

Oral History of Judge Stephen F. Williams
Session 1
November 18, 2007

Mr. Nuechterlein: Hello, this is Jon Nuechterlein. I am a partner at WilmerHale, it is November 18, 2007, and we are here with Stephen Fain Williams to begin his oral history for the D.C. Circuit Oral History Project. For the sake of full disclosure, I have known Judge Williams for many years. In fact, I clerked for him — first, as a summer clerk, back in 1988 (we worked together on his cases in an office at the University of Colorado in Boulder), and I went to work for him as a bona fide clerk in 1990-1991. So I have heard some of these stories, but I have not heard them all. I am looking forward to hearing more.

For this first installment, we are going to talk about the Judge's background. So, Judge, it would probably make sense for you to tell us a little about your parents and grandparents. We have the outline that the oral history people have provided to us, and one of their questions is when your ancestors arrived in the United States. I am not even sure if I could answer that question for myself, but do you have any insights?

Judge Williams: Everybody has a lot of ancestors, as you go up the family tree. They arrived in a range of times from the early 17th century to maybe the mid-19th century and probably after.

Mr. Nuechterlein: Do you have any Mayflower ancestors?

Judge Williams: I do.

Mr. Nuechterlein: Do you know their names?

Judge Williams: One was Richard Warren, who apparently is responsible for about 12 million American progeny (I'm not sure if that's cumulative or present-day). It sounds like a lot, but if you imagine someone who had ten children, each of whom had ten children, with an average gap of 25 years between generations, you'll see that since 1620 you would reach a current number of descendants far above 12 million. Of course Warren and his progeny were nowhere near so prolific, so there are only 12 million. There's also another Mayflower forbearer, Thomas Rogers, who didn't lead to so many descendants; I don't have any figures on him.

Of course many of my ancestors were thrown out of countries or found life uncomfortable in the countries where they were.

Mr. Nuechterlein: For religious reasons?

Judge Williams: Yes — well, at least some. Some were Huguenots who were thrown out of France as a result of the revocation of the Edict of Nantes in 1685. I don't

think they made their way — in fact, I am reasonably sure they didn't make their way — straight to the US, but proceeded instead through some intermediate countries, and at least one of the original exiles or his or her child proved to be an ancestor [who came to America]. I think the ancestor to arrive most recently was a great-grandfather who was starving in Ireland as a result of one of the potato famines and came to Texas, and he played an important role in my mother's background. I should say that both of my grandfathers were lawyers, although I don't think my mother's father did much practice.¹

Mr. Nuechterlein: Did you know them?

Judge Williams: I didn't know my father's father at all; he died nearly 20 years before I was born. But I knew my mother's father.

Mr. Nuechterlein: He was a lawyer?

Judge Williams: Yes, he was a lawyer, although not very active as a lawyer.

Mr. Nuechterlein: This was a Fain?

Judge Williams: Yes, this was William Hugh Fain.

Mr. Nuechterlein: Where did he live?

Judge Williams: He and his family lived in Greenwich, although in an early period in my mother's growing up, they used to go to Houston, Texas, where her grandfather lived. I think they went every winter — just why, I am not sure. Anyway they did.

Mr. Nuechterlein: So this is a little bit of a Horatio Alger story: the family went from the potato famines of Ireland to Greenwich, Connecticut in several generations.

Judge Williams: Yes — I suppose really two — the great-grandfather comes over, and his daughter is soon living in comfort in Greenwich.

Mr. Nuechterlein: So tell us a little about your parents themselves. We can start with your mother.²

Judge Williams: OK. She was born in 1907 in the city of New York but was brought up in Greenwich and went to Rosemary — as it then was, now Choate

¹ Judge Williams added this note to the transcript: "Jon—it might be fun to put in somewhere around here reference to my ancestors who left Scotland after an itinerant preacher persuaded everyone in my ancestors' town to take a no-alcohol pledge. Only one couple, my ancestors, stuck to it. Apparently because the other townsfolk thought they were holier-than-thou, they left, and they or descendants made their way to America."

² Virginia Fain Williams.

Rosemary Hall — and then to Bryn Mawr. And after Bryn Mawr, she moved to New York and got a job in the office of an architect, William Lescaze, who at one time was fairly well known and among architects is still well known. But she dropped that when she got married. And I think that was probably a pity. It probably was a result of some sort of notion that married women should be in the home rather than off at work.

Mr. Nuechterlein: What is the date range that we are talking about here?

Judge Williams: They were married September 6, 1930. And I think it was just between college and marriage that she worked for Lescaze. And I remember hanging on one of the walls of our summer house in Norfolk, Connecticut was a sketch of a building for an elderly invalid, imaginary as far as I know, which looked quite charming. It was very modern. It clearly presupposed that this elderly invalid had a lot of people helping, because she was out in the countryside, and how she was going to get anything to eat or see anybody would have to depend on quite a few people helping her. I thought about it wistfully in comparison to the retirement communities most people end up in nowadays. I remember that my mother mentioned that most of the work at Lescaze's wasn't very glamorous — at least some if it was working out the exact details of closets in some houses that he was designing.

Mr. Nuechterlein: When did your mother meet your father?³

Judge Williams: They married in September, and they met about 6-8 months before. Something like that.

Mr. Nuechterlein: What year?

Judge Williams: 1929 or '30. They met at a dinner party, and they both agreed that the host of the dinner party, who was a relative of my father's, was perhaps the most boring person either of them had ever met. And my mother took from it that sometimes good things can come from going to a boring party.

Mr. Nuechterlein: It makes the guests talk to each other.

Judge Williams: [Laughter.]

Mr. Nuechterlein: And so they got married several months later.

Judge Williams: There weren't long engagements in that era.

Mr. Nuechterlein: And you are one of how many children?

³ C. Dickerman Williams.

Judge Williams: One of three. I am the youngest, with two older sisters.

