

ORAL HISTORY OF THE HONORABLE THOMAS PENFIELD JACKSON
Myles V. Lynk, Esquire, Interviewer
First Interview - March 28, 1995

MR. LYNK: Judge Jackson, my name is Myles V. Lynk. I am interviewing United States District Judge Thomas Penfield Jackson. The date is March 28, 1995. This is Tape I of the interview in the series of the Oral History Project of the Historical Society of D.C. Circuit. Judge Jackson, when we spoke briefly before, you had indicated that you were born actually in the District of Columbia; is that correct?

JUDGE JACKSON: That's correct. I was born at the Columbia Hospital for Women.

MR. LYNK: How long did you live in D.C.?

JUDGE JACKSON: Probably for about the first year, year and a half of my life, and then my family moved out to Montgomery County, Maryland. We were one of the first suburban families and, I grew up in the little town of Kensington, which was then a little country town.

MR. LYNK: When you say "a little country town," did you actually live on a farm – or in a suburban —

JUDGE JACKSON: No, no. It was a suburban house.

MR. LYNK: Suburban house?

JUDGE JACKSON: It was a suburban house, but we were the, I think probably the third house on a residential street, which is now perhaps 50 houses. My parents built their own house out there.

MR. LYNK: What was the address?

JUDGE JACKSON: It started off as 111 Franklin Street and then it was changed to 4221 Franklin Street, many years after we first got there. We had woods on both sides, woods across the street.

MR. LYNK: What was it like growing up there?

JUDGE JACKSON: It was really a wonderful experience. The whole area between what is now Cedar Lane and Rockville Pike was all undeveloped forest land and it was a wonderful place for kids to play. Rock Creek wandered through the whole tract, which probably was a thousand acres or so and so we had all of that forest area to play in. My dad used to commute in. He would take a bus to Chevy Chase Lake and then get a trolley car that ran into Chevy Chase Circle.

MR. LYNK: The famous old trolley cars of the District.

JUDGE JACKSON: Oh, yes.

MR. LYNK: Did you have any brothers or sisters?

JUDGE JACKSON: One brother – younger brother, who is an engineer.

MR. LYNK: And how long did you live on Franklin Street?

JUDGE JACKSON: Oh, I grew up there. We lived there until I and my brother went away to college, and my parents then moved back into the District of Columbia and lived on MacArthur Boulevard. Both of my parents are native Washingtonians.

MR. LYNK: As are you.

JUDGE JACKSON: As am I, yes.

MR. LYNK: Where did you go to school?

JUDGE JACKSON: I went to Kensington Elementary School in Montgomery

County, part of the Montgomery County school system and then, after I graduated from sixth grade, I went to St. Albans School. I had a scholarship as a choir boy to the Washington Cathedral Choir of Men and Boys and with appointment to that choir comes a scholarship to St. Albans. So for the next three years while my soprano voice held, I was a choir boy at the Cathedral and attended St. Albans. And, then after my voice would no longer support me as a scholarship student, I went back to B-CC High School in Bethesda. Well, it was a wonderful experience. The education at St. Albans is splendid. But, I think perhaps that the lasting memory of that experience for me is working with the Cathedral Choir. It is a very, very accomplished group of musicians and the choir boys, small as they are, are expected to live up to the professional standards of the choir master at the Cathedral. You may have seen in the paper, I guess just over the weekend, that Paul Calloway died.

MR. LYNK: Yes.

JUDGE JACKSON: Paul Calloway was the choir master when I was there and he was a very vigorous and demanding task master, but in being so, he gave us an absolutely splendid education in classical and choral music. It was a rigorous routine that we followed. We had rehearsals twice a day, as I recall; we sang two services on Sunday; we sang evening song services during the week and I can't remember what days – not every day, but several days during the week. And, much of my spare time as a student, as is true of all choir boys, was spent doing rehearsals, doing things with the choir. So the choir boys were somewhat isolated from the remainder of the student body at St. Albans.

