Oral History with Daniel Finkelman

NVCA-Venture Forward Oral History Collection

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National Venture Capital

Association Venture Capital Oral

History Project

Daniel Finkelman

Interview Conducted by
Carole Kolker, PhD
November 5, 2014

This collection of interviews, *Venture Capital Greats*, recognizes the contributions of individuals who have followed in the footsteps of early venture capital pioneers such as Andrew Mellon and Laurence Rockefeller, J. H. Whitney and Georges Doriot, and the mid-century associations of Draper, Gaither & Anderson and Davis & Rock — families and firms who financed advanced technologies and built iconic U.S. companies.

Each interviewee was asked to reflect on his formative years, his career path, and the subsequent challenges faced as a venture capitalist. Their stories reveal passion and judgment, risk and rewards, and suggest in a variety of ways what the small venture capital industry has contributed to the American economy.

As the venture capital industry prepares for a new market reality in the early years of the 21st century, the National Venture Capital Association reports (2008) that venture capital investments represented 21 percent of U.S. GDP and was responsible for 12.1 million American jobs and
$2.9 trillion in sales. These figures, while significant, greatly understate the collective accomplishments of the venture capital industry.

I'm pleased to have initiated and given my early support to this project, which is now receiving support and funding from NVCA and Harvard Business School. I believe these oral histories will advance the understanding of the venture capital industry. This collection, along with Paul Bancroft's Bay Area oral history project at the Bancroft Library at the University of California, Berkeley, and Paul Holland's Silicon Valley project for the Western Association of Venture Capitalists, will add significantly to a growing body of venture capital memoirs available to the public sector.

A special note of gratitude goes to each interviewee who generously gave of his time while candidly sharing his memories. Their recollections bring to life the dynamic story of venture capital in the 20th century, providing a powerful perspective on the history of this industry.

Charles W. Newhall III 2010

Carole Kolker: The following is an interview with Daniel Finkelman, taking place at his office in Boston, Massachusetts. Today's date is November 5th, 2014. This interview is being conducted as part of Harvard's venture capital oral history project. My name is Carole Kolker.

Kolker: Okay. Today is November 5th, 2014, and I'm here with Dan Finkelman, and we're going to get started, and just for the record, your early years: Where were you born, when?

Daniel Finkelman: I was born in Queens, grew up in Queens. My mother was a kindergarten teacher. My father worked as a partner in a small textile company, and I went to school in Corona and Woodside and Rego Park, Forest Hills.

Kolker: How'd it happen that your parents were living in New York? Had they grown up there?

Finkelman: Yes. They were both second-- they were first-generation-born American. All my grandparents came over from Poland and Russia and settled in New York, Lower East Side, the Bronx. They were there.

Kolker: You said you have a brother.

Finkelman: I have a brother, who's 14 months older than I am. He's a professor of immunology at University of Cincinnati Medical School.

Kolker: His name is?

Finkelman: Fred.

Kolker: Fred, and how'd you all get along?

Finkelman: We got along fine. We're very, very different. I was..

Kolker: Really? In what way?

Finkelman: I was very into sports and socializing, and he was very into science. He wanted to be a scientist. In fact, he wrote this essay when he was six years old about how he was going to discover a vaccine to cure people.

Kolker: Your interests as a child? So you said you were interested in sports. You weren't a reader? Were you a reader, or..

Finkelman: Yes, I was a reader. I was a very good student.

Kolker: You were, and what sports were you playing?

Finkelman: Mostly everything, basketball, baseball, football, anything, but schoolyard ball, because there were no fields, really, or very, very few.

Kolker: The values in your home towards education, work ethic?

Finkelman: Very, very strong. My father had an incredible work ethic. He worked very, very hard. He believed that you always finished what you started. His expression was, “Finkelmen aren’t quitters,” and that’s not always a good thing. My mother was very nurturing, kindergarten teacher, also interested in education. I was pushed. I skipped two grades. I skipped fifth grade and eighth grade, which, in retrospect, probably not the best thing, certainly not socially. Academically it was okay. I could keep up, and I did well. Although each time you skipped a grade, it took a while to catch up.

Kolker: It’s hard on a kid, and how about-- what was expected of you in terms of your education?

Finkelman: To get A’s. One of my father’s other expressions was-- when you came home and you said, “I got 100 on a test,” he would say, “Not two percent for neatness?” and it was a joke, but it wasn’t a joke.

Kolker: You got the message.

Finkelman: It absolutely was not a joke.

Kolker: So, was there anybody in elementary school or high school along the way that influenced you as much as your father, perhaps?

Finkelman: Both my father and my mother, very different personalities. My father very hard-driving, hardworking; my mother very nurturing, loved children. I think I got that from her. There was always a battle as to what kind of work I think I would do. At one point I was very interested in psychology, and I was a psychology major. I was president of the Psych. Honors Society in college, and I don’t think my father thought very much of that. Eventually I changed to economics and went to law school and business school.

Kolker: So, I know you went to Clark University in Worcester, and you said you majored in economics. That was 1964.

Finkelman: I graduated in ’68.

Kolker: How did you see this fitting into your future, your economics major?

Finkelman: I don’t think I was focused on that at the time. I was by far the youngest one in my class. I started; I was just turning 16, and I had died and gone to heaven. I’m living away from home, and I’m just turning 16, and it was like… It was amazing that I did as well as I did my freshman year, which wasn’t all that great. But one-third of the boys in freshman year were on probation, so by comparison I did great.

