THE ORAL HISTORY

OF

RETIRED JUDGE PRENTICE H. MARSHALL

AS TOLD TO

COLLINS T. FITZPATRICK

CIRCUIT EXECUTIVE FOR THE SEVENTH CIRCUIT

1999

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CTF: Today is September 5, 1996. Tom Strubbe, the Clerk of the Court, and myself, Collins Fitzpatrick, the Circuit Executive, are recording an oral history of retired District Judge Prentice Marshall. Judge Marshall, maybe you can tell us a little bit about your family background and where the Marshalls and your mother's parents came from?

PM: Well, my father was Frank Bradley Marshall. He was born in Chicago in 1891. He died in 1941. He was 49 years old when he died. My mother was born in Louisville, Kentucky. Her name was Eva Elizabeth Maryfield. My mother was born in 1888 and she died in 1972, shortly before I was appointed to the Court. So mother lived a good, full life. She lived about 84 years. My dad only lived 49 years. My father was a typographer, a line-of-type operator. He was an itinerant line-of-type operator at one point in his life. He went to Louisville, Kentucky, where he met my mother. He was a typographer with the Louisville *Courier Journal* and mother worked in the bindery for the Louisville *Courier Journal.*

My dad had previously been married and had a son Pierre who was always called Pete. His first wife died as a very young woman. He then married my mom and mom raised Pete. Pete was about eleven years older than me. He was born in 1915. We were very close friends. We stayed in touch.

As I said, dad was a typographer and he met my mother at the Louisville *Courier Journal.* Then they moved to Chicago from Louisville where he became

a typographer with the old *Chicago Daily News*. He stayed there for a few years and then he was hired by Twentieth Century Press, a commercial printing company in Chicago. Their offices were over on Clinton Street on the old Printers Row. He became an officer and he was prospering, going along all right. The first working day of 1935, January 2 or 3, my father had a massive heart attack while at work. He just barely survived it. He could not go back to work. He lived six years. My mother's parents were Kentuckians. My dad's parents were both born and raised in Chicago.

TS: Where did you live in Chicago?

PM: I was born and raised in Oak Park. Mother and dad and Pete moved to the South Side of Chicago when they came back, down near Washington Park, and I believe that my sister Grace was born there in 1923. But then they moved to Oak Park. My father did not think well of the Chicago Public School system even then. He said, "I am going to take this family to a place where the kids will get a good education." We were renters in Oak Park. We moved about five or six times. During the Depression you could move for about $20.00 and you could save $5.00 a month in rent. It was a $40.00 net gain. So we moved a couple of times – never because we did not pay our rent.

When I was born, the family was living on Ridgeland and Washington Boulevard in Oak Park. Then we moved to Washington Boulevard and Cuyler,

a block east. Then we moved to Washington Boulevard and Scoville, a couple of blocks west. We had two different places on Scoville Avenue. Then we moved to Washington Boulevard and Ridgeland and we were living there when my father died. My sister Grace graduated from high school in 1941. My mother and I then moved into a little apartment on Humphrey and Washington. But the kids, Pete, Grace and I all went to Hawthorne Grade School at Ridgeland and Washington, which is now Percy Julian School. We all went to Oak Park High School, graduated, went on from there.

I was born on August 7, 1926, which is now known as Guadalcanal Day because the mighty First Division of the Marine Corps went into Guadalcanal on August 7, 1942. There was a celebration over here, my birthday and Guadalcanal Day. I was a screw-up in high school. I am very blunt about it. I had been a very good student in grade school. Something happened, I really do not know what it was. There are those who say the loss of my father was a contributing factor. Then there are those who also say, "Well, that was the war. Young boys that age, you know, eat, drink and be merry for tomorrow we die." You know this was true. I enlisted in the United States Navy five days after I graduated from high school. I did not have a glorious military career, but everybody was going. For whatever reason I was not a good student in high school. I graduated, went into the Navy, came out and I knew I wanted to go to college.

I had been ill in the Navy. I had rheumatic fever. So when I came out, I was under what was known as Public Law 16 rather than the regular GI Bill of Rights. I had 48 months of college to my credit. I started college at Carroll College up in Waukesha, Wisconsin for a year and summer school. Then I transferred to the University of Illinois in the fall of 1947 for a year and also summer school. I did better in law school than I had ever done in any educational exposure in my life. First three semesters of law school, I got nothing but As. I was elated. In June of 1951, I had all As, two Bs and one C. I mean I was first in my class and Judge Walter C. Lindley of this great court whose picture is hanging here on the wall as we visit, hired me as his law clerk. But now going back to high school.

TS: I want to know what your "C" was in?

PM: Sales. Bill Briton, Sales. Bill Briton and I were very good friends. There were a bunch of us that ran around together in law school – six couples – we were all married. Bill would have us over for drinks. It was warehouse receipts and bailments. It was just one of those quirky things.

I just loved law school. In fact, Lorelei and I were married about two weeks before I started law school. I can remember very vividly and so can she. We were doing the dishes one evening – I had been in school for four or five

weeks – and I turned to her and I said that "I found litigation very exciting." I had great teachers at the University of Illinois Law School.

Going back to high school. I was a cut-up, "For tomorrow we die." My poor mother, she lived through it. When I went to law school, Dean Harno used to write her notes. It was really thoughtful of him. I am sure that he was not aware of my prior history but he would write her personal letters saying, "Dear Mrs. Marshall, I wanted you to know that your son..." That was quite a different note than what she used to get from Oak Park High School.

TS: Were you ever suspended from school?

PM: There was one time when I had to bring her to get back in. We did not get suspended. There were not any guns and dope or stuff like that. There were a couple of guys that I went to high school with who will remain nameless who were musicians and everyone thought that maybe on Saturday nights, when they were playing a gig, that they might have smoked a joint or two. But that high school was a very, very well run high school, as it is today. I used to cut class, did not do my homework. I flunked Latin, had to repeat it. My last semester of high school, I flunked French. They had a rule in those days that you had to have two years of a foreign language in order to get any credit for it. Well this was my fourth semester of French so I did not have two years. But I

suppose the war saved my neck because I had accumulated enough credits to graduate so they graduated me.

CTF: When did you graduate?

PM: June of 1944. The month of Normandy. I was at Great Lakes Naval Training Station at the time of Normandy. I remember every morning on the gridiron or the grinder as they called it. I can remember the Commandant at Great Lakes. We did not have any radios or anything like that in the barracks. He would give us a description of what was going on in Europe and, of course, the invasion was a great success and known to be early on. There were some later setbacks, but the European War lasted about ten months after that. He would tell us that "The war in Europe is the Army's war and it is being waged very successfully. The war in the Pacific is the Navy's war. You men must prepare for it."

CTF: He would keep you filled in on what was happening in the Pacific as well?

PM: Well there was not a lot of talk about that because the Pacific – there was not anything at that point – was not quite as dramatic as the invasion of Normandy.

CTF: Prior to that we had the Battle of the Coral Sea.

PM: Coral Sea, Midway, Guadalcanal, as I mentioned a few minutes ago. Well in fact we secured Guam, Saipan and Tinian in the middle of 1944. You know they were all major things out there. But once we secured Guam and we had developed the B-29, then we began bombing Japan. In early 1945, I think February of 1945, we secured the Philippines and about May of 1945, Okinawa. We dropped the bomb in August and it was over.

CTF: Why did you pick the Navy?

PM: Because I could get in. I had very bad eyes and if I recall correctly, the Army was not accepting enlistments at that point. They were surviving on drafts. I may be wrong about that. But I took the Army/Air Force test and passed it. They laughed at me. I took the Navy radio technicians test, passed it and that got me a waiver on my eyes and so I was able to enlist. You know, my buddies, class of 1944, they all wanted to go. Actually, I spent nine months in various training schools. They took me out of radio technician school and put me into the hospital corps. I was in San Diego going to a hospital corps school when I came down with rheumatic fever and I ended up in the hospital for the next year and then they sent me home in March of 1946. No residual injuries. It was remarkable. It really was. I had very good treatment.

TS: So that is six or seven months?

PM: No, you needed points and I did not have any. If it had not been for the medical discharge, I probably would have remained in the Navy another year.

CTF: Forty-eight months of the GI Bill literally, so that a year is really twelve months, not just a nine-month academic year.

PM: Well, you could use them any way you wanted. You received 48 checks, that was a hundred bucks a month or something. The GI Bill, you received a year for your first three months, and then one month for every month thereafter. So under the GI Bill, I think I would have had about 30 months of college. But under Public Law 16, I had 48 months. The pay was a little higher too. I ended up using just about all of it. Because about eleven months at Carroll, another ten or eleven at Illinois, as an undergraduate, so I just about maxed out with law school.

TS: You were an undergraduate for only 21 months total?

PM: Yes. I took overloads. First I got a couple of credits from Oak Park High School, which is surprising. Not in French. I took trigonometry and college algebra in high school and they both transferred to the University of Illinois. Then they gave me six or eight hours credit for being in the military. And then at Carroll, I took about 15 or 16 hours one semester, 18 the next. Then I took Spanish at Carroll and boy, I blitzed it there. I took a whole year of Spanish in

eight weeks. By then I had figured out how you take a foreign language unless you are very linguistic. You treat it like a code and you memorize it. I have taught my kids this. That if you take a foreign language, you have got to go to class every day, you have got to memorize it. Then I went to the University, I took about 16 hours in one semester, 20 or so another semester, and then I took 12 hours in summer school the summer of 1948, and that is an interesting story too. In those days you only needed 90 hours to go to law school. You did not need a degree. They had a program where you could go to college for two years and law school for four or you could go three years to college and three years to law school or four years in college. There was no LSAT in those days and the only law school I applied to was Illinois.

After the full calendar year or academic year of 1950-1951, I went over to the law school and talked to the Dean's secretary, Marian Martin. She and Dean Harno ran the law school. That was the extent of the administrative staff. I asked about admission and she looked up my grades and said, "Well as of now, you will not be admitted." She said, "We just take the top 150 applicants and you are below the 150." I said, "I had not applied to any other school. My future wife and I, our plans are that I am going to go to law school." And she said, "Well, you are not going to go to law school here." I said, "Do you have any suggestions?" and she said, "I have two suggestions. One, apply elsewhere or go to summer school and do very, very well." I chose the latter. I went to summer school. I took 12 hours -- 6 hours of accounting and 6 hours of

political science. I got 12 hours of "A," and I went back to her and said, "There are my grades, now how do I do?" She says "Now you are in." Honest to goodness, that is how it was.

TS: Times have changed.

PM: Then I went on that roll. You see, those three semesters in a row.

TS: Had you met Lorelei somewhere in undergraduate school.

PM: Lorelei and I were high school sweethearts. I met Lorelei in the fall of 1942. She was a sophomore. I was a junior in high school. We went steady, then broke up. Then we went back together.

CTF: When did your interest in baseball start, as a kid? Did you play?

PM: Yes. I tried to play. I was not a very good ballplayer. Actually, I think what triggered me more than anything else was my dad. My dad had been a baseball fan and he became disenchanted with the game following the Black Sox throwing the World Series. As I mentioned, he had this massive heart attack in January of 1935. He followed the Cubs. In those days, the Cubs were broadcast live. Their home games were broadcast live on five Chicago radio

stations. Dad developed a scoring system which he taught me and which I still use and I really think it is far more effective than some of the other systems.

CTF: Did you ever play?

PM: I would go home and listen to the games with him on days that I was not playing myself. All of the games were at 3:00 in the afternoon. 1935 was a very great, exciting year for the Chicago Cubs. They were really an exciting team. That is really when I got started. Actually, I remember the 1934 season when the Cardinals and Detroit won the league pennant. That was the Gashouse Gang.

TS: Was Rogers Hornsby playing?

PM: No. Rogers Hornsby had moved on. The Cubs in 1935 had Stanley Hack, third base, Billy Jurges, shortstop, Billy Herman, second base, Phil Cavaretta, first base. Gabby Hartnett, catcher, Ken O'Dea, the backup, Augie Galan in left field, Chuck Klein in right field, Frank Demaree in center field. Freddie Lindstrom and Woody English were the utility guys, Tuck Stainback was a utility guy. The pitching staff was the Arkansas Hummingbird, Lon Warnecke, Bill Lee, Charlie Root, Larry French, Roy Henshaw.

Yosh Kawano and I are very good friends. He was working for the Cubs in the clubhouse when he was 16 years old. Yosh's family was interned during the war. He has Japanese ancestry. They drafted Yosh out of the camp. He went into the service as a translator.

TS: A camp in California?

PM: I forget where they were interned.

CTF: Southwest, I think.

PM: Yes, I think they were in Arizona or New Mexico.

TS: He must have been here in Chicago, and they called him back.

PM: He was home when the bombing occurred in December of 1941. His parents lived in Los Angeles.

TS: I thought I knew the story of people being interned?

PM: They hauled them in from lots of places. I do not know that for sure. So then Yosh served four years in the Army as a translator in the South Pacific, interestingly enough. Well anyway he and I would joke about the 1935 team

because that was just his second year with the ball club. Yosh has a lifetime job with the Cubs. When the Wrigleys sold the Cubs to the *Tribune*, it was understood that Yosh had his job for life. Judges have lifetime jobs. I no longer have mine but Yosh does. I love the guy, I truly do.

CTF: What was your relationship with Pete?

PM: He was eleven years older. We were very close, he was a good friend, very good friend.

CTF: But is he more like an uncle?

PM: There was an interesting thing in the paper this weekend about the relationship of sisters and brothers, where there is this big generation gap. There was a story about a fifty-five year old who has a ten-year old half sister. First of all, I was unaware of the fact that Pete was not my blood brother until I was in my 30's. My father was dead, had been for many years, and my wife Lorelei and I were having dinner with my mother one day at her apartment at Humphrey and Washington Boulevard. She said, "Of course you know that Pierre is not my child." Well, I did not know that Pierre was not her child. I said, "No, I did not know that." "Well, it is true," she said. "Your father was married before he married me. He was not divorced." She said, "If he had been

divorced, I would not have married him. His wife died." My mother was a real character; a wonderful, wonderful person.

Anyway, Pete was kind of a surrogate father, he assumed some father relationships with me after he left home and moved off into his own business and so forth. When I was young and he was still at home, why we shared a bedroom together. He is one of the smartest people I have ever known.

My sister Grace and I have a very close relationship. She was just three years older than me and graduated from high school right after my dad died. I was a freshman. She was very encouraging of what I was going through during my adolescence. We have remained very, very close friends over the years. I was very fortunate to have a brother and sister like I had. They were really very good to me, very, very good to me.

CTF: The Depression really did not affect the family much?

PM: Right.

CTF: Did you see any signs of the Depression or were you sort of like most kids, oblivious to it?

PM: We saw signs of it. For instance, the parents of several of my close friends were out of work. Yes, you saw evidence of it. In our instance the company that my father worked for, Twentieth Century Press, fortuitously had taken out disability insurance on their officers. He had become an officer by this time. So when he was stricken with a heart attack, he got disability payments and, as I recall, they were in the vicinity of $450 or $500 a month, a lot of money in those days, tax-free money.

TS: How did that compare to his salary?

