

**COOK COUNTY COURT ORAL HISTORY PROJECT**

INTERVIEWERS: Madeleine Metzler and Jason Myers

INTERVIEWEE: Theodore M. Swain

DATE: 11/12/04

INTERVIEW ABSTRACT:

(Place two spaces between the paragraph-long abstract and the transcript.)

During the first part of the interview with Theodore Swain, he discussed his life in the Champaign-Urbana area as the child of academics, his tenure in the United States Navy as well as his course of study as an undergraduate at the University of Illinois and law school at Harvard University. Mr. Swain talks about how living in an academic household influenced the decisions he made, his involvement with church and church groups at various stages of his life, his views on civil rights before the civil rights movement gained momentum, and segregation in Champaign-Urbana. Judge Swain discusses his early career at the law firm of Bell Boyd and his years at the State's Attorney's Office. He also relates his experiences as a precinct ward captain in the 33<sup>rd</sup> Precinct of the 5<sup>th</sup> Ward.

MM and JM

TS

Theodore Swain: [I was born in Champaign,] Illinois. Father was a professor of ancient history at the University of Illinois. Uh, in fact both my parents were academics, as were both of my grandfathers, behind that both of my great-grandfathers were ministers – one a Congregationalist, and one a Methodist. Uh, I... lived in Champaign through my grade school years, and then we moved to Urbana. And... went to Junior High School in Urbana, and then to High School at a... when I was a sophomore in High School I became-came down with some sort of, ah, heart condition that, ah, nobody quite ever figured out what it was, so I was non-athletic by, ah, orders after that until I more or less graduated. Probably affected my outlook on life. I was not a jock. You have no idea what growing up, being not a jock in that world was. It's probably the same today. [sips coffee] Although nerds are- have a little higher standard now – they usually become millionaires. Ah... the... my education years incidentally coincided with, almost precisely, with the Presidency of Franklin D. Roosevelt. I started in... thirty-two and

finished in forty-five. That was exactly his years so it didn't occur to me that there was any other president of the United States possible. Uh... Come in.

Madeleine Metzler: I think that's the next door.

TS: Uh, and that's- I-I was interested in public affairs and... Although my first election that I was even aware of anything was the nineteen-thirty-six election when Alf Landen ran against Roosevelt. And I remember that only because it was sunflowers plastered everywhere. That was his....

MM: That was his campaign symbol?

TS: He was from Kansas.

MM: Ah.

TS: He carried two states. Ah, by nineteen-forty I got very interested in the-the political process of the uh-uh nominating conventions. Thomas Dewey was the boy-wonder at that time, and was knocked-off by Wendell Willkie. And Wendell Willkie turned around and became a internationalist and... a... was helpful to Roosevelt in supporting things that needed to be done during the war. Uh, Dewey then went on to challenge Roosevelt in forty-four and Truman in forty-eight. My first vote was cast in forty-eight for Harry Truman. Uh... All during my childhood I went to the- attended the Congregational

Sunday school and then the youth group, which was fairly prominent in my social life. Uh... I... graduated at the head of my class and, a... so I was, you know, a typical nerd. I was also a Boy Scout. Uh, then uh, if you can put yourself back in that era – why back in the summer of nineteen-forty-five there was a war going on that looked like it would never end. Or at least, maybe, three years down the road they were building up for the invasion of the Japanese homelands, and didn't anticipate any early end. So, at that-that summer my father was a... visiting professor at Columbia University in New York, so we all lived in New York for that s-summer. And, ah, while I was there I enlisted in the Navy. I was about to turn eighteen in October and if you didn't enlist in the Navy at least thirty days before your eighteenth birthday, you'd be drafted. I think, so you... couldn't ch- do it at the- at the end, so... I had a dear friend who was a year ahead of me who had gone to electronic school in the Navy – became a-a electronics technician, a radar technician in their terms those days. And I wanted to- he was sort of my role model and I wanted to do that too. Um. Then, uh, Japanese secret service somehow heard that I was coming and they surrendered. It was also- I was in New York when the- something called the Atomic Bomb was dropped and... remember the headlines in the New York Times. A lot of talk. And then, at that point the Navy switched its policy and wouldn't take reserves in the Navy now that the war was over. So by the time I reported I had to join the regular Navy, and so I had to sign up for a-a minority enlistment. Uh, that was from that point until I turned twenty-one, sometimes called a kitty-cruise. And, I went to electronics school, and uh, Great Lakes, and then at Anacostia. I spent the first winter in Great Lakes in the Great Lakes Hospital... uh, with a series of misdiagnoses – one thing and another. I got, ah, Hepatitis because they gave me serum to cure my scarlet fever,

which I ha- they had misdiagnosed, which was really measles, so... It was a int- it was warmer in bed in the winter in Great Lakes, but then I, uh, went on to Anacostia for the secondary school, which is in, ah, the south of- it's in the District of Columbia. There's now a bridge there. There wasn't a bridge there in my day – you had to go all the way around. [Sips Coffee] And, ah... That was- my three years in the Navy was a exciting experience. I spent roughly half of it ashore and half of it aboard an aircraft carrier – a small aircraft carrier, designated CBE, escort carrier in those days. Uh... You may have come in contact with it because it was eventually sold for scrap to the Gillette razor company [laughs].

MM: [Laughs] So we may have used it whether we know it or not.

TS: Uh... Anyway, I- my j- I was the only person on the ship that knew- was supposed to know anything about radar and how to keep it working. It was... I was panicked except I realized I knew more than anybody else so, so that was a good learning experience. It was also a good learning experience in-in electronics school our- particularly in our secondary school, uh, where the more intense training took place and we realized- or my brother told me that s- I showed him some of the things we were studying, he said, "You're studying Calculus." I said, "They never told us that." [Laughs] It was a special program, uh-uh, eleven month program devised to- in that short period of time to make ah, engineer- electric- electronic engineers out of peasants, as it were. [Laughs] Yeah, it was remarkably successful. [Sips Coffee] But very highly focused. And, ah, so the o-

one experience there that was novel for me was the- in our class of thirty, I came in sixth, which was, uh, way down in the...[Laughs]

MM: Not what you were quite used to?

TS: Not what I was used to. I got back in stride at the University of Illinois, where in a class of 2500, I came out o- number one, so that I felt... [laughs] so I sort of even- bala- averaged those out. But anyway, uh, in law school... just for the record, I came in seventy-second in my class, which was just- I just made the cut so I graduated with honors. May seem strange that somebody in the seventy-second place in his class would graduate with honors, but we started with five hundred and fifty and graduated close to five hundred, so, you know, it's a respectable showing.

MM: So, definitely in the top portion.

TS: But I did not burn up the place anyway. Uh, ah, in the Navy I- when I was stationed in Washington I, uh, continued my church relationships by going to the New York Avenue Presbyterian Church in downtown Washington – who had a famous pastor named Peter Marshall, who eventually became chaplain of the Senate – but , uh, and met a family there, a girl who I eventually proposed to who turned me down. [Laughs] And her father was a tax court judge in Washington, so that was my first encounter with- that's as close as I ever got to the judiciary at that point. Um... and, uh, then when I was aboard ship, I, ah, played the organ for the-the chaplain. The organ was a pedal one.

MM: I was going to say, an organ on a ship? That surprises me.

TS: It was a little box that you pumped with your feet and, ah, they had a thing that you controlled the volume by spreading your legs, or not – depending on... [laughs] And then you had a keyboard and it-it it was- it was [laughs] it cou- it could sound sort of nice in a small enclosure. But, uh, and... Then when I went back to Illinois, um, I experienced a certain amount of culture shock. I was leaving this big anonymous Navy and going back to my hometown. And... what I found was that I was leaving a ship, where of 500, where I knew most of the people, and stepped onto a campus of 25,000 that I didn't know a soul. [laughs] So it was exactly the reverse of what I thought it would be. I [laughs] thought I would be lost in the Navy, but I was lost when I came home.

MM: Were your parents still at the University at that time?

TS: Yeah, and I lived at home while I went there. And I spent three years in- as undergraduate – I got a lot of credits for my electronics training in the Navy – and...

MM: And you said the campus was 20,000?

TS: That's- that's in those days.

MM: Was it mostly G.I.s coming back, or had that not really hit yet?

TS: No, well there were- G.I.s, the swell of them occurred while I was *in* the Navy because they all came back right after the war, and I was still away for that period, and all my high school classmates had moved on by then. But, you know, they were sort of seniors by the time I got back, so I knew some of them. But I went back to my, ah, ancestral church there, and they had a college group there that I was active in all the years I was there – had a lot of interesting experiences there. We... both in high school and in college, why it was a very intellectually stimulating group. W- you know, a bunch of... kids who are going to remake the world, you know? Have you ever met people like that?

MM: Oh, I think so. Occasionally.

TS: So I, uh, enrolled in the liberal arts college. My f-fa- my whole family, my f- particularly my father didn't think you were educated if you didn't have a liberal arts education – couldn't imagine people going to college of commerce, or engineering, or anything like that. And I ma- he wouldn't let me major in history.

MM: Why not?

TS: And I- he would ever let me take a course of his. But, uh... But I- so I majored in economics, but I had a joint minor in political science and history. And... the one thing that was comforting my first semester there – when I was otherwise lost – was I was a personal friend of about half of my professors... which had its advantages – not that they



would, uh... tweak your grade upward, but because you knew them and you knew how they thought, and-and having grown up in an academic environment it was much easier to, uh, do well. Which, you know, that's probably the principle reason I came out on the top of my class was, uh that. But, m- uh... you- the other thing that both my older brother, who was, had come back right after the war, and-and had, ah, finished his undergraduate and gone on to medical school, was uh, uh- they all had suggested courses I oughta take, and the only absolute prohibition was no "snap" courses. Everything had to be substantive. And the thinking was that, uh... in-in a substantive course you could always earn your grade. In a-in a snap course you were thrown into a pot and you hadn't- there's no way you could control what grade you got. It was all potluck.

Jason Myers: What do you mean by a "snap" course?

TS: The easy ones.

JM: Oh, ok.

TS: Where the, you know, the... things that people filled in their schedules with to get hours without having to work very hard.

JM: Could you give an example of the type class that you might consider as one?

TS: Well... Of course my father felt that anything in sociology would be... [laughter, all] But, my father had this view that, uh... um... of what an education was. And then he-he was sort of downplaying the “new” sciences, like, uh, sociology, political science... you know, things like that that- the soft sciences, where as- of course people didn’t get into an argument about history as a science because nobody had thought of it by then, at that time. But, uh, anyway, I-I en- thoroughly enjoyed my years. I took among other things, uh, a course in comparative vertebrate anatomy because my brother needed that for medical school so he thought that I should take it because it was an interesting course. It was a very rigorous course. I was not looked on with disfavor because I took an “A” out of the course that some poor, struggling pre-med needed to get into medical school, [laughs] and they said, “how can you do this to us?”

MM: Ruining the curve for them?

TS: Well I just took it-took away an “A” that would have been otherwise available. So it... ah...

MM: Were you in school with your brother at the same time?

TS: Uh... No. He had actually graduated before the war - He’d - in forty-two, and he’d gone through, straight through, and it’s s-skip- he skipped a grade in grade school. So although he was four years older than me, he-he got his- he finished, uh, his undergraduate in three years and graduated in forty-two. But, he needed, uh-uh, s- when

he was in the army he, in Japan, he saw that the only people that were well fed were the farmers and the doctors who took care of the farmers. So he decided he didn't want to be a farmer, so he'd be a doctor. And, uh, so... When I was in high school my father asked me what I wanted to be and I s-suggested medicine as one possibility. But then my brother pre-empted that so I had to think of something else to do. And of course neither of us were to, uh, wanting to be an academic, which is ironic because my brother ended up teaching pharmacology at the University of Michigan Medical School. And he was Associate Dean of the Medical School, so he ended up not only in academics, but in administration – another obscene word in my father's vocabulary. The other thing he didn't like was schools of education. [Sips coffee] Anyway...

MM: Did he encourage you to think about an academic career? Or did he dissuade you from it?

TS: No. No. No. No. Uh... in fact he didn't urge me to, ah, uh... pick a career early. He said if people who were urged to pick their careers early, the world would be full of firemen and policemen – what every grade school kid wants. But uh... anyway.... Then I took the, uh... LSATs in my, uh... last year as an undergraduate, and, uh, did very well on that. Used to get in arguments with my friends as to what the-what the- what it meant. What the hundredth percentile is. And I explained to them that a percentile is the number of units, uh, goes from zero to a hundred. And that doesn't mean you're at the top, it means you're in the top one percent, because then below that is the ninety-ninth percentile so I had no idea where I was in the top one-percent. In fact [sips coffee] when

I took the test in New York to get into the electronics program in the Navy – I- well I knew I was going to do that so I got the books to study and [laughs] actually studied in the Columbia University library. So I enjoyed doing that. And when I took the test, uh, I got through ahead of some other people and the guy who was administering the test checked it and, uh, a little bit, just to make sure it was the proper form, and he said, “Where did you go to school?” [Laughs] I explained that I had gone to Urbana High School, which he’d never heard of, and I was sort of curious why he asked. And he said, “Well you can go home and tell your parents you’re passed.” [laughs] He just glanced at it and... So.... This is- This is, uh... relevant, mainly, to, you know, how I experienced the outside world as something that could be figured out intellectually and that the, uh, you know, I didn’t need to excel at athletics because I could excel at something else. And uh... In fact my brother, who thought he was very bright, was a little jealous when I was Valedictorian of my college class and he wasn’t. [laughs] But we-we-we’re friends. And he was very active in a lot of other things – big man on campus. Uh... law school, let’s see how are we doing? Ok, let’s see. Law school, uh... and I think you can probably detect at least a hint of arrogance through all of this, but, ah, try to take it with kindness. Ah... After I got my LSATs back... I then decided I had to figure out where I was going to apply – what schools I should apply to get into. So I applied to Harvard. And that was all I applied to. And I was admitted to Harvard. And-and ah...

MM: Did you consider other schools? Or just thought, “that’s the one?”

TS: No. Uh, it didn't occur to me that, you know, I mean, it didn't enter my head that they would reject me. And uh... Which is an interesting thing because, my uh, father panicked when he saw a letter from the dead – from the admissions dean – which he thought I had screwed up the whole thing. And this goes back to the fact that in-in that generation we were very civil rights oriented. Now this was long before the sixties of course, but my little group was very – I mean there was a lot of ferment about these sorts of things. And I'd talked to people about, you know- in fact, they- we had on the, uh, campus, a string of hot dog, er- hamburger joints called the Steak N' Shake, I don't know if you've ever heard of them, but they were...