Kolker: So, it's hard. Was there something in the program that you were finding exciting that might've influenced the direction you took?

Finkelman: In terms of?

Kolker: What you were studying at Worcester?

Finkelman: I went through five majors, I think. I started in history, English, sociology, psychology and economics. The one thing I always loved was kids, and I did-- I worked with blind children for four summers, one summer blind, multiply handicapped children, the other summer blind, normal children, three summers. And I loved that, and that kind of played into my interest in psychology. But then I just decided there was too much BS in psychology.

At the time, I thought all of these different theories of-- they can't all be right, and it just seemed at one point I-- maybe I was just too pragmatic. But it seemed to be too much nonsense. Clark is a very significant psychology school, psychology department. It was the only school that Freud spoke at when he came to the United States, and very famous psychology department. And I think it was significantly Freudian, and at some point in time I just got tired of it, seen too much BS. So, I switched to economics, and I liked economics. I just had a natural facility for it. I think it's one of those things like math, either you get it, or you don'. And I immediately got it, and there were 10 pages of reading a night as opposed to 100 pages per subject in history or English, and this was great. I could do it in half an hour and get A's all the time.

Kolker: Okay. So when you graduate in '68, what were your plans?

Finkelman: Well, '68 was the height of the Vietnam War. We had half a million men in Vietnam. At the time, Johnson had decided or was forced into not running. I think he made that announcement probably in-- around January, February of '68. I was trying to figure out what to do, because they had just ended graduate deferments for-- effective the fall of '68, and I was graduating in May of '68.

So, I got a New York City teacher's license. I applied to various reserve units and JAG units and everything. And I got lucky in that it was a program that was just started the summer of 1968. If you had gone to a college that didn't have an ROTC program, which Clark did not, you were considered a deprived child, in a way. So, you were eligible to go to Fort Benning, Georgia, for basic training that summer, and that counted as your first two years of ROTC training. Then when you were in law school or other graduate school, you would continue for two more years of ROTC, which I did. I went to Columbia Law School and Business School. Columbia didn't have ROTC. I had to go up to NYU in the Bronx at the time on the Heights to do that. Then I got commissioned after two years, but they wouldn't touch you until you had gotten your degree.

So, my father came up with the plan that I should delay getting my degree. So my third year, I went to business school on a four-year MBA/JD program, and I still didn't get my degree in business school after the third year, because I still needed three more business courses, and I still needed my third year of law school. So I ended up getting both degrees in 1972 at the same time. That kept me out of the Army until 1972. Then when I went in, the war was winding down. They really didn't need second lieutenants. I went back to Fort Benning, Georgia, for infantry officers' basic training. They sent me home, and every three years I got notice to go for my promotion physical down in South Boston. Other than that, I never heard from them, which was astonishing.

Kolker: So I can't ask you how the military impacted when you were-- the direction of your life except that the way you..

Finkelman: This was my father.

Kolker: But it did.

Finkelman: This was my father's brilliant plan, I mean, just incredible.

Kolker: So you're finishing up at Columbia University. It's 1972, and what kind of a career did you envision?

Finkelman: Always corporate business. I knew I had no interest in litigation. I don't like particularly speaking on my feet, or I'd much rather write than talk. I think I tend to talk slowly, deliberately, kind of like I'm writing, as a lawyer, and I'm not sure that's the best thing if you're a litigator. But I also was interested in solving problems and dealing with problems that were already there and trying to clean them up. I think my economics background played into that. I was always fascinated with contracts, even when I was a little kid. I used to think about the subject matter, just as I used to think about statistics, because I was very interested in baseball growing up, and baseball is phenomenal statistics, and I was a huge Willie Mays fan. I would think of all these different statistical issues, not knowing that it was statistical issues at the time, and I was a little kid and made-- when I took statistics, it made it very real for me. I took three courses in statistics in college and business school and always got A's in them. My younger son, who is a math genius and a professional statistician, Ph.D. statistician, he got the same way as I did.

Kolker: Interesting.

Finkelman: So I think I went back and forth between possibly doing trust and estates law versus corporate law, and I think I decided that trust and estates law wouldn't be as big a field as corporate law and could be more repetitive. So I went into corporate law, although I think I would've liked trust and estates as well. I like working with people, so..

Kolker: So you started with Parker Chapin..

Finkelman: Parker Chapin.

Kolker: … in '72. You were there for three years..

Finkelman: I was there three years.

Kolker: … and why did you leave?

Finkelman: My ex-wife wanted to come home to Boston.

Kolker: So you were in New York, yeah.

Finkelman: She was a native of Boston. We had met at Columbia. She was in the social-work school. We got married when I got out law school and she got out of social-work school, and so we moved up here. I had taken the bar up here in, I think, 1974. I wasn't looking for a job then. That was a great experience. I just walked in off the street. I can tell you that I was the most rested person in the room, but it didn't matter. It was $50 to take the exam, and if I failed, no one knew I was taking it. I was working in New York, so what difference did it make? But I got lucky and passed, and then a year, year and a half later, I moved up here, got a job at Testa.

Kolker: Okay. So, 1975 you joined Testa, and you eventually became partner, and how'd this job come about?

Finkelman: My best friend at Parker Chapin saw an ad in the Wall Street Journal about a small firm, and I said nah. I had that typical mentality of someone who is at a large corporate firm that-- small was bad; large was good and never think about it, and he said, "No, no, just go up there. They'll pay for you to go up there, and just go see it." I went up there, and it was even smaller than I thought it was, and I came back with an offer.

Kolker: Who interviewed you?

