

INTERVIEW WITH JUDGE PRATT

JAS: Judge, do you remember your grandparents?

JUDGE: I remember two grandmothers. I don't remember either grandfather.

JAS: When did your forbears come to this country?

JUDGE: Well, way back. Two of them came over on the Mayflower -- I don't mention them, but you asked me -- the Mayflower is a very big ship, you know. But, two of them Degory Priest and Steven Hopkins were ancestors. Of course, they landed on the south shore of Massachusetts.

JAS: Your father was in the military, was he not?

JUDGE: My father was a Marine officer.

JAS: You were a military child, so to speak?

JUDGE: Yes.

JAS: What circumstances brought you to Washington?

JUDGE: My father was first stationed here from 1919 to 1921.

JAS: Where did you live when he was stationed here?

JUDGE: Well, we lived on what is now Reno Road -- at the corner of what is now Van Ness Street. Then it was then known as Springland Lane. It was right next to the Bureau of Standards where they were testing Liberty motors that late summer of 1918-19. It was all woods between Connecticut Avenue and Tenleytown which is on Wisconsin Avenue. We walked through the woods to the parochial school. As far as Connecticut Avenue was concerned, there were no buildings except for a store or so at the corner of what is now Albemarle Street, until you got to Chevy Chase Circle. There were woods on both sides and there were no apartment houses or anything else there in 1920.

JAS: Were you an only child?

JUDGE: No, I was the oldest of six.

JAS: Are your brothers and sisters living?

JUDGE: All of them are living except one sister, the youngest. There were three boys and three girls. I was the oldest.

JAS: What do your brothers do?

JUDGE: Well, one is a retired Captain of the Navy, and another is a retired Rear Admiral in the Navy. And my uncle was

Chief of Naval Operations. William Veazie Pratt. The ship on the wall (pointing) was named after him -- one of those destroyers.

JAS: Would you sketch in your education. As I recall it is a pretty good education.

JUDGE: Well, all of my education, I think, is due to my mother's interest in seeing that I was educated. I was in parochial school as I told you at Tenleytown. Then we moved to Boston -- and while we were there I went to the Boston Latin School for two years, the 7th and 8th grades.

JAS: Boston Latin has a very distinguished alumni.

JUDGE: Yes, it's the oldest public school -- oldest private or public school in the United States. It was founded in 1635.

JAS: I think Gerry Reilly went there.

JUDGE: Reilly went to Latin School, Benjamin Franklin, Charles Sumner, Edward Everett Hale, many others, not to mention the late Joe Kennedy. Admission was by competitive exam. Theodore White also went to Boston Latin. He won the Boston Newsboy Scholarship to Harvard College.

JAS: Did you know him?

JUDGE: No, but I met him. And as a matter of fact, when Jim Rowe was nominated to the Harvard Board of Overseers. Ted White was the Chairman of the Nominating Committee and he asked me if I had any suggestions. I suggested Rowe. Jim was nominated and elected.

JAS: Boston Latin, then what?

JUDGE: Boston Latin school to the 8th grade. We came down here to Washington in the Fall of 1923. I entered Gonzaga as a Sophomore because I had had Latin. They didn't realize that I was a complete blank in everything else. I was enrolled as a Sophomore, was there two months when I was yanked out and sent to the U.S. Senate as a page. It was assumed that I was going to go to school at night. I tried that for one week at Emerson Institute but I couldn't stand it physically so I did no schooling that year. When the year was over, in other words, after I had served as a page between the first of December and June of 1924 I went back to Gonzaga in September of 1924. They assumed I had been going to school so they put me in the Junior year. Actually I entered Junior year with neither first year or second year credits. That was very difficult because we were studying second year Greek. I hadn't even had Greek grammar. But I hustled and managed to graduate, the youngest in my class.

JAS: Did you participate in athletics?

JUDGE: No, I was only 15 years old.

JAS: Hugh Lynch told me that you were a very good racquet man.

JUDGE: Well, I won the local Club and City championship one time. My brothers were good athletes. One brother was quarterback of the Navy football team for a couple of years and was captain of baseball and the other one also played on the Navy baseball team. But I missed out on that because of my age.

JAS: After graduating from Gonzaga where did you go?

JUDGE: I went to Georgetown College.

JUDGE: I was there two years when my father was ordered to Haiti. That's the area that is now in contention. My father had charge of the Southern half of the island. My mother at this time decided that I should stay in the U.S. and go to Harvard. So she wrote the Director of Admissions, a man named Pennypacker -- a former headmaster of the Boston Latin School. Mr. Pennypacker admitted me as a provisional junior.

I went up there completely alone and not knowing anyone else. I lived in one of the dorms. I was 17 when I got there. When the November grades issued, my first marks were two C's and two D's.

At Georgetown I'd been getting all A's and B's. This was quite a shock and then I got a letter from the Dean saying that if I didn't improve I was going to be put on probation. With my family in Haiti, I was a pretty sick duck, I can tell you. But I got into the rhythm and the rest is sort of history.

JAS: I know you graduated at a very young age.

JUDGE: I graduated in 1930. I was 19½.

JAS: Then what happened?

JUDGE: I took a year off and went to law school in Fall of '31.

JAS: Harvard Law School?

JUDGE: Yes.

JAS: Who were contemporaries that we might know?

JUDGE: At the law school -- Charlie Horsky was one of several very smart guys in our class. Kenneth Davis wrote Davis on Administrative Law -- Dick Demuth was another one. He was with World Bank. I saw him the other day. And David Reisman. I was in a study group with Reisman my first year. There were five of us.

Three passed, two flunked. Reisman led the class. He didn't plan to go to Law School when he got through college. He got a Magna and a Phi Beta in chemistry and was thinking about going to medical school. At the last minute he decided to go to law school and in fact he registered late. He just "spread eagled" the class and he got a fantastic 88, the highest grade in years.

JAS: When did you graduate from Harvard Law School?

JUDGE: 1934.

JAS: What did you do next?

JUDGE: Well I came down here and started to work for George Morris, helping him with a book on taxation. Jobs were very scarce as you -- well this was a little ahead of your time -- but they were scarce at that time. I was paid \$1500 a year which was more than most people received when just out of law school.

JAS: Where was his office?

JUDGE: 905 American Security Building. Next to the American Security Bank. South of Union Trust.

JAS: Who were the leaders of the bar at that time?

JUDGE: Well, Regis Noel was the one that immediately comes to

mind. He sort of led a revolt against the establishment -- the Bar Association.

JAS: Was William Leahy active in those days? Or did that come later?

JUDGE: Well, he was also a great trial lawyer. He and Frank Hogan were the two great trial lawyers. And in fact I think -- I know -- I have seen them both in action. And they were very impressive fellows.

JAS: How would you describe William Leahy as a trial lawyer?

JUDGE: Well, in order to understand him you've got to understand his background. He's an Irish Catholic. He went to Holy Cross and I think maybe Georgetown Law School -- I'm not sure about that. But he was always well prepared, somewhat flamboyant. I think he was very much his own man. He was kind of a stocky fellow with a big round head. A man named Hughes, Colonel Hughes, was his scholar in residence. I suppose he fed the stuff to Bill Leahy and Bill Leahy was the one that presented it when he was in court.

JAS: I saw him once in Court, near the end of his life -- I think it was the last case he tried -- defending a criminal case.

I was told that the fee was \$75,000 cash.

JUDGE: That was a lot of money then.

JAS: It was found in his safe deposit box after he died. He just put it in there. What was your practice with Mr. Morris?