MM: Mmm hmm

JM: Oh yeah.

TS: And uh, there were pickets on those and th-th-they were integrated that year. And the barbershops were integrated in that time – in fact my pastor got arrested for... [laughs] because the barber slugged him. He [laughs] what he said th-they were- they sent out a team to test and-and, uh, the black guy – student next to him – and intentionally he'd gone in behind this other guy. And so he just said, uh, "I believe this gentleman was ahead of me." And he [the barber?] said, "You trouble makers," and slugged him and threw him out. [Laughs] Which sort of helped the cause, actually, I guess got some publicity. And also it had ripples in our church, uh... uh... when the-the people who

didn't care much for the pastor anyway, and thought he was a little too socially active, and ah... well we should get rid of him now that he's become a common rabble rouser.

MM: Can you tell me, I'm less familiar about this era, and I don't sort of think about Urbana being as being terribly segregated. What were some of the areas, other than the, um, the barbershop that were segregated?

TS: Well. There was something called the North End of town. And that's the only place where blacks were allowed to live. There were three blacks in my high school class. There were more I think in Champaign – it was a section point on the Illinois Central, and some of the people coming from the south, heading for Chicago, got off there and stayed. Uh... Housing in, uh... uh... it was, you know, they wouldn't serve blacks at the Steak N' Shake. You know, it's hard to believe this. I mean it's just, you can't give credence to it. And... Being an academic community, nobody- things- I mean the concept, although not the words, of political correctness were there. But, uh, ah... maybe the best way to- my-my-my family was, I would say, very liberal. Uh, although my father used to tell anti-Semitic jokes- and his colleagues would tell. Uh, and my grandfather would make ref-reference, when we were in New York, he would talk about the black people – “we oughta throw them off the cliff down to Harlem,” you know, but jokingly – not hostilely. But, ah, so I-I had, you know, I couldn't put it all together. One of the favorite... well, one of the forms of recreation of social life in an academic world is that- of one professor's family would go visit the other for Sunday dinner, and that was about as exciting as things got. Or, ah, maybe if it were a special occasion a Saturday night

dinner, or something, although traditionally we had supper at night and dinner in the middle of the day. Uh... at one- after my brother and sister had moved on – my sister was in college part of the time I was there, but after she went on I was the only one there – this other professor and his wife were over, and just my parents and them and me. So there were five of us. And when I got up to- when the main course was finished, I just quietly got up and took the plates out to the kitchen and brought the dessert in – this was, you know, how we did things. It was pre- It was- You know, it wasn't demanded, but that was the way I'd be helpful. And Professor [Hodegard?] said, "He does that beautifully." And my mother put his-her hand on his arm and said, "Yes, isn't it a pity he isn't black?" Now sh- Her family had come from Baltimore where black servants were the height of elegance. So [laughs], you know, you can't tell that joke to this generation and have any sense of what was being said. I mean it sounds horrible, but it was lovingly said. And ah, it wasn't particular- And, ah, we always had, ah... ah... a black cleaning lady who would, you know, was... you know, we all were, you know, it wasn't... it wasn't like, uh, "Gone With the Wind" where Mamie was a- that part of the family. She was not put down at all as an inferior, but she worked for us. But anyway, that- this is all leading up to... so, um... I- talking to one of my economics professors, and he said that Harvard Business School had a policy of no- of asking not to indicate their race or to send a picture. And, so when I se- my high- my law school application required – didn't have any indication of race – but it did say, "please enclose a photograph." So I sent off my application with a little note that I was, uh, concerned about possibly participating in a program that would have, ah- would be racially, ah, discriminatory and

I was therefore not sending a picture. I got this two-page letter back. His feelings were hurt... [laughs]

MM: The dean's?

TS: ... that anyone would think that Harvard would do such a thing. And, ah, so he... he spent the first page saying there's no way we discriminate, and the second page saying the only reason we discriminate [laughs] is to give an advantage to the black students. [laughs] So he said, but we will not consider your application until you send the pictures. So I wrote back, said, well I'll go get my picture taken now. [laughs] I didn't even have one to send them at that... Well my father got his, found his letter and went ballistic. He thought I was jeopardizing my future, you know, making, as he said, "I thought somebody put you up to it." So... [sips coffee] So when I ge- Uh... So that's been a theme that's run through. I-I met a, uh... when I was at law school there was a, ah, the Congregational Church had a graduate student group that I was active in, and one of the students was a graduate student at the Radcliff Management Training Program – graduated from Hampton Institute the year before and her fiancée was just finishing that year, so she was taking this one year program, and, ah... So I got to know her pretty well because she was a – I don't know if you know, Hampton Institute 's a black school – and- and ah, she was from Pine Bluff, Arkansas. And then they were going to get married the next summer and she invited me to the wedding. And I was the only white person at the wedding in Pine Bluff, Arkansas – before [Fauvise?] was governor – so it was- it was the old days. [laughs] Had a lot of strange experiences like that. Ah, but uh... but my



academics at Har- I was intellectually challenged and liked it. Sort of hob-knobbed with a group of mid-westerners, and, well except for my best friend who was, uh, the son of a rabbi, uh, from Elizabeth, New Jersey, who I brought home for Christmas the first year. [laughs] He was broad-minded too.

MM: Was it a bit of a culture shock to go to school in Boston after Urbana?

TS: Well I'd been in Boston with my- on my- my ship had come in the- af- shortly after I joined it, it came in to dry dock at Charlestown, in Navy Yard to have a sonar dome put on the bottom of it so that it could, uh- that we could engage in any submarine warfare. So, ah, I had spent some time in Boston at that point. So, I was... but I hadn't, uh, done it since- seen it aca- the academic world. I guess I must have looked at the Harvard Yard and all that, but, you know, ah, I hadn't thought at that time that that was my future any- in any way. I was more interested in Bunker Hill and, you know, things like that. And ah... So ah... No, I-I- My father asked me the- Well there was one aspect of it that may answer your que- [Knock on the door] Come in. [Pauses for a moment to look over some documents] Uh... If I'm taking too much time on any of this...

MM: No. This is wonderful. We'd actually like to also go back and touch on some of the things you've mentioned that we'd like to talk more about.

TS: If you want to interrupt to do it, well you're free to, or we'll go back and, ah, otherwise I'll just keep going. Uh... I met a lot of interesting people at- in law school.

Oh. I was telling you my first Christmas home my father – that was the first time I'd been home since I'd been in law school – and he said, “Well what was your impression?” And I said, “Well I don't think they'll ever win any awards for institutional humility.” [laughter, all] Some of the professors were perfectly decent people, but the institution was cannot- would never pass muster on that- that measure. They just think they're the greatest. [laughs] I had a friend from Indiana who used to [twit?] his Harvard people saying, “Well we think this is a good- a very good trade school.” [laughs] But, uh... ah... When I went to- when I- just before I left, my father to me to introduce me to the Dean [Harnow?] of the University of Illinois Law School, who I'd never met before, and it was essentially to apologize for my going away to law school. And, ah, Dean [Harnow?] said- well my father said, “But it's time he got out of town.” So he said, “I understand,” he said, “where are you going?” I said, well, I was going to Harvard. He paused a minute, and said, “I've heard of that. I think it's a very good school.” So it was all very genial. But I think that illustrates the difference between the two schools. Uh... I, um... In those days there was a core curriculum, so yo- first year you had... I don't think you had any flexibility. I think you were, uh, in a section of a hundred and twenty-five people – there were four sections – and so uh, and you stayed with them for every class – although your classes moved from room to room, of course. But, uh, and you got to know other people through your dorm, or maybe some other activities. And ah... But... And it was all – pretty much all – Socratic method and everybody was terrified, and there was a- you were not given the option of not reciting if you were called on – if you were, dare to day, unprepared – well you got a serious raking over. And, uh... One of- when the students eventually rose up in protest, they said one of the things they were

insisting on was the “no hassle pass.” [laughs] If he called on you – “I pass” – and you didn’t hear any more about it. But...

MM: And were they successful in getting that?

TS: Yeah. They-they humanized the school a little bit. Although the drop-out rate was relatively minor because they were so impressed with the quality of their admissions program that they couldn’t flunk everybody out then. But ah... No. I was very fond of the school actually, and every- and the professors. I never got very close to anybody other than the one I took the seminar from in my third year.

MM: What seminar was that?

TS: Administrative law. Uh... I guess the reason I took it was because that seemed to be the sort of things that the New Deal was doing. A-all these administrative agencies came in with the New Deal, and ah, we-we had quite a number of cases about that and I realized it was a much broader topic than just that. Uh... and we were t- we were supposed to take one perspective course the first semester of our second year. And we could choose, uh... legal philosophy, legislation, uh, I forget what some of the others were. I took Russian history, er- Soviet – Sov- excuse me, Soviet law. They had a Soviet law expert there. They have an expert in everything. And their-their special man has to be either one, two, or three in the nation to be there. They insist on having- they- it’s not possible to always get the absolute top person in a field, but you can’t go any lower than

third. So anyway, so they had this guy – so the summer before, between my first and second year, I went home and took a- audited a summer school course on Russian, the language, so I took my- I could write down the case names in Russian script – the Cyrillic alphabet. That was my achievement, exper- achievement from that. But anyway, ah, then I wrote a paper – a very sexy title – Inter-Carrier of Competitive Rate Setting in the s- Transportation of Petroleum in the West. [laughter, all]

MM: That's a grabber.

TS: Which meant I read an awful lot of published ICC cases – the Interstate Commerce Commission. Which, ah, came back to haunt me in a very interesting way later on, but ah, when we get down to principle cases. Uh... So... I was voted on my dormitory as the person least likely to crack-up. Not the most likely to succeed; but the least likely to crack-up. [laughs]

JM: That's something of a compliment, right?

TS: Yeah.

MM: Does that mean in the law school or in the... yeah.

TS: Yea- In the law school, because people do crack-up in law school – in those days. I don't know if they do anymore.

JM: Probably.

TS: There was one- one of my classmates, just before the finals, was seen roaming the halls and asked him what he was doing, and he said he was looking for the fruit of the poison tree. [laughter, all] He couldn't find it. I mean tha- that -- pretty extreme.

MM: The legal studies had just sent him around the bend?

TS: You know. But I, ah... you know, as-as much as I viewed myself as a nerd, I was not a... one of the people who made this a fanatic sort of thing. And... which meant I dropped out of competition really for law review. And I was roomed next to a guy who, um... was... thought I was just brilliant. [laughs] First place. Word gets around. I had... I guess I ha- there was one other Illinois guy there. He told them that I had been Valedic- told them I had been Valedictorian. I'd never mentioned [inaudible]... And somebody found out what my LSAT scores were, and that was circulating, so I was expected to do very well. In fact, the- my third yeah, when I talked to the same dean I had had the correspondence with, uh, he said, "You know, we always wondered why you didn't do better." And, ah... and I think could pro- part of the problem was that I had grown up and had other values. And, uh... But anyway... Or maybe I was just lazy -- it's hard to tell. I always look at the more positive interpretation of the ambiguous facts. Ah... So, um... uh... oh, anyway I was talking about my neighbor in the first year dorms. He kept saying to me, "You're gonna make law review." And I said to him, "Derek,

what are you going to do when the grades come out and you discover you made law review and I didn't." And he said, "Oh, that'll never happen." Well of course he made law review and I didn't. And, ah... But the... He- One of the things he did – I mean he was sort of, I thought he was sort of like me because, although he was obviously more talented, but one of the- while he was in first year he would go down to the college and audit courses in literature down there. Archibald McLeish was teaching a course and he took that. I mean, he was a man of... his father, or- his family had owned the Curtis Publishing Company in Philadelphia, which put out the *Saturday Evening Post* and some other things. I don't know if you ever heard his name – Derek Bach – became dean of the Law School bef- and then went on to for- he only lasted there a year because they made him president of the University before he was forty. Now if you ever want something that make you feel a failure, have one of your classmates become president of Harvard before he's forty. [laughs] What have you done? And another of our classmates became, uh... head of Cravath, Swaine, and Moore in New York. So that was one of the big firms there. But there again the successful people were the ones who didn't have the narrow view of pursuing law. This guy started at, ah, Cravath and, ah, was a associate for a couple of years, and then um... uh... His father had a manufacturing indus- ah, plant in Indiana somewhere, so he decided he'd go back and run the family business and work with his father. And, Cravath then sent out a team of their top partners to get him to come back. They had spotted something that they had not made clear to him, but he had a great future there. So they then made him the managing partner there. So those are my- my two most famous classmates. I don't have anybody else that became president or anything like that. Course they all come from Yale.

MM: Was it generally very competitive, amongst the students?

