

**Oral History of Judge Stephen F. Williams**  
**Session 2**  
**November 25, 2007**

**Mr. Nuechterlein:** In the last session, we went up through Judge Williams's law school years. He says there was one additional [classmate] from those years he meant to discuss. ...

**Judge Williams:** I thought I would mention Bernie Nussbaum, who has become famous as one of the White House Counsels for the Clinton administration. Faith just told me he appears in the Bernstein book on Hillary Clinton, so I guess he is a long-time Clinton fan. He was the editor of my note, which was on a boring subject — state authorities, these quasi-public entities such as the Port of New York Authority. In fairness to the editors who assigned it, the fault was at least partly mine in failing to make anything good of it. Bernie, though a faithful and active editor, didn't transform it.

**Mr. Nuechterlein:** Have you kept in touch with him through the years?

**Judge Williams:** No, I haven't. When he was here as White House Counsel, he came to periodic lunches that the Class of '61 Washington contingent had in that era. I was just thinking that there hasn't been one of those lunches for a long time. The probable reason is that a large fraction of that contingent has gone off to other places in retirement.

**Mr. Nuechterlein:** You also knew Tim Dyk.

**Judge Williams:** Yes — not very well. He was on the Law Review, and I certainly saw him there.

**Mr. Nuechterlein:** You graduated in 1961 from law school. What did you do after that?

**Judge Williams:** First I took the bar exam.

**Mr. Nuechterlein:** The New York Bar?

**Judge Williams:** Yes.

**Mr. Nuechterlein:** How did you do?

**Judge Williams:** I passed. There are only two possibilities — pass or fail, and I passed. Very soon after that, I started work at Debevoise, Plimpton, Lyons & Gates — or actually maybe it was Debevoise, Plimpton & McLean in that era, I am not sure. A friend of mine liked to call it "Debevoise, Plimpton, Lyons & Gates, good at talk and great at debates."

**Mr. Nuechterlein:** How did recruiting work in those days? Did they come to campus? Did you interview?

**Judge Williams:** Actually, I was quite interested in the Paul, Weiss, Rifkind firm — I forget just why. It may have been partly because I had a classmate, Bob Rifkind, the son of the Rifkind of the firm, who was my rival and then my partner in the moot court system that Harvard employed. And for some reason or another, my father seemed eager to steer me away from that, and one way to do that was to steer me toward Debevoise & Plimpton. I don't remember them coming to the campus, but I remember very well my time interviewing at D&P because my first interview was with Mr. Plimpton. I was in his office, and the phone rang, and he embarked on a 30-45 minute conversation about some complex financing, of which I understood not a word.

**Mr. Nuechterlein:** Did you pretend?

**Judge Williams:** No, there was no occasion to pretend. The conversation rolled on, and we had a few minutes of conversation, and then I was sent around to a designated list. One piece of advice my father gave me was to go to a firm where you liked the people, people you would like to go to lunch with and so forth. I found the people there very engaging. I did have interviews at Paul Weiss. But — it may have been after my father's gentle steering toward Debevoise & Plimpton — that was the end.

**Mr. Nuechterlein:** What were the starting salaries?

**Judge Williams:** I remember feeling embarrassed at what I thought was the princely sum of a hair over \$7,000 a year. The idea that anyone would pay \$7,000 a year for my time — that was quite shocking to me. I also remember thinking, if you take what I am paid and what I am doing, some client is paying \$5 an hour for what I was doing. It seemed scandalous. But I charged ahead. The dollar was different in that day, but even adjusting for inflation, lawyers' salaries and fees were different.

**Mr. Nuechterlein:** Were you in litigation? Deals? Do you remember?

**Judge Williams:** I was in litigation a bit. I guess I was never specialized there, because I went off to the U.S. Attorney's Office, which was thought a particularly suitable way to specialize. I remember I had a tax case and that I wrote a memo for it that Martin Lyons really liked, and he asked me to specialize in tax. I felt honored to be asked, but I did not feel drawn to tax. I held the invitation at bay.

I did a lot of financing work. One of my friends there said that he saw a parallel between Debevoise & Plimpton and Wellesley (I see you shaking your head): "first rate people engaged in second rate work." I don't think he meant to deny that these financings were very sophisticated and challenging, but I think his thought was that the work was not as engaging

as the people. I don't know just what his angle on the Wellesley education was.

Anyway, there was a heavy load of financings, which certainly weren't as engaging as litigation. On the other hand, litigation, one could easily see, was very taxing. Of course, after that I went into the U.S. Attorney's office, where I only did criminal litigation, which is a very intensive form of litigation.

I do remember — this is jumping ahead, I am afraid — the trade-offs of the different segments of the law, at least as they appeared to me. I worked on a case in the U.S. Attorney's office with Arthur Liman, who worked on the case while he was in the office and came back to be the lead government representative on it. He took pills to calm him down (I am sure they were legal), but at some phase during the trial, he may have been hospitalized with ulcers or something, and you could see that the physical stress of litigation on him, who really was a master at it, was very severe.

