Experience with trial courts and courts of appeal--Relationships of the courts--Relationships with various judges--California Judges Association and raising funds for elections--Retirement decision--Depublication of opinions.

[Tape 11, Side B] 248

Depublication, continued--Retirement from the court--Student of international law, Geneva, 1967--International Bill of Human Rights--Collapse of Greek democracy, 1967--Ford Foundation trips to Jakarta and Singapore.

[Tape 12, Side A] 264

Securing Papandreou's release from Greek jail, 1967--International Commission of Jurists--Council of Europe and the Greek Payson Resolution.

SESSION 9, June 24, 1991

[Tape 13, Side A] 277

International human rights law and U.S. population policy--Working with Amnesty International in Chile, 1974--Detainees in the stadium--Swedish and Indian embassies.

[Tape 13, Side B] 293

International procedures in human rights--Madame Allende at the U.N., 1974.

[Tape 14, Side A] 309

U.N. continued--Problems of Chile.

SESSION 10, July 11, 1991

[Tape 15, Side A] 317

Retirement teaching--Subcommission on Prevention of
Discrimination and Protection of Minorities--Upcoming meetings--
Human Rights Advocates.

[Tape 15, Side B] 332

Conference in Nepal--Recent human rights meetings.

[Session 1, January 24, 1989]

[Begin Tape 1, Side A]

HICKE: Let's start this afternoon, Professor Newman, with a little bit of your background and how you got into law.

NEWMAN: I'm a native Californian, born in Eureka. My mother was a native Californian, also born in Eureka, which is quite unusual.

HICKE: That is. That's really interesting. You're at least a second generation. There aren't too many of those around. When were you born?

NEWMAN: Nineteen-seventeen.

HICKE: Did you grow up in California?

NEWMAN: Yes. I had one semester of kindergarten in Eureka, and then I developed asthma. The fog up there is quite bad, as you may know. So the doctor recommended that my father get transferred to the same company down in Los Angeles, which he did. My first-grade year was in Los Angeles; then we moved to South Pasadena, and from second grade through high school I was in public schools there. I loved it. I had a wonderful time in school.

HICKE: You really enjoyed the learning experience?

NEWMAN: Yes.

HICKE: Were you involved in sports and that kind of thing?

NEWMAN: I think I got one football letter but an insignificant one. It was for the smallest team. I had to do some work--a magazine route for four years and a paper route for another four years. I was very active in student affairs, in junior high school and especially in high school. My main extracurricular activity was music because my mother made it clear during the Depression that it was unlikely I would get to college unless somehow I made money. She thought music would be the best way to do it.

HICKE: Playing in a band or something?

NEWMAN: Yes.

HICKE: And did you?

NEWMAN: Yes, she was absolutely right.

HICKE: What did you play?

NEWMAN: I was primarily a pianist. I made some money in high school but did much better in college, for three years. Even in the beginning year I got my meals free.

HICKE: You played for dances?

NEWMAN: No, not at first. We played twice a day for the freshman dining room. There were 700-plus freshmen, and we would be up in the balcony playing for them.

HICKE: They got treated to music?

NEWMAN: All we got was experience and our food. I also had nine years of French horn, including four years of symphony at college and then one year of symphony here, playing under Albert Elkus; do you know that name? He was a wonderful guy. I wanted to keep on with that but discovered that two nights a week

rehearsing were more than I could handle at law school. So I had to give up the French horn after my first year of law school. And then I also played organ and occasionally got paid a little for that.

HICKE: My goodness. You must have done a lot of music lessons and practicing.

NEWMAN: Our high school had a marvelous three-manual organ, and I got half an hour a day at it for two and a half years and one lesson a week from the high school teacher. He also gave me piano lessons. He was a great guy, and we were close friends. So classical piano and organ were my main focuses in high school.

As a matter of fact, I mostly taught myself jazz. So I got into the no-good dance band in my freshman year for those meals, and then for two more years we had a very good dance orchestra doing the Benny Goodman style. We were paid well and were quite well known in the East. We traveled all over from Hanover, New Hampshire to Washington, D.C. to Chicago and all kinds of places in between.

HICKE: Did you have a name for the band?

NEWMAN: Yes. We were the Barbary Coast Orchestra of Dartmouth College. They didn't even know about San Francisco's Barbary Coast, I think.

HICKE: So you went to Dartmouth. That's one of the things I was going to ask. That's terrific. How did you happen to go to Dartmouth?

NEWMAN: Well, I needed a fellowship, in addition to income. Dartmouth awarded me the biggest fellowship. I had one at Pomona

[College] and another at USC [University of Southern California], and there was talk about [University of California] Berkeley. But I seem to recall that Berkeley had only \$200 scholarships then, and I got \$700 a year from Dartmouth and a four-year guarantee. So that was nice. This was in the Depression.

HICKE: Oh, that's quite an honor. You were transplanted from the West Coast to the East Coast. Was that a shock?

NEWMAN: Again, I loved it. I had a roommate from Manchester, New Hampshire, a Greek descendant much like [Massachusetts Governor Michael] Dukakis. His family and friends were very good to me. I had my own large circle of friends. I used to spend Christmas vacations in New Rochelle, in New York, because I could afford to go home only in the summers.

But for two summers our dance band played on ships. My first trip to Europe was in '36 on a two-month cruise through the North Cape, Finland and Russia, and Nazi Germany. It was very exciting for me. And the next summer five of us played our way across with the Cunard Line. Then we cycled for two or three weeks and played on another ship to come home. So my vacations in California were pretty slim while I was in college.

HICKE: But you saw a lot.

NEWMAN: Yes. Then in my senior year I was given a fellowship to go wherever I wanted to study government. I chose Washington, D.C. So that's where I was from September until about the middle of April, by myself.

HICKE: What year?

NEWMAN: Nineteen thirty-seven and thirty-eight. I graduated in '38.

HICKE: Let me back up. How did you get interested in government?
Did you major in political science?

NEWMAN: It began with my teachers at college, especially in my sophomore and junior years. They were great guys. (Everybody was a "guy" then!) I didn't know much about government, except from reading; but this was a fellowship where you could go off and either be an intern somewhere or, if you thought you could hack it, work on your own; and that's what I did. I studied the budget and appropriations process of the U.S. government.

HICKE: This was your year in Washington?

NEWMAN: Yes. I also played in a symphony orchestra down there.

HICKE: You did?

NEWMAN: I've never owned a French horn; but horn players are rare, and someone could always find me a horn. Here at Cal, too. Who was the nice guy who played viola and worked under Elkus? He became a full professor ultimately, but he died too soon. Anyway, he found me a French horn.

HICKE: So there was a spot almost anyplace you wanted to go. How did you happen to take up the French horn?

NEWMAN: Well, it was the same desperate need for a player in junior high school. It was the Depression and horns were expensive; so my band teacher found me one, taught me the scale, and then said, "Now go home and learn it." [Laughter] He chose me because

he knew I could read piano music and had a little sense of harmony.

HICKE: Nineteen thirty-seven was after you graduated?

NEWMAN: No, no. The summer of '37 I went to Britain and then directly to Washington, D.C. for seven months; then back to Dartmouth to write my thesis and graduate.

HICKE: In Washington, D.C., where . . .

NEWMAN: At 18th and K [streets]. I roomed with four others.

HICKE: But I mean did you work in the Office of the Budget or. . .

NEWMAN: Well, I didn't have a set place. I spent a lot of time in the bureaucracy with budget officials. For instance, one of my best friends was budget director of the Department of Agriculture, which was very interesting in the [Secretary of Agriculture] Henry Wallace days. But I spent most of my time up on the Hill, going to committee hearings, interviewing committee personnel and congressmen on what they did with appropriations.

HICKE: Did you have some kind of an entree to talk to these people?

NEWMAN: I had a mentor--a rather famous Dartmouth alumnus. I'd go visit his family. They had a piano in their basement, but a great big mansion, and I used to practice in their basement.

HICKE: Who was this?

NEWMAN: His name was George Maurice Morris, and among other things he'd been chair of the House of Delegates of the American Bar Association, the association's main parliamentary group and tremendously powerful in the legal profession. He was most famous for successfully leading the program to defeat [President

Franklin D.] Roosevelt's court-packing plan in 1938. He was indeed nice to me. He had two kids a bit younger than I, and I used to take his daughter dancing.

HICKE: Did he tell you about that court-packing?

NEWMAN: No. He was working hard when I was winding up, and I didn't get to see the finale. Also I didn't know anything about judges or lawyers in those days. I was much more interested in legislators. He was not one to talk about what he did. He was a quiet leader but effective.

HICKE: You sort of found out afterward . . .

NEWMAN: Yes, how important he'd been.

HICKE: What kinds of impressions did you carry away of government in Washington?

NEWMAN: I developed a tremendous admiration for legislatures. But also for the quality of many of the administrative people I worked with. At that time lobbying wasn't completely capricious, the way it's become. And the money involved was not big. So even though I went around to interview lobbyists involved in my kind of thing, it wasn't a major part of my work, as it would be now.

HICKE: Can you elaborate a little bit on that, on the changes in lobbying?

NEWMAN: It was just taken for granted that certain people were especially interested. For one thing, during the Depression they didn't have vast sums or political action committees or tax breaks. It was just understood you weren't supposed to take tax deductions. That had to be worked out gradually. But I wasn't

sophisticated enough then even to be on the lookout. Later on I got deeply into campaign financing, both in California and with the federal government. But by then I'd been a professor eight to ten years.

HICKE: We certainly want to get into that a little bit later. What were the lobbyists doing? Were they providing information?

NEWMAN: Oh yes, at hearings they would be witnesses. And it was sort of assumed that what they did with congressmen was their own business, and you weren't supposed to "spy." There was no lobbying act. We got our first federal lobbying statute in 1946. And then Earl Warren copied it almost exactly out here, when he was governor. He persuaded the legislature to put it through. That was his big fight with [Arthur] Artie Samish. Do you know that name?

HICKE: Yes.

NEWMAN: And it was [Assembly Speaker Jesse] Unruh who said, "Money is the mother's milk of politics." That was a whole generation later.

HICKE: So you really didn't have any sense of what the lobbyists. . .

NEWMAN: No. At that point I hadn't thought much about law school. I assumed I was going into public administration because of the three roommates I admired most all were planning, and did develop, that kind of career. They were in one of the first intern programs, called National Institute of Public Affairs. Each of the three had graduated from college in political science and had come into this wonderful new internship program. It was great for me to have them as roommates.

- HICKE: Were you too an intern?
- NEWMAN: No, I was by myself.
- HICKE: You were just on your own?
- NEWMAN: I did a lot of research work, the traditional kind, in the Congressional Record and in the documents of the Appropriations Committees, things like that.
- HICKE: Then you went back to college and wrote a paper on it?
- NEWMAN: Yes, for the final two months.
- HICKE: What kinds of conclusions did you come up with?
- NEWMAN: Well, I had to report on the appropriations process, and I suppose my main contribution was that the myth of the media--they weren't called the media in those days and there was no TV--but the myth was that Congress was responsible for all the spending and terrible pork-barrel monies, et cetera; but I collected statistics proving that with great consistency Congress cut the president's budget. I thought that was interesting. I remember doing charts and the like. Roosevelt was a big spender. [Laughter]
- HICKE: Did you publish this?
- NEWMAN: No, I didn't know about publishing in those days. And it wasn't that good either.
- HICKE: Well, it sounds like it was pretty interesting.
- NEWMAN: Oh, yes. It was awkward, though, that I hadn't finished before commencement. So I came right home and was promptly called to come to the YMCA [Young Men's Christian Association] camp I had been deeply involved in as a high school student. All I did in the summer of 1938 was the music at the camp. That

left me six or eight hours to work on my paper, and I did finish it.

HICKE: So you graduated and then what?

NEWMAN: Came to law school.

HICKE: OK. But you hadn't thought about that before. How did that happen?

NEWMAN: My Washington mentor was involved. He said I ought to be a lawyer (and I admired a prof who said the same thing). I asked, "What about public administration?" and he said, "You can always do public administration as a lawyer, but you can't be a lawyer if you start out in public administration." And then the question was, "Where should I go?" and he said he would think about Harvard, Yale, or Columbia; but what the heck, he knew that Berkeley was good, and the dean of Boalt Hall, [Edwin] Dickinson, became interested. I forget how the correspondence started, but he gave me a small scholarship; and that was enough. I decided I wanted to come back to California after four years mostly elsewhere. I hadn't ever lived or even visited in Berkeley until the fall of '38 when I began at Boalt as a student. So this is my fiftieth year at Boalt, except for the intermissions of the navy and the court, things like that.

HICKE: So what particularly interesting things happened to you at Boalt Hall?

NEWMAN: Well, I loved my two nights of rehearsal with the symphony. I hated my courses so much that I seriously considered leaving at Christmas time. Anyway, I didn't do very well my first year. Dickinson was astounded that I didn't. So I had to bring my

grades up, and they did get better my second and third year. Gradually I got up in Law Review ranks. It was because the first year had nothing about government in it. And that's almost true now; we haven't changed the first-year curriculum. I've been fighting it ever since I joined the faculty. [Laughter] I just can't win against tradition. Harvard [Law School] is almost the same; Yale Law School is different. Columbia Law School is almost the same; and Pennsylvania, Michigan law schools--take your choice. Government study is not generally available to the ordinary first-year law student. It's just shocking when I think of the impact.

HICKE: And very little choice probably.

NEWMAN: The first year you may get a spring semester seminar if you want to. Even that's "iffy" from time to time.

HICKE: Which symphony were you playing in?

NEWMAN: With Professor Elkus, in the University Symphony. I also loved where I was living--in a cottage up on Panoramic Way with two third-year Boalt students. They later had very interesting and successful careers--one in Los Angeles, one in San Diego. They became leaders of the bar.

HICKE: Who were they?

NEWMAN: One was [Robert] Bob Morris, who died unfortunately several years ago, too early. He was in Los Angeles, the law partner of Robert Kenney, who ran for attorney general and won and then ran for governor because the Democrats made him. In those days you didn't ever beat [Governor] Earl Warren. Those were days of cross-filing, and I think Kenney lost even in the primary

to Warren. He was a great guy, no question, and he and my former roommate were very close.

The other was Alec Cory, a leader of the San Diego bar who became a trustee of the old state college system, before the constitutional changes. The two were great guys, both third-year but rather loose about studying, which wasn't a good influence. [Laughter] We were almost at the top of Panoramic with a fireplace. We each had a separate bedroom, and the cost to each was only eleven dollars a month. Then I gradually brought in a total of four roommates so it was only seven dollars when they left. [Laughter] Think of that! Gorgeous view of the bay.

HICKE: Now I know what they mean by the good old days.

NEWMAN: And it was good for my health because I think there were 326 steps to get to the house. Do you know Panoramic Way?

HICKE: Yes, I know that.

NEWMAN: I used to keep a cycle down at I [International] House that I would chain to a steel pillar. (I did a lot of cycling in my senior year, both in Washington and in New Hampshire.)

HICKE: Do you remember any particular professors?

NEWMAN: In those days there were only twelve or thirteen on the faculty, and we didn't have "sections." So we had almost every professor twice at least. And they were just a fantastic faculty. Five of them, if you include Dickinson, who was our dean, had been deans from various distinguished schools. I don't know whether you know some of those names.

HICKE: Captain [Alexander M.] Kidd?

- NEWMAN: Oh yes, indeed, we became quite close. Actually, more after I came back as a faculty member in '46.
- HICKE: And Barbara Armstrong?
- NEWMAN: She was the closest. She dominated both Frannie Newman and me, starting in 1940.
- HICKE: How so?
- NEWMAN: She was a terrific advocate and had a marvelous intellect. She had high standards on how you always had to be prepared. And she was a fighter. I remember once she said, "Frank, the trouble with you is that you don't hate anybody." [Laughter] She was very close to both [U.C. President Robert] Sproul and Earl Warren from student days. Oh, she was wonderful. Did you know that she wrote the unemployment insurance statute for Roosevelt? She was a very distinguished scholar.
- HICKE: She taught family law?
- NEWMAN: Yes, but it made her furious the way the Law Review wrote that up. She said, "They don't even know that most of my career focused on social insurance." She wrote the first serious law book on social insurance, including workmen's compensation and gradually getting into health insurance. She wrote two health insurance statutes for Warren at his request; the first was rejected, so she modified it for him; then the second was rejected. He said, "Now Barbara, I want the next one to go through, and here are all the things you're going to concede on." And she said, "Well, Earl, I'm just not going to do it, then." [Laughter] She didn't. I think he got a weak bill through.

HICKE: He got it through?

NEWMAN: Yes. But without her help. And then there was [Dudley] McGovney, a great constitutional lawyer. He was the one, I think, who invented the doctrine that opened up the courts for blacks, though you didn't say "blacks" in those days. His doctrine was that, just as the Congress violates the equal protection clause by discriminatory statutes and just as the executive branch can, by having discriminatory regulations of various kinds, courts too are an arm of government. He was the first I knew of to make that argument. I believe the first case was the law-school case in Texas.

HICKE: Courts can do . . .

NEWMAN: Courts are government. The issue was restrictive covenants. The Congress and state legislatures had nothing to do with them, and neither did administration officials, mostly. A restrictive covenant was a deal between private parties. The argument was, "Well it's private, and you have to have government." And so McGovney said, "Well it would have to be enforced somewhere, and the only government officials who can do that are in the courts; and, therefore, the equal protection clause applies to courts."

HICKE: And did that . . .

NEWMAN: Oh, yes, that was a big breakthrough. That was McGovney. And then, of course, Max Radin was one of the most colorful in Boalt Hall history.

HICKE: Do you recall any stories about him?

NEWMAN: Did you know that he was nominated by Governor [Culbert] Olson to the California Supreme Court; and he went before the Commission of Three, composed of the attorney general, who was Warren, and the chief justice, who was [Phil] Gibson, and the top-ranking court of appeal justice? I think they were the same three officials as they are now. And Earl Warren cast the deciding vote against him, even though they had been friends, though not close friends. It caused a lot of turmoil in the old Boalt building, because many on the faculty went to Max's defense, saying Warren didn't have adequate reason to vote against Max. But the product of that decision was that Max arranged with the governor that Professor Roger Traynor would get the appointment, and if it weren't for Max Radin, Traynor never would have been a justice of the California Supreme Court. He became, I think everybody would agree, one of the greatest judges in the USA.

HICKE: How do you explain Warren's vote?

NEWMAN: Well the liberal, left-wing assumption was that Warren was the Republican conservative and thought Max was too radical. Max would, for instance, speak in defense of the Communist woman who used to run for office. What was her name? Anita Whitney, and John Francis Neylan was her lawyer. That was Neylan's main claim to being liberal once in a while and was milked for years to prove he wasn't as bad as people thought because he did represent her as lawyer.

Anyway, many people didn't like Max's being that close to the left. For example, in those days the NLRB [National Labor

Relations Board] had a strong left wing that sometimes seemed to be in charge when the pendulum would swing; and Max was close to the left side of that group.

Yet, as I recall, Warren's official reason was that Max had written to a judge about some people who were in a case before a trial court; and apparently (though I'm not sure) he hadn't sent copies to the lawyers. Warren regarded the incident as suggesting an inadequate approach to judicial ethics. That may have been arguable.

HICKE: Are you saying that wasn't his real reason?

NEWMAN: Some people thought not. I have a hunch that it was because Warren wasn't at all extreme in his views.

I was at the Center for Advanced Study in the Behavioral Sciences during 1957-58. Actually I'd worked a lot with social scientists before then, a lot of young guys (and, in those days, only a few women) like me who weren't lawyers but wanted to know a little about law. The Center dumped me into pure social science. I was one of the first two lawyers to go there, and there were only two of us at the time.

So, as to Earl Warren, from one of the sociologists I learned the phrase "role concept and reference group theory." I had never heard of that. Well they taught me a lot about it, and I suddenly realized that the prototype-man demonstrating that theory was Warren. He started out as a tough prosecutor in Alameda County. He then got involved with legislators as the lead district attorney in California, picked up statewide repute, and became attorney general. He was a tough attorney

general, but not nearly so tough as he'd been as prosecutor at the trial level. He was quite a statesman as attorney general.

Then when he became governor, he really was one of the most moderate leaders we've had. Did you know that he and subsequent Governor [Edmund G.] Pat Brown [Sr.] were very good friends for years, and even while Warren was still chief justice he'd come out in the summer to visit Pat and [Benjamin] Ben Swig? They used to hunt together, for instance. Warren became the moderate Republican, some even would say liberal; and Pat Brown became the moderate Democrat, some would say too conservative. It was fascinating that those two were so much in tandem.

So that was a nice period. Again I'm talking about role concept and reference group theory.

HICKE: Would you explain those terms?

NEWMAN: Well, "role" means: By gosh, if you're going to be prosecutor you ought to do the best you can, and that means be tough.

HICKE: So when he found himself in this position, he carried it through?

NEWMAN: That's right. And then when he became attorney general he still wasn't disinterested, but he was fair and realized as A.G. he had special functions under the state constitution that were very different from those of a prosecutor. Working with government agencies, for example, is maybe the biggest part of the business. Then he became governor, wise and thoughtful, listened to both sides carefully, and didn't try to ram things through the legislature. When he became judge. . . . There

was a radio program: "He came through like gangbusters."

[Laughter] And [President Dwight D.] Eisenhower became furious almost right away, and the two became almost enemies.

HICKE: Is it your idea that he evolved into the positions?

NEWMAN: That's right. He had greatness thrust upon him and knew how to respond. The reference group theory is: who are your main constituencies? He had a constituency much broader than [Ronald] Reagan, for instance, ever had as governor. Constituency is different from who will vote for you. Reagan had tremendous popularity with voters who didn't care much about government but found him fascinating to listen to. But in terms of those whom he worked with, we're just beginning to learn how narrow the focus was. It wasn't talked about much in those days, how narrow his was as either governor or president.

HICKE: And your constituency in this theory, then, is the people you actually work with?

NEWMAN: Well, and also whom in a sense you represent. Warren decided, "As attorney general I represent all the people of California, but I'm still to be a hard-driving lawyer. As governor I'm supposed to be wiser. As chief justice, I'm supposed to be Saint Peter or someone comparable, listening to both sides carefully."

[End Tape 1, Side A]

[Begin Tape 1, Side B]

HICKE: You didn't know anybody with that . . .

NEWMAN: . . . that range, who so epitomized the role, reference group theory I picked up from my social science friends back in '57-58.

Now I'm leading to the fact that when Warren did his autobiography--I think it was with a journalist who aided him-- he had a footnote apologizing for the World War II Japanese internment, in which he had a major role as attorney general. He really pushed it. I guess it was his first exposure to threatening war and he went all out; he didn't want potential enemies around, and that led to the internment. His autobiography has a truly meant apology to Japanese Americans, but as I recall, it doesn't mention Max Rodin. [Laughter] That's the tie-in to Boalt Hall. And there were many other pros of distinction. Dickinson was an internationalist of considerable repute, but in those days I paid no attention to international law.

HICKE: Well, it must have been seeping in somewhere.

NEWMAN: It was really a complete break. I'll get to that later I guess. But starting in 1966, when I had a sabbatical, after I resigned as dean, and then from '67 on, international became full time.

HICKE: Well, we'll put that off for a bit. Did you know Earl Warren?

NEWMAN: I didn't at all in those days, though I did get to know U.C. President Sproul because of Barbara Armstrong. And who was the main assistant of Sproul? Agnes Robb. I got to know her quite well through Barbara, but I didn't really get to know the governor.

I remember, with some of the people here on campus I went to a great conference on aging chaired by Earl Warren as governor. That was when I was at a social science research council seminar here one summer when I needed money for either a baby or a car. [Laughter] So I earned a summer stipend working with them. I didn't even know what gerontology meant when I started that seminar. I was to be their government expert. So that led to my attendance at the Sacramento conference, where I remember shaking hands with Warren and saying hello, that I was a Boalt professor. He was a Boalt grad, so there was that kind of occasional, but very rare contact.

But after I became dean I would see him officially. And toward the end of his career and after he retired he used to visit in the summer. My last visit with him was in Geneva, where he had taken on an International Labor Office assignment--spending weeks and sometimes months working with a friend, the sister of one of our Boalt faculty wives. Do you know the name Mary Ellen Leary?

HICKE: Oh, yes.

NEWMAN: This was Mary Ellen's sister, Virginia. She was working in the I.L.O., and her boss had Virginia and me and Mrs. Warren and Earl out for supper. There were just six of us at his house and it was a wonderful evening--first time I had really reminisced with him, apart from Boalt Hall functions. There were many members of the faculty who knew him better than I, but that was a prize night, not long before he died.

- HICKE: Apparently you had been observing him.
- NEWMAN: Oh, yes. In fact, during a sabbatical in 1960 I began work on a criticism of his first opinion, which dealt with lobbying, so I had a special interest. I wrote five articles on how wrong he was! [Laughter] I'm sure he never read them. The court didn't get another lobbying case for years and years. He was interested, but nobody followed through. This case was very influential.
- HICKE: Did you know Governor Culbert Olson?
- NEWMAN: Never knew him, but Max Radin had tales about him.
- HICKE: Does anything come to mind?
- NEWMAN: No, it's just that Max knew him very well. In high school I had a friend whose family were deep into Upton Sinclair. I attended some of those sessions, but I don't remember ever hearing Olson.
- HICKE: When Sinclair was running for governor?
- NEWMAN: Yes. I guess he ran against Olson in the primary, was that it?
- HICKE: EPIC: End Poverty in California.
- NEWMAN: Yes, EPIC.
- HICKE: Back to law school, were you involved in political activities?
- NEWMAN: Only with a younger professor named [Robert] Bob Stone, a loyal Berkeley grad from both Boalt and undergraduate, I think. He was interested in consumer co-ops and so was Mrs. Newman. So I did a little work with him. He wrote one of the pioneering initiative measures, I think, to get more recognition for co-ops and consumer interests.
- HICKE: Did it pass?

NEWMAN: I think so. I'd have to check. I never followed through on that.

HICKE: Well, you were pretty busy with your music and your law. And climbing up and down Panoramic Way.

NEWMAN: And improving my grades.

HICKE: That's right; you had to move upward all the way. Were there any courses you remember particularly?

NEWMAN: Well, with these very remarkable profs, I remember almost every one. But I learned so much from McGovney, in both constitutional and administrative law. He introduced me to administrative law, which became my major field. Then in my third year they brought in a bright young man named Harry Jones, and I worked with him very closely. He was interested in legislation. I hadn't ever heard of a professor being interested in the legislative process. That became a major part of my career. That was my first book, on the legislative process.

HICKE: Is there anything else about your years as a student?

NEWMAN: Then I took a graduate year in law. I went back to Columbia and members of the faculty there were very helpful.

HICKE: And what was your purpose?

NEWMAN: I was going to study tax procedure and interviewed Traynor when he was a judge. I never had Traynor in a course; he became a judge before I had a chance. But I went to talk to him because he was a great tax expert. I could see he wasn't positive I was really going to be good enough for tax procedure. [Laughter] But I wanted to go work with Roswell

McGill, a famous Columbia professor and tax expert, even more famous than Traynor.

Roswell and I didn't hit it off, but I did hit it off with a prof named Walter Gellhorn, who became my mentor for years. That was the fall semester of '41 and then came Pearl Harbor. Several of us left Columbia and I went to work with Gellhorn downtown in the Empire State Building, with price control [the Office of Price Administration, OPA]. I had a year in the New York office. This was my first legal job. And then I was transferred to the Washington [D.C.] office where I worked with many of the same OPA staff people. And then in the summer of '43 I joined the navy as an ensign in the Office of the General Counsel. I spent most of my time in Washington.

HICKE: What were you doing for the general counsel's office?

NEWMAN: Do you remember the name [James F.] Forrestal? He'd been an anonymous assistant to [President Franklin Delano] Roosevelt. Apparently Roosevelt realized what a marvelous guy this young fellow was. And then Roosevelt appointed the Chicago publisher as secretary of the navy. [Frank] Knox, remember that name? And eyebrows went up. First of all, he was Republican and he didn't have a reputation for being the brightest guy in the world and he was also an isolationist. And all of a sudden he was secretary of the navy, after [bombing of] Pearl Harbor. And of course, this was an attempt by Roosevelt to reach for Republican support in the war.

So then Roosevelt said, "Now, Forrestal, you've got to go up and be undersecretary and take charge there. Because Knox

is not the man who is going to take charge of what is going to be a fantastic procurement and logistics assignment." And Forrestal said, "All right, with one condition: you get me lawyers who are not just from the judge advocate general's office. I want Wall Street firms." So most of my colleagues were Wall Street lawyers or their equivalent in other big cities, and all the young ones, like me, were in uniform. But Forrestal's Wall Street general counsel also insisted that the men on top in each bureau be civilians, so that no higher-ranking officer could tell us what to do about the law. So it was a very neat combination.

HICKE: Which Wall Street firms were used, do you recall?

NEWMAN: Oh there was somebody from almost every firm. We were a big outfit. I was only in the Bureau of Ships, but there were several other bureaus of equal importance. And each one had a civilian lawyer on top with this crew of mostly young men in uniform.

And we all had to be unfit for sea duty. When the operation first started, David Louisell of this faculty, now dead, joined right after Pearl Harbor and found this outfit, and all of a sudden he was taken off because he was eligible for sea duty. So by the time I got there the rule was: We don't want anybody pulling you away, so go through and flunk your tests, and then we'll waive. [Laughter] That was a funny story too, the waivers.

HICKE: What were your responsibilities?

- NEWMAN: We ran the law operation in connection with procurement. I was in the Bureau of Ships, and to build ships you have to have not only a shipyard--and that was another bureau, that was the Bureau of Yards and Docks--but you had to have a fantastic system of factories all over the country, building parts for the ships.
- HICKE: Were you involved with Henry Kaiser?
- NEWMAN: No, because he wasn't liked by the navy. [Laughter]
- HICKE: Didn't he build ships?
- NEWMAN: That's right, but not for the navy. It was for the War Shipping Administration. He didn't build any battleships and we were strictly into naval ships.
- HICKE: Only battleships?
- NEWMAN: Well, almost, but also auxiliaries. Kaiser was building cargo ships to get the gear over there. Army gear, mostly.
- HICKE: Why didn't the navy like him?
- NEWMAN: They thought he didn't have quality in his shipbuilding and he didn't want to; he wanted to build one a day. Do you remember that? Once when I was still an ensign, for some reason my superior took me into the main admiral's office of the Bureau of Ships, and the assistant chief was there too, also an admiral. When we walked in they were still talking about "that bastard." It turned out it was about Henry Kaiser and I remember they were very coarse and vulgar. [Laughter] I was standing there with wide open eyes, not saying a word, letting my boss do all the talking.
- HICKE: So anyway, you were telling me about the . . .

NEWMAN: We had two sections in our division. One took care of shipbuilding and the others of us took care of facilities. And we built I don't know how many hundreds of factories all over the country. Some were in south San Francisco. You know you need machine tools for shipbuilding, all sorts of things, and one of my first jobs was to check all the real property we were buying to build these things on for land titles. This was the part of first-year law that I hated most. [Laughter] Finally my work got more interesting.

But we were essentially negotiating contracts. With little firms we used forms; big firms always required negotiating some special language.

HICKE: Were there any attempts. . . . Like they're talking about now helping out small businesses.

NEWMAN: Yes, but that came later. Also, there were supposed to be fair employment practices, so we had to put a fair employment clause in every contract. It was boilerplate, two sentences or something. And I began to poke around and discovered that they weren't being enforced. I remember going to my boss and saying, "Shouldn't something be done about enforcement?" and he said, "Why don't you shut up?" [Laughter]

HICKE: Just so that it was written in. I suppose there was a certain amount of urgency.

NEWMAN: Yes, we worked a forty-eight-hour week. Even in price control we worked forty-eight-hour weeks. But we still had to learn naval customs and traditions. Once a week I'd be out shouldering arms. We'd be in line at attention and he'd say, "At

ease, men." This was a high school teacher who had achieved high rank because he went into the service early. He was from South Dakota and didn't really know much. He'd say, "Now everyone who doesn't want to donate blood, step forward." I had a history of asthma and I learned later I was also Rh negative, which I didn't know when I first went in. I've learned since then you have to be awfully careful; even pre-AIDS you had to be careful about donating and be sure they had adequate records, all that sort of thing. "All those who don't want to donate blood step forward."

But it was a very valuable experience for me. It was my only real law practice comparable to private practice. The OPA was quite different, because there we were regulatory and it was a brand new thing. But lawyers have been writing contracts for centuries and big firms have learned a lot of skills about how to write them, and I learned a lot of skills from those guys.

HICKE: What's your assessment of government operations during the war?

NEWMAN: Oh, it was so varied. In many ways it was even more varied than now. The various branches of government are struggling with each other and have different views and they're already predicting [President George] Bush's cabinet won't get along. But I must say I was astounded at the quantity and quality of production, which was what we were into.

I've never solved the problem. . . . In OPA we used to be very strict. A friend of mine has written an article called "Law-

taught Attitudes and Consumer Rationing." He talked about how so many of us, young lawyers just out of law school, were brought in to help with price control and rationing, and we learned in law school you had to be fair and had to treat equal cases similarly, you had to use the language of the priesthood, et cetera. It was a beautiful article, and I began to see right away, even in OPA, that that wasn't going to work.

The difference was WPB; do you remember the War Production Board? They were right across the street from us. They were very loose. Most of them were businessmen; they had very few lawyers, unlike OPA. Their view was, "Well, there are a lot of reasonable requests we ought to grant." So if a bird cage manufacturer came down to Washington and stopped in and talked to the fellows, they'd say, "Oh, I guess we can give you some brass for your bird cages." That was the kind of lobbying done during the war. I learned a lot more about lobbying during the war.

For instance, I started out. . . . Actually I was in charge of retail price control for garments in New York City, even though I was only twenty-five. I was the lawyer in charge of all apparel, men's and women's, at the manufacturing level in New York City, which was tremendous in those days--the famous Seventh Avenue area--and also at the retail level. So I used to roam through those stores to see how they were doing.

HICKE: Did you actually go out and look at the prices?

NEWMAN: Yes, and I sometimes talked to the storekeepers and they'd say, "What do you mean, price control?" [Laughter] That's when I

learned the language of the priesthood wasn't going to go; so I worked a lot on simple English to get to the people, the merchants who were supposed to know what we'd ruled and didn't have the slightest idea.

HICKE: How was the word supposed to go out?

NEWMAN: It took them a long time to develop an adequate public relations system, because first they had to get the law settled, and then they had to start explaining it.

HICKE: Were we halfway through the war by that time?

NEWMAN: Oh, no, this was done essentially in 1941-42. That was when the big public relations push began. PR wasn't that big in those days. We used to put out press releases, but they were often written in the language of the industry or the language of lawyers. That was no good. Do you know a man named Rudolph Flesch? He wrote on simple English--how to read and the art of simple writing. And after the war he became one of the top fellows in that field. OPA hired him to teach us how to write simple English instead of the language of the priesthood.

HICKE: They knew there was a problem.

NEWMAN: Oh, yes, they were very good at that. People were awfully bright and very, very dedicated.

HICKE: That probably goes a long way to explain why we were successful.

NEWMAN: Oh yes, I don't have any question, but it sure took a long time. Then when the war began to end, we got into contract termination and property disposition, which was a whole other kind of law practice. How do you close down? That was a

period, too, when a lot of my colleagues and friends from college and law school days began coming back, first from Europe, and the big question then was, are they going to get transferred to the Pacific? One of them was a former roommate, and I just knew he wasn't well enough to go. There was a lot of that uncertainty; that was tough. After VJ Day [Victory over Japan], it was much simpler.

HICKE: Right. How long did you stay in Washington?

NEWMAN: Until the spring of '46, because I'd come into the navy late and I didn't have any overseas points or combat duty. You got points for those, quite properly I thought. I knew I was going to be released sometime in the spring of '46. I wrote Columbia and said, "Can I finish my year now and get my LL.M.?" There was a little rhubarb about it, but the navy was very nice about it. They gave me permission to go up during the week for courses, for two weeks or so, before I was entitled to be discharged. And when I did get out I went up and finished that semester. The family stayed in Washington and I came down on weekends. I worked hard at Columbia Law School that spring semester. And then I started teaching in June of '46 here.

HICKE: You came back here to teach?

NEWMAN: Yes. In the meantime I'd picked up the job.

HICKE: Let me ask a little bit more about Washington. What was it like during the war just to live and be in Washington?

NEWMAN: You just took it for granted that you weren't suffering as much as the guys who were overseas, and so you didn't complain.

- Meat rationing was a minor inconvenience, and you couldn't get a tire. We took public transportation and cycled for recreation.
- HICKE: Was there this sense of being inside the Beltway, where things were really happening?
- NEWMAN: Yes, no question. Tremendous numbers of people--sometimes like me, residents, often from overseas, in uniform, everywhere. Mrs. Newman especially enjoyed her work on a price control panel, one of numerous neighborhood groups set up by the OPA to monitor the local merchants' compliance. It was her first close association with blacks. Everybody else on the board was black, because we lived on the borderline of the ghetto. She was also active in the League of Women Voters.
- HICKE: When did you get married?
- NEWMAN: Middle of my law school here, in 1940.
- HICKE: She's from California?
- NEWMAN: Yes, she was born in Hollywood. She had several years at Hillside School in Berkeley. Then she and her family moved to Palo Alto, and she went through high school there. She had five years at Stanford and then came back here to work with Harold Jones at the Institute of Child Welfare.
- HICKE: And you both ended up in price control.
- NEWMAN: But she was volunteering. That was the difference. We had two children, one born in New York and one in Washington. In the navy we had good law office traditions, so nobody minded if I took a long lunch and watched the Supreme Court or Congress or visited old friends from student days--for instance, the budget official of the Department of Agriculture,

whom I mentioned. I learned a lot about government while I was in the navy; and the understanding was, obviously, I'd make up the time which, obviously, I did.

HICKE: Were you interested in any particular aspects? Lobbying or . . .

NEWMAN: I got fascinated during the war by the lobbyists in a way I hadn't even thought about much when I was a student. And I got to know the lobbying scene pretty well. In price control, it got very dirty. In the navy it wasn't so dirty; it was sort of high level. [Laughter]

HICKE: Can you elaborate a little bit on either one of those, where it was dirty and where it was high level?

NEWMAN: Well, one of the reasons I mentioned apparel, I guess, is that I was thinking of telling you about this. A lot of people couldn't understand how I could work with the garment industry, and I'll admit it was colorful. The big regulation on garments came out in the late spring of '42. It was a cost-plus markup regulation, which apparel people don't like. If they get a good dress they want to raise its price 20 percent if they know it's going to sell. That was their whole tradition. No sir. You get a certain percentage above cost based on what you've been getting above cost and your annual tax return, or whatever, and you stay with that.

HICKE: That's across the board?

NEWMAN: Yes. So there was a lot of to-do in the garment industry. I remember one meeting when the OPA fellow came up from Washington; he's the one who subsequently brought me down to work with him. That was the first time I'd seen him. We

had a table holding about twenty people. He was sitting at one end and I guess I was at the other end. He was in charge, a very quiet guy, an excellent lawyer, who explained the regulations to them. They were all trade association executives. As you may know, the apparel industry is divided into, first of all, dresses, and then cloaks and suits, and then woolen goods, and then things like corsets, knit goods.

And within dresses there was one for the lowest price dress and another for not-so-low, another for medium price, another for Lord & Taylor and another for the couturiers like Bonwit Teller, above Saks on Fifth Avenue. So there was a dress association for each one of those categories, and the women's apparel executives had a lot of questions. They were smart, those guys; they knew an awful lot about their business. Toward the end of the meeting, when he could sense it was going to end soon, the blouse and skirt man got up and said, "Wait a minute. What's going on? What's happening? You're asking these stupid little questions about 'What does this section mean and what does this word mean?' You're letting this guy who doesn't know anything about it from Washington tell you the answers on how to run your business. And you know what's happening? The whole industry is being crucified." [Laughter]

HICKE: With his arms stretched out like that, huh?

NEWMAN: Yes. And oh, they used to wine and dine me. I'd go around and give speeches. I talked to a thousand people at the Hotel Astor one day. They were all converters. Do you know about

converting? That's when you take grey goods and manufacture them into pretty fabrics. That's called converting.

HICKE: Really. Is it dyeing?

NEWMAN: Everything.

HICKE: Oh, I see. It includes dyeing.

NEWMAN: Yes. I used to know all those words. Now, how did we get there? Oh, the main thing is I forget how many millions of dollars worth of bonds they sold that night, which was what the government cared a lot more about than whether they understood price controls. And boy, they had to give. The heat was put on, and they were very good about that.

HICKE: Were the unions strong?

NEWMAN: Oh, very. There usually was a union paralleling each one of the trade associations, except for the International Ladies Garment Workers Union, the umbrella over them all. But the Italians had their own special union within the ILGWU, and it comprised all trade associations. It was vertical, rather than horizontal.

HICKE: Is that right?

NEWMAN: Yes. I hadn't known all this.

HICKE: Was it separate?

NEWMAN: Yes, so even the lobbying was essentially separate for the unions. And of course, they had a big stake in price control because wages were controlled. Our office didn't do that, but they knew they weren't going to have a lot of money to waste. They were afraid the businessmen were going to squeeze them.

In New York I didn't see the Southern fabric manufacturers; and garment people were getting into the South too, for low labor costs. And they were the most gentlemanly guys you ever saw; but oh, boy they were awfully tough behind the scenes with their senators and congressmen. Yes, sir.

[End Tape 1, Side B]

[Session 2, February 7, 1989]

[Begin Tape 2, Side A]

- HICKE: Last time we had just been talking about some of the work that you did during the war years with OPA and so forth, and one of the things that I came across in some of this information was your work on security and loyalty issues. I think that started in '41, according to the information that I got.
- NEWMAN: It may have been right after Pearl Harbor. I don't remember it specifically when I was still a graduate student.
- HICKE: Do you want to tell me about that? You defended some colleagues.
- NEWMAN: That's right. Was that in Sandy's letter? Last Friday I filed a declaration. Have you received a copy of that? It's related to this. In a lawsuit involving Brian Willson.
- HICKE: No.
- NEWMAN: The Xerox just came back. It's very brief, and it had to be done hurriedly. But Pillsbury, Madison & Sutro didn't know enough so I stuck in some extra stuff. They're apparently representing Brian, pro bono, which is quite interesting because they're not famous for that.
- HICKE: And then there's another controversy where they're representing anti-abortionists. That's pro bono, too.

- NEWMAN: Yes. Did you see [columnist] Herb Caen on one of the other law firms?
- HICKE: Brobeck?
- NEWMAN: Yes. [Laughter] I thought that was hilarious. [Looking through his desk] I just had it. It must be in this big pile. It shouldn't take more than a moment. I had to make quite a few changes.
- HICKE: This is Brian Willson?
- NEWMAN: Yes. It's a short declaration. You might just thumb it through. The part you're interested in is at the bottom of page two and the top of page three. This is a subpoena to get the records of this little organization, the Ecumenical Peace Institute. They want all their members and all the instructions and their records of going out to the Concord Naval Weapons base, and they only go the first Thursday of every month. Did you know there's a twenty-four-hour vigil out there, and the organizations are taking turns and taking assignments of certain hours? The Ecumenical Peace Institute goes on the first Thursday of every month, so this subpoena seems incredible.
- HICKE: So this introductory part is your background?
- NEWMAN: Yes. And at the bottom of page two it gets into . . .
- HICKE: [Reading] "I believe too, that production of the documents sought here indeed would discourage individuals from participating in Nuremburg Actions and activities and dissuade others from joining the group." What is the "Nuremburg Actions"?

NEWMAN: That's the name of the branch of Ecumenical Peace Institute that's concerned with war crimes.

HICKE: "Beginning in the 1940s, when I was first in a war agency and then in the navy, until 1946, then later as a lawyer involved in counseling citizens fearful of the House Un-American Activities Committee, the California State Senate Committee and U.S. Senator [Joseph] Joe McCarthy, I learned much about dragnet inquiries. I view our government's action here as inhibitive not only of freedom of speech and of association, but also of recognized rights of privacy."

NEWMAN: That's the first time I can remember, reaching back into the past.

HICKE: There are several issues we want to discuss, but I thought we might start with the loyalty issue.

NEWMAN: My closest colleague on that was [Ernest] Ernie Besig, who then headed the San Francisco ACLU [American Civil Liberties Union]. Ernie was a wonderful guy and an excellent litigator, and he learned right away that you litigate not only in courts but also in administrative agencies. The loyalty-security program, as it developed, had a big adjudicative system as to whether the person charged really was guilty of activities that threw doubt on his loyalty or his security regarding classified materials.

Ernie was one of the first I knew in this field who realized how important administrative adjudication was, as compared with judicial adjudication. The difference with administrative adjudication, if it's basically fair, is that you have a good chance

of persuading somebody that the facts are just wrong. If you're going before a judge you have to persuade the judge that the administrative official was wrong. And that's quite different.

So he and I worked with him. I didn't do a lot of work. As a matter of fact, he was less interested in the legislative process than I was. In fact one of my students, I remember, went with the southern California ACLU instead of up here, which he would have preferred, because he wanted to work in the legislature; and the ACLU of southern California was ahead of Ernie in getting into that. Ernie thought that was too political. He just wanted to be a good lawyer and win civil liberties cases for people, and he was awfully good at it. And then I got tied in with Adam Yarmolinsky. Do you remember that name?

HICKE: That's a familiar name, yes.

NEWMAN: He subsequently ended up high in the Pentagon, but I didn't know him at that point. I knew him when he was just a young bright Harvard Law grad whom people knew about. Ford Foundation picked him up when [Robert Maynard] Hutchins was still in charge. You remember that Hutchins subsequently became big down in Santa Barbara with his center?

HICKE: Yes.

NEWMAN: Well, at that point Hutchins was president of the Ford Foundation and a gung-ho First Amendment type who decided there had to be a serious study of loyalty-security. So I worked with Adam and maybe with Ernie on getting together a book of

case studies, and others wrote about cases they'd been involved in from all over the country.

HICKE: Let me back up a little. How did you get started and get interested in this?

NEWMAN: Yarmolinsky chased me. I forget why he knew about me, conceivably from the Harvard faculty. Another big author at the time was Ralph Brown, a very fine Yale law professor and a close friend of mine. He wrote the leading book and I reviewed it. I said it was the [John Henry] Wigmore of the subject¹ and he thought that was a big compliment. So we had a little network going. Walter Gellhorn of New York City was another one I worked with on this. Not all the time, not as a big project; but I was fascinated.

HICKE: What were these case studies that you had?

NEWMAN: The case studies were put into an 8 1/2 by 11 brochure, except it was really a book.

HICKE: What kinds of things did you find?

NEWMAN: Well, almost nobody lost who had a lawyer, for instance, whereas thousands of people were being fired partly because of fear, partly because they didn't want to hurt their relatives, associates, or whatever; but if they braved it through, and got a lawyer, almost always they won. It was incredible.

HICKE: What kind of law was this based on?

NEWMAN: Very bad law, arguably void for vagueness. Do you know that phrase?

1. Wigmore was a famous authority on evidence.

HICKE: No.

NEWMAN: The U.S. Supreme Court and then other judges many years ago worked out a doctrine that some statutes were not law because they were too vague and gave too much discretion either to the jury or to the judge or an administrative official. We call it the "void for vagueness" rule.

HICKE: Can they go back and look at the legislative intent?

NEWMAN: Oh, yes; and that's part of it. For example, they've held that the antitrust laws aren't vague, which obviously they are. But they've said, "Oh, well, we've been working with it for decades; so apparently that's going to be all right." But the big case came out after World War I on price control. They said the whole price control statute in World War I was just too vague for either juries or administrative officials to administer.

HICKE: And they threw it out?

NEWMAN: Yes. For instance, you couldn't charge more than a "reasonable" price for "necessaries." And neither phrase was defined. What's a necessary?

HICKE: And what's reasonable?

NEWMAN: That's right. And that had a tremendous impact on World War II price controls. In any case, my view was that a lot of the regulations relating to loyalty and security were void for vagueness. But another principle is that ordinarily a government official will not tell Congress that they put out a void for vagueness statute. So you didn't win on that ground, at the administrative level. And the judges were very nervous about this whole thing.

