

## COOK COUNTY COURT ORAL HISTORY PROJECT

### Interviewee's Role at Cook County Court

District Court - Markham

Criminal - 26<sup>th</sup> and California

Chancery – Daley Center

### Key Figures/Moments Mentioned in Interview

Mike Madigan

Tom Hynes

Richard Fitzgerald

Harry Comerford

Paul Gerrity

Thomas Fitzgerald

Don O'Connell

James Henry

John Stroger

Richard J. Daley

Richard M. Daley

Rod Blagojevich

Richard Mell

COOK COUNTY COURT ORAL HISTORY PROJECT

PRE-INTERVIEW QUESTIONNAIRE

1. What was your date of birth?  
March 14, 1943
2. What was your place of birth?  
Chicago, Illinois
3. Where did you spend the majority of your childhood? If you grew up in Chicago could you also indicate what neighborhood you lived in?  
Chicago – Brainerd (Southwest side)
4. What were your parents' occupations?  
Father: Policeman; Mother: housewife
5. Where and when did you attend college?  
Loyola University Chicago
6. Where and when did you attend law school?  
Loyola University Chicago
7. When did you begin practicing law in Chicago?  
1967
8. What could you have considered your area of specialty as a lawyer?  
Criminal Trial Lawyer and Appellate Lawyer
9. When did you sit on the bench?  
1979 – 2001
10. What did you consider your area of specialty as a judge?  
It varied; I did both Criminal and Civil

THOMAS P. DURKIN

PRE-INTERVIEW QUESTIONNAIRE

1. What was your date of birth?

~~etc~~ MARCH 14, 1943

2. What was your place of birth?

CHICAGO, IL

3. Where did you spend the majority of your childhood? If you grew up in Chicago could you also indicate what neighborhood you lived in?

CHICAGO - BRANWICK (SOUTHWEST SIDE)

4. What were your parents' occupations?

FATHER: POLICEMAN; MOTHER: HOUSEWIFE

5. Where and when did you attend college?

LOYOLA U., CHICAGO

6. Where and when did you attend law school?

LOYOLA U., CHICAGO

7. When did you begin practicing law in Chicago?

1967

8. What would you have considered your area of specialty as a lawyer?

CRIMINAL TRIAL LAWYER AND  
APPELLATE LAWYER

9. When did you sit on the bench?

1979 - 2001



COOK COUNTY COURT ORAL HISTORY PROJECT

11. Could you indicate briefly which were your most significant cases and why?
  - a. I conducted 19 cases wherein the death penalty was a sentencing option.
  - b. I handled a class action involving claims in the billions of dollars.
  - c. I handled a challenge to the constitutionality of Chicago home rule powers involving the grant of health benefits to same sex couples.

Judge Thomas P. Durkin  
Interview Abstract

Judge Durkin grew up on the south side of Chicago as the son of Irish immigrants. He graduated from Loyola University as both an undergraduate as well as from its Law School. After a successful career as a criminal lawyer, he served as a judge from 1979 through 2001 in both criminal and civil courts. He describes his activities in the court through both routine activities and significant cases that he witnessed during his career. While not enmeshed in the Democratic Party, his knowledge of the system provides the reader with an understanding of clout and what effect relationships have in the judicial appointment process. Judge Durkin contends that justice is provided through the court organization in a generally equitable manner. The selection process of judges is complex with those individuals who merit high positions in the court ultimately rising to levels of influence because of their ability, intelligence, and adaptability in the real world.

*KK:* The following interview was conducted with Judge Thomas P. Durkin on behalf of the Loyola University Library for the Cook County Court Oral History Project. It took place on November 19, 2005 at the Cook County Court Building at the Daley Center in Chicago, Illinois. The interviewer is Ken Kasperski, a graduate student at Loyola University. (Martin Nord, another graduate student from Loyola, was also present). Thank you Judge Durkin for agreeing to talk with us today.

[Note: *TD*-Thomas Durkin; *KK*-Ken Kasperski; *MN*-Martin Nord; *FT*-Fallon Thomas]

I see from your background information that you grew up in Brainerd, on the South, Southwest Side of Chicago. Could you tell me about your childhood there?

*TD:* All right, my father was a policeman, Chicago policeman. My parents were both off the boat from Ireland. I was the fifth of six children. We lived in a classic Chicago bungalow. My mother was primarily a housekeeper, although my mother and father, I managed Irish Dances, so they would be working on weekends, on the evenings. But you were primarily a housekeeper during the week, didn't work outside the home during the day at least. My father spent some thirty-two years on the police department and the neighborhood was comprised of working class people. We all went to parochial school. St. Ailbe's School which was about 7 or 8 blocks away and we would of course walked back and forth. In those days you didn't stay for lunch so we would hustle home for lunch and then hustle back to school because the time was relatively short. I went to, first to Quigley and spent a year at Quigley and there was a mutual decision made by Quigley and my parents and myself that I was not a future vocation, so I transferred to Mendel over the strenuous objection of my parents. They wanted me to go to Ignatius but I had a lot of friends that went to Mendel. So I wound up going to Mendel and graduated from Mendel and then went on to Loyola University undergrad and Loyola University Law school.

*KK:* What made you decide to go to Loyola University law school?

*TD:* The fact that I wasn't allowed to go to the University of Illinois, Urbana Champaign because I was a, ah, energetic young man and my parents wanted to keep an eye on me, so, ah, they decided I would be better off at a commuting school and staying at home then going away. I had a brother who died in 1960 just as I was about to, in his final throws, and he was a, ah, very good person. And he had warned my parents that I might be too much of a delinquent to go away to school so they wanted me to stay at school, little knowing they were throwing me into the Rush Street area. I enjoyed my experience at Loyola, but that was the reason, actually I planned on going to the University of Illinois.

*KK:* Ah, ha. Did you think that Loyola versus DePaul or something helped you to become a judge?

*TD:* No, ah, there's always been that kind of interplay between the schools as to ah, which schools help you become a judge. Indirectly, Loyola did help me become a judge,

but that was primarily because of the fact that I graduated with Mike Madigan from law school, not because I went to Loyola, so I could not say that, ah, Loyola didn't have a part, it did have a part but indirect rather than direct.

KK: Did you, ah, hang out with Mike Madigan?

TD: Well, you know, we were social friends, we weren't the best of friends by any means. When I was practicing law after I got out of school and he was beginning his political career, I represented some of his constituents, for free as a favor to him. He was kind enough to support me when I decided I wanted to be a judge. As you are probably aware, that is an extremely valuable support. I also happened to live in the 19<sup>th</sup> Ward, of course had Tom Hynes supporting me as well, so I had the dynamic duo. Another Loyola grad too I might add.

KK: Oh, really?

TD: Yeah, Hynes and Madigan are both Loyola undergrads.

If the judges you have spoken to have been candid they will probably tell you, you don't see many advertisements in the *Tribune* for judges, so really who the law school, what law school you went to is less important than who's going to be your political support and that might be coincident with what law school you went to but there's certainly no direct relationship.

KK: Following up on that a bit, would you, were you active in the Democratic Party in Chicago?

TD: Not at all, not at all. I was too busy making a living to be active. I mean, would I support candidates, both Democratic and Republican when they asked for it? Sure. But I was not a major donor, you know. Primarily I was supporting judicial campaigns. I don't know that I ever supported anybody for a statewide office. I might have made contributions to local offices, but if I made contributions, ah, 90 percent of them would be to judicial campaigns.

KK: Would you share some of your aspects of your personal life, such as marriage, children, how this affected your legal career?

TD: I'm married 40 years to Alice and that was perhaps of all the events that I did correctly in my life, that was the most correct. We met at Loyola, so I certainly owe Loyola a debt of gratitude for that. She was a nurse working on her Bachelors. She had gone to a two-year program for, and then did an additional two years at Loyola and we met at Loyola, ah, she was, in fact, the magna cum laude student of the year. She graduated first in her class when she graduated. So, one member of our family had a distinguished academic career, but it wasn't the judge. So we met and dated, we married after my first year of law school and ah, had our first child, we lost our first child, premature baby, when I was in law school and we had our second one soon after I



graduated while I was an assistant state's attorney. We have a total of three children now. My son Tom is with Chase, he's in the banking business out in Phoenix, Arizona and my two daughters are both lawyers, neither of whom graduated from Loyola. They both graduated from Kent and that was, ah, they were both admitted to Loyola, but because I live in Beverly and I was paying for their law school, as a result of that they both lived at home while they were in law school and the idea of, ah, having them take the El from the Rock Island station to Loyola, particularly that cesspool at the corner of State and, ah, Chicago, if you recall they used to have that Burger King there and when I would go in, I taught at Loyola Law School for some time, and when I would go into that on Monday mornings there would go to that there would be dope deals going down in front of you. I was terrorized at the thought and Jamie Carrie, who's a friend had told me, Oh that's not a problem, but I, I had a different concept of law school. My days at Law School you hung around law school at the library until 10 o'clock at night. Of course, as a result of the internet, that's all changed and my daughters, as it turned out, could've gone to Loyola, because they were home for dinner and then would just go up and get on the computer at night, have access to the same books that we used to have to have the hard copies of, they would have on the internet, so. But I was happy with Kent for both of them. They're both practicing law. One is, ah, an associate with Larenstein Lare, which is a commercial litigation firm, and the other does defense work for the CTA. Just had my first granddaughter, my baby, the one whose with Larenstein Lare just had a little girl about 10 weeks ago. So we have our first grandchild, Brooke, with an E. And she is married to an anesthesiologist and they're just making a determination whether or not she's going to be able to have two careers or if she will follow her mother and grandmother's footsteps and be a homemaker. My wife did not work outside the home, although she put me through law school by teaching nursing. She did not work outside the home after we had our first child.

*KK:* What were your daughters' names?

*TD:* Andrea is the youngest, the one with the granddaughter. Melissa is the middle child and the second girl, and my son is Thomas, Tom.

*KK:* You must be proud of your granddaughter.

*TD:* I'm very proud of her, sure. Just had the christening last weekend, so...

*KK:* Could you explain how your early legal career as a criminal trial lawyer and appellate lawyer helped you prepare for a seat on the bench?

