

ORAL HISTORY OF WILLIAM R. “BILLY” MARTIN

This interview is being conducted on behalf of the Oral History Project of The Historical Society of the District of Columbia Circuit. The interviewer is Carl Stern, and the interviewee is William R. “Billy” Martin. The interview took place at the office of Martin & Gitner, 2121 K Street N.W., Washington, D.C. on Tuesday, March 31, 2015. This is the second interview.

MR. STERN: Since our first session, the *Washington Post Magazine* did a cover story about you which included the statement, “Billy Martin is the modern-day Johnnie Cochran, minus the bling and the brashness, but with swag intact.” What do you think of that?

MR. MARTIN: Being married to a journalist, I’m always impressed with the stories in which they are able to tell a very simple set of facts. I think there are parts of that that I agree with, and there are parts of that that I think have been used to describe somebody that I really don’t know.

MR. STERN: You need a little bit of swag in front of a jury, right?

MR. MARTIN: I think I have swag in the sense that I am extremely confident in there, so I do have the confidence. But I assume that as a professional basketball player who shoots 90% from the foul line, they have some confidence, so I walk into the courtroom with confidence.

MR. STERN: With confidence intact. In our earlier conversation, you named Johnnie Cochran as the major influence on your career, but there must have been others. Who would you put in your personal lawyers’ and judges’ hall of fame?

MR. MARTIN: It’s interesting because in every city that I’ve practiced, there have been great lawyers, and I’ve been able to emulate, to study, to oppose all of those great lawyers. Of all the great lawyers that we know currently practicing, I’ve

either opposed or co-counseled or consulted with, so if you would take David Boies, or if you would take a Roy Black, or if you'd take a Ted Wells, all extremely talented. I've learned to find the best lawyers in the city, study them, watch them, and to take away that which is good, and to leave that which doesn't fit my style. So my biggest mentor, I think, is Judge Nathaniel Jones of the Sixth Circuit. Judge Jones has been a role model for me in terms of the dignity of the bench and the bar. I've had some great – Judge Higginbotham before he passed – I've really had some great colleagues, friends, and mentors.

MR. STERN: You named some great lawyers you litigated with or against. Within this Circuit, can you name some?

MR. MARTIN: When I arrived in Washington, Ken Mundy, who was a local lawyer who tried most of his cases in D.C. Superior Court, a great trial lawyer. Great on his feet, connected with the jury, communicated well with prosecutors, and had a great reputation. Ken Mundy, when I moved here to Washington, was somebody that I said as a former prosecutor, I want to try a case against Ken Mundy.

MR. STERN: Did he do the defense in Marion Barry's case?

MR. MARTIN: In the original Marion Barry case.

MR. STERN: And you were?

MR. MARTIN: I was not in the courtroom with him. But I've had other cases with Ken over the years.

MR. STERN: Any other names?

MR. MARTIN: Sure. If you look at the white collar bar, Hank Schuelke. Hank is somebody that I tried a case with in 1989 and 1990. We became friends and remain friends to this day. There are judges who have retired that I will call and ask questions. I don't do anything in a major case without consultation with somebody who I think knows more than I do, and those are people who I respect as lawyers. I would call Brendan Sullivan. Brendan is somebody who is a dear friend, and if I have an issue that I'm really struggling with on how to resolve it, it's nice to pick up the telephone and call someone like Brendan Sullivan and say, "Brendan, what do you think?"

MR. STERN: How did you come to have a friendship with Brendan Sullivan of Williams & Connolly?

MR. MARTIN: We've been friends for so long that I have to really think back to the introduction, and that introduction has been more than 20, 25 years. I believe when I was an Assistant U.S. Attorney, and I can't recall the case, Brendan was on the opposite side of the case. We met, and we exchanged pleasantries and talked, and I think both kind of respected the other as a result of our meeting.

MR. STERN: Which is more important, personality or legal skill?

MR. MARTIN: In terms of your forming this bond, for me it's legal skill.

MR. STERN: Brendan Sullivan is a tough lawyer.

MR. MARTIN: He's a tough lawyer, and our personalities are very different. Brendan does not believe in granting interviews to the press during cases. He's very private. He does not believe in – or I wouldn't say believe in -- he's not

somebody who does a lot of plea bargaining. But Brendan is somebody that I really – if you want to be a tough guy, want to be tough in the courtroom, no deals, it's the Brendan model.

MR. STERN: It's easier to do that as a prosecutor I would think than as a defense lawyer. Now you started as a municipal prosecutor in Cincinnati, then became a federal prosecutor. Today, of course, you're on the other side. Which do you prefer? Which table do you want to sit at?

