The first recollection I have of the courthouse complex was when I was going to high school. Judge Charles H. Robb, who was then on the Court of Appeals, thought that his son Roger, who subsequently became an appellate judge, and I should have some boxing experience. So we went to the courthouse basement where Mr. Lewis, who was the courthouse electrician, had his office. Mr. Lewis was of English origin and he had been a club fighter as a young man. So Judge Robb thought that Mr. Lewis could teach Roger and me something about boxing. Well, I didn't know much about boxing, but Roger knew a little bit more. I had been told that the best thing to do was to protect your chin with your right hand and to keep your left out in the other fellow's face. Well, I had longer arms than Roger, and I managed to keep my left in his face to the point where the basement floor of the Court of Appeals was pretty well covered with Roger's blood, and Mr. Lewis decided we had had enough for that day and should come back a week from then. Well, I think he gave Roger some further instruction before that week was up because I didn't spill as much of his blood on the cement floor as I did the first time. But that was my introduction to the courthouse. Mr. Lewis was patient with us. We learned something about it. Roger subsequently became a member of the Yale Boxing Squad. I don't know whether he ever boxed in competition
up there, but I remember getting a few bloody noses myself when I was in college.

JUDGE GASCH, YOU INDICATED THAT YOUR INTRODUCTION TO THE COURTHOUSE WAS WITH JUDGE ROBB IN THE BASEMENT LEARNING THE INTRICACIES OF THE RULES OF BOXING FROM THE COURTHOUSE ELECTRICIAN. WHAT WAS THE TIME FRAME WHEN YOU HAD YOUR FIRST, WAS THIS IN HIGH SCHOOL?

This was in high school, probably about 1923, maybe earlier.

WHERE DID YOU AND, LATER, JUDGE ROBB GO TO HIGH SCHOOL? HERE IN THE CITY?

We went to Western, at 35th and R Streets in Georgetown. We'd met earlier in grade school at the Force School which was on Massachusetts Avenue between 17th and 18th.

AND AT THAT TIME THE PRESENT COURTHOUSE ON CONSTITUTION AVENUE WAS NOT EVEN A DREAM, WAS IT? IT WAS A DIFFERENT COURTHOUSE.

That's right. It was a wonderful old building that was called the Supreme Court of the District of Columbia, which was on Indiana Avenue. It had been built, I understand, from the proceeds of a lottery. It had been built about 100 years before. And Judge Robb was an appellate judge in the Court of Appeals in a separate building, which is now occupied by the Military Court of Appeals.
IS THE OLD COURTHOUSE THAT YOU ARE REFERRING TO - WAS IT KNOWN AS THE OLD CITY HALL AT SOME TIME?

It may have been. But that was before my day. The city government was located then, as now, in the District Building at 14th and E Streets.

AND IN TERMS OF THE OLD COURTHOUSE, THAT'S NOW A PART OF THE SUPERIOR COURT COMPLEX, ISN'T IT?

I believe so, unless G.S.A. has further exercised its authority to diminish the use of the building.

AND JUST FOR REFERENCE SAKE, THAT'S THE BUILDING, I BELIEVE, THAT IS AT 451 INDIANA AVENUE TODAY WITH THE STATUE OF LINCOLN IN FRONT OF IT?

Yes, the statue of Lincoln is in front of it.

NOW, BACK IN THE EARLY 1920s, THAT STATUE OF LINCOLN WAS ACTUALLY UP ON A HIGH PEDESTAL, WASN'T IT?

It may have been. I don't recall that detail.

AND YOU DID MENTION LATER JUDGE ROBB, WHO SERVED ON THE D.C.
CIRCUIT -- HIS FATHER WAS ON WHAT WAS THEN CALLED THE DISTRICT OF COLUMBIA COURT OF APPEALS?

That's right.

AND DID YOU KNOW SENIOR JUDGE ROBB?

Very well.

COULD YOU JUST BRIEFLY DESCRIBE WHAT HE WAS LIKE AND YOUR MEMORIES OF HIM IN THE 1920s?

Well, he was like a father to me. He believed strongly in no cigarette smoking and his idea was to hand Roger and me cigars, thinking that if we smoked cigars we wouldn't smoke cigarettes. I remember that idiosyncrasy of his. But it probably is his influence that guided me toward the study of the law because he never hesitated to make suggestions and to do it in such a way that I found it quite acceptable. Now my father, having the feeling that a parent's influence should be minimized, never suggested to me what I should do. I think he hoped that I would do something, but he never said, "Don't you want to go into the real estate business with me?" He was in the real estate business. He never suggested the law. He had a kind of jaundiced view about lawyers and politicians. He was a Wilsonian Democrat and his influence over me was not nearly as strong as that of Judge Charles Robb.
JUDGE GASCH, GROWING UP IN WASHINGTON IN THE 1920s BEFORE YOU GOT INTO THE LAW FORMALLY IN CONTRAST TO YOUR INFORMAL SESSIONS IN THE BASEMENT SLUGGING, LATER, JUDGE ROBB, WHAT WAS LIFE LIKE FOR HIGH SCHOOL KIDS AND YOUNG COLLEGE KIDS GROWING UP IN WASHINGTON IN THE 1920s AS IT CENTERED IN THE CITY AND THE COURTHOUSE IN GENERAL? WHAT ARE YOUR RECOLLECTIONS OF THAT?

Well, life was very pleasant. I recall my years at Force School which was an excellent school. The interesting thing about my class at Force was that there were 15 boys and 15 girls approximately in my class. Four of my classmates at Force Grade School were my classmates at Princeton, which gives you some idea of the neighborhood around Dupont Circle in those days. It was quite different from what it is now.

DID YOU GROW UP IN THE DUPONT CIRCLE AREA?

Yes.

WHERE DID YOU LIVE? WHAT STREET?

1753 P Street, which is just around the corner from Force School and about a block east of Dupont Circle.

AND IN THOSE DAYS HOW DID ONE GET AROUND THE CITY? THEY OBVIOUSLY
DID NOT HAVE A METRO OR BUSES?

Well, they had what I thought was a very good streetcar system. And subsequently that was augmented by buses. My father kept a horse and buggy at a livery stable, John Preston's Livery Stable, which was near his office and it was quite a while before he was converted to driving an automobile which he did start driving in 1920. It was a Dodge Touring car. I think he enjoyed driving it although, once, when he was charged with speeding, he appeared before Judge McMahon of the old Police Court and the officer testified as to what he thought my father's speed was. My father said, "Well, that's not right, I could without trouble drive my horse and buggy faster than I was going." Judge McMahon thought that was kind of funny and let him off.

WAS THAT ONE OF THE FIRST LEGAL VICTORIES FOR THE GASCH FAMILY?

I think so. It was the first one I remember.

AND HOW OLD WERE YOU AT THE TIME? WAS THIS HIGH SCHOOL?

It was in high school, yes. The early 1920s.

NOW, YOU DID MENTION THAT FOUR OF YOUR CLASSMATES FROM YOUR ELEMENTARY SCHOOL JOINED YOU UP AT PRINCETON. WHEN DID YOU GO OFF TO COLLEGE UP IN NEW JERSEY?
1924 - 1928.

NOW, THIS WAS STILL BEFORE THE DEPRESSION HAD HIT, AND BEFORE THE CITY OF WASHINGTON HAD CHANGED RADICALLY WITH THE COMING OF THE "NEW DEAL" AND ROOSEVELT AND ALL THAT -- CORRECT?

That's right.

CAN YOU GIVE US JUST A SENSE OF WHAT LIFE WAS LIKE IN WASHINGTON UNTIL THE ROOSEVELT "NEW DEAL" ARRIVED AND THE FEDERAL GOVERNMENT AND THE WHOLE COURT SYSTEM EXPANDED?

Well, my father was a Democrat and he had no use for Mr. Harding and used to make some derogatory remarks about him which I remember. He didn't like Coolidge much better. And his favorite quotation about Mr. Hoover was something he picked up from one of the southern Senators, Pat Harrison, I think. "He was a great engineer; he dammed the country and ditched the world." I might say that I didn't take a particular interest in politics at that time. Roger and I used to debate politics in school. He was, you might say, a rock-ribbed Vermont Republican and my home influence, such as it was, largely came from my father's feeling about the Republican presidents in the 1920s. I remember my first exposure to politics was the time Al Smith ran against Mr. Hoover and I was just out of college at the time, 1928, and I assisted my
father in campaigning in Virginia. It was perfectly obvious that the feeling of the local gentry was strongly opposed to Al Smith because he was a New Yorker. I used to take people down there to register them, but invariably the Registrar, when he saw me coming with some hopeful, would say, "Well, I left my book at the office, I don't have it with me." He registered very few people. I remember one of them was Wilson Wing, who was the stepson of Miss Madeira of the Madeira School. And Wilson and I tried hard to get his name on the books. We followed the Registrar from his office to his home, but the book was always not to be found.

THIS WAS IN NORTHERN VIRGINIA?

Yes, Fairfax County.

GROWING UP IN THE CITY, WAS THERE MUCH INTERPLAY WITH THE SURROUNDING MARYLAND AND VIRGINIA SUBURBS OR WAS WASHINGTON MORE OF AN ISOLATED CULTURE AT THAT TIME? WE DIDN'T HAVE A BELTWAY IN THOSE DAYS.

We didn't have a beltway, but we did have an electric line that ran out to Great Falls and it branched off to Bluemont. And we used that quite frequently. We had a place in Virginia which my father had bought in 1912. He paid $100 an acre for it so he told me. And I wish we could pay the same taxes today that we paid then.
WHERE IN VIRGINIA WAS THE HOUSE?

Well, it's opposite to Madeira School.

AND WOULD YOU GO OUT THERE FOR THE SUMMERS OR WAS THAT A WEEKEND PLACE?

Both. We always went out for weekends. Roger Robb frequently went with me. And we spent summers there. Father would go back and forth to Washington on the Great Falls and Old Dominion, which was a very convenient thing. It has long since gone out of business. But in answer to your question, I would say that transportation then was pretty much limited to the Pennsylvania, the B&O and Southern Railroads and such suburban roads as the Great Falls and Old Dominion. I think they had one that operated down into Maryland, the Washington Baltimore and Annapolis, although I never rode it. I read about it. And, of course, people had automobiles, but the roads were certainly nothing to brag about. They were passable and that's all.

BEFORE WE LEAVE THE 1920s AND GET MORE INTO YOUR LEGAL CAREER, I WONDER IF YOU COULD KIND OF DESCRIBE FOR US WHAT WASHINGTON WAS LIKE IN TERMS OF THE LOCAL POPULATION VERSUS THE PEOPLE COMING IN TO WORK FOR THE GOVERNMENT OR THE POLITICIANS AND THAT SHORT OF THING. WAS IT LIKE IT IS TODAY OR WAS IT DIFFERENT?
Well, you certainly had more locals who were native in those days. Of course, people came to work for congressmen and senators. And invariably they didn't go home. They stayed here. But there were a lot of people, among my acquaintances, whose families had been here for years. And they were proud of it.

They kept talking about it. My family came here in 1848, that was father's family. And mother's family came here about the time of the Civil War. Grandfather Manning was in the British Army and promotion was kind of slow so he came over and joined the Union Army. Grandfather Gasch had come to this country in 1848. He and two brothers escaped from Germany at the time of the student's rebellion in 1848. The oldest brother, a lawyer, was imprisoned for his activities in the student's rebellion.

AND WAS YOUR FATHER BORN IN WASHINGTON?

Yes. Yes, he was. Both father and mother.

WHERE WERE YOU BORN? IN A HOSPITAL OR AT HOME?

I was born at George Washington Hospital, so they told me.

JUST FOR THE RECORD, JUDGE GASCH, WHAT IS THE DATE OF YOUR BIRTH?
May 4, 1906. Again, that's what I've been told.

NOW, YOU MENTIONED THAT FOUR OF YOUR PUBLIC SCHOOL CLASSMATES WENT OFF WITH YOU TO PRINCETON FOR COLLEGE. DID ANY OF THOSE FOUR CLASSMATES COME BACK TO WASHINGTON AND GET INTO THE LAW AS YOU CAN RECALL?

Well, Roger Robb went to Yale. It's a rather interesting story. Three of us competed for a Princeton scholarship and Roger, by all odds had the best high school grades. I think Serge Korff was next. Serge's father had been the Czar's Vice Governor General of Finland and the family escaped to an American warship which was in the harbor, Helsingfors (now Helsinki), at the time of the 1917 revolution, largely because of the fact that Mrs. Korff's father was the Surgeon General of the Navy, Admiral Van Ripen. But Serge and Roger and I competed for this Princeton scholarship. The Judge felt that Roger should have gotten it because his grades were best.

THE JUDGE BEING JUDGE ROBB'S FATHER?

That's right. Serge got it because Baron Korff was teaching at Georgetown and teaching at Columbia and was literally on his uppers. And the committee, I think, justly felt that Serge needed it more than either of us. So Serge got it and that sort of disgusted Judge Robb Senior with Princeton, so Roger went to Yale. But most of my classmates, as I recall, did other things. Serge
became a Professor at NYU. He was an expert in the field of astronomy and cosmic energy. Henry Wilson, whose father had been Superintendent of the Naval Academy, went into oil and gas in Oklahoma. Morrow Roosevelt, whose father was an Assistant Secretary of the Navy, located in New York. I used to see him at reunions, but he never came back to Washington. There was another boy named Dave Taylor, whose father was the man for whom the Taylor Yacht Basin (upstream from Chain Bridge) was named. He was an Admiral in the Navy. Quentin Roosevelt had also gone to Force School and the story, as told me by my 7th grade teacher, Miss Hoover, was that T.R. used to walk up from the White House with Quentin, who was his youngest son.

THIS IS PRESIDENT THEODORE ROOSEVELT?

Yes. And that kind of thing you wouldn't find today. Regardless of how devoted the father might be to the son, he would go up in the White House car, but he wouldn't be walked up by his father, the President of the United States. I remember Miss Hoover's story about T.R. and Quentin, who apparently was a fairly mischievous young man, but very well liked by his classmates and his teachers. The President asked Miss Hoover how Quentin was getting along and if he was as bad in school as he was at home. And she said, "Oh, no, he doesn't get into any trouble." And T.R. said, "What about that incident the other day?" And she said, "That was the boy behind him that got him into that trouble." And
she said the President responded, "Are you sure it wasn't the boy in front of the boy behind Quentin that started the trouble?" And she always loved to tell that story. She was very fond of T.R. and Quentin.

Well, I mentioned T.R. and his son. There were many others that had gone to Force. It was a good school. The public schools, I think, in those days were considerably stronger than they have become in recent years. I remember, to jump ahead a little bit, being involved in some of the problems of the public schools when I was in the Corporation Counsel's Office. I got to know Dr. Corning and Dr. Hansen quite well, as well as Dr. Wilkinson, who was the Superintendent of the Colored Branch of Schools. Dr. Wilkinson was an extraordinary man. He had both a Ph.D. and an LL.D. degree. And I remember Vernon West, the Corporation Counsel, saying to me, "I wish 'Shorty' Corning (who was the White Superintendent) was as smart as Dr. Wilkinson." And that was a tribute, I thought, because Mr. West was a long-time Washingtonian. His father had been one of the Commissioners of the District. Both he and I greatly admired Dr. Wilkinson. But the schools were top-notch in those days. Dunbar, which was the leading Colored High School, is the school from which Judge Bryant, my colleague, Judge Barrington Parker, my colleague until he retired, and the late Judge Waddy graduated. There were other distinguished persons who went to Dunbar. Our representative at the United Nations, Ralph Bunche, went to Dunbar. Senator Brooke of Massachusetts went there. Also, I remember the Principal at Dunbar telling me that
the worst thing that ever happened to Dunbar was the case of *Hobson v. Hansen*. That was the case in which Judge Wright presided as trial judge and outlawed the 4-track plan in the schools. In the old days, the brightest of the Blacks went to Dunbar.

YOU TOUCHED ON A POINT IN GOING BACK TO THE 1920s GROWING UP IN WASHINGTON AND GETTING OUT OF COLLEGE THAT WASHINGTON WAS A SEGREGATED CITY, OF COURSE, IN SEVERAL WAYS. YOU'VE MENTIONED THE PUBLIC SCHOOLS AS ONE EXAMPLE. CAN YOU RECALL SOME OF THE OTHER EXAMPLES OF HOW LIFE WAS FORMALLY SEGREGATED BETWEEN BLACK AND WHITE RESIDENTS OF THE CITY?

Well, for instance, in the Corporation Counsel's Office, when I entered that government agency, there were no Blacks in the office.

THIS IS GOING INTO THE 1930s NOW, RIGHT?

This is 1937. Hubert Pair, who afterwards became a Judge of the D.C. Court of Appeals, was the first one who was selected (he was selected by Richmond Keech) and I was very fond of Hubert. He is now dead unfortunately. But he was an excellent lawyer and I tried cases with him as co-counsel. And I saw a lot of him in later years. But he was the first. And that is some indication of the reach of segregation. I don't remember at that time whether there were any Blacks in the U.S. Attorney's Office. But I
remember when I was U.S. Attorney many years later, at Bill Rogers' suggestion, I tried to recruit Black lawyers and I was met with the invariable answer that you don't pay enough. The starting salary in the U.S. Attorney's Office then was $6,000 a year. And the best Blacks could get a lot more in private practice. So we didn't do very well in recruiting. I remember one interesting anecdote. Justice Harlan of the Supreme Court, whom I knew casually because we had gone to the same college, asked me if I knew a Black lawyer by the name of Bob Harlan. I did. And he said, "Our family and Bob's family have long been close and would you have a place for him in the U.S. Attorney's Office?" And I said, "I'd like very much to have him in the U.S. Attorney's Office," and I subsequently talked to him and I found that he was making about twice as much as I could pay. And he thanked me for my interest but did not join up.

WHEN YOU MENTIONED BILL ROGERS BEFORE, WAS THAT WILLIAM ROGERS, THE ATTORNEY GENERAL UNDER EISENHOWER?

Yes.

IN WHAT OTHER WAYS, GROWING UP IN WASHINGTON IN THE 1920s AND YOUR COLLEGE YEARS AND AGAIN BEFORE WE GET INTO THE 1930s AND THE START OF YOUR LEGAL CAREER, DO YOU RECALL THE SEGREGATION OF THE RACES AND THE INTERMINGLING OF BLACK AND WHITE IN THE CITY?
Well, the schools were separate. And that sort of started the pattern.

HOW ABOUT THE RESTAURANTS AND THE TROLLEYS AND THAT SORT OF THING?

Well, I remember the old station at 36th and M Streets from which the Great Falls and Old Dominion Trolleys left, and they had segregated washrooms and the Blacks going over to Virginia were supposed to seat themselves in the last three rows. Our old Black mammy, of whom we were very fond, had my brother in her arms on this occasion. He is five years younger than I, and we were going out to the country, and she didn't believe in this segregation business for she was born a slave. And the conductor came up to her (she was seated toward the front of the car in the White seats) and said, "You have to move back." And she said to him with about as indignant a tone as you can imagine (and she could be sarcastic), "You see this child, he's White. We're sitting here. You understand?" And he didn't disturb them.

WHAT WAS HER NAME, DO YOU RECALL?

Fanny Johnson. A wonderful old gal.

AND SHE WAS BORN A SLAVE?

Born a slave in Warrenton, Virginia. After the slaves were
freed, she came to Washington and worked for my grandfather. And she used to say that "your grandfather is a mighty fine gentleman, and when your father (Mr. Hermy, she called him), when he got married, I had to go along. He couldn't go running off with any strange White woman like that."

AND THEN SHE STAYED WITH YOUR FAMILY AND BASICALLY HELPED RAISE YOU?

Yes, until she died. And she had raised my father. He was born in 1867 and she was working for grandfather at that time.

WHEN DID SHE DIE?

1920.

SO YOU WERE IN HIGH SCHOOL RIGHT BEFORE THEN?

Yes.

WAS IT COMMON IN THOSE DAYS FOR THE WHITE FAMILIES OF WASHINGTON TO HAVE BLACK, NOT JUST DOMESTIC HELP, BUT LIVE-IN HELP RAISING CHILDREN?

Oh, yes. Mammy lived with us. She had her own home in Alexandria - 622 South St. Asaph Street. And I used to go over
there with her to spend weekends occasionally. That was a great lark. There was an electric trolley that ran to Alexandria. It would start at 12th and Pennsylvania Avenue and we'd go over there and spend the weekend and come back Sunday afternoon or Monday. And I remember those occasions very well.

But speaking about how close families became to their help, I remember one time a neighbor down the street from us, Tommy Craven. His father was an Admiral in the Navy, and he and I got into an uneven fight, he got the better of it. But Lilly, who was our maid at the time (Lilly was probably in her twenties), came out and she saw this uneven fight going on and she got Tommy and put him over her knee and spanked him. I don't know how old we were at the time, we were little fellows, and Tommy went bawling down the street to tell the Admiral. The Admiral came up and complained to our next door neighbor who was a Commodore in the Navy, Commodore Veeder, about this Black woman who spanked Tommy. And so the Commodore called my father and the idea was that Admiral Craven thought that father ought to fire Lilly. And father said, in his most dominant tone, "I'm going to double her wages!" It didn't hurt Lilly in father's eyes, nor in mother's eyes either, nor in mine.

SHE HAD RESCUED YOU?

She had rescued me, yes, indeed. But another neighborhood incident -- we had what was known as the "P Street Gang" and there
was this rival gang on the next street north of us called the "Church Street Gang." That was the next street over. And I suppose we were outnumbered by the Church Street Gang but we were always expecting an invasion. And on one occasion our anticipation of the invasion ripened to the point to where I took up a collection from the members of the P Street Gang (I got about 25¢). The purpose of that was to go down and get "Bootsie," who lived in an alley down the street -- in the alley between P Street and Massachusetts Avenue. And Bootsie was made a mercenary member of the P Street Gang. We thought we needed a little bit of help. So Bootsie accepted the 25¢ and he augmented our gang and he said, "Let's attack!" So we went down. The leader of the Church Street Gang was a boy named Jack Robinson. So Bootsie assumed command, which was perfectly all right with me. I was the normal leader, but I was glad to relinquish my position to Bootsie. And so he went down and banged on Robinson's gate. The Church Street Gang was in Robinson's yard. And he said, "Jack Robinson, you there?" And he said, "Come out here, I Bootsie. I joined the P Street Gang!" Well, Jack came out. And he was perfectly prepared to make peace. And Bootsie pulled out two rough-looking knives from his pocket and snapped them in the fence. And he said, "Take your pick, Jack! We gone see who the best man now!" And Jack literally turned white as a sheet. And that was the end of that. Peace was declared.

AN OUTBREAK OF PEACE!
Yes, an outbreak of peace. But we greatly admired Bootsie. He was a little bit older than we, not much bigger, but a little bit stronger and definitely more aggressive. And so whenever we needed augmentation, he would seek to find Bootsie and sign him up!

WHATEVER HAPPENED TO BOOTSIE? DO YOU KNOW?

I don't know. Those things kind of pass by.

Well, when you came back from Princeton, having obtained a fancy college degree from a fancy Ivy League college, did you immediately get into the law as many people do now? They go right to law school. Did you take some time before you got into it? Why don't you give us some background as to what was happening in 1928.

Well, one of my close friends in 1928, Chick King, had just graduated from West Point.

WHAT WAS HIS NAME?

King. His first name was Charles, but he was known as "Chick." I guess it was Chick's mother who suggested that we might drive down to Oklahoma where she knew well a Mr. Marlin, who was President of the Marlin Oil Company. And maybe we could get jobs
in the oil business. And that sounded like a pretty good idea so we went down to Oklahoma and Mr. Marlin met with us. And he said, "This is 1928, I think there's trouble brewing." And he said, "Chick, people down here are very proud of you. You are the first boy from Okemah -- that was the name of the little town in which Chick was born -- you are the first boy to graduate from West Point from Okemah. I think you ought to stay in the Army." Chick was subsequently killed in the Normandy Invasion. Mr. Marlin looked at me and said, "You got any friends down here?" And I said, "No." He said, "I think you better go back to Washington." He said, "You'll have a better time there than you will here if the Depression comes and I think it will." So Chick and I went back to Washington and he stayed in the Army. And I was looking around for something to do. And I knew Roger had gone away to Yale to enter the law school. So I went down to G.W. and inquired about getting into law school. And they were hospitable. So I joined up. Then I had to get a job.

THIS WAS NIGHT SCHOOL?

Yes, this was night school.

DID THEY HAVE A DAY PROGRAM TOO?

They did, but more students went at night than during the day. And I think we were proud of the fact that we were better
qualified. We'd all gone to college and were a little older. So that's how I got into the law. I did not want to go into real estate. And I don't think that bothered my father very much. Those things didn't bother him at all. So I went to night school and I got a job in the Capital Transit Co. No, first it was Washington Railway and Electric and that subsequently merged to form the Capital Transit.

AND WHAT DID YOU DO FOR THEM WHILE YOU WERE GOING TO LAW SCHOOL?

Well, I was in the legal department. I investigated accident cases and attempted to settle them. And I must say I was not one of their shining examples of efficiency. I was a little more interested in being a "man about town." And I would say I was more successful at that than I was as an investigator and adjustor. But I had made application for the Corporation Counsel's office, the District Attorney's office, and several firms where I had something of a contact. Nothing really developed until 1937 when I went into the Corporation Counsel's office.

I must tell you this story, however. One day I was walking down the street and I recognized my college classmate, Howie Corcoran. And Howie asked me what I was doing and I told him I was in the legal department at the transit company. He didn't think much of that. And he said, "Come on around to dinner tonight." We live up on R Street, a bunch of us that had gone to college together. And I found out subsequently that his brother Tommy and
Ben Cohen were members of the "New Deal" establishment. So I, with great anticipation, accepted the invitation and went to dinner. After dinner we gathered around the piano, Tommy at the keys, and sang. And there was a chap there who was with the S.E.C. and he said to me, "Howie's told me about you, would you like to work with the S.E.C.?
And I said, "I sure would." And he said, "Come to my office tomorrow morning at 9:00 and I'll talk to you about it." So we had a very pleasant conversation and he said, "By the way, what was the year that you and Howie graduated from Harvard?" And I said, "Howie went to Harvard Law, I went to G.W." And he wasn't quite as abrupt as this, but pretty soon he said, "So nice to have seen you, hope I see you soon." That was my career at the S.E.C.!

DO YOU REMEMBER WHO THAT WAS?

His name was Stewart Guthrie. Incidentally, some years later it was the combination of Howie and his brother Tom that catapulted me into the U.S. District Court. I had been U.S. Attorney and I was then the President of the District of Columbia Bar Association, so I had been getting along pretty well. I got a call one morning from Tommy Corcoran, whom I'd gotten to know largely because I was a friend of Howie's. And Tommy said, "Do you want to be a judge?" And I said, "Sure, who doesn't." And he said, "Well, I was at the White House last night and the President said he wanted to appoint a Republican." And I, at the time, was a Republican because I had become U.S. Attorney and that was controlled by the Republicans.
And I had been told that if I wanted to be U.S. Attorney, I'd better become a Republican. So I became a Republican, much to the consternation of regular Republicans. But, nevertheless, Tommy said, "Well, I tossed your name into the hopper and maybe something will come of it." Well, it did, and I guess it was about six weeks later I got a call to go to the White House and L.B.J. couldn't have been more hospitable. And among other things, he said, "Been reading reports on you. Your family ought to be very proud of you." And I said, "Well, thank you, Mr. President, I'll tell them." And he said, "Well, I'm going to send your name up." And he did. And I did not have the same reception that Clarence Thomas had.

THANK GOODNESS!

Thank goodness. I remember Jim Eastland and Roman Hruska were the members of the committee who conducted the hearing. And there were two people who appeared against me. But they were the kind of people who had an axe to grind but the Senators treated them courteously. But they didn't pay any attention to them. My old friend, Milton Korman, who was my colleague in the Corporation Counsel's office many years before, when he heard the quorum bell and he asked Senator Eastland if he might have a week in which to send in a note, the Senator said to him in his rather curt way, "Sir, you can have as much time as you want, but the committee has already decided to forward the name of the nominee!" So that was
how it happened. But I've jumped way ahead of myself.

THAT'S OKAY. LET'S JUST GO BACK FOR A MINUTE. YOU TOLD ME A STORY THE OTHER DAY, WHICH I THINK IS WORTH REPEATING. I DON'T KNOW IF YOU WERE IN HIGH SCHOOL OR IN COLLEGE, BUT YOU HAD AN EXPERIENCE WITH JUSTICE WENDELL STAFFORD.

Yes, I was in law school.

OKAY, YOU WERE IN LAW SCHOOL AT THE TIME AT G.W. WHY DON'T YOU SHARE THAT WITH US AGAIN?

Well, Mother and Justice Stafford were very good friends. They were both trustees of the Public Library.

JUSTICE STAFFORD WAS ON WHAT WAS THEN CALLED THE SUPREME COURT OF THE DISTRICT OF COLUMBIA?

That's right, yes, the trial court. And she said to me, "Justice Stafford lent me a book and I should return it but you'll be downtown today, why don't you return it for your old mother?" And I said, "I'd be delighted." I think we both thought that it would be nice for me to see the Justice. So I called on him. His chambers were in the old Supreme Court building.

*NOTE: AT THIS POINT IN OUR INTERVIEW, JUDGE GASCH'S
COURTROOM DEPUTY CLERK CAME IN TO TELL US THE JURY HAD RETURNED WITH A VERDICT IN A CRIMINAL CASE WHICH THE JUDGE HAD PRESIDED OVER DURING THE PAST WEEK. WE TOOK A BREAK. JUDGE GASCH TOOK THE VERDICT, WHICH WAS GUILTY, AND THEN WE RETURNED BACK TO CHAMBERS.

I arrived at Justice Stafford's chambers with the book. He was dictating, but his law clerk, whose name was Homer McCormick, greeted me. It happened that he had gone to George Washington Law School. And I was trying to get ready for my final exams and he quizzed me about who my professors were and what my concerns were. I had many. So he said, "If you'd like to come out to my house on Sunday morning, I'd be glad to go over your courses with you and maybe I can give you some suggestions." Well, that was like manna from heaven so far as I was concerned. And I went to his house which was in Takoma Park the following Sunday. I remember his saying to me with great confidence, "Law is nothing but common sense codified. If you don't know the answer, just figure out what the common sense answer is and then put it into legal language." Well, that made quite an impression on me and I followed that in my exams and I got through them. I also used that technique when I took the bar a year before my graduation. You could do that in those days. It worked then, too.

NOW, JUDGE, YOU'VE MENTIONED A COUPLE OF JUDGES WHO WERE PRESIDING IN THE CITY BACK IN THE 1920s, ONE OF THEM WAS JUDGE ROBB'S FATHER,
JUSTICE ROBB, who was on the Court of Appeals, another you just mentioned was Justice Wendell Stafford, who was on the Trial Court, the Supreme Court, to the extent that you can recall, what was Judge Robb's father like, just your impressions and recollections of him?

He had a wonderful sense of humor. He was quite a raconteur. He remembered, of course, stories about Vermont in the days when he grew up there. And he remembered also his tour of duty as Assistant Attorney General before he went on the Court of Appeals. He was a great admirer of Theodore Roosevelt, who had appointed him. He was not a great admirer of Wendell Philips Stafford, I think, largely because of the fact that Justice Stafford was not an ardent T.R. Republican, which was part of Charles Robb's makeup. It was also part of Roger's makeup.

I remember also another Justice on the Supreme Court of the District, Jennings Bailey, who had been appointed by Woodrow Wilson, I think in 1916. I tried many cases before him in subsequent years and he always impressed me as a great trial judge, largely because of the fact that he made decisions expeditiously. He didn't go in for a lot of circumlocutions and he ran a pretty tight courtroom. He was rather elderly in the days when I appeared before him as a litigator. And I remember one case in particular. It was a slip and fall on an icy sidewalk when I was in the Corporation Counsel's office and I had followed the usual party line of say, well, the Lord causes the snow to come down, you can't
get it off the streets right away, and there are thousands of miles of streets and it doesn't show negligence just to show that one fell on a snow and ice encrusted street. Well, he agreed with me and granted my motion. And I remember, he called me to the bench after he'd acted and he said, "I'm just a damned old fool." And I said, "Oh, no, judge." And he said, "Well, next winter I'll probably fall and break my hip and you'll say it's not your fault, it's God's fault!" Well, it never happened that way so I didn't have to face that prospect. But I was always happy to try a case before him.