TS: Oh! Most competitive place I've ever been in. That's why I, you know I just wouldn't... comp- ... This guy from Indiana that I, ah, I was gonna tell you, that I recited the first couple of ti- time. I think I volunteered th- the uh... this civil procedure professor, who viewed himself as a terror, uh... asked, uh... w-would fire a question. He had a very s- ah, staccato sort of approach, and fire questions at us... and.... and... look around... I'd raised my hand and answered one of them. And the second time I did that this other guy, who sat behind me, when we were at lunch said, "From the Midwest, we do not volunteer in class." So I said, "Oh, ok." [laughs] So I didn't. I mean life was a lot pleasanter then. I think that's when I- I sort of made a moral, values choice as to what my life would be like. And ah... you know, there were a lot of nice people who did very well in our class, but I don't put down the people who went the other way. But I neve- I didn't. Anyway, uh... my s- last year there then, uh, they were- the school always expects some of their people to be placed in clerkships with judges. And... they, or course, would be miffed if they didn't get Supreme Court appointments. So, ah... ah, this dean – Dean Tepfer [sp?] – oh. Backing up one step. My, uh... first year we had, ah, ah... moot court competition and we were in clubs. And you sort of just picked a club. And, you know, they scattered the- if you wanted to work with somebody in particular they'd – [inaudible] go together [inaudible] club – and I joined the Tepfer[sp?] Club. They were all named after faculty members who were our sponsors really. And ah... We didn't really see much of our sponsors. [laughs] But anyway, um... I mention – I just

dropped that name once when I was home at Christmas that I was in the Tepfer [sp?] Club and the name's kind of [inaudible], and my father said... uh... "You know, I think you made an impression on him, but your response," he read my response then, and said, "it was very temperate and- and well reasoned and..." [laughs] But anyway, he was the one that was, uh, asked me if I wanted to be a clerk for a... oh, it was a... I guess he was a third circuit judge out of Philadelphia. Uh... William Hastey [Hasting?] who was, one of th- I guess the only black, ah, cir- ah, court of appeals judge at that time. I don't know. And, you know, they- you can understand why Tepfer [sp?] would think that... And, uh, actually I, uh, Hastey didn't take me because I had no ties to Philadelphia. He wanted somebody who might at least stay in the area and be [inaudible] useful ties. So I ended up clerking for- on the D.C. circuit for the chief judge there. I wasn't his direct law clerk, but he had two motions clerks because the D.C. circuit has an awful lot of motion work. Federal agencies are all situated there and they- appeals from administrative agencies go through the D.C. circuit. It's sort of a very specialized jurisdiction. They're also interesting- The state supreme court as it were, for the District of Columbia court system. The municipal courts in the District of Columbia have an- ahm, appellate court, but if you're dissatisfied with that the court you go to appeal that is the D.C. circuit, which i- a strange arrangement, but uh... And uh... So I spend my, ah, a- the motions would be heard, and it got to be some fairly substantive things. And I've learned a lot of- that my administrative law came in very handy at that point. And... I also learned how to read statutes. You know, the difference between a statute and a law as codified, you know, the public act so-and-so... will have a sentence... you learn your way through the numbering system – section so-and-so of the act – isn't gonna have that number in the- the U.S.



code. It's gonna, you know, car- we- the section five of this particular act will amend section 326 of the code, and substitute new language in there. So you hav- you have to be careful in your citation. It was very tricky citations. I also discovered that the high priced lawyers don't always read the statutes. [laughs] There was one case where the two sides were at loggerheads over the interpretation of a statute. One said it's this and one said it's that. And I said- I wrote a memo to my chief judge saying, you know neither of them read down to the "but" part of the statute. And I said, "they're both wrong." So... But, we also had a lot uh... petitions for to leave of appeal from the district court – U.S. District court in the D.C. circuit – I mean District of Columbia, whatever the jurisdiction is there... for ah, *habeas corpus*... and... invariably the... I suppose there may have been an appeal from *habeas corpus* that wasn't from a form of [???] petitioner, you know. But, most of them were hand-written and... and ah... illiterate more or less. But ah... they... What you learn is that if you take the trouble to read these things , you know, they may be wrong on the law, but they may be, uh... have a misimpression about what is persuasive, but they always have something that they're bitching about. I mean there's really something there in practically every one of them. And ah... you know, it isn't just something they do to try and pass the time in the penitentiary, they-they actually have something to say. And that was a hard thing to get across to the judges who heard these – 'cause they sort of would dismiss these out of hand.

MM: Because they would do so many?

TS: Well that they were- well most of them they denied, uh, substantively for good reason, but most of'em they didn't have clue what the guy was saying. There was one, ah... they would- and there would be appointed council sometimes – I don't know if there was always one. I guess there would be appointed council if we told them there ought to be. And appointed council who had been a law clerk for one of these judges, so he thought he could- wrote a very persuasive brief and made every argument he could think of. And they were- you know, they never qu- they were very strong arguments, but they never quite made it. They were losing arguments, but they were strong arguments. The only thing he didn't make an argument on was what the point the petitioner was trying to raise. [laughter, all] And, you know, it's-it's... I mean he made a great show and got lots of laudatory comments from the judges, and he was very pleased to do so and he obviously spent a lot of time with it. You know, sort of served as a model. But, for my money, it was the wrong model. You know, first find out what the guy's saying. And it's not that hard. You know, once you figure out the handwriting. But even that you can do... anyway... So I had some good experiences there, uh... Any time you want to stop or...

MM: Well would you like to take a short break now?

TS: I need more coffee.

MM: Why don't we take a short break and....

TS: Ok.

[break]

TS: ...May have been formative too. It educated me too into the importance of perspective, how things are perceived. Ah...When I was in the wedding at Pine Bluff, everybody was very nice to me, ah, there was of course what you would expect people being overly nice to you. Fay and her family were just folks and we got along fine, but the lady next door wouldn't give me the time of day. She would speak to me, but sharp sharp, I mean not sharp, but matter-of-factly and never warmed up to me and I, you know, I like people to like me. [chuckles] So, ah, I puzzled about that, but I didn't say anything. And then I, ten years later, I met...Fay and Julius were in town her visiting her sister and her husband, and I ran into them. And they couldn't decide whether to tell me this story or not. But after we stayed over, the wedding was Saturday and we stayed over Saturday night and had brunch and then everybody scattered to all points of the compass. Big family up there. And so after everybody had left and calm had settled down, Mrs. Robinson sat down with her neighbor and they started reviewing everything and they talked about how beautiful the bride looked and how a wonderful catch that the husband the groom had been and all that and then eventually they got down this list a ways and Mrs. Robinson said "And Ted was awfully nice wasn't he?" And she said "Humph." She said "He was an albino wasn't he?" She thought I was putting on airs acting like a white person. Probably the only time I passed as black. [laughter]

It says something very profound but I don't know what it is.

MM: Was that your first trip to the south?

TS: Ah, well except in the Navy. And we ran into, my home port was Norfolk and we ran into a few local cultural things there. Anyway, where are we?

JM: Well, I'd kinda like to backtrack a little bit to more when you were growing up.

TS: Sure. Mm-Hmm.

JM: You said you were born in Champaign. Could you talk for a little bit about Champaign. You said you moved ...

TS: To Urbana, they're twin cities, you know.

JM: So was there a big difference in that move?

TS: Well, the only difference was that you, it was traumatic in the sense that you suddenly had to love everybody you hated and hate everybody you'd loved. Because the rivalry between the two towns, and particularly between the two high schools, was very intense.

But, No, our family friends were scattered between both. But, I think, the history department tended to be in Urbana mostly, so we moved. My father's closest colleague lived next to us in Champaign and moved to Urbana first, and then we followed. Urbana was about 15,000 and Champaign about 30,000 at that time. A one-industry town of course.

JM: One thing I found very interesting that you mentioned that you were involved in your church and your youth group. I was wondering if you could maybe tell us a little about your experience in the youth group in both high school and college. Maybe some interesting stories or, um, how that helped to influence your thinking.

TS: Well, it was an outlet for exploring social issues, you know, which became rampant in the 60s you know. You grew up with the New Deal and there was a sense of, that for the first time the government cared about you. That sort of thing. They weren't just fine-tuning the machinery; they actually cared about the people. And that was novel.

I remember the Depression, ah, only in the sense, of uh... I mean we never lacked anything, we ate regularly, we never got very expensive presents, we never had very expensive clothes, we never drove a very fancy car. I do remember in 1937 when my father made full professor, my mother--this was the first time she ever even alluded to finances in our household--she was so proud she showed me the slip that showed that my father's salary had been raised to \$5000 a year. That was a very comfortable living.

So, we were better off. And my father was never unemployed as an awful lot of people were in those days. And, um, as my father said we got through the worst of the Depression and as things started getting better, the state budget got tighter and they cut our salaries.

But, Illinois has always invested in the University of Illinois, it is one of the front-ranking institutions, has the greatest college library of anybody in the country other than Harvard and Yale. And the librarian was a student of my grandfather's at Northwestern so we were very close to them. And I dated his granddaughter. I, um, dated in high

school, but, ah, dating in those days was quite different than it is today. You know, you just did not entertain the thought of sex. Some of the guys might talk about it, you wondered what they were talking about, but everyone put on a brave front as if they knew what they were talking about, none of them did.

And, ah, oh the other thing I did in, particularly with the college youth group, with the college group, the church group was to write youth...some theatricals which were always parodies. I never had an original thought in my head, certainly couldn't come up with a song. And most of them were political adaptations, of Filbert and Sullivan or something... and again, I got a lot of personal satisfaction out of being, you know, hailed as a very bright and creative person. I don't...you know it's an exercise that again hones your writing skills.

Words were always a big thing in our family. When my sister moved out, went to New York after she graduated, and I went to visit her and I said "Well, what was the first thing you appreciated about New York?" and she said "Well. It was the first time I got into a meal without someone getting up to get a reference book."

So it was a hot house environment, in the sense of academics, that is unusual. But the, um, it was a small church there were much bigger student groups at the Methodists and Presbyterians student centers, the Congregationalists were not a big force on campus. But we would put on programs and invite speakers, and, I can't remember what they were all about.

MM: Was it a particularly politically engaged group?

TS: In the sense of talking about it, yeah. We didn't man picket lines or campaign, or ring doorbells or anything like that. But we all had opinions about things. Had one of our....One of the people in our church group was a guy who was an ecologist long before anybody had heard of the word. And, I said "What is an ecologist again?" He said "It has to do with niches. Everything, every form of life has an ecological niche." And, he was very upset by the foreign policy of our government. Which he viewed as not sufficiently left wing, I think. He was at an ecological station in Minnesota in a very remote area, we visited there once. Then he couldn't stand American foreign policy so he moved to Toronto, only to find that Canada was in thrall to Washington. And so he moved out to the western reaches of Canada, but that wasn't far enough. So the next postcard we got from him was from New Zealand. And he said that he had finally found peace, and my friend, the guy that was a year ahead on me that led me into the Navy, wrote him back to say it was certainly wonderful that he had found peace at last, but he could not help but note that he had landed one of two places on the face of the earth in which racial exclusion was the official policy of the government.

Anyway, we used argue about the atom bomb and the morality of that.

JM: Were the only member of your family that was involved?

TS: Yeah. I don't know my bother, but he was involved in a hundred things. I was never....Four and a half year is a big difference at that age.

JM: You said you had one brother and a sister...

TS: ...And a sister in-between.

JM: Oh, okay. So you are the baby. So what was it like being the youngest?

TS: My brother resented the favoritism that seemed to him that was lavished on me. I didn't notice it myself. I did notice that occasionally at the dinner table I would start to say something and, uh, my brother would just keep talking and cut me off. And every once in a while my mother would interfere and stop and say "Let him say what he wanted to say." And so, in that sense, but, ah, my brother was very articulate. What I did learn was that you marshal your thoughts and learn how to compress them into the most terse form you can and then when they stop to breathe, you insert them quickly.

MM: Good training for a legal profession I would think.

TS: Yes.

MM: It sounds as if you had exceedingly lively conversations at your family dinner table.

TS: Yes. I took a friend down once, after I had started practice here. His parents were both doctors and he came from Reed College out in Portland, he was very literate person.



He had never seen an atmosphere like that. He was just bowled over, just thought it probably must be the most wonderful way to grow up imaginable.

But, on this issue of liberalism and views on things. My sister, when she was in New York, before she finally found the guy she did marry, was thinking seriously about marrying a Jewish guy. And so she called home and told...to tell mother about it and she said "Well, that's very nice." And so then Marty said "Put Pop on the phone." We never called him anything other than Pop for some reason which are unclear. And so he got on, and she said "You know, this guy is Jewish, am I going to have any trouble from you out of that?" He was somewhat taken aback, and he said "Why no, we want you to marry the person you want to marry." And she said, "Oh, I guess you were kidding about all those other things."

Anything else?

JM: Well, I guess, in a similar vein, with activities and groups, you said that you were a boy scout. Were you an active participant, you know, in that? How far along did you get?

TS: I got as far...I may have been a Life Scout, I know I got to be Star. I never got to be Eagle. And I think the thing that stood in my way was athletics merit badge was required for Eagle. Now my friend, this good friend of mine and I used to run the troop. We sort of gravitated to it. And if you've ever been in groups you know that there's a default position that occurs. Nobody wants to do anything, take any responsibility. We had good scout masters. But we would put together programs, we would have jamborees or

something, we would plot how to, you know... give it real thought as to how to make it work, so our troop would look good. And ah, Roland's younger brother became Eagle Scout and this other guy said "He always resented that." He said "Roland did a hundred times for that troop than Jimmy ever did." We both laughed, that's not the point, we each did what we wanted to do.

JM: Now you said that athletics was the one thing that stood in the way of obtaining, you know, Eagle Scout. Did you ever, because you couldn't play sports did you have the desire to play though? Did you at least follow sports?

TS: I wistfully looked at the people who did. And I think I rationalized it that I didn't want to. [Okay] Cause I couldn't. But even before I had the heart condition, I was skinny and awkward and weak. You know, tall and gangly. I was six feet in high school, you know. And ah...so...no, after you've had the experience of when you choose up sides to play baseball and you had the experience of being picked last time after time, it begins to send a message.

JM: I sure that reflected somewhere else, you know, you were talking about activity you know, segregation, and that kind of ideology, it's kinda similar to there.

TS: Yeah. Being excluded. I resonated with that. I never thought of that. It's an interesting insight.

JM: Now you said you went to high school in Urbana, right. There was one high school there or...

TS: One in Urbana and one in Champaign. There are now more in Champaign. I think there's still just one in Urbana now. A new one. The old Urbana high school is now the junior high school. The junior high school that I went to fell into disrepair.

JM: Did you have teachers at the high school level that you found increasingly influential?

TS: The rhetoric teacher. Rhetoric was a senior class and was noted for making valedictorians. You know, people who had good, comparable grades going into it, they were very stingy with A's. So, um, so I impressed my rhetoric teacher and also learned this ...dissimulate...what's the polite word for lying?

MM: Dissemble?

TS: Dissemble, yeah dissembling. Once, ah, she had, ah, one weekend I was supposed to write a, I don't know, a one-page essay on something. And the teacher always insisted that she wanted our work papers submitted with it so that she could see our thought processes as we got to wherever we got. And, that weekend had been a busy weekend, and do Roland's girlfriend sorta wrote my paper for me. Then I dutifully copied it over in my handwriting and handed it in. And I didn't do that very often. I think that was the only time I tried that because, she said, after we handed them in, and she said "You

know, you'll get no credit, if you don't turn in your work papers." Well, that was a bit of a problem, because I hadn't...the work papers weren't in my handwriting. And so I went up after class, and I said, "Oh, I left home without them this morning, I'll bring them this afternoon. And by that I meant that I had left home without them written and [laughter] so I went home and...It was really a very interesting academic exercise. You might try it sometime going backwards, start with a finished product and try to constitute the fragments of the less artful ways that you would have expressed this. So, I justified this as a great learning experience. I do not think of myself as basically dishonest, no.

MM: I'm curious, when you talk about being diagnosed with a heart condition, how is it that you could then join the army?