As I think about it, I continue to be amazed at my father, who was not a laid-back person (of course how could a litigator be laid back?), and I am amazed at how cool he was at being able to handle the pressure of litigation and also lead a normal life.

At Debevoise, my biggest litigation was the incredibly long, drawn-out antitrust suit. That was a more leisurely form of litigation.

I remember very well that, just before I started working on the antitrust case, our firm had the idea that we should file interrogatories asking the government essentially for details of what their position was. The government's claim was that the client's acquisition of another firm had tended to lessen competition, a violation of Section 7 of the Clayton Act, specifically in the envelope industry.

And so one of the questions was: "How did the acquisition tend to lessen competition?" And the answer from the Department of Justice was: "By accelerating competition in the envelope industry." That seemed to show a paradox, at least, in their position.

**Mr. Nuechterlein:** What did they mean?

**Judge Williams:** I think, as one steps back from it, that probably the driving force behind the government's complaint was (as it sometimes is in antitrust cases) pressure from competitors that felt that the acquisition might cause more aggressive competition. In fact, prices in the envelope industry fell, although I am sure there were complicated causes for that, but certainly they did, and I am sure part of it was increased competition. In essence, the government's case — this was a vertical acquisition — was really a now-abandoned theory: a version of "predatory competition."

**Mr. Nuechterlein:** “Predatory competition” meaning, in this case, that the company had made itself more efficient as a result of this merger, and it was therefore able to produce goods at a price lower than its competitors and still turn a profit? Or was there any claim of selling below cost?

**Judge Williams:** There was no claim that the client and its partially acquired firm were selling below costs, measured in any way. When you think of it, basically as you said, either they were more efficient or they were ready to accept lower profit margins than the envelope industry liked to enjoy.

**Mr. Nuechterlein:** This sounds a little familiar to me — it reminds me of the E.C.’s treatment of the GE/Honeywell merger.

**Judge Williams:** I don’t claim any expertise in that — but I have heard of certain parallels.

**Mr. Nuechterlein:** How hard did they work you at Debevoise? Was there a billable hours expectation?

**Judge Williams:** If there was, it was not stated. I worked very hard.

**Mr. Nuechterlein:** Did you bill time?

**Judge Williams:** Yes, and they made it easy for you by paying for your dinner. Particularly in my early times there, all kinds of associates and young partners and I went out to dinner at 6:30 or 7:00, often at some of the very nice restaurants that were located near the firm. Towards the end I reduced participation in that and would have a sandwich sent in. They made it easy for you by paying for it. I guess now they make it much easier by having cars to take you back home. I guess it was much safer back then — that was before the great crime wave hit New York. I guess I often worked until 9 or 10. In the period that I lived on West 96<sup>th</sup> Street, I would often walk home through Central Park. That would now be thought lunatic; some thought so even then.

**Mr. Nuechterlein:** What time would you get in?

**Judge Williams:** 8:30 or 9, something like that.

**Mr. Nuechterlein:** When you started there, did you have any sense that you might stay over the long term, become a partner?

**Judge Williams:** I guess I was highly ambivalent about that. There was this continual sense, which my 17 years as an academic did fulfill, of wanting to be able to set my own agenda. Obviously I don’t do that as a judge.

The other thing that work in a firm didn’t do was enable me to take the position that I wanted to take — which being an academic does, and which was being a judge does, within the constraints of the law.

**Mr. Nuechterlein:** So you were there about 10 months before military service?

**Judge Williams:** No. I started in the Army Reserves in August 1961, as a result of the Berlin crisis. The Reserve unit which I joined (because that was a comparatively painless way of avoiding the draft) was activated. I think I joined it something like the week in which the unit was activated.

**Mr. Nuechterlein:** That was unexpected?

**Judge Williams:** Unexpected by me certainly. I later learned that some people who had served longer in the unit were aware of rumors that it would be activated. It was a kind of intelligence unit. "A.S.A." were the initials, standing for Army Security Agency. What it did was basically listening. So the core training for the unit was training yourself to listen to dots and dashes and to copy them down. But I never actually reached that stage because I had not even had basic training at the time we were activated. My first period in the Army was about four months, September 1961 to January 1962, when the unit was in Fort Devens, Massachusetts. That was actually a quite charming place. I later took Faith there on our first date; we sat by a lake that, when I was stationed there, I thought would be fun when one had a girlfriend.

Our unit didn't do much. The people who had been regulars in the unit got retraining in their specialties — and the big specialty was this listening activity. Something or the other was found for me to do. No long-term possibilities. We were milling around marking time.

In January, I went to basic training in Fort Dix, which was where a vast proportion of the Army got basic training. That was a period of my life in which I lost weight — like 10 pounds in 8 weeks. I remember some things of that time very vividly. The low crawl under live machine gun fire, a very tense activity. I remember after you get to the end of the course, you are free to stand up, you are alive, it is wonderful — and I threw up. Probably tension. A strange experience.

**Mr. Nuechterlein:** So you had a drill sergeant?

**Judge Williams:** You arrive on the bus from New York with a lot of others in the same position. The first thing they did actually with my name was to get it wrong: "Bill Stevens!" So I tried to correct that, but I don't think the correction was very well-received. Then you start life. One of the sergeants especially stated that the purpose was to stamp out individualism.