Mr. Nuechterlein: Do you want to say a few words about that?

Judge Williams: Sure. My older sister Joan went to Putney School in Vermont and then to Radcliffe. She wanted to go to an art school after college, but my parents didn't feel that subsidizing that was a good venture. And I remember her talking about whether she should learn how to type. She very determinedly decided not to. She was concerned that anywhere she got a job would slide her into typing, and she would never emerge, and that would be the end of it. In fact, I just met someone at dinner a few nights ago who did learn typing, started out typing at McKinsey and Company and rose, not to be a consultant, but to an administrative post there.

So my sister's calculations weren't 100% right, but it worked for her because she somehow or other got into investment analysis and became very, very good at it. She founded the Young Women's Investment Association — that was the name at its founding, but since then it has undergone a name change [to Financial Women's Association of New York] and is now a huge organization. And she just retired from the Bank of New York as an investment analyst.

Mr. Nuechterlein: What is her name again?

Judge Williams: Joan Farr. And my next older sister is Honor, who had a radically different career. She went to Radcliffe, and before that she also went to Putney, and while she was there, Putney had a teachers' strike. In fact, both of them were there at the time of the teachers' strike. Just terribly discombobulating to the school. And I think it was in the middle of my sister Joan's last year, so she just finished up. But my sister Honor went to Chapin School for a couple of years, which at least in part overlapped with my father's being Solicitor (as it was so called and perhaps still is) at the Department of Commerce, so he and my mother were living in Washington.

Anyway, Chapin and then Radcliffe, and there she took what proved to be an important course for her. It was Professor Reischauer's course, which was generally known at Harvard as Rice Paddies. It had a more formal title such as History of Far Eastern Civilization or something like that. She became quite obsessed, and then she took an intensive course in Japanese, and she did very badly. I remember her saying she got a "DD" because it was two courses; and she felt that even the "D" had been a charitable grade.

But she remained interested enough so that, upon graduation in 1956, she set out for Japan with a job at a college there teaching English. She didn't continue to teach at that college, but she remained in Tokyo for the rest of

her life up to now. She married a Japanese man, from whom she is separated now, and has two daughters, both of whom live in the US.

Mr. Nuechterlein: You mentioned your father's work at the Department of Commerce, and since he was a well-known lawyer in his own right, I was wondering if you could say a few words about his legal career.

Judge Williams: Sure. He clerked for Chief Justice Taft...

Mr. Nuechterlein: Was that right out of law school?

Judge Williams: Yes, right out of law school.

Mr. Nuechterlein: What law school did he go to?

Judge Williams: Yale. He was Chairman of the Law Journal. Then, when he was done clerking for Taft, he went right into the U.S. Attorney's office in New York. He spoke with a little irritation of it later. He was assigned to the Criminal Division and particularly prosecuted bootleggers, so he knew criminal procedure very well. I do remember his saying that, as a prosecutor of bootleggers, it was important for him not to drink liquor during Prohibition (although I think he went to a huge number of parties where there was a great deal of liquor). That seemed to be the honorable thing.

To return to the irritation, which I think was mild but real: while others were developing skills more immediately useful in a general civil litigation practice, his concentration on bootleggers wasn't so completely transferable.

Then he was in private practice after that.

Mr. Nuechterlein: What firm, do you remember? Was it in New York?

Judge Williams: Definitely in New York — except for fairly brief stints in Washington, his whole legal career was in New York. He was in Breed, Abbott & Morgan, but I am not sure whether that was before or after he was General Counsel of the American Locomotive Company. I think before. And then he became General Counsel of the American Locomotive Company, and then, in the last two years of the Truman Administration, he was Solicitor of the Department of Commerce.

Mr. Nuechterlein: Was he a Republican or Democrat?

Judge Williams: He was definitely a Republican.

Mr. Nuechterlein: But he had a job in the Truman Administration?

Judge Williams: Yes, but at least as he described it to me, the Department of Commerce was a small enclave of conservatives in the Truman Administration. He was a great admirer of Charles Sawyer, an Ohio Democrat who was Secretary of Commerce, and they got on very well I think. As to things that he did, the Steel Seizure Case was obviously highly political, but a lot of stuff they did was — like, in a sense, most of the stuff I do — largely apolitical, where the principal job was being sure that the Department acted within the law — just like my job.

Actually, in his papers, I came across a memento of those years. A big thing he did was to settle the dispute over the Dollar Line, a dispute that generated a case called *Land v. Dollar*,⁴ a big case on sovereign immunity. I think that was decided ... just before he started at the Department of Commerce. Anyway, it was a huge litigation that went on and on, and he did settle it. And I have in his files a picture of him giving or receiving, I honestly don't remember which, a check for a million dollars that was part of the ultimate settlement. I recall, in connection with that, he flew out to San Francisco a couple of times, and that seemed to me, a kid in his teens in the early 50's, a terribly dramatic thing to do. [Laughter.]

I think at that time I had been on a plane once when we went to look at boarding schools. We went up to Boston by plane, and I was to look at Exeter. That was certainly the first time I had ever been in a plane, and we did very little travel, so I think it held the record (for me) for a long long time.

Mr. Nuechterlein: What did your father do after the Truman Administration?

Judge Williams: After the Truman Administration, he started a small law firm with others; it had various names, but most of the time it was McClay, Morgan, and Williams.⁵ They did a lot of maritime things, which I think is something he picked up in the Department of Commerce, because it has (or had) the Federal Maritime Commission. We occasionally review their decisions from time to time. In any event, it certainly gave him exposure to maritime law that I don't believe he had before at all.

I tend to regard as the high point in his career the [Oksana] Kasenkina case. She was a teacher with the school that the Soviets maintained in New York for the children of workers at the Soviet Mission at the UN and the consulate in New York. She decided she wanted to break away from Soviet control. But they caught on to this, and their goons picked her up

⁴ 330 U.S. 371 (1947).