MR. MARTIN: I tell people all the time that it's like being – I don't compare myself to athletes all the time, but it is free agency, and when you're playing for the Washington Wizards, you're going to give 100% of your effort to the Wizards. If they trade you to the Cleveland Cavaliers, you're going to give 100% of your game and effort to the Cavaliers. That's my approach to the practice of law.

MR. STERN: That implies the skills required are equal on each side? Is that so?

MR. MARTIN: I believe that as a prosecutor, that I was a very good prosecutor, and I was able to take those very same skills, very same personality, to the defense side and use those. I think it is good lawyering.

MR. STERN: I mentioned your start in Cincinnati, and this might be a good point to note a few biographical details. You were born and raised in Sewickley, Pennsylvania.

MR. MARTIN: Yes. That's about dozen miles from Pittsburgh.

MR. STERN: In what year?

MR. MARTIN: 1949.

MR. STERN: So you're in the mid-60s. I noticed in various bios they didn't have your birth date. Do you intentionally leave it off?

MR. MARTIN: I'm very comfortable with my age. As a matter of fact, when I have jury trials, I will say to a jury, "I've been trying cases for almost 40 years, and at 65, and I'm very proud to be a practitioner for 40 years, and I'm still very active." I'm very comfortable with my age.

MR. STERN: The neighborhood, the area, where you grew up is very upscale. The high school, for example, that you attended is rated by *US News & World Report* as among the top 2% nationwide.

MR. MARTIN: It's a great high school.

MR. STERN: What's the name of the high school?

MR. MARTIN: Quaker Valley High School.

MR. STERN: And you did athletics?

MR. MARTIN: I played at some point in time through high school probably basketball, baseball, track, and my best sport was track.

MR. STERN: You must have studied a little bit because I think you did well in school.

MR. MARTIN: I studied, yes.

MR. STERN: What did your parents do?

MR. MARTIN: My parents are both deceased. My dad was a steelworker. He worked his entire life, he was a very proud Pittsburgh Steeler fan, and my dad had a lot of pride in working at a steel mill outside of Pittsburgh. They had eight children. My mom was a homemaker and would sometimes do catering for some of the families in the area.

MR. STERN: So you had seven brothers and sisters.

MR. MARTIN: I had six sisters and one brother.

MR. STERN: They are all still alive?

MR. MARTIN: They are all still alive. My older sister, who was a teller at a bank in Detroit, is retired. My brother, who is retired, is an artist. He's a painter. My next sibling was a deputy warden at Rikers Island in New York. My sister was a career post office employee. I have a sister who is a flight attendant, still serving as a flight attendant. And others are homemakers. We are a very close family.

MR. STERN: You went to work, or at least had your first job, at age 12. Is that so?

MR. MARTIN: That's true.

MR. STERN: Doing what?

MR. MARTIN: Struggling on the golf course carrying golf bags as a caddy. At 12, those bags are very heavy. In Pennsylvania, they require work permits, and you're able to get a work permit at 12, and I became a caddy.

MR. STERN: Do you still play golf?

MR. MARTIN: I love golf.

MR. STERN: What's your handicap?

MR. MARTIN: I'm on record [laughter].

MR. STERN: You're under oath.

MR. MARTIN: I have a 10.5. So I can sometimes hit it.

MR. STERN: You came here to Washington to go to college?

MR. MARTIN: Correct.

MR. STERN: At Howard. Why there?

MR. MARTIN: Growing up in Sewickley was a unique experience for me. A unique experience in the sense that it is the original home of the Carnegies and Mellons. The Heinz family has their estate there. It is a very, very wealthy community. Many of the corporate executives from Pittsburgh had their residences in Sewickley, and there is just a lot of old money in the area. Growing up there, as someone of the working class parents, I had friends who lived in those homes, I had friends who were athletes with me that I would see their lifestyle and their parents' lifestyle, and I thought the only way for me to climb that ladder is to buckle down in school. I wanted to go to college, I didn't know where, and I came down to Washington to visit a friend, and he took me around the campus of Howard. And Sewickley, as we described, there are not a lot of African-Americans in Sewickley. There are enough that I have African-American friends, but it's a real minority. I did not know any African-American lawyers in Sewickley or Pittsburgh. So I came to Howard and had a chance to walk through the law school and the medical school, and I saw all the students, and I thought this is a real eye-opening, different experience for me, and I thought I would try it.