PM: I do not know what his salary was, but you know, you could live very well on $450 or $500 a month. I do not mean luxuriously, but rent was $65 a month for a three-bedroom apartment. We lived comfortably. I know, after his illness, we started going up to Lake Geneva; Fontana, the west end of Lake Geneva in the summertime and we would rent a place up there for $25 a week for maybe six weeks. That is when I became a fisherman.

I remember when Franklin Roosevelt was elected President in 1932. I was six years old. My parents were very happy. Dad had been a union guy before he went into management. My mother had been a member of the union as a bindery person. I remember the repeal of Prohibition. They had a party and they tapped a keg of beer in the kitchen and I think that is when I had my first taste of beer, at least that is my recollection.

Otto Veilhauer, Otto was a German. He was an American citizen then, but he had been in the German Army during World War I and that always intrigued me; to know that I had a friend who had been on the other side. My dad was not in the service. I do not know why.

I remember in politics in 1936, I came home from the park one day. 1936 was the first really colorful campaign button that I recall. Alf Landon, who was the Republican candidate for President, had a brown campaign button with a felt sunflower around it. He was from Kansas. The sunflower was the state flower. I had taken one of my dad's old hats and made a button hat out of it. I had all kinds of buttons on it. I came in the kitchen one afternoon. My mother was standing there at the stove getting dinner and she looked up to see whether I had a black eye or not and she said, "Don't let your father see that." I said, "What?" She said, "That Landon button." What is going on here? So I went in his room. He was a semi-invalid with his heart; and he was laying there in his bed and I walked in and I said, "What about this?" So he explained to me what it was, and he said, "Now if you want a good button, go down to the Democratic headquarters at Madison and Ridgeland." So I did. People ask me; for instance, the three of us are talking during the presidential campaign and they say, "Who do you think you are going to vote for?" I tell them very honestly, "I made up my mind in 1936 who I was going to vote for in 1996 and it has not changed."

TS: Well, you are consistent.

PM: Oh, yes. Which of course, it is that consistency that is an interesting factor, that we will get to later, and my becoming a federal judge, because I was the choice of Senator Percy, the senior Republican senator in Illinois.

My father having been a newspaper guy was an avid newspaper reader. One of my chores, not chores, but one of the things that I had the responsibility of doing–we lived on the second floor of a two flat at the time. I would go down in the morning and get the newspaper. In the 1930s I, of course, read the sports section; but I can remember very clearly reading about the Spanish Civil War between the Franco forces and the Loyalists. I was a Loyalist. I do not think I am capable of being neutral on anything, except when I was judging until all the evidence was in. Then I became a partisan. I can remember reading it and I have said many times that, if I had been old enough, I probably would have joined the Abraham Lincoln Brigade and gone to fight against Franco and that would have ended the judicial career for me because the Abraham Lincoln Brigade was ultimately pilloried; unjustifiably in my opinion, but nevertheless.

TS: You were only 10 years old when that war broke out, the Spanish Civil War?

PM: Sure. The relationship that I had – I mention my dad so much and it is not fair to mother because my relationship with her was very good and very strong. Dad was a very very bright guy and our relationship with each other, our physical relationship terminated when I was eight years old when he had the heart attack, January of 1935. So our relationship – we had just started doing physical things together.

Anyway, my relationship with Dad – I started fishing with him. I can recall catching my first small mouth bass while I was fishing with my father and it was just really good. It was a miracle that he lived in those days because coronary artery disease, coronary thrombosis they called it, devastated him. We were very lucky that he survived that first attack. Then he had a couple of others, minor ones.

In any event, our relationship became intellectual, even baseball. We were not just people that sat there and said, "Hey good, they are winning. They are losing." He had this meticulous method of keeping score, which I still use, and he would compare his scorecard with the *Tribune* box scores the next day. If they did not jive, he blamed it on the announcer. He would be listening, we will say to Bob Elson, and he would say "Elson made a mistake yesterday." So he would switch to Pat Flanagan and he would stay with Flanagan on WBBM until it did not jive again and then he would switch to Hal Totton on WCFL. He taught me the same thing. So even baseball was intellectual.

In 1938, along about there, he gave me Clarence Darrow's autobiography, *The Story of My Life*, and said, "I think you would enjoy reading this." *Ideas Are Weapons* is a collection of political essays that were gathered by Max Lerner, who was one of the lefties of his day. I remember reading a book called *Company K* which was a diary of trench warfare in World War I. We had this relationship. He was an avid radio listener. He would listen to Father Coughlin. He did not agree with Coughlin, but he would listen to Coughlin.

My brother Pete went to work for the old *Chicago Times* which ultimately became the *Sun-Times*. It was a tabloid, like the present *Sun-Times*. He was a suburban reporter for the *Times* and when the war in Europe really escalated in 1939; when Hitler invaded Poland in 1939, the *Times* discontinued its suburban coverage to devote more space to the war. So Pete was out of a job. He then went into public relations work and ultimately into advertising. He was a very successful advertising manager.

But the war had an effect, even in those years. I remember the controversy over the Lend-Lease Act very vividly, and Franklin Roosevelt's run for a third term. Oak Park and River Forest were very very Republican, conservative communities. That was sinful for a man to run for a third term. They had a pretty good candidate too. I have always admired Wendell Willkie. Of course, he was a damn good lawyer too and a Hoosier. But I would say the

war had an effect. And then, of course, when we got into it in December 1941 – Dad was dead by this time – there were little things that were done to remind me that you were in the war. Mothers saved bacon fat and they washed out the cans and flattened them out and turned them in. They would use food stamps.

TS: Victory gardens?

PM: That was above me. That was a little too sophisticated for me. Subsequently I learned that they had used – Franco had collaborated with Hitler and that they had used the Spanish Civil War to prepare the German military – no not until the very end. It is interesting. Oak Park was overwhelmingly a gentile community, but I had a couple of good friends in grade school who were Jewish. Lois Kaplan and I were good friends. I subsequently realized that Lois was Jewish, but that did not mean anything to me at the time. She moved on before we graduated from grade school, a very bright girl, and other Jewish people. The Holocaust I must say was not known.

TS: Until 1945.

PM: That is true. I think there were those who suspected it, but that is right.

CTF: Going back to law school, how did you get your clerkship?

PM: In old Altgeld Hall, down at the University, we had one bulletin board. That is where the law school was in the old days, Altgeld Hall. It had been the library. It was named after Governor Altgeld. So I am looking at the bulletin board one day and there is a little sign that says Dean Harno would like to see Prentice Marshall. If I had been in high school when I saw that, I would have said, "Jeez what did I do now?" or "What did they catch me doing now?" I went in to see the Dean and the Dean said, "Judge Lindley needs a law clerk." I have two questions: One, who is Judge Lindley? And two, what is a law clerk? "Well, Judge Lindley is just our most distinguished graduate." Shortly thereafter, I argued a moot case before Judge Lindley, but I had not at that point, as I recall. In any event, the Dean told me a law clerk is a research assistant and it pays about $350.00 a month, which was a lot of money.

So I went over to Danville. The Judge lived in Danville and by this point in his career he had been elevated to this court, the Court of Appeals. He had been a district judge from 1922 to 1950, I would say. Then he was elevated to the Court of Appeals and Ted Scott was his then law clerk. I went over and I walked in and he stood up and shook hands with me. Never asked me to sit down and then he sat down back of his desk. He was a very small person in physical stature. Intellectually he was truly a giant. He was a small person and he is sitting there and said, "So you want to be a law clerk?" "Yes, sir." "When can you start?" "Anytime after graduation." "Are you going to take the bar?" "I have already taken it." I had taken it before. In those days you could

take the bar with eighty hours of credit. I said, "I have already taken it and passed it." "You passed it and you have not graduated yet?" I said, "Yes, sir." "Are you a member of Phi Beta Kappa?" I noticed he had a Phi Beta Kappa key sitting on his little tummy. "No sir I am not." He said, "Why not?" Well, the real reason was that my grades were not good enough to be Phi Beta, my undergraduate grades. But I had a clever excuse. I said, "Judge, I was not in liberal arts and sciences, I was in a Division of Special Services for War Veterans which was a program in which you could take whatever you wanted. The only mandatory course was freshman rhetoric." "Oh" he said, "The Dean says you are a good fellow, good person. Get in touch with Ted Scott and make arrangements for when you start" and he stops. "I will see you in Chicago."

That was it. That was the interview; no resumes, no writing samples, nothing. Then he stood up again and shook my hand and I walked out. "Well, I suppose I will be seeing you in Chicago." And the next time I saw him was up at 1212 Lake Shore Drive.

Lorelei and I took a little vacation and I got in touch with Ted Scott. Went up, he told me how the job was handled and he said, "I am quitting, I think the first of July." We did not sit in the summer time in those days so for the first four weeks or so there was not a great deal to do. But Judge Lindley in those days not only was on the Court of Appeals for the Seventh Circuit, he was also on the Emergency Court of Appeals which dealt with price stabilization.

When I became the Judge's law clerk, the Chief Judge was J. Earl Major and the associate judges were Nathan Swaim from Indiana, Otto Kerner, Sr. from Chicago, Philip Finnegan from Chicago, F. Ryan Duffy from Wisconsin and Judge Lindley.

CTF: Judge Lindley was appointed by a Democratic President.

PM: Right. Well he was appointed to the district court by President Warren G. Harding, proving that everything Harding did was not wrong. Have you ever heard the story of Judge Lindley's appointment? I will tell you that story and then we will take the lunch break and I will be back. Now this story is told to me by J. Earl Major, then the Chief Judge of the Court of Appeals. Judge Major's chambers were right next door to Judge Lindley's chambers and Judge Major's chambers were up in the upper northeast corner of the building and Judge Lindley was immediately south of him. Judge Major's law clerk was Jack Ott, and I was Judge Lindley's law clerk and I can tell you stories about my relationship with Jack. But Judge Major tells this story. He told me one day he was sitting in his chambers here visiting with Sherman (Shay) Minton who was then a judge of this court. And Betty McClean, Judge Major's secretary, came in and said, "Judge Minton, the White House is on the phone." He picked up the phone, "Hello, hello you old son of a bitch." "Yeah, I am fine." "You what?" You want me to come to Washington and sit on the Supreme Court? I do not believe this." "Will I do it?" "Well, I do not particularly want to, but I will do it

on one condition and that is that you appoint Walter Lindley to be my successor on this court." "Who is Walter Lindley? Well, I will tell you one thing. He is a Republican, all right, but that is the deal. Okay. I will see you. Good-bye." He hung up. That was the President, Harry Truman.

J. Earl Major was just the most loveable man. Earl Major is such a neat one. But he said, "Even as I tell the story, I cannot believe that he actually called the President of the United States a son of a bitch." But they had been desk mates in the Senate. Truman and Minton had been desk mates and their friendship never withered.

I will tell you another appointment story. Truman, you know that is why things are so different today. I do not know whether either of you knew Edward Tamm, but Ed Tamm was a very fine judge of the Court of Appeals for the District of Columbia. He and I became close friends through the National Institute for Trial Advocacy (NITA). Well, Ed Tamm was the Assistant to the Director of the Federal Bureau of Investigation, Director Hoover. President Truman and Cardinal Spellman and someone else wanted to have a private, unpublicized meeting to discuss something. Judge Tamm never told me what the subject matter on their agenda was but he arranged for them to meet at a restaurant in New York, and cased the joint to be sure that it was all secure and whatnot and then these three guys,

CTF: Was this in the '40's?

PM: This is while Truman is President of the United States. It is in his term 1948 to 1952. He arranges the meeting, which goes very smoothly. The President meets him because Ed Tamm is there himself to be sure that everything is taken care of. When he told me this story, he said some months later he got a phone call, picked up the phone, "Mr. Tamm." "Yes." "The President would like to speak to you." "Yes sir. Yes sir. Would I like to be a United States District Judge? Yes sir, I would. Thank you very much sir." He hung up. The President had called him personally and said, "I want to appoint you to a vacancy on the District of Columbia District Court." The American Bar Association raised hell. They said he was not qualified. Then later, when he was elevated to the Court of Appeals, they said he was very well qualified. I can remember sitting with Judge Tamm. We were together out in Boulder at the NITA, the first NITA session, and someone realized that and they said, "Well Judge, what did you think of the ABA ratings?" He said, "They were right both times. I was unqualified to be a district judge, but by that time I was very well qualified to be a court of appeals judge." Wonderful man, Ed Tamm. That is something. The President of the United States calling people.

TS: I do not think that happens anymore.

CTF: Well, they call the Olympians and they call the Super Bowl champs. NBA champs, Michael Jordan. But they do not call judges. Before lunch, we were just talking about Judge Lindley's appointment to the Court of Appeals.

PM: When Judge Minton was elevated to the Supreme Court.

CTF: We did not put this on tape. Maybe we could do it now. You were mentioning about Judge Lindley's first appointment of an attorney in a capital case.

PM: Well, it was not a capital case. It was a life sentence, out of Indiana. He appointed my law clerk predecessor, Ted Scott, to represent a man named Leroy Hunter and the issue was whether Hunter had had counsel and was he entitled to counsel. The habeas trial judge was Judge Swygert. He was fairly new on the bench at that time and the common law record read something like, "Comes now the defendant, Leroy Hunter, and with his counsel he also comes," or something like that. There was case law to the effect that the common law record spoke absolute verity. That was the language. "Absolute verity." But in the habeas trial, Hunter had called a witness, a former deputy sheriff, who was asked "Do you recall the trial of Leroy Hunter?" "Yes, I do." He said, "I recall it very well." "Did Mr. Hunter have a lawyer?" "He did not. Leroy Hunter sat there all alone." I think that is an accurate quote too.

So the judge appointed Ted Scott. Ted argued the case and the case was assigned to another Judge. I cannot recall who the three judges were but Judge Major was one of the three. I cannot recall who the third one was. And Judge Major, I think, wrote an opinion affirming the denial of the writ and Judge Lindley said to me "What do you think about it?" I said, "Well, the testimony was that he did not have a lawyer and the common law record said that he did. But the testimony should control." He said, "I think we are going to do that." So he wrote a dissent and that swung the other person, the third judge, over. But Judge Major became the dissenter, I think it was Judge Major. Anyway the judge ended writing a decision, first finding that he did not have a lawyer and second finding that he was entitled to one. Now this was well before *Gideon v. Wainwright* and all that stuff. Leroy Hunter was released from the clutches of the law. I was so thrilled with that, seeing Ted argue and so forth.

When I left, the last day that I clerked, I went to every judge and told them that I was leaving and that I was available for appointments. I started practicing with what was then Johnston, Thompson, Raymond and Maier on June 29, 1953. On June 30, 1953, I was appointed to represent Ernest Cook and I got Ernest a new trial. And I went down to Peoria, and tried the case in January of 1954. After that I was appointed to represent a fellow named Davis.

CTF: Was *Cook* in the federal courts?

PM: *Cook* was in the federal court. It was a narcotics prosecution and the colloquy at the arraignment was pretty close to this. The court: "What is your name?" Answer: "Ernest Cook." The court: "How old are you?" 20, 21, whatever he was. "Do you have a lawyer?" "No." "Do you want a lawyer?" "No." "How do you plead?" "Guilty." "Seven years in the penitentiary." That was it. I still have the briefs down in Florida.

