Today is August 14, 1995. This is Wendy White from Shea & Gardner, and I'm here with Judge James L. Buckley of the United States Court of Appeals for the District of Columbia Circuit. We are here as part of the D.C. Oral History Project, and this is our first session. We are starting at about 2:15 p.m. Eastern Daylight Time; and I hope that this machine will record our words today. I'll try to get the other machine to work for the next time. I start with the only question that sounds like a deposition question, which is, why don't you tell us your full name and where you live.

BUCKLEY: OK. James Lane Buckley. My address is 4980 Quebec Street N.W. in the District of Columbia. I actually live in these chambers.

WSW: This is where you spend all your time?

BUCKLEY: Yes.

WSW: Well, I haven't had any trouble finding you here. What's your date of birth?

BUCKLEY: March 9, 1923.

WSW: You are married?

BUCKLEY: Married.
WSW: And your wife's name is Ann?

BUCKLEY: Ann

WSW: What was her maiden name?

BUCKLEY: Ann Frances Cooley.

WSW: And you have six children.

BUCKLEY: Right

WSW: And what are their names?

BUCKLEY: The oldest is Peter; next is James (we call him Jay); Priscilla; William (we call him Bill); David; and Andrew (Andy).

WSW: We are going to talk in a little bit about your wife and your family; but to begin I would like to go back in time and start, if you will, by talking about your grandparents -- either what you know of them or knew about them and where they were from. Let's find out more about them. Do you want to start with your paternal grandparents?

BUCKLEY: OK. My grandfather was named John Buckley and his wife, Mary Ann, formerly Mary Ann Langford. They grew up in a rural area of Canada and emigrated to Texas shortly after their marriage. My grandfather apparently had asthma, and somebody persuaded him that Texas was where to go for relief. My grandparents moved at first to a place called Washington-on-the-Brazos, which is the site of the Texas Declaration of Independence. I think the town has since disappeared.
My father was born there. After that they moved to a very dry, tiny town in south Texas -- San Diego, which is the seat of Duval County. Apparently my grandfather had all the virtues except that of making money. But he ended up as the successful (after a year and a half in the courts) reform candidate for sheriff of Duval County and remained the sheriff, I think, until he died. He died about 20 years before I was born.

**WSW:** About what year was it when he came to Texas?

**BUCKLEY:** My father was born in '81 so he probably came to Texas in 1880.

**WSW:** What was he doing in Canada?

**BUCKLEY:** He grew up there -- his family were farmers.

**WSW:** What part of Canada -- eastern or western?

**BUCKLEY:** The Province of Ontario, near Hamilton.

**WSW:** His wife Mary Ann was also from Hamilton?

**BUCKLEY:** Not from Hamilton, but from some town nearby.

**WSW:** And did they get married young or old or who knows?

**BUCKLEY:** Somebody knows. I have a cousin who has taken an interest in these things, and if it is of critical importance to you, I could probably find out.

**WSW:** So they got married and they decided to leave Canada for health reasons. Do you think that's why they left?
BUCKLEY: Apparently my grandfather had very bad allergy problems, and the gene has passed on for many generations.

WSW: Is it in this chambers?

BUCKLEY: Yes, but I'm grateful for it; otherwise I would not be an American citizen.

WSW: Did you know your grandparents?

BUCKLEY: I knew my grandmother slightly. The last time I saw her was when I was six. She lived in Texas; we lived in Connecticut. We visited her at Christmas. My grandfather died in 1903.

WSW: And how about your mother's parents -- where did they come from?

BUCKLEY: My grandfather was born in New Orleans, my grandmother was born in Port Gibson, Mississippi.

WSW: I didn't know you had all these southern roots.

BUCKLEY: Although I was born in New York City and grew up in New England, I am culturally southern.

WSW: We will talk about that when we get to your political career. I did not know you had these southern roots. What was your mother's father's name?

BUCKLEY: Aloysius Steiner.

WSW: And her mother, your grandmother?

BUCKLEY: Maiden name was Wassem.

WSW: And her first name was?
BUCKLEY: Marie Louise.

WSW: What did Aloysius Steiner do in New Orleans?

BUCKLEY: He was the comptroller of what was this country's largest wholesaler of sugar refining equipment.

WSW: You know, when you live in Washington and everybody practices law, it's really wonderful to hear about people who do real things that matter in this world. Was this a family business?

BUCKLEY: No. I knew that he was a comptroller, but I only learned the nature of the business when I went to New Orleans about five years ago to visit the last survivor of my parents' generation, an uncle who had just turned 80; and he told me. For whatever reason when I was growing up, I never thought to ask what exactly my grandfather did.

WSW: Did you know either of them?

BUCKLEY: I knew my grandmother. She had lived in New Orleans, and we would visit occasionally. The last time I saw her was when I was about 13. She had spent a month with us in Connecticut.

WSW: Was your mother born in New Orleans?

BUCKLEY: Yes.

WSW: Do you have any memories of stories told about your grandparents or what their lives were like. Did your parents talk about their parents?
BUCKLEY: Not all that much. My father had some stories that were possibly apocryphal, but I don't recall his having said anything much about how they lived.

WSW: Do you know what kind of people they were, what was important to them?

BUCKLEY: Character and their faith. Apparently my father's father was principled, honest, courageous, and taciturn. His mother was a strong and devout individual. That is all I can say about them.

WSW: In your father's generation?

BUCKLEY: There were six children, and one of them died when he was 17 or 18.

WSW: What were their circumstances?

BUCKLEY: They were among the poor in a poor town. It was a town of 2000 of whom 1800 were Mexican. There was no electricity, and the water was delivered by burro from the town well.

WSW: And how do you know that? Did you talk to your father about it?

BUCKLEY: My uncle told me. I visited my uncle after my father died and he started reminiscing a bit.

WSW: It's interesting how often you learn about your parents much later in life and from relatives not your parents.

BUCKLEY: I am just appalled that I never thought to ask a lot of questions.
**WSW:** I think that is very common and it is not until later that you ever think to ask. If you were to ask me all these questions, I wouldn't know many of the answers either.

**BUCKLEY:** And, of course, not having known my grandparents. But my children knew their grandmothers very well. They knew both of their grandmothers.

**WSW:** Do you have pictures of your grandparents?

**BUCKLEY:** I have a picture of my father's father on the wall in the other room. A cousin of mine sent it to me. It was taken in front of the courthouse in San Diego about one hundred years ago and shows a dozen court-related men, including Sheriff John Buckley. I call it "The forces of law and order in Duval County." Duval County is famous in Texan history. Famous for its corruption. That's where Lyndon Johnson won his Senate primary race by getting 110 people to vote from the grave in alphabetical order. According to a professor at the University of Texas, my grandfather was one of them; he voted 40 years after his death. I also have a picture of my other grandfather.

**WSW:** Do you have the picture?

**BUCKLEY:** An uncle sent it to me. This is my mother's father, and apparently he had scribbled "The Senator" on it. He apparently thought that he looked like one.

**WSW:** He does.
BUCKLEY: Whatever Senators look like. And then when you go out, I'll show you that other picture.

WSW: Now, is John Buckley a political man? Did he run for sheriff? Do you have to be a political character to become sheriff?

BUCKLEY: Well, I guess it depends on the circumstances. He was an unsuccessful sheep rancher. I think he tried selling hardware at some point. Whatever it was, it never quite worked. And apparently he was enormously respected, if one believes obituaries -- an article in a Corpus Christi paper when he died said that he was greatly respected for his character and integrity, and that people came to his funeral from all over. He was also brave. San Diego was not a very peaceful town; but he never carried a gun -- he had one but didn't carry it, and that was considered significant in those days. How did we get into this?

WSW: I wanted to know whether he was political?

BUCKLEY: Oh political -- I just don't know. What got me into the character bit is that he ran as a reform candidate. He may have been persuaded to run; so he may not have been a political man otherwise; he may have been just a very respected person. There was a family called Parr that was very powerful in Duval County, and he opposed their candidate. Apparently my grandfather may have been elected by virtue of the fact that we are Catholic and most of the non-Mexicans
were Protestants. If you go to church, you get to know fellow congregation members. He became very close to the Mexican community. When he became sheriff, he became very unpopular with a lot of "Anglos" because he sympathized with the Mexicans and tried to protect them.

WSW: Well, I'm looking of course for your political roots.
BUCKLEY: His election was challenged -- it went all the way to the Supreme Court of Texas. A year after the election they said that he had won.

WSW: What was the basis for the challenge, do you have any idea?
BUCKLEY: I've got the documents somewhere.
WSW: What an interesting story. Was religion an important part of your grandfather's life?
BUCKLEY: I suspect so, yes.
WSW: And your grandmother? Were all four of your grandparents Catholic, raised as Catholic?
BUCKLEY: All four of mine were, although only three of my great grandfathers were. Both of my father's grandfathers were Protestant, as was one of my mother's grandfathers.

WSW: You said that your father had five siblings?
BUCKLEY: He had five siblings, of whom I knew four. Two sisters and two brothers.
WSW: Who were they and what were they like?
The eldest was Priscilla Buckley, a maiden aunt, wonderful sense of humor, and formidable character. The other sister, who was the next to the youngest in the family, was Eleanor. Very beautiful. And neither married. Then my two uncles, Uncle Edmund and Uncle Claude. They both started out as lawyers, as did my father, and then one of them stayed in the law and the other became an entrepreneur in various ventures. Both stayed in Texas, via Mexico -- that's another story.

Via Mexico? Did they live in Mexico for a while?

My father developed a huge interest in Mexico; and when he emerged from the University of Texas Law School, he went to Mexico City and hung out a shingle. He grew up speaking absolutely fluent Spanish so he took whatever courses you had to take to qualify to practice in Mexico; and then when oil was discovered in Tampico he said, "Ah ha, this is my opportunity." Because he knew Mexican law and spoke English, he believed he could secure the legal business of oil companies who presumably would want to be represented by somebody who knew his way around and understood the people. So he went down to Tampico and hung up a shingle, and then called for his two brothers to join him. That is how the three of them ended up in Tampico practicing law.

Is this before you were born?
BUCKLEY: Before I was born.

WSW: And did they marry -- Edmund and Claude?

BUCKLEY: Yes.

WSW: Did they raise families?

BUCKLEY: Yes.

WSW: And where did they end up after Mexico -- in Texas?

BUCKLEY: One of them, Uncle Claude, ended up in San Antonio and the other one in Austin.

WSW: And are they still there? Are they alive?

BUCKLEY: They are dead. They were born in the 1880s.

WSW: But did you know either of them?

BUCKLEY: Yes, but not well. Uncle Edmund died of lung cancer, and I'm trying to think if it was immediately after World War II or immediately before the war. I think immediately after the war. Uncle Claude died when he was ninety.

WSW: Do you keep up with any of the families?

BUCKLEY: Yes, cousins -- but not as much as I would like. I find them a great group. When I went to a court-sponsored training course in San Antonio on how to use a word processor and LEXIS and things of that nature, I had a splendid time with four cousins who live there.

WSW: And there is one other sibling -- was there a child who died young?
Yes, John.

Was he the oldest?

He was the oldest son -- he was born in Canada.

And where is your father in the pecking order?

He was number three.

What's your father's name?

William

OK. Now let's go over to your mother's family and do the same thing. How many sisters and/or brothers did your mother have?

She had two sisters and one brother.

Why don't you tell me about them.

OK. The brother was about 11 or 12 years younger than the youngest of the three girls. My mother was the oldest.

What was your mother's name?

Aloise. Her name was adapted from her father's, Aloysius, whose father and grandfather were named Alois, so the name, or variations of it, seem to carry on.

And is this a long-time New Orleans family?

Her father was the first one born in New Orleans. Her grandfather and great-grandfather immigrated from Switzerland in the 1840s. My mother was the oldest. Then the next child was Vivian; and she married a
doctor called Lombard, Marion Lombard, who was in the
U.S. Public Health Service and was sent to New Orleans
before we entered the first World War because of a
typhus or yellow fever epidemic. New Orleans used to
have all of the tropical diseases sooner or later;
anyway, that's how she met him. He stayed in the
service, which meant she ended up living everywhere in
the United States. If she was two years in any place,
she would end up speaking with the local accent --
extraordinary phenomenon. She in turn produced a
bunch of my first cousins. Then the other one, Aunt
Inez, I have her picture here. Incidentally, they
were tiny people. Probably about five feet. My
mother was about five feet and a half. Not five and a
half feet -- five feet and a half inch.

WSW:
That's how tall I am. So you didn't get your tall
genes from this side of the family. Your tall genes
did not come from your mother.

BUCKLEY:
Well, her mother was five feet eight; her father was
five feet six. Her mother's father was six feet four.

WSW:
Well, maybe you did. I take that back.

BUCKLEY:
Aunt Inez also married a doctor, but a doctor who was
a New Orleans native and stayed there. Perrier by
name.

WSW:
And are they still in New Orleans? Do you have
cousins in New Orleans?
BUCKLEY: Oh yes, I do. My parent's generation is dead now, the last survivor being my mother's brother, who died two years ago.

WSW: And you said he was much younger than the other three.

BUCKLEY: Yes.

WSW: What did he do?

BUCKLEY: He was with a finance company of some kind.

WSW: You said your father grew up in these poor world Texas circumstances -- what about your mom?

BUCKLEY: Prosperous. You know, not rich but comfortable.

WSW: Was it a prominent family in New Orleans -- a well-known family in New Orleans?

BUCKLEY: No. Not that I know of; but socially very acceptable in a socially conscious city.

WSW: And how did they get to New Orleans from Switzerland, do you know?

BUCKLEY: It puzzles me. I just don't understand what would cause people to go from a Swiss climate to there, but apparently there were others. There was a German-speaking community in New Orleans, and it was a Catholic city. My mother's paternal forebears came from Switzerland's Catholic German-speaking canton, St. Gallen. But to go from Switzerland to the fever swamps of New Orleans was to me surprising.
Very surprising. That's right. I did not realize that New Orleans had a significant German community.

Well there were some; and my Lutheran great-grandfather Wassem, who lived in Mississippi at the time he met my great-grandmother, also had started out in New Orleans.

So how did your parents meet? With such very different backgrounds?

My father was then getting on in years (he was 36), and I guess he was very anxious to meet a prospective bride. His brother Edmund had met one of my mother's sisters in Mexico, where she was visiting an uncle (actually, a cousin once removed), whose father had moved there after the Civil War rather than take an oath of allegiance to the United States. He learned that there was a bevy of attractive Steiner sisters in New Orleans and suggested that my father call on them on a forthcoming trip to the city. So he did. There was a 14 year difference in my parents' ages. They were married four months later.

Now that is an interesting story -- and they were married in New Orleans? Well, tell me about what your father did as he grew up and what brought him to the point where he married your mother?

Well he grew up as the son of the sheriff and played baseball and rode horses and things of that sort. He attended a tiny school that had an extraordinary
teacher. The community apparently was extraordinary. There were French, German, and Irish families, and Virginians displaced by the Civil War, people with a fair amount of education who for whatever reasons ended up there, God knows why. In any event, the immediate goal on graduating from that school was to get a college education. My Aunt Priscilla and my father went to Austin, which is where the University of Texas is located; and they both went to work in the Texas land office translating Spanish deeds in order to raise the money for my father's tuition and living expenses. My aunt continued to do that until she retired many years later, but she helped finance the education of my father and their younger siblings. She herself never went to college.

WSW: So Priscilla is the oldest. She did not go through the university herself but just worked to finance others?

BUCKLEY: That's right. She just worked to help.

WSW: Did they all go?

BUCKLEY: The others all went.

BUCKLEY: My father raced through college and law school in about five and a half years and then headed off to Mexico.

WSW: So he went to Mexico right afterwards?

BUCKLEY: Yes.
WSW: Had he ever been to Mexico before?

BUCKLEY: Yes, he had been there several times -- once selling soap. At another time he had the honor of serving as Pancho Villa's interpreter.

WSW: There aren't a lot of people who can say that.

BUCKLEY: Villa called him Senor Ojos Azules. Mr. Blue Eyes.

WSW: Your mother -- who was 14 years younger and was growing up in New Orleans -- what was her life like as she grew up?

BUCKLEY: Very social. She had been engaged a couple of times before she met my father, I know that.

WSW: How do you know that?

BUCKLEY: Her sisters told us.

WSW: My guess was it wasn't she who told you.

BUCKLEY: Actually, she did. Mother went one year to college. She then had a nervous breakdown of some kind. Then came World War I. She volunteered for nursing, fainted dead away at the first sight of blood. Went to balls and so forth and then when she was 21 or 22, my father came along.

WSW: So she was quite young?

BUCKLEY: He was 36 and she was 22.

WSW: And they married four months later and where did they then move? Did they go back to Mexico?

BUCKLEY: Yes.
WSW: Did she speak Spanish?

BUCKLEY: She spoke terrible Spanish fluently. Bad accent, utterly ungrammatical.

WSW: But she picked it up.

BUCKLEY: She could say what she wanted to say. She could communicate and she could understand.

WSW: Did your mother go to college?

BUCKLEY: I said she had for one year.

WSW: She never went back. So did they live in Mexico for long -- what did they do next?

BUCKLEY: They lived in Tampico until 1920 or '21. Then my father achieved a signal honor. He became the first person against whom the President of Mexico invoked Article 33 of the Mexican Constitution. Article 33 empowers the President to expel pernicious foreigners.

WSW: Was he making too much money?

BUCKLEY: He was testifying here in Washington before the Senate Foreign Relations Committee as to why the United States should not recognize the current bandits in charge of Mexico.

WSW: He was actually told he had to leave?

BUCKLEY: Oh, absolutely.

WSW: Was there some formal proceeding?

BUCKLEY: No. The President had the authority. My father was told to get out.
WSW: And I take it that at that time he had a successful practice?

BUCKLEY: He was successful. He had started representing various oil companies and ended up engaging in various land ventures, including real estate and oil exploration leases. These ventures proved very profitable.

WSW: So let's talk about your brothers and sisters and who was born in Mexico. You were not born there.

BUCKLEY: No. I was not born there. None of us were born in Mexico although my oldest sister lived there as an infant. My oldest sister was born in New Orleans. My mother came up from Tampico (where my parents were then living) for that purpose and then returned. They remained in Tampico until my father was expelled, which was shortly before their second child was born.

WSW: What is your oldest sister's name?

BUCKLEY: Aloise.

WSW: How many other siblings do you have?

BUCKLEY: There were ten of us. I am the fourth of ten. There are now seven.

WSW: OK. Let's find out about your siblings.

BUCKLEY: Aloise, the oldest, was five years older than I. She in turn had ten children. She died when she was about 45. She had some kind of brain hemorrhage.
Leaving ten children. Did the other siblings have a relationship with her children in her absence. In other words, do you have a relationship and do your brothers and sisters have a relationship with them?

Some more than others. My brother John and I worked in New York with their father, Ben Heath, and they continued to spend summers in a converted barn on my family's place in Sharon, Connecticut; so several of us were in fairly close touch with them.

Sometimes when a mother dies young, the rest of the family really dedicates a lot of time to these other children -- and ten of them is a lot of work. Did your brother-in-law remarry?

Yes, he did. About five or six years after that.

OK, that's your oldest sister.

The next in line is my oldest brother John, married with three children. He died in December of 1984. He was 62.

What did he die of?


Where did he live?

He lived in Lakeville, Connecticut. He and I worked together, and we had an office in New York but also one in Sharon where we would work on Mondays and Fridays. We would go to New York Tuesday mornings and return Thursday evenings. Then comes my sister
Priscilla. Priscilla is retired now. She is a journalist. After she graduated from Smith College in 1943, she went to work in New York City for the United Press Radio Division. After the war, she joined the UP's bureau in Paris. When my younger brother Bill started the magazine National Review, he hauled her back to serve as its Managing Editor; and she continued as its Managing Editor until she retired about two years ago.

WSW: So, she worked with your brother all those years.

BUCKLEY: She did not marry. And she has now retired to Sharon. And then comes your servant.

WSW: We'll get back to you.

BUCKLEY: And after that comes my sister Jane who married Bill Smith. They lived in Calgary in Canada for a while. She has six children. They returned to Connecticut, to Sharon. She and Bill were later divorced, and she has remained single ever since. She lives in Sharon. Sharon, by the way, is a very small village. When we were growing up, Sharon had a population of about 1600. That population has since exploded to 2900.

WSW: Does that include many of your cousins?

BUCKLEY: None of my cousins, no.

WSW: All right, that's Jane.

BUCKLEY: After that comes brother Bill. He is married to a Canadian, Patricia Taylor. Their home is in Stamford,
Connecticut; and they have an apartment in New York, where he edits his magazine, writes his columns, and does his television program. They have one child, a son who lives in Washington, D.C.

**WSW:** Is your nephew a lawyer?

**BUCKLEY:** No, he's a writer. Lots of writing in the family.

Then we come to sister Patricia.

**WSW:** So you have a sister and a sister-in-law named Patricia.

**BUCKLEY:** Right. Patricia married a fellow called Brent Bozell. She has ten children. You shake your head.

**WSW:** It's amazing, amazing. What would you do if you ever had a family reunion and everybody came?

**BUCKLEY:** This is a picture of my mother with 34 of her 50 grandchildren.

**WSW:** Well, this is an impressive picture. It is mind-boggling. When you put together all of just your generation and their children, if you count it up how many are there?

**BUCKLEY:** Seven of us are still living; and we have produced 50 children who, in turn, are producing their own. At the time of her death ten years ago, my mother had 90 living descendants.

**WSW:** That's an impressive effort, a very impressive effort. Great picture. OK; so Patricia has ten children as well, and she is still alive.
BUCKLEY: She is still alive; she lives in Washington, D.C. For a while she and her husband edited a magazine on Catholic subjects called Triumph which, as happens to most small magazines, eventually went under; and she now does editing work for a publishing company.

WSW: Oh, so there are a lot of journalists.

BUCKLEY: Then we get to our youngest brother Reid. Reid has had two novels published. One of them was a second selection for the Book of the Month Club. It had about 750 pages.

WSW: So it was hard to take to the beach.

BUCKLEY: He has done a lot of writing and lives in Camden, South Carolina. He has established a school there at which people, mostly executives, are taught how to present themselves, how to speak on their feet; and he writes articles and gives lectures on the side. And he is married and remarried.

WSW: How many children do they have?

BUCKLEY: Four children by his first wife; one by the second marriage. He married a Spanish widow the second time around, and she has five children.

WSW: OK.

BUCKLEY: Then we go to sister Maureen. Ten years younger than I. Maureen married a lovely man called Gerald O'Reilly, and she had five children. She died in her early 30's of a cerebral aneurism.
WSW: And the youngest?
BUCKLEY: The youngest is Carol. Carol married and divorced twice and has four children. She is now living in Massachusetts, in Newburyport, which is near Boston.

WSW: So what was it like growing up in a family of ten children?

BUCKLEY: Wonderful.
WSW: That's a wonderful answer. There was probably something going on all the time. Did you take care of each other?

BUCKLEY: Yes. Mother claims that after four children there is very little incremental work. The discipline that I remember most when I was growing up was handed out by my brothers and sisters. When I got out of hand, they showed no mercy.

WSW: Were there siblings with whom you were particularly close as you grew up?

BUCKLEY: Yes, my sister Priscilla. Large families have a tendency to break up into groups. I was the youngest of the oldest group. So my closest relationships were upstream rather than downstream.

WSW: Were the age gaps evenly spaced or is there a break after you?

BUCKLEY: No break after me. My mother gave birth to 11 children in 20 years. One of them died two days after her birth. One of those things. Difficulty
breathing. So there was a gap there, but the real gap was between Maureen and Carol -- five years.

WSW:

I admire her enormously. That's very hard work. So I know what your mother did with her time. But how did they end up in Connecticut? Where did they go after Mexico?

BUCKLEY:

They went to New York, stopping on the way in New Orleans and Texas to catch their breath and, I guess, to collect whatever possessions escaped Mexico. By that time my father's principal assets were an absolute command of Spanish, an understanding of the Spanish legal system, and a demonstrated ability to develop intimate relationships with the foreigners among whom he lived -- they respected him, he spoke their language, and he was very close to them. He had become intrigued by the oil business. Oil had been discovered in Venezuela by then, so he decided that what he wanted to do was to raise the money with which to form a company that would try to negotiate oil exploration concessions in that country. Where was the money? In those days it was in Wall Street. But he didn't want his children to live in New York City. For the first couple of years, my parents rented a house in Scarsdale, New York; and then somehow or other my father found this remote village, Sharon, which he thought was exactly right.

WSW:

Where is it?
On the New York border about 12 miles south of Massachusetts. It's in the northwest corner of Connecticut. It is about 95 miles north of New York City, so it's well beyond commuting range. My father would take the train into New York on Monday mornings and come back Fridays. So we saw him on weekends.

So your mother raised ten children essentially by herself with the other children helping.

With lots of help. We had a French governess and two Mexican nurses.

And he had an apartment in Manhattan?

Yes.

What was your father like?

A remarkable man. He was very shy with his children. He had a wonderful sense of humor, was very bright. Unlike certain of his sons, he had wonderful memory for details. A man of great charm. And great intelligence. And great imagination. And great business courage. He had very strong principles. Which he communicated to his children. And what about your mother? What was she like and what was life like for her?

I gathered after I grew up that she had experienced some lonely times. But she was a lovely, lovely, lovely person. Wonderful with people. She was a woman of extraordinary faith, a deeply religious
person. My father was too, but his was much more private.

**WSW:** Was she active in the way she practiced religion? Did you go to Mass? Were you active in the church as a family? Was she active in the church?

**BUCKLEY:** Not active in the sense of being on this parish committee or that. But she went to church every day and had total faith in the Lord; and when she had problems, she would place them in His hands. She prayed energetically for any and all things. Her faith was a living, real thing for her.

**WSW:** And she communicated that to her children.

**BUCKLEY:** Yes. She communicated the strength of her beliefs. But not all of her children were as graced as she was.

**WSW:** Were you born in New York?

**BUCKLEY:** Yes.

**WSW:** And all your siblings after you, were they all born in New York?

**BUCKLEY:** All but two of them. My sister Maureen and my brother Reid were born in Paris.

**WSW:** What were you doing in Paris at the time?

**BUCKLEY:** In 1929, my father concluded he had it made, and now he was ready to do all those things you couldn't do when living in San Diego, Texas. So he took wife and, at that point, seven children to France; and a couple of months later, something called the Great Depression
occurred -- the crash. My brother John claims this is true -- I'm not sure it is -- that he was in my parents' bedroom one morning when my father received a long distance telephone call. He turned to my mother and said, "Dear, how much money do you have in your purse?" She answered, "Oh, I've got 150 francs." He then said, "Well, that's all we have." That's a slight exaggeration, but in effect he had to go back to work and raise money in Europe. So we were stranded in Europe by the Depression.

WSW: Do you remember that?

BUCKLEY: I don't. My brother John did. I was six years old at the time; he would have been eight.

WSW: Do you remember any change in the family dynamic or your circumstances? At six you don't remember much, but sometimes you pick up the feeling of what's going on.

BUCKLEY: We were protected from vicissitudes.

WSW: What happened?

BUCKLEY: Well, instead of spending six months or so abroad, we remained in Europe for two and one half years.

WSW: And what did your father do?

BUCKLEY: Raised money, to keep his company afloat. We returned in 1932. We spent the last nine months in England.

WSW: Do you remember that? You were pretty little.

BUCKLEY: I remember it some.
WSW: Were you in school there?

BUCKLEY: Yes, in France and in England.

WSW: How's your French?

BUCKLEY: I wish it were great because my only daughter is married to a Frenchman who speaks little English. I can understand French quite well, but you know those college aptitude tests; I was in the 30th percentile as far as an aptitude for foreign languages is concerned. I just can't grab the words and absorb them. I can get by in French, but I can't carry on a serious conversation.

WSW: Did you learn at the time that you were there?

BUCKLEY: At ages seven, eight, and nine, I was trilingual. I absorbed idiomatic French at school in Paris. When I was very young, my father spoke to us in Spanish; and I had a Mexican nurse. So I spoke Spanish before I spoke English.

WSW: That was to make sure that you always spoke Spanish, and did that work?

BUCKLEY: No. My French is better than my Spanish. But it worked for various members of my family who had a better native talent so that at least four or five of my brothers and sisters became fluent in one or both of those languages. But I'm not one of them.

WSW: What kind of impact did this have on your mother, this dramatic change and what the plan was?
BUCKLEY: Apparently there were some very hairy times. Nevertheless, by the end of our stay in France, our household included nine children, two Mexican nurses, and a French governess.

WSW: And that didn't change during this period?

BUCKLEY: My father went into debt. He had great confidence in his company's prospects and in his ability to raise the necessary money.

WSW: Your mother had great confidence that it would all work?

BUCKLEY: Oh! I forgot to mention one very important thing. We had a cow in Paris.

WSW: Well, that's important, where did you keep the cow?

BUCKLEY: Some livery yard stable. Believe it or not, when we went to France, the home of Pasteur, you couldn't get pasteurized milk; so we drank something called Klim, which is milk spelled backwards. It was a powder that was mixed with water. It was just awful; and after seeing his children suffer for about a year, my father went to the Island of Jersey and bought himself a certified, disease-free Jersey Cow.

WSW: That says a lot about your family. Did you live in Paris, or did you live in one of the suburbs?

BUCKLEY: Two places. One was an apartment right in the heart of Paris, and the other one was a house on the edge.

WSW: Do you have fond memories of that period?
BUCKLEY: Such memories as I have are fond, but I don't have many memories of Paris.

WSW: And then you came back when you were about nine?

BUCKLEY: About nine.

WSW: Went back to Sharon?

BUCKLEY: Went back to Sharon.

WSW: Now, looking back on it, what were your father's circumstances at that time?

BUCKLEY: The bills were being paid, but it was touch and go as to whether the company would survive.

WSW: I can't remember where we were. I think I was asking you about coming back, and you mentioned your father's business problems.