MR. STERN: Why didn't you end up in medical school?

MR. MARTIN: Science is probably not my best subject [laughter]. Interestingly, my two older daughters, one is a doctor with an MD and Ph.D., and the other is a chemist. So science does not come from me, but somewhere in the family.

MR. STERN: Tell us about your children. I know that you have twins. Fraternal?

MR. MARTIN: A boy and a girl. I have 11-year-old twins, William, Jr., and Amina.

MR. STERN: Are they going to be lawyers?

MR. MARTIN: William wants to be a lawyer, but he doesn't like what I do. He doesn't want to be a courtroom lawyer. He wants to be a patent attorney. And Amina right now is a budding gymnast and wants to possibly go to law school or – you'd appreciate this – she wants to be a journalist.

MR. STERN: You have older children from a prior marriage?

MR. MARTIN: I have two older children from a previous marriage. I have a daughter. She does not like me to tell her age. She has two beautiful children, my grandchildren, they're 10 and 8 years old, and I have a daughter who is a doctor who is 38 years old. I'm very, very proud of both of them, and they are both very smart children.

MR. STERN: Then you went to law school much closer to home?

MR. MARTIN: It takes about 4 ½ hours to get to Cincinnati from Pittsburgh.

MR. STERN: Why Cincinnati?

MR. MARTIN: I received a full academic scholarship to the University of Cincinnati Law School, so I was able to attend law school with a full tuition remission and a stipend for room and board. First off, it's a good law school.

MR. STERN: Did Joe DiGenova go there?

MR. MARTIN: Joe DiGenova went there, and at the time, they were trying to increase students from a diverse student population. I did very well at Howard, and I did very well on my LSATs and received a scholarship. I applied to probably 10 or 15 law schools and was admitted to I think almost every one

of them. But Cincinnati was a smaller city. I had friends from Howard who had gone there, so I thought I would have somebody who would help me understand the process. I'm very glad that I went to the University of Cincinnati.

MR. STERN: Joe DiGenova, as a former U.S. Attorney, is sort of hard-driven, high volume, not quite like yourself. Do you have a special bond with him because he went to the same school?

MR. MARTIN: Joe and I are friends. Judge Stanley Harris was the U.S. Attorney who hired me, but Judge Harris left when he was appointed to the federal bench, and Joe took over as U.S. Attorney. My first month in the office, Joe was the U.S. Attorney. You may not know this, but in the early days, probably up until the mid-1980s, there was a requirement in the U.S. Attorneys' Office in Washington that everybody had to go through essentially a three-year rotation before you moved into prosecuting federal cases. So it was the Superior Court training ground and then a select few would move into the U.S. District Court. Well, when I interviewed, they saw that I had been a municipal prosecutor, which is equivalent to doing a lot of the work that the Superior Court prosecutors would do through grand jury, and I then had become a federal prosecutor in six years, and we debated what do we gain by having you go back through a misdemeanor rotation and an appellate rotation, and this rotation, so Joe DiGenova told me that if you're as good as we think you are, and as good as you think you are, we'll give you a chance to bypass this rotation. So they gave me a chance to try a few cases. I did

very well on those cases, and I was one of the first Assistant U.S. Attorneys in Washington hired to bypass that rotation. So Joe and I remain friends. It took years before we realized that we were both graduates of UC. Joe is a graduate of the undergrad. I think Joe went to UC on a music scholarship. I think it was music. Joe is a singer, and I think he went to the Conservatory of Music as an undergrad.

MR. STERN: I think he comes from a musical family.

MR. MARTIN: And because we're both very well-known in the area, UC invites Joe and me both to events that they host here in the city.

MR. STERN: Just for the record, let me get this down. You were a municipal prosecutor in Cincinnati for about three years. Right? Then you went to Dayton?

MR. MARTIN: I joined the U.S. Attorneys' Office in the Southern District of Ohio, which is Cincinnati, Dayton, and Columbus, and I was assigned to the Dayton office.

MR. STERN: And you were there for not too long, two years? Then you went to San Francisco?

MR. MARTIN: Correct.

MR. STERN: To?

MR. MARTIN: To the Organized Crime Strike Force. That was my dream job.

MR. STERN: Dream because of its jurisdiction or because you wanted to be in San Francisco?

MR. MARTIN: Both. I'd always wanted to go to California. I always wanted to live in California. I had never been to San Francisco before, but the Justice Department recruited me to come to San Francisco with the Strike Force.

MR. STERN: You left your heart in San Francisco?