CTF: Who was the trial judge?

PM: I do not think it was Omer Poos, I am not sure, I have those briefs in my study down in Florida. Anyway, they set it aside, set aside the guilty plea, sent it back down whereupon I was appointed to represent this guy. I went in and told Judge Floyd E. Thompson who was one of the senior partners. He was very upset. He was as big a pro bono guy as Bert Jenner was. But he also said that it is very unfair of him to appoint you to go to Peoria. So he said go down there and kick butt. Well, I went down there, I did not kick any butt, but I tried my first jury case alone. Bob Oxtoby was the Assistant U.S. Attorney. A fellow named John Stoddard was the U.S. Attorney. I will never forget it. I had never tried a jury case, I had watched a couple – I am only practicing law five months at this point and I had tried a bench case with Judge Thompson. But anyway, I did all this reading on jury selection and so forth and went down there and the trial judge said to the young lady in the first seat in the first row "What is your name?" "Mary Smith." "Where do you live Miss Smith?" Such and such an

address. "What is your business or occupation?" "I am a school teacher." "Very well." Next man, "What is your name?" "Joe Jones." "Where do you live?" Such and such an address. "What is your business or occupation?" "I am a shoe salesman." He asked three questions of each of the twelve jurors. He said, "I tender them to the government." The Assistant United States Attorney stood up and said, "We accept the panel your Honor and tender them to the defense." So here I am, five or six minutes into my first trial and I have twelve of them sitting in my lap. So what do I do, I stand up and say "We accept the panel, Judge." But, we won two of the seven counts. The first time he had sentenced him to seven years, this time he gave him twenty-one months and he had already done about twelve.

But then Circuit Judge John Hastings asked if I would represent a guy named Larry Bardin who had been in the beer business in Indianapolis, the Indianapolis Brewing Company. He was prosecuted and convicted of income tax evasion. It was a pretty big case. There was no money in those days and Bardin was tapped out. He did not have any money. Judge Hastings asked me if I would represent him and I said, "Yes." And the first thing I did was get him released on bond. After we lost the case two to one – and there is a long story about losing it that I will not get into. Bill Batchelder, who had been Judge Swaim's law clerk, was then clerking for Justice Minton. A certiorari petition was filed except it would have been plain error. The prosecutor did a terrible thing legally, I do not mean morally. Judge Swaim called and he said, "Pren, is

that fellow going to surrender?" I said, "I expect him to do so, Judge." And he said, "Well, I want you to get him in here right away." I thought, "Wait a minute."

CTF: You are the bondsman.

PM: I am not the bondsman either. I am just his lawyer. It picked up a lot of flack in Indianapolis when he granted bail pending appeal. Bardin was not well liked and the *Indianapolis Star*, I think it is, raised Cain about it. But anyway, Larry Bardin did his time.

I will tell you what happened. He was represented by a fellow named Wesley Deirberger. He was not going to testify. The lawyer made that known to the government. Nothing was said about it in opening statements but he said, "I just want you to know that he is not going to testify." The government called his brother, Alvin Bardin, who had been in partnership with him in this brewery. Alvin was not charged with personal income tax evasion but he was represented by Maurice Walsh, the great Chicago defense lawyer. They made it known that Alvin would not testify. He would invoke the privilege and Judge Steckler, who was the trial judge, permitted them to call Alvin and question him in the presence of the jury while he invoked the privilege. No objection by Bardin's lawyer. Now it comes to closing arguments, and Marshall Hanley was the U.S. Attorney, and he comes up and in the middle of his closing argument

and said, "Now, of course, the defendant does not have to testify so we brought before you the person who best knew the facts, his brother Alvin Bardin, and you saw what he did. He refused to testify on the grounds that it might incriminate him." Finally, there is an objection. "I object judge." "Sustained, the jury will disregard it." No motion for a mistrial or anything. So we get to the Court of Appeals. Schnackenberg was on the panel and Finnegan was on the panel, and I forget who the third judge was. It might have been Judge Swaim. Anyway, I wait and wait and wait for a decision. One finally comes out. Schnackenberg writing, Swaim concurring, Finnegan dissenting. I subsequently learned from my friend Bill Batchelder. Bill was not a tattletale but you know. I read the dissent by Finnegan. It was something I had not argued. The Supreme Court, before my argument but after the briefs were written, had decided the *Holland* case (*Holland v. U.S.*, 349 U.S. 121(1954)) which dealt with instructions and the sufficiency of circumstantial evidence in a net worth income tax evasion case. Wes Dierberger had not argued anything about instructions. Shnackenberg would not. What are we doing? We are reversing on a ground that was not even argued. I vote to affirm. Swaim went along, Shnackenberg then wrote a very short opinion, affirming and Finnegan's opinion was turned into this dissent. So I lost it.

CTF: Did Finnegan do his own work?

PM: I do not know. While I was clerking, he had an older retired professor from DePaul. I cannot recall. I really do not know. Judge Finnegan's appointment was kind of interesting. He was the brother of the publisher of the *Chicago Times*. This is before the *Sun* and the *Times* merged. The *Times* endorsed Harry Truman for President in 1948. It was one of the few metropolitan papers to do that. Finnegan had been a Circuit Judge in Cook County, a trial judge. All of a sudden, he is a judge at the Court of Appeals. There is Harry Truman at work again.

Judge Finnegan was a nice man. That was a very congenial court. They ate together every day. There was a restaurant over on Division and Dearborn, Balentine's. The judges would walk over there together, have lunch there together and come back. The law clerks, Jack Ott, Bill Batchelder and I and Ken Carrick and Joe Thinnes; the five of us used to go to Drake's at the northwest corner of State and Division where we had soup and pie and a cup of coffee for 55 cents and we would tip the waitress a dime.

CTF: When I was working for Judge Swygert, you represented a prisoner on a Section 2255 petition. Swygert had sentenced him as a district judge. Swygert had this long soliloquy saying, "You are a young man and you are going to get a fresh start when you get out of jail" – then he sentenced him to 25 years. By the time I worked for Swygert, he had changed. He said he was embarrassed about the sentence.

PM: I cannot recall what we argued on the Section 2255 petition. It was without merit. But I am pretty sure Trumbly is the guy that stuck up banks disguised as Santa Claus. Well, the first time he was nailed coming out of the bank and he went to prison. He got out of prison. He did it again. He got nailed again. The third time, he got away. But they caught him soon thereafter and there was other circumstantial evidence and they put in the two priors, the prior crimes were admitted. So he got nailed again.

Then I had a guy from East St. Louis, I had about six cases up here and I won three or four of them. Then I did a lot of appointed work at the state trial courts.

TS: I remember you took a case to the Supreme Court for the Seventh Circuit Bar Association.

PM: Well, I forget exactly, I think the Seventh Circuit asked me, but Judge Cummings who was then in private practice, he asked me if I would do it. The lawyer in question, we will leave his name out, was a young associate with Walter at Sidley and Austin and it was very embarrassing and very unfair. Walter asked me if I would take it on *certiorari,* which I did. Then Judge Cummings told me he had been the Solicitor General under President Truman and argument was available at the Solicitor General's office. This is one of the really exciting moments of my career. I do not know whether it is

still available. But in those days, with the volume of cases much less than it is today, when you had a case, a *certiorari* petition against the government that was being handled by the Solicitor General – which is to say almost all cases, and certainly all criminal cases – you could ask to be heard by the Solicitor General. You could argue the case and one of his deputies would argue against you. The purpose was to urge the government to confess error before going to the Supreme Court.

The Solicitor General was Thurgood Marshall. This is after he had been on the Second Circuit. Now he is the Solicitor General. Subsequently he is appointed by President Johnson to the Supreme Court. Really, I will never forget it. The Solicitor's office, in those days at least, was a big ornate office; sort of French provincial. And behind the huge desk, no coat, and as I recall, we would smoke a while. Thurgood Marshall was a heavy smoker. But I presented my argument, his deputy presented an argument, and he said to me, "Well, Mr. Marshall, you acknowledge the fact that your client was guilty as hell." And I said, "Judge Marshall, that is really not an issue." "Oh," he said, "It is always an issue." And he then reminisced about his days on the Second Circuit. It was just a thrilling experience, and at the end of it all, he said, "Well, I will tell you what I am going to do." He said, "We are not going to confess error because that is very difficult to do." He said, "You know we have to maintain our relationship with the court." He said, "I will do this and I will tell you right now I will do this. We will file a statement saying we have no objection to

granting a writ of *certiorari*." The court granted it and sent it back. There was never a published opinion and they sent it back and they reargued it and it was affirmed but it was such a wonderful experience.

When I was appointed, when a criminal case was assigned to me, my practice was to go to the Clerk's Office, get the record and read it. And if it looked to me like the guy was guilty and he had a reasonably fair trial, that was it. If that record raised any question in my mind about his guilt, I said I did not care what the brief said, I was looking; when I read that record, I was looking for error. It was very interesting, I am going to say this, but it probably ought to be edited out, because it rejects the position of Justice Marshall whom I regard as one of the great lawyers of my lifetime, if not, I think he is one of the great lawyers in the history of the country. I have his picture in my offices here in Chicago, big beautiful colored portrait of him.

But anyway, that was Judge Cummings, not then a judge.

TS: He was President of the Seventh Circuit Bar in the early 60's. Could he have asked in that role?

PM: Well, I knew Walter. In fact, I made a list of lawyers that I admired when I was clerking for Judge Lindley, who told me when I took the job with him, one of the great things about the job is you are going to see some really fine lawyers and

then go ask for a job. Walter Cummings was on that list. He was a very able appellate lawyer, very able. He was on that list; Ed Johnston, a number of really fine lawyers. I applied for a job with Sidley and Austin. I went around applying. I went in to Judge Lindley and I said, "Okay, Judge, here is a list of lawyers that I am going to apply for a job with and I would like you to look it over." He went down the list and one of them was William Scott Stewart who was a great criminal defense lawyer in those days. He said, "Why do you have him on here?" "I have heard him argue a couple of cases. He is brilliant." He put a line through his name. He said, "Do not go looking for a job with that guy." Nothing else said. He said, "Do not go looking." And I did not. The judge knew something I did not know and that was enough for me.

TS: Did you ever learn what it was?

PM: Nope. Never asked. Then there was another one on there; Joseph Cotton, of Cotton, Truckman and Watt. He pointed to him and he said, "I am kind of curious about him." And I said, "I have heard him argue a couple of cases here and he is brilliant." Cotton was a big labor lawyer and in the early 1950's, we were going through the anti-communist attacks and Cotton argued a couple of denaturalization cases where people's citizenships were being revoked because they had failed to disclose in their applications for citizenship that they had been members of the Communist Party in some European countries. I went to Mr. Cotton and interviewed him and he had my resume and he said, "Do you

know what kind of work I do?" I said, "Yes, I know what kind of work you do. I am interested in it. I would like to talk to you about it." He shook his head and said, "I cannot believe this," but he was very cordial. It was a small firm and they did not need anybody. I was interviewed at Sidley. It is hard to believe what it was like in those days. They did not need anybody. Ken Burgess had taken a liking to me too and he arranged for me to be interviewed by AT&T out in New York.

TS: How did you land with Jenner and Block?

PM: Well, it was a combination of things. One, they were on my list. I had heard Floyd Thompson argue, I heard Ed Johnston argue, Jim Sprowl, and these were great, great advocates; all of different temperaments. Judge Thompson argued a case just right after I had agreed to go with them. Very interesting criminal prosecution out of the Cicero riots of 1950 and after the argument, Judge Lindley said, "Well, what do you think Prentice?" And I said, which was our practice, "Judge, I do not think I should say anything because I have agreed to go to work with their firm." He said, "I will do this one on my own," which he did. Eight out of ten cases he did on his own. Writing an opinion reversing and remanding the case. And when it goes back to the trial court, Judge Thompson said to me and a guy named Deit Knodell, "You boys are going to try this case this time. I am not going to try it," because there had been a special prosecutor the first time, Leo Tierney from Mayer, Meyer, Austrian and Platt, but the

second time around AUSA Jim Parsons (later a district judge) was going to prosecute. Leo was a temporary special prosecutor, all stemming from the fact that Otto Kerner, Jr. was the U.S. Attorney at that time and he was a Bohemian from the West Side and this had occurred in Cicero and the NAACP, as I recall, did not think he would be an appropriate attorney on the case. So they appointed a special prosecutor against the Chief of Police and a couple of others. It was reversed and properly so. *United States v. Konovsky, United States v. Brani et al.*, 202 F.2d 721 (7th Cir. 1953) So we go back down and at this point Judge Thompson calls me and Deit and he says, "I am not gonna try this case, I want you boys to try this case." So I said to him, "I do not know if I should be involved in it, Judge Thompson. I did not work on the case, but I was Judge Lindley's law clerk when he wrote the opinion reversing it." "I do not give a Goddamn" he said. Well, I was still uncertain about it, but we went over to see Jim Parsons and Jim Parsons said, "We are going to dismiss it." We chalked up our first big victory.

CTF: Who were you representing?

PM: We represented Chief Konovsky, I believe. Or maybe it was Lieutenant Brani. What it was, it was the Harvey Clark situation. *Clark et al. v Sandusky et al. Appeal of DeRose*, 205 F.2d 915 (7th Cir. 1953) Harvey Clark was a college-educated African American who drove a CTA bus. It was not the CTA then. It was the Chicago Motor Coach. He rented an apartment from a woman named

Camille DeRose, an apartment in Cicero. I doubt that he and his wife went there. The Chief of Police opposed the move, "There is no reason. I am not going to give you any reason. You just cannot move in." So Harvey calls the NAACP, I do not know whether he talked to Thurgood Marshall or not, but he ends up in George Leighton's (later a district judge) hands. He has the lease. Now I am telling the story the way George tells it. George says that, "I read that lease, and read it a couple of times. I do not understand what this is about. By this time Clark has heard the reason that he does not move in is because he is colored as we said in those days. I said, 'I do not see anything in the lease about your race or anything, I think you can move in. Let's get the movers and go out there.'" So they went out.

Well, a riot ensued and Adlai Stevenson was the Governor of Illinois at the time. He called out the National Guard. It was very, very serious. The Clarks ended up moving out. Camille DeRose filed lawsuits as the landlord. A special grand jury had convened in Cook County and George Leighton was indicted for inciting a riot. Honest to goodness! And he goes out to the Criminal Courts Building at 26th and California with Thurgood Marshall as his lawyer. Tom Kluczynski, as I recall George's story, is the Chief Judge of the Criminal Courts at that time and all arraignments in those days were before the chief judge; and then he assigned the case out. Tom knew George very well. "You are George Leighton?" "Yes." "You know you have been indicted for inciting a riot." "Yes." "Do you wish the indictment to be read?" "No, your

honor. I waive the reading." "Well, we will assign your case to so and so." "Thank you very much, Judge." He turned to leave and at that point. They called another case up. The defendant comes out and Judge Kluczynski says to the defendant, "Do you have a lawyer?" "No sir." "Do you want a lawyer?" "Yes sir." "Mr. Leighton, would you come back here please." He calls George back and he says to the defendant, "I would like you to meet George Leighton. He is one of the greatest lawyers in the City of Chicago. Mr. Leighton, I would like to appoint you to represent this man." George says, "I am happy to do it, Judge." The charge against George was ultimately dismissed.