**Mr. Nuechterlein:** They were communitarians?

**Judge Williams:** They were communitarians of a kind, yes. Basically the object was to make sure you followed orders, no matter how peculiar, as needed. All

these stories about how the Army turns rotten kids into stalwart citizens — I am sure that is true.

**Mr. Nuechterlein:** So here you are, having gone to a prep school, Yale College, Harvard Law School — first of all, did you tell anybody about that?

**Judge Williams:** Oh no — of course not. I should say that when I went to basic training, there were three others from our intelligence unit that went that same time, and actually we were made squad leaders because we had some experience. It was not an activity that played to my strengths. One or two of the others surged ahead inasmuch as one could surge ahead in basic training.

Our unit, because it was an intelligence unit, was a relatively well-educated group. In fact, of my three best friends in the intelligence unit, one is a professor at NYU Law School now; one has just retired as a teacher of English at Flagler College in St. Augustine, Florida, a wonderful person, just very witty and full of ability to cite reams of Shakespeare in a very amusing way; and one, Pierre deVegh, who was an investment manager on Wall Street later. They were not the ordinary grunts certainly. They were probably among the better educated in the intelligence unit. And the education level there was relatively high compared to basic training.

**Mr. Nuechterlein:** How long were you in the Army?

**Judge Williams:** A total of 9-10 months. We were activated for the Berlin crisis, but it was perceived as receding.

**Mr. Nuechterlein:** Did you seriously entertain the prospect of going to war?

**Judge Williams:** Yes, there was talk of that. And by the time of basic training, January 1962, the sergeants used to try and concentrate our minds on the theory that what they were teaching us would be helpful to our survival if we were sent to Vietnam.

**Mr. Nuechterlein:** So after 10 months ... how did this work exactly — why didn't you stay in the military and get sent off to Indochina?

**Judge Williams:** The deal with the Reserve program was that you joined supposedly for six months of training — that is why all the people in the unit had the training for listening to signals — and then you were on reserve for five-and-a-half years; that makes it a total of six with your six months of original training. They somewhat shortened our terms in compensation for the time spent as an activated unit. After deactivation, we served a periodic night and a periodic weekend. The weekend that Kennedy's assassin was shot was a weekend we were on duty. A bunch of people were sitting around doing

nothing, and someone had the radio on, and there was Ruby shooting Oswald.

**Mr. Nuechterlein:** Basic training ended, and you went back to New York and Debevoise?

**Judge Williams:** Basic training ended and then I went back to the unit. It was demobilized, deactivated in June, and soon after I started again at Debevoise.

**Mr. Nuechterlein:** You stayed there actually several years.

**Judge Williams:** Yes, until I went to the U.S. Attorney's Office in the spring of 1966.

**Mr. Nuechterlein:** Before I ask you about that — particularly as your former clerk, I am curious: did you give any thought to clerking for a federal judge?

**Judge Williams:** I remember thinking of it in law school, and I only applied to Justice Harlan. And that was probably for a bad reason — that he was a friend, from the U.S. Attorney's Office, of my father. That link did not do any good. I don't know what Harlan's system was for picking clerks. It would have been very interesting.

**Mr. Nuechterlein:** So you never thought of clerking, like, on the DC Circuit?

**Judge Williams:** I didn't, no — I guess I thought that I would go to New York.

**Mr. Nuechterlein:** — or the Second Circuit?

**Judge Williams:** No. I wasn't really focused on it.

**Mr. Nuechterlein:** You missed out.

**Judge Williams:** Yes, I missed out.

**Mr. Nuechterlein:** So you went to the U.S. Attorney's Office in 1966. What motivated you to look for a job there?

**Judge Williams:** It seemed to be the classic thing to do if you wanted to be a litigator. As I said, I had conflicting thoughts on being a litigator — the great positive being the variety, the challenge, a new set of issues continuously, the downside being the incredible pressure. Faith likes to recall a Christmas Eve when I was working at the office until 10 or something, but that was because we were in the middle of trial. A trial waits for no man.

**Mr. Nuechterlein:** You did criminal prosecutions?

**Judge Williams:** Yes.

**Mr. Nuechterlein:** Did you have a specialty?

**Judge Williams:** There were a huge number of drug cases. People seem to think that the war on drugs is a new thing, but in the U.S. Attorney's Office in the early '60s, it was a huge part of the criminal docket.

**Mr. Nuechterlein:** Which drugs would you prosecute?

**Judge Williams:** Mainly heroin. There was a drug unit. I wasn't in it but it scooped people up and assigned cases to them. Then I made my way into the securities fraud unit. I worked on a case with Arthur Liman. That was a case against a very well-known swindler at the time, Lowell Birrell. When one of his swindles broke, he had taken off to Brazil, and then he was returned to the U.S. I don't know the details of the return, except that another person working on that case told me that he returned to the U.S. without even a toothbrush. So I take it that it was not voluntary and was engineered by the FBI and friends in Brazil.