⁵ May be a transcription error; Dickerman Williams' *New York Times* obituary identified the firm as Baker, Nelson & Williams.

and took her to the Soviet Mission in Manhattan, a building just off Park Avenue in the high 60s.

Word got out about it, and my father had the idea of using the writ of habeas corpus to get her out. As you know, it is an ancient writ designed to challenge the custody of someone, so this suit was filed on her behalf. It didn't do any legal good, but it received some publicity because the factual background was exceptional. I don't know if the New York newspapers were particularly interested in the innovative use of the writ, probably not, but as a result of the publicity, a throng of reporters gathered on the sidewalk by the building. She was on the 4th floor and saw them, and she jumped out of the window.

She wouldn't have done that without the crowd, because the Soviets would have just scooped her up and taken her back. She did survive, and the newspaper men protected her from the Soviet agents. She wrote a book about it.

Mr. Nuechterlein: So your father practiced for many years in this firm?

Judge Williams: Yes, from the end of the Truman Administration to his retirement, which was a gradual thing — he let his work taper off — sometime in the late 70s.

Mr. Nuechterlein: I was fortunate enough to meet your father in 1988. He was in his 90s then

Judge Williams: If it was the summer of '88 he would have been on the verge of being 88.

Mr. Nuechterlein: And he lived to be how old?

Judge Williams: Lived to be 97, very nearly 98.

Mr. Nuechterlein: What can you tell us about his political views? Would you say he was a mainstream Republican?

Judge Williams: He certainly was a Republican, and probably what was the Republican mainstream at that time. He was very into economics, but he definitely was soft on protectionism — both the two major kinds. One is tariff protectionism, and the other is regulation of, for example, trucking, which is now seen as having worked entirely for the purpose of protecting trucking firms and trucking labor and of course has now been done away with. This protectionist inclination may have come from the time he was at the Commerce Department, which was pro-business.

Mr. Nuechterlein: When I think of the Republican Party from the first two thirds of the 20th century, I think of a business orientation.

Judge Williams: He had considerable understanding of markets, but he was more pro-business than pro-market. He was also, as the Kasenkina story suggests, very anti-communist. I once asked him when that started, and he mentioned that when the Bolsheviks took over he was kind of agnostic — “this is an interesting idea if it works.” I am sure there was a gradual awakening process, but what really turned the lights on was a set of articles by Eugene Lyons ... called *Assignment in Utopia*. It was a series of articles about what Lyons found when he went to the Soviet Union.

Unlike a lot of other people who went there in the 30s, he got it right. The articles locked my father in on the viewpoint that I don’t think anyone now questions.

Mr. Nuechterlein: How did he feel about the New Deal?

Judge Williams: Well, he wasn’t one of the people who called Roosevelt “that man.” I remember discussing minimum wage laws with him; he found it odd that farmers resisted the minimum wage, because on the family farm, using family members, labor wouldn’t be paid at all. Because their non-family competitors would be paying the minimum wage, among farmers it would be advantageous for the family farmers.

And for farmers as a whole, it probably would have made little difference, because their competition was other U.S. farmers, and the minimum wage would raise all their costs and prices. So there would be little harm — always on the assumption that foreign competition wasn’t a big deal. Which was probably pretty much true in that era.

Mr. Nuechterlein: Do you remember your parents having political discussions?

Judge Williams: Certainly, by the time I knew them, they were roughly on the same page. My aunt used to recall a moment in the mid-20s — she and my mother were lying on a beach in Bermuda, and my mother turned to her and said, “Well, I think I am really a socialist.”

But certainly by the time I knew her she wasn’t a socialist at all. They were both out of the current Republican mainstream — they would be classified as social liberals. Their very best friend was very active in Planned Parenthood, and they were staunch proponents of the right to have abortions. Although certainly, as a lawyer, my father thought *Roe v. Wade* had absolutely no constitutional basis, he definitely liked the policy — if he had been a legislator, that is what he would have voted for.

Mr. Nuechterlein: Had they ever identified themselves as libertarians?

Judge Williams: I don’t think so. The Libertarian party, if it existed at all, wasn’t yet well-known, but certainly you could line up quite a few of their positions as

libertarian, except for my father's sympathy for various kinds of protectionism.

Mr. Nuechterlein: You mentioned during our break that there was something about your mother that you wanted to talk about.

Judge Williams: She was a very bright and talented woman, but what I wanted to mention is that she had legal skills. There was a time when there was a meeting about her mother's estate in the offices of Sullivan and Cromwell in New York — my mother, father, lawyers from Sullivan, and a lawyer from Connecticut called Mr. Badger. Apparently after this meeting, the associate and partner from Sullivan and Cromwell were walking down a corridor, and the associate asked the partner, "Who do you think is the better lawyer, Mrs. Williams or Mr. Badger?"

She cared a lot about words, which lawyers tend to, and she cared about using them correctly. She was very good at Scrabble and anagrams, crossword puzzles, which I am terrible at, and I am not much good at Scrabble either. She was extremely verbal. We actually have some paintings of hers in the house. She had a lot of skills.

Mr. Nuechterlein: Let's move on to where you grew up. Am I correct that was Connecticut?

Judge Williams: No — I grew up in New York City. In the summers, we went to Norfolk, Connecticut, but for 9-10 months of the year, we were in New York City.

Mr. Nuechterlein: Where?

Judge Williams: Upper East Side. I went first to some school — you may want to delete this:⁶ One time when my father picked me up at the end of school, the head of it said, "I would like to talk with you and Mrs. Williams about Stephen's development" — I was five at the time, maybe four. The time was set up, and he came to my parents' apartment, and he said, after a lot of throat clearing, "I have to tell you that Stephen does not understand the role of the father in the reproductive process." I assume it was a pretty progressive school — I have very little recollection of it. That is the high event from it.