Finkelman: Steve Hurwitz was the main person, but I met with everybody. There were only six lawyers or something there.

Kolker: What was your impression?

Finkelman: That it was a small firm that was doing some amazing things and had some amazing clients, but it was very, very risky.

Kolker: In what way?

Finkelman: There were three partners, three main partners, and Dick Testa was very well known. He was in his mid-30s at the time. Steve Hurwitz and George Thibeault were maybe five years younger, five, six years younger. They were very, very young. They really didn't have any business to speak of, and Dick had chosen them. He needed additional people for the firm, and if anything had happened to Dick, the firm would've just gone out of business, I'm sure, at that point in time. The firm had amazing, amazing clients for this tiny, little firm. It represented Digital Equipment Corporation, which was the second-largest computer company in the world after IBM, represented Teradyne, which was another very large public computer company, computer test equipment, another company called Adage. It represented some major banks, First Chicago, and it represented some venture funds. It represented American Research and Development, which was … outside probably of family venture funds like Bessemer and Venrock, it was really the first kind of institutional venture-capital fund, and general Georges Doriot, who I'm sure you've heard of by now, he was Dick Testa's mentor. He loved Dick.

Kolker: So when you went in '75, these clients were already on board, because Testa Hurwitz started in '73. So he brought these clients to..

Finkelman: With him. He was at Gaston Snow. That was the name of the firm. It was Gaston Snow. He had made partner there at age 26, and I think he made executive committee there at age 30. He was short, not terribly prepossessing Italian who mumbled. And this was Boston, back in the day, and it was a white-shoe town, particularly at the large firms. So, he had to be just extraordinary to be able to accomplish that, and he was.

Kolker: Okay. So let's talk about Dick Testa, because he seems to be a larger-than-life kind of figure. You know about his velocity, his temperament. So how would you describe him in terms of-- what was his temperament? What was it like working with him?

Finkelman: Very good to work with. He was a teacher. He was relatively patient. I had the luxury of just following him around, carrying his bag. Steve and George were the other two partners, Steve Hurwitz and George Thibeault, and they had their clients that they worked with for Dick. And Dick needed someone basically to work on his other clients. And when I came in, I was the most senior associate at the firm with three years' corporate experience, and I went wherever Dick went. I just followed him around, and unless you were brain-dead, it was just osmosis absorbing his business brilliance. All the things that they didn't teach you at Harvard Business School or Harvard Law School…how to communicate with clients, How to solve business problems, how to get more work, not by going to cocktail parties or romancing clients, but by pushing the work out every day. Deadlines were extremely important, self-imposed deadlines. A "B" was, as I said earlier-- was often better than an "A", particularly with the kinds of clients that Testa represented.

With the exception of DEC and Teradyne and a few others, they were small startup companies. They might have revenues of up to $10 million. Often, they had zero revenues, just trying to come up with a product, and they didn't need, nor could they afford, the perfect agreement. I started there on June 16th, 1975.

When I walked in, I sat down with Dick, and he gave me three clients the first day. One was a company called CompuGuard Corporation, and I was supposed to do a stock purchase agreement for the person who was joining to become executive vice president. That person was going to buy stock in CompuGuard, and Dick said, "Okay, Dan, you have three pages." I looked at him. I couldn't believe it, 3-- I'd never seen a stock purchase agreement under 30 pages, certainly. Most were 50. They weren't like they are today, 100 or longer, but 30, 35 pages certainly, and really made you think. Okay, I've got 3 pages. He meant it. He wasn't fooling. That was what the client could afford. That was the timing for the project, and that's what it should take, and so you go back to your desk, and you think, "Okay, what's important? What's really important in this 35-page contract?" And you whittle it down to 3 pages, and I did it. And I worked with CompuGuard for years after that until they were ultimately acquired.

Second client I got that same day was a double-header offering for Lehman Bros., which-- just amazing, this tiny, little firm. Testa Hurwitz was six, seven lawyers, and we were representing Lehman Bros., which at the time was a giant investment bank, and they were doing an offering-- public offering of debentures and notes for Textron. Textron..

Kolker: Why did they come to Testa?

Finkelman: Lehman Bros. was the investment bank for Digital Equipment Corporation. I think they also knew and understood that Testa was representing all these crazy young clients, which were going to have capital markets needs, and so they came to us. I followed Dick down to Providence for weeks on end, meetings at Textron, writing the prospectus and going to the printer at night, and that was my second project. That finally closed in December of 1975, and I'm sure I have the binder still on the shelf.

The third one I got the first day was a company called Medi. This was a tiny, publicly held company, which was being acquired by another company and really tiny. Its lawyer was a sole practitioner in the Back Bay somewhere. I remember going over to his office. He was an elderly Jewish gentleman, probably like me now, although I think he was even older, and kind of like a nice, fatherly figure. He liked me. I liked him, and we worked out the deal.

Then I started getting more and more of these privately held companies, small startup, crazy. Just some of the things were just bizarre. Company was going to find a substitute for oil. I mean, what were some of the others? These modular shelters. There were lots of failures, lots of successes, and everything moved very, very fast. So, when I worked at Parker Chapin, I worked very hard. I worked every night until minimum 8:20 train going home, mostly 9:20 train. But if I hadn't have shown up on any particular day, it wouldn't have mattered, because the work wasn't that pressing. Everything was scheduled out, the public filings for the public companies. You knew what you had to do a year in advance.