BUCKLEY: The company which he had founded, and whose stock was actively traded on the old New York Curb Exchange, had several very large concessions in eastern Venezuela, where oil had not yet been discovered. The properties, however, had great geological interest. But if a company doesn't have any income, you have to constantly find new sources of financing or negotiate a deal with a major company. My father would try to interest Standard Oil or some other company to go in and invest X amount of dollars in exploration in order to earn an interest in a particular property. This was a frantic, bankruptcy-around-the-corner type of
existence, but his children were only peripherally aware of the pressures he was under.

WSW: Is that right? Throughout this whole period, even as you grew up?
BUCKLEY: As we grew up we knew that there were some large problems. Mother would ask us to pray very hard that this or that deal would work out, but in the meantime we continued to have our piano lessons and this and that.

WSW: So what was your life like; what did you do?
BUCKLEY: Well, I had my piano lessons.
WSW: Was that important?
BUCKLEY: Not to me.
WSW: Important to your mother?
BUCKLEY: Yes.
WSW: I see. You don't now play the piano, I take it?
BUCKLEY: No.
WSW: What else did you do?
BUCKLEY: I played, had friends and had my Shetland pony.
WSW: Did you ride?
BUCKLEY: Yes.
WSW: Was that important to you?
BUCKLEY: It was important to me until I outgrew my pony and we began riding in horse shows. I had a very close friend who lived a mile away. He had a Shetland pony
as well, and every day in the summertime we would meet and go on long rides together. We felt free. Sharon was strange -- in this tiny town, there were about a dozen substantial houses along South Main Street, and these were owned by New York gentry who arrived right after school got out and stayed until after Labor Day. So we had a set of summer friends. These New Yorkers were known to the locals as "city people," and we were considered "city people" even though we lived in Sharon 12 months a year.

WSW: Well, you had a house in the city, you just didn't live in it.

BUCKLEY: Not really -- an apartment that couldn't have housed a third of us.

WSW: Were you interested in sports?

BUCKLEY: No. We played softball, touch football, and things of that sort; but my interests were in birds and natural history.

WSW: Were you a baseball fan?

BUCKLEY: No.

WSW: Even as you grew up? Were you a Yankees fan?

BUCKLEY: Not really. I hate to admit that I was not a typical, red-blooded American boy.

WSW: That answer surprises me. And how about politics? What kind of role did politics play in your life as you grew up?
BUCKLEY: My father was not a great fan of Franklin Delano Roosevelt. But then he was not a fan of many people in government. When growing up, I had no idea how he voted, or whether he voted. He and my mother obviously had 100% Democratic party roots. But keep this in mind. When my parents were growing up, the Republican party was the party that favored a strong central government. The Democratic party was for state's rights. The national parties changed their stripes; my parents didn't. There was a lot of talk about political matters but not in a partisan context.

WSW: Did you have a family dinner during the week. Did you all sit down together?

BUCKLEY: We were a large family, right? There were three connected dining rooms or areas in our Sharon home. The layout was like the letter "T." A long room with two smaller tables intersected the main dining room, where the older children would eat with our parents. The younger children would eat at the other two tables.

WSW: Did you graduate from one to the next?

BUCKLEY: Yes.

WSW: At your place, you were with the older children. Did your Mother eat with you?

BUCKLEY: Yes.

WSW: And did you talk about political events?
I don't recall political talk as such, although it was clear my father had zero sympathy for the New Deal. My principal memory is of stories my father would tell of his adventures in Mexico. He was a great story teller.

What other early memories do you have of being in Sharon?

Carpentry.

Working on the house? That's interesting.

Our house kept needing expanding.

As you had more children. You needed more rooms.

Exactly.

Did you have your own room or did you share?

We all shared. I shared with my brother John.

Do you remember what you cared about when you were little? What was important to you when you were a little kid in Sharon?

I have always been fascinated by nature, particularly birds. I would have odd pets -- at one time or another, a crow, a cooper's hawk, a flying squirrel, a woodchuck. I was very shy and would often go on long expeditions into the countryside alone or with my friend Deane Witt. My life was family centered. I have difficulty recapturing the details as I seem to have been born without an anecdotal memory. I'll meet an old friend and he'll say, "You remember when ...?"
and I'll have no idea what he is talking about until he teases it back into my memory.

**WSW:** Who were your friends; do you remember them?

**BUCKLEY:** Very, very few in number. It was a tiny community. My brothers and sisters were really my close friends. I had one very special buddy, Deane Witt, who was my pony pal. There was also a fellow called Bill Coley who lived next door; and then there are two or three others. But these were all city people who would arrive the first week of June and then disappear after Labor Day.

**WSW:** Where did you go to school?

**BUCKLEY:** The first three years after returning from Europe, my younger siblings and I, together with the children of two or three other year-round residents of Sharon, had the equivalent of home schooling -- first at the home of the Congregational minister and then at our home. When I was 13, I went to Millbrook School, which is in New York State about 11 miles from Sharon.

**WSW:** Is that co-ed? Or is it just boys?

**BUCKLEY:** It is now. Then it was a school for boys. It had just been started. My father was able to cut a favorable deal because he had four sons in inventory. The school had been started in 1931 or 1932, in the middle of the depression. By the time I graduated, it had 50 students. It now has about 200. When my
brother John went there, the entire school had its meals in the headmaster's dining room.

WSW: When did you see your family?

BUCKLEY: As a result of the deal cut by my father with the headmaster, Mr. Pulling, we were semi-boarders. At boarding schools in those days, Wednesday afternoons were free, as were the weekends after Saturday morning classes. We would come home Wednesday afternoon and return to school Thursday morning, and we would spend the weekends in Sharon.

WSW: Do you have memories of Millbrook and what it was like to be there? Did you like it?

BUCKLEY: Yes, I did. The school had some marvelous teachers who knew how to make schoolwork interesting. It maintained high academic standards. I found the school particularly attractive because the year I arrived (with a pair of armadillos my father had sent me from Texas), a new biology teacher, who had just graduated from Cornell, arrived with a sparrow hawk, and a boa constrictor. We were instant soul mates. He established a zoo that is now nationally accredited and developed an advanced biology course that was more sophisticated than anything that was available to undergraduates when I entered Yale. So I was in my element there.
WSW: How did your father decide to send you there? There were many choices in New England of where you might have gone.

BUCKLEY: He liked Mr. Pulling's approach to education and to the formation of boys' characters. Sharon is located within a very few miles of several first-rate boys' schools. Hotchkiss School is five miles away. Salisbury School is another five miles beyond that. Kent School is fifteen miles to our south. But this was a new venture, and my father felt that his own views on the education of his sons would get a fair hearing.

WSW: Where did your sisters go?

BUCKLEY: They went to different places. All four of the boys went to Millbrook. Three of my sisters went to the Nightingale Banford School in New York City. I think two others went to Ethel Walker in Simsbury, Connecticut; and my youngest sister went to the Sacred Heart Convent in Noroton, Connecticut.

WSW: Anything else you remember about Millbrook and what it was like to be there?

BUCKLEY: It was small, rural.

WSW: Other than the natural history and the study of birds, were there subjects that you liked?

BUCKLEY: History. I liked math, geometry, algebra.
Were there any teachers there that particularly had an impact on your life, about whom you thought?

Several. Frank Trevor, who taught biology. Mr. Abbott, the Latin teacher -- not because of the Latin, I assure you, because before every test I would have to re-memorize the same irregular verbs I had committed to memory three or six weeks earlier. But he ran the Glee Club; and in those days I was a soprano, and I enjoyed that tremendously. He also taught a very sophisticated music course that was created by the Carnegie Foundation. It was absolutely first rate, and it has given me a lifetime of satisfaction because it caused me to love classical music. Mr. Tuttle, a businessman turned teacher, knew how to make mathematics fun. And then there was another wonderful man, Mr. Callard, who was the Assistant Headmaster. He was the person to whom I would turn if I had problems. He was outstanding.

Were your brothers there when you were there?

My brother John was. My brother Bill arrived the year after I graduated.

Were you and John close during that period?

Yes.

Anything in particular during that time that you were afraid or concerned about? Anything that as you think
back on it now was worrisome to you during that period when you were in high school?

BUCKLEY: No. I do recall that there would be times when at home in Sharon I had the blues. I guess that term reflects my southern roots.

WSW: Normal, teenage, adolescent stuff. Do you think of yourself, or as you think back on your childhood, as a child who was pretty happy?

BUCKLEY: Yes.

WSW: Easy going -- do you have a temper?

BUCKLEY: I'm told that I had a temper when I was one, two, and three years old.

WSW: And not since.

BUCKLEY: Very placid.

WSW: And were as a child?

BUCKLEY: I think so.

WSW: Is there anything that you particularly loved that really made you happy?

BUCKLEY: Pets and birds and so on, my family, my mother's "Nancy" stories, from which we developed a special feeling for the American Revolution.

WSW: Tell me about those.

BUCKLEY: Nancy was a girl who happened to be a confidante of George Washington. My mother would spin these stories right out of her mind. I wish I had a recording of
them. We learned a tremendous amount of history: the Battle of White Plains, General Bourgogne, the crossing of the Delaware. We developed a real reverence for what was going on in that struggle.

WSW: And your mother knew that. It was really your mother who was communicating that, right?

BUCKLEY: Right.

WSW: That's interesting. And did she learn that from reading? Was your mother a big reader?

BUCKLEY: She was a big reader, but I'm not sure she was reading about those sorts of thing as an adult. I know she read a lot of novels. My father was also a very big reader and would be more likely to be reading things like history. But I have a feeling that in years past in the United States, the schools made sure that you had a thorough grounding in the history of this country.

WSW: She just learned it in school.

BUCKLEY: When I was growing up we learned all about the American Revolution and the philosophical underpinnings of the American Republic. We were taught the basic structure of the Constitution -- the separation of powers and federalism. And George Washington was our hero. We celebrated his birthday with cherry pies, ice cream, and candy hatchets. It was a big occasion.

WSW: And do your children?
BUCKLEY: No. Not as well as they should.

WSW: Your mother wasn't around to tell them those stories. And what part did your father play in this? He wasn't home but he obviously played a major role in your life as you grew up. Did you spend time with him?

BUCKLEY: In that period I was intensely shy. My father I think tended to be shy with his children. Some of my brothers and sisters, however, had a very close relationship with my father. But although I was not especially close to my father, and although, as I have told you, he was generally home only on weekends, he was a very large presence in my life. He was the pervasive authority figure, and it was obvious that he had us and our welfare constantly in mind. It was he who worried about our education; and he made sure we were exposed to just about every kind of activity just in case one of them would catch our fancy. At one time or another I had lessons in carpentry, model boat building, tap dancing, fly casting, horseback riding, and mandolin playing in addition to the more customary lessons in piano, golf, tennis, and ballroom dancing.

WSW: And they all impacted on your siblings in very different ways. Other than going to Paris, did you travel much?

BUCKLEY: Well, not too much. During the three years we were in Europe, we spent several vacations in Switzerland, traveled around France, and ended up in England.
Before you came back.

Yes, before we came back. September to June.

What was your father doing, do you know?

Raising money. But we used to -- when we still had grandparents alive -- we would take the train down to New Orleans and Texas. Then in 1934, after we returned, we took a trip to Wisconsin and the Chicago World's Fair. Then towards the latter part of the 30's, my parents never totally at ease in the north, they found a place in South Carolina called Camden where they began to take the family at Easter time -- Easter break -- and eventually bought a house.

You would go back and forth to the house in South Carolina. Did you go to summer camp?

No.

Any book that you read as you were growing up that had a particular impact that you remember?

Serious books? Ernest Thompson Seton's *Wild Animals I Have Known* and his other books; Peattie's *An Almanac for Moderns*; Thoreau's *Walden*. I also read the Burgess books. Did you read the Thornton Burgess books to your children?

Absolutely the Thornton Burgess books. I read them all to my children. I loved the Thornton Burgess books. Did you read the Thornton Burgess books to your children?
BUCKLEY: No.

WSW: Several of my sons read them; my daughter was not terribly interested in them.

BUCKLEY: There were some others.

WSW: You read the Oz series? There is a whole series of them.

BUCKLEY: I confess to having read all of them.

WSW: Did you like to read?

BUCKLEY: Very much, although I am a very, very slow reader. My oldest sister taught me how to read, that may have something to do with it -- the slow pace. I like reading history.

WSW: It's quarter to four and I think this is a good place to break. You have a better memory than you thought.

BUCKLEY: You'll find out soon.

WSW: This is the end of the first session.
Date of Interview: September 7, 1995

Today is September 7, 1995. I'm here with Judge Buckley for the second session of the Oral History Project. Why don't you start Judge, if it's OK, by filling me in on some information that you looked up during the interval.

BUCKLEY: My maternal grandmother's maiden name was Marie Louise Wassem. My paternal grandmother's maiden name was Mary Ann Langford; and my father's parents came from Waterdown, Ontario. John Buckley was 24 and Mary Ann 22 when they married.

WSW: Thank you. Now if you remember last time, we got you through high school and then we quit. I want to pick up today with college and military service and that general period of your life. You went to Yale. Had anybody in your family gone to Yale, any of your brothers or sisters before you?

BUCKLEY: In those days, no sisters could go.

WSW: Oh that's right, of course. Had any of your brothers gone?

BUCKLEY: My oldest brother did. Subsequently, my two younger brothers went there.

WSW: I see, but if I recall correctly from last time, your parents or grandparents or other relations had not gone. You did not come from a Yale family before
that. Did many of the graduates of your high school go to Yale? Was there a relationship there?

BUCKLEY: None. The graduates of my school tended to go to Ivy League colleges; but as the school was only nine years old, when I graduated in 1940, there were no traditions of that kind. Only one of my classmates went to Yale.

WSW: But since you were in Connecticut, it was not surprising that you chose Yale. Are there other reasons? Why do you think you ended up there?

BUCKLEY: I thought about Harvard. As a matter of fact, I visited Harvard; but Yale obviously had a great reputation; and my brother enjoyed it; and I spent one weekend there with him and liked his friends.

WSW: Did you overlap with your brother or had he graduated when you started?

BUCKLEY: We overlapped. He was two classes ahead of me. Are you an old Eli?

WSW: No, but many people I know are. And I know there is intense loyalty to the college as well as to the University. Tell me about your college life; tell me what you were interested in academically, socially; what was your life like during that period?

BUCKLEY: Well, it was truncated, courtesy of the war; but it was enjoyable. I knew practically nobody in my class. I came from a very small town, went to a very small
school. I was intensely shy so I was a little while feeling my way around. I had a tremendous interest in biology and subjects of that sort; but the general assumption in biology was that the days of field work had gone, that from now on biology involved looking through microscopes, and that I didn't particularly like. Ecology had not been discovered yet.

WSW: Environmental sciences were not taught.

BUCKLEY: Otherwise I would have undoubtedly gone in that direction. As it was, I majored in English and took history and other liberal arts courses as well.

WSW: Were you interested in any particular sporting activity in that period?

BUCKLEY: No. My freshman year I did what was called heeling, i.e., competing for a position on, the Yale Daily News, which was the undergraduate equivalent of going to boot camp in the Marines. It was the toughest of the non-athletic extracurricular activities. The competition started the last week in October, and it continued until mid-January. Heelers would report for their assignments five days a week at one or two o'clock in the afternoon; and if they were required to do proofreading at the printer, they might not be through until two or three o'clock the next morning.

WSW: You did this as a Freshman?

BUCKLEY: Freshman, yes. And I was fortunate enough to be among the winners.
WSW: Sounds like Law Review.

BUCKLEY: Sort of. But I developed my closest friendships through my work on the News. Got my feet on the ground and enjoyed the work tremendously. So the Yale Daily News was very important to me at Yale.

WSW: You came from a small town, you went to a very small school, and I suspect it was difficult to find a niche socially and otherwise. Would you say that the Yale Daily News was that niche?

BUCKLEY: It worked for me.

WSW: Did you write for the paper all the way through?

BUCKLEY: Not so much writing -- the heelers did most of the writing. Once you were elected to the News board, you spent most of your time editing the work of the heelers.

WSW: This is just like Law Review right? Did you do this with your brother? Was he also doing it?

BUCKLEY: No.

WSW: When you went to Yale, did you have a view about what you would do when you graduated?

BUCKLEY: No.

WSW: Hadn't decided yet you were going to go to law school?

BUCKLEY: Not yet.

WSW: Now this is a period right before the war?
BUCKLEY: Well, yes. The war was declared December of my sophomore year. From then on, my immediate future was military. Thoughts as to what I would do after graduation were easily postponed. A lot of people in my class did that.

WSW: So what was the impact of the war being declared? What did that mean for you and your military service?

BUCKLEY: The military services created a variety of programs that provided college students with alternatives to simply waiting to be called up by the draft. I was then 18 and signed up with a Navy Officer Training Program that turned out to be the one that kept you in college the longest. It was called the V-12 program. But for the next year, life at Yale went on pretty much as usual, although on an accelerated basis. This meant that instead of having two semesters a year, we had three, with very brief vacations between each.

WSW: Was that to accommodate military coming or leaving?

BUCKLEY: No, to rush us out faster.

WSW: Oh, so you effectively could go through faster. I see.

BUCKLEY: It also meant that people graduating from high school in May or June of '42 would begin college in July. Beginning that summer, members of my class, the Class of 1944, began receiving letters from their draft boards or from one of the Army Air Force or Army
programs they had enlisted in calling them to active duty, so our ranks began to thin out. Classmates who were in the ROTCs were allowed to stay through the first semester of senior year, which ended in June of 1943. Yale gave degrees after seven semesters, so if you were in the ROTC you received a degree. After June of 1943, only about 110 of the original 850 or so members of my class remained at Yale. They were those who had signed up for medical or divinity schools, were disqualified for the draft for medical reasons, or were in the Navy or Marine V-12 programs. Those of us in those programs, however, were placed on active duty on July 1. Starting in July of '43, the whole atmosphere of the college was transformed. Although we continued with our academic programs virtually intact, we were in uniform, woke to a bugle, learned to march. Instead of living two to a three-room suite, there were four of us; instead of eating in dining rooms with linen and waitresses who would come around asking what choice of meals you wanted, we went through the chow line with our trays. These changes continued in effect after the war.

**WSW:** And it never changed afterwards?

**BUCKLEY:** Before that we also had maid service in our rooms.

**WSW:** That ended too?

**BUCKLEY:** That ended too.

**WSW:** At Yale?
BUCKLEY: At Yale, yes.

WSW: That's an interesting thing to think about.

BUCKLEY: We were required to take a war course, which in my case was mechanical drawing, and to get some kind of physical exercise; but basically we followed our majors and got our degrees.

WSW: Was there a lot of discussion about the world situation?

BUCKLEY: When I entered Yale, there was tremendous debate over America's role -- the interventionists vs. the isolationists. I was in the latter camp and worked for America First, which brought speakers like Lindbergh and Senator Robert La Follette of Wisconsin to the campus.

WSW: Did any of your brothers go into the service?

BUCKLEY: All of them did at one time or another.

WSW: During this period, was anybody overseas?

BUCKLEY: My brother John was a senior when the war was declared. He graduated the June following Pearl Harbor and went right into the military. Believe it or not, he went into the horse cavalry.

WSW: I don't even quite know what that means. What did he do?

BUCKLEY: Horses. Trained on horses but that quickly disappeared. People don't realize how basically unprepared we were -- the draft, I think, was
inaugurated in 1940. First peacetime draft ever and people would drill with wooden mockups of guns and so on. If memory serves, Switzerland had a larger standing army than we did. So you had to build almost from scratch. As soon as tanks and things of that sort came along, the cavalry disappeared. In any event, my brother John, who was fluent in French, ended up in North Africa as a liaison officer with French forces. He went overseas shortly after I graduated.

**WSW:** What did you do after you graduated? You were then in the Naval Reserves.

**BUCKLEY:** I was sent to Norfolk, Virginia, to what they called a pre-midshipman school where we essentially marked time until openings developed at one of the several midshipmen schools around the country. I was in Norfolk for about four weeks, I guess, then shipped out to New York where I entered the midshipman school that had been established at Columbia University. That would have been in December of '43. I graduated from the school in April as a freshly minted ensign; I was then assigned to an LST, the acronym for Landing Ship Tank, which was the largest of the amphibian vessels. You've seen them in movies about D-Day, the very large ships that came up onto the beach and lowered a ramp to discharge vehicles. I was assigned to U.S.S. LST 1013, which was in the final stages of
construction in Quincy, Massachusetts. I reported on
board just before it was commissioned. I remained on
board for the next two years, one month and 13 days,
when I left it in Hong Kong with orders to return to
New York for my discharge. During that period, I was
off the ship just four nights.

WSW: Two years on this craft. What was that like?

BUCKLEY: The first year and a half was pretty dull. There were
three brief periods of intense interest when we were
engaged in invasions, but in between them we would
spend months on end transporting people and equipment
over empty stretches of ocean.

WSW: There wasn't a lot of action. You weren't needed a
lot.

BUCKLEY: We had a far larger crew than was needed to simply
operate the vessel, so we didn't have watches every
four hours the way very small ships had. The extra
manpower was only needed when we were at battle
stations and had to man the antiaircraft and damage
control stations. The officers had relatively
comfortable quarters. My stateroom was able to sleep
four people, but the other three berths were reserved
for Army or Marine officers on the relatively rare
occasions that we were moving troops. So we had more
space than most people had in the Navy. But it was
not glamorous duty.

WSW: Where were you?
OK. After we were commissioned, we sailed to New York City, where we spent three days picking up supplies. We left New York on June 6th on our way to Guantanamo Bay in Cuba. That's an easy date to remember because shortly after we set sail, we learned that the D-Day landings in Normandy were taking place. We spent two days in Cuba loading up with different kinds of equipment, headed through the Panama Canal, and, after a stopover in California for repairs, pushed on to Hawaii. When we reached Honolulu, we unloaded our cargo (mostly canned food and beer), loaded up with amphibious personnel carriers, and other very military equipment, and received orders to proceed to Manus, a base in the Admiralty Islands, which lie just to the north of New Guinea. When we were en route for Manus, our captain opened sealed orders which informed us that we would be participating in the invasion of an island called Yap. Now you do know about Yap?

I don't know about Yap.

Well, Yap has the largest currency in the world; namely huge stone discs that can be six or seven feet in diameter. We never saw them because when we reached Manus, the high command decided to accelerate their grand plan and move directly to the Philippines.

Is that where this island is?

No, Yap is in the mid-Pacific. Our destination was the Philippines and so we ended up taking part in the
invasion of Leyte, which was in October of 1944. After that we were engaged in several resupply missions, moving supplies from Manus and Hollandia, New Guinea, to Leyte. Our next invasion was in January 1944, when we landed at Lingayen on the island of Luzon. Then lots of traveling back and forth moving supplies to advance bases.

WSW: But you never got off the ship during this time?

BUCKLEY: We would go ashore; but as I said before, I was only off the ship four nights.

WSW: I see. You would get off and then you would get back on.

BUCKLEY: There was almost nothing to see at Leyte and Lingayen, other than the destruction caused by naval bombardments. We were not in the streets of a London or Naples.

WSW: No, you were in the Philippines.

BUCKLEY: We'd been out quite a while before we saw a town of any size and could get such delicacies as fresh eggs. But that was the following summer, a place called Iloilo on the Philippine island of Panay. Until very late in the war, we would shuttle between bases that had been built from scratch and consisted largely of Quonset huts and other prefabricated structures. Our last engagement was the invasion of Okinawa -- on April Fool's Day, 1945. We went all the way to Guadalcanal off the northeast coast of Australia and
picked up over 600 Marines who were packed in like sardines during the 30 or so days before they landed in Okinawa. These three invasions were, next to Normandy, the largest in the war. But for LST's, the least bloody.

**WSW:**
Did you have a sense at the time of how important these battles were?

**BUCKLEY:**
Yes, because we were making giant strides towards Japan. No doubt about that. But I never felt personally threatened. I felt as if I had 50-yard line tickets at awesome military engagements with shells from the bombardment vessels roaring over our heads to the beaches while watching the infantry landing from small boats or amphibious vehicles.

**WSW:**
But you didn't physically feel that you were in danger? Was your sense of confidence because you were young and an officer in the Navy or because you were really not in danger?

**BUCKLEY:**
You have a point there. I never felt in danger, but part of my job was to censor letters written by the enlisted men, many of whom just never got it through their heads that they couldn't say where they were or what they were engaged in. So many of those letters ended up looking like lacework as we cut out the verboten information with razor blades. In any event, I noticed that many of the married men were conscious
of danger while bachelors like me tended to feel that our manhood had not been tested.

WSW: That's interesting.

BUCKLEY: We would hear some pretty grisly war stories from many of the Army or Marine personnel we would transport from time to time and feel terribly inadequate. We were, of course, exposed to danger even though there were far juicier targets than LST's in the engagements in which we participated. In fact, six members of our crew were awarded purple hearts for wounds inflicted off Okinawa by a 20-millimeter shell that had been shot by another LST at an American plane and exploded on our deck. These things happened.

WSW: Doesn't make it any less dangerous though. What did your mother think? You weren't feeling threatened, but what did she think about you being out there?

BUCKLEY: I never asked her. She was very reluctant to see any of us go overseas of course.

WSW: I happen to think that is probably the hardest thing -- mothers watching their sons feeling quite brave going off to these very serious battles. Do you think about that time -- does it impact on your life now?

BUCKLEY: Not really, no.

WSW: Are there people that you met during that period that you stayed in touch with? Or is that a part of your life that was really over when the war ended?
BUCKLEY: I have kept in touch with one of my shipmates, but in a very desultory way. He ended up in California, so I have only been able to see him a couple of times over the past 40 years. I saw two or three others during the first few years after the war, but that's about it.

WSW: This is the group you told me you spent every night with for two years. Have you ever had a reunion or ever met again with the people on the ship?

BUCKLEY: There is an organization called the U.S. LST Association that I came across a few years ago. I sent in my $15 in dues and receive its newsletters. I see that many LSTs do have reunions. A military organization is hierarchical. An LST crew consisted of about 105 enlisted men and six to eight officers depending on certain circumstances. If your universe is confined to six or eight persons, you may or may not find close buddies among them. And, of course, even close relationships tend to fade if you live too far apart to ever see one another.

WSW: What did you do when you came back?

BUCKLEY: I applied for law school. I didn't go straight to law school because I didn't get back until May of '46 and there were too many other veterans waiting in line ahead of me. But let me backtrack and complete my description of my Navy career. We were anchored off Leyte when the Japanese surrendered. After moving
some Army Air Force personnel from the Philippines to Korea, we were assigned the duty of ferrying various groups of Asians from one place to another in the Far East -- Japanese civilians and soldiers from various Chinese ports to Japan; Korean slave laborers from Japan to Korea; Chinese soldiers from Haiphong to Manchuria -- so I saw a fair amount of the Orient during my last six months or so aboard ship. Three of my four nights off the ship were spent in Peking.

WSW: Was this after the war, during that period?
BUCKLEY: Yes.

WSW: And then you came back, and where did you go? Did you go back to Sharon?
BUCKLEY: Went back to Sharon.

WSW: Came back to Sharon and then?
BUCKLEY: Sent applications to various law schools. Very, very crowded. Law schools, incidentally, were still operating on a war footing, with three semesters a year. Six to eight months after the war was over they continued on this schedule. They had to absorb a three- to four-year backlog of men who, on leaving college, had gone off to war instead of law school. I was admitted to several law schools for the semester beginning in January. So what did I do during the fall? I returned to Yale as a special student. The GI Bill of Rights paid the way, and I was able to take five courses I had always wanted to take but could
never fit into my schedule. It was a wonderful experience.

**WSW:** That was a nice thing to be able to do.

**BUCKLEY:** It was lovely. Aside from the academic work, I was able to catch up with old friends I hadn't seen for three years and to help the Yale Daily News get started again.

**WSW:** Not a lot of pressure -- you had already graduated. This is not a bad way to spend a few months.

**BUCKLEY:** And then I started in law school at Columbia and later transferred to Yale.

**WSW:** Why did you start Columbia? Why didn't you go to Yale Law School?

**BUCKLEY:** Because I was not admitted there. I was admitted at Harvard, Columbia, and Virginia, but not Yale.

**WSW:** But then they took you later -- after a year. Did you spend the year at Columbia?

**BUCKLEY:** One semester.

**WSW:** Just one semester?

**BUCKLEY:** You had to get a certain level of marks and I got them.

**WSW:** Then you went back to Yale?

**BUCKLEY:** Went back to Yale.

**WSW:** And at this point did you have an idea what you wanted to do with your law degree?
BUCKETLY: I wanted to be a country lawyer.

WSW: I suppose that's on your resume somewhere.

BUCKETLY: But I didn't become one.

WSW: I didn't see it anywhere in your resume that you ever became a country lawyer.

BUCKETLY: That was my ambition, and one of the reasons I went to law school was that it would have made it possible for me to earn a living in the country.

WSW: I would say that many people who go to law school go with an idea that they will do something very different than they end up doing. Do you think that's right?

BUCKETLY: Could be, yes.

WSW: Law school in fact changes your view of what it is you are going to do with your life. Were there particular teachers, law school professors, that were important to you during that period?

BUCKETLY: Not really. I must confess that when I asked a professor at Columbia for a recommendation to go to Yale, he called me a sap because, he said, at that time Columbia had by far the better teachers. Law schools go up and down, but at that particular time the professors at Columbia were tops in their fields.

WSW: And who was it that told you that? Somebody I would know?
BUCKLEY: I don't think so. His specialty was the Development of Legal Institutions. He taught a fascinating course. It was a required course for first-year students. It taught them the origins of the common law and traced its development from the time of the Norman Conquest to the settlement of British America.

WSW: That sounds like a course that would be offered at Yale.

BUCKLEY: But it wasn't. The luminaries at Yale were not, by and large, the ones who taught the bread and butter courses, and my interests were bread and butter. There were a number of professors at Yale whom I liked but I wouldn't say that they molded me in any way. I was exposed to Eugene Rostow at that time and later got to know him fairly well. He taught me bad economics.