Then I went to Collegiate from first through third grades, and what I remember mostly is ... my sisters' endless teasing me about it. There was a report card that said that I was "mature in thought, immature in actions." Then I started the fourth grade at the Buckley School, which ran from K to eighth grade, and then I went to Millbrook School for ninth through

⁶ Too charming to delete.

twelfth — Millbrook being a boarding school. About two hours north of New York.

Mr. Nuechterlein: Tell us about those years in Millbrook. Did you enjoy them; did you learn lots of things? Tell us about your classmates you kept in touch with.

Judge Williams: It was a very small school at the time, partly why I went there. When my parents took me to Exeter, which was something like seven or eight times as big, I remember feeling just overwhelmed by the number of people, so at least I thought a small place would be more comfortable. I am not sure whether that was really true. That played a role in my going there.

I was originally quite drawn by the zoo they had there, which had been started by Frank Trevor. He had just driven up to the school with a station wagon full of animals and talked to the headmaster, Mr. Pulling. And his enthusiasm and intelligence were so great that Mr. Pulling gave him a job on the spot, and he started a zoo, which has now become quite a huge enterprise at Millbrook. ...

In the end, I had very little contact with the zoo, and I didn't enjoy Trevor's biology course very much. It seemed to me to be too much focused on taxonomy — we were always classifying animals, which didn't seem to be very interesting. If there was stuff on evolution, which I think I would have found fascinating, as I do now, I *don't* recall it. There was also looking at things through microscopes, amoebae, spirochetes and so forth, and I remember having great difficulty finding what I was supposed to be finding. I didn't seem to have very much of a knack for that. So, anyway, that aspect of Millbrook didn't prove out very much for me.

But I found it offered a lot of attention to individuals, and there were challenging courses. I went into ... an advanced Latin course on arrival, and same thing for French. My first year I was taking classes in French and Latin with people who were at least a year ahead of me. They certainly made sure they tried to fit students into the right classes.

There was a class taught by Mr. Pulling on the Bible, and that really focused on interesting stories and so forth. And there was chapel twice a week, which included one reading from the Bible at the Thursday chapel and two at the Sunday chapel. So that gave me good exposure to the Bible, which simply seemed to be extraordinary, and may have had some effect on my writing.

Mr. Nuechterlein: How about socially? What do you remember about the social milieu of the New England boarding school back in those years? This being your first time away from your family.

Judge Williams: In some aspects, Millbrook was less preppy than other prep schools. There were people there that undoubtedly had loads and loads of money but you didn't see it. Obviously no one could have a car, nobody had a TV set, there was no way someone could display wealth at Millbrook, so that was a good thing. I was very shy.

Mr. Nuechterlein: Were you homesick when you first got there?

Judge Williams: Yes, I must have been. There were a very limited number of times you could go home for weekends, which was probably a good thing. But I found a niche of a sort. I never became a madly social being there. My best friend was Tony Piel, whom I encountered later at law school. A very bright, very talented person. ...

Mr. Nuechterlein: You mentioned earlier that the Buckley brothers were at Millbrook — Bill and Jim?

Judge Williams: Bill and Jim, plus two of their brothers whom I've never met, John and Reid. This was of course before I got there; they had all graduated — I didn't overlap with them. When I think of the Buckleys at Millbrook and myself at Millbrook, I do think of this anecdote involving Frank Trevor, who . . . I guess was ardently pro intervention in World War II. He certainly locked horns with Bill Buckley, who was an America Firster — an organization that opposed intervention in World War II.

Mr. Nuechterlein: This is while Buckley was a high school student?

Judge Williams: Right. And I must have had some political disagreements with Trevor, because I do remember another teacher reporting to me that Trevor had said that "Williams is the most dangerous student here since William F. Buckley."

Mr. Nuechterlein: What do you think he meant by that?

Judge Williams: Well, (a) I had bad ideas, the way he saw them, and (b) he must have thought I had some skill at presenting them; otherwise I wouldn't have been dangerous.

Mr. Nuechterlein: What sort of ideas or topics?

Judge Williams: That is a good question. This was the Eisenhower era — good feeling, complacency, and so forth. . . . They probably were things having to do with America's international role. I can't recall any specific clash with Trevor on such things.

Mr. Nuechterlein: Do you recall ever focusing on domestic, economic, regulatory issues?

Judge Williams: I really don't.

Mr. Nuechterlein: Were you exposed to economics in high school?

Judge Williams: No — high school was devoid of economics.

Mr. Nuechterlein: Latin instead.

Judge Williams: [Laughter.] Latin made us think, so that would be enough. I am jumping ahead: I had my first economics course in my freshman year at Yale, and it was at 8:00 am, and I was sort of an early riser, so that wasn't so bad, but I have to say that something about the teacher or whatever made it terribly boring, although Yale had a good economics department. I never took another economics course. In fact I never took another economics course in my life.

Mr. Nuechterlein: I took exactly one economics course at Yale and had exactly the same experience.

Judge Williams: Oh really?

Mr. Nuechterlein: Yes. You mentioned before we began here that your first job was pumping gas?

Judge Williams: I worked in a gas station.

Mr. Nuechterlein: Do you remember which one?

Judge Williams: This was a gas station in Norfolk, Connecticut, where we went for the summer, and it was probably the first summer I had a driver's license, so I would have become 16 the September before. I pumped gas, which wasn't rocket science obviously, and I tried to watch what the mechanics were doing by way of repair. I can't say that I picked up a great deal. I did learn how to change a tire; I don't mean just changing the wheel and tire, but removing the tire from the wheel and replacing it. But you have to have the equipment, so later in life it doesn't do any good without the equipment. At least I know what they are up to when I watch them doing it in a garage.

Mr. Nuechterlein: When did you buy your first car?