**Mr. Nuechterlein:** Did you enjoy your years there?

**Judge Williams:** Yes I did. In the securities cases, a great challenge was to try and make it coherent for a jury — or for anybody. I remember working with a guy from the SEC on charts that would map out the flow of funds, all backed up by checks and deposit slips and so forth, and trying to get those in a way to communicate the exact nature of the scam.

I enjoyed summing up, enjoyed cross-examination. On the Birrell case, I was low man on the totem pole — the witnesses I was given were small fry. I had a nice securities fraud case of my own just when I was ending my time there, involving a father-and-son team whose last name was Parrott. Great fun cross-examining Mr. Parrott.

**Mr. Nuechterlein:** How did this experience affect your views of juries? Did you think that jurors reached the right results? Did you talk to jurors after a verdict?

**Judge Williams:** I didn't talk to them afterwards — no. We were not encouraged at all to do that. There was one trial where we did get feedback. I was handling the trial, and it was fairly early in my time as an Assistant; there was a senior person sitting with me. As I recall, there was one person among the venire that I was nervous about, and I thought of using a peremptory challenge on him — but didn't. Later I did learn that he had been quite active for acquittal.

**Mr. Nuechterlein:** Do you remember what made you nervous?

**Judge Williams:** Yes — he looked to me like a pointy-headed left-wing intellectual.

**Mr. Nuechterlein:** A beard?

**Judge Williams:** No, not a beard. Worked for one of the NY media.

I will say that I certainly didn't see any greater pattern of folly on the part of juries than judges. One criminal trial comes to mind. A defendant chose a bench trial, the evidence was pretty overwhelming, and the judge acquitted him. There were two possible stories. There was the government's story, that this guy stole a suitcase — a very small crime — stole a suitcase in Pennsylvania Station. And his story was that he was helping a little old lady carry her suitcase. The judge acquitted, but he also rather severely instructed the defendant that he certainly hoped that he would not be involved in this sort of thing again. The defendant was very young. I think the judge did not want him to be marked in a way that a felony conviction would mark him.

**Mr. Nuechterlein:** Were you the prosecutor?

**Judge Williams:** Yes --

**Mr. Nuechterlein:** I take it this was one of your early cases?

**Judge Williams:** Yes, it was an early case. Very handy for training young assistants.

**Mr. Nuechterlein:** And when were you involved in the case with Arthur Liman?

**Judge Williams:** He was brought back as lead counsel in the Birrell case because he had been involved for the government at the indictment stage. A story told about him, which was always very impressive, was that at the end of some very long securities trial, running months and months, he had summed up for the government, and the first thing the jury did was to send back a note asking for the exhibits mentioned by Mr. Liman and arranged in the order in which Mr. Liman had spoken about them. So that certainly set out an ideal of clear communication to a jury.

**Mr. Nuechterlein:** This is neither here nor there, but did you watch any of his cross-examination of Oliver North? That was my first exposure to Arthur Liman.

**Judge Williams:** Oh really. He was cross-examining Oliver North on whose behalf?

**Mr. Nuechterlein:** He was the Senate's counsel [during the congressional Iran-Contra investigation of 1987], and John Nields was the counsel for the House.

I am going to ask you a question that requires some generalization, and maybe the generalization is misplaced. Do you think that your experience as a prosecutor has affected the way you conceive of the role of prosecutor now that you are a judge? Having been a prosecutor, are you sympathetic toward the challenges that prosecutors face, or in fact are you more demanding in what you expect of prosecutors because you have been there and can see when someone has done a shabby job?

**Judge Williams:** Seems like a very good question, for which I don't have a very good answer.

**Mr. Nuechterlein:** Let's talk about Faith — you said you met her in 1965?

**Judge Williams:** I met her in the fall of 1965 at a wedding of someone she had known in college and someone I had known in New York. I was in the receiving line, and the gentleman in front of me was her brother, whom I had gone to school with — two schools, actually. And so we were chatting away, and along came Faith in the receiving line, and her brother introduced me to her, and nine months after that we were married.

**Mr. Nuechterlein:** What month was this?

**Judge Williams:** September 1965.

**Mr. Nuechterlein:** And when did you get married?

**Judge Williams:** June of the next year.

**Mr. Nuechterlein:** That was a quick engagement.

**Judge Williams:** By current standards, lightning.

**Mr. Nuechterlein:** Tell us a little bit about your courtship of Faith. Was it love at first sight between the two of you, and did the plans for the wedding begin after two weeks?

**Judge Williams:** The course of true love never did run smooth.

**Mr. Nuechterlein:** Of course, these days, if you meet in September, you are not even going to be able to reserve a place to get married by the following June.

**Judge Williams:** We did not have a vast wedding, so there was no worry about that. Actually there was a bit of luck involved.

She was up in Cambridge, and it so happened that that I was working on an acquisition of a company in Boston; I had to go there for the closing. So I gave her a call when I found out her number, which was much harder in those days. Anyway, I called her and took her out, and then, after maybe one more date, there came an evening — quite soon, I think it was October — in which she sent me packing. I was very crestfallen. She later explained that she intuited me as someone she might marry, and that made her hopelessly nervous. So she cut it off. But then fate intervened again, and a very good friend of mine from Debevoise & Plimpton was getting married in Boston, so that brought me to Boston, and I tried again with Faith, and this time she accepted me back into the fold.