WSW: Would he agree with that?

BUCKLEY: He would agree it was economics that I would not subscribe to. It was pure Keynes.

WSW: Did you have classmates who were particularly important to you then or now?

BUCKLEY: Yes. And several of them were individuals who were important to me as an undergraduate. In a very real sense, I was able to recapture some of the flavor of my undergraduate life.
WSW: It was no longer military. Everybody wasn't walking around Yale in uniform. So it probably in some sense seemed like what college was supposed to be.

BUCKLEY: Right, except the dining rooms hadn't reverted.

WSW: You never got the tablecloths back. Did you like your law school education? Did you like it while you were doing it?

BUCKLEY: I liked it; I wasn't excited by it, but I was learning a trade.

WSW: You didn't meet with study groups and discuss the finer points of due process?

BUCKLEY: No.

WSW: And at what point in your law school career did you decide that you were maybe not going to be a country lawyer.

BUCKLEY: I didn't make that decision until several years after I had graduated. From the beginning, I had decided that to succeed in the particular area where I wanted to be a country practitioner, it would be necessary for me to first work a few years with a top quality firm. I needed the legal background and preparation that would enable me to get the carriage trade when I moved to the country. I had a role model, a man who had been a partner in one of the very big New York firms for 10-15 years, and then moved up into the country. He was able to get the business of retired
New Yorkers who would go to him for their wills and estate planning. That's what I more or less had in mind. So on leaving law school, I became an associate with Wiggin & Dana in New Haven, which was one of the top firms in Connecticut.

WSW: Were you successful in law school? Did you do well?

BUCKLEY: By my way of thinking I was very successful. I ended up in the absolute middle of a class to which I had not originally been admitted.

WSW: And you thought that really showed them.

BUCKLEY: And I must confess I did not work as hard at Yale Law School as I had at Columbia.

WSW: That was my next question. What were your study habits like? Were you one of those people who was always in the library or more like one who was generally on the soccer field. Where did you fall in that spectrum?

BUCKLEY: In the middle.

WSW: As you think back on your law school education, do you think it was appropriate, useful, too academic, not academic enough? How do you think about your law school education?

BUCKLEY: I thought that Yale had too great a focus on the development of public policy. Its emphasis was not on training practitioners.

WSW: That hasn't changed one bit at Yale as far as I know.
BUCKLEY: I have had some wonderful clerks out of Yale.

WSW: We have wonderful Yale law students. I didn't mean to say otherwise. But they haven't learned a lot of bread and butter things in law school. I think that's characteristic of Yale. You weren't married during this period. I don't want to go out of order, but I can't remember exactly when you did meet your wife or when you got married. Was it shortly after law school?

BUCKLEY: No. I graduated from law school in '49, I was married in '53.

WSW: How did you meet your wife?

BUCKLEY: There's a great argument about that.

WSW: About the answer to this question?

BUCKLEY: Yes. The reason was that when I applied to Yale as an undergraduate, I said I wanted a roommate but I had nobody in mind. I received a postcard in the middle of the summer advising me that I would be rooming with somebody called Richard Cooley.

WSW: Your future brother-in-law.

BUCKLEY: Right. Richard Cooley had three younger sisters. I am not aware of having met my wife during the two times I visited his home.

WSW: But she has a different recollection.

BUCKLEY: I do recall meeting her youngest sister. My wife was at a boarding school at the time. In any event, years
go by and when it was suggested that I have a blind date with Ann Cooley, I figured this wouldn't entail a large risk. Ann and my sister Priscilla were both working in Washington for the CIA. I was working in New Haven. At the time I was in my late 20's and thought that I was doomed to perpetual bachelorhood, which I didn't want. Priscilla said that Ann was a splendid person and proposed bringing her to Sharon for a Memorial Day weekend, which is a long time. Having known her brother Dick, however, I figured it was a good risk.

WSW: Where did she go to college?

BUCKLEY: Manhattanville College, which was then in Manhattan. It's now in Purchase, NY.

WSW: What was she doing for the CIA? Or can't you tell?

BUCKLEY: She never told me.

WSW: That sounds like the CIA. You never know what they are doing.

BUCKLEY: I really don't know.

WSW: How long after the Memorial Day weekend did you get married?

BUCKLEY: About a year.

WSW: And then you were in Connecticut at that time and I take it she left the CIA?

BUCKLEY: She left the CIA, yes.

WSW: Tell me a little bit about your children.
BUCKLEY: The oldest is Peter. We were married in '53 and he was born in '54. Therefore he is now 41. He has an MBA degree from Harvard and now works out of New York City for a San Francisco investment banking firm, lives in Connecticut, but seems to spend most of his time in an airplane. He married a lovely woman three years ago -- just before his 39th birthday. They now have a son. Number two child is called Jay, which is short for James. His middle names are those of my first boss, Frederick Wiggin, whom I greatly admired. Jay is married, has three children - two boys and a girl. He works for a computer software company and lives in Rhode Island. The next child is our only daughter, Priscilla, who has lived abroad for the last fourteen years or so. She married a Frenchman six years ago and lives in Paris. They have one child. She is a writer, was a freelance writer. After her child was born, she decided she needed a regular paycheck and now writes manuals for software programs.

WSW: She and her brother have a lot to talk about when you have Christmas together.

BUCKLEY: She got her job through her brother.

WSW: That's one of the advantages of having a large family.

BUCKLEY: Next one in line is son Bill. He is one of the unmarried ones. Since he was a boy, he has had an absolute passion for hunting and fishing. After trying his hand in commercial real estate, he ended up
working for a group of magazines in New York which included several hunting oriented magazines -- one archery, one on white tail deer hunting, and so on. He subsequently moved to Bozeman, Montana, where he now works as a freelance hunting and fishing photographer and writer. A competitive field but he has a freezer full of good meat.

He probably doesn't need a lot to live on. And he is unmarried.

He is unmarried. The next child is David. David is the only lawyer. He went to Virginia Law School and, before that, Yale.

Is he the only one who went to Yale?

Yes. After practicing for a few years with a firm in Los Angeles, he moved to Davis, Polk in New York City. He worked with their real estate group for about six years. He liked the work, but a point came when he got fed up with not knowing whether he could keep a dinner date that evening or have to cancel his weekend plans at the last minute. So he started shopping around and now works as a real estate lawyer for Host Marriott. This entailed a substantial reduction in pay, but he is happy as a lark.

Does he live in New York?

No, he lives in Virginia and works at the Marriott headquarters in Bethesda, Maryland. He is engaged in the same kind of work as he was in New York but has a
greater degree of responsibility. Likes the people he works with.

WSW: I'm sure the stresses are so much different. Good. Is he married?

BUCKLEY: No. And then there is our youngest child, Andrew, who is married. He has one child, a daughter, who has the honor of being our oldest grandchild. His interest is photography. After a stint working for a weekly newspaper, he decided to go out on his own as a freelance photographer. He lives in York, Maine.

WSW: Do you get together as a family often?

BUCKLEY: Not often enough, but we have managed to get together virtually every Thanksgiving and Christmas. But now that families are being established, we are seeing competition from in-laws. So we count our blessings. Last Christmas we had everybody, but we don't expect that to continue.

WSW: And when you have everybody, does everybody come here?

BUCKLEY: To Connecticut.

WSW: Do you have a home in Connecticut?

BUCKLEY: We had a home until ten years ago, eleven years ago, but the house and the place where I grew up was rather large. After my mother no longer used it, it became condominiumized. The main house was made into five units, two of which were purchased by two of my sisters. The place also had a large barn that was
converted into three units. One of these was retained for members of the family, so between the surplus accommodations my sisters make available and this unit, we can all squeeze in.

**WSW:**
And do you still do that? When you go to Connecticut, is that where you go?

**BUCKLEY:**
Yes.

**WSW:**
I remember last time you said that you had an enduring memory of construction on that house. How would you describe your role as a father as your children were growing up? Were you active in raising your children? You might compare it to the role that your father had in raising all of you.

**BUCKLEY:**
Well, I think there is a fair degree of similarity between us. I think I told you that my father was in many ways an absentee father. He would be in New York during the week while we stayed in the country. My father's business involved Venezuela. From time to time he would have to take business trips to Venezuela which would last several weeks.

**WSW:**
Which was nowhere near Sharon.

**BUCKLEY:**
Nowhere near Sharon. I ended up following a similar pattern except that when I was not away on business trips abroad, I would spend five nights a week in Sharon as opposed to his three. But we are ahead of ourselves. I wasn't married until after I left Wiggin & Dana.
WSW: We are going to get to the whole legal career, I just wanted to talk a little about your family.

BUCKLEY: OK. I left Wiggin & Dana to work with my brother John for a group of small oil exploration companies that my father had founded. This would take me out of the country on the average of four or five months a year. Our principle office was in New York City, but John and I also had a tiny office in Sharon that had a telephone tie line to our New York switchboard. We would go into New York Tuesday mornings and return to the country Thursday evenings.

WSW: That is in the model of your father. Did you ever take your children on trips when you were going?

BUCKLEY: Not as many as I wish we could have. We did have several trips. We went to California several times to visit Ann's parents and rented a house there. And one time I took a sabbatical and moved the whole family to Spain for five months. The group I worked with had this wonderful idea. Because we could pinch hit for one another, we would each take off for a period of six months with our families while we were still young enough to enjoy the experience. I was the second of the four of us to actually take off on a sabbatical when a series of corporate crises forced us to abandon the policy. As it was, I had to make two emergency trips from Madrid to the Philippines while we were in Spain.
OK. Let's go back to your career now. After you graduated from law school you went to Wiggin & Dana, is that right?

Yes.

Did you look a lot of places? How did pick Wiggin and Dana?

I looked at some firms in Hartford because the pattern that I wanted to duplicate was to gain big city experience to prepare me for a quality practice in a small community. My first thought was to work in Hartford. I had a very good friend in New Haven, however -- Lew Wiggin - who was the nephew of Frederick Wiggin of Wiggin & Dana. Lew, who was an orphan, lived with his Uncle Fritz and suggested that I discuss my plans with him. So I visited Uncle Fritz, whom I had known slightly through this connection, and he said, "Why don't you work for me?" So I did.

Great way to get a job. So you went to work for Wiggin & Dana in New Haven. How large was it at the time?

As one of the largest law firms in Connecticut, it then had eleven partners and three associates.

Were you the third?

Yes.

How big is it now?
BUCKLEY: Fifty, sixty lawyers. I don't know.

WSW: Is that all?

BUCKLEY: I don't know.

WSW: And what did you do?

BUCKLEY: A little bit of everything, except criminal. I didn't do any trial work either, although I carried a partner's briefcase a couple of days and was assigned by the court to handle one divorce case. I represented some obstreperous Yale law students before the City Magistrate -- not really a trial.

WSW: But you didn't do a lot of litigation, you didn't find yourself in court. Is that what you wanted?

BUCKLEY: I was not drawn to litigation.

WSW: How long were you at Wiggin & Dana?

BUCKLEY: Four years.

WSW: What kind of views about law practice did you form during that period?

BUCKLEY: It seemed to me that a law practice would become truly rewarding once you had clients of your own where you could follow through with them and you became part of their universe. The work of researching discrete issues and other tasks assigned by partners who had continuing relationships with clients did not excite me tremendously. But I could see how the practice could become more rewarding. Towards the end, I did begin to get my own clients. One in particular
interested me -- a fellow who dealt in rare books. He wanted to be incorporated, so I incorporated him; then he had a little zoning problem, and I had to look at that; and then there was something else. But in any event, by this time my father had become short-handed and sent my eldest brother John, who was working for him, as an emissary to woo me away; and because I was not totally excited about what I was doing, and even though it meant working in New York City, which I had hitherto gone to some lengths to avoid, and even though I had never considered a career in business, I found myself saying goodbye to Wiggin & Dana and going with my father's group. I began my new life doing primarily legal work with Dean Reasoner, a partner of the Washington, D.C., firm of Reasoner & Davis, who spent most of his time working for this group of companies and was in our New York office three days a week. So I started out working with these companies as an associate of Reasoner & Davis. For awhile we had a little apartment in Washington where we spent a few days a week, but I soon ended up spending all my time in New York.

WSW: What is this group of companies?

BUCKLEY: The specific company I worked for was called The Catawba Corporation, which was family owned. Catawba in turn represented and worried about all of the non-technical aspects of a number of publicly held
corporations engaged in petroleum exploration, mostly outside the United States. At the time I joined the group, there were four of them -- all traded on the American Stock Exchange. By the time I left Catawba, in 1970, the group had grown to seven: Pantepec Oil Company of Venezuela, my father's original company; Pancoastal Petroleum, which also held concessions in Venezuela; Coastal Caribbean, which held mineral exploration rights in Florida; Canada Southern Petroleum, with properties in western Canada; United Canso Oil and Gas, ditto; Magellan Petroleum, which held petroleum exploration rights in Australia; and San Jose Oil, with properties in the Philippines.

**WSW:** Which of your brothers were working for these businesses?

**BUCKLEY:** My brother John and my brother-in-law Benjamin Heath, who was married to my oldest sister, Aloise.

*WSW:* So this happened when you were a fourth-year associate. The fourth year is the usual time you go do something else.

**BUCKLEY:** Is it?

**WSW:** Yes, because you have been practicing law, you think you ought to be on your own with your own clients. You are not; it's very frustrating; it's a hard period, so it's not surprising; and I wonder if it had happened five years later if you would have gone. You probably would have become a partner at Wiggin & Dana.
BUCKLEY: Unless, of course, I had followed on my original course and hung out my shingle in Sharon.

WSW: You were married when you did this?

BUCKLEY: I married during the transition. We were married on May 22, 1953, in St. Louis, Missouri. But in any event I'd left Wiggin & Dana at the end of April and I reported for duty in my new job after my honeymoon.

WSW: Where were you living? Did you stay in Connecticut?

BUCKLEY: We got an apartment in New York, and we had one in Washington and spent most weekends at my parents' home in Connecticut.

WSW: Did Ann go back and forth with you?

BUCKLEY: Yes, she did. Then after a little over a year, after our first child was born, we bought a little cottage five miles from the village of Sharon and lived there weekends. Then after our third child was born, we built a house nearby. By then, Ann was spending most of her time in Connecticut.

WSW: During this period in which you were working with your father's firm, I take it you are really not practicing law?

BUCKLEY: Basically working with lawyers. I understood the corporate problems and so, for example, I became engaged in negotiating concession contracts, checking prospectuses, and so on. The work I did required familiarity with the law and the ability to deal with
lawyers as well as a thorough grasp of the corporate and operating requirements of Catawba's clients. I would find myself, for example, in Sicily working with an Italian lawyer to structure a corporate subsidiary in such a manner that it could both qualify to hold Sicilian concessions and enter into customary petroleum operating agreements that relied on trust concepts that were foreign to Italian law. I also worked with the Philippines Bureau of Mines in drafting a standard oil exploration concession form that would prove workable from the perspective of both parties. As I say, although I was concerned with legal problems and worked with lawyers, I no longer engaged in legal research or other work of that kind.

WSW: It's more fun to be the client.

BUCKLEY: I negotiated a lot of contracts. I worked on SEC prospectuses. I helped write the Philippine geothermal energy law. But I did not practice law in any traditional sense.

WSW: But it sounds like you were enjoying it.

BUCKLEY: Yes, I thoroughly enjoyed it. It was creative. I found that I had an entrepreneurial streak in me that I hadn't realized I had.

WSW: Were you surprised actually that you ended doing this?

BUCKLEY: Yes.
While you were moving around the Pacific, I suppose one of the options must have been to go into your father's business.

I had never considered it.

You'd never thought of it?

No.

Why not?

Just never considered it. I didn't think I had any particular talent for business, and I wanted to work in the country.

How long did you do it? How long were you involved with your father's businesses?

About 17 years.

During this period, did your oldest brother continue and your brother-in-law?

Yes.

And you must have traveled all over the place. Was it mostly oil or were there other businesses?

Almost exclusively oil and gas. Towards the end of my time with Catawba, I began to explore the possibilities of geothermal energy -- the search for commercial sources of geothermal steam for the generation of electricity. We formed an informal partnership with a California corporation that had the technical expertise. I then spent time investigating...
the possibilities of securing geothermal exploration concessions in Nicaragua and the Philippines. I was also responsible for the organization of a mineral exploration venture in the Canadian arctic called Borealis Exploration Limited.

WSW: Well, up until this point we've talked about a lot of things you did in your life. None of them are political or associated with the political process directly. So either I've missed something or there's more to tell. So my next question is, sometime after this period you ran for the Senate and you became involved in politics. What happened; what have I missed? You said it all happened by accident.

BUCKLEY: I've always been interested in political issues and at one time or another worked for various political committees, but I was never involved in traditional party work.

WSW: But how did you end up as a candidate for the United States Senate?

BUCKLEY: You may have heard that I have an exotic brother.

WSW: I've heard that.

BUCKLEY: In 1965, Bill was prevailed upon by the recently organized New York Conservative Party to run for Mayor of New York City. That campaign has achieved folklore status because of Bill's answer to a question he was asked at the press conference announcing his candidacy. A reporter asked, "Do you expect to win"?
Bill said "No." He was then asked what he would do if he did win. And his answer was, "Demand a recount."

The Conservative Party was organized for the purpose of creating a counter-force, a counterbalance to New York's Liberal Party, which had proved enormously effective in influencing both of the major parties. Do you have any familiarity with New York politics?

WSW:

I do a little bit. I never lived there but New York was a very interesting political scene, which I was aware of at the time.

BUCKLEY:

Let me give you the background. The Liberal Party was founded shortly after the war by two very astute heads of two New York City garment workers' unions. They developed enough of a following to establish that a Liberal Party endorsement was worth a certain number of votes in any election. These endorsements normally went to Democratic Party candidates; but on occasion, the Liberal Party would endorse a particularly liberal Republican. New York elections are often decided by very narrow margins, so the perceived value of the Liberal endorsement had the effect of leveraging New York's Republican Party to the left, at least when it came to selecting candidates for statewide office and for races in New York City. In 1964, two very bright young New York City lawyers, one of them now a Federal Circuit Judge with the Second Circuit, Dan Mahoney, founded the Conservative Party as a counterweight. To
gain credibility, a leverage party such as these must field its own candidate if it cannot in good conscience endorse the candidate of one of the major parties. This was the case in the 1965 mayoralty race. The Republican candidate was John Lindsay, a Yale classmate and friend of mine. He was not only a political liberal, he sought, and received, the Liberal Party's endorsement.

**WSW:** That is what the Republicans in New York City were known for -- they were Lindsay Republicans.

**BUCKLEY:** Right. So, Bill thought this might be interesting -- (a) it would require him to focus on political issues in the urban arena as opposed to the national and international arenas that had been his principle concern, and (b) somebody had to run on the Conservative Party line. He referred to it as his jury duty.

**WSW:** He thought it would be fun.

**BUCKLEY:** Right. Because it was conceded that there was no possibility that he would win, he was assured that he would not have to spend more than a day or two a week on his candidacy.

**WSW:** Somebody lied.

**BUCKLEY:** Right, and so Bill said he would do it. I was then in California with Ann and our children visiting Ann's parents. I got a telephone call from Bill. He said, "I'm going to run for Mayor of New York, and I want
you to be my campaign manager." I said, "Bill, I don't know anything about campaign managing." Bill answered that that was not important. What he needed was someone to run interference for him, to protect him from all the amateur politicians in the Conservative Party who would be drowning him with advice. And I said, "Well you know, Bill, I don't have the time." To which he replied, "It isn't going to take any time. A couple of mornings a week. I'll just be giving a few speeches; everybody knows I can't win." I confess I was a little intrigued; and with these assurances, I signed on.

It wasn't the way it was portrayed.

It wasn't the way it was portrayed. So I became at least the titular campaign manager of a campaign that really caught a lot of people's imagination. John Lindsay, as splendid as he is, was very earnest on the campaign circuit; and his Democratic opponent, Abe Beame, was a typical product of the Democratic city machine. Bill brought a wit and irreverence to the enterprise that captivated the press corps. At the same time, he injected into the campaign a serious and penetrating critique of the liberal approaches to urban ills. Reporters would flock to Bill's press conferences at campaign headquarters for relief from the earnest seriousness of those given by the opposition.
Just to be entertained.

To be entertained; plus the fact that some reporters were intrigued by the unorthodox but serious ideas that Bill would float on different aspects of urban management. Time passed and Bill did not have to ask for a recount. Nevertheless, Bill did astonishingly well. John Lindsay won.

Not to anybody's surprise.

Then, less than three years later, in February of '68, I found myself flat on my back in an American military hospital in Libya, having three days earlier ruptured a disc while tying my shoelaces preparatory to meeting some Libyan minister.

That's painful.

Fortunately, there was an American hospital there. In any event, it was while I was at the hospital that I received a telephone call from Bill asking whether I would consider running for the Senate. I said, "What?" Bill explained that Senator Jacob Javits was running for reelection that fall, that obviously the Conservative Party couldn't endorse him, and that the Party's chairman, Dan Mahoney, had asked him to call me to see if I might be interested. Apparently those Conservative Party stalwarts who had earlier consented to oblige by running for this or that office had finally said, "Enough." Having run out of names, someone said ...
There's another Buckley.

Exactly. I told Bill the idea was ridiculous.

Why didn't Bill?

He had done his bit. He had done his jury duty. In any event, even though I said the suggestion was ridiculous, I have had a practice of never saying no until I've thought something through. So I agreed to let Dan make his pitch in person after my return to the States. So, a few weeks later, after I had returned home but still had to spend much of my time on my back, Dan called to see if he could come up to Sharon for a visit. I said fine. He was to join us for dinner, but that night was horrendous, with a bad fog. We waited and waited for Dan and finally ate dinner without him. We finally heard from him at about 10:00 p.m. from a town about 20 miles north of us. Dan assumed that Sharon was on the Connecticut shore to the east of his home instead of in the mountains about 80 miles to his north. An hour had gone by before he discovered his mistake and, having again missed the mark, was seeking precise directions. Unfortunately, the fog was so dense by this time that it took him another hour to arrive at our house; so we put him to bed, and the next morning he made his pitch while I was flat on my back and defenseless. He pointed out the intellectual interest of being involved in a major political race and said that
because I would have no chance whatever of winning, no one would expect me to spend much time campaigning. I told him that if I had a chance of winning, it would be irresponsible for me to run because of family and business obligations. As that wasn't in the cards, I said I would ponder the educational value of his proposal and then give him my answer.

WSW: Was it a problem that you didn't happen to be a resident of New York?

BUCKLEY: One thing at a time.

WSW: I'm sorry. I love this story.

BUCKLEY: Finally, I concluded that this would be an intriguing experience. I had never given a speech. I'd never been on television, let alone a televised debate. I had no idea whether I could handle this or not.

WSW: You describe yourself as shy. Most people who describe themselves as shy don't then run for the Senate.

BUCKLEY: They've probably never been asked to. In any event, after a week or so talking it over with my wife and with my cohorts at Catawba, I told Dan that, if he hadn't come up with a better idea, I would give it a try. Ann gave me permission to undertake this mad venture and thought it might be fun; John, Ben, and Dean who, along with me, were by that time in charge of Catawba, assured me that they could pinch-hit for me as required during the two months between Labor and
Election Day that I would be a part-time campaigner. On the problem of New York and my residency: In 1968, the issue really didn't arise because everyone knew I couldn't possibly beat Javits. Furthermore, Bobby Kennedy had taken much of the edge off the carpetbagger issue in New York. He moved into the state as a total outsider in early 1964, bought himself an apartment, moved in his family, accepted the Democratic Party's nomination for the Senate, and won. In 1970, when I again ran for the Senate, this time with the hope of winning, the question of my residency was raised by some Upstate New York newspapers that had opposed Kennedy on that basis. I was able to secure their endorsement, however, because unlike Kennedy, I had some genuine New York credentials. I had worked in New York, maintained an apartment there, and paid New York State and City income taxes over a period of 17 years. But I'm ahead of the game. We were talking about 1968. I have this period confused in my mind, and I have tried to get my friends to help me sort it out, and none of us could.

WSW: I jumped ahead to the 1970 campaign when I ran against Senator Charles Goodell, who had been appointed by Governor Rockefeller to fill the last two years of Bobby Kennedy's term after the latter was assassinated. You had been asking me about 1968,
about how I had gotten into politics. I was explaining that although I was the legitimate candidate of an established party, everyone, including your servant, knew I couldn't possibly win. To the extent that anyone did raise the residency issue, which was virtually never, I would run through the litany of my then 15 years as a New York taxpayer.

WSW: Your family thought you lived in New York. Your family would give you an affidavit. OK I should know this and I am confused, but in 1968 Javits had that seat; it was the Javits seat, not the other seat; and you ran against Javits?

BUCKLEY: That's right. And the Democratic candidate was Paul O'Dwyer, the brother of the former Mayor of New York City. A nice man.

WSW: Who ran your campaign, your brother?

BUCKLEY: No. A fellow who was a full-time employee of the Conservative Party -- its executive director, I believe. He was not very well organized. But I made the rounds and to everyone's surprise, most particularly mine, I came across well. I rattled off my first few speeches at 90 miles an hour. It took me a long while to sort of throttle back. I did a lot better in my televised appearances, answering questions on talk shows or participating in the three-way debates that were occasionally scheduled. I was able to reach large audiences through these freebies.
My campaign was only able to raise about $180,000 or $200,000, so we couldn't buy TV coverage. On the other hand, a lot of volunteers flocked to the cause. They would set up store-front operations in various parts of the state, pass out literature, and so forth. I was the beneficiary of a great deal of grassroots activity. Also, because I was the candidate of an established party, I would get media coverage as I moved around the state. Turn up at the airport in one of New York's media centers, and you would be on the local television that night answering a lot of pertinent questions. I quickly found, however, that all this took a heroic amount of time and effort -- not the few hours a week that Dan Mahoney had suggested. But to make a long story short, I did astonishingly well. I got approximately 1,200,000 votes, which was twice as many as any third-party candidate had ever received in New York. And so when it was all over, I felt that it had been a wonderful experience but that it was time to get back to work. You didn't say, "This was fun; I think I'll try this again"?

No. To the contrary, I told the press that it been a great experience but never again. The New York Daily News ran the story under a headline that said, "First and Last Hurrah." Then, in the next couple of years, in 1969 and 1970, some very strange things started
happening in the United States. I refer to the campus violence, the anti-War protests, the bombings and flag-burnings, the rejection of traditional standards that dominated the headlines during that period. At that time I was spending a considerable amount of time in places like Australia and the Philippines. What was going on in the States created headlines everywhere I went. I grew up thinking these sorts of things couldn't happen in the United States. We had too much sense. We had legal procedures, political procedures that allowed people who had grudges and problems to work within the system. I recall talking in Australia to a couple of Americans who had immigrated there because they felt the United States had had it. All of this aroused some Boy Scout impulses in me, especially as Charlie Goodell, who had succeeded to Bobby Kennedy's seat, had begun to align himself with the anti-Vietnam forces and some of the (to my mind) ruinous social positions being advocated by campus radicals. So I returned from the Philippines with the thought that, based on my performance two years earlier, and given Goodell's perceived shift from the conservative to the liberal wing of the Republican Party since moving from the House of Representatives to the Senate, it might not be implausible for me to win a primary contest for the Republican nomination. So, with great hesitation, I broached the subject with Ann, and she said OK based
on the understanding that I would only undertake another race if I had a realistic chance of winning. So this was in earnest. I then met with Dan Mahoney and a couple of other people; and the first thing I learned was that because I had resumed my Connecticut voting residence in 1969, thereby forfeiting my New York registration, I could not challenge Goodell's nomination in a primary election unless I received the Republican Party's permission to do so. By virtue of that lack of foresight, I had to abandon the thought because Nelson Rockefeller controlled the Republican Party, and he was not about to authorize a challenge to his nominee. So what I now had to find out was whether there was any possibility of winning as a third-party candidate. Incidentally, I am not sure I see the relevance of all of this to the legal background of a federal judge.

Here's my view about that. I believe that the purpose of these interviews is much broader than that. It's not just to find out what your judicial views are and how you get along with the court and what your legal practice was like. For many of these interviews, that's all there is to discuss because that's what people did. But you have done much more. What I want you to think about, and what I'd like to talk to you about, is your thoughts about the different branches of government and how they work together -- having served in all three branches. You are a very unusual
person. You've been in all three branches, and I want to talk at the end about comparing all of the experiences. So all of this is fascinating. And, in any event, you are not going to deprive me nor anybody else who listens to these tapes of the pleasure of hearing these stories. More to the point, who you are and who you are as a judge has been affected not only by your experiences at the Yale Law School, but I suspect much more by your experiences in the Senate. Have I persuaded you?

Buckley: I yield. In any event, I decided that I wouldn't run unless somebody could assure me that (a) it was possible for a third-party candidate to win an election; (b) that I would be perceived at the outset as a credible candidate (credibility being essential if I were to secure the press coverage and financial support essential for a successful campaign); and (c) that I could secure the initial financing required to establish the organizational base I would have to have in order to establish that credibility. So somebody suggested that I get hold of Clif White -- F. Clifton White. Does that name mean anything to you?

WSW: No.