MR. MARTIN: She came back with me [laughter].

MR. STERN: You were there for what, four years?

MR. MARTIN: Just over four years.

MR. STERN: And then you transferred to D.C.?

MR. MARTIN: While I was there, I had a very interesting assignment, and the assignment was the U.S. Attorneys' Office in Anchorage, Alaska, recused the entire office of a major investigation. So I was assigned to go to Anchorage for three years. I would do two weeks on in Alaska and two weeks home. I did that for close to three years. So I spent a lot of time in Alaska, and the reward at the time was after spending all that time in Alaska, there was a triangle. You could go from San Francisco to Anchorage to Honolulu. We had an office in Honolulu, and I was given assignments in Honolulu to work with a U.S. Attorney there for a week or two doing grand jury presentations.

MR. STERN: How did you miss the Virgin Islands? [laughter]

MR. MARTIN: That was controlled by D.C. Did you know that?

MR. STERN: I thought it was the First Circuit that had the Virgin Islands.

MR. MARTIN: No, but the D.C. U.S. Attorneys' Office sends a lot of their assistants down there.

MR. STERN: I can't imagine why. How did you then get to Washington? I believe your father was ill and you asked for the transfer?

MR. MARTIN: I love San Francisco. The weather is beautiful, and it's a beautiful city. I thought I was going to establish my new home in San Francisco, and I

received word from my mom that my dad had been diagnosed with terminal cancer, and he had been given six months to live. So I asked the Justice Department if they would transfer me from San Francisco to the east coast so I could spend some time here on the east coast. Judge Harris and Joe DiGenova hired me and brought me to Washington as an Assistant.

MR. STERN: And you worked your way up to the Number 3 position in the U.S. Attorneys' Office in the District.

MR. MARTIN: I did.

MR. STERN: In 1991, you left, is that right, to enter private practice? And in fact you didn't open your own office until about three years ago, 2012?

MR. MARTIN: I opened this office in 2012, and I have been with several big firms.

MR. STERN: What firm did you start with?

MR. MARTIN: I started with Eckert Seamans, a Pittsburgh-based firm. The U.S. Attorney in Pittsburgh at the time, his name was Jerry Johnson, Jerry and I are friends to this day, Jerry was ready to leave the U.S. Attorneys' Office and was interviewing with various firms in Pittsburgh. There were two or three firms that were hiring, and he called me to say, "I don't know if you ever think of leaving, but there's a firm who's looking for a lawyer with your background." That was Eckert Seamans.

MR. STERN: Why did you leave the federal prosecutor's office?

MR. MARTIN: I loved the job, so when you asked me earlier which one did I enjoy the most, the most satisfying in the sense of professional opportunities was the U.S. Attorneys' Office. The most satisfying in terms of financial compensation

has been big firms and private practice. So there was a tradeoff. At the time, I had one daughter in college and another daughter who would be going shortly thereafter, and for financial reasons, I took advantage of it and I almost tripled my compensation from the U.S. Attorneys' Office.

MR. STERN: And then you went to Dorsey & Whitney, which is a Minneapolis firm?

MR. MARTIN: No, I went to Dyer Ellis. Dyer Ellis, which was at the Watergate, and Dyer Ellis merged with Blank Rome, so I then went with Blank Rome for a couple of years. After Blank Rome, I had the opportunity by then to conduct the Chandra Levy investigation. I had a lot of headline-grabbing cases in the sports area. In my term at Eckert Seamans in Pittsburgh, they represented all these sports teams – the Pirates, the Penguins, and the Steelers – so I learned to do those cases, and I got a lot of publicity from those at Blank Rome. So by then, I had a lot of headhunters ask me, “Would you like to relocate?” and I went to Sutherland, Asbill & Brennan for two or three years and had a very successful practice there. Howrey Simon – later Howrey – was looking for trial lawyers to do some of their big projects with some of the corporate clients and offered me a package that I could not turn down.

MR. STERN: Howrey had about 1,000 lawyers.

MR. MARTIN: Almost 1,000 lawyers.

MR. STERN: And here you are with a six-member firm. Quite a difference.

MR. MARTIN: Quite a difference.

MR. STERN: What's wrong with 1,000 lawyers?

MR. MARTIN: You don't know -- I probably knew 100 of the 1,000, and I probably worked with 10 of that 100. But I like big firms. I enjoy big-firm practice because right now if we were going through a client interview and you were to say to me, 'Billy, I have a problem with these antitrust issues.' While I understand antitrust law at a basic level, I would pick up the phone and call one of my antitrust partners and have them come down and listen, and there might be something that that partner could help with. Or a patent lawyer. So it's easier to fix problems by just making a call to one of your partners.