TS: Navy?

MM: I'm sorry, yeah the Navy.

TS: I wondered about that. And I told them when I went in, they listened. But they said "There, there, I understand. One-A." You know, that sort of thing. And then when I was in the Great Lakes hospital I kept referring to it, It had been a heart murmur. And, we had a old family doctor, I don't know if he knew anything about heart conditions. People said "Did you have rheumatic fever?" and he said "No that was the one thing it was not." But I had this feeling that my heart would stop beating at some point. And, um, but he said you may outgrow it. And, I don't know if I ever outgrew it, outgrew it, or whether I...it became clear that it was not disabling in any way. I think, you know, nobody in the

Navy was able to detect it. And, until I was back in the scarlet fever ward, which I had caught in the scarlet fever ward when I had the measles. It's a good place to catch scarlet fever. And I told that doctor about it and he said, "Yeah, I can hear the heart murmur." I dutifully reported that to my parents and my father said "Oh, dear." But nothing. Then I once accidentally saw my medical folder that travels with you, the record. And one notation said "The only thing the matter with this man's heart is he is nuts about it." So I took that as meaning that I could forget about it.

MM: Definitely something you got out of the Navy. You were cured I guess.

TS: Yeah. Or it wasn't anything in the first place. The big thing was that I was in bed for three weeks and out of school for six weeks in my second semester of my sophomore year. And my sister used to bring home assignments for me. Go around to my teachers and then take my homework in, so that I could keep up. And, ah...But, ah... the result of being in bed for three weeks was that when I came back to school and had grown an inch. I seem to have lengthened out lying down all that time. And again, no doctor since has been able to tell whether what I went through was necessary or not.

But that's...Just an epilogue, five years ago I had a near fatal heart attack, but I survived it by chance. That is, I happened to have it at home when I was within five minute of the brand new Northwestern hospital, when I lived downtown. Timing is everything. It was a total blockage of the main heart artery. I started ...angioplasty and have been fine ever since. But it's the sort of thing that if you don't catch it, you don't

survive. But I have no clue that had anything to do with what happened earlier...in fact, they said it was all diet and cholesterol and things like that.

Do you want me to go ahead with the next phases or what do you want?

JM: Sure

MM: I'd like you talk a little but more about, before we go on to the next phases, some of your time in the Navy. You mentioned some of the ports you were at. And particularly being in New York when the atomic bomb was dropped. How you experienced the war.

TS: Well, um Remotely. Of course the war ended before I actually got in. I got my orders and the war ended, and then I reported. You know, everybody breathed a sigh or relief, everybody was going home, and demobilization was the big thing. In the meantime, the people who ran the Navy knew that they were going to have to have a Navy when this was all over. So, that is why they weren't interested in reserves at that time, they wanted a commitment. I was in for three years, one month and one day as a result of my minority enlistment. But ah...So it was all ...we were, when I was on board ship we were developing anti-submarine tactics and we operated out of Key West. We would go out with a destroyer screen and the submarine would try to penetrate that. It was a question of whether our detection equipment was good enough, whether our routines were good enough. Whether our fliers could then go bombs them, whatever you are supposed to do with them or the destroyers...And then they would drop their

depth charges. Cause they were concerned with submarine warfare. And these little destroyers looked like corks popping, bobbing around. Of course, I was on this very big thing. For the eighteen months I was at on board the ship, I was only seasick the first twelve. It means I didn't think I had a career in the Navy. I can't imagine what would have happened to me in one of those little ships. But it was, it was a very light complement, that is, it was not a full crew. It was peacetime. So it was a nice... and you know we got our liberty regularly.

Oh, one of the things that happened was that...Um, if you go to electronics school, they make you a 2nd class petty officer when you graduate. You start, instead of being a seaman, or a seaman 1<sup>st</sup> class, you start the school as a petty officer third class and when you graduate you're a 2<sup>nd</sup> class. Which, you know in the pecking order is of some note, when you get aboard ship and those rank...ratings means something. In school everybody has them so you don't even think about it. And so the officers used to think that that meant that I should be able to take, exercise leadership. They would put me in charge of things and I didn't know how to do this. And uh...people were very kind. I was working on a piece of equipment and I said to the guy I was working with "Will you go to the next deck and get this thing for me?" And he said "No. You can get it just as easily as yourself." And I said, "Oh, okay." So I went and got it. Afterwards he explained to me, the purpose of rank is so that where it is necessary for you to delegate you do it, but if you can do it just as easily, we are not your servants. You know, made a very interesting distinction there.

And one guy sorta, I was chided for not exercising adequate leadership and so I tried once. And I actually shouted at one of the guys in my division. And, uh, one of my

friends said yeah he overheard some of the other guys saying “Oh, Did you hear that boot, petty officer saying, trying to chew the guy out.” They thought I did it very badly. So I decided that my stereotypes of leaderships were wide of the mark.

And, you know I got out, my last column in the ship’s newspaper as I was leaving the ship, I was bidding farewell. I had been writing it for a year or so and, um, I said ah, I referred to my departure as my “inter-war leave,” between this war and the next one, or the last one and the next one. Anyway, you get the picture.

And of course, I got out in ’48 and my sister and I went to...took a trip to Europe in ’50, in the summer of ’50, and a war broke out while we were there. We had vowed that we were only going to read French newspapers. And when the war broke out, we said well it was a noble idea but we also wanted to know what was going on. So, you’d read the Paris edition of the *Herald Tribune*.

MM: Was that your first trip to Europe? It must have been interesting to be there during the immediate post-war years.

TS: We took the whole summer, it was like 6 weeks, at least. And it cost us a thousand dollars a piece including passage. These numbers don’t mean anything of course, ‘cause you can’t put yourself back. Although even then it was...most people would spend a lot more to take that sort of trip.

JM: You said you wrote for the ship’s newspaper in the Navy. Was that your first foray into journalism?



TS: Well, let's see. No, I wrote a column in the high school newspaper occasionally. I wrote...I remember writing an editorial about the Battle of Iwo Jima. And I had no idea what I said or what I even knew. But, you know, it was original. And my, the teacher who was the sponsor of the program said she sent it to one of her friends who said "That's the most sane thing I've seen written about." I mean, that's all nonsense of course, but it made you feel good.

No, I enjoy writing. And I enjoy tearing apart other peoples' writings. My colleagues here who work for me, you know, eventually get used to the idea that they'll work and work and work on a memo or a letter or something, and it will come back with measles, everything's red all over it.

MM: Nowadays they take legal writing in law school. Did you take legal writing at Harvard?

TS: No.

MM: So how did you learn how to write legally?

TS: Reading, writing. Listening to my parents speak. You know, you get a feel for what doesn't sound right. And if you are fortunate enough to grow up in a family where what doesn't sound right isn't right, you're way ahead of the game. If you grow up in a family where what you hear everyday is wrong, why then you have a terrible burden to

overcome. You know, I...everything I have and have achieved I see as you know, practically an outright gift. You know, I worked but, you know, I would never had done anything of what I've done without the advantages heaped on me. Which is also what I was taught as a good Protestant.

TS: Well interrupt anytime, and whenever you decide that you have to quit, why that's fine with me. The clerkship well, I got some understanding<sup>1</sup> there. When I would write memos I thought were very well written and the judge the first couple of times said "Oh, that's very nice, now here's the way you have to recast this." In the first place you have to consider who your audience is, there would be a three-judge panel, there were nine judges on the DC circuit and they would rotate, so you never knew which judges you would get. You've got to get their attention. You've got to tell them what you are telling them. And you have to make your points up front.

And, you know, just one little dinky little trick that I tumbled to, I was arguing with Judge Basil on, who was sorta a boy wonder in Chicago, and uh, he viewed his intellect as very high and you know he'd let you know it and uh I was arguing with him on justifying a [issue] and he said "That's wrong." "No," I said "the cases all say thus and thus and so except this ..." And I was prepared to distinguish it when he interrupted me before I got to the "except" and he said, "That's clearly false, what about this case?" I said "If you read the rest of the sentence. "No, we shouldn't have to read the rest of the sentence, you should put that up front." So that nobody could, you know, reading something you know is not accurate creates an impression, so if you protect yourself by qualifying it before you get to the...then you make a much stronger point.

Anyway, I resented it at the time.

But my judge who died at the very end of the year that I was there. He had pancreatic cancer and went very quickly at the end. Before that he had given me a list of six law firms in Chicago that I could apply to. He thought they were adequate or good firms.

JM: Now had you always had the desire to come back to Chicago?

TS: Oh, yeah. I always meant to come back to the Midwest. And I wanted to go to a metropolis and that's Chicago. Very easy choice. Between my second and third year I clerked for Thompson, Hine and Florey in Cleveland, which is Cleveland-based. It wasn't a world-wide empire back then. And ah, I did it because I had never seen the inside of a law firm and I thought maybe I'd better do that before I got to my third year of law school. And so it was a good experience and when one of their guys came to Washington on something he asked me if I would be interested and seemed a little disheartened that I never had any intention of you know they were very nice to me, but I always wanted to come back to the Midwest.

JM: What was the appeal to the Midwest?

TS: My roots. This is where I am at home. I talk Midwest. And I resent Bush or Nixon telling me what Middle America is all about. It's not those right-wing Christians, I'll tell you that.

Clerkship, we dealt with. Now we come, I interviewed with all six firms, it didn't occur to me to interview anybody else or to ask anyone else. And, uh, so I got two offers, one from what was then Jenner and Block, I think. It was something else back then, and Bell Boyd, which was then Bell, Boyd, and Marshall. Which went by the trade name of Bell, Book and Candle, which was a popular book at that time. And uh, cause Judge, Justice Stevens had been a friend of Tom Marshall thus the Marshall of the firm. It then soon morphed into Bell, Boyd, Marshall, and Lloyd. And then went through a lot of other manifestations, and finally settled down into to Bell, Boyd, and Lloyd now. All of whom are dead of course.

But uh, I'm sure I spoke with Tom Marshall when I came. He was a gruff litigator. And, uh, but he would never chat with me in the hall. And the only way I figured out that he knew even who I was, was that we were standing alone in the elevator lobby outside our office and the elevator didn't come and didn't come and even he got a little squirmy about not saying anything. So, without looking at me and staring at the floor, he said "So Harold Stevens is dead." And I said "Yes." And gave him some particulars of it. That's not the usual warm greeting.

He had a secretary who was once called to testify in court about the mailing of a notice. Because that became an issue in a trial. And so they put her on as a witness, because that was what she'd done. So she went to court, sat through the court proceedings, and came back and resigned. She said "He was so nice in court, he doesn't have to be the way he is here. He's a sonofabitch here, he can be perfectly charming." So there's a lesson. I've always tried to be nice to my staff.

Anyway, I gravitated to ah....we used to protest real estate...I got in the real estate department because that's where I was assigned. When you come to a law firm where they need you is where you go. And, this may determine your career, no matter you think. And so one of the things the guy who was my immediate, ahead of me in the hiring order, had handled the gathering up of people's tax bills and shipping them over to the other law firm that protested taxes. And so he passed that on to me, as something that he thought I could do, and so I had that connection to real estate taxes.

But mostly it was other things. I had a very nice boss. But after five year, well come 19...I came in '55 and in 1960, Dan Ward was elected States Attorney. Who... back up to my political science course in college um, I had Professor Near, was the big name in political science, he was a very short guy by the name of "Shorty Near" not by his mother but by others, but he was prominent in the field. He was lecturing to a room of well over a hundred people, and called on someone, no he asked a question. No, he called on somebody, who said, cited something that had happened in municipal government that we were studying at the moment. And he said "Why do you suppose that happened?" He turned around to write something on the blackboard and the guy said "Oh, it's all politics." And Charlie Near turned around, I mean he whirled, and he stared the guy down and said "You know what's wrong with politics in this country?" The guy was a little bewildered and didn't know what to say and he said "Cause people like you won't go into it and so you get exactly what you deserve."

So I decided right then that that was what I was apt to do, go into politics, it was challenge. So when I came to Chicago, one of the first things that I did was to look up my ward committeeman. And I wasn't going to have anything to do with those

independents, I wanted the real machine. So I worked for Claude Holman who was of course the fourth ward committeeman. I thought I was in the fifth ward, because that's where Hyde Park is usually identified with. But, uh, so I was a machine precinct captain for ten years. All the time I was working at Bell Boyd and at the States Attorney's office

MM: And how did you know that if you wanted to get involved in politics to contact your ward ...

TS: You look it up on a map and then look up in the phone book and then walk in.

MM: Sure, but were you familiar with machine-style politics? And who you needed to know?

TS: Well I had heard legends about it. Most of which were wrong. We just interviewed Judge Jordan yesterday. Who was also out of the fourth ward and who started was as my assistant precinct captain. As a matter of fact. He had joined Len DuPres who was the fifth ward alderman and head of the IVI faction of the Democratic Party. And uh, he had, Michael Jordan had gone to him and asked, you know, he wanted to get into politics too. And he had said "Well, you know, this is what the independents are doing here, and..." he said "No I want to get into party politics." He said, "Well, you are in the fourth ward. He said "Marshall Korshak's alright and you can go do what you want for him. But you're a resident of the fourth ward and your committeeman is Claude Holman and you know he won't give you the time of day and his ward is 80% black and he has no use for a white precinct captain. Won't even talk to you probably. Some assistant or something."

So Michael went to see him and found out that everything that Len had told him was wrong. And, the odd thing was that Len knew that I was a precinct captain, I know Len and have known him for a long time and I had good things to say about Claude, but it was ideological with him. He thought only independent Democrats could maintain their integrity.

But anyway I walked in and he said "Where do you live?" And I told him, he said "Do you know what precinct that is?" I can't remember whether I had taken the precaution of looking it up and I may have said "No." He pointed to a map and said you're in the thirty third precinct or whatever it was, and he said "You wanna be a precinct captain? We don't have one there." So I walked in off the street and I am a precinct captain. And uh, course I'm employed so I don't ask him for a job. Come the first big election, we're all required to come through and tell him exactly how our precinct is going to vote. We'd be graded on that. And, uh, then he said "Well how much money do you need?" [chuckles] I looked at him puzzled. "Well, how much do you pay your workers and your judges and, you know, you have to buy food, get the coffee and doughnuts, you have expenses. And the policeman expect something too, you know. I said "Well, whatever it is, I'll take care of it." And so he always called mine a free precinct." I learned the first election day when the policeman came up to me and said "Now, I know Claude gives you money." And I said "No, this is a free precinct." And he said "What! I've never heard of such a thing." So we interacted to sort of learned each other...he thought for five years that I was a spy for the IVI. And he finally decided that I was for real. And I blazed a trail for Michael Jordan who ended up president of the

ward organization. Actually, it was instrumental in seeing that Tim Evans was his successor when Claude died very suddenly. I just heard that yesterday.