Buckley: He recently died -- fascinating man. He made his national reputation by masterminding Barry nomination at the 1964 Republican National Convention. Absolute attention to detail -- he was a native New
Yorker and was very familiar with the structure and organization of the political machinery in New York, at the county level and so on. At one point he was the State Commissioner of Transportation. He paid enormous attention to detail, took every contingency into account in his planning. I spoke to Clif White and retained him to find the answers to the three questions. To find them, however, he would need to commission a poll, which would cost about $11,000. A family in New York, a father and two children, came up with enough money to pay for the poll and Clif's retainer. The poll satisfied him that there was enough public support for the positions that would distinguish me from the two major party candidates to make a victory in a three-way race possible. But no additional significant money was in sight. In the meantime, the date was rapidly approaching by which I would have to announce my candidacy in order to get on the ballot. Once I announced, I had another period in which I had to sign an affidavit that would commit me to remain a candidate. Clif was confident I would be viewed as a credible candidate provided I secured adequate financing, but I had to take a chance and commit to the race before there was any assurance that I would receive the funding required for a serious race. One critical need at the outset was a highly visible, operating headquarters in New York City. That was really essential. The press had to have the
evidence that ours was a serious operation. We also had to have telephones. Because the campaign committees of several of the candidates for the 1968 Democratic presidential nomination had large debts outstanding, New York landlords were refusing to lease space, and Mother Bell declined to install telephones, unless all charges were paid in advance through election day. A friend of mine came to the rescue by lending the campaign sufficient securities to enable us to borrow $50,000 on the understanding that he would be repaid out of a portion of the first receipts from a fund-raising mailing that that money would also finance. So that enabled us to lease the same space on Lexington Avenue that Bobby Kennedy had used in his presidential primary campaign two years earlier. We had the phones with which to make and receive calls, and we were off to the races.

**WSW:**

To a certain extent the rest is history. What do you remember most about that race? This is a very turbulent time in New York and everywhere across the United States. The war is raging.

**BUCKLEY:**

And there are people that like seeing the flag burned. And there's a lot going on. You had been out of the country; and it was interesting, something that you said a little while ago, that a lot of your perception about what was going on was what you were reading in
foreign newspapers. What did you find when you came back?

BUCKLEY: Well, you had this rampant lawlessness that was being condoned by college presidents and the editorial boards of papers like the New York Times. I thought there were serious social problems and the country as a whole was not yet ready to ditch Vietnam.

WSW: How did you feel about that?

BUCKLEY: I thought that having gone in there, we should win it. I had no sympathy with the violence -- the burning and bombing -- that was associated with so much of the protest. A lot of people agreed with me, because the money began coming in, and I was assured of enough to put up a decent race. I found that I was on the same wavelength with all kinds of people all over the state. I was well received, although there were some places, mostly campuses, where I was forbidden to go. I did go to some campuses -- typically small Catholic colleges.

WSW: It was a very angry time.

BUCKLEY: But it was hectic racing back and forth, which was planned to take advantage of the several distinct media markets that exist in New York. So long as you didn't overdo it, if you turned up in Utica, you would be met by the local press and broadcasting media, and you would be carried in the evening new programs and the next morning's papers. Ditto Buffalo, Albany,
Syracuse, and so on. We had our debates. I worked with some wonderful people on my campaign and research staffs and had wonderful advance work. But it was not until early in October at a rally in Garden City, Long Island, that I suddenly realized that there was the real possibility that I might win. There was real enthusiasm.

**WSW:** What did your family think about this effort? Your wife and your children?

**BUCKLEY:** I did not involve them. The children did turn up at a county fair on Labor Day, when the campaign was officially launched; and Ann got dragged into a number of coffee clatches, but I didn't exploit them. They were still fairly young.

**WSW:** I guess your oldest was probably just entering college?

**BUCKLEY:** He was still in high school.

**WSW:** They were not in college yet so they were not caught up in the university scene.

**BUCKLEY:** Right. In any event, election day finally rolled around; and I won. It was really an experience, and the networks did not want to concede. I won by just under 40 percent, and Goodell ended up in third place by a substantial margin. There is one point I would like to make about this election. The conventional wisdom is that I was able to win that race because Goodell and the Democratic candidate, Dick Ottinger,
split the liberal vote. I don't think that is true. One of these days I am going to dig up an article in the now extinct New York Mirror that supports this view. The Mirror had an interview with Charlie a few days after the election. He was asked why he hadn't pulled out of the race when it became clear that he could not win it. A number of persons had urged him to withdraw. He told the reporter that would not have changed the outcome because his polls showed that his major support was coming not from liberals, but from upstate Republicans, who are generally conservative. Had he pulled out, I would surely have received the majority of those votes. I'm told that I received 40 percent of the blue collar vote. I got the traditionally Democratic, socially conservative, ethnic vote in New York, people who didn't condone the burning of the American flag.

**WSW:**

It was really a transitional time in American politics.

**BUCKLEY:**

Right.

**WSW:**

We have been at this about two hours, and your voice is probably going to give out. I propose that we quit and that we'll start next time and talk about the Senate and move on to your judicial career. Is that all right? OK.
Date of Interview: October 30, 1995

WSW: Where we left off last time, if you will recall, is we got you as far as being elected to the Senate. I wanted to pick up from there and talk a little bit about your life in the Senate, what committees you were on, what your assignments were, what issues you focused on. Why don't we start by talking about your committee assignments.

BUCKLEY: Well, over a six-year period you sort of wander from one to the other until you find your permanent legislative homes. And if you began, as I did, as number 99 on the Senate totem pole, you don't get the plums immediately. I did get one committee assignment I was anxious to have that, fortunately, was not high on most people's list. It was then called the Public Works Committee. What attracted me to it was that it had the primary jurisdiction over environmental protection, and I was very much interested in that area. The environment was only just beginning to be a hot legislative field, but it was one that I had highlighted in both my campaigns. In fact, it was such a new area of public concern that one of the Conservative Party fathers wrote me a stern letter during the 1968 campaign scolding me for wasting time on such a non issue as the environment. So I was able to get assigned to Public Works as one of my major committees. The way the Senate worked at that time,
each senator was assigned to two major committees and one minor committee. My other major committee, which was not all that major, was Air and Space. My minor committee was the Committee for the District of Columbia. Within two years, I had moved from Air and Space to the Interior Committee and from D.C. to the Joint Atomic Energy Committee. Two years later, I moved from Interior to Commerce. Towards the end of my term I also joined the Budget Committee, which had been recently authorized and was not classified as a major committee. I remained on Public Works throughout my six years; and because it was so unglamorous, I ended up as its ranking minority member.

**WSW:** Even though that involves the environment?

**BUCKLEY:** Yes.

**WSW:** Well, things have changed.

**BUCKLEY:** What happened was -- yes, things had changed; the environment was getting very important in those days. Although Howard Baker outranked me on the committee, when he became minority leader, he had to give up the position of ranking minority member. This explains my meteoric rise. As a member of Public Work's environmental subcommittee, I was very active in the first major revision of the Water Quality Act and in work on a number of new areas of environmental legislation. And because I was on the Interior
Committee during our first energy crisis -- the 1973 or 1974 Arab oil embargo -- I worked on important legislation in that area as well. My key interest throughout my Senate career was in the development of intelligent environmental regulation, by which I meant regulation that balanced benefits against costs and that were not so rigid as to inhibit the development of new and more efficient technologies for controlling pollution. Because I knew something about the economics and risks of oil and gas exploration and development, I tried without too much success to keep the new energy legislation from imposing controls that would inhibit the discovery of new domestic reserves. Federalism was always a preoccupation of mine and so I tried, whatever committee I was on, to draw lines as to what was an appropriate area for the exercise of federal as opposed to state and local responsibility. I'll give you two examples. I believed and continue to believe that, in most instances, the control of pollution requires national regulation for the simple reason that air and water move across state lines. But when we worked on legislation to control sound pollution, I took the position that we had to distinguish between noise generated from essentially local or stationary sources, e.g. jackhammers, and that created by mobile sources like airplanes and trucks. I wanted to limit federal controls to sources that would cross state boundaries in the normal
course. One of the proposals that the Commerce Committee held hearings on was no fault insurance. I thought that no fault was a great idea, but it seemed to me that the states were quite competent to decide for themselves whether mandating no fault car insurance was in the best interest of their citizens. Moreover, experience had proven that no problems affecting interstate commerce had resulted from the fact that a car registered in a no fault state was involved in an accident in a state that did not have no fault. Anyway, that's the kind of line between appropriate and inappropriate federal action that I consciously drew when I was in the Senate.

WSW: Were the speed limit pieces of legislation up when you were there? The 55 MPH limit in effect during the Arab boycott?

BUCKLEY: Yes. And that was justified purely as an energy conservation measure.

WSW: And did you support that?

BUCKLEY: I supported that.

WSW: What about the Clean Air Act and the Clean Water Act? Wasn't this legislation being enacted during this time?

BUCKLEY: They were passed shortly before my election. I think one of them -- the Water Quality Act -- was passed in 1968 or 69; the Clean Air Act was passed in 1970. The first work I did when I joined the Public Works
Committee was on a thorough revision of the Water Quality Act in light of the experience gained during its first three years. In my next to last year, we started work on doing the same thing for the Clean Air Act, but that was quite a different experience. I might as well go into that now. After I was elected to the Senate, somebody gave me a study of Congress that was published in 1970 and had been prepared by the Bar Association of the City of New York; and it concluded that the work load of the average congressional office had doubled every five years since 1935. In my own experience it may not have doubled, but it came close to doubling within my six years; and my favorite datum is that in January 1971, the Public Works Committee began a thorough review of the Water Quality Act. It held a series of hearings with witnesses from industry, environmental organizations, state governments, you name it. Amendments to the existing act were drafted, debated, revised in Committee mark-up sessions, adopted by the Senate, reconciled with the House version, and adopted in final form by Congress and signed into law by the end of the year. We started doing the same exercise with the Clean Air Act in 1975. By that time, however, so many committee and subcommittee meetings were being scheduled at identical times that often we couldn't proceed with any work because of a lack of a quorum. Moreover, even when we had a quorum, our
meetings were constantly being interrupted by the ringing of bells summoning senators to the floor for roll call votes. In any event, it took over a year and a half before the Senate finally enacted its version of the overdue revisions of the Act. But because the House hadn't been able to report out its version of the amendments, Congress was unable to enact any amendments before the 94th Congress became history. That meant that the process had to begin all over again in 1977.

**WSW:**

Now there is a famous piece of legislation that seems to impact everybody's life all the time which is known as the Buckley Amendment. That's in a different area. Tell me a little bit about the origins of the Buckley Amendment.

**BUCKLEY:**

That amendment had its origins in an article that a member of my staff called to my attention. It was a report on a study by a foundation in New Jersey which dealt with damage that too often resulted from the refusal by schools to provide parents with information concerning their children. That information would contain test results, teacher's comments, and gossip that was often inaccurate or prejudiced and could have the most devastating effects on the children's futures. It could affect their course assignments, assumptions as to their ability to learn, and so forth. Because parents were denied access to this
information, they had no opportunity to correct errors or to challenge decisions concerning their children. The foundation had developed draft legislation to address these problems and had circulated it for comment by various academic organizations. The article caught my interest because I had long been concerned by the failure of too many educational bureaucrats to recognize that parents had the primary responsibility for the welfare and education of their children. The purpose of my amendment was to strengthen the parental role by requiring schools that received federal funding to provide parents, on request, with all information relating to their children. I will confess, however, to an intellectual dilemma. I had long believed (and continue to believe) that the federal government had no business involving itself in public education; that this was an area that should have remained the exclusive concern of state and local governments. So, although I voted for the Buckley Amendment, I voted against the bill to which it had been appended.

**WSW:**
I don't even know what it was an amendment to. Was it one of the higher education acts?

**BUCKLEY:**
I forget. Whatever the underlying bill, the amendment was accepted by the chairman of the sponsoring committee, Senator Pell. As you no doubt know, it has proven controversial. About 99 percent of the
complaints have been directed to the fact that the amendment gives parents, and students who have attained the age of 18, the right to see letters of recommendation that have been squirreled away in academic files. Frankly, it had never occurred to me that this would be a problem. I had naively thought that any letter of recommendation I had ever written would have been thrown away after it had served its purpose. Nevertheless, there is a provision in the amendment that enables a student to waive his right of inspection which is routinely availed of by students who solicit such letters; so I have always felt that this particular complaint was something of a red herring.

WSW: Of all the things that you did, the Buckley Amendment does stand out as a memorable piece of legislation.

BUCKLEY: Incidentally, one of the things that has irritated me is the way that some colleges will play games with the amendment. I have learned that many of them will refuse to provide parents with the grades of children who are 18 and over and blame me for it. Yet the amendment specifically provides that the parents of dependent children, whatever their age have the right to get their marks.

WSW: Well, that I didn't know; but it is an important piece of legislation and it has had a real impact on higher
education. Some staff person brought it to your attention?

BUCKLEY: Yes, and I was intrigued with the issue. Another child-related bill that caught my interest came up for a vote in the fall of my first year. The bill was described as a bill to extend the Head Start Program and "other matters." The other matter happened to be something that was described in fine print as revolutionary. It would initiate a federal child development program of extraordinary scope that would apply to every child in America irrespective of economic need. It had an estimated cost five years out of a billion dollars, back when a billion dollars purchased quite a few things. I was the only person in the Senate to vote against the bill. It was subsequently vetoed for the reasons I had given when I tried to have the child development program eliminated. I later persuaded Walter Mondale, who was chairman of the sponsoring committee, that a lot of problems hadn't been looked into; and at a hearing on a new bill, he invited a couple of the experts I had recommended to testify before the committee. As a result, Senator Mondale and I subsequently cosponsored some amendments to a traditional child care bill that incorporated certain safeguards that the experts had recommended.

WSW: What were the issues that you found in that bill?
BUCKLEY: Aside from the fact that it would inaugurate a huge new federal program that virtually no one had examined with any care, it was critically flawed in many of its details. It would have forced, in effect, the warehousing of children with little thought to the consequences for the children. A number of studies were available at the time that demonstrated that infants could suffer significant developmental problems if more than two or three of them were placed in the care of a single adult, especially if that adult was changed every few days. One of them observed that, in the Soviet Union, the people who ran similar programs would not allow their own children to be placed in them. French authorities were cognizant of the harm that could be done infants if entrusted to institutional care at too young an age. So in France, mothers were not required to return to work for umpteen months. These are just some of the problems I saw with what the sponsors themselves described as a revolutionary program.

WSW: This was a federal child care program?

BUCKLEY: It was far, far more than that -- they called it child development. It went beyond meeting the needs of mothers who have to work. The fact was, no one studied this part of the bill. They all thought of it as the extension of existing, apple pie programs.
Because it was something for children and everyone thought it had to be passed?

It was labeled as a bill to extend Head Start and other matters. The child development program was buried under "other matters." A little woman in tennis shoes brought it to the attention of one of my upstate New York offices during the summer recess. It had been reported out shortly before the Senate took its August break, and it was scheduled as the first order of business after the Senate returned.

The problems? Do you know who that woman was? It wasn't the woman in the Senate who wears tennis shoes?

No.

Are there other issues or other legislation that you think of now as being important in your senatorial career?

I think I told you at the outset that I have a bad memory for specifics. Most of a senator's legislative work is done in committee, and it involves shaping the bills that become law rather than initiating them. That work can be highly important but tends to be invisible. I believe I had a definite impact on the environmental bills I worked on. One consistent effort was to require regulations to balance costs against benefits. But my first accomplishment during my work on the revision to the Water Quality Act does come to mind because of its parochial interest for New
Yorkers. As originally enacted, this legislation provided for 60 percent federal financing of water cleanup programs initiated by the states. The committee decided to increase the reimbursement to 80 percent. This would have rewarded those states that had dragged their heels in meeting the requirements of the Act. I was able to persuade the committee to apply the increase retroactively by reimbursing the early bird states the difference between 60 percent and 80 percent of the cost of the completed programs. This resulted in a rebate to New York of $900,000,000.

I can also claim credit for a few items outside the scope of my committee work. For example, I liberated America from the tyranny of the ignition interlock seat belt, that pesky device that made it impossible to start the engine unless seat belts were attached -- and sometimes wouldn't let you start your car even when they were. I introduced the Senate resolution that led to the reduction of U.S. payments to the U.N. from 30 percent of the total to 25 percent. I also initiated some legislative ideas that I wasn't around to see enacted. I am credited, for example, with introducing the concept of indexing the income tax. I also was the first to introduce some other concepts that have been seriously discussed, if not enacted, in recent years, e.g., tax credits for school tuition payments, the outlawing of preferences based on race
or sex, and a constitutional amendment protecting the unborn.

**WSW:** Did you live in Washington? Did your family move with you, or did they stay in Sharon?

**BUCKLEY:** Three children moved down. I came down alone in January of '76 and rented an apartment. My wife would commute back and forth. We bought a house that spring and, in the fall, my three youngest children came down with her, the oldest of them for just one year before going off to boarding school. My other children were already in boarding schools. My wife and resident children went north during the summers, and I would join them on weekends.

**WSW:** Did she like being a senator's wife?

**BUCKLEY:** Yes and no. It disrupted our normal family life, but the change from life in a small community to that of Washington officialdom did open up all kinds of interesting things to see and do that otherwise wouldn't have come her way. She does resent the fact that the only official trip I ever took her on was one to Puerto Rico. I had been appointed by Nixon as one of the U.S. representatives on a joint U.S.-Puerto Rican Commission to study the question of the latter's status, i.e., the choices between the existing commonwealth status, statehood, and independence.

**WSW:** She keeps reading about all these great trips and wonders why you missed them all.
BUCKLEY: I went on a number of solo trips to investigate particular problems of international policy that interested me. None of these was financed by the taxpayers.

WSW: Did she go with you?

BUCKLEY: No.

WSW: And what about your children -- did they enjoy being children of a senator?

BUCKLEY: I think they disliked it.

WSW: Because they never saw you.

BUCKLEY: I hope that's one part of it; but I suspect that the major reason was that being the child of a public official, especially one elected on something called the Conservative Party line, made them rather conspicuous at their respective schools. A couple of them told me, after I was dis-elected, that one or more teachers had given them a hard time or made fun of them in class over stands I had taken.

WSW: How did your children handle that? That was very difficult.

BUCKLEY: They seem to have survived.

WSW: And they didn't tell you at the time?

BUCKLEY: No, but I wish they had because it was outrageous.

WSW: Just out of curiosity, where are your children on the political spectrum?
BUCKLEY: I've never quizzed them, but I suspect that they are conservative.

WSW: Well you haven't quizzed them, but generally in talking to your children you must talk politics somewhat and sort of know where you are.

BUCKLEY: I can say that there are no crashing liberals among them, although they don't by any means share all of my positions. They even campaigned for my reelection. On their own. I didn't ask them to do it.

WSW: They were no doubt very proud that their father was in the Senate; more so than you probably realized. What would you say was your greatest accomplishment in the Senate? What are you the most proud of?

BUCKLEY: Again you have the memory problem. I worked consistently and a little bit creatively to require environmental regulators to take costs as well as benefits into consideration. I also kept emphasizing the need for flexibility and the role of economic incentives if we were to achieve the most efficient results. I thought it was necessary for people to recognize the huge burdens imposed by this kind of regulation, and I thought it was incumbent on government to make sure that the value of the benefits would at least equal the enormous costs that were being imposed. One of the things that I succeeded in having included in the Senate revision of the Clean Air Act, in 1976, was a test of the effectiveness of
using so-called pollution taxes to achieve the maximum feasible results. One of the problems with the one-standard-fits-all approach of existing environmental regulations was that they failed to recognize the fact that the cost of controlling a particular pollutant could vary enormously, depending on the nature of the particular polluter. Thus, standards would be set that could readily have been bettered by some industries because the imposition of more stringent standards would have put others out of business. Also, because existing regulations tended to require the utilization of the best available technology, there was a disincentive to develop new technologies that would clean out more of a particular pollutant lest this require the developer to spend still more on pollution controls. The new bill would place controls for the first time on the emission of nitrous oxide from stationary sources. I was persuaded that this would be the ideal opportunity to discover whether we could achieve the targeted reductions more efficiently by taxing the emission of nitrous oxide rather than by imposing rigid, uniform regulations on the emitters. This would create an incentive for the emitters of these gases to devise the most efficient ways to reduce the release of nitrous oxide from their particular plants. Because it would be far more costly for some of them to do the job, some industries would end up eliminating far larger percentages than
others; but on average, the target goals would be met. And if they weren't, an increase in the tax would increase the incentives to find new and better ways to reduce the emissions. Unfortunately, although the bill incorporating that test was adopted by the Senate, I was not on hand to make sure it was incorporated in the new bill that was enacted by a new Congress the following year.

**WSW:** Is there anything you can identify that you regret about your Senate career or any major disappointments that as you think back on you would rather have turned out differently?

**BUCKLEY:** Well, the election.

**WSW:** I haven't gotten to that yet. That's next.

**BUCKLEY:** Other than that, I am sure that there are but I would have to really sit down and think about it. I am having the same trouble with my mind as you are having with this machine.

**WSW:** Well, actually you remember more every time I ask. Let's talk about the campaign in 1976. Am I right that you campaigned against Moynihan?

**BUCKLEY:** Yes.

**WSW:** Tell me about that campaign. What were the major issues? What were the politics? What happened?

**BUCKLEY:** I think I should say something as a prelude to all of this because it is very relevant to how the campaign
turned out. You may or may not recall that in 1975 New York City went into a huge financial crisis, faced bankruptcy, and actually became bankrupt, although no one used that word.

**WSW:** That's when the New York Post had the headline that said "Governor to New York City - Drop Dead."

**BUCKLEY:** It was "Ford to New York City - Drop Dead." The instant appeal out of New York City and New York State was for federal guarantees of New York City borrowing, and I flatly opposed that. That meant that during the campaign the literature that was handed out included that headline, and on the other side it said: "and Buckley was a pallbearer."

**WSW:** Now there's a campaign issue. You knew you were handing him a campaign issue.

**BUCKLEY:** Yes, but I didn't know how I could be credible in the future if I didn't apply the same standards to my state that I would apply to anybody else. A very important point of principle was involved. New York City's problems were the direct result of gross mis-management. City employees were paid substantially more than those of any other major city; they could retire earlier with larger pensions, and so on. How a city is managed is the direct responsibility of its citizens and of the state in which it is located, not the federal government. While I believe it is reasonable to call on the citizens of all of the
states to help the victims of a natural disaster that strikes one part of the country, I could (and can) see no reason why they should be called upon to bail out the victims of a man-made municipal disaster. I did work with the Ford administration on an alternative approach to New York's problems that did provide New York with some significant help. Even well run municipalities will do periodic short-term financing to maintain their cash flow -- that is to say, to fill the gap between the periodic collection of taxes and the need to pay bills on a weekly or monthly basis. New York City, however, was no longer able to borrow. So the plan I worked on with the Treasury Department involved helping the city with its cash flow by accelerating certain federal payments that would fall due later in the year. This approach enabled the city to pay its operating costs and maintain its essential services, but it didn't involve additional subsidies from the federal government. In the meantime New York State passed legislation that created a board with the power to manage the city's affairs. The New York State legislature went a step further: it suspended payment on one series of New York City obligations, which is basically what happens when you go into bankruptcy. The suspension of debt payments was subsequently found to be unconstitutional by New York State's highest court. That, however, was well after the election. In the meantime I had to face Moynihan.
He had been a very effective U.S. Ambassador to the U.N. and was particularly effective in defending Israel against Third World attempts to paint it as a pariah state. He stood out as a lonely champion of fair play, and it made him an enormously popular public figure in New York. On one television program, which I happened to see, he was asked if he had any thought of running for the Senate; and he said "no, that it would be dishonorable of him to use his position at the U.N. to do that.

WSW: You picked that up in your campaign literature?

BUCKLEY: No, nor did he flash the letter I sent him saying, "I'm much relieved, because if you did I would probably have to step down." But anyway, he was my opponent -- by a very, very narrow margin. He won the Democratic primary against Congresswoman Bella Abzug by one half of one percent. It would have been a different story had she been the candidate. So all of this was undoubtedly destined by someone way up there.

WSW: Well, it's all politics. You never know.

BUCKLEY: My position on New York City was enormously harmful to me. Whereas, in my first election, I had substantial majorities in the bedroom counties around New York City -- Nassau, Suffolk, and Westchester, I lost them in 1976; but I did have very healthy majorities -- about 63 percent or 64 percent of the vote -- upstate. Also, of course, it didn't help to have Moynihan as my
opponent. He was generally viewed as a conservative Democrat, which cut into my earlier blue collar vote; and because of his eloquent defense of Israel in the United Nations, he had an absolutely solid hold on the Jewish vote. In fact, two of New York's most prominent Jewish Republicans told me, at a strategy meeting in my New York City office before the Democratic primaries, that if Moynihan won the primaries, they would be unable to help me because they had to protect their own positions in the Jewish community. There was, however, one thing that did please me about the 1976 election. Right after I was elected under the Conservative Party label, which caused the press such horror, I was asked what I would like to accomplish in the Senate. I said that one of the things I hoped to accomplish was to demonstrate that conservatives do care. I very consciously worked at this during my six years in office, and a woman in my New York City office set out to help blacks and Hispanics to help themselves in all kinds of areas based on their own abilities and merit -- the establishment of small enterprises, home ownership, you name it. We showed them how to do such things as get access to credit and training, and how to take advantage of public programs, especially those that helped people help themselves. That was very much appreciated. I received several awards from black organizations, something that neither the New York
Times nor the television stations ever reported. During the 1976 campaign, I marched across 125th Street in Harlem in the company of Floyd Patterson, the black middleweight boxing champion, and the president of the Malcolm X Democratic Club of Harlem. This was a pro-Buckley demonstration that, again, went unreported by the Times and the broadcast media. I'm told that I received somewhere around 20 percent of the black vote as opposed to the six or seven percent who voted for Gerald Ford. Anyway, I was very pleased with this.

WSW: So Moynihan won for whatever reasons and then you did run again. Didn't you run later against Senator Dodd?

BUCKLEY: Yes.

WSW: Was that two years later?

BUCKLEY: Four years.

WSW: How did you decide to run against Dodd and what about that campaign?

BUCKLEY: I felt that I had earned a certain position in the Senate that would enable me to achieve some of my goals in a second term. For example, I had developed a following among a number of Republicans who were uneasy on environmental issues. When important environmental votes came up toward the end of my term, a number of them would come up to me and ask how they should vote. They trusted my judgment. I had privately decided that I would not serve more than two
terms. I felt that in twelve years, I should be able to contribute whatever I had to contribute in the framing of public policy. Moreover, it was getting harder and harder to be a serious legislator. This was the direct consequence of the extension of federal authority over vast areas once considered the exclusive province of the states. This had two consequences. First, it resulted in an enormous increase in the number of bills submitted by senators that had to be considered by committees and debated on the floor, and the proliferation of federal agencies and programs doubled and redoubled the Senate's oversight responsibilities. Second, because federal laws began to have a direct impact on local communities and individual citizens who then had to struggle with bureaucratic red tape, more and more of a senator's time had to be devoted to dealing with the complaints of constituents who had nowhere else to turn after running into a bureaucratic stone wall. All of this meant that there was less and less time to study, let alone master, the details of new legislation that could have an enormous impact on American society. The Senate could no longer claim to be a truly deliberative body because it was trying to juggle a host of problems and complaints that previously would have been handled by county seats or state houses -- or resolved without government intervention of any kind.
WSW: Do you think it's worse now than it was when you were in the Senate?

BUCKLEY: Yes. I'm told so.

WSW: People of course are leaving the Senate that you might not otherwise expect to leave.

BUCKLEY: There are only so many hours in a day; and if your job is to give careful thought to national needs and national strategies for achieving those needs, you have to have uninterrupted time. You need time to study.

WSW: And there's no time to do that in the Senate: that's what everybody says.

BUCKLEY: It used to be a reflective place where people could examine and discuss matters in depth; and when the scope of federal authority was understood to be limited to the areas enumerated in the Constitution, senators were able to be truly deliberative and to complete their work in five or six months and then go home.

WSW: Did you find that it changed over the six years you were there?

BUCKLEY: Yes. At the beginning of every morning my secretary would hand me an index card with my schedule for the day, including my committee and subcommittee assignments, hearings and so on. When I first arrived, I sometimes found that I had two committee
meetings scheduled for the same time. During my last year, it was not uncommon for me to have three committees or subcommittees meeting at the same time. Yet a senator's primary institutional responsibility was to master all of his own committees' work. As a practical matter, this was no longer possible.

**WSW:**
You think it's going to get any better? Is there any way to make it any better?

**BUCKLEY:**
I have my own thoughts on the matter. They boil down to the need to rediscover federalism and decide that the federal government should not become involved in areas that state governments are capable of handling — whether or not one approves of the manner in which they do so. This was the division of governmental labor that was originally written into the Constitution. Modern development may require some thinking as to where the line is to be drawn, but the principle remains both sound and the same. Anyway, that is my solution.

**WSW:**
Do you think a lot of it is just increased demand from the public? The expectations of the citizenry are greater now than they used to be? People expect their senators to be able to do more?

**BUCKLEY:**
Yes, that is true today; but I would blame this on the encroachment by Washington on what used to be understood to be the exclusive jurisdiction of state and local governments. Until the Johnson Great
Society programs came on stream, most Americans were never affected by legislation coming out of Washington, except the income tax. But now you have a federal finger in just about every pie. Now, if people want relief or if they want help, they have been conditioned to turn to friendly representatives in Washington. I happened to be in the office of Senator Robert A. Taft on the morning of December 8, 1941, waiting to be escorted to the Capitol with his nephew, who was a classmate and friend of mine. We couldn't get into the House of Representatives to hear Roosevelt ask for the Declaration of War, but Mrs. Taft invited us to hear it on her portable radio in a room off the Senate floor. In any event, while waiting until it was time to leave, we volunteered to sort his mail, which filled about a third of a standard mail bag; and Taft was a fairly important Senator in those days. Thirty years later, I found myself serving in the Senate with his son, Robert Jr. I asked him how many bags of mail he received on the average morning. He told me four or five. That difference is a measure of the increased impact of federal laws on the average citizen over the intervening years.

WSW:

Is it just that people are writing their senators? Aren't they also expecting more out of state government? Everybody is expecting more from government.
BUCKLEY: Oh sure. Everybody is expecting more from government. We've moved into the age of the welfare state; but still, in the past they would not have turned to Washington the way they do today.