One of his contemporaries was Judge Cox--Joe Cox. He was not as incisive as Jennings Bailey. But I got to know each of them because their sons and I had gone to school together--not that I had any back door approach as a result of that. But at least they knew who I was and, of course, I knew who they were.

JUDGE, SOME OF THE OTHER JUDGES WHOSE NAMES I KNOW FROM THE 1920s AND EARLY 1930s, LET ME JUST ASK IF YOU RECALL ANYTHING ABOUT THEM FROM YOUR EARLY DAYS OR THEY MAY HAVE PREDATED YOUR LEGAL CAREER. WAS JUSTICE WALTER MCCOY STILL AROUND WHEN YOU WERE STARTING OUT?

He was, but I never had any cases before him.

DO YOU KNOW WHAT HIS REPUTATION WAS?

I really don't.
WHAT ABOUT JUSTICE STAFFORD, WHAT WAS HE LIKE? I KNOW YOU'VE GIVEN US SOME PERSONAL ANECDOTES. WHAT WAS HE LIKE AS A JUDGE?

I've understood from Judge Robb that he was a tough sentencer. But I think the thing that stands out in my mind the most about him is that he liked to write poetry and I suppose that's how he and my mother became good friends when they both served on the Public Library board. But I remember this story about Justice Stafford. The Staffords came to dinner one night at my parents' house and mother knew that he loved good strong coffee and so she went out and told the cook that Justice Stafford was coming to dinner and she wanted the coffee pot scoured and the best coffee made that the woman could make. Mother was shocked when the cook said, "The kinda coffee I'd like to make for that old man would have arsenic in it! He sent my son to Lorton for 20 years!" Mother said she had no hesitancy about letting the cook have the day off!

HOW ABOUT JUSTICE GOULD, ASHLEY GOULD? HE WAS IN THE EARLY 1920s. DO YOU HAVE ANY RECOLLECTION OF HIM?

No, I used to hear the name mentioned, but I had no contact with Judge Ashley Gould. I remember the Justice by name only. Then there was Daniel Thew Wright. There was something untoward about his relations with the fair sex that had come to the attention of his colleagues as a result of which he decided to
resign.

I remember years afterward, when I was in the Corporation Counsel's office, prosecuting a case before the Police Trial Board. The presiding judge of that board was Inspector Maurice Collins, who had a lovely Irish brogue of which he was very proud. And it was suggested that we all go to lunch at Hall's, a seafood place in the southwest section, not far from the old 4th Precinct, where we were meeting. Defense counsel, Charlie Ford, had suggested that we go to Hall's. Inspector Collins demurred and we were naturally curious because Hall's was a good place. And he said, "Once I remember when I was a young bicycle policeman, there was quite a bit of noise from the upper stories of Hall's where people sometimes spent the night after drinking at the bar. I knocked on the door to get somebody's attention, Sunday morning, and this old gentleman came down the steps in his nightshirt. I soon recognized it was Judge Wright, Daniel Thew Wright! And before I could get out a word as to why I was there, he bellowed at me, 'Officer, don't disturb my rest and that of any other honest people sleeping upstairs!" So we accepted Inspector Collins' demurrer and we didn't go to Hall's for lunch that day.

I'VE GOT A COUPLE OF OTHER NAMES OF JUDGES FROM BACK IN THE 1920s. AND BY THE WAY, I'M LOOKING AT A BOOK THAT YOU PROBABLY HAVE SEEN A LONG TIME AGO WHICH IS CALLED "THE COURTHOUSE OF THE DISTRICT OF COLUMBIA" WHICH WAS PRINTED BACK IN 1920 WHEN THEY HAD THE CENTENNIAL ANNIVERSARY OF THE OLD COURTHOUSE ACROSS THE STREET FROM

Yes, and he was a descendant of the great English Shakespearean actress who was known as Mrs. Siddons. And I remember some of the judges referring to him as Mrs. Siddons because he had thespian inclinations, which undoubtedly ran in the family. And he was a mild-mannered, soft-spoken individual, not greatly admired by the more noisy members of the bench.

WHAT ABOUT JUSTICE WILLIAM HITZ?

Well, Billy Hitz, as he was known, had been a partner in the firm where I served between the years I was in the District Attorney's office and when I came on the bench. He was a man of great wit and a good lawyer; the two were not necessarily mutually exclusive. But one of the expressions I heard about Justice Hitz during his trial days, because he served on both courts, was in a divorce case in which it was brought out that although the parties were antagonistic in court, they still saw something of each other at night. And he coined the phrase, "I object to parties litigating by day and copulating by night!" What he did with the case is not known to me, but I would think that he probably threw it out. His two sons were in college with me--Billy and Freddie.
Hitz. Billy was in the D.A.'s office when I was there. Freddie had been, but he was no longer in the office during my tenure.

_**DID YOU KNOW THE CLERK OF THE SUPREME COURT AT THAT TIME, A JOHN YOUNG?  DID YOU EVER HEAR OF HIM OR DID HE PREDATE YOU?**_

He predated me but I understand that he was the father of John Russell Young, who was the Commissioner of the District at the time I was in the Corporation Counsel's office.

**ALSO IN THE EARLY 1920s, THERE WERE TWO U.S. ATTORNEYS. FIRST, JOHN E. LASKEY. **_**DO YOU HAVE ANY RECOLLECTIONS OF LASKEY THE SENIOR?**_

Yes, I remember Mr. Laskey well. He was an active trial lawyer when I came to the bar. Of course, I subsequently became a close friend of his son, John Laskey. I used to go down to John's place on the Bay. And he had a little boat and we'd go out fishing together. But Mr. Laskey, Sr. was one of the outstanding trial lawyers at the bar in the teens and twenties.

**NOW, HE WAS SUCCEEDED BY MAJOR PEYTON GORDON. **_**WHAT CAN YOU TELL US ABOUT MAJOR GORDON, WHO SERVED AS A U.S. ATTORNEY IN THE 1920s?**_

Well, I didn't know him as a U.S. Attorney. I subsequently knew him when he was a judge on the Supreme Court of the District.
He was tall, heavyset, rough and so far as young lawyers were concerned, they much preferred to be in some other court.

IN THE COURT OF APPEALS YOU'VE ALREADY RECOLLECTED JUSTICE ROBB, JUDGE ROGER ROBB'S FATHER. THERE WERE TWO OTHER JUDGES BACK IN THE 1920s WHO WERE ON, AT THAT TIME IT WAS A THREE-JUDGE COURT, I BELIEVE. THERE WAS A JOSIAH VAN ORSDEL. DO YOU RECOLLECT HIM?

Yes, I remember him. He was appointed about the same time as Judge Robb, maybe a little later and they served on the court for over 30 years. He was a big heavyset individual. He always appeared very kindly to me. But I understand he was a difficult person to argue a case in front of. I never had a case in his court.

I ALSO UNDERSTAND THAT JUDGE HITZ SUBSEQUENTLY WENT UP TO THE COURT OF APPEALS. IS THAT RIGHT?

That's right, yes.

AND DO YOU RECALL WHAT HIS REPUTATION WAS LIKE UP IN THE COURT OF APPEALS AS IT WAS CONSTITUTED THEN? THIS WAS IN THE EARLY AND MID-1930s?

I would say that he was well liked. He was an outgoing individual with a great fund of stories. Of course, I know this
primarily from what I've heard from others. I did not know Judge Hitz personally.


Not really. I met him first when he was appointed to the Supreme Court of the District. My recollection is that he was appointed Chief Judge. You see, the law in those days was unlike our present law where the senior judge usually becomes the chief judge if he is not too elderly. I think he has to be less than 65. But I think Bo Laws was appointed Chief Judge as the President could do in those days. But he was very outspoken, very friendly and extremely well liked by the bar. I tried cases before him and it was always a pleasure because he helped you over the rough spots. He didn't try to embarrass you as some of his colleagues did and lawyers generally liked to be before Bo Laws. Of course, there were exceptions, but there were few.

YOU DISCUSSED EARLIER HOW BACK IN 1928 AND 1929 YOU ENTERED THE NIGHT PROGRAM AT GEORGE WASHINGTON LAW SCHOOL AND WORKED DURING THE
DAY AT WHAT WAS THEN THE WASHINGTON ELECTRIC RAILROAD COMPANY AND LATER BECAME THE CAPITAL TRANSIT COMPANY, CORRECT?

That's right.

NOW, THAT WAS BASICALLY THE PREDECESSOR OF METRO AS WE KNOW IT TODAY IN MANY WAYS. WHAT DO YOU RECALL ABOUT GOING TO LAW SCHOOL AT NIGHT HERE IN THE CITY? WERE YOU ABLE IN ANY WAY TO COMBINE YOUR LAW EDUCATION AT THE SCHOOL WITH ANY EXPERIENCE AT THE COURTHOUSE?

Yes, Judge Charles Robb had often said to me with that wonderful way he had of presenting an idea, "You know where most of the witnesses are located?" And I said, "No, judge." And he said, "They are in court. Just take off an hour whenever you can and go in and watch a case being tried." And that seemed like a real good idea to me. I used to do that regularly in the Supreme Court of the District. I used to go to the Court of Appeals, and I occasionally went up to the U.S. Supreme Court to hear a case argued. And I would say that that was the best piece of advice I ever got. And I did that just because of that sly remark he made, "Do you know where most of the witnesses are located?" And he was right, they were right there waiting to testify. But that isn't what he meant.

WAS LAW SCHOOL EDUCATION DIFFERENT BACK IN THE LATE 1920S AND EARLY
1930s FROM WHAT IT IS TODAY?

Well, I'm sure it is. The competition is stiffer today, I'm sure. And judging by the education that most of my 50 or more law clerks have received, I think the education is better. The most extraordinary thing that has happened is the computer. If one knows how to operate a computer, one can very quickly have access to the leading cases in the matter under consideration. Of course, in my day you had to know how to handle the indices and it just required hours and hours of concentrated work. You asked about working during the day and going to law school from 5:00 to 7:00. There is no doubt about the fact that it takes a lot out of you. And I used to try to get to law school half an hour before my first class at 5:00 and take a nap in my car before going into class. And I found that when I could do that, I got a lot more out of the class than if I went in and tried to fight sleep.

YOU MENTIONED EARLIER THAT YOU TOOK THE BAR EXAM FOR THE DISTRICT OF COLUMBIA BAR A YEAR BEFORE YOU GRADUATED FROM G.W. LAW SCHOOL. WHAT CAN YOU TELL US ABOUT THAT LITTLE STORY?

Well, I had a classmate by the name of Joe Bulman, who subsequently became an outstanding tort lawyer. It cost $25.00 to take the bar in those days. So Joe went around and he picked five guys in our class and he said, "I bet you could pass the bar." We all had another year to go. So it was an alluring prospect to take
the bar under those circumstances. And we all passed, and Joe made his $25.00 so he got the bar free. That's how I happened to take it. I took a review course for five nights from a Mr. Smith and it was sure money well spent. I've forgotten what the review course price was, but he hit the constitutional law problems head on by anticipating several recent Supreme Court cases that would be the subject of the examination. The most difficult exam, as I remember it, was the criminal law exam because it was based upon sections of the Code which I had to study. These were not covered in law school or in the preparation for the bar. So I was relegated to the common sense approach which doesn't always cover the criminal law. But I got through. It took three days. The exam took three days in those days.

WAS IT ALL ESSAY?

Yes, no true or false. The thing that I remember most about the fourth year was that I was a member of the Bar and few of my professors were. Every now and then I would allude to that. I don't think it added to my standing, but I got quite a kick out of it. But you learn a lot by doing. And that leads me to a revelation of a secret. Somebody who had the responsibility of assigning criminal cases got the idea that recent admissions to the Bar should be assigned to criminal cases. And I got a case in which a man was charged with robbery. I was still going to law school though three of us who had passed the Bar had organized a
firm and one unemployed member was doing most of the office work. The other one was Paul Hannah, who afterwards became General Counsel of Raytheon. Paul and I took a few cases. In this single case that was assigned to me, I interviewed the man at the district jail. That's the old jail. And he told me about the case. And I was trying to figure out what defense we could conjure up and the next thing I heard was that he had pleaded guilty without my presence. Well, fortunately, two things have happened since then. No neophyte like I was then would have been assigned to such a case under present standards. And secondly, the man would not have pled guilty without his lawyer being present. The plea would not have been accepted. Those are changes all for the good.

NOW, WHEN YOU GOT OUT OF G.W. LAW SCHOOL YOU, OF COURSE, WERE ALREADY A MEMBER OF THE BAR. THAT WOULD HAVE BEEN IN THE SPRING OF 1932?

That's right.

WAS THE COUNTRY AND THE CITY OF WASHINGTON THEN WRAPPED UP IN THE MIDDLE OF THE GREAT DEPRESSION?

It sure was.

WHAT WAS IT LIKE GETTING OUT OF SCHOOL IN 1932 WITH THE GREAT DEPRESSION STARING EVERYONE IN THE FACE, PARTICULARLY LAW SCHOOL
Well, at first I thought that I'm a member of the Bar and have lived here all my life, I ought to be able to get a good job in a law firm or in the government. And the trouble was that the Depression prevented the hiring of people unless they were pretty lucky or better than I was. So I tried to get various jobs and didn't succeed. I remember applying to the District Attorney's office and the Corporation Counsel's office and other places like that. And there just was no opportunity. Subsequently, I decided that I was leaving the legal department of the transit company and taking my chances. So I gave them 30 days' notice.

AND THIS WAS HOW SOON AFTER YOUR GRADUATION, WOULD YOU SAY?

About four years afterwards.

YOU'D BEEN WITH THE TRANSIT COMPANY IN THEIR IN-HOUSE LEGAL DEPARTMENT FOR FOUR YEARS?

Oh, I'd been there longer than that because I was there all the time I was in law school.

SO THIS WAS FOUR YEARS AFTER GRADUATION?

Yes. But in any event, I got a call from Elwood Seal. He was
then Corporation Counsel and he said, "Ray Sparks has resigned; he is going to work for Barrett Prettyman in his private law firm." And he said, "Come down and see me in the next two weeks. I'd like to talk to you." I said, "Mr. Seal, I'll be there in 20 minutes." And I was, and we seemed to be getting along pretty well until he said, "I'd like to hire you but you've got to get political clearance." Well, I didn't know what political clearance meant. And so I said, "What's that?" "Boy," he said, "you've got to get some senator or congressman to vouch for you and ask that I appoint you." Well, that seemed pretty nearly an insurmountable obstacle as far as I was concerned. I didn't know any senators or congressmen. And I doubted whether my father did. So Seal then said, "Well, your father drinks liquor with Rixey Smith, why don't you speak to Rixey?" Well, I knew who Rixey Smith was. He was Senator Carter Glass' Administrative Assistant.

WHERE WAS SENATOR GLASS FROM?

Virginia. So, far be it from me to tell Mr. Seal he didn't know what he was talking about. So I said, "Okay, I'll go down to see Mr. Smith." So I went down and there must have been some communication between Seal and Smith because when I got there, Smith was all smiles and he said, "What can I do for you?" Well, I told him and he said, "Okay, I'll take care of it." Well, there again it was shrouded in mystery so far as I was concerned. He called in his secretary and started dictating this letter which
sounded like it was Senator Glass talking, not Mr. Smith. So when he finished, I said, "Well, the Senator can't sign that, he's never met me." And he said, "Don't worry." So when the secretary produced this freshly typed laudatory letter, he took his pen and signed Carter Glass. So I thanked him and took it back to Seal. Seal looked at it and said, "He signs it just like the Senator, doesn't he!" And I affirmed that that was correct.

But it was a happy experience going into the Corporation Counsel's office. It was everything that the legal department of the Capital Transit had not been. Over there the greatest achievement that I ever had was to carry Nubby Jones' briefcase into court.

WHO WAS NUBBY JONES?

TAPE 2

Nubby Jones was the leading trial man for Hogan and Hartson, which firm handled the litigation for the Transit Company. And he was a fine trial man. Nubby was tall and handsome with a nice sense of humor, which he never overdid. And I think it's fair to say that he won a lot of cases that he probably should not have prevailed in simply because the jury liked him.

At this point I would like to interject this remark about his senior partner, Frank Hogan, who was a nationally known trial man who defended Doheny in the Fall and Doheny cases involving the
Teapot Dome scandal. Secretary Fall was the Secretary of the Interior and he had been convicted of accepting a bribe insofar as leases of the Naval oil reserves were concerned. And Doheny was the one who was accused of bribing him. And so when Mr. Hogan was retained to represent Mr. Doheny, the chances were that Doheny would be convicted since Fall had already been convicted of receiving the bribe. So Frank Hogan's work was cut out for him. But he prevailed. And the story is that he received a check for $1 million for his successful defense. And with respect to the impression that one makes on a jury, I remember, years after this supreme triumph of Frank Hogan's, I met and worked with the gentleman who had been his investigator during the period of the Doheny defense. His name was Martin. We called him Pop Martin. He was rather elderly. And he and I both worked in the legal department of the transit company. And he loved to tell how he investigated cases for Frank Hogan. He said that Mr. Hogan wanted to know everything about the jurors, what their sports were, what their religion was, where they worked, what their hobbies were. And he had a way, according to Pop, of standing in front of a juror when he was making a point and he could address that particular juror as if he was the only man in the box. Of course, that takes a little doing. But Frank Hogan had apparently achieved the ability to do that. At least that was what Pop Martin thought. And, of course, the ammunition he had was the investigation that Mr. Martin had made of each individual juror so that that individual could be or think he was very close to Mr. Hogan because
of Hogan's intimate knowledge of his background. Well, perhaps that's why he won the case, I don't know. But Nubby Jones was in the mold of Frank Hogan in whose firm he was a partner. And I'm sure he didn't have the resources at his command that Frank Hogan did, particularly in the *Doheny* case. But he at least knew how to appeal to a juror.

JUDGE, YOU'VE MENTIONED A COUPLE OF THE BETTER KNOWN AND BETTER RESPECTED PRACTITIONERS IN THE CITY BACK IN THOSE DAYS--FRANK HOGAN, WHO OF COURSE FOUNDED HOGAN AND HARTSON, AND MR. HARTSON YOU'VE ALSO MENTIONED, AND NUBBY JONES, WHO WAS ONE OF THEIR PARTNERS AND REPRESENTED THE TRANSIT COMPANY. BACK IN THE LATE 1920s AND EARLY 1930s, WHO WERE SOME OF THE OTHER LEADING PRACTITIONERS HERE AT THE COURTHOUSE OR THE OLD COURTHOUSE, I SHOULD SAY?

Well, I remember Dave Pine, who subsequently became U.S. Attorney, and his partner, Francis Hill. They were quite different. Dave was inclined to be somewhat brusque as a practitioner, district attorney and judge. Francis Hill, on the other hand, was the debonair southern gentleman. I remember being so much impressed by Francis Hill's manner that when I sought to get a job in his private firm after graduating from law school, I went to Francis Hill, whom I knew slightly, and his offer went something like this: "Yes, Oliver, you can hang your hat in our library, and we will give you half of what you bring in." I wasn't
sure I could bring in anything. Half of zero is zero! But I remember many years later, when I was in the Corporation Counsel's office, Dave Pine, who was close to Elwood Seal, offered to trade one of his assistants for me. Seal wouldn't buy it.

WHAT ABOUT WILTON LAMBERT?

Well, I knew Mr. Lambert's son Arthur, who died recently, very well. He was a few years ahead of me at Princeton and Arthur's favorite professor, Walter Phelps Hall, was also my favorite professor. And so in one of Walter Hall's preceptorials, he asked me if I knew Arthur Lambert. Fortunately I did, but when Arthur learned that we both were close to Walter Hall, he and I became very close friends and that friendship lasted as long as he lived. I really did not know his father, Wilton Lambert. But I remember seeing Mrs. Eleanor Roosevelt come out of what was then Convention Hall on the arm of Mr. Lambert at the first inaugural ball of F.D.R. And that indicated to me that Mr. Lambert must really have been somebody.

HOW ABOUT A MR. FRED MCKENNEY?

Well, I knew Mr. McKenney and his partner, Mr. Flannery, very well. They were family friends, particularly, John Spaulding Flannery. They had a practice that was focused on Supreme Court litigation. They were both close to the justices and they argued
many cases up there. I heard that, when I was with their firm, they represented the estates of more Supreme Court Justices than any other lawyers in the country. And that's a pretty good indication as to how they stood with the Supreme Court. I remember visiting the Flannery family up on Martha's Vineyard, and Mr. Flannery's asking me if I liked rum. I told him I did. I didn't like it as well as some other things but, nevertheless, he said, "Jamaica rum is the best of all, but if you mix it with a little White Grape Juice, Island Queen Grape Juice, you've got a good drink. Now when the girls drink with me, it's two parts of grape juice and one part of Jamaica rum. But when you drink with me, it's 50 - 50." He was a great friend. He was a great friend of my father's. And I was delighted when, after I left the U.S. Attorney's office, I was given the opportunity of going with that fine old firm, though it was in those days known as Craighill, Aiello, Gasch and Craighill.

WHAT ABOUT JUDGE COVINGTON, WHO, OF COURSE, FOUNDED COVINGTON & BURLING?

He was Chief Justice of the Supreme Court of the District, and I would say very highly regarded both as a jurist and as a lawyer. Mr. Burling, I did know somewhat because he had a place out in Fairfax County about two miles down the road from our place. Eddie Burling, his son, was a friend of mine. And on occasion we used to play softball at the Burling place. I never knew his father
very well. The story is that he preferred Harvard and Yale graduates to those who had taken their law at Georgetown or George Washington, though a few of the partners were from George Washington.

WHAT ABOUT - THERE WAS A CRIMINAL DEFENSE LAWYER BY THE NAME OF JAMES O’SHEA?

I remember him well.

HE WAS KNOWN AS A FIFTH STREETER. CAN YOU TELL US WHAT THE TERM FIFTH STREETER WAS AND THEN A LITTLE ABOUT MR. O’SHEA?

Jimmy O'Shea was a professional criminal defense lawyer, that is to say, he expected to be paid for his services. In those days, we did not have the Criminal Justice Act and the court could not compensate appointed counsel. But as a civic duty the court impressed upon some uptown lawyers that it was their responsibility to serve without a fee, and some of them did. I'm sure that Jimmy O'Shea, who was known as a "Fifth Streeter," presented a more effective defense than some of the uptown volunteers. Charlie Ford was another one who was known as a Fifth Streeter. They were both top-notch trial lawyers. I got to know them when we were opponents before the Police Trial Board. They represented many police officers. I always questioned whether the connection that these two lawyers made with the police was a good one. But,
nevertheless, that was the way it was. I'm sure they knew more about the case because of that than many of the prosecutors did.

GIVEN THE TIMES, THE LATE 1920s AND EARLY 1930s, WERE THERE ANY WOMEN ATTORNEYS THAT YOU CAN RECALL WHO PRACTICED AT THAT TIME, AT THE VERY BEGINNING OF YOUR CAREER?

I'm sure there were women lawyers at the Bar. And I remember one in the D.A.'s office by the name of Grace Styles. But there were very few.

HOW ABOUT BLACK LAWYERS BACK IN THE LATE 1920s AND EARLY 1930s?

I do remember one particularly. His name was Charles Houston, Sr.

WAS THE HOUSTON FIRM FOUNDED BACK THEN?

Yes. Mr. Houston, Sr., who was the father of Charlie Houston, Jr., was active in practice in those days. And I remember he used to bring a bundle of cases over to the Transit Company and he and Mr. Keyser, who was the head of the legal department, would sit down and have a little session in which the cases would be settled. I'm sure each of them thought he'd done well by his clients. But Charlie Houston, who was also on the scene in those days and who sometimes came over with his father, was really an extraordinary
lawyer. He did a lot of civil rights work. Incidentally, the Houston firm was founded 100 years ago and nine partners of that firm over the years have become judges.

WHAT DID YOU MEAN BY CIVIL RIGHTS WORK IN THE LATE 1920s AND EARLY 1930s GIVEN THAT THE SUPREME COURT AND THE CONGRESS HAD MADE PRETTY CLEAR THAT SEGREGATION WAS THE RULE AND PLESSY V. FERGUSON WAS THE LAW? WHAT KIND OF CIVIL RIGHTS CASES COULD BE BROUGHT?

He brought them. He didn't win many of them at the outset, but he was in on Brown v. Board of Education. And I do recall this experience with him at the time of the Marian Anderson incident when I was in the Corporation Counsel's office.

THIS IS IN THE 1940s OR LATE 1930s?

It was the late 1930s. And the NAACP was very much interested in picketing Constitution Hall during the time of the DAR Convention. And I was representing the city in this conference and he was representing the NAACP. And I remember taking the position that if one of these elderly ladies fell as a result of what she considered being blocked out of Constitution Hall that the results might be something they didn't want to experience. They had won. They had prevailed on Secretary Ickes to allow Miss Anderson to sing at the Lincoln Memorial. That was a much greater audience than she would have had at Constitution Hall. And to my
surprise he agreed. So there was no picketing. I always thought that was a good example of the breadth of his thinking - the practical nature of his thinking. He was a fine man and a fine lawyer. He died much too young, I would say, probably in his 50s.

JUST A FEW OTHER THINGS ABOUT THE LATE 1920s AND EARLY 1930s AND THEN WE'LL FINISH TODAY'S SESSION. FIRST, YOU'VE MENTIONED THE TEAPOT DOME FALL CASE, WERE THERE ANY OTHER CASES FROM THE 1920s THAT YOU RECALL? THE KNICKERBOCKER DISASTER? THE WAN CASE, THAT SORT OF THING?

Yes, I remember both of those cases, but largely through reading about them in the paper. The Wan case, of course, received wide publicity. And the conclusion of people with whom my parents associated was that Wan was probably guilty. They knew George Vass of Riggs Bank, who was a witness in the case. And that was a case in which confessions were a major part of the government's evidence. And the confessions were thrown out. Of course, I remember the famous Mallory case when I was D.A. in which the Supreme Court said that the statement Mallory is alleged to have made was inadmissible because he had not been taken before a magistrate without unnecessary delay in violation of Rule 5(a), Federal Rules of Criminal Procedure.

WAS JUDGE BRYANT THE DEFENSE LAWYER ON THAT CASE?
He became the defense lawyer, yes. He argued the case in the Supreme Court.

WHAT ABOUT THE KNICKERBOCKER DISASTER?

I remember that well because on the block in which I lived, that snowstorm was quite extraordinary as it was all over town, and a group of youngsters were going up to the Knickerbocker. It was only about ten blocks up the street. It didn't seem far at that age. It seemed pretty much like a lark, to tramp through the snow which was very deep! I think it was about 17 inches. But my parents - God bless them - said, "No, you stay home!" Now, the Nesbits, who lived right across the street, went and they were in the theater when the roof caved in. Another friend of mine, David Lindsay, was killed. About 100 people were killed. The Nesbits survived with fractures but I remember that case well because Mr. Reginald Gear, the architect who designed the Knickerbocker, was an acquaintance of my father. And father was always inclined to blurt out what was on his mind. He said that he didn't think much of Mr. Gear's design and that there's too much hollow tile construction in the Knickerbocker and that somebody ought to go to jail. I don't think anybody went to jail. And I doubt whether there were any substantial recoveries. I know there were some lawsuits. But, of course, in today's climate, with a man like Jack Olender, there would have been tremendous recoveries.
I'M SURE HE'D BE HAPPY TO HEAR THAT.

It's the truth. That's the kind of case you couldn't lose.

THAT COMPLETED THE FIRST SESSION.
JUDGE GASCH, I HOPE YOU HAD A PLEASANT WEEKEND?

Yes, I did.

AND JUDGE GASCH WAS JUST REPORTING ON THE BAR BANQUET FROM THE OTHER NIGHT WHICH UNFORTUNATELY I COULD NOT ATTEND BECAUSE OF ILLNESSES OF SOME OF MY CHILDREN. AND HE HAS SOME VERY NICE THOUGHTS TO REPORT ABOUT SOLICITOR GENERAL STARR WHO GAVE A TRIBUTE TO JUSTICE BRENNAN. AND AS YOU MAY RECALL, JUDGE GASCH, WE ENDED OUR LAST SESSION ROUGHLY IN THE 1937 TIME FRAME AND YOU HAD JUST RECEIVED THE COVETED POLITICAL ENDORSEMENT FROM A SENATOR THAT YOU SAID WAS NECESSARY TO OPEN THE DOOR TO GET APPOINTMENT AS AN ASSISTANT CORPORATION COUNSEL. AND YOU HAD RELATED THAT STORY. AND I TAKE IT YOU THEN JOINED THE STAFF IN 1937 OF THE CORPORATION COUNSEL, CORRECT?

First of July, 1937. I remember I was dispatched to what we called the Police Court. It was located in a dingy building where the Recorder of Deeds is now located. There were four of us, John O'Dea, Milton Korman came along a few months later, George Neilson and myself. Most of the cases we had were traffic cases. The exception rather than the rule was the jury cases we tried, driving
while drunk, reckless driving, leaving after colliding, those cases. We also had cases involving street walkers. I don't know why the Corporation Counsel had them, but we did. I remember one that I tried against Denny Hughes, who was a Fifth Street lawyer of considerable reputation and ability. This particular case involved a lady who had a highly painted face. We recessed for lunch about 12:30 and Judge Hitt warned everybody to be back promptly at 1:30. And Denny was there, but his client was late. And Judge Hitt fulminated about that. Then George Neilson walked in; he was a spectator. And he had with him a young lady whose face was somewhat disguised by cosmetics. Judge Hitt, who didn't see too well, immediately thought that this person was the missing defendant, so he bawled out, "We've been waiting for you, young lady, come up here!" and so forth. Well, George Neilson rushed ahead of her and said, "Your Honor, this is Senator King's granddaughter, she's just visiting the court." Poor Hitt, who wished to be reappointed, said, "Oh, yes, my dear, come up and sit alongside the court." It was a quick reversal from his rage over the fact that the defendant had not shown up. She came in a little later, and I've forgotten what happened to the case. My recollection of those years is somewhat dim. But I do remember the incident involving the granddaughter of Senator King, who was Chairman of the Senate District Committee.

We had other cases down there that do stand out. There was a case of a congressman who was charged with leaving after colliding. He was accompanied by a lady not his wife. I was told
to try the case. And, of course, I wanted to make an impression and I pushed the case until finally, there was always an excuse - the congressman couldn't show this day or that day. Finally, I heard that the case had been dismissed by one of the judges who apparently had good reason for doing what he did but it never was made known to me.

I remember another case that I tried against George E.C. Hayes. George was General Counsel of Howard University and an outstanding lawyer. This was a strange kind of a case. It involved white liquor sold up an alley. They hadn't paid any taxes on it. Why the Corporation Counsel had jurisdiction to prosecute this case, I never knew. But, nevertheless, I tried it and I thought I had made a pretty good showing before the jury, but the jury came in with a verdict for the defendant. And I was quite disappointed at having lost the case, but my self-respect was reborn when I heard the foreperson of the jury go up to the defendant and say, "Don't you sell no more of that liquor up that alley." George Hayes had overheard the remark, too, and he shook his head, but that remark did somewhat restore my self-confidence.

I was there about 11 months and then Elwood Seal called me up to the main office to start work in the trial of damage cases. There were many of them. They were mostly cases involving falls on defective sidewalks which the Chief Trial Counsel, Chester Gray, referred to as "departures from perfection." Sometimes the departures from perfection were quite noticeable, but, nevertheless, that was always Chester's expression.
I remember one of those cases in particular in which Judge Youngdahl was the trial judge. I guess I'm getting ahead of my story because, yes, that was in that period.