MR. STERN: You mentioned Howrey. Why did Howrey implode in your judgment?

MR. MARTIN: I wish I knew. I know that the reasons that are stated is that they were overextended in anticipation of a couple of huge contingency cases, and the firm accepted a couple of huge antitrust contingency cases that did not conclude in time to satisfy creditors on lines of credit.

MR. STERN: You've not been to my knowledge a plaintiffs' lawyer, so are you unaccustomed to contingency cases?

MR. MARTIN: They had just been so financially rewarding to the firm. They were very handsome settlements, and had that settlement come on time, it would have been very handsome to me as an equity partner with the firm.

MR. STERN: Would you take a contingency case?

MR. MARTIN: I do. We're very selective in taking them. My partner Gitner does some contingencies, but we're pretty selective in taking them.

MR. STERN: That recent *Washington Post Magazine* article that I mentioned described you as a “\$650 an hour lawyer.” It quoted a judge who said you were very expensive but worth it. Is this a prestige thing, the lawyer’s hourly rate?

MR. MARTIN: Actually, they didn’t get that right because I charge \$750 [laughter].

MR. STERN: And if we sit here long enough it will be \$850. [laughter]

MR. MARTIN: I charge \$750. I was \$900 an hour at Howrey. So I know the marketplace for the quality of my services in corporate America, With lower overhead I reduced that, but I know that if I’m representing a Fortune 50 corporation on an internal investigation, they want the best lawyer that they can have, and I think they realize that I’m probably not a \$600 an hour lawyer in the marketplace. But I represent a lot of individuals now, and it’s difficult for individuals on a trial. The minimum amount for trial is going to be probably a couple hundred thousand dollars for any major trial in federal court. We just went through a trial, and I can tell you it was over \$200,000 in expenses. And those are for individuals without a Directors and Officers insurance policy. If you cash in a mortgage or take a home loan, it’s difficult for individuals, so we charge a lower rate.

MR. STERN: We hear so much about our litigious society and the profusion of lawyers and lawyering, in fact, many people who deserve a lawyer and need a lawyer can’t afford one because of the high cost of preparing for trial and the trial itself. Do you lament that the profession isn’t able to provide adequate care and coverage for those who don’t have that kind of money?

MR. MARTIN: I do. And we make a commitment to do a lot of pro bono work to give back to the practice. If you were to ask me what would I like to have as one of my lasting challenges or legacies, that would be the improvement of quality of representation to the indigent. I sometimes go down to the courthouse, and I'll watch the public defenders who are in the courthouse, all very good lawyers, all very eager to successfully represent their clients, but when I walk in there retained with one client having had days, weeks, or at least overnight to prepare myself for my appearance, that public defender may walk in with ten or fifteen clients that day. The system is overburdened, and while we're giving them good lawyers, they're competing against prosecutors sometimes who have one case or two cases. So if you get a public defender who is there, they're competing against somebody who's had an investigation going for three years and have had the FBI, the IRS, and other agencies working with them. So in terms of the balance, I really do lament at times that we're not able to provide greater representation for the poor.

MR. STERN: Could it be argued that we don't have enough lawyers?

MR. MARTIN: I suppose as one lawyer to another I absolutely would argue that, but I think that the economy and society feel differently. Enrollment in law schools has dropped. The debt ratio to income has been so out of line that when a lot of these young lawyers come out, they're hundreds of thousands of dollars in debt and then can't find jobs. So I think it's a great education, and it's a great profession. I'm very honored to be a member of the Bar, but I think we could do better at creating opportunities for more lawyers other than the

mega-lawyer. When I was at a big firm, we would hire associates at between \$150,000 and \$175,000 right out of law school. They don't know the first thing about actually lawyering, and corporations started resisting paying the first- and second-year associates because they were being taught training on the job by those corporations. So I think there's a way to bring those lawyers in, train them, more on the firm expense as opposed to client expense, and teach them how to lawyer as opposed to teach them how to bill.

MR. STERN: Some years ago, among well-regarded law schools, it was not uncommon that they would forgive the indebtedness of students who would go into public interest law. You don't hear much about that these days. Has that disappeared? Should more of it be undertaken?