MR. LYNK: Do you continue to have a love for choral music? Is that something you —

JUDGE JACKSON: Yes, although I don't sing any more. I haven't done any singing for a long time. Primarily because it does take a sustained commitment. You have to be available for rehearsals over a period of weeks or months and you have to be certain that you are going to be there whenever the performance is going to be given and I just haven't been prepared to make that sustained commitment. I love to listen to it still.

MR. LYNK: Now when you left St. Albans, you were in the ninth grade?

JUDGE JACKSON: Ah, I would have entered the tenth grade; I finished the ninth grade at St. Albans.

MR. LYNK: So you were entering the tenth grade?

JUDGE JACKSON: And then went to B-CC starting in the tenth grade.

MR. LYNK: Bethesda-Chevy Chase High School?

JUDGE JACKSON: That's right.

MR. LYNK: And how long were you there for?

JUDGE JACKSON: I was there until 1954 – three years – and graduated from B-CC in 1954 and went directly from B-CC to Dartmouth College.

MR. LYNK: Can you talk a little bit about your experience at B-CC?

JUDGE JACKSON: Well, B-CC was then, as I understand it is now, a very fine high school. The quality of the education we got was comparable to what I had received at St. Albans. So, I did not suffer any in terms of the education I was getting at B-CC, after having left St. Albans. One of the circumstances that I remember and I remember it, unfortunately, unhappily, was that B-CC was, as all Montgomery County Schools, all Maryland Schools were then, a segregated school. And, so, all of my classmates were white. I didn't have a black

classmate until I got to college.

MR. LYNK: The fact that all of your classmates were white, was that something that you noticed at the time?

JUDGE JACKSON: No, no, which I also regard as unfortunate. It seemed to us to be a very natural state. It seemed at that time to be as natural as it seems unnatural today.

MR. LYNK: Outside – you say you didn't have any black classmates. What would you say would have been your contact with anyone who was black at that time? This is the early '50s to 195 —

JUDGE JACKSON: Yes, early '50s. Of course, *Brown v. Board of Education* was decided the year I graduated from high school. Very limited. There was – I can't say that there was – there surely was no sustained contact with the black community and the contact was usually with those who were domestic servants or laborers.

MR. LYNK: So, is it fair to say, and, again, this is, I think is interesting to get a sense of what the Washington community was like in the '50s because that, in fact, there were at least two and maybe others, but at least two communities divided along racial lines and there was very little interaction between the two.

JUDGE JACKSON: Very much so. And, and overtly so. I remember that newspaper classified advertising for housing would be divided into “white” and “colored.”

MR. LYNK: When you would come into the District for shopping, or for visiting, or for shows, or anything, movies, or anything like that, did you come in contact with blacks just as part of a crowd scene? I understand that even some of the major department stores at that time were also, you would not necessarily come in contact with —

JUDGE JACKSON: It's possible. I don't remember having any extended contact, or any significant contact with the black members of the community and we did come into the city. That was where we went. There were no shopping malls and none of suburbia as we know it today, so a shopping trip was a trip down to F Street and G Street. A trip to the movies was a trip to the Warner or the Palace Theaters downtown. Restaurants, of course, they were all in the city.

MR. LYNK: There was no Beltway in those days,

JUDGE JACKSON: No, no Beltway.

MR. LYNK: So I guess commuting from one suburban area to another was fairly – I guess you would just have to travel on the surface roads —

JUDGE JACKSON: Yes, yes.

MR. LYNK: – and hope for the best.

JUDGE JACKSON: Yes, the Beltway made a major difference, I'm sure.

Rockville Pike, when I was growing up, was a two-lane country road that went virtually through uninhabited farmland from the Naval Medical Center all the way out to Rockville. On both sides of the road were farms and little country stores – distinctly rural civilization and I remember that one summer when I was working in a nursery, pulling weeds out of plants, I used to ride my bicycle from Kensington, out Rockville Pike, along the shoulder of Rockville Pike, to the nursery where I was working, and really had no fear of traffic because there wasn't much traffic out there. Something that no one could contemplate doing today.

MR. LYNK: I get the sense that one of your memories of growing up in your teenage years was that there was a sense of spaciousness, a sense of nature was very close to you.

JUDGE JACKSON: Yes.