JUDGE: He was entirely a tax man. My job was to do research for Morris' book on corporate taxation. He had three associates -- everybody was an associate in that office -- he was the boss. They were all very good tax men. Later on they acquired Albert Beitel, an excellent lawyer, who had formerly been with the Civil Aeronautics Board. I was kind of a jack-of-all-trades and master of none. After the book ran out, the office was retained to represent the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Locomotive Engineers in an Interstate Commerce proceeding against 725 Class I railroads. The Unions claimed that the larger steam locomotives should be equipped with mechanical stokers. What was happening was that during the Depression, engineers who had been firemen were being demoted back to firemen. Because of their age, they suffered physical disadvantages leading to accumulated fatigue. It was also much safer having them on the left side of the locomotive looking out rather than down on deck of these locomotives shoveling coal. It was a very protracted case. Around the clock literally, Saturdays, Sundays and nights. About 6 or 7 months and about 600 witnesses. The transcript was some

25,000 pages long. I don't know how many exhibits. And we got a favorable decision out of the trial examiner when nobody knew, except us, that he had been a former member of the Firemen's Brotherhood. That case went to the Sixth Circuit Court of Appeals in Cleveland. My only job was to run the projector in the court in Cleveland, to show that one couldn't see anything if you are sitting upon the left seat box with the train either going to the right or slightly to the right -- I don't know whether this is worth pointing out but Florence Allen, the first woman Court of Appeals judge in the United States, served on the three-judge panel.

JAS: Who were your close friends in those days?

JUDGE: Well, when I came down here I lived with Brunson MacChesney, who had just graduated from Michigan Law School. He was Jim Landis' law clerk. Landis was one of the first Commissioners of the SEC and was later the Dean of the Harvard Law School. We lived on Eye Street in an apartment house and I think along about January we moved into a house on Q Street in Georgetown with Dave Shaw and Gary Van Arkel. Shaw and Van Arkel were both a year ahead of me at the law school. Both worked at the Labor Relations Board. Van Arkel then later became General Counsel to the Board and resigned when the Taft-Hartley Act was passed in 1948. Van Arkel and Henry Kaiser then became partners. We all were together until the summer of '37 when I moved in with Oliver

Gasch, Phil Herrick and Jimmy Mann at the Gasch House on P Street. I was there until I got married the next year.

JAS: What were your hobbies in those days?

JUDGE: I played a lot of squash. I didn't play much golf. That's exercise I suppose. I did a fair amount of reading.

JAS: Where did you play squash?

JUDGE: University Club. My father had joined the Racquet Club in the early 20's so my brothers and I could have a place to swim. Well of course the Racquet Club went bust in the early '30s and its building was acquired by the University Club.

JAS: Where was the Racquet Club?

JUDGE: Right there where the University Club is now, on 16th Street next to the Soviet Embassy. It went bust and the University Club moved in from their spot at 15th and Eye Streets. John L. Lewis and the United Mine Workers moved into what was formerly the University Club. And in those days the dues were \$4.53 a month. There was no initiation fee.

JAS: Who were the good squash players in those days?

JUDGE: Well, Marshall Exnicious and Jimmy Gibson were the two that stand out. Both of them won the Club championship a number of times. I beat Exnicious finally and when I beat him he quit. He was a rather dashing fellow around town. I don't know if you remember him. He wore a derby hat and I think carried a cane.

JAS: Did he have a beautiful daughter?

JUDGE: Yes he did.

JUDGE: Well Marshall really put on the dog, style wise.

JAS: What did he do?

JUDGE: He was a stockbroker. And I'm trying to think of others -- Frank Pace, later Secretary of the Army, also played a lot of squash. Rowland Evans was another. Evans is a real racquet man. We once played at the Merion Cricket Club in Philadelphia, having a team sent up there. Rowly pointed out the Merion Cricket Club building and said his grandfather had done the architecture many years before. He was awfully good.

JAS: Were you playing any tennis in those days?

JUDGE: Yes. I played tennis. I didn't belong to any club. I played at St. Albans.

JAS: Did you ever play Hugh Lynch?

JUDGE: I played against Hugh Lynch. Hugh Lynch was and probably still is damned good. Hugh Lynch could return balls all day long.

JAS: Hugh went to Princeton on a baseball scholarship. He was playing shortstop on his high school team. Then they converted him to tennis and he became captain of the tennis team.

JUDGE: I think his son may have been captain also.

JAS: Yes. That's right.

JUDGE: What's his son doing now?

JAS: Well, Hugh, Jr., Hugh, III -- he teaches at St. Albans. I played a lot of paddle tennis with Hugh and a little tennis.

JUDGE: Where do you play paddle tennis?

JAS: I've got a court next to my house.

JUDGE: Did you build it?

JAS: Yes. It's gone through various phases but it's in pretty good shape now. John Lynham has played on my court. Do you know John Lynham?

JUDGE: Do you mean Charlie Lynham's son?

JAS: Yes. He's a very good athlete.

JUDGE: He's a recent member of the Lawyer's Club.

JAS: Yes. He's a very good athlete.

JUDGE: My wife has played bridge with his mother.

JAS: Then what happened to your career as a lawyer?

JUDGE: Then we had -- oh miscellaneous things. I had a lot of zoning cases. I didn't have any tax cases -- but anything in the office that nobody else in the office did not want to do, I got. I represented the City of Indianapolis and its local utility due to the fact that my mother and Will Thompson's wife were classmates at school in Indiana. Will Thompson at that time was perhaps the finest appellate lawyer in the Middle West. He sent me a lot of matters in which I represented the City before the Power Commission as well as other things, none of which were very important. However, he and his partner, Pat Smith, always made it

a point that I was paid well. It was a very worthwhile association. And of course the war came along and I was out of the practice.

JAS: When did you go into the service?

JUDGE: The fall of 1942.

JAS: Did you go into the Marine Corps as a pilot?

JUDGE: No, I went in as what's known as AVS -- Aviation Volunteer Specialist. Known as the metallic marines -- silver in the hair, gold in the mouth and lead in the ass. We had an interesting group. Francis Goldolphin, later dean at Princeton, was one of our group. Ted Lyons, the White Sox pitcher, and Ernie Nevers of Stanford were also in our group. These were people who were normally older but let in under this special program. Supposedly we were to be the intelligence officers attached to aviation units. Later, they opened up a new program called "close air support." Our class was split in half, the first half going to Tarawa in the Gilbert Islands and the other half of which I was a member went to Kwajalein in the Marshalls.

JAS: How long were you in the service?

JUDGE: I was retired in '46. I got hurt in '44 and had a

very close call.

JAS: Where was that?

JUDGE: An air strip at Tacloban on the Island of Leyte.

JAS: You were struck by an airplane propeller.

JUDGE: That's a model of the airplane there. It's an F4U
Vought plane.

JAS: Was it anybody's fault?

JUDGE: No, it really wasn't anybody's fault. Our planes had
been covering the western approaches to Leyte and had been shot up
very badly. We had no maintenance at that time because we had left
very suddenly from a little island called Emirau. This was because
Admiral Halsey had taken off chasing the Japanese fleet and left
the Leyte landing exposed. So we had a group of 82 F4U's and we
flew them first to Hollandia, then to Peleliu and finally to Leyte.
On this particular occasion the Navy was to make its next landing,
after Leyte, on the island of Mindoro. They needed cover for their
convoy as it went down through Surigao Straits south of Leyte and
as it passed Cebu and Negros, two islands held by the Japs. We
provided that air cover. On this particular occasion, it was the
13th of December, 1944, I, as group Intelligence Officer of Marine

Air Group 12, briefed these several planes from our group as they were about to take off. It was about 4:00 a.m. I went out to watch the take offs and sat in my jeep which was about 50 feet off the runway. The planes took off from right to left in front of me. A fellow named Joe Watson was the Squadron Intelligence Officer for Squadron 313 and was sitting beside me. He yelled. I looked to my right and I could see this plane -- it was just off the deck but the pilot hadn't retracted his wheels. He was barreling right at me so I threw myself in the seat that Joe had just vacated and I got nicked on the ear. You can see that slight scar. A revolution of a prop took my arm off clean and I've got a scar here where the prop hit me on my left side. This left a hole in my left ilium about as big as a fifty cent piece. The pilot was killed as well as about six others who were assembled near the control tower. The torque of the plane which badly needed maintenance had sort of pulled it off the direction of the runway. The squadron commander of the lead plane was flown by a fellow named Olson. I remember very well because I saw him spin into the water at the end of the runway just before I was hit.

