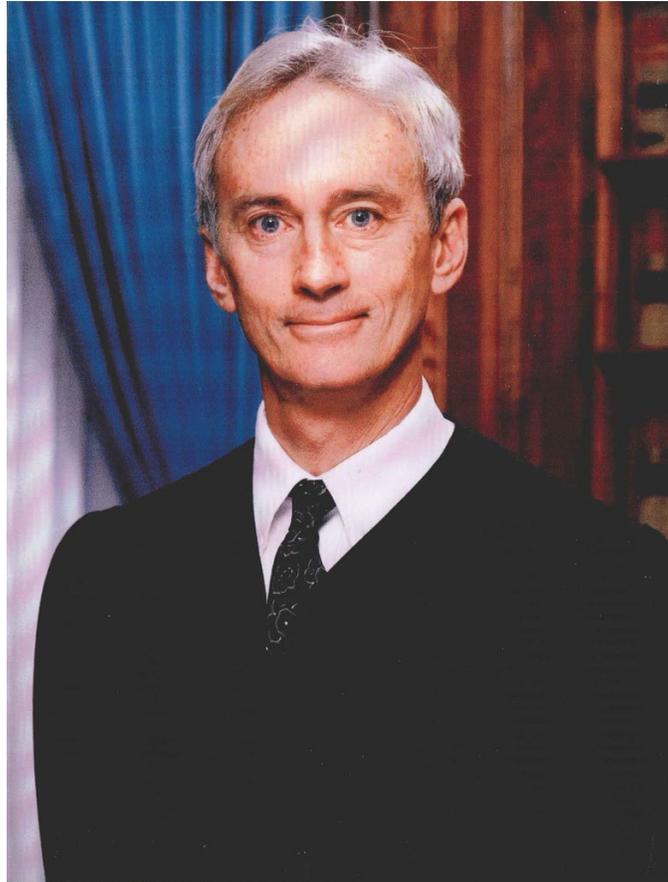


Thomas M. Coffin
An Oral History

Thomas M. Coffin An Oral History



FOREWARD BY JUDGE OWEN PANNER
US DISTRICT COURT OF OREGON HISTORICAL SOCIETY
ORAL HISTORY PROJECT
EUGENE, OREGON

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Foreword

The Oral History Project of the District Court of Oregon Historical Society began in 1983. Through the efforts of Judge James Burns and his wife Helen, a gathering of lawyers, judges, and historians took place at the Society's inception. The Honorable Robert F. Peckham, District Judge for the Northern District of California, discussed the Northern District Historical Society and the inspiration was born for Oregon's District Court Historical Society, the second such organization in the country. The original Board of Directors of the Society was composed of twenty-one members with bylaws including the Presiding Judge of the Court, the Chief Justice of the Oregon Supreme Court, and the President and a representative of the Oregon State Bar. The original officers and directors included outstanding judges and lawyers – Judge John Kilkenny, Honorary Chair, Judge James Burns, Chairman, Randall Kester, President, Manley Strayer, Vice President, Elizabeth Buehler, Treasurer, Susan Graber, Corporate Secretary, and Robert M. Christ, Executive Secretary, along with many other top names in Oregon's legal history.

The Society decided to collect, study, preserve, analyze, and disseminate information concerning the history, development, character, operations, and accomplishments of the United States District Court for the District of Oregon. It was therefore logical that the Oral History Project should be established to preserve the histories of the judges, law firms, and lawyers who actively practice in the Court. With the assistance of Rick Harmon and James Strassmaier, the Oregon Historical Society held seminars to educate volunteers in taking oral histories with a biographical and Court-oriented focus. The Oregon Historical Society has been most cooperative in agreeing to maintain these histories in their permanent collection for study by scholars and other interested parties.

These oral history interviews have been taken by recording devices, and are either transcribed or transcription is underway. A transcript reproduces, as faithfully as possible, the original sound recording that reflects the special value of oral history, namely its free and personal expressiveness. Most of the transcripts in the District Court Collection have been lightly edited and reviewed for clarity and accuracy by the narrators. That process continues. It is through these wonderful oral histories that the story of the Court is told. We now have recorded nearly 120 individuals since the project began. The goal is to record the individual histories of all the judges of the Court, as well as those of participating lawyers. The Court has a rich tradition reflected in the activities of the judges and lawyers of the Court. The recording has been done not only by professional historians, but also by dedicated volunteers. As one such volunteer said, "The opportunity to interview someone that you always admired is truly an exciting experience."