MR. LYNK: Do you feel a sense of loss, that that's no longer —

JUDGE JACKSON: Oh, yes, very much so. Washington's a big metropolis now; it was, I wouldn't say a small town, but it certainly was a small city when I was growing up. I was here, of course, and remember the World War II years and observed Washington grow during that period of time. There was no question that it expanded perceptibly during the World War II years.

MR. LYNK: In the World War II years, you would have been — about —

JUDGE JACKSON: Oh, I was born in 1937, so I was 4 to 9.

MR. LYNK: What do you remember of those years?

JUDGE JACKSON: Well, I remember the “Back the Attack” rallies on the Monument grounds where all the military equipment was assembled, and if you bought a \$25 war bond, you could come down and crawl around tanks and planes and things like that. For a little boy, that was a wonderful experience. My dad was in the Navy at the time; he did not get sent overseas and was stationed in Washington, but he was in uniform, as were most of my neighbors' parents. I remember the scrap metal drives where in local communities people would collect scrap metal and there would be great heaps of metal debris on the street corner, waiting to be picked up to be made into munitions and weapons. But, of course, the war didn't touch us significantly. I do remember lying on the living room floor with my dad plotting out on a map the advance of the Allies up the Italian peninsula, and the events of D-Day, and after that, I was old enough to understand what was going on. I do remember stories of my mother's cousin who was a B-24 bomber pilot and who made many missions over Germany during the war. But these

really are the peacetime, home front-type recollections of a small boy.

MR. LYNK: And, of course, during that time Washington was full of a lot of people and a lot of very colorful people, men in uniform, things like that.

JUDGE JACKSON: Yes, yes.

MR. LYNK: Do you know what your father's duty station was, or what his position was in the military?

JUDGE JACKSON: You know I really don't. He had something to do with the allocation of raw materials between private industry and the munitions – the wartime industries. And he – much of his working time was spent with economists; he was a lawyer by training, and he was dealing with a bunch of Ph.D. economists and it was an interesting experience for him. Oh, I also remember rationing, too. I remember the stickers that you'd have to put on your windshield which would announce to a gas station owner your priority for getting gasoline. I remember my mother going to the commissary – the military commissary – and stocking up on groceries, many of which were C-rations and K-rations, which I liked. I thought they were great! And Spam; Spam was an ever-present staple.

MR. LYNK: Wasn't Spam introduced during World War II?

JUDGE JACKSON: I think so; I think so, yeah. Celebrated its 50th anniversary or something like that just a few days ago, few months ago.

MR. LYNK: Judge Jackson, what was your father's name?

JUDGE JACKSON: Thomas Searing.

MR. LYNK: Now he was a lawyer at that time. When did you first become aware of what that meant – to be a lawyer and that your father was a lawyer?

JUDGE JACKSON: Oh, I think I was aware of it fairly early on. My father was a lawyer in the sense that one could be a lawyer anywhere in the country. He practiced the sort of law that you would practice in Cleveland, or Detroit, or Philadelphia, or wherever. He was not in any sense a Washington lawyer; he was also a trial lawyer. He went to court and tried cases and usually, although not by any means always, represented insured defendants. He was a very, very capable trial lawyer, very able trial lawyer, and very much respected by his peers at the bar, and my memories of him are of enormous pride in my father. He had a very highly developed sense of the ethics of the profession – of being a principled advocate and lived that sort of a life – had no patience with dishonorable conduct by lawyers. He also had a very, very wonderful camaraderie with his colleagues at the bar. They were all good friends, vigorous adversaries in court, but good friends and very respectful of one another and they had little traditions that were – I gather are not observed today. One being, for example, if you won a case then it was the gracious thing to do to go to your adversary's office to pick up the check. Or, as a defense lawyer, if you lost a case, to go to your adversary's office to deliver the check to the winning lawyer. My dad also tells many stories, which reflect, I think, very well on the profession of that era, and maybe on society of that era. He used to tell the story about a client of his who was involved in a dispute, a boundary dispute with a neighbor, and the case was very nearly ready to go to trial when the deposition was taken by my father of the adversary who testified directly in contradiction to what his client said. And he came back and reported to his client what his neighbor had said on deposition. And his client said to him, “Well, if he says that, it must be true, because he would not tell a lie, and so we'll have to settle this case with him and dismiss our claim. I didn't know that he would say that and if he said it, I accept it.” It's hard to imagine an

event like that occurring today.