JAS: How long was your recovery from that accident?

JUDGE: Well, I went to the only Harvard medical unit in the Pacific which was on the island of Biak in Dutch New Guinea. This was an interesting experience, although I would not like to repeat it. I was the only Marine patient I knew of as well as the only

one who had a Harvard connection. We had about 300 patients under canvas with sand decks. I was at Biak for about 3 months and then flown to the Navy Hospital at Mare Island, California, then to the Naval Hospital in Philadelphia, then out here to Bethesda where I had a plastic operation on my left side as well as a few others. I was finally retired in May of '46 but I was left with an osteo infection that flared up every 8 or 10 months for about 11 years. When I could feel these things coming on, I admitted myself to the hospital and they'd clear up and after a while I could almost stay home without medication. In the beginning these abscesses were very painful but after a while they were not too bad. The Admiral in charge of orthopedics at Bethesda, a person named Kruez, told me that he thought it would be a mistake to curet the area, that the infection eventually would burn out if I could stand it. I said "fine." Kruez later become the commanding officer of the Naval Hospital at Oakland, California and was succeeded by an officer named Miller -- Captain. I remember Miller came in to see me one day while I was making one of my periodic visits. He called in to say "Captain, I have bad news for you." I said, "What's that?" He said, "We've got to go in and curet that area." I said , "That's not what Capt. Kruez said." Miller then said, "if you were an enlisted man, I would order it." I said, "Well I'm not an enlisted man. How about letting me have the pictures." Previously, I had asked "How long is this going to lay me up?" He said, "Oh, about six months." To make a long story short, I took 2 tons of X-rays to an orthopedist friend of mine, Tom Wheeldon, that I was going to

see in Richmond. He put them up on a slide and said, "I could not be paid to curet that area." About a year later I had to make another visit to Bethesda and when I told Miller of what Wheeldon said, he responded, "You were right."

JAS: That's a close call, isn't it?

JUDGE: Sure, yes. But it's a very interesting example of what might have happened.

JAS: Did you make lasting friendships in the service?

JUDGE: Yes, I did in the Marine Corps. I mentioned Goldolphin. We used to visit the Goldophins in Princeton regularly. A second one, Holt McAloney, after Dartmouth was with Time Magazine. We often visited the McAloneys in Sarasota, Florida. He died recently. A third one was Stuart Janney whom you've probably heard of. He won the Maryland Hunt Cup two or three times. Stuart had gone to Princeton and was on Harvard Law Review. He practiced with Venable, Baetjer in Baltimore. Stuart's father had been a partner of Governor Richie. All of these were attractive persons. None had entered the service because of the draft. All were volunteers.

JAS: When you were discharged from the service what did you do?

JUDGE: Went back to the Morris law firm.

JAS: Okay. Who was there?

JUDGE: The same people. Well we got another person named David Fegan.

JAS: Was the office still in the same place?

JUDGE: The same place. They were having a shortage of space so they put me across the hall in a spare room that Jimmy Murphy had. Do you remember Jimmy Murphy?

JAS: I don't remember him.

JUDGE: Jimmy did all kinds of things for John Cross who represented National Airlines for a while.

JAS: How did your practice develop after you came back?

JUDGE: Well, as you'd expect, it took a little bit of time but one big matter we had was an administrative case before the Food and Drug Administration involving standards of identity for white bread. In this case our office represented the Shortening Institute, the chief members of which were Swift & Co. and Procter & Gamble -- the makers of natural fats. The proceeding involved

the contents to be approved for white bread and particularly concerned a very bitter argument about substances known as bread softeners. They are synthetics manufactured by two or three outfits but mostly by the Atlas Powder Company. Swift & Co. and Procter & Gamble were the leading members of the Shortening Institute.

JAS: What governmental agency was interested?

JUDGE: The Food and Drug Administration.

JAS: Describe the case.

JUDGE: This was a long proceeding in which Bakers was pretty well torn apart but they basically did like the stuff. The Shortening Institute which I was representing appeared on behalf of the makers of natural fats. This antagonized the bakers association. They called upon the president of Swift & Co., John Holmes, and suggested that I be removed and also that Neil Huff, the company lawyer for Swift, be fired. We had three lawyers. Neil Huff, myself and Potter Stewart. The case lasted about 18 months and that's where I first met Stewart who represented Procter. I decided early on that he was not only a fellow that was born with a silver spoon in his mouth, but he was also very smart. I wouldn't have predicted that he would soon be appointed to the Sixth Circuit Court of Appeals. The appointment to the Supreme

Court came not long thereafter.

JAS: His father was on the Supreme Court, wasn't he?

JUDGE: The Supreme Court of Ohio. I think his father was a former mayor. And Potter was on the city council of Cincinnati at the same time that his firm represented Procter.

JAS: Who was the best business getter you ever met in the practice of law?

JUDGE: That's a good question.

JAS: That question was asked of Judge Lombard in an oral history and he said that Wild Bill Donovan got business every place he went.

JUDGE: I've heard that about Donovan. I'd have to think about that.

JAS: Certain people have a knack of attracting business.

JUDGE: And some people who are very able...

JAS: Can't get any work.

JUDGE: Dave Pine was a perfectly good example. Dave Pine was a star -- if he'd stayed in the practice.

JAS: You know, I think that was true also of Leo Rover who was a U.S. Attorney here, went into practice, then went on to the D.C. Court of Appeals.

JUDGE: I think that'd be true of Leo.

JAS: Yes, but when he tried to practice he didn't get anything else. And certain people with no ability whatsoever attract a lot of business.

JAS: I don't think Phil Herrick got a lot of business either.

JUDGE: Phil didn't get as much business as he should have. Phil was a very solid fellow all along. I knew him very well. I was sorry to see him go. He was a thoroughly decent fellow.

JAS: I knew Phil. Phil was a good tennis player, too.

JUDGE: I used to play with Phil.

JAS: His son is an expert tennis player.

JUDGE: I suppose his son Chico still plays.

JAS: Yes. His son taught tennis.

JUDGE: That's out at Congressional.

JAS: Yes. That's an interesting idea of who can get business and who can't. Some of these people who have big careers in the government get paid large salaries by law firms and then they don't bring in any business.

JUDGE: There's another thing, too. Take some of these big firms -- take Covington, for example. Some are rainmakers like Dean Acheson and John Lord O'Brian and so on. Most of the younger people coming along, so far as I can see, they didn't generate the business themselves but they know how to do the work. Now Gerry Gesell, for example, was sort of a right-hand man for John Lord O'Brian, as the result of which he worked on a lot of Dupont matters as well as those of General Motors, and important cases generated by these two companies.

JAS: Dupont was a big client of his.

JUDGE: Yes, but John Lord O'Brian was the rainmaker in connection with that. And I don't know how he got it except for the fact that he knew important Wall Street firms which were very

prominent in financial circles -- came from New York, and then moved from New York to Washington. Did you know him?