*TD:* Well of course when you're a criminal lawyer, when you do criminal defense, I can't claim that I had a mission to become a criminal defense lawyer. It just happened, I went to the state's attorney's office and I had taken a job with an insurance company when I graduated from law school. Our economics were such that we were essentially pay check to pay check as my wife, as I said, was at home with the babies, baby then. Yes, baby, just my first one, Tom as you know. So she was home with Tom so we could not afford, go without me having a job and I had actually wanted to go and do personal

injury work, but I had been hired by an outfit which was called Harrington, which is a famous training ground for personal injury lawyers. But their budgeting was such that I couldn't start until January 1<sup>st</sup> and this was about November when it happened. I had been transferred by the insurance company, which I had agreed to when I started working. I didn't think it would happen quite so quick and I didn't want to take the transfer so I was going to have to quit the insurance company, so in a hurry to get a job and I was hired by the Cook County State's Attorney's office, and so it was really a question of serendipity, my law school career was a question of serendipity. I really didn't know what else to do, kind of like going to graduate school in history? Didn't know what else to do so I went to law school. I was certainly the first lawyer in the family. Interesting, my sister was a schoolteacher following in my footsteps and she's now a judge in this building. She's in the law division, Maureen Durkin Roy, R-O-Y. So we were the first two lawyers in the family. There have been a few, obviously, since. So I didn't have much guidance as to what to do in the law and it was a question of having a job and it was certainly a wonderful thing because quite literally from the time I started practicing law, which I think was November 29, 1967 until I went on the bench on April 16, 1979, so for a period of twelve years I literally was in the court every single day. I don't recall having a day that I wasn't in court if I were working at least. If I were on vacation at least I would be. But if it was a workday, I was in court. So as a result of it, just a tremendous amount of trial experience. Tremendous amount of in court experience, and kind of a training by osmosis. You could certainly detect who the good judges were and who the bad judges were and the idea was to emulate the habits of the good ones and avoid the habits of the bad one and I had twelve years of training to do that. Not that I was always successful in my own career, but...

*KK:* Who in your mind was the best judge for you, to be your mentor, or something?

*TD:* Right, well it wasn't a mentor, a friend, but it wasn't a mentor. Only, I suppose, a mentor in extended admiration kind of phase but the name that comes to mind is Richard Fitzgerald, who is still alive, he was a former, he's probably well into his nineties at this point. We have lunch together about once a year. But his demeanor on the bench, his mind, he had a very sharp mind, very analytical mind, and the fact that nobody ever doubted who was in control of his courtroom. He was, ah, he was dominant in a quiet sense. He was not petulant. He wasn't, you know, temperamental, but you knew who the boss was and I had joked earlier that punctuality was a great quality for a judge, it is. It was a joke at the time, but punctuality is extremely important, because it sends a message to the litigants, but controlling a courtroom is absolutely fundamental. If you're not in control of the courtroom, by definition someone else is and that's a very bad situation for a judge. So it's interesting, I hadn't anticipated that question, but his name sprung to mind immediately. He sat in the criminal courts at 26<sup>th</sup> street. He was the one who brought me when I was an associate judge, brought me to the criminal courts. As a result of the Greylord thing, they were expecting to lose a few judges and did and so they were looking for people to fill in the felony trial court spots and I was the first associate judge that was given a felony trial court at 26<sup>th</sup> and California and Richard Fitzgerald, who I didn't know well, at all then in fact, he called me up and introduced himself and asked me if I would be willing to come over there and of course I was delighted at the prospect

and then nothing happened for about a year and then suddenly I got the phone call and I was to go over there, but the phone call from Harry Comerford that I was transferred to 26<sup>th</sup> Street. I was on top of the world, great assignment.

*KK:* You came in right during some of that Greylord change?

*TD:* I was sworn in on April 16, 1979 and I would say it was popping just about then.

*KK:* What was your mother and father's background? What do you recall of your family's reaction to your judicial appointment?

*TD:* Oh, pride to the zenith. Not even, my mother, if, actually she only died four years ago at the age of 91, so she lived a healthy life and we joke in our family about the fact that my daughter married the anesthesiologist. My mother would probably say a minimum of fifty times a day, my son-in-law the doctor and she was equally proud of her son the judge, her daughter the judge, so she would let everybody know. Having come over from Ireland with less than a grammar school education, to have their two children become judges was a source of great pride for both of them.

*KK:* I can imagine.

*TD:* I think my father died before my sister went on the bench, so he died in '89, at age 89. But he, in spite of the fact we had the typical father/son conflicts, he was still very proud of that, particularly having been a policeman.

*KK:* What were some of those conflicts, were they in relation to your professional career, or just growing up?

*TD:* No, just, ah, being a man rather than a child, from my perspective. I would suppose he would say that I was disrespectful. From my perspective, I would say that he wanted me to remain a child and wasn't willing to accept the fact that I wasn't anymore. Things like that.

*KK:* Yeah. What were some of your recollections from your first year as a judge?

*TD:* Well, I, actually my very first day as judge, I tried a jury trial which was somewhat unusual. I had worked with the judge who in charge of the district. I went off to Markham, got 165<sup>th</sup> and Kedzie for my first assignment. That was a great assignment because you didn't wind up, most of the new judges here do traffic for a lot of years and as a result of being out there I got exposed to a lot of different things, including the felony trial court, the civil courts and my share of traffic. But the very first day out there he had known me and knew that I had a number of jury trials as a state's attorney, and asked me if I was willing to try a jury trial and I said yes, and at the time, judges were not really allowing lawyers to question jurors. Judges were doing all the questioning themselves. There's probably been a slight erosion of that, but ah, the lawyers tend to overreach and the judges go back and I remember at the time I had always wanted, when

I was a defense lawyers I had always wanted to question jurors and some judges would let you, some wouldn't. So I had decided that as a judge, I would allow lawyers to question the jurors and John, I should remember the lawyer's name, John something. He was an old, old workhorse, not a particularly talented lawyer but certainly one who persevered in his stubbornness, and I allowed him to ask some questions and after about fifteen minutes of questioning one juror, I called him aside and I explained to him that it had been my plan throughout my career to allow lawyers to ask questions but as a result of watching him, I had changed the rule and so I was going to take over the questioning and I explained to the jurors that I was going to do the questioning and the lawyers could submit questions to me and the jurors broke into a round of applause, so they were tired of John, whatever his name was also. So that, I tried that and I suppose, you know to be honest, I don't know if I remember my first assignment, which pretty well confirms my suspicion that it was probably traffic calls. In those days, we would go out to the various places to do the traffic calls, rather than have them come in to a central location, and, ah, one of the things, I had done a lot of federal practice, federal criminal defense lawyer and I was thought of the kind of the formal majesty of the court, well in the federal courts and they encouraged us to give speeches at the beginning of the court call to explain the process to them, and I always thought, well, this kind of takes away from the dignity of the court, so the judge to be that kind of an active participant, but after a couple of days without it, I realized it was such a helpful device that I began making speeches and I would try and keep them under five minutes and you could tell the amount of effectiveness. If you gave a good speech, and explained everything to people, for example, explained to people that a broken speedometer is not a defense to a speeding ticket, or that the speedometer was improperly working. Let them know what isn't a defense, what would happen is a lot of people would plead guilty and take supervision which was readily available then, so you could judge the effectiveness of your speech by how many people still asked for a trial at the end of it. So I became, I was very productive on the call. I was sent out to a call where the police, in the suburbs the police would often go on ticketing blitzes or ticketing starvation if their contract was coming up. They would want to let the city fathers know that they were very, very valuable and an income producer for the town, so they would do one of two things. They either would do a splurge of ticketing to let them know how much money they could make for them or they would stop writing tickets, except for drunk driving and accidents to let them know how they could hurt them in the future and the town of Lansing had a courtroom up above a garage or something. It wasn't particularly, ah, grand, or there certainly wasn't debilitated, it was an assembly room of some kind, but they had 2,000 tickets on the call. Of course people couldn't get through so I had to go stand outside to give my speech and I, they had offered me some other judges and I said no, the judges weren't going to help, I wanted additional clerks. So they sent down a bunch of clerks and we broke the people down into alphabets and we lined them up in big lines in the alphabets and this would be three calls so really at one time you'd only have 660 people there, which is still quite a number, and we did it. Got through the call probably only an extra hour by using some systems and I was very proud of that. I remember that. In fact it got written up in the newspaper about the kind of spontaneous systems analysis that we put into affect out there, so I was proud of the fact I was able to do that. I'm sure that was in the first year.

But other than that, traffic calls are traffic calls, you know? But, not too much unusual happens so it's kind of a mélange of events that occur from day to day.

*KK:* I would imagine that many of the people at the traffic calls, this was their first experience in front of a judge.

*TD:* Uhm, hmm. It's important to keep that in mind, it is. And you know, you often say, that you know, the Supreme Court justices when they come talk at the Associate Judge seminars will often talk about how this front line is so important to the majesty of justice, whether or not they meant that is a question, but they certainly didn't think so from the way they treated us. But they certainly gave lip service to it and indeed it's probably true. As you point out, this may be people their only occasion, you try and treat people fairly, but... On the other hand, when you try and tell somebody that a broken speedometer is not a defense and they step and go to trial, and they take out their bill and say they got their speedometer repaired, it's very difficult to keep your patience about you. So what would happen is those people would not get the supervision, they would get a judgment of conviction. They wouldn't get a higher fine but it would be on their record as opposed to not being on their record.

*KK:* As you moved on past traffic, what would you say your typical case or daily activity that you experienced as a judge?

*TD:* While out at Markham, since I was at Markham five years, we would have our assignments for a minimum of six months. So five years, '79 '84, actually a little less than five years so you have to assume in that time I had about 8 different assignments. I had been granted felony jurisdiction early, so I was always looking for an opportunity to get to try some felony cases. If a judge was on vacation and somebody was demanding, running into trouble, and was demanding immediate trial, I was always willing to pitch in and there was another young judge out there who, we would cover each other. If I tried a felony trial, he would cover my call. If he could try one, I would cover his call, to give us both the experience. So, you know, there would be misdemeanor calls, there would be the civil call, there would be jury, if someone wanted a jury trial at either traffic or misdemeanor, they didn't get it in those courtrooms. They'd be transferred over to the jury court and the other judge, Frank Meagans, a very talented judge and I, we had it, for the time we had it, it a common practice for a lawyer who had been denied a continuance to demand a jury trial in one of the courtrooms and so they would go over there assuming that he was going to have to continue the case if he happened to be on the call. And he would say, no, no, we're ready for trial, we're going ahead and throw a monkey wrench into their plans and then I would take over the rest of his call and when I was on it, and so when we had the call we attempted to see how many juries we'd try in six months, had a contest, and he did beat me. I think he tried some fifty some and I was only in the forties in the six months. We would try to do a jury trial in one day.

*KK:* You had some very interesting experiences as a judge as you noted in your bio, one of which was 19 cases where the death penalty was a sentencing option. Could you talk a little bit about some of those?