At Testa, you had no idea what you were going to get that day, and everything had to be done quickly, because the companies themselves were moving a mile a minute. It was also a very interesting learning experience in that you had to do everything. Testa at the time did not have any tax lawyers. We didn't have any immigration lawyers. We didn't have any real-estate lawyers. We didn't have any trust and estates lawyers. We had one litigator, and you had to do everything. So, I would walk into small-claims court on behalf of clients having no idea, basically terrified, looking to see what the other lawyers would do just so I would not be out of place, kind of like in church today. I stand when everybody else stands. I turn when everybody else turns, but I don't know what to do. It was an amazing educational experience.

One, being with Dick, who was just so totally brilliant and just understood how to talk to businesspeople that other people talk to businesspeople as lawyers. Dick never spoke to a businessperson as a lawyer.

He spoke to businesspeople as a businessperson, as a very educated, sophisticated businessperson in corporate structuring and tax, and it was amazing. You'd go into the largest, most sophisticated law firms in the world with senior partners for some giant corporation, and whether it's Sullivan & Cromwell or Cravath or whatever the law firm was. And you'd be sitting there with Dick, who was-- I guess I was 27, so he was 37.

And these moguls of industry, and in 5 minutes the other client, other lawyers' clients, would be talking to Dick, looking to Dick, asking Dick questions, asking him for his advice, because he just talked the same language that he did. He was extraordinarily practical. He would separate the wheat from the chaff very, very quickly, focus on what was important, not be bothered by what wasn't important. He used to tell me, "Okay, Dan, I want you to make this presentation to the client. You have one page."

And similar to the story I told about the three pages for the stock purchase, he meant that one page, and he was absolutely right. If you're before a judge, you can have a 75-page brief, and maybe that's fine if you're in the 2nd Circuit Court of Appeals, if you're in Supreme Court of United States. But the average court, that's useless. One page, you get the judge's attention. You focus on the essence of the case and what's going to convince the judge or the jury, and you go with that.

Kolker: I mean, I can understand just from what you're saying that he was a mentor for you.

Finkelman: He also performed my marriage ceremony.

Kolker: He did?

Finkelman: That was 2001. So he was very significant in my life, next to my father, most significant man in my life.

Kolker: So you were there when he was working with Doriot and AR&D. What was that like? I mean, that's really early venture capital.

Finkelman: Yeah. I didn't work on ARD. ARD was spoken for. It was a preexisting client by the time I got there in 1975.

Kolker: Did you meet General Doriot?

Finkelman: At the French Library. We represented the French Library, and I think Dick's wife may have been an officer at the French Library, and we used to go over there on Bastille Day for the party all the time, and I did some small work for the French Library, and I did a few deals for ARD.

Kolker: You did?

Finkelman: Yeah, the deal work. But ARD was at the time-- I think was a subsidiary of Textron. That was another way that we got-- it was owned by Textron. ARD was independent, then acquired by Textron, then spun out of Textron.

Kolker: Really? That's how Doriot was able to manage some of these investments, perhaps.

Finkelman: What do you mean?

Kolker: Trying to remember, having read recently about a problem that AR&D ran into, because didn't DEC come out of AR&D?

Finkelman: Yes.

Kolker: Ken Olsen?

Finkelman: Ken Olsen.

Kolker: So were you involved in that in any way?

Finkelman: I wasn't involved with DEC, but I was involved in Ken Olsen's next company, nicest man imaginable.

Kolker: Really?

Finkelman: He's just great. I loved him, so down to Earth. He's a multimillionaire, lived in the same house he'd always lived in. By the way, Dick Testa lived in the same house he'd always lived in, nice house but nothing ostentatious, certainly. And I think my oldest son, Andrew, must've been about 10 or 12 at the time, and he always was coming up with inventions. He would always ask me to run the inventions by Ken Olsen, and I would, and Ken was so interested and so nice to Andrew, and we talked to him about his inventions.

Kolker: Oh, my God, how dear, really. So what were the challenges of working in this venture-capital industry? It was so young when you got there..

Finkelman: Yeah. Well..

Kolker: … because you..

Finkelman: … there weren't really any forms, first of all. It was a cottage industry in the truest sense of the word. Virtually no one worked in it.

Finkelman: So one thing was in those days, I was not solely a fund-formation lawyer. For the last I don't know how many years, long time, all I've done is form funds. At some point in time, maybe 20 years ago, 25 years ago, Dick Testa decided that every fund client would have 2 partners: the fund-formation partner and a deal partner. The deal partner would represent the fund on its investments. The fund-formation partner formed the fund, and the work had been growing quickly. There were only a few firms doing it: Cooley Godward on the West Coast, Wilson Sonsini, Debevoise Plimpton, and Testa, really. There's just a handful of firms, and we were people who knew how to do it or who thought we knew how to do it. We were very much in demand, and we were trained, so couldn't afford to let us be deluded in terms of our focus. One of the things I loved about Testa Hurwitz was the fact that I got to work on all kinds of different things. Every day was interesting, a challenge, something new, something I'd never done before, and it could've been tax. It could've been immigration, real estate, litigation. Who knows? And at one point Dick came and told me-- and I used to represent operating companies, and that's what I did primarily until I started on NEA in 1977. NEA closed June 6th, 1978, and..

Kolker: How did NEA come to Testa?

Finkelman: So, there were three original partners at NEA: Chuck [Newhall], Frank Bonsal and Jim Morgan. Jim Morgan was from AR&D, was close with Dick, and I'm sure that Jim Morgan was the impetus for Testa, doing the work. So, I remember going down to Howie Wolfe, do you know that name? Landmark?