MR. MARTIN: I think more of it should be undertaken. We have these volunteer programs that are hosted and sponsored by the President and Congress, the President on his volunteerism. We should offer the same type of incentives to lawyers. Peace Corps. We have doctors. We have lawyers. Maybe we should offer the same type of assistance for debt relief to those who are willing to commit to going into public service. Public service could be representing the indigent, representing the homeless, pro bono work. Absolutely.

MR. STERN: The Legal Services Corporation from time to time comes under attack in Congress and elsewhere with efforts being made to reduce its funding. A number of lawyer organizations, such as the American Bar Association, have successfully countered that over the years. But it's a recurrent threat to the

system. Are you encouraged by what you see in that direction, or do you still have to keep working at it?

MR. MARTIN: I think we have to keep working at it. I'm not encouraged by it. I'm very active with the American Bar Foundation, and those are issues that are near and dear to me, and I think we have a lot of work to do. If anybody one day listens to this or one day would read a part of this would ever spend a day behind bars or an hour behind bars, in the process that you go through, even as a lawyer, when I walk into a prison or when I walk into a jail, when you hear that door slam behind you, and you look at people and you know that you're the link to the outside world with them, I think if somebody would just study that, we would want to be very cautious about locking people up for the sake of locking them up.

MR. STERN: Do we lock them up for too long a period?

MR. MARTIN: Yes. Some. Which is what happened with our Federal Sentencing Guidelines. Judges took those guidelines as a mandate that was mandatory, as opposed to discretionary. So it has taken years to whittle that down and to translate that into no, they're only advisory. And the mandatory interpretation had a lot of people locked up for a long period of time, especially for drug offenses.

MR. STERN: People judge you on your performance in the courtroom, and yet that's sort of the tip of the iceberg. For every hour that you spend on your feet in the courtroom, how much time do you put into preparation?

MR. MARTIN: That's an interesting question. When we go through and estimate what it would cost to try a case, we anticipate that it's probably two hours for every courtroom hour. And that's just in terms of trial preparation. So if we have a trial that's going to take two weeks, we're probably two to four weeks in preparation for that trial, full time, and that's even before you get into understanding the case. We put a lot of time into the case. That has been my motto over the years: preparation, preparation, preparation.

MR. STERN: When the system does fail and someone is convicted who is innocent, frequently the lack of time for the lawyer to do that kind of preparation is cited. But it may also be true in some instances that the prosecution has withheld evidence which would have been, maybe, even dispositive of the case. You have been on both sides. Is the problem real or is it exaggerated, of prosecutors withholding important evidence?

MR. MARTIN: I think it's real, and it's the fox guarding the henhouse. You ask prosecutors, and you hope that in good faith they give you honest answers, but you're asking prosecutors to look through their documents and tell the defense which ones may be exculpatory. There's a lot of mischief that occurs from time to time by prosecutors in turning over those documents. I can tell you that as a former prosecutor, that's not the way that I prosecuted, nor do I think that's the way that most prosecutors prosecute. But it does happen, and it happens far too frequently.

MR. STERN: That *Washington Post* article said, “Everything Martin does is measured and calculated,” yet you come across as very affable, relaxed, uncomplicated, a straight-shooter. Are you in some sort of disguise?

MR. MARTIN: I think what it is, and I think I’m probably observed on two different settings. In court, I probably am very, very measured, but if you ask me to have an off the record or on the record conversation not in court, I generally will tell you what’s on my mind.

MR. STERN: Do you bluff? Do you ever bluff in private? Do you say you have something that you don’t? Or say you intend to do something that you don’t intend to do?

MR. MARTIN: I once had a lawyer tell me that once you start the process in a defense capacity, it’s a ritualistic dance, and all the parties to that dance understand all the projected possible moves. Are there times when one party or the other may bluff? Probably. And it’s not a game of poker, but there are similarities, when you want to, you can’t blink too soon. And what I mean by that is if I want a prosecutor to dismiss a case, I have to argue vehemently why it should be dismissed. If I want a prosecutor to give me a deal on a guilty plea, I have to act as though I’m moving forward and not retreating, because when you’re retreating, they sometimes help propel you backward.

MR. STERN: Do you ever imply that you have a straight flush when in fact you’re holding a pair of twos? You’re smiling [laughter].

MR. MARTIN: I can’t tell all my secrets here.

MR. STERN: Okay, we'll give you a pass on that one. Some lawyers keep scorecards of their wins and losses. Do you do that?

MR. MARTIN: I do not. People will tell you who spend a lot of time in the courtroom that you win some cases that you shouldn't have won, and you lose some that you shouldn't have lost, and for that reason, I don't. If you ask me meaningful cases, I could tell you the cases, but I've won some of those and lost some of those.