*TD:* Sure. The state would, a lot of the cases, the state would have been shocked if someone had been given the death penalty and I only actually had to try one jury. Illinois splits the penalty phase between the trial and, the trial is heard and later the penalty phase is heard. And actually, I only had one where the jury made the decision about whether or not the defendant would receive the death penalty and they voted against it, so in the other 17 or 18, I was making the decision, and I never did give the death penalty. I would explain to the defendants that it was my position that if I were in the legislature I would vote against the death penalty, but that I felt that the state had the right to seek it and in appropriate circumstances had the right to give it, but I never gave the death penalty, the bottom line is. There were cases probably where if the evidence were different, I would have given the death penalty, but it's interesting cause there's a story in the paper today with Judge Ersow sentencing the kid to life in prison for that horrible murder of that young Arab-American girl and he said, well, before I would consider the death penalty, I want to have absolute certainty and I think that for a conscientious judge, there's proof beyond a reasonable doubt, which is a high level, but if you were to consider the death penalty, there has to be something, in my opinion, you can never ever have a doubt that this is the perpetrator and I had a horrible, horrible torture murder involving a male and two female cohorts who, they both plead guilty and testified against him and they had been going to rob a drug house and unfortunately got the wrong address so they picked out a couple, elderly couple in the next block and killed the wife in front of the husband and then tortured the husband for him to come up with the money and he didn't do it, didn't have it, didn't have the money, didn't have the drugs. They weren't about to believe that so they wound up killing him as well. Now he is a fellow to whom I would have happily given the death penalty, but the evidence against him was the testimony of the two women who had both plead guilty for minimum murder time and no corroborating physical evidence at all, some small circumstantial evidence, enough to convict him, the jury convicted him, but I couldn't see giving him the death penalty, but there was a case, had they had a finger print or two in the house, had they found some DNA or some blood evidence, I probably would have given him the death penalty. So it was a question of, I'm not a fan of the death penalty. I think the cost/benefit analysis falls in favor of life imprisonment instead, but if the state wants to have the death penalty, that's not my decision. Because I'm a judge, I'm required to follow the law and that was a case where I could have followed the law, but because of the nature of the evidence, chose not to.

*KK:* So there's a wide discretion available for the sentencing.

*TD:* Of course, yeah, Illinois has minimum sentences but within the minimum and maximum sentences a judge has almost unbridled discretion. Probably, public clamor would be about the only thing that would affect him.

*KK:* Do you feel that in any of those cases there was publicity, or a public demand for a death penalty?

*TD:* Sure, I had a policeman that was murdered, ah; he was either on his way from work or going to work. My suspicion, although it never really came out is it is what is called a trick-shake where they would, a prostitute would lure somebody into a situation to rob them. His family didn't want to think that but the circumstances and my experience would indicate to me that was probably what happened. Because he wound up in the back of his own van and was murdered there and they caught those people. It was a tremendous amount of clamor, because you know it was obviously a policeman that was murdered. Of course the police would show up in uniform and sit in the courtroom for each one of the hearings. So, there are cases like that. Certainly, the case involving the guy at the wrong house, you could imagine that the newspapers, particularly in that area, if I'm not mistaken, it was out in Fernwood, about 115<sup>th</sup> say near State, they were certainly up in arms about this poor family. How could you be anything but sympathetic? Huh?

*KK:* Any qualms about not giving a stronger sentence for any of these individuals where perhaps later on they might have committed other crimes?

*TD:* Well, no, never happened. Now, that's not to suggest that they didn't commit other crimes, but they were probably in long enough that if there was a connection made, it wasn't made that I ever heard of. That's one of the advantages as well as the disadvantages of being in a large metropolitan area. There are areas in this state, for example, where a judge wouldn't let the defendant take a bench trial cause he doesn't want to make the decision, he wants the jury to make the decision so he won't get tagged with it and that's not true of 26<sup>th</sup> Street. I know the judges, the number of cases that draw any attention whatsoever... I mean you could have a death penalty case going at 26<sup>th</sup> and California and nobody would be in the courtroom, the benches would be empty. I mean, you know, some of the defendants, their families quit coming to court after a while, they're just sick of it, sick of the whole process. You know, if you have a victim who's often from the same milieu, or maybe the same on the other side, so. The kinds of things you see on television, where the weeping families are demanding justice are actually relatively rare. Oftentimes what happens is a defendant who is at the absolute bottom of the socio-economic ladder is naturally enough hanging around with people who are the same way and they're the kind of the anonymous murders we see all too often.

*KK:* With the defendants being oftentimes at the lower end of the social strata, your perception as a judge, do you feel they were adequately represented?

*TD:* I do, I think the Public Defender's office, I think very often, the public defenders are better because of course, the way the system works, you have two or three public defenders assigned to the courtroom. They know that judge. They have a great, great sense of predictability about what that judge is going to do, what kind of sentence that judge is going to impose, what factors appeal to him and so oftentimes you get a high priced lawyer who comes in off the street and is assigned to this judge and know very little about the judge, doesn't know about the judge's personality or quirks. Where I think that defendants get the short end of the stick would be, public defender versus private counsel, is in the sentencing hearings. You hear oftentimes, the public defender, he's got

so many cases on his call, that when one is going on, he's worried about the next one and so after finding him guilty, they really leave it up to the defendants to let them know who they want to bring in. They don't do much of a social investigation. Now that's probably also true, often, of the private bar, but I think it's more uniquely true of the public defendants. But as far as having some talented lawyers, they have some great lawyers.

*KK:* Another very interesting case, you were saying you were involved in a class action involving a claim in the billions of dollars.

*TD:* Um, hmm. Against Chrysler Corporation. Some lawyers from Chicago represented a client who bought, if I get the dates right, I think it was 1991 through 1995, Jeep vehicles with a six cylinder or four cylinder motor. They were built on a truck frame. But these, the class action was complaining about a sound, a tappit noise that they made and claiming that this was a breach of an implied warranty of suitability. One of the problems, there was no question that they had this sound, because we took the trucks out on two different occasions. Once to Soldier Field in the parking lot to listen to them and it was barely discernible there so the lawyer said, well, we need to be near an ATM or a bank line, I mean. You know pulling into a bank line, where you have a tunnel, something akin to what we are doing here, a tunnel affect and I could hear it much more, so since we had to do it during the day, we wound up going over to, near Wacker Drive and we found a place where we could pull up against a wall to simulate that. There's no question it had the tappit sound. One of the difficulties is, of course, Chrysler never guaranteed a particular sound for this car and it was built on a truck frame and there was never any question about that, and interestingly enough, the plaintiff, who named, in a class action, you have to have a named plaintiff who represents other members of the class, and they had some other, you know, two or three plaintiffs. And the one plaintiff's Jeep had 120,000 miles on it and two others had the Jeep with about 80,000 and 60,000 and had never had any motor problems. So it may not have sounded the way they liked it, but that had to go all the way through. We had to; I had to certify the class, which takes some time, something to be then notified. It was interesting because Chrysler bringing in, I think they brought in somebody from half of the states to testify how much they loved the similarly designed vehicle and it's part of the trial, the trial took a substantial amount of time and I ruled in favor of Chrysler. So no billions were given. But they were looking for 1,500 dollars per person for a million and a half consumers, so actually, it was more than a billion, it was a little over two billion when you did the calculations. Of course, it was a very expensive case for both sides, even for the winners. I understand the case is still around and I've been off for about four years because Chrysler is attempting to recoup some of their cost from the plaintiffs, so it's in on that. The case is over with but now they're trying to get cost. Still around the system, some of these cases are like snakes with fifty tails, or fifty heads. See how long they keep on going.

*KK:* The class action type of suit seems to be in the news from time to time and some courts seem to get in the news that are more favorable to have those, like down around St. Louis, further south in Illinois.



*TD:* St. Clair County, Bellville, East St. Louis. In fact, last week was in the news because the Supreme Court threw out a certification of a class action down there, saying that it shouldn't have been certified. One of judges got reversed on that, but I saw a story in the newspaper about that, so. It's something that the higher courts are aware of and of course if a judge certifies a class, usually what happens is they have to go through the entire dance before they get a chance to get to the appellate court, so they spent, I have no doubt, with the case before me, that the legal fees and costs were well into the millions of dollars. Chrysler may have won the case but of course they still spent a lot of money. And the plaintiff who was doing it for class action fees, a very prominent local lawyer who was presumably spending his own money to get there. So he was certainly spending in the millions too and he's really up a tree because he's not going to collect his money and on top of that, he's got the other side looking to collect their money from him, so...

*KK:* Do you feel those cases in general are looking towards the public's welfare?

*TD:* Not a chance. I mean, are there cases where class actions are necessary? Sure. I mean which of us hasn't bought something that cost 25 cents or a dollar and it just doesn't work? Who's going to call a lawyer to take care of that? You throw it away and regard it as cheap tuition in the school of life. So cases like that, where the public is being taken advantage of... I always remember, there was a case down in Florida, it was a criminal case, but it had the makings of class action because the advertisement said "Your money returned if not satisfactory." And the people would get this product, which was absolutely useless, and write the guy back. And he would send the form saying "There's absolutely nothing wrong with your money and so we feel no need to return it. Your money was satisfactory." So a case like that would be a good class action case in my opinion, but as it turned out, the government prosecuted, it was a mail-order case, the government prosecuted, so I'm sure that never turned into a class action. But that's actually a true story.

*KK:* The challenge on the constitutionality of Chicago Home Rule powers involving the grant of health benefits to same-sex couples, was that recent?

*TD:* Um, sure, within, well it can't be older than four years because I've been gone for four years and three months. But it was certainly in the last two years of my being on the bench. It was while I was in the courtroom next door. In going through these, I never made a catalogue of cases I regarded as important. In going through these, I thought, now, which cases got public notoriety or I received a lot of letters. And I don't know if I mentioned the priest. I had sentenced a priest to the penitentiary for child molestation. That case, I got a lot of letters. But the most hate mail I got was on the home rule case. I would get, the case had very little to do with homosexuality. It was a question of whether or not the City of Chicago could in fact give same-sex couples who had a sexual relationship benefits. It had nothing to do with the quality of their relationship, whether or not their relationship was moral or immoral, it had to do with if the city had the authority to do that, and I received letters telling me that not only was I going to roast in hell, but my children and wife would roast in hell. In fact, one day on the bench I read some of the letters \_\_\_\_\_ made a comment that I didn't think they were all that Christian when they

were writing these kinds of letters. So then, as a result of that, I got some different letters from other Christian groups saying don't align us with you and a homosexual author, identified himself as homosexual, from Milwaukee, wanted to write the story of my life. He almost beat you to it. He wanted to write the story of my life and publish a book and really, it really didn't have anything to do with that and yet, the public... I see the same kind of thing going on right now. They missed the issue; the issue was could the city do it? Of course, they can do it if they want to. It's something I came to; in some respects it's a microcosm of the death penalty. If a legislature wants to vote for or against the death penalty, he's the person that should do it. But if the city counsel wants to vote for or against giving marital rights to gay couples, they're the ones who can do it. And legally, they have the right to do it, so it's really a political question after that. If they can take the heat and do it, \_\_\_ I just felt that in both of those cases, it wasn't the judge's responsibility to try and second guess whatever legislative body was involved.

*KK:* The people who were against that, were they trying to go on the basis of some legal precedent, or their values?

*TD:* Well, it was a group, it was a value driven group out of Virginia, I think, that was fighting the lawsuit on behalf of a local plaintiff who was no doubt affiliated with a religious group. Did they have arguable grounds to say that the home rule authority was exceeded or that this wasn't contradictory? They weren't successful, but they were arguable. Of course, that was the grounds they asserted. It really had nothing to do with their motive. Their legal grounds had nothing to do with morality because they were smart enough to know that wouldn't fly. So legal grounds had to do with the extension of home rule powers and the constitutionality of the enabling act that granted the home rule powers, but their secondary motivation, it's actually their primary motivation, but their secondary motivation was their feelings against same-sex relationships.