Kolker: I do know that name. Yeah.

Finkelman: Howie Wolfe's office at Landmark, in New York. It was on East 55th Street, I think, and meeting Chuck and Frank. I think Jim was there also, having lunch with them. Howie was an investment advisor, he represented the John Deere family, among others. And they made a major commitment, I think $4.5 million commitment to NEA, and we went out to raise the fund.

Jim Morgan got cold feet, and withdrew. And he formed his own fund with a guy named Dan Holland, who'd also been, I believe, at AR&D, who's also close with Dick. The Liberty Ventures, I think. One of the Liberty Ventures. And we represented them as well. But I went on working on the NEA fund formation, which closed in June. I remember going down to Delaware, in person, for the closing, because, at that point in time, people were not sure that, if he didn't close physically in the jurisdiction, that that jurisdiction's law would be applied, would be the governing law for the entity. So, we literally all went down there.

There was one firm, Cadwalader, Wickersham & Taft, which was chosen to represent all the investors as a group. Lawyer there, Jonathan Wainwright, who I think was a friend of Howie Wolfe's. Yeah, he was a friend of Howard Wolfe's. And so, we worked on that together. And then, Dick Kramlich came in, maybe two months after Jim Morgan pulled out, to replace Jim. And then I got to work with a fellow named Kit Kaufmann, a lawyer who was Dick's personal lawyer. Still friendly with him, he's Latham and Watkins, excellent lawyer. And he represented Dick on the fund formation, just looking over the shoulder to make sure everything was okay. Dick was a well-known venture capitalist at the time, having worked with Arthur Rock. And we closed on all of $10 million in this law firm's offices, Prickett Jones, in Wilmington, Delaware.

We had to wait for the last wire transfer to come in. We had called one-third of the capital in advance, and so we had to wait until $3.3 million was literally wired and confirmed, before we could declare it closed. That's, you know, ancient history, in a sense that no one calls money in advance, now. That hasn't been the way it's worked for years and years. You only call money on a just-in-time basis, because if you call money before you need it, it's sitting around, it's going to affect your IRR, internal rate of return, and internal rate of return is what fund managers use to sell their next fund. The higher the IRR, the better.

It's kind of the reverse of an interest rate, if you will, what kind of performance the fund has generated. And then, after that, I started representing NEA, doing its deals, with Chuck and Frank, and some with Dick on the West Coat, although Dick had, given the time difference, particularly in those days-- it was other counsel, Kit Kaufmann used to do a number of the deals for NEA. And as one of the only people who had ever done a venture capital fund, I got called in to do more of them. And, you know, so much of life is luck and timing.

Kolker: And network--

Finkelman: You know, might not have been NEA. It could have been some disastrous fund, but NEA was terrific. NEA I was a great fund. And we're still doing-- we're starting on NEA XV now. And I did one fund after another. You know how it goes. Chuck or Frank or Dick would be asked, well, who do you use, when someone wanted to start a fund. And so, I used Dan at Testa. And Testa got a reputation in the industry. We had represented a couple of funds before that. We had represented Palmer Organization, which is also a spinout of AR&D, represented AR&D. We had represented-- what's the name of it? Famous-- Ferry [ph?] and Gall [ph?].

Kolker: Paul Ferry?

Finkelman: Paul Ferry and Joe Gall, Ferry and Gall, before-- no. It wasn't. It was-- wait a minute. It was Hellman and Gall. Warren Hellman, who had been the vice chairman of Lehman Brothers, and that was actually the first fund I worked on, but not as fund formation counsel. Warren Hellman was having a dispute with his partner, Joe Gall, and I was basically called in to fire Joe Gall, because I wasn't as nice then as I am now. And I used to get all-- at Testa, I used to get all the nasty assignments.

Kolker: Wow.

Finkelman: Interestingly enough.

Kolker: Yes, yes.

Finkelman: So, I remember doing that. And we got Joe out. And then, NEA, the next year, and then it was one after another. Abingworth, have you heard of Abingworth? It's a large, UK venture firm, investment advisory firm. Based in London, and they were doing deals with NEA. So, I got introduced to Abingworth, and I started doing Abingworth's deals, and started representing Abingworth on the US aspects of its fund formations. And Oxford Bioscience Partners-- or Oxford Partners co-invested with NEA in deals, so I got to see them. They liked me, so I started working with them. I still work with them today. I still work with Abingworth today. And just kind of went like that.

Kolker: So, I'm thinking that, you know, with Dick Testa -- such a large presence in this firm, I mean, he was-- the firm was-- you know?

Finkelman: Mm-hm.

Kolker: Were there any tensions in the practice?

Finkelman: No. No, Dick was an amazing human being, as well. He was the exact opposite of a control freak. His modus operandi was to give you the clients. And he often determined, maybe rightly, maybe wrongly, how good a lawyer you were, based on whether the client stuck with you and whether he got calls from the client after he gave them to you. If he didn't get calls from the client, and the client stuck with you, in his mind, you were a good lawyer. Now, oftentimes, that is the case. Maybe it's 90 percent of the time. But there are also so people who are just great at BS and can pull the wool over client's eyes, so it's not a perfect prescription.

But he would let you run with the clients. They were yours, as far as you could go. He had so many clients, so many small clients, there was no way he could possibly be on top of all of them. And gradually, you do more work. The clients would come to trust you. And remember that these clients were generally very young, also. So, I was the same age as the clients. 30, 27. I mean, Chuck's a few years older than I am, Frank's a few years older, Dick's maybe eight years older than I am. But, you know, it was a very, very young industry.