- HICKE: How did Adam Yarmolinsky . . .
- NEWMAN: He was the main editor of this book. He was retained by the Ford Foundation to publish a serious, scholarly study of what was going on.
- HICKE: It was Ford Foundation's idea?
- NEWMAN: It was Hutchins' idea, I think.
- HICKE: Now, back to where we were.
- NEWMAN: So that was, I think, my first scholarly entrance to this field.
- HICKE: Did anything come of this? What was the impact?
- NEWMAN: Well, finally many of the regulations were tightened up. I remember three students in my legislation seminar wrote the first procedural statute that related to this. I said that was incredible. Civil liberties lawyers all over the country and liberal senators and congressmen were all griping about the terrible system and how unfair it was, and we couldn't find even a draft regulation as to what the procedures should be at the administrative level. So the team of three students wrote this statute and published it in the California Law Review.
- HICKE: When was this?
- NEWMAN: Oh, I think in the fifties. Even before '55. I just couldn't believe it. I said, "Anybody reading this who knows about another set of rules please send us a copy, because we'd like to follow through on this."
- HICKE: When you say the regulations were tightened up you mean fair . . . ?
- NEWMAN: Well, it's like alcoholism. You can be fired or demoted from your government job for excessive alcoholism. And that's a

phrase that people understand. I read this morning that the military rule is that at least once a week you take five drinks. That's excessive.

HICKE: That's alcoholism.

NEWMAN: Yes. Or perhaps "heavy drinking." Well, it was similar with loyalty-security. They began to realize it didn't matter. I remember I had a six-hour case over in the city lasting two days involving a very distinguished citizen of the Bay Area. They said, "And besides, weren't you once a card-carrying member of this organization?"

HICKE: Which organization?

NEWMAN: I'm not going to tell you. I was able to intervene and say, "Oh, there's no question. My client will say yes. But I think the board should know that [Dwight D.] Eisenhower, even when president, was also a member." That's the way you began. You could cut in, and they suddenly were terribly embarrassed.

HICKE: But how do you know those things?

NEWMAN: Oh, we did a lot of work on that case. You've got to get their lists of forbidden organizations. And when you have a client you have to say, "I'm sorry; I've got to know about your whole political life." For instance, in that same hearing, I suddenly realized that these board members were convinced that my client had voted for Henry Wallace. That was a verboten.

I checked with him and found out he didn't. So at the hearing I led him on a little about whom he voted for in the recent election. I hated this. It was none of their damn business whom he voted for, but I had to get him cleared. So I

finally got back to 1948 and I said, "In '48 whom did you vote for?" and he said, "Harry Truman"; and all the members of the board looked up and said, "Who?" [Laughter] So my guess had been right and he got off.

That's just a sample. In other words, sometimes it's plain old TV lawyering. Sometimes it's very heavy research on what really are the government rules, what are the secret rules. Sometimes you can find them out.

HICKE: Secret rules?

NEWMAN: For instance, they weren't going to tell him they had information that he voted for Henry Wallace. They just thought the list showing my client's name was perfectly OK and that you weren't supposed to be associated with that kind of organization. (And they were dumbfounded when I noted that President Eisenhower too was a member.) That's the sort of thing that Washington, D.C. gradually began to clean up, so there wouldn't be this dragnet where "we want to know everything about you." It had to be something that really did relate to loyalty or to security.

HICKE: It seems to me you're covering a long time period here. There must have been a lot that happened before that.

NEWMAN: Oh, there were so many famous cases.

HICKE: In 1944, just to get back to you, you co-founded the D.C. branch of the American Veterans Committee.

NEWMAN: My main colleague was Orville Freeman, who subsequently became governor of Minnesota and U.S. Secretary of Agriculture and has had a very distinguished career.

HICKE: What was that about?

NEWMAN: Well, a lot of us in the service didn't want to belong to the American Legion because they had a very reactionary record, even prior to World War II. Veterans of Foreign Wars was better, but we didn't think it was that much better. We thought there was a place for young liberals in the veterans' movement. So a guy named Charles Bolté created the American Veterans Committee. He was a brilliant young fellow from Dartmouth, who even before Pearl Harbor had signed up with the British army. He was with [Field Marshall Bernard Law] Montgomery in North Africa, and he lost a leg at El Alamein; so he was discharged.

The prosthetic equipment wasn't so good in those days, and they obviously couldn't keep him in the service; so he decided he wanted to do something. I guess he had independent income; so he became national president, and they organized a group of comparable guys up in New York and New England. I wrote him once and asked, "Are you doing anything in Washington, D.C.?" and he said, "No, but we'd like to." So I started getting together with some of my friends; and then they had friends; and at one point we had more than a thousand dues-paying members in Washington. Ours was the largest chapter.

I was on the public relations committee with two others: Budd Schulberg, famous author, and Collier Young, fine film producer but not quite so famous. The three of us met every couple of weeks to plan activities. From the movie industry,

NEWMAN: they had navy jobs related to their skills. They were brilliant and knew all about public relations.

I remember one lunch when they were bursting with wonderful ideas on how to get thousands of new members. So when they'd finished their discussion, I said, "Well, what should we do next?" They said, "What do you mean?" I said, "Well, I have this pad of paper here and I think we ought to plan." And one said to the other, "You know, it's sure lucky Newman is here because otherwise we wouldn't have a pencil."

[Laughter]

The other story I especially recall was from Budd Schulberg, as we were sorting out some wartime experiences. His brother had been drafted; and when Budd asked him about it, his brother said, "Well, it was terrible. All I did was fill out questionnaires and go through medical exams and everything else." And Budd said, "Was it constantly boring?" His brother said, "Well, there was one exception. As we were doing the questionnaires, and the sergeant said to me, 'What's your religion?'," the brother said, "Not affiliated." So the sergeant looked at his superior and said, "What does he mean?" His superior said, "He means Protestant." [Laughter] That's not a common question anymore.

Budd was quite a guy, and incidentally the first person I heard talk about the problem of the death camps in Germany. He had been a special navy reporter on early visits to some of those camps. It just overwhelmed us.

Later we had a Red-Scare split, comparable to the one that almost split the CIO [Congress of Industrial Organizations] and the ACLU. Remember some of those histories? We didn't trust our hard-leftists; and so they wrecked us, just as they tried to wreck the CIO and the ACLU. A lot of them were sincere, but we wanted to accomplish things and were convinced that we wouldn't if we went hard-left.

HICKE: What did they actually do?

NEWMAN: Oh, you know, make people not want to go to meetings.

HICKE: Threaten you?

NEWMAN: No, it was just a bore. They didn't care enough about things we thought were critical. I tended to be more tolerant than a lot of my friends who had more sophistication than I. But Charles Bolté and Orville Freeman (our Washington chair) made the decision, along with many other good people.

One was Neil Staebler, who was [G. Mennen] Williams's finance man when Soapie ran for governor.¹ Neil kept up with Democratic politics, became Michigan's national committeeman, and subsequently got into Congress. He's now head of a very interesting government studies operation in Michigan. He's older than I, but he was the kind of guy who was very faithful and didn't want hard-leftists to keep bothering him at meetings when he wanted to get things done. We didn't have access to enough dues-money; we faded away.

1. Williams was governor of Michigan 1948-1960.

Timothy Leary was one of the leaders out here in California when I became inactive. I hadn't know him until I got out of the service, probably the summer or fall of '46.

HICKE: So it did spread nationwide?

NEWMAN: Yes, but mostly in urban centers. And not a lot of them. We used to put out good literature. Our slogan was "Citizens first; veterans second."

HICKE: Veterans second?

NEWMAN: "Citizens first; veterans second." And that, of course, distinguished us from the old organizations.

HICKE: OK. Well, the loyalty issues went on . . .

NEWMAN: Yes, two decades.

HICKE: . . . through the late forties and early fifties, and they appeared on the University of California campus here. You were involved in that I'm sure. Can you tell me about that from the beginning to the end?

NEWMAN: No, it's too long; but I remember I was quite angry in my old office here when a civil service man came in and asked about a student I'd had many years before. This was in the sixties. I remembered the student's name, and I even knew where he'd gone to work. He'd become a fine government lawyer, I learned later; but I wasn't sure at the time. The civil service man said, "I can find out what he's doing now, but I'm more interested in what he did when he was a student." I said, "What you mean?" "Well, tell me something about his activities." I said, "I don't know what his activities were. I only had him in a big class." He said, "Well, tell me something

about him in class." I said, "I don't remember him in class. This was a big course." Then he said, "Can't you even remember whether what he said was liberal or conservative?" Now this was in the early sixties, during Kennedy's term, I'm pretty sure.

HICKE: Did you tell him you only discussed commas and statutes and so forth?

NEWMAN: He didn't know a thing about that. (He wasn't very alert, in my opinion.) Well, I really got angry. I was on the Academic Freedom Committee of the Academic Senate at the time, and then I became chairman. There was a great guy named [Isadore] Iz Perlman on my committee, who was associate director of the Lawrence Berkeley Lab up on the hill. And I remember how astonished I was at a meeting of the little committee--I think there were five or seven of us--he said, "Frank, you're out of date. We no longer require a security clearance at the Berkeley Lab." And I'd always thought you had to have a pass to get up there. He said, "No, we just decided it was a nuisance; we weren't working on things that were that classified; so we just told them, no more security clearances."

I got to thinking about the rest of the campus and how many profs like me had been subjected to the civil service kind of inquiry, and I got the committee to approve a long statement with a sentence that said, "No professor shall ever discuss the political views of his student with any potential employer, governmental or private."

Well, [U.C. President] Clark Kerr got awfully mad and so did a lot of profs. They said that was an interference with academic freedom and cited "tradition" was against me. Obviously people about to employ someone want to know a lot about students, they argued, and not just their grades but even their political views. Well, we pushed it through the senate and won; Clark got quite angry and with the help of his general counsel--I guess it was [Thomas] Tom Cunningham at the time --ruled that the Academic Senate had no authority to tell individual professors what they couldn't say. That led to quite a blowup, as you can imagine; but the general counsel's opinion held, and we really didn't want to fight it out in court.

HICKE: This was based on the right to privacy of the individual?

NEWMAN: Well, at that point the right to privacy was not in the California constitution. Do you remember the date of Roe v. Wade?¹

HICKE: This is the sixteenth anniversary.

NEWMAN: Yes. We didn't even have Roe v. Wade, and in those days right of privacy was something that [Justice Louis] Brandeis had written a Harvard Law Review article about with a fellow named Warren. It was called "Right to Privacy," and everybody thought it was just tort law. That was one of the things you couldn't argue in loyalty-security cases. You had to argue First Amendment or freedom of association, or something like that.

HICKE: Going back to Tolman v. Underhill². . . . Is that . . .

1. Roe v. Wade, 410 U.S. 113 (1973).

2. Tolman v. Underhill, 39 Cal. 2d 709 (1952).

NEWMAN: Yes, but remember that wasn't this kind of case. I was deeply involved in that one. It was in the early fifties, the famous case where the victory was that the governor, Earl Warren, persuaded the regents that it was terrible to make only professors take the Levering Oath or any oath. He would get an initiative or referendum measure through, making all state government employees take a Levering Oath. That was his great victory for civil liberties. [Laughter] Of course, it caused some to-do at the time; and ultimately that was held unconstitutional, too.

HICKE: Let's back up and tell me a little of the background of that.

NEWMAN: Of the oath? Well, I forget the language of the original oath, but it came out in '49. Little groups began to meet, and I was in at least one of them. There was a lot of argument among the profs. Everybody thought it was very funny that Thomas Reid Powell of Harvard, who was great on one-liners. . . . What's this new phrase we invented for this last election? Sound bites?

HICKE: I know what you mean.

NEWMAN: Well, Thomas Reid Powell was marvelous at these. Harvard had had a loyalty oath in the thirties, I think; but it wasn't like the university oath; it was just a plain old "uphold the constitution." He was regarded as perhaps the greatest constitutional law professor at the time; and so when they came up and asked him, "What are you going to do about the oath, Professor Powell?" his answer was, "Well, of course, I'm going to sign it. The constitution has been upholding me during

almost all my professional life, so why shouldn't I say, 'Sure, I'm going to uphold it?'" The older profs here thought that was very funny, and we tried to persuade them this was a different kind of oath.

So you just can't imagine how many meetings--some secret, some huge collections of professors, fantastic turnouts for the senate, which wasn't all that large at that time--and then official committees of all kinds, trying to work out some kind of deal. Then a few of them decided they were going to litigate. I guess I helped find the lawyer. He was Stanley Weigel, who subsequently became a very distinguished federal judge, and he won that case when nobody thought he was going to.

HICKE: How did that work?

NEWMAN: Well, he used a lot of arguments. He opposed Pillsbury's Eugene Prince. I was at the oral argument, I remember. All my friends were saying, "Oh, Prince's brief is so magnificent; and he is such a brilliant advocate, Frank; we haven't a chance." Stanley Weigel was quiet and wrote a very good brief, and so "we" won.

In the meantime a lot of us assessed ourselves 2 percent of salary to finance the non-signers. I was treasurer and put out a lot of tens of thousands of dollars, writing checks to the people who held out.

But there were some humorous parts of it. At one point Kerr, who was chair of the Privilege and Tenure Committee, came out with what he thought was a great compromise--that

we would swear to uphold "impartial scholarship and the free pursuit of truth." That was going to be the phrase instead of "the constitution" or "you hate communism" or all those things. You'd swear that you were for impartial scholarship and the free pursuit of truth. Well, talk about "void for vagueness."

HICKE: Yes, it's hard to argue with that.

NEWMAN: I'll say. But I think it really was humor that finally brought it down, because miscellaneous people--and they applied it to all university employees--and people like custodians would come up and say, "Professor, I don't know what that means."

HICKE: I'm pursuing waste paper, not truth.

NEWMAN: So thank God there was a little humor in it, but there was a lot of bitterness too. And I regarded it as a main cause of civil liberties. That was the first time I got deeply into academic freedom, and I did a lot of work on academic freedom from then on.

HICKE: How do you think that impacted on the university?

NEWMAN: Well, [David P.] Gardner got to be president and he's the author of, I think, the leading book on the subject.¹
[Laughter] So whatever wounds there had been have essentially been forgotten.

We lost a lot of good professors. We lost three or four theoretical physicists and a great classicist. After we'd finally won the lawsuit, I went around to see him. He was in the library annex. I hadn't known him well, but I said, "You've

1. David P. Gardner, The California Oath Controversy (Berkeley: University of California Press, 1967).

heard this compromise has been reached?"; and he said, "I know; that's why I'm leaving." I said, "Well, professor, you can't win them all and we made great progress. This isn't what we hoped, but some of us think we ought to stay around and keep going on the whole issue of academic freedom." He said, "Newman, that's what I said when my friends first came to me and asked me to stand up against Hitler."

HICKE: Oh, my.

NEWMAN: How do you answer that?

HICKE: What was the compromise?

NEWMAN: I forget which one this was, whether it was before or after the lawsuit. But I think they took out the anticommunist oath and impartial scholarship and free pursuit of truth. It may just have been the plain old Levering Oath that got into the California constitution through initiative or referendum, with the backing of Governor Warren.

HICKE: Then how long did it take to heal the split?

NEWMAN: Well, obviously some departments were hurt and some had great divisions. The terrible division of psychology may have traced back to that, but I'm just guessing. There was a period when the clinical psychologists and the so-called academic psychologists wouldn't meet together even though they were in the same department. There were a lot of those things around, but I just don't remember how many came out of the oath. I think it was [Dean William L.] Prosser who once called a faculty meeting without me, to ask the faculty whether the time hadn't come when they should do something about me.

Fortunately I had a few friends. There was quite a bit of that throughout the campus.

HICKE: So you were really taking risks when you were doing some of these things?

NEWMAN: Somehow I never thought so. I didn't feel very brave.

[End Tape 2, Side A]

[Begin Tape 2, Side B]

NEWMAN: I didn't quit because of the oath with the famous forty-five who did. Then thirty-nine of those signed the Kerr Compromise. The other six wouldn't. That was when a lot of people got mad at me, because I decided I couldn't desert the six. Those six were the true conscientious objectors compared with those like me who said, "Oh, hell, we're going to have more fights ahead." Monroe Deutsch helped us. Do you remember his name?

HICKE: No.

NEWMAN: He'd retired. The chair of the math department and I went to see him in his San Francisco apartment and persuaded him to give the lead speech on how the Academic Senate couldn't possibly desert the six.

HICKE: In front of the senate?

NEWMAN: Yes. That was the tightest moment in terms of colleagues' anger when you didn't go along with the crowd. One of those six is still a friend of mine. He was just a young guy then.

The Academic Senate people didn't want to get in with the TAs [teaching assistants] and the other nonsenate personnel.

And that caused some friction, as you can imagine. Do you know Professor Van Deusen Kennedy, with the Institute of Industrial Relations and the School of Business Administration? An economist. He's still around; and I still have lunch with him and others. He volunteered to head up the campaign for nontenured faculty. Or maybe he was treasurer, the way I was. I was always proud of him. Not many of the others wanted to leave the castle of senate membership. I think the rules were even more arbitrary then than now as to which teachers could and couldn't be members of the senate. For instance, those who had taught even as long as eight years, but were still untenured, I think were not senate members. Some of those rules have changed, but I'm not current on the details.

HICKE: There were other loyalty issues in the state?

NEWMAN: The state also had quite a loyalty security program. When Pat Brown was governor, I got a call from a member of his staff who said, "Hey, you know this guy, don't you?" And I said, "Slightly." He said, "Well, I don't see how we can hire him," and I said, "Why not?" He said, "Oh, he's been horsing around with leftists." Just like that. I was shocked. This guy was a civil libertarian himself, but he wasn't going to have Pat Brown take any chances.

It was also the time of the famous [Senator Jack B.] Tenney Committee, later taken over by another senator whose name I forget. Tenney's in some ways was worse than the House Un-American Activities Committee. The Tenney Committee put out a huge directory of everybody who'd ever

been mentioned by name in any available published hearing, federal or state or any other kind of governmental publication. He had them all listed alphabetically and I think by geography and every other category, and many of us were in there.

HICKE: It didn't differentiate as to what was said about you or anything else?

NEWMAN: No, no; just the list. They distributed thousands to employers and government personnel people and others. I think I threw mine away. [Laughter] But let me ask you a question. The Bush administration has been in now for almost a comfortable three weeks, and tremendous hiring is going on. We see mostly top people. But suppose you want a humble job or some middle-level job. Would you warrant to me that no one will ever be asked, "Are you, or have you ever been a card-carrying member of the ACLU?"

HICKE: Very interesting.

NEWMAN: I just don't think there is any question. I have a distinguished friend who has been writing to the Reagan White House for several months--and now is going to continue his work--with respect to lawyers abroad who are being treated badly, thus making it impossible for them to represent their clients. In fact, some of them are in prison, some are tortured, some are disbarred, all kinds of discriminations against lawyers. It's just incredible how that goes hand in hand against dictatorships. The dictators' advisors learn that lawyers are the guys who really cause them trouble. All an ordinary person can do is scream and nobody listens, but once he gets a lawyer. . . .

And I wouldn't be at all surprised if some minor functionary in the White House, getting the first letter to Bush from the organization represented by this guy, would say, "Hey, we better find out what his ACLU record is." And I would guess it's just routine with the FBI [Federal Bureau of Investigation]. We used to think the FBI files were sacrosanct, unless J. Edgar Hoover cheated; but now we've learned that an awful lot of people cheat on the FBI files, just as they cheat on the CIA [Central Intelligence Agency] files. So we're not clean yet.

HICKE: Back to the fifties, let me ask you this first, what do you think in your background gave you this attitude about civil liberties?

NEWMAN: I haven't any idea. I was tremendously influenced by teachers, but I think I knew that one or two of my junior high school teachers were liberal even in the days when I didn't know the difference between a liberal and a conservative. My parents had been Republican until the New Deal, but they sure didn't like the Depression. I'm not sure they voted for [Franklin D.] Roosevelt even the first time, but by the second time they knew he was going to do something for people of modest means. I remember when my father lost his job because the plant closed down, and the only job he could get while I was in college was \$140 a month. So that was my first experience with anything that was sort of liberal except for a few teachers who said, "Of course I'm voting for Roosevelt, Frank."

We also had a very liberal principal of the junior high school, and I got to know him well because I was student body

president and had a lot of business to do with him. Who was the economist who wrote books about liberal economics? Stuart Chase, remember that name? He was a Stuart Chase fan and even brought him to some community meetings, and all of a sudden he was kicked out of his job as principal of the South Pasadena junior high school.

Then it certainly wasn't through my high school faculty. There again, in my senior year I was close to the principal for the same reason. I was also close to his family because they had musical children and neighbors. I learned later that not only did he look a little like Hitler, he obviously had a few Fascist or Nazi ideas. And the students in the assemblies, I'm told--this would have been inconceivable when I was there--used to give him the fascist salute. Think of that! That was my background. [Laughter]

Oh, and then when Culbert Olson got to be governor. . . . Who was the radical who ran against him?

HICKE: Upton Sinclair?

NEWMAN: Yes. I had a girlfriend whose parents were deep into the Upton Sinclair campaign, but they were the only people I knew like that. I think I went to one or two of his rallies. That's not much of a start. It must have been the college profs.

But even then I was pro-Roosevelt. I was an isolationist for a long time, in fact even pretty close to Pearl Harbor. And I was certainly no traditional liberal. It was partly the McCarthyism that began to come out even before I got in the navy. I could see that people were being treated badly and that

got me into this particular kind of civil liberties; and then I suppose I mostly stayed Democrat and became more and more liberal as time passed, just as Earl Warren did.

HICKE: Can you tell me any more about the Tenney Committee?

NEWMAN: Well, I had a classmate who joined the Boalt faculty at the same time I did, [Edward] Ed Barrett, who then became the dean at Davis and is now retired. He wrote a book on the Tenney Committee; but it came out when he thought the committee was going to evaporate, and it didn't. So it's a sad book to that extent because he said, "Things are getting better and I'm bullish about the future." But then this other fellow, whose name I can't remember, took over the committee with the same staff man, a really tough guy who dominated and thought he was doing God's work.

It's somewhat comparable to George Stewart's book on the loyalty oath. Do you know about that? George Stewart wrote a beautiful book called The Year of the Oath¹. Ed Barrett and I each wrote part of a chapter. I wrote about the TA here in chemistry whom [Regent] John Francis Neylan didn't like and attacked personally. Ed wrote about the piano player in the women's gym at UCLA, and Neylan had found out about her too. So Ed Barrett and I each had a half a chapter, and I think it was called "The TA and the Piano Player." George wouldn't let any of the authors who collaborated with him use their

1. George Rippey Stewart, The Year of the Oath (Garden City, New York: Doubleday & Co., 1950).

names. It's only George Stewart, because he was afraid of attacks and wanted to get the whole brunt of them.

HICKE: He was protecting you?

NEWMAN: He was very generous as an author. He said, "No sir, I'm not going to publish this book if any of you is going to get in trouble. And I think more than one of you is in jeopardy." But he wrote it literally after one year and things hadn't gotten tough by the end of the first year. He thought it was going to get nicer, and it didn't. It got worse.

HICKE: Did you find yourself in any difficulties with the Tenney Committee?

NEWMAN: No. They never called me. They put me in their book, but that was from some list they found. It could even have been the American Veterans Committee, I suppose. Or ACLU, you never know.

HICKE: What else were they doing?

NEWMAN: Oh, they were just looking for Communists all over the state. Aggressively. And for Communist sympathizers. And they had no trouble at all finding out what organizations they thought sympathized with Communists and, therefore, everybody on those organizations' mailing lists.

HICKE: Do you recall anybody else on the committee?

NEWMAN: No. Because nobody got famous the way [President Richard M.] Nixon did, for being on the House Un-American Activities Committee.

HICKE: What ever happened to the Tenney Committee activities?

NEWMAN: It evaporated. It may have been during Warren's governorship. He went to Washington in '52 so maybe it didn't.

HICKE: [Governor Goodwin J.] Goodie Knight followed Warren.

NEWMAN: Yes. And did he have two terms?

HICKE: Two, I think.

NEWMAN: I remember we thought that as a regent Knight was a right-winger. A lot of my friends did. I was never persuaded that he was that bad as a regent; but he was the subject of liberal attack for a long time, because it was assumed he would be powerful in his way as Warren had been, and he wasn't all that interested in the university. I also think he probably thought it was a tempest in a teapot. He knew the university was doing good things for the state and thought, "What the heck?" Gardner's book may have more on that.

Of course, the whole thing went out of fashion after McCarthy was broken. I think that's really it. It didn't sell after McCarthy was finally sent back to Michigan, and then with his death suddenly there was no leadership and very few people who wanted to keep it going.

And also, the big work was being done secretly by the government investigators. They were called "loyalty-security," but essentially they were after security; and they didn't question people about loyalty in the traditional sense. They said, "You're insecure in the Pentagon because you've been to meetings of this group."

Crazy things happened. An old college friend of mine named [William] Bill Remington was caught with a young

woman they thought was a Soviet spy. This was right after the war, and he became famous. A New Yorker profile wrote him up, and they gave him a clean bill of health. But I remember thinking at the time he wasn't that clean. [Laughter]

But at the time he was under attack he even went to jail for perjury; that was one of the things: I don't think anybody went to jail for breaking loyalty rules unless he was a real trader of secrets. But they'd get people for perjury on the ground "We think you lied." And even if it didn't relate to the main question, "You lied when you said you didn't see this girl at the corner of such and such a street at such a time." (And in those days it was "girls.")

There was another guy with a similar job in the Department of Justice. They called him in. I was in the navy still, I think, and everybody thought it was such a huge joke. They said, "We have reports you've been seen with this woman." And he said, "Yes, but it was only for sex." So that was all right. [Laughter] And it never even occurred to them until later, when they got into homosexuality, "Oh, well, but she'll blackmail you." At that time they didn't even think about that. [Laughter]

HICKE: That was before John LeCarre.

NEWMAN: Yes. I'm awfully proud of the American sense of humor. But sometimes things aren't funny.

HICKE: OK. So what other involvement did you have with the state government on the loyalty oath issue?

NEWMAN: That's all I can remember. I may have done some drafting of procedures, but I don't think so. Because state agencies never got into this business the way federal agencies did. During all this period I was working very closely with [Director of Administrative Office of the Courts] Ralph [N.] Kleps and his successor on administering the new administrative procedures act, and that was based upon fair procedures in all the government licensing agencies. There may be a hundred of them now, but at that time there were some sixty licensing agencies. Most were covered by this new procedural fairness statute. Ralph headed the program first, and then when he became legislative counsel, John Clarkson was his successor, and I worked with John; but having gotten to know Ralph so well, I did a lot of work with Ralph in the legislature, sometimes drafting.

When Pat Brown was attorney general he said, "We have to tighten this thing; it's become a mess." Of course, compared with now it was beautiful. I'd do anything to go back. [Laughter] We had a lobbying statute that Earl Warren had put through, and Pat felt that campaign contributions were the political counterpart. So he had a very good deputy attorney general working on it who knew I'd done some work and got in touch with me. We had a lot of fun on that statute.

HICKE: Who was that?

NEWMAN: Leonard Freeman, who became a distinguished appellate judge up in Sacramento. He was well known as one of the best on Pat's staff. Pat had a good staff. I remember, though, we had

a final meeting with a group of six or eight people over in the Women's Faculty Club. We worked hard, and Pat wanted to be on top of it, so we had to educate him as to what the provisions meant. On the way out he said, "Frank, there's something I don't understand about you." I said, "What, Pat?" He said, "You could get awfully rich in a law firm." [Laughter] You know, here's a guy whose whole career is public service. I'll always remember that. It was a little dumbfounding.

HICKE: That brings up two more questions. Why are you in public service and why was he, with that in mind?

NEWMAN: He probably didn't like law practice, and he became district attorney in San Francisco. He enjoyed politics. In those days [William] Bill Malone was chairman of the Democratic Central Committee in San Francisco and sort of a czar of the Bay Area. Very close to labor, very close to important business and professional people, and Pat was probably one of his proteges--good Irish as Malone was. The Italians were just beginning to make it. The big donation of a political leader was a judgeship, and I would guess Pat thought maybe he would get a judgeship. But the first thing he knew he was being elected attorney general and then governor. And I thought he was a very good governor.

HICKE: That explains about him. What about you?

NEWMAN: I just never was excited about big money. And I love public affairs, as you can tell. I loved having the opportunities to get a good look at a lot of different kinds of public affairs--starting

with Berkeley, a little of Alameda County, much more of Contra Costa County and then state, both administrative and legislative, and then incomparable early opportunities in Washington, D.C. I did a great deal of work with the American Bar Association on lobbying in Washington, D.C., appearing as witness before both Senate and House committees, things like that.

HICKE: OK, well, I want to hear about that.

NEWMAN: I'm sort of a compulsive reformer. I think problems ought to be solved.

HICKE: I'd really like to know how you arrived at that.

NEWMAN: I don't know. It was fun. I get tired of people's bitching about the problems.

HICKE: Without doing anything.

NEWMAN: Yes. Or sometimes without even saying anything about what should be done. I almost prefer the far-out solvers of problems who don't know anything. They could cause nothing but trouble, but at least they are trying.

HICKE: OK, well, there are several things I want to pursue.

NEWMAN: There's a final thing related to McCarthy. It took us a long time to get decent procedural rules for legislative investigating committees, and I worked on that, especially in Washington.

HICKE: What did you do?

NEWMAN: There was a lot of it in our legislation casebook. [Leans over to pick up book] I showed you this, didn't I?

HICKE: No.

NEWMAN: Oh really? This is famous because it was one of . . .

HICKE: Oh, that's your textbook?

NEWMAN: This is one of the first law texts that had cartoons.¹

HICKE: I was going to go to the library to see if I could find one.
[Reading cartoon caption] "It's OK, we're hunting Communists." That's one of the cartoons. Very good. Who drew the cartoons?

NEWMAN: Herblock.

HICKE: Oh really?

NEWMAN: We got permission.

HICKE: They were ones that had appeared in newspapers?

NEWMAN: Yes. But this was the first serious legal analysis of the whole thing. You want to borrow it?

HICKE: I'd like to just take a look at it.

NEWMAN: You'll probably like the cartoons. I always liked this one.

HICKE: [Reading again] "Must we concern ourselves with the meaning of the bills we pass, gentlemen? I understand it's the duty of the Supreme Court to determine them." [Laughter] Very good.

NEWMAN: Here, I'll give you one of my texts.

HICKE: I'll bring it back next time. Thank you.

NEWMAN: That was a great guy I worked with.

HICKE: [Stanley S.] Surrey?

NEWMAN: Yes. He was a tax expert, tax legislative-counsel at one point; and that's how he got to know more about Congress than I ever knew. He taught here for two years and then went to Harvard and stayed; but under [President John F.] Kennedy he became assistant secretary of the treasury.

1. Frank Newman and Stanley Surrey, Legislation: Cases and Materials (Englewood Cliffs, NJ: Prentice-Hall, 1955).

HICKE: OK, well, there are so many things to talk about here, I don't know where to start. Let me ask you, you started to talk about Pat Brown as governor. Maybe you could tell me a little bit more about your relationship with him.

NEWMAN: Well, I wasn't close, but I had known him when he was district attorney because he was very active in organizing a post-World War II group of young lawyers, mostly ex-service people like me. I remember Mary Ellen Leary enthusiastically telling me about Pat's efforts. She was the Scripps-Howard reporter on legislative matters, and said, "Here's a guy who's going to get going, and more than that, he's brought together this young group." I guess it was [William] Bill Orrick who invited me over to join them, and you can't imagine how many of the people who were later active in politics, both Republican and Democratic, were in that group of young lawyers. They were mostly Democrats at the time, but there's one famous one who switched parties (I think) after he got into a big firm and ended up as Eisenhower's commissioner of internal revenue or something like that.

HICKE: Who was that?

NEWMAN: I was with him a few months ago up in the hills of the [San Joaquin] Valley. I hadn't seen him for years. But Bill Orrick and [William] Billy Coblentz were top advisors to Brown, on his personal staff. Orrick then went back to Washington, D.C. with the Kennedys and had three different jobs in the Justice Department and another one in the State Department for a year. Coblentz became a legislative advisor, congressional

counsel, to the State Department. A lot of them became judges. Who was the one that was such a nice guy? [Robert] Drewes. Caroline Drewes was his wife.

HICKE: What did you do?

NEWMAN: We planned to take state government away from the Knowlands [Laughter] and to get Pat in as attorney general. We wrote position papers. For instance, Pat didn't know anything about the Public Utilities Commission. That sort of thing.

HICKE: So it was really to advance his . . .

NEWMAN: Well that was the original reason, but then people began to develop their own interests. For instance, I had interests on this side of the Bay. I'm pretty sure the only address of a Truman Club in the state of California was the Newmans' house on Shasta Road [Laughter], because the Democratic powers decided we didn't need Truman clubs.

HICKE: This was in '47-48?

NEWMAN: Yes, in '48. One of my friends was there with his wife, and she kept her membership card for years and was proud of it because it was probably the only membership card in existence.

HICKE: Wasn't George T. Davis part of that Truman campaign? Do you recall that?

NEWMAN: That's right, but that was because of his wealth. My impression was that he wasn't a group worker of our kind. He was somewhat a loner. He wasn't quite [Melvin] Mel Belli. And you know, Pat over the years picked up really good friends of all kinds in San Francisco. He was a great friendship guy, just the way Warren was.

I remember the first time I went to a large Sacramento conference there was Warren at the head of a reception line for several hundred of us. You had the impression he enjoyed seeing everybody. I couldn't believe it.

HICKE: What happened to this group?

NEWMAN: Oh, it drifted. Some of them got on central committees and some got government jobs like Bill Orrick and Billy Coblentz--all sorts of things.

HICKE: But the group itself . . .

NEWMAN: It was very informal. I don't think we even had any bylaws. I was a volunteer bylaw drafter in the late forties, and I don't remember any bylaws for that group.

HICKE: Did anything ever come of the position papers you wrote and things like that?

NEWMAN: Oh, they went into candidates' files for a while.

HICKE: Were they used in speeches?

NEWMAN: Perhaps. But I don't think I ever wrote a speech. I once wrote an article for Pat. [Laughter] I didn't want to be mentioned at all. Pat said, "I'm not going to send that in for publication unless we mention you at least in the first footnote." It was on the right to petition, because that's one of the First Amendment rights that lawyers almost never argue about. It rarely gets into judicial opinions; there are very few writings on the subject. So at that time this may have been the lead article of the fifties by Edmund G. Brown, Sr.

HICKE: Is the right to petition often a problem?

NEWMAN: Oh, yes. That's what I'm fighting at the moment, as to whether a protest may in fact have become part of the right to petition because it's the only way many people can be heard. Most people think it means a letter to your congressman. Well it's much broader than that.

[End Tape 2, Side B]

[Begin Tape 3, Side A]

NEWMAN: Protest is an opportunity to be heard, though not in the traditionally adjudicative sense. In other words, you don't come with a lawyer; sometimes you can't. Well, my test was--in fact it's in the Administrative Procedures Act¹ of the federal government--that every person has a right to see someone in a government agency about any matter subject to the act. I said that means that even the Budget Bureau can't keep somebody out. The agency people can say you can't see the chair or even a mere big shot, but you get to see somebody who'll listen to you.

HICKE: If it is a problem like that why had there been so little written about it?

NEWMAN: Because most lawyers didn't see how they were going to make a case.

HICKE: They didn't know how to use it?

NEWMAN: There had been terrible abuses. Before the Civil War some big movement was underway, and all the petitions were burned

1. Administrative Procedures Act, 60 Stat. 237, 918, 993 (1946).

NEWMAN: without reading them--something like that. There were other bad episodes in history. I began to see that there was what we call "a de facto right to petition" even though lawyers didn't think it was "de jure." In other words, very few government officials would say, "Not only can't you see me, I don't want you to see anybody." They'd almost always say, "Why don't you check down the hall?"

I did a lot of work on "illegal" government documents, like those not properly published. It was a scandal during the Depression days. It even hit the [U.S.] Supreme Court. They had oral argument, briefs and everything on a big case, and somebody then tipped off one of the judges that the regulation at issue had been repealed, but nobody knew it. And that led to the creation of the Federal Register. There's been a lot of work since then on improving the Federal Register. And we've faced the same thing in California; the rules: you couldn't get them.

So I had to poke around. I did this even when I was in the navy, because I knew the reform statute was going to come into effect, and I wanted to be ready to write the first big article on the subject, which I did. I would go all over Washington, to the big agencies saying, "I'd like to see about your press releases and your regulations." I learned I got the best treatment if I talked to the receptionist a little first. [Laughter] Usually receptionists have a few pamphlets and handouts, and then I'd say, "Well, actually, I was hoping for

some of the more formal things." She'd say, "Well, I'd better call Mr. So-and-so. You can talk to him."

HICKE: Did you get pretty good cooperation?

NEWMAN: Yes. This is essentially the rule of government officials. It's very rarely that if you look decent (I don't mean in appearance), and if you don't shout at them, you can get all over the place.

HICKE: You can petition as much as you want to in a normal voice.

NEWMAN: That's right.

HICKE: Did anything come of this?

NEWMAN: I published an article in the Harvard Law Review on the subject, and then I guess I wrote the first serious article on publication of California regulations. I probably did that for the state bar. I'd have to check to be sure that's true.

HICKE: So the one on the California regulations was investigative?

NEWMAN: No. This is the whole question of administrative rules and regulations, as we call them. (I've never known the difference between a rule and a regulation.) They're more voluminous than the statutes of California, just the way the Federal Register is more voluminous than all the federal statutes. And they're easier to change, but you have to be careful; so you write procedural rules on how changes are made and how new ones are issued. This was Kleps's contribution. Then you have to police and monitor it.

I remember I wrote every agency in the state--that's how I got into this--on the controlling California statute, and I got the craziest letters back. Some of them had never heard about

having to publish their regulations. One agency, because I may have used a phrase like "welfare of clients" or something, sent back this incredible letter saying, "We decided to send your letter to the Department of Welfare." [Laughter] This is what always happens when you have a big new reform. There are just a lot of people who don't know about it for years.

HICKE: OK, then was your work with the ABA [American Bar Association] section on administrative law related to this?

NEWMAN: Yes. I didn't join, I think, until 1950. I have stayed on as a member, except at one point I resigned for two years when they said they couldn't approve the United Nations treaty on racial discrimination.

HICKE: The ABA said that?

NEWMAN: Yes. And then two years later they approved it, so I joined again. [Laughter]

HICKE: They wanted you back?

NEWMAN: It wasn't just that, but some of my friends were angry.

HICKE: I guess I just need to know a little more about the California regulations and what happened there if you can explain it. Was this published and then became more of a procedural . . .

NEWMAN: Yes. It's the California Administrative Procedure Act,¹ and it's in two basic parts. It's been changed so much since then, but it basically started and was for years in two parts. One dealt with how agencies had to publish their regulations. There are lots of borderlines on what you don't have to publish. And

1. "Administrative Procedure Act." A.B. 35, 57th Leg. Sess., Reg. Sess., Cal. Stat., ch. 1425 (1947).

then there was a procedure for certain kinds of regulations that you don't just sit down at your desk and tell the world what the law's going to be. You have some kind of informal hearing and you notify people so they can write in and say, "Hey, wait a minute, that's a terrible proposal." There are often important hearings all over the state, like legislative hearings except less formal, usually with just one person but sometimes with a whole board.

The other big part of the statute dealt with fairness in the adjudicatory proceedings, mostly for licensing. That had immense impact in California. I published something in the middle fifties on that, too.

HICKE: What was the result?

NEWMAN: Oh, well, the agencies now essentially follow that law just the way they follow the Code of Civil Procedure, once they learn about it. Except for the state bar, and I've never forgiven them. They got mad at me because they thought I was going to cheat and try to make them do this when I was a judge. The [California] Supreme Court is in complete charge of the state bar; did you know that? I guess there are 130,000 members, and they knew that I thought lawyers were outrageous for refusing to be part of the Administrative Procedure Act in their disciplinary proceedings. We fought them for years. (I didn't have many helpers on this.) They're still fighting and spending millions of dollars on their disciplinary scheme; and it's a scandal compared with the doctors, optometrists, cosmetology people. All these other

licensed people who are quite happy with the administrative procedure of adjudication. But the lawyers are saying "Oh, no, we're different."

HICKE: What's the problem?

NEWMAN: They think they're different. [Laughter]

HICKE: They don't want to have anything to do with this?

NEWMAN: No, they just don't want to follow those rules. They want their own rules. They experimented with having discipline handled by little local groups--and they were terrible! But I don't want to crusade with you on that. I've given up that crusade. It would take at least two years to make any progress.

[End Tape 3, Side A]

[Session 3, March 30, 1989]

[Begin Tape 4, Side A]

HICKE: So far we got up more or less into the fifties and we talked about some of the things that you had been doing. Loyalty issues was one of the things you . . .

NEWMAN: Remember the phrase became "loyalty and security"? The final attacks on people were because they were security risks, even if they were not disloyal. For instance, in those days it was enough if you were gay. You couldn't really say a gay person was disloyal. The argument was that you would be subject to blackmail.

HICKE: Right. Incidentally this is your copy of the legal agreement we signed. We also got into academic freedom, the Tolman versus Underhill and some of those. There's one thing I wanted to go back to that I read about, in 1946. You'd told me about the American Veterans Committee.

NEWMAN: Yes, AVC.

HICKE: I read that in 1946 you challenged Oakland's refusal to permit the AVC to use . . .

NEWMAN: The Veterans Memorial Building.

HICKE: Can you tell me a little bit more about this?

- NEWMAN: I worked with a classmate on that, [Thomas] Tom Berkley, in the days when almost no blacks came to Boalt Hall.
- HICKE: He is a black?
- NEWMAN: Yes, and a very successful lawyer in Oakland who since has gone into business. He publishes the Post. He was head of the Oakland Port [Authority] for a while. A wonderful guy. I think he had his last year of law school at Hastings. But he came back from World War II and opened a law office; I began seeing him for lunch occasionally, and I'd bring him to class. He ran for Berkeley City Council too. And I was very active in that race. That was when we were fighting for a reformed government. So he said, "Well, some things are going on that you and I ought to work on." One was the Veterans Memorial building. It was just absurd that the veterans group was being denied use of it. The other was the Berkeley bowling alley. They wouldn't let blacks bowl.
- HICKE: Really?
- NEWMAN: Yes. So we got into both those litigative situations. There was a group of lawyers who were to the left of us who wanted to make a big public case out of the bowling alley scene, and all we wanted to do was win the lawsuit. So we split off, and sure enough, they got a lot of publicity; but they lost. These were the days before the Unruh [Civil Rights] Act.¹ Tom and I were pretty mad. But we were pleased about the Veterans Memorial.

1. A.B. 592, 1959 Reg. Sess., Cal. Stat., ch. 1866.

- HICKE: Was there any special technique that you used? How did you win it?
- NEWMAN: We tried to be good lawyers. Both of us were learning.
- HICKE: And what grounds did you win it on?
- NEWMAN: Discrimination without justification.
- HICKE: That was a pretty early case of that, probably.
- NEWMAN: Well, it didn't involve race; and there was the basic rule that unless you had some good reason such as race or sex, or all the things you can't use now, you had to have some rational basis. We said there was absolutely no rational basis to exclude this particular veterans group. Because even though it was regarded as left-leaning, it was sure miles away from disloyalty or security risk or anything like that.
- One of the leaders here at the time was "Mr. Drugs": Timothy Leary. We already were having serious problems with the hard left in the American Veterans Committee; and most of my friends from back East began to peel off, and that was the scene out here almost immediately.
- HICKE: I also read you went to Britain to study its handling of loyalty-security matters.
- NEWMAN: Yes. That was in 1957, following up on work I'd done at Harvard and then in Britain a few years earlier.
- HICKE: What was the particular interest in the British? Because of the relationship of their law to American law?
- NEWMAN: Partly, but also because they had very good repute among political scientists for being more decent with their campaign money, they had good repute too on other political practices. . .

. they couldn't understand McCarthyism. Well, I discovered they had a little of it.

HICKE: Is that right?

NEWMAN: Oh, yes. We could learn very little from them. Now it's come out that they're much worse than we are on secret proceedings. I don't know whether it's still true, but at that point I was working on federal statutes and rules to try to cut into McCarthyism, and I didn't get much help in Britain. They were very big on what decent people they were; but it wasn't always reflected in their law, I thought.

HICKE: That's interesting.

NEWMAN: And then my big year was 1960-61; that's when I did a lot of due process writing from Switzerland.

HICKE: Due process writing?

NEWMAN: I wrote articles on the concept of due process and particular applications of it on the whole question of fair procedure. And it wasn't till '67 that I switched to human rights.

HICKE: Along the way what kinds of things do you remember on this loyalty-security issue that particularly challenged you?

NEWMAN: Well, for one thing it was a great experience to work with Ernie Besig, the ACLU leader in San Francisco, and then gradually I became interested in other ACLU people in southern California and especially in Sacramento. A former student of mine was one of their first full-time Sacramento lobbyists. He's now a court of appeal judge.

HICKE: Who is that?

- NEWMAN: Coleman Blease, a very fine judge now and always a courageous attorney. I became a civil libertarian, really. With more emphasis on the civil liberties part of it than on the civil rights part.
- HICKE: You founded the Meikeljohn [Civil Liberties] Institute?
- NEWMAN: Was I a founder? [Ira Michael] Heyman was in on that too. I was at lunch with him today. The institute is having a big meeting at Boalt Hall on the fifteenth of April this year.
- HICKE: And whom was it that you were lunching with?
- NEWMAN: Oh, the people planning the meeting. I have a flyer right here. [Looking for document] The great personality is Ann Fagan Ginger.
- HICKE: Well, can you tell me how that got started and why?
- NEWMAN: A lot of us knew [Alex] Meikeljohn quite well. He was in a faculty luncheon group we had and he used to come around, as I recall, even at age ninety. His views were fascinating, because even though he was a powerful civil libertarian he didn't think the First Amendment should cover speech other than political speech. Those were the kinds of questions that used to be very difficult--comparable to the affirmative action debates now. (You can be against racial discrimination, but does that mean you're for affirmative action?) Well, Meikeljohn bowed to nobody in his love for freedom of speech, except he thought it should be restricted to politics and not get into pornography and dumb things like that, from his point of view.
- HICKE: More of an idea of a passive protection rather than an active policy?

- NEWMAN: Well, he just didn't want to confuse politics. He thought the great contribution of the First Amendment was that it kept our government decent and let people criticize it. But he didn't think that meant that pornographers ought to be protected.
- HICKE: And so, from this you went on to found the institute, or somebody founded it?
- NEWMAN: After Meikeljohn's death his wife, Helen, talked to me about his library, and then somehow Ann Fagan Ginger latched onto the name and began to see that maybe she could get the Meikeljohn books. And I think Heyman was the one who persuaded me to join the little group that at that point acted as advisory trustee.
- HICKE: And I see you have a training mission workshop on making peace work for our lives.
- NEWMAN: Yes. Ann turned to peace in much the way I have. I didn't influence her on this. It was her own separate work.
- HICKE: Is there a goal for this institute, in general?
- NEWMAN: She calls it education. She wants to teach people that peace law protects them. I'm more interested in changing statutes and regulations and winning lawsuits.
- HICKE: Well, those are complementary activities, I would say.
- NEWMAN: She's very active. She publishes the National Lawyers Guild magazine now. She has a fantastic library in a converted building in her backyard and it's one of the best on this kind of material.
- [Discussions deleted]
- HICKE: Does anything else come to mind on loyalty-security issues?

NEWMAN: By that time, because of the legislation coursebook (which came out in 1955), I was testifying a lot in Congress on matters relating to congressional and administrative procedures. Do you remember there was a big corruption episode during Eisenhower's administration, when [assistant to the President] Sherman Adams got fined? A colleague of mine from New York University was appointed investigator. He wasn't careful enough in his work, and a lot of people began to get mad at him, including members of Congress. I wrote an article defending him, saying, "If we're going to get to the depths of corruption we have to have guys who don't hesitate to move in brashly, and they don't always have Harvard manners."

So it was this combination starting with loyalty, then switching to security, then getting into legislative investigations such as McCarthy's. We quickly learned that other people were investigating too. Senator [Estes] Kefauver, for instance, was a very important antitrust investigator.

HICKE: Senator Kefauver?

NEWMAN: Yes. He was running for president at that time. All of these things sort of melded together. My own view was that it was high time to speak up on behalf of Congress. Because I thought the White House was making noises about "Why isn't Congress more like the British Parliament?" That approach has surfaced intermittently in American politics for a long time. So I wanted to defend the powers of Congress to investigate. I even quarrelled with my civil liberties friends on some of that.