*KK:* So tell us about the priest.

*TD:* The priest was convicted of molesting a little girl. He had been, actually a guy by the name of Maier I think his name was, he was a priest, as it turned out after the fact I think he was one who was accused of being more involved in molesting boys than girls, but this little girl come forward and it was a bench trial and I convicted him in a bench trial. They had waived the jury. He had Pat Tuit representing him and, you know, it was enough evidence. Would I say it was the strongest case that I ever heard in all my time, of course not, because of course it was in large measure a question of her testimony against his testimony and then some supporting circumstantial evidence, the fact we would have her in a certain place at a certain time which would lend credence to what she would have to say. And so for example the housekeeper would testify that, yes indeed he would bring her over and go into a room and close the door, which he denied doing and the little girl had said happened. So, those kinds of circumstantial things bolstered her testimony enough that it had proved beyond a reasonable doubt and he was affirmed. So, it became a question as to whether or not he should get probation or go to the penitentiary. And I thought that in light of his relationship with the community and the fact that he took advantage of not only a superior non-dominant, him being the superior, her being the sub-

serviette, not only did he take advantage of that relationship but that the fact that he was a priest so I sentenced him to the penitentiary and that I got mail from all over the world on that, primarily supporting me so clearly the people from the SNAP probably had a pretty good world network and that got a great deal of press, it would be on television every day.

*KK:* Was he from the Archdiocese of Chicago?

*TD:* Oh yes.

*KK:* Did you get a lot of pressure from the parish that he served at?

*TD:* No. I have one priest who told me that he was asked to come and sit in the courtroom after the fact and he was asked by somebody, but what the effect of that would have been, and he said he wouldn't do it, so I don't know what they thought the pressure would have been, for him or against him. In any event I can only speculate because he refused to come. But, one of the State's witnesses was a Bishop who didn't necessarily incriminate him but had testified as to something that had occurred, he was at St. Barnabas which was actually a parish adjoining the parish where I lived, before he got transferred out and, I'm trying to think what the Bishop testified, but it was something incriminating, about when he was there and then he went out to Berwyn. This little girl was a resident of Berwyn when it happened and it happened at a priest house. So I'm pretty sure, ninety-nine percent sure, he got kicked out of the priesthood long before the current things started. Cause this would have been, I was not out at 26<sup>th</sup> and California after 1994, so this had to occur before 1994. And I believe that, I was told, of course I've never bothered to do an inventory of all the cases, but I was told that he was the first priest in Cook County ever sentenced to jail for sex crimes.

*KK:* What in your opinion were some of the most difficult or troubling aspects of the legal system in Chicago or Cook County?

*TD:* Volume is certainly one. It's such a volume of cases that you don't often get the amount of time that you want. There is both in the private bar and in the Public Defenders office, and of course I didn't see any Public Defenders down here, its like any profession there is a range of talent that sometimes you feel sorry for the people who have hired a particular lawyer because you just see him messing up the case before your eyes. That's the troubling aspect. The fact that you see attorneys pad their bills, significantly, doing things that really aren't necessary, that's troubling.

*KK:* With the talent of trial lawyers out there, it's hard to get into law school.

*TD:* Uh-hum

*KK:* It's hard to graduate...

*TD:* You know this from first hand experience? [Laughter]

*KK:* No I don't. *Assuming*, as an assumption, is that a valid assumption?

*TD:* Yes it is a valid assumption as a matter of fact. I was allowed to hire clerks and I came here in 1994 and stayed here until 2001 so whatever number of clerks, usually one a year, and I would always ask them the same question that you've asked me about going to law school and I suspect that in some respects it was a bit of honoree about it because it just that there wouldn't appear to be too many other alternatives. In those days of course the prospects of getting hired, not only was it tough to get into law school and tough to graduate, but when you graduated you might not find a job. And, I would say to them why would you do it and they would say, "Well, what else" would be a typical answer. "What else am I going to do? I've either got to get an MBA or a law degree and things aren't any better for MBAs" so they would tell me sometime. They've all turned into, you know, very successful members of various law firms over the years, so it worked out for them. But I was the beneficiary of that because, I mean, I was a law clerk for a judge in the Chancery Division, it's not like clerking for somebody on the 7<sup>th</sup> Circuit Court of Appeals, you're fishing in a different pond. And I don't expect to see, although amazingly enough I got them, I would get resumes in the mail from graduates of Harvard and Michigan, looking for these jobs, and I would tend to hire people locally based upon the recommendation of law professors and I attempted to favor Loyola in that so that very often time they would only get a letter back from me saying that the job has been filled. But, as a result I was a beneficiary because it became not a job that people were looking for as a last resort but a job they were happy to get as a job. So you got some-top of the class people instead of getting the middle or bottom of the class that you might otherwise get.

*KK:* With the need for improved talent and you mentioned earlier that you had taught some law classes at Loyola, what in your opinion would help improve the quality?

*TD:* Well, I'm not blaming the law schools for the fact that there's a wide range of talent. The wide range of talent is inherent in humanity no matter what you do. So, I wouldn't, can't blame the law schools for that and certainly they're getting the best and the brightest so I don't know, perhaps they should be looking for qualities beyond the best and the brightest but that would be a matter of speculation. To get into law school now you probably have to be an A- with a ninetieth percentile LSAT score so they're certainly not fishing the bottom of the barrel with the candidates they have. But, if you see the successful lawyers out there, very oftentimes they're not necessarily at the top of their class. They weren't the law review kind of people. You know, they perhaps have some people skills that are a lot more difficult to define and it's certainly difficult for an admissions department to define those as well because oftentimes it's not the kind of thing you get in an interview. Certainly, we've all seen people who can mesmerize a jury with their personalities and their skills. I suspect that they had those before they started law school. Law school might have defined them for them, but it's kind of nebulous, difficult to figure out and I don't know if law schools would be able to do that. The profession does that for them. Unless you're from Michigan or Harvard or Princeton or Stanford your legal degree is a driver's license. It gives you the right to get out and drive.

Those other schools, maybe Northwestern or University of Chicago, they might be entry tickets into some level that you otherwise wouldn't get to, but the good lawyers are going to get there anyway. They might have to take a few more years, but very oftentimes the guy from Loyola who didn't get hired by so and so goes to the U.S. Attorney's office and all of a sudden five or six years later he's made a partner at Schiff Harden or one of the bigger law firms because of his talent and molinere. He probably moves in line ahead of the guy from Harvard, from Michigan who started there. The cream will rise to the top; I suppose is the simplest statement.

*KK:* Somewhat related to that, can you name, you came in as a judge sometime after the effects of the Shakman decrees.

*TD:* Unfortunately, Shakman has never had anything to do with judges.

*KK:* OK

*TD:* That would be an exempt position. It wouldn't even be considered. And believe me, if Shakman had much to do with judges there'd be very few judges. [Laughter] Then there'd be all the guys from Harvard and Yale that we talked about. There are no tests given. Certainly political contacts are very, very important to who becomes a judge. People talk about the fact that the Democratic Party's clout in so far as slating judges has been diminished, but no reasonable person running for office in Cook Country would say to you that "I'd just as soon run without the Democratic Party." Because, for me that would be an indication that they're not qualified because they have no common sense. [Laughter]

*KK:* That makes sense to me too. So the Shakman decrees really had no influence with the judges whatsoever.

*TD:* No. In the only public job that I had other than being a judge was an assistant states attorney, and again that would be an exempt position. Usually at the policy level, Shakman refers to the guys who are going to sweep the floors, put in the light bulbs, do the clerical jobs, but when it comes to a policy level job, where somebody's going to make policy decisions and have a certain amount of independence, those are exempt from Shakman anyway. It certainly would not be fair to Mayor Daley to require his Chief of Staff, for example, not be a political appointment. By its very nature he wants someone who is attuned to his political feelings and whose going to work on behalf of what the Mayor wants done. So, having somebody just hired from the outside, I don't think anybody would want to do that to him.

*KK:* Looking back, how do you feel about your experience as a judge?

*TD:* Oh, best job I ever had. Best job, I mean wonderful and at 26<sup>th</sup> and California, this and the last eight years on the job. I started out as an associate judge, which is the lowest rung, where essentially in any other county but Cook the associate judges do all of the misdemeanor work, all of the traffic work, and they're forever stuck with that.

Nothing is ever going to change that. The elected judges get the better assignments and in Cook County that's different. In Cook County a judge who's got some talent as an associate judge can rise above that and a lot of them have done it. I don't think there's a, the Chancery Division is the only division that doesn't have an associate judge hearing cases in the division. They are all circuit court judges. Now in the mortgage foreclosure section of the Chancery Division there are some associate judges but what they call the Chancery, like Jim Henry, they are all elected for circuit court judges. So that I started out in one of the municipal districts which is not at all an unusual assignment. I was lucky because if I'm not mistaken there were twenty-nine of us that were sworn in together and I think there were only two that didn't go to traffic court, me and one other judge, and it was fortunate because I had worked with Judge Paul Garrity who was the head of the Sixth District, the presiding judge of that district at the time. He had specifically asked for me and so I was lucky to get out there because as I said I got a larger variety of cases. So from that point forward all of the horses in that race are attempting to distinguish themselves to get out of the traffic court. There are certain plum assignments, the preliminary hearing courts are plum assignments because you do your work and you're done. And when I got to 26<sup>th</sup> and California, 26<sup>th</sup> and California was the most autonomous division in the entire circuit court of Cook County. You had your call. You were responsible for your call. You were responsible for moving those cases and that was it. You didn't have to worry about anybody else's calls. If the guy next door to you was not doing his job, you didn't have a presiding judge coming in and saying; "Durkin, I want you to take Henry's cases". I obviously used a farciful analogy there. But, so at 26<sup>th</sup> Street that wouldn't be the case. At 26<sup>th</sup> Street if the judge couldn't keep up with his call, the presiding judge whether it be Richard Fitzgerald or Thomas Fitzgerald would be on the phone to Harry Comerford saying, you got to get this guy out of here, he can't handle his call. Where as in the locals, Districts 2, 3, 4, 5, and 6, the strong mule theory applies. If in fact you can carry three bales of hay on your back out there, the presiding judge is anxious to find out whether or not you can carry four. And so that if the judge next door is only carrying one bale of hay, he knows that he can't get rid of her or him and so he's probably going to take some of their call and divide it. So, that can be a source of displeasure for the more productive judges, where as at 26<sup>th</sup> Street that doesn't happen.