**Mr. Nuechterlein:** How old is Faith? Is she about your age?

**Judge Williams:** No — she is five years younger than I am.

**Mr. Nuechterlein:** So what was she doing when you met her?

**Judge Williams:** When I met her, oddly enough, she was momentarily interested in city planning. I had an uncle who, in one aspect of his life, was a city planner. I was (and am) very fond of him, and so this seemed to be a very positive thing about her. I think her city-planning career lasted about two weeks. Then she started working for a publishing company. I can't remember the name.

**Mr. Nuechterlein:** A book publishing company?

**Judge Williams:** Yes. It published some sort of guide to colleges, and so Faith knew (probably still knows) the names of colleges which, to me, were extremely obscure, but she knew where they were and all kinds of things about them. I don't think it was a very challenging job. But you had to be accurate and so forth.

**Mr. Nuechterlein:** Did you have a religious ceremony? A civil ceremony?

**Judge Williams:** A religious ceremony. We both admired William Sloane Coffin a lot, so I guess I was assigned the task of calling him up to see if he would marry us.<sup>9</sup>

**Mr. Nuechterlein:** You admired him! Why?

**Judge Williams:** It is interesting to think of nowadays — he was the classic left-wing clergyman.

**Mr. Nuechterlein:** So this was 1965, and the war was already...

**Judge Williams:** 1966, and the war was really almost at its absolute peak, and I guess I had not completely given up on the policy. Maybe my admiration of him was in deference to Faith, but I didn't feel I was being pushed around at all by her. So I called him up and he said he couldn't do it, but he recommended a guy named Howard Moody, who was the rector of the Judson Memorial Church in New York. I called him up, and he said probably yes. He asked us both to come over, and we met him in his office. An early question was, "What day would you like to get married?" So we gave the day, and he said, "What time?" And we said "4:00," and he said "AM or PM?" That somewhat endeared him to us.

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<sup>9</sup> Coffin was a well-known peace activist and, at the time, the chaplain of Yale.

Then he asked, “Are you sure you want to risk spoiling a good relationship?” We said we were willing to take that risk. And then he performed the ceremony. The ceremony was in the Quaker meeting house at Gramercy Park in New York, a lovely building. Actually, since then we have been to a wedding there, for the daughter of a cousin of Faith’s.

**Mr. Nuechterlein:** What was his religious affiliation?

**Judge Williams:** Judson Memorial is actually Baptist.

**Mr. Nuechterlein:** Has Faith been a Quaker all her life?

**Judge Williams:** No — her father was a Quaker at this time, and Faith had sort of dabbled in Quakerism, as I have. I actually participated in a “Ban the Bomb” march while I was a Yalie. We had no effect on the Bomb, but we did cause a minor accident. We distracted the eye of a driver, who smashed into the car in front of her, then panicked and smashed into the car behind her, and then panicked again and smashed a second time into the car in front of her. So we did some damage but did not solve the issue of nuclear weapons. That may have been my last involvement with Quakers while I was in college. Law of unintended consequences.

**Mr. Nuechterlein:** Faith’s father was a Quaker?

**Judge Williams:** He was a Quaker. She only became very actively involved — in fact we both did, at the time — when we went out to Boulder in 1969. I don’t think we had any joint Quaker activity before then, other than the site of our wedding.

**Mr. Nuechterlein:** I have actually been to a Quaker wedding. There is no script, and people will just say nice things about the couple as the Spirit moves them. Was your wedding like that?

**Judge Williams:** No, it wasn’t. It was in a Quaker building, and Dr. Moody gave a talk, and he actually said something that I have used at many weddings since (but not at yours, and I am not quite sure why I didn’t). He said, “Don’t be troubled by your differences — you will grow by your differences.” Of course he did not point out just how many growth opportunities we would have. Obviously I have always remembered that in the 40-plus years since.

He also told a complicated story about being in World War II. He was a bombardier, and he told a story that seemed to involve him being stretched in a terribly perilous way — feet and arms connected to parts of the plane, but his whole middle section not connected — nothing but 40,000 vertical feet and then earth below his middle section. In fact I hadn’t thought of that analogy for a long time. I assume he was alluding to the possible sense of anxiety that people have approaching matrimony. Whatever the details, it was generally a very good talk, although talking about life as a

bombardier was a little odd, considering he was chosen for his peacenik connection.

**Mr. Nuechterlein:** In 1969, you decided to go into teaching. What prompted you to do that?

**Judge Williams:** Well, basically I thought it would be a way of exploring the law without any prior commitments dealt you by your client. I think circumstances like the midnight work on the Birrell case made Faith enthusiastic [about a teaching career].