HICKE: Did this have anything to do with your being a professor here at Boalt Hall?

NEWMAN: Well, I had time. I could write about subjects that interested me and I learned to testify in connection with studying legislative procedure. I was also very active in the American Bar Association's Section on Administrative Law.

HICKE: Yes, you did tell me about that before.

NEWMAN: Most of my prechairman work was on these kinds of issues in the late fifties and early sixties.

HICKE: So you were pretty much of an "expert" on that?

NEWMAN: Yes, as they go in Washington. Did you see what one of the TV networks did the other night on the little corps of commentators that all the big networks are using now? There are only about fifteen of them, and they're all in Washington and you see their faces constantly. One of the big anchormen was making fun of all the others and their constant sound bites: "Please Mr. Expert, can you tell us briefly what you think of this?" and then ninety seconds later they're on a commercial.

HICKE: An in-depth study, right?

NEWMAN: It's terrible how we do it. One of the guys was an assistant cabinet secretary I've never liked much named Richard Pearl. He was an aide to Senator [Henry] Jackson for a long time, and I think he did a lot of damage to American foreign policy. He's now with American Enterprise Institute or perhaps Heritage Foundation. They're using him on anything relating to the Middle East or Eastern Europe or take your choice.

HICKE: OK, one other thing that I didn't get a chance to ask you about: we did talk about Governor Warren a little bit, but I found in going back through the material that you were a consultant on his Commission on Unemployment [Compensation].

NEWMAN: That's right. I was their lawyer for a year or more. Adrian Kragen of our faculty was the one who arranged it. It wasn't a big money-maker but it introduced me to some California law I knew nothing about, both substantive and procedural. There were good people on the commission. Dean [E.T.] Grether of the business school was chair. He was a very fine economist and, I think, is still living. Nicknamed "Greth" always.

There were about seven commissioners and a couple of staff people. We really went into that unemployment insurance law with the idea of rewriting it, but we weren't strong enough to get all our ideas through the legislature. Industry and labor dominated us. I was disappointed because I wanted a statute that most employees could read; and the answer was, "You can't write law that way." Their thought was that trade association and union lawyers should be in charge. One of the commissioners was Charlie Scully, a great labor lawyer from the City; and he believed that too. So I lost my battle to get a statute that most employees could understand. Which was a battle I helped win in constitutional revision. This was my first rude awakening to the fact that most lawyers didn't want to write laws so that people could read them.

HICKE: Was it that or was it they didn't think it would be legally binding if they didn't couch it in this . . .

- NEWMAN: Oh, they were afraid. . . . I don't know how much of it was selfish; they wanted the business. (That was also true among my American Bar associates.) The unemployment commission rarely met with the governor even though one of the reasons he had a commission was that this was a hot potato at the time and he didn't want to get too involved himself.
- HICKE: And did a statute get passed, did you say?
- NEWMAN: After a grueling final ten- or twelve-hour day the commissioners agreed to disagree, and the effort collapsed. And of course, I didn't have a vote; I was just a lawyer. Adrian Kragen will remember more about the upshot than I would. But I don't think it's that critical.
- HICKE: Then I also have in '59 that you were counsel for the General Accounting Office.
- NEWMAN: Yes, that was on a very important question. The comptroller general who heads that office was an old graduate student friend of mine, Elmer Staats, a great public servant. He told his lawyer, the general counsel of the office, that they should bring in some pros and he probably mentioned my name. Three of us were a special team to advise the comptroller general on whether he could get documents from the Pentagon. The specific issue was antiballistic missile work, and the inspector general of the Pentagon had spent \$22 million or some fantastic sum on an investigation trying to find out if these missiles were any good. The comptroller general wanted to see that report. The White House and the Pentagon decided they weren't going to show it to the comptroller general,

because he worked for Congress; and this was at a time when there were big arguments over what was called executive privilege: what kind of president's papers could congresspeople look at?

We came to the conclusion that of course Congress had the right to see those documents. But the question was, how could they enforce that right? You couldn't send the sergeant-at-arms off to fight the air force. We recommended that a statute be passed giving the comptroller general or certain members of Congress or congressional committees authority to sue so the courts could decide this big issue, but nobody really wanted it to be decided. Every president since George Washington has had a fight with Congress about this, but they've never gone to court. Neither side wants to lose. They'd rather fight. It's a fascinating story. But we worked very hard on that report.

HICKE: Let me just go through just a few more of your activities to see what we've got. You were a visiting professor at Harvard; you told me about that. You were a visiting professor at the Salzburg Seminar on American Studies.

NEWMAN: Yes, I've been there several times; twice as a full-time teacher in the summer months, and I've talked to alumni sessions. Mrs. Newman has sung twice in the festival.

HICKE: Oh wonderful. Mozart.

NEWMAN: They do the C Minor Mass once a year on a Saturday morning. She's done it twice, first in '64 and then in '67. She'd sung it here with the Oakland Symphony Chorus and knew it very

well. It was great fun both times, and of course she was thrilled.

HICKE: What did you teach?

NEWMAN: One year I got into civil liberties. That was in '54 when I taught administrative law. In '64 I taught legislative process and the role of Congress compared with parliaments. Then in '67 I didn't teach; I just lectured.

HICKE: You were working up to the state constitution, I guess. But first of all, let's go into 1961 when you became dean of Boalt Hall. Can you tell me how that happened?

NEWMAN: Well, Prosser announced that he wanted to resign and that he was going to do it right away. Our first job was to persuade him to stay on a year because it's very bad for repute if your dean just walks off and says, "I'm leaving." And then we had search committees and blah blah blah. Finally some young people on the faculty came and said, "Newman, we're awful sorry, but it has to be you." Procedures were irregular and I wasn't sure; the thought had never occurred to me, but they won.

HICKE: And lots of interesting things happened during that period.

NEWMAN: That's right. I started in July of '61 and I stayed through June of '66.

HICKE: The first thing that comes to my mind is the Free Speech Movement.

NEWMAN: That was September of '64, so I had had considerable experience, including I think my earlier fight with Clark Kerr on the freedom of speech in the classroom resolution.

- HICKE: Yes, you told me about that one, where someone wanted to . . .
- NEWMAN: That was before FSM, but related, of course. And then, with FSM, it was just inevitable that I get involved. [Edward] Ed Strong was chancellor at the beginning, and then [Martin] Marty Meyerson was brought out as the new chancellor when Ed left. I became Marty's "lawyer." I remember hiring a room in the Faculty Club and staying up all night writing regulations, then rushing up to his house in North Berkeley and getting his approval. That was the sort of thing we were constantly doing.
- HICKE: Well, what did it all involve? Can you tell me a little bit more about it?
- NEWMAN: Well, the basic problem from a lawyer's view was that most of the faculty and most of the faculty leaders including, I think, every dean but me, thought the students were not protected either by due process or free speech. Some of us in the law school said, "That's pretty silly." But most of the others thought we were disgraceful: didn't we know the famous legal rule of in parents patriae? And then what's the other Latin phrase?
- HICKE: In loco parentis?
- NEWMAN: Yes. The professors are the substitute parents--they have all sorts of parental control. That's not covered by the First Amendment. [Laughter] So that was a big thing at deans' meetings, and it became nationally famous. I took a whole group of young faculty people back to the Christmastime meetings of the American Association of Law Schools, and we had a large panel and a huge crowd because they were all

scared to death it might happen to them too. By then we had the constitutional arguments pretty well set. But in the meantime the great phrase "time, place, and manner" had been recognized. [Professor] John Searle of the philosophy department was so good on time, place, and manner. In other words, you can't interfere with speech; but you can reasonably control time, place, and manner of speech. So that led to sidewalk tables, how big they could be, where did the campus end and the city begin? It was incredible.

HICKE: This was all based on constitutional issues, the First Amendment?

NEWMAN: We had to get that settled first, that the students did have some rights--first of all to free speech, second to fair procedure. You couldn't just throw them out because you didn't like them.

HICKE: Where did "time, place, and manner" come from?

NEWMAN: Probably from a Supreme Court case. There had been a big issue of picketing at the time of the Depression. You could picket, but you couldn't picket however you wanted. Over decades there evolved this formula: of course you can control time, place, and manner, reasonably; but you can't say nobody talks.

HICKE: So that would be . . .

[End Tape 4, Side A]

[Begin Tape 4, Side B]

HICKE: So that would be something like where the public welfare is at stake?

- NEWMAN: People are entitled to attack your views on public welfare as long as they don't block the doorway to Sproul Hall, as long as they don't shout so you can't hear the other person. These are the kinds of things covered in "time, place, and manner." As long as you don't bring a table that is too big, but only a card table. I always thought that was a dumb rule. [Laughter]
- HICKE: How did they ever come up with that?
- NEWMAN: There were dozens of card tables out there for weeks--even months. I remember Clark [Kerr] at one point decided there just was no reason they shouldn't convene down in front of Zellerbach, because that was built to be a big space. He didn't want everybody blocking the walk from Sather Gate to Bancroft. So that became one of the big questions: "Could you tell them where they had to go?" And the answer was no; part of free speech was being able to see and talk with the people marching through on their way to lunch and back to class. These were tough questions.
- HICKE: It's interesting and I don't understand how you decided them.
- NEWMAN: Talk, talk, talk.
- HICKE: Oh, it was negotiations.
- NEWMAN: I could show you some of my shiny pants. Constant negotiations.
- HICKE: That's what I wondered. I didn't know whether you based it on some case law.
- NEWMAN: Most people don't know the first four years were peaceful. But the second four years were not. The whole thing lasted eight years.

HICKE: The first four years of the Free Speech Movement?

NEWMAN: Yes. Mario [Savio] believed deeply in passive resistance. But then there were big arguments: "Oh well, if you sit in, that's not passive." So they arrested 700 students in Sproul Hall one night. And then they said, "If you sit on and dent the top of a car, that's not passive," which is what happened to one of them the first bad day. But these guys and women had done a lot of work on Martin Luther King and Gandhi, and some Christians got into it.

HICKE: Reform, born-again, you mean?

NEWMAN: No no, I just mean they weren't necessarily pro-black or pro-Gandhi. Jesus was a passive resister. You didn't have to be born again.

HICKE: OK, I thought maybe they were . . .

NEWMAN: And then the rock throwing began in '68-69, four years later. That was a dirty period. The last big event, I think, was at the law school in '70. The whole story ended with a tremendous move in the spring of '70 against the U.S. actions in Cambodia; and that was when Governor Reagan even had to close the university for two days, as I recall. Everybody was on the telephone. And it wasn't just the university; he closed the public schools--everything. Our daughter was substitute teaching in the black part of Oakland, which was very poor in those days. She said, "My kids don't have any place to go except school." So she'd stay around just to be house mother.

Anyway, at Boalt Hall we trained law students from all over the state. They came in one night for a special course,

taught by students, on how to lobby. The next day they had buses and cars taking 600 students up to Sacramento. They sent five students to every single legislator, including at least one veteran and one person from the legislator's own district.

HICKE: Oh, in the group of five.

NEWMAN: Yes. The immediate goal was to get a statute ordering the attorney general of California to test the legality of the Vietnamese War and especially Cambodia. It never passed; but we had TV, press conferences, very impressive coverage. Also at that time [President] Lyndon [B.] Johnson had begun his War on Poverty, so a lot of those students were engaged in public interest law work because there were adequate salaries competitive with the private firms. It was a great period.

And then at Boalt Hall, the law review sent out young law students to protect pamphleteers and leafleteers at shopping centers. It was a huge operation, run out of Boalt Hall, all focused on Cambodia. So that summer Nixon changed the draft rules and everybody relaxed. From my point of view Laos, in the fall of '72, was worse; but the students didn't care anymore. I was disappointed. They had a good case against the war in Cambodia, but that wasn't the only reason they were protesting so vehemently. They just didn't want to be drafted. So once there was only Laos and they weren't subject to the draft until they finished their studies, they didn't find time to protest.

HICKE: So this was basically a student-led movement.

NEWMAN: Oh, yes. And the same with FSM. This was sort of an outgrowth of FSM, partly because a lot of our law students in the early seventies had been radical undergrads. There was one period of two weeks in that spring of '70 when we had an average of one bomb-warning a day here and had to clear the building each time. There was even a fire in the library downstairs. It was not funny.

HICKE: No. You were under siege almost.

NEWMAN: That's right. And then it got all mixed up because the blacks and the Chicanos were not getting along. And then don't forget People's Park. We're having strange little reminders of it now.

HICKE: Let's talk about that a little bit.

NEWMAN: The violence began in '68, in the fall. One of my best friends from Europe was here teaching human rights in the spring of '69, a man named Karel Vasak. He was one of the leading human rights scholars of Europe and had set up the International Institute of Human Rights to which Boalt Hall had very close ties. You may remember that Nanterre, in France, exploded in the spring of '68, so both Karel and his wife and their six children were fascinated to compare Berkeley with the French university scene. Do you remember that Place St. Michel, across from Notre Dame, was one of the great arenas?

HICKE: They had barricaded it?

NEWMAN: Yes. And the police used to use lead in their capes, did you know that?

HICKE: No.

NEWMAN: Their French capes had lead sewn into the bottom skirt to use as clubs. I got to see some of that. Huge buses would come up to get ready for the big arrests. Well, Vasak was fascinated by all this, and we were concerned with the human rights implications, specifically those affecting civil liberties. So he and I did a lot of poking around. He taught me how to use a wet handkerchief for tear gas. On one occasion he and I, after running with one of the mobs, found ourselves all alone, in one corner of the big lower plaza of the student center; and a cop came up and fired tear gas at us.

HICKE: At you?

NEWMAN: Yes. And we were dressed nicely; we were always careful to do that so we would be segregated; and I learned to handle tear gas.

And then there was a great march following the People's Park protests. Do you remember that a young man was killed and another had his eye put out on the bad block of Telegraph [Avenue] between Dwight and Haste? They had hundreds of "sheriffs" out that day, not trained policemen; they were deputies, mostly friends of politicians. Oakland or Alameda County, probably Alameda County, bought them blue overalls. This was the time of the Beatles, so they immediately became known as the Blue Meanies. They used to line up all the way to Sather Gate.

Karel became especially interested in People's Park, so both of us brought our families to that great march. There were varying estimates on whether we really did have 100,000

marchers. It was almost an all-day affair. By then the Academic Senate had decided it had better cooperate with the students as best it could and try to keep the peace; so I had an official arm band as a faculty marshal. I spent most of the march up in a church building on Dwight. It was across from the New People's Park. The original People's Park had been set up on what was planned as BART [Bay Area Rapid Transit] property.

HICKE: Oh, was it? Oh, I didn't realize that.

NEWMAN: That's where the march began. Then they marched up to this new site, much closer to campus. It was a very exciting day. After that things began to calm down for a while, but they burst open again because Vietnam got tighter and tighter. The civil rights movement got tougher and tougher, and then Cambodia, and then Laos.

HICKE: Was this the occasion when you were telling me about Cecil Poole? Could we get that one on tape?

NEWMAN: Well, I'd known Cecil for many years and respected him greatly. At that time he was United States attorney, I think, in San Francisco, which meant he worked with federal courts and had a bigger jurisdiction than a county sheriff or district attorney. So he brought some of his people with him to the East Bay--because something had gone wrong in Oakland, and students were beaten up or something, and he'd investigated the police down there. So he was here partly to see that the students didn't get out of hand and partly to be sure the sheriffs didn't.

- HICKE: He had quite a job.
- NEWMAN: I remember following Cecil with my little camera, taking pictures of him moving around; but it was a very peaceful day. That was the last big demonstration of the flower children. They put flowers in the riot helmets and in the barrels of guns; it was incredible. The student marshals kept them in complete control, as far as I recall.
- HICKE: OK, well, let's go back to the sixties. One of the other things that I know happened is that you and [Professor] Sam Kagel founded the Earl Warren Legal Center.
- NEWMAN: We had help, but I suppose it's fair to say we were main backers. Sam and I had done a lot of work, so after getting faculty approval we got into the question of how to finance it. That was one of my assignments as dean, and I never liked that part of the work much.
- HICKE: How did you finance it?
- NEWMAN: Oh, you try to hit the alumni. You have some friends, and you try foundations. We tried everything. We finally ended up with Manville Hall. He was of the famous Manville family, but he wasn't Tommy. He was a very nice guy who lived in Nevada, and his sister was the wife of the U.N. secretary general who was killed in a plane accident in Africa, [Dag] Hammarskjold.¹ So he and his sister were trustees of a lot of money. I never did find out if we got that quarter of a million dollars, because it took a lot of years and I had left the

1. Ed. note: Dag Hammarskjold was not married.

deanship in June '66 before final arrangements were made. But that was the sort of thing we did. And Glenn Seaborg was very helpful. He worked with Adrian Kragen and Dean [Edward] Halbach to get money for the auditorium.

HICKE: What was the purpose of the center?

NEWMAN: We needed an auditorium because we couldn't put enough students together in one place. We needed a dorm. We very much needed seminar rooms. We needed offices for research people. A modern law school is a big operation. We just didn't have the space.

HICKE: Well, what were the other challenges that faced you as dean?

NEWMAN: Oh, mostly trying to get and keep good faculty people. That's the biggest part of the job. And trying to keep the faculty peaceful and happy. I spent a lot of time with the younger profs, for example. I used to try to get them summer jobs or special assignments, some of the kinds I had had, in Sacramento. I always thought it was very good professionally to get them involved.

We've never had, in my opinion, enough Boalt graduates on the faculty. We do have a bigger number now. And for me it was a major task to persuade some of the brightest young people to join us.

HICKE: You said you tried to get some summer positions in Sacramento. Did that work out?

NEWMAN: Sure. I got one fellow an assignment with the Department of Social Welfare and another a comparable job--I think with a legislative committee. Then we used to take on little

assignments; for example, one of the revisions of the Education Code was done down in Room 131. I wanted it to be public interest work, but I also wanted to help get them money for a baby or a car or a mortgage.

HICKE: All necessities, or all requiring money. Tell me about your relationship with state government.

NEWMAN: I had very close friends in the legislature and in the administrative agencies. I did quite a bit of testifying in Sacramento too, much as I did in Washington.

HICKE: On loyalty-security issues?

NEWMAN: No, because that wasn't a big thing in California. The Tenney Committee was a big thing and then [President pro tem] Hugh Burns had a subsequent committee. They had a very controversial lawyer working for them. I don't recall having specific assignments relating to that. I did a lot of work on the lobbying statutes.

HICKE: Tell me about that.

NEWMAN: That, again, relates to the 1955 book. As part of the work on party finance that I had started in 1954, I concluded that lobbying expenses were a huge hunk of the problem, because lobbyists finance most of the campaigns. They get their start in Congress; that's where they decide which legislators they're going to back. And Warren on his own in 1946, before I knew him, learned that Congress had passed a statute, the Lobbying Act of 1946.¹ So he almost copied it for California, and

1. Federal Regulation of Lobbying Act, 60 Stat. 840 (1946).

suddenly we had a lobbying statute.¹ And both statutes needed a lot of attention: how do you apply them, how do you interpret them, how do you enforce them? I was involved with that operation. For instance, there was a legislator from the City who wasn't too bright, and I'm pretty sure they made him chairman of this committee so he wouldn't cause any harm. He was chair for at least six years. I was his lead witness, I think. In those days the legislature met biennially. Every two years he'd have a new hearing. And they always wanted to change the statute for the worse. I used to tell him I couldn't promise that the League of Women Voters wouldn't speak out against him.

HICKE: Was that a convincing argument?

NEWMAN: Yes, that's all he wanted. He loved being popular. But also he didn't want to irritate lobbyists. But we held the line. There have been a lot of changes since then that I haven't kept up with, both federally and in California.

HICKE: Do you recall any specific things that you dealt with?

NEWMAN: Well, the main thing was to get the lobbying statute enforced. It was a reporting statute. We were for disclosure, not for prohibition. My basic argument was that lobbying was a form of free speech and the only question was whether it was going to be secret. So we had to keep improving the publications--pamphlets and implementing information, and we had to educate legislators too.

1. S.B. 769, 1949 Reg. Sess., Cal. Stat., ch. 942 (1949).

I remember having been irked because I didn't think Pat Brown had pushed hard enough on lobbying controls. And at one hearing in the legislature somebody from his office read Pat's speech. He said, "Lobbying is an insidious thing and we must do all we can to control it." I was the next witness and I said, "Well, frankly, it seems to me the only reason people thought lobbying was insidious was because people like the governor kept saying so." [Laughter] And Unruh just thought that was terrific. I remember he spoke about it when he was at a Boalt Hall luncheon. I was sort of pleased. Because it related to my whole approach that you're trying for disclosure and you don't tell people what they can't say or can't do.

HICKE: And not to say whether it's good or bad what they're doing but just so that . . .

NEWMAN: Let the people decide when they've got the information. Finally, they began to put out an annual book, a fascinating book. I guess they still do. I've got a first-rate former student who worked with me my first year on the court. She's now the general counsel of that agency.

[End Tape 4, Side B]

[Session 4, November 28, 1989]

[Begin Tape 5, Side A]

HICKE: During our last session in March we discussed some of the events when you were dean, and you talked quite a bit about the Free Speech Movement and People's Park and some of that. Well, I came up with one question. There was an impromptu panel on the Free Speech Movement at the meeting of the Association of American Law Schools.

NEWMAN: That's right.

HICKE: And I wondered if you could tell me sort of what happened there?

NEWMAN: Well, it was exciting, because that was a pretty stuffy organization in those days and yet they knew that this was an important academic event and that lawyers and law teachers were obviously going to have a role. When we proposed the panel their reaction was, "Gee, the program is too full. We don't see a place for you." Well, I knew that group pretty well in those days, and I said, "Well, your meetings usually end late in the evening." They said, "Yes." I said, "Well, suppose we have an 11:00 or a midnight session." And do you know, it was absolutely jammed.

HICKE: Oh, fantastic.

- NEWMAN: Not even on the main program--but hundreds were there. They were so fascinated, because for years there had been a lot of student demonstrations, but at the time ('64) not many people had yet become involved with Vietnam protests, which sort of developed out of the Free Speech Movement. Many of the law profs had been involved in civil rights. But even civil rights were different from free speech. Civil rights is fourteenth amendment, equal protection.
- HICKE: Free speech . . .
- NEWMAN: The first amendment is ACLU.
- HICKE: Yes. OK, very good.
- NEWMAN: So they knew there were legal implications here that varied from the traditional academic freedom problems. And that was why they came. Of course the papers were filled with it. It was like this year's earthquake. [Laughter]
- HICKE: Well, tell me a little bit about the other panelists and what you talked about.
- NEWMAN: Well, I remember there was one prof I should have invited because his dad was there, but I didn't know that. I should have. [Laughter] But we had Hans Linde, now a Supreme Court justice in Oregon, who then was merely a professor in Oregon. And Bob O'Neil, who subsequently became president of one of the big universities back East. They were both teaching at Berkeley that year. (Bob was, we thought, on the ladder and then he began to be invited to be president of these universities; he left us.) And then, I suppose I was chair. And maybe Bob Cole? Anyway, some of our best Boalt Hall

teachers were on the program, and the question period was the most interesting.

HICKE: Yes, that's what I . . .

NEWMAN: There were a lot of able people sitting in that audience who didn't think students ought to demonstrate. [Laughter] So it was an exciting evening.

HICKE: So it was a bit of exchange here and there?

NEWMAN: Yes, and the next day it was a great subject of conversation.

HICKE: Oh, yes. Do you think that you made any converts or convinced people?

NEWMAN: That happened sooner out here. I think I mentioned before that at the beginning I was the only one at deans' meetings who thought students were entitled to free speech and due process.

Remember, the first four years were peaceful. The Savio years were peaceful. It was only in '67-'68 that the violence began, and then we had four more years that were tough. I didn't like those years.

HICKE: Yes, that's a good point.

NEWMAN: That's what isn't generally known. Even in U.S. circles and overseas I've discovered, people don't realize that we had these two very distinct periods. It all began here and then erupted all over the world. Then the question was, "Well, at Berkeley it was peaceful." That's what they used to say. And then Berkeley went violent. . . . But we had a total of eight years: four peaceful, four violent. I don't think any university in the world had that long a period.

- HICKE: Why did Berkeley last so long?
- NEWMAN: One of the nice things about the peaceful period was that there were four years to instruct both students and profs. By then the issue was no longer free speech and due process for students; it was, What about the South? A lot of children of profs went to Mississippi. I used to talk to profs who had kids down there when we would sit together on the sun deck of the gym with a bag lunch.
- HICKE: Were you or other professors here called in to answer legal problems?
- NEWMAN: Oh, constantly. Many members of the law faculty served in various positions during those years. Heyman and Kadish both had big jobs at that point. Preble Stolz and Bob Cole and many others. [Richard] Dick Jennings was chair of the Academic Senate. Arthur Sherry was on the famous committee that Kerr appointed. Et cetera, et cetera. That was the first time the law faculty as a group had plunged into university problems. We had always been regarded as a rather isolationist circle. From those years on, the lawyers were everywhere. Fortunately, from my point of view, it was a great panorama of views.
- HICKE: There must have been a spectrum of people going from left to right.
- NEWMAN: Yes, we had some very tight conservatives. And we spent a lot of time--notwithstanding our spectrum of views--trying to work out some policy. One Saturday we spent the whole day down

in the faculty lounge because the press were insisting that we have a Boalt Hall statement. They were coming from all areas.

HICKE: Oh, a policy statement for the entire law school?

NEWMAN: Yes. "What do you law pros think of all this?"

HICKE: Oh my.

NEWMAN: So we met for a whole day; and I remember one draft was just about to be accepted, and I said, "Well, I couldn't possibly participate in that as dean." [Laughter] That shook them up, so back it went to the drawing board, and we finally worked something out. Then I was told, "Now, Newman, you've got to go out and talk to the press," because reporters were pounding on the doors. "How come we took so long?" A lot of them had been there for hours. [Laughter] So I said, "I'll read you the faculty statement." I remember the first sentence--I hadn't thought much about it when we were fighting about more important sentences. I started reading this sentence, and what it said was, "The causes of the present controversy are deep and complex." [Laughter] And that's become a catch phrase around here.

HICKE: On a dark and stormy night . . . [Laughter] And everybody did finally agree on this statement, though?

NEWMAN: Oh, yes.

HICKE: That's a pretty amazing thing that . . .

NEWMAN: Well, we've always had rapport on that. It's all right to dissent, but sometimes. . . . We haven't talked about how [Supreme

Court Justice] Earl Warren got a unanimous vote in the school desegregation case.¹

HICKE: Well, let's talk about that.

NEWMAN: He went from chamber to chamber, as I understand it, and said, "This is too important an issue for us to have a split vote."

HICKE: Oh, I see.

NEWMAN: The rumor for years has been that he personally went around. Another judge had done that on the earlier flag salute case. I think that was a 5-4 decision saying you could make students salute the flag.² There was also a better one later during the war. It was very parallel to the present controversy on burning the flag. "Of course, you can force a child to salute the flag: What's America all about?" But one judge went from chamber to chamber and within a year or two they reversed the decision. I don't have the slightest idea what the true facts were. Could you write up the flag-salute situation at the moment with any security of what the real facts are?

HICKE: No.

NEWMAN: Did you know that became a problem during the riots?

HICKE: Oh, no.

NEWMAN: Yes, because all of a sudden flags were everywhere--on T-shirts and jeans and all kinds of paraphenalia, and suddenly we had a state statute (or possibly even federal or armed services rules) saying you can't treat the flag that way. So some of us then

1. Brown v. Board of Education, 347 U.S. 483 (1954).

2. Minersville School District v. Gobitus, 310 U.S. 586 (1940).

began clipping items on commercial exploitation of the flag.

[Laughter]

HICKE: Oh!

NEWMAN: The flag was used on expensive fashion as well as on the legs of your jeans. We collected a marvelous set of samples.

HICKE: Oh, great.

NEWMAN: I think I submitted only samples. But the display was just overwhelming. It's different from burning, but in those days people didn't think you should downgrade the flag by displaying it in any way critical of the government.

HICKE: What did you do with this?

NEWMAN: The whole thing evaporated.

HICKE: I mean did you present it to somebody or what?

NEWMAN: Oh, yes. In those days you can't imagine how many committees were working on this.

HICKE: To some committee.

NEWMAN: The Free Speech Movement really captured the imagination of a lot of law profs in America. [Laughter] And of ACLU too.

HICKE: OK. Anything else that you recall about the Free Speech Movement that might be of importance?

NEWMAN: Did we talk about the Greek Theater ceremony when Savio was arrested on the stage with more than ten thousand people there?

HICKE: No, I don't think so, but . . .

NEWMAN: That was when Earl Bolton was vice president [of the university]; and, again, this is only rumor, but Earl and I were very good friends and we often met just to chat. He was one

of Kerr's favorites, because he was experienced both as lawyer and as administrative manager. Earl decided Savio was going too far and ought to be arrested. A Russian this morning told us three terrible mistakes [Mikhail] Gorbachev has already made. I didn't think of it at the time, but one mistake was very parallel to one of the few mistakes Bolton made. In those days we hadn't learned to sit it out. That was too much to expect. Savio wasn't a recognized speaker. He just came up and grabbed the mike. So, the word went out to the police: "Take him off of here." The students just went wild. The whole ten thousand.

HICKE: Was that the watershed, do you think?

NEWMAN: Oh, there was just no question; that started everything really going. I'm uncertain as to exact dates, though, and I can recite to you the progress of the law much better than all the facts related to it.

HICKE: Yes, well, the facts are elsewhere. What I'm mainly asking, you know, is to tell about what happened at Boalt Hall and what experiences you had. The period during which you were dean, you instigated I think a lot of growth, particularly in hiring new faculty.

NEWMAN: I helped start that process.

HICKE: Well, do you want to tell me how . . .

NEWMAN: I was on the Faculty Recruitment Committee and chair for a while.

HICKE: Why did you start this?

NEWMAN: Well, it was clear to me that legal education in California had to grow, because we weren't producing enough lawyers relatively and all sorts of proprietary schools were setting up and charging students thousands of dollars for tuition. I wanted to be sure the state universities were doing their share.

This was partly because Dean McHenry had been such a good tutor for me before I became dean, when he was chair and I was vice chair of the committee on whether there should be more campuses. I remember I came home early from Britain, where I'd been doing some research in the summer of '57, so that I could get to a Regents' meeting at the Lake Arrowhead conference center. That was our final report. Of course the rest of California had to have new campuses.

At that point we didn't get into the question of, "Does that include new law schools?" We were thinking mostly about the undergraduate population and related graduate work. Dean McHenry gave an excellent report. He was just a Poly Sci [Political Science] prof from UCLA [University of California at Los Angeles] then. Great guy. But the outstanding event of the meeting was when Kerr responded to the report progressively, whereas my recollection is that almost every other chancellor expressed the administrative view: "Well, let's be careful. We don't want to go to fast." And I remember that Catherine Bauer Wurster said to me, "Frank, that shows what the planners are going to do to this country." Because Kerr was a harbinger of advance planning, and that led to his becoming president I think.

HICKE: He was all in favor of more campuses?

NEWMAN: He and I hadn't discussed this, I recall, but our committee had worked hard on the question: "What was the statewide role of the university with respect to higher education in California?" There was no Santa Cruz; no Irvine; no San Diego.

HICKE: And you felt that the role was to serve more students than . . .

NEWMAN: A fair proportion. We didn't want to be funneling them all to Stanford [University] or USC [University of Southern California] or the Catholic colleges, and we didn't want proprietary business operations to begin when they should be academic. So that was the main goal. And we're going through it again now.

HICKE: Really? OK, so this committee started you thinking about . . .

NEWMAN: We were more concerned about undergraduate development and the necessary social science and literature courses, and graduate faculty to sustain good teachers who wanted to do graduate studies. So we worked that out. But nobody cared about law, so for law we had to start working ourselves. I was very close to the UCLA law dean at that time. And there was no Davis Law School. [Edward L.] Barrett, a classmate of mine and then a prof here at Boalt Hall, became the first dean at Davis in the sixties. We both joined the Boalt faculty the same year, after World War II.

My view still is that we need a law school in San Diego. It wouldn't surprise me if Santa Cruz needs some kind of school going for that huge population base. Did you see that San Jose

passed San Francisco in population? That was in this week's or last week's paper.

HICKE: Well, certainly, a lot of the law firms seem to feel that the competition's much too rough and that there aren't enough good law students coming out of the schools, so I think that everything I've heard points in that direction.

NEWMAN: And I'm more interested in the public service part of it. We're not getting enough first-rate students to go into public service, whereas the tradition of Boalt Hall for many years--I think decades--was that 25 percent of our June graduates would go into public service.

HICKE: Just since you're on this now, as an aside, do you think that it's true that a state university, a public school, produces more lawyers who go into public service?

NEWMAN: Oh, there was no question in those decades, and it was partly because they weren't used to big incomes, they were used to having jobs while they were at school. We were exploiting the Depression generation.

HICKE: So it was a different income group that came into law school here.

NEWMAN: And then the dedicated group among this great faculty I have talked about said, "Hey, look, there are some big jobs to do," starting with the Depression and then with World War II.

HICKE: OK. So now we're back to you; we're hiring more faculty. How did you go about doing that?

NEWMAN: Well, those were the days when you knew exactly the kind of person you wanted. It was best if he'd been a law clerk. And

he had to be an editor of the law review. I remember one faculty meeting where some great guy was on the law review and one member of the faculty said, "But he wasn't an officer."
[Laughter]

HICKE: So much for him!

NEWMAN: So that's first: you had to have been on the law review and preferably at the head of your class. That meant that if you wanted you could go clerk for a Supreme Court judge, sometimes starting with a court of appeals judge (the intermediate level of the federal courts), and especially with Learned Hand in New York or someone like that. That was before the court of appeals of the District of Columbia became I think even more famous than the circuit court in New York.

Heyman, for instance, had a year with the court of appeals in New York and then a year with Earl Warren. What could be more perfect? And of course he was also on the law review.
[Laughter] Those were the people we were looking for. In those days we were terribly proud that we had a Japanese American; he had been on the Harvard Law Review and had then gone to the Attorney General's Office. So he was OK. He was our first minority hiree.

HICKE: What was his name?

NEWMAN: Sho Sato.

HICKE: Sato, OK.

NEWMAN: Yes, he made a great contribution.

HICKE: OK, whom did you hire?

NEWMAN: I'd have to check to be sure, but I think of Heyman immediately. There were a lot of H's, which was confusing.

HICKE: I have a few names here, too.

NEWMAN: I went on sabbatical for a year before I would agree to be dean, because I hadn't had a sabbatical. So I was away during the '60-'61 period. I think Herma [Hill] Kay was hired that year.

HICKE: OK, that's one of the names.

NEWMAN: But I'd been either a recruitment committee member or chair long before that, so I was in on all of this. Heyman and Halbach, John Hetland, Kadish, [Jesse] Choper--I was in for the hiring of all them. They're good samples, aren't they? We had a terrific crew but then lost three of them, which is one of the reasons I got mad and left as dean, because we lost them for such tiny, little amounts of money, and I was furious at the university.

HICKE: Because they wouldn't raise the salaries.

NEWMAN: Yes. One of them is now famous at Harvard, and another is now famous at Michigan.

HICKE: I think I have those here.

NEWMAN: Yes, that's possible. Oh, one became famous at Yale and then . . .

HICKE: [Goeffrey] Hazard and [John] Jackson and [Jerry] Cohen. But this is another thing that I got.

NEWMAN: Is this [Sandra] Epstein's thesis?¹

1. Sandra Epstein, "Law at Berkeley," 1979 (unpublished).

- HICKE: Yes.
- NEWMAN: I wonder how she found that out. She didn't tell how mad I was, I bet. I was away when she wrote the book. Oh, I was a judge; that was it.
- HICKE: Well, one of the things she said was that you tried to get faster promotions for people, too.
- NEWMAN: I worked hard on that, and that's why I was so mad that I lost these three. One of them left because of a salary difference of only two or three hundred dollars. Think of that! Now one thing she missed in her book . . .
- HICKE: What was that?
- NEWMAN: Well, I mean, if you think that's relevant now.
- HICKE: Yes, definitely.
- NEWMAN: She never did understand the burst of activity with respect to international and comparative law that occurred here.
- HICKE: Oh, tell me about that.
- NEWMAN: Well, it began in the middle fifties, because suddenly the Ford Foundation wanted to distribute money. Do you remember the fifties and the Ford Foundation? They just couldn't spend it fast enough. Well, we had three great people: one, Stefan Riesenfeld, still here; one, Albert Ehrenzweig, now dead; and one, Covey Oliver, now retired from Pennsylvania after having taught here for a while and then deciding he wanted to be back East again. Steve Riesenfeld, one of the greatest international lawyers in the world, maybe in all history, still here, over eighty I think. Ehrenzweig died after he'd retired; it was too early. He was to comparative law what Riesenfeld was to

international law. Riesenfeld was out of Prussia; Ehrenzweig was out of Vienna. And we used to kid them and they kidded each other about why didn't they have the right accents.

[Laughter] And the students used to make up funny songs about . . .

[End Tape 5, Side A]

[Begin Tape 5, Side B]

HICKE: Funny songs?

NEWMAN: Funny songs about Ehrensfeld and Riesen-zweig. [Laughter] And there were some students who did their accents marvelously.

HICKE: Sounds like you have to yodel after that or something.
[Laughter]

NEWMAN: But always done with special affection, also respect.

HICKE: Yes, yes.

NEWMAN: The moderator for those two was Covey Oliver, out of Texas. Both Covey and Ehrenzweig had been office mates of mine when we were graduate students at Columbia before Pearl Harbor; then Covey and I both left right after Pearl Harbor and disappeared for five years. Covey's had a very distinguished career in the State Department. In fact, his main work during World War II was with the Office of Strategic Services, in Spain, and then he came back and was a big shot in the economic warfare part of the State Department. Later he was ambassador to Colombia and also Assistant Secretary of State

for Latin American Affairs. All the time he was essentially a law prof.

When he left to go back to Pennsylvania I was very mad at him--but that wasn't because of money. He just wanted to be in the East. It was before FAX and even common long distance calls, and he felt he couldn't be too far from Washington and New York. He became president of the American Society of International Law not so many years ago. Anyway, we were very lucky to have those three.

HICKE: That's amazing.

NEWMAN: Riesenfeld also had close ties. He had been a student here before I was. We got him out of Minnesota and brought him back. He and Ehrenzweig persuaded the Ford Foundation to let us get a liaison arrangement with the University of Cologne, because both of them knew Germany and Austria very well, and knew numerous faculty people there.

HICKE: Oh, yes.

NEWMAN: And they decided that the dean of Cologne was the best dean in West Germany for building the new kind of law school that would get away from Nazism. It was a good decision. I don't know all the details, and maybe some German scholars now wouldn't agree with me, but at that time it was demonstrable that Cologne was a comer . . .

HICKE: That's interesting.

NEWMAN: . . . with new ideas and rejection of the old ones. And so, developing both international and comparative law, we

expanded with the Ford money, which for the first time gave us air tickets.

HICKE: Oh, good.

NEWMAN: It also gave us research assistance and other benefits that, until then, guys like me never dared dream about, as to what could be done if you had a chance to get out of the Bay Area once in a while. And that developed. . . . I wrote a big report on this when I was dean. And that led to the hiring of some wonderful new profs, for instance John Fleming, who was dean of one of the smaller schools in Australia. Prosser picked him up because he wrote a very good torts book. [Laughter]

HICKE: He did? Oh.

NEWMAN: Yes, Prosser had a wonderful mind as long as you were discussing torts. And Fleming was way ahead of Prosser in modern approaches to tort law. Prosser said, "This is one of the best books I've seen. We ought to hire this one." Well, we were delighted, because Fleming is a first-rate comparative lawyer. He guided the American Society of Comparative Law for many years, and we publish the American Journal of Comparative Law here still. So then we hired John Jackson and Jerry Cohen, who were both interested in international law. And there were others. That opened up not only Cologne but several other German universities who wanted to compete and knew the Berkeley/Cologne program was very strong. We used to publish books and things.

HICKE: Well, describe the program. What did you actually do?

NEWMAN: Well, we traded students, for instance.

HICKE: I see, OK.

NEWMAN: We'll cover students as a topic later, but Cologne sent students here and we sent students there. [German Chancellor] Willy Brandt's number-one advisor was our second Cologne student here, Horst Ehmke. And then Horst got in some scandal, like Speaker [Jim] Wright, or maybe like [Senator John] Tower--I forget which kind of scandal it was [Laughter]--so he's not as "good" as he used to be. But Horst was the first German teacher to take a group of German students to Israel, because he was teaching a seminar . . .

HICKE: Oh my.

NEWMAN: . . . on how not everything was perfect about the Nazi era, for instance, and Israel at least was trying to build back. So they said, "Well, if you know so much Professor Ehmke, why don't you let us see what it looks like?" So he did.

HICKE: About in . . .

NEWMAN: Oh, probably late fifties or early sixties.

HICKE: That must have been an interesting experience.

NEWMAN: [Laughter] But that's the kind of guy he was. He was our number two Cologne fellow. But then it spread to other German universities; and then other profs began to see that for goodness sakes, why shouldn't they study comparative law in Italy, and why shouldn't they study international law at the Hague? And so we began to expand.

HICKE: What's happened . . .

NEWMAN: I always thought that was my best contribution as dean.

- HICKE: Oh, yes, that sounds wonderful. Has that continued to go along?
- NEWMAN: Yes, we're having two big meetings next week. First, the whole faculty on what our curriculum should be like; and second, a special meeting of the international law types, on how we can improve our international law program again. And then the comparative lawyers are having their own meeting. I learned that we shouldn't always put the two groups together, because they have different ambitions, and legitimately so.
- HICKE: Do a lot of students get interested in this?
- NEWMAN: No, that's our main failure up to now. We have too few. For instance, my seminar has only twenty-five, and I might have even fewer next semester.
- HICKE: Why? Because there's not a big demand for people in that field?
- NEWMAN: We're arguing that we have to get some of it into the first-year curriculum, or they begin to think it's not real law. It's fuzzy, like environment or helping the poor or other "soft" seminars for the third year. [Laughter] As if the big firms don't care. In San Francisco we don't have a big enough base yet for international hiring. It's getting a lot bigger fast, and [Professor Richard] Buxbaum is one of the leaders in the whole operation.
- HICKE: Who is it just opened a law office in the Embarcadero? They're having a big celebration. Well, anyway . . .
- NEWMAN: There's going to be a lot of that.
- HICKE: Yes.

- NEWMAN: Oh, I got some notice about that or saw it in the paper.
- HICKE: Yes, I've forgotten who it is now. Well, that's good, because a lot of it's been going to Los Angeles up until now, I think.
- NEWMAN: We always had a few firms. New York used to have only a few firms like Coudert Brothers, and now. . . . But they're specializing so much that students think they can make a conscious choice as to whether they want to do tax or corporations or real property and mortgages, and international means "from here"; and comparative you don't worry about. Well, it's just stupid. I was at a conference in Buffalo just a year ago that one of our great friends designed, on the internationalization of all law. Just last night in my mail was an announcement of a conference with the same name in the Chicago area this year with no reference to the other group.
- HICKE: I've just got one last question, since we're on this subject. Wouldn't the international corporations demand somebody who knows international law or is that not a thought?
- NEWMAN: Well, this has been a big fight for decades. It started with patent law, I think. I remember there was a famous lawyer in the city on patent law who used to come over and give speeches to the students when we were tiny. And he'd say, "Now don't you worry about taking patent law. We'll teach you all you need to know about patent law if you come to our firm, but we want you to be a good lawyer first."
- HICKE: I see, basics, yes.
- NEWMAN: The tax people have realized it's more complicated, and they can't handle it any more. You can't just teach an associate tax

law. But that still has an impact. "Do you want to go to our Brussels office? We'll teach you if you decide you want to go there. If you want to go to Saudi Arabia, we'll teach you that. Don't worry about taking a course." There's a lot of that still.

[End Tape 5, Side B]

[Session 5, April 16, 1991]

[Begin Tape 6, Side A]

HICKE: Let's start this afternoon by talking about the Constitutional Revision Commission. I wanted to ask you if you would give me a little background about what led up to this, what were the needs and so forth, and then about how you came to be appointed as a member.

NEWMAN: Well, almost from the first time I got up to Sacramento and began talking to some of the legislators there. . . . One of them, for example, was a classmate here at Boalt Hall.

HICKE: Who was that?

NEWMAN: [U.S. Representative John] Jack McFall, from the valley. A wonderful guy. He later became an important congressman. Another was [Assemblyman Thomas] Tom Caldecott of the famous Caldecott family. He was two years ahead of me at Boalt Hall. And there were others whom I knew through miscellaneous ties, which of course had worn thin during World War II.

One of the people I worked with was George Miller, Jr., state senator from Contra Costa whose son is now in Congress. George got very interested in legislative salaries, because he was an honest guy and bothered about having to work with

NEWMAN: lobbyists just to learn his business. The main function of lobbyists is really to educate legislators, and in those days the government agencies weren't as evolved; there weren't legislative staffs comparable to the staffs now. So he had to turn to others, and he learned right away that for ideas he could come to some of us who weren't being paid to instruct him.

I was also deeply involved with members of the League of Women Voters, who were interested in legislative reform. It was one of their main planks, I think, during the fifties. And in preparing materials for my course on legislative process here, I did a lot of scholarly work on the lobbying statute of California and how it tied in with the federal lobbying statute. So that was another reason I had to get to know legislators I hadn't known before, like [Assemblyman Charles] Charlie Meyers from San Francisco, who was chair of the lobbying committee of the assembly.

So my involvement was a combination of scholarly and public interest; and in the same way that I work with human rights organizations now, in those days the League of Women Voters helped introduce me to California politics (and kept me very "clean"). [Laughter] In those days it didn't cost much. I just drove up to Sacramento, and usually didn't stay overnight.

Senator George Miller was chair of a committee to make proposals for increasing legislative salaries because then, I think, they were getting only \$100 a month. And Mary Ellen Leary was one of my best advisors on this. At that time she was on

the Scripps-Howard paper, the San Francisco News, and was generally recognized as the best political reporter in California during the late forties and early fifties.

HICKE: Is that right?

NEWMAN: She was tremendously helpful. And she liked the League of Women Voters, and had ties with me because of that work. She knew some of the best legislators in San Francisco personally; and then her husband, Arthur Sherry, became a member of our faculty. He was a [Chief Justice Earl] Warren protégé, starting way back in the district attorney days, then to attorney general days, and then governor days. He was a very important advisor over the years to the Warren operations, even after he joined the faculty. So that was another tie of a different kind.

Anyway, this committee was set up; and I was appointed as a member. It wasn't very big, but it included representatives of business and labor and the League of Women Voters. We had several meetings around the state on what would be a fair legislative salary as compared to \$100 a month. In the meantime I think it had gone up to maybe \$500 a month, which at the time was regarded as magnificent. But by the time of our committee meetings that obviously wasn't enough.

HICKE: They're just doing this same thing right now, aren't they?

NEWMAN: Well, absolutely. That's why I am giving you so much detail.

HICKE: That's great. Yes. OK.

NEWMAN: All this was before I got into campaign funds control, which of course is much more important. And on that, too, I worked

both in California--that was the first time I did a job for Pat Brown; that was when he was attorney general--and then I went back to Washington and did some drafting on statutes there during the fifties. So all of this cut in together.

Anyway, our committee on salaries after a conference at Stanford where we brought in a lot of lobbyists and government people to discuss the problem, ended up with a proposal of \$9,000 a year. I remember George (Senator Miller) sitting in front of us and thinking about it awhile. Then he said, "OK. That's about right. It's enough for them to live on it if they have to, but not enough to make them want to stay." [Laughter] That was sort of his definition of a "clean" legislator. I may be caricaturing a little, but that was how he sized it up: Nine thousand, that's quite good, because you can live on it. He was an insurance agent. That's how he then survived financially, and he knew what a difficult problem it was. In those days lawyers comprised a much bigger percentage of the legislature than they do now, and they had miscellaneous law clients. Now the legislators have other ways of getting their money.

So, because of that work, I think, when the League of Women Voters got into the whole question of revising the state constitution, which they decided was the only answer to all the big problems they were confronting in those days . . .

HICKE: They came up with the idea?

NEWMAN: Oh, sure.

HICKE: The League of Women Voters.