MR. LYNK: Do you think the community back then – there were more shared values, more shared —

JUDGE JACKSON: Oh, I'm absolutely certain of it, absolutely certain of it. It's – we've lost a large sense of community, I think – for whatever reasons. But certainly there was a sense of community within the practicing bar in the city of Washington at that time.

MR. LYNK: When you were in high school – when you were of high school age, back at Bethesda Chevy Chase, did you know then that you wanted to be a lawyer?

JUDGE JACKSON: I probably had a pretty good idea of it. I was torn, at that point – once I got beyond wanting to be the second baseman for the Washington Senators – I was torn between being a lawyer and wanting to be a journalist. I've always loved writing and I still love the writing part of being a lawyer and being a judge. But, I think that I had the conviction fairly early on that I was probably going to be better at being a lawyer than I would be anything else, including a journalist – and, with a few digressions along the way, I think that that's what I was planning to be from about the age of 15 or 16 forward. I also, during those years, got to watch the Army-McCarthy hearings on television and got absolutely fascinated in the whole process.

MR. LYNK: What was your impression of the lawyering in those hearings?

JUDGE JACKSON: Well, of course, Joseph Welsh was the maestro who put everybody else to shame there and I remember thinking that there isn't anybody in this hearing room who is of his caliber and I kept trying to think of ways how I would like to be on the other side – how could I oppose Joseph Welsh better than the people who were in the hearing room –

that were in the hearing room. But the whole idea of interrogation and cross-examination and points of order and motions to do this or that really got to me. It looked like fun. I thought I'd enjoy doing it.

MR. LYNK: Were there any fictional lawyers on television or anything like that in the early '50s?

JUDGE JACKSON: Perry Mason may have been around —

MR. LYNK: Okay.

JUDGE JACKSON: There was a program that I thought was pretty good but I think that that came somewhat later. It was a program called “The Defenders.” I don't know whether you remember that or not.

MR. LYNK: Yes, yes I do.

JUDGE JACKSON: A father and son trial team.

MR. LYNK: With E.G. Marshall as the father.

JUDGE JACKSON: E.G. Marshall was the father. And they raised – it was a very mature, sophisticated program. They raised issues that were very ambiguous and allowed for a good deal of sympathy either way. Ethical dilemmas that lawyers confront every day that you never had heard of before. But those were I think of a later era. I think that was the late '60s or early '70s.

MR. LYNK: So in 1954 you were about ready to go to college. How did you come to Dartmouth?

JUDGE JACKSON: Encouraged by my father who knew a number of Dartmouth alumni and had been very impressed with not only these men – Dartmouth was all

male at the time – but also with their loyalty to and love of the college. There was an esprit on the part of the Dartmouth alumni of his acquaintance which he admired. He had gone to school at night at G.W. and while he enjoyed G.W. and did well there, there was no sense of college spirit as such and he always wished that he had seen that. So he introduced me to a number of Dartmouth alumni who were indeed very enthusiastic about the college and encouraged me to consider it. I applied to several other schools, but it also turned out that I received a Navy NROTC scholarship and Dartmouth was the only school of those that I had applied to which had an NROTC unit so that was pretty much foreordained once I was accepted both by the Navy and by Dartmouth.

MR. LYNK: Tell us a little bit about your experiences in Hanover, those four years there.

JUDGE JACKSON: Well it was —

MR. LYNK: Or, in New England generally, I guess.

JUDGE JACKSON: I had traveled through New England with my family before but had not spent any time there.

MR. LYNK: You were saying that you had visited New England with your parents, but you'd never spent any time there before you went up to Dartmouth.