**Mr. Nuechterlein:** How did getting a teaching job work in those days -- similar to the way it is now?

**Judge Williams:** Somewhat similar. There was the AALS [American Association of Law Schools]; they had a meeting in the fall, and you submitted to them a one-page form with basic data. Then that went out to the law schools, and they called you either to meet you at the actual AALS meeting or to meet you elsewhere. The University of Colorado called me before the meeting, and they sent the Dean and James B. White.

Jim later spent the end of his academic career at the University of Michigan, after becoming famous for his book *The Legal Imagination*. Jim was absolutely a dazzling character. It was very clear from the first moment of conversation with him that he was very brilliant, and that certainly helped me embrace the idea of teaching at the University of Colorado.

The other places that I went to were University of Indiana and Ohio State University. I liked particularly Ohio State — I was there on a gorgeous day, very deceptive — but Colorado seemed more appealing.

**Mr. Nuechterlein:** And Faith agreed?

**Judge Williams:** She seemed to be very happy about it. Part of her theory was putting a little mileage between herself and her family.

**Mr. Nuechterlein:** Oh.

**Judge Williams:** Well you know — independence, growing up.

**Mr. Nuechterlein:** So you went out in the fall of 1969. What did you teach? Do you remember?

**Judge Williams:** The first year, I was given the second half of Civil Procedure, to students who had had someone else for the first half of the course. I taught Property by my request. Property was a split course — there was Property I and Property II, and Property II was located in the fall, so again I was teaching students who had had someone else for the first part. What else did I

teach? At some early stage, Evidence. It was a few years before I moved into Administrative Law.

**Mr. Nuechterlein:** There are many ways to teach Property, and in recent years a lot of people have been teaching it through the lens of law and economics. Were you one of the vanguards in that movement?

**Judge Williams:** Yes, I think I was. I remember I called Charlie Meyers, who was the author of a Water Law casebook. Water Law was one of the courses I taught too. I was asking him about what books to use, and he suggested I call Richard Epstein. So I did, and I found something that most people find when they call Richard Epstein: there is no great burden on them to keep the conversation going. But I felt very honored. Here I was, a nobody from Colorado, and he was already very distinguished, and he talked at great length and in great detail and very interestingly about Property and casebooks and so forth. Whatever the casebook was that he recommended, I adopted.

I found it was interesting to view Property Law as a building block of an economic system, and not simply as a set of rules which someone worked out and were more or less coherent among themselves.

**Mr. Nuechterlein:** You mentioned before that you didn't have much formal training in economics. You took one course in college.

**Judge Williams:** And I worked on this antitrust case at Debevoise & Plimpton, and that certainly restored interest.

**Mr. Nuechterlein:** Did you start reading economic literature to get you up to speed on these concepts?

**Judge Williams:** I can't remember. At some very early stage, the Law Review asked me to review Dick Posner's *Economic Analysis of Law, First Edition*.

**Mr. Nuechterlein:** That was the '70s?

**Judge Williams:** Very early in the 70's. It was interesting: I found that Posner's work "spoke to my condition," to use a Quaker phrase, in the sense that, in many respects, it approached things in the kind of consequentialist way that seemed to me essential or inevitable. In some respects, he deliberately put in things that he was confident would make people react with some shock. The whole question about pricing limbs was articulated by him in a particularly bloodless way, and that slightly horrified me. But the fascination enormously exceeded the horror.

**Mr. Nuechterlein:** When you were asked to review his book, had you met him yet?

- Judge Williams:** I had seen him around on the Harvard Law Review, but I can't really say I knew him.
- Mr. Nuechterlein:** Oh, you overlapped with him.
- Judge Williams:** Yes. He was a year behind me.
- Mr. Nuechterlein:** Was he recognized as brilliant then?
- Judge Williams:** Yes he was. The Harvard Law Review had a very elaborate system for choosing the President, which took hours and hours and hours. And it was clear from a very early stage that Dick was just astonishingly brilliant, and that it would be crazy for the Law Review to pick anyone else. Nevertheless, the system ground on and took hours and hours and hours, and of course it did elect him President.
- Mr. Nuechterlein:** What sorts of things made it obvious that he was brilliant?
- Judge Williams:** On the Law Review, you get reports from the people who had worked on any piece of student writing that an editor had done. And those reporting about him, very bright people themselves, made clear that they were in awe of him. There was no way to explain these encomia except that he was very, very bright.
- Mr. Nuechterlein:** Was he a nice guy? People liked him?
- Judge Williams:** I didn't know him all that well, but in the reports on him, no one said anything nasty about him.
- Mr. Nuechterlein:** My year at Yale, [to pick the editor-in-chief of the Yale Law Journal,] we used something you may be familiar with — the Borda count, where you rank your preferences. You don't merely vote for people "yes" or "no." It measures the intensity of likes or dislikes. And the predictable consequence of that is you get someone highly competent and uncontroversial.
- Judge Williams:** As I said, nobody suggested that there was any sort of character flaw in Dick that would undercut the advantages of having someone who was very brilliant.
- Mr. Nuechterlein:** You've kept in close correspondence with him over the years, haven't you?
- Judge Williams:** Yes, but not starting from Law Review days. I wrote a review of one of the Morty Horowitz books entitled *The Transformation of American Law*. I found his economic analysis woefully defective. I forget just how that review came to Dick's attention, but for some reason Dick saw it before it was published, and very kindly asked me to publish it in the *Journal of Legal Studies*, which he was editing. I told him that I

had committed to publish the review in the UCLA Law Review. And of course I visited for a year at the University of Chicago, where he taught. It was very nice there.