NEWMAN: And I think maybe it was even on the ballot. Anyway, everybody in the state who was anybody, except me, knew that [Speaker] Jesse Unruh was completely in charge of this thing, including choosing the members of the commission. I think we started with fifty or sixty, and he chose very carefully. He had as many or maybe more Republicans than Democrats. He had more lobbyists than government officials. He had at least five League of Women Voter members. He balanced it quite astutely. And [University of California President] Robert Gordon Sproul was co-chair with a fellow from southern California who died soon after appointment. All of this was covered in the first report of the commission, which came out in '64.

I remember watching this develop, and I was surprised when my name was there. That's why I think it was some individual like George Miller who mentioned me when Jesse talked to him and said, "Who the hell shall I take from among the professors?" Unruh always had some ties with professors, and they took some of the obvious political scientists; but I wasn't obvious, I thought.

HICKE: Did you just read your name in the paper or something?

NEWMAN: I think I got a letter. So then I decided I would do it and do it hard, because I realized how potentially important it was. Nobody knew how it was going to go at first. I remember a meeting where Sproul presided. It didn't go very well at first, and I think Unruh wasn't sure it was going to work.

HICKE: How do you mean it didn't go very well? It was . . .

- NEWMAN: Well, for one thing we wasted almost a year on background discussion, including a controversial proposal of some gung-ho profs from Pomona College. They brought the marvelous new message that we needed two constitutions. And this is still around as an idea; I heard somebody in Atlanta, Georgia last month say, "We need two constitutions." There we were doing constitutions for "the world." "We should think about two constitutions instead of one: One that you can change easily, one that you can't change." India has something like that.
- HICKE: Is that right?
- NEWMAN: Yes. And there were a lot of people around who didn't like the idea. I didn't like it, because I didn't think it was practicable, although it might have been plausible. It's sort of like a unicameral legislature.
- HICKE: I was just going to say, two constitutions and one legislature.
[Laughter]
- NEWMAN: Yes. And don't think unicameral wasn't part of all this, too. You can imagine what the legislative members thought of that.
[Laughter]
- HICKE: Yes. Most of them would lose their jobs.
- NEWMAN: It took at least a year to rinse all those ideas out of the League of Women Voters plans. That was really fun. We had to persuade them that these ideas were dumb.
- HICKE: How did you go about doing this?
- NEWMAN: Talk, talk, talk. Coffee. See them, here, in their offices.
- HICKE: Individually?

- NEWMAN: Yes, mostly individually or at little group meetings to report on how the work was going. But also at regular meetings of the commission. It was well financed--guaranteed good financing.
- HICKE: Let me interrupt. Who in the League of Women Voters; do you recall anybody particular that you were talking to?
- NEWMAN: Several wonderful women: Bernice Zorbas from Pasadena; Marge Spear. Claire Lilienthal from the City, a member of the San Francisco school board. And Margaret Hayes, a terrific younger woman from Oakland. There were five former presidents of the League.
- HICKE: Oh really?
- NEWMAN: Yes, they really went into their top level.
- HICKE: They did, yes.
- NEWMAN: This was their major project. It would be silly for me to try to reconstruct the names of those that I don't think of immediately.
- HICKE: Yes, well that's OK, because I wanted the ones who stood out in your mind anyway.
- NEWMAN: That first report in 1964 was a critical one. After Sproul died and they hadn't really decided who was going to lead in his place or who was in southern California, everybody agreed that Bruce Sumner would be a good chair. He was my top guy all these years. I put in eight years with this group. And [Assemblyman] Bruce Sumner, at that time, had been a legislator. He was a freshman legislator at the same time as [Assemblyman Casper] Cap Weinberger, and they were regarded as the two, bright, Earl Warren-type liberal kind of

Republicans. It was just great that one was from southern California and one was from northern California.

HICKE: That was the early fifties, I guess.

NEWMAN: Yes. And they both really were good legislators. Weinberger had his national career, of course, later, and lost interest in states. But Bruce still keeps up his interest in state governments. He ran for Senate against the famous Bircher down in Orange County. You remember? When the John Birch Society was just beginning. It was part of Impeach Earl Warren. And he beat Bruce, as I recall, in the Republican primary. So then Bruce went into law practice until Pat Brown appointed him to the superior court, and within a few years he was presiding justice. And subsequently there was a tremendous fight. They had twenty-five members of the superior court down there, and [Governor Ronald] Reagan personally got on the phone to call the Republicans and say, "I want to wreck this Sumner." Bruce obviously got some Republican votes, because he stayed on as presiding justice.

Anyway he was an absolutely first-rate chair of the commission for all those years, from about '63 on.

HICKE: Can you elaborate a little bit on that? Why was he such a good chair?

NEWMAN: First of all, he knew the legislature and he knew Unruh; and people up there who counted respected him. At that time. . . . Let's see, who would have been governor? [Governor Goodwin J.] Knight?

HICKE: What are we talking about? The sixties?

- NEWMAN: Yes.
- HICKE: Yes. He was the governor.
- NEWMAN: Who followed Knight? Did Brown follow?
- HICKE: Pat Brown.
- NEWMAN: Yes. So it was a combination of Knight, who didn't care much, and Pat Brown, who was always nice. And then we had to work with Reagan in the final years--I think '72 was our final report. Bruce did all the big lobbying and was also respected by the lobbyists. They knew he was essentially a League of Women Voter type, but he wasn't a wild man like me. Anyway, I ended up as chair of the Drafting Committee and had that job all the way through, and at some point that made me an ex-officio member of the Executive Committee. So for the first time I was really in on the whole machinery, because I guess it's fair to say that the Drafting Committee made a bigger contribution than any other single committee. There was a Water Committee, and a Public Lands Committee, and a Local Government Committee, and a Public Utilities Committee. And we went over every single one of their proposals.
- HICKE: You had to cover everything. Yes.
- NEWMAN: Yes, and word by word.
- HICKE: Yes.
- NEWMAN: We could have made tremendous changes. Our basic rule was that we didn't change substance without going back to the commission and getting approval, but we sure improved the wording and kept a consistency. It really was well drafted. Bruce was also on the committee, and Margaret Hayes from

Oakland. And Paul Mason, who was a top-staff advisor in Sacramento for many years. He was conservative and had a distinguished government career in Sacramento as a statutory draftsman. He'd even written books on the California legislature and drafting.

HICKE: I thought I had a list someplace, but I don't see it right now.

NEWMAN: And then there was Ralph Kleps.

HICKE: Oh yes.

NEWMAN: Those are the five of us. And on all tremendous fights, it was usually Bruce and Margaret and I voting against Paul and Ralph, who knew more about Sacramento than we did--the top legislative drafting people in the state. Maybe in the nation.

[Laughter]

HICKE: Well how were the lines drawn?

NEWMAN: It was almost always the conservative/liberal split.

HICKE: But over the language?

NEWMAN: Oh, no, no. Well . . .

HICKE: You're talking about the Drafting Committee now or the Executive Committee?

NEWMAN: Well, in drafting we had to make a lot of decisions on whether we'd go back to the commission when there were ambiguities on what they'd instructed us to do.

HICKE: Oh, I see.

NEWMAN: For instance, I remember when we did the judiciary article. That was one that Ralph was watching as lobbyist, because he was administrative officer of the courts at that time. He was no longer an administrative official or legislative counsel. He'd

come down to work with [Chief Justice Phil] Gibson in the Judicial Council. So as a judicial lobbyist he was for the judiciary staying mostly the way it was. Gibson was a member of the commission, and they dominated; and Burnham Enersen was chairman of the Committee on Judiciary. I think it was Jack Sutro who chaired the Water Committee because he was president of the California Bar and a lawyer for the big estates in the Valley. That's the kind of stuff that took a lot of battle thinking. [Laughter] I remember it was Burnham Enersen we had to face when the Drafting Committee redid the judiciary job. We couldn't fight Unruh, but fortunately he was a real reformer of the legislature. He loved the legislature. He just liked it better than the courts and the administration.

HICKE: Well, let's talk about the judicial article. One of the things that it did was eliminated the two separate departments of the supreme court. Was that a problem?

NEWMAN: I don't think it was. I think Gibson was probably for that. He came to the commission meeting, as did Ralph, with a long list of things that had to be done. Gibson was probably our greatest reformer of the California judicial system in history, and still is. He'd done marvels throughout the state, and there were some things he hadn't been able to do yet, and basically we wanted to help him on those.

HICKE: Oh, OK.

NEWMAN: But there were lots of little things.

HICKE: There was another provision to allow superior court judges to serve more than one county.

- NEWMAN: Yes, we knocked that out. You're way ahead me in what it used to be.
- HICKE: Appeals should go to the court of appeal before the supreme court.
- NEWMAN: That's right. That was a major reform.
- HICKE: Was it?
- NEWMAN: Yes, because they still had the myth that you should never go directly to the court of appeal except on a writ. Everything went to the supreme court, and then the supreme court automatically referred it back, but that's changed now. It was a terrible system.
- HICKE: Was there a battle over that one?
- NEWMAN: Oh sure, because a lot of judges have a stake in who is first in charge of handling the case and who would assign them cases they didn't want to take. It was the power to transfer that was very controversial. But in my case that's so overwhelmed by the struggles we had on those kinds of issues when I was a member of the court that I almost forget now the work we had done on the judiciary article.
- HICKE: Yes, that's kind of interesting, because some of these things obviously did impact your service.
- NEWMAN: I remember a joint meeting with the state bar board which wanted a crack at the judiciary article before we presented it to the commission. So it was the Executive Committee of the commission, probably, and the Board of Governors of the State Bar that met in the city, and Burnham Enersen presided. They went through it article by article. And I was very pleased,

because at the end Burnham said, "Well I have to admit that these five people have done one of the best drafting jobs I've ever seen." [Laughter]

HICKE: Oh nice. Very good.

NEWMAN: Which it should have been with both Ralph and Paul Mason there. [Laughter] I was the simple language man.

HICKE: Well, I was going to say, you're interested in language yourself, I know.

NEWMAN: Yes, but that was a main fight we had constantly. I won finally on using simple language and making "rollcall" one word. [Laughter] And that's just a sample. . . . I said, "An eighth grader ought to be able to read this. And in any case, we ought to have a document that could be taught in the junior year in high school," where with my kids I'd witnessed a marvelous course on the U.S. Constitution, but not a word about the California Constitution. And I said, "We ought to be able to give the pupils a copy of it, and they ought to be able to teach part of it." And they should, too.

HICKE: And how could they argue with that?

NEWMAN: I still haven't won the teaching part. [Laughter]

HICKE: But the simple language problem. Why did they not go along with that?

NEWMAN: Oh, I've been in that fight since the month following Pearl Harbor.

HICKE: They still want to put in every comma and every . . .

NEWMAN: It's called the language of the priesthood. One of my colleagues wrote a neat article for the Wisconsin Law Review on how the

language of the priesthood is one of the things that wrecked price control, because nobody could understand the rules.

HICKE: Oh, that's interesting.

NEWMAN: That was my argument on the constitution. I wanted people to be able to understand it. I lost that argument on unemployment insurance. That was another thing related to what I did on the commission, I realize now. I had four years on the Unemployment Insurance Revision Commission.

HICKE: Oh really?

NEWMAN: With Adrian Kragen and Dean [Ewald T.] Grether and Charlie Scully, the labor lawyer, and Neil Haggerty, the labor boss, and a banker who represented industry. And I'll never forget the meeting where they decided that if we used simple language people would be confused into thinking they understood what was meant. [Laughter] I didn't get one vote from those guys. [Laughter] In my first book we have a whole chapter on drafting in simple language. It's become a science now, but most lawyers still don't like it.

HICKE: OK. Well, there's a few more things. The idea was to increase the requirement to ten years for bar membership for judges and then to separate judges from politics as much as possible. That was one thing.

NEWMAN: Yes, that was the League of Women Voters' point. And that's one we won. We said judicial and municipal elections have to be nonpartisan. But then we got tricked by the U. S. Supreme Court, which said that interfered with the use of free speech,

that a local political committee can endorse a nonpolitical candidate. I don't like that particular disagreement.

HICKE: One of the things that was proposed was that a judge be required to take a leave of absence before running for office. Was that . . .

NEWMAN: We never accepted that.

HICKE: OK.

NEWMAN: But there are some related rules. For example, if you had other state employment you can't hold two offices at once, which often caused problems for people who had holdover work. It was decided that that didn't affect my retirement from the court. I had some holdover work. In fact, after I retired, I started teaching here without a salary while I was still a member of the court. And someone from the attorney general's office wanted a rule that I was unconstitutional even though I wasn't getting paid. [Laughter]

HICKE: Well, I trust it didn't succeed.

NEWMAN: I was still doing my judicial work.

HICKE: The article on the legislature, you talked about the salaries. There was also the proposal to change the two-thirds vote required for budget proposals? Budget bills?

NEWMAN: Yes, we lost on that. Some of us believed majority rule was basic, but there wasn't a prayer. But we got into a fight that I think we finally helped win, because people were coming up with all kinds of percentages--60 percent; three-quarters--on all kinds of issues. Somebody would say, "Let's have an extra vote here." So we finally moved in and said, "Look, this is stupid."

And we'd collected all the different proposed percentages. It was the same thing with rules on timing--whether it should be ten days or twenty days or thirty days or two months. We tried to get some consistency into that pattern.

HICKE: Why did you believe that majority vote is better?

NEWMAN: Because so much cheating was done in vote-trading at the end of each session. And I still believe that.

HICKE: Quid pro quo?

NEWMAN: We tried to clean up the "adjournment week," which has now become "adjournment two weeks." It has become disgraceful because a lot of statutes are purposely postponed so that legislators can cheat and get their amendments in by trading. And also it was very bad that the people approved giving the governor a longer time to decide on whether to sign or not, because that gives the lobbyists an extra month to hit the governor, even during his election campaign. It's just shocking. There were a lot of reforms we didn't get through.

There was another complication that relates to the two-thirds rule. You have to be careful to define two-thirds of what? One test is two-thirds of the total membership of the house; another is two-thirds of the members who voted; another is two-thirds of a recorded vote. All different kinds of how you prove it's your percentage. And how about somebody who is sick?

HICKE: Yes, two-thirds of the members present.

NEWMAN: Yes, that's what we tried for.

HICKE: Oh, is it?

- NEWMAN: Yes. But sometimes I think we lost even on that. And then we'd say total membership. It becomes important with initiatives, too. All through the constitution are examples of why one group really had to follow it all the way.
- HICKE: OK, in the executive. . . . There was a problem of the disability of the governor?
- NEWMAN: Yes, and that caused some complexity recently. I never got much interested in that, as to who should take over. It's a very important issue; but because it's really a sport, I didn't want us to waste too much time on it. But tempers would get high. It was the same with the federal, you remember: Who should be where, in the line-up of successors?
- HICKE: Yes, sure, yes. And then there were problems with salaries for state officers and the attorney general's expenses, traveling expenses, or something like that.
- NEWMAN: Oh, details like that were endless. I haven't mentioned yet the staff. We ended up with a marvelous staff.
- HICKE: OK, tell me about that.
- NEWMAN: Two of the top guys in the state were. . . . [Richard] Dick Patsey was the first head of the staff, and he's now an excellent judge in Contra Costa County. Then Larry Sims. They were both excellent as staff directors. They hired good, young lawyers and over the years developed excellent contacts with government experts, because we needed government expertise constantly.
- HICKE: You mean federal government?
- NEWMAN: No, from the state agencies.

- HICKE: Oh, I see. Did you have hearings?
- NEWMAN: Oh, yes. And our meetings were public, and Bruce established a tradition that we'd go to Redding and to Fresno and San Diego; we once went to Eureka. And then the lobbyists began to insist that we go to airport motels, and we had to have a revolt. [Laughter] And one of the arguments we used. . . . You know, we'd always be interviewed on the local radio, and there'd be a picture in the local newspaper, that sort of thing.
- HICKE: They didn't like that? Or they . . .
- NEWMAN: They regarded it as a nuisance. "Where the hell do you stay in Eureka, and how do you get there?" [Laughter]
- HICKE: OK. What stands out in your mind most for that time you spent?
- NEWMAN: Well, the Drafting Committee meetings were very challenging professionally, as was the presentation of the Drafting Committee report to the meetings of the whole commission. So that's where I learned the most; you had to learn a lot of detail when you were working with every word. I tried not to get involved with many of the substantive fights. That was not true on the Bill of Rights. I worked hard to keep the Bill of Rights clean, and won some and lost some.
- HICKE: Well, we didn't talk about that very much.

[End Tape 6, Side A]

[Begin Tape 6, Side B]

- NEWMAN: Mostly I was in the controversies that related to drafting, either within the committee--where it was wonderful fun, because they

were such good people and so able--or sometimes in the commission, when it wasn't always that nice.

HICKE: We didn't talk about the Bill of Rights. That's Article I.

NEWMAN: That was one of our last big meetings, and it was reserved to the end because by then Earl Warren's opinions were beginning to be significant in the world. So there we really did have a civil libertarian-civil rights struggle against a lot of people in varying ways. For instance, one of the League of Women Voters women really didn't believe in women's equality. [Laughter] Now that, we thought, was going to be an obvious reform.

HICKE: Did you talk her into that?

NEWMAN: No, I think. . . . Well, we won, but I think over her opposition.

HICKE: OK, and how did that end?

NEWMAN: We have a very good Bill of Rights. It's better than the U.S., by far. And the supreme court of California has said so now very dramatically.

HICKE: Great. Good for you. How did . . .

NEWMAN: You see we put in the provision saying. . . . I'll show you. I took my pocket copy. I was using it as a visual aid. It's stuck away in the text where most people don't know about it, Section XXIV.

HICKE: You're reading the constitution. Oh, here's the constitution of California. Twenty-four. "Rights guaranteed by this constitution are not dependent on those guaranteed by the U.S.

Constitution. This declaration of rights may not be construed to impair or deny others retained by the people."

NEWMAN: That first sentence means that obviously you have to do what the U.S. Constitution says, but we're given better rights often. And that's very important.

HICKE: And they don't depend on the rights . . .

NEWMAN: We have a better freedom of religion clause than they do.

HICKE: How so?

NEWMAN: Because the words of the constitution are different, and because four of us on the court voted for them.

HICKE: But I mean, what does it say?

NEWMAN: The words are a little different. Some of the differences were exemplified in the case of the cross on the Los Angeles city hall. The Los Angeles city government used to make a huge Christmas cross from the lights of the building that you could see from freeways miles away, and we said that was unconstitutional.

HICKE: There was a long time before there was. . . . There is a lot of argument about that now.

NEWMAN: I know, but we don't care what the U.S. Supreme Court says when California protects more.

HICKE: But you were way ahead. Yes, in California it has already been established.

NEWMAN: I wrote the opinion, and I said, "We're not going to discuss the U.S. Constitution even, because ours is better on this issue, from my point of view." And the court's majority agreed.

HICKE: When you were on the court?

- NEWMAN: Yes. I wasn't cheating. Look at this first sentence.
- HICKE: "Free exercise and enjoyment of religion without discrimination or a preference are guaranteed."
- NEWMAN: The First Amendment doesn't say anything about discrimination. And remember, we didn't have a federal equal protection clause until 1868.
- HICKE: Good for you.
- NEWMAN: And there are many examples of that. On privacy, for instance: we've got a much better right of privacy than anything they'll ever end up with in the U.S. Constitution.
- HICKE: And most of this is the work of this revision commission?
- NEWMAN: Well, we clinched it. You could reach for some words like that in the original constitution, but that one sentence makes it absolutely clear. [California Supreme Justice Stanley] Mosk is the high priest on this.
- HICKE: How did the California Constitution compare before this revision?
- NEWMAN: Well, of course, it was the fourth longest in the world. That's the main thing. And we took out, I think, 22,000 words. So I don't know what its ranking is now. The others. . . . India's was the longest, and then I think next were Mississippi and Alabama.
- HICKE: But I'm talking about how does it compare in freedom and that kind of thing.
- NEWMAN: Well, at the time nobody had invented the doctrine of what we now call "independent state grounds;" they were just beginning to play with the idea. I think that one of our Boalt Hall alumni

now on the Supreme Court of Oregon was the first high priest, and then he and Mosk began corresponding, and Justice [William J.] Brennan became interested. So we were able to put in that one sentence that makes it clearer. That's the law of California now.

HICKE: Independent grounds is what?

NEWMAN: In other words, you don't look to the U.S. Constitution if you can reasonably interpret your state constitution for better rights.

HICKE: OK.

NEWMAN: You can't go below the U.S. Constitution, but you can go above it. That's the theory.

HICKE: Oh, that's a good way to put it.

[End Tape 6, Side B]

[Session 6, May 7, 1991]

[Begin Tape 7, Side A]

HICKE: Let's start today with talking about the supreme court, the California Supreme Court. And I want to ask you how you came to be appointed and, well, let's just start back at the beginning of the story.

NEWMAN: Well, I'd always assumed that I would never be a judge and should not let it influence me in any way, notwithstanding the traditions of many law professors who are challenged by the [U.S. Supreme Court Justice Felix] Frankfurter tradition and many, many others. So it was a complete surprise for me when I got the telephone call from Sacramento. Actually I was in Crete.

HICKE: And you were called from . . .

NEWMAN: And I remember the phone connection was very bad.
[Laughter]

HICKE: You were in Heraklion?

NEWMAN: No, it was on the other side.

HICKE: Oh, my.

NEWMAN: We weren't even at a beach. It was a very nice town toward the center of the island. It was our first and only time on Crete. We were with two very close friends dating back to

college days, so, of course, they shared the news. My immediate answer was, "Well, I certainly have to think about it." So when I reported to Mrs. Newman we proceeded to discuss it and together concluded it really was a pretty good idea. And so . . .

HICKE: Let me ask you first who called you.

NEWMAN: I think it's still secret.

HICKE: Oh, OK, all right.

NEWMAN: But it was on behalf of the governor. This was [Edmund G.] Jerry Brown [,Jr.].

HICKE: OK.

NEWMAN: I'd only met him once, I think. So we talked once more in the late spring of '77, and that led to the appointment fairly soon. He appointed me to the position left open by Justice [Marshal] McComb's retirement. The hearings were held almost immediately by the Commission on Judicial Qualifications, and they went very well.

HICKE: Is that a bar commission?

NEWMAN: It's a constitutional provision. The attorney general and the chief justice and the senior court of appeal justice of the state have to approve the nomination. So I started service. . . . I was sworn in, I remember, the day before my birthday, which was July 17, because I got a call from an older, old friend, who said, "Frank, you've got to get sworn in before you turn sixty." Because serving at least ten years before the age of seventy makes a big difference in retirement.

HICKE: Oh, yes.

NEWMAN: So, with close friends we hastened. I was sworn in by Judge [Bruce] Sumner (who, you recall, had been chairman of the Constitution Revision Commission) in San Francisco. First we all had a nice Italian dinner, and then went to one of the little bridges in the park behind the Golden Gate condo development. Because of certain filing rules we had to wait till midnight. So we all stood on the bridge, and after the stroke of twelve I was sworn in. [Laughter] So that was fun, because they were good friends.

HICKE: Who decides where the swearing in is going to be?

NEWMAN: That's up to the judge and spouse.

HICKE: Oh, I see. So you chose that.

NEWMAN: I think Frannie probably worked out the details with Bruce. It was like a very small wedding.

HICKE: How nice. Let me ask you why you decided--other than the fact that Frannie thought it was a good idea--why did you think it was a good idea?

NEWMAN: Well, she had been impressed by the fact that my life had changed several times, and looking back to recent changes, she thought not only had they been very interesting and broadened her own interests and activities, but had kept me from getting in a rut (or the decent equivalent thereof, because I was very happy here at Boalt Hall).

We had had changes. . . . Forget World War II and years immediately following that. There was quite a change when I became dean because the whole occupational scene varied. And then there was a big change when I switched in 1967 from my

traditional approach to legal education to international issues. And both she and I had found that change rewarding. So ten years later there wasn't going to be enough time for another academic change, especially one that would be interesting and challenging and would lead to a nice retirement. And so--let's skip a lot of the detail. . . .

It was understood with the court and the chief justice that I would not begin to serve actively until after my final August trip to the United Nations meetings in Geneva, so I reported for duty toward the end of August. Before I left for Geneva we had employed a secretary, two research attorneys, an administrative assistant, and two student judicial externs. And we were ready to go, all of us, in late August.

HICKE: Was your appointment recommended by [Chief Justice] Rose Bird? Or do you know . . .

NEWMAN: Well, she was on the commission. She was chair of the commission, so she had to go along.

HICKE: Oh. [Laughter]

NEWMAN: I knew her better than I knew the governor, but I hadn't really seen her for a long time. She was a former student, which was nice. Then my first oral argument week was in early September '77, and that was a dramatic week for me. It was the first time I appeared as a judge in public and the first time I realized how much preparation was going to be necessary in this job. It turned out to be a very, very tough and time-consuming job for lots of reasons, not merely the day-to-day work, but other matters that came up as we

proceeded. So then I was a regular judge, going to oral arguments ten months a year: four in Los Angeles, two in Sacramento, four in San Francisco.

I enjoyed that first year immensely, except I learned right away that two externs--two students on assignment for the semester--were inadequate. So when I left the court after five and a half years, I had had a total of eighty people on my personal staff, entirely apart from the staff of the court. Seventy of them had been student externs, each serving one semester or a summer; the others were a mixture of lawyers and secretarial people and an administrative assistant.

HICKE: That's a job in itself, isn't it, taking care of all those students and so forth?

NEWMAN: Well, that's why I wanted an administrative assistant. I was the first justice other than the chief to have an administrative assistant. (She had a very loyal and effective one.) But I said I needed an assistant because I'd had the experience as dean and I'd also witnessed a lot of international activity where administrative assistants would have helped immensely. So I persuaded a young woman who had worked with me in that capacity, during my final year here at Boalt, to come with me to the court. She was the only member of my staff who stayed all the time I was there.

HICKE: What was her name?

NEWMAN: Joan Pomerleau, at that point. She's Japanese American and was married to a French Canadian. And a remarkably bright and lovely woman, and patient. She had enjoyed the human

rights work she did with me and had gone to Geneva with us, both in February and August 1977. She and Kathryn Burke, my top human rights student at the time, came home with me; and the three of us sat in the coach section of a plane at the end of a hot summer all crowded together in three seats. All the way home from Geneva to San Francisco we planned and plotted on how we were going to organize the staff on the court and proceed. Here was my top research attorney, and my new administrative assistant for judicial work; and none of us, in retrospect, knew anything. [Laughter] But we had the rules with us, and we studied very hard and really had a good time coming home.

They were the core of the staff that I enjoyed so much, constantly though individuals changed. Later on, Joan and her first husband parted; and then several years later, after I had left the court, she married a young fellow whom she had met while she was working with me, and I married them.

HICKE: Oh, wonderful.

NEWMAN: Because as a retired judge I can still marry people--which Mrs. Newman enjoys immensely and always has.

HICKE: Oh, that's wonderful.

NEWMAN: And in fact, I am still eligible to serve on any court in the state.

HICKE: Oh, is that right?

NEWMAN: So anyway, Joan didn't take the name of her new husband; and now she's known as Joan Miura, still highly professional and for several years after leaving me one of the top staff people running the opera house, Davies Hall, and Herbst Theater.

HICKE: My goodness.

NEWMAN: We'd shared musical interests together, so those were wonderful years for Frannie and me as well as for her. Now she's decided to leave that job and works as special assistant to Alice Walker, whose newest book was reviewed in the [San Francisco] Chronicle two days ago.

HICKE: Oh, how interesting. Well, let's think a little bit about what were some of the first challenges that you met when you started on the court.

NEWMAN: The first challenge was professional, completely. It was time-consuming for all of us on my staff, because it was so different from anything any of us had known (except the secretary who had worked for another judge, and she was helpful). The court, at that time even, was filled with young people: most of them as externs; some as one-year law clerks after they had graduated from law school; and several young people as well as older people on the permanent staff of the court. So our main job was to get to know those people as a staff. And my main job was to get to know and work with the six judges I served with and, of course, primarily the chief, because she was so very active in administration and management.

HICKE: Well, let's interrupt just a minute right there. Maybe you could tell me a little bit about each one of them as you think about them.

NEWMAN: The justices?

HICKE: Yes.

- NEWMAN: Let's save that till I give you the story.
- HICKE: All right. OK.
- NEWMAN: Because they are so wrapped up in the story.
- HICKE: Good.
- NEWMAN: Maybe you know that until recently they have met every single Wednesday of the year as a group of seven. And when I was there the court never took a vacation. Individual members would take vacations and try to arrange it so that not more than two, and preferably not more than one, would be away at a time. The court also had a very good system of bringing in other state judges to sit pro tem, we say; and that's how I got to know many of the lower court judges whom I would not otherwise have known. I got to know them quite well, because some served for quite a while or on very important cases while my colleagues were ill, or on vacation, or on another assignment.

The Wednesday conference was the focus of all my immediate activity, because every Wednesday I had to be prepared on eighty to ninety cases. The big decision is whether you take the case or not. Taking it means you're going to assign it for oral argument. We never took as many as 10 percent, I think. Of all the cases that came in on Wednesday we took only about 6 or 7 percent to be heard at our monthly oral arguments. Those were the cases we decided were important enough for us to listen to.

Selecting cases is a very important function and has more to do with creation of California law than anything else that's

done judicially because, basically, if we didn't take a case the law was often set by what the court of appeal justices had done. In other words, we were the third step in the process. First the trial, then the intermediate court, and then the supreme court. And so, as Bernard Witkin, the great overseer of California law says, "Lawyers ought to come to grips with the fact that most law in the state of California that involves judges is made by court of appeal justices and not supreme court justices." And that's true.

HICKE: But in a sense, as you review these cases to decide whether you want to take them or not, don't you have to come to some kind of a judgment?

NEWMAN: A judgment, first of all, as to whether it's an important enough question.

HICKE: Right. So, you are . . .

NEWMAN: Then the second question is whether the lower court was wrong.

HICKE: Yes.

NEWMAN: And if it's a very important question and if we think the lower court may have been wrong, then we hear it.

HICKE: So you are, though, actually in a sense deciding on that case.

NEWMAN: Oh, that's right, as to the merits, but not necessarily on the law, because we would often decide to accept the court of appeal decision even though we wouldn't agree with that court's written opinion.

HICKE: Because it was. . . . All right. Because it was correctly . . .

NEWMAN: Correctly decided on the merits.

HICKE: . . . decided, yes, on the merits.

NEWMAN: Or sometimes it would be the other way around. Sometimes we weren't sure about the merits; we didn't think the case was important enough to decide on the merits, but thought the point of law in the lower court opinion was so wrong or so badly stated that we had to take it.

HICKE: I see.

NEWMAN: There were some details that I won't get you into, but Wednesday conference was our big focus. And that meant that my staff had to write its share of the memos for eighty or ninety cases every week.

HICKE: So each justice's staff would prepare some cases.

NEWMAN: The arrangement was that the chief justice took nearly all the criminal cases, because they followed sort of a pattern. And then she would apportion the noncriminal cases among the rest of us--alphabetically, or in order of seniority, or whatever order she used. But there was never any question of her cheating by giving certain cases to a friend or an opponent.

The other big task was to be ready for oral argument. In my first week or two that was the most important thing, because there I was sitting in San Francisco listening to four or five days of oral arguments all day long and having to be on top of all the cases. That is an entirely different product. Your staff are required to write detailed legal memos before oral argument for the cases you've been assigned after the Wednesday conference. We call those "calendar memos," and they prepare the other six judges for the oral argument

proceedings, which follow a calendar setting the date and hour that each case is to be argued. So calendar memos, which are almost like a court opinion, are the most important memos done in the court, because they guide the judges on how to decide the cases heard in oral argument, after the basic decision that these cases are important.

HICKE: Could you explain what exactly goes into this memo?

NEWMAN: All right. The conference memo for every Wednesday might average five to ten pages. It was sometimes very long and sometimes one or two pages. The calendar memo often would be fifty pages, and for many of the judges that would be a draft opinion. Based on the briefs submitted by the lawyers, it was the best each judge and staff could do, were they to decide the case alone before oral argument.

HICKE: I see. OK.

NEWMAN: Then sometimes the calendar memo would be accepted; sometimes it would be changed in various parts; sometimes four of the judges would decide they didn't like the memo's proposed ruling and would vote against it, and another judge would be appointed to write the opinion. And then either the calendar memo author, if three other judges agreed, or the newly assigned author, if four justices didn't agree, would immediately begin work on the opinion. After each day of oral argument we'd meet and try to make tentative conclusions, having listened to each argument. Sometimes we'd still be arguing till 7:00 or 8:00 at night, and at times we couldn't finish.

HICKE: In this meeting, was that recorded or . . .

NEWMAN: Oh, no, no. On the contrary. All meetings of the court were completely confidential. The only staff person allowed to enter the room was the chief's main secretary. And we'd stop talking when she came in.

HICKE: Oh.

NEWMAN: It was that private. It's not quite so private as the U.S. Supreme Court, because there I'm told nobody is allowed in. The youngest judge goes to the door and carries any message from the staff to the chief. And then closes the door. [Laughter] But we used to just be quiet when Charlene would arrive. [Laughter] And we had a very strict secrecy rule on everything that's not published. People don't see the Wednesday conference memos or the calendar memos or the draft opinions.

After each day's oral argument and the meeting following, the judge and his staff go to work to draft what may become the opinion of the court. Then they circulate the draft to each of the other judges who, if they wish, write a concurring or dissenting opinion. And that, as you see, can be a very lengthy process. It entails a tremendous amount of work by each judge and every member of the staff involved at the time, because you often want to discuss your draft or another judge's draft and suggest and make changes before the opinion goes out. And staff members do a lot of negotiating and report back and forth to their judges.

HICKE: Are those papers then destroyed or . . .

NEWMAN: Oh no, they're just locked up. And secrecy is very rarely violated. It was once very significantly violated. I'll come to that.

Now that's the basic process: on Wednesdays, what cases are you going to hear? And after oral argument, what kind of opinions are you going to write? Those are the main tasks of the court.

In addition there's a tremendous amount of management involving all kinds of things. Personnel questions, as with any big institution, from very personal to highly significant for the whole outfit. Your staff has to get attuned to all of that. And one of the first things I saw was that I couldn't rely on the very bright law graduates that I'd chosen to be my only law clerks.

HICKE: Really?

NEWMAN: Because none had had enough experience. After the first year, I took one of the most senior attorneys on the staff to replace a one-year appointee. (They're called research attorneys.) He was just a little younger than I, and I had known him only slightly before, but I saw right away that he was one of the outstanding people there and persuaded him to join our staff. He should have been the judge instead of me. [Laughter] That was true of several of those people we refer to as "young people." (Every judge had at least one such person.) Then after another young attorney decided to leave, I decided to get a middle-aged research attorney. So I ended up with the senior attorney, the middle-aged attorney, and then Joan, who herself was beginning to be "middle-aged." At some point she passed

forty, I remember. [Laughter] I'd had to give up an attorney position to keep her, to have the only administrative assistant. I couldn't persuade the chief that she should be separately financed.

HICKE: Oh, I see.

NEWMAN: So my two top attorneys and I worked very hard on the law, and that's why we ended up with five externs a semester, to get extra legal assistance.

HICKE: Did that work out very well?

NEWMAN: Yes, I think very well. When I left, one of my final "gifts" to the court was that I helped push through the decision that they should seek, through the budget bureau in Sacramento, and with the chief's help of course, one more attorney for each judge and half of a new secretary. One and a half secretaries and four attorneys is now, I think, the standard.

HICKE: Terrific. That was well done.

NEWMAN: But I never have benefitted. [Laughter] All right, lets pause again.

HICKE: All right. I think that I might just ask you a little bit about the newspapers at the time who reported that you were going to be the liberal, most liberal, justice on the court. In fact, I have--I don't know if you want to see them or not--I have several assessments of the decisions and so forth that were made of the court as you were on it. Maybe you can comment on that.

NEWMAN: Well, it depends on which period. There were some assessments before I was elected in 1978. Do you have some that go back that far? Those were speculative.

- HICKE: OK. Well, let's see, '78. Would that be I think this includes yours.
- NEWMAN: I have a lot of these. Here's one just before the election, and I'll talk about that next.
- HICKE: OK. I think I have one more here but . . .
- NEWMAN: Never as a dissenter.
- HICKE: Well, it depends on the case, doesn't it?
- NEWMAN: No, I mean in this list they have here--six key decisions. In all of those I was with the majority.
- HICKE: Well, maybe you could just comment a little bit on that as you came in and the comparison of your court with the previous one.
- NEWMAN: Well, of course, most people had never heard of me, and I think most lawyers had never heard of me. But some had, and some thought obviously I was a notorious liberal; some thought I was a moderate liberal. Nobody ever accused me of being conservative in those days.
- HICKE: But at least a friendly liberal.
- NEWMAN: Yes. And later on, I can say that several of those people just couldn't believe that mine was the deciding vote that allowed the death penalty in California. That was quite traumatic for all of us.
- HICKE: Well, shall we talk about that right now or . . .
- NEWMAN: No, because that comes after the big crisis.
- HICKE: OK. So we'll do this a little bit more and then.
- NEWMAN: I didn't think much about the election of 1978, and four of us were on the ballot. The chief was on, because she was a new.

. . . Do you know the rule? The rule is that justices of the supreme court are appointed by the governor, but they must get the approval of the people at the next gubernatorial election. So the next gubernatorial election was 1978, which meant that Chief Justice Bird had to be approved by the people, as well as Justices Frank Richardson and Wiley Manuel; and so did I. Both Richardson and Manuel had been on the court longer than I, so I was the youngest on the ballot in terms of service.

HICKE: But all of those four people were appointed by Jerry Brown. Is that correct?

NEWMAN: No. It was Reagan who appointed Richardson.

HICKE: Oh, OK. All right.

NEWMAN: But all that was quite irrelevant in those days, and none of us had a campaign of any significance. And, as expected, Rose got the lowest approval vote, because she had had a press that I thought was very unfair at the time, but of course nothing compared with what followed. To my surprise, I got a few more votes than Wiley Manuel, and I'm sorry to say, I think those were racial votes. Frank Richardson got the most of the four of us. But we all passed comfortably. That was the tradition on voting for supreme court justices; none had ever been turned down.

But the '78 election was very critical because of some of the stories that had come out maliciously, particularly against the chief. And so during that Thanksgiving weekend . . .

[End Tape 7, Side A]

[Begin Tape 7, Side B]

NEWMAN: I was in Carmel with the family, and the chief learned that I was down there. She called me to say she was so upset by some of the tales and the particular one that had come up that month--charging that we had politically withheld publishing certain opinions until after the election. She wanted to invite an investigation. I asked her if she'd gotten the opinions of the other judges, and she said she was going to try to call them all. I said, "I certainly don't think any letter should be sent until we vote on Monday." But I think she had already sent it.

HICKE: What letter?

NEWMAN: This was a letter to the Commission on Judicial Performance requesting that they investigate these allegations against us. That was the beginning of the breakdown of good rapport among the justices. I was deeply involved in that whole business. Do you remember much of that story?

HICKE: Is that the Tanner¹ and . . . ?

NEWMAN: Yes, for instance. And they were also targeting my opinion on the Christmas lights at the L.A. City Hall.² But there were many others. It was a miserable period of--what was it--ten months? Yes, I remember going to L.A. for the trial in Justice [Stanley] Mosk's suit in the summer of '79, and then the hearings followed that fall. It was quite remarkable. People don't know how well we proceeded in accordance with tradition

1. People v. Tanner, 24 Cal. 3d 514 (1979).

2. Fox v. City of Los Angeles, 22 Cal. 3d 792 (1978).

at our Wednesday meetings, and during oral argument and after oral argument at our meetings, and went ahead with the business of the court. But our views on whether there should be investigatory hearings, how they should be conducted, how we should conduct ourselves at them, and what they would likely lead to just exploded. There were many divisions of opinion and hard feelings.

HICKE: Some thought there should be open hearings and some thought there should be closed hearings?

NEWMAN: We had nothing to do with that. The only question was whether we would intervene and say, "Hey, wait a minute, you can't do this to us." And the basic decision . . .

HICKE: Let's start back. Can you just tell me the story before . . .

NEWMAN: I'm sitting here wondering how much I can tell you. I'm not thinking at the moment of confidential material, but it's so complex. I guess you really want to know this, don't you?

HICKE: I think we should get it on the record. There's a lot written, but it's sporadic too.

NEWMAN: Well, except that one of my colleagues and closest friends, the faculty member who testified that I should be confirmed as judge at the July 1977 hearings, wrote a whole book on the subject.¹ Have you seen that?

HICKE: No.

NEWMAN: I'll bring it then.

HICKE: Who wrote that?

1. Preble Stolz, Judging Judges: The Investigation of Rose Bird and the California Supreme Court (New York: Free Press, 1981).

NEWMAN: Preble Stolz, a very close friend. Then I have another one that a friend of Rose's wrote later. And let me start going backwards, in a sense.

At one point all six of the judges were against me, and the press went wildly against me. I was on the front page, with pictures, because I was the only judge who refused to disclose what had been said at our confidential meetings. It was my view that under the constitution and judicial tradition those meetings not only had been treated as confidential, but that such confidentiality had to be preserved to keep future courts from worrying about what they should say to each other.

HICKE: Why were the others willing to reveal?

NEWMAN: The press was so terrible that the others felt they had to, to protect, first, themselves and, second, the court. And, of course, not all they said was protective of other members of the court.

There were two kinds of hearings. I think some of the judges may have talked about things in secret hearings (which I'll explain in a moment) but not in public. That was a deal of sorts they made with the commission. Now the Commission on Judicial Performance had, I think, seven members. And they were able people, no question. Some of them were absolutely disinterested in my opinion. Some were biased. But they were conscientious about their work. They were prodded by Seth Hufstедler, who was what the federal government calls "special counsel"--like the ones they've used in the famous hearings in Washington. And he had an able staff. But from my point of

view he mostly dominated that commission. They interviewed us and many members of our staff privately, in preparation for the public hearings. And they did split with Hufstedler on one issue right at the beginning of the hearings. Hufstedler arranged for televising the opening hearing, and the commission met immediately and decided never again would there be television. But the hearings were open for everything but television.

HICKE: What was the problem that they had with the television?

NEWMAN: Oh, it became a TV show. It was a spectacular, and they had to conform.

HICKE: To the type . . .

NEWMAN: Yes, everything. It was wild. And I think it was crazy to let the TV in. It's comparable to San Quentin and KQED now.

HICKE: Yes. Yes.

NEWMAN: That would be bad enough, but here were nice decent people. And so the commission crossed him on that. I'm sure they told him several other things he shouldn't do, but basically he was in charge of those hearings and, from my point of view, also dominated the other members of the court far too much. So that led to a great deal of disagreement around the office. The staff members, of course, were first titillated and then got terribly involved themselves, because some of them who didn't want to testify had never done anything like that in their lives. They were very proud--these senior staff people--of the work they'd done for years for all kinds of courts, conservative, liberal, and for different chief justices. And now, all of a

NEWMAN: sudden, they were supposed to tell all the secrets, and they'd made a career out of not talking about it. So that was pretty tough.

There were two climaxes. The first was when I refused to disqualify myself from the basic issue of the legality of the hearings, and all the other six did disqualify themselves. I said that under the constitution of California, which they knew I'd helped write, [Laughter] pursuant to whatever Phil Gibson told me, [Laughter] there was a "doctrine of necessity." I'd learned a lot about this when I was an administrative law teacher, because the issue comes up more often there, that sometimes if you're the only tribunal that can decide a question, you have to swallow your pride and what you'd like to do--which is to get out of the mess--and go ahead and do the best you can and try to appear objective.

And they all said, "Oh, no, no. This was different. My God" I said, "Well, we're the only tribunal under the constitution that can do this." And they said, "Well, look, the constitution provides for a substitution of justices," as I mentioned to you, if one were ill or on vacation. And I said, "But that doesn't mean you can substitute seven new people. I'm not even sure you can get down to one. There's a good argument that you ought to have at least four. But you can't say we're going to disqualify the final man so you have seven absolutely new people in charge of the law of the state of California. That wasn't what the constitutional drafters meant,

given the traditions." But I didn't sell that to any except Justice Mosk.

The climax of that was that I met with the six judges who had been appointed to serve as pro tems; and the constitution says that the next in line shall be chief, and so I was the acting chief.

HICKE: Oh, I didn't know that.

NEWMAN: And they voted to disqualify me. We even had an oral argument on that and, like a damn fool, I said I'd argue my own case, or I'd appear to answer questions if they wanted to ask me questions in public about whether I should stay on. So they voted to disqualify me. I think I said in an opinion later on that the vote was four to two against me. So that meant one man decided it. Otherwise it would have been three to three, which wouldn't have been enough. And that was a whole story in personalities and problems that I don't want to get into.

So they were all ready to proceed, and one of them who sort of appointed himself acting chief, got very excited about this as the great moment in his career. [Laughter] But in the meantime Justice Mosk had sued on the ground that there shouldn't have been any open hearings--everything should have been confidential. (It was a good legal argument, and though it didn't address some of the constitutional issues I'd been concerned about, I was, of course, in favor of it.) Mosk won that case--with the seven-person court that replaced me and my six colleagues. In other words, he won his case from the seven

new supreme court justices who, in my opinion, should not have been sitting as a court. [Laughter]

HICKE: Boy, is this complicated.

NEWMAN: Then everything exploded, and the whole investigation collapsed. All that was left was for Preble to write a book, and for the chief's friend to write her book, and for editorialists to comment. I think almost all of them came to the conclusion that it should have been confidential, when they realized what a terrible episode it was in California judicial history.

HICKE: Yes. You said there were two crises.

NEWMAN: Well, one was Mosk's case and one was mine.

HICKE: Oh, OK, yes. And this took place over about ten months?

NEWMAN: Well, the excitement didn't really start till it went public. Oh, there had been dirty stories. I've got a fantastic file somewhere of news clippings and such.

HICKE: I'd like to ask you what you think the impact of all of this is.

NEWMAN: All right. It had a terrible impact at the time, as I've suggested. And I think undoubtedly the plans to dump Rose began about that time. So, if I'm right about that, one tragedy was that not only was Rose bounced when she ran but [Justice Joseph] Grodin and [Justice Cruz] Reynoso went down with her, which is absolutely intolerable. With respect to the chief, there was at least a reasonable argument. With respect to those two men, in my opinion, there was no argument whatsoever. I wasn't part of that campaign except that I supported all three; not that anybody cared.

Much more important was the fact that despite the hearings we went right back to business and I believe were as efficient a court as we'd ever been. Even during the hearings I don't think our decisions or opinions suffered. We carried out our business as efficiently as we could with the pressure. And fortunately the main excitement was during the summer when we had two months without oral arguments. I was very proud of the court for its resilience and strength. That continued, and from my point of view led to my own most productive and exciting period on the court. I was writing my best opinions and, by that time, had learned enough to make efficient use of an excellent staff.

I don't see any long-range impact except possibly for the precedent, which could hurt sometime if there were a similar crisis because it's never been decided, authoritatively, that I was wrong about the seven-man kangaroo court. So that's still a potential opening for somebody trying to get the court. But I don't foresee that. The whole thing seems to be a "sport" in judicial history, not just in this state. I've never known anything like it anywhere else. And it was hardly headline material outside of California.

HICKE: Yes. And it didn't have a major impact. But do you see any peculiar factors that made it possible for this kind of thing to arise, either in this court or in this state?

NEWMAN: No. One thing I didn't mention was that I agreed to join [member of California Judicial Council Seth M.] Hufstедler on TV at KQED. I think it was in December following all this

mess, in '79. Each of us had been consulted by staff people on how we wanted to organize the show, and we had visited with each other before we went on the air. It could have been a very tough session, and I might not have gone on but for the publication of the book called The Brethren by the famous Woodward of the Washington Post.

HICKE: Bob Woodward?

NEWMAN: Yes. He wrote it with Scott Armstrong, also of the Washington Post staff.¹ It was about the U.S. Supreme Court--a very interesting book but a bad one, in my view, except that it made quite clear the fact that members of the Supreme Court took it for granted they could do things such as we were charged with doing illegally. Even the chief justice is quoted as saying, "Well, don't publish that opinion till after November."
[Laughter] And that was the main point.

HICKE: Interesting.

NEWMAN: I thought opinions ought not to be held up for political reasons, and I didn't ever want to argue that they should. But it sort of took the stuffing out of Hufstedler's whole case; if we'd known about The Brethren at the time he might not even have gone ahead with the hearings.

HICKE: Oh, isn't that interesting.