JUDGE JACKSON: Going to Dartmouth was a brand new experience and not altogether a happy one. Hanover, New Hampshire, was a lot more remote from centers of civilization then than it is today. There were no interstate highways and the public transportation to and from Hanover was very sporadic and very primitive. I remember going up there during my freshman year from Washington, leaving on the Montrealer at three o'clock in the afternoon

here and arriving in the railroad station for Hanover, which was White River Junction, Vermont, at two o'clock on a bitter cold – 2 a.m. – on a bitter cold February morning, and thinking, why am I doing this? Dartmouth was also all male at the time and, at least for freshmen, the opportunities for socializing with members of the opposite sex were few and far between. Freshmen weren't allowed to have cars and so it was a rather spartan existence during the freshman year. From freshman year forward it was a wonderful experience. A splendid education; a very fine group of men, of young men, and I, from the sophomore year on, enjoyed Dartmouth very much and still feel a great loyalty and affection for the college. I still have a picture of it on my wall and have done things with the alumni organization both at the college and the Washington Dartmouth organization.

MR. LYNK: What was your major?

JUDGE JACKSON: Government.

MR. LYNK: Did you do any extracurricular activities? Well, you were in ROTC.

JUDGE JACKSON: I was in ROTC and that probably was my primary extracurricular activity except for my fraternity, which was very important to me then as fraternities are now. And as much matters of controversy on campus then as they are now, because their influence is decidedly both positive and negative. I happened to have the good sense to join a very good fraternity which I suppose would be described as a straight-arrow fraternity. We were always academically first or second on campus. We had very fine intramural athletic programs. We competed in all the other areas in which the fraternities competed with one another: intra-fraternity plays, debate tournaments, things like that, and

always did well.

MR. LYNK: What fraternity?

JUDGE JACKSON: Delta Upsilon. It is now defunct at Dartmouth.

MR. LYNK: During the summers while you were at college, did you come back to Washington, or did you work in the New England area?

JUDGE JACKSON: The Navy required that you undergo naval training during the summers. So, my first summer between freshman and sophomore years I was a midshipman on a cruise on the U.S.S. Albany, a cruiser, which went from Norfolk, Virginia, to Scandinavia. It went to Oslo and Stockholm, and I fell hopelessly in love in Stockholm, and came about this far from deserting the Navy which would have ended my naval and legal career shortly. But I had sense enough to get back on board ship. We went then from Stockholm to Guantanamo Bay, Cuba, and then back to Norfolk. But that left only about three or four weeks at the end of the summer before college started again.

MR. LYNK: How long did the ship stop in Stockholm?

JUDGE JACKSON: Oh, I guess about five, six days.

MR. LYNK: So in five, six days you were able to fall hopelessly in love?

JUDGE JACKSON: I ran into a girl on the street. We were – it was a mutual attraction and the last night we were there, I besought her to let me take her out to dinner at the best restaurant in Stockholm and, she was very reluctant to go, which I discovered was because she had another date that she would have to break and she didn't know whether – she didn't expect me to ever be back again. But she did agree to go out to dinner with me, and it just so happened that the reporters for the feature page of the Stockholm daily newspaper were looking

for a photo opportunity for the American midshipmen who were about to depart the following morning, and they took a picture of us having dinner in a restaurant in Stockholm, and I discovered later on that it was published the next morning in the Stockholm newspaper and the date that she had broken saw the picture. I don't know what that did to her romance, but it was a lot of fun for me. Then, the summer between sophomore and junior years, the Navy introduces its NROTC scholarship students to the Marine Corps, so we spent three weeks in Little Creek, Virginia, being taught how to be Marines, or what it was like to be a Marine. Then the next three weeks were spent in Corpus Christi, Texas, where they gave us an introduction to naval aviation and we were given the rudiments of flight training there. When I got back to Washington that summer between sophomore and junior years, I managed to latch on to a three-week job at NIH as a laboratory animal. They used me as an experimental guinea pig measuring the tidal volume of my lungs. I spent much of it underwater breathing through a long tube while they measured my oxygen consumption and how far I had to respire; they would increase the length of the tube which would increase the amount of dead air I would have to inhale in order to get fresh oxygen. That was an interesting experience.

MR. LYNK: You had indicated before that the first time you had a black classmate was at Dartmouth.

JUDGE JACKSON: Uh-huh.

MR. LYNK: Do you remember who that person was?

JUDGE JACKSON: I don't remember who the black classmates were, but I do remember that we were the first fraternity on campus to pledge a black man.