Judge Williams: I think it was when I got to New York after law school, and after my 10 months in the Army.

Mr. Nuechterlein: Did you put a lot of thought into what you were going to buy?

Judge Williams: Well, I liked the idea of a convertible, and being in New York, I wanted something easily parked, and I got a VW convertible. VW had a very good reputation.

Mr. Nuechterlein: You are not still a car aficionado?

Judge Williams: No, I am really not.

Mr. Nuechterlein: So this is sort of an interesting summer job, given your background. You had gone to an exclusive prep school, and you took a job pumping gas one summer. Was this considered something that was good for you?

Judge Williams: I am sure my parents thought it was good for me. In exactly what ways, I don't know. They knew I was very interested in cars – it was a natural thing.

Mr. Nuechterlein: I think I remember the first President Bush spent some of his summers bailing hay out in the West because that was considered good for the character.

Judge Williams: Yes. When I was small, the farm we lived on was a working farm — not worked by my parents, but it was a working farm. One summer I was a farmer helper in a serious sort of way, getting up at 6 a.m. or before to milk the cows. And being with the farmer and his main helper on all the stuff they were doing, I got a real exposure to farm life.

Actually, that reminds me that Millbrook has put out a 75th Anniversary CD. And in the course of it, they interview lots of graduates, not including me. They interview actually both Bill and Jim Buckley, and Bill talks on the CD about his brief period of involvement with the Millbrook zoo, and says that it gave him a lifelong dislike for all things agricultural. I will say that my time on the farm made me not want to become a farmer.

Mr. Nuechterlein: This was your parents' farm?

Judge Williams: Yes, my parents' farm.

Mr. Nuechterlein: What sort of salary did you make at the gas station?

Judge Williams: I am sure it was minimum wage.

Mr. Nuechterlein: What would that have been?

Judge Williams: \$1 an hour? Very, very small. But it presented a tax situation. If my income, or perhaps my earned income, rose above \$500, then I had to file a tax return. I can't believe the tax rate was very high, but my parents wanted me to continue working, and they wanted me to have an incentive to work. They didn't want me to receive more taxable income, so after I hit \$500 they paid me.

Mr. Nuechterlein: I'm sure the gas station appreciated that.

Judge Williams: So clearly my parents weren't interested in boosting the family income.

Mr. Nuechterlein: You graduated from Millbrook and went to Yale. What was the college admission process like then? Was it highly competitive to get into Yale? Had your father gone there for college and law school?

Judge Williams: Yes he did. It was obviously much less competitive than it is now. I really can't say what position I would be in if what is happening in 2007 had prevailed in 1954. I sailed in.

Mr. Nuechterlein: Did you apply anywhere else as a safety school, or did you apply, get the answer back that, yes you were admitted, so you didn't need to apply anywhere else?

Judge Williams: I did apply to Haverford, but it wasn't really as a safety. Again the yearning for the small was at work, and so I did apply to Haverford. I assume I got in, but more relevantly I got into Yale. The college adviser at Millbrook told my parents, "Steve can write his own ticket." He felt confident I could get into anyplace.

Mr. Nuechterlein: I went to Yale, just for the record. Did they have residential colleges then?

Judge Williams: Oh yes — I was in Pierson. They all had some number of residential seminars, and I remember I took an English seminar with Joel Dorius, who I thought was a really good teacher. ... He helped me see things in what we were reading that I would have never seen.

Mr. Nuechterlein: What did you major in?

Judge Williams: History. I remember another teacher ... — L. Pearce Williams, whose specialty was the history of science. He didn't teach the main European history course, but they had "sections." Once a week, a small group of people — 20 or so — would meet. ... There was a separate book for that part of the course, which had problems and was supposed to teach you how to reason from the raw material of history. And he was just extraordinarily lively and came up with comparisons that made things understandable and vivid, which on the whole they weren't in the main lectures.

Mr. Nuechterlein: Did you write a senior thesis?

Judge Williams: I did — I wrote on the Hoover Moratorium. Very few people know of the Hoover Moratorium now, but a continual problem from the end of World War I until the Hoover Moratorium in 1931 ... was the failure of the Germans to pay reparations, and the failure of the European allies to pay their wartime debts to the U.S. There were successive reductions under the Young Plan and the Dawes Plan, and finally, once the Depression got underway, it obviously became still more difficult for them to pay. The

Hoover Moratorium was a moratorium on the payments across the board, Germans to the Allies, and the Allies to us. It was done in the hopes of rescuing the European economies from the Depression. Obviously in some sense it was completely inevitable, but it was a good thing that the world's principal creditor called a halt to it semi-voluntarily. That made it a less contentious problem than it would have been if we had kept on trying to collect the debts. Of course moratorium means just delay. But as it proved, it wasn't just a delay; it was the end.

Mr. Nuechterlein: Who was your thesis advisor?

Judge Williams: I forget — it wasn't a very hands-on giving of advice.

Mr. Nuechterlein: Do you ever remember thinking “Oh, I wrote this interesting paper, maybe I should get it published?”

Judge Williams: I really didn't — no.

Mr. Nuechterlein: That is one of the odd things about college — people are constantly writing these papers that only one other person will probably ever read.

Judge Williams: I am sure I sensed that it wasn't good enough. Whether it could have been turned into something good enough, perhaps by the help of some shoving by a teacher, I don't know.

Mr. Nuechterlein: ... I am thinking about William Buckley and his book *God and Man at Yale* and ... about current President Bush's view of Yale in the late '60s when he was there. And I am wondering whether you perceived a particular ideological environment at Yale. Did you feel estranged at all from the other students, or did you feel you were more in the mainstream of the Yale students' worldview at that time?

Judge Williams: I was probably in the mainstream. A very central event of it — almost the exact chronological center of my time at Yale — was the Hungarian Revolt of 1956. Everyone was on the side of the Hungarians. If we were to construct a parallel today, I'm not sure if that would be true.