So I loved 26<sup>th</sup> and California, I just would have stayed there forever except I thought it was time to broaden my horizons and so I asked Don O'Connell to come downtown and I had really my choice between the Law Division and the Chancery Division. I chose Chancery because I thought the cases would be more challenging, and it was great, it was a wonderful experience. But Chancery in some respects you'd flip back to the same work standards that you had when you started in traffic court because if Jim Henry has a case, for example, that is set for trial and on the morning, he's got the whole day blocked out for this case, he's going to do it on trial, and the morning they come in and they say, "Well we've settled the case. Judge you were very helpful, thank you for that conference on Friday, we've settled the case." Now, almost anywhere, for example at 26<sup>th</sup> and California I would be barely able to contain myself, I'd say great, this is it, there's nothing else you can do that day, you can't call witnesses in on an hour's notice, for another case that happened to be on the call, so that's a day off. You want it to be a day

off catching up on paperwork in chambers; you want it to be a day off going to the golf course, that's a day off. But in Chancery it doesn't make any difference what time you're done. You are tied to your courtroom until 4:30. When the clerk's office closes, and I used to get them to call me at about five after Four to find out if anything had been filed, so I would at least be able to know what kind of train I was going to be able to catch to tell my wife. But if somebody walked in the clerk's office at 4:29 and filed a request for a temporary restraining order, and the computer happened to assign it to my courtroom, I'm there. I'm there until ten o'clock at night or one o'clock in the morning, I'm there. So, you wind up with some of the same ties that I had referred to. So, the autonomy is more limited in Chancery than it would be, say, in the Law Division. The Law Division is the same kind of thing; one trial, one judge, one jury. So they send you up a trial and you start picking the jury at ten o'clock in the morning and at one o'clock you bring the lawyers back and say "How far apart are you on this?" and they say "Well, we're 50 thousand dollars apart" and so you sit down with them, split the difference and get rid of the case, send the jury home. That's it for the Law Division judge, see. There's nothing else they can do that day and so they're free. That's not true in Chancery, they're not free.

*KK:* How many years were you at 26<sup>th</sup> and California?

*TD:* Ten. From 1984, actually I was a little short of ten, and I guess I was a little short of eight down here. It all totals up to twenty-two and a half years.

*KK:* Was being a judge what you expected it to be?

*TD:* Better.

*KK:* Better, why better?

*TD:* Oh well, there's a lot of things you can get involved in. I taught at the National Judicial College as well. One of the nice things about the policy of the court then is if I would spend two weeks at the National Judicial College, Harry Comerford and Don O'Connell both considered that to be a boon to the judiciary, that someone would select you to teach out there. So they wouldn't charge you any vacation time. So the nice thing is I would bring my wife and kids out there and spend two weeks in Reno Nevada and it didn't count against my vacation time. And the Judicial College would pick up at least you and the wife, they wouldn't pay for the kids, but the room would be provided so there was a nice inexpensive vacation for them and so I had a lot of teaching opportunities that came my way as a result of being a judge.

Although this is a city where judges are not held in the kind of political respect they might be somewhere else, I had an interesting thing occur as a matter of fact at my daughter's baptism. My son-in-law's father is from Egypt. He's a Doctor and they're Christians in Egypt, the family is, and it's kind of a difficult minority to be in the middle of a Muslim country, but his uncle by marriage came over and he is also a Christian and he was a military judge. We were going to Salvador's, a nice restaurant, up at Fullerton,

just north of Fullerton, right off of Lake Shore Drive, for the reception, the lunch, and I was driving and they were staying in a hotel, so I was driving in from the Baptism over to the restaurant and I said I've got to look for a parking spot. He said, "Well why don't you just park in front of the restaurant and put your sign on?" I said, what do you mean? He said in Egypt I would park anywhere, I would just take my judges sign and put it in the window. His name was Rashad, and I said Rashad if I did that not only would the police tow my car, I said, but most of the people would come by see the thing and key it, scratch it, break a window, I said the last thing in the world you want to do is let the people around here know you're a judge. [Laughter] But apparently the kind of clout that the judges have in Egypt was a little higher. And I've noticed that in other cities. I have a friend that was one of my students out in Reno who's an appellate court judge down in New Orleans and they are much more active. They have to run for office on a regular basis so that he is quite the politician. He is known everywhere and if he went into a restaurant somebody's going to pick up the tab for him. The kind of things that we'd be in trouble for up here, they routinely do down there and think nothing of it.

*KK:* Why do you think that is in Chicago?

*TD:* First of all you don't run for office after the first time. If you're an associate judge of course your constituency is the circuit court judges so even though they call it an election, it's an election with a very restricted constituency. And when you run for office, I've done both, I ran for associate judge, I ran for the appellate court, and I ran for the circuit court, unsuccessful of course for the appellate court. But, once the election is done you're up for retention and unless your name is on the front page of the Tribune, you're going to get retained. So, you have no incentive whatsoever to be involved in political work. And as a result you kind of lose that politician part of being a judge. I happen to think that's a positive rather than a negative. But one of the downsides if you're looking for fame and acclimation, you're not going to get it in the system we have up here. People don't much care about it. Funny story when I was first started, they had a courtroom in Chicago Heights, which was part of the 6<sup>th</sup> Municipal District, and I told you we would go around to the various courtrooms...

*KK:* Yes.

*TD:* ...and the judge had his parking spot, which was marked "Reserved for Judge." And the first day when I was going out there I saw the parking spot, it was available for me, the closest spot to the entry door of the place, and having been a criminal defense lawyer for some years I probably had a little more sophistication than someone else. I went around the block, found a parking spot and parked my car, and never went near the spot. So sometime during the day, somebody did park in that spot. And of course their car windows were smashed by some disgruntled litigant, [Laughter] who came out of the courtroom and figured it was the judge's car and put a brick through the window. So those are the kind of things you have to worry about. People are more than willing to express their anger at you if they can get away with it on the sneak. You're just as well off being anonymous. And never park in a spot that says "Reserved for Judge". I give you that advice for nothing. [Laughter]



KK: That is very interesting. I think it's telling too.

TD: Well, you know somebody is unhappy with every case. So if you take the cases that go out of the courtroom and divide it by two, fifty percent of the people are unhappy. Some of these policemen will take their traffic cases very seriously. Find somebody not guilty and they're angry with you, particularly if some guy gave them some lip. You know they want to tell you all about that, you say, "No, that's not part of this case. It's a question of if this guy was speeding, not a question of whether or not he was polite." If you then proceed to magnify your unwillingness to listen to their beefing, by finding the guy not guilty of speeding, it might be a policeman who's putting a brick through your window.

[Short break with Judge Durkin asking about our goals in history]

KK: Can you reflect on the selection process of a judge?

TD: There are some very, very talented people who will never ever be judges. There are some people who have less talent who become judges. Is that fair? No. Is it life? Yes. Just like when the two of you are looking for jobs you might be more talented than the people who get the jobs. Is Cook County a place where political clout is important? Absolutely. Anybody who tells you differently is a liar. In my case as I say I was very fortunate. I had applied for a job which is supposedly non-political, that's to be a U.S. Magistrate, in 1979 and I was one of the three finalists. And with a certain amount of haughtiness, I looked at the other two candidates and said, "Come on, I'm going to get this job." Guess what? Somebody who had been a law clerk for somebody on the 7<sup>th</sup> Circuit Court of Appeals got my job. It was small politics, in other words, rather than big politics. So at the time I had literally seen the ad in the paper, but it was the law bulletin, not the newspaper, for associate judges, and so I thought why not. And I went down there and put in the application and I contacted Mike Madigan and he told me that because I did not live in his ward it would be difficult for him to directly sponsor me, but that he would support my candidacy, and he called Tom Hynes, who I knew vaguely, and told me to go up there and interview with him and I did. And he said, well there's somebody that I'm interested in, but I don't know if they're interested in the job at this point. So he said I don't know what I can do for you, but apparently, because Tom Hynes when you talk to him you got no information from him whatsoever. But, apparently that other person must not have wanted the job or something happened because as it turned out he supported me and I made the ballot. One of the advantages of being a States Attorney and a criminal defense lawyer is I knew everybody. I knew that if I made the ballot I was going to get elected because all the judges knew who I was. You go around a kind of humiliating, but very valuable process. You go around with your resumes to meet all the judges and very often I would walk into a courtroom where a judge was on the bench and he'd say, "Durkin, get out of here, you got my vote." [Laughter] So that was very uplifting and I did get the associative judgeship.

I would be a liar to tell you that there aren't people who are more talented than I whose names would never appear on that ballot, and I would be a liar to tell you that there aren't people who are not talented at all who get on that ballot, and sometimes become associate judges. That's unfortunately the process of life, that everything has some political bent in it. And it's still very, very important to have political clout. Sometimes it changes. For example, let's talk about ethnic. There is certainly a much higher percentage of black judges on the bench than there are members of the bar. In other words from the eligible pool if you count the number of judges and divide it into all those who are eligible to be judges, there are probably more black judges than any other ethnic group. People think there's a lot of Irish judges, and there are, and I would say the same thing is true of Jews and Greeks. There are probably compared to the number of Jewish lawyers, I would put them probably in fourth place, after the Blacks and the Greeks. But if you take a look there are organizations, first of all it happens for example that the Blacks have a very, very strong and wise political unity to them to push for black judges, and it's successful. There have traditionally been a large number of Jewish lawyers and judges around, so they try and make sure that their own get on the bench. The Irish do the same thing, try and make sure that their own get on the bench. The only difficulty is they're too busy elbowing each other in the face to make sure that they're the one of their own who get there. So, ethnic considerations are important and always have been. In the days when I was running for judge, if a judicial candidate ever came out and said that, "I'm gay," he or she wouldn't stand a chance. Now it's actually almost an advantage because it's part of the process, the winnowing down process. The chief judge is going to make sure that he's got a diversity group. And so he's going to be looking to have somebody who is from the Gay-Lesbian Bar Association. Women again now, women have been definitely underserved in the judiciary, the Women's Bar Association now almost uniformly gets a spot among the judicial candidates. So that the judge, the chief judge, that would be Judge Evans right now, who has to make those decisions. But certainly part of his decision making process is to make sure that when that ballot goes out, and there's one coming out shortly, I think they have sixteen judges up so they'll be about thirty-three names, if that came out with thirty-two blue-eyed, blond-haired Irish names, he'd be in trouble. So, he's going to make sure that when that ballot gets distributed there's diversity on it. You know, kind of sexual diversity, ethnic diversity, maybe even some intellectual diversity, the least important of all three. Those things come into consideration that has the effect of diminishing the power of the Democratic Party, because if in fact you have to have something reserved for a Greek candidate who may or may not be supported by the Democratic Party, but you want to make sure that they're entitled to their nebulous share of the judicial pie, the fact that that person is going to get there because of something other than the Democratic Party clout has the necessary effect of diminishing that clout, but the clout is still there. When that ballot comes out, if there are thirty-two names, certainly twenty-four of them are going to be heavily supported by some Democratic committeeman or some Democratic organization. A couple of Republicans and then the rest will be filling out that diversity ballot that I talked about.

KK: That's obviously changed.