**THIS WAS WHEN IT WAS STILL THE SUPREME COURT OF THE DISTRICT OF COLUMBIA?**

That's right. In any event, Dorsey Offutt represented the plaintiff and we went before Judge Youngdahl for trial and in accordance with his usual practice, he called each counsel in and gave them a fight talk about why the case ought to be settled. He inquired of me what my authorization for settlement was and I gave him in general terms what it was. And then he called in Dorsey and asked him the same question. Then completely without counsel he called in the plaintiff and gave her a fight talk. Then he called in both counsel and said, "Now this case can be settled for X dollars." And he pointed his finger at me and said, "You'll pay that." And fortunately it was within my authorization, so I said, "Yes." And then he said to Dorsey, "You'll take it?" And Dorsey was quite unhappy with that. He said, "No, the case is worth much more than that." And the judge said, "She'll take that and so you'll take it." Well, that was the rubber hose technique in those days. And finally Dorsey agreed. And then the trouble was the little old lady up at the office who had the job of sending out the checks. She was always instructed to put the lawyer's name and the plaintiff's in the spot for the recipient of the check. That was
one of the ways of insuring that the lawyer would get his fee. But she forgot to put Dorsey's name there. She sent the check to the plaintiff. So, as might be expected, the plaintiff endorsed the check, cashed it and Dorsey was like a wounded stag. He screamed that he hadn't gotten his money. And Youngdahl said to him after a conference, "Well, Mr. Offutt, I'm sure Mrs. whatever her name was will pay you your fee." He said, "I'm not so sure of that, Your Honor." And then he said, "Ms. So and So, you owe Mr. Offutt for his services, now you must pay him." And she said, "Well, I've spent the money, Your Honor." And then he said, "Well, how much can you pay?" And she said, "Well, I can pay him $5.00 a month." So he said, "Mr. Offutt, that's a very reasonable settlement, you'll take that." Offutt never agreed. I remember that case because of Offutt's activities. He had many cases against the city. I tried a few of them. My colleagues tried a few of them.

I remember some that I lost. There was the Estelle Smith case. She fell on snow and ice in front of the Tower Building located at the corner of 14th and K Streets. I remember interposing the defense that the city couldn't be expected to clean all the hundreds of miles of sidewalks and highways right after the snow fell. And the trial judge and jury accepted that defense, but the Court of Appeals, through Judge Prettyman, set aside the verdict. I found out afterwards that my friend Joe Ryan, now a Judge of the Superior Court, at the time of his service as a law clerk, had dug up all those authorities for Barrett Prettyman as a result of which we lost the case and it had to be settled after
Another case I remember was the Gertrude Lyons case. And I tried that before Judge Tamm.

WAS THIS BEFORE OR AFTER THE WAR OR CAN YOU RECALL?

I'm really not sure. Those things have a way of merging, but it was probably after the war. In any event, I defended the case on the basis of the choice of ways doctrine. Mrs. Lyons was on her way to a medical appointment, she said. The sun warmed that section of the street in such a way that had she taken one path it would have been free and clear of snow and ice, but she took the path that had not been warmed by the sun and she slipped and fell. And I was explaining to my wife, who is also a musician, how I had established a defense that the jury and Judge Tamm accepted and my wife said, "What is the name of that lady?" And I said, "Gertrude Lyons." And she said, "Oh, she's a friend of mine. She's a pianist. I've known her for years." So that was one that you might say was controversial in our home. But Judge Fahy wrote the opinion in the Court of Appeals reversing the choice of ways defense that I had interposed and said that it didn't make any difference whether or not there was a path that was safer because of the action of the sun, the city had the obligation to clear the streets. Well, I was never satisfied with the result that we got in the Court of Appeals. But it didn't make any difference. Gertrude Lyons got her recovery.
Another case I remember, and always will remember, was one that I tried sometime before the war. I left the office in May of 1942 for duty in the Army. It involved a lady who had been selected by the Commissioners to head the facility that dealt with delinquent girls. It was called the National Training School. And she was a very forward thinking person and thought they would be much more impressed by having tea at the White House than being examined for venereal disease. And since Dr. Carey Weaver Smith was a friend of Mrs. Roosevelt, the tea was arranged and they all went there. Well, the newspapers hit upon that as an example of the Commissioners' lack of diligence in the selection of Dr. Smith. The Commissioners told me to draw up charges against Dr. Smith, not charging that she took the girls to tea at the White House, but charging that she was delinquent in performing her duties. So I had to present the evidence. The hearing was held before the three Commissioners. And as I recall, it took several days to present the evidence. And I didn't know until later that Mrs. Roosevelt had directed one of the President's Special Assistants, Jim Rowe, to attend the hearings and report to her whether Dr. Smith got a fair hearing. Well, Jim, whom I knew in later years, as the partner of Tommy Corcoran, told me that he reported to Mrs. Roosevelt that her friend had gotten a fair hearing. I would say he was probably accurate in that evaluation because we did present the evidence. And the evidence was not very favorable to Dr. Smith.

There was a chap who remains in my memory as one of the most
memorable witnesses that I have ever called. He was an Alaskan Eskimo by the name of Nikolai Ashtashkin. He claimed to have been the skipper of a Russian submarine operating in North Pacific waters during World War I. And Ashtashkin had the job of finding these delinquent girls who had escaped from the Training School. And I said to him, "Were you armed when you went back in these obscure places to look for these girls?" And he said, "No, but I took a Coca-Cola bottle or two with me and when I found them I just broke off the neck of the bottle and the rest of the bottle was pretty jagged and showed it to them and they usually came along with me." At least he had an imaginative technique that seemed to work. I lost sight of Ashtashkin for a while and then some months later an old friend of the family told me that she was looking for a chauffeur. She would like a chauffeur that had a lot of stories to tell. And I immediately thought of Ashtashkin and I asked him if he would like to be a chauffeur for my friend and he said he would. Later she wrote me from the Villa Marguerita in Charleston where she went for the winter, Mr. Ashtashkin having driven her down there. Everything seemed to be going quite well until he became acquainted with the general who was the Superintendent of the Citadel Military Academy. And on one occasion he had presented the flag of Alaska to the Citadel. Among other things, he indicated that during World War I he commanded a Russian submarine in Alaskan waters. The Commandant had given him a full military review by the cadets and he made a speech during the course of which he had indicated he was spending the winter in Charleston
with his friend at the Villa Marguerita where Mrs. Johnston was staying. Mrs. Johnston was somewhat upset by the newspaper story about the gentleman who was spending the winter with her at the Villa Marguerita. I never found out what happened. But I rather doubt whether Mr. Ashtashkin remained in her employ.

I rather liked the work I did in the Corporation Counsel's office though there was a lot of sameness to it. I remember the Thompson's Restaurant case which broke down the barrier that had existed whereby Blacks were not served in restaurants like Thompson's, although there was certainly nothing exclusive about Thompson's Restaurant. I think it was the Supreme Court that made that ruling. I did not handle the case. It was handled by Chester Gray.

We had many discrimination cases in which members of various city departments, particularly the fire department, had claimed that they were denied promotions because of their race. Also, the school board had many of those cases. Bolling v. Sharpe was the local case that came to the Supreme Court at about the same time as Brown v. Board of Education. Milton Korman handled Bolling v. Sharpe and though he did a very fine job under difficult circumstances, it always seemed to plague him in his effort to become the Corporation Counsel after Chester Gray retired. That was an unfortunate circumstance so far as Milton was concerned.

That was about the time that I was selected by Leo Rover to be his First Assistant when he came in as United States Attorney upon the election of Dwight Eisenhower. Leo never asked me what
my politics were and I think, had that question been put, I would have to say, as I said in my 25th yearbook (the 25th anniversary of my graduation from college), that I was an unchanged Democrat. But he didn't ask the question, so I became his First Assistant and shifted over from the trial of municipal law cases to matters concerning the U.S. Attorney's office, which were much more interesting, I felt. My responsibility in that office was the appellate and the civil divisions.

JUDGE, WHILE YOU WERE IN THE CORPORATION COUNSEL'S OFFICE, BOTH BEFORE AND AFTER THE WAR, WHAT WERE THE RELATIONS LIKE BETWEEN THE CORPORATION COUNSEL'S MEMBERS AND THOSE IN THE U.S. ATTORNEY'S OFFICE?

I would say the relations were very good. Several of my close friends told me I was making a mistake by transferring to the U.S. Attorney's office, which they described as a political office. The Corporation Counsel's office was non-political. Of course, Elwood Seal required political clearance when I entered the Corporation Counsel's office. And Leo Rover never even asked the question whether I was a Republican or a Democrat. Now, as far as I knew, both during Leo's tour of duty and mine, neither Herb Brownell nor Bill Rogers ever asked that question. Once Bill said to me, "Just be sure that the man you recommend for appointment is the best qualified man available." He said, "I don't care if he's a Republican or a Democrat." I always thought that attitude was
preferable. I do remember this somewhat amusing story about the time that Leo was nominated by the President to be the Chief Judge of the D.C. Court of Appeals. He called me in and said he was going to accept the appointment and he asked me if I would answer a personal question. And I said, "Sure." And he said, "I'm thinking about recommending you to succeed me, but I want to know whether you've joined the Catholic Church." Well, I knew that Leo's son was a priest and that he was a very devout Catholic. I think his sister was a nun, although I'm not sure of that. So I figured, well, I got close but not close enough. So I said, "No, I'm still an Episcopalian." He said, "Fine, I'll recommend you." So I said, "May I ask you why you asked me that question in the first place?" He said, "Well, if an Irishman who is a Catholic appoints somebody named Sullivan or Murphy or O'Donald, everybody's going to say look what those Irish Catholics are doing to us and they'd be all up in arms. But, if a Dutchman named Gasch, who is a Protestant, makes the same appointments, nobody gives a damn." So I thought that was a pretty good explanation. And I remember many of the people I recommended to Bill Rogers were Irish Catholics. But that was not the reason I recommended them. They were just good trial lawyers. Many of them had gone to Georgetown, which seemed to turn out good trial lawyers.

YOU MENTIONED A MINUTE AGO THE COMMISSIONER SYSTEM IN THE DISTRICT OF COLUMBIA, WHICH, OF COURSE, WAS THE PREDECESSOR OF THE CURRENT HOME RULE SET UP, WHAT WAS IT LIKE, PARTICULARLY DURING YOUR
Corporation Counsel Years Before and After the War, with the Commissioners? They Really Ran the City, Didn't They?

They ran the city and we had an excellent government without a hint of fraud or dishonesty. Engineering services were administered by a Corps of Engineers Army Officer who was well qualified on the subject of government contracts and they were top-notch. There were people like General Dan Sultan, General Gordon Young, and General Lewis Prentiss. You just wouldn't get people like that in any municipal government. And the reason you got them here was that the President made the appointments. And if he named a senior officer in the Corps of Engineers, that senior officer couldn't turn him down. So those services, which are usually the subject of most of the charges of fraud in the city government, were never tainted by any implications of dishonesty in those days. We had some other top-notch people who served as civilian commissioners. I remember, of course, Melvin Hazen, who was Chairman of the Board of Commissioners when I went with the city government. He was Surveyor of the city for many years before he became a Commissioner. He knew the government intimately. He was highly respected by people in and out of the government. While the city was not any smaller then, as far as the number of people are concerned, the government was much smaller and, I think, much more efficient than the current government. The other people that I remember particularly as civilian Commissioners were people like Jiggs Donohue, Sam Spencer, and Walter Tobriner. Those three were
outstanding lawyers, and when you would take an issue up to discuss it with the Commissioners, you knew that they knew what you were talking about. You had to be prepared. So I would say that experience was a good experience. I left the city government before they changed over to the mayoral form of government.

WERE THE COMMISSIONERS BEHOLDEN TO THE SENATE AND HOUSE DISTRICT COMMITTEES, OR WERE THEY REALLY MORE ANSWERABLE TO THE PRESIDENT AND THE EXECUTIVE BRANCH? WHO WERE THEIR REAL CONSTITUENTS?

Well, in the 16 years that I was in the city government, I don't recall any showdown between Congress and the Commissioners. There were battles about the budget, but the Commissioners handled themselves pretty well, I thought. And I don't remember any situations in which there was a controversy between the President and the Commissioners. I remember that somebody quizzed F.D.R. about why John Russell Young was appointed Commissioner. And F.D.R., who had quite a sense of humor, said, "Well, he was a newspaperman representing the Star and I always remembered he was the best raconteur of any of the newspapermen who appeared at the White House Press Conferences." Hardly a qualification for a Commissioner, but, nevertheless, Mr. Roosevelt had his little joke. But John Russell Young was certainly able to handle himself quite effectively when he appeared before Congressional Committees.

I remember one situation involving him toward the end of his service as Commissioner. There was a suit by Mr. Cafritz against
the city. It had to do with the zoning of a certain garden-type apartment owned by Mr. Cafritz. Counsel for Mr. Cafritz—I think it was Jim Artis of the Wilkes & Artis firm—said he wanted to take Mr. Young's deposition. Well, I knew Mr. Young didn't know anything about this particular garden-type apartment and I said to him, "Look, you don't want to waste your time taking Mr. Young's deposition, just to embarrass the man." He said, "I still want to take it." I said, "If you take John Russell Young's deposition, I'll take Gwen Cafritz' deposition." And so then he saw it my way and neither deposition was taken.

But I would say those years passed rather quickly. When I went into the military service, the Judge Advocate General's Department was located down at the D.C. Armory, which is near the Stadium. And we were there for several weeks and then we were transferred up to what was then known as the Munitions Building, which was near the Lincoln Memorial. And I served there first in the Litigation Section of the JAG which serviced the cost plus a fixed fee contracts. And that was not a very demanding assignment. And like most of the men in that section, I was interested in a transfer. The question was how to get a transfer. And finally we came to the conclusion that the best thing to do was to prepare and sign a petition addressed to the Director of Personnel in the JAG office, who was a Colonel Springer. And fortunately Colonel Springer realized that we were just a bunch of civilians that didn't know anything about Army traditions, one of which was that you never file a petition. So he said to us, when two or three of
us went down to wait on him, "Never sign a petition. I'll tear it up with your permission." So we said, "Yes, you have our permission." And he said, "If you want to get out of that place, I'll transfer you out of there within 30 days. Is that satisfactory?" And we all said it was fine. Well, we got transferred out and I got transferred into contracts. I worked under General Brannon then in contracts. And there were three of us who prepared for the Board of Contract Appeals all the cases that were filed against the Army by various contractors, most of whom were interested in getting a reevaluation of their contracts.

That was a fairly taxing assignment, but not a particularly interesting one. So I let it be known that I wanted to get into the field and I was transferred down to the Caribbean Command of the Army Transport Command located in Morrison Field, Florida. And I liked that assignment. Who wouldn't like spending a winter in Palm Beach, Florida? But then we learned that we were all to be transferred to the newly organized wing called the Southwest Pacific Wing of the Air Transport Command. So it was on that change of station that I went overseas. And I must say that for the first time I really enjoyed Army service, when I was transferred out of the Washington area where I felt that most of my time was spent shuffling papers. Overseas, the work of a staff Judge Advocate in our command was largely either trying court martial cases or reviewing them, depending on the date when our General got general court martial jurisdiction, which was about two or three months after we arrived in Australia. I had to do a lot
of flying, not as a pilot, but as a passenger to the various bases that the Air Transport Command had in the Southwest Pacific. It stretched from New Zealand, through Australia, New Guinea, and later the Philippines. In all of those spots, I served generally as a law member of the court. And, of course, if I were the law member, the case had to be reviewed by the next higher echelon, which was either Hawaii or General MacArthur's Staff Judge Advocate, Colonel Olivetti. But that unheroic service was a seven-day-a-week job. None of us seemed to mind that because obviously people in the service are subject to that. But it was sure a lot better than the service that some had.

I recall my colleague John Pratt. He was stationed at the Tacloban Strip in Leyte. We were about five miles from there. John was checking in Marine fighter planes. They had made a strike on the Japs in Mindora. And he was sitting in a jeep alongside the runway at the Tacloban Strip. And this fighter plane, which had been subjected to fairly heavy anti-aircraft fire, crashed as it was going down the runway and John's driver was killed. And John was seriously injured. Well, you could certainly say that John had a much more heroic tour of duty than I did. But we were glad when the time came to leave that and return to civilian jobs.

JUDGE, WHEN YOU RETURNED FROM THE SERVICE IN THE PACIFIC, DID YOU IMMEDIATELY RESUME YOUR DUTIES WITH THE CORPORATION COUNSEL?

My recollection is that I returned in November of 1945 and my
military leave took me over sometime into January of 1946. I remember going through the separation center at Ft. Meade, and being able to take off the military uniform and find some civilian clothes. That was a great pleasure. But I remember, as far as transition is concerned, Judge Holtzoff called and he said, "You've been in the Army now for almost four years, and I understand you were a JAG officer. I'd like to talk to you about your experience because I've been put on a committee of the American Bar Association investigating military justice." So he sat me down, and I've forgotten now whether he had one of these recorders or whether his secretary, Mrs. Smith, was taking the testimony. And he asked me to detail some of my court martial experiences, and I did. And I was generally favorably impressed by the system. I found out afterwards that "Little Alec," as we all called him, was not so favorably impressed. And so he excused me shortly thereafter. He did not expect favorable testimony. Nevertheless, I told him what I experienced. We were always very friendly. I didn't have any objection to him, but some people did. I liked him. You always knew where he stood. He didn't hold back anything. And he had one of the best legal minds I've ever encountered.

JUDGE HOLTZOFF WAS THE CO-AUTHOR OF THE FIRST REAL TREATISE, THE PREDECESSOR OF WRIGHT, MILLER, IS THAT RIGHT?

Yes. And he knew pretty much how he wanted to rule. He had
one, somewhat amusing, idiosyncrasy which I never learned of until I became one of his colleagues. He would generally leave about 3:30 or 4:00 if he were not trying a case. And I said to him, "Alec, don't you leave pretty early?" And he said, "Mrs. Smith likes to leave before traffic gets heavy." Alec was a fairly astigmatic driver and you know he was a little man and when he was driving down the street, you wondered whether he saw what was directly in front of him. But, nevertheless, I don't think he had any accidents.

He had a disposition to indicate to counsel that he would rule after hearing argument. And occasionally he would say, well, I haven't seen the file, but he would thumb through the file very rapidly and come to a conclusion and dictate an opinion right then and there from the bench. I said to him, "When you leave so early, how do you occupy your time?" Well, he would say, I usually go down to supper as soon as the dining room is open. This was at the Broadmoor. And then he said, "I come back to my apartment and I work until about midnight." So it was perfectly evident to me that this thumbing through the file, which seemed to be an afterthought, was unnecessary because he'd previously done it the night before. And he knew what was in the file. And if anybody challenged him on the file, he showed them where in the file his references were based.

He was a remarkable little fellow. He went to Europe invariably each summer. He was proud of the fact that he'd gotten to know some of the Justices in Old Bailey. And he was invited to
sit on the bench with them. And he delighted in telling us about those situations. He also liked Italy. I don't know if he ever sat as a Judge in Italy. I don't even know whether he spoke Italian, although he might have. Actually, he was in Rome at the time he was taken ill. And he didn't have a reservation to return, but he was able to convince the airline of his need to get some expedited medical attention. When he returned to Washington, he went to George Washington Hospital. I don't think he lived more than a month after his return from Rome. I don't know what the cause of his passing was. But he was a remarkable little guy. And, as I observed earlier, he was never at a loss for words. And he had no difficulty making up his mind. Sometimes he was reversed. But he had an expression for that. When an opinion would come down reversing some decision he had made, he would say, "That's only two of three of nine." And some trial judges feel that way. Occasionally, one encounters a situation where you realize the appellate court was correct in reversing you. But I must say that that is not a usual experience.

WELL, THE OLD ADAGE THAT JUDGE WYZANSKI MADE ONCE WAS A GOOD DISTRICT COURT JUDGE SHOULD BE REVERSED AT LEAST A THIRD OF THE TIME.

I've heard that. But we don't look with favor upon a reversal. Goldsborough's famous comment when Joe Weiss, his law clerk, told him that he had been affirmed by the Court of Appeals,
was: "I still think I was right."


Yes. It wasn't immediately noticeable, but the city during the years I grew up was about one-third Black and two-thirds White. And that was true when I was in the Corporation Counsel's office originally. After the war, the division in population changed rather rapidly. Now, it's about 70 percent Black. I don't know what it was immediately after the war. But that one-third figure of the Black population grew quickly.

I have skipped from return from the military to the time when I was a judge. But I remember when I left the Corporation Counsel's office, it was sometime after the election of Dwight Eisenhower. I think that was probably about 1953. I'd been fishing down in Florida. I got home late one Sunday night and my wife said that Leo Rover had been trying to reach me and he said that no matter when you got in to call him. I said, "It's 2:00 in the morning. I'm not going to call anybody at 2:00 in the morning. I'll call him after we both get up." So I did. And he offered me this job at the U.S. Attorney's Office as his first assistant. I was very pleased at the opportunity. My friends at the Corporation Counsel's office warned me of the political nature of the U.S.
Attorney's Office. But that did not dissuade me. And, as I have previously indicated, it certainly was not the fact. The men who were appointed by Leo and afterwards, those whose appointments I sought, were men who were good trial lawyers or who had the potential for being good trial lawyers. And I would say that certainly during my tour of duty, which ended in 1961 when J.F. Kennedy was elected and took office, we had no political requirements. I don't know whether Bobby Kennedy ever told Dave Acheson that he wanted that taken into consideration. I never had occasion to discuss it.

But those years in the U.S. Attorney's Office were three years as the first assistant, five years as the U.S. Attorney. I enjoyed them tremendously. I had good relations with the courts, both the appellate court and the district court. I've always been grateful to Barrett Prettyman. On the occasion when I was sworn in as U.S. Attorney, both the appellate court and the trial court took the bench in the Ceremonial Court. As far as I know, that's the only time that has been done. And that was Barrett Prettyman's suggestion, so I was told. But one thing that I want to mention is that I never felt that you should seek to indict everybody who is suspected of a crime. Judge Rover, who had served under four Presidents of the United States as U.S. Attorney, always said to me: "Never allow a person to be indicted unless you have a case that you can win before a jury and which will be sustained on appeal." And he said, "Never put in more than four or five counts." Well, that's no longer the practice and I think it's a
mistake to depart from that principle, the idea being that the more
counts against a man the more likely you are to get a plea of
guilty. Well, that may have been the rule before we had these
mandatory minimum punishments that we are now confronted with in
most of the narcotics cases. In the years when I was U.S.
Attorney, Al Stevas was the man in charge of the Grand Jury and he
followed his orders.

DID HE LATER GO ON TO BECOME THE CLERK OF THE SUPREME COURT?

Yes, he did. Al had the instructions I mentioned. He carried
them out to the letter. We never overburdened the court with
lengthy indictments. We had a pretty good notion of how many cases
could be handled and we didn't exceed that. Leo always told me,
"Never practice law in a judge's chambers." I think that's a good
rule. And I never did. But if I got a call from any of the
judges, I responded to it. I recall one case that had to do with
our first degree murder statute, which required a mandatory death
penalty for those convicted of first degree murder. One day
Barrett Prettyman called me and he said, "Come up to the office, I
want to talk to you." I did. And he said, "You know, too many of
our reversals in first degree murder cases are predicated upon the
fact that this statute requires the death penalty." He said, "Do
you know who is the Chairman of the House District Committee?"
Well, I didn't at the time, but I found out afterwards that it was
a Congressman from Little Rock, Arkansas. Barrett had found that
the penalty under the Arkansas statute on first degree murder was permissive. In short, the jury determined whether or not it was death or life imprisonment. And if the jury couldn't agree, then the judge decided. So he and I went down and saw this Congressman and we told him that we would like him to introduce legislation substantially as the Arkansas statute provided. So he agreed to do that. And we adapted the Arkansas statute to our needs. And it was passed. And it was the law here until the Supreme Court decided that death was cruel and unusual punishment. We don't have the death option anymore. I don't think we've lost anything by that judicial interpretation because at least in my experience, jurors are very reluctant to agree upon the death penalty. I remember the first first degree murder case I tried, there was an indication of that. The evidence was clear that there had been a murder and that this defendant was responsible for it. And there really was no excuse because it was a killing for money. But I recognized one of the jurors as a man who went to my church. I knew he wasn't driving anymore, so when the jury came in at about 11:00 that night, I offered to take him home. His name was Roland Pyne. I said, "Roland, you don't need to tell me a thing about the jury verdict. But if you want to tell me how you hung up on the penalty, I'd be interested." He said, "Well, I don't have any reason for not telling you." He said, "As you know, I was the only White man on that jury." And he said, "I'm just one of the chicken-hearted Episcopalians who couldn't agree to a death penalty." He said, "All the Blacks on the jury wanted to
electrocute him." So that was one case in which another chicken-hearted Episcopalian, myself, had to decide whether death or life. And I decided life imprisonment.

I'm jumping ahead of my story. Do you have any other cases that you want to talk about in the U.S. Attorney's Office?

I DO. BUT BEFORE I GET TO THAT, I'D LIKE TO ASK YOU JUST A COUPLE OF BACKGROUND QUESTIONS. AT WHAT POINT IN TIME DID THE COURT SYSTEM CHANGE FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA WITH THE COURT OF APPEALS TO ITS PRESENT, WELL AT LEAST ON THE FEDERAL SIDE, THE U.S. DISTRICT COURT AND THE D.C. CIRCUIT. DO YOU REMEMBER WHEN THAT WAS AND THE CIRCUMSTANCES SURROUNDING IT?

It was about the time that Jim Proctor went on the Court of Appeals. He was elevated from the Supreme Court of the District of Columbia to the Court of Appeals. I'd have to look that up, but it shouldn't be hard to find. I think the reason for it was that this court was basically a federal court, though it did have some local jurisdiction. And the Congress, for good reason, wanted to have all the federal trial courts called U.S. District Courts. And the old name, Supreme Court of the District of Columbia, was just an anachronism. Of course, under the legislation that was passed about 20 years ago, all the local crimes were transferred to the Superior Court.

WERE YOU IN THE CORPORATION COUNSEL'S OFFICE WHEN THE SWITCH WAS
MADE?

I was on the Court at the time common law crimes were transferred to the Superior Court. I was in the Corporation Counsel's Office when the name of the Court was changed to the U.S. District Court in the early 1950's.

DID THAT CHANGE HAVE ANY SIGNIFICANT IMPACT IN TERMS OF JUST WHAT THE BUSINESS OF THE COURT WAS?

We continued to have the same federal jurisdiction, which was the broadest jurisdiction of any U.S. District Court, largely because of the fact that we had this common law jurisdiction which other district courts did not have. And we also had, by reason of the fact that this is the center of government, many foreign cases that resulted from the overseas duty of the military. I don't know how many military cases we have to review, but we do have quite a few. I've had quite a few since I've been a judge. The fact that the center of government is here does result in the filing of many lawsuits here for that reason.

Now, I remember when I was in the U.S. Attorney's office, Bill Rogers recommended legislation with respect to venue which changed the venue of district courts generally and provided that one could sue in the district in which the incident happened or in the district in which he lived. He didn't have to come to Washington. And that was something that we in the U.S. Attorney's office wanted
very much. We got a lot of cases we really shouldn't have had. And it was tough on the plaintiff. He had to come to Washington and get a Washington lawyer, and so forth. You can still do that, but I think most people prefer to sue in their own home district.

DO YOU RECALL WHEN THE COURT ACTUALLY MOVED FROM THE OLD COURTHOUSE UP THE STREET ON INDIANA AVENUE TO ITS PRESENT LOCATION AT THE FEDERAL COURTHOUSE? WAS THAT AROUND THE LATE 1940s OR EARLY 1950s?

TAPE 3

I think so. I may have a program of that ceremony.

THIS WAS THE DEDICATION OF THE PRESENT COURTHOUSE?

Yes, and whenever it was, you could be right that Truman was the President at the time. Both the appellate court and the trial court moved into this building and the District Attorney had the third floor. A few of them remain over in what was formerly known as the Police Court, then afterwards the Criminal Division of the Court of General Sessions. But it's interesting to me that in those days we had 50 Assistants. Now, the office has five times that many. And, of course, there is much more crime to prosecute and there are more civil cases. You would know that better than I. We had about six or seven people in the U.S. Attorney's Civil Division in the courthouse. And the Appellate Division was about
the same size. The main difference between then and now is that the Criminal Division of the U.S. Attorney's office in this building was a veteran division. They were men who had been trying criminal cases most of their careers. Arthur McLaughlin, who was the dean of the Criminal Trial Division, probably prosecuted more serious criminal cases than any man in the country. He'd been at it all his life and he was pretty gray when I knew him. But we were very fortunate in having that kind of an organization.

WHAT DO YOU RECALL ABOUT, AND THIS IS THE TIME FRAME OF LET'S SAY THE EARLY 1950s TO THE MID-1950s? YOU'VE ALREADY DESCRIBED JUDGE HOLTZOFF, WHO'S FAIRLY WELL KNOWN. AND YOU'VE MENTIONED A COUPLE OF THE OTHER JUDGES, JUDGE TAMM. WHAT ARE YOUR RECOLLECTIONS ABOUT JUDGE TAMM, PARTICULARLY WHEN HE WAS ON THE DISTRICT COURT?

Well, Ed Tamm had never been a trial lawyer before he was appointed. He had risen in the FBI, where I understand he was the number three man. He had not only a very quick mind but a very retentive mind. The story around the courthouse was that he started reading all the Court of Appeals cases, from the beginning to the present. Whether that story is correct or not, I don't know. It was not long before the Bar learned that Ed Tamm knew what he was doing. He remembered the precedents. He remembered the cases. And he ran a very strict courtroom, and a very fair courtroom. He certainly earned the respect of the Bar very quickly.
Of course, the shining example of justice in our district court was Bo Laws. He had been an Assistant U.S. Attorney. He'd been in private practice and when he was appointed to the Court, he was appointed Chief Judge at the outset because the law was different then. It was always a pleasure to try a case before him because he not only knew the law, he had experience in the law and he was a fair and a generous-minded fellow, not that he gave you any more than you were entitled to but his manner was such that it was a pleasure to be before him. It wasn't always that way with Alec Holtzoff. Alec ruled and you couldn't argue the point with him. Laws would do it in a very gentlemanly way and you had no inclination to try to argue with him.

Now, Goldsborough was a difficult fellow before whom to try a case. He had been a Congressman from Maryland and the story was that he had supported the President on the court packing project and he had not been reelected. So Roosevelt put him on the court. Whether that's the only reason, I don't know. But according to scuttlebutt, he usually returned from his country place about Tuesday and started his weekend either Wednesday afternoon or Thursday. So he was not popular among the Bar. And he was pretty arbitrary. One story that they used to tell about him was that in the trial of an insanity case, he was waving a piece of white paper, saying, "I've got my certificate showing that I'm sane, have you got one?" He never did that to me, but I've heard that from someone who experienced it. He did not have any use for psychiatrists. In charging a jury where insanity was an issue, he
would wave a piece of white paper and he would say, "See this paper, if an expert witness tells you it's black, you don't have to believe him. Take the case."

WHAT OTHER JUDGES DO YOU RECALL FROM THE LATE 1940s AND 1950s?

I was very fond of Judge Letts. He had been a Congressman from Iowa and he was on this court for many years. I think he was over eighty when he finally retired. But he was every inch a gentleman and it was a pleasure to be before him. He never pushed you hard. He always wanted to know what your point was. And he gave you adequate opportunity to prove it.

Jennings Bailey was probably my favorite. He was appointed by Woodrow Wilson in about 1916. And he was from Tennessee. He was a man of few words, but an excellent trial judge. He really ran a taut ship. You had to be prepared before him and he wouldn't let you waste any time. I tried many cases before him and I always enjoyed the experience. Although I admit that every time I knew I had to go before Judge Bailey, I put in extra time just getting ready with the details of the case.

Another Judge I remember was Jim Proctor. He, of course, had been on the trial court and then he was elevated to the Court of Appeals. He was also very much of a gentleman.

And then there was Joe Cox. I liked Joe Cox. I had gone to school with both Cox's son Joe and Jim Proctor's son Jim. But I never remembered being at their homes in the early days. But I
think there was a greater opportunity in those days for judges to know who the lawyers were. The Bar was smaller and the Bar was basically a local Bar, not a Bar that had been brought in by big law firms that are now the usual situation here. So it was different.

Burnita Matthews was another judge before whom I tried cases. She was the first woman federal trial judge, and she was a friend of my family. I was delighted at her appointment. My experience in the U.S. Attorney's Office on cases that were assigned to her was that she never ducked a tough case and she always handled herself in the best traditions of the bench. She got pretty sore at Ed Williams for the trick that was pulled in the Hoffa case bringing Joe Louis into the courtroom. She had made the mistake of being the last person to enter the courtroom and that afforded Joe Louis the opportunity of walking up and throwing his arms around Jimmy Hoffa and saying, "The best of luck to you, Jimmy." And, of course, that was in the presence of the jury seated there. She was furious about that. I remember she called me. She reached me when I was on vacation up on Cape Cod. I didn't have a telephone there. She called a neighbor.

YOU WERE THE U.S. ATTORNEY AT THE TIME?