But anyway, so I was given a precinct. I worked very hard at it. I was still single.

MM: What sort of things did you do?

TS: Well you canvas, you go meet everybody. You go ring doorbells, you learn everybody, you put out literature. I designed my own literature. I would attach the party literature, but it was... I used to put out a newsletter. It was called the "Democratic Doorbell for the Thirty-Third." It was a very catchy. I would cut the stencils but then I would take it over to headquarters and I'd let him, I'd at least use his office to run the... Apparently he'd never had anybody quite like that.

And so, eventually though, after my six years with Bell Boyd, I wanted to go into the State Attorney's office. I went to him and you know, he was happy to have me. The thing, I think, that puzzled him more than anything else was for a while he treated me with kid gloves, but occasionally you do something that displeases him and he would really ream me out just like anyone else. And, I think he was impressed that I would accept that, of course I didn't want to be treated any differently than anybody else. So he eventually made me president of the young democrats. Where I met people like Harold Washington, John Stroger, all those guys.

John and I have an agreement that we'll admit to being in the young democrats but never how long ago that was.



So that was sort of the beginning of my real political career. I think I wrote, ah, I was interested in Adlai's campaign but that was off at law school at the time...you know...but my hero was really Harry Truman, what a president ought to be...still my opinion that he was the last president that we had that decided things on the basis of right and wrong, not focus groups.

Anyway, so I did all this real estate tax work, and I was happy with it. In the 60 election, I was surprised to see that the chairman of the lawyer's committee for Dan Ward, Dan.... They'd lost the States Attorneys office four years before to Ben Adamowski who'd switch sides and become a Republican and spent most of the intervening four years indicting all of Daley's friends. So we wanted the office back. Adamowski also earned the record for having the most indictments dismissed. I mean he would do it just for the show of it, for the fun of it as it were.

But, anyway the chairman of the lawyers committee, I was surprised to see was Laird Bell, who was my senior partner. Now Laird Bell was distinction among senior partners in big firms in that he was a democrat. You had down on our letter head a long way before you came to the second one. But um, um, so when I got this idea well...oh they brought in a blue ribbon candidate as it were, they took Dan Ward out he was the Dean of the DePaul law school at the time. So he made an excellent choice, ran a good campaign and got elected and, you know, working in his office was a real joy because was very professional. And he, uh, when I got there, when he interviewed me he said "Now, uh, what sort of assignment were you looking for?" "I said, "Well, I don't know anything about what the state attorney does, but one of the things that I do know is that I want to be assigned to the criminal division. He said "Okay, I see." So, I never saw the

criminal division. He knew a lot more than I did, he assigned me to the civil division and put me in a desk that said tax expert on it, and so I became a tax expert.

Everything crossed my desk and I was the only person there to do it. And you know, some of the things my predecessor explained and he always held himself out as willing if I had any questions arose. But as new things would come up, I would say "Well, how did my predecessor handle these?" And they'd say, "Oh, he didn't. We couldn't proceed along these lines, no body knew anything on it." So I created my own office as it were. I used to accuse my friends of leaving hand written notes on the walls of the bathroom saying "If you have problem that nobody else can solve, go see Swain in the State's Attorney's Office." I could get the most remarkable lineup of people. But, uh, so I learned my tax law there.

And my first big case was the railroad case. I established my reputation by handling the case where the county suffered the largest civil judgment in its history, \$40 million tax refund. But, you know, the railroads were right, but that's besides the point. Actually we won at the trial level, and in the course of it, the case we put together, you know it had to do with how you value railroads. And so I went back to all these cases on which I'd done my paper in law school and they were all right there, and I used most of them in our brief.

But the Supreme Court...I learned something else, two things out of that experience. One was that uh, the, ah, they had already decided a downstate case, in which they had granted relief to the railroads in a very modest amount. And so the downstate counties that were involved were stuck with this judgment. So as Cook County comes along and a lot more is at stake but to think that they were going to say to

the downstate counties you lose but we're going to decide for them, just because they know what they are talking about, is fanciful.

The second thing I learned, as I was cleaning out the file drawer about the case I found a correspondence folder about the case there was only one piece of correspondence in it, saying...It was a letter, exchange of letters from the States Attorney to the counties that had been first been hit, saying that the State Attorney of Cook County, who was Ben Adamowski at the time, this case has implications for all of us, why don't we pool our resources and attack it and really put up a defense to it. And Adamowski wrote back a nice letter saying "Thank you very much, I appreciate your concern, we'll certainly get back to you." That was all that was said on all the correspondence. So it could have been nipped in the bud earlier, but it would have produced a different result altogether, I don't know, but, ah, I learned a lot about tax policy.

Do you want to go home it's 3:10, you're entitled.

MM: Well we thought perhaps we could stop now and pick up next time with the start of your public career. That's sort a nice place to start in our next conversation. Is that okay with you?

TS: Yeah.

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SWAIN: I had some good notes here. We got up to my being  
(inaudible) almost, didn't we?

Q: I think we had gotten to the Cook County assessor's office.

SWAIN: Oh, well that's --

Q: Public career, and we thought that would be a good place to  
sort of resume.

SWAIN: When I became a public man. I had come out of law  
school, and I clerk. The (inaudible) and then I worked for  
[Belvoid] for five years or something. Then went into a  
state security's office. Did we get into there?

Q: You had talked a little bit about some of the -- I think it  
was ICC cases in the state's attorney's office.

SWAIN: No, that was at -- yeah. Yeah, that's right. We had  
a litigation involving evaluation of railroads. What I  
learned from my third-year law school course on  
administrative law was useful at that point. I stayed in  
that job until I found that I could answer 85% of the  
questions that came across my desk without having to get  
up. I wasn't learning anything new. At that point, I left  
for the Chicago Federation of Settlements and Neighborhood  
Centers. Helped fight the war on poverty.

Q: What's that? I'm not familiar with that organization?

SWAIN: It doesn't exist. It went out of existence. It was a  
grouping of a lot of settlement houses, neighborhood social

service agencies, all over the city. When the war on poverty came along, the city didn't want to deal with 40 different agencies. They didn't want to have to police those (inaudible) their books and what sort of papers to submit, and so they all flowed through the Federation office. I was hired as something like controller or associate director. That was my principle responsibility. Figuring out the case flow and the paper flow. Very substantial, federally-funded undertaking. It all passed through the city, so we were actually dealing with the city. And all sorts of programs. Head Start. (inaudible) I had been on the board of the Federation of Settlements before I left the state's attorney's office, and actually what precipitated my departure was the director there said he needed help; would I be interested? So I said yes. I'm always looking for new things to do. I used to tell people the reason I change jobs every five years was that I was diagnosed with (inaudible). So I can't remember -- and it was a very interesting experience. I had worked with a local settlement house (inaudible) right next to Hyde Park, where I lived all that time. My first wife was a social worker. Actually, my second wife was, too. I can't remember. I think they both went to SSA at University of Chicago. Anyway. So that's the do-gooder side of things.

My father was always definitely afraid that I would do something -- would spend my life doing something good rather than doing something significant or useful. Academics have their own standards of what's useful and what's worth doing. So then I went from there into the assessor's office, and that came about because we had a new assessor named [Parky Cohen] come in at that time, and the chief deputy assessor was Tom Tully. Tom Tully was somebody I had trained for the job, simply because [Culloden] was looking for a new chief deputy, but it wasn't quite so overt. He just brought him in one of his precinct captains, who would have been a prosecutor on the west side in the criminal division of the state's attorney's office. I was supposed to show him around all the various (inaudible) offices to explain how the system worked. I had no idea why I was doing that, and whether he'd be around long enough to be of any use. But anyway, he was hired by the assessor. When there was a big (inaudible) scandal in the assessor's office, they sort of cleaned out and put Tully in as chief deputy. Then he served for, I don't know, four or five years. And then -- maybe not that long. [Culloden]'s term was going to come to an end a year later, and he wanted to leave the office so he could run for the office. He didn't want to be running for



assessor's office as chief deputy for -- I don't know why, but that was his wish. So he had to find somebody to take his place. [Culloden] wouldn't let him go until he found a suitable replacement. So Tully asked me. Actually, he asked his law partner, he said, "Who knows more about real estate taxes than anybody?" and this other guy fingered me for it. So he offered me the job. I don't think he knew anything about my political involvements, but (inaudible) credentials through (inaudible) organization. I said to him, right off the bat, "Well, there's one problem. Mr. [Culloden] doesn't know who I am." Tully was equal to the occasion. He lied and said, "Of course he does. He thinks very highly of you." I said OK. Then he wanted to make it a big secret. He announced his own departure, and didn't tell anybody -- he and [Culloden] didn't announce anybody to replace him until it got right up to the time he was about to depart. So there was wild speculation and a lot of interest in the office as to who was going to replace Tully.

Q: And why would he do that? Why would he want --

SWAIN: He liked drama.

Q: Intrigue.

SWAIN: Yeah. It was so out of left field, I think he got a kick out of it. The night before he was going to make the

announcement, I woke up in a cold sweat and called Tully the first thing in the morning. I said, "Tom, does Mr. [Culloden] know I'm a Protestant?" So he lied again and said, "Yes. There's no problem." We have a long line of Irish Catholic assessors in this county. So then I stepped into this job. I had a staff of 300 people. I had never had an administrative job before. I inherited a lot of his people, of course. He had cleaned out the place after the big scandal, including a lot of his friends and younger people. Anybody who wanted to go to law school, he would pay for if they would work for him. So a lot of budding law school aspirants in the office. It was an exciting place to be, and they put in the computerized system called [multiple aggression] to figure out what the proper assessments of property were. Then Tully went across the street to his office and practiced law. Assessment law. (inaudible) But it wasn't quite clear. Some of his people would still go across the street and ask him what they ought to do, instead of ask me. So it was a little iffy. But Tully and I got along fine. He was very much at pains to support and back me up. It was a learning experience. You certainly get to know the ins and outs of the system.

Q: And what were your primary areas of focus as chief deputy there?

SWAIN: Well, just finding out how the office was running and what the bottlenecks were. Who was performing, who wasn't. Just all the problems that you get with an administration. And the other problem was, I knew more about functioning the office than most of the people who worked there. I worked in the state's attorney's office. I had to equate myself with it. (inaudible) I remember one memorable day -- I used to have staff meetings, which was considered novel. I think every Tuesday morning or something, we would gather in my office and get reports from my department heads and find out who was doing what. Make assignments. Timelines and that sort of thing. One time, somebody came with a problem -- what is our policy on partial construction? If you put up a building during the year, how do you assess it as [on the first of the year]? I said, "Well, what's been the practice?" I got several answers to that. I said, "Well, you put your heads together to find out. Come back and tell me next time." So they did. Depending on the day of completion, there would be a percentage assessment made. (inaudible) I said, "OK, that's fine. Let's write it up, and I'll -- for my signature." And they all blanched and said, "What would you want to do that for?" And I said, "Well, it's only two requirements to making a policy public, and one is you have to know what you're doing, and

the other is you have to want to treat everybody the same." And they said, "Well, neither of those requirements have ever been met in this office." It was a lot of fun. I don't think there was ever another -- (inaudible) was ever assigned by the chief deputy after that. But it's a historic document now. People wave it in the assessor's face, even to this day. But a lot has changed. But anyway. Personnel problems, which I wasn't used to. Going back to my Navy days, I never had had much success managing people. But there was a good spirit around the office. Tully had sort of cleaned out the sources of independent entrepreneurship in the office, where various departments would collect fees on their own for doing their job.

Q: Was that the big scandal that --

SWAIN: Yeah.

Q: Just typical?

SWAIN: That was part of what was going on. But Tully was very vigorous. That had been done before I got there, and the office had been pretty well professionalized, so it was just my job to make sure it didn't slip back. The question arose what field men do. They're supposed to go out every time a permit is issued by a municipality. They go out and inspect the site and draw a plan -- cards for our permanent records. I asked one of our staff people, "Well, what do

they do?" I said, "Have any of you ever gone with one of them?" (inaudible) said, "Well, nobody's ever done that." And I said, "Well, I want everybody, in the next six months, to pick one day that they go ride shotgun with one of the field men." So I did that on a couple of occasions, and one of my chief assistant did, but as far as I know, we were the only two who ever did. You get to know what the field staff is doing. They (inaudible). It was sort of amusing. It's like a culture all its own. There was nothing venal about it. In fact, I got to a point where I used to -- there was four of the field men who decided I need more education on how the system works, so they suggested we all go out and drink beer together sometime. So we did that on a fairly regular basis. It was six months or so. They said, "There are only two rules." Well -- two rules. "You can't pay for anything, and nothing we say here is ever repeated." So you get a lot of good information that way.

Q: I imagine.

SWAIN: So that was my brush with public life. Well, I, of course, had been in the state's attorney's office, but that was a different experience. I guess I mentioned last time about, when a new problem would arise, I would ask how my predecessor would handle it, and they said, "Oh, he

didn't." So I'd have to make up a way of handling it. I said, "Well, what did you guys do?" They said, "We just waited it out until you came." So there's certain -- you learn a lot about how people deal with bureaucracies. Partly, they -- some of the old-time practitioners told me, there's one person in every office that knows what's going on, and it's never the person you think it should be, but it's your job to identify who that person is and get on their good side. Then they'll tell you. That's how government tends to function. I don't know if you want to dwell anymore on that. You can ask questions about it later if you do, but anyway, the... Then, I, at one point, I said to Tully, in the fall of '75, that I wanted to move on. I had been there -- I had only been there two and a half years at that point. I said, "My family is looking for a little more support than I can give them on this salary." Since I limited myself to my salary (inaudible) which apparently was another novel point. He said, "I understand, but I think what you should do next is become a judge." I said, "Oh?" He said, "You'd make a great judge." He said, "Slating comes up in December. Mr. [Culloden] will certainly put in a good word for you before the slating committee, if you'd like to be that." I was planning to serve until the end of the year, in December.