JAS: I didn't know him but I've taken a number of depositions in the John Lord O'Brian suite at Covington & Burling. There's a lot of memorabilia on the walls.

JUDGE: He was a wonderful man. I was walking down the street with him one day and I said I'd just finished reading a biography by Merlo Pusey of Charles Evans Hughes. I pointed out that there appeared from Pusey's biography to be little connection between Hughes and Henry Stimson. Although they seemed to have much in common. Both were Republicans, they were both lawyers, they both lived at about the same time and they were both in politics, more or less. But other than that there didn't seem to be much between them. Mr. O'Brian agreed and went on to say that of course Hughes was a most imposing person who scared the hell out of most people but he said there was a third person who lived during this same period who was the greatest of the three. And I said "who was that?" Mr. O'Brian replied "Elihu Root". I replied, "I've got a Law club shingle out on the wall. Root's signature is on the bottom badly faded." The other thing I mentioned to Mr. O'Brian concerned his being responsible for resurrecting the Harvard Divinity School. President Conant had no interest in the Divinity School. He wanted any spare money to go to the School of Education. And he was perfectly willing to let the Divinity School

die. But Mr. O'Brian and Grenville Clark went to him one day and said they'd like to do something about the Divinity School and they'd like to try and see whether some money could be raised. Conant said "Go ahead." O'Brian and Clark reportedly had a successful sampling. Conant didn't believe it. He said "Do it again." They came back with the same successful response as a result of which Conant reluctantly let them go ahead. The Harvard Divinity School is now probably the best school of its kind in the United States. They've got more Catholics enrolled in the Harvard Divinity School than in any Catholic institution of its kind.

JAS: That's pretty remarkable. That's a corrupting influence.

JUDGE: It is a corrupting influence. And I said to Mr. O'Brian, "Why do you suppose Conant felt that way about the Divinity School?" and he said "Well I spoke to him once and he said except for weddings and funerals neither he nor his parents had ever been in a church in their lives." "Thereby said Mr. O'Brian to me, showing himself to be a complete illiterate in the oldest of the humanities."

JAS: I was reading around Frankfurter's diaries some years ago and he made a notation that he had a meeting with Hughes and Hughes was quite old. And what struck him was whenever Hughes mentioned something that could be verified in any way he would

always go to his books and he thought that pretty remarkable. When people get old they ignore looking things up. But he said Hughes wouldn't let anything go unless he was certain about it. Fritz Weiner had a good story about Hughes that Hughes' son -- well, ah, Fritz told the story to me -- and I've heard it from other people that Hoover promised Hughes a spot on the Supreme Court but he wanted to give it to somebody else. And he was told by an advisor to just call up Hughes, offer it to him and he'll turn it down because his son is in the Solicitor's Office. So Hoover called up Hughes who accepted it immediately. And then was Chief Justice on the Supreme Court.

JUDGE: He was Chief Justice after Taft. I'll tell you a story about Taft. I was delivering the Evening Star one day -- at 23rd and Wyoming Avenue -- Taft was out front of his house conversing with John Hayes Hammond, the mining engineer. Hammond owned what is now the French Embassy. They were talking and Hammond called me over and introduced me to the Chief Justice. Hammond said to Taft, "This young fellow and his brothers are the best paper boys in Washington and I've written the Evening Star about them." Taft responded "Yes, I know. In times of inclement weather they always put the paper under the mat."

JAS: That's pretty good. When was your birthday?

JUDGE: November 17.

JAS: Was this a birthday card from Fritz?

JUDGE: No. I'll tell you what it was. Fritz got into a row with Joe Fanelli.

JAS: I know of that.

JUDGE: Fritz had resurrected some clippings from a June 1957 Washington Daily News. The headline stated "U.S. lawyer investigated about fee" or something or other. Joe Fanelli had gotten off the Board of Immigration Appeals and was in private practice.

JAS: Joe Fanelli.

JUDGE: Joe Fanelli, yes. And he'd gone into private practice and was charged by somebody for sponsoring a private bill to get an immigrant into this country. You know the story about Joe wanting to join the local Bar Association. Fritz formally objected and Charlie Horsky finally mediated. Fritz sent on these clippings and said he'd like to know whether so-and-so is still alive.

JAS: No, Joe is still alive.

JUDGE: I called Horsky up and he said he died within the four years. And was practicing up until he died.

JAS: Yes. He had. Fanelli had the last Hoffa case before the Supreme Court of the United States where conversations between Hoffa and a government plant were recorded. And the claim was that Hoffa was discussing his legal affairs with this plant and the argument was that it was a flat out case of improper government conduct and Fanelli was certain that he would prevail in the Court of Appeals but the opinion was written by Fortas, as I recall it, confirming the conviction and that was about the end of Joe Fanelli. They affirmed the conviction of Hoffa and Hoffa went to jail.

JUDGE: I had the last appearance of Hoffa in any court. He was represented by Leonard Boudin. He asked that the commutation of sentence coupled with a provision that kept Hoffa out of union politics be declared unconstitutional.

JUDGE: Anyway, Boudin showed up and said he wanted to file a motion for summary judgment. I asked, "How much time do you need?" He replied "I'll file it tomorrow." It totaled 110 pages. He had evidently been working on it for some time. I came back to chambers where I had a law clerk named Mike Ruane, an Irish boy whose father had been a bartender up in Hazelton, Pennsylvania. I said "Mike, I don't know what you're doing at the moment but this is something you've really got to handle. I don't care how much time you take but go back to the Year Books and the origin of the pardoning power," which is what Boudin had done. We decided

against him. There was an appeal to the Court of Appeals and Hoffa didn't show. And that was the end of the case. He was the only one in the courtroom when Boudin argued the case.

JUDGE: Boudin's son who was down here for a while was a remarkable fellow too.

JAS: Different.

JUDGE: Completely different.

JAS: He's on the First Circuit now.

JUDGE: I don't know who -- I suppose Kennedy -- was responsible for it but ---

JAS: No. Judge Gesell told me that Michael Boudin got tired of practicing at Covington and took a job in the antitrust division. Then someone in the White House asked him to write up opinions about judicial candidates. His evaluations were so intriguing that they decided to make him a judge. Did you know him when he was sitting -- Michael?

JUDGE: Yes, but not well. When I took senior status, Boudin got some of my cases, I had to take them all back when he quit.

JAS: You know, he just quit.

JUDGE: He did. I think people around here were a little bit angry.

JAS: I went in to see him one day and asked him how it was going. He said I just don't like it at all. The things that I would like to work on I don't have time to work on and the criminal cases he found very oppressive. He had no background in criminal law.

JUDGE: He didn't like trying cases. That was part of his problem. He just couldn't make decisions. A little bit like Spottswood. But a very charming fellow. He came in to see me the first time he was here and also the time he left. I think Judge Gesell probably saw more of him than anybody else.

JAS: I think the big influences on Michael were Hugh Cox and Henry Friendly.

JUDGE: I knew both of them. Speaking of Henry Friendly, I remember -- never forget one time when his nomination for the Second Circuit was being held up because of the pending confirmation of Milton Kronheim, Jr. Judge Friendly said, "I'm a little bit fed up having to wait around for action because of an appointment to one of your local courts."

JAS: Was that Truman who made that appointment?

JUDGE: It was Truman. And evidently Mr. Kronheim, Jr. had gotten next to Harry and ...

JAS: Did you know Mr. Kronheim, Jr. at all?

JUDGE: Never met him. I'd seen him play baseball.