*TD:* Yes, that's a change. In fact it was probably true that because the committeemen, Chicago being 50 wards, and them including the suburban townships, I won't mention the judge's name because I don't have his permission, but a very, very fine circuit judge who's now retired told me that his college buddy was a ward committeeman, he was a ward committeeman from one of the more insignificant wards, and he told me one time when we were having a beer he said, "This guy in order to make me a judge had to use up every favor and give off jobs, because he just wouldn't have been in the hierarchy. In my day the hierarchy would have been Mike Madigan, Tom Hynes, Kelly on the north side, certainly John Stroger's ward on the south side, if one of those guys wants you to be a judge, then you would be a judge. If one of those guys wants you to be a judge now, although Tom Hynes is no longer a ward committeeman though I'm sure he's still influential, if one of those guys wants you to be a judge now, you're going to be a judge. It may not happen the first time but certainly insofar as getting the associate judgeship, or getting slated, they can do it.

*KK:* - So even if you were somewhat of an independent that maybe didn't do any precinct work, over time you'd still need to at some point in time say I need to make contact with people and let them know who I am?

*TD:* Absolutely.

*KK:* And whether you were Irish, Polish, Greek, Hispanic, it doesn't matter, its not going to hurt you.

*TD:* No. The contact is what matters. The rest of it can be an advantage or a disadvantage depending upon what you want to do with it. But it's the contact that counts. So clearly if you happen to be a Black lawyer you're more likely to go and talk to John Stroger than you are to go talk to somebody at O'Hare Field, you know whatever ward is out there. If you're a Polish lawyer you're more likely to go and talk to 'Pinski, so you do have this affiliation that comes about. The only people who are going to care about you doing precinct work is the ward committeeman who might be helping you. And if he doesn't care about the fact that you didn't do any precinct work, in my life I did have to do some precinct work while I was an assistant States Attorney, that's a requirement of the job, but I've never done anything, precinct, ward, or anything else other than donate money since. And clearly that didn't make any difference to the guys who wanted to help me. Are there guys who managed to work their way up by doing those kinds of political activities? Sure. But in some respects it's the whim of the ward committeeman. If John Stroger wanted Tom Durkin to be on the Appellate Court, I'm going to be on the Appellate Court. But, it's just a question of how long it's going to take them to get me there.

[Introduction of Professor Manning and brief chat on the project]

*TD:* I'm curious, have you found that judges have been candid about this?

*KK:* Some more so than others. It's sort of understandable. It's part of working in the city.

*TD:* Right. The veneer may be different, but it's pretty well true throughout the United States.

*KK:* Some people think that Chicago's very different. My gut says its not, compared to Philadelphia, Boston, New York.

*TD:* Oh definitely. The only difference that I remember reading a story in the paper when Mayor White, I think his name was Kevin White, he was the Mayor of Boston and his aide was indicted because he used campaign funds to throw a birthday party for Mrs. White, the Mayor's wife. Clearly they have different campaign laws in Massachusetts than they have here because in Chicago if they didn't use campaign funds to pay for the Mayor's wife birthday somebody would be suspicious. "Why aren't they using campaign funds?" [Laughter] Those are the kind of things that are just expected. There's a difference in that regard I suppose.

*KK:* Uh hmm. I suppose, following up on the importance of the ward stuff, you're fortunate because you've been on the bench for a long period of time, from 1979 through 2001. And there were a number of changes in terms of who was Mayor through that time. How did you see that from your perspective?

*TD:* From my perspective, zero. The Mayor had no impact upon my political career whatsoever. Could he have if he wanted to? Certainly. My sister and the Mayor's sister were in the convent together so I have known Rich Daley since we were about thirteen years old. We used to play basketball together at St. Xavier's. He would not recognize me on the street, I would recognize him. We were never close and we were never friends. But he certainly knew who I was. Obviously, that would be the first Mayor Daley as well though he was dead by the time I became a judge. And that would be true as well, I didn't play basketball with him, but I certainly saw him as a result of our sisters. My sister, his daughter. But unless he's helping you, Mayor Richard J. Daley, certainly if he wanted to hurt you and that's a very important thing to remember about any of the elections whether it be for slating or for an associate judgeship, if somebody wants to hurt you their ability to hurt you is magnified far beyond the ability of people to help you because of course there are hundreds of candidates that want to be judges. And so a negative does everybody a favor. If a ward committeeman says "I don't want Durkin, he's the worst guy in the world." He does everybody a favor. He does the guy that wants to help Durkin a favor because he can now say, "Well, I tried to help you but you don't stand a chance. So I'm moving on to my next candidate who I'm going to help now." So the negatives are killers. If Mayor Daley wanted to prevent somebody to be a judge that person never, ever, ever's going to be a judge. Does Mayor Daley and has he helped people become judges? Yes, but surprisingly sparingly. With the kind of clout you would think that he would exert, he will not for example, we mentioned the thirty-two people on the associate judge ballot, if one or two of them are his candidates that will be about it. He recognizes that these kind of plums are not to be hoarded by him, but they

probably belong to the legislative process, the City Council and the ward committeemen. That's my theory, he never told me that of course, but my theory is that you've got to figure that the largesse has to be spread around.

*KK:* What would be the things that would be killers? What would you have to do to be on the list?

*TD:* I'll give you an example. It was in the paper. A lawyer on a divorce case had represented the stepmother of a circuit court judge, in the stepmother's divorce against the father of the circuit court judge. And this is in the last election. That lawyer made the ballot. That judge campaigned against him as hard as somebody who was supporting the candidate, probably a lot harder. And he told judges that I could not go and visit my father at the cemetery if this guy gets elected. The guy didn't stand a chance. And whatever grievance there was in the course of the divorce, I don't know. But that actually made the papers about the judge working hard against this guy. And he not only worked hard but he worked successfully hard. This poor lawyer in my opinion is dead in the water. Because whoever is helping him to get on the ballot is going to say to himself, "Why should I waste my efforts, when this is going to happen again? When I've got another candidate who I can help and he might stand a chance." He won't get the rock put on him like the last candidate did. So, that's what I'm talking about where a negative can be much more detrimental than a positive can be helpful. If a ward committeeman calls you up and says that John Doe is the finest candidate in the world you're going to get a lot of calls from a lot of ward committeemen all of whom are going to tell you that John Doe is the finest candidate in the world. And you still have to figure out who you're going to vote for, or who do you want to make made at you by not voting for him. If somebody calls you up and says, "This guy is death. He's the worst person I ever met in my life." You're not going to get but one of those calls, because it just doesn't happen. [Laughter] So, now all of a sudden it's easy for you. You say, well, I can make this guy happy by not voting for this other one.

[Brief pause while Fallon Thomas introduces herself]

So in that respect as I say, the negative vote is a killer. Whereas the positive vote is very, very helpful, but even if you got the best committeeman in the world pushing for you, there's still other people pushing for the other candidates and you still have to make it. And of course the judges who are voting for the associate judges are cloaked in anonymity. So that if you have, let's say John Daley wants somebody from his ward to be elected an associate judge and the guy gets by and he's on the ballot. He probably has, essentially, judicial precinct captains who are pushing for this particular candidate. If the guy doesn't make it he doesn't know which judges voted against him so he'd be mad at them, but he can certainly be mad at his judicial precinct captain. And they're probably going to get an ear-full, "What the hell did you do, what happened that you didn't get John Doe elected?" So there's a great deal of electioneering and politicking that goes on in the associate judge process, and you're going to have the advantage of watching that happen right now. It wouldn't be a bad idea to talk to one of the candidates both before, during, and after the election and see what they tell you about it.

*KK:* Yeah, that would be very interesting. There seems to be a certain camaraderie that develops, maybe network would be the better thing, that develops between the ward committeemen and the people in the judicial system, and the administrative system, is that truly a network?

*TD:* It depends on the ward. The old fashioned wards, the John Stroger ward, the John Daley ward. What's Blagojevich's father-in-law's name...

*KK:* Mell

*TD:* Yeah, Richard Mell, his ward, Kelly's old ward, Kelly doesn't have one anymore. Those were the wards that they were looking to get jobs from the top to the bottom and they had the people, the right demographic for it. And of course there'd be more camaraderie there. If you came from the other wards I can tell you in all honesty then, twenty-three years on the bench, I never had a single phone call from Tom Hynes asking me to do anything except on judicial election time, maybe to vote for a particular candidate. That's the only calls I ever got from him. And I know judges from certain wards wouldn't answer their phone during the day. They'd tell their clerks don't answer the call because they figure it's somebody calling trying to fix a traffic case or something. So, it depended upon where you were from. I was blessed were I was from in my political background that I didn't have to worry about that.

*KK:* Is there something else that we haven't mentioned that you want to make sure that people know about the judicial system?

*TD:* I would say the system, since I've been going into the nuts and bolts, perhaps showing you the grease and dirt, I would say that all in all my respect for judges went up over the years. I think that most of the judges I met wanted to do the right thing. And you know at 26<sup>th</sup> Street for example it was like a seminar every day because forty of us would eat lunch together, not forty every day, but part of the forty judges who'd come to the lunch room and I can recall judges agonizing over tight cases that were very close. Talking about the evidence trying to get a shoulder to cry on more than anything else. But I was impressed by the integrity of the judges that I've met along the way, and the fact that they wanted to do the right job. Were there some who were just jerks, and lazy and didn't want to do anything? Sure. But they were definitely in the minority, most of them were good men and women who wanted to do the right thing.

*KK:* I never thought of that, not that they want to do the right thing, but having another judge that you could talk with.

*TD:* Um hmm. That's all you can talk to. You're not allowed to talk to lawyers or law professors, but you can talk to other judges about cases.

*KK:* So is that very helpful for you?

*TD:* Extremely. Very oftentimes somebody will come to lunch and I can recall one time Will Strahorn telling me one time when I was just at 26<sup>th</sup> and California about a pork chop murder. And he said, "I have a pork chop murder case." And nobody seemed to know what it was and I said, "What the hell is a pork chop murder case?" He said guys living together in an apartment, one guy eats the other guy's pork chop, goes and looks for his pork chop and doesn't find it. So he kills him. Stabs him in the neck or shoots him. And I thought that has to be the most bizarre thing I ever heard in my life. I had two of them in my career out there. It became a pork chop murder was one kind of case you say or a trick shake armed robbery case. We use to call for example the area around 44<sup>th</sup> and Cicero the "Bermuda triangle" because it was amazing that young white guys for some inexplicable reason their cars would brake down, and that would be their stories, they had to admit why they were in an alley behind the housing projects there at 44<sup>th</sup> and Leclair or what ever street it was. And what would happen they'd meet the girl and they'd cut the deal with the girl, she would say ok well you pull back up there behind the garage. And as soon as he would get up there behind the garage someone had a gun up to his neck or relieve him of his money or take his car keys or maybe his pants so he finds himself stuck in there and he's got to have his story, well his story is always his car broke down. So we called in kind of bizarre humor the area around 44<sup>th</sup> and Cicero was called the "Bermuda Triangle" because young white guy's cars would mysteriously break down when they got to this area. It can be fun to it as well as ... human beings can only be bad in so many ways. The pork chop murder case I never forget that Earl Strayhorn, a great judge very knowledgeable man. The first time I had my own pork chop murder case I came down all excited. I said guess what? I got a pork chop murder case. Yea... so what, you'll get others and he was right I got others. You know the kind of things that people will... just people living together something could of happen to cause them to boil over. Very often times somebody taking the other one's food, you wouldn't think that someone would do it. It's a particular category of case out there.