He said, "Why don't you wait and see if he succeeds in getting you slated? If he doesn't, then you can move on." And so I went before the slate committee. It was chaired by -- the chairman of the committee was Richard J. Daley. He didn't really know who I was, but I came and appeared before all of the committee. He said, "Well, now, Theodore, tell us why you would make a great judge." I said, "Well, my first qualification is, for 10 years, I've been a precinct captain for [Todd Holman] in the fourth ward." Standing ovation.

Q: And for him, that was the most important qualification?

SWAIN: Well, (inaudible) everybody knew it was... Then they asked about my qualifications. They, in fact, slated me. I remembered at the last minute to make sure I went to [Todd Holman] and asked him, because Tully had arranged it with [Culloden], and I didn't want to -- until I had it both ways from my own (inaudible) who was not un-powerful, and [Culloden], who was probably the number two man in the party organization. So I didn't have any trouble getting slated. That year, they created a whole lot of new judgeships. They created 20 new judge -- no -- yeah. Twenty new judgeships. Maybe 20 -- I can't remember. Anyway, there were a group of 10 that were running at large, in addition to the agencies that normally got

filled. On a vacancy -- it's a head-to-head contest for that seat, where if they wanted to create new judgeships, they'd run the top -- there were 14 -- no, 15. Fifteen of the city ran county-wide, and 10 in the city. So there were 25. Yeah, 25 all together. Everybody who was running against the machine thought, ah, that's the best place to hit. So there were 60 candidates in the primary for those 15 spots, and it's including 15 party nominees. They were not the top 15 on the ballot, either. You would count down 14 numbers before you hit the party slate, which was all together. You were totally dependent on party discipline to get -- anyway, the party did a remarkable job and carried 14 of the 15 in the primary, and got them past the primary. This was virtually no contest (inaudible) general election, although it was county-wide. It was a coveted skill to put up campaigns back in those days.

Q: And why had they created these new judgeships?

SWAIN: Expansion for the handle of business. It had been a long time since they added judges.

Q2: Had you thought of being a judge before it was recommended to you?

SWAIN: I guess maybe I had thought about it. I thought maybe I'd be the chief justice of the Supreme Court. I didn't have any of the intervening steps laid out, but... Then the



next question after -- got through the primary, then went to -- the general election, of course, was in November, and I got sworn in in December. About that time, it occurred to me what had happened. Tully got a whole extra year on me, because I had plan to quit the preceding December. So instead, I stayed on. I got sworn in. Once I got past the prime -- if I hadn't made it through the primary, (inaudible).

Q: Did you actively participate in the campaign process?

SWAIN: Yeah, we had a group approach. We ran as a group, and it was coordinated so we wouldn't inundate the board meetings. That's where most people campaigned in those days. You'd go out and explain to the precinct captains that you're their buddy and will look out for justice for the people and all this other thing, and I'm a hell of a guy besides. One thing I failed to mention in all my campaigning was that I had gone to Harvard Law School. I think that was on advice. In fact, with the augmenting of the court, there were, I think, 300 judges now, total. After I got elected and Bill Cousins got elected, that made a total of three from Harvard Law School. [Bill Cousins] - - do you know Bill Cousins? Does that name --

Q: The name sounds familiar.

SWAIN: He's a black guy that ran for -- he ran against the machine on the city-only slot. That's the first time anybody had ever done that, and he knocked off one of the party candidates and got slated. Then he was on the appellate court, I think. Maybe not. Anyway, he recently ran for chief judge against Fitzgerald. He made a good showing, but didn't win. I don't know if he's still (inaudible). Anyway, a really outstanding guy. Then the other guy was somebody who was in the northern suburbs. (inaudible) who I think was an associate judge at that point. So I got myself elected somehow. And you learn a lot in campaigning. First thing Tully told me, never to drive to one of these, because if somebody drives with you on your way home, they will insist that you were drunk, and it will be a scandal. So I will always give you a driver (inaudible) one of the staff people of the state's attorney's office. So one of my drivers was -- it just shows the variegated nature of our party in our community -- a guy named [Riley McIntosh], who I had actually trained to be the railroad assessor in the assessor's office. We became good friends. We still are, except I don't see him since he retired. [Riley McIntosh] was my driver, and we went out to a ward committeeman, whose name was [Kelly]. The interesting thing about that was they're both black.

Usually you think an Irish name is other than that. But anyway, it was a wonderful experience, getting to go with people all around the county. And not everybody appealed to you, particularly. Some of the judges I campaigned with, some of them were sitting judges running for retention, and so -- I mean, reelect -- I can't remember. Anyway, for some reason, I was campaigning with a judge I particularly didn't like. He was decent to me, and we were civil. He eventually ran for chief judge, and I voted against him. Fortunately, he didn't get elected. Well, after I got elected, then the question was, where will I be assigned? We had this totally integrated system that's unique in the United -- or it's the largest one in the United States. Totally integrated court system. County. And any judge, on any day, can be assigned to any courtroom by the chief judge. They don't do that. They tend to put you into an assignment and keep you there for a while. Sometimes they shift you, sometimes they let you stay. There's general requirements and your predilection. So I said to Tully -- or Tully asked me, "What assignment do you want?" I said, "Well, I would like to renew my interest in criminal law." Since I didn't get into it in the state's attorney's office, when I told [Dan Moore] that's what I wanted to do. Tully said, "OK. We'll get you there. But,

for heaven's sake, don't tell the chief judge that. Because if he knows you want it, he won't appoint you there." Where he appointed me was a place everybody else had asked for, which was the tax section of the law division. I couldn't sit with the county division, which was then passing on everything I had ever done in the assessor's office. I thought that would be inappropriate. Well, some judges couldn't understand what I was talking about. So I didn't say anything, and he assigned me to the tax section of the law division. Unless you understand the finer points of jurisdiction, it probably doesn't mean much to you. But Tully said, "You just go there and do what you're told." The presiding judge was a guy I used to work with in the state's attorney's office, who I sort of trained in the field. Anyway, he was my boss. Tully said, "I'll tell you what I'll do. I'll speak to Richard Fitzgerald," who was a Fitzgerald before Tom Fitzgerald, who had been presiding judge of the criminal division. This whole time, we referred to him as Fitzgerald the Great (inaudible) current Fitzgerald on the Supreme Court. I'm a dear friend of Tom's, but he's different. He's a much more political creature than Richard was. Tom Tully told me that, "What we'll do is we'll let you stay there about six weeks, and then Richard Fitzgerald will ask the chief judge

for you. That way, it doesn't come from me." Richard Fitzgerald was thought highly of by the chief judge as one of its real stars. He was the presiding judge on the Greylord investigation. He was the only judge the feds trusted. (inaudible) was going on. So he was a highly respected guy. Some of the national famous trial lawyers would comment that he was the judge they appeared before. Really remarkable guy. Tully had been his prosecutor. The world moves around -- positions itself. Promotes it somehow. So my immediate boss was on vacation, and I had taken his calls, in addition to my own, in the law division. The bailiff came in and said, "There's a phone call I think you want to take." I said, "Oh. Yeah." "It's the chief judge." I said, "Oh, court will be in recess." So I went and took the call, and Ed Boyle said to me, "Swain, this is Boyle." I said, "Oh. Pleased to talk to you, Judge Boyle." And he said, "For some reason, Judge Fitzgerald is high on you." I said, "Oh, I'm pleased to hear that." This was on a Friday afternoon. He said, "Monday, report to the criminal division." So I said OK. When my boss came back, I was gone. He came back the following Monday. I left him high and dry. When the question came up, I had talked to him a little about, hypothetically, where I wanted to spend time, and I

mentioned criminal division. He said, "Oh, you wouldn't like that. I was there two years and hated every minute of it." So I expected I would last about two years there. So I served out for the rest of my time there, and never got tired of it. Never any two cases the same. Just kept learning and learning and learning. Of course, I had had the general trial experience. Certainly in criminal. I had litigated the railroad cases on the civil side. Which (inaudible) totally what propelled me into fame, was losing the largest civil case (inaudible) County up to that point. That bespoke the responsibility I carried (inaudible). Actually, I felt very good about the way we conducted the case. But I didn't know anything about rules of evidence, since I had a course in law school -- it was the course I was most fuzzy about. What you ordinarily do is you have a trial call in the morning, and you sort of process cases. Find out (inaudible), where they are [in discovery], when they're going to be ready for trial, and do they want a plea conference. All that. Then, sooner or later, you get one that's actually going to trial. There was one guy up on the floor above me, who I knew pretty well, who had been in the state's attorney's office with me. A very amusing guy. Every time I had a sentencing, I said, "How do you know how to sentence anybody?" They had a program for us

of a few weeks, a couple of weeks, right after we started being judges, and that was very helpful, but it only goes so far. I would go up and see him, and he would give me some good pointers. Of course, I am not sure the omens were good. The first time I did that, coming back down, the elevator got stuck. I called the -- there's a phone in the elevator. I said, "Will you call my courtroom and tell them where I am? I haven't run away." So I had to learn how to handle what my relationship was with the clerk, my courtroom clerk, and the bailiffs. It's little-noted that there's seven different separate entities that all have to be present before court can start, and most of them -- they're all independent of one another. There's the judge, who's elected (inaudible). Except, presumably, the presiding judge. Then the prosecutor, who's appointed -- assigned there by a separately-elected state's attorney. There's the public defender, who's there by -- appointed by the public defender, who is selected, I think, by the county board. There's the courtroom clerk, who's an employee of the (inaudible) court, who's independently elected. There's the bailiffs, who are employees of the sheriff, who's independently elected. There's the court reporter, who's hired independently, again, by, I think, the county board. That's a commonality there. And then

you need a defendant. When you get all seven of those together, you can start. I did learn one valuable piece of information. The judge is never late to court, because they never start without him. But I tried to make the point always to be fairly timely. There was a certain camaraderie between the prosecutors and the public defenders that were assigned to the courtroom. They would always come into my chambers for coffee before court started, just to make sure that everything was in order for the trial call. Then, eventually, I had my first jury trial. How do you pick a jury? In those days, you let the attorneys interrogate the jurors, and they would make their decisions. One by one, the judges would tell me, "You're going to get tired of that." Eventually, you take it away from them and do the questioning yourself. In the first place, you get much more relevant questions that way. Secondly, you're assured that the relevant questions do get asked. The oversight of the attorneys (inaudible). And then again, managing a whole new population, array of jurors, which is a fascinating group of people. One of the things that you appreciate is just how terribly, seriously the jurors all take their job. Whenever I'd have a jury trial, I would always mentally make a note of how I would rule if it were a bench trial. There were very few cases



where I came to a different conclusion than they did. I'm not sure what their thought processes were. Some of them are very fascinating. But...

Q: Other than sort of learning by doing and talking to other judges, were there other ways that you learned the ins and outs of the court?

SWAIN: There was something called the National Judicial College. The first year, there was a program put on at Harvard, as a matter of fact, by another competing group that was not associated with the National Judicial College, which is located in Reno, and this other place had headquarters in Virginia, but they would sponsor programs. This was for a course called Humanities and the Law. I paid my own way to go to that, because they wouldn't pay your tuition and your expenses until you had served two years. Now, I thought that was mighty strange. When you need it is the beginning. But at the end of two years, I went out to Reno, and understood what their thinking was, that I would have gotten virtually nothing out of the course if I had gone right away. You'd have to have confronted these problems before all this information means anything to you. And you learn how judges do it all over the country in the various judicial systems there are.

Q2: How does this college work? Is it a couple weeks? A weekend seminar?

SWAIN: No, it's a three-week residential course. They reserve a block of hotel rooms, actually. They have a nice facility. The reason it's in Reno is because somebody gave them the money to build it there. A guy named Fleischmann, who you may know of, because of his gin. So that's who funded the National Judicial College. It's also the seat of the national juvenile court system. Some of my friends -- I was coming out of the fourth ward with a guy named Sylvester White, who was head of juvenile court here for many years. He was noted for giving a speech out there once, saying -- he often reflected on the juvenile court system, and all he could think of was Charlie Brown and Peanuts after a game was over, and it said, opponents, 99, home team, 0. And he was walking off the field with Lucy and he was shaking his head. "I can't understand it. We were so sincere." Mr. White was likening the juvenile justice system to that. Which always stuck in my mind. Anyway, I never got close to juvenile court. My neighbor, who was head of Commission on Youth Welfare when I first became a judge, insisted that I ask to be assigned to the juvenile court, because that's where the need was the greatest. I said, "I'm not sure I could make much of a

contribution there." Nobody even -- that was not an option at the time. I never did, but I've since gotten involved in a lot of activities. Chicago Council on Urban Affairs, which I've served on for many years, has got into a big step in the criminal justice system. So I served six years, and then I ran for retention. Incidentally, when I ran in the first group, they had always, of course, published the election results. I came in 14<sup>th</sup> out of that 15. I didn't come in last, but the lady who came in last had actually bumped one of our guys off, who was right behind me. The guy who got bumped was re-slotted the next time around. Got his turn, but... So the second time around, on retention, people saw the results and were shaking their heads. It turns out I was near the top of the retention ballot, in terms of percentages. Of course, I assumed it was because I had done a good job. Another guy, named... I can't remember his name now. (inaudible) with an Irish name and I came in near the top of the list. People would explain it that people in the suburbs thought he was white, and they thought I was black. This Swain name -- there's a big chain of drugstores on the south side with that name on it. The only people I've ever run into with my name have been black. It's a name that's familiar to a lot of people. You just never know why people vote

for you. I had gotten high ratings (inaudible) [bar and polls]. So did a lot of other people. All during this time, towards the end of my six-year term, my wife was increasing the pressure to get a decent job. You've been indulging this luxury too long. We're all paying for it. Which translated into something like, you have four tuition-paying daughters, and the unspoken thing was, and you also have a high-maintenance wife. But we didn't talk about that. I had actually been interviewing, since I was approaching the end of my term. I filed for retention. I didn't want to be out of a job, but then -- and so I went into a pool with the other guys who were running -- everybody running for retention pool (inaudible) particularly on retention, trying to outdo everybody else. Like the most recent election. All the retention (inaudible) got retained. Which is not a bad idea, in the sense that it approximates the federal system, where you have lifetime tenure. In other words, you have to do something pretty bad to attract newspaper attention. Unfortunately, the newspapers -- attention is attracted by the most irrelevant things. They'll go after people just because they didn't like the ruling they made. Because newspapers have a way of trying cases before the trial starts, which is the bane of all judges. One of the things

we learned in Reno is the one thing you cannot do is answer them. You cannot defend yourself. You just have to keep your mouth shut. They have a lot of material that shows what happens when you do. They control the newspaper, you don't. They can make you look stupid, no matter what you say. I had one case that the Sun-Times (inaudible). They were very unhappy with the result. That's another experience that most judges encounter.