NEWMAN: I did some research later that made it clear to me that withholdings weren't unheard of in American judicial history. That doesn't mean it was proper; nor would I have held up an

1. Bob Woodward and Scott Armstrong, The Brethren: Inside the Supreme Court (New York: Simon and Schuster, 1979).

opinion for political reasons. But The Brethren became huge news all over TV and the papers for awhile; and then everybody decided, Who cares? [Laughter] And, as I say, it was sort of a dirty book because Woodward and Armstrong persuaded a lot of the U.S. law clerks to disclose confidences they never should have.

Of course, that was parallel to what the California commission was making our law clerks do. I think every judge told his clerks they should use their own judgment. I told mine they should use their own judgment, and they were worried; so I spent a lot of time discussing with them my own view. I said, "Now look, I'm not even suggesting that you follow my view. I believe you ought not to distinguish yourself from the others just because you happen to work for me." And I had a lot of respect for those other staff people as well as my own, as I've told you. They were some of the best people I've ever worked with.

HICKE: How did this all get. . . . It sounds as if it was really blown up.

NEWMAN: It was. It was just inexcusable. Do you know that in law we have the basic concept of the demurrer?

HICKE: Yes.

NEWMAN: What Hufstedler never saw--and I don't know why the judges on the commission working with him didn't--was that there should have been a proceeding like a demurrer proceeding to find out whether the charges were really serious, even if proved. Certainly they weren't serious enough to smear the

whole court and plaster it on TV and get everybody to talk about who said what to whom or "What I heard in the corridor." Oh, God it was awful, and that's what I refused to get into. In any good trial court the "charges" would have been dismissed on demurrer if the judge had been honest and neutral.

HICKE: How did that slip by?

NEWMAN: None of my friends wanted to attack. Some of the best lawyers in the state were involved in these proceedings. I was represented by a quiet guy two years ahead of me at Boalt and not widely known outside of the Bay Area. But he's one of the best private lawyers I know. He works mostly in estate planning now, and has had labor experience and a lot of tax experience.

HICKE: Do you want to name him?

NEWMAN: J. Richard Johnston. Highly regarded in the legal community. Member of the school board for many years in Lafayette. Incidentally, he was the junior partner of [Spurgeon] Sparky Avakian when Avakian first opened his law office. They were a great team. Avakian, in my opinion, is one of the best judges California ever had. He should have been on the court instead of me! But he's made a tremendous contribution on the trial bench, and also on the appellate bench where he's often served pro tem.

Anyway, I was very proud of Johnston and most of the others. We can check their names. Rose had Jerry [Jerome B.]

Falk, and Wiley Manuel had Michael Traynor. All that's in Preble's book, laid out beautifully.

And there were what seemed to be almost illicit reasons for not treating the hearings as an ordinary proceeding--leaving unanswered such elementary questions as "If the charges are correct, what should they prove?" That somebody should be removed from office? Reprimanded? Censured? What else?

HICKE: Well, I guess what I'm trying to get is why? Were there political . . .

NEWMAN: Oh, absolutely. This was the initial thrust of what became the great movement against Rose. It was also the initial thrust of the right wing and of the pro-death-penalty people and of people who were furious that she was the only dissenter in the Prop. 13 case. There was a tremendous crew of allies to get the Rose Bird court.

HICKE: It was a bit of an organized thing perhaps?

NEWMAN: Yes, and in this Sunday's Chronicle, reporting on a death penalty case where the judges were split, they referred back to the old history, reminding readers of the famous campaign against Rose Bird and Grodin and Reynoso. That hadn't been forgotten. And the next paragraph said, "Rose wasn't liked." They called her Rose. [Laughter] Can you imagine that? What kind of reporter would do that? I think it was a slip. You know, someone had just written "Chief Justice Rose Bird" and then all of a sudden . . .

HICKE: Oh, maybe it was a typo.

NEWMAN: No, no, it was no typo. I'd guess it was some smart aleck.

- HICKE: Or else they left, they could have left out Bird, but probably not.
- NEWMAN: I don't think so. But anyway, that was typical of the kind of reporting that was going on, because most of the reporters didn't know what the hell a Wednesday conference was and here, day after day, we heard testimony of what went on at Wednesday conferences. But please, I again affirm my prejudice, [Laughter] and I want to be sure you are aware of it.
- HICKE: Which is?
- NEWMAN: That I thought the whole thing was terrible.
- HICKE: Yes. All right.
- NEWMAN: Which was what I had told Rose during that first Thanksgiving weekend. I also went in to see her the next Monday morning and said, "Rose, up to now I've tried to be as loyal as possible, within conscience. But now that you've requested an inquiry I'm not going to bend over that way anymore, because I think it's a terrible judgment that you've decided all by yourself, without consulting us." That, of course, had made a lot of people mad. I didn't get mad because I decided I'd better go straight-lawyer to the extent I could. So I never testified in public. There were just two of us, I think, who didn't in public. But he testified in private in ways I wouldn't have.
- HICKE: There's been no real impact on the work of the court?
- NEWMAN: Just a moment. I knew the court well only until December of '82, when my retirement became effective. I had worked out a deal with the court to attend classes, because Boalt wanted me to teach in the fall semester. I'd assumed I was going to leave

the court during the fall, but I could see they needed me to stay. If you leave before you've written opinions you've worked on, the cases have to be reheard, because a newcomer can't participate in an opinion unless he or she has heard oral argument. There are terrible complications, for instance, after a judge dies. I didn't want to push my colleagues into that sort of bind. So I stayed on to continue with those cases where my participation was needed. I left in the middle of December of '82; then some big case came up in which Rose had disqualified herself, and Reynoso became acting chief justice. He asked me to serve as a pro tem. So my last official business was in January of '83, I think.

HICKE: But you've observed the court since then.

NEWMAN: But not closely. Purposely not.

HICKE: Oh, OK.

NEWMAN: I haven't gotten involved in whether their opinions were good or bad. I show up at the annual luncheon hosted by the Lawyer's Club and try to see them at the time. I haven't seen them in their new offices yet, even though there are many staff people whom I still like and do see. And I haven't had much chance to visit with [Justice] Joyce [Kennard]. I sat next to her at one of these affairs, and we had a good visit. I've gotten to know the chief [Malcolm Lucas] quite well, but others hardly at all. During '83 and '84, when I did see some of the young people, they'd immediately start chatting. But on the strict business of the court, on how fast they were going and so on, my only overall comment is that they're overwhelmed by death

penalty appeals--and from my point of view they should have followed a suggestion I made. I haven't told you yet about my famous final memo.

HICKE: No, well, we've got a lot still to do.

NEWMAN: Before I left, in fact before I even knew I was going to leave, I wrote what was maybe the most thoughtful and carefully worked out memo on how we ought to manage ourselves that had ever been done.

HICKE: I think you gave me a copy of that already. Somebody, somewhere. Well, anyway, tell me a little bit about it, and we'll see if . . .

NEWMAN: Well, my first arguments with Rose--except for some tiny ones about efficiency that came up earlier--began as I became more and more dissatisfied by her management decisions. This had nothing to do with what the law should be, or what our personal ambitions were, or anything like that. I just knew I wasn't being managed efficiently enough and was doing a lot of junk I shouldn't be doing. So I wrote a big memo and worked on it very carefully for months. Joan Pomerleau and I used to have lunch with Bernie Witkin and Ralph Kleps [former director of Administrative Office of the Courts]. I've told you a little bit about Kleps, remember? He was on the constitution-revision drafting committee and one of the great legal people of California, I think. And Bernie Witkin's still a great person in California law.

HICKE: Oh, yes.

NEWMAN: And the four of us would meet and discuss how to improve the supreme court. Yes, that's the memo. [Laughter]

HICKE: I think you gave it to me.

NEWMAN: Well, you'll see that we just had to do something about the death penalty. Oh, yes, this is a pretty good summary (I haven't seen it for years) for you, because it talks, for instance, about the kind of business we had. We worked hard on this, Joan and I. And Bernie and Ralph just tore it to shreds. Joan usually sided with them, and then Ralph would cave first. He and Bernie would cave at different times. [Laughter] This was the first time Bernie had ever heard about "rearranging the deck chairs on the Titanic."

HICKE: Oh.

NEWMAN: And commentators are using it now. In the last year I have heard several people use it.

HICKE: What is it?

NEWMAN: Well, certain kinds of reform are like rearranging the deck chairs on the Titanic.

HICKE: Oh. [Laughter]

NEWMAN: And I said that in here somewhere.

[End Tape 7, Side B]

[Begin Tape 8, Side A]

NEWMAN: This is the three-paragraph summary of the problem.

HICKE: Starting with death sentence appeals, page seven.

NEWMAN: Yes.

HICKE: OK.

NEWMAN: And the problem now is just overwhelming compared with what it was then, but they would never accept my solution. My solution was that we had constitutional authority to transfer death cases to courts of appeal when we didn't think they involved important new issues of law.

HICKE: And they didn't accept that?

NEWMAN: No, and they still don't. It's partly because some of them aren't sure of the constitution and don't want to take any chances in what they know could be a tremendous public outburst. Others really believe that the supreme court should be the only group that can really decide in this final analysis. And that's baloney. I won't bore you with all the reasons. I've become even more convinced of this since I left--that they're wrecking themselves, they're digging their own grave, and they've got to do something. What I fear is that they may actually be working on the opinions (now almost always with dissents by Mosk and [Justice Allen] Broussard) just as one technique for getting rid of future cases. And in my opinion that's a major operation that they really should not get rid of. Now that's the only thing I've followed closely enough so that I feel fit to make a comment.

A parallel problem is the state bar appeals they handle, and that's stupid. The supreme court shouldn't be the only one to deal with state bar matters. Again they have the power to transfer. But again they say, "Oh, well, the court really ought to be in charge of the bar." Well, you know what are we now, 124,000 lawyers? Something like that, in California.

- HICKE: And the supreme court wants to hold on to that?
- NEWMAN: Yes, and always has. I never won those arguments. But those illustrate the kinds of problems I thought had solutions. I see that my final section here is the search for solutions.
- [Laughter]
- HICKE: Cut the inflow of work--that was one.
- NEWMAN: I've written some things that really merit publication. This is one of them. [Laughter]
- HICKE: What happened to this?
- NEWMAN: This is private, confidential.
- HICKE: I know but, was it . . .
- NEWMAN: By that time Rose was having so many problems that she didn't want to get into it and cause more. And the others thought they would stumble through somehow. I used to send a copy to every new judge who arrived, but I gave up. I sent it to one who didn't even respond, and I decided, "Hell, I'm not going to butt in anymore."
- HICKE: So it just kind of fell into a black hole?
- NEWMAN: I think so.
- HICKE: Well, we'll rescue it.
- NEWMAN: [Laughter] No, you won't, because nobody cares, except that every month the Judges' Journal talks about overload, and the chief justice gives speeches about it. He likes to focus on the trial courts, and people don't realize that the supreme court is suffering. This is one of the reasons so many justices are leaving now. I left for a reason that was unique. We haven't discussed that.

- HICKE: No, but we haven't even discussed most of the things that you decided on such as tax revolt and some of the. . . . You know, didn't you, were you in on that?
- NEWMAN: Oh, yes.
- HICKE: The Prop. 13 case?
- NEWMAN: Oh, sure.
- HICKE: Well, that and the death penalty case, and what would be the other cases that you think are the ones we . . .
- NEWMAN: Well, some that are really important are still there. [Laughter]
- HICKE: I think we should talk about them if you think you can.
- NEWMAN: I've got to check on those. I'll make a note, because I've forgotten the details, and some of the details are important.
- HICKE: OK.
- NEWMAN: Joan did a file card for me on the opinions.
- HICKE: And unitary system for taxation? Was that, were you involved in that?
- NEWMAN: I don't remember that as a big problem. My big problems ranged from the Fox case to the Berkeley barriers to some things that really were important.
- HICKE: OK, OK. Let's look at those, the ones that you think were major.
- NEWMAN: Well, I'll just give you two. And they've had an immense impact on me even since then. You know about the Bill of Rights and the Supreme Court of the United States and how we all genuflect and pray before them. But quite a few years ago some judges in some of the states began to realize that their own constitutions had clauses that, from the civil liberties and

civil rights point of view, were better, more decent, more liberal than the federal Constitution.

The two high priests of that movement before I got on the court were Justice Mosk, who had just begun to get interested in this and was in touch with [U.S. Supreme Court Justice William] Brennan, the only U.S. Supreme Court justice in that period who saw it as a very important idea. The second one was Hans Linde, on the supreme court up in Oregon, a former student of mine and a very close friend. Tremendous experience and wonderful guy. He and Mosk corresponded on this even before I arrived; so as soon as I got there I told Stanley this was a major thing with me, and we worked together on the doctrine. Fox was my first opinion on that, and I have a hunch that was the main reason it was chosen as the one to go after in the investigation.

HICKE: Can you give me the name and . . .

NEWMAN: I guess Fox v. City of Los Angeles.¹ You remember, it was the cross on the city hall?

HICKE: Yes.

NEWMAN: And did you notice just this morning we learned that the California Supreme Court has said that prayers are unconstitutional. [Laughter] Boy, they sure weren't ready for that when I was on the court.

HICKE: Yes, this is what, thirteen or fourteen years later?

NEWMAN: This is the conservative court, too.

1. Fox v. City of Los Angeles, 22 Cal. 3d 792 (1978).

HICKE: Oh, yes.

NEWMAN: I can tell you that [Justice William] Clark and Richardson and Manuel wouldn't have voted for abolishing prayer. They were the ones who dissented, I think, from Fox. (I want to check this to be sure I'm remembering right.) Anyway, it was a divided court. I did a lot of work on this. That was one reason it took me a long time to get it written. Also, I wasn't sure I had the final fourth vote; and I was writing to be sure to get that vote because I thought it was important. In that opinion I say there are reasons for believing that the California people, when they wrote their constitution and bill of rights, had in mind something that would guarantee even more religious freedom and, specifically, more protection against discrimination of one religion in favor of another. So that protection was spelled out in more detail in the California Constitution than in the federal Constitution. And therefore, since we were not violating the federal Constitution by denying freedom of religion, there was no reason we couldn't give more freedom of religion. I said that Fox was the case that indicated the problem. And Joan Pomerleau, a non-lawyer administrative assistant, did a tremendous job of research on religious symbols, throughout the world.

HICKE: Oh really?

NEWMAN: Including many religions that have a locus in the U.S. So in the opinion are a couple of paragraphs on how it would be impossible to have a Star and Crescent, Star of David, Buddhist Wheel, et cetera, on the city hall; therefore, almost by

definition this was a discrimination in favor of the Christian cross. I could have gone farther because even while the case was pending I learned--but decided not to put it in--that many people still regard the cross as a primary symbol of torture. It was an instrument of torture for so long. In those days I was so ignorant as to all the ramifications of this. I've learned a lot about Fox problems since then, because I do a lot of work on this in the U.N.

HICKE: Yes, OK, good. We want to hear about that.

NEWMAN: And I've also worked with the Baha'is. I forget whether they have a symbol. [Laughter] But anyway . . .

HICKE: Just for the record, let's just say that this is a case where I don't know who was involved, but somebody sued the City of Los Angeles to take the cross down that they usually put up at Christmastime.

NEWMAN: Oh, no. It was in lights on the city hall.

HICKE: In lights, yes.

NEWMAN: It covered sixteen floors--something like that. Of the window lights. And you could see it from freeways miles away.

HICKE: I see, oh.

NEWMAN: So I mentioned that. . . . It was very tight at the time because nobody knew how the U.S. Supreme Court was going to come out on crèches . . .

HICKE: That's right.

NEWMAN: . . . which involved many of the same problems. The Fox case preceded most of the important crèche cases. So it was very controversial, and a lot of people must have been ready to ding

me for that reason alone. There are a lot of right-wing Christians who think there ought to be crèches and crosses at Christmas, and it is a nice thing to have a cross on the city hall in Los Angeles. That's what this country is all about; that's what our fathers meant when they founded this country, they say; they weren't thinking of these other "strange religions." [Laughter] But the doctrine helped put the final stamp of approval, unless the rules are changed, that if the people of California and our constitution had clearly manifested a desire to give extra freedom, extra protection against discrimination if you're in a minority religion, then it was OK for California to give that extra. And the Supreme Court of the United States didn't have any stake in that.

HICKE: Now, where did you find that doctrine?

NEWMAN: Oh, I'd known about it.

HICKE: I mean, where in the constitution is it? What . . .

NEWMAN: The opinion covers the words that I think are different in the California constitution. We wrote it in the revised constitution.

HICKE: [Laughter] Oh, that's good.

NEWMAN: But in very general terms--so general that you can't say, "Oh well, it's clear," because it's not that clear.

HICKE: So it was open to your interpretation.

NEWMAN: That's right. And the others said, "Oh, my God, I didn't mean that." And I never did say I knew what it meant. [Laughter]

HICKE: When you write something in general terms like that, do you intend to leave it?

- NEWMAN: Oh, sure. I've even written on that subject. It's called (I remember one of my Columbia professors got angry at my even mentioning it) something like The Intentional Use of Ambiguity.
- HICKE: That sounds good. I like that.
- NEWMAN: I think I had a better phrase than that even. Let's look at Section XXIV.
- HICKE: OK. I'm just going to read this in the record. "Rights guaranteed by this constitution are not dependent on those guaranteed by the United States Constitution. This declaration of rights may not be construed to impair or deny others retained by the people." Adopted November 5, 1974.
- NEWMAN: That was us. The Bill of Rights was one of the last provisions we put in.
- HICKE: That was Article I. Right.
- NEWMAN: Yes. But what does that mean? That's what I had to answer.
- HICKE: Yes, yes, I see.
- NEWMAN: Now, that's the first case. The second was tougher: the Pruneyard case. You know the Pruneyard shopping center down on . . .
- HICKE: San Jose or near there?
- NEWMAN: Yes, in that area of the valley. Robins v. Pruneyard Shopping Center.¹ This was tougher, because you must know that in the United States Bill of Rights, sometimes there are very hard decisions when you have to balance two conflicting rights. So are you going to let the ACLU protect those damn Nazis in

1. Robins v. Pruneyard Shopping Center, 23 Cal. 3d 899 (1979).

Skokie? Are you going to tell the press they can wreck a fair trial by publicizing in advance what the witnesses are going to say? Free press against fair trial. We've got a long list of conflicts among rights that themselves are civil liberties and civil rights. It was sort of ironic that the shopping center case was assigned to me, because it involved rights of high school students to go to the Pruneyard parking lot to ask people to sign petitions to get the U.S. out of the U.N. And of course they had literature, too. And that wasn't my favorite set of facts. [Laughter]

HICKE: Well, you have to disassociate yourself from those things.

NEWMAN: The Supreme Court of the United States has said the Fourteenth Amendment guarantees due process, which means that no person shall be deprived of life, liberty, or property without due process of law. And we (the U.S. judges) think that, in this case, the property rights under the Fourteenth Amendment are superior to rights that ordinarily we protect under the First Amendment, such as free speech and petition. And they held that way.

HICKE: So this is a case where you have to decide between two conflicting rights outlined in the Bill of Rights.

NEWMAN: Correct. So after the case was argued before us, I wrote the opinion; and I got only four votes again. And Frank Richardson was quite cross with me. (I was close friends with all judges on the court. I haven't mentioned this yet. I liked those people so much, and the staff, too. It was a great place to work.)

- HICKE: That's an important point, because obviously when you're . . .
- NEWMAN: Oh, yes. I got along with them. Everybody had told Justice Clark and me separately that we wouldn't get along at all, of course, because he was pure [President Ronald] Reagan and I was pure New Deal. [Laughter] But we ended up close friends. I remember Mosk, Richardson, and I met him covertly one night in San Francisco. [Laughter] Covertly because of his new importance in Washington. We had the best evening together.
- HICKE: I think that's wonderful.
- NEWMAN: But anyway, Frank Richardson was quite angry with this opinion and wrote a powerful dissent. And I said, "Look, the California Constitution and its history show that the people of California wanted to give more protection to free speech and free petition rights than they wanted to give to property rights." And I had some history that suggested that. Our free speech clause doesn't read like the First Amendment. It's a little different.
- HICKE: So is this based on precedents or on . . .
- NEWMAN: No, well, on history.
- HICKE: What do you mean by history?
- NEWMAN: Oh, the history of people, of what they said and wrote, in getting the constitution ready.
- HICKE: In the Constitutional Convention.
- NEWMAN: Yes. And then a few earlier cases than ours--things like that. Legislative history, we call it, for statutes. It's a huge topic.

I've got a chapter in a book on the whole topic, if you're interested. [Laughter]

HICKE: Well I am because . . .

NEWMAN: No, it's too tough. [Laughter]

HICKE: I'm interested in what kind of a record is created when a statute is passed and how much the court uses.

NEWMAN: I'd better give you a citation then. The statutory rules govern the constitution rules. The document is different, but the approach is essentially the same.

HICKE: Do I get to look at the cartoon or . . . [Laughter]

NEWMAN: It was maybe the first casebook like this that ever had cartoons.

HICKE: OK. I want to write down the name of the book which is Legislation: Cases and Materials.

NEWMAN: 1955.

HICKE: That's terrific.

NEWMAN: Ordinarily, I wouldn't refer it to you, but it has a chapter outline that still is a pretty good summary.

HICKE: Oh, yes. Excellent, yes.

NEWMAN: See "Aids to Interpretation."

HICKE: "Is evidence available that may show the meaning originally intended by the legislature when the words became law?" Yes, that's . . .

NEWMAN: A list of miscellaneous sources. That's inside.

HICKE: Excellent. That's great. Thank you.

NEWMAN: Well, anyway, I wrote that all out in the Pruneyard opinion. Oh there was a big uproar, and the attorneys said, "Oh boy, are we going to rush to the U.S. Supreme Court with this one!"

Because even if you do have a doctrine of independent state grounds, that doesn't mean you can outguess the Supreme Court of the United States on balancing two rights. And if they say the Fourteenth Amendment is better than the First Amendment, that governs you on your own "First Amendment."

HICKE: Is that right?

NEWMAN: So the U.S. Supreme Court wrote seven opinions. Seven justices, and they couldn't agree with each other. [Laughter]

HICKE: Oh, my goodness.

NEWMAN: But nobody overruled us. It was fascinating because I wasn't sure at all that we'd survive that.

HICKE: I need to get the cite for that, too, for the case that went to the Supreme Court with the seven opinions.

NEWMAN: So Fox and Pruneyard are, from my point of view, the two potentially most useful cases because I don't think there had ever before been a case where the balancing point was hit right on the head with a U.S. Supreme Court case against you on balancing. This doesn't mean the Supreme Court will always reach the same result. For instance, what if we compare free press and free religion? It's conceivable they could say that within the First Amendment, where rights are so intertwined and often declared to be the supreme rights, the U.S. court is completely in charge. But basically Pruneyard is a good ruling on how the California court can choose, up to now, on balancing questions.

HICKE: So they just sent the case back?

NEWMAN: No, no, they affirmed it.

- HICKE: They affirmed it, yes.
- NEWMAN: And no judge said he was against us. They were bitterly in disagreement on other issues and maybe decided it wasn't important enough to discuss what they thought about our opinion. [Laughter]
- HICKE: And no other state has come up with this?
- NEWMAN: Well, I haven't seen it. There's quite a bit of publicity now on this in general. It's going to come up with questions of, "Can you abolish taxation?" for instance. And, "Do you have to give somebody food?" I have several clippings on this. The reason this is important for me is that it's the precedent for saying that United Nations law can be better than the U.S. Constitution. And that's . . .
- HICKE: A nice place to end there.
- NEWMAN: This is all laid out for you perfectly now. It's never been stated before. [Laughter]
- HICKE: "For individuals in the U.S., does the international bill accord better rights than the U.S. bill?"
- NEWMAN: Go to the next sentence.
- HICKE: "Again the answer is yes, sometimes." We'll have to get into that next time.
- NEWMAN: Yes.
- HICKE: Well, we haven't finished the supreme court, have we?
- NEWMAN: No, I guess not.
- HICKE: But we'll put it off till next time. OK.

[End Tape 8, Side A]

[Session 7, June 10, 1991]

[Begin Tape 9, Side A]

NEWMAN: Thinking you would be interested in my death penalty opinion.
. . . This is the one that changed . . .

HICKE: Indeed. Oh yes.

NEWMAN: It's almost all on one page, so you could even read it now if
you want.

HICKE: What I'd like to do is take down the citation, and then people
who are reading your oral history can go to this and look it up.
Is that the name of the case?

NEWMAN: That's the name of the case.

HICKE: People v. Jackson.

NEWMAN: And you need only the first citation.

HICKE: 28 Cal. 3d 264.

NEWMAN: 264 at 318 (1980). This was a very long opinion by the
majority.

HICKE: I see, yes. The conclusion.

NEWMAN: Yes. Because this was the case that said the death penalty is
OK.

HICKE: OK, well why don't you . . .

NEWMAN: And you'll see why I said that.

HICKE: Yes, why don't you tell me about the case, the issues, and then why you feel the way you do about the death penalty?

NEWMAN: All right, start?

HICKE: Yes.

NEWMAN: I've been very much opposed to the death penalty for many decades, partly because of my work with the faculty here, even when I was a student, but especially when I joined them after World War II. Several members of the faculty were strongly opposed to the penalty. I remember one colleague--and they were all older than I in those days--who said, "Frank, what you have to remember is that we can never rely on the prosecution not to make a mistake, and therefore we can't conceivably have the government take a person's life relying on the prosecution or the quality of his lawyering or anything like that." Life imprisonment is one thing, because if the mistake is bad enough the person can get out, as we see constantly. People are getting out after seventeen years. It's incredible what happens. And I was very impressed with that argument. I didn't see any objection to it.

So when I got to the California Supreme Court, it was assumed that I would go along with the great revolution that had taken place in the seventies that had reversed the California law on the subject.

HICKE: There was a vote, wasn't there?

NEWMAN: Well, that was the important thing, and that's what influenced me immensely because the people of California amended the constitution in a very hotly contested early election. I think it

NEWMAN: was by initiative, saying, "We don't want the California Supreme Court to make up any law on this subject."¹ Essentially, "We the people of California are for the death penalty; and we want the only limits to be imposed by the Supreme Court of the United States, where we can't do anything about it, and no more limits or restrictions by California courts." And I didn't want to interfere with that. That was the general view of the court also. Obviously when the people told us that we had to follow the United States Supreme Court, we didn't want to say we'd like to have a different set of rules. So we tried our best during my first years on the court to figure out what the United States Supreme Court was meaning.

Well, in the meantime the people or the legislature tried to fix it up. The legislature figured out, with the help of its lawyers and the attorney general and others who believed the death penalty was needed, what they thought would be an adequate statute under the new tests the Supreme Court of the United States kept prescribing. From my point of view they did a very conscientious, honest job trying to construct how a legislature should respond when the U.S. Supreme Court had said, "Well, this statute isn't adequate yet, too vague." There were lots of details and complications.

1. Proposition 17 was an initiative submitted to and approved by the voters in November 1972. It is cited as California: Constitution, Article I, Section 27.

By the time the new statute got to us we were very divided. And this was the famous Jackson case that had been around a long time. And as you know, he still hasn't been executed. We still haven't had our death penalty. They're getting closer and closer. But our opinion was in October 1980. Justice Richardson--who I thought was one of my very best colleagues in terms of how a judge should work--wrote the majority opinion, and Justices Clark and Manuel concurred with him; and then I wrote a separate concurrence, which gave them the fourth vote. Mosk and Bird wrote separate dissents with [Justice Mathew] Tobriner concurring on each. The chief often had separate views from those with whom she agreed on their result. This was a case where she agreed with Tobriner and not with either Mosk or me. Her reasons were different from Mosk's.

HICKE: Right. Yes.

NEWMAN: It'll be easier if we talk about it while you're looking at the words, and then I won't have to summarize for you.

HICKE: Oh, fine. Yes, OK.

NEWMAN: Because as you'll see, I wrote only five paragraphs.

HICKE: That's right. It looks like it's just barely more than a page.

NEWMAN: More than a year earlier I had joined Mosk's opinion in Frierson,¹ which was a tremendously important case. Here, however, I said I was not persuaded by his dissenting opinion in this case. Very briefly I will explain why.

1. People v. Frierson, 25 Cal. 3d 142 (1979).

I do not subscribe fully to any colleague's views. I think Richardson's majority opinion credibly answers certain questions raised by the chief justice and by Mosk. As to the death penalty in general, I still share views expressed by Mosk in Frierson, which was the preceding case.

HICKE: Which must have been against. . . . His views were against the death penalty.

NEWMAN: That's right, and we had won in Frierson, but then the new statute came in. I did not agree with Mosk's conclusion that four defects require us to hold the statute unconstitutional. So I go into each of the four. Then this is the important paragraph for my philosophy: "How much should we demand of the individuals who draft death penalty statutes?" And this relates to all the work I had done first with the California legislature and then with Congress, drafting statutes, appearing before committees, talking with legislators and especially staff, and so on. A reasonable and conscientious response to the United States Supreme Court rulings is enough, I think. In other words I said, "Look, the legislature may not be as skilled in reading court opinions or as experienced as we are. But if they reasonably and conscientiously respond to what they think is the law, I think they are entitled to some credence before we get up and argue with them and each other."

HICKE: So there's a question of expectations as to what you can . . .

NEWMAN: Here is where the legislature is mentioned: "Since I am persuaded that the California legislature did so respond, I vote to uphold the statute." Now I must point out that the way the

United States Supreme Court is going now, there is a lot of uncertainty still, as we know even from this week's news. . . .

HICKE: Yes.

NEWMAN: It's still going on. If you're in law practice, all you know is that you can protect a client for at least ten years. And from the prosecutor's point of view it's outrageous. The U.S. Supreme Court starts with the same kind of awful agonies that we went through. But a state court would be rash, indeed, to predict how and when the U.S. Court will ultimately solve the problem created when it told legislatures they weren't being specific enough. "If the Supreme Court does decide"--the U.S. Supreme Court--"to prescribe certain procedures, how might our approach to cases like this be affected?" So here is where I try to put it into two sentences. "Should we pronounce that legislative acknowledgment of the new prescriptions is essential and, as Justice Mosk seems to suggest, that all elementary requirements must be articulated in a rewritten statute?" In other words, was he demanding of the legislature that they cover every disputed point so we know exactly what they think about everything? No, that's impossible when you draft.

HICKE: Right. You knew it well.

NEWMAN: "If feasible within bounds set by their words and purpose, statutes should be construed to preserve their constitutionality." That's all right.

HICKE: That's quoted from . . .

NEWMAN: From one of my opinions.

HICKE: From another opinion. Oh, OK.

NEWMAN: On which I had worked very hard to explain that rule. It's called the "presumption of constitutionality." Courts don't rush around whenever a lawyer raises a question and say, "Well, damn it, we're going to look at that." You say, "Wait a minute. We presume the legislature knows what it's doing under the constitution as well as on policy. So we need a pretty strong case." It's like the burden of proof.

HICKE: I see. OK.

NEWMAN: But not exactly the same.

HICKE: Yes.

NEWMAN: "California courts and federal courts are not timid in reading into legislation various procedural and other rules deemed constitutionally required that the draftsmen may have overlooked or rejected." I did a lot of that. "That is demonstrably true as to countless requirements on matters such as unanimous verdict, proof beyond a reasonable doubt, and judge and jury findings." Blah, blah, blah. We disagree with them. "Whether there be four such matters or forty"--here I quote myself and then Mosk--"we should not insist, even in death penalty cases, that each requirement be first written out and then enacted by the legislature."

HICKE: So this was a constitutional, a state constitutional question and did not really appertain to the death penalty or whatever the subject was.

NEWMAN: But it wasn't even constitutional, because nothing in the constitution instructed the supreme court how to interpret

either the constitution or statutes. This was rather a rule that springs from presumed constitutionality.

HICKE: What is that based on, this presumption of constitutionality?

NEWMAN: Oh, separation of powers.

HICKE: Oh, OK.

NEWMAN: In other words, you've got plenty to do as courts; and you don't want to be just the ombudsman for the legislature.

HICKE: OK. OK.

NEWMAN: You want to be damn sure that there's a really good argument that it's wrong under the constitution. And nobody fights that, I think. Even oligarchs, everybody else, they all agree with that. You presume statutes are constitutional, and then argue about what that really means.

Now, Mosk went further I thought. He's a man of great integrity as well as ability and dedication and strong beliefs. So I'm not criticizing his approach, except on legal grounds. He said, in effect, "Death penalty is so serious that the legislature ought to spell it out the way they do in tax laws."

HICKE: Oh, so this is an exception . . .

NEWMAN: I'm caricaturing.

HICKE: Yes.

NEWMAN: I'm saying we can't demand that they do everything in advance that somebody might think of, and we can't pretend that the death penalty issue, with its involvement of the people of California, is just like any old evidence statute, where we know they're not expert; so we horse around with it as judges. This is a constitution. And there is a separation of power with the

legislature just as there is with Congress. So this was my briefest and most dramatic statement of obeisance to the legislature under separation of powers, without mentioning separation of powers--but they all knew what I was talking about. In fact, Mosk himself at my farewell luncheon said they could never take away from me the respect I had for the legislature.

So I've given you one more opinion. This was five paragraphs. Here's one where I wrote a concurrence with the majority.

HICKE: OK. Let's get the cite on that and the name of the case.

NEWMAN: Yes, you always look at the top of the page for the name.

HICKE: California Teacher's Association v. San Diego Community College District, 28 Cal 3d 692 (1981). OK, then I don't have to write it down. I read it on the tape, so I don't have to copy it.

NEWMAN: Oh, this is an opinion "by The Court." No single author.

HICKE: It's unanimous?

NEWMAN: No, because Bird dissented.

HICKE: Oh, OK.

NEWMAN: And I wrote a separate opinion. My hunch is that the others were in disagreement with whoever started to write the opinion and finally said, "Let's just have it be a court opinion because Newman is concurring; only Bird is dissenting; and nobody has to take credit." It was probably a joint product; I'm guessing because I don't recall the history. So a good opinion, the opinion of the court. And then we get to me.

- HICKE: What was the case about? Tell us a little bit about it.
- NEWMAN: Oh, this was a teachers' claim for back pay. Not a very significant item on the agenda of California government, [Laughter] because almost nobody cares. [Pointing] This is how you tell. These are headnotes where somebody summarizes.
- HICKE: OK.
- NEWMAN: Teachers. Tenure rights. Back pay. Reclassification. How much back pay. All of that.
- HICKE: All of that.
- NEWMAN: All education code material. But it was a very interesting question on statutory interpretation, from my point of view, given my own career and writings about the legislative process, not only about statutory interpretation but about lobbying and the lobbyists' impact on interpretation.
- HICKE: Were you the only one on the court at this time that had that kind of legislative experience?
- NEWMAN: Well, almost everybody had mixed around a little with the legislature; but I was the only one who had had that many years.
- HICKE: And rewriting the constitution and that kind of thing probably.
- NEWMAN: In fact, after I had announced my retirement but before I retired, I wrote to the governor [George Deukmejian]--who didn't like me--and said, "Governor, I have just one suggestion as I leave. Please get more men and women on the bench in California from the legislature. Legislators or staff or lobbyists. We don't have enough people around who understand the

legislative process." For example, I couldn't persuade my colleagues that you had to interpret statutes differently if they'd passed in the last week or two of each session, because there's such a mess up there in Sacramento. And though almost everybody was reading things that had been written, those things never got read during the last two weeks of the session, for instance.

HICKE: That's an interesting point, yes.

NEWMAN: That's just a sample. So here is the tiniest point you can imagine on why I wouldn't sign the majority opinion.

HICKE: "The majority concludes that the statement submitted by Senator [Albert S.] Rodda is not a proper subject for consideration."

NEWMAN: This is the old rule that you shouldn't even look at a statement by just one legislator. Wiley Manuel had always disagreed with me on that. I think he had died before this case was decided. He said, "Frank, you've got to have some rules." And he did know the legislature. But I was convinced that you shouldn't close your eyes. So I worked hard on this. I said, "You can't look here at the evidence code or common law. Instead, we look to precedents that concern statutes and the use of extrinsic aids when courts construe statutes. And we consider federal as well as state precedents, because California courts often interpret federal as well as state statutes." And then I say, "I don't discuss other kinds of writings. They are quite different." Some people think you can interpret anything that's in print in the same way.

HICKE: Oh, yes. OK.

NEWMAN: For instance you have treaties, and that's my business now. It's entirely different.

So then I went into everything that my staff and I could find on legislators' comments. And I looked at every pertinent California case we could find. The old ones. No longer did those ideas frame or distort our approach. Then I begin to quote starting with Roger Traynor, which is always good up there. [Laughter] And I had [U.S. Supreme Court Justice Felix] Frankfurter as a good conservative. This was my main point.

HICKE: Admissibility versus weight.

NEWMAN: Some things you find don't weigh even an ounce. They're so ridiculous that they're unimpressive. That's different from saying we close our eyes. And that's "admissibility." It's the same as in a trial. You see, we are dealing with fact--who said what to whom, when, and how. And that's admissibility, no hearsay.

HICKE: Yes. OK.

NEWMAN: Hearsay is not our problem when there's no jury or trial, because as an appellate judge you can look at practically anything you want. You may look at a thousand pages that are worthless and wish you hadn't had to waste your time on it.

HICKE: Yes, but that's not the same thing.

NEWMAN: I didn't want anybody saying to me, "Oh well, you can't read that; so that goes in the wastebasket even though it's in the brief." I feel very strongly about this, and I had worked very

hard on it for several years as a scholar. And then I quote, quote, quote. The majority lead opinion refers to violation of "well-settled principles." So I go through every case.

HICKE: You have several pages of them.

NEWMAN: And try to prove that each case was wrong. I had really done some background work by that time.

HICKE: That's obviously a lot of work.

NEWMAN: One opinion the majority relied on mentions neither Friends of Mammoth, nor Ballard (both of which implied admissibility of legislators' statements whether or not "persuasive"). This is old legal writing. Ignored in the Bragg case was the second paragraph of the Law Revision Commissions Comment. The judges never saw that comment, I suspect. Then [thumbing through] other sources, the "plain meaning rule." That used to be the rule. If a statute has a plain meaning you don't need to look at anything. Well, we sure learned that that's a lie. [Laughter] "We should not now concoct a new rule on admitting evidence that relentlessly will lead us to the kinds of vagaries and absurdities that the discredited rule helped effect." I'm saying they're reinterring a doubtful doctrine that was wrecked by the New Deal court. Frankfurter too, great conservative. So this is my whole thing. "I concur in the reversal of the judgment here, and I agree with the majority's conclusion that Senator Rodda's statement 'provides little guidance'." Some people would say I shouldn't have done this, because it seemed so insignificant to the other judges. Then I say it's even insignificant to me, on the facts. It had no

weight. But I fought for the concept of admissibility, because there were major cases where it was tremendously important to know who wrote a letter, whether [Governor] Earl Warren or Deukmejian did, and said what and when and why. Sometimes that's helpful. Often the courts looked at them without any question, because it's obviously powerful.

So that illustrates the range of my legislative interests. And I won't bore you with more.

HICKE: Oh, no, those are excellent illustrations. That's really helpful. That's very much the kind of thing that I was hoping we could do.

I know that we talked before about the Tanner¹ case, which is the "Use a gun, go to prison," isn't it? But we only talked about it in connection with problems in the Supreme Court, but maybe you could tell me about the issues of that.

NEWMAN: Well, I never thought the case was worth discussion.
[Laughter]

HICKE: Oh, OK. [Laughter]

NEWMAN: The only important thing was the allegation that the majority of us had held it up for the elections.

HICKE: Oh, OK, so then . . .

NEWMAN: And I think I mentioned that my final conclusion was, so what? Judges had always done it. The book called The Brethren indicated the U.S. Supreme Court had been doing it and, especially, Chief Justice [Warren] Burger at the very time

1. People v. Tanner, 24 Cal. 3d 514 (1979).

we were charged with this awful sin. [Laughter] In other words, decisions were being held up constantly, nearly always because of workload and backlog. The mere fact that some one person, or even others, said, "Well, another good reason for my not putting it out now is. . . . What the hell, why foul up the election?" I never did that, and I don't think the others did either; but so what if it had been done the way the U.S. Supreme Court has done it?

HICKE: OK. Well, I have several more subjects here, and I've got articles on them if you want them to refresh your memory. One is the free speech at shopping centers issue.

NEWMAN: Yes. That's Pruneyard.

HICKE: Oh, that's the one we talked about. OK. All right.

NEWMAN: That's a very important case. Maybe the most important I did.

HICKE: All right, good. Here's the tax revolt, which I'm sure we haven't talked about.

NEWMAN: Oh, Prop. 13.¹ I think I talked before about how I went to the Canadian Rockies and read the constitution from end to end, twice?

HICKE: Yes, OK, that's right. So maybe we did do that.

NEWMAN: Yes. And how long it took to get the court to agree, and the chief's role in pushing for an early decision because it was such a hot issue. It was sort of like U.S. Chief Justice Earl Warren and school desegregation. Do you know that story? They were all split on school desegregation back there in 1953-54.

1. Proposition 13 (June 1978).

Warren kept pushing them on the need for a unanimous opinion. And he got it.¹

HICKE: No, I didn't know that.

NEWMAN: This was written up recently. Some new material came out. And law pros immediately began asking whether it was legitimate for him to put on that much pressure and so on. Rose felt that way without question and at first thought she might win against the amendment. But at the very end, almost as a last gasp, she got her staff to help put her arguments together and dissented all alone. There was some irritation because she hadn't given us enough notice. She felt that the amendment violated equal protection. (This was the argument that Macy's was going to make this week, and then they ratted out.)

HICKE: That was interesting, wasn't it?

NEWMAN: While I was in Hawaii, the Recorder came that talks about Macy's suit and how important it was. When I came home I learned they'd decided to withdraw.

HICKE: In the newspapers there were big articles about the suit on the day it was going to go up and also whatever that group was that put the protest out.

NEWMAN: They obviously would not have mentioned Chief Justice Bird, but they were clearly relying on her kind of argument. Their lawyers felt firmly that the Supreme Court of the United

1. Brown v. Board of Education, 347 U.S. 483 (1954).

States--in recent years since Prop. 13--had given new ammunition to that point of view.

HICKE: Well, there's another case that's challenging it that's brought by a private person.

NEWMAN: Yes. They're all mixed up because it's not going to get any special attention, or it's not going to be moved forward on the calendar, which was the route when it involved government. And I don't know the whole story but that's the explanation. That's why suddenly it's no longer news.

HICKE: OK. Well you probably have a better idea than I do of what we, of things that we. . . . Oh, I know. One thing you mentioned was the Berkeley barriers.

NEWMAN: Oh yes. [Laughter]

HICKE: Tell me about that.

NEWMAN: As you can see I feel very strongly about some of my opinions, but this one I was never positive I was right. It related to what we've been talking about earlier, because I was persuaded that there was nothing constitutionally wrong with the city's setting up barriers of various kinds.

HICKE: Let's just describe. . . . There were certain streets that they blocked off with cement posts.

NEWMAN: Just the way some of them are still blocked.

HICKE: Right, yes.

NEWMAN: Except it was worse, I think, for a while; and they later figured out better systems of notice. So I find that I'm not so often down a blind alley.

HICKE: Have to turn around and back up.

NEWMAN: Did I tell you that, early in the proceeding, I wondered if I should disqualify myself? Have I told you about my daughter?

HICKE: No.

NEWMAN: The poor kid had had four wisdom teeth yanked in one day. We had worried about whether that made sense, but the dentist, an extraction specialist, said, "No problem at all--she's a strong young girl and will be OK." But I was very worried and so was Frannie, so when we got the word as to when we could come back and see her at least, maybe take her home, I jumped in the car and headed straight down Dana Street to her rescue. And suddenly at Dwight Way loomed that barrier, where you have to turn left and go back to Telegraph. I could see the office, a little clinic one block ahead; and here were a lot of cars parked and obviously people were going through constantly. So after looking all around and being sure there would be no problem, I cross the street with the green light and start down the street to park when suddenly I hear the siren. So I say, "Well, officer, my little girl. . . ." He didn't care. He just gave me the ticket. [Laughter] So I wasn't very partial to those barriers. But I did know they weren't unconstitutional. The only question was whether the legislature had permitted or denied permission to the city to do that kind of thing.

HICKE: I see. Was this a case? Do you have a name?¹

NEWMAN: Yes. Oh yes. I forget who brought it.

1. Rumford v. City of Berkeley, 31 Cal. 3d 545 (1982).

HICKE: Oh, OK.

NEWMAN: What the heck. We always called it the Berkeley barriers case. But I can find that for you. I'm having the staff do a Lexis search for me on my opinions.

HICKE: Oh, excellent.

NEWMAN: So you and I don't have to. I had decided that my eyes went bad looking for these things. But the staff said it might be fun.

HICKE: And I have one more question. Did the people put up the barriers themselves? Who put them up?

NEWMAN: Oh, no, the city council.

HICKE: The city put it up. OK.

NEWMAN: Yes. And it was a hot political issue. I remember one of my colleagues at Boalt said, "Guess who on the city council has arranged that nobody is going to come around her house?" [Laughter] A lot of people were very angry, because all the thoroughfares on their way home were barred. Suddenly I myself once discovered there was no way to avoid the labyrinth between Ashby Ave. and Cedar Street.

[End Tape 9, Side A]

[Begin Tape 9, Side B]

HICKE: You'd have to go underground.

NEWMAN: I was caught there last week. [Laughter] Well, it was a very technical point. One member of my staff really wanted to do a good job on this. So the research was excellent on how the legislature had struggled with putting together a code that covered streets in general. The troubles they'd had over the

decades are all reflected in that code. They'd had to put all kinds of restrictions on cities. And as I recall, there was a great chart with specifications as to which kinds of barriers were OK and so on.

I finally concluded that the Berkeley council hadn't read all those rules carefully enough and that, therefore, they ought to rethink with the kind of rules we cited. And I said, "I'm not positive, but I'm pretty sure that as I read the legislative history and look at those words and try to figure out what they mean, the legislature meant that this kind of barrier was not permissible in a city the size of Berkeley." City size is one part of it; Los Angeles obviously is different, from the state's point of view. Just think of freeways. So it's a terrible job. I wouldn't like that work at all. But engineers and architects and others had obviously worked on it for years.

And so there was a furor because locally it was a hot political issue. No one else in the state cared that I knew of. This was very close to the end of the session, and whoever was the local assemblyman rushed up and spoke out, implying he had a few votes of his to spare if any one would help get the barriers back. [Laughter] It was a perfect example of what can happen as the session closes and one of the fastest overrulings of the supreme court in history, I think. All the assemblyman had to say was, "The court tells us we probably shouldn't have said something this way because that interfered with Berkeley. So we'll change it."

HICKE:

OK. So what was. . . . I'm confused. What was the final?

NEWMAN: Oh, we held the barriers illegal.

HICKE: They were illegal. OK.

NEWMAN: And within a few weeks they were legal again because the legislature changed the statute.

HICKE: OK. Yes.

NEWMAN: This sort of thing often happens, but usually takes a year or two.

HICKE: Yes. And he rushed it in at the end of the session mess. Yes, OK.

NEWMAN: So that was the Berkeley barriers case. It wasn't all that significant and proved nothing, except that it took some legislative time to get the change. But maybe some assemblymen got a vote that they needed terribly--perhaps on very important matters. [Laughter]

HICKE: Oh, that is great.

NEWMAN: You can just imagine how much time the legislature had to study Berkeley barriers in the final weeks of a session. [Laughter] I can just hear other legislators ask, "What are they?"

HICKE: Never mind what they are, just vote. [Laughter]

NEWMAN: "It's very important to me."

HICKE: Oh, that is great.

NEWMAN: What else have you got on your notes?

HICKE: Let me see. I've got various cryptic notes here. Search warrants? Was that an issue at some point?