**Mr. Nuechterlein:** When were you in Chicago?

**Judge Williams:** Chicago was '79-'80. I had been at one conference, at least, that took place in Chicago before then. The conference had originally been scheduled for Cornell, but an incredible storm forced everyone to go back; the conference was cancelled and replaced by this one in Chicago. Dworkin, Ellickson, George Priest — good people.

**Mr. Nuechterlein:** You mentioned that it was a couple of years before you started teaching Administrative Law?

**Judge Williams:** Yes.

**Mr. Nuechterlein:** How popular of a course is that at the University of Colorado?

**Judge Williams:** It didn't fill a big room.

**Mr. Nuechterlein:** At Yale, it was a very popular course. A lot of people expect to go to Washington.

**Judge Williams:** Yes — obviously, I think it is important for any lawyer anywhere, but no, it was not a blockbuster course.

**Mr. Nuechterlein:** Were you assigned to teach that, or did you choose it?

**Judge Williams:** I honestly can't remember. I think I saw it as a nice foil to Property, a different way of organizing matters.

**Mr. Nuechterlein:** As you describe it, it sounds like your first clearly public-law-oriented course.

**Judge Williams:** I also taught a course in the law of city planning. So that is kind of public law. In fact, as I think back, it seemed to me the real issues in that were effectively administrative law issues, issues that one would now classify as administrative law: the relationship between courts and agencies. That of course is the issue of administrative law. I suspect that what happened is, I had a long-term interest in city planning, and I stumbled into that course, and then seeing that an administrative law course was focused on the more central issues, I moved into that.

**Mr. Nuechterlein:** Describe your scholarship a little bit in the '70s. What were you writing about?

**Judge Williams:** I wrote something on aesthetic regulation in the interest of city planning.

- Mr. Nuechterlein:** “Aesthetic regulation?” I don’t know the term.
- Judge Williams:** It is an element of zoning — also an element of historic preservation, design review, that type of thing. It seemed to me, as I explained in my paper, to raise First Amendment issues, but ones that were solvable in a fairly reasonable way.
- I recall that one of the people at the Justice Department later talked with me about whether I was suitable to be appointed a judge. He had seen the paper, although I don’t think he had read it carefully. It somewhat alarmed him because, on a casual reading, it seemed to smack of judicial activism.
- Mr. Nuechterlein:** Did this relate to the government’s ability to zone out adult entertainment?
- Judge Williams:** No — although at least one of those cases had been decided by that point, I think, and so I used some of the reasoning from it. It was more a matter of the city trying to make itself look better.
- Mr. Nuechterlein:** As for your other writing...
- Judge Williams:** The review of Morty Horowitz. The Colorado Law Review asked me to do something on a couple of water rights cases that I didn’t know anything about at the time, so I immersed myself in that. And it certainly was an economic analysis — I don’t think it had any legs. When I visited at UCLA...
- Mr. Nuechterlein:** When was that?
- Judge Williams:** That was ’75-’76. While at UCLA, I talked with Dick Maxwell about property law issues, and that led into oil and gas law, which he taught. That subject just right up front raised very interesting economic problems, particularly the common pool problem and how different common law principles had failed on that. What were suitable ways of making the law more efficient? And also, of course, if the property rights were well defined, to what extent was there a threat of premature exhaustion of resources?
- Mr. Nuechterlein:** So that, over time, became your academic specialty: *The Natural Gas Revolution of 1985*.
- Judge Williams:** It certainly became a great interest. And it involved network industries, which proved to be a lasting interest.
- Mr. Nuechterlein:** What is your first law review article that, in looking back on it now, you are genuinely happy with, knowing your future in law and economics?
- Judge Williams:** It is hard to say. Very early on, the review of Morty Horowitz’s book.

I should say that, when I visited UCLA, I audited a course called Law and Economics, which was really sort of an intermediate micro course. It was taught by Armen Alchian, and it did a great deal to revivify my interest in economics.

**Mr. Nuechterlein:** Was there a discernible law and economics movement by this point?

**Judge Williams:** Yes, I think that is fair to say.

**Mr. Nuechterlein:** Did you attend conferences devoted to law and economics issues?

**Judge Williams:** The budget at Colorado was always very lean, and so I could attend conferences only when somebody from outside the university paid for it. That was the case for that one in Chicago in '78-'79. That was nine or ten years into my academic career.

**Mr. Nuechterlein:** Did you find like-minded souls on the Colorado faculty?

**Judge Williams:** Not really many — no.

**Mr. Nuechterlein:** How about students? Did you have students that seemed particularly proficient at looking at the world the way you did?

**Judge Williams:** There were a few, yes. One of them became a clerk — Bill Mooz.

**Mr. Nuechterlein:** Oh yes — I went camping with Bill Mooz once. How long were you in that house on Euclid Street in Boulder?