Mr. Nuechterlein: So, Judge, tell us a little about the Yale Political Union when you were a student there in the '50s.

Judge Williams: Well, it was modeled on the Oxford Union idea that students could hone their skills as debaters. There was a right-wing party called the Party of the Right, and a left-wing party, I don't know how it was labeled. And each of them in my time had one incredibly articulate ... outstanding spokesman (they were men, as were all students at Yale at the time). For the Party of the Right, it was Richard Arnold, who later became a judge of the Eighth Circuit. You mentioned, while we were talking, “Wasn't he a Democrat?” Well, yes, he was a Democrat, but I remember a conversation with him —

I don't know if it was at Yale or a later, at law school or even beyond — in which he said, "A liberal Republican is the worst thing because it is against nature." You might say the same of a conservative Democrat. But he probably didn't feel that was against nature.

He certainly showed at Yale the brilliance that he later showed. I can't remember particular lines of his but he was definitely very eloquent. Then on the left there was André Schiffrin, who later went into a very distinguished career in publishing, being director of publishing at Pantheon for decades. He also was very eloquent. I do remember a line of his — well, I am not going to get it quite right — but it was basically how the Republicans are always criticizing the Democrats for giving away countries the U.S. doesn't have. That must have had to do at least in part with China.

Mr. Nuechterlein: Do you remember debates at the time about economic policy?

Judge Williams: There must have been debates about tax policy, but I honestly don't remember them. I think it is fair to say that today a debate about economics would be carried on at a more sophisticated level than it would have been then. ... I also remember — and this may say something about Yale in that era — I think it was André Schiffrin who was very critical of the course on Marxism, and I remember him saying it was just an attempt to inoculate the students.

Mr. Nuechterlein: Did you have any Marxist professors?

Judge Williams: Not that I know of. If there were, they kept it in the closet. The course on Marxism took us through the great Marxist writers, but of course it also took us into the uses of Marxism by Leninists and Stalinists and Third World dictators who assumed power and then justified their one-party rule with Marxist theory. It is fair to say that it didn't leave one with a very warm feeling toward Marxism.

Oddly enough, later in life, I found that Marx occasionally said something that was really very penetrating and smart. I quoted a whole paragraph of his in my book,⁷ so maybe my general distaste for Marxism shows that the course was just an inoculation. But I have been thinking back on it. It does seem to me that Marxism then and Marxism now, on the whole, as a way of looking at the world, tends to flatten things into class struggle. Social life, economic life are so much more complex than class struggle that Marxism overall seems to be really quite a deadening set of notions.

⁷ Stephen F. Williams, *Liberal Reform in an Illiberal Regime: The Creation of Private Property in Russia, 1906-1915* (Hoover Inst. 2006).

Mr. Nuechterlein: Did you get the sense that other students at Yale College were flirting with Marxism?

Judge Williams: No, not at all. No sense at all, except for André Schiffrin, who was definitely a strong and articulate left-winger.

Mr. Nuechterlein: One gets a sense that, at Oxford and Cambridge in those days, there was a lot of Marxist ferment.

Judge Williams: Yes. If there was at Yale, I completely missed it. ...

Mr. Nuechterlein: Were there any discussions about whether Yale should admit women?

Judge Williams: No.

Mr. Nuechterlein: Where did people meet women?

Judge Williams: People went to Poughkeepsie and Northampton. Women came from various places. ...

Mr. Nuechterlein: Were there any great universities in that time that were co-ed?

Judge Williams: Well, Harvard de facto was, although, as my wife will tell you, in her era it was definitely not fully integrated as it is now. Radcliffe had a separate residential life, but to some degree there was an integrated intellectual life. There was obviously geographic convenience, and in addition some jointly given courses.

Mr. Nuechterlein: What about racial minorities? Do you remember Blacks on campus?

Judge Williams: There was a tiny handful — very few.

Mr. Nuechterlein: Was there a sense that Yale didn't look like the United States at large? Was that a concern for anybody?

Judge Williams: People weren't talking about it, I don't think.

Mr. Nuechterlein: Did you meet any of the Black students?

Judge Williams: I am sure I met them, but I didn't have any extensive contact with them.

Mr. Nuechterlein: Asian-Americans?

Judge Williams: I don't think there were many Asian-Americans.

Mr. Nuechterlein: How about Jews?

Judge Williams: Yes —

Mr. Nuechterlein: I was told that, during this time, there was a quota system designed to limit the number of Jews at Harvard and Yale. Do you remember hearing anything about that?

Judge Williams: I didn't — it seems I had my ears and eyes closed. I don't remember that being a subject of discussion.

Mr. Nuechterlein: But you knew there were Jewish students?

Judge Williams: Oh yes. I have to admit it was a problem I had and still have — I am not very good at identifying who is Jewish, so I have absolutely no idea what the proportions were.

Mr. Nuechterlein: Was there any sense of Jews being outsiders at Yale College at the time, or were they fully assimilated?

Judge Williams: I think they were pretty assimilated.

Mr. Nuechterlein: So you graduated in 1958?

Judge Williams: Yes.

Mr. Nuechterlein: And you moved straight on to Harvard. Did you know early on in college that you wanted to go to law school?

Judge Williams: Law school was certainly on my parents' agenda and so it was something that I thought about. At college I had notions of going into the ministry. I had a strong but very erratic idealistic streak. For some reason or another, I thought I would do well as a minister. I didn't really believe, which made it not a terribly good fit.

Mr. Nuechterlein: You would have fit in perfectly at the Yale Divinity School.

Judge Williams: I would have fit in perfectly today, but I am not sure if I would have fit in in the mid-'50s. I think I would have been ahead of my time.

Mr. Nuechterlein: Were your parents church-going people?

Judge Williams: Randomly, or occasionally.