Kolker: Yeah, I was going to say, how did it change over the 30 years that you were at Testa?

Finkelman: Well, first, regulatory-wise, it was a very unregulated industry. You worried about not violating the public offering rules, not making a public offering. It had to be private offering. So, you didn't have to register it with the SEC. And you couldn't run afoul of the advisor's act. But it was an extremely unregulated industry. That was one thing I liked about it, because you could use your business skills, and you didn't have to worry about a lot of the technicalities.

Also, it was largely US-based. The investors, principally, were from the United States. The fund invested principally in the United States. You might make a few investments in the UK or Canada, but that was pretty much it. Over the years, the industry has become highly regulated. It's become a much more important industry on the macro level, to the economy. And it’s become international in scope. The investors are international, the investments are international, made all over the place. And certainly, the companies, even if they're US-based, will have operations overseas, and will be involved in international transactions.

So, the need for tax expertise has gone up immeasurably since when I started. I was the tax lawyer on NEA I. Of course, I wasn't a tax lawyer. And when I look back at the-- some of the things in NEA I, it's clear that I wasn't a tax lawyer, because the allocations and the distributions, which should tie together, do not. And I didn't realize, at the time, that they should have tied together. But it didn't make much difference, no one seemed to care. No one knew.

Kolker: And did you, from your viewpoint, you know, see venture capital as a romantic quest, in any way?

Finkelman: Yes. I thought of it as people going out and building new businesses, coming up with new technologies, none of which I understood. And creating jobs. I viewed it as a good thing, compared-- as positive for the world, positive for the economy, as opposed to some of the other work I had done as a lawyer. I remember, once, trying to convince the FDA-- this was back in New York, when I represented a silver company. Their product was being accused of leaching into food, the chemicals leaching out of the silver into food, or something like that. And I didn't think that was a good thing.

But venture capital, I thought, was a very good thing. One regret I have is that I never understood technology. I don't understand technology at all today. I'm a technological and scientific idiot. I have no idea what they do. And it would have been, I think, more rewarding, to me personally, if I had a better sense of what the operating companies do, the companies they invested in. And also, I was representing those companies until Dick Testa came to me one day, maybe 25 years ago. He said, Dan, you're no longer representing operating companies. I need you just to do fund formation, full-time. And I negotiated with him and got him to agree that I could continue to represent, on a grandfathered basis, my existing operating companies, but no more. I couldn't take on any new ones.

Kolker: Why do you think he said that?

Finkelman: Oh, because there were so few people who knew how to do what I knew how to do. And I was needed.

Kolker: He needed you, yeah.

Finkelman: And we had lots of other people who could represent operating companies, but very few people who could represent funds.

Kolker: So, you certainly worked with a lot of different VCs over the years. Were there any that you particularly admired, you know, were just stars in the industry, according to your experience?

Finkelman: Well, certainly, the NEA folks, without question. Real stars. I worked with Spectrum Equity Investors, or Spectrum Equity. They're in this building, actually, as well as out on the West Coast. They've done extremely well. For a time-- and this was just another example of the spiderweb kind of tentacles, whatever you want to call it, NEA. I worked with a guy named Ed Anderson. He was…

Kolker: I talked to him yesterday.

Finkelman: Okay, so Ed was at ABS at the time, Alex. Brown and Sons. Frank Bonsal came out of Alex. Brown. And I forget exactly how I started working with Ed, but obviously, it was from some NEA connection. Ed came into my office one day, this was 25 years ago, maybe, with a guy named Desh Deshpande. And you know Deshpande's name?

Kolker: No, I just--

Finkelman: So Desh Deshpande, and Ed, I think, said, we, at ABS, will give you $100,000, $125,000 to go come up with an idea for a company. And Dan, you're Desh's lawyer. I'll go get my own lawyer. And he got his lawyer-- his name was Kaplan. He was at a venture capital law firm in New York. Fred Adler was the head of that firm. Drawing a blank on the name. It's been acquired multiple times, and it's now part of Fulbright. And-- Carl Kaplan, that's the name. And Carl and I decided-- we had common mentality or philosophy that $125,000, $100,000, [the] paper should be very short, very simple, and that was what was appropriate.

And that's Dick Testa's philosophy, and that's venture capitalist's philosophy. You do what's appropriate and what's needed for the job, not because there's a model for it. And you have to, again, back to that three-page stock purchasing, you have to think about what's important, and you can't be wedded to a model, a form, a methodology. You have to create on the spot. So, I think Carl and I came up with a term sheet, maybe a page, and organized the corporation, which was called … god knows what…. Next Gen, I think, originally. Next Generation, something or other. Then, it changed its name to Cascade Communications. Before you knew it, it was acquired for $4 billion. And that was a long time ago, when $4 billion was a lot of money. You know, if I-- yeah, Cascade Communications. It went public, 1994. I would have-- that's only 20 years.

Kolker: 20 years.

Finkelman: I would have guessed it was longer than that. But Desh was this very, very interesting guy. Incredibly nice guy. He was an entrepreneur, not a venture capitalist, but he was also an influence on me, and he went on to found other companies, and I loved working with him. He was also very philanthropic.

Kolker: So, Dick passed away suddenly in 2003?

Finkelman: 2003? 2002?

Kolker: 2002 or 2003. Yeah, I do have it.

Finkelman: December 3rd or 4th, 2002

Kolker: Two.

Finkelman: Two, yeah.

Kolker: And--

Finkelman: That was tragic.