Q: Were there other places that were particularly noted publicly or important in that way?

SWAIN: There was a rape trial of a public defender, I remember, which received a lot of notoriety. It didn't occur to me I was supposed to handle this any different than any other. They had pretty good council, veteran council, representing the guy. But I found him guilty, and that surprised an awful lot of people. I got a note slipped under my door from Judge [Gillis], who was in the next chamber, one afternoon after this ruling had come down. He said, "Congratulations on uncommon courage." I didn't realize I was being courageous. The learning process -- a lot of things surprise you, and the learning process is one of them. There are places you get help. My first jury trial, I think I probably got into the Guinness Book of World Records for most side bar comments. Every

time one of the attorneys would make an objection, I would say, "Court will be in recess. Attorney will come into chambers." And I said, "What's this all about? Educate me." And you have no idea the response you get. They were delighted that some judge finally was going to listen to them, their objections, instead of just ruling off the top of his head, and trying to do it according to the law. I thought they would hold me in low regard because I didn't know anything, but they were so glad I was willing to learn. Gradually, you get the hang of it, and you talk to other judges. One thing that's -- way over at 13<sup>th</sup> Street -- we started at 13<sup>th</sup> and Michigan until they got the new buildings built out at 26<sup>th</sup> Street. (inaudible) administration building and moved everybody out -- all the offices out of courthouse. Made a lot of new courtrooms there, so they brought the outlying criminal courts out there. One of the features of that facility was the judges dining room, which doesn't exist downtown. Judges could go out to lunch with one another if they wanted, and they often would downtown, but there, everybody ate at the same place. It was depending on when your break was, when you took a break for lunch. Depends on who was there at the time. Tables of 10. You'd sit down with whoever was there at the time, and so you really got to talk to other judges

about how -- no judge, to my knowledge, ever walked into another judge's courtroom to see how he was doing. It just doesn't happen. I have a feeling that people would think they were snooping. And --

**END OF AUDIO FILE 1**

SWAIN: But you get some interesting -- and then you get close to some of the judges that -- either in adjoining courtroom or -- well, somebody was adjoining my courtroom in 13<sup>th</sup> Street, was on my floor, (inaudible) courtroom out there. We used to get together occasionally. He once raised the question -- he said, "What do you do about all those phone calls?" I looked at him. I said, "What do you mean?" "Well, you know, if somebody calls and says they're a friend of the defendant. Some political figure. In the first place, how do you handle the call? What do you tell the guy? And then, secondly, what do you do about it?" I said, "Well, I've never met that problem." I apparently had a fearsome reputation, that somehow I was different from other judges, and that you were not to call me. That it would not -- and it made life a lot easier. Another case I had was a wife-beating. It was in the black community. The wife had gone to some social service agency, and they had the forethought to take pictures.

They put on a pretty strong case, and the defense wasn't much. I found him guilty of -- I forget what -- battery. Aggravated battery, probably. Something like that. And sentenced him to -- and then one of the black judges came up to me and said, "What on earth were you thinking? That's her husband." As if that's no offense. Beating up on a woman is an offense unless it's your wife. I said, "Well, the evidence is pretty strong." He said to me, "You know that he was a friend of [Tim Evans], don't you?" [Tim Evans] was (inaudible). I said, "Well, I did not know that, and it's to Tim's everlasting credit that I did not know." You stumble onto rather startling things that way. Had one case where I probably had the highest-priced legal staff assembled for the defense. There were four defendants, who were accused of nothing more seriously than stealing from the liquor store. Big chain. I forget. I think there's one in Hyde Park, if I remember. (inaudible) They were noticing losses from stock, and so they hired a Pinkerton guy to come in as assistant store manager, unbeknownst to anybody. So he sort of found out what was going on. I guess they invited him in. Fortunately, he wasn't a police officer, so it wasn't entrapment, but I think he went along with the program to find out (inaudible). These guys all -- none of them had a record,



and this was a felony charge, and none of them wanted a felony record. The state's attorney was perfectly happy to plea them to probation. I then cleared it. The sentence wouldn't matter. Whether they took a trial or not, they were clearly eligible for probation. But if they wanted a trial, they can have it. They were trying to get it knocked down somehow to a misdemeanor or get an acquittal. Between the four of them, they had three private attorneys who were pretty well-known in the field. They lost the case. There wasn't much of an issue. Afterwards, Tully called me and said the owners of the liquor store called him and said, "Do you know Swain?" Tully told them, "Just relax. He's going to do what's right. You don't need to worry about any of them getting to him." That was what he was afraid of, is somebody would -- too much pressure. It didn't even start, so I didn't really have to do anything about it. I have a feeling it goes back to my first Christmas at the state's attorney's office, when I sent back all the Christmas presents. Did I --

Q: Yeah, you did.

SWAIN: I was aware that, from just practicing, that at Christmastime, a number of the public officers were full of gift-wrapped liquor bottles, for example. They would be on the attorney's desks in the state's attorney's office one

thing or other. I thought to myself, now, I've got to be prepared for this. How am I going to handle this? There again, you're in for a lot of surprises. My initial thought was I would just say, "Thank you very much, but I don't accept gifts, but thank you anyway. I appreciate your kind thought." I was startled at the fury that this invoked, or caused. And it wasn't all just liquor. People would hand me envelopes, and people would mail me cheeses at home, and send around fruit baskets and things. I was in a fairly pivotal position in the state's attorney's office. People would say, "Are you calling me a crook?" So I finally had to realize I really had to change my approach and say, "I really appreciate your thought behind this, and it's very generous of you, and it certainly is no reflection on you, but it's just a personal idiosyncrasy. I decided not to accept gifts." They'd just shake their heads as if I was crazy, and let it go at that. I once got a big basket of something from Stop n Shop, which was then on Washington. The next morning after it came, I brought it down to Stop n Shop and said, "I want to return this. Will you credit the account of whoever sent it?" (inaudible) They said, "Is it something you didn't like? Would you like something else in its place?" I said, "No, no. Sorry. I'm not in a position to accept it." They

said, "Why aren't you in a position to accept it?" I said, "I work for the county." They said, "I don't understand." I said, "Just credit it for me." Don't try to understand. Sometimes I would get perishables at home, like somebody sent a case of oranges or something. I'd take it to one of the settlement houses. I couldn't send it back at that point. It would rot or something. I would let them send a thank you note to the guy. Even that's getting pretty close to the line. I was looking like the benefactor. I wanted them to be clear that -- they made it clear to the person who sent it, I couldn't accept it, but they are very appreciative of having it. And that I insisted they add that person to their mailing list, so they would get tons in the future. Integrity takes all sorts of forms. You understand about integrity? You've never had any problems with it.

Q2: Not really.

SWAIN: Anyway, I think that -- I certainly didn't expect -- I expected that to be just a private matter between me and each of the people who came in.

Q: But apparently the story got around?

SWAIN: Yeah, and I think that's why it stuck with me all the -- and that's why they (inaudible) judge. But there was one unhappy group that I felt sort of bad about, and that

was the clerks and secretaries that worked for me, who used to get the overflow. They said, "You've giving away our material." I realize that. I don't mind that you take things, but I can't... personally would offer it to them. I guess one or two did, but... I had only one case where I was not sure -- I lost any sleep over. Again, it was a very high-priced attorney, and he put on this defense alibi. He had a parade of witnesses like nobody's business, and all very credible, and everybody testifying that this particular guy, he had been at the party, and what sort of party it was. The cross-examination always consisted of, "When the defendant told you he'd been charged with an offense that evening, if your first thought was, oh, we must tell his attorney." "No." "Well, when did you tell his attorney?" "We didn't until he came to us." And it was pretty clear that he'd manufactured the whole alibi thing. The whole story was true. You can tell by the detail that it happened, but there's nothing to tie it into the night that he committed the offense. So I found him guilty. And the state had a pretty persuasive case, but I often wondered if the defense had taken a different tact. I guess the thing that haunted me -- my defendants never expressed anger at the court, and this kid seemed to be more concerned about what I thought of him.

As he was leaving the courtroom after being sentenced, he looked up at me and said, "Judge, I didn't do it." I nodded to him. He wasn't complaining. There's a wide cynicism in the black community that the system doesn't work anyway. That was haunting. I can't tell you how many times I reviewed the evidence in that case, and cursed the attorney for taking the tact he did. His alibi was just not -- it was demonstrably an afterthought. I had another one where -- a very similar alibi. Offense occurred on December 31<sup>st</sup>. Two o'clock in the morning. He had two very good defense attorneys hired. Paid. Not public defenders. They put on this case -- again, they brought in this stream of witnesses. And this was a New Year's Eve party, so there wasn't any question about when it was. When it got to the closing arguments, something that I had noticed back at the beginning, and -- the state's attorney was sitting there, just on pins and needles, for fear I would blow it. I did. Two AM on December 31<sup>st</sup> is not New Year's Eve. It's New Year's morning. It's the morning of the day that becomes New Year's Eve. It was 24 hours off. They finally filed a motion for a new trial on the grounds of incompetence of council, who -- they filed it themselves. As one of the prosecutors said, this is a good (inaudible) lesson in, if you have a witness who will say anything for

the defendant, be sure you get your facts right before you come in (inaudible). So it was persuasive witnesses.

(inaudible) And the role of the judge was one of the things that's sort of hard to get used to, because you can't do the other people's job. If the state's attorney blows it, that's -- you can't sort of realize that they're incompetent and skew your ruling on the base of that, and the same way with the defense. That's a harder one. If the defense doesn't have a good attorney, you worry about. But you're protected by (inaudible) beyond a reasonable doubt (inaudible). Aren't sure. And the problem is that, if you try to do somebody else's job, not only do you not do their job well, you don't do your job well. You can be manipulated that way. Anything particular you want to know beyond this? What I did after, in my afterlife?

Q2: I actually had a quick question about your time on the bench. How often did you have a bench trial compared to a jury trial?

SWAIN: Oh, yeah. About three or four to one. Very small percentage were jury trials. Most of them were bench trials. I don't think the attorneys -- I think the attorneys -- in the first place, they'd get acquainted with the judges and know whether they were going to get a fair shake. Secondly, they don't want to waste their time if

it's not going to benefit them. You get a murder case. You think long and hard about what you want. Anything that will give your guy even a slight possibility of doing better, you're going to grab onto it. Now, that's the cases that go to trial. That's more than 25%. Seventy-five percent are pleaded out. I see all these erudite articles about how bad plea bargaining is. I just shake my head in disbelief. They don't have any idea what they're talking about. They think this is somebody is getting away with something and it's a con game. It makes the system run a lot more smoothly. If everybody went to trial, the system would break down.

Q: Just from the sheer volume?

SWAIN: Yeah. (inaudible) trials. And at a plea bargaining conference, they lay out the evidence and present. It didn't occur to me at first that the attorneys were looking for guidance. I would listen to one side, and then the other, and they'd keep arguing back and forth. The state should reduce it. The judges protect it, that if the state's attorney doesn't go along with it, there can't be an agreement. But a lot of times, the state's attorney will want to know what the judge thinks. At first, I thought, that's wrong. That's not what this is all about. Finally, a defense attorney looked up at me one day and

said, "Judge, will you kindly put us out of our misery?"

He was getting nowhere, but he couldn't cave in until I had said (inaudible). They're used to a judge saying, "Well, if that's the evidence, I'm going to rule thus." I always thought that was bad form. You never know what...

Q: Were there any particular challenges just in running a courtroom? We talked about the sort of administrative role, but with all those people and observants?

SWAIN: One of the things, which doesn't directly answer your question but has a great deal to do with the administration of a trial, is how my courtroom clerk kept me awake. If she saw that I was flagging -- she always kept a law book on the rail beside her, and she would knock it onto the floor, and then would fall all over herself, apologizing to me for interrupting. She was the most wonderful person [you could have met]. The other way I knew if I was flagging -- I always took notes. The first few trials, I thought, oh, no, this is so pivotal, I'll never forget that. By the third trial, I was mixing up the facts of one trial with another, so I always took notes after that. When I looked down and my handwriting was illegible, I didn't know what I was writing, I decided to call -- the judge always has the advantage of calling a recess. Attorneys can say, "Your honor, I have to go to the



bathroom," but that's about the only thing that will... But then just administering the timing of it. If you get late in the afternoon, how much -- you ask them how long the next witness is going to take, and would you rather stick it out or do you want to break here. A lot of things are educational, but don't really have much impact on how the system runs. You discover some amazing things. Gun control, for example. That's not an issue in a case, but I had a case where a man shot his wife in the head and rendered her a vegetable. So we had a trial on it. What had happened was they had taken a vacation and gone down to Atlanta. And they thought, we can't buy guns in Chicago, but anybody can buy a gun in Atlanta. Why don't we just buy ourselves some guns to protect against burglars? So they each took them back to Chicago with them, and the night before this night, they had gotten into an intense argument, and the bride, the wife, had shot at the husband but missed. That had sort of jolted them out of their argument at that point. The next night, the same thing happened, only this time it was the husband who shot, and he didn't miss. When the police -- the neighbors called the police. When the police came, the husband was sitting in the middle of the living room floor, sobbing because what he had done to his wife. They tried to see if there

were any ways they could get it reduced from first-degree murder. It was a bench trial. Then it came to the sentencing, and I gave some thought to this and said, "There's nothing the court can do that's going to punish you anywhere near what you've already punished yourself." That's going to be with you the rest of your life. That's off to one side. In the meanwhile, the justice system has to do what it has to do, and so I sentenced him to 12 years, but explained that I assumed that was the lesser of the penalties he was getting. It points out, don't have guns lying around. I had one capital case on my call at the time I left. I never had a capital case up to that point. I was just as happy to leave. I decided that if I had it, it would have gone to trial and found guilty. All the (inaudible) sentenced him to death, because that would be my obligation. I wasn't very comfortable about it. I was delighted when that case didn't get very far.