MR. STERN: What sticks in your mind? Considering all these celebrity cases that you've had, what sticks in your mind as the most memorable?

MR. MARTIN: The most notable case to me was the representation of Monica Lewinsky and her mother because, as a student of the law, to have been involved as counsel to a witness in an impeachment proceeding, was something that I never would have dreamed in my wildest nightmare. This is an opportunity for a young lawyer, and that was twenty years ago, for a young lawyer who was previously unknown to have shown that on these major investigations involving even impeachment, there's room for new lawyers.

MR. STERN: It was the media attention that made the case so memorable?

MR. MARTIN: Oh, no. For me it was quite the opposite. For me it was dealing with a special counsel. It was dealing with an impeachment proceeding. It was knowing that I had a witness who had key evidence and testimony. For me it was the process.

MR. STERN: Any matter that you've been involved in where the outcome really surprised you?

MR. MARTIN: That's a tough question because I don't think I have been. There are some times when, and excuse the informality of this term, a crapshoot, with what the decision might be. But I don't think there have been any where I've been knocked off my feet with the decision made. On every major case that I've been involved in, we have probably modeled every possible scenario. So no. While I say the practice of law is not a science, there are many parts of it where it is a science.

MR. STERN: And the result, was it a just one in each of these cases, or in some were you quite upset?

MR. MARTIN: I was upset. I was disappointed, that possibility wasn't anticipated.

MR. STERN: Can you give me an example where you were disappointed by the outcome?

MR. MARTIN: That was always a possibility, and you're hoping to beat the odds.

MR. STERN: You thought you would do better than you did.

MR. MARTIN: I thought we could do better than we did. Does it happen frequently? No. But when you've been around the practice of law for as long as I, you know that once there are twelve angry men – I'm really not referring to gender, it's the concept of that movie – where that battle in a jury between goes on between potential jurors. Once a jury gets a case, there's no telling what happens.

MR. STERN: Do you ever have any sense of failure?

MR. MARTIN: No. And the reason I don't have any sense of failure is that I really will say to a client that I think these are all the possible outcomes. This is what I think will happen if this witness says that or that evidence comes in, this is

what I believe. I won't give odds, but I'll tell people what I believe may be the outcome. What do you think will happen? Well if this happens, that. So I haven't been disappointed.

MR. STERN: How long do you chew over what occurred?

MR. MARTIN: I chew on it for a while. A month after a verdict I still play parts of a case through my head. There have been years when I've thought back about how did that happen and was there a way to prevent it, or if I am the victor how did I do that?

MR. STERN: Have you ever had a situation where you know you did your best but the client blames you for some lack of skill?

MR. MARTIN: Absolutely. And one of the things that it took some adjusting to as a defense lawyer is I do some civil litigation, but I'm not the civil lawyer in litigation. I'm a litigator in the courtroom with a civil litigator there with me. So for pure trial skills I'll try civil cases with somebody who has an expertise in patent or commercial law. It's just the lawyering that I'm doing, and in a civil case, the clients know you're fighting over money, and they may be disappointed, but they're realistic in terms of chances. And civil clients, clients involved in civil matters, who sometimes are disappointed, unless you've committed negligence or malpractice, understand the risk.

MR. STERN: Have you ever been sued for malpractice?

MR. MARTIN: Never. Criminal clients, though, you're the first person on their mind if they're convicted, so I frequently am blamed. And what's interesting, I've had clients who I believe, based on the evidence, were as guilty as charged.

If we come close to getting a hung jury or not guilty, you raise their expectations.

MR. STERN: The reverse of what we're talking about here is if you were so skillful that you manage to win the acquittal of someone you think is guilty, has that occurred?

MR. MARTIN: Yes.

MR. STERN: And? Any remorse or do you feel you let society down?

MR. MARTIN: No, and the reason for that is that even though I believe that there's a chance the person committed the crime, the system, the rule of law, is that it has to be proved, and if it's not proved, the system works.

MR. STERN: If you believe your efforts put someone who's dangerous back on the street, what are you going to do about it?

MR. MARTIN: My job has been completed. I'm asked that question occasionally, and I think I've thought it through and I've come to the conclusion that while my profession may be different, I am no different than a surgeon who saves the life of a very bad person. It's not my job to make the decision whether that person stays in jail or out of jail. It's my job in my profession to see that their Constitutional rights or their rights in the courtroom are protected. And I do that to the best of my ability, and if I win some that I shouldn't, I won it because the rule of law applied. I don't have any remorse.