Kolker: Had to be. Just, you know, after hearing you talk about him and--

Finkelman: But Dick had trained everyone so well in the firm, and had given such long leashes to people, that we all had our clients at that time. We were trained. We weren't reliant on Dick, although I used to go to him. Any time I had a really tough business question, you'd go to him with it. And he'd always have some great insight or analysis. And it always used to amaze me, that he'd give me a contract to write, and I'd write it. I thought I did a very good job. And he wouldn't nitpick contracts. He would just read them in five minutes, and he would mark down two or three things. But they were always very incisive business comments, business analyses. Oh, I missed that, or something, why didn't I get that?

One thing I shouldn't forget about with Dick was, Dick was instrumental in changing the rules to permit public pension funds and private pension funds to invest in venture capital. And this was a revolutionary change for the industry, not evolutionary. Because if you look today, the largest investors are public and private pension funds. And the industry would not be anywhere near where it is today, was it not for that. In the old days, there was a prudent man standard. You know, prudent women.

Kolker: It's okay.

Finkelman: Probably an oxymoron. And every investment was tested on its own. Was this a prudent investment for a trust, a pension trust, to make? Because the pension trust represented the interests of all the pensioners. And if you were representing the schoolteachers, public schoolteachers of Pennsylvania, their pension plan, you'd want to make prudent investments, because this is ultimately going to pay the retirement pensions of the schoolteachers. But what was a fundamental change, I guess, in investment theory and understanding was that not every investment in a large pool of investments needed to be prudent for the portfolio, as a whole, to be prudent. In fact, it made much more sense to have a diversified portfolio with some more risky investments, alternatives.

Kolker: And that was his argument?

Finkelman: That was the argument that Dick made to the Department of Labor. There was this new law that came into effect in 1974, the Employee Retirement Income Security Act of 1974, which was designed to protect people's pensions. Because, up until that time, a company went out of business, the pension plan might be totally unfunded. You had worked at, I don't know, US Steel for 40 years, you were relying on getting your pension, company goes bankrupt, and there's nothing left-- there's nothing in the pension plan. They were just relying on an unfunded basis, that the company would continue to make money, going forward in the future, and be able to pay pensions.

So, this law changed that. This law put into place various tests that had to be met, and funding requirements for plans. And with it came the idea that investments had to be prudent -- which had been the trustee standard, forever, back into, you know, ancient English times.

Dick went down to lobby the Department of Labor. It might have been 1976, '78, I'm not exactly sure when, and got them to adopt something called a plan asset regulations. And plan asset regulation basically allowed for investments in these kinds of risky deals, as long as the portfolio as a whole was diversified, and made much, much more sense.

And if you look at returns, look at Harvard University's returns, or Yale's returns, Stanford's, MIT's, from having invested significantly in alternatives, including private equity, have done much better than just investing in municipal utilities or something like that, that had a 3 percent return. And that opened up the door to pension investing. And it took some time and missionary work, before pension trustees got comfortable, despite what the plan asset regulations said about investing. But eventually, more and more followed, and more and more followed. It became accepted, and pension plans became the largest single investor in venture capital and in private equity.

Since that time, you've had a number of other major sources of investment capital for private equity and venture capital. You've had sovereign wealth funds, which really didn't exist, certainly, back in 1978 when I started working on NEA I. And you've had something called Fund of Funds, which was a new phenomenon. Fund of Funds were designed to diversify someone's investments and funds, because a fund investment is a large ticket item. Big ticket item. You can't invest $1000 in a fund. Even back in the NEA I days, you had to invest $100,000, certainly. And now, you know, it can be a minimum of $75 million, $100 million, $150 million for a fund. Not too many of us have that to invest, and certainly not to invest in one fund.
So, these Fund of Funds sprang up, in which they would invest in a variety of different funds, which gave you diversification. So, for your million dollars, you could invest in a Fund of Fund and gain entry, maybe to 30 different funds, indirectly. Also, it gave you access to funds that you could never access on your own. You weren't a big enough investor, they didn't know you, they didn't want to deal with you. So that was a major change. But the first major change was the pensions.

Kolker: Huge.

Finkelman: It was huge, yeah.

Kolker: So, this has been really fascinating. And I'm just wondering, I mean, you've moved over here, to--

Finkelman: Pardon?

Kolker: You've moved over. You left. Why did you leave Testa?

Finkelman: Testa dissolved.

Kolker: Oh.

Finkelman: It dissolved in January 1975. I'm sorry, January 2005. Sorry. It was not really, in my opinion, due to Dick Testa no longer being there. He had handed over the reins, the management reins, before he died. It was just a case of real mismanagement. And--

Kolker: In what way? I mean, well--

Finkelman: The managing partner who replaced Dick, when Dick was still alive, he's the nicest guy in the world. Truly, the nicest human being in the world, but that's not the best thing. And you had the bubble burst, the tech bubble burst in 2002, maybe? And all the other firms were laying off people left and right, and cutting back. And Testa Hurwitz didn't do that. And it also didn't enforce discipline among partners, in terms of collections and making sure clients were solvent. So, it was really amazing, because Testa Hurwitz had great lawyers. If you look to see where the partners went after Testa broke up, and how they've done over the ten years since Testa broke up, done phenomenally well. So, we had great lawyers, great clients, and a great brand, and zero debt. You have to work to fail, with those attributes. And it was sad, in a sense. But we all died and went to heaven and better places. So.

Kolker: So, what philosophy did you bring here [Proskauer LLP]. Lessons you learned at Testa?