WSW: After you left the Senate what did you do? It looks like you did a number of things, including going to the State Department. But before you went to the State Department, did you work at Donaldson, Lufkin & Jenrette?

BUCKLEY: Yes.

WSW: As a consultant of some kind?

BUCKLEY: I was there for about a year working on spot assignments and continued to serve on their board of directors for a couple of years thereafter.

WSW: Were you doing international work?

BUCKLEY: I did one international project, yes. I went over to Saudi Arabia to raise money for a venture capital program that had been pioneered by a subsidiary of DLJ. It was beautifully conceived and was supervised by a wonderful management. But after that, there were some dramatic developments in our family business that took me away. I worked as a consultant for a couple of years to see if we could develop a new line of business. And then I became involved in my Senate campaign in Connecticut.
WSW: who was running the family business while you were in the Senate?

BUCKLEY: My brother John.

WSW: When last we talked about it, the company was involved with oil ventures.

BUCKLEY: Catawba provided a variety of services to seven companies that were publicly owned. They were engaged in oil and gas exploration ventures in different areas outside the United States with the exception of Florida and had altogether about 80,000 shareholders.

WSW: And did it move into a different business?

BUCKLEY: Its business had disappeared. The SEC decided that because the public companies all had what was deemed to be a management contract with Catawba, they would all have to be treated as affiliated. This in turn would have raised financing and other problems for Catawba's clientele. Therefore, the contracts were terminated and virtually all of Catawba's executives went to work for the various client companies. This left Catawba with some capital and a history in the oil exploration business, but with only a couple of employees with any experience in it. Then the question was whether or not it was possible to develop a new business. We decided to enter the tax shelter business; but it turned out that our timing couldn't have been worse. After a great deal of work investigating various drilling deals that we would
then market, oil and gas prices started tumbling, and the interest in petroleum-related tax shelters simply dried up. So we finally decided to liquidate the company. In the meantime, I continued to work on several projects, served on a couple of boards of directors, and did radio commentaries for the Westinghouse Group and as the house conservative on the Public Broadcasting System's, "All Things Considered."

This takes me to 1980 and my campaign as the Connecticut Republican Party's candidate for election to the Senate. I again failed to get elected; but a man I much admired became President of the United States, and I decided to see if there might be an interesting position for me in the Reagan administration.

**WSW:** And that's when you went to the State Department.

**BUCKLEY:** That's right.

**WSW:** What did you do while you were at the State Department?

**BUCKLEY:** I was Under Secretary of State for Security Assistance. Security Assistance involved a variety of military and economic programs designed to help and strengthen countries in which we had a security interest. The latter are not to be confused with our AID programs, which sought to help the needy irrespective of how they fit into the security equation. The countries that were the beneficiaries...
of the economic programs I administered included such strategically located ones as Malaysia, Thailand, the Philippines, Israel, and Egypt. The military programs involved both the gift of military hardware and sales of such equipment and the providing of military training on a discounted basis. Those programs accounted for the major part of the State Department budget and required a fair amount of traveling on my part. One of my major assignments was to reestablish a cooperative security relationship with Pakistan in response to the Soviet invasion of Afghanistan. I also headed a task group consisting of undersecretaries of State, Defense, and Commerce and a representative of the National Security Council in a failed attempt to persuade our NATO allies that their extension of credit to the Soviets at sweetheart, below-market rates made little sense. It was an interesting couple of years.

WSW: And during that time you were living in Washington.

BUCKLEY: Living in Washington

WSW: Was your family still here?

BUCKLEY: My wife was here. By this time, my children had all left the nest. At the tail end of my time at the State Department, I changed jobs. Secretary Haig wanted me to become Counselor, which has nothing to do with the law. The State Department's Counselor is essentially an officer without portfolio whom the
Secretary can deploy to address discrete problems. It can be a fascinating position, but it depends entirely on the nature of the Counselor's relationship with the Secretary of State. But after the arrangements for the change had been set in motion, Haig resigned and George Shultz was appointed in his stead. Shultz asked me to stay on in that capacity; but unlike Haig, he did not yet know how he would want to use me. So, about a month after the Senate confirmed my appointment as Counselor, I decided to accept an invitation to become head of Radio Free Europe and Radio Liberty.

WSW: Did you move to Germany?

BUCKLEY: Yes.

WSW: Tell me about that. Was it interesting?

BUCKLEY: It was very interesting. I was there three years. I committed myself for three years and then towards the end figured that was enough. My wife and I didn't want to become expatriates. It was enjoyable. The work was important. It was done with great skill and had an important impact on its audiences in Eastern Europe and the Soviet Union. There were, however, some hideous personnel problems. What's happening in Bosnia right now will give you some idea of the tensions that could develop among the 23 nationalities housed in our Munich headquarters. We had 22 national services (including each of the Soviet republics) that
broadcast in 23 different languages. Each of the services was staffed by expatriates who had fled communism, and many of them brought ancient grudges with them. But it was a great experience. I had always done a lot of traveling, but I had never as an adult lived abroad for an extended period under circumstances where I didn't have to pack every other day. It would be hard to choose a more delightful place to be stranded for three years than Munich. We just had a wonderful time on weekends driving around and seeing what we wanted to see.

WSW: How's your German?
BUCKLEY: Zero.

WSW: How was your German when you were over there?
BUCKLEY: Zero. I am very, very poor at picking up languages. My wife is fairly good, and she took lessons. The in-house work of Radio Free Europe was conducted in English. The work of Radio Liberty was conducted in Russian, but the principals all knew English anyway. Nothing in my daily work would have required me to use German.

WSW: I think that this brings us to your appointment to the bench. Am I right?
BUCKLEY: Yes.
WSW: Tell me how that happened. Were you in Germany?
BUCKLEY: I was in Germany, and I received a telephone call from my brother Bill.

WSW: He'd called before -- I remember that earlier. That's how you ended up in the Senate.

BUCKLEY: This time he said that he had been asked to do so by a guy who had once done some work for National Review and knew Bill, and who was currently a member of a group in Attorney General Meese's shop that worked on the selection of judges. Bill was asked to ask if I would be interested in being a circuit judge. I said that was the most outrageous idea I had ever heard.

WSW: No it wasn't -- you said that when you thought about going to the Senate.

BUCKLEY: I thought it all over again. I had never given the matter a single moment's thought. My first reaction was that I wasn't competent to do the job. But as I have never believed in turning any offer down without giving it careful thought, I decided to do just that. I hadn't practiced law in any traditional sense for many years. So it seemed to me I had to decide. At the time, I had started making the rounds of Washington law firms to see if I could get an "of counsel" relationship that would involve international work and negotiations, which I felt very competent to handle. But I hadn't done any legal research in 30 years; and I had never done any serious trial work. In any event, I figured I would have to do a little
investigating before rejecting the idea. It happens that I knew Justice Stewart pretty well; so I called on Potter Stewart and said, "An astonishing thing has happened to me. I have been asked if I would be interested in being on the Court of Appeals for the Second Circuit." His answer was, "Grab it." I told him I hadn't practiced in any traditional sense in almost thirty years. He countered that I had spent six years in the Senate, which would prove most valuable. He said that I was competent to do the job, but that I would have to put in a tremendous amount of very hard catch-up work for the first couple of years. Yes, I hadn't had 15 years of antitrust experience or whatever, hadn't done trial work, but I would bring to the table other experiences that would prove equally valuable, always assuming that I had the necessary judicial temperament and basic intelligence, which he thought I had. So I heard him out and then talked to four circuit judges, two of them on the Second Circuit and the others on the D.C. Circuit. They all said the same thing. Then the question was, would I enjoy it? I was then 62 and I figured this would be my last job. What impressed me was that the judges I talked to had all come from different backgrounds -- academia, elective office, the traditional Wall Street type of practice. They all said, "Yes it's a cloistered life; yes it's this; yes it's that; but it is intellectually very interesting, and you have the satisfaction of
knowing you are doing important work." The telling argument in the end was that if I found in two or three years that I didn't like the work, I would have little difficulty, as an ex-judge, in moving on to a law firm.

**WSW:**
The question on my outline, which I wrote before we actually started talking, was long-time ambition? I take it the answer to that question is no. It never occurred to you that you might do that. In telling your story you said you were thinking about being a judge on the Second Circuit. But of course, as you and I know, you are not on the Second Circuit.

**BUCKLEY:**
When the possibility of becoming a judge was first broached, I asked the people at Justice whether there was a vacancy on this court because I thought my Senate experience made me better suited for the D.C. than the Second Circuit. But there was none at the time. It was only after Judge Tamm's death created a vacancy here, which was after my nomination had been sent to the Senate, that I was redirected to this court.

**WSW:**
Wasn't there opposition to your nomination for the Second Circuit?

**BUCKLEY:**
Yes there was, and it came primarily from one of my own senators, Senator Lowell Weicker; and this created some formidable, although not insurmountable,
problems. As I had become a Connecticut resident again in 1979, he was in a position to exercise one of the traditional senatorial prerogatives -- that of placing a hold on consideration of a presidential nominee from his state. He raised large questions as to whether I'd be competent in the job for all the very understandable reasons -- I hadn't practiced law for over thirty years; I hadn't taught law; I hadn't done trial work, etc. His ability to obstruct my confirmation, however, was defused by Judge Tamm's death, which enabled the White House to redirect by nomination to the D.C. Circuit.

WSW: Then it was easy. Tell us about the confirmation process. Did Senator Weicker voice any objections once the nomination was for the D.C. Circuit.

BUCKLEY: Yes, on the floor.

WSW: In those days the confirmation process, I think, was quite different than it is now. You might agree or disagree. That was one of the questions I was going to ask you.

BUCKLEY: Yes. It still tended to be a formality, but the process was not nearly as perfunctory as it was when I was introducing New York judicial nominees to the sole member of the Judiciary Committee who would be on hand to conduct the confirmation hearing. I'd introduce Mr. So-and-so, the candidate for the Southern District of New York, and the ranking minority member, Senator
Roman Hruska of Nebraska, would in effect say, "Mr. So-and-so, do you believe in the Constitution of the United States?" "Yes, sir." "That's fine. I hope you'll go out there and have a wonderful career." And that was about it. At my hearing, three or four senators were on hand at one point or another. I had served with all but one of them, Senator Paul Simon. The hearing was opened by the committee chairman, Senator Strom Thurmond, who mentioned that he had known my parents back when he was Governor of South Carolina and said that they were fine people. He congratulated me on my nomination; said that the President had made a fine choice. He threw a few very soft questions my way and then asked whether I felt my lack of trial experience would be a problem. I answered that I had myself been worried about this, but that conversations with several appellate judges had satisfied me that I could handle the job despite the lack of this experience. Senator Simon was the only other senator to question me, and his questions were also friendly. I received several follow-up inquiries, however, while bouncing around Europe.

WSW: You hadn't finished your three years with the radios yet.

BUCKLEY: No. No, I was still there. I do recall that we were taking a holiday, my wife and I were in Austria, and there was a list of questions telephoned to the desk
of our hotel that I was supposed to answer forthwith. I had a devil of a job drafting my answers in our poorly lit attic room using the little pieces of tissue paper that passed for stationary.

WSW: You didn't have your notebook with you or your Apple?

BUCKLEY: No, none of those things. So, there was a certain amount of follow-up -- for example, would I recuse myself from any cases involving abortion in light of my strong pro-life stand while in the Senate. I answered that my introduction of a constitutional amendment to protect unborn life should be evidence enough that I fully understood the implications of *Roe v. Wade* and, further, that I fully understood that it was not the province of a circuit judge to overrule the Supreme Court. Therefore, there would be no reason for me to recuse myself.

WSW: So that was an issue even back then?

BUCKLEY: Oh, yes. It was also suggested that I gain some trial experience by actually handling some trials. I replied that I was so inexperienced in trial work that it would be a disservice to the parties if I were to do so. Having since learned the pressures under which trial judges work and the command they have to have of the relevant rules, I know I was right. I have tremendous admiration for trial judges.

WSW: They have to make a lot of decisions fast -- and be right.
Yes, and without having people second-guessing them.

Who never did a trial. I suspect that ultimately the confirmation process for you must have been rather genteel -- these were your colleagues, and they must have been very supportive.

It was genteel. There was frankly some question as to whether Weicker's delaying tactics would still be able to block it. There was a long delay between the time that the Committee signed off on me and the time that my nomination was taken up on the floor. The administration was getting very nervous about the matter because it was getting close to the time when Congress would adjourn for Christmas. It is reported, I don't know whether there is any truth to it, that my nomination served as leverage for securing millions of extra federal highway dollars for Connecticut.

That would not be inconsistent with what often goes on. Right?

It's inconsistent with nothing that goes on, but I always objected to that sort of thing.

Well, but it is what goes on.

Yes.

Having been in the Senate and gone through the confirmation process, I suspect you have views about what has happened to the confirmation process. It is dramatically different.
Buckley: I think that much of it is outrageous.

WSW: Do you think it's outrageous on all sides? Do you think that more deference ought to be given to whoever the presidential choice is, without political considerations interfering?

Buckley: I don't think you can ever do away with political considerations, but I think there are licit and illicit ones. Take the matter of judicial philosophy -- a Brennan's living Constitution versus a Scalia's focus on original meaning. That issue can be described as political.

WSW: That's true.

Buckley: I think that's a legitimate inquiry. Questioning a candidate on how he or she would rule on specific matters is, I think, illegitimate. Questions dealing with such things as professional competence and judicial temperament are proper. If I were a President who had a Supreme Court vacancy to fill, I would sacrifice two or three first rate candidates by instructing each to open his testimony on the first day of the confirmation hearing with something like the following, "Mr. Chairman, members of the committee, I think it's important that we understand our respective roles here. I respect your right to ask me anything that will enable you to assess my competence to serve as a Supreme Court justice. By the same token, you have to understand the constraints
on my ability to answer questions. Specifically, it would be improper for me to answer any question about my views on any issue that might ever come before the court because if I were to do so, I would be compromising my ability to objectively assess and rule upon arguments that have yet to be presented in cases and controversies that have yet to arise. And then every time a senator asked for the candidate's position on the relevance of natural law, or to rank the importance of property rights, or for a view on abortion, the candidate would reply, "Sorry, Senator, I can't answer that question. It is I think that after four, five or six televised confrontations of this sort, the country might begin to be educated as to the role of a judge and perhaps the Senate would learn to limit its questions to those bearing on the nominee's competence to serve.

WSW: Which is generally to advise and consent in the process. I think everybody would agree that the process has dramatically changed.

BUCKLEY: I really preferred the old system -- the one that was in effect until about 50 or 60 years ago -- when a candidate for the Supreme Court was never asked to appear before the Senate.

WSW: We're a long way from that. It's about 6:15 -- I don't know how much longer you want to go.

BUCKLEY: I'll go five minutes more if you want.
OK. You were confirmed. You put on your robe. You came to the courthouse. And what did you do next.

I needed to find law clerks. I was rather desperate because I was sworn in December and this was out of the clerk hiring season. Basically, what I had to do was raid some law firms. Fortunately, I had a friend at Covington who passed the word around that I was in the market for bright young lawyers who would welcome the opportunity. I ended up hiring two excellent associates from Covington, and my third from a New York law firm. While I was interviewing and hiring, I had to make do with the help of other judges' clerks and one or two staff attorneys. But by the end of my second month I had three very good people.

And who were your first clerks? Who were these three?

They were Steve McCowin, Jeff Holdaway, and Steve Rademaker.

What happened to them? Where are they now, do you know?

None of them went back to their firms.

That's very interesting.

Two of them -- one from the New York firm and one from Covington -- had roomed together at Columbia Law School. They were Mormons, and one of them went from me to Salt Lake City, where he's in practice, and the other one went to work for Marriott International.
And the third, who was very interested in foreign policy, went to the State Department where he worked on Central American problems and ended up attached to the Office of the Legal Counsel for the President while spending a fair amount of time with the NSC. He is now Chief Counsel for the House Committee on International Relations.

**WSW:** Do you keep up with your clerks every year?

**BUCKLEY:** Yes. Actually we have two occasions -- one is a Christmas party my wife and I give for current and past clerks. The clerks tend to stay in the Washington area -- I've had 70% of my alumni show up. Then there's a barbecue in July that the clerks have generated.

**WSW:** Organized -- and has that become a ritual?

**BUCKLEY:** That has become a ritual. This is one of the great pleasures of this job. You get to spend some serious time with very bright young people, and it gives you some faith in the future. Some people are still getting very well educated in this country.

**WSW:** And now you get to hire them in their second year of law school, right? You don't have to wait until they're at Covington. Do you remember anything about the early cases that you heard -- anything come to mind in particular?

**BUCKLEY:** The first case involved WMATA (Washington Metropolitan Area Transit Authority) --
Yes.

-- and it had to do with workman's compensation.

Anything in particular that you remember about it? Suddenly you're listening to arguments, you're listening to cases, you're reading the law, you're learning again about Shepard's. Did it all come back to you?

A surprising amount of it did, yes. One of the things that was pointed out to me by a fellow whom the American Bar Association has assigned the terrible job of trying to figure out whether I was competent or not -- reminded me that in doing my Senate committee work, I spent six years listening to evidence, weighing arguments. Some people who do that don't do it with an open mind but I believe I did -- and I had that reputation.

Were there any of your colleagues who you were particularly close with who were mentors as you started this job?

They were all ready to help. Spottswood Robinson helped me out -- he was just down the hall. He was sitting with me on the WMATA case, and he let me have his clerk's bench memo. I turned to Judge Scalia a couple of times, and Judge Silberman was always very, very helpful. But the key to my survival has been someone called "Dee."

I know who Dee is. Did you hire her or was she here?
BUCKLEY: She had been Judge Tamm's secretary.

WSW: I see.

BUCKLEY: And she called on me at the Radio Free

Liberty office here in Washington

while I was awaiting confirmation. She's just a

gem. She started out in the Clerk's Office, and
she knows how all of the court machinery works.
She has a wonderful sense of language, and she
will go through a draft opinion and will say that
this or that sentence doesn't make sense; and she
is almost always right. And finally, she has a
proof-reader's eye that is just extraordinary --
she can find mistakes in opinions that two or
three clerks have gone through 12 times and I've
gone through 15 times. Well, anyway she gave me a
real head start.

WSW: And she'd been here so she knew how things really

worked. [Laughter]

BUCKLEY: Exactly.

WSW: That's wonderful. She was here from the

beginning. OK, why don't we quit for now.
Date of Interview: November 29, 1995

WSW: This is the beginning of our 4th session. Today is November 29, 1995, and we'll start with some memories that you have about the Senate that you have recently recalled.

BUCKLEY: When I was in the Navy in officers' training, I was taught that "forehandedness" was the hallmark of being a good officer -- the ability to foresee the future and prepare for it. But only after my appointment to this court was I able to realize how very forehanded I would prove to be in the Senate. In the years immediately before my election, Congress began giving the D.C. Circuit exclusive jurisdiction over appeals from agency decisions implementing key regulatory statutes. I had a soul mate in the Senate, Jim McClure of Idaho, who served with me on both the environmental subcommittee of Public Works and the energy subcommittee of Interior. As I mentioned earlier, these subcommittees were engaged in drafting important new bills in both these fields. We were sufficiently alarmed by the activist reputation of the U.S. Court of Appeals for the District of Columbia Circuit that we made it a point of ensuring that this court not have exclusive jurisdiction over any of the legislation being reported out by our subcommittees. This was a controversial circuit in those days, and we
thought that people who felt abused by this agency or that in Idaho or Arizona or Florida or New York should have the option of bringing their appeals in their home circuits.

Now in hindsight, looking back from where you now sit, do you think that was such a wise decision after all? I won't cross-question you about that. But actually that's a useful lead into something that I want to say before we get started today. As we progress today and probably for the remainder of the sessions, the questions that I'm going to be asking you will probably be more sensitive. I may ask you questions which you are uncomfortable answering or which you are clearly interested in answering only with the understanding that the material will remain confidential. I'm going to go ahead and ask the questions, and I hope you'll understand what I'm doing. A lot of these questions are of a type that I would never think of asking a federal judge except under these circumstances -- questions about how decisions were reached, judicial philosophy, politics of the court. I understand that these are the kinds of questions that you may feel less comfortable answering or may wish to answer only under strictures of confidentiality. As we get into that, you can tell me right then that you'll answer only if we later make it clear that it's confidential or that you don't feel
comfortable answering them. It's with that understanding that I will proceed.

**BUCKLEY:** May I assume that I can answer your questions as candidly as I am able and then, after the fact, ask that part or all of the answer be treated as "off the record?"

**WSW:** Absolutely. You have the following choices --

**BUCKLEY:** off the record forever or off the record until the characters all die.

**WSW:** That's exactly right. And the other thing that you can assume absolutely is that anything that you tell me that you decide you want to be held confidential, either forever or under whatever circumstances, will go no further. That is part of my job and I can assure you that I will not violate any confidence that you tell me in any respect. But I thought I should make that clear because I am going to be asking --

**BUCKLEY:** You're going to be asking a lot of impertinent questions --

**WSW:** Yes, that I'm feeling very uncomfortable about asking, but I think I probably am going to try and ask them anyway. OK. Well, last time if you will recall we had just had you appointed to the bench and were talking about what you first did when you got here. When you first got here, what did you feel you were comfortable with, that you knew how to do, and what
BUCKLEY:

was it that you thought you were going to have to learn the most about in order to do this job?

Well, I was obviously dropped into a great big cold bath and assumed responsibilities for which I had little traditional preparation. Nevertheless, as I think I told you, after talking to one Supreme Court justice and several circuit court judges, I was satisfied that I was competent to do the job. I had been warned that I would have to spend a great deal of extra time at the outset getting up to speed on various aspects of the job, but that was doable. What I hadn't counted on was the problem I would be facing as a result of my being a very slow reader with a very poor memory for details. I was overwhelmed by the volume of reading I had to do in preparing for my first hearings -- the job of having to absorb and sort out quantities of factual information and questions of law that were completely new to me. So, it was a little bit like going to law school and plunging into your first assignments in which you were required to read a dozen difficult opinions and start making some sense out of the law. I found, however, that I hadn't forgotten how to think like a lawyer and was soon satisfied that I had nothing to be scared of in terms of my ability to do the job. But there were a myriad details to be absorbed and learned -- the ABCs of the FCC, FERC, ICC, and things of that sort. And initially I had to get on top of all this without the
benefit of a clerk, because my first clerk didn't report for duty until after I heard my first cases. I guess what this all adds up to is a huge amount of concentration on a type of work that I hadn't been exposed to in years, in the hope that I would get to the root of the key questions with sufficient confidence not to make a fool of myself when I asked my first question in open court.

WSW: Did you find that the other judges were helpful in getting you oriented?

BUCKLEY: Very willing, but not all that helpful. As I had found on several previous sink-or-swim occasions, there is precious little that someone else with all the good will in the world can do to help you. They're there to listen and give advice on this, that and the other detail, but you are essentially on your own.

WSW: And so you had to find your own way.

BUCKLEY: Exactly.

WSW: Did you find that whatever style you developed early on is what you carried through in the way you prepare for cases or has that changed over time?

BUCKLEY: It has changed to a degree. From the beginning, I have required my clerks to prepare fairly detailed bench memoranda to compensate for the slowness of my reading and my poor memory for details, but I nevertheless used to read each of the briefs from
beginning to end and to duplicate a lot of the other work my clerks were doing. I now begin by reading the bench memoranda and then check those portions of the briefs that address the legal questions at issue in the case. In this way, I have a first hand knowledge of how each of the parties frames the argument but spare myself an awful lot of the background and excess verbiage. In other words, I've learned how to make more intelligent use of my clerks' bench memoranda. This in turn has freed up time for a closer scrutiny of cited sources, which can often prove misleading. And that's probably something that would develop over time. Has the way your clerks write bench memos changed over time?

WSW: They tend to include more details than are required for me to grasp the essentials of a case, and I keep trying to get the clerks to slim them down. But it's like that old saw about not having the time to write a short letter. It's a losing battle, because I want my clerks to cover all the essentials, and it's often easier for them to be expansive than to edit themselves down to terse but comprehensive analyses. So I've given up my 4-, 5-, 8-year attempt to keep the memos at between 15-20 pages, and sometimes I'll get ones that are up to 40 pages long. But I can't complain. I have had wonderful clerks.
WSW: Do you find that your clerks progress as the year goes on?

BUCKLEY: Yes.

WSW: I mean these clerks are coming right out of law school and they don't really know a lot either. I would think that as time goes on they are better able to focus on the issues that you care about.

BUCKLEY: That's right as a rule; but some clerks have proven so bright that they get right to the heart of a case at the outset. Also, some of my clerks have had a couple of years of private practice or a district court clerkship before I hired them.

WSW: When did you hire your first clerk -- how long had you been on this job before somebody showed up?

BUCKLEY: I took the oath of office in the middle of December 1985, the 19th to be precise. My first clerk came on board the first week of January; but because he was scheduled to be married the first week of February, I graciously granted him two weeks for a honeymoon. My second and third clerks came in late February. So I was understaffed during my first two months.

WSW: Tell me about your early relationships with your clerks. How did you use them, how do you relate to them, how much time do you spend with them?

BUCKLEY: First of all, it has to be understood that this is a solitary business. Appellate work consists about 99%
of reading and writing. These are hardly group activities. I have my work to do, and the clerks have theirs. But I think I quickly establish a relationship with my clerks where they know my door's always metaphysically open even though I keep it shut because I am usually playing music on my radio or CD player. But they can barge in whenever they have a question they need to discuss with me. And as I get into my preparation for oral argument, I will call in the clerk who is assigned to a case to discuss a particular point or to ask for additional research. I think I end up with very close relationships with my clerks, and one of the best things about this job is the chance to spend some time with some very bright young people who are fresh out of school and beginning their careers. I'm more of an introvert than an extrovert, so I'm not a glad-hand. Anyway, the relationship evolves very naturally. My clerks seem to be pleased to have been associated with me, I'm happy to say. Because I spend so much time with them, to the exclusion of anybody else, I have always made a particular point of trying to find people who are agreeable as well as competent. I try to be aware of the intellectual arrogance that afflicts some very, very bright individuals; so when I interview candidates for clerkships, I place particular importance on what I call the "chuckle factor." And have you generally been successful?
BUCKLEY: Yes, I have.

WSW: It makes it a lot easier to get through the day. How long would you say it took you until you felt as though you'd really settled in and were comfortable with this job?

BUCKLEY: Close to a year.

WSW: Do you think that your style of preparing for cases has changed since the early days?

BUCKLEY: Only in the way I have described. I try to understand the arguments on both sides. One of the things I emphasize at the outset is that the purpose of a bench memo is to provide me with an honest presentation of the arguments being made by each side supplemented by the research needed to test their strengths and weaknesses. One of the things that surprised me at the beginning was how very bad some of the lawyers arguing these cases could be; this is a hazard of the adversary system. So one of the things I look for in a clerk is someone who has the imagination and the initiative to go out and fill in the gaps in the parties' arguments or make sure that the cases cited are really on point. Once those arguments are laid out and analyzed, I welcome the clerks' analyses of the merits; but one of the habits I have to break early on is the tendency to convert the entire memorandum into a brief for one side or the other.
And do you find that's what you get from your clerks after you have worked with them? Do your clerks generally write drafts of opinions?

Yes.

Do they generally write a first draft, and then you work on it, and then it goes back to them?

They work on the first draft, and then how it goes from there depends on a lot of things, including the clerk. Clerks come in different varieties. In terms of writing, there are those who write and frame an argument the way I do, and those who don't. In those relatively few instances where I have had a very close fit, I have had relatively little reworking to do. In other instances, even when I am presented with a draft that is competently written, I find the style and approach so foreign to mine that I end up completely rewriting the opinion. In only a few instances have I signed off on an opinion without having made significant revisions in both the style and substance. As a rule, I do a major rewrite that will involve a half dozen or more drafts to get things just right. When I find that the clerk has simply missed things or that some additional research is required, I will return the draft with a number of notes listing all the things that need to be done or redone and I will discuss them with the clerk and ask for a second draft, which I may well end up rewriting. I'm a heavy
editor and very conscious of the fact that the opinions will appear over my signature. One thing I strive for is what I call "reader friendly" opinions. That is one of the reasons I have banished footnotes. I tell my clerks that a reader should never have to read a sentence a second time, or flip though the pages, or look up a case or statute in order to understand what is being said. I am aware, however, that the quality of my writing can be uneven. Polishing takes time. You may or may not have read some of my opinions.

**WSW:**

I have.

**BUCKLEY:**

Is there a consistency in style?

**WSW:**

Yes. I would say there really is.

**BUCKLEY:**

Anyway, that's -- I would like to think it ends up as my work.

**WSW:**

I would have guessed that you have clerks do a first draft and then essentially after that it's pretty much your work and you write it in your way. There is a consistent style in the way you address problems, whatever the problems are, and get through the analysis to the end. It's all very systematic. You tell the reader where you're going and then you get there. It looks like a style that is yours.

**BUCKLEY:**

For better or worse, anyway.
WSW: What do you think makes a good judge, as you look back on your own experiences?

BUCKLEY: I think you've got to rid yourself of your own prejudgments. My job is to apply the law. I didn't write the law. I think a lot of the law I am required to apply is awful, but I view my oath as requiring me to use my best understanding of what the law is and, in applying it to the facts, to come out with the result that the lawmaker intended.

WSW: And do you think that's the most important thing that a judge does?

BUCKLEY: Yes, if you're talking about a federal judge. A common law judge, of course, will at times be called upon to evolve substantive law. But it isn't my prerogative to act as a philosopher king. That's not the job that I was sworn to perform. And so what makes a good judge beyond that? Obviously, a good judge will have to have certain intellectual credentials, such as the ability to grasp sometimes complex concepts and to relate them to the facts. I am aware, however, that people of the same intelligence and the same commitment to objectivity may nevertheless perceive reality in different ways. There's a book by Thomas Sowell that elaborates on this and that. One of these days I'll find the time to read it. In it he sorts mankind into two categories based on their perceptions of reality.
What seems reasonable to \(x\) percent of humanity in any given situation will not seem reasonable to \(y\) percent. People who believe in original sin will see things one way and those who believe in the perfectibility of man will see them in another. According to Sowell, political conservatives will fall in the first camp while liberals will fall in the other. And so I think it may well be this different perception of reality that explains why, in a very small percentage of cases, politically conservative and liberal judges of equal intelligence and probity will come to different conclusions as to what the law requires.