- NEWMAN: We had several cases. They were interesting to me as a test of borderlines on whether the California Constitution gave better rights of search and seizure than the federal Constitution.
- HICKE: Oh, that was another one of those.
- NEWMAN: And I was convinced that constitutional history justified that conclusion. I even had language from some of the Traynor opinions suggesting that. But the court didn't want to take it on. They felt that we were having enough trouble with my Fox opinion on the cross. [Laughter] And Pruneyard on free speech. So they certainly didn't want to get into search and seizure. And I don't blame them; it's so hopelessly technical. Again last week, the U.S. case on searching the car trunk?
- HICKE: Oh, yes.
- NEWMAN: And did you see that a lot of lawyers just blew up about it? The New York Times had letters.
- HICKE: I didn't see all that.
- NEWMAN: It was regarded as a terrible retrenchment. "Gone are the good opinions of Earl Warren," because he was famous on this. And Traynor was famous for attacking search and seizure as well as the whole problem of telling the arrested person that he had some rights. All of that. Miranda,¹ all those names. So, that was the framework of the whole U.S. opinion. I remember I had at least one car trunk opinion myself. We were getting into questions like "Did it make a difference if the glove

1. Miranda v. Arizona, 384 U.S. 436 (1966).

compartment was locked?" You could open it if it wasn't locked, but you couldn't break it.

HICKE: I see.

NEWMAN: I thought all that was somewhat stupid. It didn't make that much difference but, every time you touched one of those cases, the words you thought you were using one way might be used later, the way the U.S. Supreme Court played with words last week.

HICKE: Why are they so much of a problem?

NEWMAN: Well, you can't imagine the abuse that both Traynor and Warren took at different times by people saying, "My God, you have a guy, and he's got dope in the front seat; and you're not permitted to look in the trunk?" Things like that. There are immense implications. Another of my controversial opinions was whether a mom could tell the cop he could look in the boy's toolbox where he then found dope. This was a sixteen- or seventeen-year-old, I think. And everybody said, "Well, of course his mom can tell the cops to look when they suspect that he's done something terrible." But we said no. And I didn't have too much trouble with that.

HICKE: What if he had been seven?

NEWMAN: You sound just like my research attorneys! [Laughter] That was my first year on the court, and my three staff attorneys were women. All had graduated one year earlier, at least. This particular woman had gotten a degree in social science and worked in juvenile homes and social welfare, generally, and she was really expert and tremendously helpful to me in the early

months. She came in one day and said, "Frank, what if he were only thirteen or fourteen?" [Laughter] And I said, "So what?" "What if he were only three?" [Laughter] But we didn't have to decide those questions. Which is another thing you realize as a judge. You never waver on borderlines unless you are forced to. In other words, you don't try to project into what could be the next case. But I just felt that a seventeen-year-old was entitled to some privacy, because the California constitution says we're enshrining the right to privacy; and it means a lot more than it does in the federal system. So what does it mean? Well, shouldn't seventeen-year-olds' privacy be protected?

HICKE: And you don't worry yourself about whether he was fourteen or eleven or whatever, unless that comes along.

NEWMAN: No. The courts know how to handle borderline situations. I remember even when I was in law school at Boalt Hall, Justice [James Clark] McReynolds--he was a famous conservative in the pre-Roosevelt court--wrote an opinion that Professor McGovney used to love to teach in class. The question was whether a certain tax violated the equal protection clause. McReynolds' opinion said, "Well, how do they know to cut off at \$5.00?" Because taxes often have a bottom limit, you know, so we don't worry about below \$5.00. He said, "Why can't it be \$4.98 or \$5.02?" And McGovney thought that was the dumbest reason he had ever heard. [Laughter] So that's why I don't worry about whether it's twelve years old or even ten.

HICKE: Yes. That's right. You sort of drive yourself crazy.

NEWMAN: But to illustrate the complications of search and seizure and why I didn't think it was the most critical issue of the day: The reactionaries and the present U. S. Supreme Court say, "My God, we have to help prosecutors all we can now with the drug business." But you're never going to get a rule that says, "We'll let them look for drugs." I remember right after I wrote that opinion I was down in L.A. for oral argument, and by then I had learned to stay in Santa Monica, so I was taking a late afternoon walk on the pier and looked out at the. . . . Do you know the Santa Monica beach?

HICKE: Yes.

NEWMAN: Tremendously wide. And there's a huge parking lot on the north of the pier where hundreds of cars come on Sunday.

HICKE: Oh, I don't know if I've seen that.

NEWMAN: But on weekdays it's very empty. And I watched a car come whizzing in, to park. The guys ran out. And then I saw three cop cars coming. They found one guy and brought him up, and searched him, and got his keys. Then I saw one of the cops reach for the key to the trunk and look in the trunk and pull out a lunch bag; and I wanted to shout, "Don't you realize I just wrote you couldn't do that?" [Laughter] But I might have been mobbed. [Laughter] Those are the pressures, and yet it's not all that damn significant.

HICKE: [Laughter] You have to carry around your opinion and make a paper airplane out of it and fly it at people who need to know those things.

NEWMAN: It was comparable with Christmas crèches after I'd written Fox. People would say to me, "Well, what are you going to do now about the cross on Mount Davidson at Easter?" I had to say I couldn't see why it was justified if it wasn't private.

HICKE: Well, fortunately you don't have to go out and chase people around just to make sure they. . . . But I think the police and the prosecutors and all the law enforcement people must be extremely involved in that issue and very . . .

NEWMAN: Oh, they started fighting Traynor and Earl Warren, and in many respects it was a more critical fight than with Rose. Traynor got it in the early days. He was the first to say that a misogynation statute was unconstitutional. And then great political jeopardy came with the old Rumford bill,¹ which was one of the first fair housing bills.

And I learned later that Traynor thought he was going to be defeated in the following election for that reason alone. But racism was nearly always part of it. The racists and the prosecutors got together and fought both Traynor and Warren. This was a large part of "Impeach Earl Warren." It wasn't just that they didn't like the U.N. [United Nations].

HICKE: OK. Let's see, this is probably. . . . There is one in '78: "The supreme court curbs the power of grand juries; California citizens have a right to face their accusers."

NEWMAN: Yes. Though I don't remember that.

HICKE: OK. I've just got some stuff I got out of headlines.

1. A.B. 1240, 1963 Reg. Sess., Cal. Stat., ch. 1853 (1963).

NEWMAN: We did a lot of jury analysis on my staff. Have I told you any of those stories?

HICKE: No.

NEWMAN: Well, one of the problems I had as judge was that I knew hardly anything about trials. I had never conducted a trial myself, and I'd never been on a jury. I'd never been lawyer in a jury trial. I'd been involved in several different kinds of administrative proceedings; but they're quite different, mostly because they don't have juries.

I had done some work on grand juries. In fact several of us at Boalt at the time when Bobby Hutton was killed in Oakland, I think, as part of the big race riot--Black Panther picture. There was only one black on the Alameda County Grand Jury at that time, and she felt they were hiding possible police misconduct in that shooting. Hutton was in a house with Eldridge Cleaver, I think. I don't remember the details specifically.

Anyway, one of the young profs here was tracked down by this black member of the grand jury. She appeared to be just like a League of Women Voters person except that she was black and from the grand jury instead of involved in a city council or something like that. And she persuaded four or five of us to come down and testify on fairness of grand jury procedures. I was dean at the time and thus I was lead witness. And that was the first time so far as anybody could remember that witnesses had appeared before the Alameda County Grand Jury.

HICKE: Really?

NEWMAN: Yes. It's notoriously secret in many ways. Counties vary from each other, and the federals are different from the states. Incredible differences.

So because of that episode, and some other work I had done, I had known something about grand juries. But nothing at all about trial juries, and I felt I had to learn more. When we got a case--I think involving Contra Costa--on whether the jury was chosen fairly, I decided we ought to find out how juries are chosen in all counties of the state. And my wonderful administrative assistant got intrigued. So I said, "Joan, you get me a copy of each county's rules on juries and how they're chosen."

HICKE: How interesting.

NEWMAN: The permutations and combinations were immense. Can you list automobile licenses and then pick jury people at random? No. Because too many people don't have automobiles. Can you do telephone books? No, for the same reason. All right. How about voting registration? Most people don't vote.

HICKE: Oh, dear.

NEWMAN: You have a terrible time deciding how to pick an average jury. So a lot of counties, we discovered, didn't have anything in writing. That was quite a shock in itself.

HICKE: Just sort of the old boy network.

NEWMAN: Then she and I spent a day and a half in Los Angeles as guest of the presiding judge [William Hogebaum] of the superior court down there. Did you know that the Superior Court of

Los Angeles has more judges of general jurisdiction than serve all Great Britain?

HICKE: No, I didn't know that. [Laughter]

NEWMAN: So at that time he was in charge of about two hundred judges.

HICKE: Oh my.

NEWMAN: An incredible operation. He wanted us to tour the court in general and watch some jury trials, which, of course, was great. Wonderful guides, letting us see what we wanted. It was like our going to San Quentin and having the Number Two man say, "Here's every key in the building, so you tell me what door you want to unlock." This was comparable. Our last meeting, on the second day, was with the jury commissioner. I'd never known about jury commissioners, but they're completely in charge in a big county. In smaller counties it gets more complex. And in Los Angeles County it's one of the highest civil service jobs.

HICKE: Do they pick the juries? I mean, they oversee the process?

NEWMAN: Yes. We sat down in his office, and he said, "What would you like to know?" So I said, "Well, why don't you tell us how you start when you're going to pick a jury." He said, "Well, we have this warehouse building with machinery." (In those days Joan and I didn't know much about computers.) "So we call them up and say, 'Pick us 300,000 names.'"

HICKE: Out of what?

NEWMAN: Like three million.

HICKE: I mean, pick the names out of what?

NEWMAN: Well, that's . . .

HICKE: Where do they pick them?

NEWMAN: It's some kind of registration.

HICKE: Oh, OK.

NEWMAN: I don't know what lists they were using. And then he described how they cut that 300,000 down to about 300 and then brought them all in for oral interviews; then divided them into segments so you'd get twelve people good and true. Except that grand juries are bigger, and you have to be more careful, because they're almost an administrative agency. That was one side of what Joan and I went into.

Now, back to trial juries: I'll never forget the day Joan walked into my office and said, "I just called Eureka, and I know it's where you were born." I said, "OK." "Let me tell you the conversation." I said, "OK." She said, "Well, the lady said, 'Look, honey, we don't have anything in writing. It's just tradition up here.'" (This is in Humboldt County.) So Joan kept pestering her. The big question was, Did they let anybody not serve when you're choosing juries? No, she said; "So finally I asked her outright: 'Then can I fairly conclude that you don't have any exclusions?'" There was a pause, and the lady said, "Look, honey, obviously fishermen and lumbermen and people like that don't have time to serve on juries." [Laughter]

HICKE: Oh, isn't that amazing?

NEWMAN: Of course, we were checking race as sort of an elementary matter, and there was no evidence of that at all. But a nice fisherman and a nice lumberman? You can't pull them off their jobs just for jury service!

HICKE: Did you assemble what you found in some kind of a report?

NEWMAN: No, we never really had to use it because traditions were changing so fast that we could not have kept current other than in a major constitutional case. I don't recall what we decided in the Contra Costa case.

But then the big question was, Can you let the prosecutor automatically disqualify blacks? Mosk wrote the opinion, and it was a very powerful opinion. And the Supreme Court of the U.S. just last month finally agreed with it.

HICKE: What was that case, do you know?

NEWMAN: They had already decided you can't exclude on the basis of race if you're a prosecutor. Then last month they said they're not going to let you exclude on the basis of sex either. That was a case where a prosecuting attorney decided he didn't want any women. This was the U.S. Supreme Court. It took them all these years.

HICKE: He has the right to several challenges for no reason whatsoever.

NEWMAN: Yes, each side has what are called peremptory challenges.

HICKE: Peremptory, yes, OK. But other than that, he can't. . . . I mean, he can use those the way he wants to still?

NEWMAN: Unless he uses the forbidden classification.

HICKE: Even in his peremptory challenges?

NEWMAN: Oh, yes, that was it. Mosk wrote the pioneer opinion . . .

HICKE: That's what I was getting at.

NEWMAN: . . . saying, "You can't say, 'I don't want any blacks.'"

HICKE: Even in your peremptory.

NEWMAN: More than that. You can't do it even if it's hidden.

HICKE: Yes. You can't say I don't want . . .

NEWMAN: If the record shows you refused all blacks, that's pretty strong. That was a very controversial opinion.

HICKE: You don't have any more to put into that . . .

NEWMAN: That was much more important than selection, because nobody has a good answer to the selection question.

HICKE: Yes, that's much more difficult. OK. Let's see what else I've got here.

NEWMAN: It's conceivable that in that L.A. warehouse they had census figures, isn't it?

HICKE: Oh, sure.

NEWMAN: That's my guess. And that was the big argument. We were going to insist on census figures for the smaller counties.

HICKE: Oh, OK.

NEWMAN: And suppose you have a county where the population is growing like this [Demonstrating] within ten years?

HICKE: Oh.

NEWMAN: So what if they didn't have a single Vietnamese when you last took the census?

HICKE: Then what do you do?

NEWMAN: You don't get them on the jury.

HICKE: Yes, and you have no recourse, right?

NEWMAN: Well, I don't know the details now. All that relates to your simple little question.

HICKE: Yes, well that's the whole, what we want to do here. The McNaughton Rule? Was that . . .

NEWMAN: I didn't get into that much.

HICKE: OK.

NEWMAN: That was one of Tobriner's hobbies. We also got into hypnosis. Again, that was one of Mosk's interests; and one of his staff people made it almost a graduate thesis.

HICKE: That's pretty interesting, because I've talked to George T. Davis who at one point did like to use hypnosis. I don't know if he still . . .

NEWMAN: That's right. It's still controversial. And I think the U.S. Supreme Court may have gone against us on that.

HICKE: What was. . . . Were you involved in. . . .

NEWMAN: Oh, I went along with Mosk. Yes. He and his staff had done a very impressive research job.

HICKE: Do you remember anything about the case?

NEWMAN: It was where they hypnotized the defendant, or maybe an important witness. I forget the details.

HICKE: And the test, it was whether to accept the testimony or not? Or whether it was . . .

NEWMAN: See, when I respected the judge and her or his staff, then I didn't worry about the whole thing.

HICKE: Didn't try to learn all the . . .

NEWMAN: If I knew I was going to disagree, for instance, with Mosk on the death penalty, then I went through his material very carefully. But if I was clearly going to agree, then I didn't fuss around. Although with one judge I often read his footnotes first, because I felt that he sometimes reached out a little on the footnotes. [Laughter] Most of the judges didn't read those carefully.

HICKE: Oh, that's interesting.

NEWMAN: I don't mean consciously. [Laughter]

HICKE: Well, now that we're on that subject, could you talk a little bit just about the general characteristics of the other people who were on the court with you? I mean we've got some of it, but . . .

NEWMAN: Well, I think I told you I had immense respect for every single one. It started out around the table with Rose and then Tobriner, Mosk, Clark, Richardson and Manuel. I was the last one and sat next to Manuel. We'd go around the table in order of seniority. At the present time it's Lucas then Mosk and now, with Broussard leaving, only Mosk remains of those I served with.

HICKE: Oh, yes.

NEWMAN: But while I was there Manuel and Tobriner died. Tobriner had retired before he died. I had Broussard and Reynoso as newcomers. Then Kauss; and Grodin took my place. When Broussard replaced Manuel it was a solid group until Clark left to go work with President Reagan in Washington. I knew him very well. He, Mosk, Richardson, and I would sometimes meet. I kept in touch with each; Frannie and Mrs. Richardson get along well, and we've had good times together. We were much closer to the Tobriners and the Mosks. I never knew the Clarks socially, really; but there were still many functions where we were together, with wives in attendance; so there wasn't a problem of being out of touch. As a judge I spent a lot of time

in others' offices, talking with each one, and I learned to respect every colleague for ability, honesty, and drive.

HICKE: How did they differ from each other? Maybe philosophically and work style and that kind of thing?

NEWMAN: Well, the first thing we all learned--and I didn't learn it for the first year--was that the staff were most important. Everybody knew that, and it was an incredible staff that developed. We were there in years when the staff were probably at their strongest, because their work had to be excellent, dealing with judges with so much experience and ability. And we worked with each others' staffs constantly, too.

HICKE: Oh.

NEWMAN: If I had a question on an opinion, I'd have one of my people go talk to another staff person. And sometimes a staff person would come in and say, "Peter and I would like to come talk with you." And so we would talk--it was that kind of very close professional work. I wouldn't say that anybody I served with wasn't fit to serve.

Now as to philosophy, there were tremendous differences of opinion. Even when I was going through records today, I was surprised to see that Bird was often different from the rest of us, philosophically. But sometimes Tobriner would go against me. As on the death case, Mosk would go against me. There wasn't any set pattern that many people could have identified in advance.

On the death penalty opinion, the news came out in the morning after the papers hit; so it was broadcast only on the

air and only certain people knew it. My administrative assistant, Joan, and I were having lunch that day with Ralph Kleps and Bernie Witkin and Sparky Avakian at Trader Vic's at Watergate [Apartments] in Emeryville. Four of us arrived before Avakian, and apparently Kleps and Witkin hadn't heard the news. Joan had expected them to jump all over me. So we had a nice chat, as we usually did, until Avakian came and said, "Well, have you heard the news?" And they said, "What do you mean?" And he said, "Well, the death penalty is legal again." I still remember that Ralph and Bernie looked at me and then at Joan and then at each other, and they were trying to figure out whose vote changed. Nobody said anything for a while; and finally Bernie said, "Do you mean, Newman, that after skulking in the weeds all these months?" [Laughter]

HICKE: He pointed at you.

NEWMAN: Yes.

HICKE: What was their reaction?

NEWMAN: Oh, they were aghast. But he may be for the death penalty, I would guess.

HICKE: Who? Bernard Witkin?

NEWMAN: Witkin . . .

[End Tape 9, Side B]

[Begin Tape 10, Side A]

HICKE: You were just saying they didn't expect that.

- NEWMAN: They thought I was in concrete the way they thought the others were, Bird and Mosk and Tobriner. But think how small an issue that is in comparison to so many others.
- HICKE: What? The death penalty?
- NEWMAN: Yes.
- HICKE: Oh you mean in . . .
- NEWMAN: Compared to Prop. 13. Compared to the issues that really count on who were going to be hurt and who were going to be helped.
- HICKE: Yes, but . . .
- NEWMAN: It's symbolically terribly important.
- HICKE: Right, I guess that's . . .
- NEWMAN: And some people would say it's a test of humanity, which I guess I believe, but not in terms of impact on people.
- HICKE: Yes, oh yes, yes. That's very true. OK. Oh, I know what I wanted to ask you, there was one point when the court outlawed key sections of the Political Reform Act¹ which had been passed in 1974. Were you involved in that?
- NEWMAN: No, I'd guess I hadn't arrived yet.
- HICKE: Oh, maybe so. [Looking through papers]
- NEWMAN: Yes, I don't even remember that name. Does it give the name? Yes, I remember. This was something I'd spent a lot of time on because I did so much work on campaign contributions. Manuel said the entire law should be outlawed, and Newman said the entire law should be upheld. [Laughter] What's the

1. Proposition 9 (June 1974).

date? Seventy-nine, yes. So I hadn't even been a year on the court. I had done the earlier work on campaign funds control and at the time had a very strong view that, as soon as you brought money into politics, the basic rules had to change. I wanted to protect everything that related to free speech and free press and fair campaigning. But I felt that money often brought in corruption; therefore we had to give the legislature and the people a great deal of discretion in how to handle this disease.

I did my work with Peter Odegard in the middle fifties; and I'd worked constantly on the issue, writing statutes both for Sacramento and for Washington, D.C. I still believe that's true, and I think it's exactly why everybody is going crazy right now trying to figure out what they're going to do about campaign money in Congress. I heard a tremendously effective speech on the radio yesterday from the Commonwealth Club, by the Common Cause man, saying this is the worst disease that affects our commonweal; and I think it is. So that was the prejudice with which I came to the court. Whether I was justified in going that far, I don't know.

HICKE: Do you see any hope for resolving the problem?

NEWMAN: It all depends on whether they're going to continue trading votes on this. The [Persian] Gulf War isn't going to help. I think we would have gotten it for sure but for the Gulf War, because prior to the war this would have been a neat issue to take and put the blame on the president [George Bush]. He's refusing, you know, to get involved in the money quarrels.

Well, he ought to be leading the reform. The reason he doesn't is that he too is helped by money. This speech here said Bush is talking passionately about how government shouldn't finance campaigns; and he himself got, what, \$12 million?

HICKE: I'd heard that, too. [Then, turning to a book]

NEWMAN: This was back in 1958-59.

HICKE: The handling of campaign funds. From your book on legislative process?

NEWMAN: No, this is from Columbia.

HICKE: Oh, it's a chapter of a book.

NEWMAN: It's the centennial of Columbia Law School.

HICKE: What's the name of the book?

NEWMAN: You want to borrow it?

HICKE: Well, I just want to get the cite, so I can add that. Legal Institutions Today and Tomorrow. And it's edited?

NEWMAN: Oh, by Paulsen, P-A-U-L-S-E-N.

HICKE: M. G. Paulsen.

NEWMAN: Nineteen fifty-nine.

HICKE: Thank you.

NEWMAN: It was a good crowd. Roger Traynor, Frank Newman.
[Laughter]

HICKE: Yes, that's a good crowd. I agree.

NEWMAN: But I didn't care much about courts at that time. I did know I cared about the legislative process. [Laughter]

HICKE: The name of your chapter is "A Legal Look at Congress and the State Legislators."

NEWMAN: Yes. And the handling of campaign funds.

HICKE: Well, you were early off the mark on that one. You know what I think I'll do. I'm just going to hand you this list of court opinions, and why don't you look through it and see what you think are things we should still talk about.

NEWMAN: Yes. Well this is very good. I was looking for this.

HICKE: OK. Do you want to look through it and see what we've missed or . . .

NEWMAN: Well, TexCal was famous in certain arenas of the legal profession, but I don't think you want to get into that detail. That was the first one that concerned [Justice] Ray Sullivan. Kleps once said, of all the judges he had known on the supreme court, he would have wanted Ray to be his personal lawyer. And he and Ralph both agreed that they didn't like my TexCal opinion. [Laughter]

One of these is sort of interesting. I wrote the opinion that gave one of the public-interest law firms a tremendous fee. Remember that was a hot issue when public-interest law firms were getting fees for doing the work that private lawyers did? And one such firm was very grateful, because it was about to collapse. [Laughter]

HICKE: What's this case?

NEWMAN: I forget. There was another one that women and children's rights people were very thankful for. I've marked several little opinions like this that aren't very important except to certain constituencies.

- HICKE: OK, this is the Marriage of Schiffman?¹
- NEWMAN: Yes.
- HICKE: OK. That's good enough, and then I can get the cite. That was the one that gave the. . . . I didn't read the. . . .
- NEWMAN: It said the child could use the mother's name and didn't have to use the surname of the father. And many thought that was shocking. How come I permitted that?
- HICKE: Well, how come you did? [Laughter] Tell me.
- NEWMAN: Apparently I got quite strong here. . . . "Today those bases for patrimonial control of surnames have virtually disappeared." Way back in the middle of the nineteenth century, wives got a legal identity. We have accelerated it. The California legislature has abolished outmoded distinctions, and suddenly here is somebody saying we ought to go back to that old junk. And my argument was that the new rule was in the best interest of the child. Let's see who dissented. Mosk concurred but would qualify the rationale. Clark dissented. Richardson concurred with the dissent.

This one is related to judicial disqualification. Remember I mentioned that disqualification was a big issue at one stage of the investigation and that I was all alone at one point. This wasn't a major opinion, but it was my first striking back on the question of disqualification: Should one of the Agricultural Labor Relations Board adjudicators have disqualified himself?

Again this related to my administrative law work.

1. In re Marriage of Schiffman, 28 Cal. 3d 640 (1980).

- HICKE: OK. Andrews v. Agricultural Labor Relations Board . . .
- NEWMAN: ALRB.
- HICKE: Oh, OK.
- NEWMAN: It's different from NLRB [National Labor Relations Board].
- HICKE: 28 Cal. 3d 781 (1981).
- NEWMAN: I wrote separately to propose an analysis that I thought might help resolve future cases where recusal of a non-judicial adjudicator is sought. But I don't yet see here the big case I did on that point.
- HICKE: Was that. . . . It was the same sort of issue.
- NEWMAN: That's right. And as a matter of fact, I argued very strongly that Justice [Marcus] Kaufman and the court of appeal should not have been forced to disqualify. Kaufman subsequently became a member of the supreme court, but he's leaving now. Oh, do you know that the current issue of the bar journal has a lot of material on the California Supreme Court with an incredible cover on it?
- HICKE: Which bar journal?
- NEWMAN: The California.
- HICKE: Oh, does it? Oh. I tried to subscribe to that about a month ago. I called them, and I don't know why, I've never heard anything about it.
- NEWMAN: A great hunk of the state bar's funds is spent on discipline. They have \$33 million just for discipline.
- HICKE: Oh, really.
- NEWMAN: Yes. It's incredible. Some people are beginning to wonder what's going on.

HICKE: Didn't they just raise the dues, too?

NEWMAN: Oh, sure.

HICKE: OK. Anything else on that list that . . .

NEWMAN: I don't see anything here. Have you done what you wanted to today?

HICKE: Very interesting, Frank. Yes, this is just absolutely great. I really appreciate your going into the detail that you have been.

NEWMAN: I shouldn't have this kind of memory for irrelevant details.
[Laughter]

HICKE: Oh, but that adds so much and, you know, those little illustrative anecdotes and things like that just really add a lot to a history.

NEWMAN: I'll admit the Eureka story is one of my favorites. "Listen, honey. . ." [Laughter]

HICKE: It's hard to believe that's really true, isn't it?

NEWMAN: Yes. And then anything special about next week, or next time?

HICKE: Yes. Next time, where should we start? Well, we have. . . . I think, do you think we've covered the supreme court?

NEWMAN: I think enough. I'll pull out anything I think might supplement.

HICKE: All right. If you'd get that list.

NEWMAN: Yes.

HICKE: OK. Then I think we want to start with why you retired, and then we'll go to the human rights.

NEWMAN: OK.

[End Tape 10, Side A]

[Session 8, June 18, 1991]

[Begin Tape 11, Side A]

HICKE: Well, I'd like to start this afternoon with a little bit more about your time on the supreme court, and I wanted to explore the relationships of the courts: the supreme court with the lower appellate courts and also the state and the federal courts.

NEWMAN: This was a big problem for me as soon as I decided to accept the appointment because I knew I hadn't had enough exposure to trial courts. I learned that I also hadn't had enough exposure to appellate courts, but at least I knew a lot about opinions that appellate judges wrote, because I'd been working with thousands of them during my adult career. But I think I mentioned in our prior interview that writing opinions is merely one part of the job. The huge part is how do you manage your own office and how does the court manage itself, if you're interested in efficiency and in not devoting your whole life to overload and backlog. We discussed that briefly.

So first as to trial judges, I immediately got in touch with close friends who are trial judges, and I'd been in touch with other close friends who were trial lawyers and had talked to me after my appointment. I arranged with one of the local judges in Alameda County, Sparky Avakian, a very famous Cal

graduate, to visit his court. And he said, "More than that, I'm going to have you sit if you come over." We agreed I couldn't possibly handle a jury trial but that I could handle what they call "law and motion" day. That's when lawyers come before the trial judge and argue legal points that relate to their current cases. They discuss only law, which would be a bore and possibly misleading for jurors to listen to. So the attorneys come and talk to the judge, and sometimes it's a rather informal proceeding. Sparky and I agreed that with a little preparation I could handle that.

Actually that never worked out because of overload and backlog at the supreme court. So I never did get my days as law and motion presider.

HICKE: You didn't have your day in court.

NEWMAN: No. And I think I mentioned that the only time I was actually called to jury duty was just a few months ago; and then there was the peremptory challenge. So, my approach to trial judges, apart from literature, and the opinions they sometimes write, was mostly through friends I saw regularly at judges' or alumni meetings or through lawyer friends and, occasionally, with somebody who'd been on a jury. I was always fascinated by their various reports, and you must have gathered that lawyers like to talk about their litigations. I'd had a lot of that with my young graduates. They're especially anxious to talk when they're fresh out of law school.

So, that's not very good training; but it was the best I could do, I thought, given the limits on time. The judges in the

NEWMAN: state courts of appeal are quite different, because they provide most of the business of the Supreme Court of California. In other words, very rarely does a trial decision come up to the supreme court directly. The most famous exception is in death penalty cases, which under the constitution, go automatically to the supreme court. Most of the other business comes from courts of appeal that have reviewed work by trial courts; and of course there are thousands of those appeals every year in California. I don't know how many court of appeal judges we have at the moment. I think it passed the figure seventy when I was on the court, and I would guess it's bigger now. And they do terrific work, usually in groups of three; though all kinds of adjustments of that model have been worked out over the years.

And therefore, our basic assignment at the supreme court, when the chief justice assigned us a case as it came in, was to start with the court of appeal record. That would include the trial documents and accompanying comments by the appellate court. Those documents plus the lawyers' briefs were usually all we needed. So my main schooling I suppose, as a supreme court justice, was in learning how courts of appeal worked and wrote their opinions. I won't bore you with the various procedures that bring cases from the court of appeal to the supreme court. But even among those brought by lawyers the Supreme Court of California, while I was on it, didn't accept more than 5 to 10 percent, and certainly less than 10 percent

of the total cases, because our basic rule was, "Is this an important question of law and California jurisprudence?"

HICKE: But you had to review all of those.

NEWMAN: Oh, that's right. This was the Wednesday Conference, fifty-two weeks a year. In addition, the court of appeal for the northern part of California, except Sacramento eastwards, is located in the San Francisco state building, or was prior to the October '89 earthquake. So I was in constant communication with justices from many divisions of that court, a number of whom were my former students and some of whom I had known in the legislature in my work there. Many of them were invited by the chief justice to sit as pro tem justices when one of our regular justices was on vacation, or ill, or otherwise unavailable. And thus we not only had socializing in the corridors and at lunches, but a very intimate participation in our Wednesday conferences, in oral argument, and in our writing opinions for cases they had heard in oral argument. They were rarely asked to write an opinion themselves, but if they'd sat-in on oral argument, they would always participate in approval of opinions and would cast one of the seven votes, sometimes the deciding vote.

Also, as a member of the California Judges Association I purposely sought out committee appointments and went to meetings and panel discussions. And I think every year except my first--I didn't even know what CJER was at that time--I went to the yearly meeting of court of appeal justices for sessions run by the California Judicial Education Research

NEWMAN: group, called CJER. Those meetings were very useful to me because there was an opportunity to be away from home, away from the office, usually in a nice place, good facilities; the others did almost all the talking; and I learned a tremendous amount, not only from what individual judges would say, but from what they said when they got together and argued with each other and complained about what the supreme court was doing.

So I'll put it frankly--I was completely satisfied with my relation with court of appeal justices in terms of my own education, which was my main drive, though some of them, of course, like Wakefield Taylor, became very good friends. He is a famous Cal graduate who has been so loyal to the university and to Boalt Hall, now retired, a very distinguished citizen.

Now as to federal judges, I think I've never really known a United States Supreme Court judge well. I was dean when we had the groundbreaking for the Earl Warren Legal Center, as it was called then; it's now the Earl Warren Legal Institute. And eight of the nine justices were with us for that occasion and were also tied in with state bar affairs, so that was a very good chance to get to know some of them a little. And as I've told you before, I did get to know Earl Warren, but I knew him best after he had retired. He was always friendly and very loyal to Boalt Hall. But I wasn't close to any others. I'd been with Justice [William O.] Bill Douglas at one of the conferences down at the Santa Barbara Institute that Robert Hutchins used to run, and that was an interesting occasion. I had met

[Justice Robert H.] Jackson, and I may have met a few others. But, I knew about them primarily through gossip of law clerks and of professors, so many of whom had been Supreme Court clerks; and I learned as judge that that's pretty undependable gossip. Also, I've had some very close friends on the Federal Court of Appeals, the intermediate federal court. For instance, Dorothy Nelson and some of the senior judges in the ninth circuit.

HICKE: Do you know Judge Browning?

NEWMAN: Yes, of course. He's one I knew quite well, and I worked with him when I was on the court, on the joint committee, and at other occasions.

HICKE: What joint committee was it?

NEWMAN: Rose appointed a liaison committee between the California Supreme Court and the Ninth Circuit. It was a good idea, and we obviously had some things to discuss together; but that was one of the casualties of the investigation of the court in the summer of '79. Everybody got so swamped.

And then the federal trial judges. I've gotten to know a few personally for the reasons I've mentioned--seeing them at the various affairs; but I think I've never appeared before one. Three times during the Vietnam War, lawyers in San Francisco tried to get me on as witness about the legality of the war. Each time it was before a judge I knew pretty well, but not one of the three would let me testify. [Laughter] I can say I've been involved informally in those kinds of proceedings.

I've learned not nearly enough about administrative structures of the court systems. I guess most law professors think there's a clerk for every court, which there is. But often the clerk is by no means the most important staff person, and I've talked a little about our dependence on staff at the California Supreme Court. And that's true all over. I've talked about the jury commissioner in the Superior Court of Los Angeles County; and others are tremendously important--the heads of the Judicial Council, for example. And then a group of men--they were all men once, and now, fortunately, there are women as well--they're called commissioners. And they're doing many kinds of important judicial work both in the state and in the federal system. I still have much to learn about the judicial process. At the supreme court we rarely dealt with a commissioner's ruling. If people appeal from a commissioner it goes to a "real trial judge."

We have, you know, thousands of administrative adjudicators, maybe tens or hundreds of thousands. I'm told there are more social security adjudications in this country than there are federal district court adjudications.

HICKE: No. And are they all called "judge?"

NEWMAN: Well, that's the new rule. We used to call them hearing officers, and then they went to administrative law judge. I was in some of the ABA committees that worked on that. And they like it abbreviated to just "judge."

- HICKE: Because I called somebody who I think is on the Equal Employment Commission; and they said, "Well, Judge Tarkington," or something. . . . I said, to myself, "Judge?"
- NEWMAN: Well, if they're adjudicatory, they're administrative judges; and we've played with these other names. It's very confusing to lay people and the media.
- HICKE: Yes, sure.
- NEWMAN: But it's merely tiering things. They don't have the constitutional protection "real judges" do.
- HICKE: And it sort of deflates the idea of a judge.
- NEWMAN: That's why it's been so hard for them to get the promotion to the new name. All of these things have been fascinating. I'm a veteran of the identification problem both in the federal system and in California's.
- HICKE: Yes. The California Judges Association certainly didn't like that.
- NEWMAN: No, once they didn't even want justices of the peace to be called judge.
- HICKE: OK. Well, so we've got commissioners.
- NEWMAN: I guess I knew the adjudicative process of administrative agencies reasonably well for a professor, and I've been an administrative judge myself. But I still don't know much about juries except from TV.
- HICKE: Well [Laughter] you didn't even have L.A. Law then.
- NEWMAN: That's right.
- HICKE: Oh, dear. Are you. . . . Can you tell me anything about the California Judges Association? I don't know much about that.

NEWMAN: I'm still a member, because as a retired judge I'm eligible to serve on any California court.

HICKE: That's a fairly historic group, isn't it?

NEWMAN: Oh, yes.

HICKE: It seems to me.

NEWMAN: And very powerful, traditionally. I think it's becoming less powerful. And it's beset, as I guess all huge organizations are, with many internal struggles and competitions among geographic districts and between municipal and superior court judges as against appellate judges. But it's run very fairly. They have a good newsletter. First rate people have been on top, but I wouldn't want to have been one of the deciding officials of the organization because it's a terrific time-gouger.

HICKE: Yes. I seem to recall last year there was a decision that judges in California could raise funds among other judges.

NEWMAN: Yes. The ethics had always forbidden that.

HICKE: Yes. What was that all about?

NEWMAN: Well, long before the election when Rose Bird was defeated, it was clear that many judges were having to spend money to run for office. But most of them didn't have problems in the early days because the voters never knocked out an appellate judge. For appellate judges, we vote only yes or no; there's no opponent. But at the trial court level there is sometimes an opponent. Rarely did an opponent win, and the incumbents just took it for granted they were going to win. That changed; and some of the trial judge elections have been hotly contested, and that means money in the modern world.

Even when I was on the ballot for confirmation in '78, I think some appellate judges were beginning to spend money for publicity though they had no opponents. They were afraid of the "no" vote. And then, with the Rose Bird election they were spending hundreds of thousands of dollars, and the oppositions were spending millions. So those rules just had to change, and I don't think it's nearly settled yet. It's a very delicate operation: Do you allow attorneys to contribute? If not, who else knows the judge or cares?

HICKE: Oh, yes.

NEWMAN: I fought judicial contributions. If they can't figure out a better option it has to be government-financed, I think. It's getting worse. You see, it's the trial judges who are really on the line. We won't have any more Rose Bird problems, I predict. But this was an awful problem for both Joe Grodin and Cruz Reynoso, because it never occurred to them that they would have to worry about campaigns when both were so pleased with their appointments, justifiably so. All of a sudden there they were; and the need for dollars kept getting worse, every month.

HICKE: Would you say that a campaign for a judgeship doesn't affect much of the public? You just said something about who else cares besides attorneys, and I . . .

NEWMAN: Oh, the public should care but . . .

HICKE: I know they should, but, I mean . . .

NEWMAN: But they don't.

- HICKE: . . . don't, yes. That's what I meant. That's why incumbents usually win.
- NEWMAN: I heard a program on--what's the NPR morning phone-in show in the city?
- HICKE: Oh, National Public Radio. It's not "Forum" is it?
- NEWMAN: I think that's it. Today they had a representative of the man who had just written the book Dirty Politics. So people were phoning and phoning. Oh, he knew so much about the problem; and it didn't matter if you won one election because not a single politician survived. By the time of the second election, the candidate was already a prisoner of the system and on and on. I didn't listen through because I was in the car; but not a word about the impact of campaigns and campaign money, and no suggestion as to what might be done. He said, "We've just got to keep electing new people so they don't get caught in the rat race." Well, they're going to get caught in the rat race unless we do something about it. They have to have money if we're going to allow TV.
- HICKE: I guess that's what this limiting the terms was all about, too.
- NEWMAN: Oh, sure. Look at the trouble it's causing already. The legislature won its case on one of the small things. That was great, I thought.
- HICKE: But that was only a small part of that whole thing.
- NEWMAN: Oh, those are peanuts.
- HICKE: OK. Well, what else do we need to cover on the supreme court?
- NEWMAN: I think that's enough for now.

HICKE: OK. All right, then you decided to retire?

NEWMAN: Yes.

HICKE: Do you want to give any indication of why you were retiring?

NEWMAN: It wasn't because of the coming judicial election because I wasn't on the ballot. I think I mentioned that I was secure until 1990, with tenure; and by then age probably would have persuaded me to leave.

It was a combination of several things that. . . . I was getting tired of the commute.

HICKE: From San Francisco to Sacramento? I'm sorry, from . . .

NEWMAN: No, from Orinda to San Francisco.

HICKE: Orinda. OK.

NEWMAN: And I wasn't so happy--four times a year officially, and once or twice or more for meetings--about going to Los Angeles. Those trips were time-gougers. And I didn't have nearly enough extra time for things I thought were important, including recreation. So that was part of it. I was disappointed that I had not had as much success as I sought, in improving the management of the court in ways I thought would help.

HICKE: Administration?

NEWMAN: Yes. And I didn't see a future ahead; and that, in a sense, was one impact of the election. I knew the election was going to be so serious. At the time, though, I was really concerned only about Rose; and it never occurred to me that two of the new colleagues would be in trouble, too. But I could see that it was going to have the same kind of impact on the court that the

investigation had had, and I didn't want to go through another thing like that.

But mostly, even though Rose had been very good about giving me time off to go to Europe for United Nations meetings and on other occasions, I just wasn't getting enough international work accomplished. And I thought about all those who would love to have my job [Laughter], people I was often with on the courts of appeal. In recent years appellate judges have filled most vacancies on the supreme court, and a lot of trial judges fill vacancies on appellate courts. I knew how badly most lawyers and judges wanted to rise. So I didn't have any problem about an able person's coming in. And as I looked at international human rights, I certainly didn't see people flocking to do what I wanted to do and thought I could do. I just thought it was wasteful from the point of view of both my career and public interest work, that I should be in a job doing obviously important work but not nearly as important, relatively, as the work I might do internationally.

HICKE: Let me just interrupt. You were talking about administration. Were you familiar with what was. . . . I think the circuit court was undergoing some administrative overhaul under Judge Browning. Were you familiar with this?

NEWMAN: Well, that was federal only. So I was watching as a bystander.

HICKE: That's what I meant.

NEWMAN: Just as a bystander, that's all. No, he didn't discuss that kind of problem with us.

HICKE: But that was, it was . . .

- NEWMAN: For instance, they had a similar problem on depublishation of opinions, which is a hot issue for intermediate judges.
- HICKE: What's that?
- NEWMAN: Both state and federal systems have a procedure whereby a higher group can depublish the opinion of a judge or a group of judges as written, on grounds that it doesn't add much to the law and contains some bad statements; so just knock it out, and then it can't be cited.
- HICKE: Oh, really?
- NEWMAN: Yes.
- HICKE: I've never heard of that.
- NEWMAN: The feds don't use it much, and attorneys there are still very critical. Actually the reform came in California because of pressure from the bar, which said that too many appellate opinions were being written and attorneys couldn't keep up with them. So that's how it got started in California, many decades ago.
- HICKE: So there was pressure to do more of this depublishation?
- NEWMAN: To cut down on the publication of court of appeal opinions.
- HICKE: OK.
- NEWMAN: And then as we got more and more court of appeal opinions we also got new machinery. Starting with Xerox even, attorneys, the big firms especially, wanted all these opinions. And it became a very hotly contested issue while I was on the court. I was with the group of judges who wanted to keep that power, because it was one of the most effective devices for cutting down on workload. On Wednesdays, we'd say, "This isn't an

important issue at all." Four of us would agree on that. Then somebody would say, "But it's published now. It's in the reports, and everybody is going to cite it." So we would have to take it and change it. And the answer was, "No, we just depublish. Then it can't be cited."

HICKE: I see.

NEWMAN: We did that by the scores. I spent a lot of time on those statistics, how many we did.

HICKE: Oh, I see.

NEWMAN: So it was hotly contested, with pressure from the rich bar and also as a favor to lawyers who couldn't spend huge sums on litigation research.

HICKE: Solo practitioners and so forth.

NEWMAN: And even small firms.

HICKE: Yes.

NEWMAN: You know, even the cost of putting them on your shelves. Even the cost of shelving can become a tremendous expense.

HICKE: That's true, not to mention having to go through and retrieve them when you need them. I mean, that's an expensive process.

NEWMAN: The new machinery has helped that a lot.

HICKE: But it's expensive.

NEWMAN: And from my point of view it means you have to read maybe one hundred opinions that are going to be worthless, really.

HICKE: Good. That sounds very effective. OK, so that's one of the things they were doing and you were trying to do, too?

NEWMAN: Well, the majority held. I don't know whether it's going to have trouble because there's still constant pressure. Another way we used it was to resolve inconsistent opinions from the courts of appeal. The argument was, "Oh, well, you'll have to solve that dispute, because otherwise lawyers won't know which one to look to." So we depublished the one we didn't like.

HICKE: Instead of reviewing?

NEWMAN: Yes. It saves I don't know how many hundred hours of staff and judges' time.

HICKE: Does the U.S. Supreme Court do this?

NEWMAN: No, but when they meet en banc in a circuit court they can do that. I'm out of date on the federal system, but I have an attorney friend in New York who said I was violating the First Amendment for allowing depublishation. He was all worried about the Second Circuit. That's all I really know about that.

HICKE: OK. Well . . .

NEWMAN: It's an interesting concept that hasn't caught on in other fields so far as I know. Think of what we could do for scholarship if we could knock out inconsequential publications.

HICKE: Yes, but who is going to decide what to knock out?

NEWMAN: Well, remember that the only rule is you can't cite it.

HICKE: Oh.

[End Tape 11, Side A]

[Begin Tape 11, Side B]

HICKE: OK. All scholarship . . .

- NEWMAN: Goes into footnotes because when it's in print, with somebody's name and with a title, a citation, and so on it must be scholarship.
- HICKE: Yes, yes, yes, but who's going to say "No, this can't be cited."
- NEWMAN: The supreme court. The supreme court of scholarship. I don't have any problem with that.
- HICKE: The supreme court of historians. [Laughter]
- NEWMAN: And it doesn't disappear from science. It's still there for a scientist who really wants to dig into a problem. It's like saying, "You can't use an old-fashioned typewriter anymore." We don't want you to bother us with things that aren't going to matter to us; so it's not really a free speech problem.
- HICKE: It seems to me just the pressure of the amounts of information is going to force that to be an issue.
- NEWMAN: Well, I'm a fan of our doing something about quantity. In scholarship there's not even a market economy. I don't know any theory that justifies use of authority that's not authority. Now if the discretion is exercised badly, then you kick the rascals out of office with other techniques. You don't have to be able to cite something in a footnote of an article or a brief when "there's no there, there."
- HICKE: OK. Well, now we want to go back and pick up the human rights, and I'm not even sure where we left off.
- NEWMAN: Well, are there any more questions on why I left? We've done enough on that?
- HICKE: Yes, I think that's perfectly clear.

NEWMAN: It was not simple. I gave the court notice, I think, a year in advance because they had to do some planning. And there was a lot of negotiation with the university as to whether I should teach. First of all, was I going to be approved by the faculty? Was I going to be approved by the academic senate committee? Or by the administration? There were routine rules that had to be followed, and it wasn't a shoo-in by any means.

I won't go into detail, but there was a tough judicial adjustment problem because of the rule that if I'd sat on oral argument then, if I didn't vote on the case and it was a close vote, no other judge could vote; and no opinion could be written without a new oral argument. So following a long-standing tradition, except of course when a judge died, I agreed to stay on as long as I could after I had formally retired.

HICKE: So that you could vote on the cases where you had heard the oral argument.

NEWMAN: That's right. And we thought a year would be plenty of time for the court to plan. But because of all the troubles related to the election that didn't work out. I was going to leave at least by September 1 for the 1982 academic year here. As it turned out I didn't file my formal retirement papers for salary purposes (because I didn't want two salaries), so the court was still paying me until December. That was when I switched to the university payroll. All this was complicated but not very interesting. And it also was a back-breaker for me, because I had a double commute.

- HICKE: Yes, almost twice as bad. So you came back to Boalt.
- NEWMAN: Yes; and I was given the regular load of courses, typically two a semester, and continued them until I reached the mandatory U.C. retirement age. I first taught one of my old courses on legislative and administrative processes; but my main reason for coming back was to start again the international human rights course and to develop specialized seminars in that field. And that's what I've been doing ever since.
- HICKE: OK. I want to go back and pick up. We started very early with your interest in human rights, and I don't remember exactly how far we got, but. . . . I don't know quite how to do this. What were you doing in the fifties, or where did this actually start?
- NEWMAN: Oh, it's very easy to identify my start. I think this may be repetitive, but I forget how we cut it off.
- HICKE: I don't remember either.
- NEWMAN: Well, '67 was the critical year. It was in that January that I really began seriously to study international human rights.
- HICKE: OK. And what prompted you to do this?
- NEWMAN: I had been dean from '61 to '66, until July 1966. It was agreed that I was entitled to a sabbatical after those five years. I had expected to go right to Switzerland and work in the United Nations headquarters at Geneva, but then Mrs. Newman had a detached retina.
- HICKE: Oh. Yes, I have heard of that.
- NEWMAN: She was laid up for several months; and I stayed here and did some research on a traditional problem, which I thought would

be tied in to what I wanted to do on international human rights. After she recovered we decided to go to Switzerland for the spring semester. She and the kids stayed in Orinda till the end of their school term. But I went three weeks earlier, in January '67, to get organized; and that began my exposure to the United Nations.

HICKE: Well, can you tell me just briefly what you were doing?

NEWMAN: I had chosen human rights as sort of a hobby subject, because I was embarrassed that I knew so little about international affairs. I'd never had an international law course. I'd never read a World Court opinion. I'd never seen the U.N. charter or any U.N. documents. I really felt I was a Luddite as to international legal matters. I was a Time magazine reader, little else and really embarrassed--especially after World War II, which should have converted me. I may have been an interested citizen in a typical sense but I certainly was not an interested lawyer. So that was my big assignment, to learn about human rights law.

I thought at first it would tie in to what had always been more than a peripheral interest of mine re subjects concerned with civil liberties and civil rights. They were easy to work into my courses in many ways. So I thought, well, I'll just add human rights to that collection of ideas; that will give me interesting reading in the spring and summer; and I'll come back to teaching. I learned you couldn't do that. International law is a very elite fraternity; and it was also a male-dominated

fraternity in those days, though we did allow women in.