CTF: Who was the State's Attorney?

PM: This is 19__, it could be John Boyle.

TS: Early 1950's.

PM: Boyle was defeated. I think in 1952 by John Gutnecht. Gutnecht was defeated in 1956 by Ben Adamowski. I do not know who it was. Well Otto Kerner was the U.S. Attorney when the Cicero guys were indicted. It is a remarkable story. They end up being exonerated. Judge Thompson represents these guys, one of the guys from Cicero. They were convicted. The principal grounds for the reversal as I recall was that there was a guy named Eddie Silverman who professed to be a Communist. His father was a furrier in Oak Park and Eddie

and I had gone to high school together. He was a year ahead of me. He was kind of a mixed up kid politically in high school. I forget exactly what his affiliations were in high school. Anyway Eddie passes out literature at the gathering encouraging a riot and it is one of these double agent things. He wants there to be a riot. He is a Communist. He purports to be the lover of the downtrodden and the oppressed but he wants there to be a riot out there so that he can then say look what the white American establishment does to colored people. For some reason Leo Tierney put that in, he had pictures of Eddie passing out these riot provoking pamphlets. Judge Lindley ruled that there was no connection that Brani and Konovsky had anything to do with the riot.

TS: Why was Judge Thompson called Judge? Had he been a judge?

PM: He had been a Justice of the Illinois Supreme Court. He was 31 years old when he was appointed to fill a short term on the court by Democratic Governor Dunne. Judge Thompson was then the State's Attorney of Rock Island County, Illinois. He was only 31 years old. I have a picture of him in his robe. He had never gone to law school but studied law in a law office. He had not practiced until he became State's Attorney of Rock Island County in 1912. Rock Island was a Republican County. Judge Thompson was a Democrat and he ran a little weekly newspaper out there. The Democratic Party came to him and said, "We would like you to run for State's Attorney." He said, "I am not a lawyer." This came in 1912. There was the Republican Party and the Bullmoose Party and he

gets elected along with Woodrow Wilson and others. So now he is the State's Attorney of Rock Island. He does a good job. He gets himself re-elected in 1916. In 1919 there is this vacancy created by the death of one of the Supreme Court justices. He then gets elected to a full term in 1920. They say "We want you to run for governor." He said, "I will resign from the court first." He resigns. He said, "It is not appropriate for a sitting judge to be running for governor." He runs for governor. Al Smith's nomination splits the Democratic Party and Herbert Hoover is elected. Judge Thompson goes down the tube.

Well, now he is unemployed and in those circumstances, it was appropriate and, in fact, a lot of judges did. He started then practicing law for the first time at what was then Newman, Poppenheusen and Stern. But Newman and Stern both died. They reorganized the firm as of January 1 of 1929 – Poppenheusen, Johnston, Thompson, and Cole. That is why we called him Judge Thompson.

Here is some stuff that will connect in here. Poppenheusen, Johnston, Thompson and Raymond. Cole left and Raymond came in from Omaha, Nebraska. There were three young lawyers there named Stevens, Rothchild and Barry – John Paul Stevens, Ed Rothchild, Jack Barry. They were very good associates. I heard alleged reasons why they left but I am not confident of them. Nothing at all improper or anything, but the three of them left, Stevens, Rothchild and Barry left simultaneously and organized their own firm.

Stevens, Rothchild and Barry, from whence John Paul Stevens was appointed to this court and then to the Supreme Court.

TS: They were ahead of their time.

PM: Now then, there is a big void at the firm. This is a law firm of about 28 lawyers and there is this big gap in the litigation department because all three of those guys were litigators. As is true today, it was then too, litigation was a very significant part of the practice of that firm. So, Bert Jenner gets on the phone and he recruits four guys from the University of Illinois in one class, the class of 1950. Wes Hall, Bill Davenport, Bill Randolph and Deit Knodell. Okay. I know these guys because I am the class of 1951. So, now I am coming out from my clerkship with Judge Lindley and they start rushing me; particularly Wes Hall, my dear, dear friend. All three of them were good friends, but Wes and I were very close. I interviewed here, there. I could tell you a lot of stories about interviewing in those days if you are interested in hearing them. Here, there and everywhere I am interviewing, looking for a job. I mentioned AT&T which said they were going to put me in the Attachment Division. I said, "What is that?" They said, "We own all the equipment. Western Electric makes it. We own it and we do not permit anyone to make any attachments on this." I said, "You mean like those hooks that people have." "Oh yes," he said, "Like that. Little ads in the public phones, yes, we do not permit that." I said, "So what does the person in the attachment department do?" "You tell them to take

those things off and, if they do not, you sue them." So, I start now, "How do I move on from there?" For instance, I am being interviewed; in those days you were interviewed by everybody. I was interviewed by the Vice President and General Counsel of AT&T. Now, he did not talk to me about attachments, he just wanted to meet me. But a man named Quisenberry who was the Solicitor General, and was one heart beat away from being vice president and general counsel, he is telling me. So I said, "How do I advance here?" "You know, you will not stay in attachments too long and we will move you into something else. But," he said, "the real advancement programs here is," he said, "Let's say that a Western Washington Bell opening occurs out in Tacoma and, if you get it, you go there as their assistant general counsel or something. If another opening opens at Texas Bell, and you bid for that, another one occurs at Oklahoma Bell, you bid for that." I said, "Mr. Quisenberry, what happens if I get that job in Texas and the Oklahoma job opens up, but I do not want it." He said, "That never happens." Meaning you do not say no to Ma Bell. I said, "Well, I think I will sleep on it." They offered me $7,500. That was a lot of dough even if it was New York City. That was a lot of money.

So, anyway, I came back. There were other experiences that I could reveal, but I will not. But anyway, I get rushed by Johnston, Thompson, Raymond and Mayer. So I go to the interview. Well, there again I think I was interviewed; there were probably 13 partners and 17 associates. I was interviewed by probably every partner, and by most of the associates.

TS: Lengthy interviews?

PM: Oh yes, half hour or so, sure. So I end up with Judge Thompson. I can see him like it was yesterday. He had this big old desk. He was sitting there puffing on his pipe. He said, well, I do not know whether he called me Prentice or Mr. Marshall. But he said, "We are very interested in you. All the partners are impressed. Will you come to work for us? I think the only open item is your salary. What do you have in mind?" I said, "Well AT&T offered me $7,500 in New York." "Well, Goddamn It! You will not get $7,500 here. It is $400 a month. You can take it or leave it." And I said, "I am taking it."

TS: Nice try.

PM: Then he tells me – It is so wonderful to reminisce about this. I know we are not talking about the court. He said, "Now I want to tell you something. Leon Fieldman and Kenneth Burns have been here since 1951." They were classmates of mine. He said, "They are making $425 a month. I do not think it is fair for you to get that same thing because you have not been here. You will catch up to them in a couple of years." Well Bud Fieldman and Kenny Burns and I became very fast friends, very fast. So this June I am getting $400 a month, and they are making $425. The end of the year I get a $37.50 raise, to $437.50. I go out to have a beer with Ken and Bud. They got a $25.00 raise. So they are at $450.00 so I am closing in on them. The next year, honest to

goodness, that is the end of 1953, the end of 1954, they got, let's say a $50.00 a month raise, I got a $62.50 raise, so now we are even. Two years or a year and a half. That is the way it was.

TS: He lived up to his promise?

PM: Oh, he lived up to his promise. Walter Lindley, Bert Jenner, I enjoyed working with them. Jim Sprowl was a great lawyer. Former district Judge Frank McGarr and I had stuff against each other. McGarr is a great lawyer.

TS: How long were you at Jenner and Block?

PM: From June 29, 1953 to July 31, 1967, 14 years, one month, and one day. Happy years. We could go on and on and on.

CTF: What about your run for State's Attorney?

PM: Now that was fun. That was 1959. That is when I became – he is a very dear friend and I believe I am a very dear friend of his, Circuit Judge Bill Bauer. Bill and I did not know each other until then. In 1958 the Democratic Party in DuPage County was nonexistent. Nobody filed for any of the county offices in November of 1958. A man named Joe Tampac was the county chairman and an organizer for the steel workers. They did not have a penny. So the Democrats

wanted, at least, to run a full slate in the November 1958 election. Bill Guild was the incumbent state's attorney and Bill ran for either county or probate judge. We had both of them out there. I think it was county judge. He ran for county judge and was elected creating a two-year vacancy in the office of state's attorney.

Tom Sullivan and I were practicing law together at Jenner which still by this time I think it is Thompson, Raymond, Mayer and Jenner or something because Ed Johnston had retired. Tom and I are commuters and we are both Democrats. And so there is a special post election meeting of the county committee. We are both precinct captains. That is to say Tom's four democrats in his precinct and I probably have two, Lorelei and me. We go to the county precinct meeting over in Downers Grove. There is talk about him, we did pretty well, we got thirty percent of the vote, blah, blah. Tom and I have done a little research and we know that a special election should be called because the state's attorney vacancy is for more than a year. So we stand up and say we going to demand the special election. Well Joe Tampac, although he is a hard-nosed guy and a tough labor organizer, he is really not inclined to rock the boat that much, but there are a couple of other guys that are. As I recall, one of them was a guy named Tom Dublinski. Tom was always ready to go to the mat. "Yes, let's do it. How do we do it? Who is going to run? Let's nominate Marshall to run." Sullivan and I are the young Turks. So we put together a mandamus petition, we go in and we demand that Clarence Wegemann, the

County Clerk, call a special election in the name of Joe Tampac, who is not real happy about that. Judge Rathje grants it like that. It is open and shut. The statute says do it and it is done.

Meanwhile back at the ranch, Bill Bauer was the First Assistant State's Attorney under Bill Guild. The statute was ambiguous. Well actually there were two statutes. One statute said the County Board would appoint the acting State's Attorney, because there has to be somebody. The other says the Chief Judge of the circuit will. Judge Rathje can appoint Bill Bauer or before he does, maybe not before he can, but before he does; a guy named Bud Waterfall is the chairman of the county board. He appoints a guy by the name of Jack Bowers who is his private lawyer. He appoints him as acting State's Attorney. So Bill Bauer's out in the cold.

TS: Bowers was not even in the office.

PM: No. He had been in the office years before for a year or so. He is out. Okay, so we demand the special election. Well, this opens the door for Bill. So Bill Bauer files in the Republican primary, Jack Bowers files in the Republican party, and another guy named Steven Lee who Bill Bauer and I continue to call Leaning Steve Lee – he had some sort of, I do not know what it was, he looked like he was half in the bag all the time. He sort of leaned when he talked. He

was sober as could be. But in any event, he did not make a very good impression on the assembled citizens.

So I file and a guy named Eddie Jacobs files against me in the Democratic primary. Eddie had run for probate judge in the 1958 general election and lost, but he gained a lot of friends among the precinct captains. He had put up the good fight. So I go into the office after the smoke is sort of settling down and I walked past Judge Thompson's office and he says, "Prentice come in here." You went in when the judge said come in. "Yes sir." He said, "I understand you are running for State's Attorney of DuPage County." I said, "Yes, sir, that is right." "And I understand you got a primary contest as a Democrat." I said, "Yes, sir, that is right." "Well, you are going to lose in the general election, but god- damn it you had better win that primary." So Tom and I went to work. He called on every precinct captain in DuPage County personally.

TS: Every Democratic precinct?

PM: Every Democratic precinct.

TS: Were there precinct captains in each precinct?

PM: Most precincts, but you know a lot of them were like my precinct, like I said two or four voters and whatnot. But we won the primary, pretty handily. Bill Bauer won his primary. Then he and I ran it off. The primary was April 14, I think it was, of 1959 and the special general was June 2. It was a nice compact thing. He and I became very close friends as a result of that. We ran the campaign, both of us did. We talked about the real issues. We did not know each other well enough to take potshots at each other; plus the fact that neither of us were inclined to do it anyway. He won handily. Sixty-forty, I think it was. I got forty percent of the vote, which was quite an accomplishment.

CTF: Was Joe Sam Perry (later a district court judge) a force in the party at the time?

PM: Yes, he was. Well he was not active but he was one of the old mentors. And I called him.

CTF: Was he on the state bench at the time?

PM: No, he was on the federal bench by then. Yes, he was appointed by President Truman. That is another interesting story about the federal judiciary that we will come back to in a moment. But in any event Bill and I became very fast friends and I know, Bill has never said it to me directly but I know, that Bill Bauer was very instrumental in my being appointed to the district court. At that point Bill was very highly regarded in the Republican Party. He had been

appointed as district judge when Sam Perry took senior status. Bill had just been a district judge for a short time. After that campaign we served on a jury instruction committee together. The friendship continued over the years. His wife, Mike, and I were high school classmates though we did not know it until I ran against Bill in 1959.

You know this business about Sam Perry. In 1952, it was early '52, I was clerking for Judge Lindley and there were three vacancies on the district court for the Northern District of Illinois. Two were new and one was a vacancy by death. The tradition in those days when you had something like that in a city like Chicago was a Catholic, a Protestant and a Jew. So Paul Douglas was the senior Democratic Senator. Scott Lucas had lost in 1950, to Everett Dirksen. So Paul Douglas who had won in 1948 was now the senior Democratic Senator, in fact the only Democratic Senator from Illinois. Ben Epstein, who was a sitting state court judge of very high regard, is the Jew. Willard King, who is a very fine Chicago lawyer, is the Catholic. Sam Perry is the chairman of the Democratic Party in DuPage County. He had worked very hard for Douglas in 1948 when he was elected Senator. Perry is the Protestant and Ben Epstein was Douglas's Jew.

Harry Truman's Jew was Joe Drucker who was the grandson of Representative Sabbath who was then the Dean of the House of Representatives. He had been in the House about 38 years. And Alsab, I do not

know whether any of you remember Alsab, the racehorse; but the Sabbath family was in the clothing business. But anyway Joe Drucker was the grandson. He was a municipal court judge in Chicago. His Catholic was Neil Harrington, who was then a well regarded Circuit Court of Cook County judge, and his Protestant was Sam Perry. So they agreed on Perry. He gets the appointment. Those two hardheaded guys could not agree to split the difference on King versus Harrington and Drucker versus Epstein. By default they were never filled until President Eisenhower was elected; at which point Win Knoch and Julius Hoffman were appointed to the United States District Court.

CTF: Was Marovitz ever one of those?

PM: Judge Marovitz was appointed by President Kennedy.

CTF: That is the second time around. He was considered earlier. Where did you live in DuPage County?

PM: In Wheaton. We lived in three different houses. One a little cracker box on Evergreen Street, 1307 Evergreen. Then we bought an old ark of a colonial at 723 Willow which we remodeled. That is where we lived when the kids were first – in fact Connie was born at 723. When I came back from teaching at the University of Illinois, when I was appointed to the court, we lived on Golf Lane

for about five years. Once Connie was finished with high school and had gone on to college, we moved down to Harbor point at Randolph and the Lake.