WSW: Is that something that becomes clearer as you deal with your colleagues on the various cases that you've handled?

BUCKLEY: Yes, yes. Although I think one or two of the judges I sit with may be influenced by what they think the outcome ought to be (I won't name names), I am increasingly persuaded that Sowell may have the answer as to why I will reach a different conclusion than somebody else when I believe that both of us are trying to apply the law as objectively as we can.

WSW: How would you say you prepare yourself for an appellate argument for a sitting? What do you do to get yourself ready?
BUCKLEY: Aside from trying to understand what the case is about and trying to understand the principles of law that are involved, what the statute tries to say, all of those things -- are you talking about the mechanics?

WSW: It's really a combination, because how one does it is part of how one views the work and the job. Do you go back and read the cases? Do you rely on your clerks for that?

BUCKLEY: Any brief is going to cite 40 or 50 or 60 cases, and I'm not going to read all of them. My clerks are required to do a huge amount of work. Their bench memoranda, which will contain fairly detailed analyses of the parties' arguments, will have appendices containing copies of the key cases and relevant statutes and regulations. Then as I review this material and check the briefs, I will run into other cases I will want to check and questions that require further research by my clerks. At times I will have inspired insights that had not occurred to either of the parties that will make what I am working on an open and shut case; and 99.9% of the time, I will find out that there was a very good reason why my brainstorm had not occurred to the very able lawyers who had spent months working on the case -- my theory was all wet. But once in a very long while, I do have the satisfaction of having come up with a fresh perspective that will dispose of the case.
WSW: I was just going to ask you that. I'm always frightened when somebody's been working on a case for a long time and I come in and I have an insight because I'm quite sure that I've just missed the point. When you argue as an advocate, every once in awhile you'll get a question that indicates clearly that the judge thinks he has an insight when you've gone all the way up and down on the point and have rejected it.

BUCKLEY: Actually, I've often gone off on premature tangents that have wasted huge amounts of my clerks' energy and time when turning a page or two of a brief would have made it obvious that my brainstorm was all wet.

WSW: Do your clerks help you figure all of that out?

BUCKLEY: Yes. They'll go charging off in the direction I sent them. But they quickly get to the point where they're not at all shy about saying, "I think you're wrong." This is something I try to encourage. Now, at a certain point, after a particular point has been debated back and forth, I reach a decision and advise the clerk that's the end of it; it's time to move on.

WSW: Right. Do you usually sit with your clerks and talk about the cases that are being argued?

BUCKLEY: It depends on the difficulty of the case. Some of them ought never to have been appealed, and these can be disposed of summarily. But when I am struggling with a particularly hard case, I will spend a great
deal of time with a clerk trying to get a grasp of the key issues. I am able to hire very able clerks, and many of them have an ability to grasp technical details and relationships that entirely escape me. Let's face it; I try to get clerks who are significantly brighter than I am. In preparing for a case, I take notes on a legal pad as I go along. Usually, these take the form of questions that I'll ask each party. These will be interspersed with "CQ's", which are questions I will need to follow up with my clerk. I find that by going through my 10 to 15 yellow sheets of notes before oral argument, I can quickly recall the details of a case before oral argument. Then I will have "TC's", which stands for "tentative conclusion," with an emphasis on the tentative, because I will often conclude that my initial conclusion was wrong based on what I learn at oral argument and in discussions with the other judges on my panel. In three quarters of the cases, however, the issues are not really in doubt.

WSW: How often do you think the oral argument makes a difference?

BUCKLEY: Maybe one out of five cases, one out of four cases. You never know in advance which case it'll be.

WSW: But generally you find that whatever tentative conclusion you bring to the argument, when you leave
BUCKLEY: Generally speaking, yes. But having said that, I'm of the persuasion that the legal process has got to suffer from the sheer volume of cases we hear. Judging ought to be a leisurely profession with a lot of time to think these things through and rethink them, to make sure that some critical factor hasn't escaped you and that the precedent you are about to establish won't prove pernicious in the longer run. From time to time, when working on an opinion, I have become convinced the panel had reached the wrong conclusion, and I have been able to persuade my colleagues that we needed to dispose of a case in a different way. This has happened often enough to lead me to believe that if we had more time to mull over a case, we would gain a better understanding, better perspective on the real issues that were presented to us. So, I had lunch today with a fellow who -- very bright guy called Mike Uhlmann -- I don't know if you know him. He was with Pepper Hamilton at one point, was on my Senate staff and served as an assistant attorney general at one point, very bright. He'd just finished reading a biography of Learned Hand, and he told me that Hand would invite members of his panel to spend a weekend at his country home where they could discuss a point of a case they'd heard three or four
days earlier. There is no opportunity to do that sort of thing today.

**WSW:** Because there's no time --

**BUCKLEY:** Yes. Which reminds me of a comment I heard a few years ago at a convocation of appellate judges. When one of them held Learned Hand up as an example to be emulated, another judge replied, "If Learned Hand were on the bench today, he wouldn't have time to be Learned Hand."

**WSW:** I have found in preparing cases for a Court of Appeals that there are whole new issues that I hadn't seen in the District Court even though I worked on the case in the District Court as well; as you get ready for oral argument there are additional issues. So that it's hard to see how three people who then get this package, and have only a limited amount of time to review it, can see all of the issues including any additional issues that the advocates have missed. Do you find in hearing oral argument that there are additional new issues to consider or do you usually find that by then it's all there?

**BUCKLEY:** Well, of course the nice thing about the adversarial system is that you're not allowed to bring something new that you didn't bring below.

**WSW:** Well, that's true.

**BUCKLEY:** So that eliminates some arguments.
WSW: Yes, but not all. A good advocate can always figure out how to argue that they argued the issue below. It's just a different theory, but the same argument. Do you have a view as to what the most effective kind of argument is? What works for you, what do you look for in a good argument?

BUCKLEY: I tend to be impressed by advocates who decide which are the critical issues and then focus on them. At the same time, they must be responsive when answering questions from the court. Too many lawyers either don't understand the question or try to duck it. I am particularly impressed by lawyers who will admit to the weakness of one argument and then move on to others where they are on firmer ground. I confess to a great deal of sympathy, however, for lawyers who are so inundated by questions from the bench that they have little opportunity to present their case their own way.

WSW: Some idea that some judge has that misses the point --

BUCKLEY: That's been known to happen. But I am always impressed with lawyers who will listen to a question and answer it honestly, even if it requires admitting its weakness.

WSW: After the argument, there's a conference of the three judges. What kind of give and take do you find at these conferences?
BUCKLEY: It depends entirely on the complexity of the cases and the extent to which the judges may have different views on particular issues. Sometimes the conference will be over in 10, 15, 20 minutes because there is an immediate consensus on each case even though each may involve three or four discrete issues. On other occasions the conferences can go on for a couple of hours either because of strong differences of opinion among the judges or because they are having difficulty coming to grips with the issues that have been raised, difficult issues to resolve. At times one judge or another will be asked to do some additional research on a particular question, and a decision will be deferred until the results of that study have been sent around. In the usual case, however, the judges are pretty much in accord and little discussion of the case is required.

WSW: Do you usually find that, for yourself, you can make up your mind, that either after the argument or before the argument you're pretty clear which way you want to go and why, rather than finding yourself in indecision having a difficult choice?

BUCKLEY: That is generally the case. But sometimes I'll have a run of cases where I have a genuinely difficult time coming to a conclusion. The issues can be terribly, terribly close. We may be dealing with an ill-defined body of law or a factual situation that is difficult
to pigeonhole. Sometimes, when preparing for a case, I will change my own view of it three or four times, change again during oral argument, and change it yet again after hearing what my colleagues have to say.

**WSW:** Do you find it more difficult to decide some cases quickly than others?

**BUCKLEY:** I find the more difficult cases to be those involving highly technical regulations applying a statute that draws arbitrary lines and where the particular situation to which the regulations are being applied had not been anticipated by Congress, and where there is no guiding principle that allows you to bring order to the chaos. Does this make any kind of sense to you?

**WSW:** Yes. What you're saying is the hardest cases are those where there's no underlying public policy or philosophy that guides you in understanding the statute or its application.

**BUCKLEY:** Yes, exactly. There are too many of those.

**WSW:** I was going to ask whether those are most of the cases that you get. They're most of the cases that I have.

**BUCKLEY:** What is your field?

**WSW:** I do some appellate litigation, I do some environmental and labor work, products liability, a lot of different things. But the case that you just described is similar to a case right now that I'm
BUCKLEY: I have my own views on a number of Supreme Court decisions, but I find *Chevron* very troubling; and I say that in significant part because of my own experience in the Senate. As I read *Chevron*, the Supreme Court assumes that because Congress has assigned a particular agency with the responsibility for a program, Congress expects judges to defer to that agency's interpretation of the relevant statutory language. I recall markup sessions when this very new senator would ask, "What does this provision mean?" And the old-timers would say, "Well, we don't have time to fiddle with this. Let the courts decide." I very rarely heard anyone say "let EPA decide" except in those highly technical matters that fall within the agency's area of expertise. So I think that the Supreme Court got this one wrong; it creates a terrible burden for a court that is persuaded that Congress intended something else.

WSW: Although I generally find that if the court believes that, they can find a way around *Chevron*.

BUCKLEY: It does encourage a tendency to find a statute unambiguous.

WSW: Precisely. This is clearly what Congress meant. Which leads me to another question, which is, having
been in the Senate and knowing what legislative history is all about in the real world, how much do you defer to legislative history, how much do you rely on it, what do you think of it?

BUCKLEY: I prefer the British system, but I understand the British system is getting corrupted by American law.

WSW: It always has.

BUCKLEY: One of the opinions I referred you to laid out my views on legislative history.

WSW: Which one? I have not read them all, only a sampling of them.

BUCKLEY: OK. The first one I cited, *International Brotherhood of Electrical Workers* (?61 F.3d 41 (1995)) I have scant use for most legislative history. First of all, statements made by a particular senator or representative in floor debate can hardly be taken to reflect the body's understanding when there is virtually nobody on the floor to hear what is being said. Number two, Congress is a political as well as a lawmaking body; and a lot of things will be said on the floor that are directed to a home audience and cannot be taken as a serious explanation of what a statute means. Number three, because legislative history has assumed the importance it has in so many court decisions, people who've lost a fight in Congress will try to win it in the courts by salting the Congressional Record with self-serving
interpretations. For these and other reasons, I will ignore the whole body of legislative history with the exception of the committee reports, which can be very useful in determining what meaning is to be given a particular word or phrase. But committee report discussions of policy objectives can be deceptive. In interpreting a statute, I take the same approach I do in interpreting a provision of the Constitution. What is significant is not what delegates in Philadelphia may or may not have thought, but what the people who ratified the Constitution understood the language of the document to mean. Similarly, it seems to me that in order to interpret a statute of Congress, it is ultimately irrelevant what the sponsor or reporting committee intended; we need to give the statute that meaning that the majorities in each house believed it had when they voted it into law. In deciding how to vote, they have access to the committee reports and therefore it is not unreasonable for a court to take those reports into account in deciding what a particular provision means. But nowadays, a knowledge of what is said on the floor or at committee hearings cannot be imputed to the average member of Congress. But it's very hard to figure out what the majority thought --
Therefore you look at the language. Surely that's the best clue to what they understood the statute they were voting on to mean. There is another reason why the focus should be on the statutory language. Ours is supposed to be a government of laws, and the law is made intelligible to laymen by lawyers. Take a lawyer in a small town in North Dakota. He doesn't have the Congressional Record at his elbow; he certainly doesn't have transcripts of the committee hearings. He ought to be able to look at the language and advise his client.

Do you think it's also true that the legislative history is often written from whatever political vantage point you have and therefore may or may not shed light on what anybody really thought they were doing?

That's one of the problems. It can be manipulated. I remember a lunch I had with Senator McClure shortly after he left the Senate, where he had served for a while as Chairman of the Interior Committee. He told me that he took the trouble of reading the committee report on one of the bills that had been reported out by his committee and found something like 18 errors in it, significant errors, including a couple of assertions that had been expressly rejected by the committee.

I'm not surprised. I'm sure you're not either.
BUCKLEY: No. So, anyway, for all of these reasons I think that courts ought to rely on the language of a statute or of the Constitution as it was understood contemporaneously by the people who enacted or ratified it.

WSW: This is all consistent with the opinion that you wrote in Chastain [833 F.2d 311 (1987)] where you went back and looked at the Federalist Papers and what the Speech & Debate Clause was thought to mean at the time. Was that opinion fun to write? I bet it was.

BUCKLEY: It was.

WSW: That's why I was going to ask you about it. Because you could use all of the history of that time and go back to research it. Did you do that yourself, did you go back and read that history or was that given to you in the briefs?

BUCKLEY: No, much of it was the result of original research by a very bright clerk using a set of books that I'm now the proud owner of. Four volumes published by the University of Chicago called The Founders' Constitution. Are you familiar with them?

WSW: No.

BUCKLEY: Those volumes take up one clause of the Constitution at a time and follow it with quotations from dozens of relevant sources that relate to it -- commentaries on
the common law such as Blackstone, royal edicts, writings by various of the Founding Fathers, and so on, so as to place the clause in its historical and philosophical context.

WSW: What a fabulous tool for a judge in deciding a Speech and Debate Clause issue. Did your clerk find that book or did you have it? I bet he had a wonderful time working on this case. I wondered whether or not the historical work was something that was presented to you by the advocates or something you had developed. My guess is that you had done that work.

BUCKLEY: Yes.

WSW: In writing that opinion, Judge Mikva, as you may or may not remember, was concerned about the policy issue of limiting the definition of what a legislative duty was. Did you struggle with that issue?

BUCKLEY: I lost no sleep over it.

WSW: Was that an issue that you thought was not important?

BUCKLEY: I believe I left open the possibility that somebody might find certain congressional activities protected by a principle of qualified immunity; but that is quite different from the immunity provided by the Speech and Debate Clause.

WSW: Limited immunity -- I know what you're talking about.

BUCKLEY: I just didn't think that it would be possible to stretch speech and debate to cover the kind of
speaking you indulge in in your home district in order to get reelected. Members of Congress have taken on all kinds of jobs and chores that may be of great importance to constituents and are very relevant to getting reelected but have nothing to do with writing legislation. And the Speech and Debate Clause very clearly dealt with the latter.

WSW: Did you and Judge Mikva have a debate in a conference about this or was it clear?

BUCKLEY: No, we had a discussion and I just said I disagreed; and at the time, I was in the minority. What I originally wrote was the dissenting opinion, which persuaded the third judge.

WSW: That's very interesting.

BUCKLEY: Which is always fun.

WSW: That's the goal. That is interesting.

BUCKLEY: The thing that won over the third judge was the distinction that I drew between executive and legislative functions. A public official is granted immunity in order to protect his ability to perform his constitutional duty; to do the job assigned. Members of the Executive Branch or the Judiciary are required to make hard decisions without fear or favor, and they have the benefit of broad immunities. The obligations of a legislator are more discrete. If a legislator is to be effective, he must be free to say anything he wants to with respect to the making of
laws and the formulation of law without fear of being hauled into court. The Constitution doesn't protect a member of the House or Senate from being sued for libel for speech that is unrelated to the function of legislating.

WSW: Is that a distinction that you drew in your own analysis? That was not something that you found in the briefs?

BUCKLEY: That's right.

WSW: I also take it that this was an opinion that even if you'd gotten a first draft from a law clerk that you wrote pretty much start to finish. That's how it read. And it was one of your earlier decisions.

BUCKLEY: Yes.

WSW: I take it you probably haven't done any Speech and Debate Clause work since?

BUCKLEY: I've done several.

WSW: Really? Do you remember which cases they were?

BUCKLEY: [Pause]

WSW: Not the names necessarily but what the issues were?

BUCKLEY: A couple of the recent cases involving the prosecution of congressmen for violations of the Ethics in Government Act.

WSW: How did this early opinion, when you went back to use it in analyzing these later issues, how did it hold up? That's the question I want to ask.
BUCKLEY: It held up well. The speech and debate issues were not close; the larger focus, as I recall, was on questions of separation of powers.

WSW: I take it you didn't find the conduct to be protected by the Speech and Debate Clause?

BUCKLEY: No.

WSW: Another one of the cases that I looked at -- I looked at one of the earlier ones and then I looked at one of the later ones -- Gary v. Long, [59 F.3d 1391 (1995)], which was one of the cases that you had listed, and probably one of your most recent opinions.

BUCKLEY: I'm trying to remember that one --

WSW: I was just going to tell you which one it was. Your memory in some ways is like mine because I wouldn't remember without looking at it. It's a Title VII case and it had to do with sexual harassment.

BUCKLEY: Oh, yes.

WSW: You identified it as a significant opinion and it clearly was because your holding limited the employer's liability in such cases.

BUCKLEY: The employer's liability -- yes.

WSW: That's right. Title VII. If the employer is not liable for acts of its employees in these circumstances, under most circumstances, employers in this day and age would not be held liable under Title VII.
I take it that's why you identified it as a significant opinion.

BUCKLEY: Yes. The law was very ambiguous, with clear consensus among the circuits.

WSW: Do you think it was an issue that other circuits had decided different ways? I don't think so.

BUCKLEY: No, they didn't quite go different ways, because, as I recall, no other circuit had been presented with the precise set of facts with which we had to deal. Insofar as one can extrapolate from some of the holdings in other circuits, I think it fair to say that other courts might have come out differently.

WSW: I think that's quite right. I don't think that anybody before had analyzed the issue in a way that permitted the employer to escape liability or not to be liable where you had a case of an employee who, if the facts were true, had done some pretty bad things.

BUCKLEY: Yes.

WSW: But this kind of analysis had been used in cases where the facts were less clear.

BUCKLEY: Things are beginning to fall into place -- the Supreme Court said follow traditional agency principles. What distinguished our case was that the employer had done everything in its power to make employees aware of its opposition to any form of sexual harassment and of the procedures that were in place to protect any employee
who was the subject of improper conduct. In applying traditional agency principles to these facts, we concluded that the employer could not be held responsible for the supervisor's actions.

WSW: What did the briefs argue to you in that case?

BUCKLEY: One argued that the employer was liable as the devil and the other that it was not liable at all.

WSW: Did they consider all these agency principles?

BUCKLEY: Yes, but not in a totally focused way if I recall correctly.

WSW: My sense in reading the case was that this was an analysis that you had developed; you must have had some aid from clerks and from briefs but it read as though it was your theory, having thought it through, using the analysis that you were going to develop. Am I right about that? There must have been a lot of debate about that decision.

BUCKLEY: There was a lot of discussion, and I recall circulating a couple of memoranda outlining how I proposed to structure the opinion. I believe we all moved in the same direction as we thought things through. I don't think there was any pulling out of hair.

WSW: There was no dissent in that case.

BUCKLEY: No.
WSW: Do you think, having read other sexual harassment decisions raising different issues in connection with writing that decision that this decision changes the direction of sexual harassment law under Title VII?

BUCKLEY: I think it demonstrates how an employer can protect itself against what might otherwise have become an open-ended liability.

WSW: Have you seen any cases appear since then that involve that issue or have you seen what other circuits have done with that issue?

BUCKLEY: No.

WSW: Would it surprise you if other circuits came out the other way?

BUCKLEY: No.

WSW: I'm about to ask you one of those impudent questions. Had the panel been Judge Edwards, Wald and Mikva, rather than Buckley, Williams and Sentelle, do you think it might have come out differently?

BUCKLEY: It might have been different. I think this is one of those areas involving perceptions of reality - I don't know how to express it. I have become persuaded that there are differences in how various judges perceive the world. On rare occasions, this difference will affect the outcome of a case. There are certain categories of cases where this is so, and I think it reflects how one sees life; and these different
perceptions of life will often reflect the division of the court between political conservatives and political liberals, although it isn't always easy to tell why Republicans judge one way and the Democrats another. The vote on a petition to rehear my speech and debate case en banc is a case in point. The nominees of Republican presidents all voted to deny the request, and the Democratic nominees (the minority on the court at that time) voted to rehear; but for the life of me, I can't fit the reach of congressional immunity into an ideological pigeon hole. But there it is. I can think of one other case where I couldn't explain in political terms why the court split the way it did.

WSW: Action for Children's Television actually is like that. [58 F.3d 654 (D.C. Cir. 1995)].

BUCKLEY: It is very definitely.

WSW: This was an en banc decision that you wrote. There were dissenting opinions joined by Edwards, Wald, Rogers and Tatel. Now following your analysis, there are political issues involved. The decision could have come out either way because there was an obscenity issue competing with regulation of speech. Lines could have crossed even if everybody was voting a political philosophy, and yet they didn't.

BUCKLEY: I am persuaded that the judges were not voting their party lines, their votes were determined by their
perceptions of what is a reasonable restraint on speech and of what constitutes a interest. There is no precise legal formula that will tell you what is a compelling government interest so it is in this strange area where perceptions of how the world works does make a difference.

**WSW:**

I want to go back to one of the answers you gave me earlier about what makes a good judge - that you have an open mind and that you look at the issues. That being true, and recognizing that everyone is trying to do that, it was interesting as I looked at the opinions you identified as significant that I could have told you in advance, pretty much in every case, how the court would be aligned. Does that surprise you?

**BUCKLEY:**

I hadn't thought about it until I gave you that list. I didn't think of it when I asked for it, and I certainly didn't ask for it for that reason; but when I read 4 or 5 of them, it did strike me as interesting.

**WSW:**

One case I could give you which would not have come out that way was an OSHA case, but I couldn't remember the name of it at the time. I concluded that both the agency and the employer were wrong, and that the petitioning labor union was right. I was later complimented for that decision in a union journal.
WSW: Do you remember it now? I'll read it and we'll talk about it next time. Maybe I can find it. Or if you think of it I'll look it up; I haven't finished reading these. I read about half of them before I came today - some of the early ones and some of the later ones - and was struck by my guess that you had done a lot of independent work on each decision. Your opinions start with first principles and work through the issues and come out at the end. It was also interesting to me that judicial philosophy somehow seemed to play a role in most of these significant decisions. Now why did you pick these? What criteria did you use?

BUCKLEY: Maybe because I remembered them. Well, I guess because more often than not they dealt with an area that was not squarely predetermined by nearly identical cases and because a certain amount of "original work" was required. Association of American Physicians and Surgeons [997 F.2d 898 (1993)] is one example. There you find me disagreeing with two very conservative judges, namely Judges Silberman and Williams.

WSW: That's right. Silberman, Buckley and Williams. Judge Silberman wrote the opinion and you wrote a concurring opinion.

BUCKLEY: You read that one too.
Of all these cases on your list, or any others, is there a case or cases that you thought were the hardest to decide, that you really did lose sleep over?

Just trying to think. I'm sure there are many more than one. These things just evaporate from my mind. Are there cases where years after I'm still not sure if we got it right? Yes, there are such.

But you don't lose sleep over them.

You can't. Because you've got to move on.

Incidentally, would you be interested in a written statement of my philosophy as a judge?

Yes.

Would that be helpful? OK, I can give you that.

In what context did you write this?

It was originally for presentation at a Senate prayer breakfast. It ended up as an article.

Good, yes. Are there any cases, as you sit here now, that you can remember at the time you were deciding them you found very hard to decide either because of policy reasons or because you couldn't sort out what the law really was or ought to be or for any other reason?
BUCKLEY: Yes. First of all, I don't think I have any right to impose my own views on policy. So if I have had difficulty with questions of policy, it would have to be because the policy undergirding a particular statute was unclear - either congressional policy as stated in a statute or framed by an agency courtesy of its delegated authority. I don't think that's what you are talking about.

WSW: No it's not.

BUCKLEY: I have had plenty of cases where I think the correct application of the law has set American society back several major steps. But our understanding of the law was clearly what Congress intended and that's their job. So that sort of thing doesn't bother me.

WSW: But it must be also the case that sometimes it's not clear.

BUCKLEY: Unfortunately, that is too often the case. A law is poorly drafted and difficult to understand, or it may be very difficult to determine whether it was intended to be applied to the situation at hand, or the case involves a number of intellectually difficult concepts, or there is no underlying principle that can be relied on for guidance. For whatever reason, it can be devilishly difficult to come to a conclusion with any degree of certainty that it is the right one.

WSW: The court, as we talked about a few minutes ago, does divide in some sense by judicial philosophy.
BUCKLEY: I'm not sure you would get anyone to say that.

WSW: Well, I was just going to ask you whether you would agree with me? Other than my looking at the way these significant opinions were decided, what do you think about that? Let me just ask the question straight. Do you think there is a division of judicial philosophy on this court?

BUCKLEY: At the margins. Law schools will talk about the Constitution as a living document that must be constantly massaged and changed and kept up to date, and so on. Insofar as there are judges on this court who are comfortable with this view, their decisions will, I think, inevitably test the limits in pursuit of what they believe to be the correct result. But on this court, at least, any "activism" of that sort is held within rather tight limits, bound by a perception of the latitude the Supreme Court will allow in a particular field. I don't believe that our judges will claim any latitude with respect to a statute. At times, however, some of them will read something into a statute that I can't find. That is why I prefer to attribute differences in results to differences in perceptions of such intangibles as what is reasonable. People reading the same words will at times understand them quite differently. Especially when you have to come to grips with things such as government interest" or due process."
These are spongy concepts. I think probably we would all define our jobs in pretty much the same way -- yet we will reach these quite different conclusions in a very narrow set of cases. I think it would be in less than 5% of the cases we have that this sort of thing will manifest itself.

**WSW:**
Taking *Gary v. Long*, which is the Title VII sexual harassment case, as an example, I think you agreed with me that if a different panel had sat on that case there was a pretty good chance it might have come out differently.

**BUCKLEY:**
I think I said it might be possible. I feel, however, that we applied standard agency law in a conventional way. I know I tried to.

**WSW:**
I was trying to figure out, using the analysis you just gave me, how it would work in the context of that case. The case did not involve our analysis of Title VII except to the extent that in it you applied standard agency principles. Yet I suspect that with a different panel a different decision would have been reached.

**BUCKLEY:**
To that degree, that panel would have been an activist panel.

**WSW:**
OK. To the extent that there are differences on the court of world view we will call it, do you find that there are personality conflicts that arise or are you
all pretty much able to accommodate the different world views that you have?

**BUCKLEY:**

I think we do a pretty good job of that. I know that there are those who assume, from the great differences in our political backgrounds, that we must engage in all kinds of clashes, but it's not true. I understand that in earlier years, there were some legendary battles among the judges of this court, but I haven't experienced any. There are individuals of all different types here, and they are all extremely capable. Occasionally some sparks will fly, as they will in any human situation, but these flare-ups are short lived and have left no permanent bruises, at least I am not aware of any.

**WSW:**

I would hope that would be true, but I can see that people with very different personalities could find it difficult to accommodate one another.

**BUCKLEY:**

One of the strange things about this job is that we almost never see one another. I can literally go three weeks without laying my eyes on another judge. It's a very weird situation. In my first years on the job people asked me what it was like, and I said it's like entering a monastery. And then after a while I realized this was wrong because monks get together about five times a day at inconvenient times to pray together. By contrast, this court consists of a
series of hermitages. We each live our own quite separate existences.

**WSW:** Do you find that to be a good or difficult part of the job?

**BUCKLEY:** It's a limitation. There are wonderful people here that I just don't get to know as well as I would like. We don't have sufficient numbers to support a dining room where you would drop by to have lunch and have a chance to get to know each other in a three-dimensional way outside the context of the legal issues that we discuss during those four days a month that we hear cases with two other judges.

**WSW:** Do you socialize with other people in this court?

**BUCKLEY:** Very limited. But I do very little socializing.

**WSW:** We'll get to that. Do you think that there are judges on this court who are particularly good at consensus building?

**BUCKLEY:** Unlike the Supreme Court, we have very few cases that offer the opportunity to build a consensus. We have en banc hearings, but only two or three of them a year. So basically you come down to a situation in a three-judge panel where some individuals prove more persuasive than others in presenting a particular point of view. So the answer is yes, but you won't get me to name them.
WSW: Do you think that the court is overloaded? You said earlier that there is no time.

BUCKLEY: I think it is more accurate to say that I have no time. I am a very untypical judge in that I am truly very slow. It takes me significantly more time to do my job than it takes the other judges here. When I mention this, people say that I must be more thorough than the others. But this is not so, I'm not better prepared. I am often less well prepared than many of the people on the panel. I am just painfully slow at reading and writing, which is 99% of an appellate judge's work. I have always been a workaholic, but I have never put in more hours in any job in my life; I work most weekends and I get here at 8:15 in the morning, I leave here at 6:30 in the evening, and I usually put in an hour or two at home at night. On the other hand, there are 3 or 4 judges here who teach on the side, who do a fair amount of lecturing, who take off to Eastern Europe and help people establish judiciaries and so on. So from my perspective, the court is way overloaded. Taking the court as a whole, I think we are probably at the level where we can handle our work without falling behind. Our work load hasn't changed much in the last three or four years. I think that's probably going to change. What happened is that with the moratorium on significant new legislation during the Reagan years, lawyers began
to run out of new ways to challenge existing regulatory laws, but significant new regulatory laws were enacted during the last couple of years of the Bush administration -- significant new amendments to the Civil Rights and Clean Air Acts and a couple of others, and we are just beginning to get the challenges to the regulations that have been issued in response thereto. So right now, we as a court are able to handle the work even though we have been working with a complement of 11 judges rather than the 12 authorized. We have been an 11-judge court for most of the time I have been here; I think 12 were authorized just before I came on.