[Laughter]

HICKE: What was this group?

NEWMAN: Well, the first group of separation or distinction served international lawyers, both academics and practitioners. They were in a realm almost nobody else knew anything about, and they loved it.

HICKE: Were you in a school or an institution?

NEWMAN: No, no, I was on my own. I was a self-taught "graduate student."

HICKE: So you were just studying by yourself in Geneva?

NEWMAN: That's right.

HICKE: I see.

NEWMAN: But I learned a lot about studying.

HICKE: I don't doubt that you could do that very easily. I just wanted to . . .

NEWMAN: I had graduated from advanced law courses at Columbia after World War II, in June '46. I'd been a student up to then, except for the period following Pearl Harbor; and from then on I worked with students. So I knew how to do research.

HICKE: Yes.

NEWMAN: But it was a new kind for me, new kinds of documents especially. So for three weeks I holed up in a mountain cabin and skied when the weather was good, in the afternoons. I think I told you perhaps that I was often snowbound, once for five days.

HICKE: No, you never told me that.

- NEWMAN: And I learned a tremendous amount. I was in a primitive village with no grocery store that had fresh fruit or vegetables, but they did have cans. [Laughter]
- HICKE: Where was it?
- NEWMAN: Well, it's in the Lake Geneva region and is called Verbier. I knew the village from a skiing jaunt with the family during our 1960-61 stay in Switzerland and was sure it would be a marvelous place to work.
- HICKE: So you worked with U.N. documents. Is that what you are saying?
- NEWMAN: Yes. Also, there was a young fellow who had just finished serving his clerkship for Earl Warren who was persuaded to join the Berkeley faculty but said he would not join unless we let him wait a year while he and his wife finally got their big trip to Europe. I was the dean who hired him; and after the deal was set I said, "Incidentally, what are you going to do in Europe?" He said, "Oh, we're just going to travel and enjoy it." I said, "What are you going to do when the weather is bad?" He said, "What do you mean?" I said, "Don't you realize it can be terrible in a European city in certain months of the year?" "Oh," he said. [Laughter] I said, "How would you like to work for me for two months?" "Great," he said.

So they found a little apartment in the outskirts of Geneva. And while I was in the mountains for those first three weeks, he was my Geneva contact and helped teach me what I was going to have to read. Then he'd send up Xeroxes. I'd

phone him and say, "Hey, I've got to get more of this." And so he'd get it and send or bring it up to me.

HICKE: Is that right?

NEWMAN: Yes. And he's now a distinguished member of our faculty.

HICKE: Do we want to say who he is?

NEWMAN: Oh, it was Michael Smith.

HICKE: Oh, OK.

NEWMAN: This was 1967. Historically it was fascinating because I did all this reading and learned that everybody was talking about how we didn't yet have a U.N. human rights treaty. We had the Universal Declaration of Human Rights, which was promulgated in 1948. Do you remember that Eleanor Roosevelt was co-drafter of that? Thousands and thousands of pages were written about it. But the two most important documents were the Covenants on Human Rights, which extended the Declaration and spelled it out in great detail. And they were in treaty form. With the Declaration they were to become the basic Bill of Rights of the U.N. The most startling datum I learned from Mike Smith was that the U.N. General Assembly finally had sent out those two draft-covenants for treaty-ratification on December 19, 1966; and as yet no government had ratified.

So there now is an International Bill of Rights, but there wasn't when I started my work. There was the Declaration, not a treaty; and there were the two treaties in draft form, one on civil and political rights and the other on economic, social, and cultural rights.

- HICKE: And the countries had not had to ratify?
- NEWMAN: No, more than that. Until December 1966 they hadn't even been approved by the U.N. General Assembly. So I read all this literature about the covenants in which the writers said, "So we hope the General Assembly will approve." The latest writings I had were from the spring of '66. Most were from '65, '64, going backwards. (I always start in reverse chronology.) So I was trying to figure out what my exact topic should be. Then all of a sudden I get a telegram up in my village, from Mike, saying "Stop the presses. The General Assembly approved them last month!"
- HICKE: Oh, really.
- NEWMAN: December '66 was the famous year.
- HICKE: And you were there.
- NEWMAN: So from then on my life got more exciting because this was to become real law! And one of my major projects was to help get those treaties ratified. And the speech I gave in Atlanta this March [1991], which will be published soon--because it honors the bicentennial of our own Bill of Rights--is called The U.S. Bill of Rights, the International Bill of Human Rights, and Other Bills. It will, I hope, be one of my "seminal" articles.
- HICKE: Good.
- NEWMAN: Because there really is a Bill of Rights for the world now, but there certainly wasn't in January 1967. That's how it all started.
- HICKE: OK. Well, where did it go? Tell me a little bit about how it developed.

NEWMAN: Well, the Newmans kept that chalet through the spring for weekends, and that was beautiful. But I did most of my work in Geneva. We lived in Lausanne, which is forty minutes away by train. The two younger kids were in public school in Lausanne, and Julie came over after she graduated from Cal. I commuted to Geneva to work in the Palais [des Nations], visited Human Rights Commission meetings there, and talked with many people who were working on the subject. I found some American profs, on sabbatical. And there's a marvelous international law institute in Geneva just a few blocks away from the U.N. buildings. It was a great semester and also nurtured special friendships that I'll describe later. Is this enough on transition?

HICKE: Yes.

NEWMAN: During those early months, from January to April, say, I learned it wasn't ever going to be a peripheral field. If I wanted to accomplish anything it had to be full time, essentially, in the way administrative law had been my first full-time field, and then the legislative process, and then the court. So I worked hard. And, let's see, how much did I write? This is the first article I wrote in '67.

HICKE: OK. Natural Justice, Due Process, and the New International Covenants on Human Rights: Prospectus, by Frank C. Newman.

NEWMAN: I wrote most of that in Geneva.

HICKE: It was published in Public Law.

NEWMAN: Yes, it's a British publication.

HICKE: So it was about the covenants.

- NEWMAN: Yes. And it's one of the best things I've ever done; there's no question. But it didn't have much impact. [Laughter] I thought it was going to be a notably important problem, and it should have been; but there were other more important problems, and I assumed that too much would happen faster than it has. In other words, this article assumed that the covenants were going to become law and that lawyers had better learn about it. And for the U.S. they still haven't become law.
- HICKE: The covenants.
- NEWMAN: The U.S. still hasn't ratified them. Nearly one hundred nations have.
- HICKE: Have not?
- NEWMAN: Have. But we haven't. Nearly all other big nations have.
- HICKE: Why haven't we?
- NEWMAN: All sorts of reasons. Maybe we'll go into more if you want to get into substance.
- HICKE: Yes. Let's go into it.
- NEWMAN: No, let's not. Let's first talk about the progression.
- HICKE: All right.
- NEWMAN: Because this proves that I didn't anticipate what was going to happen and how complex it was going to be. So, perhaps next I should take you to Greece and Strasbourg, after we look at the basic text.
- HICKE: Whose text?
- NEWMAN: United Nations.
- HICKE: OK, this is the United Nations text on human rights.

NEWMAN: The whole business.

HICKE: OK. OK.

NEWMAN: It starts with the International Bill of Human Rights: The Declaration, two covenants, and then a procedural protocol to the second covenant. So, that's the International Bill of Human Rights. And then we have all these other documents: regarding women, race, employment, refugees, et cetera.

HICKE: And these are all positions that the U.N. has taken on these . . .

NEWMAN: They're like our Declaration of Independence plus Constitution plus Bill of Rights. Sort of a combination of the three. This was 1988, and there have been several since then; they're accumulating faster than in the beginning. But in 1967 I had only the International Bill of Human Rights, basically, to work on. Well, I learned right away that just as I'd felt it essential in my early days as prof, or even earlier when I was in the navy, to get into civil liberties and civil rights work so as to learn really what was going on "in the streets," and that I'd better get away from libraries and even from high-up organizations like the Commission on Human Rights to find out what was going on.

There happened to be a nice tie-in to Berkeley, California and the university because I had worked quite closely with Andreas Papandreou when he was head of economics here, and several of us had a big fight on academic freedom with Clark Kerr when he was chancellor. It was on the Freedom in the Classroom Resolution, I think. It was one of the many things that gradually came out of the oath fight and McCarthyism and

NEWMAN: so on. Andy and I hadn't known each other before, but we worked closely on that. He was one of the best colleagues I had known on quarrels with the administration; and he was highly regarded in the economics department as well as nationally. He was relatively new here; Berkeley was proud to have gotten him. So it was a very nice contact; and we got along fine. Then he went home to Greece, where his father was I think prime minister, under the King.

So I lost contact with him until the spring of 1967 when there was the sudden collapse of Greek democracy and the fascists takeover. Frannie and I had planned what was to be our first trip to the Greek islands. It was going to be so beautiful; and I still remember coming home with the paper and saying, "We're not going to go to Greece, Frannie. I learned that you didn't try to make friends with Nazi Germany, and I'm not going to try to make friends with Nazi Greece."

[Laughter] So she said, "OK. We'll go somewhere else."

So then I followed Greek developments with interest because I soon learned that they had almost immediately imprisoned Andreas, as well as his father. I read the news carefully and had some news from home, and nobody knew anything about him and or the family. So I got to thinking, "I'd better go see what's happening to that family and find out what's happening to Andreas." I'd been going through a lot of literature that dealt with torture and other terrible things dictators do. So Frannie and I worked out a schedule, quite different from our original plan. And off we flew to Athens.

Coincidentally, I had seen Athens for the first time in the fall of 1966. That was the semester when Frannie had her retina problem, the kids were in school, and I went off to Singapore to negotiate for Boalt Hall the program with the University of Singapore. The Ford Foundation wanted a legal education headquarters in that part of Asia and thought that Singapore would be a good place. In 1964 the Foundation had sent me to negotiate a similar arrangement with the University in Jakarta, the capital of Indonesia. That collapsed, because three weeks after I left Indonesia the dean of the law school was fired, and the dictator, the awful one, stayed on for quite a while; and then they had a complete new government with a new dictator.

HICKE: Suharto.

NEWMAN: Suharto now, but then it was Sukarno.

HICKE: Sukarno, yes.

NEWMAN: He was the monster. That was a great trip that didn't produce much for legal education. And that's why Ford, which had this blueprint for that part of Asia, decided Singapore was next best from the start and best now, so I was assigned to go negotiate.

That was a very moving trip first, because I was able to stop en route in Saigon for a weekend, and our son was there. He was one of the first draftees in the Vietnam War. He'd gone over as a musician because the officers wanted to dance. [Laughter] This was when they weren't taking other draftees to Vietnam, I think. So we thought, "Well, that's pretty good. It's better than. . . ." But by the time I got there things had

gotten pretty rough, so he was out in the jungle every night and had to get a weekend pass to come see me. That weekend, as you can imagine, was tense.

HICKE: Yes.

NEWMAN: And though Vietnam then got incredibly worse, Saigon (all I saw) was an awfully sad place even when I was there. Then I flew to Singapore, which was a marvelous place. We thought we'd work something out. At that point, however, people were beginning to realize that the leader was going to become a dictator, it was quite clear. And the university thought it could still be free; but while I was there the students had scheduled a riot and had told the dean he certainly wasn't going to let the students march; so the dean told me that if the students were harmed, he would resign the deanship immediately.

[Laughter] So I didn't think that would look too marvelous; and thus I failed on both trips, notably because of human rights violations.

Well, the point of mentioning this is that on the way home I'd persuaded the Ford Foundation to let me go around the world so I could go to human rights sessions and investigate. I wanted to see what was going on in Geneva, which I didn't know much about in the fall of '66. En route we landed in Athens at 4:00 or 5:00 in the morning, with a four-hour layover. The Athens airport wasn't all that great in those days, so I rushed outside and found a cab driver who understood enough English for me to let him know I wanted a tour of Athens and to be brought back to my plane on time,

and also to see the dawn from the Parthenon. [Laughter] It was an absolutely fantastic morning. The dawn was perfect. It was October and equinox time, I guess.

HICKE: Those were the days when you could get up to the Parthenon at that time of day, probably. You can't now.

NEWMAN: More than that. First he took me to Lycabitus, the mountain that looks across the city.

HICKE: Yes, I know what it is. You can look down at the Parthenon.

NEWMAN: That's right. He said it was too early for the sun. I'd never heard of this place or seen the monastery, but there was the whole city, a much better view. And then to the Parthenon, where I saw the sun through the pillars and then rushed back to the airport. So I knew that much of Athens. [Laughter] It was maneuverable.

Then a very close friend here, the wife of John Summerskill, the president who resigned from San Francisco State during the riots and gave [S.I.] Hayakawa his career. . . . Remember the tam-o'-shanter?

HICKE: Yes.

NEWMAN: Well, Summerskill was a lovely guy; but people didn't think he was adequate for the riots, and he couldn't wear a tam.

HICKE: That's a big problem.

NEWMAN: Anyway, we were close to that family and had known Mimi, the mother, and the six children when she was married to her first husband. After the divorce Mimi took the children off to the Aegean, where they were enchanted by the remote island of

Ios. So against incredible odds she built a very comfortable villa on a bay several miles out of the main port of the island.

[End Tape 11, Side B]

[Begin Tape 12, Side A]

NEWMAN: With a tremendous amount of negotiating through Mimi and struggles with the Greek language on our first trip to Greece we had this place of refuge . . .

HICKE: Oh, nice.

NEWMAN: . . . far from Athens. We managed to make connections with a guy who ran a hotel in Athens who had handled all the shipping arrangements for Mimi, and another hotel man near her villa who had handled the house part of it; so that's why we decided that it could be a safe trip, that nobody would interfere with our going to Ios as tourists. That was our cover: We were visiting Athens the very first time for Frannie and practically the first time for me, that we wanted a few days to see Athens and then were going to the great isle of Ios (which we had never heard of before). [Laughter] Ios later became a well-known hippie haven and has since been overrun with tourists.

HICKE: Oh.

NEWMAN: It's almost just another Greek tourist island. But it certainly wasn't then. So, we flew to Athens.

I am mentioning all this because the Greek case is still big in my life; I fought the colonels for several years; and they gave me my first experience with a real case not only in the U.N.,

but with the Council of Europe in Strasbourg. So that's why I'm not just rattling on. I'm trying not to rattle on about dumb things. But this was immensely important for me. Just incredible.

So off we go. Let's not go into details; but basically I was the first American to knock on Maggie's door. She was there with their four kids, under house arrest.

HICKE: Maggie is . . .

NEWMAN: Mrs. Papandreou. Margaret Papandreou. She's now quite famous in the feminist movement. But they have split. You may know that Andreas, in the last two or three years, has gone through a terrible scandal. He's now being charged with corruption, in trial. That part of it is the saddest of all, but Maggie survived with the tremendous strength she always had.

Just by coincidence, her parents were visiting them in 1967. Her father was an American Legionnaire from Indiana, who most enjoyed Athens because it had a local chapter of the American Legion. [Laughter] He'd always been sort of a right-winger and didn't know what the hell his radical son-in-law was doing over there anyway. But they were loyal to Andreas, and I remember once when he was driving me to a secret meeting, he said, "You know, Professor, one thing that makes me mad is that here we are going down this main street, and there are tanks everywhere and they're bought with American money." [Laughter]

Maggie loved her parents, but they weren't the most perfect guests to be with, going through this hell. The oldest of

the four kids was still a teenager. Maggie had an American friend, also visiting, who I think stayed on because of the troubles. And the colonels' agents had just taken Andy out of the house and put everybody in the house under house arrest. I still remember that Maggie said [puts finger to lips], "We're wired."

HICKE: Be quiet.

NEWMAN: Yes. So, I finally found her house. And incidentally, just by coincidence, Mike and Martha Smith had finally gotten good weather and left me in Geneva to work out my own research problems. [Laughter] And at that point the Smiths were in Athens. [Laughter] They had a car, and Mike was very useful as chauffeur and co-pilot trying to find the Papandreou house. We had a street number, all in Greek and Greek script, but were afraid to ask for directions.

HICKE: I know, you have to alpha, lambda, delta. [Laughter]

NEWMAN: I think we finally decided we had to break the cover, so we asked a teenager if he knew where the Papandreou family lived and showed him the address. He said, "Oh, yes." So it was a very dramatic moment. Maggie has written a book about it all.¹ She has a very nice paragraph on my arrival. I'll show you that if you like.

HICKE: Yes. I would like to see it.

NEWMAN: So she and I worked very closely together prior to the Ios trip, and then she did more preparatory work while Frannie and I

1. Margaret Papandreou, Nightmare in Athens (New Jersey: Prentice-Hall, 1970)

were in Ios. All this had to be clandestine, and she was a bit worried about Ios because the islanders were pro-colonel. You remember there were Greek colonels who were the fascists?

HICKE: Who's "they?" Were pro-colonel?

NEWMAN: The bad guys.

HICKE: Oh, yes.

NEWMAN: They were the fascists. I knew all their names at one point, Papadapoulous. Panagoulis was "a good guy." What he did was throw a bomb at the bad guys. (So later several of us had to go over and try to get Lady Fleming out of jail, because she was just chauffeuring the bomb. She was the wife of the discoverer of penicillin, and quite a scientist on her own. That was four years later though. Greece kept going.)

Maggie said, "OK. We haven't heard any bad reports about you. But you've got to keep your cover." So we were just two tourists, and we had a remarkably good time on the island. And back to Athens; and she'd arranged for much more, including a meeting at the house, which was illegal because not more than five people were supposed to talk together. But she wanted to bring Andy's criminal lawyer, who had to be Greek and could speak only Greek. She also wanted to bring some law type who could speak English. There was a wonderful guy, but he didn't know anything about how to get a person out of jail. And she wanted her friend to be there and somebody else. By the time we added up we were an illegal meeting. All the blinds down; the radio blaring because of the "bugs."

HICKE: Oh, Frank, honestly.

NEWMAN: But we made it. And then she came to see me at the hotel.

HICKE: What did you discuss in the meeting? How did you . . .

NEWMAN: Oh, our only hope was to work through the American Embassy and in Washington, D.C. I won't get into the strategy and tactics of that . . .

HICKE: OK.

NEWMAN: . . . but it was a big thing, and I thought we had lost completely. And then to go ahead a little, Andy got out on Christmas Eve. He went in in the middle of April and had all those months in jail, and in the meantime I had learned that he wasn't being ill treated. So all that became the big project, incidentally, to teach me human rights.

HICKE: Now, OK, you say that was your project.

NEWMAN: Greece.

HICKE: Just Greece.

NEWMAN: Getting rid of the fascists.

HICKE: OK. I wanted to spell that out.

NEWMAN: First getting Andy and other people out of jail. And second getting rid of the fascists.

HICKE: OK.

NEWMAN: For instance, coming home from the island, I was taking pictures of the Greek shore when suddenly I saw a warship filled with people who I realized were being taken either to or from a famous prison-island that had already been publicized clandestinely. I returned alone in July; and again Maggie did the arranging. I did a lot of interviewing, with embassy people especially but also with private individuals and others. My next

trip wasn't until September of '71, and that was for Lady Fleming. So I had three trips into Greece during the fascist regime.

My original sponsor was the International Commission of Jurists, which is a marvelous organization in Geneva. They're still going very strong. I'll show you one of their reports. I had worked with them in Geneva in 1960-61 when I was involved with Comparative Law. And I had been researcher for a Brazil conference they ran in 1962, again as Comparative Law expert. I was in charge of the working papers for the conference in Rio, which was their first worldwide conference. It was a pretty big affair, and that's when I got interested in due process problems around the world. I didn't yet know much about international law or international human rights, but that was my tie with the International Commission of Jurists. Preparing those working papers required meetings in Geneva and also a lot of work in Berkeley, and then required that all of us comparativists go down to the conference itself.

The International Commission, composed of thirty or so very distinguished jurists from around the world, was one of the first of the human rights groups to begin bringing in people from Asia and Africa to join their boards. At the Greece time, in the spring of '67, the head guy was Sean MacBride. Sean MacBride was famous as an old Irish patriot from the twenties and an illegitimate son of a famous actress in Paris, so he was beautifully fluent in French and marvelously broguish in Irish.

HICKE:

Oh, yes.

NEWMAN: He became foreign minister for, I think, the first Irish president in the twenties. And was a great patriot, no question. Some say he was a bomb thrower too. I don't know. But a terrific guy who ended up getting the Nobel Peace Prize. He was also the first president, I think, of Amnesty International, and later became U.N. commissioner for Namibia. He did the original blueprints for the U.N. on whether Namibia was going to get its independence. But in 1967 he was only secretary-general of the International Commission of Jurists. And that led to a very close friendship that continued till his death.

He was extremely helpful, and before I left on my first trip he found a Professor Jean Siotis at the International Institute in Geneva, a Greek and on the Greeks' blacklist as a traitor, but a very distinguished young professor in Geneva--highly regarded not only through Western Europe but also in Greece by the moderates on the left. So he is the one who gave me basic orientation for the trips, and MacBride was the one who gave me the basic strength, almost physical strength, in terms of being sure I was somehow going to be protected. They were my main mentors when I started returning to Greece. Both of them were immensely important, bringing in other people for my second trip in July, when I knew a little more and in the meantime had been doing some reading.

Also, in the meantime, the pope had called for one of his great world conferences to be held in Geneva.

HICKE: When? In sixty . . .

NEWMAN: Pacem in Terris--Peace in the World.¹ And that made possible a very important meeting for me related to the lobbying with the U.S. government that was so essential, because [John Kenneth] Ken Galbraith was coming to that conference. I'd known him during World War II, when he was up the ladder above me in price control, and had worked with him a little; but I don't think he remembered that. He was an admirer of Papandreou, this great young man, head of the Berkeley economics department out of Harvard, Minnesota, et cetera.

Ken organized a dinner session with two of the senators who were at this Pacem in Terris. One was Senator [Claiborne] Pell, now chair of the Senate Foreign Relations Committee; and the other was Senator Joe Clark of Pennsylvania, at that time one of the leading liberals. So Ken and I (and maybe Siotis, maybe Sean--it was just a small dinner party--and Mrs. Galbraith came) discussed how we were going to get Andreas out of jail. I remember one of the senators said to him, "Well, Ken, who is this Papandreou?" (They, of course, had read a lot about it.) "Why do you care?" And Ken said, "Well, how can I best tell you? Well, for instance, this is one subject on which Milton Friedman and I agree, that Andreas is one of the brightest young economists in the whole United States of America." [Laughter]

HICKE: Oh, that is great.

1. In 1963, His Holiness Pope John XXIII delivered his encyclical letter "Pacem in Terris."

- NEWMAN: So that's the sort of thing that went on--talks, letters, and a whole lot of other stuff, but hard work between May and July. I have a feeling this is getting mixed up.
- HICKE: No, this is making sense. You're still working on Greece.
- NEWMAN: Now the other thing that happened was that my work in the spring had made me realize I had to learn about European human rights, because in the sixties Western Europe was way ahead of the U.N. on practical developments. They had a Human Rights Commission and a Human Rights Court for Western Europe, and these things were going fast.
- HICKE: Is that right?
- NEWMAN: The base was Strasbourg, on the Rhine. Do you know that country?
- HICKE: Yes.
- NEWMAN: All right. You know it's French-German. An incredible history. It is really a marvelous place and is the headquarters of the Council of Europe. At the present time it has nearly two dozen members. At that time it had fewer than twenty, but essentially all the leading Western European countries. Portugal and Spain weren't allowed in at that time because of their own dictators. And it has nothing to do with the Common Market.
- HICKE: That was the first thing that popped into my mind, of course.
- NEWMAN: And it's disgraceful how the Council is being ignored at the present time, because the Common Market doesn't care much about human rights. It didn't then and it doesn't now, in my opinion, seriously, unless rights are tied in with the free market and how you build better, richer businesses. So they get into

labor policy. They get into labor education but not general education. They get into hospitals for injured workers but not into general hospitals or mental hospitals. They don't have any of the big, tough problems of government. All they're interested in is helping people get rich. And that takes reasonable schooling of some kind, and roads, and a lot of things you need in the world, and some kinds of environment, but they don't care much about a lot of other needs.

The Council of Europe, on the contrary, right away in 1950, had its Declaration of Human Rights.

HICKE: Was this organized after the war?

NEWMAN: Yes. And it was to be the big base, and then the economics people took over in the media, and elsewhere.

HICKE: Oh, I see.

NEWMAN: And there are several other organizations. One was even mentioned in this week's Time: Western European Union. There are a lot of them that are being ignored at the present time. But the Council of Europe has the world's best record for human rights progress if you're concerned with the traditional approach to human rights, which is that basically judges are the ones who protect your civil liberties. And don't worry too much about discrimination and don't worry about poverty; those problems aren't really human rights problems. Don't worry about schools. So that's been their approach and one of the reasons for their success. I've put it partly in terms of what the U.N. has to concern itself with: big problems, like poverty and starvation and world health. You know, AIDS is peanuts in

Europe. I read this morning that there's hardly any in Eastern Europe, for instance.

HICKE: Yes.

NEWMAN: The Council of Europe, nonetheless, did a wonderful job of proving that you can use the commission type of investigatory system; and you can have a group of fine judges in the traditional sense above them, deciding wonderful opinions constantly. But most of them are little matters. They deal with one business; they deal with something wrong in one prison, that sort of thing. Greece was the first big country case they had, and they haven't had one since except for Turkey; and all that happened is that we won Greece, and they didn't win Turkey. And that was not because I wasn't involved in Turkey. [Laughter] I decided, "Hell, I've got problems in the U.N. that are much more important." But at the time the Council of Europe was our best forum.

HICKE: So you decided to bring this problem there.

NEWMAN: That's right. And the Scandinavians took over and did a wonderful job.

HICKE: Took over what?

NEWMAN: They took over the Greek case.

HICKE: Oh, I see.

NEWMAN: I didn't have to be lawyer on it. I consulted with several people who were deeply involved in the Greek proceeding, but after an exploratory trip to Strasbourg in September of '67, to point out some things they ought to keep in mind that they hadn't considered, I didn't go up again. Greece got kicked out

of the Council of Europe in '69, I think. And they said, "Oh, you don't dare do that to us." They had first been reprimanded, but by '70 they had been kicked out. They said, "We don't care." These were the colonels talking. But it had tremendous impact. For the first time there was truly a decision with worldwide impact.

They said, "How is it going to hurt us?" Well, this is one I had nothing to do with. They'd expected to get \$70 million from rich Western Europeans to rebuild, and that was a lot of dough in the early seventies. The Western European Bank said, "We're not going to loan you any money." How about that? All of a sudden no \$70 million. The colonels had promised the country they were going to rebuild and do marvelous things with the economy. So that was very good for us. The only reason the Western European Union had was that, "We're not going to overrule the Council of Europe. If they can't take you, we're not going to loan you money."

So that appeared to be great progress in human rights. But it all happened while I was over here teaching happily, building a new course, and I open up the green sheet of the Chronicle and. . . . Do you remember that the business and sports sections used to be together?

HICKE: Yes.

NEWMAN: I never paid any attention to sports, and I didn't like business much either; but I usually thumbed through for whatever reason. And my God, there on the front page of the business section of the Chronicle was this ad. "Consortium of California

Banks Need \$70 Million." And it really was to loan to Greece. [Laughter] So that made me happy again that I was focusing on the U.N.

HICKE: Oh, yes.

NEWMAN: Just think.

HICKE: Isn't that amazing?

NEWMAN: The exact same figure! They didn't even bother to make it seventy-five or sixty-five or eighty-five or whatever. There it was, \$70 million. I wrote one of the banks. I got a letter from the vice president explaining how there could be nothing wrong with that. And I decided it wasn't worth pursuing. I had more work to do in the U.N.

Now let me pause for a moment. Are you beginning to see how this thing kept going?

HICKE: Yes.

NEWMAN: It led to my first important work in the U.N., and that was The Greek Case. I filed the first formal proceeding, or I guess I was lead attorney in what was regarded as the lead case in 1972 under new rules of the U.N. that permitted that kind of case to be filed. Lillick and I put it in our '79 book. Have you seen its chapter six?

HICKE: International Human Rights, no. Lillick and Newman. I think I've seen it. Chapter six, "The Greek Case and Resolution 1503."

NEWMAN: Then the next big case was Chile, and that's chapter five. But you're lucky, because you don't have to read all this stuff.

HICKE: [Laughter] This is a textbook, right?

NEWMAN: We call it a coursebook, which would have summarized it all for you. And this other book I'm embarrassed about. Chapter ten.

HICKE: OK. Part five, "The Frank Newman file."¹

NEWMAN: That's the only one you need to take.

HICKE: Can I borrow this?

NEWMAN: Yes.

HICKE: Till, well . . .

NEWMAN: Till we meet again.

HICKE: Till we meet again. OK, if that's not going to be too long.

NEWMAN: This one is the scholar; the other's the activist. You can borrow it. This reprint [1967] was the first time I'd ever really had to learn French. I'm still no good at it, but I just had to learn how to read it.

HICKE: Are the U.N. documents mostly in French?

NEWMAN: No, they're both, but I learned that sometimes it's important to know the difference. So that was another big change in my life. [Laughter]

HICKE: Well.

NEWMAN: You don't have to learn all about it.

[End Tape 12, Side A]

1. New Directions in Human Rights. Part V. Ellen L. Lutz, Hurst Hannum, Kathryn Burke, Editors. University of Pennsylvania Press, 1989.

[Session 9, June 24, 1991]

[Begin Tape 13, Side A]

HICKE: You were about to show me an article here, and I thought we'd better start taping.

NEWMAN: Well, this is a reprint, and it sounds like a very complex title.

HICKE: Journal of International Law and Politics. That's the journal. The title is "Using International Human Rights Law to Influence United States Foreign Population Policy: Resort to Courts or Congress," By Sandra Coliver and Frank Newman.

NEWMAN: Sandra Coliver is a former student who, I guess, has worked more closely with me than any other. She was a judicial extern and then became very active with me in Geneva. She had first come to Geneva with us in 1977, just after she graduated from Yale; and she wanted to do something else before going to graduate school. So she worked with us in Geneva for several months and obviously was very able. Then she finally chose Boalt Hall and, as a result, served as my extern during her second year of law school. She was the only extern ever permitted to come in her third semester because we generally wanted everybody to have at least constitutional law. She hadn't had constitutional law, but having worked with her I was pretty sure she would be qualified. At that time I didn't

NEWMAN: participate in the choosing of externs. I left that to my top staff people. But right away they decided they wanted her for that semester.

Then, after her second year at law school, she took a year off to work for Amnesty International and ran their death penalty campaign in the United States. Then she returned, got her law degree, and took the kinds of jobs that allowed us to work closely together on human rights problems. This is one example: We were both on a panel in New York City on the tie-in between rights in this country, civil liberties and civil rights, and international human rights. There also was a gender focus--a great deal of discussion on women's rights at the meetings.

And although the title doesn't indicate it, this article is particularly relevant because it's right in the middle of current news. In a sense we predicted that the U.S. Supreme Court would get into the First Amendment abortion problem which it subsequently got into this spring, and that it would be almost a waste of time to intrude with international human rights law via an amicus brief or something. We went through all this partly to decide what might be a good channel for activism. And we ended up concluding it was worth writing up our conclusion, that for the same resources in terms of money and time and travel, we'd probably work more effectively in Congress than in the courts on abortion and the privilege to speak about it freely, whatever one might decide about allowing or preventing abortion itself.

In other words there are two questions, as we've learned this last month. The first is, Are you going to be against abortion? And the second is, If you are, are you also going to insist that doctors and other health people don't ever mention it? That's a matter of free speech, and the Supreme Court decided against speech. But, just in the last two weeks a congressional committee has said, "We can't tolerate that. The free speech issue is separate." We were dealing only with federal monies for use abroad, and we focused quite a bit on Planned Parenthood, which though it had given up all abortion counseling and clinics, still wanted to go ahead and tell people there were other choices than pregnancy.

It was decided that all federal monies for use abroad would be cut off if at any of those clinics they allowed free speech, comparable to the speech that they were talking about in the Supreme Court case and Congress this spring.

HICKE: These aren't in military installations, U.S. military stations. They are in countries . . .

NEWMAN: Oh, no, no. This is . . .

HICKE: Yes. OK.

NEWMAN: This is almost "church charity" that Planned Parenthood made available. It's one of the most successful of our United States agencies on handling problems of health, and particularly maternal problems throughout the world. So that's why it's of special interest at the moment, I think. Although it's like a good deal of legal writing and publications, which are so vast now, very few people have even seen it.

HICKE: You're surrounded. Well, how do you use international human rights law to accomplish this?

NEWMAN: Well, many of the human rights documents get into the abortion question in differing ways. For example, the Latin American or Western Hemisphere treaty on international human rights doesn't allow abortion. But the Western European position is quite different, and the United Nations sort of waffles. We go into that problem in great detail, and what exactly is the United Nations law with respect to abortion, and how that may affect the U.S. Congress. But, again, my own view is that the channels of activists ought to be legislative and U.N., rather than spending so much time and money on local people.

For instance, on several radio and TV programs yesterday this issue was discussed again and again, and all the experts on the domestic scene were saying we're due for another decade of quarreling in state legislatures. They were talking about the new Louisiana statute that they assumed wouldn't permit speech either; but ACLU-types may fight it, so the speech question should come up constantly. And as you know from what we've said, California could have a different rule--maybe on both issues but certainly on free speech. In my opinion some of this effort should go into United Nations activities where I think we have a very strong chance of getting powerful action out of U.N. bodies.

HICKE: Good. And is that one of the things you're working for?

NEWMAN: I will be in August.

- HICKE: In August.
- NEWMAN: We haven't worked thus in the past; but this year I think there's going to be a focus on women and children, a new kind of focus in the U.N. And we'll try to get into the vanguard of that.
- HICKE: This is at the meeting in Vienna that we discussed earlier . . .
- NEWMAN: No, no because even though the Women's Commission, the Crime Prevention Commission and many other groups are in Vienna, the human rights bodies meet in Geneva. So after a short visit in Vienna, I'll be going directly back to Geneva, spending two weeks or more.
- HICKE: Well, good luck. [Laughter] Well, last time we sort of stopped in 1972. So can we pick up there?
- NEWMAN: Well, with the Greek case. And then, in '74, I went to Chile. I forget how much I've told you about Chile.
- HICKE: You only mentioned it.
- NEWMAN: Well, the generals--I say fascist generals--moved in in September.
- HICKE: Are we in Chile now?
- NEWMAN: Yes. In Santiago. And it was a very brutal coup, unlike the Greek case because, though we don't know for sure, I think hundreds of people were killed. The whole system, the whole state, the whole government all were upset tremendously. The president had been killed by warplanes that bombed the palace, as I recall. It was an old-fashioned, vicious coup.

HICKE: Weren't there rumors about the CIA [Central Intelligence Agency] being involved?

NEWMAN: Yes, indeed. I tried to stay away from those, and I still don't know completely. But I worked closely with the woman in charge of Amnesty International in New York at the time. This was quite soon after Amnesty itself had been organized and had begun to be interested in U.N. matters and in missions to Latin American countries. The president of Amnesty, a man named Martin Ennals, whom I didn't know at that time, came over; and the two of them persuaded me that I should lead a mission to Chile as soon as it could be arranged.

And so it was arranged, and at the end of October I went down with a fine young fellow from the Amnesty London office named Roger Plant, and Judge Bruce Sumner from Orange County, the man I'd worked with for eight years in Constitution Revision. One of my closest friends and one of the law-trained people whom I most admired. Amnesty thought he sounded good, so after a lot of arranging with the foreign ministry in Santiago and a whole lot of other complications, as you can imagine, Bruce and I flew down directly, and Roger flew from London. And on that first day the three of us met in the hotel and agreed on general plans on how to find out what was going on in Chile and what might be done about it. And of course there was very strict censorship. And we weren't sure at all, I guess, that it would be safe.

I'll always remember our ride from the airport. The foreign ministry had sent a chauffeur with a car, a modest car.

It wasn't like [White House Chief of Staff John] Sununu.
[Laughter] Bruce and I were in the back seat, and there were two of them up front--one who met us and the chauffeur. As we approached the city we began to see all kinds of military equipment and guards, who stopped us from time to time. It seemed to get tighter and tighter as we got closer to the city center. We would stop at each block. And when we were quite close to the center of the city, a guy stuck his rifle in at us. It was an automatic.

HICKE: In the window?

NEWMAN: Yes. To get our papers. And everything was all right because it had been arranged, and the people with us could speak Spanish of course. So he withdrew, and we started again. And Bruce turned to me and said, "Newman?" I said, "What?" He said, "Do you remember I was in the marines?" I said, "Yes." He said, "That guy didn't even have on his safety lock."
[Laughter] So that was the first signal that we had to be unusually careful.

And then--skipping ahead for a moment--almost every night we heard sporadic fire of automatic weapons. You never knew which direction it was coming from. Nor did we ever learn whether people were being shot or whether rebels were shooting at the military; it was also possible it was being done by the generals merely to frighten the people. There were curfews--very strict curfews. So that was our introduction.

HICKE: Welcome.

NEWMAN: We said we didn't want to stay at the famous hotel where the press were staying, which was, I think, in the same square as the palace that had been bombed. We didn't want the press around. So they finally found us one a few blocks away, the way in so many cities there's an unknown hotel. It was very comfortable, not the least bit fancy. I don't think there was a restaurant there.

We had a nice suite with small rooms. I think Bruce and I shared a room, and Roger had his own. He was our Spanish speaker--the only one who was fluent. Then we had sort of a sitting room for interviewing witnesses. And just by chance an extra room, which turned out to be wonderful because intending only to make a call on behalf of a concerned father (a colleague here at the law school whose daughter had gone to Chile to learn Spanish) we got in touch with the daughter who said, of course, she'd love to see us and practice her Spanish and interpret for us. So we saw her every day.

Toward the end things began to get tight. One evening we were at a meeting. It was after dark, and I said, "You're going to stay with us tonight." She said, "Don't be silly." [Laughter] I said, "Look, you've got a separate room. You can lock the door if you want. Besides you know very well that no one is going to touch you." [Laughter] She was still nervous about it. I guess she was a senior in college. Just a delight to be with. [Laughter] Anyway, that room was very important, because even when she wasn't going to stay overnight it was important for her to have a place to rest and read.

So then we started out on the non-personal part of the venture. Of course there's so much I've forgotten, but basically we had pretty good access. We never did see the general, the top guy. But the foreign minister, who was an admiral in uniform, was nice to us. We saw him more than once. He had a smart young lawyer working with him who was fluent in English.

HICKE: This is the new group now.

NEWMAN: Yes, that's right.

HICKE: Yes.

NEWMAN: They'd never had an admiral, I think. At least in recent times as a foreign minister. We were so lucky that his aide was a lawyer who could understand us. And they were very proud. They introduced us to the new lawyer for the foreign ministry. It turned out that he was a distinguished older man whose whole practice had been commercial, and he knew almost nothing about either constitutional law or international law. It was quite an experience--which is, of course, why we were so pleased that the young fellow was around. And as the days passed we talked with the secretary of interior, a very tough guy, and the chief justice, and the head of the Ministry of Justice. We had a tough session with members and leaders of the bar in a big room, with maybe forty or fifty of them.

HICKE: Could I interrupt for just a second and ask, what were your goals? What were you trying to accomplish?

NEWMAN: Well, at that point Amnesty had a very limited mandate, as they call it, as to what were their concerns. And we were instructed

to follow the mandate very carefully. Therefore the revolutionary cause, either before or after the revolution, was none of our business. Dissent wasn't part of our business. Military forces were not our concern. Relations with other nations? None of that was supposed to be our business. Our major instruction was as to arbitrary killing or killing by torture or treatment that was torturous. The phrase is "arbitrary killing." That's the human rights phrase; and it doesn't include ordinary warfare, even ordinary internal warfare, such as this was.

HICKE: What does it include?

NEWMAN: It includes torture and murder after torture. It includes execution of war prisoners. In other words, at that point, Amnesty investigated violations of the Red Cross treaties dealing with treatment of prisoners and, to some extent, treatment of civilians. At that point U.N. law hadn't matured much, but we used it as I'll explain in a moment.

Our main concern was with detainees. Remember that detention always follows a revolution, and you aren't discussing jail or even prisons, because they're in the ordinary criminal process. So there's no appearance before a judge; no hiring a lawyer; no jail keeper who knows what the rules are; and--even in a civil system or a western system or a decent system--you're months away from getting close to a prison, because you go to a prison only if you've been convicted of a serious crime. But the estimates were that between fifty and sixty thousand people were in the stadium even, when we arrived. Internees.

HICKE: Oh, that's where they were kept.

NEWMAN: That's because they ran out of jail space.

HICKE: Fifty to sixty thousand?

NEWMAN: Yes. And so I'll spice it up just telling you about the stadium for a while.

HICKE: Yes.

NEWMAN: We learned a lot about it because we'd gone down with some names, and then as we began to talk to people other names were suggested. We were involved with priests, and with Lutheran ministers, and ambassadors from other nations, and U.N. people. Almost everybody talked about the stadium and how ghastly it must be. Even the government said, "We wish we had a better place. We're doing the best we can to keep it clean and see that they can sleep, and so on. Obviously there's no maltreatment. We just don't know what will happen. But we were dealing with a huge communist movement, and we just couldn't take any chances because our soldiers were getting killed by government soldiers and by communist traitors." So that was the major problem.

Well, we then began to get rumors that people were being taken out of the stadium; and so we pressed for information.

HICKE: And disappearing?

NEWMAN: No, no. Well, nobody knew yet.

HICKE: Oh, they weren't let go, though.

NEWMAN: Well, yes, it turned out they were.

HICKE: Sorry. I jumped it.

NEWMAN: They were going to empty the whole stadium. And they said, "From the first we've said this was temporary. And it took us awhile to get things organized." They'd taken over a ship and made a prison ship out of it, and they'd gone to some other camps and reconstructed a mining village out in the desert. They had all these new places. Yet they said, "But tens of thousands of people, of course, we aren't going to keep any longer because the danger is over from our point of view, so they can go home." And that literally happened. For days we tried to find out what was going on; and we had newspapers and good access to TV and radio and journalists. One suggestion was that the international pressure had blown almost volcano-like against Chile, in a way that they hadn't expected at all; and since there was so much focus on detainees and especially the stadium, the government decided this was an easy way to take some of the international pressure off. So we liked that. That's why we were there. We were part of the pressure.

HICKE: I would say that's a major success.

NEWMAN: Well, that's what we thought until we heard that locally the theory was that, since Chile had won the soccer games through the hemisphere, they were going to be in the finals. And the Soviets were sending a team over for the world championship in soccer--which I didn't know as much about, of course, as football. So we inquired and by the time we were on our way home I said to Bruce, "I'm pretty sure that the soccer theory is better than our own," which we liked better. [Laughter]

HICKE: And so that's why they were letting these . . .

- NEWMAN: This is all speculative, of course.
- HICKE: That's why they were letting these people go, because. . . .
- NEWMAN: They knew the people were beginning to get excited about the soccer game. The news had hit them so hard and fast that they hadn't had time to get resentful yet about little things for which they wouldn't be shot or imprisoned. So they began griping about how no one would ever know whether they were going to be the world champions. You know, this was the "Roman Colosseum" and would take attention away from some of the problems. (I should concede that I was watching I Claudius last night.) [Laughter]
- HICKE: Again? Was it on again?
- NEWMAN: They're so parallel. Oh, yes. They're doing a rerun.
- HICKE: It must be the like the third or fourth time it's been on.
- NEWMAN: Yes, and it's wonderful. I didn't see it all before, but it's just marvelous. Last night they were in the Colosseum with the gladiators.

Well, in Chile it wasn't gladiators, but clearly the soccer game would have been a circus the people would have loved; and it would have been marvelous to show that the Chileans were better than the Russians, of course, and probably better than everybody. And the Russians, of course, were important to the journalists. I think the Chileans must have spent a lot of time talking about what if they lost! [Laughter] So they could have, but they sure would have liked a fascist victory against the communists.

NEWMAN: Anyway, that's what happened. But then in succeeding weeks the international pressure did grow so much--and the Soviets were part of this; Chile was getting heat from the communist and socialist countries of the world. For instance: even the Labor Party in Britain was asking why governments weren't doing anything about Chile because [President Salvador] Allende was very highly respected in the socialist world. It's a bit parallel to [French President Francois] Mitterand now, although things have changed so much it's hard to make parallels.

 But the Russians decided they wouldn't go to Santiago, and we began to wonder if the generals would open up that damn stadium again. But so far as I know they didn't.

 Now, what else? There were many incredible moments. I'll tell you about the embassies next. We got in touch with the U.N. people right away. There weren't any human rights U.N. people down there, but the U.N. development group had just built a huge building that the Interior Ministry had taken over. They borrowed it. [Laughter] So they were not in very good graces with the U.N. personnel, of course. But more than that, apparently some ill-trained squad, sort of a gang-squad aiding the right wing military, arrived with government weapons, raided one of the smaller U.N. offices. They didn't hurt anybody but smashed files and things like that.

 The inquiry indicated, we thought--again partly speculatively--that some dumb sergeant had misread the initials as those of some left wing group. So when one of their men

NEWMAN: was in this building--a building also occupied, I think, even by private businesses--he went back to tell his fellows we'd better get up and trash that place. This is the sort of thing that was going on. At the same time, some of the U.N. people were terribly frightened--both for the good of the U.N. and not wanting to get it involved, and for their own safety and the safety of their families.

And others, many underground, were very helpful. Also outside church people who helped us with local church people, and outside foundations, because Chile was one of the favorite countries for foundation research and development money in those days. So this undercurrent of activity was going on but was all mixed up.

Roger Plant was especially interested in prisoners, because that was the main Amnesty concern in those days. Amnesty was the group to protect political prisoners, and obviously a lot of these people were prisoners. Roger had very good contacts with the Red Cross people, who were quietly staunch as always. So clandestinely he made many prison visits that were, of course, helpful to us.

That got us into the embassy problem because some of the embassies had given refuge to Chileans who would beat on the iron gates saying, "Please help me." The embassies we knew best were Sweden and India, both of which had protected facilities. The Swedish was a little like an embassy with a protective fence around it. The Indian was a compound, with hundreds of people there but reasonably spread out in small

buildings. In the Swedish embassy people had to stand up to let us get up the stairs, because that was the only place they could sit. They were sitting there with suitcases on their knees. Fantastic. I'd never seen anything like it, because I hadn't gotten into Greek detention centers. Nor were they like this, I think, because the numbers of people involved there were so minuscule.

HICKE: In Greece?

NEWMAN: Yes, as compared with Chile. So I'll focus on Sweden, which was our first, and then India, which was our next. In a sense they were reflective of a whole group of embassies who wanted to help, who were not in favor of the generals, but more than that who saw tremendous suffering the way that in the Gulf War this year people have been concerned about suffering. It doesn't matter whether it was in Kuwait or in Iraq, even, or whether it involved Kurds or others. There are a lot of people in this world, thank God, who realize that the refugee problem is unique.

So we went to the U.N. refugee people; and they said, "We can't do a thing, as you know, because the definition of refugee is someone who's beyond his own border; and these are almost all Chileans." There were others, too, who were nervous. The Swedes and the Indians were nervous, just the way it was in Kuwait. But in addition there were all these Chileans, and they really were afraid. The generals had threatened to move in, with army if necessary, to find them. They didn't care about non-Chileans.

[End Tape 13, Side A]

[Begin Tape 13, Side B]

HICKE: They didn't care about other refugees?

NEWMAN: That's right. The generals also pretended, however, that they were really part of an anti-communist movement and were trying to make it worldwide. They thought maybe they could help end the cold war and thus save beauty and justice.

Even though the U.N. people said they could do nothing for the Chileans, they were trying to help make arrangements for the others--for visas, permits from accepting governments as well as from the countries en route. All this presented terrible problems.

But just by chance, I had worked with the U.N. on similar problems related to Burundi, which was one of the early cases parallel to the Greek case. You may remember that there were terrible killings in Burundi. It wasn't quite as bad as Biafra, where Nigerians had had internal warfare and an estimated million were killed. But Burundi involved hundreds of thousands of people, much like in the Sudan and Ethiopia now. So, acting for the International League for Human Rights in New York City, I filed a complaint under the new U.N. rules that we talked about in connection with Greece. It wasn't as complete as the Greek case but had fantastic facts that the Greek case didn't have.

HICKE: Let me just interrupt again. Those covenants, I think, weren't ratified until '76?