Let me tell you about my wife too. Let's talk about Lorelei. Lorelei is truly an extraordinary person. I do not say that just because I love her and she is my wife, but she really is a wonderful person. I have known people as honest as Lorelei, but not very many. Tom Sullivan is one of them. When I omit people from a statement like that, that is in no way to disparage their integrity. But Lorelei is really an extraordinary person. She is a writer. For many years she tried to publish in the *New Yorker* unsuccessfully. It is too bad because she wrote good stuff.

Lorelei has been employed in one capacity or another most of our marriage. The first three years of our marriage, she was employed while I was in law school. When we moved to Chicago and started having babies, she stopped working. But when we moved out to Wheaton in 1954, shortly after that, she got a job as a theme grader at Glenbard High School. Later in her career, when we moved down to Urbana, she was a psychological social worker who dealt with mentally disturbed people. Then she was an Illini girl and she moved from department to department. Then we came back to Wheaton and she became school secretary, junior high secretary. Then we moved downtown. She was not sure what she was going to do. So she started studying and decided she would go into business for herself as an administrative trouble

shooter and advertised herself along this line. If you have that project sitting on your desk and just cannot seem to get to it, I will come in and do it for you and I will be on my way. Very successful. She did it for a lawyer. She did it for a couple of other people. Zonta International is a women's service organization somewhat like Rotary. They hired her to do a job. She did it in four weeks time. It had been sitting around for a couple of years. "Okay, thanks very much, send my check to my home address." "We have another project. Would you stay and do this?" "Sure." She stayed. Then she had another project.

Of course she ends up editing their magazine, *The Zontian*. She did a lot of great writing. Amelia Earhart is the patron saint of Zonta. Because Zonta's educational program is in aerospace science and Amelia was their patron saint, she wrote a biography of Amelia Earhart. She retired from Zonta about nine years ago. She is now a genealogist, self taught. She is very adept with her computer, self taught. And she has put up with me for 48 years plus those six years before we got married and all our kids, four children, Hank – Prentice Henry, Jr. – we call him Hank. He is a partner at Sidley and Austin in Chicago. He is doing very well in product liability work, but he does a lot of *pro bono* work too. For a while he was doing reproductive rights litigation with the ACLU, and with the death penalty cases.

Hank is married. He has been married for 26 years and has four children. Shaynee, who is a college graduate, Megan who will graduate next

June, Garrett who will graduate from high school next June, Clare who is a trailer. His wife Kim is outstanding. Hank was born in '52.

Pam was born in '53. She is a lawyer, but not practicing. She is a personnel manager. Her husband rehabs houses. He picks up trashed houses, does a lot of the work himself, rehabs, then rents them. I think at the last count he had 24 houses that he was renting. They have three children, two adopted, one biological. The first adoptee is Amanda who is a bi-racial child, the second is Ian who is a Honduran child, and the third is Austin, the biological child.

Then we have Fred who lives in Bemidji, Minnesota. Fred is an accountant who practices out of his home. Fred is seriously disabled with rheumatoid arthritis. They have two boys, Jacob and Jordan. They live in Bemidji; and you will have to ask them, but I understand they like it. They live on a lake. Bemidji is oftentimes the coldest place in the United States, just south of the Canadian border.

Right after Fred was diagnosed with having it, he took a year off from his then work. He was working for a shopping center chain. He took a year off. Carolyn took a year off from her job. This was before they had children. They toured the country, literally. They drove east to Maine, down the east coast to Florida, over the South to Arizona, Mexico, California, back up north and they

passed up to Colorado and so forth. They traveled up onto the following summer, the summer of 1985. They ended up back at home. They sat down and said okay where do we want to live? We want to live here. Bemidji.

Connie, the baby, she was born during the great primary of 1959. She was the golden kazoo in the primary and Connie will be 38 this coming April. She started college and dropped out when she got married; and has now returned to college, a course at a time. She will graduate college next June. Peter is a computer wizard. He is the information manager with Simpson, Thatcher and Barlett, the law firm in New York. Peter is not a lawyer. He is a college graduate from St. John's. They have three children: two sons, one a sophomore in high school, one a freshman in high school, and a little girl who is seven years old.

All our children are honest, hardworking. They got it from their mother. You know, when I was in the practice, Lorelei at many points was almost a single mother, single parent. I was on trial with Bert Jenner in St. Louis for a year. We commuted on weekends. I was never home. She really raised those kids. In 1967 I became a professor of law at the University of Illinois Law School.

TS: Is that because you wanted to be at home more?

PM: Yes, I think that was it. You know, you never know the mysteries of life, but at that point, Hank was a freshman in high school. My father died when I was a freshman in high school, and I really think, "I am never home with these guys, and Pam's just a year behind him in school." And the opportunity came. Nelson Young, who was my tax professor when I was in school, was still on the faculty. He and I bumped into each other on the street and he said, "Can I come up and see you this afternoon?" Nelson was the tax guy and he did a lot of consulting, and I was doing some tax litigation. I would try anything. Anything that had two legs, I would try it. I thought jeez, he is going to come up and ask me to get involved in some litigation.

The firm was in the Field Building then. I still call it the Field Building. I refuse to call it the LaSalle Bank Building. We talked for a little while and he finally said, "Well let me tell you what I am here for." He said Ed Cleary, who had been my procedure and evidence professor when I was a student, was retiring from Illinois to become a member of the initial faculty at Arizona State in Tempe, Arizona. "I saw you on the street this morning and I just thought, well I have to ask. Would you be interested in teaching? I really do not have the authority to offer you the job." I said, "When do I start? I want to do it but I have to ask Lorelei."

So I went home that night, the kids went to bed, Hank went off to study and whatnot. Lorelei and I climbed into bed. I said, "I have to tell you

something that happened today" and I recounted to her what Nelson had said to me. I did not tell her what I had said to him and she said, "When do we go?" I called Nelson the next day and I said, "Get me the job." I was interviewed and they offered me the job and I took it. The practice was exciting. I really enjoyed the practice greatly. But, as I said, I was never home. I tried cases in Minneapolis, Los Angeles, St. Louis, Wilmington, Erie, all over the place, and a lot of them here. Lawyering, in those days, you did it almost all yourself. I do not think I was ever involved in a case that had more than two lawyers. I would try cases, Judge Thompson and I.

I was working on a case with Judge Thompson. I will tell you the story and then we will call it a day. In about 1955, 1956, 1957, along in there, Judge Thompson was retained by Glass Wax to defend it in an action brought by Johnson Wax Company under the Lanham Act. Johnson Wax alleged that Glass Wax did not have wax, and that Johnson had spent a lot of money educating the people as to using the preservative qualities of carnuba wax, and that Glass Wax's product was mislabeled; and they sought an injunction under the Lanham Act. Judge Thompson put me to work on it. I read all kinds of cases. I wrote a big memo on it, even took a couple of depositions. It was pending in Washington, D.C., I had never been to Washington, D.C. Lorelei and I had two children. So I summoned up my courage one day and I went into the judge, and I said, "Judge, the case that is set for trial, I am just wondering when we are going to Washington so that Lorelei could make arrangements."

"There is no need for you to go to Washington, Pren ." I think by this time I had become Pren. He said, "I can try that case alone." Well, I was crushed. I wanted to go and watch him try it. He was a great guy at sharing responsibilities in a case that you worked on together. The first case that I worked on was with him. I had been practicing law sixty days and he had me examining witnesses. He had me make part of the closing argument in the bench trial. But he said, "No, I can handle that alone." Well, he did. He went out alone, and won it. But that is the way it was.

I tried a lot of cases alone. Bert and I went to St. Louis. We had a local lawyer, Jim Symington, who was the son of the senator. Jim had helped us from an administrative standpoint, but he was in court no more than fifty percent of the time. I tried that case and we had other things going. And we were together about fifty percent of the time, but then twenty-five percent of the time. Bert had something else to do, so I was down there alone. I tried the case alone. I had other things to do. He was down there alone; he tried the case alone. This was a massive lawsuit. Nine months, well actually it was eleven months from beginning to end and we did not work in July and August.

Well, it is very demanding work and it still is, because of the information explosion and whatnot. Back in those days, copies were carbon copies. Today, you know some guy writes a memo and he sends it to Tom Strubbe, but he wants everybody else in the building to know how hard he is working, so he

copies 25 people. They read it and, because they want everybody to know how hard they are working, they write comments on it. We call it "marginalia." So, you know, computers and so forth. So it is still very demanding. It is very hard to have just one or two lawyers in commercial litigation today.

Some lawyers – Addis Hull. Did either of you know Addis? He is now retired from Jenner. Addis started out as we all did, litigation back in the late 40's and early 50's; everybody started in litigation. Addis switched to estate planning, estate taxes, probate and trusts. Addis would take work home at night, but it was always in a little envelope, sort of a briefcase. He would leave, catch the 5:30; come in in the morning, get in at 8:45 and stuff like that. But he would work at home, he had a dictating machine at home, take his little briefcase with him. Take the library at home with you. Today, in fact, we are toying with the idea of whether I will get an electronic library in my study down in Florida. All of the Supreme Court Reports, U.S. Code Annotated. Well, I had better go because I have this committee meeting at the Chicago Bar Association.

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CTF: Today is July 29, 1999. We are in the offices of Bob Stephenson's law firm and we are doing the oral history of former District Judge Prentice Marshall. And with me at this oral interview is Bob Stephenson, long time law clerk and former student of Judge Marshall, and myself, Collins Fitzpatrick.

PM: Okay. Well, fire away, Collins.

CTF: Well, you are about to talk about your first case with Judge Thompson on the Dyche Stadium case.

PM: Sure. The first case that I ever worked on, I was assigned to it two days after I went to work for the law firm on the 29th of June, 1953. On the 30th of June, I was appointed to represent a man named Earnest Cook in the United States Court of Appeals for the Seventh Circuit, as I already mentioned.

Judge Floyd E. Thompson was one of the great advocates in my life. As I stated earlier, he had been a Justice of the Illinois Supreme Court, and had resigned to run for Governor in 1928. He was a Democrat who lost to Louie Emerson, and then went into practice. He was at one of the low points. A lot of lawyer's practice is like a sine curve; it goes up and down, and the judge was sort of at a low point. The General Finance people were going to build a home office building adjacent to Dyche Stadium. They were sued by some single family residence owners north of Dyche Stadium. Frank Czar was the general counsel and he spelled his name, as I recall, just like the czars of Russia. He asked Judge Thompson to represent him. The judge selected me to work with him.

Neither of us had ever worked on a zoning case. So I read every Illinois zoning case. In those days they always went to the Illinois Supreme Court because they involved the validity of a municipal ordinance. We won that case. (see *Bulock et al. v City of Evanston*, 123 N.E.2d 840 (Illinois 1954)). It went to the Supreme Court. We won it in the Supreme Court. The office building was constructed. But here is Floyd Thompson's name appearing in the advance sheets now, in a zoning case. So he starts getting phone calls. "Judge Thompson, we would like you to represent us in a zoning case involving a case in Elmhurst, Illinois." And I could just hear him; I am sure that on occasions he would say, "Goddamn it. I am not taking anymore of those cases, but I have a young guy here who is very good at it." I was the young guy.

Well, you know, trying zoning cases does not turn one's metabolism up very much, but it was trying cases. We had half a dozen or more of them. They were bench trials. I learned how to try a case before a judge. When they were appealed, they went directly to the Illinois Supreme Court. I was involved in a couple of very important zoning cases too. The *Bright* case in Evanston, which was a very important case, involving the exhaustion of administrative remedies before you could file a law suit challenging the validity of the ordinance. (see *Bright v City of Evanston*, 139 N.E.2d 270 (Illinois 1956)).

But the General Finance zoning was my first case, and it was such a delight. Floyd Thompson, we started trying that case in September. I had been

practicing law three months and he had me cross examine some witnesses. We tried it before a Master, Isador Brown, with whom I remained on cordial terms his entire life. His law clerk was Jack Joseph with whom I also have remained on cordial terms all these years. Master Brown wrote a report in our favor. In those days, you then filed objections and exceptions to the master's report. Those objections were filed and the exceptions by the plaintiff's lawyers. We appeared before Judge R. Jerome Dunn, who subsequently became the probate court judge of Cook County. Judge Thompson said to me, "You know more about this case than I do. You argue the exceptions to the report." I mean I am just a kid and he is giving me all this responsibility.

I remember one other thing too. Judge Thompson was not big on *pro bono*. Bert Jenner was. Bert really encouraged Tom Sullivan, Jerry Solovy, me and a lot of other guys at the firm to engage in *pro bono* work, particularly in the defense of criminal cases. I had three or four appointments in the Seventh Circuit. The first was Earnest Cook. I had a fellow named Davis. I had a fellow named Bardine. In any event, Judge Thompson would grumble a little. He would see me in the library and he would say, "What are you doing, another one of those free cases?"

Then he came to me one day and he said, "I was with a couple of judges of the Court of Appeals, and they told me you know how to argue a case up there." I thought, okay. He and I had a couple of cases up there in which he

asked me to participate in the arguments. But he was a magnificent man. Certainly he is one of my ten heroes.

He died in 1960, before the 1960 election. He had sort of a hostility toward the Roman Catholic Church because he blamed it in part for his loss of the governorship in 1928. He really thought he was going to be elected governor. But Al Smith got the Democratic nomination for President and Smith was a Roman Catholic and that split the Democratic Party and Floyd Thompson lost. But he told Tom Sullivan, he said, "I am going to vote for that young man, Kennedy. I am going to vote for him." And then he died before the elections and he could not do it. He was a lion, I will tell you that.

CTF: You had a lot of experience before the Illinois Supreme Court and you got to know Justice Schaefer. We got into it in the earliest part of the oral history in your decision to go to the University of Illinois and to accept a professorship down there. Justice Schaefer encouraged you to continue trying cases pro bono.

PM: Yes, he did. Justice Schaefer, whom I regard as the greatest judge that Illinois has ever produced, and that is not in any way to minimize so many great judges that we have had. But he just was extraordinary. He had been a professor at Northwestern before he was appointed to the court. He was appointed to fill a short unexpired term when Justice Wilson died. Adlai Stevenson, the elder, who was Governor of Illinois appointed him. One day I was visiting

Justice Schaefer in his chambers and he said to me, "Pren, I want to tell you something. You are going to enjoy teaching, I am sure, but you never, never can be sure that you will not want to change and you will not want to come back. Keep your hand in, keep trying cases, on occasion." Well, the first year that I was on the faculty, you do not have time to try cases when you are a new professor, you have four courses and then I taught that summer. I worked as hard that full year as I have ever worked. People laugh at that but it is true.

When you are preparing a course for a bunch of bright law students – Ed Cleary, I did not take his place, but his resignation or retirement from the faculty is what caused me to become a professor there. Ed was the Reporter for the Federal Rules of Evidence. He told me one day, he said, "Just remember this, Pren, you know more than they do." But I will tell you when you have got seventy-five of them out there, and they are all top notch students and they are all competitive, they are all A-type personalities, you have to be prepared. I have seen some who were not, who fell flat on their keister.