MR. LYNK: Really?

JUDGE JACKSON: Yeah. And it was a big event because in the national fraternity structure, there was an alumni blackball mechanism which enabled an alumnus of any other school to cast a blackball on a pledge to the fraternity on any campus in the country. It was also a requirement that the candidates all be reviewed by the national office which would then disseminate information about the pledges to the alumni. Ray Johnson, who was also a Washington kid, was the pledge that we desperately wanted to take, and ultimately did, after having pulled all sorts of machinations to get blackballs removed. When the final blackball had been removed, we “sank” him, or whatever it is you call it, we swore him in at two o'clock in the morning so that nobody could throw another blackball. Ray was an absolutely great guy and I'm so glad that we did that. He ultimately went on to Howard Medical School and became a physician. He entered the Navy as a physician and when I last talked to him, he was the head of cardiology at the Naval Medical Center out in Bethesda.

MR. LYNK: My goodness that's a nice story. How did you feel going through that experience in light of simply not having any contact with blacks before then, and now – *Brown v. Board of Education* was decided in 1954 – all of sudden your consciousness must have been made aware of all of these issues out there and then you had this presented in a very real way at your fraternity as you tried to do this. What were your reactions and thoughts and feelings as all of this was swirling around you at this time?

JUDGE JACKSON: I don't remember it swirling, other than the situation with Ray which was an immediate matter. Here was a terrific guy that we wanted and these redneck alumni were preventing us from taking a guy that we wanted in our fraternity. I remember feeling an enormous amount of resentment at them for putting us through this and putting Ray

through it. Ray was just a hero through the whole thing. He just gritted his teeth and stuck it out and I'm so glad that he did. But, it was a very personal thing and an immediate event without any really larger overtones. Nobody was on a great crusade; we just wanted to get Ray.

MR. LYNK: One of the points you made earlier was that, and I think it's harder for people looking back to understand but that things seemed there was a natural order to things and that was just how things were, and it was no conscious malice or malevolence, it was just the natural order —

JUDGE JACKSON: I think that that's true.

MR. LYNK: Now, when you went to college, did you see that natural order challenged or did you just say, “Well, at college things are different?”

JUDGE JACKSON: I think that's what we said.

MR. LYNK: Okay.

JUDGE JACKSON: And there really were not that many blacks. I don't – I really don't know what the proportion of our class was, but I would guess that it was less than five percent. And that really seemed very natural too. These were all very fine young men who were, who were, in every sense of the word, our peers. So, it was as natural to have them there as it had been not to have them there when we were in high school. They really fit in pretty well. I have the sense that there is probably a much wider gulf between black and white and other minority students on campus today, generally, than there was in those days. The blacks who were in our class just fit in and did everything with everybody else.

MR. LYNK: As we're looking just at the college years and your experience in the Navy, as part of the NROTC, and your summer excursions, would you say that you found that

to be a very positive experience?

JUDGE JACKSON: The Navy?

MR. LYNK: The Navy part of it.

JUDGE JACKSON: Oh, yes, absolutely. I'm sorry that more young people don't do it today. Even today when I get applications for law clerks who have military experience, as far as I'm concerned they get one leg up. I will try to interview those who have had military experience. I've had several former military officers as law clerks. I think it's a very maturing experience for young people. It certainly was for me. The idea that at the age of 22 or 23, I guess when I qualified as a officer of the deck, that I was suddenly during my watch in charge of a 2200-ton destroyer running around the ocean at 35 knots and chasing aircraft carriers and dropping depth charges and whatnot; that's heady stuff.

MR. LYNK: That really is.

JUDGE JACKSON: And that, I think, exacerbated my general sense of dissatisfaction when I got back to law school. I was a lowly 1-L. I could, and did, reflect on those days of yore when I had been in charge of a ship and was a pretty important person out there on the ocean.

MR. LYNK: How long did you serve on active duty?

JUDGE JACKSON: Three years.

MR. LYNK: After college you served on active duty for three years before you went to law school?

JUDGE JACKSON: Yeah.

MR. LYNK: Okay.