Mr. Nuechterlein: What type of church?

Judge Williams: My father had been brought up as a Presbyterian, and in fact his mother was Presbyterian, but, as a young girl at a marriageable age, she had a suitor whom she liked a lot who was a Methodist, and in the end that was the deal-breaker.

Mr. Nuechterlein: Don't both the Presbyterians and the Methodists — don't they both trace from Calvin?

- Judge Williams:** Whatever the divergences were, they were conceived by her in the 1890s as too great.
- Mr. Nuechterlein:** At some point you gave up these dreams of the priesthood to go to law school.
- Judge Williams:** Not exactly priesthood. Even at law school I had resistance. I actually won a Ford Foundation scholarship to study Chinese, which was to be integrated with law to some extent. It was a flight from the law. And in part a flight into scholarship, to which I later did turn, for 17 years. There was a special resistance to being a conventional lawyer.
- Mr. Nuechterlein:** But your parents, you say, wanted you to be one.
- Judge Williams:** They were very enthusiastic.
- Mr. Nuechterlein:** Why? Did they think you would be good at it?
- Judge Williams:** I think they thought I would be good at it. My mother had somewhat idealistic notions about lawyers. She thought they were always dealing with *principles*, and she distinguished that from businessmen, who were just making money. That may have played some role. I remember my mother being quite articulate on that ideal.
- Mr. Nuechterlein:** And your father didn't set her straight?
- Judge Williams:** No. My father really had a high regard for law professors, and he admired enormously his professors at law school.
- Mr. Nuechterlein:** Now that was during the era of Legal Realism.
- Judge Williams:** Yes. In another effort to break away from the law, I toyed with foundation work. We had a friend who was on the board of the Ford Foundation, and he set up an interview for me there. And I came away from that horrified on two grounds. One was, I said something to the person interviewing me indicating my notion that the great thing about the Ford Foundation was all these bright people having millions to throw around; I pictured great lunch conversations finding new ways to deploy their millions. And he responded that there was rather a strict chain of command. He depicted it as the most bureaucratic organization, and that didn't appeal to me at all. And the other thing I remember him saying that repelled me was, "When we travel, we travel first class." So he wasn't speaking to the idealist in me. But I do remember talking to my father about that, and my father specifically saying, "It is not as if you would become a law professor," which he regarded as challenging and serious. He regarded foundation work as dilettantish and frivolous.
- Mr. Nuechterlein:** So did you apply to other law schools?

- Judge Williams:** I applied to Yale and Harvard, and I got into both, and I spent a long time mulling which one to go to. And I decided I should flip a coin. So I flipped it, it came up Yale, so I said, “well, maybe it should be the best out of three.” So I flipped some more, and Yale was still ahead, and then I thought, maybe it should be the best out of five. And Harvard won on the best out of five, so I went to Harvard.
- Mr. Nuechterlein:** So what do you think guided you to keep on flipping?
- Judge Williams:** I think it must have significantly had to do with Cambridge over New Haven. ...
- Mr. Nuechterlein:** We all have a sense of the difference that Harvard and Yale law schools have today. When you think back to the late '50s and early '60s, when you went to Harvard, what was the popular conception of the distinctions between those two law schools?
- Judge Williams:** People still thought that you got a serious legal education at Yale.
- Mr. Nuechterlein:** Is there a “but” coming?
- Judge Williams:** There is a “but,” but I don’t recall anyone saying to me that attention to other disciplines would engulf the legal education. I think I did ask family friends and people like that, and I don’t think anyone said, “Steer clear of Yale.”
- Mr. Nuechterlein:** And your father was OK with your heading off to Harvard?
- Judge Williams:** Oh, he was OK with my heading off to Harvard, and by the same token, he certainly didn’t raise any ideological objection to Yale.
- Mr. Nuechterlein:** We have all heard these stereotypes of Harvard Law School — the first year, in particular — from the popular media, like *The Paper Chase*, books like *One L* — I think they both took place, like, ten years later. Do you recall the first year being high-pressure?
- Judge Williams:** I think it was high pressure. But at the same time, I should say, I was a member, for example, of a study group there, and I think what we did was practice on exams, which was a useful thing to see what exams were like and to have practice at writing an answer. This study group used to meet in the late afternoon and do this for an hour or an hour and a half or so, and then it would be time for drinks. So it couldn’t have been too absolutely nose-to-the-grindstone.
- Mr. Nuechterlein:** And you were a member of the Law Review?
- Judge Williams:** Yes.

Mr. Nuechterlein: I assume that was highly competitive then.

Judge Williams: Yes.

Mr. Nuechterlein: Do you remember a lot of stress in the class about competing for a seat on the Law Review?

Judge Williams: I don't remember people talking about it.

Mr. Nuechterlein: Did it seem like a competitive environment to you? Were your fellow students obviously ambitious?

Judge Williams: A lot of them were much more ready to speak out in class than I was, and some of those I identified to myself as loud mouths, but some of them were very, very bright. I rarely spoke in class. The first and only time I was called upon in Contracts, there was something about a case that engaged my interest, so I was able to say something that the professor really liked. I don't remember what it was.

Mr. Nuechterlein: What professors stand out as particularly good ones?

Judge Williams: Braucher was very funny, but I never understood Commercial Law, which is what I took with him. I had Property I and Property II with Casner, and it was very clear, and gave to a large extent a sense of how property held together as a system. I should say, at the same time, that when I later came to teach property, I took a somewhat more Yale-oriented approach, because I tried to fit it into economic notions and to some extent sociological notions. That hadn't really happened at all in Casner's class. There was a clarity I remember about it, a sense of someone being totally prepared and totally conscientious about trying to bring out the meaning of the materials, within a certain constrained sphere.