*KK:* The system then works?

*TD:* Well, the system grinds along. Does it work with the same precision as a diamond cutter? No it doesn't. Perhaps like an old tractor that keeps chugging forward and getting the job done somehow and getting whatever necessary repairs that are along the way. Yea it does. Its' not a diamond cutter it's an old chugging tracker. It works. ... When you look at the number of cases that a judge in Cook County handles compared to the national standards you know we just couldn't afford, the county would go bankrupt if you tried to meet the national standard of cases. There is a book on Court Room 302. It is definitely worth looking at. A reporter for the... Steve Bogara use to be a reporter for the Reader and the Book is *Court Room 302*. He spent a year in the courtroom with a Judge at 26<sup>th</sup> and California by the name of Dan O'Connell who is now down here in the law division and wrote about his experiences. It's a pretty good analysis of the criminal justice system and it is certainly not perfect, but it works.

*MN:* ...I guess I just wanted to ask you, you mention a couple of times people who you thought were talented judges...what do you think makes a talented judge?

*TD:* I'm going to get back to something I started with as a joke. Having spent 10 years in private practice myself, to me punctuality is so important. Some of the judges they don't...if the case is suppose to be called at 9 o'clock in the morning, the judge should be on the bench at 9 o'clock in the morning; maybe he's going to take somebody else's case first. I went to the doctor last night to have a test done, set up having a test done my appointment was at 6 o'clock and I got called around 6:35 was I slightly aggravated. Yeah, but at least I knew he was there working. The problem you have... and these judges will come out, you know they are laying on their asses back there reading the newspaper, drinking coffee, they will come out, "Oh, I had an important call from the chief judge." You hear judges say this time and time again, you know they are lying through their teeth. They just don't care enough about the clients to be out there. So the judge who is punctual is number one. You have to have good demeanor, that can be very, very difficult because people will really go out their way to make you angry. Sometimes you wonder if they don't do it on purpose. Generally...just out right stupidity and I include the lawyers on this not just the clients. So, you have to watch your demeanor and try and just try and do what you think is right, be fair to people, and treat people with respect. I can recall when I was first on the bench there was a giant black guy who was charged with a DUI out in Markham. And it was about his fourth DUI and he was going to get convicted and was going to go to jail. The sheriffs told me, this guy he's wild, he's already attacked some policemen. So when I was about to find him guilty with a bench trial, I said to him Mr. Smith, whatever his name was, I said the sheriffs had told me about you, he was almost up to me and I am sitting up on the bench looking him in the eye, giant, oh my god. I said the sheriffs told me they expect to get some trouble from you. Just take a look around the courtroom there were about 15 sheriffs in the courtroom. I said you might hurt some of these sheriffs, I said but they are going to win ultimately your going be taken into custody and I said then you going to be charged with aggravated battery and on top of that, without the aggravated battery I'm going to have to give you 6 months for contempt of court for doing this. I said you're going to get a sentence for your DUI now. I said that if I were you, I would think to myself now do I want to do whatever sentence the judge is about to get me and get this thing over with? Or do I want to make a jerk out of myself and wind up doing a lot of additional time? I said, if you get found in contempt I am going to make sure it's consecutive to your sentence. And he listened to me and I said do you understand he said yea I understand, yeah I'm not going to give you any problems...well the sheriff...he went back took his time, probably got 90 days in jail. He took his time and went back like a lamb into the lock up. They wanted to handcuff him in court. They had asked me, can we handcuff him in court? I said OK. They were afraid he might change his mind once he got out the door. So they did handcuff him in court. I mean, using common sense is a valuable technique. Common sense and to work hard. You have judges who for example, don't want a prisoner in a bench trial, don't want him in court without cuffs on. The sheriff will say, well this guy is a mental case, we're taking him down to the psychiatric institute. But we have to get a bond for him before we bring him out in shackles. In some cases judges say, oh no that's a violation of his constitutional rights. So, all of a sudden you have a big fight in the court room and this guy's constitutional rights aren't going to be affected one bit, there is no jury there so he'd be prejudiced in front of jury he's coming out for a bond hearing so a judge who has a little bit of common sense says yeah, bring him out in the handcuffs, bring him out in



the shackles. Saves him from getting a beating, saves the sheriffs from getting a beating, and saves you from witnessing all this stuff. So common sense is very important but treating people with respect...like the guy in the DUI he felt like I treated him with respect and he didn't cause anybody any trouble as a result of that.

When I was leaving Markham in 1984 two black sheriffs who had worked in my court room that I don't think particularly liked me, asked if they could talk to me before I left... You figure they going to call you...you know, you no good son of a bitch. We're sorry you didn't leave sooner were not going to miss you a bit. He sat down and said you know you are one tough judge and I thought here it comes...one thing we want you to know you didn't treat blacks any different then you did whites and we respect you for that. That actually was one of the proudest moments of my life and I got out of there and I thought you know I will never get a better complement.

*KK:* Very true.

*MN:* I was also wondering with these...kind of high profile cases is...in the diversity of them, is that something that is kind of untypical of judges?

*TD:* Depending upon where you're at, if you're in the felony courts at 26<sup>th</sup> and California as I was for 10 years you're going to get your share of the high profile cases. They're done by computer. Same thing is true in the Chancery division. I had a case which I didn't mention involving a football player from Northwestern. He wanted to be in a movie. He was offered a movie part and the NCAA said that if he took his movie role...he was actually quite famous, he was an All American. I wish I could remember his name. This was probably eight or nine years ago. So the case was against the NCAA and they came in on a motion for a temporary restraining order. Which I granted, frankly I couldn't believe that the NCAA has such a rule. And then we set it down for a preliminary hearing. They abided by this. They said that they would not suspend him during the period...they told his lawyer that we will not suspend him while the preliminary injunctions for the temporary restraining orders are in effect but we intend to bar him from football when the case is over with. So we went to a hearing on it. And it was actually considered their position, which I never did accept I...and actually changed the rule as a result of this. But their position was a lot more reasonable when you heard it. And that's the nice thing about hearing both sides. Their fear was that a school like Southern Cal or UCLA would be able to dangle movie roles in front of the best athletes in the United States. And so all of sudden you would have the best football teams in the world would all be centered around Los Angeles. Which made a little bit of sense, but by that time I had already ruled against them anyway. And they did change the rule, they allowed the, with restrictions, they allowed athletes to take movie performances. Because, this guy he could take a job working as a bar tender in the producer's house and that wouldn't be a problem and it really wouldn't make that much difference. So, little things like that. But those cases are strictly...in fact, it's interesting, that case got a huge amount of national television coverage. The late and very good judge...he died...what the hell was his name? He was in the Chancery division. He had a case pending. And late in the afternoon, I was still here because they had told me that I had got the TRO. So this

came up at about 4:30 in the afternoon. He had a case going. So when they brought the case into him, he said I don't have time to hear it, send it to somebody else. While looking at it, and they called me up and said would you take it judge... (Banging on table)... I can't think of his name, well judge, I can't remember his name. He said he wouldn't take it, so I said well sure send it up. It turned out to be this very high profile case that got me all over television and all over the newspapers. He always kidded me saying you stole that case from me...

[Laughter]

*MN:* My last question was...my impression is that Cook County Courts are seen by a lot of people as quite a bit different from other court systems. You kind of indicated that you don't think that's so.

*TD:* Yeah, I really don't. I mean...there are advantage and disadvantages. Remember, I told you about, it's kind of sad when you can conduct a death penalty hearing and look out and see that all the spectator seats are empty. Down state of course there's a lot of public interest in the case. That's why I told you there were places where a judge literally will refuse to hear a bench trial. So you know this case is going to get tried by a jury, because he does not want to take a collar. The nice thing about being in Cook County is, if you wanted the case to be in the newspaper, it's not going to be in the newspaper. Death penalty cases rarely make the newspaper. The case of this little girl who was murdered by these two guys is in the papers right now. There are probably similar cases that have been up for sentencing and trial within the last three weeks that don't even make the Morning squib in the *Sun Times* and the *Trib*. That can be a benefit because you don't really have to worry about the public impact of your case. The likelihood of people holding it against you because you didn't give the death penalty to somebody is not a problem in Cook County. You go down to Central Illinois and it's somebody that the public wants to get the death penalty and doesn't get it, next time you are up for retention you will probably be going back into private practice. So we are insulated from the kind of public clamor that other counties it would make a difference. When I was still in practice I represented a guy who had burned down an American Legion or VFW post down in Morris, Illinois. The post had been there for veterans since the Civil War, they have changed the name...He and his buddy went in there they wouldn't serve him a drink because they were drunk. So he left and waited for them to close and came back in the middle of the night and torched the place. The kid was a jerk, that's what it was. The states attorney was willing to give him probation but wouldn't recommend it. He told me put on all these witnesses and make sure you...he was actually trying to help me with this kid. The kid when the states attorney was asking him a question about how he, wasn't he ashamed of how he hurt his parents. The kid blew up and said my parents never did a god damn thing for me anyway and my father...it was over he went to the penitentiary, he got the minimum I think its four years, but his chances at probation were gone. But in that case, when I would come out there and I'd be out there to pick up the discovery from the states attorney. He would give me the newspaper from the last time I was there as a joke and it would be "Cook County lawyer request continuance in arson case." Requesting a continuance was a headline in the paper and the fact that I was a Cook County lawyer.

This is what the people out there were interested in. A lawyer coming in the court asking for continuance in Cook County that might make a difference in the Jeffrey Dahmer case, but it would have to be something like that. There is a tremendous advantage to that insulation. If you're a judge looking for publicity it's not much of an advantage but it's probably never a good idea anyway. You're better off with the anonymity.

Pause...

*TD:* How about you Fallon do you have any questions?

*FT:* No I don't, I came in at the end, I don't know what was said already.

*KK:* A couple of things we could do here. We've tried to look at things that you would imagine would be important to leave in a historical record from your long career. Obviously you know your career better than we do. So is there anything that you would like to add at this point that we've been missing?