JAS: He told this story that I'm going to tell you now. He told it many times. He said he wanted to be an athlete, Mr. Kronheim. And he liked to get involved with people who were athletes. He went up to the arcade market where there was a gym and boxed John Sirica. Sirica gave him a black eye and he went home and his wife said, "Where did you get that black eye?" He said, "Well, I was boxing Johnny Sirica" and she said, "If I've told you once I've told you a hundred times, stay away from those wops." He told that story in front of Sirica many times, who enjoyed hearing it.

How is it that you received an appointment to the bench?

JUDGE: Well, right after Kennedy was shot, within a couple of months -- I think January 1964, Jim Rowe, my classmate at Harvard, called up to have lunch. We had lunch at the Ritz Carlton there in the dining room. He said, "Have you ever thought about going on

the District Court?" I said, "I've never thought about it." He said, "Well, Lyndon Johnson is going to have some appointments" and he said, "I can put you in line." And I didn't hear anything more of it. Then in '68, about four years later, Gasch called me up and said that what's his name, Bob Ash, you know the fellow who represented the ABA Judicial Selection Committee -- was talking to him about Sidney Sachs. He said, "Look, if you want to be on this court you'd better get your horses running." And so I called either Rowe or Corcoran and within ten days I got a call from Warren Christopher, the Deputy Attorney General. He gave me a form to fill out which was about as complicated as the worst kind of a corporate tax return and one that would take you back to before you were born. He called me again to come down there and I came and he said, "Mr. Pratt you've got a lot of friends. I've got a letter here from Steve Ailes." He said. "I think things are in good shape." The next I heard was when I got a call from Barefoot Sanders or from Larry Temple, Lyndon Johnson's lawyer, asking that I meet with them in an office on the west side of the White House, which turned out to be the day of the rioting because of Martin Luther King's murder.

JAS: '68?

JUDGE: '68. April 6. I remember going down there. There were soldiers stationed every fifty yards in front of the White House, and smoke could be seen to the East. I was checked out by

Sanders and Temple which took about five minutes time. When I was finally appointed by Lyndon Johnson shortly thereafter (and I got this from two sources) the President said to Ramsey Clark, "I've been trying to fill this job on the District Court for over a year and when I ask my friend Rowe for some suggestions, he always comes up with the name of a fellow by the name of Pratt -- says he's a law and order fellow. I guess that's why you don't like him." This is the Attorney General to whom he was speaking. I don't know the exact reason for the delay but I'm sure Clark had something to do with that. I think Bazelon also had something to do with it. I know Bazelon tried to stop Gasch. That's about it.

JAS: What was the state of your practice at that time -- in the '60s? From 1960 to 1968? What type of cases were you handling?

JUDGE: I mentioned these two administrative cases -- the bread case was in the '50s and went from the Food and Drug Administration to the Third Circuit Court of Appeals. Incidentally, in that case opposing us were members of the firm of Wilmer, Cutler. Before the case reached the Third Circuit, I had an unusual experience. Going through the voluminous file I found a couple of ex parte communications from Mr. Cox with the firm of Wilmer, Cutler addressed to Mr. Ewing, who was the Commissioner of Food & Drug, asking that the administrative finding in our favor be reversed. We didn't have a chance to even know it existed since we

had not received copies and we had no chance to respond. When I recently told Lou Oberdorfer about that, I think he was shocked and surprised. Anyway, we went to the Third Circuit and Bill Hastle affirmed the decision we had gotten from the trial examiner who was a fellow named Irv Levenson.

JAS: You know, your memory is remarkable for names and dates.

JUDGE: Mostly trivial.

JAS: No, you've got a remarkable memory. Did you ever involve yourself in any debating or anything like that?

JUDGE: No, I never have. One thing I did do was right after I got to Washington. I took a public speaking course from a fellow named Granville Jacobs. In the public speaking course were twenty or thirty people who met once a week for dinner and then we'd pair off for various things. One of our leading members was Larry Gichner.

JAS: You know, Larry was kind of mashuga, to use a Yiddish expression. You know, Larry's kind of mixed up upstairs.

JUDGE: Oh yes, sure. He was an expert in pornography, particularly ancient erotica. He was collecting this stuff that I

think Inspector Blick of the Vice Squad read one time. As the result of a court proceeding, he was forced to keep a list of the people who came to see his collection. Gasch told me that this happened when he was United States Attorney. The first name on the list was that of Judge Bazelon!

JAS: I got to know Gichner pretty well. Gichner wanted to be treated as an intellectual person and there wasn't much depth to the man, unfortunately. You know, he lived a very long, happy life. He just died within the last couple of years.

JUDGE: He outlived Henry, his cousin, didn't he?

JAS: He outlived everybody.

JUDGE: Henry was a good ball player. I think he was the catcher at Cornell.

JAS: Really? I didn't know that. Whose place did you take on the bench?

JUDGE: Judge Holtzoff. I have the Jewish seat. That's what Sachs said. "You've got the Jewish seat."

JAS: One of these days I'll tell you one of the reasons why Sachs wasn't appointed. It's too long a story here. But anyway,

did you know Judge Holtzoff?

JUDGE: Not all that well. I had appeared before him, not too many times. I didn't get down here very much. I was not a trial lawyer as I made perfectly plain in everything I said.

JAS: He had very strong friendships with Judge Keech and Judge McGuire, I believe.

JUDGE: Particularly McGuire. Keech was right here (pointing) and McGuire was a couple of doors down.

JAS: Did you know Judge Keech very well?

JUDGE: I think quite well. I was very fond of him.

JAS: From what I knew of him, he had no faults. He did his job, was responsible.

JUDGE: Exactly. I had the feeling he didn't have a blemish.

JAS: And he had a great sense of humor. He wasn't condescending. Tough as hell.

JUDGE: When he was leaving I said to him, "Richard, what are you doing to us? You're moving."

JAS: He told me that the reason he stopped altogether -- he said he'd seen people around the courthouse who had lost their marbles. And he was not going to put himself in that category. I had some talks with him close to when he died. He was very clear-minded up to the very end. I think his secretary, Ms. Bunton, thought he was going to marry her. But he didn't.

TAPE 2

JAS: Judge Holtzoff was a track man at Columbia.

JUDGE: Yes, he was. And I think he grew up on the East Side, I'm not sure.

JAS: He thought he was a very worldly person. And he certainly wasn't. Some lawyers could do no wrong before him. Charlie Ford could get anything he wanted.

JUDGE: And Laughlin too.

JAS: Laughlin could get anything he wanted.

JUDGE: Laughlin was a complete fraud.

JAS: Well, you went on the bench around 1968?

JUDGE: That's right.

JAS: What did you find most enjoyable about being a Judge when you first went on the bench?

JUDGE: I think complete independence for one thing. Another thing is not having to have to bill people.

JAS: Didn't have to worry about getting business.

JUDGE: No, I didn't care about that. One thing I didn't like about the practice was having to send out bills. The first man who complained about the bill I said, "Okay, you write your own."

JAS: Who was your first law clerk?

JUDGE: Dan Hurley who was very recently confirmed as Federal Judge in the Middle District of Florida.

JAS: That's wonderful.

JUDGE: Dan went to GW -- a night school fellow. Full of charm. He came from Fitchburg, Mass. I think he may well have been an ex-seminarian, I'm not sure. I never knew why he went to Florida, but he did. And he and Paul Friedman were together and Paul started working for Roger Robb, having previously worked for

Aubrey Robinson. There was a vacancy with Robb and Dan was called by Robb's chambers. Dan went up and he was Robb's second law clerk. He held it for a while until he elected to protest the Vietnam War in front of the White House. He had asked Robb about it. Roger said, "If you want to do it, go ahead but just don't come back." That was the end of Dan's clerkship with Judge Robb.