JUDGE JACKSON: Uh-huh.

MR. LYNK: And where did you serve?

JUDGE JACKSON: On a destroyer that was home-ported first out of Norfolk, and thereafter, or later on, out of Mayport, Florida. But we saw relatively little of the home port. We were at sea most of the time. I had two tours to the Mediterranean and one tour down to the Caribbean. So we spent most of the time at sea.

MR. LYNK: Was it unusual to be attached to one ship for three years?

JUDGE JACKSON: Not as an initial duty assignment.

MR. LYNK: Okay.

JUDGE JACKSON: If I had been a career officer, I probably would have been transferred off after two years. But, for those that are not going to be careerists and who are at their first duty station, it was customary then to simply keep you there for your entire tour.

MR. LYNK: Were you still single at that time?

JUDGE JACKSON: No, I got married my second year in the Navy to a girl that I had met, actually at NIH, and who was at Mt. Holyoke, and who I dated all my senior year. We got married after I returned from my first Med cruise.

MR. LYNK: So after three years in the Navy, you now go to law school?

JUDGE JACKSON: Uh-huh.

MR. LYNK: Did you feel that now you were beginning the real part of your life or career?

JUDGE JACKSON: I think so. I think so, although I had enjoyed the Navy and had a great deal of respect for what it had done for me, and the opportunities it had given me, not

the least of which was travel. I really saw much of the world that I would never have seen otherwise. And got my acceptances to law school while I was in the Persian Gulf. I developed the usual short-timer's sense of impatience about completing this interval between college and what would be my career. When I started off to law school I had a sense that, sure, this is where I'm beginning the rest of my life, and the occupation that will carry me through.

MR. LYNK: What was your father's reaction to your Naval years?

JUDGE JACKSON: He was very envious. During the war he had tried very hard to get assigned overseas but he had a physical disability resulting from an accident that he had which prevented the Navy from assigning him to sea duty. But he had always coveted sea duty and when I got assigned to a sea-going warship, he thought this was really – he told me several times, “You say you want to be a lawyer, but don't be too hasty about this thing. Take a long look at the Navy.” Even to the point of saying, “Well you know, you can serve 20 years in the Navy and then come out and go to law school.” But, I think he was ultimately pleased when I elected to follow in his footsteps.

MR. LYNK: You and I were talking briefly while I was changing the tapes about just the role of fathers in their children's lives, and although we will talk later on about your practice with him, one of the points you were making was how important and often unrecognized the importance is of a father in formulating the son or the child's life.

JUDGE JACKSON: I certainly think so. I certainly think it is awfully important. My father was a role model from my earliest years. He was a man that I admired, respected, trusted, learned from, and I do not intend to diminish the role of my mother, who was equally important in her own way. But for a young man or a boy to have a father to model his

character and his behavior on is awfully important. And dad taught me the things that in those days boys had to know. He taught me how to throw a baseball, he taught me how to play football, he taught me – he had been an enthusiastic Boy Scout. I had not, but he taught me things that he had learned as a Boy Scout. He taught me Morse Code, he taught me woodcraft and things like that. How to recognize birds, he had an enormous influence on my growing up.

MR. LYNK: Do you think that's carried over to your influence on your own children?

JUDGE JACKSON: I hope so. I take great pride in the fact that I have taught both of my daughters how to throw a baseball and throw it like a boy. (Laughter.) I watch them today and I think, "I taught them how to throw that ball."

MR. LYNK: What year was it when you entered law school?

JUDGE JACKSON: Sixty-one.

MR. LYNK: And where did you go to law school?

JUDGE JACKSON: Harvard.

MR. LYNK: What was it like?