Yes. And she wanted to know what we were going to do about that. And there were other things that happened. I would say that was not characteristic of her. But she just thought that things
had gotten out of hand in that case. The other one was having a special edition of the Afro-American newspaper printed and delivered to each Black member of the jury that described her as being the daughter of magnolia-scented Mississippi and she didn't like that. But it was the delivery of that paper, which, as you might imagine, was pretty much slanted toward Jimmy Hoffa. Jimmy Hoffa was hardly a friend of the Black race. His Union didn't have many truck drivers who were Black. But that point was not discussed.

YOU MENTIONED ED WILLIAMS. THE OTHER DAY AT LUNCH YOU TOLD ME A STORY ABOUT EDWARD BENNETT WILLIAMS WHEN HE WAS TRYING CASES FOR THE TRANSIT COMPANY OR HE'D JUST LEFT TRANSIT, HOGAN & HARTSON AND WAS TRYING PLAINTIFF CASES AND I THINK YOU TRIED A CASE OR TWO AGAINST HIM FOR THE CORPORATION COUNSEL.

Yes, I remember one case I tried--a woman who had fallen on Macomb Street west of Wisconsin Avenue, a snow and ice case and Ed represented her. She had a witness, who was a pretty tough witness but I went after her sufficiently so that the jury returned a verdict for the city. And I remember Ed's final argument characterized me as a character assassin. Ed and I often laughed about that afterwards. But I guess that's the way trial lawyers are. They fight like hell in court and are friendly outside. But I remember Ed particularly in the Bobby Baker case because that was the first big case that was assigned to me when I became a Judge.
And that was very close. Bill Bittman was for the government. And Bill was an exceptionally good trial lawyer. And it was one of those wonderful situations where both sides were well represented. When you find lawyers of that type going at it, the judge's job is much easier than when you have a couple of "stumblebums" that you have to try to help each guy to bring out the points he has to bring out.

DO YOU RECALL DURING YOUR TIME EITHER IN THE CORPORATION COUNSEL'S OFFICE OR IN YOUR TIME IN THE U.S. ATTORNEY'S OFFICE SOME OF THE OTHER NOTABLE AND NOT SO NOTABLE LAWYERS THAT YOU WENT AGAINST?

Well, I suppose every judge who has ever had the experience of Jimmy Laughlin being before him remembers it. I remember a first degree murder case that he tried before me, I guess, the first year I was a judge. And Jimmy put on an act. It persuaded me that allowing a lawyer to conduct the voir dire is a great mistake. Jimmy's act went something like this: His defendant was an undersized little chap from Jamaica or some place down in the Islands. He had a British accent. And Jimmy said, "Would any of you, ladies and gentlemen, be prejudiced against my little client--stand up Mr. So and So and show them how little you are--because he speaks with a British accent? Now, Mr. So and So, say good morning to the members of the jury." And he said it with his British accent and, of course, the people on the jury were amused and they went from just plain amusement to the point where
they just loved it. And they weren't trying the case. They were members of an audience in a show that was being put on. And the jury hung. I said to Jimmy afterwards, "Why did you strike all the Black people off the jury?" And he said, "Oh, the Whites are so much more indulgent than the Blacks. That's why I did it." I told that story to Aubrey Robinson, our Chief Judge, some years later and he said, "That's absolutely correct, particularly when they've got a showman like Jimmy Laughlin." Well, I didn't have any problems with Jimmy. Some of the judges did. Alec Holtzoff liked him. Some of the judges disliked him very much. But he was always sort of patting Judge Holtzoff on the back and flattering him. "Judge, that was a brilliant opinion you wrote. You must publish it." And that was like candy in Judge Holtzoff's mouth. I don't think many of us, even if we felt that way about it, would say it. But, nevertheless, Jimmy did and he got away with it.


Well, of course, the dominant figure on the Court of Appeals in the years when I was in the U.S. Attorney's Office was Dave
Bazelon. And Dave had some very strong ideas about criminal justice, particularly, insanity as a defense in criminal cases. I remember the Durham case particularly. We used to have a rule in the U.S. Attorney's Office that before a case could be argued by one of our people in the Court of Appeals, we would have a moot court rehearsal. And since my job was to supervise the operations of the appellate division, I was there when the Durham case was presented to the moot court. And I realized that it was a pretty sure bet that we would lose because of the way that the psychiatrists were manhandled in the court. And I actually went back and spoke to Leo Rover - I was then First Assistant - and I said I think we ought to confess error in this case. Leo said, "Hell, no. If we go down, then we go down with our battle flag nailed to the mast." And we did. And that was a pretty serious defeat. It knocked out the McNaughton doctrine and remained the law in this jurisdiction until Judge Leventhal's opinion, which adopted the American Law Institute formulation many years later, in the Brawner case.

But you asked me about appellate judges. Of course, Warren Burger was an appellate judge. He was nominated and confirmed as Assistant Attorney General about the same time I went into the U.S. Attorney's Office. And the memory I have of those days is that I had gotten to know him when he was Assistant Attorney General in charge of the Civil Division in the Department of Justice. And he used to come over personally; he didn't send for me to go to Justice. He'd come over personally and say, "I want to go over the
civil cases in which you represent the United States." He'd say, "If you want to bring in the people from the Civil Division, okay, let's do it." But he wanted the details on how we were going to handle this tort claim case or this injunction case. And I've never known any other attorney from Justice who took that kind of interest in his assignment. When he became a Judge of the Court of Appeals, he and Dave Bazelon differed about a number of things. I think they also differed about the insanity rule. Charlie Fahy usually agreed with Dave Bazelon. Charlie Fahy was a very compassionate man. I remember this rather amusing story about Charlie Fahy and a case that we had. It was a rape case, *U.S. v. Mallory*. The jury had convicted and returned the death penalty. And the Court of Appeals had affirmed, 2 to 1. It went to the Supreme Court and it was reversed. And I went down with the U.S. Attorney who tried the case, Artie McLaughlin, and Lieutenant Sullivan, who had investigated the case for the police, and we looked over the area in which this incident was supposed to have happened. And my purpose in going there was to find out whether or not there was a basis on which the case could be tried on circumstantial evidence because the Supreme Court had thrown out the confession. I was convinced that we couldn't try it on circumstantial evidence so I dismissed the case. And Charlie Fahy said to me, "You did that just to embarrass the Supreme Court." I said, "No, Your Honor, there was no justification for keeping that man in jail one day longer after I found out we couldn't retry him." He said, "You know, I never thought of that."
HOW ABOUT JUDGE EDGERTON AND JUDGE MILLER?

Well, they were two very different people. Judge Edgerton was very much in sympathy with the things Dave Bazelon sought to achieve. I always got along very well with him though certainly he could not be termed a person who was predisposed towards the U.S. Attorney's Office. Wilbur Miller, on the other hand, was very friendly with the U.S. Attorney's Office. I remember he told me shortly before he retired, "I just got tired of swimming upstream." And I guess that's a pretty good characterization of his efforts. Walter Bastian was another judge that I had known when he was a District Judge. I'd tried cases before him. And I had argued cases before the panels of which he was a member in the Court of Appeals. Walter was very friendly and outgoing and very practical.

I suppose my favorite on the Court of Appeals was Barrett Prettyman, largely because of the fact that I had known him during the years he was Corporation Counsel. And he always seemed to take an interest in me when I went into the Corporation Counsel's Office and afterwards in the U.S. Attorney's Office. Another judge that I liked very much was John Danaher. John had been a Senator. And I think he had also had some service in the U.S. Attorney's Office before he became a Senator. But on one occasion I remember I had filed a motion for rehearing en banc in some case, the name of which I've forgotten, but he had dissented. And he had written what I thought was a very logical dissent. And I thought he would
look with favor upon the motion to rehear the case en banc. He called me up to his chambers and he said, "Oliver, if we want to hear a case en banc, we will hear it. We don't need any suggestions from the U.S. Attorney." And I knew he felt very strongly and without any effort to embarrass me. And I was always glad to have that kind of give and take relationship with a judge.

WHAT ABOUT JUDGE BENNETT CHAMP CLARK?

Well, I remember one case I argued before a panel composed of Clark, Edgerton and I don't remember the name of the other judge. It was the Martin's Wharf case. And I argued that in the Court of Appeals when I was in the Corporation Counsel's Office. It was the only case I think I ever had in which Clark was a member of the panel. It had to do with the direction that a wharf should be projected from the shoreline. And Martin's Wharf was erected in such a way that it really infringed upon other riparian owners. And the District had given Martin an order to change the direction of his wharf which would have been expensive to accomplish. My opponent was a lawyer by the name of Dan Partridge, whom I knew personally. And Dan was one of these Alabamians who, if a ten word sentence would be sufficient, Dan would put 30 words into it. He was an orator. And he also was hot under the collar when things didn't seem to be going well. Now, on this occasion, he said, "Your Honors, there's one thing the court has reason to expect, that government counsel will be a gentleman." I don't know what
I had done to offend him, but Bennett Champ Clark interjected, "Counsellor, that's an assumption without any basis in fact." I didn't know exactly what he meant by that. But Judge Edgerton interjected, "I think you've said enough on that, Mr. Partridge, what's your next point." I always remember the Martin's Wharf case. Dan had presumably done a tremendous amount of research. The case was tried before Judge Bailey at the trial level. Afterwards, in looking up the law on that subject, we ran across a case in the Supreme Court in which a similar issue was involved and all these references to ancient history were mentioned. So, all Dan had done was read a case we'd missed without citing it. Why we missed it I don't know. But the result the Supreme Court had reached was more in accordance with the city's view of the law than Dan's view. But Dan had used these historical notes without attribution to the case. I suppose lawyers do that. But you asked about Bennett Champ Clark, that's my only recollection of him.

WHAT'S YOUR RECOLLECTION OF - I KNOW JUDGE FAHY WAS ONE OF THE FEW LAWYERS WHO ACTUALLY HAD WORKED IN WASHINGTON BEFORE COMING ON THE COURT OF APPEALS, WHICH WAS UNUSUAL IN THOSE DAYS. I GUESS EVEN TODAY MANY OF THE JUDGES PARTICULARLY ON THE COURT OF APPEALS ARE FROM OUT OF TOWN OR WERE IN CONGRESS OR IN THE GOVERNMENT. DID YOU KNOW CHARLES FAHY BEFORE HE WENT ON THE COURT?

No, I didn't. I knew of him by reputation. He had a distinguished career as a Naval aviator in World War I. He won
the Navy Cross. If you look at the Navy planes that those aviators flew, survival might have justified a Navy Cross. But I didn't know him. I knew who he was. He was a very compassionate individual who always impressed me with that characteristic. He was a very keen evaluator of the law. Of course, he had been Solicitor General. I don't remember any other judge of either court who had had that experience. Of course, Bob Bork had been Solicitor General. I have the highest regard for Bob Bork. I sat on a number of appellate cases as a designated judge when Bork was a judge. He has an incisive legal mind. It was just a shame that he had made too many speeches and had written too many articles so that he afforded Biden and Kennedy and Metzenbaum and the others the opportunity to shoot him down.

A MATTER THAT YOU MENTIONED IN ONE OF OUR EARLIER DISCUSSIONS, AND THIS IS GOING BACK TO JUDGE BO LAWS, WAS THE CENTRAL ASSIGNMENT SYSTEM THAT THEY HAD IN THE COURTHOUSE. APPARENTLY IT WAS FAIRLY CUMBERSOME AND VERY STRICTLY ENFORCED. WHAT CAN YOU TELL US ABOUT THAT?

Well, we had an assignment office and they controlled the assignment of cases and where you were on a ladder to reach a trial. You were never assigned to a judge until the morning of trial. And that meant that you had to get ready day after day. You'd go down and sit in the assignment court until your case would be called. And if your opponent had no excuse why he couldn't go
forward, you'd be sent up to an available judge. So far as the U.S. Attorney's Office was concerned, since our men were in trial constantly on the criminal side, often if he would see an Assistant U.S. Attorney sitting there who didn't have a case, and if the one who had the case was in trial, Judge Laws would say, "Well, you go try this case." And it was a pretty difficult assignment to try a case without being familiar with the file. In the assignment system we now have, the judge gets the case from the beginning, so you have the opportunity of being familiar with it and of hearing the motions that have been filed, and it's a much better system. But we didn't learn that until Judge Murrah was designated by the Judicial Conference to have this conference on the assignment of cases. Bill Bryant and I were sent out to Denver where the judge held the conference. He had a number of judges who were there to lecture on the individual assignment practice in their courts. And Bill and I became convinced that the individual assignment system we now have was infinitely fairer and worked better. So we came back and started lobbying for the individual assignment system.

WERE YOU ALREADY ON THE COURT AT THAT POINT?

Oh, yes. And I remember calling Judge Hubert Will in Chicago, who was one of the most effective proponents of the individual assignment system. And he agreed to come to Washington and speak to our Bar about the individual assignment system. And I recall one of our judges, who was in the audience, giving him the Bronx cheer. But as a court we adopted it. Most of the judges who were
junior to Bill and me voted to go along with it. Some of the other judges, like Hart, Curran, McGuire, Jones and Keech, objected. It was only after we demonstrated its efficiency by agreeing to take all the criminal cases ourselves that they realized the system was preferable. But that other system, the general assignment system, had its inception when Bo Laws handled the assignment court. And while I had the greatest respect for him as a person, I think that general assignment system is something we were fortunate to abandon.

I'VE HEARD SOME STORIES, MAYBE SOME BY YOU AND SOME BY THE OTHER JUDGES, ABOUT HOW JUDGE LAWS RAN THE ASSIGNMENT COURT. DO YOU RECALL THE DETAILS? APPARENTLY IT WAS DONE WITH AN IRON FIST AND MILITARY PRECISION.

Yes, but he was so much of a gentleman that he got away with it. And it was only after Judge Murrah had this session in Denver that Bill Bryant and I attended that we had the specifics on the two competing systems, and we were able to persuade the Court to adopt the individual assignment system. The central assignment system was pretty arbitrary, particularly as far as the U.S. Attorney's Office was concerned. But I remember cases where most of the judges on the bench had had something to do with them, but they just lateral passed them from one to the other without assuming responsibility for disposing of the cases.
RIGHT UP TO THE TRIAL?

   Yes. You'd get the case for trial and you may never have seen it before. Or you may have had it for a motion a year before. It was a great time waster.

JUDGE, I NOTICED HANGING IN YOUR CHAMBERS A SMALL BLACK AND WHITE PHOTOGRAPH TAKEN BACK IN THE MID-1950s WHICH I'VE SEEN IN SEVERAL OTHER CHAMBERS AND OFFICES AND U.S. ATTORNEYS AND THE LIKE, AND IT'S A PICTURE OF YOU AS THE U.S. ATTORNEY SURROUNDED BY YOUR ASSISTANTS, CORRECT?

   That's right.

AND WHAT I'D LIKE TO DO IS MAYBE GO THROUGH THE PICTURE FOR A MINUTE BECAUSE THERE IS A LARGE NUMBER OF JUDGES WHO GREW OUT OF THIS GROUP, ISN'T THERE?

   That's right.

I'M JUST GOING TO START WITH THE FRONT ROW AND IF YOU CAN REMEMBER WHO THE PERSON IS AND WHAT THEY WENT ON TO DO.

   Well, that's John Doyle over there on the end. And next to John is Bill Pryor. John was for many years on the Superior Court. Bill Pryor was Chief Judge of the D.C. Court of Appeals for some
years before his retirement. The next one that became a judge is Al Burka. Then there is Don Smith in the center of the picture on the first row; Joe Hannon and Luke Moore are over here at the end.

NOW, MOVE UP ONE ROW TO THE SECOND ROW.

There's Nate Paulson, who became Clerk of the U.S. Court of Appeals, and over here is Ed Daly, who was a Judge of the Superior Court. Tom Flannery, my esteemed colleague, is in the third row. I see Harry Alexander there. There's Catherine Kelly, of both the trial court and the appellate court. Near Catherine is Sylvia Bacon. Behind Catherine is Frank Nebeker. Going over to the end, there are Joe Ryan and Harold Greene; John Warner, afterwards a U.S. Senator from Virginia. John Kern is behind Harold Greene and Bill Bryant is in the back row. Standing near Bill Bryant is Dyer Justice Taylor. They were all in the U.S. Attorney's Office and they became Judges. Fred McIntyre, Charlie Halleck, Len Braman and Tim Murphy were not in the picture, but they, too, were in the U.S. Attorney's Office and they became Judges. It adds up to 21--22 if you include me. Twenty-two of the 50 is 44 percent who were ultimately selected as Judges by the President of the United States.

JUST TO TRY AND FINISH UP THIS SESSION TODAY, JUDGE, IN THE 1950s WHEN YOU JOINED THE U.S. ATTORNEY'S OFFICE AND BASICALLY RIGHT UP TO THE 1960s WHEN THE KENNEDY ADMINISTRATION CAME IN AND YOU WENT INTO PRIVATE PRACTICE, HOW WAS WASHINGTON, D.C. CHANGING IN THOSE
YEARS, IF IT WAS?

Well, a lot of new people were coming in. Many law firms, small law firms were merging with larger out-of-town firms. And that changed the character of practice before the courts. And I think that those of us who knew the courts as they were earlier and the Bar that practiced before the courts regret the change. But as a French philosopher once said, there is nothing constant but change, so it was something that was inevitable.

HOW DID THAT AFFECT THE PRACTICE OF LAW AT THE COURTHOUSE, IF IT DID?

Well, when I was trying cases, it always helped to have some knowledge of the opposing counsel. Some lawyers make a statement and you know that it can be trusted. If it is someone whose background you are unfamiliar with, you’ve got to be convinced. I would say that that's something that has happened that is not in the interest of justice. But you can't control it. Judges don't select counsel unless it's an assigned case. When I first came to the Bar, judges more or less arbitrarily assigned counsel to represent an indigent defendant in a criminal case. Later, there was a system whereby the magistrates did it for a while. Now, the Federal Public Defender either has one of his assistants try the case or selects the assigned counsel who is taken from an approved list. We hope that this is an improvement. I don't know whether
the Federal Public Defender is going to supply something that we had hoped for or not. I've heard a lot of criticism of the actions of some of the members of that office. Those who've appeared before me have been reasonably well qualified but they seem to be more impressed with winning a case if they can regardless of how they achieve that result.

HAVE YOU SEEN ANY DIFFERENCE OVER THE YEARS, AND THIS GOES BACK TO YOUR U.S. ATTORNEY DAYS, IN HOW THE U.S. ATTORNEY'S OFFICE RUNS OR THE QUALITY OR PRESENTATION OF ASSISTANT U.S. ATTORNEYS?

Well, I would say that this five-fold increase in the personnel of the U.S. Attorney's Office is not a good thing. It's too big. They transfer their people around in such a way that the Assistant U.S. Attorneys don't really understand their cases and the judges before whom they are practicing. Now, that was the great advantage we had with a veteran staff, those who prosecuted criminal cases during my day. We never transferred them for the sake of transfer. And perhaps that's an advantage so far as the individual is concerned. But it certainly is not so far as the efficiency of the system is concerned.

HOW MUCH WAS AN ASSISTANT UNITED STATES ATTORNEY PAID?

The starting salary was $6,000 a year. We certainly got a lot of value for that $6,000. But the salary now is considerably
higher. I don't know exactly what it is. I do know that people I've had as law clerks can go out of this law clerk job and get $50,000 or more in a firm and that's amazing to me. The U.S. Attorney was limited by law to $10,000 when I went into the office. I made more than the U.S. Attorney made because Leo Rover had agreed to pay my D.C. salary. The salary I was making in the Corporation Counsel's office was about $10,600 as I recall. I didn't realize why he was doing it. But I learned afterwards that there was a strong argument he could make to get the salary of the U.S. Attorney raised, that one of his assistants was making more than he was making. I recall one salary impasse with which I was confronted. I wanted very much to add Jerry Cohen to the staff. He had been Editor-in-Chief of the Yale Law Journal, head law clerk to Chief Justice Warren, and later to Justice Frankfurter. He turned down my $6,000 and went with a private firm where he was paid $9,000. A few months later, he came in to see me and said he would like to reconsider and asked how much could I pay. I called Bill Rogers and he upped the ante to $7,500, which Jerry accepted. It would not surprise me if he were earning 100 times that amount today.

AND THIS PICTURE WAS TAKEN SHORTLY BEFORE YOU RESIGNED AS U.S. ATTORNEY?

That's right. So it would be about the middle of 1961. I told Bobby Kennedy that I would serve until he had selected my
replacement, and he agreed.

WHO WAS YOUR REPLACEMENT?

Dave Acheson.

AND AT THAT POINT YOU WENT INTO PRIVATE PRACTICE, FOR THE FIRST TIME IN A LONG TIME?

That's right.

AND WHAT WAS THE NAME OF THE FIRM YOU WENT TO?

Craighill, Aiello, Gasch and Craighill. And they are still practicing.

END OF TAPE TWO
Well, I was in high school when it happened. And Roger Robb and I often talked about it, particularly with my mother, who was a newspaperwoman and who was very much interested in the details. Of course, Mother loved a murder. And this was a fairly good murder. So it wasn't difficult to get her started and she had insights into it. I must say that with the passage of 70 plus years since then, I don't remember many of the discussions that we had with her about it. But George Vass of Riggs Bank was a friend and my cousin Harriet Barrett worked at Riggs Bank and she knew George Vass. And so, of course, it accounted for a lot of discussion when she would go down to do her banking errands at Riggs. It was a long time ago. Wan had contacts with the Chinese Educational Mission, which had a substantial bank account at Riggs Bank. Money was withdrawn from the account under suspicious circumstances and about that time, three members of the Mission were murdered. Wan was indicted, tried and convicted. The case was reversed in the Supreme Court because of the circumstances.
surrounding the confession.

JUDGE, SINCE OUR LAST CHAT, I HAD A CHANCE TO USE SOME OF THE SO-CALLED MODERN CONVENIENCES OF THE LAW PRACTICE, AND I DID A LEXIS SEARCH, WHICH MEANS YOU HAVE YOUR ELECTRONIC LAW CLERK RUN THROUGH THE COMPUTER AND YOU PUNCH IN A NAME OR A CASE AND SEE WHAT COMES UP. AND I HAD MY LIBRARIAN DO A SEARCH ON YOUR NAME AND IT CAME OUT WITH ALMOST 200 CASES BY THE WAY. BUT THAT'S UP UNTIL THIS YEAR. BUT IT GOES BACK AS FAR AS FEBRUARY 1948 FOR THE FIRST REPORTED CASES IN WHICH YOUR NAME APPEARS. AND I THINK IT'S SAFE TO SAY THAT THAT REFLECTS YOUR TENURE IN THE CORPORATION COUNSEL'S OFFICE. IF I MIGHT, I'M JUST GOING TO RUN DOWN THE NAMES AND SEE IF ANY OF THEM RING A BELL.

Sure. In 1948, after I got back from military service, it was pleasant to be out of uniform and to resume practice of the law.

THE FIRST CASE IS A CASE CALLED WIRTH V. CORNING, SUPERINTENDENT OF SCHOOLS. DOES THAT RING A BELL? FEBRUARY 1948.

Well, I remember representing Dr. Corning in a number of cases. I don't remember the Wirth case just by that name. Does the index reflect anything about it?

WELL, I ONLY PULLED THE CITES. I DIDN'T PULL THE WHOLE CASE BECAUSE WE'D BE SITTING HERE FOR TWO WEEKS STRAIGHT. THE NEXT ONE
IS - AND I'LL JUST RUN THROUGH THEM AND SEE IF THEY RING A BELL -
BEALLE V. DISTRICT OF COLUMBIA, OCTOBER 1948?

I don't remember that case.

THE NEXT ONE IS DOUFFAS V. JOHNSON, 1949?

No.

1951, ORVIS V. BRICKMAN?

I remember that case well. We tried it before Matt McGuire. Smith Brookhart was on the other side. Miss Orvis was a relative of the Orvis Fishing Tackle family in Vermont. One morning she called her office and said she wouldn't be in to work because she had cut herself rather badly in an effort to trim calluses off her foot. And the fellow worker whom she called immediately called an ambulance and said, you should go to Miss Orvis' residence and see if you can help her; her voice seems very weak. So this gentleman, whose name was St. Peter - I remember the ambulance attendant - he went there with the driver of the ambulance to see what he could do to help her. And when the door was opened by a neighbor who had the key, he was impressed by her size and weight. She was a little bit too heavy for St. Peter and his friend to carry down the steps. He, however, concluded that there must be something wrong with a person who would cut her wrist in an effort to remove calluses. He observed a tremendous amount of blood on the bed and in the
bathroom. In any event, he called in to his headquarters and his idea was that she should be taken to Gallinger Hospital for mental observation. St. Peter called for assistance. And Officer Brickman of the Metropolitan Police responded - Jake Brickman. And Jake was a rather robust individual who looked as though he had taken care of himself. And so with his assistance, the ambulance people got Miss Orvis down the steps and to Gallinger Hospital, the mental ward there. In any event, she was very much put out that she had been put in a mental ward. And so subsequently she sued Dr. Sweeney, Dr. Gilbert of the Hospital, members of the Mental Health Commission and Jake Brickman. The doctors and the Mental Health Commission were dismissed on summary judgment. Well, if anybody was responsible for saving her life, it was Jake Brickman, who not only insisted that she get treatment, but treatment that he thought the situation required.

I defended the case with John Doyle as the Assistant Corporation Counsel assigned to the matter and became convinced that Brickman should be exonerated. At the conclusion of all the evidence, I moved for a directed verdict and Matt McGuire took the case from the jury and granted my motion. I do recall that Matt McGuire delivered a fairly stiff lecture to her counsel, Smith Brookhart, and Miss Orvis about filing such a suit. He said that, had the suit been filed in England, sanctions would have been imposed. Smith Brookhart and I had gone to law school together. We were close friends. Miss Orvis did not have much of a case, but she was insistent that the suit be filed. I remember that much
about it. It's been many years since I've heard the name Sally Orvis. Incidentally, the Court of Appeals affirmed: 90 U.S. App. D.C. 266, 196 F.2d 762 (1952).

I'VE GOT ANOTHER ONE FROM 1951, ROBERT BARRETT V. YOUNG. DO YOU REMEMBER THAT ONE?

Robert Barrett was Chief of Police. I can't imagine why he would sue John Russell Young. But according to that rundown, he did. It may have been that some disciplinary action was taken against him and he simply wished to enjoin that action.

WHO WAS RUSSELL YOUNG?

He was the Chairman of the Board of Commissioners. I believe that case was argued before Jimmy Kirkland, a District Judge. My recollection of the facts is not too clear, but from what I do recall, it was an injunction suit and I moved to dismiss it. My recollection is that Jimmy Kirkland had written his opinion, which was fairly favorable to Barrett and then he read my brief and so in the last few minutes of his oral opinion, he threw Barrett's case out of court. He apparently was so enamored of the phraseology he'd employed in praising Barrett that he didn't want to waste it so he delivered it orally and then delivered his final coup de grace against Barrett. Barrett incidentally was a real thug.
THIS WAS THE CHIEF OF POLICE?

Yes, the Chief of Police. I remember one case particularly I tried before the Police Trial Board. There was a Black man who worked for the Washington Post by the name of Willie Cleg. And the police had grabbed him and arrested him and he alleged they had beaten him. In any event, charges were lodged against the policeman responsible. And I prosecuted that policeman before the Trial Board. I've forgotten now what happened to those charges, but as I was walking from the Trial Board Room in the Municipal Center to the elevator, Barrett followed me to the elevator and said, "I hope you fight as hard for us as you fought against us." John Pratt, with whom I lived in those days, was with me. And he overheard the conversation. And he sometimes refers to it. But I was not one of Barrett's favorite people. He was a difficult man to like.

WAS HE THE CHIEF OF POLICE WHEN YOU WERE THE U.S. ATTORNEY, OR HAD HE ALREADY LEFT?

I think he had gone on to his reward by that time. The man I remember most in that position when I was U.S. Attorney was Johnny Layton, who was an excellent police officer, and one with whom I had many contacts. We got along well.
I HAVE A COUPLE OF CASES FROM 1952, WHEN YOU WERE STILL WORKING IN THE CORPORATION COUNSEL'S OFFICE, HYMAN v. COE. DO YOU HAVE ANY RECOLLECTION OF THAT ONE?

I certainly do. Hyman was a builder. His name is still associated with the construction firm.

GEORGE HYMAN?

Yes. That was a zoning case as I remember. It involved a property constructed as an apartment house opposite the Russian Embassy on 16th Street. Jimmy Wilkes represented Hyman. And he wanted to get an exception to the residential zoning so that it could be rented for office space which would be more profitable. And Jimmy and I battled that case up one side and down the other. As I recall, we lost the case at the trial level. We took it to the Court of Appeals. It was reversed in the Court of Appeals. And by the time it was back for retrial, I was no longer in the office. So I don't know what happened to it ultimately. I would say probably Jimmy Wilkes prevailed because every now and then I walk up 16th Street and it looks to me as though the place is being used for office space rather than living quarters. Jimmy effectively rezoned 16th Street by challenging the individual zoning before the Board of Zoning Adjustment. I represented them on a number of those cases. And Jimmy waved a magic wand over the Board of Zoning Adjustment.
I've got another case from 1952, **In Re: Bullock.** Does that ring a bell?

Bullock was an Inspector of Police. He is reputed to have ridden shotgun, as they call it, in the automobiles of gamblers, as a result of which he lost his position on the police force. The particular case to which you refer is probably the case in which the District cancelled his pension, and he sued to have it restored.

Well, there is another one the following year called **Bullock v. Spencer.** Were those two related, do you think?

I think they probably were. Sam Spencer was the Chairman of the Board of Commissioners. So Bullock probably sued Spencer to get his pension restored. I remember arguing the case before Judge Holtzoff. He disagreed with my view that the conduct of which Bullock was convicted was sufficient to revoke his pension. I think Judge Holtzoff took the position that Bullock had earned his pension and, therefore, it couldn't be taken away from him. In short, it had vested.

**Even if he was thrown off the force?**

Yes.
 HOW ABOUT CAMP V. RECREATION BOARD FOR THE DISTRICT OF COLUMBIA? DOES IT RING A BELL?

No, I don't remember that.

HOW ABOUT THIS 1952 CASE, MOSES V. CORNING?

That's probably one of the suits in which the dual school system here was challenged. You see we had a Black Division and a White Division. And Corning was the recipient of a great deal of litigation on that subject. I think I mentioned earlier that by the luck of the draw, Milton Korman, who worked with me in the Litigation Section of the Corporation Counsel's Office, drew the Bolling v. Sharpe case. That case probably prevented him from becoming Corporation Counsel later on.

FOR HAVING TO DEFEND THE SEGREGATION POLICY?

Yes. Of course, we all defended it because we were the city's lawyers. He had a lot of contact with Corning and the other people in the school system.

HERE'S ANOTHER CASE FROM 1953, AMERICAN UNIVERSITY V. PRENTISS.

Yes, I remember that case. Jimmy Wilkes again was my
opponent. In that case, American University agreed to have Sibley Hospital constructed on its grounds. And the Zoning Commission, of which General Prentiss was a member, for many reasons didn't want it there. In the first place, there was inadequate space. I think the University would have agreed with that. Certainly, subsequently, they've agreed with it. We didn't think it was the proper neighborhood for a hospital. It was too congested. So we tried the case before Judge Holtzoff. And my recollection is that we lost. But the neighbors were very much up in arms and one of them was a man who had considerable experience on the Hill. I've forgotten his name right now. But he proposed that Sibley Hospital be erected at the point where it is now located. And he got whatever legislative clearance was necessary for that. And that's where Sibley was built. I think everybody would agree that that was a wise decision. There just wasn't space enough on the American University campus for the erection of a large hospital with the attendant parking needs and so forth. But it is located now in a very convenient spot. And I much prefer to go there when some friend is there as a patient. It would not be true at the campus of American University. That is my recollection of that case.

TWO OTHER CASES I SEE REPORTED IN THE FEDERAL REPORTERS DURING YOUR CORPORATION COUNSEL TENURE. THE FIRST IS THE DOEHLA GREETING CARDS V. SUMMERFIELD CASE. ANY RECOLLECTION OF THAT?
My recollection of that case is that Summerfield was Postmaster General. And that probably would bring the case over into the years when I was in the U.S. Attorney's Office. I remember visiting Summerfield when he was in the hospital to confer with him about that case. And I've forgotten what the issue was. It was probably a postal rate case.

WELL, THEN, WE'RE PROBABLY NOW INTO YOUR TENURE AS THE PRINCIPAL ASSISTANT U.S. ATTORNEY, WHICH YOU TOLD US HOW YOU GOT THE JOB LAST TIME. IN THIS PRINTOUT, I'D SAY, WE'VE GOT ABOUT 20 REPORTED CASES FROM 1953 UP TO 1956 WHEN YOU BECAME THE U.S. ATTORNEY.