JAS: How did you meet Judge Robb?

JUDGE: Well, I knew him through Judge Gasch. Robb was a good friend when I got appointed. When he learned of it, he called up Jim Eastland, his client. Jim said, "Well get Senator Hruska and somebody else and we'll set it down for a hearing." The hearing lasted every bit of about 5 minutes. John Powell showed up from the Bar Association and Phil Herrick came down, God bless him. Eastland alone presided with his fat belly sticking out and a cigar in his mouth. It was very informal. This was before Abe Fortas ran into trouble and they weren't looking us over very carefully.

JAS: I went down there a number of times when I was president of the Bar and Jiggs Donoghue and I went together to a number of meetings and I said to Jiggs once -- "You've been down here dozens of times. Does it help you with these judges?" And he said, "No Jake, they turn on you."

JUDGE: There was a good man.

JAS: Jiggs was a wonderful man.

JUDGE: A damn good Commissioner.

JAS: Jiggs said during the Watergate days that if Nixon had walked blindfolded down Fifth Street he'd have gotten better legal advice than he got from Mitchell, Haldeman & Ehrlichman.

JUDGE: That's true.

JAS: What have you liked most about judging, as you've gotten more used to it?

JUDGE: Well, as I indicated before, the matter of being independent appealed to me. Another thing that appealed to me very much, even before I became a senior, was that I could pretty much set my own pace in terms of the speed at which I proceeded. I deliberately did not overbook. On the other hand I didn't have to continue cases very often. My trick, perfectly frankly, as far as I was able to do it, was get the parties to pretty much agree on the facts and the issues and then dispose of the case on the papers or after an oral argument.

JAS: How does oral argument strike you? Is it valuable?

JUDGE: In close cases I think it can be very valuable but I

think if the issues are one-sided I think it's a waste of time.

JAS: I heard Judge Robb speak at a judicial conference about oral argument and he said a lot of people were dispensing with it. But he was of the opinion that if you're going to kill a man's case you ought to look him in the eye at some point in the proceeding.

JUDGE: There is something in that. Also if it's a close case, including a case where there's a lot of sympathy on the one hand, but probably the law is on the other -- I just got through with one. I took over from Judge Harris a case involving a woman who was a widow of an army colonel who had committed suicide while he was under investigation for fraudulent vouchers and a few things like that. And she had a well-meaning lawyer who was not familiar with trying cases and they went to great length -- we had a trial even though I was pretty well satisfied with what the issues were. I nevertheless asked for findings of fact and conclusions of law not to exceed 18 or 20 pages. I was glad to have done it even though -- I would have concluded the matter summarily if I hadn't had sympathy for this woman in what I thought was a rather shoddy way she'd been treated by the military in her time of grief.

JAS: Who are some of the interesting lawyers that come to mind? Good and bad.

JUDGE: I think the best -- I thought about it as I was looking at the -- I showed you that thing of Leonard Boudin -- that fellow is about as good a lawyer as I've ever had.

JUDGE: Patrick McCartan, head man at Jones, Day in Cleveland. Also from Notre Dame and former law clerk of Sherman Minton. He stopped by to see me some time ago. I had previously had him in a very interesting case involving the Federal Trade Commission going after Exxon in connection with their acquiring the Reliance Electric Company. They were doing it because Reliance possessed certain technology Exxon thought was the wave of the future. We had protracted litigation, "hold separate" orders and a few things like that. Finally Exxon decided that the invention that they required was not all that great. They ditched the whole thing and that was the end of it. The thing that particularly impressed me was the way McCartan squared off against Mr. Gillespie, the top man from Davis, Polk. Mr. Gillespie came marching in, with his spear carriers, about five of them.

JAS: You know who loves spear carriers, Lawrence Walsh. Oh, he loved spear carriers.

JUDGE: Oh, you mean MacKinnon's appointee.

JAS: Yes.

JUDGE: In any event, he came in and I remember at one stage in the game he said, "Your honor please, this is one of the most unfair things I ever saw." I said, "Mr. Gillespie, don't you remember that President Kennedy said that all the world is unfair?" Well, McCartan got a big bang out of it.

JAS: How long did that case take?

JUDGE: Well, we had two or three hearings. It extended over a period of time. He's now, of course, managing director of Jones, Day. And he had to put to bed that \$43 million settlement that they made. I don't know what the facts were but they had evidently given some bum advice to someone.

JAS: Did Judge MacKinnon discuss the Walsh appointment with you?

JUDGE: No, but he stands up for it all the time. A lot of these people he appoints -- he didn't do this with me -- but a lot of these people he appoints he kind of checks around, what do you think about so-and-so. He probably called you.

JAS: He did. I had an experience with Walsh which was unpleasant and I thought that if I told him about it he might think it was sort of sour grapes or something or other. So, I didn't mention it. But Walsh is a strange, strange kind of a guy.

JUDGE: I remember him one time speaking to one of Howard Markey's patent law conferences. Howard was a great advertisement for the profession. Walsh had been with Davis, Polk and in 1954 was appointed a U.S. District Judge by President Eisenhower. Later, he went to the Justice Department as Deputy Attorney General, then back to Davis, Polk.

JUDGE: President of the ABA at one time too. A fellow with an interesting background. You know, he was born in Canada. He's about two months younger than I. You know, George is very solid on Canadians. I guess Walsh came in to see MacKinnon within the last two or three weeks and MacKinnon sent Walsh up to see Judge Sentelle. They didn't get into any detail. It only lasted about five minutes. Incidentally, there is a great judge.

JUDGE: He's got a lot of sense.

JAS: He's a pretty damn good after-dinner speaker, too.

JUDGE: Oh, he is? His father worked in a mill. That's his background.

JAS: What other cases do you remember as a Judge?

JUDGE: My cases?

JAS: Yes.

JUDGE: Well, I had -- not a court case at all -- although it eventually ended up in a libel suit -- but I represented a Marine Colonel named Frank Schwable who was in an airplane that was shot down by the North Koreans at the time of the Korean War. They had him in captivity for I guess about six months and after extreme pressure was forced to make a so-called "germ warfare confession." He came back to the U.S. eventually and of course they said, "If you're a Marine you don't do that." He was court martialed. They had the proceeding over at Henderson Hall -- an Admiral and two Generals as the general court martial. I got hold of a fellow -- I've forgotten his name, but he was a Dutch psychiatrist -- who had been worked over by the Nazis before he finally got loose. He testified that no matter how strong you are, if people like the Nazis have six months to work you over, one of three things will happen. Either you cave in, you go insane, or you die. I said, "Does that apply to anybody in this courtroom, doctor?" "Yes it does." Well, I had a lot of that kind of testimony.

JAS: That has a lot of emotion.

JUDGE: Yes, it sure did. And I got an Army General who was in command of some large unit over there who himself had violated the Geneva Convention. And these people were really subdued when a number of former prisoners testified as to their treatment.

Another person whose name came up was Minzenty, the Hungarian Cardinal who had made the same kind of incriminating confession as Schwable.

JAS: As a judge, do you get many opportunities to correct an injustice in various cases?

JUDGE: If I can bend the rules in connection with some of these criminal sentences I'll do it every time. And because of the guidelines, I'm tempted to get rid of these cases if I can reasonably do so by sustaining a motion to suppress.

JAS: What do you think of the guidelines?

JUDGE: What do I think? I, along with most Federal trial judges, think they are atrocious. I also believe laws authorizing mandatory minimum sentences should be repealed. The disparity in sentences for cocaine crack and cocaine powder is an example. You probably read the story in the Sunday Post. Judge Hogan has written extensively on that. Another thing is the disparity between the sentences in drug cases and other trials. In drug cases, you mostly have some young black with no prior record and he gets slapped with a mandatory minimum of five to ten years or even more. And there's not a damn thing one can do.