Q2: Did you feel any extra burden having to deliberate on all these bench trials, as opposed to (overlapping dialogue; inaudible) --

SWAIN: (overlapping dialogue; inaudible) This was -- you learn by doing. I made some mistakes early on. I would always -- even on a ruling on a bench trial -- in the first place, I would never rule on the same day. I would always

want to go back and review my notes, and put a little distance between me and them. Then I would write out my ruling, and if I couldn't make sense of it in writing it out, I knew there was something the matter. I would see that this particular point was crucial in the logic to get to this conclusion, and I'd look and I'd say I remember that this was evidence. Then I'd look back and it wasn't. You create all sorts of imaginings if you don't -- it's unusual, I think, for most judges. I guess the more experienced ones don't feel the need to -- been at it long enough. Feel comfortable about doing it, but I never did. Even after six years. After that third trial, I quickly changed. One group of people I always made friends with by doing this was -- when I would read my ruling, then the court reporter would turn to me and say, "Judge, can I borrow your book now?" So that they would get it. They were taking it all down, but transcription is always imperfect at best, so they always -- things they couldn't quite hear or didn't quite get right, they wanted to check it against mine. What I had actually written. Then another thing that I did, during closing arguments, I would take notes. I would make margin notes as I went along about the conduct of the attorneys. Quality of their performance. The state's attorneys would just lie in wait

for me after, and then, "Would you go over your notes with us?" Because they were eager to learn. There was one that I probably should have refused myself on, but I was much too far along at that point. I didn't feel anything would be gained by starting over again, particularly with another judge. During a break, there were some young people in the back of the room. When we came out to start the trial again, I was chatting with these guys. We were the only ones in the court. Everybody else was out in the corridor. (inaudible) Wondering how they -- what they were learning from this proceeding, and why were they here. They said they were friends of the defendant. I said, oh, that's nice of them (inaudible) support. It makes him feel good. Then they said, "Do you have a daughter at Kenwood High School?" I said yes. (inaudible) who were classmates of hers. "I'll tell her I ran into you." That's a little too close for comfort. The only time that they really got -- the attorneys got out of control -- and I used to take my gavel there, but what I found was that if I -- sometimes I would scowl, and that would tone them down. If they really started getting bad, I would do a little tap like that, and that would stop them in their tracks. I don't know. There's something about me that I'm terrifying. I never figured out what it is. But one time, the attorneys were

hurling personal insults at each other, and one guy slammed down his folder of papers on the table, but he came at an angle, so they scooted all across the room. I was trying to regain control, and I banged my pen down, and it got out of my hand and went up and hit the ceiling. And the jury said later, that was really the high point of the trial. That was as far as I ever got (inaudible). No, I had -- excusing jurors was a poignant sort of thing. I observed that the more serious the charges were, the more likely I would get an affirmative answer to the question, "Have you ever been the victim of a crime?" I don't know whether that was because people wanted to serve or what, but a lot of people just didn't want to serve on a murder trial, and you would get some horrifying stories. Finally I would say to them, "Would you rather not sit on this case?" Not even asking the (inaudible) attorneys. They said they thought they could be there. Again, (inaudible). I had one lady - - it's amazing. The charge seemed to trigger memories. This was a rape case, and I had one lady, and I said, "Have you ever been the victim of a crime?" and she said, somewhat nervously, yes. I said, "What was the nature of the crime and when was it?" She said, "It was 25 years ago, and it was rape." I said, "Oh." I said, "Is there anything in that experience that still stays with you that

would keep you from being a fair juror here?" Instead of answering, she just started to go to pieces. I finally said to her, "Would you rather not serve?" and she nodded. I said, "The lady deputy will take you out and sit with you for a while." At the end of the afternoon, after we picked the jury and everybody had gone home, the lady deputy came and said, "What will we do with this person?" I said, "She's still there?" She said yes. It turns out she had never told anybody in the 25 years that she'd been raped. She thought, since the judge asked her, she had to tell. It was just -- you know. Puts you in sort of a god-like position that you'd rather not be in. So you have to be careful how you throw your power around, because some people are going to take you very, very seriously. I had a couple of amusing ones, to give you a little laughter break. We had a police decoy case. Police decoy theft case. Do you know what that would be? A policewoman, in what is called street clothes, went to Taste of Chicago out on Navy Pier, and she had slung -- had a purse slung over her shoulder, and sticking out of it, very visibly, was a \$20 bill. Four paces behind her was a plain-clothes policeman. So the first poor (inaudible) that grabbed it was nabbed. This is as close as you can get to entrapment without actually throwing your case out. Well, the first

surprise was the defendant didn't want a plea. Second surprise was that he wanted a jury trial. Said, OK, you're -- and the public defender was beside himself. "Judge, this is what my client wants." I said, "Well, you're doing your job. We'll have a jury trial." We picked a jury trial. The evidence ran for 20 minutes or so. I instructed the jury on the law, and they retired. That was about 2:30 or 3:00 in the afternoon. I did some paperwork or something and was waiting for them to come back so we could all go home. At six o'clock, the bailiff came in and said, "You're going to have to send out for supper. Feed the jurors." I said, "You're kidding." "No, they can't reach a verdict." Then we waited until about nine o'clock. The bailiff came in and said, "You're going to have to sequester the jury. I'll call ahead to the motel and tell them we're coming." OK. I have no idea what was going on. So the next morning, they brought them back in. I charged them to go back into the jury room, in their deliberations again, and I started my morning call. Halfway through the call, there was a terrible uproar in the corridor behind my courtroom. I said to the lady deputy, "Go find out what's happening." So she came back in and interrupted the proceedings. She said, "Judge, I think you better come." The holdout juror had run screaming from the jury room and

gone into the chambers of the adjoining judge, and locked herself in the bathroom for her own protection. Well, who was this holdout juror? In picking the jury -- people probably couldn't care less who the jurors were in this case, but one of them was a secretary who worked for the Chicago Police Department. I thought surely that the defense is going to bump her, and then they said no, she looks like an honest woman, and I think probably, what the hell difference does it make to let her sit? Turns out she was the holdout. She said she never believed the policeman in her life, and she wasn't going to start now. She was a secretary for the Chicago Police Department. So I hung the jury. After that, the public defender came and said, "He's ready to plead now." He had had his fun. The public defender said, "You cannot count on this ever happening again." Anything else you need to know?

Q: If you were talking to a newly-appointed judge, would you have any advice or guidance as they started their tenure from the bench?

SWAIN: I think humility goes a long way. Not assuming that you know things. There's a temptation to think that you have to fulfill your role of being all-knowing. You're not supposed to be all-knowing; you're supposed to be all-fair. And that's quite a difference. You can be terribly unfair



to somebody by pretending to know things you don't know. Listening is a great talent. The other thing that I notice often is lacking in courtrooms is respect for everybody. I used to wonder how I would handle defendants who acted out. I even had a fantasy about that. (inaudible) I never found out how I would react, because it never happened. The reason it never happened is I always treated the defendant just like everybody else in the courtroom, as human beings. They were the defendant. That's all they were. They were not criminals. They were not low-lives. They were people. If you accord people respect -- you never call a defendant by his first name. It's always "Mr." You never make cutting remarks about them. The attorneys can do what they want, within limits, but -- you only tolerate so much. You don't even have to enforce that, because you -- the thing about a courtroom is that people have very, very good antennae. They can walk into a courtroom and sense what sort of courtroom it is, and what goes and what doesn't go. You don't really have -- I thought I would have to instruct my staff, but you don't have to instruct your staff. They're with you two days and they pick it all up. In terms of court management, I think that's the thing that came as one of the big surprises to me. I didn't realize what was happening at first, until I had a friend who

brought his college class down to sit through a morning's proceeding. Didn't happen to be a trial, but just a regular call. We went in the chambers and answered their questions. One of the kids asked about keeping order in the courtroom, and the male deputy spoke up. I was startled by this. He said, "Everybody takes their cue from the judge. You don't have any problems in this courtroom." I didn't realize that was what was going on. I was wondering when it was going to happen. I thought maybe they were giving me a honeymoon or something before they started really getting to me, but they never did. So it was a very meaningful experience for me, all the way around. I once stopped at the McDonald's on Chicago Avenue. It's now being rebuilt. They used to have a Burger King and a McDonald's side by side, and I'd been doing a little shopping over the lunch hour, and didn't know if I had time for a bite, so I thought I'd just duck into McDonald's, grab a hamburger, and maybe bring it back with me. Eat it on the bus, which was probably a felony. And there was a guy outside passing out leaflets that said, "Two Big Macs for the price of one." Well, I didn't want to eat one Big Mac, let alone two, but I'm polite, so I took it and put it in my pocket. I walked in and was distressed to see there were about six people in every

line. So I stood there, and almost immediately somebody bumped into me from the back. I turned around and looked up at him. I'm six feet tall. This was a big, mean-looking black guy. So I said, "Oh, I'm sorry," and then I turned around and waited a little bit longer. It happened again. He bumped into me. It was pretty clear that it was not accidental, so I thought, well, he's going to be asking for a handout. So I turned around and looked at him straight in the face and waited for him to speak. He said what would probably be the most frightening words you can imagine. He said, "Judge Theodore M. Swain?" I said, oh my god, he even remembered my middle initial. I just lit up like this. "Oh, you were in my courtroom?" And he said yeah. I said, "What was the charge?" He said, "Felony involving possession of drugs." I said, "And what was the sentence?" He said, "Two and a half years." I said, "Well, how was the experience?" He said, "It wasn't bad." He was out now. I said -- while this was happening, while this all was going on, a busboy had seen what was brewing, and had turned tail and run. I thought, what a coward. But what he was doing was running for the manager. So the manager came up at about that point and was about to hustle the guy off, and I said, "No, no, I know the gentleman." The manager's face just fell. He was shaking his head --

walked away shaking his head. So I turned to the guy and said, "Would you like a Big Mac?" Since McDonald's was paying for it, I thought it was important to be generous. He said yes. So we sat down and had our Big Macs together. Somewhere in the middle of it, he sort of got confused, and I think he began to think of me not as the judge but as God somehow. I mean, you know, he talked that way. But I wished him well and went on my way. But he's -- that's only the most dramatic... I've encountered three or four of my people I've sentenced, and nobody seems to hold a grudge. They want a fair trial is what they want, and they're told they'll never get one, and they get one, which... The other thing I was surprised at was one of the public defenders came up to me and said -- no, it was the state's attorney came up to me and said in a case where I had acquitted the defendant, and -- on a bench trial -- and he said, "Judge, I just want to thank you for letting the prosecuting witness tell her story." I looked at him. He said, "A lot of judges would have, you know, would have brushed it aside, I mean, or made short work of it." I said, "You've got to be kidding?" "No, no, that's what happens. They think -- they get impatient. They know it's all made up or something." You know, people want to be heard, and... So, you know, you just don't know what

you're doing right, (laughter) or you don't know what you're doing wrong until that happens, too, but... No, I had a lucky tenure. And I've developed a good deal of respect for the journeyman judges that fill our courts, you know, that they're not Harvard graduates and they're not... You know, they come from all strata of society but they're all trying to do a job. I differ with them on some of the techniques of how to run a courtroom, but they're all... And, you know, but for them the system would be a mess. You know, they do 98% of the cases. They just -- it's routine, and they handle beautifully, and get the job done. It's hard to think of that as a job. There are judges who think of it as an elevated status rather than a job. It's interesting work, though. Anything else?

F: Any other questions?

M: I think that's about it.

F: OK, well thank you so much for sharing all this time and --

SWAIN: Well...

F: -- your recollections with us.

SWAIN: Trip down memory lane. (laughter)

**END OF AUDIO FILE 2**

M: All right.

SWAIN: OK. Yeah, there are two general observations I wanted

to make. One is about the, how I saw my cases breaking in two categories, and I think they came out about 50/50, cases of human venality on the one hand and human tragedy on the other hand, and, you know, there were just as many - - and you, you hear the recounting of the events. Where the husband shot his wife is an example of a lot of things that just... And the difficulty of knowing how to sentence people when it's not, it doesn't fit the mould. I had two murder cases, unrelated to each other. In the one, the lady was in bed with her boyfriend and she got mad at him, so she called her granddaughter and said, "Go to the kitchen and get me the butcher knife." And so the kid brought her the butcher knife, and so she stabbed her in the leg. Then he started bleeding, and then she urged him to go to the emergency room. You know, she said, "You'll die if you don't go to the emergency room." He said no, he wasn't going to go, and so he died. Well, that's a pretty clear cut case of murder, you know. (laughter) Had no prior record, mature woman, alcoholic, on drugs or something. The trial was delayed interminably, and I didn't, I didn't -- it was already old when I got it. In the meantime, she'd gotten into the hands of Catholic charities or Lutheran charities or somebody who -- and she'd straightened out her life, and so she was a perfectly

respectable looking person on the stand. Obviously, this is not anything that would ever happen again, and you'd like to just say, "You know, this has been a terrible experience for everybody, and I know you're terrible sorry. Why don't you just go on your way?" But you can't do that. You have to... First place, there's a range of sentencing. You have to sentence them to a minimum of -- I forget what it is now or was then. And of course we were getting tough on crime in those days, too, Governor Thompson's classics felonies and everything. But, you know, I sentenced her to the minimum, but I expressed hope to her that she would continue on her upward path and she'd get adequate support services in prison, too. 'Cause, you know, she was obviously leading -- she was making a contribution to society. I forget what she was doing. She was helping out in some program, thing or other. The other was a guy who ran a small store in the ghetto, and this guy came in to hold him up, and he knew the guys. They were neighborhood kids. And I forget what happened, but he was outraged by it, so he went home and got his shotgun and came back and killed them. (laughter) Fifty year old man, no prior record of any -- even a misdemeanor. What do you do? (laughter) What, what is society trying to tell this guy? What is, what is the purpose of the sentencing? And

you can't probation him because it's, it's murder, you know. It's premeditated. If he had, if he'd reached for the gun, if he had it under the counter and shot, you know, I don't think there'd be any problem of reducing the charge and getting a plea out of it. So those were the hard, hard ones, and, you know, just the things that people do to each other is appalling. Some of them... And people escape for summary... The things that people survive is amazing. Had one case where -- I don't know whether it was... I think it was the lady's prior boyfriend, and I don't know whether he came and raped her or just came to kill her, but anyway, he thought he'd killed her and carved his initials in her chest, but hadn't completed the job, so she screamed and the neighbors came, and (laughter) she survived, you know, to tell the tale. And so people survive amazing things. I guess it's a testimony to the human spirit. But anyway, people ask me if I regretted leaving the bench, and I said, yeah, I would've liked to have done it all my life if the finances had been available. My wife said no. (laughter) And, you know, my next thought was to go to school and learn some Spanish, because that's a real need in the criminal justice system, certainly. And anyway, that's, that was my afterthought.

M: Thank you.



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