Yes, I argued some of the cases when I was in the U.S. Attorney's Office as Principal Assistant. They were mostly injunction cases.

WELL, I'M CERTAINLY FAMILIAR WITH THAT PRACTICE HAVING DONE A FEW OF THOSE. WELL, LET ME JUST LOOK THROUGH THE TIME WHEN YOU WERE THE PRINCIPAL ASSISTANT, FIRST, WHERE IT WAS MORE LIKELY THAT YOU WOULD HAVE HANDLED THE CASE THAN WHEN YOU WERE U.S. ATTORNEY.

That's right.

IN 1954, BENNETT V. DULLES?

I've forgotten what Mr. Bennett's problem was, but we would
have represented Mr. Dulles as Secretary of State.

HOW ABOUT ANOTHER 1954 CASE, IN RE: CAMMER?

Oh, I remember that well. Cammer was a New York lawyer who had sent a very searching questionnaire to members of the grand jury. He was interested in finding out what their reactions were to people who were accused of having Communist leanings. And I won the case before Chief Judge Laws - at least the government prevailed, enjoining Cammer and those associated with him from searching out the opinions of grand jury members. The Court of Appeals sustained our position two to one. It could be that your friend and mine, Judge Fahy, was the dissenter. I've forgotten now. It went to the Supreme Court and the Supreme Court agreed with the dissent. I did not argue the case in the Supreme Court. I don't know that I would have been the one who had the assignment. But someone else had it up there, probably the Solicitor General. But I remember that case well.

AND THE SUPREME COURT SAID IT WAS OKAY TO ALLOW A LAWYER TO MAKE INQUIRIES OF THE GRAND JURY ABOUT POLITICAL OPINION?

I have forgotten what the basis of that decision was. But my recollection is that it went off on some procedural point. I don't think they actually went so far as to hold it is perfectly all right for counsel to write letters to the grand jury.
LET ME JUST DIGRESS FOR A MINUTE FROM THE LIST OF PUBLIC CASES IN WHICH YOUR NAME APPEARS. YOU POINTED TO SOMETHING ELSE. I UNDERSTAND THAT UP UNTIL THE LATE 1950s THERE WAS A PRACTICE IN WASHINGTON THAT THE SOLICITOR GENERAL, WHO NORMALLY REPRESENTS AND REPRESENTED THE UNITED STATES IN THE U.S. SUPREME COURT, WOULD ACTUALLY ALLOW THE U.S. ATTORNEY FOR THE DISTRICT OF COLUMBIA OR HIS ASSISTANTS TO ARGUE CERTAIN CASES IN THE U.S. SUPREME COURT.

That's true.

THAT'S A PRACTICE, OF COURSE, THAT HAS LONG BEEN DISCARDED BY THE SOLICITOR GENERAL'S OFFICE, WHICH HANDLES ALL CASES NOW. COULD YOU TELL US SOMETHING ABOUT THAT PRACTICE? OBVIOUSLY WHEN YOU WERE IN THE CORPORATION COUNSEL'S OFFICE, THAT WAS VERY DIFFERENT. BUT WHEN YOU JOINED THE U.S. ATTORNEY'S OFFICE AS THE PRINCIPAL ASSISTANT, WHAT CAN YOU TELL US ABOUT THAT PRACTICE IN U.S. SUPREME COURT CASES, CIVIL OR CRIMINAL?

Well, contempt of Congress cases are a fairly specialized subject. Billy Hitz was the expert in that field. He argued at least one in the Supreme Court. Another one who was well informed and who sometimes handled those contempt of Congress cases was Joe Lowther. And my recollection is that, because the field is so specialized, the Solicitor General was willing to have Billy or Joe take those cases. If you are interested in that aspect, I talk to
Billy Hitz every now and then. He lives in Annapolis, and I could call him and ask him if he remembers arguing those cases in the Supreme Court.

THAT WOULD BE VERY HELPFUL. THANK YOU.

All right, I'll be glad to.

FOR OUR NEXT SESSION.

My recollection is that Joe Lowther argued a case involving a chap by the name of Ben Gold in the Supreme Court (352 U.S. 985). Gold had been convicted of filing a false Taft-Hartley affidavit. The Court of Appeals affirmed by an equally divided vote. The Supreme Court reversed and remanded. Gold had been a member of the Communist Party for 30 years. The question which disturbed Judge Bazelon in the equally divided Court of Appeals was whether the conviction should be set aside because an FBI agent investigating another case had spoken to three members of the jury during the trial concerning whether they had received any "propaganda." [237 F.2d 764 (D.C. Cir. 1956)].

Billy Hitz is an extremely affable gent. I always enjoyed my association with him. His older brother, Freddie, was a year ahead of me at Princeton and Billy was a year or two after me. So the two Hitz brothers were there at the same time I was. But we were not close friends as undergraduates.
DO YOU RECALL, ASIDE FROM THE CONTEMPT OF CONGRESS CASES, ANY OTHER KINDS OF CASES THAT THE U.S. ATTORNEY'S OFFICE EITHER WAS ALLOWED OR CHOSE TO ARGUE IN THE U.S. SUPREME COURT BACK IN THE 1950s?

Carl Belcher argued the Willie Lee Stewart murder case in the Supreme Court. One of the Justices, probably Justice Burton, told me that Lowther had done a very good job in the Ben Gold case. He was a hard worker and a chap who never took a backward step. And, you know, taking backward steps is the wrong thing to do when you are an advocate.

THAT'S TRUE. WELL, LET ME JUST KEEP RUNNING THROUGH SOME OF THESE CASES, BECAUSE MAYBE THAT'S THE BEST WAY TO TRIGGER SOMETHING. IN 1954 I GOT ABOUT FOUR CASES. ONE IS CALLED IVAN ELCHI BEGOFF V. DULLES. DOES THAT RING A BELL?

No, he could have been someone who was denied a passport.

APPARENTLY THE CASE WAS AGAINST BOTH THE STATE DEPARTMENT AND THE CIVIL SERVICE COMMISSION.

It could have been a personnel case in which the man lost his job or was demoted or something like that. I don't remember the case.
HOW ABOUT JIM CHRISTIE V. POWDER POWER TOOL?

I don't have any recollection of that.

NATIONAL LAWYERS GUILD V. BROWNELL?

That's probably Herb Brownell, the Attorney General. The Lawyers Guild, whether it's still in existence now or not, I don't know. But they were a very energetic group of young lawyers, apparently with leftist leanings. And they wouldn't have hesitated to sue the Attorney General. I do not remember that case.

MORRIS AND RUTH LUFF V. GERALD RYAN?

I'm not familiar with that either.

OKAY, THEN, WE'VE GOT ABOUT FIVE CASES IN 1955. I'LL JUST RUN THROUGH THEM. THE ATCHISON, TOPEKA AND SANTA FE V. SUMMERFIELD, POSTMASTER GENERAL?

Just judging by the identity of the parties, it could have been a contract for hauling the mail on the Atchison, Topeka and Santa Fe Railroad. I don't remember the case.

OKAY, ANOTHER 1955 CASE, OTTO NATHAN V. JOHN FOSTER DULLES?
I think that was a passport case.

WERE THESE PASSPORT CASES--DID THEY TURN ON COMMUNIST AFFILIATION TRAVEL?

Usually.

ANOTHER 1955 CASE, PETER DEMETRO ORAHOVATS V. HERBERT BROWNELL?

Well, that's a suit against the Attorney General. And that probably is a case in which, as U.S. Attorney, I was on the papers. Or as the Principal Assistant, I was on the papers. But I'm quite sure that Mr. Brownell would have been represented by someone from the Department of Justice.

OKAY, I'VE GOT A COUPLE MORE BROWNELL CASES. MAYBE THEY WERE ALL IN THE SAME CATEGORY. ONE IS RICHARD BENJAMIN HAYMES V. BROWNELL?

I would say that was in the same category. I don't have any recollection of that.

AND ANOTHER ONE IS CARLOS MAETZU V. BROWNELL?

No, I don't remember Mr. Maetzu.

HERE'S ONE AGAINST THE STATE DEPARTMENT. PETER GRAUERT V. JOHN
FOSTER DULLES?

No, I draw a blank on that.

AND THE LAST ONE FROM 1955, RAPHAEL SMITH v. MILLARD SUTTON?

That probably is a fire department personnel case. Sutton was the chief of the fire department.

NOW, WHEN IN 1956 DID YOU GET TO BECOME THE U.S. ATTORNEY?

Yes, March 29, 1956. I remember Leo Rover, who was the U.S. Attorney before me, knew that the President had nominated him to be Chief Judge of the D.C. Court of Appeals, and he had asked me if I wanted to succeed him, to which I said, of course. And I had my hearing on the nomination to be U.S. Attorney before he moved over to the D.C. Court of Appeals. So, he said, "You can be the U.S. Attorney for the Southern District of Columbia and I'll be the U.S. Attorney for the Northern District." That was one of his facetious remarks. But it was some time before he was confirmed. You see, Leo had taken vigorous action in the Lattimore case which was before Judge Youngdahl. And there were people in the Senate who were very much opposed to him. His confirmation was not routine although he had been nominated.

I remember one incident in connection with that. I had spoken to some of Leo's friends in the courthouse, particularly
Walter Bastian, who had been on the District Court and was then on the Court of Appeals. And he said, "I'll be glad to support Leo if I can do him any good." There was this hearing before a Senate committee. It was the Senate Committee on the District of Columbia. And he went down with Leo, and it was fortunate that he did because Walter had been counsel for labor unions when he was in private practice. And the Senator who was presiding, a Senator from West Virginia by the name of Matthew Neely, had also been active in labor union matters. And it was rumored (now, I didn't know anything about this at the time I asked Walter to go down and help) but they knew each other - Walter Bastian and Matthew Neely from labor union days back in West Virginia. And so when Walter, who was a big handsome fellow, walked in the room with Leo, who was much smaller, the opposition to Leo Rover dissolved. And these two ex-labor union battlers literally embraced each other and Neely said, "Walter, what can I do for you?" or words to that effect. And they had a series of recollections about their days in supporting organized labor in West Virginia. And things swung right around and the hearing was entirely favorable to Leo Rover. And he hadn't anticipated that. I hadn't anticipated that. I knew nothing about this West Virginia background. But he was confirmed as Chief Judge and I was confirmed as U.S. Attorney by the Senate Judiciary Committee. There was no opposition to me. They didn't know anything about me.

YOU WERE THE CAREER MAN.
Yes. I hadn't taken any position against someone like Owen Lattimore. I had not asked a Judge to recuse himself. I know that Leo had the Lattimore case. It was a very important and highly controversial case, and he had asked Judge Youngdahl to step aside. But I think I may have mentioned that to you earlier. Youngdahl never forgave him.

REALLY?

And, you know, they had a great deal in common. Leo's son was a priest. Youngdahl's son was a minister. But they fell out over that Lattimore case.

WHAT CASE WAS THAT, YOU'D REFERRED TO IT?

Well, Lattimore, was a State Department official who was an expert on China. And his position differed from the official position which was favorable to Chiang Kai-shek. Lattimore favored Mao Tse-tung. And there was quite a bit of Senate dissatisfaction to Lattimore. They wanted him fired.

WAS THIS IN THE DAYS WHEN THE COMMUNIST SYMPATHIZERS WERE NOT TO BE CONDONED IN THE STATE DEPARTMENT OR AT LEAST THAT WAS THE GENERAL IDEA? MCCARTHYISM AND ALL THAT?
Senator Pat McCarran knew Judge Rover and he advocated that the U.S. Attorney take action against Lattimore. And then when the case was assigned to the one judge on this bench who probably would be sympathetic toward Lattimore, this Senator and Leo literally exploded.

WHY WOULD JUDGE YOUNGDAHL HAVE BEEN SYMPATHETIC - BECAUSE GENERALLY OR WAS THERE SOMETHING SPECIFIC?

Well, his dominant record in Minnesota was that of a very liberal Republican. I suppose there were those who would say he wasn't a Republican; he was a Farmer Laborite. But I don't know the difference between the two. I'm not acquainted with Minnesota politics. I suppose if you'd want to find out about that, you'd go up and see my friend upstairs on the fifth floor, Judge MacKinnon. He can tell you all about that. So those feelings run deep on that issue in that area.

Of course, if you grew up in Washington as I have, particularly, in the days before there was any vote here at all (you'd just read about it in the paper), you would forget it. But I had the responsibility as First Assistant of writing the brief that supported the position that Rover had taken concerning Youngdahl on the recusal. Leo assigned the case to me, saying he had to go down to the Department of Justice for a conference with all the U.S. Attorneys from the entire country, which lasted a couple of days. So we dug the cases out of the books and filed the
brief. Pat Wald was on the other side. She was with Judge Arnold's firm. I didn't know that until she happened to tell me the other day when the subject came up concerning Lattimore and Judge Arnold.

WAS THE ARNOLD, FORTAS & PORTER FIRM REPRESENTING JUDGE YOUNGDAHL IN THAT CASE? I THINK THAT'S WHERE JUDGE WALD HAD WORKED FOR A WHILE.

I think that's right. I remember going over to deliver the government's brief. They were then located in the old Pierce Butler red brick house, which is located at the southeast corner of 19th and N. But I didn't realize that Pat had worked on that case.

Well, Youngdahl and I were good friends. We used to go fishing together. And I was amazed one day when I happened to be up in his chambers (both of us were then district judges) and the conversation had been very pleasant up to a point. And suddenly, he said (turning his back on me), "I'll never forget what you and Leo did to me in that Lattimore case." Well, I hadn't argued the case. I didn't do anything but write the brief. I think the brief was just digging out headnotes and reading cases. That's how we used to do it in those days before we had computers. And there were quite a few cases that supported Rover's position. But judges usually find a way of not recusing themselves when they think they should retain the case as a matter of principle.
JUDGE GASCH, YOU'VE HAD AN OPPORTUNITY TO SCAN THIS LEXIS PRINTOUT THAT LISTS CASES PUBLISHED WHILE YOU WERE THE UNITED STATES ATTORNEY BETWEEN 1956 AND 1961. THE FIRST ONE IS FROM OCTOBER 1956. IT'S UNITED STATES V. DORSEY OFFUTT. WHAT WAS THAT ABOUT?

Offutt was a personal injury lawyer and in this particular case, as I recall, he represented a doctor named Peckham who was charged with performing an illegal abortion. And the case was tried before Judge Holtzoff. Judge Holtzoff was not one of Mr. Offutt's greatest admirers. And he also had something less than respect for Peckham, who had been involved in a number of illegal abortions over the years. And you might say, it was a battle royal between the judge and defense counsel. I recall one particular comment of Mr. Offutt's: "Let the record show I object to Your Honor jumping from your chair up onto the bench." Judge Holtzoff had a way of sort of sitting back in his chair and then all of a sudden, springing forward, and I suppose that was why Mr. Offutt characterized it as he did. But the case resulted in the conviction of Peckham. And in addition to that, Judge Holtzoff held Mr. Offutt in contempt of court and imposed a sentence of ten days' confinement in the District Jail. And Mr. Offutt appealed that. It went all the way to the Supreme Court. Justice Frankfurter wrote the opinion for the Supreme Court, remanding the case for retrial on the conviction for contempt as well as the sentence before another judge than Holtzoff. Well, I think that
I'm correct in this. Judge Holtzoff called me and said, "I want you personally to handle this matter." And usually when a judge makes such a request, you conform your conduct to that request. The case was retried before Judge McLaughlin, who was a good friend and admirer of Judge Holtzoff. The trouble was that Judge McLaughlin wouldn't let Warren McGee, who represented Offutt, put in any mitigating testimony. So then the case went back to the Court of Appeals. I remember arguing the case up there. And I referred to Offutt's comment about jumping from your chair up onto the bench; telling the Court that Offutt had likened the judge's conduct to that of a squirrel. That amused the panel but they still thought that ten days was too much. And they remanded it back to the trial level for a determination as to whether the conviction should stand. Well, none of the district judges wanted to try this. It was a hot potato at that point. There was a visiting judge from Ohio, whose name was Wilkin. He was tapped to try it and he concluded that Offutt was guilty and that six hours was an appropriate sentence. So the U.S. Marshal called me and asked if it would be all right if Mr. Offutt sat in his office for six hours.

THAT WAS THE SENTENCE?

That was the sentence. So I said, "Do you usually allow prisoners to serve their sentences in your office?" He said, "I don't think I've ever had such a sentence to deal with." But to
answer the first part of your question, I have never had a prisoner sit in my office. So I said, "Mr. Offutt is no different from any other prisoner." So he locked Mr. Offutt up for six hours down in the cellblock. And Offutt wouldn't speak to me for about a year. But he was continually in hot water. I remember he had filed a suit against somebody, and I was called by defense counsel as a witness. Why I was called I don't know. But we appeared before Judge Mildred Reeves, who was the trial judge. I was called as a witness to express my opinion as to his character. I expressed my view that Mr. Offutt lacked character. There were others, Frank Roberson of Hogan & Hartson, and Hubert Pair, later a D.C. Court of Appeals Judge. But Offutt was an unusual fellow. He got big verdicts, and to that extent was unpopular with the defense bar. But I do remember being personally requested by Judge Holtzoff to sustain the charge that he had leveled against Offutt, contempt. And I agreed it was contempt. It didn't make much difference whether it was ten days or six hours, Offutt was never satisfied with the sentence. And Judge Holtzoff thought it was much too lenient. But in any event, that was the Offutt case as I recall it.

The next one you've mentioned is from 1957, William Girard, who was in the army, apparently versus Charles Wilson, Secretary of Defense. What was that about?

Girard was a soldier serving with the occupation forces in
Japan and he had committed a serious offense against a Japanese civilian, as a result of which the Army, under the Status of Forces Agreement, issued an order turning him over to the Japanese authorities for this violation for trial and punishment if convicted. He filed suit in the District Court. And that case, as far as I'm able to recall, holds the record for the most expeditious disposition of litigation by the Supreme Court. I think he filed suit near the end of the term. I argued the case before Joe McGarraghy, who was very much opposed to the decision of the Army to turn Girard over to the Japanese. He never understood or appreciated the Status of Forces Agreement, which specifically provided that, if the offense committed by the soldier was against a civilian, it was a matter for trial by the civil authorities. There wasn't any question but that this was not a military offense. Girard shot and killed this Japanese woman who was picking up shell casings on the rifle range. In my judgment, the commanding officer did just what he was required to do. I argued the case, and I got no place with Joe McGarraghy, who was known, after the case was decided, as "G.I. Joe." Well, a chap from the Solicitor General's office, Roger Fisher, who afterwards became a professor at Harvard Law, sat alongside of me and kept saying, "For God's sake, lose this case." And I couldn't understand why he was saying that. Afterwards, he explained to me that if the decision was against the government, we control the appeal. We can get the Court of Appeals to step aside and we can ask the Supreme Court to hear it right away, and they were just
about to go on their summer recess. He said, "Of course, if you win the case, it will be kicked over into the fall or whenever they want to fit it in." He said, "This is something that's got to be decided right away." So that made sense to me. And I didn't try to lose the case but Girard's side prevailed. So the government asked the Court of Appeals to pass jurisdiction to the Supreme Court, which they did, and I think by that time the Court was in recess for the summer and Justice Douglas was actually climbing a mountain in Tibet, but the rest of them were around and eight of them heard the case. And based on Schooner Exchange, an early case in the Supreme Court, the Court ruled that the commanding general of our forces in Japan was correct in his determination under the treaty. Since our people were, in effect, guests of the Japanese government, the Schooner Exchange case applied, and the decision was correct. Some months later, I talked to a friend, General Ted Decker, who was Assistant JAG of the Army. He was sent over to monitor the trial in the courtroom when Girard was tried. And I asked him what he thought of the trial. He said, "Girard got a more lenient trial before the Japanese than he would have gotten before a Court Martial." He was confined in the stockade of the occupational forces during the trial, so he was never actually a prisoner of the Japanese. In accordance with the Japanese system, you may try a case one day, and then recess it for several weeks or months. Finally the Japanese found him guilty of the offense, but released him on a time-served basis. So the general was correct. Girard got a break. But I remember the case particularly
because the Supreme Court decided the jurisdictional aspect of the case within probably a month or six weeks of the time suit was filed. And that is a record.

JUDGE, I AM JUST GOING TO RUN DOWN THE LIST OF CASES LISTED ON THIS COMPUTER PRINTOUT THAT YOU PUT A CHECK NEXT TO DURING YOUR U.S. ATTORNEY TENURE. IF YOU CAN REMEMBER WHAT IT WAS ABOUT, FINE, OR I'LL LEAVE THE LIST WITH YOU. FIRST, ONE'S FROM 1958, U.S. V. DOMINIC GUAGLIARDO.

Guagliardo was a chap that was associated with Marcello in New Orleans and it was a deportation case. He filed a habeas corpus to avoid deportation. I remember being before Judge Tamm on the Guagliardo case. And I raised the technical point that Guagliardo was not in this jurisdiction and, therefore, the efforts by his lawyer to be heard on his behalf here was lacking habeas jurisdiction. I remember this lawyer, whose name I don't recall at the moment, cupped his hand to his ear and he said, "If Your Honor will listen closely, you will hear an airplane going over the District of Columbia and that airplane is deporting my client." Well, I heard the Judge say, "Thank you, my hearing is not that acute." So habeas was denied and Guagliardo was deported.

WHAT ABOUT ANOTHER CASE FROM 1958, IN THE MATTER OF DALLAS WILLIAMS.
Dallas Williams is known as the "Bad Man of Swampoodle." He had shot and killed at least two people. But somehow or other, he prevailed in the Court of Appeals on a speedy trial basis. We were seeking to avoid some of his efforts to stay out or get out and I was directed to appear before Judge Keech, who was probably my closest friend on the bench, having served in his office when he was Corporation Counsel. The Court of Appeals had remanded the case and he was assigned to hear it. I thought that if anybody would be receptive to my plea that Dallas remain in custody, it was Richmond Keech. But my guess was wrong and Dallas got out. One is hard-pressed not to claim to be right when you lose a case and that is certainly true of Dallas Williams' case. He hadn't been out more than a year before he went into a gas station and, instead of buying gas, simply unzipped his fly and started to relieve himself against one of the gas pumps. And the gas attendant said, "You can't do that here, go round the corner to the men's room." And Dallas pulled out his pistol and shot and killed the attendant. I don't think I ever discussed that case with Richmond Keech, but I think he would have agreed that his decision in letting him go was wrong. But Dallas was a character and having any connection with him was a memorable event.

IN 1958, LINUS PAULING V. MCELROY, LINUS PAULING OF NOBEL PRIZE FAME.

That's right. He was a physicist. And I think his suit
sought to restrain the Secretary from utilization of atomic or nuclear warheads. And I remember that, although my effort in the case was solely as counsel for the Secretary, Pauling, with great alacrity, accused me of being one of these nuclear zealots, which I was not. But, nevertheless, that's my recollection of the case. I don't remember how it turned out, but I think the Secretary prevailed.

ANOTHER 1958 CASE. DIANA POWELL V. THE WASHINGTON POST.

I think Diana also sued some federal official.

SECRETARY OF LABOR, I THINK, WAS IN THE CAPTION.

Yes, and I don't know how those two were linked up. But I do remember Ms. Powell. She was a lady lawyer who always seemed to be trying to swim upstream. She was rarely successful, but she always kept trying. And my recollection is that sometime after this, she got into further trouble, as a result of which she was disbarred. But she was a person for whom one felt sorry, but you just wished that sometimes she would get a good case.

FROM 1959, U.S. V. BERNARD GOLDFINE.

Mr. Goldfine was a gentleman who gave Sherman Adams a vicuna coat.
SHERMAN ADAMS WAS PRESIDENT EISENHOWER'S CHIEF OF STAFF.

That's correct. And there was so much flack raised about it that Sherman Adams resigned. And the case that is probably referred to in that caption is a case in which delivery of some records was made to the Hay Adams House, where he was staying, and Goldfine contended that the FBI had improperly gotten access to the records. And I remember it had to be shown that the FBI agent had somehow or other gotten into his room as his fingerprints were on the records. But due to the fact that the agent could have touched the records when they were in the possession of the desk clerk, Goldfine's suit failed. I remember Goldfine because Roger Robb was at one point his counsel. I don't think he was Goldfine's counsel at the time this suit was in the works because Goldfine, like a lot of other litigious people, shifted lawyers quite easily. It could be that the case to which reference is made was the case in which Ed Williams represented him. I don't know whether - if I looked at the reference in Fed. Supp., it would be clarified. But I remember in that case, he had been sent to St. Elizabeths Hospital for mental observation. The people at St. Elizabeths were very anxious to get him out because he was a big spender and he used to order food from the Mayflower Hotel.

DELIVERED TO ST. ELIZABETHS?
Delivered to St. Elizabeths and he would call in these psychiatrists who were examining him for a banquet. And that was kind of tough on discipline. And Overholser, the Superintendent, was very anxious to get him out. And Overholser was very good at pulling strings. The case got before Judge Hart. It was shortly before Christmas and Judge Hart had a record player and he was playing Christmas carols or Christmas music on the record player. And I should have said to him, Judge Hart, for God's sake, cut out the music, let's try this, Williams and I, on the merits and get rid of the issue. Williams wanted him shipped back to Boston, where he could be given psychiatric attention and so forth. And I was quite willing to concede that because Overholser had been calling me and saying, "Get him out of my hospital." So, it was just a question of whether he would go to Boston by train, which was my preference, or whether he was allowed to fly up, which is what Williams wanted. Well, Hart, as I said, was quite sentimental about Christmas, and his parting remark to counsel was, "I don't have it in my heart to make this little old man go to Boston on the train. I once took that trip and it's horrible." Ed prevailed. Unfortunately for his client, when Goldfine landed in Boston, his wife was there and his secretary, a Miss Pepperman, who was well-named, was also there. These two women were in constant competition for Mr. Goldfine's attention and they had a free-for-all.

IN THE AIRPORT?
In the airport. And I don't think Goldfine was a party to the fracas, but it was well publicized. And I never had the gall to say to Judge Hart, "Don't you wish you had sent him up on the train." Ed Williams and I chuckled about it from time to time. But that is probably the Goldfine case that is referred to there. The one I mentioned about the delivery of papers to his hotel and whether the FBI invaded the sanctity of his room at the hotel may have been another case, or maybe a part of the same case, but I do remember those two incidents.

WE'LL HAVE A CHANCE DURING OUR LITTLE RECESS TO LOOK IT UP, BECAUSE I'LL MARK ALL THESE ON THE PRINTOUT. I'VE JUST GOT A COUPLE MORE, THEN WE CAN FINISH UP. YOU CHECKED 1960, SUNSHINE PUBLISHING CO, V. SUMMERFIELD, POSTMASTER GENERAL.

That is probably a nudist magazine or at least one in which the postmaster general sought to preclude the delivery of that group of pictures or magazines or whatever. I have a very dim recollection of this case.

YOU ALSO HAVE IN 1961, U.S. V. JAMES KILLOUGH.

That was a case in the Court of Appeals in which the Court of Appeals reversed the conviction of this man. It was a very controversial 5-4 decision. Killough had been convicted before
Judge Youngdahl of strangling his wife. Rule 5(a) of the Federal Rules of Criminal Procedure, which requires that an arrested person be taken before a magistrate without unnecessary delay, was involved. Judge Youngdahl had excluded Killough's first confession on this ground but a second statement made to a classification employee at the jail was incriminating. This second statement was admitted. The dissent emphasized that full warnings had been given and that the statement was voluntary. The majority held that it was the product of the first confession and it was inadmissible.

LAST ONE BEFORE WE BREAK, HERBERT O'BEIRNE V. WINFRED OVERHOLSER.

The O'Beirne case was a habeas corpus from St. Elizabeths Hospital and I don't remember what the decision of the Court of Appeals was at the time, but another one of the St. Elizabeths cases that we had during the time I was U.S. Attorney, and I might say that, when the Court of Appeals finally adopted the Brawner formulation of insanity as a defense, I was extremely happy; and, later, when this young fellow shot President Reagan --

HINCKLEY?

Hinckley, yes, Congress adopted a formulation of the insanity defense which requires that one asserting insanity as a defense must prove it. I doubt very much whether I've had a case since the Hinckley incident in which insanity was raised. I remember having
one, when the American Law Institute formulation was the test. It was an extraordinary case in which this world-class bridge player named Glenn Wright kidnapped a Mrs. Rosenkranz, who was also a world-class bridge player.

OH, YES, YES, I REMEMBER THAT. THAT GOT A LOT OF PUBLICITY.

It did.

YES, A LOT OF PUBLICITY. THAT WAS JUST A FEW YEARS AGO.

That's right. I tried that case, and this chap was convicted. He pleaded insanity as a defense, but that was under Brawner, and the jury didn't accept it. That was an amazing case. It just shows what a guy will do when he's hard up. The ransom of $1 million was paid but a phalanx of FBI agents were there to afford him custody.

WHY DON'T WE CALL THIS A DAY. THIS IS THE END OF THE TAPE.
Okay, Judge, we were going to start with cases that you presided over since you joined the U.S. District Court back in 1965. I know you may have told me this very briefly before -- you were happily engaged in the private practice of law at the Old Craighill firm, after serving as U.S. Attorney, in the Corporation Counsel's office and all that, JAG Corps, and were enjoying the pleasures of private practice as well as the non-pleasures. How did it come about that you wound up on the bench of this courthouse?

One morning I was getting things together to go to court; I was representing the Librarian of Congress, whose wife had died as the result of an accident. She slipped on the floor of a Giant store and, unfortunately, had died of complications. But, nevertheless, I thought I could prove liability and get a substantial recovery for my client. And I got this call on the phone. It was from Tom Corcoran, who was an older brother of Howie Corcoran, my college classmate. And Tom said, "You want to be a judge?" I said, "Sure, who doesn't?" He said, "I was at the White House last night and the President said, 'I want to appoint a Republican, who do you recommend?" Tom said, "I tossed your name in the hopper. Nothing may come of it, but if it does, you will know who started it." So, about six weeks later I got a message
that the President would like to talk to me, that was LBJ. So I went over to the White House and had a very pleasant chat with him. And I remember he said, "Well, we investigated you thoroughly and your family ought to be very proud of you." And I said, "Thank you, Mr. President, I'll tell them." So he said he was going to send my name up and, unlike some of the recent nominees, I had a very friendly reception from the Judiciary Committee. At that time it was presided over by Jim Eastland and I remember Senator Hruska was there with him. They did not give me a hard time, and I was confirmed and have been very happy in the ensuing 26 years down here. But, that's the way it came about.

The first case I want to talk with you about this afternoon is the Parrott case. The point of law involved in that case was whether the United States could initiate parallel proceedings, one civil and one criminal. And since discovery in the civil case was much broader than the very limited discovery you get in a criminal case, the Government had subjected Parrott to intensive questioning on the civil case and was starting to use it before the Grand Jury. Jiggs Donohue, who was a very experienced lawyer, represented Parrott. And so there was a battle royal in the courtroom and Jiggs was seeking to enjoin the utilization of this material discovered in the civil case. It seemed to me that he basically had a good point, and I agreed with him. I remember my good friend, Bill Foley, who was then first assistant in the Criminal Division at Justice, and later, head of the Administrative Office of the U.S. Courts, and I had known him for years disagreed. After
the case was all over, Bill called me and he said, "You may be right on what you did, but you're the first one who ever did it." He said, "Up in the Southern District of New York they approve that practice." I said, "Bill, I never wanted to live in New York." That's the first case I remember and I think it's an important case. To my knowledge, of course, though our bench is collegial and we talk about our cases from time to time, both in executive sessions and at the lunch table, I've never heard of a similar case in this district. So, as far as I know, the Department of Justice hasn't sought to do that in any other case.

WAS THIS SIMILAR TO THE SELLS AND BAGGOT SUPREME COURT CASES, WHICH ARE A LITTLE DIFFERENT, BUT THE SAME JUSTICE DEPARTMENT LAWYER COULDN'T WORK THE CIVIL AND CRIMINAL CASE. DID THAT COME UP TOO? IT'S A LITTLE DIFFERENT ISSUE, I KNOW.