JAS: Have you ever lost your temper on the bench? I've

never seen you out of control.

JUDGE: I try not to be but I've chewed people out once in a while. I think the people who get my dander up are -- I'll give you a pretty good example, it happened the other day. As long as I've been here which is 25 years, we have these personal injury cases. And frequently there's been an expert medical witness by the name of Jeffrey Goltz. He's never shown up as a witness. And I found out the other day that a particular plaintiff had a civil case before Lamberth which was transferred to me. And one of the last things Lamberth did was permit the plaintiff to substitute Dr. Smith for Dr. Goltz as an expert witness. And I read Sporkin's memorandum in another personal injury case as to what Goltz had done in misrepresenting his credentials. I said to counsel for the plaintiff, "Well Lamberth may have given you permission to substitute Smith for Goltz but I'm not going to follow that. I said I've seen what this fellow's done in other cases and I'm not going to permit him to testify to anything." And they settled the case.

JAS: Do lawyers disturb you on the bench? You seem to be invulnerable to what goes on.

JUDGE: Well, maybe I'm half asleep. I really never had a real problem. If so, I'm not aware of it. There's a public defender named Mike Wallace who is a good lawyer. Gasch can't

stand him. Wallace supposedly rolls his eyes when Gasch rules against him. The jury can see all this. My first experience with Wallace was that he kept arguing after I ruled. I finally said, "Mr. Wallace, I'm holding you in contempt. Now pay attention." He came up to the Clerk in tears and asked what would happen. I asked the Clerk what she told him. She said, "If you'd behaved maybe at the end of the trial things will be alright." Well, that's exactly what happened. Wallace asked to be relieved of the contempt, which I did. I've done that a few times.

JAS: Would you say that you are by disposition a controlled, calm person? You seem to be. Nobody knows what goes on inside of a person.

JUDGE: I don't know. I have trouble keeping my temper sometimes. But one thing I've tried to follow is if in doubt, don't say it.

JAS: Well, that's a hard thing to learn.

JUDGE: I'm probably accused of being pro-government in criminal cases which I freely admit. But I don't know about the rest. A judge can't want to be liked. That is a mistake for a Judge.

JAS: You can't do that and be a judge.

JAS: What do you learn over a 25-year period as a judge? Anything in particular in the way people act, something about human nature? Are you a better judge of human nature now than you were?

JUDGE: I think I am. I think probably much better. I think I'm a little more -- I'm a little more understanding of human beings than I was when I first came down here.

JAS: The difficult life it is for most people?

JUDGE: Precisely. I think that I am more inclined to give people the benefit of the doubt. The things that really upset me more than anything else are where there's been overreaching on the part of a lawyer who abuses the discovery rules by papering some poor person to death. That happens, as you know. And before the civil rules changed in 1938 we didn't have that kind of thing.

JAS: Did you know Judge Tamm very well?

JUDGE: I knew him very well. He was very fond of me, I found out. I didn't realize it.

JAS: He was an interesting man, wasn't he?

JUDGE: He was. You know I got appointed to a couple of Judicial Conference committees, particularly the chairmanship of

the Committee on Judicial Ethics, now more properly named the Committee on Financial Disclosure. I had this for five years when the Chief Justice decided he ought to cut me off, which I agreed was a pretty good idea. But he was a very strange fellow, Tamm. He never talked about J. Edgar Hoover except if he were referring to him he always referred to him as "the Director." He knew where the bodies were hid. I heard him once say Frank Rizzo was on the take from the Mafia. Not the kind of thing that is public knowledge. Another thing he told me, he said one time he went to Adolph Berle, an Assistant Secretary of State in '42 or '43, and told him about Alger Hiss. Now this was five years before Hiss was indicted.

JAS: Judge Tamm told me at one of the Lawyers Club affairs that Hoover was mentioned by Walter Winchell as being sweet on Ginger Rogers' mother, Lila. He said Hoover was upset so he just couldn't control himself. He got very upset being in Winchell's column and he cut his relationship with Winchell which had been close. I remember when Tamm was first appointed. I think it was about '47 or '48.

JUDGE: The Bar Association president foolishly put that nomination to a vote and it was three to one against the nomination.

JAS: Well something interesting about that. The only

lawyer who testified for Tamm was Alvin Newmeyer, Sr. Mr. Newmeyer was asked to go down there by Hoover. Hoover had asked Mr. Kronheim to get Mr. Newmeyer to go down there and testify on behalf of Tamm who had not then been admitted to the D.C. Bar. He was a member of the Montana Bar. Frank Waldrop told me that Hoover was enraged when Tamm got the appointment. Waldrop knew Tamm well. And Hoover tried to block the appointment and Tamm got the support of the Archbishop of Chicago -- which closed the issue.

JUDGE: Cardinal Mundelein was very close to Roosevelt.

JAS: Yes, that was the end of it. Then Hoover came over to Tamm's side after that.

JAS: Tamm was a self-disciplinarian.

JUDGE: Tamm was as prepared a man as comes to this place. He prepared for the Judgeship by reading all of the appellate reports.

JAS: What other personalities over your career would you comment on? Did you ever have any cases with Ed Williams?

JUDGE: Yes, I had one with Ed Williams, which grew out of the Schwable case. I brought a libel suit against Newsweek Magazine. It concerned certain remarks made by the Marine Corps Commandant about Schwable concerning his "confession." They were clearly

libelous. I don't know whether they did Schwable any actual injury. Ed filed a motion to dismiss which Holtzoff decided my way. Then one day Williams called me up and said I think we ought to settle this case. We had lunch at the Metropolitan Club. As a result the case was settled but not for very much.

JAS: Did he ever try any cases in front of you?

JUDGE: No, I never had a case with Ed. I had an interesting one with Paul Connolly, Ed's partner, and Joe Rauh. Paul represented United Mine Workers, and Joe represented Joe Yablonski. Yablonski sued Tony Boyle as well as the Mine Workers Journal. Boyle allegedly had used the Journal to promote his candidacy for the presidency of the Mine Workers Union.

JAS: It's an interesting case.

JUDGE: Paul Connolly represented Tony Boyle two months before Yablonski and his wife were found dead, murdered. I tell people, "You know, if you're playing baseball and you bat .500 that's a hell of a good average." I said, "I couldn't help but bat .500 in that case." I decided in Rauh's favor and against Connolly.

JAS: Paul Connolly is a very impressive lawyer.

JUDGE: Well, I didn't like him. I think it is because he

didn't pay any attention to me until I came on the bench, and then he overdid it.

JAS: He had a problem with condescending.

JUDGE: He did. I played golf with him one time and I got to measure the man -- playing in a foursome at the Chevy Chase -- at 15th hole. When we reached the 15th green someone asked, "What'd you get, Paul?" and he said "6." I was watching the guy all the way and he took at least 8.

JAS: That's pretty good evidence.

JUDGE: Pretty good evidence. This was a diversion about Ed Williams. We thought we'd settle the case at that luncheon. But nothing seemed to happen. So I called Pat Sullivan, Newsweek's New York lawyer, and told him what the story was. He said, "I'll take your word for it" and he sent me the check. Thereafter, I never completely trusted Ed. I am perfectly willing to concede he was as able as any I've ever seen and I never saw him unprepared. Sullivan incidentally supported the U.S. Olympic Committee in 1980 when I upheld Carter's order denying U.S. participation in the games that year in Moscow.

JAS: What do you think of the jury system? Is it worthwhile?