NEWMAN: No. This was under general U.N. rules; and we had the Universal Declaration of Human Rights, rules from the High Commissioner for Refugees, and Nuremburg law. There was plenty of law around. So my argument was that Burundi involved crimes against humanity in the Nuremburg sense, apart from modern human rights law. But we never heard anything about the Burundi case because those cases filed in '72 were not successful.

In the meantime, I had gone to the refugee people to tell me who were refugees in Burundi and who weren't. And a good lawyer I talked with said, "Well, you've hit on something we don't talk much about, because nobody seems to care. But we had to care," he said. "We decided we needed a new definition." Why? Because Burundi is in the part of Africa that not even the geographers, I think, are completely comfortable with; and the Veldt, which I know nothing about, extends everywhere in all directions; and national borders relate to something that diplomats did after World War II or World War I and so on. He said, "We decided that, in order to help these hundreds of thousands of people, we had to have the word uprooted," when they were uprooted in the same way that in Europe you're uprooted if you cross a border.

HICKE: Oh, excellent.

NEWMAN: And I thought it was a wonderful idea, but at the time I'd never been out in the field or actually seen refugees. So in Chile I began to give this speech to the U.N. people first; I said, "Haven't you heard about the new ruling?" And they hadn't. It

was so recent that it hadn't yet been legalized in the form of new regulations.

HICKE: Incidentally, you won this?

NEWMAN: The Burundi case didn't even surface I think except in one story in the New York Times. We never did find out, because these were lousy rules where the members operated in secret. And among those first cases not a single one survived. That's what I later decided was why I was in Chile.

Anyway, this led up to discussing it not only with the U.N. people, but also with the Swedish people and then with the Indians. I said, "Look, you have something to protect you from the Chilean police because the man who talked to me in the New York headquarters certainly wasn't lying, and 'uprooted' is exactly what you are dealing with, and it's the perfect case. The Chileans, who still pretend to be careful about law, aren't going to come in and say, 'Oh, these people aren't uprooted so we get to bring our police and soldiers if necessary.'"

Well, both of them bought it and said, "Newman, we don't know whether you're right or wrong, but it's something we can say in a cable because our foreign ministers won't know either." [Laughter] "And in the meantime we can help get a lot of these people out." So it was a good feeling. But I was never able to follow through on that.

Now, I think that's enough about Chile, isn't it?

HICKE: Yes, that's fine.

NEWMAN: With one exception. Did you see the movie Missing?

HICKE: No.

NEWMAN: Beautiful movie, with Jack Lemmon as the father of a young husband who had gone with a wife to do liberal things with the Allende government. Social service sort of thing. Remember, this was '74, after the riots of the sixties when a lot of young people had learned about working in the field with a new approach through Peace Corps endeavors. A lot of people were inventing their own kinds of assistance. And these were another pair who wanted to learn Spanish and help in the barrios. They went down to Chile who they thought had this marvelous new government--socialist but not communist. Well, Missing is the story of how the husband was brutalized. It's a fantastic movie and Lemmon is outstanding. It takes you into the morgue, where we never got. It dramatizes many clandestine runs for help to churches and other groups, and at one point it graphically shows their attempt to enlist the U.S. Embassy, where the receptionist refused to let them see anybody. That was just before they were abused.

One Sunday a CBS [Columbia Broadcasting System] guy had invited me to join an annual boat trip around the bay that he and others organized for foreign reporters. So I was all day traveling through this beautiful, beautiful bay and having this wonderful opportunity to interview these reporters, some of whom were very knowledgeable. Remember, nobody had heard of the title Missing or about Jack Lemmon's role. And even the Greek's movie--State of Siege--wasn't out yet. This CBS reporter had been sitting in the U.S. Embassy's reception room

when these two kids, whom he didn't know, came in. He said, "I thought it was just terrible that they wouldn't let them talk to anybody."

HICKE: So that actually happened, that part of it.

NEWMAN: That happened. And subsequently I testified about it in Congress, and that led to a quirky to-do with the State Department that maybe we'll get to.

One of our troubling questions was, Do you keep notes, or are they going to confiscate them when we leave the airport? Are they going to search our bags? So all this was very complex for the three of us and for Heather, the daughter of my faculty colleague.

HICKE: What was her last name? Do you recall?

NEWMAN: I guess it's all right to tell you. Heather Foote. Because of that experience, she's done some wonderful work in Washington, D.C. with an organization called Washington Office for Latin America, WOLA. That was one of the first of the Latin American organizations that have tried to protect human rights. Central America has recently received more publicity, and WOLA is very important in that business. That area more than any other in the world, I think, has received all kinds of American human rights assistance.

HICKE: Is that right?

NEWMAN: Literally hundreds of missions, with thousands of people. So we knew more about El Salvador from first-hand observation than anywhere else.

HICKE: That's interesting.

- NEWMAN: But we lost. We lost Nicaragua too. Some people were helped; I don't want to deny that. But it took the U.N. to move in to give us any real hope. So I want to go to the U.N. now if you think that's enough about what we did in Chile.
- HICKE: OK, I just have one question. Did they search you for notes when you left?
- NEWMAN: Not that we were aware of.
- HICKE: OK. Yes, that's true. You might not have known.
- NEWMAN: Our first afternoon in the hotel, we searched our rooms thoroughly, of course, and didn't see anything that looked suspicious.
- HICKE: Looking for bugs.
- NEWMAN: Yes. Or whether there were open vents or anything like that. But each of us had come with all kinds of notes of phone numbers and "Please call my uncle's son." "What about the friend I studied with?" All of this. Also some very good leads on who would help us, like the priest. (The Catholics had established a little legal organization.) Maybe check in with the U.S. Embassy, et cetera. Anyway, I decided I ought to make a call right away and, when I found out how to do it, I went to our rooms so nobody in the lobby would overhear. The telephone was the old-fashioned type, receiver hooked on a stand.

So I took the receiver out of its holder and put it to my ear, and the whole front dropped out. [Laughter] Some dumb "bugger." So we were pretty careful. We had a radio and had it on constantly. They knew whenever we were out of the

office because they were in charge of our transportation. But no serious evidence like that phone. [Laughter]

HICKE: That sounds like something out of James Bond.

NEWMAN: As a result we were very careful with all the calls, as you can imagine. I'd never had a thing like that drop out before. [Laughter] I wonder if some guy got fired.

And then we had to write a report, which is in the congressional hearings. I think that's the only place where the whole report is published. Bruce had to get back because of his full-time judging and didn't have the flexibility I had as a teacher. We finished our draft in time for the December meeting of Amnesty in Paris. So I went to Paris to work with Roger on the final drafting of the report, and we presented it at the Amnesty executive committee meetings that were a part of the big Amnesty conference. That was a very interesting session in itself.

It was pleasant there because, through Stanford connections, Joan Baez had become interested in Chile. This was when she was first starting her international work. She'd done some on Greece, partly because of her peninsula contacts with Ginetta's friends. Ginetta Sagan, who was very big in Amnesty in those days, had worked with us on Greek matters and then got deeply interested in Chile because of the parallels; and she is the one who helped bring Joan into the anti-[Chilean President Augusto] Pinochet movement. So Joan put on a concert, for Amnesty, while we were in Paris.

We also had a wonderful supper gathering, just a few of us. We were in Melina Mercouri's apartment, where a friend of hers was living, an earlier women's rights leader who worked with [Jean-Paul] Sartre or some such intellectual leader.

HICKE: Oh, yes. I've read her books. [Laughter]

NEWMAN: Yes, that's right. She was hostess, I think.

HICKE: Oh, really?

NEWMAN: Yes. And Joan was her main guest.

HICKE: Is that right? Oh, for heaven's sake.

NEWMAN: And that wonderful French movie actress, Simone Signoret, was there. So it was quite an evening, as you can imagine . . .

HICKE: Yes. Yes.

NEWMAN: . . . to plan and plot on Chile. But the main thing was to get that report through, and we did.

HICKE: I'm just looking at your article--the one you wrote with Sandra Coliver. I wanted to ask you, can you specifically tell me what it is in the Constitution that, as you say here, "is offended by official action that violates internationally recognized rights"?

NEWMAN: Let's see; I have to see it. Does it say that?

HICKE: It's right up there. In other words, is there something in the Constitution that says we have to . . .

NEWMAN: Well, in this country, not every country, we have the rule that the government can be bound--the White House and the State Department and the Pentagon--by international rules, even though the rules can't be enforced in our courts.

HICKE: Is that in the Constitution? Where does that rule come from?

- NEWMAN: Yes, that's the source. It doesn't say so. But it says that treaties are the supreme law of the land.
- HICKE: OK, OK.
- NEWMAN: And the United States Supreme Court more than a century ago said, "That doesn't mean only treaties. It also means customary international law."
- HICKE: Oh, so it's case law that really provides . . .
- NEWMAN: Well, it's both. That's our argument, that the rule comes partly from the U.N. Charter, and partly through decades and, in some instances, centuries of "customary international law." You put them together, and you've got a rule that, in the World Court, we can't deny. The only thing we can do is say, "We're leaving the court then," which we did when we objected to their Nicaragua opinions. That's different, and it still means that no court can tell our government it has to follow international rules unless Congress says so.
- HICKE: I see. OK. Thank you.
- NEWMAN: And our First Amendment arguments, of course, are different. I mean, this does more than First Amendment, but we had to put them together.
- HICKE: Yes, I just picked out that one.
- NEWMAN: Now I've had a chance to organize some thoughts. The reason I wanted to pause was to be sure my head was clear for talking about the U.N., as compared with Chile. [Laughter] And

where we are now is in this last chapter of the book we started to talk about last week.¹

HICKE: "The Frank Newman file."

NEWMAN: Yes. Now you yourself have shared a personal experience regarding an immense international movement all over, where people in one country are willing to do something for people in other countries whose governments are abusing them. It's a fantastic thing that involves millions of people now, through national Red Cross societies, through Amnesty International, through church movements. In some ways the churches have taken the leadership. The Vatican has a tremendous development program, a charity and medical program; the National Council of Churches, the International World Council of Churches, the Lutherans, the Baha'is, almost every religion. The Quakers, of course, are deeply involved. But the big-money churches are even more involved, helping hundreds of thousands instead of thousands. This is fantastic work.

That is what I was involved in, going to Greece, because I was worried about the Papandreous. And it's what I was involved in when Amnesty was worried about political prisoners in Chile. So that's work that not many people, except for the Red Cross, knew much about in those days, but in the intervening fifteen years it's expanded so that I don't think there's a community of any size in this country that hasn't

1. New Directions in Human Rights [cited p. 322] Ch. 10. Creative and Dynamic Strategies for Using United Nations Institutions and Procedures: The Frank Newman File. (by Theo Van Boven)

heard this sermon in church or from a meeting of some kind. And it's a wonderful thing.

The basic rule is that you send out somebody you respect who will come back and tell you what's happening. You do it a little bit more carefully than journalists; and you have specific aims; and you don't have any New York publisher telling you what you can and can't say. So it supplements worldwide journalism very nicely. Then at home you try to see what you can do to help, and you reach for any forum that may help. Sometimes you reach for the U.N., sometimes for the Organization of American States, sometimes Congress, sometimes the Berkeley City Council or the San Francisco Board of Supervisors. Almost everybody is involved now.

HICKE: But also, as you did when you were there, it focuses the spotlight on what's happening at that point.

NEWMAN: That's right, but most people are interested in the spotlight with respect to their particular mission. Or, in the case of a big organization like Amnesty International, with respect to their specific mandate--torture and political prisoners, due process in criminal cases--very limited compared with the total range of human rights.

Now, I don't want to downgrade that in my life. And I'd still be doing it if that's all I could do; but I'm one of the very few, including dozens and maybe scores of my closest friends and colleagues, who are interested in what law schools call a case-study approach to how to improve the implementation and

enforcement methods. So the Greek case taught me that U.N. Resolution 1503 wasn't ever going to be good enough.

HICKE: That's discussed in your book, but we haven't talked about it.

NEWMAN: No.

HICKE: But we can footnote it in your book.

NEWMAN: I'd learned that message at least enough to worry about it when I went to Chile. And although, while I was there I wasn't thinking much about it I was forced to ask myself, "How come you're so interested in the U.N.? What are you going to do in the U.N.?" And I had to make up some things I thought I was going to do. So when I got back. . . . Well, even in Paris I talked about it. But talking with Martin Ennals and my New York Amnesty friend, I became convinced that we might be able to start sort of a new thing in the U.N. And that's what I call Resolution 1235 as compared with Resolution 1503. Resolution 1235 had been passed by the General Assembly of the U.N. the year I began my human rights work. It was amazing. I still remember, there I was in Switzerland . . .

HICKE: Oh, you were right there.

NEWMAN: Yes, and I said. . . . I saw Mike [Smith] at the Palais in Geneva one day, and I said, "What is this on the agenda?" He said, "I don't understand it." And I said, "Well, look at the new phrasing. Is it serious?" He said, "I know it, but I don't know what it means yet." Well, it didn't mean much for, well let's see. . . . It was first articulated in '67, then 1503 came out in '71, and then this. . . .

Anyway, the big question was, Do you use 1503, which lets an individual or a nongovernmental organization complain; and you get an opportunity to present witnesses but only in secret? Or are you able to go to the commission and its subcommission, assuming you have the ear of a commission delegate or a subcommission member who can introduce what you think would be good or could improve an existing rule? So that was the route I decided I'd try with Chile. And don't think I did all this alone. I don't want you to get the impression that I sat in an office like this at Boalt Hall. [Laughter] I sat over a lot of soft and hard drinks and got indigestion at some good French meals [Laughter] because this related to my Strasbourg work with the International Institute of Human Rights.

HICKE: We haven't talked about that either.

NEWMAN: But I told you about Karel Vasak and René Cassin, didn't I? Didn't I tell you about them?

HICKE: You mentioned you had done that, but I don't think . . .

NEWMAN: Yes. Well that was the intellectual base for my work.

HICKE: Oh, OK. OK. I'm sorry, I'm forgetting that.

NEWMAN: Because they were involved in the Greek case at the Council of Europe level.

HICKE: Yes. OK.

NEWMAN: That was their kind of thing. But I said, "Look, you can do it in the U.N. too." Well, as of 1974, when we started in New York at the February meeting of the Commission on Human Rights, essentially only two governments had ever been attacked using the power codified by this Resolution 1235. A lot of us

NEWMAN: thought it was an inherent power in these two organizations, the commission and the subcommission.

Those two governments were South Africa and Israel. And both of them had been criticized for years in the U.N. But they were on different extremes of "the bad guys." The whole Moslem world thought Israel was perhaps the worst possible thing that had ever happened; and the West, at least the civil liberties/civil rights West, thought South Africa was one of the worst things that had ever happened anywhere. With South Africa, you were in the U.N. also allied with all the blacks of the world; and as the jurisprudence progressed it became a huge racial thing that Asians and others latched onto, too. So you had South Africa, that almost the whole world had serious reason not to like on the one hand. . . . I'm talking only about people now, and not the leadership. The leaders didn't like the people's reactions very much and managed to keep away from sanctions for years.

But South Africa was unique; and Israel was also unique, with a different constituency. Most people didn't care an awful lot about Israel, but the Muslims certainly did. Even this morning's paper points out that Egypt is the only Arab country that has ever recognized even the existence of Israel, even after the Gulf War. And the Arabs, at that point, were beginning to be very clever about trading votes.

Anyway, having started in '67 and here it was '74, I thought it was just ridiculous that in this miserable world only Israel and South Africa got serious attention. And we were

under rules as nongovernmental organization
representatives--NGOs--you know that phrase now?

HICKE: I read that just recently.

NEWMAN: Nongovernmental organizations. Amnesty is an NGO. The
International Commission of Jurists is an NGO.

HICKE: OK.

NEWMAN: There was an unwritten rule that even when you talked orally
at a meeting, which I told you we could do as a representative,
you couldn't mention a government's name. You couldn't say,
"And Iran's almost as bad as Israel." That wasn't permitted.
Even if you said "almost."

HICKE: Well, that's the kind of thing they did in the trial of Oliver
North. They had to talk about countries A, B, C, and D.

NEWMAN: Yes. But that became a cultural lag. We had similar tricks, but
they were very unsatisfactory I thought. And if you did it in
writing, they'd censor it before they'd publish it as a U.N.
document. You remember I told you that was one of the
frustrations. So we decided that the Chile case might be the
perfect case and that we might get the votes. And that led to
tremendously exciting meetings in February 1974, to quieter
meetings in April, and final meetings which were successful in
August. Now, I'll review.

February was the Commission on Human Rights; and that
was our major forum, with forty-three government delegates,
and foreign ministries and the State Department in complete
charge of their votes, and so on. But a nice hall in New York

where it was easy to maneuver, with good access to commission offices for conferring with staff and government representatives.

Then in April it was the Economic and Social Council mentioned in the charter as one of the big U.N. councils, in charge of human rights work as well as developmental work and of other things that come under the rubric Economic and Social Council. And that meant dealing with even more government representatives. We didn't win there.

But in the subcommission of twenty-six experts, most of them not under the thumb of their governments, there was a better chance. We lost in the commission after a bitter struggle. We lost in ECOSOC because we didn't have many votes. We knew we wouldn't do much there even though [Theo] van Boven was our leader in ECOSOC. Then Nino [Antonio] Casesse, our Italian friend, was the one who accepted leadership in the subcommission. And that was where we finally got the vote to recommend to the commission that there be an investigatory committee. That was the great breakthrough. Now it's almost routine that you can get an investigatory committee or an investigatory rapporteur--as, for instance, Felix Ermacora in Afghanistan. He did it alone when the U.N. was having all the trouble with Afghanistan more recently.

I'll give you a reference, not expecting that you'll want to check it but in case you begin to think of questions.

HICKE: I think that's good for people reading this. They know where to go to look for other information.

NEWMAN: [David] Weissbrodt and I have two chapters in the book. The first is chapter four, "What U.N. Procedures are Available When Violations of Human Rights are Alleged?" And it mentions both the resolutions. So this is the general introduction, and that's the quick outline. This is page 101 of Newman and Weissbrodt, on International Human Rights, 1990. Then chapter five is a little different: "What Human Rights Thematic Procedures are Available?" That refers to what I've been saying. The other procedures are talking about individual governments. Here you're talking about the U.N. system and how its procedures haven't been good enough to get at named bad governments. And more than that, you begin to realize that some bad governments can be helped in ways that don't involve the finger of shame. For instance, when Equatorial Guinea, after it has gone through the tough part, says "Well, you tell us we ought to have a decent constitution. We don't know how to write one."

[End Tape 13, Side B]

[Begin Tape 14, Side A]

NEWMAN: So the U.N. sent down two famous experts on worldwide constitutional law.

HICKE: Oh, really.

NEWMAN: Yes. It was essentially comparative, but they had some ideas as to how you ought to write constitutions. And one of the other African countries, shamed because of its failure to handle slave-trade problems adequately, confessed, "Well, we fought you, but

you're right; we're not perfect. But we don't know what we should do now. We're dealing with big shots." So a first-rate guy was sent down to make suggestions on how best they could handle the slave problem.

That is what we mean by theme procedures. They may start out with a committee or a rapporteur. The committee is good because it includes five people: one from the West, one from the European East, one from the Far East, one from Latin America, and one from Africa. That's how you keep the committees representative. The rapporteur produces results when colleagues have confidence in his or her disinterestedness and integrity. And both means have been used for the same ends--to report on a situation, to make improvements, and so on. And from my point of view those procedures were terribly important, to prove to the U.N. that it could name governments and not just Israel or South Africa. They could even be in North America or in Asia; and they could even be big governments, and so on. That's the fight that now is going on constantly. Governments don't like it; but they can no longer say, "It's none of your business."

It's parallel to what the Security Council did with the Gulf War. They invented all kinds of new measures. They did it faster; but they didn't get to it until 1990, forty-five years too late, and we got to it in 1974.

HICKE: Well, that was a great achievement.

NEWMAN: Well, it's pretty modest still. It was very modest when it was only Chile. And then remember, the U.S. and the Soviets were

our main foes. Neither one wanted this to go on. The U.S. didn't want any investigatory committees horsing around, particularly in Latin America, where we were in charge. What's that word you say? Hegemon? That's a new word for me I learned in Hawaii.

HICKE: Does it have to do with hegemony?

NEWMAN: That's right, but now you can talk about a government that's hegemon.

HICKE: Oh, really?

NEWMAN: Yes. And the Soviets were hegemon, and now they aren't any more.

HICKE: Is it a French word or . . . ?

NEWMAN: I don't know. It sounds Latin to me.¹

HICKE: Yes, Latin.

NEWMAN: I don't know enough about hegemony. But in Hawaii they use a hard G, which is why I got to thinking about it. And I'd never thought of it as "hegemony."

HICKE: No, that's right.

NEWMAN: I should check my dictionary. Anyway, that's what's going on still. But back to Chile: The U.S. decided it would pick up the Chile question as part of the cold war. And they said, "This is terrible. The Soviets have persuaded you that you should investigate these nice generals down in Chile, and that's outrageous." [Laughter] Now I'm caricaturing a little, but don't

1. *Hegemony* comes from the Greek *hegemonia* meaning "leadership" and *hegemon* meaning "leader."

think that wasn't the fight in Congress. But for Congressman Don Fraser, we wouldn't have won.

HICKE: Really?

NEWMAN: Oh, yes. And the Russians were scared to death of investigations in places like Poland and wherever they were doing bad things, apart even from their own government.

HICKE: What does it take to put this into play?

NEWMAN: Oh, you just have to get a majority vote--first in the subcommission, then in the commission, then in ECOSOC, and then in the General Assembly.

HICKE: That sounds like quite a bit to me.

NEWMAN: But the first two forums are the ones that count. It's been years, I think, since ECOSOC has interfered.

HICKE: And who brings a complaint? A country or a disinterested somebody like . . .

NEWMAN: A member.

HICKE: Oh, a member.

NEWMAN: That's the difference between [Resolution] 1235 and 1503.

HICKE: Yes, OK.

NEWMAN: We had to have somebody who was willing to make the original motion. In February of '74 I was very close to getting in trouble, because Madame Allende--the widow of the murdered president--was persuaded to come and give a talk to the commission. The Cubans were in charge; they were hard-line communists at that time; and they were fighting the Soviets on this. It was interesting that their Latin American socialism was more important to them than orders from the Soviets. But it

Soviets. But it was very nervous for them just as it is now. They just don't have many friends left in Latin America. That's the big difference.

So the Cuban member of the commission was the main host for Madame Allende. And the U.S. government wouldn't let her come to New York except to the U.N., because she was on the ding list. She was an old radical. You know, this was only six months after her husband had been murdered. She was a wonderful woman, too--such dignity and articulateness. And her visit turned out to be very significant. She had to come in by helicopter, landed on top of the U.N. building, and could stay only one or two nights, something like that. And she was restricted to the premises of the Cuban mission to the U.N., I believe, except to walk to the U.N. building.

HICKE: Oh my.

NEWMAN: The left-leaning liberals in New York City had arranged for a speech the Sunday night after she arrived--she was going to be in the U.N. on Monday--at Peter Cooper Union. Do you know that name?

HICKE: No.

NEWMAN: Well, I think that's the name of the building that for decades has been used for the liberal left going back to the nineteenth century. It's like Sproul Plaza or what used to be Longshoreman's Hall in San Francisco.

HICKE: Oh.

NEWMAN: Which wasn't limited to red-wing unions. Hundreds of seats, maybe more. Huge auditorium. And the U.S. government said

she couldn't speak. We were awfully mad. But she did get to the U.N.; and it was the first time that photographers and broadcasting were allowed in the meeting, which was another breakthrough.

There's a poignant photo in our U.N. library downstairs of Madame Allende sitting in the back row among nongovernmental organizations. We had a terrible time finding an NGO that would sponsor her because they were all so afraid of the left wing, but we finally found one. She has the mike; and this beautiful photo has the whole room, almost, looking back at her. I'm there in front of her, and so is Julianne Traylor. I'm where I could whisper if necessary. It was the Cuban, of course, who was her main host. But I would whisper occasionally.

Julianne is black and a wonderful young East Bay scholar, a graduate of Skidmore [College] who got her master's here in political science and is still a Ph.D. candidate. She's been working with us since '74. I have been on her Ph.D. committee. She happened to be in Washington, D.C., studying in the congressional library, and when I saw this was all happening I found her home phone and I said, "Julianne, are you doing anything important?" She said, "You know very well I'm doing something important." [Laughter] I said, "Well, you just better get the hell up here." [Laughter] So ever since then she's been possibly the most consistently loyal member of our group and is still working with it.

HICKE:

That's great. That's great.

- NEWMAN: Anyway, there's that great photo. Since then the rules have become so loose that photographers are all over. There's even been television, I'm pretty sure now. But all of that's since '74.
- HICKE: Terrific.
- NEWMAN: Those are footnotes.
- HICKE: Yes. Great.
- NEWMAN: Now, what else? The subsequent history of the resolution and the procedures is fascinating, but we have most of it in the book.
- HICKE: OK.
- NEWMAN: David Weissbrodt has been one of the ablest practitioners. He's been involved with many more actual cases than I, on the front lines. I'm not quite in a command post, but relatively . . .
- HICKE: Well, I think that I'll just leave it up to your judgment to tell me what isn't in the books that's left. I know you're still very active, and there's a lot going on.
- NEWMAN: It might be useful to switch now.
- HICKE: OK. All right.
- NEWMAN: Well, I missed three of the commission and subcommission sessions in '89 and '90 because of some health problems. My first trip back to Geneva was last February [1991].
- HICKE: I see.
- NEWMAN: So I might just tell you what's going on now.
- HICKE: That would be great.
- NEWMAN: Would that make sense?
- HICKE: Yes, yes.
- NEWMAN: A lot has happened in between, but . . .

HICKE: Yes, well, we can't cover the entire thing, I'm afraid. I know there's a lot that we're missing, but I hope it'll be in the book or published at some point.

NEWMAN: I won't bother you about my trip to China, where I taught, or my trip to the Philippines; but I can tell you about my Japan trip.

HICKE: Oh, OK.

NEWMAN: You decide whether you want to pick up some of those odds and ends.

[End Tape 14, Side A]

[Session 10, July 11, 1991]

[Begin Tape 15, Side A]

HICKE: Let's talk about what you did after you retired?

NEWMAN: Well, you remember, I experimented with several kinds of courses when I was a full-time teacher. But my retirement began three years ago, and since then I have taught only one course each semester. In other words, I was officially retired but then invited back to teach half time.

HICKE: Is that on recall? Is that what they call it?

NEWMAN: Yes. I was caught in that small group of people who didn't benefit from the new federal statute that sets the retirement age at seventy-five instead of seventy. For the past three years my courses have been on human rights: International Human Rights in the fall, and War and Other Armed Conflict in the spring. The names have stayed the same. This means that I have a seminar once a week each semester.

HICKE: OK.

NEWMAN: The students get two units for thirty hours of class. Both courses have changed considerably because, by the time I began teaching just the one course on International Human Rights, I was convinced that the book I had published with Lillick in 1979 was hopelessly out-of-date. So I began collecting

up-to-date material that I thought would be part of a second edition. But then Lillick and I decided not to proceed together, and at that point I changed to David Weissbrodt of Minnesota, one of my former students--outstanding as both student and professor, and also as lawyer, friend, and father.

HICKE: Well!

NEWMAN: Great guy. He was my co-author on the book that was published in August 1990, not even a year ago. So during the past fall semester, for the first time in recent years, I had an up-to-date book; and the course is relatively set although I still have to do supplementary materials because so much happens.

HICKE: Yes.

NEWMAN: He and I already can see we're going to need a second edition because last month, when we finished sending in material for a second printing, the publishers let us make only little corrections; and we weren't able to update with any significance.

War and Other Armed Conflict is different because there's no book I have yet found that does what I want. But two friends of mine have written books I wanted to use in part. The first is a fellow named Yorim Dinstein, one of the best lawyers I've ever known. He is a very important educator and sometime government official in Israel. He's been rector of the University of Tel Aviv and dean of the law school there. He put out a marvelous book dealing with war and other armed conflict. But it cost, I think, \$140; and that seemed to me brutal and inconceivable. I thought I had negotiated a

significant reduction for the students, but then somebody in some other office just decided, "You can't do that; only the normal discount." So I had to proceed without his book. That was a year ago. This year--spring of '91--I taught an excellent book by Professor Casesse, the same Italian friend who earlier as a subcommission member led our push for an investigatory committee in the Chile case. He is now a scholar in Florence and also very active in the Italian government. He's been with me in United Nations work in Geneva ever since 1974, and we're close family friends.

HICKE: What's his name?

NEWMAN: C-A-S-E-S-S-E. Casesse. Antonio.

HICKE: OK.

NEWMAN: His is a fine book and very useful, but it's brief (nice for the students), and doesn't by any means cover the course. It did give us something to hang on to. I still haven't worked out a satisfactory outline for the course on War and Other Armed Conflict. But the semester that's just ended was unique because I had new material every week from the Gulf War--very interesting juridically, because for the first time in history the Security Council has taken the kinds of action that made the original offense against Iraq in Kuwait possible. This is still a major item on the foreign affairs agenda of our country and of many other countries, and is also one of the most significant events in the history of the United Nations. So there was plenty to keep the course lively.

HICKE: Yes.

HICKE: What's your approach to war and other conflicts? Is it through international law?

NEWMAN: Absolutely, except that it's the perfect example of something that can't just ignore domestic law. For instance, in this country, there's the War Powers Act. Presidents of the United States have said it's unconstitutional. Well, how do you conduct a war when you're having an argument as to whether the War Powers Act is constitutional?

HICKE: Somehow they did it.

NEWMAN: Yes. But you can't have a war unless you have money. And if you need money you have to go through the budget office of the United States government, and you have to go through Congress when you finally get the President's budget. And so on and so on. The Congress has been intimately involved. But you can come all the way down to the city of Oakland and the city of San Francisco, where both governments have gotten into trouble with people because of their attitudes on the war. So the spread is immense. It could be a whole law school curriculum because so many things are covered including family law, rights of women and children, and Red Cross law. It's incredible.

HICKE: Yes, I see.

NEWMAN: My focus was on the United Nations and its unique and unprecedented role in the whole business of the Gulf War, starting immediately in August 1990.

HICKE: Will the next course focus a lot on the Gulf War also?

NEWMAN: Yes, as we'll talk later today about the work I'm still doing. For several months now I've been working on postwar problems. Once the firing stopped in February the war wasn't over by any means; and we're still involved in tremendously important struggles on what's to be done with the Iraq government; what's really to be done with Kuwait, Iran, Jordan, Saudi Arabia, and then all kinds of minorities. The Palestinians obviously have a role that brings in Lebanon, and so on and on. But individuals and corporations in the United States, Europe, and all countries that were involved in the war have rights to make claims under the Security Council resolutions.

HICKE: It sounds like a fascinating course.

NEWMAN: The main problem is that the media give us only a gnat's-eye-view of the serious problems ahead. One of the things that I've been working on is that we're ignoring the precedents set by Nuremberg, because Nuremberg, after World War II, is the word we use to describe countless trials of Nazis and other defeated leaders, and sometimes even non-leaders, for war crimes and other serious misconduct. We know quite a bit about the big trials, the famous ones, and about how it was a new kind of international law; but we've always framed it in criminal law terms. What people don't know is that billions of dollars and property were transferred as a result of World War II that had nothing to do with crime. It had to do with redress and reparations for people, and repatriation, and many other things. So from my point of view those should be our precedents. But there's very little discussion of them, as you

may know from your own reading of the papers. There was a big fury and flurry about war crimes for a while, but very little discussion now. That's one of the things I've been working on.

Now, have you any questions?

HICKE: No, I'm going to let you proceed, because I think you've got this planned out pretty well.

NEWMAN: I want to switch. I haven't planned that much. I've had a busy day, so I'm going to tell you about my day.

HICKE: Good. I think it's relevant.

NEWMAN: I'm getting ready to go to Geneva for United Nations meetings--meetings of the Subcommittee on Prevention of Discrimination and Protection of Minorities. I call it the United Nations Human Rights Subcommittee, as distinguished from the commission.

HICKE: I see.

NEWMAN: And I was at the commission meetings in February and March, in Geneva; and these now are the subcommittee meetings that occur in August every year. And in a sense, the subcommittee prepares material for the commission, which then sends it higher up into the United Nations machineries.

Now the subcommittee is for me the most exciting of the groups, because whereas the commission, as I think I mentioned before, is composed of over forty delegates from the State Department and foreign ministries, the subcommittee is composed of just twenty-six independent experts. Not all of them are completely free of governmental influence; and in terms of their own personalities and backgrounds and so on,

everyone is subject to some influence. But he's not a representative of his own country. He's nominated by his own government; then he has to pass through an election process; and among the twenty-six there can be only one from each country. And the countries are switched constantly so that every three years there's a new subcommission.

Why don't I show you a membership list to see if you have any questions about it? You'll see that it's fascinating. The first one is listed because he's Mr. Alphonso, and he's from Cuba. And then it goes Cuba, Jordan, Nigeria, Philippines, Netherlands, USSR, Greece, Argentina, and so on. And the U.S. has a representative, too.

HICKE: Are there any countries that always have a representative?

NEWMAN: Just the five powers, I think.

HICKE: Yes.

NEWMAN: And that's not in the charter; but it's just taken for granted that they'd better have the USSR, China, Britain, France, and the U.S. That's going to change if the Soviet state ends up with more than one republic.

HICKE: Oh yes.

NEWMAN: It's also complicated by the fact that two [Soviet] republics are represented in the U.N. and have been since the beginning.

HICKE: Mongolia?

NEWMAN: No, Byelorussia and Ukraine.

HICKE: Oh, I didn't know that.

- NEWMAN: But they have no automatic right to be there. And as to what's going to be done with the other thirteen republics, we just don't know.
- HICKE: And do they all rotate at the same time every three years?
- NEWMAN: Every three years, that's right.
- HICKE: And they meet once a year?
- NEWMAN: Yes, that's all.
- HICKE: For how long?
- NEWMAN: Four weeks.
- HICKE: And somebody prepares an agenda?
- NEWMAN: Well, that's what I was going to tell you next. This is a rough summary of the provisional agenda of this session of the subcommission. It's a short one.
- HICKE: Major issues are elimination of racial discrimination; and then apartheid; economic sanctions.
- NEWMAN: That will be a hot issue.
- HICKE: Why?
- NEWMAN: Because people are by no means persuaded that the sanctions should be removed from South Africa. This group over the years has done a tremendous job trying to bring South Africa to heel, and they aren't going to give up half way.
- HICKE: So our guidelines for removing them don't conform to those of the U.N.?
- NEWMAN: Oh, they certainly don't. Already there is tremendous criticism of a report on U.S. sanctions in today's papers.
- HICKE: Independence of the judiciary; disability; elimination of discrimination; slavery?

- NEWMAN: You'd be surprised at how much slavery still exists, and the subcommission has been wise enough to realize that the people who set them up originally to study slavery wanted to include slavery-like practices. So that's been expanded, much in the same way that we've expanded equal protection of the law in this country; so now the study of slavery has a tremendous sweep, including even such items as female circumcision--a tremendous problem in many Muslim countries--and there's a special rapporteur on that subject, a fine woman from Morocco.
- HICKE: And emigration and immigration. Any one of these issues could be debated for years just by itself.
- NEWMAN: That's right. And the agenda, when you first look at it, appears to be about the same as it has been for a lot of years; but of course this doesn't include the subitems, and many new items have been added.
- HICKE: So within each of these categories there have been changes?
- NEWMAN: This agenda is fifty pages long, single-spaced, with annotations. And here, for example, after the introduction, are more detailed listings of what they're going to do.
- HICKE: Oh, yes. Well, now, does each representative or member of this commission. . . . Is that right? It's a commission?
- NEWMAN: Subcommission.
- HICKE: . . . subcommission debate each one of these items on the agenda?
- NEWMAN: It's almost exactly like a legislature. They have the equivalent of committees. They have individuals who are very important, experts on certain subjects, called rapporteurs. There are

committees they call working groups. They are very flexible and have done some wonderful inventing of new procedures and new institutional arrangements within themselves. And, of course, they've had some direction from upstairs as well.

HICKE: Well, now comes the sixty-four dollar question: What part are you going to play in this?

NEWMAN: Well, you see item twelve there?

HICKE: Have I got twelve? Yes, I do. Human rights and disability?

NEWMAN: Yes. Well, this morning I faxed this to Geneva. [Hands Hicke paper]

HICKE: It's a paper: "Disabled Rights and the International Bill of Human Rights." Have you got a copy?

NEWMAN: This is yours.

HICKE: Thank you.

NEWMAN: Each year the U.N. puts out a report that looks like this. This is the report of the commission from February and March. It's 319 pages long. Now that's the commission. The subcommission's report will be closer to 200 pages. (The commission meets for six weeks--that's one of the differences.)

HICKE: What kind of representation from the subcommission goes to the commission?

NEWMAN: Only in written form. They submit a report, and then they attach subsidiary materials. Now once in a while the commission will request that the chairman of the subcommission or a rapporteur on a special subject appear and explain complex items when the commission wants to delve into the matter in detail. But their business is conducted separately.

The commission has the power to instruct, including to cut off, and the subcommission only makes recommendations to the commission.

HICKE: Are you a rapporteur?

NEWMAN: No, no. I'm what's called an NGO representative.

HICKE: OK.

NEWMAN: And I'll be one of the representatives of Human Rights Advocates. Now let me tell you about this three-page document.

HICKE: Yes, please do.

NEWMAN: This is just one item. It's human rights of the disabled. A fine woman named Wilda Spalding . . .

HICKE: Yes, her name is on there.

NEWMAN: . . . I've been working with her for ten years--not constantly because she's disabled herself and has been hospitalized much of that time with awful kinds of accidents. She's a fantastic woman, lives in southern California, and has formed a nongovernmental organization, an NGO, for disabled--a very interesting group, quite different from the ordinary NGO. She's trying to enlist artists and musicians and others--some of whom have experienced disabilities themselves or through family members--and she's making this a big, splashy year because we're aiming for a successful decade ahead.

We started work ten years ago and though I haven't been able to work each year on the subject many people have, thank goodness. But some of them have been struggling, and we think maybe this is the year to break through. So Wilda is

doing a big kind of Amnesty International fanfare in Geneva this summer on behalf of the disabled. And among other things they're putting out a whole issue of a journal, an "intellectual" journal that's going to include good reports and discussions and poetry and so on. I haven't seen even the table of contents. I talked to her by phone. And she said, "You have to be in it." I promised her I'd do my best when I went to Hawaii, and then I got stuck with all sorts of things that you know a little bit about. So she called this week and said, "Where is it?" And I said, "Wilda, you know I told you I wasn't sure I could do it; and in the meantime, the old problem." She said, "Really, all we want is your name on a page of something." I said, "Do you mean that maybe three pages would be enough?" She said, "Yes, of course." So, these are the three pages. And if you look at the last paragraph you'll get a little of the flavor.

HICKE: OK. Well, I'm going to include this, but maybe we can just read . . .

NEWMAN: Why don't you read that last paragraph. That will lead into . . .

HICKE: "Many of us will be engaged in the needed work this summer, and the hope is that with reasonable luck, in the year 2016, future colleagues will celebrate (1) the fiftieth birthday of the International Bill of Human Rights, and (2) the twenty-fifth birthday of the protocol or other U.N. document which helps guarantee that basic human rights for the disabled will be protected everywhere."

- NEWMAN: So we'll see whether it's helpful. But while I was at lunch, Florence took this message from Geneva. [Hands Hicke paper]
- HICKE: "Kenneth Deer, the Mohawk ambassador, will not be allowed to go. The Indians are becoming more militant and won't fund him." What's that all about?
- NEWMAN: Indians and other indigenous peoples have disabled problems of many kinds, all over the world. They're sort of a mini-world of their own with special problems, including disability. They're big on the fifty-page agenda this year because they're immensely important in working out world environment problems. For example, at lunch I talked with a man who has just come from Borneo where they want him to do something to protect indigenous peoples in Malaysia who are losing their whole culture because of the uncontrolled deforestation of one side of Borneo. That's just a sample of many things that are happening.
- Anyway, that will be part of the work I do, but mainly what I'm going to be doing is for Human Rights Advocates. And here's the memo that tells about our meeting next Wednesday night, July 17.
- HICKE: "U.N. committee, subcommission in Geneva, H.R.A." What's that?
- NEWMAN: Human Rights Advocates.
- HICKE: Representation at the U.N. in Geneva, at the U.N. in New York --and the human rights conference planned by the U.N. Center for Human Rights.

NEWMAN: Now, I think I've mentioned to you that, since before 1970, I've been taking people to Geneva. And because that was working so well, Human Rights Advocates was formed and incorporated. So we're now a tax-deductible group and an accredited organization of the United Nations. Under the United Nations Charter you can apply for accreditation, and the Economic and Social Council of the U.N. accredits you as an NGO. So we've been represented every year now for many years, and from time to time we do some good.

This time we've got an exceptionally qualified delegation. Four members of the board are coming with us: Kim Morris, a lawyer in Palo Alto who has been very interested in human rights problems in Tibet. And she works with Andy Scoble, another lawyer in San Francisco, a former student here, also interested in Tibet. Both of them are becoming interested in the whole subcommission process. And Naomi Roht-Arriaza, who graduated a year ago and has been teaching at Hastings and will be a visiting scholar here this coming year. She's one of the most outstanding students we've ever had, and has already done a tremendous amount of work on many subjects, including the one I'm working on as to what is to be done about Saddam [Hussein] and his clique and getting people some redress. She's an environmental expert, and we'll be doing environment and human rights. Michele Schwartz is another involved in environment and human rights.

In New York during April Michele organized quite a program. I think I told you I had two days in the U.N. New

NEWMAN: York building in April, and Michele presided on one of those days. It was a lively meeting with people interested in environment and human rights, including the woman rapporteur from Algeria; and there was also a chance to talk with her and others at an uptown reception. Then the following weekend the two of them came to San Francisco, and we had an all-day meeting at the Sierra Club. This time the Sierra Club hosted; so it's a very interesting tie-in.

Michael Sorgen is a fine public-interest lawyer in the city; and working with him is Sheila Shah, just graduating from Hastings, who has been in Geneva before as an intern and as a U.N. employee. Besides the ones we've mentioned here's the Armenian/Soviet Union expert. And here's a woman who worked on the staff of the U.N. Human Rights Center in Geneva and another woman who's an expert on Hong Kong problems.

Here's Roxanne Dunbar Ortiz, the West Coast expert on indigenous people. She began her work when the indigenous people first started to come to the U.N. She was a very good leader. Senta Pugh is our linguist, speaks I don't know how many languages. I think she is either Hungarian or Czech by birth, and her husband was up at the rad lab on the hill here but died last year; and that's been very sad. But we still have close ties. Pat Merloe is coming for the first time. He's a successful lawyer in the city, a specialist on Romania. [Sidney] Sid Wolinsky is the guy I was with at lunch today; he runs the disability clinic for Boalt Hall with the Disability Rights and

Education Fund NGO. He's a fantastic lawyer, many years in San Francisco with Public Advocates there. Gail Rowan has just graduated and is taking the bar exam. She's an environment person. Kate Jastram was with us in Geneva when she was a Berkeley student. She's now working with David Weissbrodt, my co-author in Minnesota, who has given her six-months leave to work with the U.N. refugee people in Geneva.

HICKE: That is truly amazing.

NEWMAN: So I'm looking forward to this, and you can see I'm quite excited about prospects.

HICKE: Yes.

NEWMAN: I'll know a lot more after our meeting on Tuesday about our plans. So that's what I've been doing today; that relates to what I'm doing this summer; and that relates to what I've been doing since 1967.

[End Tape 15, Side A]

[Begin Tape 15, Side B]

HICKE: You just said there's a funny footnote.

NEWMAN: Yes. Did I mention that I've been invited to Nepal, by a human rights group there, to a conference that's parallel to the one I attended last month in Honolulu?

HICKE: I think you said you were invited, but you weren't going to go.

NEWMAN: That's right, because I didn't have any money. Well, because I wasn't going to go and needed some time to get to work on some of these things we've been talking about, I went off to the

mountains for a week. I had four days alone, and then Mrs. Newman came up for the Fourth of July weekend. We had a wonderful time, except that she brought with her a fax from Nepal. . . . I didn't explain. I'm in a log cabin that has no phone, no radio, no fax, no nothing. And it can be reached only by boat. [Laughter]

HICKE: Heavens!

NEWMAN: So Frannie brought many interesting items collected during my absence; and among them was this fax from Nepal saying, "Well, we're going to pay your way."

HICKE: Oh, fantastic.

NEWMAN: So now I'm trying to figure out the logistics. It's more complex than I can imagine. The fax says, "Unfortunately, we don't have any foreign currency." [Laughter] So I guess they can pay Northwest Airlines, in Nepal, but nobody else. I faxed back and said, "You've got to work it out. These are the dates that I can make."

HICKE: Now what is the group in Nepal that is . . .

NEWMAN: I don't know anything about them except that they have good ties in this country with people I know--I'll show you the basic letter and the stationery. This is what came through in May.

HICKE: It's the Institute for Human Rights, Environment, and Development.

NEWMAN: And then, read the heading of the conference.

HICKE: "Invitation to the First International Conference on Human Rights, Lawmaking, and Transition to Democracy."

NEWMAN: And by "first" they mean in Nepal.

- HICKE: In Nepal, yes.
- NEWMAN: But very interesting people have been invited, including at least one of my former students, Sandy Coliver, whom I've mentioned before.
- HICKE: Is she going?
- NEWMAN: We don't know yet. She's in London now, working with a free press organization there. So that's my footnote on what's going to happen before Geneva.
- HICKE: Very exciting.
- NEWMAN: And of course some of these topics will be very important at Geneva.
- HICKE: What are the dates on that one again?
- NEWMAN: This is the twenty-ninth to thirty-first of July.
- HICKE: Oh, that's coming up soon.
- NEWMAN: That's one of the problems. [Laughter]
- HICKE: I see.
- NEWMAN: So I've a lot to do in any case, but especially if I have to go to Nepal as well. Obviously I'm intrigued because I've never been near there before.
- HICKE: Yes, that would be fascinating to me to go to a country where they're just starting something like this and help get them going.
- NEWMAN: Well, my colleagues next Wednesday night will be fascinated because Tibet and Nepal appear to have so much in common, and yet they're completely separate. Nepal's an independent nation. Tibet's a Chinese province. Things are not perfect in Nepal, but at least there aren't the brutalities that are occurring

in Tibet. That's the reason the two people I mentioned have been active.

HICKE: Could you give us a summary of your activities this spring?

NEWMAN: After the Japan trip I went almost directly to Geneva, in February and the beginning of March. Then at the end of March I had the conference in Atlanta where Jimmy Carter talked; then in April the work in New York at Columbia and in the U.N.; then Honolulu, and now what I've just explained. All of that has related directly to things I'm working on. For example, in Japan for two weeks I had a fantastic opportunity to observe a problem they regard as perhaps one of their most serious human rights problems: detention of suspects after arrest. They have this terrible rule that the police don't have to turn a person over to a judge for nearly three weeks.

HICKE: Oh, three weeks?

NEWMAN: Their new jails now are not called jails. They're places where you keep suspects for twenty-one days. It's a whole system with tens of thousands of people involved every year, and obviously it produces abuse. I was able to help one of the people I'd been with in Japan when I went to Geneva. He was sent over alone to start exploring the possible United Nations response to that problem.

And the Commission on Human Rights is intimately involved with the subcommission. In New York much of the work related not only to environment and human rights (through the Sierra Club and other people there) but also to the human rights aspect of the East-Europe collapse and the

Gulf War. At Atlanta, I was giving my favorite speech on the International Bill of Human Rights and how it doesn't get publicized enough. In Honolulu it was a combination of Gulf War and what do you do about human rights violations. And all of it melds into this summer. So I haven't had much spare time as a professor emeritus.

HICKE: [Laughter] Have you had time to sleep?

NEWMAN: I've had more time to do the human rights "thing." And I've been very lucky because I don't think I've had to pay for more than one of these trips yet. I get reimbursement for expenses. That's a problem I didn't worry about when I had the professorship that covered reimbursement.

HICKE: Oh, yes. Yes, that's a lot of travel.

NEWMAN: And I would have been embarrassed seeking this much reimbursement when I had the professorship, without having somebody else take part of it. So I've been lucky on this.

HICKE: Yes, well I think it's well deserved. I don't see how anybody could expect you to pay your own way. You're doing enough as it is.

[End Tape 15, Side B]