In any event the second year that I was there though, I began to try some cases. They were all pro bono. I would say seventy-five percent of my clients were African-Americans. Bob Stephenson, who is here with us today, helped me on a couple of them and one in particular. The last case that I tried as a lawyer was a murder prosecution. We represented a young man named Steve Jackson. We did a good job for Steve. He was convicted of manslaughter,

Judge Birch Morgan gave him probation. He made the probation, kept in touch with Bob and me for a while, but he sort of drifted away. He got a job with the Postal Service.

It was an interesting case. Steve was a sort of community agitator. Cornelius Fortner whom he concededly killed with a gunshot, Fortner fashioned himself as a gangbanger and gang leader. He was fomenting trouble in what we call the north end which is where the black people lived in Champaign-Urbana.

But I kept my hand in. The first case I tried, I represented a fellow who was a postal employee and he bought a color television set and it did not work and he took it back and they would not give him his money back. He got in a fight with the store owners, there were two of them. He won the fight, but they charged him with aggravated battery. He was prosecuted for it. If he had been convicted in those days, he would have lost his job with the Postal Service. So it was very important to him. He asked me if I would represent him and I did. That was really the first case that I had. The *News Gazette* and the Urbana *Courier* were the courthouse papers. At the *News Gazette*, there was a guy who wrote a story at the end of the first day of the trial and you would have thought that I was representing the Rosenbergs or something. Screaming headlines–"Professor represents alleged batterer"-- or something like that. And my Dean, John Cribbet called me that evening and he said, "Pren (he had that

Central Illinois twang), I do not object to you representing that guy, but you damn well better win that case." And so we did. We got a Not Guilty.

Actually as I look back at it – I am really going to sound boastful now, but I think we won every case we had down there. I cannot recall any that we lost. I do not know, I suppose, I tried twenty, twenty-five cases; a lot of them were student cases. Those were the so-called days of rage.

In any event, Walter Schaefer gave me that advice and it really stood me in good stead because when Senator Percy expressed an interest in me – my understanding is and he never told me this and I am not going to use any names when I tell the story – but my understanding is that he had chosen another law professor. He wanted to appoint a law professor to the court. He had chosen another professor and the ABA said that it would not approve that professor because the professor had no trial court experience at all. So Senator Percy said to a committee of lawyers that were not interested in being judges to find a professor that will pass the ABA. And I believe, although Bill has never in any way claimed "credit" with this, but I think Bill Bauer was very instrumental too. He told the committee about me. He had worked with us in our trial advocacy program. I had run against Bill in 1959 for State's Attorney of DuPage County and we became fast friends. I tried cases before him when he became a circuit judge. Bill is one of the finest trial judges I have every appeared before. Boy, he really knows how to try a case. I could never figure

out why he wanted to go to the Court of Appeals. He was just a natural as a trial judge. But he has been a great Court of Appeals judge, too.

CTF: You had another case. You had many more cases, but one in particular which I think makes the point of your views of courtroom conduct.

PM: The flag burning case?

CTF: Let's talk about that.

PM: All right. Well, you know, these were days of unrest on the campus. A young fellow was charged with burning a flag which was a violation of the state statute. He came to me to represent him. I talked to him about it. He first asserted that this is a political prosecution. I said, "No. The statute may be invalid, but you have been charged with violating that statute. I will represent you, but we are going to try it straight up as any other case." Well that was not satisfactory to him. He said that he wanted to make a political statement, so he left my office.

About a week later he came back and said, "I cannot find anybody to represent me, so I will do it your way." So I investigated the case briefly. It did not take a lot and I learned that there were no witnesses who could say that this person set the flag on fire. There were people that could say that they saw

him in the area, and that the flag burned, but no one could say he ignited the flame. So I told him, "This is a knock down. You will be found not guilty at the close of the state's case."

So we go to court, set for trial. I show up for the trial and here he is with his psycho fans, parading back and forth in front of the courthouse with picket signs that say, "Birch Morgan is a fascist pig." Birch Morgan was the chief judge of the circuit. He was the presiding judge in Steve Jackson's case that came significantly later. But it was Birch Morgan who gave Steve Jackson probation and that was a very, very courageous sentence because Steve had been in trouble before, serious trouble. Birch Morgan gave him probation and Steve made good on the probation. In any event they have these signs castigating Morgan. So I told my client, "I am out of here. I told you the conditions under which I would represent you and you breached them."

So I went in and I appeared before Judge Morgan and I moved to withdraw. This is the day of trial. He said, "Professor." He used to call me professor at least in our colloquy. I do not think he did that in the presence of a jury but he said, "Don't worry, I have been called worse things than that." I said, "Yes, I understand, Judge, but these were the conditions that I laid down when I agreed to represent this man and I really want to insist on it." So he said, "Okay, I will let you out." So I withdrew and he continued the case for trial. And as I understand it, I am pretty sure of this, the client came to

Chicago, found himself a fellow with whom I am now well acquainted and I think well of him. He found him and retained him to represent him; and the guy went down and pleaded him to disorderly conduct.

There were a couple other times when I had to tell clients, "No, we are not going to do it that way. We are going to do it this way." I have had clients say to me, "Adios. I will go elsewhere." I think all lawyers encounter that. It is endemic to the profession. There are some clients who believe that it is perfectly all right to lie during the course of the trial and it is not. The lawyer has no business permitting it. The lawyers that I know do not permit it – lawyers that I think well of. Then there are clients that say we want to do it this way, we want to do it that way. But that is the case, I think, to which you refer.

CTF: After you win, in effect, on the manslaughter charge against Steve Jackson, you had a party in the north end of Champaign. We would be remiss if we did not include it.

PM: Steve and his mother Daisy who was a lovely, lovely person – I do not know whether we said it on this tape as opposed to the earlier tape, but Steven was an African-American and his mother Daisy was just a real, real nice person, a hard working lady. She threw a party for us -- for us, I mean Lorelei and me, for Bob who helped me greatly in that case, for Jack De Lemar and his wife.

Jack had been a student of mine, and was now practicing in Champaign. I think we were probably the only Caucasians there. The party was predominantly, if not exclusively as I have just said, it was overwhelmingly African-American. Daisy served this wonderful, sumptuous buffet with prime rib of beef and turkey and chicken and ham and whatnot. I am walking through the line, getting my dinner, and I come upon a crock pot with some gray stuff in it that is kind of gurgling and I did not know what it was. I said to myself, audibly, "I wonder what that is?" And a voice behind me says, "Them's chitlin's." It is a fellow from the North End, one of the "brothers," named Beets Mitchell. Beets was a very nice guy, a trustworthy guy. But he was well nicknamed because I do not know that I ever saw Beets smile. He had a constant frown on his face. And Beets said, "Them's chitlin's." I thought well, I better have some of those chitlin's. So, I took a scoop of them. I went over and sat down, ate them first. Just like I used to eat Brussels sprouts first when I was a kid. I will never have chitlin's again. Never! If the doctor says to me "Pren, it is six foot under or chitlin's," I will say, "Call the guys with the spades, doc, because I am not eating those things again." Yes, indeed, soul food. You know, they are pig intestines, that is what they are. That is what the slaves got.

CTF: You went down to Cairo, Illinois, as an arbitrator.

PM: I went down there as an arbitrator, Little Egypt, the foot of Egypt. That was Jim Crow country down there. In fact there were a lot of Southern sympathizers there during the Civil War. Illinois was a Union state and there was a Union barracks down there.

I was appointed a hearing officer for the Illinois Fair Employment Practices Commission. There was an allegation about a factory down there. Black people who appeared at the main gate to apply for a job were given an application, told to fill it out, and turn it in at the gate. White people were given an application, and permitted to go in and fill it out in the employment office and turn it in, personally, to the employment department. I heard the case and those really were the facts. There was virtually no dispute over the facts. I ruled in favor of the black applicants. I cannot recall the remedy that was awarded, but I ruled in their favor.

The first day of the hearing, I held it in a courtroom. I think that is the first time I ever sat on the bench. I am sitting up there and I look out in the audience. And there is a man of the cloth there. He has a Roman collar on and I thought, that is nice. The clergy was here supporting these folks. Either the first recess or at lunch, I introduced myself and he asked me where was I having dinner that night; and I said, "Well, I really have not decided." He said, "Why don't you have dinner with me at one of the service clubs, the Legion or the VFW, one of those places." I thought, well you know, nobody can criticize

me for having dinner with the clergy. Well, we went to dinner and I think we went to dinner first. I am not sure about this. I may have eaten dinner after he said what he said. He took me out into the section of Cairo that was public housing. It was kind of run down. There was a young black man who was an activist and this clergyman called him, "a communist agitator, no good, and he is behind this whole controversy and these people do not have any claim and so forth." I am not sure whether we had eaten first and then went on this tour or whether we went on the tour and then we ate. I admit that I ate at the Legion or wherever it was that night.

It really shook me up. It is one thing for him to have feelings and it is another thing for him to express those feelings like that to a judge in the case. But Cairo was a strange place. A law school classmate of mine had a little cocktail party for me. He was not involved in the case. All the women at the party were carrying guns in their purses. You walk into drugstores, back of the cash register there is a board on the wall with pegs in it and there are guns hanging up there. They are for sale. They are not just on display. They are selling guns in the drugstore. This is 1969, 1970, along in there.

CTF: How did you get that appointment?

PM: To the Fair Employment Practices Commission? I believe that Paul Simon was instrumental in that. I cannot recall. He ultimately became Lieutenant

Governor in a very interesting situation. Dick Ogilvie was the State Governor and Paul was the Lieutenant Governor, because in those days we voted separately for the two. I am sure he was instrumental in my getting that appointment. It was a hearing. I was not on the Commission. I was just a hearing officer, like an administrative law judge.

CTF: You also served on the Illinois Crime Commission. That is where you met Harlington Wood, Jr.

PM: That is right. In 1963, Governor Otto Kerner was running for re-election in 1964 and the Crime Commission had been created. It was six Republicans and six Democrats. A fellow named Zack Hickman from Danville, who was one of the Democrats, was the chairman. Zack resigned. The Governor called and asked me if I would take his place. He was afraid that, if the Commission remained imbalanced six to five, the Republicans would make political use of it during his re-election campaign. I told him that I really did not approve of law enforcement by exposure. I thought that if a person had committed a wrongful act, he or she should be indicted if it was a crime; be indicted and tried. I would do it because he had requested that I do it and he had been helpful to me. He was then the County Judge of Cook County in 1959 when I ran for State's Attorney and he had been helpful to me and my campaign against Bill Bauer of DuPage County. So I did it. It was on of the misspent years of my life.

But going back again to Paul Simon, Paul was then, I believe, a member of the legislature and he wrote an article for *Atlantic Magazine*, the title of which was something like, "The Illinois General Assembly, a Cesspool of Corruption." Nice low-key title. By the way, I think the world of Paul Simon. I think he is one of the great public servants that we have had. Anyway, there was a demand that his allegations be investigated and we investigated; "we" meaning the commission. We came up with a report that found that there was probable cause to believe that certain members of the General Assembly had acted improperly, had conflicts of interest and so forth. Everybody agreed to that report tentatively.

We met on the day when we were all going to sign the report and have it printed with our signatures on it, and there is a motion. I believe it was Senator Zeigler from Carmi, who is a nice guy. Anyway there is a motion. "Mr. Chairman" – I was presiding that day – "I move that we delete all the names." There was a voice, "I second the motion." I called for the question and the vote was ten to two to delete all the names. We ended up with sort of a crossword puzzle – blank did this, blank did that. It did not take a rocket scientist to figure out who the blanks were, but Harlington Wood and I dissented from that. We did not disclose names because there was a confidentiality clause in the statute creating the Crime Commission, but we filed a dissent protesting this treatment.

I think Harlington Wood and I had been acquainted prior to that, but we became fast friends at that point. And when I was asked by Senator Percy's office if I was interested in becoming a judge, the initial contact had either to do with Chicago or Springfield. But then, within a matter of days or weeks when we talked about Springfield again, I was told that the Senator had selected Harlington Wood for the district judge spot in Springfield, which is what happened. He was appointed and confirmed. He was an outstanding district judge. Now he is on the Court of Appeals, on senior status, as I recall. He was the United States Attorney in Springfield during the Eisenhower Administration. Anyway Harlington Wood is a great, great person – and he likes horses too.

CTF: Describe the process in your selection as district judge.

PM: All right. I received a call one day in my office in Champaign from Joe Farrell. Joe was Senator Percy's chief administrative aide. "Professor Marshall, this is Joe Farrell." He told me he was Senator Percy's aide. He said, "I am calling to find out if you are interested in becoming a United States District Judge in either Chicago or Springfield." I said, "Well, you know, show me a lawyer who has devoted his life to litigation and I will show you somebody who would like to be a United States District Judge."

"But," I said, "before we go any farther, I am a Democrat." He said, "We know that." I said, "I ran for public office as a Democrat." "We know that." "My wife and I were Chairmen of the Citizens for Kennedy in DuPage County in 1960." "We know that." I think I went on to say, "I have never voted in a Republican primary and I have never contributed to a Republican candidate." He said that those things are unimportant. The question is whether you are interested. He was very cordial. I make it sound like it was peremptory, but it was not. It was very cordial. I said: "Yes, I am."

He called me back in a week or so, maybe a little longer than that. He said, "The Senator would like to meet me. Could I come out to Washington?" I went out to Washington, met with the Senator, one on one for at least an hour; I think more than an hour, but at least an hour. He asked me a number of very relevant questions having to do with my background and my representation of clients and what I taught and so forth. At this point, he had no resume. I did not have a resume in those days. He talked about my philosophy toward various issues that were in the courts. At the end of it, he said, "Okay, I have not decided yet, but I want you to know that you are one of my candidates for Chicago." I think I raised Springfield with him again because Lorelei and I and the kids had taken a liking to living in a community like Champaign-Urbana and Springfield was akin to that. Either he or Joe Farrell told me that they had decided to recommend Harlington Wood for that spot, which was a great appointment. I said, "Well, I only have one request, Senator, and that is that if

I do not make it, you not make known the fact that I was considered because I have a bunch of law students that I appear before every week and, while I doubt that it would affect my credibility with them, those are things you just never know." He said, "The only people that will know about this will be you, me, your wife, if you have told her, and Joe Farrell. No one else will know it until I decide who it is going to be. If I decide it is someone other than you, they will never know that you were considered."

Shortly after that, it was in January as I recall, I was home ill and Bob had been my teaching assistant and he was in my office. The call came in. The Senator wanted to talk to me and Bob referred him to my home. I really was pretty sick, had the flu or some viral thing. He told me that he wanted to recommend me to the President. I said, "Can I have 24 hours?" because I really wanted to sit down at that point and talk seriously with Lorelei about it. He said, "Sure, call me back tomorrow." Lorelei and I discussed it and decided we would do it. I called him back the next day and said yes, and he then promptly submitted my name to President Nixon and that did receive attention. There were some understandable objections. I was not a Republican. I was then living in a very Republican district in Central Illinois. It was kind of funny. There was a state representative down there, John Hirshfeld, who was quite active in the Illinois House of Representatives. He called a meeting of the Republican caucus who passed a resolution. I do not know whether they condemned, but they disapproved my nomination by Senator Percy.