Finkelman: Very much-- we have a team-oriented practice here. We have a large group. When I came over here, I came with six other partners in the funds formation group, and we brought about 25 to 30 lawyers, all fund formation, with us, when we came over from Testa. It's a kind of area that's become more and more specialized, and you need depth. You need people who will understand specific aspects of-- specific regulatory aspects, tax law, ERISA, whatever it is. It's totally different from 1978, when I just wrote the contract, I did everything.

I think we also understood that work had to be done on a level a client could afford, on the level the client wanted and was useful to a client. And again, I hate to say this over and over again, but an A wasn't always what you wanted to strive for. It wasn't my father and where's the 2 percent for neatness. That's not the best thing. You had to get the work done. These were people who were moving quickly. If you didn't get the deal done in a day,24 hours, the deal might be lost. And you could say, all right, well, the deal was lost. We had a great piece of paper, we had a great contract, but it's not the way venture capitalists or entrepreneurs saw it. They wanted practical, real-time solutions. And so, we were dedicated to delivering work on time, and on budget.

And I relish the idea, having come from a background in economics, I relish the idea of understanding marginal cost, marginal benefit. That was always a very important concept to me. That, okay, you're doing work back at Testa in 1975, a Digital Equipment Corporation, and you're having a public offering for $150 million. You know, every word in the prospectus had to be perfect. But if you're doing a $35,000 contract for the first executive Vice President of Compuguard corporation, three pages. And didn't matter if every word was perfect. So, I think a lot of what lawyers, good lawyers, do, is understand what's important, understand what's not important, focus on what you have to focus on. I remember, once with

Compuguard, I was in Cleveland, Ohio. Compuguard was being acquired-- the offices of Midland Ross. And maybe the smartest guy in my law school class, he was a senior editor of Law Review, was now an in-house counsel at Midland Ross. And we were debating contract issues. I was representing Compuguard, he was in-house representing Midland Ross. And he kept harping on the governing law provision, and saying how important this governing law provision was. Telling his client, Midland Ross, the senior executives there, they had to focus on this. This was really, really important. And finally, the senior officer said, Lenny, shut up. And Lenny was brilliant. He was far smarter than I could ever be. He'd been a constitutional law professor in college, before he went to law school. But, yeah, he couldn't see the forest for the trees.

Kolker: Okay, so Dan, what do you do when you're not practicing law? What do you do to take a break?

Finkelman: I play with my girls.

Kolker: You play with your girls.

Finkelman: I used to have four boys with me all the time, because I had my two boys and always two friends. And now, I always have four girls with me.

Kolker: Oh, really?

Finkelman: Yep. And I just love it. And I'm-- I grew up in New York, and-- not in the suburbs. And we just went over to our friends' house and picked each other up during the day to get a basketball game going. I can say with absolute certainty that I'm the only father in Lexington who takes his daughters out, door to door, to go pick up friends, uninvited, knocking on doors, ringing doorbells. I'm sure some of the parents hate it. I'm sure others are delighted that, you know, their daughters are going off and they don't have to watch them all day on Saturday and Sunday. But if I can just play with the girls on Saturday and Sunday, I'm in heaven.

Kolker: And your girls' names, for the record?

Finkelman: Amy -- Amy is 11, and Sarah is 8. And I like listening to classical music, I like bike riding. I like walking. I love my wife. I've got a great wife.

Kolker: And your wife's name?

Finkelman: Is Nancy.

Kolker: Nancy, okay.

Finkelman: And Dick Testa married us on May 12th, 2001. I went to Dick, because Nancy and I couldn't decide on an officiant. And Nancy's Roman Catholic, so one time, we thought we would have a priest and a rabbi, but we couldn't find a priest, interestingly enough, not because I was Jewish, but because I was divorced. At the time, no priest would do it. And Massachusetts has a law on the books that said you can get the Governor to appoint someone who is a reputable citizen to perform a single wedding. And I went to Dick and asked him if he would perform and wedding, and he says, you sure this is legal? And it was. And he performed the wedding.

Kolker: Oh, what a wonderful memory.

Finkelman: Pardon?

Kolker: What a wonderful memory--

Finkelman: Yeah, it's a wonderful memory, and we have it on tape, obviously.

Kolker: Yeah. And you say you love kids, so you've been involved Big Brothers?

Finkelman: Yes, very much. I was nominated for Big Brother of the year and made it to the semifinals, the state semifinals in 2004. I went with my little brother to the big dinner, all these sports celebrities there, which was, you know, a major event for him as well as for me.

Kolker: Oh, great. So, well, sounds like a very rewarding career in many ways.

Finkelman: It has been. It has been. And now, I got to decide what I'm going to do when I grow up.

Kolker: Might never have to decide.

Finkelman: No, I've got to decide. We've got mandatory retirement here, for partners only. You can't have-- can't force employees to retire, that's against the law. That violates the age discrimination laws. But I still have probably two years. 68, I think, is mandatory retirement. And I think of teaching, I think of doing something like that. I love kids, so.

Kolker: Well, thank you, for Harvard, for taking part in this--

Finkelman: Oh, my pleasure.

Kolker: And also, for Chuck, who I always say is the heart and soul of this project. Would never have gotten off the ground if it weren't for him and his drive and his spirit, so--

Finkelman: He's an amazing human being, incredibly loyal, very smart, and eccentric. We'll leave it at that.

Kolker: Okay, we'll leave it at that. Okay, well, thank you.

Finkelman: My pleasure.

END OF THE INTERVIEW