I don't believe mention was made of that. After all, that case was 25 or 26 years ago. And I just remember the heated discussions we had between the lawyers for the Government, who thought the practice was all right, and Jiggs Donohue, who was a pretty persuasive advocate. Probably the best Commissioner under whom I had served -- and I mention that because in my 16 years with the Corporation Counsel's Office, I served under some outstanding Commissioners, such as Sam Spencer and Walter Tobriner, both fine lawyers, and a number of outstanding generals who were engineer commissioners.
I can't pass over this opportunity without saying that having outstanding people head the city government is a definite plus. And I always regarded Jiggs Donohue as a great Commissioner as well as an outstanding lawyer. Jiggs had the equities with him and in spite of Bill Foley's negative reaction about him, I thought he did the right thing.

I'm not passing on whether Mr. Parrott got off lightly, but that's not the way to get a criminal--sue him civilly and take extensive discovery and use it against him in a criminal case. And that's what they sought to do.

WHAT WAS THE BENCH LIKE, THIS BENCH, WHEN YOU CAME ON THE BENCH? WHAT ARE YOUR RECOLLECTIONS OF JUDGES, THE COURTHOUSE, THE PRACTICE THAT WAS HERE?

I would say it was an outstanding bench. I always had great admiration for Matt McGuire, and Richmond Keech was an old friend. I had served with him when he was Corporation Counsel. And later he became counsel to President Truman. Truman put him on the bench. There was Dave Pine, who had been U.S. Attorney, and Dave was a hot-tempered individual, but a very good lawyer. He would give a lawyer hell in open court and apologize privately, and I was sometimes the recipient of that practice. I never really appreciated it, but I got along well with Dave. I think he was a good lawyer.

Joe McGarraghy. Joe was a man who served in the Corporation
Counsel's office. I don't know if he was there at the same time Keech was there or not; he was there before my time.

Burnita Shelton Matthews was the first woman to be appointed a federal trial judge. I always admired her, particularly during the period I was U.S. Attorney. We had some really tough cases that she had to pass on. And I always thought she handled them with exceptional skill and demonstrated that a good woman lawyer is as good as a good man lawyer. She had the Hoffa case. Ed Troxell was the prosecutor. Ed Williams represented Hoffa. That was the case in which somebody connected with the Hoffa defense brought in Joe Louis. On this occasion, Judge Matthews was the last to enter the courtroom after the jury had been seated. At the most dramatic moment, Joe Louis entered the well of the court and embraced Hoffa right in front of the jury, which was predominantly Black. I always thought that that had a significant impact on the jury. The jury acquitted Hoffa. Judge Matthews was a very good judge, very hard-working. She also tried the Monroe-Prather and White-Top Simpkins gambling case. Monroe and Prather were police officers, and they were literally in White-Top Simpkins' pocket. They were convicted along with him. She presided over that case. That was a very difficult case. That happened when I was Principal Assistant U.S. Attorney. It was a memorable case—the only case I recall in which high-ranking police officers were convicted of bribery in the numbers game with the principal numbers operator. White-Top Simpkins died sometime ago. I haven't heard anything of the others. Simpkins tried to bribe a police lieutenant named
Thoman, who reported the matter to the Chief of Police. Thoman was then equipped with a recording device. Traffic noises permeated the recording. With the help of experts at the Bureau of Standards, the extraneous noises were filtered out.

WHO ELSE WAS ON THE BENCH BACK IN 1965?

Alec Holtzoff. He was a top-notch judge in my opinion -- a little bit hot-tempered and some of the lawyers thought he moved too fast. You can't hear everything that a lawyer wants to say, but you should give him the opportunity to put on his best points. I remember, in connection with the Parrott case I mentioned, Alec Holtzoff was our next-door neighbor in the Court House. And since I was, in effect, blazing a new trail, I had the hunch to go next door and say, "Alec, I just made this decision, would you like to read my memo." And I remember his throwing up both hands and saying, "No, no, no! That's your opinion; that's a hundred percent with me. Never rely on some other judge's opinion; do it yourself." That made an impression on me. I would have been glad to have his opinion because he was probably the most scholarly person on the district bench at that time.

Bo Laws had been an extraordinary Chief Judge. He was probably the best liked Chief Judge that this Court ever had so far as the Bar is concerned. He wasn't always accepted by his colleagues. I doubt very much whether any Chief Judge is universally liked by the group of prima donnas who serve as
district judges. District judges are inclined to be extremely individualistic. They have their own philosophies and while they generally accept the precedents of the Court of Appeals, it isn't always graceful. The same thing is true of the views of the chief judge. He's there, he presides, and that's it.

WHO ELSE DID WE HAVE BACK THEN? WERE HART AND SIRICA ON THE COURT AT THAT POINT?

They sure were. Judges Hart and Sirica I had known for years. I suppose they are approximately the same age, though each of them may have had a year on me. I think Judge Hart was Class of '27 at VMI and then he went to Harvard Law School. Johnny Sirica got his education at Georgetown, and I'm not sure when he graduated, but we had the same barber, Luigi. Luigi always asked me whether "Siric" is older than I or younger than I. I had to concede, he's older than I, how much I don't know nor does Luigi. But he was on the bench.

Bill Jones was on the bench. I think Bill was appointed by President Kennedy. I always admired him as a top-notch judge. He had played football under Knute Rockne at Notre Dame and he also served as one of Rockne's assistant coaches while going to law school. He on one occasion, I recall, was challenged by Minnesota's representative on the bench, George MacKinnon, about some statistics: How heavy was so and so who played next to you in the Notre Dame line? MacKinnon always recalled with great
specificity, and I assume accuracy, how much each man on the Minnesota line who played with him weighed, how tall they were, and so forth and so on. Bill Jones replied to MacKinnon quite proudly, "Hell, George, I've thought about other things since I stopped playing football. I don't know how tall he was or what he weighed!" But we still have our football lunches, and they just terminated, of course, with the Redskins triumph at the Super Bowl. MacKinnon reverts back to the days when he played football, and he will never concede that anybody on the Redskins tackles as hard as they did at Minnesota back in the 1920s when he played there. But, let's see who else was on the bench then. Those are the ones I remember.

Oh, yes, Eddie Curran was on the bench. He afterwards became Chief Judge, as you know. Eddie was not an administrator. Hart and some of us suggested to him that he appoint an executive committee that would assist him in running the court. Well, Hart and Jones were on the executive committee and they ran the court. Curran didn't have much interest in administration. But Hart, when he became chief Judge, was an excellent administrator.

I should mention that the same day I was sworn in, I think it was the 16th of August 1965, Bill Bryant was sworn in. As I recall, I was sworn in in the morning, and he was sworn in in the afternoon. But Bill had been in the U.S. Attorney's Office when I was. He went on from that job to be an outstanding defense counsel. Mallory was his case that was prosecuted by the U.S. Attorney; Bill was Mallory's defense counsel, after he left the
U.S. Attorney's Office. Mallory had been convicted of rape. The conviction was sustained by the Court of Appeals, and he had been given the death penalty. Bill got the case reversed in the Supreme Court. They failed to bring him before the Commissioner without unnecessary delay under Rule 5(a). In any event, now his conviction was based largely, if not entirely, upon his confession, and without the confession, we couldn't make a case. He had a handkerchief over his face, and the victim could not identify him. We checked whether we could prove the case with circumstantial evidence. I was satisfied we couldn't, so we could not retry the case.

HE WALKED?

He walked -- until he did the same thing in Philadelphia. And I've forgotten the exact manner in which his career was terminated, but I have the dim recollection that he was trying to escape and was shot by the police. That may be something that is not entirely accurate. But he didn't get in any further trouble anyhow.

Now, you asked about the manner in which the court operated in those days. I would say that it was a smoother operation, largely because of the fact that we had very few, if any, drug cases. We did have a few numbers cases. And I remember some of those, but we were able to handle our load with a reasonable degree of expedition. We had the entire common law felony load as well
as the statutory load. We had a lot of civil cases, but the court was the same strength then as now--15 judges. And we got along without too much trouble. There were those who felt that local crime jurisdiction should be vested in the -- I think they then called it the Court of General Sessions -- it's now the Superior Court, to try the local crimes. Matt McGuire was one who felt strongly that that should be the way it should be done. Probably about half the judges, little less than half the judges -- Walsh, Gesell, Bryant, Pratt, Smith and I -- were in the category that wanted to keep the criminal load over here. I suppose it was because we liked to try criminal cases. And we weren't so sure that the Court of General Sessions as then constituted could handle them.

I remember we were visited by a group from the Senate District Committee, the Tydings Committee. They sought our views and tried to get us to agree with them, but we never did. They had the legislative power when it came to court reorganization, which I think was passed about 20 years ago. Fortunately, it happened before we got this load of drug cases. The drug cases have changed the whole complexion of the court. I don't think there is a single judge that enjoys trying them, particularly since we've been saddled with this so-called Sentencing Reform Act, which requires the imposition of horrendous sentences as a mandatory minimum. There's not much you can do even if the offender is a young fellow who's never had any criminal record and if the amount of drugs distributed is over a certain arbitrary amount, five grams, which
is a small amount, you are required to impose five years. And if it's less than five grams, the Sentencing Commission has imposed guidelines, so-called, which are binding on the judges, and it's very hard to justify some of the guidelines for the individual sentencing judge. But the reason for the sentencing act and guidelines is that Congress felt that there was too much disparity in the sentences imposed by the judges throughout the country. That may well have been true, but it always seemed to me that disparity is something that you encounter when you analyze facts and circumstances in a case. Some cases are much more outrageous than others. And I have always felt that it is better to have the opportunity of imposing a sentence that forms a basis for the opportunity of rehabilitation. If you lock up a guy, and throw the key away, he's a goner. Ten years, twenty years in prison without an opportunity of parole is -- it's the end of that individual. Not all the criminals support their families, but some of them do. So you have a whole class of people that are deprived of the support they might get from the head of the family. I don't think that's just, but we're stuck with it. It's such a problem that most of my colleagues are literally unable to touch their civil caseloads. They can take a civil case now and then.

Just recently Judge Revercomb was tied up with a very complicated contract case involving the Metro system and the construction of one of its lines.

I SHOULD TELL YOU MY FIRM REPRESENTS METRO IN THAT CASE.
I know.

IN THE SPIRIT OF FULL DISCLOSURE.

He asked me to take two of his criminal cases. And one of these criminal cases involved the largest seizure of cocaine in this district. Now, I know Revercomb well enough to know that he wouldn't be asking an ancient senior judge to take a very important drug case unless he thought that it was absolutely necessary for him to try this big civil case. So he's had to cut loose some of his criminal cases. And he looked to me. I understand that some of the judges are so impressed by the fact that they have been putting off their civil cases for months, that they now, out of a sense of obligation to counsel and clients in those cases, are trying a few civil cases, but we don't try many. It is unfortunate that you have this kind of situation. And the point I would like to stress in that connection is that prior to the time we had these horrendous, rigid guidelines and the sentencing "reform" act, we got pleas of guilty in about 90 percent of our criminal cases. Now, it's down to about 50 percent or less. Rarely, in my experience, do you get a plea in a drug case because the penalties are set -- set in concrete. Counsel has the obligation of discussing that with his client and there isn't any reason why he shouldn't take a chance. They might get a hung jury; it only takes one. Or you might get an acquittal. You never really know what
individual experience members of the jury or their families have had with police testimony. There is no doubt that word has spread to jurors about these penalties. They'll probably deny it, but every now and then you get a lawyer on the jury and lawyers know what the penalties are. But you get somebody else on the jury who knows or thinks he knows, they all know it's pretty bad. Formerly, you know, you could say to a jury, don't consider the question of penalty, that's the responsibility of the court, and the court has considerable discretion. You can't say that anymore. You can say it's the responsibility of the court, but they don't have to let you exercise it, if they decide to acquit. And that's what's happening.

Just today, they were talking about acquittal. And that's happening time and time again. I think it's a direct result of the fact that jurors are accepting this theory of nullification. They think the penalties are too stiff in drug cases. So, instead of the proposition that the tougher you make the sentences the greater the impact will be upon the drug traffic, that's not true. If the defendant is acquitted, that's just a challenge for him to try it again.

THE FIFTY POUNDS OF COCAINE YOU JUST REFERRED TO, THERE WAS AN ACQUITTAL, WASN'T THERE?

That's right. And my own feeling is that somebody on that jury knew what the penalties were. I remember old Judge Bailey,
who was appointed to this Court by Woodrow Wilson in 1916. When he was in his 80's, he came down one day and dropped in to see me -- I was then the U.S. Attorney. We had a chat and I said, "What do you miss most about not being down here everyday?" And with that wonderful old Tennessee twang he had, he said, "All those lies." You know, witnesses sworn to tell the truth -- they get up there and lie like hell. I think just consider all that and this acquittal yesterday. If the defendant says he didn't know what was in his bag -- it's hard to conceal 25 pounds of cocaine. He was told it was books sent by his codefendant's girlfriend to some girl in New York. So, at least there was some discussion of what the package was. And the fact that it was wrapped in plastic, with duct tape strapping. I've seen books transported but never that way. I'm not that naive. Maybe somebody, or all 12 of them, were naive. They acquitted him. But I think it's probably an exemplification of how stringent the penalties are.

HOW ABOUT THE COURT OF APPEALS, WHEN YOU CAME ON THE BENCH HERE? THERE HAVE BEEN A LOT OF CHANGES UP THERE TOO.

There sure have been.

WHAT'S YOUR RECOLLECTION OF THE COURT OF APPEALS BACK IN 1965 WHEN YOU CAME ON THE DISTRICT COURT AND THE INTERRELATIONSHIP BETWEEN THE DISTRICT COURT AND THE COURT OF APPEALS?
Well, I think the present Court of Appeals is probably more inclined to recognize the difficulties which confront trial judges -- not that all cases result in compassion. That will never happen and it doesn't happen now. But in my years in the District Attorney's office, we had the "Durham insanity rule," which was Dave Bazelon's contribution to the law. I remember one horrible month in which one-half of the people who were charged with felony crimes were found not guilty by reason of insanity. Dr. Overholser, who was the Superintendent of St. Elizabeths, was sympathetic with the theory that, when there is some evidence of insanity, the Government had the burden of proving beyond a reasonable doubt that the defendant was sane before he could be found guilty. Well, it was partly corrected by Judge Leventhal's opinion in the Brawner case. And, of course, it has been practically eliminated as a defense in criminal cases by the case in which the young man -- I've forgotten his name -- attempted to assassinate President Reagan.

HINCKLEY.

Hinckley. Now, if you assert insanity as a defense, you've got to prove it. Nobody raises it anymore. At least it is rarely raised in my experience since the Hinckley case. But I would say in the years I was in the U.S. Attorney's office and when I first came on the bench and had to instruct on the defense of insanity, the Durham formulation was the biggest problem. And now, as a
result of **Brawner** and **Hinckley**, insanity as a defense is rarely interposed. I remember talking to Herb Wechsler about it at a meeting of the American Law Institute and suggesting to him that he should seek to have it adopted as the law in this district as a defense in insanity cases. He didn't think that was properly his function. He was probably right. But, of course, Harold Leventhal came along a few years later. He just wrote off **Durham** and wrote in **Brawner**. I think the **Brawner** formulation, the ALI formulation, was a big improvement.

SIDE TWO - CONTINUATION OF JANUARY 29, 1992 INTERVIEW

I would say the judges on the Court of Appeals both in the years when I was U.S. Attorney and in private practice, and a judge were extremely friendly. I remember Barrett Prettyman, who agreed with Dave Bazelon about the **Durham** rule, he called me one day and he said, "Who do you know on the House District Committee?" Well, I didn't know anybody. He said, "Think about it and we ought to get rid of this mandatory death penalty in first degree murder cases." He said, "Make it permissive and in the bad cases the defendant can get the death penalty, but," he said, "I'll wager that most of the time juries will vote life imprisonment." So we thought about it and found that a Congressman, I think from Little Rock, was the Chairman of the House District Committee, and we found out what the law was in his state -- it was the permissive death penalty for first degree murder. So Barrett suggested that
he and I go down and see this gentleman, which we did. And we asked him to introduce similar legislation. And he did. So we got rid of the mandatory death penalty and I think that we haven't had a death penalty case since then. Now, that's 30-some years ago. I mentioned that primarily to show the friendly relationship between the district attorney and the Court of Appeals and the District Court.

I remember another situation -- John Danaher, who had been Senator from Connecticut -- a certain case, the identity of which I've long since forgotten, where the Court of Appeals was two to one for reversing the conviction. I filed a motion for rehearing en banc. John called me upstairs to the 5th floor and he said, "Look, you're wasting your time anytime you do that kind of thing." He said, "If the Court of Appeals wants to rehear it en banc, the Court of Appeals will make that decision. We don't need any advice from the district attorney." I had to agree that he was right and he was the one who had written the dissent, so I knew then that he didn't think the Court would take it. It would have been an exercise in futility.

Walter Bastian had been a district judge, a very good trial judge. He was a top-notch trial lawyer for many years before he was appointed judge. And he was, as might be expected, very friendly with trial judges and very friendly with the district attorney's office. He was friendly with everybody; he was that kind of a fellow. I would say that this same relationship exists today. It's probably broader than it was then. I don't know
whether the same details apply today as they did then, though with some appellate judges, if you have the same interests and inclinations, why, the relationship can grow and become deeper. I think these judicial conferences which we now have -- like, say, at Williamsburg or Hershey or at the Greenbrier or wherever they select -- are a definite improvement over the judicial conferences that formerly used to take place in the Ceremonial Court. And everyone was wondering how soon the damn thing would break up. Now, we have breakfast together, have dinner together. Those who play golf or tennis, play golf or tennis and there are those who even go in for what is known as the "fun run." It wouldn't be any fun for me to run 2 1/2 miles; I don't think I could make it. But there are those who do.

I would say that Ab Mikva is a very outgoing, friendly fellow. Certainly, his views about the criminal law don't always coincide with those of many of the trial judges. Nevertheless, he's a good administrator and he's a good person to have in that position.

I would say the relationship is friendly and understanding today. We have an annual dinner at which the judges of the two courts get together and break bread. I think that kind of thing is a great advantage. I think the business of having a "chip on your shoulder" because you've been reversed gets you no place. But I guess it could be said that I haven't been reversed recently. I haven't tried as many cases in the last few years as I used to try. It's rare that a trial judge likes to be reversed. Sometimes you recognize that you should be reversed, and that, of course,
makes it a little easier. But, generally speaking, the trial judge thinks he's right, and he's sore as hell when he's reversed and wants to see something done about it. Well, ordinarily there's not much you can do about it.

I remember the other day my attention was called to a case in the D.C. Court of Appeals, *United States v. Crews*. It involved a charge that had been placed against a juvenile who had robbed a couple of women in the women's toilet in the Washington Monument. Stan Harris was on the appellate panel of the D.C. Court of Appeals. I think Frank Nebeker was also on the panel. And they affirmed the conviction. It was reheard en banc. And I think the reversal was something like 7 to 3, something like that. Well, I had just had my attention called to the *Crews* case in the D.C. Court of Appeals, and I read it, and was somewhat appalled by it, and I asked Stan, "How the hell did that come about?" And his face lit up and I don't think I've ever seen him more radiant. He said, "It went to the Supreme Court. You know what the vote was up there?" I said, "No, I didn't know it had gone to the Supreme Court." He said, "Nine to zip." So it can be said that there's no medicine that's as rewarding as a reversal which restores your original view of a case. And I've had some of those experiences and I've had some where it's happened the other way. But if you can maintain a position of understanding and appreciation of the other fellow's view, you're a lot better off. It's easier to do your job if you recognize that, although you know some of those people upstairs are less qualified, they may have better reasons
than you have for certain decisions.

WASN'T IT JUDGE WYZANSKI WHO SAID YEARS AGO THAT A GOOD -- THIS IS PROBABLY NOT THE RIGHT QUOTE -- A GOOD DISTRICT COURT JUDGE IS NOT DOING HIS JOB UNLESS HE'S REVERSED AT LEAST A THIRD OF THE TIME?

I think he did say something like that.

SOMETHING LIKE THAT.

Yes, well, the thing of it is that a district judge should have been a trial lawyer, because a trial lawyer has to make quick decisions. You can't research every point. I remember one of my friends, now retired, used to take several days to try a case involving unauthorized use of a motor vehicle. He'd declare a recess and research points of law during the course of trial. It's like bird hunting. You note the general direction in which a partridge is flying, when he jumps up in front of you, you've got to let him have it. You sure can't sight down the barrel of your shotgun. But, I think, it's more difficult for an individual, even if he's been a good trial lawyer, to be a good trial judge than it is to be a good appellate judge. You can check your work up there. We can't always do that; we can't usually do that when you sit on the trial bench and most of us know that.

YOU HAVE GOT TO BE FAST?
You've got to be fast. It's like being at the seashore and the breakers are coming in and if you seek to walk through the waves, they're going to knock you down. But if you dive in and start swimming, you're going to have a hell of a good time. I try to think that way when tough decisions come up. Obviously, you can't remember every point that has been raised in appellate opinions. I think appellate opinions you get today are probably longer than those that I remember when I first came on the bench and when I was DA. I'm not sure about that, of course. Justice Brandeis wrote long opinions, but they were great opinions. Justice Holmes wrote short ones, and they were great opinions. I always loved it when Holmes wrote something that I could rely on because it wasn't so much to read.

Well, now, I've talked too long about things that were unrelated to cases I've had. How would you like to utilize the rest of your time? I have files here that concern cases that seem to me to be important cases that I remember.

Well, why don't we just start with what you have in front of you. If there's something you want to say about them, we can talk about them. If you have some that you think are particularly memorable, as you say to the lawyers, brief the case. I know you've told me to do that in front of you a number of times.

Well, one case that finally settled after trial, which I think
of often, is called *Doe v. Yogi*. It involved a gentleman of Hindu extraction.

THAT'S RIGHT. THERE WERE SIX OR SEVEN OF THEM: 85-2848. These people sued the Maharishi Mahesh Yogi and the World Plan Executive Council. Yogi was never served, but a very fine team of lawyers came in from his headquarters -- I think it was in Iowa -- and defended the Council. The trial took about three weeks, and resulted in a verdict for the plaintiff, which was subsequently set aside in the Court of Appeals and remanded. Fortunately, the parties got together and settled the case. How much they paid, I've never known.

There was one incident that occurred in the courtroom which shall forever be remembered by those who were present. One of the things that the Yogi was supposed to have taught the witness was how to levitate. You can sit on a little prayer rug and say you wanted to levitate and if you really had studied levitation, you would rise up. So there was this very emphatic witness on the stand and I said to him, "Mr. Witness, could you give us a demonstration?" And the jury would hang on the next words, you know. And he was a little hesitant. He said he couldn't do it in the courtroom because he might fall down and hurt himself. Right away, Oliver Jackson, my courtroom clerk, paying good attention, said, "Excuse me, Your Honor, I'll go next door. Judge Pratt's
secretary's got an exercise rug. I'll bring it in." And, you know, before we could stop him, off went Oliver Jackson. He came back with this foam rubber exercise mat, laid it on the floor in front of the witness. I said, "Now you won't hurt yourself. Just show us how you do it."

AND THERE WAS A JURY?

There was a jury. Whether this theatrical ploy had anything to do with the fact they returned a verdict in favor of the student who had sued the Yogi, I will never know.

I TAKE IT THE MAN WAS NOT ABLE TO DEMONSTRATE THE LEVITATION?

No. They did send us photographs of levitating disciples. But we all know what you can do with a photograph. So, it was a hard fought case, but one that should have been settled, and it was settled in fact, after many pounds of pleadings on all sides and opinions by the Court.

A case I had, about four or five years ago: Southern Air Transport Corp. v. American Broadcasting, 87-0634 -- in that case the broadcasting company had described the activities of Southern Air Transport, which was a small aviation company which was delivering arms to the Contras. They had implied a connection between this company and the South Africans. Some of these planes were owned by the South Africans. So plaintiffs filed this libel
suit. We had a hearing in camera. I don't know why it was in camera. I think it was the only one I've ever heard in camera; somebody wanted to have it and nobody objected. We did it in the jury room. They produced the TV run of the jungle warfare and the loading of the airplane, and by innuendo that demonstrated a connection with South Africa and so forth. It was terribly hard fought by good lawyers. I remember Max Truitt represented the defendants and Robert Beckman represented the plaintiffs. My final decision was that they hadn't proved libel, so I threw the case out. And I got some rather heartfelt letters from losing counsel. It sometimes happens that way, but not often. Usually the winning counsel doesn't say anything about the victory and the losing counsel doesn't mention it either. But in this case, I suppose everything connected with the Contras was in a high gear and this was no exception. But since that situation seems to have cooled off for the time being, I thought of it when this project came to my attention.

Another case that has some historic significance -- and being kind of a history buff myself, whenever I get a case that has some historic significance, it probably makes more of an impression on me than just the run of the mill -- is Kuwait Airlines v. American Security Bank. The number of the case is 86-2542. That was a case in which Kuwait Airlines operated pretty much on a shoestring between that country and National Airport. They transported Kuwaiti people. I doubt whether ordinary travelers flew the line, but, nevertheless, that wasn't an important point. The point of
the case was -- there was an individual named Sensi who managed the Washington office of the airline and he wanted to open a bank account and did so at the American Security Bank. But the Kuwait people said that this is a depository account only; you can't draw checks on it. And that kind of limited his activities. So he got very friendly with the people at the Bank and pretty much gave them the impression that he was another one of the Kuwaitis, but he wore American clothes and that kind of thing. So, he said he wanted to open a second account which was to be a checking account. Well, they'd dealt with him for months and they were impressed by him so they opened the second account. And he immediately transferred funds from the depository account to the checking account -- as I recall it, to the extent of a couple of million dollars. And his defense was that when the royal family of Kuwait came to this country, their expense account was limited and he had to take care of them, so that's why he drew this money out and used it as he did. Well, that was also a very hard fought case. The jury was cautioned on the statute of limitations, but they didn't get the correct words from the Court, so the verdict for Kuwait Airlines was set aside, remanded to be retried, with the correct interpretation of the statute of limitations. Well, I importuned the gentlemen to settle the case, as you might expect. There appeared to be no reason for their settlement. But, then suddenly, there was a conference in London. They refused to confer back in Kuwait and the Kuwaitis refused to come to Washington. But they met in London and decided on a formula that certainly was not out
of any law books, but it was something like this--that if the Bank will pay us what we lost (something in the area of a couple of million dollars) then we will see to it that you get sufficient business that will make you whole over an undisclosed period of years. So I felt that, if these people could get together - bankers and Kuwaitis, it was all right with me. And so they signed off on it. I haven't been to the Bank and I don't know anybody at the Bank. I probably will never know if they were justified in settling the case. But I was happy to hear it. I don't think the Gulf War had anything to do with it, but it wasn't settled until this last Fall.

One case that I enjoyed very much was a case involving Samoa. The title of it is *The Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter Day Saints v. Donald Hodel, Secretary of the Interior*. What happened was that the Church got a substantial plot of Samoan land many years ago. And then the Samoans decided that was contrary to their constitution and bylaws and so forth. Churches could not own any more land than was necessary to construct the building itself and maybe a little bit around the building. So they recaptured the land. And the Secretary went along with that decision, telling them that it was a proper decision for them to make. He might not have made it but, he didn't have that degree of control over their internal affairs. Well, I remember the case, particularly, because the Attorney General of Samoa, who was a tremendous individual physically, Polynesian, a very handsome man, flew in from Samoa. The Church
was represented by the former Solicitor General of the United States.

WAS THAT REX LEE?

Yes, Rex Lee. And it was one of the best arguments I've ever heard. You don't normally get two such people facing each other. The case was of special interest to me because the first legal job I ever had offered to me was in Samoa. And that was the year after I graduated from law school. And the Attorney General of Samoa at that time was a Navy captain who was a good friend of mine. Samoa was under the jurisdiction of the Navy back in 1933. So this Navy friend of mine said to me, "How about coming out to Samoa with me, I'm going out there in a few months." And he said, "It's the experience of a lifetime." Well, I thought that was great. But the captain's wife, who was a very practical woman, a native of Alabama, said to her husband, "You can't take this boy out to Samoa with you. He'll kill himself out there." I knew what she meant. She said, "One condition, if you get married, you can go." Well, I had a very attractive girlfriend at that time, Betty Rogers. She had just graduated from Yale Law School. She was on the Law Journal. She was the niece of Henry Stimson. And I thought I was making some time with her. But this proposition that came, not from me directly, but from the wife of my friend was more than she could swallow. And so she said, "I know you are not offering matrimony, but even if you do under these circumstances, I'm not
accepting it."

THE SHERMANESK APPROACH?

Yes. So our relationship deteriorated. Thereafter, she went up to New York and became an Assistant District Attorney for the Southern District. And I haven't heard from Betty Rogers from that day to this. But when I revisited Samoa, as a result of this litigation, although I thought Rex Lee made a very good argument, I decided the case for the Attorney General of Samoa. It was affirmed on appeal. But that was a memorable situation, largely because of my private experience.

I remember a case I had in 1985, *Horn and Hardart v. National Railroad Passenger Corporation* -- that's Amtrak. Horn and Hardart had a very profitable cafeteria in Penn Station in New York, and there came a time when Amtrak wanted to enlarge its facilities. They wanted the space that Horn and Hardart had developed and which they were operating profitably. The lease they had was kind of vague. It didn't give them the opportunity of holding on for a definite term. It was pretty much at the will of the railroad company. So they were told to vacate, but they didn't want to vacate. So they sued. It came before me as a case of contract interpretation. I had been for some years, by a special appointment, a member of the special railroad court, so I had gotten familiar with the operations of Amtrak and the various commuter rails which spread off from the Amtrak main line, as well
as the Conrail operation. So I took that case in stride. Amtrak prevailed. And they didn't seem to think there was any conflict of interest. Of course, my job was just to adjudicate what the rails were doing.

We go from the railroads to the horses. American Horse Protection Association, Friends of the Showhorse Association, Tennessee Walking Horse Breeders v. Clayton Yeutter, Secretary of Agriculture. That was a case in which over a number of years, the horse people on one side and the -- actually the horse people were on both sides. The Secretary was simply at one point favoring the horse people on one side and then he shifted over. But the lawyer--a chap named Russell Gaspar--had never been before me in any other case. But I never heard any more dedicated performance than he turned in. And the other side brought up a lawyer from Texas who was equally good, John Harmon. He was brought up by Jack Miller, you know, Herbert J. Miller, an exceptionally able trial lawyer. There was a gal from the U.S. Attorney's Office whom you may remember, Patricia Carter.

OH, YES, SHE'S STILL THERE.

She's a very good lawyer.

AND SHE KNOWS HORSES.

Is that so?
YES.

Well, she's low-key and very effective. Sometimes when lawyers get to yelling or screaming in the case of the women (a sexist remark), they kind of lose a few points with me. But the issue in this case was whether or not the Horse Protection Act, which was designed to prevent these showhorse people, these people who put weights on the horses' feet to make them -- it was very painful, that's why they stick their forefeet out like that, and that's what the people down in Tennessee or the walking horse people love to see. And there was all kinds of testimony to the fact that this would put a million dollar industry out of business, and so forth. And the Secretary, I think, was caught in the middle and found a tremendous pressure brought to bear on him, although I must say that Patricia Carter was quite objective in her presentation of the case and quite convincing. Ultimately, though, I was sympathetic towards the people who believed in training the horses without attaching these weights and soring them with chemicals. My decision favoring that action was overruled by the Court of Appeals. And I suppose the answer is that Russell Gaspar, who impressed me very favorably, did not register to the same extent in the Court of Appeals. I enjoyed that case very much. It certainly was very different from the railroad cases I had and some others.

This next case has to do with picketing in front of an
embassy. *Michael Boos v. Marion Barry*. I'm sure you are familiar with D.C. Code § 22-1115, which limits picketing within 500 feet of foreign embassies. It was attacked on the ground that it was unconstitutional. My feeling, dating back to days when I was in the Corporation Counsel's Office and I defended the original litigation, was that it is perfectly constitutional. But the Court of Appeals disagreed and the regulation was thrown out. It was argued in the Supreme Court. It was held to be a violation of the First Amendment.

**TAPE 2**

The Justices seemed to be somewhat divided, but in any event, they felt that the regulation was trespassing on constitutional principles and was therefore invalid. I note that Justice O'Connor delivered the opinion of the Court with respect to Parts I and II-B and C, in which Justices Brennan, Marshall, Stevens and Scalia joined and with respect to Parts III and IV, all participating members joined. And Justice Brennan filed an opinion concurring in part and concurring in the judgment in which Justice Marshall joined. Chief Justice Rehnquist filed an opinion concurring in part and dissenting in part, in which Justices White and Blackmun joined. Justice Kennedy took no part in the decision. So it was a divided opinion. But, in any event, we seemed to have gotten along all right in spite of it.