I cannot recall how this came out. I did not release it, I knew enough to keep my mouth shut. Someone got ahold of Dick Kleindienst, who was President Nixon's Attorney General, and asked him what he thought of this resolution. His response was (this really helped me), I think his response was, the Constitution says, "with the advice and consent of the Senate, it does not say anything about the advice and consent of the Republican Caucus and Illinois General Assembly." That was sort of a kind of a commitment and they stuck by me. "They" meaning Mr. Kleindienst and the President. It took a little time because those were troublesome times for President Nixon. He was under fire by now with regard to Watergate, although it really did not really materialize, it did not result in his resignation for another year.

I do recall one thing, though. After my name was submitted by the President to the Senate, I was teaching with Bob out in Boulder that summer, the National Institute for Trial Advocacy in Boulder, Colorado. I received a call that I was to appear before the Senate Judiciary Committee for my hearing. My mentor, Edward Tamm, was a great judge then sitting on the D.C. Circuit Court of Appeals. He said, "when you get out there, Pren" – because he was teaching with us that summer in Boulder – he said, "When you get out there, stop by the White House and thank the President. He sets aside a certain amount of time each day, like 15 minutes, for people to come and do this. All it will be is a handshake, but you might get your picture taken with him."

Well, I called the White House and they did not know who I was. Then I called them again from the airport in Denver. They still did not know who I was. When I got to Washington, I called and it was sort of, I felt like I was, and I do not say this disparagingly of President Nixon or of his staff, but I sort of felt like I was dealing with the Kremlin. There was no way I was going to penetrate. So I never had a chance to stop and thank him. I am grateful that he appointed me.

It was a great opportunity, a real challenge. It is really a great job. I have said this before, I will say it again on this tape. I said it in a law review article for the *Arizona Law Review*. I do not think the federal judges are overworked and I do not think they are underpaid. I think they have a great job, great staff, great facilities. These guys that say, "Oh I could make so much more money out practicing law." Yes, and they get phone calls in the middle of the night. They have to worry about whether their bills are being paid, whether the rent can be paid. It is a terrific job. It may be a little tough these days on younger men and women who are sending their children to college. College has become an enormously expensive budget item and it is all post-tax spending. But, other than that, if you cannot live on $135,000 a year, you have problems. That is the way I look at it.

CTF: Why do you think Senator Percy's system suggesting judges to the President worked so well to provide such high quality in the appointments?

PM: Well, for one thing, I believe that Senator Percy consciously disregarded party affiliation, and I am Example A of that. But he also recommended John Powers Crowley and he also recommended George Leighton, both of whom were openly Democrats. George had been very active in the Democratic Party in Chicago and was elected a circuit judge as a Democrat. But that was one thing. Senator Percy really concentrated on quality. He achieved it, when you look at the judges he appointed: Frank McGarr, Dick McLaren, Phil Tone, Bill Bauer, Joel Flaum. I am probably overlooking somebody that I should not overlook, but these were really great judges. Bill Bauer and Harlington Wood and Joel Flaum all were elevated to the Court of Appeals. Frank McGarr was just an absolute rock, an outstanding judge. So was George Leighton. Number one, party did not influence his decision. Number two, he had his staff, particularly Jerry here in Chicago, tour the courthouse about every six months and stop in – and he did it with me several times – and he would say, "Have you seen anybody lately that you think would be a good district judge?" And we would tell him.

I can remember he came to me once and said that he needed to appoint someone from the western part of the district. The Western Division was beginning to develop a backlog and they wanted someone from out in that neck of the woods. He asked me, "Do you have any recommendations?" I said, "Yes, Al Kirkland and Stan Roskowski." Stan was a known Democrat. He had not yet run for the Illinois Supreme Court. Al Kirkland was a circuit judge, a good

track record. He gets the appointment. I think, if I am not mistaken, they swung by the building. It is not just me they are talking to. They are talking to all of the judges. They wanted someone else from out of Cook County, preferably from the north. Jerry and I discussed John Grady, who has had a very distinguished career on the court. John and I had been acquainted in the practice. Party was really immaterial. It was a search for quality. Then he had this little screening committee that he would ask them for candidates, or he would submit names to them. United States district judging was in no way a patronage reward to Chuck Percy, in no way. He did us a favor.

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CTF: Today is July 30, 1999, we were in the U.S. Court of Appeals and we are continuing the oral history of former District Judge Prentice Marshall and the interviewer is Collins Fitzpatrick.

Tell us a little bit about the big cases and your first cases, we talked a little bit off the record about how you had a suit against the Illinois Crime Commission.

PM: When I was appointed, I was sworn in on the sixth of August. Judge Ed Robson was the chief and he urged me not to begin sitting immediately. At that time we had 250 cases, something like that. He said, "Take your dockets, go away for a month, review the dockets. And that way, when you start, you will know what you are doing." So that is what I did. I had all the dockets sent to me. We were up in Green Lake. I reviewed the dockets and one of them was a suit

by a student of Kenwood High School against the Illinois Crime Commission, of which I had been a member, and Charlie Siragusa, its executive director. It rose out of an investigation of the Students for a Democratic Society at Kenwood. The investigation was silly. In fact, I had written to Governor Ogilvie when I heard of this. I am now off the Commission and had been for a number of years. I wrote to Governor Ogilvie and urged him to veto the appropriation on the grounds that this is not what the Crime Commission is supposed to be doing. Well, it was obvious that I could not hear that case. So I recused myself from it.

In those days when a new judge came on and got his or her calendar, if they rejected a case for any reason, it went back to the originating judge and that judge could then send another case of like age and nature to the new judge. This case, the Crime Commission case had come from Frank McGarr, and I sent it back to him and he sent me a case entitled, *Renault Robinson v. City of Chicago.* Renault Robinson was an Afro-American patrolman. I think he was a very able police officer. He was complaining, in a private action in which he was represented by Kirkland & Ellis, of discriminatory treatment based upon his race and a suppression of his First Amendment rights because he had spoken out on a couple of issues with regard to the Police Department. So I end up with *Robinson* against the city.

That summer the United States of America had filed a lawsuit against the City of Chicago alleging that the city had violated Title VII of the 1964 Civil Rights Act. Title VII became applicable to municipalities in 1972 and the government alleged that the city, through its Police Department, was discriminating against African-Americans, Hispanics and women. Also at about that time, there was a group led by a man named Camacho, who was a Latino police officer. They were represented by what is now the Schiff, Hardin firm. One of those cases, I think the *Camacho* case, was pending before Judge McMillan and the government's case was before Judge Parsons. In those days if you thought your case was related to another case, "you" meaning the lawyer, you could appear before the judge upon whose calendar the lowest numbered case was pending, and ask the judge to consider whether he or she would take these related cases. So the government lawyers and the Camacho lawyers appeared before me. I review the pleadings and it was evident that there were many similarities and I agreed to take the cases. So, that is how I ended up in the Chicago Police Department litigation. It was just a fortuitous thing.

Then the government sought a preliminary injunction very promptly. We held hearings, as I recall in January of 1974. We moved that case pretty fast. We held hearings on the preliminary injunction and I granted the preliminary injunction. Then we moved the merits along well too. If I am not mistaken, I decided the merits of the case the day before the preliminary

injunction was to be argued in the Court of Appeals. I really thought that it was desirable to get everything done at once. So that is how it happened.

I thought the evidence was very compelling that the City had discriminated against African-American patrolmen. Discrimination against women was virtually conceded by Jim Rochford who was then the Superintendent of the Police and a very able guy. He made it very clear that he did not want female line officers. Title VII says that you cannot discriminate on the basis of gender. But I suppose, as I look back, that probably is the most significant litigation that I had. *Robinson v Conlisk, et al. (James M. Rochford* substituted 3/14/74 as new Superintendent), 385 F. Supp. 529 (N.D. Ill. 1974) and *United States v City of Chicago,* 385 F. Supp. 540 & 543 (N.D. Ill. 1974). Certainly it was very challenging. It was institutional litigation. The judiciary has learned a lot since then. We are talking about 25 years ago now. We have learned a lot since then with regard to institutional litigation and the judiciary stepping in and managing various public institutions.

That is how I got the Police Department case. I recused myself from the Illinois Crime Commission case and Frank McGarr sent me *Renault Robinson.* Then comes the rest of the story.

CTF: How much of the assignment of cases at that time to the new judges was random and how much were cases that judges wanted to get rid of?

PM: By the time I came on the court, it was overwhelmingly random. I picked up a few cases that I wondered about, but you know, that is a part of it. In the old days, they were all handpicked. I remember when Judge Minor was appointed to the district court from the state circuit court, they just unloaded mercilessly on Judge Minor. He picked up all kinds of antitrust cases and patent cases. It was really unfair, what they did. But I would say overwhelmingly these were random assignments.

I am using this just as an example now. In no way is this accusatory. District Judge Richard Austin and I were friends. I appeared before Dick. I tried cases before him in the state court, and in the federal court. I think we had a mutual respect for each other. And so Dick might have said, "Wait a minute, let's give this kid Marshall a couple of winners." I have no recollection of any particular case. I do know that I did get a case that had been pending for, I think, ten years. I reviewed the file. As I recall there was a motion for summary judgment. I wrote about a three-page order granting summary judgment. It went to the Court of Appeals and I was affirmed. But I would say that, basically, it was random.

CTF: What other cases are memorable to you?

PM: I cannot say they all are because some you do not get involved in, but I had an interesting experience the other day. I received a letter from a lawyer about an

issue that I had decided in 1975 in a Federal Torts Claim Act case against the government involving a young man who dove into some water down in Crabb Orchard Creek and came up a quadriplegic. This lawyer wrote and said, "I am sure that you do not remember this case, but I thought you would be interested to know that a state law issue which you decided back in 1975 is now going to be argued before the Illinois Supreme Court."

Other cases of significance. Well, I had the Immigration and Naturalization Service case, *Illinois Migrant Council v. Piliod*, 398 F. Supp. 882 (N.D.Ill. 1975). That was a very important case. The Immigration and Naturalization Service was really being pretty oppressive out in the truck farming area, northwest of the city. They would go up there and break into the dormitory and line people up, demand their green cards. Their patterns were really quite discriminatory against Latinos. I entered an injunction in that case which was affirmed by an equally divided court in the Seventh Circuit, four to four. The first panel affirmed me two to one. Judge Tone, my former law partner and dear friend, dissented and as soon as I read the dissent, I said, "This is going to be *en banc*." It was. They divided four to four. Harlington Wood provided the tying vote. He said, "I am going to vote to affirm if this little modification is made." So that was, I think, a very important social case. I presided at two of the Greylord judge cases. Circuit Court Judge Laurie was found not guilty by a jury and Circuit Court Judge Reginald Holzer was found guilty by a jury. I thought both results were very perceptive. I presided at the

trial of Roy Williams and Allen Dorfman and others in a conspiracy to bribe a United States Senator. *United States v Dorfman,* 532 F. Supp. 1118 (N.D. Ill. 1981).

CTF: Senator Howard Cannon of Nevada.

PM: Yes. That was an interesting case. Allen Dorfman was rubbed out shortly after the verdict. I think some of the boys figured Allen was going to try to talk his way out of prison. He had been previously convicted of defrauding the pension fund. In New York, he had done a short period of time. When the verdict came in, the government asked that I incarcerate him pending motions and appeals and so forth. This was before the statute that changed the presumption to no release after conviction. I said, "No, I am not going to incarcerate him, but Mr. Dorfman's bond is going to be $5 million in cash" because this was at a time when several prominent criminally convicted persons had fled the country. I said right in open court to Mr. Dorfmann, "You know, I think that you will stay around, but it you should decide to flee, it is going to cost your family a lot of money." The defense came to the Court of Appeals and the Court of Appeals modified the bail; reduced it to a million in cash, plus securities. Allen made the bail and very shortly thereafter he was killed in the parking lot of a restaurant up in Lincolnshire. I really think that the so-called outfit guys figured that Allen would try and talk his way out of prison. I told him, "You and I both know that if I denied the post trial motions, that you are going to

have to go to prison, because you have already been there once on this thing." That was a fascinating case. I suppose that case attracted more media attention nationally than any of the others because Roy Williams was the President of the Teamsters and he followed the pattern of Teamster presidents who were indicted and convicted. So that was kind of fun, sort of managing the media.

There was a neat fellow from the *New York Times* who covered the case. ABC had one of their lead reporters here and I met with the media. We had a very open conversation and I told them, "You cannot expect me or my staff to say anything. So please do not even ask us. But you are welcome here." And we set aside some space for them in the courtroom." It was a very challenging situation.

I remember when I was still teaching. I appeared before the American College of Trial Lawyers and delivered a paper. In it I made a passing remark about frivolous cases, how we should try to screen the frivolous cases. Jack Kennelly was the renowned plaintiff's personal injury lawyer. Jack concentrated mostly on airplane crash cases. He followed me on the program. He said, "You know, I have great respect for Professor Marshall. I worked with him and so forth, but I want to tell him that there are not any frivolous cases as far as the plaintiffs are concerned. There may be cases brought by lawyers who should not bring them because they should investigate and know that, on the

facts and the law, they do not have a valid claim. But the plaintiffs, the individuals, they never think their claims are frivolous. They have been injured in some way and are seeking recompense for their injury." That has always stuck with me. Now sure I have seen some frivolous cases, but not very many of them.

CTF: Would you tend to use the term insubstantial?

PM: Well, of course, there are a lot of slam dunk cases one way or the other. The defense can be insubstantial, the plaintiff's claim can be insubstantia,l but I do not know. I never felt that I should characterize a case as frivolous. I probably did it sometimes, but I never felt that I should.

CTF: You practiced a long time in the state courts. You just mentioned you tried two of the state judges here in Cook County arising from the Greylord investigation. Subsequent to Greylord, we had other state judges who had been prosecuted in the federal courts. What do you see as the problem in the state judiciary, or do you see a systemic problem at all?

PM: I really do not know. It is very depressing. It jades the public's attitudes toward all judges. The public does not distinguish and they hold everybody responsible for this behavior. When I sentenced him, I said, "You have not only injured yourself and the Circuit Court of Cook County, you have injured all

judges because to the public a judge is a judge." You can be a justice of the peace and if he or she is caught on the take, it jades the public's attitudes toward the judiciary generally. And it is so important that the public have confidence in the judiciary. We are the dispute resolution device created by the Constitution. I suppose one can say that there is a question of numbers, there are hundreds of state court judges now. One can say it is a matter of how they become judges. I do not think that it is. I think it is undisputed that it takes money to become a state court judge. Particularly in the electoral process, and contributions are expected.

I heard recently Shirley Abramson who is the Chief Justice of the Wisconsin Supreme Court and whom I hold in the highest regard. She is a brilliant jurist. Last year she ran for re-election to the Wisconsin Supreme Court and she and her opponent, combined, spent $1,300,000 on that campaign. The news was that Judge Abramson spent about $100,000 of her own money and her opponent reportedly spent $500,000 of her own money.

The whole electoral process has become that way, as we know. Politics has become big business. So you get that dollar factor involved. Then it is not just the judiciary that shows up corrupt from time to time in big cities. It is other people as well, and these judges have come up through the political ranks where accepting gratuities and so forth is a whole way of life. I do know this; that the overwhelming - ninety-nine percent of the judges before whom I have

appeared were straight shooters. There were a couple when I was practicing law that I had doubts about, but they are straight shooters. Some are better than others from the standpoint of intellect. Some are more patient than others. But they really try to do an honorable job and I think they succeed too.