*TD:* Just in case my children ever look at it. When I was out in Markham 1979, let me see, my son was born in 1968, my one daughter in 1971, my other one in 1975. What they use to absolutely love is when I would have to do bond court on Saturday's. The associate judges are always the ones that get stuck with bond court. And I would bring them out and I would do the bond court. In one courtroom, they would get to go in the cells and get locked in the cells by the sheriffs. It was a day... that was things they still talk about, that they could be down there locked in the cells, so they certainly loved it. If they ever get a chance to read this they would be happy to know I pointed that out. My feelings in spite of the fact that I talked about some of the up sides and the downs side, I said...I mentioned the grease on the wheels of justice, but it's just a wonderful job. I got to retire early because of a happenstance. It had nothing to do with me. Most people believe it was Judge O'Connell. It used to be you had to be on 20 years and age 60 to get your pension. You got the full pension at 85 percent. Along about my 57<sup>th</sup> birthday, legislature passed a bill saying if you were on the bench more than 20 years you can off set the age reduction by the number of years you were on the bench. In my opinion the bill was designed for Don O'Connell. So I looked him up in Sullivan's or some book where his age was mentioned. Low and behold he was a month older than I am. So I stared doing up the figuring and I thought I can retire in six months. It was a matter of some illation for me and I'm still very active. I do arbitration and mediation work. But on the other hand it was quite a life style change. It was a job that I loved, a job that I actually looked forward to going to everyday. All of a sudden because of this economic windfall which is really what I regard it as. I was going to get out two years early, I always planed on retiring on my 60<sup>th</sup> birthday, I'm 62 now. So I was able to get out two years early. And having used that time I think in a good manner and it was still a question of a certain sense of melancholy leaving. As I said, I was proud of the judges I worked with. I think that the judges in Cook County have done a terrific job under sometimes difficult circumstances. Are there some bad seeds? You bet. Hopefully a goodly number of them have been weeded out. I think the process has a tendency to work. One of the things for example about the associate judge process we always laughed at, I said as a

circuit court judge that I thought if there was an IQ test, the associate judges would win. Because, the associate judges are required to really go by the Bar Association and really be vetted by the Bar Association. The Bar Association doesn't know who's going to win and who's going to lose, whereas if someone from the Bar Association gets a call from the Illinois Supreme Court saying that we would like you to do an investigation of John Doe, well they know that the Supreme Court Justice is about to appoint John Doe. So the feeling, and I believe the feeling is accurate, that is the brushes that they use on that judge are a lot gentler than the brushes that they use to check out the faults of the other judge. In some respects there is a form of merit selection in the associate judge process and you know you...if somebody is an idiot and yet makes it to the ballot, the word will go out that this guy just can't try a case, he's a terrible lawyer, how's he ever going to be a judge? That word will go out, that candidate won't make it. You will see some candidates who have tremendous political clout. Usually a person gets two bites of the apple. If a person is on the associate ballot two times, usually they'll never make it again. You'll see some people who will show up three or four times and the judges just never selected them... and it's usually...in those circumstances it's usually merit. The word is out that this person just doesn't have what it takes. The process works.

Pause...

KK: OK...Well I want to thank you for your time.

TD: My pleasure..

KK: Some of the judges have felt it's useful to do a follow-up interview and I know Professor Manning likes to do that. Gives you time to reflect to see if there is something that you missed and want to get back to.

TD: I would prefer not to. That was my reason for coming here today at 10. I mean if someone wanted to call me and ask me a question or two that they forgot. I would be willing to do that. With the new grand child and everything I've got things to do on Saturdays.

KK: We're totally fine with that.

MN: Did you have anything else you wanted to ask us?

TD: How many judges have you done so far?

KK: I think there's been a process so far about 20 that have been done... We just do one judge.

TD: Interestingly, why are they only doing retired judges?

KK: There are some that are doing active judges.

*TD:* What percentage of the judges do as I have done and permit public knowledge of it immediately?

*KK:* Almost everybody.

*TD:* That's good, that's a good sign they don't think too highly...the idea that somebody would say I don't want somebody to see this for 50 years...it's not the Kennedy papers, just a bunch of judges. I just hope that someday somebody will look at it.

*KK:* Like Judge Henry was saying, the way he got involved was he tried to find some information on the judges and there's nothing available.

*TD:* That's something I can tell you interestingly enough...Judge Henry, who we are friends...friendly certainly, but whom I didn't know when we were practicing law. It's amazing, my parents are from a very small town in Ireland called Bohola. His parents are from a very small town in Ireland called Bohola. As it turns out that Jim Henry and I are getting on the bench and his folks are also off the boat. And as it turns out my sister naturally her parents are from the same place, and Sheila O'Brien who is on the Appellate court, her grandparents are from Bohola. So we have...my cousins in Ireland who have done extremely well for themselves, they have taken my grandparent's home and turned it into a museum over there. They make a point of having the judges, who have their roots in Bohola. There is at least four, I maybe missing somebody, and the town can't have over two hundred people in it. It's kind of amazing that it spawned four judges in the United States. We have gotten laughs out of it. Sheila, Jim, Maureen and I over the years. It's kind of nice to know Bohola, Ireland thanks more highly of our service than Chicago, Illinois does.

*KK:* You haven't moved from where you were born to where you live now.

*TD:* Not very far, I've never lived outside the city of Chicago. I grew up at 8955 S. Bishop. When my wife and I got married, I lived home until I was married. When my wife and I got married I went 133 N. Central. We stayed there two years and then we went to 1719 N. Austin. She was teaching nursing at the time and then once we got married I actually wanted to stay north she wanted to come out south because you got a better bang for the buck on the homes. As it turns out she made a very wise move because the homes have just gone through the ceiling out there. So she was anxious and we wound up out there. Neither one of us have ever lived outside of Chicago. She grew up on the North side. She was also home until she got married. We shared the remaining addresses from the time. It is kind of nice to have these Chicago roots. You got to keep in mind that where I live now and where I lived in Brainerd, is the difference between the top of the mountain and the bottom of the valley. I mean, I went to Catholic grammar school right next...St Ethelreda, right next to Christ the King. I didn't have a single friend at Christ the King. And nor did they want to be friends...those were the rich people and we were the poor people. We were on the wrong side of tracks. They wanted no part of us. So to move into Beverly for me was quite a thrill because I had been on the other side of the tracks...being there all of a sudden. My mother was also very proud of

that. When the Evergreen plaza on 95<sup>th</sup> and Western opened in 1951, so I would have been about eight years old, and we walked up to the Evergreen plaza some friends, about four or five of us. There was a wedding going on in somebody's back yard. If we would have been dropped from Mars...I mean they had waiters going around with jackets and champagne, were looking at this and we absolutely couldn't believe it. We couldn't believe that people live this way. We thought this was something that you only see in the movies and little things like that. The tennis club to which I now belong, outdoor tennis court club with nice hard... courts. On one of our trips to the plaza we were standing at the tennis courts on the public sidewalk. And somebody came over and said, and they said it nicely and of course they were, I believe in retrospect imparting a message that said that "you are kind of interfering with our game, can you move away from the fence?" So we moved away from the fence and stood in the public parkway there and watched them play tennis. Again I thought this is unbelievable that people can actually belong to a private club, people can belong to this club and be able to play tennis like that and we're out there looking at it. And now I belong to the club and it's not so impressive anymore.

[Laughs]

*TD:* So the difference is day and night that I'm telling you. Growing up in Brainerd you were just standard old working class, but people of Beverly in particular, they were the ones that were definitely the Crème de la crème, a lot of rich people.

*KK:* That neighborhood changed too over the years? Beverly, didn't it?

*TD:* Well Beverly has integrated, it hasn't change. Brainerd has certainly re-segregated. Brainerd would be all black. The guy who bought my father's house, I did the real estate closing probably in 1968. He had two little daughters; and he had come from like 79<sup>th</sup> and Racine. He had a house there. He told my dad, "I had to move, my daughters were getting their lunch money taken away from them on the way to school and I just didn't feel safe." And sad to say, my father went to go see the house like 10 years after that when he was in his dotage since he... we went over there and the guy was still there my father went up and knocked on the door. And he told my father, "I don't know if you remember me telling you about my daughters, but I almost moved out of here the same thing happened, the kids couldn't walk to school without getting their money taken." It's sad, big difference.

*KK:* I grew up in Cicero but my grandfather, he moved here from Poland. He bought a house on...

*TD:* How long did he work for Western Electric?

*KK:* No, he didn't, my father did.

[Laughs]

*TD:* Where you from?

*MN:* I'm from Iowa.

*FT:* I had it frozen... I was trying to read the box last night...it seems like there is pretty much history there...I'm from Connecticut so I have no idea.

*TD:* What part?

*FT:* New Haven.

*TD:* Are you far enough North that you can get lobster rolls?

*FT:* Yes.

*TD:* You get lobster rolls you don't have to worry. I would rather have a lobster roll than a pizza anyway. Although, you go broke eating those lobster rolls today.

*FT:* ...probably here...they would be cheap.

*TD:* Well it wouldn't be lobster it would be that phony stuff that they sell at Jewel. I was trying to think of something else that came to mind about that...as I said the camaraderie is pretty good. Now one of the things that I did probably as a result of Greyford, I think I might of done anyway. A lot of the judges at 26<sup>th</sup> street would open their courtrooms in the morning. They would get some of their calls, lets assume their calls started at 9:30, they'd get there at quarter to 9, they would allow the state's attorney to sit down and have a cup of coffee and talk. And I never allowed any lawyers in my chambers at all. I thought it was a good move then and I still think it is a good move now. It's interesting because of my Irish mother, the very first time when I was working at 11<sup>th</sup> and State in gun court. I was down there and my mother came down there to watch it. I said my mother probably went to the 4<sup>th</sup> or 5<sup>th</sup> grade, she had wonderful common sense. The judge took a break and a lawyer came up and started talking to me. I'm sure he was talking to me about a plea-bargaining... what kind of a fine I will get in this case. But we're chatting there the judge comes back out and we do the call, and when I took her to lunch, her face was dark and she said, "Oh, why were you talking to that man, you shouldn't be talking to him?" I said well he was a defense lawyer. She said, "He looked so terrible." And I believed it. I always thought that very often you'll see a court call at 26<sup>th</sup> Street start, even today, where (bang, bang) all right court is back in session where the state's attorney comes walking out from the judges chambers into the court room and the judge comes out a couple of minutes later. And the clients, they see this and they think they don't stand a chance. And the appearance of this relationship and the relationship is really probably, probably harmless. There are some state's attorneys who try to take advantage of it by sneaking some information to the judge. My situation was that if one side is going to be in the chambers with me, both sides have to be present before I will discuss anything. I thought that was a good practice. Whenever I talked about it, not only is it important to do justice, but it's also important to appear to do

justice. Because I know I had clients tell me. I'd say, you know, we're going to take a bench job before this judge, and they would say. "I don't want to take a bench trial before this judge." I would say why not? "Before you got here when the call was started, he said the state's attorney came out of the chambers, I know they were talking about my case. I said I hate to disabuse you of the notion. They do that everyday, and they are probably not talking about your case they are probably are talking about the Bears' game. But, I mean the point is in order to take a bench job I would have to twist an arm a little bit then because this guy had seen that. That's important to learn those kinds of things as you go along. Most courtrooms will have two doors one that goes by the courtroom and one that will go out to a public area. At least if the judge had any sense and he's going do that kind of thing he should have the lawyers go out into the public area, not through the courtroom so nobody will see them.

*TD:* All set?

*KK:* Thank you very much!

*TD:* It's been a pleasure!

*KK:* Thanks for your time!

*TD:* My pleasure...good luck to all of you and your careers. What do you plan on doing?

*FT:* History teacher.

*TD:* There's one...