A case that kicked around for a number of years, *Panik*. 
Incorporated. There was a fellow named Dash, or at least Dash was a part of his name. He had a cut-rate men's store.

DASH'S?

Yes, on 19th Street. In fact, I occasionally bought something from him, although he didn't know it -- not during the course of the litigation. Dash or Danik, Inc. vs. Intercontinental Apparel. And here's how the case developed. Intercontinental Apparel is another name for Hart, Schaffner & Marx. They were wholesale clothiers. And he got behind in his account to about $100,000. So they filed suit against him. They wanted to be paid. So he filed a counterclaim alleging antitrust violations by Hart, Schaffner & Marx. Well, I remember the law clerk I had that year. She, like most of my law clerks, was pretty good at hitting the books. And she brought in to me a decision called Bruce's Juices -- it was a memorable name -- in which the Supreme Court held that in such a situation, that is to say, a suit for goods had and received, you could not file as your defense an antitrust suit. So I told that to his counsel. And I said, we'll sever your counterclaim. I will call for a briefing on summary judgment on Hart, Schaffner & Marx's claim, and then we will deal separately with your antitrust proposition. Well, I thought that was a reasonable way to do it. But counsel filed a motion to have me recuse myself in the Court of Appeals. And in due course they threw it out. And in the meantime, counsel for Hart, Schaffner &
Marx filed a summary judgment motion, which I granted. He never appealed that. So they got their $100,000 and interest. In about two years, the antitrust counterclaim was reached. And I remember my law clerk that year was a chap by the name of Yosef Riemer, a very bright fellow. And he furnished the ammunition during the course of this antitrust case, which probably took about two or three weeks to try. Hart, Schaffner & Marx won that. And I remember that counsel for Hart, Schaffner & Marx sought Rule 11 sanctions -- the only time I'VE ever imposed a sanction on a lawyer and it was about one-third of what the other side asked for. But it stuck. The Court of Appeals sustained me. He hired some professor from the University of Virginia to represent him in the Supreme Court. And he lost up there. So I remember that. It's not often you get that type of situation. But it was just bad lawyering on that fellow's part. It was perfectly simple that the client owed this money. And if he didn't pay it, well, he risked having a judgment. I don't know what his fee was but he was a good charger. So I guess that was one of the reasons why Dash went bankrupt. I hate to see a guy go bankrupt, and that was a while back.

THAT'S FOR SURE, ESPECIALLY TODAY.

You can imagine how much paper went back and forth between the Court of Appeals and this Court. I mentioned Yosef Riemer. Yosef observed when the Hart, Schaffner & Marx people won their original
suit, "You don't see many like that, do you?" He was right. It was a case that deserves a spot in the history of this Court and ultimately justice was done.

**Hodge v. Evans Financial Corporation.** Evans Financial decided they wanted to employ a fellow by the name of Hodge, who worked for the Mellon Bank in Pittsburgh and they offered him a job and he came down to Washington and took the job. Apparently he was not their kind of man. He was a straight shooter. And so he lost his job and filed suit against them. I wrote in his favor. The Court of Appeals reversed me, but the case was retried and he won again, and this time he collected. But the thing that impressed me about the man was that he was not a trial lawyer, but I guess he was so hard up he couldn't hire a lawyer, so he had to do it himself. And when you have somebody stepping on your tail, as he did, you can win. And he did. So that case stands out in my mind. I've often wondered what happened to him because he had it made there in Pittsburgh. He'd been with that organization for most of his life. And he came on here to Washington with big prospects, but he undoubtedly lost his pension. He had a big family. I often wondered what happened to him because this is not a cheap town in which to live. And there are a lot of middle-aged lawyers looking for work.

THAT'S TRUE.

It's no laughing matter. Well, it was a bum deal for him.
But he did recover a decent amount. And, of course, he didn't have to pay a lawyer. Who was it that said that a lawyer who represents himself has a fool for a client?

ABE LINCOLN, WASN'T IT? I THINK --

It could well have been.

HAVE YOU GOT THE TAVOULAREAS CASE IN THAT FILE THERE?

No, I don't think I have.

THAT MIGHT BE WORTH A MINUTE.

I'm sure it would be. Well, we might as well talk about that.

I DIDN'T MEAN TO INTERRUPT.

That's all right. I had a case that I thought might have some appeal. It was one I thought would never end. I'll tell you briefly about it. The Republic of New Afrika v. The FBI, and there was a companion case, Obadele v. Smith. It was basically a case in which the Republic of New Afrika, which was a brain child of Obadele, wanted to take over five or six southern states and create the Republic of New Afrika. And I said to Obadele -- he's a very intelligent fellow, very articulate -- "How are you going to pay
for this property you take over." And he said, "That's not my worry. The United States can pay for it." Hardly a complete answer. The case had its inception when he and a handful of followers, almost like John Brown's raiders, attacked -- I guess it wasn't they that made the attack. They had their headquarters in Tennessee. And the local sheriff's people, reinforced by the FBI raided the place. And Obadele was arrested, tried and convicted. He did about five years in the pen and he came out and he started a Freedom of Information inquiry as a result of which he filed suit against the head of the FBI and officers who had taken part in his arrest and conviction. That involved quite a number of FBI agents. He wasn't able to serve very many of them, but he served some. And finally, after about eight or ten years -- the Freedom of Information cases drag on -- he had one FBI agent who had retired and lived over in Fairfax County and he was really going after him. Well, I was hopeful that the suit could be terminated before I retired. And I thought about this FBI agent who must have been worried about whether or not he would have any property left after all these lawsuits. But fortunately he had the services of the D.A.'s office and several motions were filed for summary judgment, one after the other. And finally one was granted.

THE CONTINGENCIES AND ALL OF THAT?

You couldn't get anybody to take the case. Now I have such
a case pending -- well, I'm not going to talk about it -- but when I told Aubrey Robinson that I would finish up the cases assigned to me, including the fee cases, I didn't realize how damned near impossible it is to dispose of these fee situations. And he said, "Go ahead and decide them." Well, I guess that's the only thing I can do--decide them and if they bounce back, well, somebody else will have to handle them. He says you're not going to live forever. And I know that's true. But so far I've stayed around a long time. In another three months I'll be 86.

You asked about Tavoulareas.

THAT'S A CASE THAT RECEIVED QUITE A BIT OF PUBLICITY, NOT THE LEAST OF WHICH WAS THE FACT THAT THERE WAS A BIG FIGHT BETWEEN THE PRESIDENT OF MOBIL OIL, WHICH IS NOW A WASHINGTON BASED COMPANY --

I didn't know that.

YES, THEY MOVED TO FAIRFAX, VIRGINIA DOWN FROM NEW YORK, AND OF COURSE, THE WASHINGTON POST.

That's right. I don't know how I happened to get the case but I did. And I must say it took a lot of my time. It took most of the month of July to try the case. We sat six days a week. A chap named Irving Younger, who was then in Ed Williams' firm, tried the case for the Post. And I'm trying to think of the name of counsel for --
Walsh, yes, was the New York lawyer with Cadwalader, Wickersham & Taft. He was very smooth and very appealing. And Irving Younger was more of the hammer and tongs type. One thing about Williams was, and I'm sure Williams was hired by the Post because he not only could be smooth but he could also be forceful -- Ed had it in spades. Younger, in my opinion, was an excellent lawyer, but not a lawyer who had jury appeal, not to the extent that Walsh did. As I think about the case now, the Post with Williams' firm's assistance, really prepared the case. Take the case of their key reporter -- Pat Tyler. He wouldn't just write a story without personally investigating it. He did all the spade work. He called Tavoulareas. He talked to him a while until Tavoulareas hung up on him. He called young Tavoulareas in London -- the same treatment. And he talked to a number of people in the oil company. So they were well prepared and it couldn't be said that they had gone off half-cocked. I've forgotten now what the verdict was. I think it was something close to $2 million for the plaintiff. And I think one reason was that Walsh was a very appealing fellow. And you can't overestimate the importance of that in a jury case. Tavoulareas himself was a very appealing witness. And Younger I think made the mistake of asking a question and when he got a smidgen of an answer, he'd cut him off and go to the next one. Of course, Walsh objected, and I told Younger to let
him answer. This Tavoulareas was smart, you know. So he'd get a question and then he would make a speech. That's not the first time that's been done, but it was effective. And I think between Walsh and Tavoulareas, they got to the jury. And so the verdict came in. As I said, it took about a month to try the case and we sat six days a week. There were post-trial motions. And when I considered the New York Times v. Sullivan picture, I decided I had to set the verdict aside. So I've no love for the Washington Post. I subscribe to it. I don't know whether there is any alternative here. I was reversed by a panel of the Court of Appeals. The first panel opinion was by MacKinnon. By then there was the rehearing en banc and they decided that my decision had been correct. So every now and then MacKinnon will tell me something about how wrong I was and how correct he was. And if it had gone up now, I probably would have been reversed. Well, another story about Younger. He was quoted as saying, after I agreed with him about setting aside the jury verdict, "I played that judge like a violin." The next time he was in court, I said, "Mr. Younger, do you want to play your violin?" He laughed. But I saw in the paper that he died. He was a very able lawyer and he really knew his pleadings. But there's a saying, you know, that you've got to know how to appeal to the jury, and Ed Williams sure did.

DID ED WILLIAMS APPEAR IN FRONT OF YOU AFTER YOU BECAME A JUDGE?

Oh, yes.
WHICH CASES CAN YOU RECALL?

Bobby Baker.

OH, YES, WE DIDN'T TALK ABOUT THE BAKER CASE REALLY. THAT WAS EARLY IN YOUR TIME RIGHT?

Matt McGuire came to me one day and he said, "Do you know anything about Bobby Baker, he's just been indicted." And I said, "Yes, I know." And I said, "To answer your question, I don't know him." He said, "You know his buddy?" I said, "Who do you mean?" He said, "The guy who appointed you." So I said, "Yes, I do." So he said, "I'd like to ask you to try the case." I said, "Okay." You know, when you're 25 years younger, you feel like undertaking a thing like that.

A LOT OF VISIBILITY.

A lot of visibility and I had tried cases with Williams years ago. And I had some contact with him when I was D.A. and I looked forward to it. And then when Bill Bittman was named government counsel, I didn't know about Bill but I knew that he had done an extraordinary job insofar as the Hoffa case in Chicago was concerned. The lawyer selected by the Department of Justice to try Hoffa had a heart attack after about a week's trial. The
Assistant Attorney General, Jack Miller, said to Bill, "You take the case, Bill." Hoffa was convicted—a very extraordinary feat. When I heard Bill was confronting Williams, I knew it was going to be a battle royal and I was glad that Matt had come to me and asked me to take the case.

Ed filed, literally, a box full of motions. He filed every motion you could think of. I had one law clerk that year, Frank Craighill, and I said to Frank and also Pat, my secretary, "Lock that door and don't open it for anybody. Just let the mail come through the slot. We're going to answer every one of those motions." And we did, every one of them. And I did a lot of research and learned a lot of law. The case went to trial. I remember one little thing about the pretrial. Ed was pretty good at filing these pretrial motions at the 11th hour. And he filed a motion at the 11th hour. He sent it down by one of his young men, who was a very conscientious fellow, and he said, "We're going to file another motion, but it isn't ready yet. It will come in Monday morning." This was Saturday. I said, "Well, what's it about?" And he told me very briefly. And I remembered that Bill Bryant—we'd also been associated in the D.A.'s office—Bill told me about having had that same proposition. So I called him. He, too, was a Saturday worker, and I said, "Bill, have you got the briefs in that case?" He said, "Sure. You need them?" And I said, "Yes, I do." He said, "Well, I'll bring them down." And I said, "I'll come up and get them." So I've forgotten whether he came down or I went up but, anyway, I had the briefs on this point
that Ed pulled on Monday morning. And I was thoroughly advised. And I ruled against Ed. We went to trial. And I would say that that case was a real toss-up. It wouldn't have surprised me to have seen an acquittal. But Ed's closing argument, I thought, was ill-timed. He blamed Senator Kerr, arguing that Kerr had gotten the money, not Baker. Kerr was a Senator from Oklahoma, and a fellow of questionable reputation. At least that's what some say. I didn't know him. I couldn't make any judgment. But the point is that Ed's final argument blamed Kerr. Bittman grabbed it and said, "How can you blame a dead man who can't answer the charge?" And, of course, he had the last shot at it. U.S. News & World Report interviewed the jurors after the trial. I think 11 of the 12 were Black. And the one thing that I found over the years is that you can't say to a Black man, the dead man did it. A dead man can't defend himself. And that in various forms was set forth in this article in U.S. News & World Report quoting the jurors. The jury just didn't accept that defense. There were other defenses. It was largely a circumstantial case.

BUT HE WAS CONVICTED.

He was convicted on all counts. I think I gave him a few years and he served two of them. But, you know, he called me a couple of years ago. I was down here on a Saturday morning working.
BAKER CALLED YOU?

Yes. Well, it was some years after the case was decided. He said, "Judge, I want to take you to lunch." I said, "Mr. Baker, I don't eat lunch." He said, "Well, just break down and eat this time." I said, "Thank you, no." He said, "I just want to tell you I'm not guilty." I said, "You tell Ed Williams, he's your lawyer." He said, "I wouldn't tell that so and so if it was the last breath of life I had in me." Well, we had a number of post-trial motions filed by him. And he finally got a chap who was no longer associated with Ed Williams' firm but who had been with his firm at the time he argued the case.

I would say probably I never tried a criminal case where the pressure was greater than it was in that case. Top-notch lawyers were on both sides, and neither of them took a backward step. And I didn't appreciate the significance of that closing argument until sometime later after I'd read that story in U.S. News & World Report. And it has been my experience, and I've known many Black people over the years, that you just don't do it. You don't blame a dead man who can't answer. I don't say that's a universal rule, but it's a rule that many of them adhere to. And apparently, judging by this article, the people who spoke to the reporters -- and that was most of them because they were named -- that's the way they felt. Of course, Bittman had called Kerr's son. He called his bookkeeper, so Williams argued that it's not likely the bookkeeper would have made entries in Kerr's books
to the effect that he had taken a $100,000 bribe from anybody. His son was a young man in his 20's. You remember over the years that some were good witnesses and some were not. I remember the Baker story was that he had taken this $100,000 that he had gotten from the savings and loan man in California and he divided it up among five Senators. One of them was Dirksen, and I've forgotten who the others were. But Bittman called every one of them. All denied it. You know the flamboyance that you would expect of Everett Dirksen. They hadn't gotten any money from Bobby Baker. So that was a memorable case for me.

ARE THERE ANY OF THE OTHER CASES THERE THAT YOU WANT TO RECOLLECT?

Here's a case, another unusual case. You may know of the plaintiff in this case, his name is Thomas Dine, who is the -- I don't know exactly what his title is but he is the chief lobbyist for Israel. And he sued Western Exterminating Company declaring that they put too much termicide in the house that he bought. He bought the house, and according to D.C. Regulations, you cannot pass title to a house unless it's been inspected for termites and the termites, if any, have been exterminated. So whomever Dine bought the house from found that there were termites in his house and he hired this termite company, Western Exterminating Company to do the job. And they did the job. And Dine claimed that they had put so much termite killer in there that it had damaged his silver, damaged his paintings, damaged his health. And he sued for
some astronomical amount -- I've forgotten what it was. You know you can sue for any amount, and he picked a big figure.

Well, the thing that impressed me about the case was a lawyer named Joseph Artabane, who represented the termite company. Artabane had been in the Tavoulareas case. He was then associated with counsel for Tavoulareas. And he's smart and articulate. And his cross-examination of Dine was the most meticulous thing I think I've heard. As a result of that, Dine decided not to proceed with the case. His wife would have been the next witness and I think he probably did not want her to be subjected to Artabane's questioning. So when I went on the bench the next morning, the clerk told me that counsel would like to have a few minutes, and that there might be a settlement. I don't know what the case was settled for but it was for a very nominal amount. I just remember this guy, Artabane, who hadn't had much to say in the Tavoulareas case. He carried the briefcase and whispered to lead counsel. But in this case he really did a job. I think it was probably because Dine's lawyer, whose name I've forgotten, had not warned him that it's much better not to overextend yourself on direct examination, to be a little conservative in your approach. And Artabane had taken advantage of his opportunities a couple of times and Dine had been vulnerable. So that was a case that stood out in my mind over the years.

You look at lawyers and their skill in questioning and you know some just ask the routine questions and do so in such a way that it puts the jury to sleep. Impressing the jury is something
that every trial lawyer seeks to learn. Some never learn it. But in Baker, certainly both Bittman and Williams did an outstanding job. Artabane did it in this Dine case. That's the great thing about being in the D.A.'s office. You have a heavy load. You wonder how you can carry it. But you finally get to the point where you have a sixth sense. You just go. And the good ones do well. You know, the best trial man on the criminal side when I was the D.A. was Tom Flannery. And the reason for that was Tom Flannery never used the vacuum cleaner approach. He didn't put in all the evidence the police gave him. He just put in the good evidence. And his cases were rarely reversed. Some of the rest of the assistants -- if the police gave them a tip, they'd stick it in. I remember once -- in the sessions we used to have which some of the boys used to refer to as the "ding dong school" -- once a week, usually Monday afternoon, we'd go into the grand jury room and shut the door. The cases decided by the Court of Appeals the prior week would be reviewed in detail. The appellate advocate would present the case and then call upon the guy who tried the case. And finally, I said to them, "Look, if you don't pay attention to what the Court of Appeals is telling us, I'm going to transfer you to the appellate section."

I remember one time Artie McLaughlin was arguing a case in the Court of Appeals. He never resisted getting an appellate case. He didn't get many because he had such a heavy trial load. He was a remarkable guy. He was upstairs arguing this case and this particular panel in the Court of Appeals was fascinated by his
approach. It was so unique. He was a trial man, but he didn't trespass on their finer instincts. And they were so charmed by him that one of the judges said, "Is there anything else you'd like to say, Mr. McLaughlin?" And he had quite an Irish brogue. And he said, "Aye, yes, Your Honor, if you want to get some heroin, then you go up to the corner of 8th and Eye Streets and," he said, "stand there a little while and there will be somebody who will come by and he'll sell you some heroin if you want to buy it." And the judge leaned down and said, "On what page of the record is that contained, Mr. McLaughlin?" He replied, "It's not in the record. You asked me if I wanted to say anything else and that's it." Artie was a good advocate. He probably prosecuted more first degree murder cases than any lawyer in the country. Of course, then that was his stock-in-trade and Artie was good at it and he was in the office for most of his life. So we gave them to him.

END OF FOURTH SESSION WITH JUDGE GASCH
JUDGE, THERE WERE SEVERAL CASES, ABOUT EIGHT OR NINE OF THEM THE OTHER DAY THAT WE WERE TALKING ABOUT THAT YOU HAD SOME FOND MEMORIES OF AND I THOUGHT MAYBE WE'D GO THROUGH THEM TODAY. A COUPLE STAND OUT AS GREAT CONSTITUTIONAL ISSUES, OTHERS WERE BIG POLITICAL CRIMINAL CASES AND SOME OTHERS YOU REFERRED TO AS MORE INTERESTING ON A PERSONAL LEVEL BECAUSE OF THE PEOPLE INVOLVED RATHER THAN GREAT POLITICAL ISSUES, OR THE LIKE. ONE OF THE FIRST THAT YOU MENTIONED AND WHAT WE WILL TALK ABOUT NOW IS WHAT HAS BEEN CALLED THE POPE ON THE MALL CASE.

Yes.

AND THAT WAS, I BELIEVE, IN THE FALL OF '79?

About that time, yes. Madalyn Murray O'Hair, who is an activist espousing atheism and objecting to any interplay between religion and the government on First Amendment grounds, filed suit against Karol Wojtyla, aka the Pope of Rome. Few of us had ever heard his given name. It is Polish but we knew who the Pope of Rome is. The case was originally assigned to Harold Greene. And
Harold told me that his clerks were very disappointed that he was out of town and the case had to be transferred.

I WAS ONE OF THOSE LAW CLERKS AND STILL - TO THIS DAY, I AM STILL DISAPPOINTED.

Well, I'm sure he would have handled the case with great skill but it fell my good fortune to get the case and I remember well suit was filed about the 3rd of September and the Pope was scheduled to celebrate Mass on the Mall on the 7th of October. A permit had been issued and O'Hair's suit sought to enjoin the celebration of the Mass and to have the permit cancelled. She insisted upon presenting her case although her son, who was also a plaintiff, had two lawyers in court, and although I suggested that she let the lawyers present the case, she insisted upon going forward. Actually, whatever her other attributes are, oral advocacy is not one of them. So I started out by saying, "Well, Mrs. O'Hair, what is your best case; we'll let you pick a passage from your best case and go from there." Well, she mentioned a case. I've forgotten now which one it was. There are many cases, of course, in the Supreme Court that have addressed this subject. So we sent for the case and she fumbled through the pages but couldn't find the passage she wanted. So I asked her what her next best case was and the same result. She couldn't find the passage that she wanted. So then I asked her if she didn't want the lawyers to proceed. And she declined that opportunity and I think
she spoke for 15 or 20 minutes and then Steve Trimble, who represented the Archdiocese, went to the podium. It had intervened so that the Pope would not be confronted with a bunch of process servers, wherever he might be. The Archdiocese had intervened - Cardinal Baum had authorized one of his bishops to accept service and that was done. So Steve presented the case for the Archdiocese on behalf of the Pope and he made an excellent argument that the motion to cancel the permit should be denied and that the injunction should also be denied. I've forgotten now who spoke on behalf of the Secretary of the Interior, representing the Park Service, but it was probably someone from the U.S. Attorney's Office. I had no difficulty deciding the case in favor of allowing the ceremony to proceed. And the main point that occurred to me was that the government had represented that this permit would be available to anyone who sought it regardless of which faith it was or whether it was any other group totally disassociated from religion. The representation was also made on behalf of the Archdiocese that it would be responsible for the cost of erecting the altar, of taking it down, of cleaning up the site after the celebration concluded and that they would also pay for the electricity and whatever facilities were made available to the people who attended. So with those two points in mind, I thought that there was no basis for enjoining the celebration of the Mass. The timing of the case was rather significant, I thought. The case was heard, as I recall, on the 3rd of October. I think our opinion came down the next day and she immediately sought to appeal the
matter to the motions panel in the Court of Appeals. The motions panel happened to be Judge Leventhal, Judge Wald and Judge MacKinnon. I know Leventhal had an extremely quick mind but not long after the case was argued upstairs, this elaborate opinion with many citations came down from the Court signed by Leventhal. I think it was probably 15 or 20 pages. My hunch was that Harold had probably been working on it for some days before it was argued. And MacKinnon wrote one not quite as long, concurring. But for slightly different reasons. I would say that Leventhal's opinion was much more polished than mine and it cited many more authorities but it reached the same conclusion. He was impressed by the fact that such a permit would be available to any group who had agreed to bear the extra expenses of such a celebration. I have heard - and this is pure scuttlebutt - that following the argument in the Court of Appeals, O'Hair walked down to the Supreme Court, which is only about three blocks down the street, and confronted the Clerk of the Court - probably Al Stevas, though I'm not sure that Al was Clerk then - and said she wanted to appeal. He said, "Appeal what?" She said, "The Court of Appeals opinion." He asked her where that was and she said, "Oh, they haven't handed it down yet, but I know they're going to be opposed to me." So he said, "Well, I can't let you file your papers until you have something to appeal from but you can leave them on my desk if you want to and if the decision is adverse to you, we will accept them for filing." Well, when the opinion came down, which I think was on the 7th, I'm not sure about the date, it was probably a day or so later, she was
insisting upon a writ of certiorari to the Supreme Court but before the matter could be brought to the attention of the Court properly, the Pope was celebrating Mass so they never reached a formal decision up there but I think probably it is very unlikely that the Supreme Court would have issued a writ of certiorari.

That was probably the most dramatic case that I've ever been confronted with. I recall going over the file a few days ago. My secretary usually saves out letters that come in connection with the cases. One memorable letter addressed me as "Oliver Gasch, You Contemptible Son of a Bitch, Washington, D.C." The postal department knew who I was and where to deliver the letter, so I got it, but I was sure that my mother would have laughed about it had she been living. In any event, most of the letters - I'd say practically all of the letters, from whatever source - were quite complimentary about the issuance of the permit, the governmental decision to allow the Pope to speak.

Now, perhaps a little more solemn than the case against Karol Wojtyla, as Mrs. O'Hair saw fit to call the Pope, was the situation presented by the enactment of the Gramm-Rudman-Hollings legislation. As you recall, the government was confronted with a terrible deficit on which horrendous interest must be paid each year and so these senators structured legislation which would have the effect of requiring that steps be taken each year to reduce the deficit. The original structure named the Comptroller General as the person who would have authority to make decisions respecting the vetoing of legislation because of the funds required to be
expended. When we got the case, we noticed that the legislation itself provided that whatever challenge was made to the legislation be heard by a three-judge court and that standing was conferred as a matter of law. In any three-judge court situation, the Chief Judge of the Circuit Court must name the other two members. So Justice Scalia, then a member of the Court of Appeals, and Judge Johnson of this Court were named to the panel. I recall that Judge Johnson was tied up in a protracted criminal case. We didn't have many conferences in which she was present but Justice Scalia and I did confer a number of times before the argument and right away we recognized the principal issue was separation of powers since the Comptroller General is a functionary of the legislative branch and this legislation called upon him to make decisions more properly within the scope of the duties of the Executive. That seemed to be the principal point. At least that was the point that we emphasized in our three-judge opinion. I remember the argument well. I think there were about six parties that wished to be heard.

WAS IT HEARD IN THE CEREMONIAL COURT?

It was. Mr. Cutler - for some reason or other - Lloyd was chosen by the Comptroller General to represent his interests. Alan Morrison, representing the ACLU, was in the case.

HE WAS CHALLENGING THE CONSTITUTIONALITY, WASN'T HE, ON BEHALF OF
A NUMBER OF PUBLIC INTEREST GROUPS AND A COUPLE OF CONGRESSMEN, I THINK?

I think he represented Synar, the plaintiff.

CONGRESSMAN SYNAR. I THINK YOU'RE RIGHT, CHALLENGING THE CONSTITUTIONALITY, AS I RECALL.

Yes, that's correct. And there was a lady by the name of Williams, who represented the Treasury Union and they were taking the position that they would lose their COLAs, cost of living increases. She is always a very effective advocate; she's been before me many times. And Richard Willard, Assistant Attorney General, represented the interests of the United States. He emphasized the separation of powers argument. I thought he was particularly effective. Then, Michael Davidson, who used to be counsel for the Court of Appeals -- he is now counsel for the Senate, or was then. And then there was Steven Ross, counsel for the Clerk of the House of Representatives. They all spoke, some much more convincingly than others. I thought that Willard's argument was the most persuasive. Of course, we had pretty much decided in the beginning that separation of powers was the key point in the case. And as you may recall, the legislation was drawn in the alternative. They apparently realized that there was no question but that the separation of powers argument would be raised by the government, so they had an alternate position that
would have generally the same effect but would not be as vulnerable on the constitutional question, because the person who is to make the decision on cutting appropriations was an official of the Executive Branch so we sustained the alternate but held the basic Gramm-Rudman Act unconstitutional. It went directly to the Supreme Court, as was provided by the legislation itself and Chief Justice Burger wrote the opinion of the Court. There were two dissents. The Burger opinion adopted the same line as the decision that Justice Scalia had advocated when the case was before us. I wish Congress had followed it more than they have. They haven't followed it at all. But it was probably the most important case from the standpoint of the nation's welfare that I was confronted with and I shall always remember it. I shall always remember going up to confer with Nino Scalia after we heard argument -- Norma Johnson was again involved in some criminal case -- and here he was in front of his computer banging out things he wanted to say and erasing lines and restoring some lines with some changes. It was the first time I had ever seen a judge work at a computer. I suppose that was the detail that impressed me. But I understand many do that. I wish I had that facility but I don't.

Now, let's see what else we want to talk about.

WELL, YOU ALSO MENTIONED YOU HAD MANY CRIMINAL CASES YOU'VE PRESIDED OVER -- FIRST, THE BOBBY BAKER CASE THAT YOU TALKED ABOUT IN A PRIOR SESSION AS ONE OF THE FIRST PUBLIC CORRUPTION CASES BUT OF MORE RECENT VINTAGE, THE TWO CONGRESSMEN CASES ABOUT TEN YEARS
That's right.

ONE OF THE MOST FLAMBOYANT CONGRESSMEN, CONGRESSMAN FLOOD OF WILKES-BARRE, PENNSYLVANIA, AND ONE OF THE LESS FLAMBOYANT, BUT LET'S SAY NOTORIOUS, CONGRESSMAN DIGGS OF MICHIGAN. BOTH WERE INDICTED IN THIS COURT HOUSE FOR UNRELATED FEDERAL CRIMINAL INFRACTIONS AND YOU PRESIDED OVER EACH OF THOSE TRIALS. COULD YOU SHARE SOME MEMORIES OF THOSE WITH US.

Well, Diggs, I guess, was the first Congressman I tried. Normally, while you have many different types of offenders, you don't usually have Congressmen or Senators. But Diggs came before me charged with 29 counts of mail fraud and false statements -- 11 counts of mail fraud and 18 counts of false statements. And what happened was this, Diggs was hard up, as I suppose many congressmen are from time to time, and he had falsified his payroll by representing that the salaries for instance of the people who ran his Michigan Congressional office were higher than they were and he took a kickback on that. Some of these employees also worked in his undertakers business. He also did that for his secretary here in Washington. And she rather resented it and she didn't keep her resentment to herself but got in touch with someone who might do something about it with the result that it wound up in the Grand Jury. And he was indicted. When I looked over the file of this
case, I noticed that the jury convicted him of 29 counts and since each count carried a five year penalty -- that's a little time to serve, I guess it's something short of 150 years. But we don't normally sentence a person consecutively as a rule, but the sentence he got was reasonably light. I think it was something like three years. Of course, in those days a defendant wouldn't serve the maximum. Bobby Baker served two of the three years that I gave him, but I think Mr. Diggs served less than a third of the time I gave him. I'm not sure about that. But the thing I remember after all these years is the string of character witnesses that Ed Williams' firm produced to support his position that Diggs was a man of integrity and honesty, and so forth.

He had Coretta King, the widow of Martin Luther King; he had Andrew Young, who had been our Ambassador to the United Nations and afterwards, the Mayor of Atlanta; he had Coleman Young, who was Mayor of Detroit, and Walter Fauntroy, who was the District's Delegate to Congress, and an Under Secretary of State, whose name I have forgotten, who had dealings with Diggs when Diggs was Chairman of the Black Caucus, dealings that had to do with Africa. In any event, it was a very impressive list of character witnesses. And they sought to bring in more, but I told them five was certainly enough and besides, I said I'm going to limit the testimony to an affirmative statement by the witness that he knows other people who know him in the community and his reputation for truth and honesty is outstanding. They may state briefly why they conclude that, but I said I don't want a speech on his activities
on behalf of civil rights. Well, Diggs' counsel were very much upset with that ruling but there's nothing in the Court of Appeals opinion affirming his conviction that indicates either that they made the point on the fifth floor or that if they made it, the Court of Appeals paid any attention to it. I certainly did not want the case to degenerate into a group of outstanding citizens telling about what a great civil rights leader Diggs was. The issue before the jury was much narrower than that.

Well, here again, most of the people who wrote in after that case -- and there were many of them -- called my attention to the fact that one convicted of 29 counts should have gotten more time than three years. And some of them were quite outspoken. Well, while you read those letters, or some of them, you don't necessarily feel that you have to follow them. The jury has acted and the jury represents the public, not the people who write you about what a heel the judge is because he didn't give the man 150 years. So there wasn't anything I could do about it anyhow. He had been sentenced. I remember my good friend, John Walker, the Bishop of Washington, came to me about Diggs and wanted me to consider probation. Well, I had considered probation but I certainly wasn't willing to sentence him to a term of probation. I remember that one of the parole board members -- unfortunately I can't recall his name at this point -- he was Black and he had been Chairman of the New York State Parole Board before he was put on our federal Parole Board. And I talked to him about the sentence. And he said, "You know, if you give that man probation,
they ought to ride you out of town on a rail." Well, I didn't give him probation.