CTF: What are innovations that you used in trying cases and settling cases and managing your calendar?

PM: Fairly early on, when I say fairly early I cannot give you the exact date, but I developed a practice of every week my courtroom deputy clerk would bring to me the cases which had been filed that week and assigned to me. I would read the complaints and I would enter a scheduling order right then. The order provided that the plaintiff's counsel was obliged to notify defense counsel when the defense counsel appeared. Now we would adjust that scheduling if need be. I would look at a complaint and I would say "Okay, this case should be tried in six months." I think the longest that I said was two years. But they got a trial date right away. The two years were the anti-trust cases and things like that.

I also required them to make disclosure of the names and addresses of persons having knowledge of relevant factors, and make disclosure of documents. This was bilateral. I had my own Rule 26 and we did not have Federal Rule of Civil Procedure 26 in its present form. Then we would hold a status conference, which I learned from District Judge Hu Will. You would just

take the position with the lawyers that this is the schedule that we are going to follow here. I think it worked. It was the same in criminal cases and arraignments. I was a great supporter of the speedy trial. I thought we had one in Illinois all the time that I was practicing. We had what we call the four term act and the defendant was to be tried within four months of arraignment. I was a great supporter of the speedy trial. At the arraignment, the defendant would be there with his counsel and the United States Attorney and I would say, "Okay, when can we try this case?" We would talk it over and I would say, "This is the date and I do not want either of you to come in here and tell me that you have another engagement." Well of course those things happen and we would have to adjust it, but I think that the secret to moving a calendar is to have firm dates set early in the case and stick by them. I really believe that. Every case on my calendar had a trial date.

Of course they settled. Techniques and settlement, you have got to be very careful when you are trying to settle bench trials because if you do not succeed, the side that says no the last, if they lose the case, they think I lost this case because I did not settle it. There is some truth to that. If they settled it, they would not have lost the case; they would have compromised it. But you have to be very cautious about settling bench trials. I pretty well withdrew from that shortly into my career as a judge.

Jury trials were different. You can be candid with them and you can express what you thought was the fair market value of the case and get them settled. I found the whole institution of settlement very interesting. I saw plaintiffs settle cases for peanuts. I remember one case where the plaintiff was there with his lawyer and the plaintiff had suffered an egregious injury, not physical, but reputation. They were going to settle the case for $3,000, as I recall. I said, "Why are you doing this? It is only going to take three or four days to try this case. What are you going to do with $3,000? Take your chances." He took the $3,000 anyway.

Now when you get into criminal cases, of course, federal judges have been prohibited, and I invited the prohibition, from engaging in plea negotiations. When I first came on the court, that was not so. I had a couple of conferences in which we worked out a deal, as we say, like they do in the state courts. Once the Federal Rules of Criminal Procedures were amended to prohibit it, I never participated in any plea negotiations. But I did reject a couple of guilty pleas. I recall one case where a fellow came in and his lawyer said, "He is going to plead guilty" and I heard the facts and I said, "What is he pleading guilty for? On the basis of what you told me, I have not heard all of the evidence but on the basis of what you told me, you did not commit a crime." The government went down and dismissed the indictment. District Judge Abraham Lincoln Marovitz was the great settler. He was without question. Hu Will was a great settler. I do not know that I was a great settler.

Other things that I did, and I really felt very strongly on this, was handling the jury. I have a very high regard for juries. I have had talks on that. I appeared before a few judges of whom I did not have confidence, but I have never had a jury in which I did not have confidence. I just think they are outstanding. I know when somebody reads this, or hears that, they are going to say there are some crooked jurors out there and, yes, I know that. When we were trying a jury case, I made it a point that the jury was up in the courtroom the day the trial was supposed to start. That jury was in the courtroom no later than 10:00 a.m. If something came up that stopped that, I would go down personally to the jury assembly room and speak to the panel that had been selected and tell them that something had come up and we were not going to get to you until that afternoon. I wanted jurors to feel that they were an integral part of the justice system. Then, when we were selecting the jury, I would tell the lawyers, just ahead of time, I did not hold bench conferences. I told the lawyers, "If you want to be heard out of the presence of the jury, come in in the morning and I will be here. I will stay over the lunch hour with you or I will stay after the close of business of the day, but we are not going to be sending this jury out of the courtroom." During the selection process I would say, "These are adults and they are here to work and we are not going to send them out. We are not going to hold bench conferences. You object. I will rule."

I also would explain to the jury – not during the course of the trial but at the onset of the trial – I would explain to them in very, very loose terms the basic rules of evidence – what "relevancy" means and what "hearsay" means.

We ran a good schedule. If we had a case that was attracting a substantial amount of attention, we would ask the jury not to get the paper, not to listen to the radio or watch television about the case, and do not get the newspaper in the morning. Come in and we will have a newspaper for you and we would find out what they read, the *Tribune*, the *Sun Times* and the *Defender*. We would get the papers and cut the stories out and I would keep a scrap book for them. At the end of the trial, I would give them the scrap book.

After the trial, I always met with the jury. I did not ask them how they arrived at their decision. My opening was, "Do you have any questions of me and is there anything we can do to make your life more pleasant." In criminal cases they always have the question, "What is the sentence going to be?" They would make suggestions as to how life could be improved. I have received some very nice letters from jurors saying they really appreciated what we had done. My staff was courteous to them. I am rambling here a little bit, but I have seen judges who treat jurors as just sort of a necessary evil. They have no confidence in the jury system. They were not jury trial lawyers when they were in the practice. They looked down upon them. They really believed the Mark Twain stuff. I do not believe that. I think the collective wisdom of the jury when you

are dealing with facts, and that is what jurors deal with; I believe the collective wisdom of the jury is superior to that of the judge.

CTF: In spite of that, have you seen cases where after the jury verdict you could not understand it?

PM: No. I really have not. If the case should not go to the jury, then you would direct the verdict. I remember reading an article early in my career and I will not name the judge who wrote it, it was not a Seventh Circuit judge, telling judges how to avoid being reversed. Well who gives a damn? Sure I put my blood, sweat and tears into a decision, and when you get reversed, it is kind of a disappointment. But this guy said, do not grant summary judgments and do not direct verdicts. Well, come on. Judgments NOV, I had a couple of those. So, in that regard, I countermanded the jury, but I did not think that they are off the wall. They just decided at the close of all the evidence to send it to a jury and see what happens. I did that early in my career. I granted a Judgment NOV and I think it was Judge Cummings who reversed me. It came back down and another judge tried it under Rule 23, or whatever it was, and another judge tried it and the jury that time returned a verdict for the defendant.

CTF: This is the only circuit in the country that has the rule that provides for cases, upon retrial, to go to a new judge unless the parties stipulate to go back to the former judge. The big proponent of that, who pushed it through, was Circuit

Judge Luther Swygert who had been a longtime district judge before coming to the Court of Appeals. What is your perspective on the rule?

PM: This you may want to edit out, but that was the Julius Hoffman Memorial Rule. Judge Hoffman was a brilliant guy and he gave me some very good advice. They sent cases back, just reversed and remanded, and it was intolerable. I have always called that rule, the Julius Hoffman Memorial Rule. I think it is a good rule, I do. I did not resent being reversed, but I know that there are judges who do. I just thought that there is a disappointment. You have tried the case once and retrials are really kind of boring. I think it is a good rule. I was not aware that this is the only circuit that has it.

CTF: I get calls once or twice a year from some attorney who wants to know the history of the rule because they would really like to suggest it to another court. Nobody else has picked up on it.

PM: Well I may be mistaken because Luther is not here to tell us anymore.

CTF: I think Luther would say there were a number of folks he thought would be the cause of that. It might have been a collective name to the rule.

Why did you leave the bench? You had a great respect for the job and you really liked it. Why did you leave?

PM: I suppose the bottom line is that I thought I would like to try one more aspect of the profession, but I had run into some health problems, which caused me to take senior status. I then wound my calendar down. I kept my Chicago calendar, disposed of all of it. Then Lorelei and I started traveling about the country, holding court in various places, which appears to be one of the benefits of senior judging, but it can be kind of burdensome. Because of my cardiac history and all, she accompanies me wherever we go. My staff proper was being diminished because my caseload was going down. I got to the point where I did not have a secretary any longer. I had to rely on a swing secretary and they had very good swing secretaries, but I just thought well former District Judges Nick Bua, George Leighton, and Frank McGarr had left. I thought, I think I will try that. Of course, you cannot have it both ways – you cannot be a judge and a mediator and arbitrator. I just decided on April 15, 1996, I effectively retired. I selected that date, because judges are obliged to file financial disclosure statements 30 days after they file their income tax return and 30 days after they retire, so I figured if I retire on the 15th of April, I can get a two for one, just file one financial disclosure statement.

I did enjoy my 23 years very much. It was very challenging. My colleagues were just outstanding people. I lived through a certain metamorphous on the court. The district court now has women judges and minority judges. I feel very confident with the federal judiciary. The current issue of *Judicature*, The Journal of the American Judicature Society, has a very

interesting article comparing the appointments by President Clinton, President Bush, President Reagan and President Carter. It is very interesting how similar the appointments have been, save for political affiliation. That is a part of the warp and woof of American democracy. They average 49-50 years old when they are appointed. That gives them a good 15 to 20 years. I know we have had some unpleasantness with certain federal judges, but on the whole, when you look at the broad spectrum of the federal judiciary, they are really honorable people. They try very hard to do their job. We have had no experiences like we have had in the state courts, not only here in Chicago, but elsewhere. Just a handful of judges whose behavior has been challenged.

It was just a decision. Let's try something a little different. I have enjoyed doing it. Now I do not appear in court. I do not know whether I said this earlier in this interview. What I am about to say, in no way do I mean to be critical of any of my former colleagues and so forth, but I retired voluntarily in April of 1996 and I really think it is inappropriate for a judge who is there for 23 years to appear in courts, telling other judges how to decide cases. I really think that is inappropriate. I also think that it reflects somewhat adversely on the whole picture. If a former judge wins, the loser thinks that he won because he is a former judge. Some judges, I think, resent former judges appearing before them. When I left the court, I decided that I would not become involved in any adversary proceeding and I have not. I have limited my activities to mediations and arbitrations. I get a call every now and then saying, "What do

you think about this?" I tell them. Also, when I first start talking to them, I tell them, "You cannot quote me. I am not going to appear on the brief. I am not going to appear in court. If you want my opinion, I will give you my opinion, but it is strictly between you and me." I remember I was asked to go on an *amicus curiae* brief in this court, the Seventh Circuit. I think it was on a death penalty case and I said, "No, I will not do it for the reasons that I have articulated."

I am walking down the street one day and I bump into Circuit Judge Frank Easterbrook and we exchange pleasantries and he said, "I am reading a brief that has your name on it." I said, "It better not have my name on it." "Oh," he says, "It does, and it is in such and such a case." I said, "Well I was asked to go on that case and I said I will not go on that brief and if my name is on that brief, I am going to make a motion to strike that brief." The following morning Judge Easterbrook called me at the George Cotsirilos law firm where I was and he said, "I was wrong. It is not on there." I said, "That is good, because I made it very clear that I was not going to engage in that."

CTF: But how would he even come up with that statement?

PM: There were other federal judges, retired federal judges, who put their names on there. He glanced at it and thought, "Marshall, he is at Cotsirilos's firm. He is probably on this thing." But I got a kick out of it. He called and said, "I guess

my memory was not as sharp as I thought it was." It was a very humorous, pleasant conversation.

CTF: What do you see different in arbitration from court cases and do you know that there has been some criticism of private forums? My perception is that the big contract cases that were once in the federal court are not here as much any more. Parties are going elsewhere. Is that good or bad institutionally?

PM: I do not think it is either good or bad. My concern about alternative dispute resolution is that it has been injected in some courts on a mandatory basis, as in Florida, and it costs money. Florida permits a judge to say you are going to mediation. Now it does not cost a lot of money. The mediators, I think they get $300 for a couple of hours, $150 per hour. But it is still $150. I do not think that people should have to pay those extra costs. Then you get non-binding arbitration. If the parties do not accept the non-binding arbitration award, then they can be stuck with costs and attorney's fees and so forth, depending upon the ultimate result. Those kinds of things trouble me because of the added cost. I think the founders created the judiciary to resolve disputes and I do not think that you should have to pay. Sure, you have to pay the filing fee, things like that. I just do not think that you should be put through those extra hoops.

When you get into major commercial disputes, I think there is clearly an area for arbitration. Major commercial disputes can be very demanding on the

judge. You get involved in it. So long as it is not mandatory and so long as the little cases are not compelled to do it, I have had a lot of good experience mediating cases and we have got most of them settled. I do not regard alternative dispute resolution as a threat to the judiciary. I think that it has worked well. I talked with Circuit Judge Richard Posner once about it and I said that we also ought to have it in criminal cases, because in civil cases what we are talking about most is money. In criminal cases, we are talking mostly about time and we ought to be able to mediate criminal cases too. You know, what do you want, what will you give? Get it over with. But, of course, we cannot do that.

CTF: Let me end with one question, for somebody who has had cardiac history. What makes Pren Marshall tick? What motivates you?

PM: I do not know. I love life. I am married to an absolutely wonderful person. I had very good parents. I lost my dad when I was just a kid. I thought of becoming a lawyer for a number of years, probably starting along about eleven or twelve years old. When I went to law school, my academic record up to law school was not all that outstanding. I went to law school and I absolutely fell in love with the law. Lorelei and I can remember very vividly, we were doing dishes one night. She and I were married just before I started law school and I said to her, "I just love it." And I did, since four to six weeks into law school. I did better in law school than at any other point. I was almost a straight "A"

student, I think I got one "B" and one "C". Then I had the good fortune to work for Circuit Judge Walter Lindley; and you cannot work for someone like him without being stimulated, motivated. Then I went with a great law firm, with Floyd Thompson, Bert Jenner, Phil Tone, Tom Sullivan. You cannot live around people like that without being stimulated. Then I joined the law school faculty. I have been inspired my entire career. Came here as a district judge. I was greeted with warmth and encouragement. I knew most of the judges because I had appeared before them. I recognize also that I am an A-type personality. I know that. I like the contests. I have a picture in my study. It shows Clarence Darrow in the *Loeb and Leopold* case, with his chin in his hand and Richard Loeb looking over his shoulder. It is a courtroom shot. They permitted courtroom photography in those days. Then I have a picture of Floyd Thompson coming out of the courthouse with his client Samuel Insull, whom he successfully defended three times. Thompson has a big grin on his face, a cigar jutting out of his mouth and Insull has a big smile on his face. I had framed these two together and I called them *The Agony and The Ecstacy.* It really is. There is the ecstacy in victory and the agony in defeat. You have to be a certain type of person to do that. That is why I like trial lawyers. They have all been there. I love life. That is really what motivates me. I have four wonderful children. They are happily married, twelve grandkids, two great grandkids. I just really do not think you put it in terms of deserving. I really have just lived a wonderful life and I am very grateful for it. And I am grateful to the people who have made my life what it is, beginning with my wife.

CTF: Thank you very much.