I had Abe Chayes, who was very exciting. I don't know if I fully understood corporations, but he was almost, you could say, electrifying. I remember this — I won't focus on the professor, but Torts — I do remember when we came to nuisance, my mind immediately started to see it in economic terms, and these weren't the terms in which the professor addressed it. As one of my few affirmative interventions in law school, I put forward a view that would now be associated with Pigou, the professor whose ideas to a significant extent were overthrown by Coase in his famous article on social costs. But even Pigou was far too advanced for that course in that era, and the professor just brushed it off.

Mr. Nuechterlein: I take it this was before Melamed and Calabresi's article, *Another View of the Cathedral*.

Judge Williams: Yes. It was definitely before that article, and it would have been shortly before Coase published "Social Cost" in 1960, but it is fair to say that my

gambit there was just brushed off without hesitation and without its being engaged with. That says something quite critical at least about that professor and probably about Harvard Law School in that era.

Mr. Nuechterlein: Did you get the sense that the professors were trying to instill in the students a sense of mission, of the use of the law as a social tool for the betterment of society — was that part of the environment at the time?

Judge Williams: Griswold was Dean at the time, and I connect this remark to him, although possibly he said it later or it really was said by someone else, but I think it captures the feel: “The world has no need for more lawyers. It has a huge need for better lawyers.” Of course, it was a self-serving remark to some extent. There was certainly a notion that lawyers were a good thing, and this was largely put on the basis that lawyers were essential for the wheels of commerce to run.

Mr. Nuechterlein: What about the law of racial equality, which was obviously an important issue at the time? Was there much focus on that in law school?

Judge Williams: Very little.

Mr. Nuechterlein: So the focus was really on what the people in law firms do.

Judge Williams: I think that is fair to say. Yes. Maybe this is my mother’s influence, I had a kind of scornful view of business, moneymaking, so forth. I really didn’t see its role in making life better for people.

Mr. Nuechterlein: You didn’t see the value of a capitalist economy?

Judge Williams: It wasn’t that I thought socialism was a good thing. It was that it didn’t seem very uplifting. Sort of the spirit of Irving Kristol’s book, *Two Cheers for Capitalism*. As a young idealist I didn’t think two cheers were enough.

Mr. Nuechterlein: Harvard Law School was co-ed at this time?

Judge Williams: Yes, it was — but in my class of approximately 500, there were eight women.

Mr. Nuechterlein: Would I recognize any of the names?

Judge Williams: One I remember very well was Nancy Eastham, and she is the mother of a Canadian law professor. His first name is Edward, and his last name is Iacobucci, and her husband was also a Canadian law professor, but I am not sure about that.⁸ Her son certainly is. I saw him at a conference, and I

⁸ From 1967 to 1985, Frank Iacobucci was a professor at—and, for a time, dean of—the University of Toronto Faculty of Law; he later became Chief Justice of the Federal Court of Canada. His son Edward Iacobucci is also a professor at the same law school and was dean from 2015 to 2020.

knew she had married someone named Iacobucci, and he looked plainly too young to have married her, so I introduced myself and found out he was her son. There was another I met post-law school when I went down to Mississippi with the Lawyers Committee for Civil Rights under Law — that was in 1965.

Mr. Nuechterlein: Did you overlap at all with Ruth Ginsburg?

Judge Williams: No — I am 99.9% sure of that. Her travails with Harvard Law School were earlier.

Mr. Nuechterlein: How about racial minorities? Were there Blacks or Asians?

Judge Williams: There certainly were Asians. One, Wally Tashima, became a federal judge — part of the enormous contribution of our class to the federal judiciary. But I don't think I knew him at the time. There were Asian faces, and there were black faces, but very few. I have a count on women, but not on minorities.

Mr. Nuechterlein: The admission process at Harvard Law School was fairly competitive. Was there any sense that the admissions office was trying to achieve social or economic diversity, or was it solely on the grades?

Judge Williams: I think the overwhelming focus was on LSATs and grades. I think they must have made an adjustment from where the grades were coming from.

Mr. Nuechterlein: But it was a solely quantitative assessment?

Judge Williams: I believe it was quantitative, and yielded a prediction of how well, quantitatively, they would do in law school.

Mr. Nuechterlein: Was this an era in which people failed out of law school? ...

Judge Williams: [There] is a terribly famous and much-quoted statement. The class gathered together in the auditorium, and was addressed by the Dean, who said, "Look to the right of you, look to the left of you; one of you three will not be here at the start of the second year." I can't remember if the Dean actually said that to our entering class. I think he couldn't have said it, because it was totally not true. I think our class of 500 was roughly 500 through the second and third year. Although, actually, I just learned from some friends of mine that I had a classmate — I don't know if he did badly or just didn't like it — but he did drop out after the first year and became extremely distinguished in Chinese literary scholarship, which is probably is a strong net benefit for the world all around. I learned of it from talking with the wife of a now-deceased classmate, who had kept somewhat in touch with this person. We were talking about it because one of my sons is now a Chinese literary scholar.

Mr. Nuechterlein: You mentioned that your class holds a record of sorts — tell us about that.

Judge Williams: I think we hold the record for any law school for the number of federal judges, and I believe the class had that record even before Tim Dyk went on the Federal Circuit. In any event, they now include Anthony Kennedy at the Supreme Court, on our court Larry Silberman and me, Lanier Anderson on the Eleventh Circuit, Wally Tashima on the Ninth Circuit, and Tim Dyk on the Federal Circuit.

Mr. Nuechterlein: Did you know any of these people well when you were in law school?

Judge Williams: Except for Tim Dyk, through law review, no.

Mr. Nuechterlein: Didn't know Anthony Kennedy?

Judge Williams: Not at all. Nor Larry. As Larry said at the hanging of my portrait, I spent most of my time in the library or at the Law Review, and he was seldom in the former and never in the latter.

Mr. Nuechterlein: This is the end of our first day interviewing Judge Williams. We will resume soon.