**Judge Williams:** The whole time. We bought that in 1969 and still have it.

**Mr. Nuechterlein:** I bet the property value has appreciated.

**Judge Williams:** Yes, somewhat.

**Mr. Nuechterlein:** I am going to ask you about your kids. You have five children?

**Judge Williams:** Yes, five. Geoffrey was born August 8, 1969. We flew to Colorado on July 7<sup>th</sup>, bought the house, and closed July 8<sup>th</sup>.

**Mr. Nuechterlein:** Tim is next?

**Judge Williams:** No, then it gets complicated: Susan and Sarah. Susan is older than Geoffrey, but her parents had split, and there were all kinds of other difficulties. She is actually Faith's second cousin once removed, so we heard of this problem. Susan arrived in January of 1971. By that time, we were already launched on adopting Sarah. We got word from the adoption people in Vietnam that she had been assigned to us nine months before she arrived in March 1971.

**Mr. Nuechterlein:** She was born in Vietnam?

**Judge Williams:** Yes.

**Mr. Nuechterlein:** Describe your interest in adopting her.

**Judge Williams:** At that point, we were to some extent persuaded by the population growth people, who were totally wrong, but whose influence was at its peak. We were unsure we would have any more children ourselves, but we wanted to raise more children, and all these terrible things were happening in Vietnam, so adoption seemed like a win-win solution. We were very active in the adoption movement in Colorado and got in contact with a remarkable Australian woman in Vietnam who was very good at organizing reasonably good conditions for orphans there — and also in trying to place them in the West. Sarah came through that.

**Mr. Nuechterlein:** And Tim was next?

**Judge Williams:** Yes, Tim arrived in December 1973. There was a stillborn child while we were in Chicago, in May or June 1980. And Nick was born in April 1981.

**Mr. Nuechterlein:** One of my fondest memories of working with you that summer in 1988 was of you hoisting Nicky up and Nicky saying, “I love you Daddy!” I was thinking that parenthood can’t be all bad.

Say a few words about what the five of them are doing now.

**Judge Williams:** Susan is a housewife; she works in the home and has two children. One is at little over 7, and the other is a little over 3, and Susan takes care of them. They live in Chantilly, about 45 minutes away. Our only child with children, therefore — our grandchildren — happily live in the same city as we do.

Geoffrey has done an extraordinary number of things, but is now embarked on getting his Ph.D. at Rutgers in economics. He says there is a very small group of Ph.D. candidates there, and he stands out because he has had a lot of math training, which is of course what modern economics mostly is. I think Geoffrey sees himself as a big fish in a relatively small pond....

**Mr. Nuechterlein:** I think we have covered Susan and Geoffrey.

**Judge Williams:** Oh, Sarah — Sarah is the only one who went to law school. I don’t really think law school interested her that much, but then after a couple of years in the Florida state bureaucracy, she took a special real estate law program at the University of Miami. That really did engage her interest, and she is now doing real estate law in New York — but I think it is much more real estate than law.

**Mr. Nuechterlein:** Tim?

**Judge Williams:** Tim and Nick came with us on my first expedition to Russia, which we call in the family “bringing the rule of law to Russia.”

**Mr. Nuechterlein:** [Facetious:] Worked out well.

**Judge Williams:** It had effects on the Williams family because, in the Arbat area of Moscow, Tim met a Russian girl, and they corresponded for years. Various things happened in his life and her life, and he went back to Russia in the summer of 2000, and to our surprise — at the end of the summer of 2000 — he announced that they were engaged to be married. Indeed, they were married in December of 2000 in Moscow. I remember Faith kept saying throughout the trip, of one decision and then another, “Next time we have a wedding in Moscow in December, we must do this differently.”

That opportunity actually hasn’t arisen, and the marriage did not work out, and they divorced two years later. But his interest in things Slavic lasted. He started getting a Ph.D. in Slavic studies at Columbia. And then he went to Poland to learn Polish as his minor Slavic language, Russian being his major one, and wanted to stay there — so he stayed by teaching English. I think it’s been three years. Now, surprisingly enough, he may be about to move to Japan to teach English there.

And that is a natural segue to Nick, who took an intensive course in Chinese at Harvard, paralleling his aunt, who took an intensive course in Japanese. Nick did well and liked it — loved it. At some point after his time at Harvard, he told me he wanted a career in which he had plenty of time to devote himself to reading and translating Chinese poetry. The choices seemed to be either an academic career, in which you can do that, or another career that would leave him plenty of time to do that. He seemed to prefer the first, and in about a year and a half, he will get his Ph.D.

**Mr. Nuechterlein:** He was a math prodigy right?

**Judge Williams:** Yes, he was very good at math in the early days, and his major at college was math. But his interest in Chinese was much stronger.

**Mr. Nuechterlein:** That requires some intellectual versatility — math and Chinese. Not many people are gifted at both those two things.

**Judge Williams:** I don’t think they’re very often mixed.

**Mr. Nuechterlein:** I think the next major topic of discussion is your ascension to the judgeship. Maybe we ought to do that next time.