MR. STERN: So you go home and you do your gardening – that's your principal hobby, right?

MR. MARTIN: It used to be. My hobby now is just golf.

MR. STERN: Not travel, not skydiving, scuba diving?

MR. MARTIN: And walking. Eighteen holes, which will take 4 ½ hours, with no business talk, is very relaxing.

MR. STERN: I'm curious, what kind of a car does a celebrity lawyer drive?

MR. MARTIN: I love cars. My favorite car is a Porsche. I drove that until somebody hit me, not long ago, and then I wanted a bigger car so I moved to a General Motors Cadillac.

MR. STERN: Did you sue the fellow who hit you? [Laughter]

MR. MARTIN: We worked it out.

MR. STERN: Do you have a special license plate?

MR. MARTIN: I do not. No vanity tags.

MR. STERN: O.K. That's an important measure of a man.

MR. MARTIN: For me, I enjoy it. I don't get a lot of anonymity, so I would not want to ride down the street having people see me in a convertible. If people say he's driving a Porsche, they would talk about it. I would like to not bring a lot of attention to myself.

MR. STERN: We don't have cameras in the courtroom. You would be very much at home in front of the camera. Are you disappointed that we don't have cameras?

MR. MARTIN: Actually I have tried cases on live TV. The Jason Williams trial in New Jersey, the former NBA player, was televised. And it was very interesting. Blackberries were really just starting to take off so it was very interesting to have a witness, and this is a true story. Direct examination of a witness has occurred and I'm preparing to cross-examine the witness, and

one of my associates, a lawyer in the audience, hands me a Blackberry, and it has a message from the person on there who says, "I am 'so-and-so', the ex-girlfriend of that witness. I know for a fact that 'blank.'" So I look at that and think, wow. I have a good faith basis now to ask questions. I'll say, "Do you know Ms. So-and-So?" The answer is yes. "Do you have a relationship?" Yes. So now I go forward with my questions. It's interesting to have live, real-time questions fed to you.

MR. STERN: But you're taking a certain risk, you haven't checked – or perhaps you have – before?

MR. MARTIN: We had some background. We knew who the person was. It wasn't a blind call. It was somebody who we knew and we could not get to until the person heard the witness tell an untruth on the witness stand.

MR. STERN: The argument against cameras would be that it affects the manner in which the parties, witnesses, the judge, et cetera, perform.

MR. MARTIN: I'm not in favor of cameras in the courtroom, and I'm not in favor of cameras in the courtroom because if a witness has yet to testify but they've seen the testimony of the previous witness, they could shape their testimony now to fit that which has already occurred, and I think that's dangerous.

MR. STERN: We talked about the qualities that are desirable in lawyers. Has a judge ever bawled you out?

MR. MARTIN: Absolutely.

MR. STERN: Why?

MR. MARTIN: Not for long, but I have been verbally instructed to have a seat and “Mr. Martin, you are finished with that argument,” and I was not finished with the argument and I wanted to continue making a record, and I said, “Well I would like to make a record.” And he said, “You will not make a record, you will sit down.” I said, “Of course I will sit down.” And I would submit in writing what I wanted to say on the record. But I am somebody who recognizes the authority of the bench and bar, and I’m not going to be chastised. I’m a litigator, and in the heat of battle sometimes your adrenaline is really revved up, and in a contested trial, and you have to catch yourself. I’m always very respectful of a judge.

MR. STERN: The quality of judging, is it improving?

MR. MARTIN: In Washington? There are some very good judges. They’re very smart. There are some very good judges. I have been elsewhere in the country and the quality is not as high where politics enters into some of these issues. But overall I think that most judges take their job and their duties seriously.

MR. STERN: I find the quality of judging substantially better in recent years.

MR. MARTIN: It probably has.

MR. STERN: Let me ask you finally in reference to Monica Lewinsky’s mother, who you represented, in that *Washington Post* article she said, “Billy didn’t just care about the law, he also cared about how their clients were affected by the law.” You’ve been recognized by your clients as somebody who really works -- maybe we should underline that word “works” -- in the best interest

of his clients. You candidly assess situations. You negotiate. You work to create the best possible defense. Would you like that to be your epitaph?

MR. MARTIN: I think that's a great way to wrap this up. I think that all those factors are the way I like to practice law. People come to me with problems, and I like to think that I attempt to understand the problem and to assume that they are in a better position when they leave my office than they were when they came in.

MR. STERN: Thank you.

MR. MARTIN: Thank you.