JUDGE: I think it is in certain kinds of cases.

JAS: I have my doubts now.

JUDGE: I've got my doubts too. There are cases some jurors just plain cannot grasp, especially civil cases where there are a lot of documents -- I try to get the lawyers ahead of time to select from the panel those jurors that they would like to see on a jury. I will then select those jurors first and then the remaining ones in the order that they are listed.

JAS: But in the main I think the idea of a jury in any case that has any complication is a myth. And I think in big cities now juries are affected by race so strongly ...

JAS: What did you make of George Hart?

JUDGE: I was very fond of George Hart. I think he's the best chief judge that I've ever served with. He'd make decisions. He was a great fellow. He used to handle the pro se cases and gradually farmed them out to me. In the early days of pro se there was no problem with dismissals because of lack of merit. Shortly toward the end of George's tenure, the Court of Appeals started sending some of these back on the grounds that a case could not be dismissed in the posture the case was. In other words, lack of jurisdiction appearing on the face of the complaint was an

affirmative defense which had to be affirmatively pleaded. We worked out a system whereby we would issue a rule to show cause why a case should not be dismissed. This avoided the business of having the marshal run all over the country serving people. But some of these people upstairs don't realize this.

JAS: Did you get to know Judge Gesell very well?

JUDGE: Yes, I think I probably knew Judge Gesell as well as anybody on the Court.

JAS: What did you make of him?

JUDGE: Well, he was a very complex as well as able fellow. There was a certain arrogance about him that annoyed some people. He was also a very brave fellow. He told me that last fall, over a year ago, about three months before he died, and before he came down with what eventually killed him, that he'd had a prostrate operation during the North trial. I don't think he told anybody about it. Did it over a weekend.

JUDGE: I inherited Roy Smith, my bailiff, from Gesell. I'm very glad to have him although I don't have too much for him to do.

JAS: He is the famous son of a famous father.

JUDGE: Oh yes.

JAS: That doesn't happen too often.

JUDGE: His father was the pediatrician back when our children were growing up -- prior to Spock.

JUDGE: I was very fond of George Revercomb.

JAS: He was a remarkable man, too.

JUDGE: I miss him. He was a partisan, right wing Republican. But a completely fair and modest fellow. He really liked food. His father was a Senator from West Virginia. I think he died his second term. But George went to Princeton in about the class of 1950 and then to Virginia Law School. He's a wonderful, wonderful person.

JAS: Has Ken Mundy appeared before you?

JUDGE: He's an excellent man.

JAS: You know what comes through from him, I think, I've tried cases with him -- representing co-defendants -- a genuine niceness comes out of that man. Nothing mean in Ken. And that comes through very nicely.

JUDGE: That's right. I think Ed Brown is a good man, too.

JAS: He's very good. Yes. He's a well-trained lawyer. He was in the Department of Justice -- dignified man, Ed is.

JAS: You were the first one to have women law clerks?

JUDGE: I think I've had more than any of the male judges and so when they come to talk to me about sex discrimination I take pleasure in mentioning that I have four daughters.

JAS: Well, you had this case -- sexual harassment case.

JUDGE: I had one, yes. The Broderick case made a lot of noise.

JAS: You held for the plaintiff, didn't you?

JUDGE: Yes, I told the parties to agree on the remedy. They gave her a hell of a lot more than I would have. Yes, over \$400,000 in attorney's fees, \$700,000 for an investigation of the practices at the SEC. I appointed David Tatel to handle that. \$700,000 to H&H on that one. The plaintiff also to have unlimited psychiatric treatment and to be able to shop around the SEC for any job she could get. She got everything. She was a neurotic woman, but I felt that she shouldn't be subjected to the kind of treatment

these good ole boys were according her.

JAS: I think William Howard Taft said that the best job in the world was being a federal district court judge.

JUDGE: I think it is. I think most people would prefer to sit where we are instead of on the Court of Appeals.

JUDGE: I think Ed Tamm very much wanted the Court of Appeals. I think as a matter of prestige, probably.

JAS: What have some of your other law clerks done? Do you keep in touch with them as some judges do?

JUDGE: Yes, we have a party every year. And I ran into one of them at church just last Sunday. I don't know what her husband does but they're both partners. She's a partner with Arnold & Porter. I'm very fond of a number of my former clerks. Most of them I think have been very satisfactory. And the girls have been fine.

JAS: When you pick a turkey, what misled you?

JUDGE: I've never been in the habit of having a friend -- a boy's father, for example, get in touch with me. They know me and so on. I discourage that.

JAS: Why do you discourage that?

JUDGE: Well, I know a lawyer uptown named Eugene Stewart -- a very good lawyer. I had litigation with him once. He called to say that a son of a friend of his was applying for a clerkship and said, "I'd like to come down and talk to you about him." I said, "You don't have to do that, I'll take your word for it." Well that, plus the fact that the boy was a very good talker, I hired him. He did not work out. He is now making a lot of money in the cellular phone business.

JAS: How would you describe Judge Robb? You knew him very well.

JUDGE: He was a complex person. A person who does not lend his friendship easily. He had a lot of New England reserve about him. His father, Charles Robb, a native of Vermont, was appointed Assistant Attorney General by Theodore Roosevelt in 1906. I think of Roger as a person of excellent character and completely fair and unbiased. Being a judge is probably the epitome of what he wanted to be. I think he wanted to be like his father. As a judge I liked the way he wrote; he was terse, very much to the point, and called them as he saw them. He was not result-oriented like some of these people upstairs are. I had great admiration for Roger. I think he suffered a lot in his life. His wife treated him badly. He got TB and moved down to Charlottesville. She never called him.

Finally when he got over that she wanted to make up.

JAS: He married his English teacher from Western High School.

JUDGE: Yes, later. Irene. And prior to that he married Lillian, I think her name was. She had previously been secretary to Nelson Eddy.

JAS: What are your interests off the bench? Anything in particular you'd like to talk about?

JUDGE: I like to read current politics mostly. We do a fair amount of traveling. Recently we came up the inland waterway from Jacksonville to Charleston. Our previous trips -- we were twice to Europe, the Middle East, Russia, and several others -- the best being from Lisbon along the French coast and south of England, the west coast of Ireland, the Orkneys to Bergen, Norway. Our U.S. trips include Alaska, the Mississippi River from Memphis to New Orleans and the Columbia River from Portland to Idaho.

JAS: How old were you when your father died?

JUDGE: He died in 1965. I think I must have been about 55, something like that.

JAS: Were you close with your father?

JUDGE: Yes, closer in the later years. I think he thought I was kind of a smart ass.

JAS: Were you?

JUDGE: I was.

JAS: The reason I said were you, my father thought the same thing about me -- and he was right.

JUDGE: I know I irritated him. I used to wear a Browder button, when Browder was the Communist candidate for the Presidency in 1932. You probably don't remember this but there was a trial in Honolulu involving a murder of a Hawaiian by a naval officer named Massie.

JAS: Was that Clarence Darrow's case? I think Clarence Darrow represented Massie.

JUDGE: Yes it was. There was a much publicized trial.

JAS: First degree murder?

JUDGE: Yes. And while the trial was in progress, I voiced

the opinion that Massie should be found guilty of murder. My father immediately reacted and said, "What do you mean by that? Don't you know about the unwritten law?" I said, "I never heard of the unwritten law in my criminal law class." I think in the latter stages I got to be very close to him.

JAS: Are you close with your brothers?

JUDGE: Yes. I am. Their attitude on most things of course is quite different. I don't think they are as interested in current affairs as I am and they're politically very conservative.

JUDGE: Thank you very much, Mr. Stein, for your patience and understanding.