JUDGE JACKSON: Well, you know. (Laughter.) Law school was not fun. I can't think of it in the same emotionally satisfying terms that I think of my undergraduate experience. It's hard to work up any warmth for Harvard Law School as I think most people who have been through that experience will confirm. I was just reading the most recent *Harvard Magazine* which describes the era of Stephen Breyer at the law school. He was in my class. He and Mike Boudin were both in my class and there is no question that they are brilliant, brilliant people. And I will give them credit for having a level of intelligence that I will readily

acknowledge is superior to mine. But there is no question in my mind in reading that article in the magazine that there was then an aristocracy of intellect that was carried to absolutely ridiculous extremes when you would separate ten places or twenty places in a class by a decimal point grade, when a failure to be on the law review was like the scarlet letter of failure. On the other hand, of course, you know as well as I, that the education that we got there was absolutely superb. I will never for a minute detract from the quality of the education that I got and I remember thinking when I got out of law school with an academic record that was somewhat less distinguished than Stephen Breyer's, that I knew enough to be a good lawyer. And I was going to be a good lawyer, and that the training that I had been given there and the intellectual discipline that I had gotten from my law school gave me confidence that I could handle anything. That, with sufficient application, I could learn to do anything in the law, eventually. Fine education, but not necessarily a happy experience.

MR. LYNK: Do you remember any particular faculty members that made a particular impression?

JUDGE JACKSON: Oh sure. Ben Kaplan, I think was a – he was my civil procedure professor. He also taught a course – I don't know if they teach it any more – but it was called simply “Equity.” Not just “Equitable Remedies,” but “Equity.” I, probably through that course, got a sense of the enormous range of things that could be done in the law to produce the right results, that I would never have had if I hadn't taken that course. Ben Kaplan was influential. My contracts professor was Bobby Braucher. I don't know – was Braucher there?

MR. LYNK: I know the name.

JUDGE JACKSON: Louis Jaffe.

MR. LYNK: Yes, I did.

JUDGE JACKSON: Taught torts. Arthur Sutherland taught commercial transactions. Herwitz taught business planning. Remember business planning?

MR. LYNK: Yes.

JUDGE JACKSON: Did you take that?

MR. LYNK: I did.

JUDGE JACKSON: Did you ever take legal process?

MR. LYNK: Yes, I did. With, I think, Abram Chayes taught it while I was there.

JUDGE JACKSON: I never took that course, and that's one of my great regrets. I would have loved to have taken it and I missed out. Now, I don't know what it was that I took in lieu of it, whatever it was it didn't stay with me, so I'm sorry I missed that.

MR. LYNK: Judge, I'm going to stop us for right now.

JUDGE JACKSON: Okay.

MR. LYNK: We were talking about the lawsuit – do we have any time?

JUDGE JACKSON: I've got to go on the bench at ten o'clock.

MR. LYNK: I just wanted to get this on tape.

JUDGE JACKSON: All right, well I can't remember what the years were, although I could recover them, but Carl Hansen had established this track system, a three-track system in which students who were college-bound got an absolutely splendid secondary education in the public school systems of the District of Columbia, but there were proportionately fewer blacks in the honors track than white students and, conversely, a

proportionately higher number of black students in the lower tracks. And that was thought to be discriminatory and unfair and was attacked in a lawsuit which became something of a cause *cel'ebro* here. The thrust was that a disproportionate amount of resources was being expended on the honors track with a correlative neglect of the lower tracks. This isn't a bussing issue; it had to do with whether or not it was fair to divide students up into vocational, general, and honors or college-prep tracks. It was tried ultimately before Skelly Wright as the trial judge. And the reason it came before Skelly Wright, who was then on the court of appeals, was because back in those colonial days the school board was appointed by the district court. The district court, as I recall, nominated or appointed the members of the school board who I think then, in turn, chose the Superintendent of Schools. But – and there has always been a suspicion that this was engineered in just this fashion – because the district court appointed the school board members, each of the district court judges was named as a defendant in this lawsuit, which resulted in the judges of the district court all having to recuse, leaving it to the Chief Judge of the Circuit to appoint a trial judge to hear the case, and David Bazelon appointed Skelly Wright to try the case. There are those, Carl Hansen included, who thought that once Skelly Wright was appointed the judge, then the result was foreordained. And he became a sort of victim of the whole process. It was the concept of the track system which was thought to be discriminatory and unfair, and Carl Hansen simply happened to be the guy who was in a position of authority at the time. It destroyed Hansen. Absolutely, the man, who was an honorable guy, and was well-intentioned and was trying to do the best he could for everybody, ended up being the villain of the piece. He never recovered from what happened.