**WSW:**

What about the criminal docket? Has that increased?

**BUCKLEY:**

We had a period three or four years ago where it had increased significantly, but the increase was artificial; artificial because of a situation peculiar to the District of Columbia. As you are aware, unlike the states, the District has a single chief prosecuting officer -- the U.S. Attorney for the District -- who has the authority, in the case of offenses that violate both federal and D.C. law, to decide in which of the parallel court systems, federal or District, the criminal charges will be brought. The last U.S. Attorney was sending a lot of cases in our direction that really didn’t belong here. It was penny-ante stuff that would have been handled by the
state courts anywhere else. The new U.S. Attorney has
gone back to a more normal division of labor and so we
are not carrying as heavy a criminal load as we were
carrying during those aberrational years.

**WSW:** Do you think that in the next few years the docket
will grow?

**BUCKLEY:** Let's put it this way -- Because of the new laws I
have referred to, a new generation of regulations is
being issued that will be challenged in this court.
In a sense, however, these cases will more or less
offset the decline in challenges to the regulations
issued under older statutes. So, unless Congress
enacts major new laws that will generate a mass of
additional regulations, the net effect will not be a
significant increase in our work. Eventually
litigants will run out of new ways of challenging the
old stuff.

**WSW:** You underestimate the bar.

**BUCKLEY:** In any event, I think right now it's very hard to tell
because very strange things are happening on Capitol
Hill. If there is a genuine move to deregulation and
the return of a lot of responsibilities to the states,
you could find in the longer term a decrease in our
workload.

**WSW:** Although short term, this could generate an increase
in the workload as all of those laws are challenged.
Have you found an increase in any particular kind of case over the years?

**BUCKLEY:** If you want to subdivide the administrative load, if you are talking about hazardous waste, for example, the answer is yes, there has been an increase in hazardous waste cases because new laws have been passed; but there has been a decrease in some of the other kinds of cases such as challenges to CAFÉ standards. Are you familiar with those? They have to do with the gasoline efficiencies of automobile product lines.

**WSW:** I don't do that. Do you think that the court now writes more than it used to; writes longer opinions, more detailed opinions?

**BUCKLEY:** How far back do you want to go? My perspective is 10 years. I would say that perhaps the individual opinions are a little shorter. One significant change is, I think, that you'll find far fewer footnotes.

**WSW:** I think we can all speculate on why that might be. What do you think about technology? Has it changed the way people write opinions? Do you think that computers and access to information on computers has had any effect?

**BUCKLEY:** I'm not sure it has had an effect on the writing of opinions; it certainly has changed the job of clerks and how they do their research. I haven't gotten into electronic research. I can do word processing, but I
haven't gotten into the type of thing. I hope to advance into that. The court has now developed a system of electronic voting on such things as motions, which saves a lot of paper. So there is a little less paper shuffling.

**WSW:** Do you have E-Mail?

**BUCKLEY:** Yes.

**WSW:** Do you write each other notes?

**BUCKLEY:** Not yet. But I can see that will probably be coming. That might change your life more dramatically because you'll have contact with more other judges because you send each other notes all the time. That is what E-Mail does. I mean if you have a judge's network, you could send each other all sorts of chatty notes.

**BUCKLEY:** The machinery is all in place. I don't personally use it to chat - nor do other judges that I know of - but our offices are now circulating memos that way.

**WSW:** Are there discussions about technology? Is it anything that is of particular interest in this court?

**BUCKLEY:** It's of tremendous interest to our chief judge who has been very good at bringing new technology into play; but I think you are rather interested in this sort of thing or you are not. So I passively accept whatever happens.
WSW: In the last ten years have you seen any differences in the District Court bench here? Either who is on it or how cases are decided - how they come to you?

BUCKLEY: I really haven't noticed. I have no comment to make on that.

WSW: This is another one of those questions that you may or may not answer - are there any District Court judges that you particularly admire or whose opinions you particularly respect?

BUCKLEY: There are some and, again, I will not name names.

WSW: Well, then, I'll ask another question and you won't answer it either - are there people you have a different view about - are there judges whose opinions you are less likely to respect?

BUCKLEY: As you would expect, the judges in this building will inspire a range of confidence, even though they are a very talented group. There are certain District Court judges, for example, for whom I have so high a level of respect that when I find myself going off in a different direction, I scrutinize where I'm headed to make doubly sure that I am not missing an essential point - and at times I will find that I have.

WSW: Does that happen often?

BUCKLEY: It happens on occasion, sure.
When you are reaching a decision, do you think at all about what the Supreme Court will do or how it will react to the decision you make?

Basically, no. On certain issues I assume that the Supreme Court is going to be given a crack at my handiwork and assume that the Court might very well grant certiorari, but I do my job and they do theirs. If you are asking whether I will change anything because of the prospect of Supreme Court scrutiny, the answer is no. In arriving at my conclusions about a case, I will apply, to the best of my ability, what is binding Supreme Court precedent, but I am not going to second guess where the Supreme Court goes next.

Would you write a different opinion thinking this is one the Supreme Court is going to look at? A more detailed, or broader, or narrower opinion? Does that enter your calculus at all?

No. In terms of writing opinions, I tell my clerks to make sure their drafts are reader friendly, i.e. easily understandable on a first reading by readers with no particular familiarity with the field of law in question. I also emphasize the need to avoid any asides, dicta, things of that sort, that, in my experience, have the effect of strewing the legal landscape with land mines. In writing an opinion, I try to explain the court's reasoning in reaching its conclusions while, at the same time, not straying
beyond what the case requires. I would not change this approach, let alone modify my conclusions as to what the law, including Supreme Court precedent, requires merely because the Supreme Court might be looking over my shoulder.

**WSW:**
As I said, the opinions that I have read and I am sure I have read others, my perception is that your approach is to take the problem, to take it apart, to analyze each issue, one at a time and reach your conclusions. It's very linear. There aren't a lot of asides or byways and other analysis. It's just very straightforward and clear. Your opinions tend not to be very long, as D.C. Circuit opinions sometimes can be. As a general rule your opinions are pretty straightforward. That's what I found in the few cases I read getting ready for today. Do your clerks often go on to clerk for somebody on the Supreme Court?

**BUCKLEY:**
Some have, not often. I am not a feeder. I have had, I think, four or five.

**WSW:**
I wondered if over time judges on this court developed relationships with Supreme Court justices and their clerks often go to one or another.

**BUCKLEY:**
Not in my case. Nor do I have a relationship with a law school professor who will spot the bright, upcoming stars on my behalf.

**WSW:**
So that your clerks come from various places. I know that we have some clerks of yours at our firm, but I
don't remember who they are. Are there any lawyers that you can think of now who struck you as particularly good appellate advocates?

**BUCKLEY:** Yes, and I can't think of their names.

**WSW:** Do you remember any of the cases or the nature of the cases that they argued?

**BUCKLEY:** I'm sorry, specific cases don't spring to mind. There are some lawyers who have a way of explaining complicated issues, and they do it in an agreeable way - they answer questions directly. They display a certain amount of artistry, they can really give you a feel for an issue and an argument. There is the art of persuasion that some people have in greater abundance than others.

**WSW:** Partly related to being smart and it's partly just a talent. It is wonderful to see somebody who you think is really good at advocacy. There must be times when you sit on the bench and think to yourself - this person is really good at this.

**BUCKLEY:** And then it's wonderful when both sides are really good at it.

**WSW:** Does that happen often do you think?

**BUCKLEY:** It happens at times.

**WSW:** Well, as you sit here, if you think of particular people or arguments that you have heard, it would be
fun to hear about them and specifically what the cases were about.

BUCKLEY: This is the sort of thing I just don't have the capacity to recall on short notice.

WSW: Do you find at the end of the day that you go home and share with your wife either interesting cases or particularly good advocacy or bad advocacy that you have seen?

BUCKLEY: No.

WSW: Do you share it with friends or colleagues?

BUCKLEY: No. For better or for worse, I've taken very literally the injunction that nothing that goes on here ever gets repeated elsewhere. Of course public argument is public argument.

WSW: You said that you don't have law schools that you particularly look to find your clerks. How do you find your clerks?

BUCKLEY: I get about 300 applications, and I do have a galaxy of law schools that are high on my list; and I will concentrate on their graduates. I will arbitrarily throw out applications that come from law schools I have never heard of. Therefore I'll no doubt miss some extraordinary talent, but shortcuts have to be taken. You could probably name the 10 or so law schools that I look at. Then I look at the grades, what the applicant's experience has been, and the
letters of recommendation. You can usually tell which letter is perfunctory and which is written by someone who is really excited about a student. I've found that this can also be a hazard; that some teachers will develop an infatuation for a particular student that will blind them to the student's very real shortcomings. So you need second opinions.

WSW: You usually try to find that out before you hire this clerk.

BUCKLEY: Exactly.

WSW: How do you do that?

BUCKLEY: As I say, get opinions from some other professors and former employers. Of critical importance, of course, is the interview. I may see thirty or more candidates before I make my choices, and they will be individually interviewed by my clerks as well as by me. My clerks' assessments can be very useful. But it's hard. This hiring situation has reached the ridiculous point where judges are choosing clerks a year and a half before they will be reporting for duty, and with little more than first year grades to go on.

WSW: That's right. You hire these clerks before they have really done anything -- they are practically just out of college.
BUCKLEY: For better or for worse I have embarked on a policy of not hiring anyone who hasn't finished two years of law school.

WSW: What a dramatic idea. Does that put you way out of the mainstream?

BUCKLEY: Yes, because everyone else is hiring second year people in the middle of their second year.

WSW: And I suspect you find that it has not affected the quality of your clerks?

BUCKLEY: Not really, not so far. I've only had one year of this.

WSW: Does anybody else on this court do that, or does everybody else still hire based on first year grades?

BUCKLEY: I think Judge Edwards is doing it too.

WSW: You wait and hire the summer after the second year so you have two years of grades.

BUCKLEY: Or the following year. And so you have theoretically missed all the stars, except there is an awful lot of talent that is overlooked the first time around.

WSW: There is a lot of talent, that is exactly right. This court was famous a number of years ago for moving the hiring date earlier and earlier.

BUCKLEY: It just got ridiculous.

WSW: And of course it's even more ridiculous because law firms like ours who tend to hire appellate court
clerks, hire law students before they have even started their clerkships; so we also are effectively hiring on the basis of first year grades. It really does perpetuate itself. I wonder if somehow we are creating a certain category of people in the legal profession by doing that.

**BUCKLEY:** Are you familiar with the system the medical schools use?

**WSW:** It's all computerized; you put in your first choice and your second choice and the computer determines the internships.

**BUCKLEY:** It involves matching the teaching hospitals' preferences with those of the students. It seems to me that makes sense. You do that half way through the third year of medical school. You can do it the summer after the third year.

**WSW:** Do you really think that the federal bench would put up with having some impartial system control who they get as law clerks?

**BUCKLEY:** If the bench was self-disciplined it would. You only get people you choose.

**WSW:** Yes, but you are limited because you can't jump ahead of someone else.

**BUCKLEY:** That's right. What you do is get the optimum combination of mutual choice.
I look forward to that system, and it would be very helpful for the law firms but chances of it are not great.

It's not going to work. No.

Because everybody wants to pick a week before everybody else does because they are afraid they are not going to get the star of the year - right?

Yes.

Where are your law clerks from this year?

I have one from Harvard. I branched out this year in making my next selections - I have my first from Duke and my first one from Georgetown.

The first one that you have had from Georgetown or Duke?

Both. I figure if Ken Starr is an example of what Duke produces, it is not all that bad.

Have you selected law clerks for next year yet?

I've got one of them for next year, yes.

Do you find that there are differences among the law schools, I mean of this tier of law schools, that you select from - do you find that law clerks are different?

Not really, no, if you get very bright people that are reasonably well prepared. In fact, Yale is the most difficult one to choose from because the grades are
meaningless. But the clerks I've had from Yale have been superior. Excellent from Harvard, excellent from Chicago and I've had terrific ones from Michigan, Stanford, Boalt.

**WSW:** What led you to stray this year to the southern schools?

**BUCKLEY:** This was my first time hiring in the third year. And they seemed to have an awful lot of talent who apparently didn't surface in their second year. In any event, I saw quite a few people before I settled on this group.

**WSW:** How many people do you have here?

**BUCKLEY:** In the past, before I was selecting in the third year, I might see 30 people, and this is a tremendous drag on chambers time because of my insistence on having them interviewed by my clerks as well as by myself. This last time I saw under 20 candidates, but I was dealing with a smaller universe of applicants and less competition from other judges.

**WSW:** Do you do the selection process yourself, or do you use your clerks to help?

**BUCKLEY:** I narrow the field myself. Then they help.

**WSW:** Some judges use former law clerks to do a lot of their screening and hiring. You do not.

**BUCKLEY:** No.

**WSW:** Do you have reunions of your law clerks?
BUCKLEY: Yes. About two a year. One at Christmas time and one in the summer.

WSW: Do you do it here? Somewhere in Washington?

BUCKLEY: Christmas time at my home. The clerks have organized the other, and its location depends on what facility is available to them. Usually it's the home of a former clerk. In my first full term, one of the clerks and two friends had rented a house with a substantial yard, which was used for the purpose. It started the tradition. The clerks did all the cooking messing up the borrowed dining room and yard. Anyway, they organize it.

WSW: What have your clerks gone off to do? Are they in private practice, work for the government, what do they do?

BUCKLEY: A number of them have put in some time in the Justice Department or U.S. Attorney's offices. Most of them are in private practice. One of them is on the Hill and some of them are in corporate practice. A couple of them are teaching.

WSW: Other than these reunions, do you keep up with them?

BUCKLEY: Fairly well. They drop by when they are around. Especially if they settle in the Washington area. Clerking here has that effect on people.

WSW: Would you say that your clerks are predominantly male, female, both?
BUCKLEY: Mostly male. I have been very hurt; I have had a number of turn downs from very talented women.

WSW: I have no idea why that would be. I think actually this is a good place to break. I think we have about one more session of questions. Whenever it's good for you, we should meet again.
I think that this probably will be our last, our fifth session. Today is January 15, 1996. When we left off we were talking about the courts and the court system here and we had talked about your law clerks, and I was going to start today talking a little bit about your views about how this court works and how it's managed and whether or not you think it has changed since you started.

OK. One of the nice things about this job is that you don't have to worry about management. Only the Chief Judge and staff have to. Occasionally we get roped into some weighty problem, but I have had the good fortune of being under a series of quite competent chief judges. The one we have now, Chief Judge Edwards, is not only competent but has managed to keep up with the latest technology. As a result, we have been able to eliminate a lot of paper shuffling. In sum, I have absolutely no complaints on the way the court is being managed.

Do you have any role in administration or in management or do you have an interest?

No, and I wonder why anyone ever wants to be a chief judge.

What about the role of senior judges in this court?
BUCKLEY: It has been my misfortune not to have been around when senior judges played significant roles in the regular work of the court. When I came on board there were two, George MacKinnon and Carl McGowan. I sat a couple of times with Carl, but he died soon after I arrived. George MacKinnon was then spending almost all of his time as a member of the commission designing the new federal sentencing guidelines and as head of the special panel or whatever that appoints and oversees the work of independent counsels. So I never sat with him. Judge Wright took senior status shortly after I arrived, but he had developed Alzheimer's disease and died shortly thereafter. So as I say, I have not had experience with the kind of service by senior judges that I understand has been of enormous help in other circuits.

WSW: That is interesting, I hadn't focused on that. Senior judges here have not been active for one reason or another. Have you been a participant in the D.C. Circuit Judicial Conference over the years?

BUCKLEY: I was the moderator for one program at a conference a few years ago, and was a member of the planning committee for another. Then, since Judge Mikva left, I have been given the heavy responsibility of serving as conference parliamentarian on the strict understanding that no parliamentary issue would ever arise.
WSW: What do you think of the judicial conferences? Do you think they are useful, do you think it's useful to invite the Bar or is it something that you would do away with?

BUCKLEY: Frankly, I'm not sure how useful they are. I don't know if I would do away with them entirely, but I think one every other year would certainly be enough. If you read the statute requiring them, their principle purpose is to get the district judges and the circuit judges together to discuss matters of mutual interest. But this virtually does not happen. There has been a breakfast for the district and circuit judges at each conference, but that doesn't allow enough time for a meaningful exchange. At each of the conferences, however, I have always found some programs that have been very interesting and have attracted some excellent speakers. With respect to any benefits accruing from the commingling of bench and bar: frankly, from my perspective, it hasn't done much for me. It may well be useful from the attending lawyers' perspective, I just don't know. What do you think?

WSW: I think they have become more of a social gathering, a prestigious thing for lawyers to be invited to. It is wonderful to be invited. I love it when I am invited, but I do wonder whether it is anything more than a nice opportunity for those lawyers who get to be
invited to socialize with each other and the bench. I agree with you that every other year is ample. Having said that, yes, it's wonderful to be invited but they are expensive and I might use the money for something that is a little more worthwhile. The other thing is that they are very exclusive, and when you get invited, you get on the list not necessarily because you have made a major contribution to the bar or really deserve to be invited. But once you get on the list you get invited again.

BUCKLEY: Then you get hurt if you don't get re-invited.

WSW: Right. It's a little like a wedding. They are fun but I don't know that money should be devoted to them in any great amount. That's sort of been my experience. Do you think the court has changed much since you were appointed?

BUCKLEY: Not really. In what ways?

WSW: Well I guess there are two ways it could have changed; probably more than that but in the way it's managed, the way it's run, the administration of it. Has that changed?

BUCKLEY: Without implying anything derogatory about earlier chief judges, I think our current chief judge, Judge Edwards, has shown great organizational talent and has been effective in addressing all kinds of grungy problems of which the other judges are blissfully unaware, but which need to be handled - problems
involving the workings of the clerk's office and various services to the public.

WSW: Has there been any change in relationships among the judges themselves? Are there cliques?

BUCKLEY: When I was about to join the court, some people cautioned me that the court was known for its factions, and this, that and the other - I think we touched on this earlier - but I have seen nothing of all those legendary battles and confrontations that I understand plagued the court at an earlier time. Occasionally a judge will slip something into a dissent or a concurrence that causes some outsiders to believe that the fabled tensions of the past linger on; but while a particular issue in a particular case may give rise to some sparks, that's all there is to it. There are no feuds or resentments that I am aware of, no cliques. You asked me if I noticed a change. I think that this is certainly a very different court than the one that existed in the sixties and seventies. That court had a reputation for activism, for plowing vast new legal ground. I don't know when all that changed; but five years before I came on board, people like Judges Bork and Scalia began to be appointed to the court, and that has had its effect. Today, a majority of the judges were appointed by Presidents Reagan or Bush, and that has had its effect.
WSW: So to the extent that this court was known as it was many years ago, as a very liberal court, as a very activist court, that really had changed by the time you were appointed pretty much anyway?

BUCKLEY: I think so.

WSW: Yes, I think that is right.

BUCKLEY: And I think, incidentally, that this may be one of the reasons why our filings have leveled off.

WSW: Yes, that was the next question - what about caseload? I think that probably is right that in the late 60's and 70's certainly the case load in this court was, or at least it was reported to be, burdensome and overwhelming - that does not seem to be the complaint in this court.

BUCKLEY: I find I've got more than I can handle; but as I said earlier, it just takes me longer than the others. I think that the feeling among most of the judges is that they can keep up with the current flow and do a decent job without heroic sacrifices.

WSW: Now you may not want to answer this question, but how do you feel about the current debate about the 12th judge on this court?

BUCKLEY: If you look at the statistics, you will see that we haven't fallen behind in our work even though we have been operating most of the time as an eleven-judge court. Our filings have leveled off, and that's why
the argument can be made that we don't need twelve. I think we are right at the edge. I believe there are two reasons why our case load has not continued to rise, as it has in all the other circuits, keeping in mind that we handle far more administrative law cases than any other. First of all, we no longer have the reputation of being a venturesome court that is hospitable to what some would style as wild new theories of law; and second, during the Reagan years and the beginning of the Bush years, the emphasis was on deregulation, and no major new regulatory laws were enacted that had to be analyzed and litigated and fleshed out. But in these last two years, there have been some significant initiatives - significant changes in clean air and civil rights legislation, the new Disabled Americans Act and a couple of others that don't come to mind right now. We are beginning to see challenges to the regulations that have been issued to implement these laws, and as tends to be true with any initial set of regulations, they are being challenged from 12 different directions; so it would not surprise me to see an upturn in our administrative case load.

WSW:

Do you think there has been an impact on the effort to have alternate dispute resolution and mediation that this court has adopted and other court have as well?

BUCKLEY:

I just don't know. All I know is that mediation has worked very well for us. When it was first
instituted, and I think that was done the year I arrived, there was a lot of question as to whether the government would ever settle a case; and to everyone's wonderful surprise and delight, the government has shown it could be reasonable in this respect.

**WSW:** So that from your perspective, it works in this court and you think that is also a factor in reducing the case load?

**BUCKLEY:** Yes, it has to be. That does not reduce the filings and the statistics based on filings, but it certainly affects our workload.

**WSW:** Right, it reduces the amount of work that you actually have to do if the case settles before you have to hear it. I don't know what the statistics are for the number of cases that go through that Court of Appeals mediation. Do you?

**BUCKLEY:** I have seen them, but they don't stick in my mind. But a significant percent of the cases are disposed of in this way.

**WSW:** One of the things that I think we talked about briefly and you were going to think about more was whether, as you think about your judicial career, there were any memorable arguments or advocates either because they were particularly good or particularly not good

**BUCKLEY:** There have been both but my memory is such that I can't cite the names or cases.
WSW: The circumstances without putting names on it particularly?

BUCKLEY: No I can't. I just don't have that kind of memory. It has plagued me throughout my life. There have been times when I have been overwhelmed by the quality of the lawyers. I have also been surprised that sometimes you have somebody from a very big name firm who would fly all the way across the country to argue a case - and would bomb.

WSW: I suppose I could ask a question this way. I have found that it is often the case that when a case reaches the Court of Appeals and a client decides to bring in a big name, someone who is not familiar with the record, someone who is not familiar with the case below, that the argument is not as excellent as the advocate thinks it is and the client had hoped, despite all the money that the client paid; and you see that a lot at this stage. Clients think they have to bring in some big name, and they will bring in somebody who doesn't have the depth of knowledge of the case and so the argument is not as good. Do you think that's right, do you find that?

BUCKLEY: I think that is a very good analysis. I have also had cases where you wonder how the lawyer ever passed the bar or received a law degree.

WSW: What do you find generally when you sit on the bench? Are the arguments generally what you would expect or
are you often impressed or are you often amazed at the quality of the argument?

BUCKLEY: Well, you expect competence and you usually get it; but sometimes you get someone who is exquisite. I do remember one instance – it was my only experience with a three-judge district court. It involved election law and a challenge to the election of some New York judges. The Attorney General of New York argued the case, and he came before us three times. He was absolutely masterful. Total command of the law, total command of the facts. The good sense not to pursue a losing argument. The quickness to pick up on an admission made by the other side – wit and grace; and I heard this man in his last argument as Attorney General because he had lost the election. We heard the case in the first week of January, before he had to step down.

WSW: That is a wonderful thing to hear. When somebody is really good – at his or her best, it is a wonderful experience to watch. Who was this? Which Attorney General?

BUCKLEY: The one that just lost. Couple of years ago. 1994.

WSW: Is this a case about the election of judges in New York?

BUCKLEY: Yes.

WSW: Yes, I do remember that case. I can't remember what the issue was but I remember.
The Justice Department was trying to set aside the election of several judges in New York City by expanding the definition of discrimination beyond what the language of the statute and prior judicial interpretations of it could possibly support. The basic argument was that the system by which candidates are selected is such that it makes it harder for a member of a minority to be among the pool from which they are selected.

I do remember it. Do you think this court at the moment faces any major challenges as it looks ahead? Either in the case load it has or the statutes or personnel or management?

No, you have good people on the court, and I think that the management is good. There are always problems. I think that we do need more space now than we have.

Don't you have judges in this court that don't have chambers?

We are OK. The District Court has some judges who have to share temporary courtrooms. Also, the Federal Public Defender's office ought to be here. They are now squirreled away elsewhere, but it would be more efficient to have them in this building. The same is true of some other ancillary bodies. An excellent plan has been put together for an expansion that is very economical; but we are the victim of courthouse
extravagances elsewhere, namely New York City and Boston.

WSW:
Yes we have all been reading about Boston in particular. Well you see I would save the money from the judicial conference and use it for other things like space actually. Let's talk for a few minutes about your personal life while you have been on the bench. Do you find that being a judge makes it difficult to meet new people and be in social situations because of the limits of what your job is and what you can talk about?

BUCKLEY: Not because of the limits of what you can talk about. The fact is that I have had a limited social life these last ten years in part because I have been working so many evenings. Another factor is that judges live such isolated lives at work and don't have the occasion to bump into people casually. Therefore people tend to forget that you exist. Even people you are very fond of. If you are practicing law, you are in daily contact with other lawyers and clients. As a result, I found that I have had to take the initiative to call people and say let's have lunch. Otherwise I won't see anybody except my clerks.

WSW: How about the judges on this court. Do they socialize? Do you socialize among yourselves?
BUCKLEY: Very little, but that little is enjoyable. We have a great group of people, but everyone is very preoccupied with his own work.

WSW: How does your wife deal with this - your working all the time?

BUCKLEY: Philosophically. She has her own activities. And a couple of them routinely take her out an evening or two a week.

WSW: Tell me about what your children are doing now?

BUCKLEY: My oldest works in the investment banking group of BankAmerica in New York City and lives in Connecticut. His work involves such things as helping the bank's clients place their securities. Our number two child, also a son, recently moved from Florida to Rhode Island. He is with a computer software company, and he is involved in such things as programming. Our third is a daughter who lives in France, married to a Frenchman who speaks no English; therefore the chances are she'll continue living in France, to our regret.

WSW: Does she have children?

BUCKLEY: She has one child.

WSW: Speaks only French?

BUCKLEY: She speaks to him only in English. He is now 5½ and understands English but he has trouble speaking it. And she also works for a computer company. She is a, was a freelance writer, but after her child was born, she figured she needed a more predictable kind of work. She translates computerese into understandable
English and, I am told, is very good at it. Our next child is a son who lives in Montana. He is a freelance writer/photographer for hunting magazines.

And then we have a son who is a lawyer. He was with Davis, Polk in New York, and though he enjoyed the work, had virtually no time for anything else. As he described it, overworked — though overpaid, so a year ago he moved to the legal division of Host Marriott Corporation. He now lives in Alexandria and works in Bethesda.

WSW: So there is one child you can see.

BUCKLEY: One child we can see. And then the last child, and fifth son, lives in Maine and is a freelance photographer. He is married and is the father of our oldest grandchild.

WSW: So you have two freelance photographers among them.

Are you a faithful newspaper reader?

BUCKLEY: I read newspapers, yes.

WSW: Do you read the Post; do you read the Times?

BUCKLEY: I read the Post.

WSW: Well you read the "In the Loop" don't you? That's the page I turn to. "In the Loop" is on the Federal page in the back of the front section, and it tells you who is moving on to what job and who is doing what.
BUCKLEY: I really don't. I concentrate on the first section. I am unhappy about the Post. It reflects narcissism, which is huge.

WSW: I will tell you a fairly funny story about the Washington Post. My father-in-law was a newspaper man for many years, and he railed about the Post his entire career. He hated it. He hated a lot of newspapers, and he was a very crabby journalist type. In his later years he had Alzheimer's disease, and he was actually in terrible shape and very rarely did I have a conversation with him which was terribly coherent in the last year. But I went over there one morning and he was railing about something, and I said, "Well, do you want today's" And he said, "That's not a" and went railing on and on; and I couldn't tell whether this was a moment of sanity or what. He was back to his old self because it sounded like it. Anyway, what about television. Are you a television watcher?

BUCKLEY: Not much. I usually take in the McNeil Leher News hour and find that very satisfactory.

WSW: Do you watch your brother?

BUCKLEY: I don't because he comes on at some strange hour of a Sunday afternoon. I'm sorry to say I haven't seen him in a long time. But I don't hunt out television in the daytime except when I'm dressing in the morning.
Then I turn on either CBS or ABC morning shows to get the news and the weather.

**WSW:** You don't watch CNN Headline News?

**BUCKLEY:** No.

**WSW:** Do you watch court TV? Have you seen any of those?

**BUCKLEY:** No.

**WSW:** They are more interesting than you would think. They are surprisingly interesting every once in a while. Of course you see that all the time, but I find it fascinating to see the various cases and advocates.

**BUCKLEY:** It will not corrupt my understanding of how the judicial system works?

**WSW:** I think it will have no impact. It was actually very interesting during the O.J. Simpson trial. It is more interesting than you would think. I don't know how many people really watch it or get anything from it.

**BUCKLEY:** Occasionally in the evenings when trying to get a little relaxation, I turn on Discovery. Usually for the animal programs.

**WSW:** And what about travel? Do you ever get a chance to go anywhere?

**BUCKLEY:** Yes. I've always taken three weeks off in the summer and usually travel someplace. Then we have had a habit of taking about 5 or 6 days off in the spring and go someplace warm.

**WSW:** A favorite?
BUCKLEY: No. Gone to different places. No place that we routinely go. We also take off for 4 or 5 days in October to see the New England foliage at its peak. It has become close to a sacred obligation which we missed this year for the first time in God knows how many years. The magic day is October 12.

WSW: And where do you go?

BUCKLEY: We have friends who live in New Hampshire. And we come back through Connecticut. In the early 80's I spent three years in Europe and swore that I would never again for the few remaining years left to me deny myself this experience.

WSW: New England is October. We just came back from New England. We always spend Christmas in New England, which is not the leaf season.

BUCKLEY: Where?