Flood's case was somewhat different. Dan Flood was a congressman for many years from Wilkes-Barre, Pennsylvania, a very influential member of the House, but it had long been rumored that he was on the take. And the government produced a number of witnesses who gave testimony that Flood had offered to help them with some project in which they were very much interested. I remember one of the most persuasive witnesses was a Jewish Rabbi who had gotten to know Flood and it was pretty much put up to him, well, the congressman will go along with your projects provided you make a contribution in such and such an amount to his campaign. And that apparently was the way things were run. I thought the evidence was fairly persuasive and so did 11 members of the jury. The twelfth, however, held out and it looked like we had a hung jury on our hands. And I was wondering what I could do about it. They hadn't reported that they were deadlocked. But that's what I was afraid of.

Then I got a note from one of the jurors who said that one of her fellow jurors claimed he had confidential information on the basis of which he was convinced that Flood was not guilty and this juror put the question: "Can a juror rely on information that's not the subject of testimony or an exhibit?" So I, with both counsel present -- I think Mr. Flood had been excused; it was Saturday morning and he claimed to be ill -- so we had a hearing in the alternate jury room. The lady who wrote the note then
identified the juror, and when I called him in after warning him of his rights, I said, "Did you tell the jury that you had confidential information that Flood was not guilty." He said, "Yes, I did, but that was just a joke." So I said, "That's a pretty expensive joke. Don't you know it's improper to claim you have inside information when in fact you don't or even if you do, not to disclose that at the outset." He said, "Yes, I shouldn't have done it." Well, I afterwards reinstructed the jury that they were to pay no attention to anything other than the evidence heard in open court and I hoped they'd reach a verdict. That was Saturday morning. We sat the rest of Saturday. With great reluctance, and you might say disgust, I declared a mistrial toward the end of the day. I directed that the FBI investigate the matter and seek to ascertain what if any connection there was between this dissenting juror and the defendant or any of his friends. As I recall it, the report indicated that this hold-out juror was a retired Navy cook who had a friend who was employed at Murdock Head's farm called Airlie near Warrenton. That was as close as the FBI got to link this juror with Flood or anybody with whom Flood might have had influence. And it is to be remembered that one of those who was supposed to have bribed Flood was Murdock Head, and he was afterwards convicted in the Eastern District of Virginia of giving Flood a bribe and did some time, so that may have been the confidential information but in any event, there was a mistrial and defense counsel continually represented to the Court that Flood was seriously ill and that he was in Georgetown Hospital and he
wouldn't live very much longer and the case should be dismissed.

Finally, he pleaded guilty to a lesser-included offense and on the continuing representation of ill health, he got a sentence of one year's probation and I got some adverse communications about that. Of course, there were some who wrote in saying that they were Elks and Flood was an Elk and they were sure he wasn't guilty. But, I always remember that case and as I drive north occasionally, I go up U.S. 81 and I pass Wilkes-Barre and I wonder whether Flood is still around. The last time I asked the question I was told, yes, he's still around but --

HE'S KEEPING A LOW PROFILE.

He's keeping a low profile. Well, that's a case I shall always remember and this is just sort of a footnote on that. There is an English couple that I know quite well. He's a member of the House of Lords. I was trying Flood -- trying the case when the Inglebys were in town and they sat in on part of the case and afterwards I asked Lady Ingleby what impressions she had of it and she said, "Oh, he reminds me of an old-fashioned movie villain." I thought that was quite an apt description.

WELL, FLOOD WAS NOTORIOUS FOR HIS WAXED MOUSTACHE.

His waxed moustache.
LOOKS LIKE SNIVELY WHIPLASH.

AND A CAPE, WORE A BLACK CAPE.

Oh, yes, he was quite an actor.

AND SLICKED-DOWN HAIR AND BIG HAT, THE WHOLE THING.

Well, we don't have many like him. Another actor that I remember well was a chap who was charged with false pretenses -- what was his name -- his name was Garner.

OH, YES.

Well, Mr. Garner was a newspaper publisher but as is the case with many people who are in that business, he owed considerable money and made representations about why those loans should be extended to him and he was finally indicted for false pretenses.


Well, Mr. Garner was not satisfied with his first court-appointed lawyer -- I've forgotten now who it was, but he unilaterally decided that he didn't want to stick around here any longer so he went AWOL. But as is usually the case, he was picked up by the FBI someplace west of here. He was brought back and he
was most apologetic but he indicated that he was on the track of an important story and just had to run it down and then he was very much ashamed of what he had done so he decided he wouldn't come back right away. Well, I said, "All right, we've got to go to trial now." Well, he didn't want to go to trial unless he had a lawyer in whom he had confidence. And he said, "I've got some suggestions." And I let him make his suggestions.

He wanted me to appoint Ed Williams, and I told him that I knew that Ed Williams was very busy, that I had him in another case and had to give him a continuance because he was loaded up. He accepted that explanation. Then he said, "How about Thurman Arnold." Well, I told him I was sorry but I didn't know Mr. Arnold's current phone number, that he was no longer listed in the telephone book. He got the point quite quickly and said that he didn't want no dead lawyer. Then he said, "What about John Treanor." Well, I wasn't quite sure but I thought he probably referred to the retired Chief Justice of the California Supreme Court, but the name was like that of a local lawyer who had been in the U.S. Attorney's Office and who had tried many cases before me, a very good lawyer, John Treanor. So I said, "All right, I'll appoint John Treanor." At first he was gratified but John is quite outspoken and I guess John didn't go along with some of his antics and so, one day when they appeared before me for a status call, he said he wanted to ask his lawyer some questions under oath. And I said, "All right." So the Clerk swore John Treanor. He took the stand, and Mr. Garner said to him, "Now, you've got to answer these
questions truthfully 'cause you're under oath. Isn't it a fact that while I was locked up you were shacking up with my mistress?"

Well, John Treanor was furious and he came as close to exploding as I have ever seen any lawyer in court. But the first thing he said was, "Your Honor will have to relieve me, I couldn't possibly defend this man." So I relieved him and appointed Leroy Nesbitt to represent the defendant. I think he filed a motion for me to recuse. I'm not sure what happened to that motion. There wasn't any basis for it. But about that time Gerry Gesell had said that he was about out of cases and he could take somebody's overload. So I said, "I've got a very interesting case, false pretenses case, and will you take it?" And he said, "Sure I'll take it."

Well, he took it and Garner started some of his antics down in Judge Gesell's court. The result was that Judge Gesell said to him, "Mr. Garner, if you continue this course of conduct, you'll sit back there in the cellblock while I try the case, is that clear to you?" Well, that didn't appeal to Mr. Garner so he discontinued his interruptions, the case was tried and Garner was convicted. The file discloses that Garner wrote me several letters from Leavenworth where he had been sent. He was having a dispute with the authorities over how much good time he had coming to him, but I figured it wasn't up to me to get involved in Mr. Garner's case any more and I did not communicate with Mr. Garner any more. So much for Mr. Garner.

YOU NOTED THE OTHER DAY THAT THERE WERE THREE CASES THAT WEREN'T
MAYBE AS NEWSWORTHY OR WEIGHTY IN THE CONSTITUTIONAL OR POLITICAL SENSE BUT THAT YOU HAD FOUND VERY GRATIFYING ON A PERSONAL LEVEL.

That's right.

I WONDER IF YOU COULD MAYBE TALK ABOUT THOSE CASES -- THERE WERE THREE SEPARATE CASES.

Three separate cases, completely unrelated. But they did indicate that something out of the ordinary had to be done with those cases. The first and the oldest one was Hoskin v. Resor. Hoskin was a veteran of World War I, Russian Railway Service Corps, so-called. Also, his outfit was called the AEF Siberia. And the story behind his case I found fascinating as a matter of history. Hoskin was a young railroad employee of the Great Northern Railway. I have forgotten whether he was an engineer or a fireman, but that's really not important. What had happened was this: The Czar's government had fallen; Kerensky's provisional government was attempting to continue the Russians in the War; Lloyd George and Clemenceau and Wilson were very much concerned that the Treaty of Brest-Litovsk might be a means whereby two million Germans on the so-called Eastern Front might be transferred over to France so they wanted to do everything they could to keep the Russian Army in the War so that that would not happen. And one was to get trains moving over the Trans-Siberian. So they persuaded Daniel Willard, who was then president of the B & O Railroad, to recruit around,
I think, three to four hundred engineers and firemen, people who were used to the cold weather in the north to join the U.S. Army Corps of Engineers. And these men were given commissions, second lieutenant to colonel. Hoskin was one of them. I've seen a copy of his commission. By direction of the President the Adjutant General was to commission Hoskin in the Corps of Engineers, U.S. Army, to serve with the Russian Railway Service Corps. But for some reason, the Army contended that these men served with the Russian Army and were not members of the U.S. Army, though pictures had been retained by Hoskin and some of his colleagues in the uniform of the U.S. Army Corps of Engineers with the castles insignia on the neck and U.S. on the other side of the U.S. uniform, and sidearms. No, said the Army, they're just like the Red Cross. Well, somehow or other, that argument really irritated me. And since the lawyers representing Hoskin and Resor were not very energetic in digging out documents, I sent my law clerk over to Archives and I said, "I'm sure that there is a section of Archives that has all the records on the AEF Siberia. Go over there and make friends with the Archivist and get all the documents relating to the AEF Siberia, particularly those that concern the Russian Railway Service Corps." Well, that young man was very energetic -- Roger Warin is his name, now a partner of Steptoe & Johnson. And Roger brought back a whole armful of documents with ribbons and stamps and other indicia of authenticity. And I called in the two lawyers and I said, "Will you please examine these documents. This is what I believe they are but I haven't looked
at them but they purport to be the official documents of the AEF Siberia and particularly the Russian Railway Service Corps and tell me whether or not they are authentic and whether you have any objections to the Court's considering them." Well, they looked at them, and they said, "No, we'll stipulate to that." So I looked them over and I found that the Czar's government was broke, Bakhmeteff, the Ambassador of Kerensky's government here in Washington, said his government was broke too and they wanted more U.S. money particularly to pay these U.S. troops that were in Siberia. So the argument that was made by the Acting Judge Advocate General, General Ansel, to the effect that these men were in the Russian Army because they were being paid by Russian funds was baseless. Friends of mine in the JAG Office have continued to assert it.

WITHOUT LOOKING INTO IT.

Yes. They just took it on face value. So I wrote this opinion. All Mr. Hoskin was suing for was an Honorable Discharge and the right to be buried in a military cemetery.

NO MONEY.

No money. And I remember when the Court of Appeals agreed with me, Judge Bazelon wrote the opinion and described my opinion as excellent, which he didn't often do. I thought surely the Army
would say, all right we'll agree with his demands. Not at all. They sought certiorari. I saw my friend General Williams, who was deputy JAG of the Army at the time. It was at the National Prayer Breakfast. And I said, "Larry, you people are not going to persist in this, are you?" He said, "You feel rather strongly about this case, don't you." And I said, "I sure do." So I got word a couple of days later that they had requested that their petition for cert. be withdrawn. So Hoskin got his honorable discharge and his right to be buried in a national cemetery. But I felt very strongly about that case. It was an opportunity to revisit a chapter in history with which I was somewhat familiar.

I remember one argument the government made that kind of bothered me: laches. This incident occurred not later than 1920, but it so happened that these people had sought relief year after year on Capitol Hill. Many bills had been introduced for their relief. And so I took the position that laches applies to one who sleeps on his rights and these people had not slept on their rights. True, they hadn't filed suit but they had the understanding that Congress could give them relief and all they wanted was relief, and minimum relief at that. So I brushed aside the laches argument and the Court of Appeals agreed with me. It was an interesting case and I enjoyed very much working on it. I recall that at the time Roger Warin's co-law clerk was a chap who had been managing editor at G.W. and he took this opinion, which I had dictated, and put it into "law clerkese." You, having been a law clerk, know the particular style law clerks use. And I said,
"Hell no. If they want to say they won't go along with me because it's not written by a law clerk, they can. But I want it just the way I wrote it." So that's the way it is.

Another case somewhat like that is the Mt. Zion/Female Union Band case, a case that I think of with a great deal of satisfaction. It came into my court in this connection. As you will recall from your service here, as a law clerk - I guess they still do - the motions judge, among other assignments, considers what are known as petitions for an order nisi, which in effect is a court auction. Property may be sold if there's an offer to purchase unless there is a higher bid in open court. Well, the property in question here was the old slave cemetery which is located off Q Street in Georgetown and abuts the Oak Hill Cemetery. Well, these two cemeteries, the Female Union Band Cemetery and the Mt. Zion Cemetery, had gotten into some sort of a dispute over where the line is drawn between them and Mt. Zion had retained the services of a Mr. Norris, who was more a real estate man than a lawyer, but he was a member of the bar and he represented the Mt. Zion side and his fee was contingent and it was 25 percent of the value of the Cemetery. Well, anything in Georgetown is worth money but the project that Mr. Norris, and later Mr. Smith, as trustee, had was to get rezoning, backhoe out the bodies, bury them someplace else and build a high-rise apartment there. Well, the matter had kicked around this court house for some time. Judge Jones had it, Judge Walsh had it, and they had each gone along with the efforts to transform the old cemetery into a high-rise
apartment to a degree but there hadn't been a rezoning. In the meantime, the cemetery had gotten pretty much overgrown and the District had issued an order that unless it was picked up a little bit, weeds trimmed, and trash removed, that it would be condemned. Well, that was precisely what Mr. Smith wanted. He wanted it condemned so that he could buy it and sell it for a high-rise apartment site. So, to get back to the point, there was an order nisi hearing before me as motions judge and the offer was mentioned. I think it was something in the neighborhood of $160,000, plus the obligation to remove the bodies and to bury them in some other area. Well, nothing was said for a moment after the offer was made or renewed, and then a George Washington law professor by the name of Eric Sirulnik stood up and said, "I represent Mrs. So-and-So whose kin folks are buried in this cemetery and we object and wish to be heard." Well, that seemed reasonable. And then a chap by the name of Vincent DeForrest, who represented the Afro-American Bicentennial Committee, stood up and said that his Committee represented a number of people similarly situated. So I put the case over and permitted them to file and Smith in the interim was furious and thought I was transgressing his rights. But ultimately they were able to block the construction of the high-rise, or any construction on the cemetery site and, in the meantime, Mr. DeForrest was instrumental in getting the area declared a national monument -- their objective was ultimately to have the Park Service take it over. Many people have become interested in it. I think I mentioned to you that the
retired Chairman of the Department of Landscape Architecture at Harvard University became interested to the extent that he drafted a tentative plan for a memorial park and I think, ultimately, that or something similar might well come to be because there was a lot of support for it and I might say that I got a lot of satisfaction out of blocking this exhumation of the bodies by a backhoe. And I noticed, looking over the file last night, that there was a letter in there from Bill Jones, who had originally gone along with them.

JUDGE JONES?

Yes, saying he had read my opinion, that he agreed with it one hundred percent and he was glad I took the pains to dig into it and seek to make something out of it. I removed the two trustees who had been put in by Mr. Smith and DeForrest and Sirulnik are now the trustees. Alan Raywid, who died about a month ago, was a trustee but I've got to appoint somebody to succeed him. Among the interesting things is that one of the toughest policemen I know is a Captain John Sullivan. You may recall that I mentioned his name in connection with the Mallory case. Sullivan got interested in this thing and he has enlisted the resources of the Police Boys Club to go in and pick up this area, cut the weeds, cut the brush and so forth. I've been over there several times and it doesn't look like the same place. And the city has notified these people that the Cemetery is no longer in violation of city
regulations but that's a case, you know, I could just as well have
told Sirulnik that the only purpose of the order nisi -- and that
was all that was before me -- was to receive a higher bid, if any,
but there was no higher bid so to accept the bid that was
outstanding.

THAT WOULD HAVE BEEN THAT.

That would have been that. I don't think there would have
been any appeal of that. But somehow or other it was one of those
things on which I had a gut reaction. That was just not the way to
handle that case. And I mentioned also, the last time we were
talking about this, that there was a retired Naval officer, a
Captain Belin, who lived over in that area and he had heard about
this problem. He came and listened to some of the hearings we had,
and we had a number of hearings that year on this subject. And he
sent me a note saying he had been a regular contributor to the
Georgetown Historical Society and that he would make an additional
contribution of $20,000 on the understanding that, if it were
necessary to compensate this man for legal services, that fund may
be used for it. I'm not sure whether it was. It was put in the
Registry of the Court, and it may well have been used for that
purpose. But that was a matter that I didn't have before me.

The other case I wanted to mention -- an unusual case but very
much this same type of thing was the Lindenberg case. Lindenberg
was a refugee from Hitler's Germany, a young man with a musical
background, and when he got out of Germany, he went to Aberdeen,
Scotland, and he fell in with a group known as the Camp Hill
Movement. It wasn't plain from the record, or if it was, I've
forgotten it. But the purpose and objective of the Camp Hill
Movement was to work with retarded children and apparently in
Europe they have several places where they have homes in which they
take care of retarded children. Lindenberg became very proficient
in teaching these retarded children to sing four-part harmony. And
I remember he was an expert in that. And he was not a witness
before me but his lawyer was very well versed in the activities of
this group and he explained how the group needed someone in its up-
state New York facility who had Lindenberg's experience and
interests and so they persuaded Lindenberg to get a temporary visa
and come to this country. He did and did very well with this
assignment. And then, for some reason or other, Immigration and
Naturalization sought to deport him. They probably had every
reason under the law to do so but they went about it in such a way
that I got my back up and I decided, for instance, there was a
provision of law whereby if this particular immigrant were
connected with a religious organization and if his work was
religious in character that he could be blanketed in. Well, the
first thing Immigration said was, you're not a Presbyterian, or a
Catholic, or Jew, or whatever. You're not connected with any
religion. Well, the Supreme Court has many times passed on that.
You cannot say that because you are this or that or not this or
that, you are not eligible. And it seemed to me that one who
received no salary who devoted his entire life to working with these retarded children was doing something that was basically religious in character regardless of whether it was in the form that you usually expect. So I decided the case his way.

DID IT GO UP?

They noted an appeal and I asked my clerk to check on the appeal and I found out they dismissed their appeal. But as far as I know, Mr. Lindenberg is still in up-state New York. And he is so good at this that various other agencies that have a similar problem borrow him from time to time. And apparently there is something to it. I've had some experiences, as all judges do from time to time, with mentally retarded people and it's probably one of the most difficult things to deal with. You can, by giving appropriate medication to people who suffer from a serious mental disease, correct that or partially correct it, but there's not much you can do about making whole a retarded person. But you can establish them so that they can lead a more productive life. These people have a farm; they work on the farm. And for pleasure, they have a little music. And Lindenberg is responsible for that. But those cases stand out in my mind as something that I had achieved and it's unusual but I think it's material to the pursuit of justice. Let's see what else I can tell you.

YOU HAD A COUPLE OF OTHER CASES YOU MENTIONED THE OTHER DAY --
Yes.

THAT STOOD OUT. WHICH ONES DO YOU RECALL ARE WORTHY OF MEMORIES AND RECOLLECTIONS?

Let's see. Well, I remember, among the cases that were a real problem when they came in, were the jailbreak cases. There were probably about 25 of them. The ringleader was a fellow named Gorham.

THEY BROKE OUT OF THE OLD JAIL?

Yes. They didn't actually get out, it was an attempted jailbreak. And some of the guards were pretty badly beaten and it might have been more serious but they were able to quell the insurrection before it got to that point. I remember telling the prosecutor that, while you may indict 25 people, it's not practical to attempt to try 25 people in the same courtroom at the same time. I said to him, "You know the facts of the case. Break it down for three trials and we'll try the case three times." In that way you have some control over what goes on in your courtroom. And he did it and we had three trials. I think they were all convicted. Some pleaded guilty. There were a couple of women who were accused of tossing a gun over the wall but the proof was not very strong. A gun was tossed over the wall but it was not shown, as is required
in a criminal case, that they were the ones who did it. They were the girlfriends of two of these men. They were acquitted. But I remember particularly Gorham's case because following his conviction he asked to see his lawyer or a lawyer asked to see him and that is routine. The lawyer saw him downstairs in the cellblock and after the lawyer left, Mr. Gorham produced a pistol that he had smuggled in and held up the cellblock, got the guns from the place where the Marshal keeps them and I think there were about seven people held hostage. I remember Bill Garber was one of them and there was a lawyer from the Department of Justice who came over with his secretary to interview a prisoner and this business went on for two or three days. I remember various expedients were suggested. Get a sharpshooter from the Army and let him kill Mr. Gorham. Well, I would say that the Court was not unanimous that that should be done. So it was not done. Ultimately, the thing that worked was time. Mr. Gorham had been awake supervising his empire for about three days. He dozed off and went to sleep and his partner was busy doing something else and so the hostages were able to escape through the expedient of one of the women asking for a sanitary napkin and the Marshal had a hunch that if he put the keys to the cell door in the sanitary napkin, she'd find them. She did. They opened the door, the seven got out and then got on the elevator and went to freedom, a much better way of handling it than the way that had been suggested. Gorham was one of the most desperate people that I've tried. He had, when he came before me, time that added up to about 75 years
and I thought that was sufficient. I didn't give him any more consecutive time for the offense down at the District Jail, attempted escape, but when Jack Smith tried him for holding up the cellblock, he did give him substantially more time consecutively. Well, that was a memorable case. Let me see if I can see anything else here that we should mention.

LET ME CHANGE TAPES WHILE YOU'RE LOOKING AT THOSE.

All right.

THIS IS THE END OF SIDE TWO OF TAPE ONE ON MARCH 2, 1992.
One case that I remember, being something of a history buff, is *Expeditions Unlimited v. The Smithsonian*. Expeditions Unlimited was the commercial name of the deep-sea diver who had suggested to the Smithsonian that he be employed to find the wreck of the Union ironclad called the Tecumseh which was part of Admiral Farragut's fleet which invaded Mobile Bay. And Farragut is often quoted, the words he used in Mobile Bay -- "Damn the torpedoes, full speed ahead." Well, one of the Union ships that followed the Admiral's command was the Tecumseh, which was an ironclad, cheesebox on a raft, they called them.

**JUST LIKE THE MONITOR.**

Yes.

**THE ORIGINAL IRONCLAD.**

That's right. And the torpedo that she encountered caused her to sink. I don't know what the depth of the water was but as I recall the evidence, it was something around 100 feet, which isn't
too much for a deep sea diver. And this chap reached it and retrieved some artifacts that made it clear he had actually located the Tecumseh. And the next step was to raise it. Well, he had some dispute with the official at the Smithsonian who was in charge of the project, as a result of which the project was cancelled and he sued. The case was heard in my court. I remember Jack Pyne was counsel for him - a very able lawyer - and my recollection is that Jack got a judgment of about $225,000. The record reflects that the case was subsequently settled for around $150,00 so there was no appeal on it but I've always been interested in Civil War stories and I guess this is the only one that ever came to trial in my court. After all, 1863 or 4 was a long time ago. But an interesting footnote on that. I go to Cape Cod in the summertime and we have a place which is near Woods Hole which is a passageway between Buzzard's Bay and Vineyard Sound. And on the Vineyard Sound side there's a nice little harbor -- Kettle Cove. I've been in it many times. The man who made the decision cancelling this contract at the Smithsonian, the very summer that he had made the decision, was on a cruise with his wife and they had gone to this little harbor and they had gone ashore and the boat was anchored and he cooked dinner on the shore. A storm came up, as it frequently does in the summertime, quickly, and instead of just staying ashore and waiting for the storm to blow over, which they always do, he decided to row out to his boat. He didn't make it. He was drowned. Well, we hate to remember those things but I'm sure my reaction is a little different from the deep sea diver
whose contract was cancelled. I don't know if he even knows about it but this place -- this little harbor is not more than five miles from our cottage. And, of course, the local papers played it up, told about his being an important official of the Smithsonian.

Let's see if I have anything else here.

HOW ABOUT THE GOLDWATER CASE?

Oh, yes.

INvolving the Treaty with Taiwan.

Yes.

That was one of those political and constitutional cases like Gramm-Rudman.

Certainly was.

And I know the case ultimately went up out of your courtroom.

That's right. I recall, originally, suit was filed probably June or July -- the reason I recall it, my law clerk that year or one of my law clerks was a very bright girl who had been Editor-in-Chief of the Georgetown Law Journal, Kathy Fenton. And Kathy said, "You can't do anything with this case, it's a political
case."

To me, that was just a handle. And I thought, you know, that these Taiwanese had been good friends and they had entered into this Treaty, and they had gotten the approval it required, two-thirds of the Senate, and that the President should not unilaterally rescind the Treaty without Senate approval, either two-thirds of the Senate or a majority of the two Houses. There were no dominant precedents. But I did not follow Kathy's advice and when my replacement law clerk, Bruce Ryan, came in -- I knew Bruce was very bright, he was number one in his class at G.W. -- and I said to him, "Now look, Bruce, there's not very much written on this subject but don't worry about any other cases on your list. Devote your full time and attention to this case and let's see what we come up with." Well, finally he and I agreed that if it wasn't the law, it should be, that the President should not be given authority unilaterally to rescind a treaty. I noticed from my file that I got a number of letters approving my decision from law professors. But the only judge who agreed with me was MacKinnon, and while George and I are good friends, we don't always agree about cases and the Court of Appeals overruled my decision and the Treaty was to expire or this action was to take place around the first of the year so there was expedited consideration in the Court of Appeals and then counsel for Goldwater -- and I've forgotten now who it was that represented him -- sought to get the Supreme Court to consider it. And instead of just saying cert. denied, they took it and then about six of them wrote opinions but none of them agreed with the action I had taken. So, probably, if
I had followed Kathy's advice, I would have saved a lot of time but it was an interesting adventure into international law and I suppose it'll be sometime before we have occasion to revisit that.

ONE CASE YOU TALKED ABOUT LAST WEEK WAS A CASE THAT I HANDLED IN FRONT OF YOU THAT YOU FELT PRETTY STRONGLY ABOUT --

Monk.

THE MONK CASE. IT WAS BASICALLY A MILITARY HABEAS CORPUS CASE FILED BY A MARINE WHO WAS CONVICTED OF MURDERING HIS WIFE. I THINK AT CAMP LEJEUNE OUT IN CALIFORNIA OR SOMETHING LIKE THAT OR, CAMP PENDLETON IN CALIFORNIA, AND HE HAD BEEN CONVICTED THROUGH THE COURT-MARTIAL PROCESS. THE U.S. COURT OF MILITARY APPEALS HERE IN WASHINGTON HAD AFFIRMED TWO TO ONE THE CONVICTION. AT THAT TIME YOU COULD NOT FILE A CERT. PETITION TO THE U.S. SUPREME COURT. TODAY THE LAW HAS BEEN CHANGED AND YOU CAN. HIS LAWYER -- AFTER MONK WAS SENT TO LEAVENWORTH, THAT IS -- HIS NEW LAWYER, A FELLOW AROUND HERE IN WASHINGTON, AN EX-MARINE, FILED A CIVIL ACTION IN THIS COURT WHICH WAS ASSIGNED TO YOU.

Yes.

ESSENTIALLY IN A DECLARATION THAT HIS CONVICTION WAS IMPROPER.

Yes, that the instruction by the law member of the court was
in violation of the Constitution.

AND WHO IS CHIEF JUDGE EVERETT?

Yes, he had dissented. He was Chief Judge of the Military Court of Appeals.

AND THAT WAS HOW WE STARTED OUT WITH THE CASE.

That's right.

WELL, JUDGE, THE MONK CASE WAS ASSIGNED TO YOU WHEN IT WAS FILED AND IT WAS ASSIGNED TO ME PROBABLY THAT AFTERNOON TO REPRESENT THE SECRETARY OF THE NAVY, AND AS I RECALL, THE FIRST THING THAT THE GOVERNMENT DID, NAMELY, ME, WAS TO FILE A MOTION TO DISMISS ARGUING THAT MILITARY PRISONERS WHO RESIDED OUTSIDE THE DISTRICT OF COLUMBIA AND WERE BEING HELD OUTSIDE THE DISTRICT OF COLUMBIA -- IN THIS CASE FORT LEAVENWORTH -- COULD NOT FILE WHAT WAS ESSENTIALLY A HABEAS CORPUS PETITION HERE OR ELSE EVERY MILITARY PRISONER IN THE COUNTRY WOULD BE FILING PETITIONS IN THE CLERK'S OFFICE DOWNSTAIRS. THE CASE THEN MOVES BOTH ON THAT JURISDICTIONAL POINT AND PRETTY MUCH TO THE MERITS IN YOUR REVIEW OF THE UNDERLYING CRIMINAL TRIAL.

Well, I reviewed the merits and came up with the proposition that the dissent in the Military Court of Appeals, written by Judge
Everett, was correct. It went to the Court of Appeals and to my knowledge the only ex-Marine upstairs, Judge Bork, wrote the opinion, and he agreed with you that essentially what Monk was trying to do was violate the rule that one seeking habeas corpus must file in the area in which he is confined. His counsel had sought to avoid that by saying that the Secretary of the Navy was his custodian and the Court of Appeals didn't buy that. He filed suit out in the area of Fort Leavenworth -- I'm not sure what the --

I THINK IN THE DISTRICT OF KANSAS.

Sued in the District of Kansas. The District Court agreed with the court-martial decision but the circuit court on the merits adopted the position that Chief Judge Everett had taken in his dissent, so Monk was ordered released. I don't know how much time he served but quite a bit. That's an example, of course, of the wide-spread jurisdiction that we get in this court because of the fact that this is the seat of government.

I had another Marine case, a man named Bozin. And Bozin had been discharged from the Marine Corps because of marijuana usage. The facts were, as I recall them, that he had gone to a little party off the base and they drank beer, so he said. And then he went to sleep on a couch and one of the ladies present had decided to blow a little marijuana smoke in his face, which she did. He reported back to his duty station and he was either unsteady on his
feet, or whatever, and they gave him a test as a result of which he was found guilty of having smoked marijuana in violation of orders. I always thought that perhaps he had a very shaky record and they were looking for an excuse to get rid of him because they normally wouldn't fire a guy for a first offense of smoking marijuana. But I got the case on review of the decision by the Military Court. I suppose it must have been -- I suppose it must have gone to the Military Court of Appeals before it came here. I am unclear about that right now. I never discussed it with Judge Everett, who is a close friend of mine. But in any event I sustained the Navy's position on Mr. Bozin. The chap who represented Bozin was a little fellow who had a lot of these military cases - Fidell, or something like that. You remember him?

VAGUELY. FIDELL.

Fidell.

GENE FIDELL.

Gene Fidell.

YES, I KNOW.

He was great on research but not a very persuasive advocate. You know, there is a difference.
SO I'M TOLD.

I recall a number of military cases but --

YOU JUST HAD ONE, VERY RECENTLY, THE FELLOW WHO WAS DISCHARGED FROM THE NAVAL ACADEMY. I KNOW THAT WAS JUST HANDLED AND PROBABLY UP IN THE COURT OF APPEALS NOW, RIGHT?

I suppose so. I'd rather not talk about anything that's pending in the Court of Appeals.

THAT'S RIGHT.

This was an impoundment case.

NEW YORK V. RUCKELSHAUS?

Yes. Congress had made available a large amount of money for the purpose of allowing municipalities to construct improved sewage treatment facilities and other municipal activities that would be directed toward improving the environment. The administration thought that it was too costly and sought to impound the funds. My initial reaction was somewhat consistent with the government's position but my law clerk that year was Elinor Stillman, who is very bright and somewhat aggressive, in a very pleasant way, and
she came in to see me literally with both fists flying and said, "You can't do that. That's a great piece of legislation and New York needs that facility." Well, Elinor was so wrapped up in it that I said, "All right, let's go along with it." So we did. I remember well that the man who argued the case for New York was a former Leventhal law clerk and I remembered him when he had been around the courthouse because he was confined to a wheelchair. But he came down from New York, argued the case brilliantly, and he prevailed. The Court of Appeals saw it in the same light. Judge Merhige in Richmond was confronted with the same set of facts as they pertain to the allocation for Richmond but he agreed with the government and the Fourth Circuit agreed with him, the case went to the Supreme Court on disagreement between circuits and the Supreme Court agreed with Elinor. You always have to pay attention to your law clerks. Sometimes you agree with them; sometimes you don't. But I see her from time to time. She is now the --

IS IT THE LABOR BOARD?

Yes, she is now the legal counsel to the Chairman of the Labor Board. And labor law was the thing in which she was most interested. Well, I'll think about cases, and maybe I'll find something else that deserves a little treatment.

THIS IS THE END OF THIS CASE. THANK YOU VERY MUCH.