WSW: Well, we go different places. Generally New Hampshire; and this year we were in Hanover, which is an absolutely lovely time, lovely, beautiful snow almost as much as we have in Washington. But we also try to make it up for some weekend during the leaf season. My husband is from New England. And there is nothing else like it. How about books? Any books that you have read recently that you particularly liked or particularly didn't like?
BUCKLEY: I try not to read books that I won't like. I'm reading an interesting one right now by Thomas Sowell. I'm trying to think of the title.

WSW: Do you read novels? Or do you read more serious stuff?

BUCKLEY: I tend to read more serious things which these days I usually do by listening to recorded books while driving. It is astonishing how much ground you can cover during daily 40- or 50-minute round trips to work. I have managed to cover some pretty heavy stuff — de Tocqueville's *Democracy in America*, Dante's *Inferno*, the Illiad, *Moby Dick*. As for traditional reading — sitting down with books and turning pages — this has virtually been limited to long plane flights and vacations, and that reading is usually light.

WSW: That's pretty heavy stuff for somebody who is working all the time.


WSW: You can buy those on tape too. Any other activities or interests that you have cultivated in the last few years?

BUCKLEY: None that I have cultivated in the last few years but I have been able at the margins to continue some interests I have always had. Natural history, birds in particular, and in recent years — meaning going back 30 years — an interest in the Arctic. Since I
have been on the court I have watched polar bears on three occasions. If you do something like this, you escape into a totally different world. When out watching polar bears, you have no access to news and therefore

WSW: Just polar bears - no access to people either.

BUCKLEY: You have access to other people who like to watch polar bears. In any event, I try to do that sort of thing.

WSW: Are you a member of the Audubon Society?

BUCKLEY: Yes.

WSW: OK. Let's talk a little bit about judicial philosophy. Over the last five meetings, you have really talked a fair amount about your judicial philosophy which has been consistent throughout your career. But let me ask you a few questions anyway about that. Let me ask you a general question. Do you think the public's view of the courts and the judiciary has changed over time and what do you think it is and is there anything we can do to improve it?

BUCKLEY: I am sure the public view has changed, and I think there probably are things that can be done about it. Whether we will or not is something else. My impression is that, beginning with the Warren Court, too many Supreme Court decisions have overturned too many settled practices of the American people so that a very large number of Americans have come to view
Supreme Court justices and other judges as engaged in making policy rather than concentrating on the objective application of the law. And this perception of the judiciary can only be reinforced by recent spectacles of Supreme Court confirmation hearings which give the impression that the Senate's sole concern is with assessing the political views of nominees for the position of philosopher kings who will have the authority to write their policy preferences into law. I find this terribly disturbing because that isn't what the rule of law is supposed to be about. If this impression is even part way justified, then it should hardly be surprising that significant numbers of Americans have become disenchanted with the judiciary. I don't know if you read my piece on the oath of office. In it I say that the oath administered to judges requires me to apply the Constitution and laws of the United States to the case at hand as objectively as I can. If I deviate from that standard and insert my own druthers into the Constitution or other laws of the United States, I violate the oath and undercut the constitutional principle of the separation of powers.

What do you think the public perception is? Do you think that the public perception is that the judiciary has a broader role because of what it was doing early in the 60's and 70's?
BUCKLEY: That it plays a larger role, which is not the same thing as saying that it has a larger role. When organizations like People for the American Way and National Organization of Women wage major advertising campaigns to defeat Bork or some other nominee for the Supreme Court, they reinforce the idea that judges have a legitimate policy role to play; and presumably, many members of the Senate share that view, judging by some of the questions they ask nominees. Under the circumstances, it would hardly be surprising that many Americans see a legitimate policy role for the courts. But at the same time, because federal judges are not elected and have life tenure, a perception that they are in fact policy makers must inevitably undermine confidence in them as guardians of the rule of law. You can't have it both ways.

WSW: Focus for a moment on the criminal justice system and the problems that has. What do you think the public's view of the courts is in actually controlling crime, and is there anything that can be done to make that different or better?

BUCKLEY: I really don't know. I'm not sure that the public is aware of the arguments that are going on in terms of some of the controversial Warren Court decisions. I just don't know; but obviously the public is very worried about crime, and some people will say that the
courts are soft on criminals, whatever they mean by that. Whether large numbers of Americans blame the courts for erratic sentencing or early parole or things of this sort I just don't know. The public could very well believe that Congress or a state legislature has enacted the wrong set of rules and that the courts are doing an honest job of trying to apply them.

WSW: And people are able to make that difficult distinction. And what do you think about how the courts are doing in the criminal justice system? How is this court doing do you think?

BUCKLEY: Well, I think that we are doing a competent job of applying the Constitution as the Supreme Court tells us to. I'm not necessarily in agreement with some of the Supreme Court rulings. The exclusionary rule has never made a great deal of sense to me. I know the public policy rationale for it, but if you have somebody who has been certified a career rapist and murderer and you have the goods on him but can't use them because some policeman made a mistake, punish the policeman but don't punish society.

WSW: I suspect that's what the public generally thinks about the exclusionary rule. Especially those who are mostly concerned about crime. And if you were on the Supreme Court and had that case before you, would you reverse it?
BUCKLEY: I might, I might. This of course gets into the whole difficult area of ...

WSW: Right. I know I am asking you a complicated question. Here's something you feel fairly strongly about. I take it that in the first instance if this had come to you, you would not have developed an exclusionary rule. Now that we have had it for 20 some years ...

BUCKLEY: I guess at the federal level it's been there for eons hasn't it? And this in effect is federal common law. The exclusionary law does not represent an interpretation of the Constitution as such. But I have questions about the view that the Fourteenth Amendment has required the substitution of federal law for traditional state law in many of these areas. I've got lots of questions there. I'm not sure that was ever intended by the Fourteenth Amendment. This is more a gut feeling than a studied conclusion as I have never had to study the matter. I think part of the problem may arise from applying a common law methodology, i.e., the development of law case by case, to the interpretation and application of written law. Holmes demonstrated early on that the common law was an evolutionary process that, over time, could result in radical changes in what had earlier been considered immutable rules. Courts would build precedent on precedent, and over time a particular rule of law would be transformed into a beast of quite
a different kind. But our Constitution is the instrument by which the people, in their ratifying conventions, delegated specific powers and authority to a new government and established the rules for conducting their new nation's future business. And while the common law principle of stare decisis is important in lending predictability to the law, if with benefit of hindsight it can be seen that a chain of precedents has turned a constitutional principle on its head, I have not been satisfied that the Supreme Court doesn't have the duty to revert to the original understanding.

**WSW:** And how would you apply that theory in looking at the exclusionary law?

**BUCKLEY:** I am not sure that what I have said would apply to the exclusionary rule, as I don't know enough about its origins. I would do what I have just said only where it is absolutely clear that the people who wrote the Constitution could not have meant what the Court had come to say it meant. And I think there are some areas where that's true. But in any event, ...

**WSW:** Give me an example of an area where you think that is true.

**BUCKLEY:** First Amendment and pornography for example. First Amendment as applied to religion.

**WSW:** Well, why don't we focus on that. Let's look at religion.
BUCKLEY: The establishment of religion had a very precise meaning in the 18th century. The Church of England of the Anglican Church was the established religion of Virginia. Other religions were publicly supported in other states. I think a straightforward reading of the First Amendment supports the view that all that clause was intended to do was to prohibit the Federal Government from establishing an official religion of the United States and, conversely, that the Free Exercise Clause was intended to keep the United States from prohibiting the practice of any religion. It seems to me that it is less than self-evident that these provisions prohibit the saying of a nondenominational prayer at a public school. At least it never occurred to any one during our first 170 years that school prayer was forbidden by the Constitution. But I take my orders from the Supreme Court.

WSW: Well, I am giving you a chance to be a little more expansive; and if you were on the Supreme Court, would you cut back in that area do you think? Or has the law moved to a place where it would be very difficult now?

BUCKLEY: There are always difficulties. But if I am a Justice of the Supreme Court and I take an oath to apply the Constitution to the best of my understanding, what am I to do if I reach the twin conclusions that there is
absolutely no support in the Constitution for the Court's decisions and, therefore, no delegation to the Federal Government - let alone to the Supreme Court - of the authority to deny the states and their subdivisions the right to decide matters of school policy? Where do I find my authority to deny them that right?

WSW: That's right. But even so, as you said, if you are on the Supreme Court you still have to deal with what has developed into federal common law and so if you look at an area like establishment of religion where the law has developed over the years.

BUCKLEY: Over recent years.

WSW: Well, it's not so recent anymore; there's been a lot of establishment law-more than 10 years, 15, 20 years.

BUCKLEY: Well, in my lifetime, how's that?

WSW: Well, that's over a significant period of time, is that enough? It's a guideline. Any other areas in particular as you look at it?

BUCKLEY: The most difficult one to unravel is what's been done with the commerce clause.

WSW: Well, the Supreme Court is looking at that.

BUCKLEY: It is looking at it but with a very narrow focus. I think you are referring to the case last year which threw out a federal law forbidding possession of a gun
within X feet of school. In enacting that law, Congress didn't even adopt the formality of finding an interstate connection. There was no reference whatsoever to commerce. I think it is too early to tell whether we are witnessing a significant reexamination of the Court's commerce clause jurisprudence. One could say that the Supreme Court is now going to insist that Congress claim an effect on commerce, however tenuous. But a real rollback? As a consequence of this jurisprudence we have, in my judgment, totally discarded what was one of the critical protections of American freedoms in the Bill of Rights, the Tenth Amendment.

**WSW:** Well, how far back would you go in rolling it back? Would you go so far as to say Congress shouldn't be legislating in the area of minority rights, discrimination?

**BUCKLEY:** Congress clearly has that authority under the Fourteenth Amendment.

**WSW:** But you have hesitations about relying on the Fourteenth Amendment.

**BUCKLEY:** Not in terms of protecting minorities against discrimination. The only place where I have hesitation is when you say that the Fourteenth Amendment extends all parts of the Federal Constitution to the states as opposed to recognizing
that the Fourteenth Amendment prohibited discrimination across the board.

WSW: Even based on disabilities as opposed to race? Which nobody thought about?

BUCKLEY: That requires an assessment of the scope of the class protected from discrimination by the Amendment and also of the nature of the discrimination. But if required to guess, I would say that is state business.

WSW: So in other words - I'm just looking, exploring the limits of this - we are talking about the American Disability Act. It's hard to rely on the Fourteenth Amendment if you are looking at the Fourteenth Amendment for what it was designed to do, and if you can't rely on commerce, you would really say that it was up to the states.

BUCKLEY: Sure. And I think if you did return to a more restricted view of the scope of Congress's authority, we would have far better government at the national level. Congress would once again have the time to think through those things that are necessarily national.

WSW: Well, they are not doing a very good job.

BUCKLEY: They can't. They don't have time to. A couple of years ago, a researcher accompanied a member of the House of Representatives for an entire week and concluded that he had no more than 15 minutes during the typical day for uninterrupted, consecutive
thought, for reflection. It has become an impossible job.

WSW: As they are proving every single day. I know you have a very strong religious background and religious sense - do you think that's had an impact on your judicial philosophy?

BUCKLEY: It is more accurate to say that I am not a religious person but that I take religion very seriously. As an institution. I am utterly persuaded that the framers of the Constitution never intended to exclude religious perspectives from public life, contrary to what so many are suggesting today. If you read the writings of the founding generation, you can't help but be struck by what they saw as the relationship between religion and freedom. They believed that freedom depended on the exercise of self-control by moral people, and that morality in turn depended on religion. They would have been shocked by the idea that the state should not be hospitable to religion so long as it established none. Now what was the question you asked me?

WSW: You are answering it. The impact of your religious views.

BUCKLEY: Has religion affected the way I have conducted myself as a judge? I don't believe it has, although I could be fooling myself. As it happens, I have written an article on the place of religion in public life. For
the reasons I have just recited, I say in it that it is entirely proper for a member of Congress or a president to take his religious beliefs into account when formulating public policy. At the same time I say it is improper for a judge to take his own religious beliefs into account because a judge's sole responsibility is to interpret and apply the law in a manner that is faithful to the intentions of those who had the authority to write it. I did mention an exception. Judges were quite free to take into account the hell fire that awaits those who violate their oaths.

WSW:
You are in remarkably unusual circumstances. You have been in all three branches of government. Looking back, which was, which is the most fun?

BUCKLEY:
The Senate was, although it was becoming less and less fun because of the increasing difficulty of finding the time for serious legislative work, the work for which a Senator is elected. In fact, I had privately determined that had I been reelected in 1976, I would not have gone for a third term. Another six years would have allowed me to accomplish whatever I was able to accomplish in areas that most concerned me. I have the feeling, however, that for anyone interested in the formulation of public policy, there could not have been a more glorious job in the world than to be
a United States Senator at any time from the founding of the Republic until relatively recently.

WSW: Is that because during that period there was less media attention, less other things going on, you would have had an opportunity to focus on public policy issues and make decisions based on how you felt about them where now it is difficult to do that? You think that's right?

BUCKLEY: The principal difference between the days when the Senate earned the title of the world's greatest deliberative body and the present is that in earlier days, the federal government concerned itself with relatively few areas of concern, namely those reasonably related to the powers enumerated in Article I of the Constitution. [TAPE 2] Each one of these involved functions that, in the judgment of the Founders, could only be effectively handled at the national level. Even through the New Deal days, Congress would usually meet for no more than seven or eight months a year, and it had the leisure to concentrate full attention on the half dozen questions at hand. Those were the days when the Senate could be compared to a club because its members had the time to get to know one another on an intimate basis and to carry out important business in a civil and unhurried way. Even in these far more complex times, if Congress were to limit itself to just those concerns
that cannot be handled effectively at the state or local level, you could close down three quarters of the United States Government, beginning with the Departments of Human Resources and Education. Keep in mind that in 1946, at the close of World War II, the United States Code consisted of just three volumes, exclusive of index and tables, and that includes all the New Deal legislation. Today there are 25 volumes of federal laws that are implemented by over 150 volumes of fine print regulatory marching orders. They affect just about every individual and every activity in the country. As a consequence, everyone with a problem brings it to his representatives in Washington, further crowding out time for serious legislative work. I think I told you about the New York City Bar Association Study that concluded that the workload of the average congressional office had doubled every five years beginning in 1935. When I was elected in 1970, the incoming senator from Ohio was Robert Taft. It happens that I spent the morning of December 8, 1941, the day after the day that will live in infamy, in the Senate office of his father, Robert Alfonso Taft, also of Ohio. I had arrived there with his nephew and another college classmate hoping to get a pass to hear Roosevelt call for a declaration of war. Senator Taft couldn't accommodate us, but he did offer to have Mrs. Taft take us to a room off the Senate chambers where we could listen to
Roosevelt on a portable radio. So to pass the time, we sorted the Senator's mail. I recall that there were 1.5 bags of mail and two rooms in his office suite. I asked his son how many rooms he had and how much mail he received on average. The answer was five rooms and 12 bags of mail.

WSW: Three rooms just for mail is what they do now.

BUCKLEY: There has been a vast change in the institution in just the past few decades. Every morning in the Senate the leadership gets unanimous consent to waive two rules. One requires the reading, essentially, of the prior day's Congressional Record and the other prohibits the conduct of committee work when there is action on the floor of the Senate. These rules must be waived for all the obvious reasons. I once asked the parliamentarian when the rule about committee work began to be invoked as a matter of routine and he said it was in the early 50's. Before that, senators would be on hand to listen to debates as a matter of course. Now, the floor is largely empty because committees are constantly having to meet to process the mountains of bills generated on Capitol Hill. That, incidentally, has affected my view of the utility of legislative history. The great majority of those who vote on bills never hear them debated.

WSW: You assume they all read the Congressional Record when they were at home. They read it to their children.
before they went to bed. Let me ask you for a minute about writing a book. You wrote "If Men were Angels" a number of years ago, although I did not write down the dates. Tell me what inspired you to write that book.

BUCKLEY: An offer from a publisher. I thought that it could be done by assembling a bunch of my Senate speeches and articles and splicing them together. I tried that, but it didn't work; and so I had to go back to the drawing board. It was a hideous experience. I am a very slow writer. So never again.

WSW: Do you think your views have changed since then?

BUCKLEY: About writing a book?

WSW: No. About what you expressed there. I must say I didn't read the whole book, but I looked through it; and it seems to be consistent with your current philosophy of government. Think that's right?

BUCKLEY: Yes.

WSW: So you don't need to write another book.

BUCKLEY: But I suppose I could expand on certain parts of it now that I have served in the other two branches of government.

WSW: Now, because I read "In the Loop" carefully every day, I did read that you had announced that you were thinking of retiring at the end of the year.
BUCKLEY: No. What I said was that it was possible that I would take senior status. There is a difference. The court schedules its work over a year in advance. I am currently set down for sittings into May of 1997. Because of the uncertainty as to whether or when the Mikva vacancy will be filled, the court has had to prepare two alternative schedules, one for an 11-judge court and another for a 12-judge court. Because it is possible that I will take senior status, I thought it a courtesy to advise the court managers that they should be considering a 10-judge alternative as well.

WSW: Do you think you'll do that - take senior status?

BUCKLEY: I am thinking about it very seriously. I haven't made a precise decision yet.

WSW: Are you ready to try something a little less? I take it that what senior status means is that your case load will be reduced and you could do some other things with your life.

BUCKLEY: Yes. Such as reading books instead of listening to them on tape.

WSW: But not writing them.

BUCKLEY: Not writing them. I might write an article or two - I don't know. Who knows. I must confess that I find the prospect of some leisure time more and more appealing as my actuarial horizon diminishes.

WSW: Any pressures from home in that respect?
BUCKLEY: No pressures whatsoever with respect to any of the exotic things I have undertaken, but I know that my wife would not be disappointed.

WSW: As you look back over all the things you have done, which were not as some people would have thought planned out from day one, do you have any regrets in particular?

BUCKLEY: In terms of activity? I've got the standard regret of workaholics that I didn't spend more time with my children.

WSW: That is the standard regret, right?

BUCKLEY: Right.

WSW: Anything else?

BUCKLEY: Not regrets, no. I have had a strange life, utterly unplanned at just about every stage. I do have a regret. I regret that I don't have a memory that would enable me, when on a rocking chair in a nursing home, to recapture all of the things I have been exposed to. I just can't do it. Occasionally I bump into somebody from college who says, "Oh, do you remember such and such?" and I find I have totally forgotten some fascinating experiences. Or my children will say, "Do you remember such and such?" and I have totally forgotten the incident they are referring to.
You are probably very sympathetic on the bench when you hear about witnesses who can't remember. Well, your life has been as you've described it over these last five sessions: interesting, varied and unplanned. That is the way you have described it. You did not set out either to be a judge or to be a senator in any particular way. I'm not even sure you set out to be a lawyer at any point really.

I set out to be a lawyer.

Well you did go to law school.

My intention was to be a country lawyer which would be a life of 100% law.

And 100% different than what you in fact did with your law career. So what do you see ahead for yourself?

Ultimately, it is a question of timing. Yes, I will take senior status. You have heard about the income tax tail wagging the taxpayer. My wife is frantic right now because we are moving simultaneously from our home in Washington to an apartment in Bethesda and a house in Connecticut. Where does Internal Revenue come into this? We knew we would ultimately retire to a town in Connecticut where I grew up and where we raised our children. A house came on the market that met all of our specifications. Because the village is so small - about 2500 people - years could go by before another would be on the market. So we grabbed it and placed it on the rental market. The magic two-
year period expires next month when we have to sell our existing home in order to take advantage of the capital gain rollover. So we placed our Washington house on the market last fall and managed to sell it almost immediately.

WSW: Did that have any impact on the timing of your announcement that you might take senior status?

BUCKLEY: Yes, it has. That and the fact that I am shortly going to be 73 and want to see more of my children. Also, there are places I haven't seen yet that I would like to see.

WSW: Have you been to France to see your granddaughter? Is it a granddaughter or grandson?

BUCKLEY: Grandson. We have made a point of going there at least every other year. We were last there in July of 1994. It was just awful.

WSW: Crowded, hot?

BUCKLEY: Crowded, very hot, and no air conditioning. In any event, our ultimate goal is for me to be a senior judge with a lot of spare time.

WSW: Sounds pretty good; wouldn't be a bad thing to do. As you look ahead for this court or for the political system in this country, are you optimistic - do you think things will get better, will they change? What do you think?
BUCKLEY: They will certainly change. It will undoubtedly surprise you to learn that I found much in the election of 1994 to give hope. As for the future, I have had a stock speech since my late Senate days which I update and deliver periodically. It is called "Overloading the Federal Horse." It catalogs the gridlock that has been overtaking both the legislative and executive branches, underscores the philosophical virtues of assigning government responsibilities to the lowest levels of government competent to handle them, and ends with the suggestion that the gridlock may reach a point where necessity, if not philosophy, will force a return to something like the federalism we once enjoyed. The underlying themes of the 1994 congressional campaigns suggest that this thought is not entirely wild.

WSW: Well, thank you very much. I think that is the exact right note on which to end this interview.
REFLECTIONS ON THE OATH OF OFFICE

by Honorable James L. Buckley
Reflections on the Oath of Office

by James L. Buckley

We are all familiar with that rite of passage in which an individual who has been elected or appointed to public office is asked to swear that he will defend the Constitution against all enemies, foreign and domestic. At the instant that he utters the magic words, "I do," that individual is vested with the powers of his new office, and his friends uncork the champagne in celebration. But even though that oath is required by the Constitution, I suspect that few give any thought to its implications in the larger constitutional scheme.

The requirement of an oath is to be found in the first part of the third clause of Article VI, which reads as follows:

The Senators and Representatives ... and the Members of the several State Legislatures, and all executive and judicial officers, both of the United States and the several States, shall be bound by Oath or Affirmation, to support this Constitution.

The balance of that clause provides that "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States."

I began to consider the implications of the oath two years ago when I was asked to participate in a symposium on "The Catholic Public Servant." As I was teamed with a former governor and a current congressman, it was obvious that I was expected to focus my remarks on the role and responsibilities of a Catholic judge. And because of the lamentable tendency these days to view members of
the Supreme Court as philosopher kings who are authorized to write policy into law, I felt it necessary to focus on constitutional fundamentals.

It should be noted that the third clause of Article VI is the only provision of the original Constitution that applies to all three branches of government; the only one that binds both state and federal officials. So it should be obvious that the Founders intended the oath to serve more than a ceremonial purpose. They were launching an extraordinary experiment in governance, and they knew it would work only if every public officer in their new Republic were to bind himself to make it work. To this end, they consciously enlisted the power of religion to ensure fidelity to the Constitution. James Madison, in fact, was to comment on the seeming paradox that such a requirement should appear in the same clause as the provision abolishing religious qualifications for public office. As he wrote in October of 1787, "Is not a religious test ... involved in the oath itself?"

It doesn't speak well of our age that we must remind ourselves that the special power of an oath derives from the fact that in it we ask God to bear witness to the promises we make with the implicit expectation that He will hold us accountable for the manner in which we live up to them. This understanding of the meaning of an oath is as ancient as our civilization. Edward Gibbon made the point in a wry passage on the role of religion in the Roman Empire:

The various modes of worship, which prevailed in the Roman world, were all considered by the people, as equally true; by the philosopher, as equally false; and by the magistrate, as equally useful. ... The magistrates could not be actuated by
a blind, though honest bigotry, since the magistrates were themselves philosophers. ... [But they knew and valued the advantages of religion, as it is connected with civil government]. ... [And they respected as the firmest bond of society, the useful persuasion that, either in this or in a future life, the crime of perjury is most assuredly punished by the avenging gods.

Like the Roman magistrates, the Founders of the American Republic took conscious advantage of this "useful persuasion" to further the interests of their new nation; but unlike those magistrates, the Founders believed in both the religious nature of the oath and in the sanctions that await those who break a promise made to God. In his Farewell Address, George Washington would ask, Where is the security for property, for reputation, for life, if the sense of religious obligation desert the oaths...? And in his diary, John Adams acknowledged his terror at the thought of eternal punishment should he ever betray his conscience and his God in order to secure political advantage.

What, then, are the implications of the oath that all public officers are required to take? What obligations does it impose on them? The answer, of course, lies in the words to which they have been asked to swear. These have been set by statute; and although the exact language will vary depending on the office being assumed, they all require that the prospective officials swear or affirm that they will support the Constitution of the United States and faithfully discharge the duties of the offices upon which they are about to enter. This undertaking demands that they determine as best they can exactly what it is their offices require of them, and what limits have been placed by law on their authority; having done
so, they live under a continuing duty to meet those standards and to respect those limitations to the best of their abilities.

In my remarks to the symposium, I observed that the nature of a public officer's responsibilities will determine what role, if any, that religious convictions may legitimately play in his official work. I acknowledged that there are those today who will construe the First Amendment to require that public servants ignore their own religious beliefs when discharging their public duties, but suggested that this position demonstrates a profound ignorance of both the Constitution and human nature. Which brings me to the second part of clause 3 of Article VI, namely, its prohibition of religious qualifications for public office. This provision, of course, merely ensures that positions of authority in the federal and state governments will be open to persons, and therefore to influences, of every faith, and of none.

The Founders were not afraid of religion. To the contrary, they thought it essential to the success of their fledgling government. Because the Founders understood the links between religion and virtue and responsible citizenship, they emphasized throughout their writings that the Republic's survival, and the liberties it was intended to protect, ultimately depended on the morality of its citizens. In sum, we live in a society in which the importance of religion has always been recognized; and while the First Amendment forbids laws "respecting an establishment of religion," it has never required that the state be isolated from exposure to religious influences.
Thus, as I understand our constitutional arrangements, a President and members of Congress need never apologize for the fact that their views or votes may reflect their religious beliefs. As members of the elected branches of government, they are expected to engage in the formulation of public policy; and it is, quite simply, fatuous to suppose that they can check the religious components of their convictions at the door before entering the council chambers of government. The role of federal judges, however, is of a significantly different kind. As unelected officials, they can claim no mandate to reconstruct public policy. Rather, their constitutional duties are exclusively judicial. It is their job to give force and effect to the law, whether they agree with it or not; and that, I assure you, is responsibility enough.

I explained to my Catholic audience that in taking office, I had sworn to "administer justice ... according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States." I then proceeded to describe this federal appellate judge's understanding of the nature and limits of his authority, more or less as follows. I said that the authority that was vested in me upon taking that oath is derived exclusively from the Constitution. Thus the justice I am sworn to administer as an appellate judge is not justice as I might see it in a particular case, but justice as it is defined by the Constitution and laws and legal traditions of the United States. And if I consciously deviate from that body of law to do justice as I see it, I violate my oath of office and undermine the constitutional safeguards
embodied in the Separation of Powers. I acknowledged, of course, that a judge is no more relieved of moral responsibility for his work than anyone else in either private or public life. My duty as a federal judge, however, is to be measured by the requirements of my office. I cannot act as the impartial arbiter of the law unless I am willing to apply it.

I recognized that when it came to interpreting the Constitution, there existed a body of respected opinion that viewed that document, its nuts-and-bolts provisions aside, as essentially a depository of principles that each generation of jurists is at liberty to adapt to the exigencies of the times. I noted, however, that whatever the merits of that school of thought, I felt my own reliance on original meaning not only sounder in principle, but better designed to narrow the occasions for the ultimate judicial sin: the abuse of power. It ought to be clear, I suggested, that in a polity based on the rule of law, federal judges have no license to insert their own views of what is right or appropriate into the Constitution and statutes they are sworn to apply. To put it bluntly, no federal judge, however wise, has the moral authority or political competence to write the laws for a self-governing people; and no American should wish it otherwise. The federal judiciary is recruited from the ranks of a professional elite, and at the appellate level at least, it is isolated from the rough and tumble of everyday life.

I ended my talk by suggesting that while it is improper for any judge to use his position to smuggle religious doctrines into the law, the law may well benefit from a religious judge's approach
to his work. I also said that to the degree that there is such a thing as a Catholic ethos, and I believe there is, it nurtures a respect for and acceptance of lawful authority and tradition; and it cultivates a sense of work as vocation. And to the degree that judges continue to believe that fidelity in service will be rewarded, and a betrayal of trust punished, in the next world if not in this, to that degree do they remain subject to the incentives the Founders sought to harness when they required the oath as a precondition to public service.

I suspect there are few positions in public life in which it is easier to keep faith with the oath than the one I now occupy. Thanks to life tenure and the cloistered environment in which appellate judges work, none of us is exposed to the temptations to depart from perceived duty that confront, for example, the members of Congress. I am persuaded that in the case of elected officials, the overwhelming temptation is to conclude that it is more important for your constituents that you be reelected than that you deal honestly with them. Hence the frequency with which legislators will yield to political pressures or expediency and vote against their convictions, especially when they can salve tender consciences by persuading themselves that a principled vote would not have affected the outcome. Given the difficulty of resisting such temptations over the longer run, a proper concern for the welfare of congressional souls may well be the ultimate argument in favor of term limitations.

In the last analysis, of course, an oath will encourage fidelity in office only to the degree that officeholders continue
to believe that they cannot escape ultimate accountability for a
breach of faith. In a footnote to the passage that I quoted
earlier, Edward Gibbon observed that by the beginning of the Second
Century A.D., the poet Juvenal would lament that the Roman world
had lost the fear of punishment in the afterlife that had given
oaths their special force. I suspect the same may now be said of
ours. It seems that cheating no longer raises eyebrows, whether
committed in a schoolroom or in bed, and such words as "sin" and
"honor" and "virtue" sound quaint as we discard standards of
behavior that have been rooted in our society since the founding of
the Republic. Moreover, we are showing a dismaying tendency to
recast God in Man's image. If enough people openly engage in
conduct once considered reprehensible, we rewrite the rule book and
assume that God, as a good democrat, will go along.

Still, I can't help wondering what changes there might be in
the quality of public life today if more of our officeholders could
be persuaded to take a truly scrupulous view of the responsibili-
ties they assume when, with hands placed on Bible, they swear to
faithfully discharge all the duties of their offices, according to
the best of their abilities and understanding, so help them God.