The history of the Court is being created by the men and women who have participated in its collection and activities. The Society's goals are to collect as much of that history as possible, because it is the history of the law and those who make it that constitutes the moral development of humanity. All of us who are students of the law venerate it. We are also interested in the people who make it.

Judge Owen Panner
February 28, 2006

Introduction

Judge Thomas M. Coffin recorded his oral history for the District Court of Oregon Historical Society in a series of five sessions in 2018 and 2019. At the time, Coffin was serving on recall after retiring in 2016 from 24 years on the bench as a United States Magistrate Judge for the U.S. District Court in Eugene, Oregon. Prior to serving on the bench, Coffin was an Assistant US Attorney in San Diego where he ultimately became chief of the criminal division before transferring to Eugene. He continued in that position for the US Attorney's Office in Eugene until he was elevated to the bench in 1992.

Thomas Coffin was born on May 30, 1945 in St. Louis, Missouri to Kenneth Coffin and Agnes Ryan. His father's family traces their lineage to Sir Richard Coffyn who aided William the Conqueror of Normandy in his conquest of England in 1066. The family's storied history includes other well documented figures like Tristram Coffyn, a magistrate judge in 17th century Nantucket and Owen Coffin, a sailor on the ill-fated whaling vessel, *Essex*. By the time of his father's birth, their family branch had moved into the Midwest to Indiana and Illinois. Agnes Ryan's family settled in St. Louis, Missouri, after immigrating from Ireland and Poland in the late 19th century.

Kenneth and Agnes Coffin married in 1938 and put down roots in a middle class neighborhood in St. Louis. Both Kenneth and Agnes were college graduates. Agnes graduated with a sociology degree from the University of Illinois. Employment opportunities were scarce for women at the time and Agnes worked as a secretary until marriage. Kenneth worked as an engineer for the John Nooter Boiler Works Company, a company with close ties to Agnes' family.

Agnes' Catholic faith was deeply embedded in family life. Kenneth converted from his Protestant upbringing as their family grew. Thomas was the third of five siblings—his older brothers, Richard and Robert were born in 1940 and 1942 and his younger sister and brother, Carolyn and Stephen, were born in 1950 and 1952. The neighborhood church was a central feature in their lives and the children attended Catholic primary and secondary schools.

Coffin remembered his youth with great fondness. He recalled friendly games of sandlot softball and soccer with neighborhood children and Cardinals games at Sportsman's Park. Between his father, WWII veteran neighbors, the parish priest, and coaches, he had an abundance of mentors that modeled integrity, diligence, and devotion. Coffin was a voracious reader and he found equally inspiring role models in classic literature. He credits *Les Misérables* and *To Kill a Mockingbird* among the seminal works that shaped his deeply held beliefs that justice should be tempered with mercy and that fairness is rarely a clearly defined concept.

Coffin entered St. Louis University High School in 1959, a Jesuit institution where he learned Latin, played sports, and developed academic discipline. The excellent professors and rigorous intellectual milieu nurtured his inquisitive and studious nature. He credits his secondary education for cultivating a foundation for his continued success.

In 1963, Coffin entered Cardinal Glennon College, a local seminary. His strong faith propelled him to seek a vocation in service of others, but the rigid hierarchy of the religious institution was at odds with his maturing values. After a year at seminary, he enrolled in St. Benedict's College in Atchison, Kansas where he majored in economics and minored in philosophy. St. Benedict's was more diverse than his former schools and Coffin bonded with his African American roommate and fellow athletes. During commutes between St. Louis and Atchison, they discussed the ongoing Civil Rights Movement and their support for the activists fighting for equality and systemic change. Coffin graduated St. Benedict's at the top of his class, fortifying his resolve to apply to Harvard Law School.

Coffin entered Harvard Law School in 1967. The culture shock of East Coast life, the elitism at Harvard, and social turmoil of the era motivated Coffin to focus his energies on his studies. Coffin was drawn to criminal law and joined the Harvard Voluntary Defenders, a student organization providing pro bono legal assistance to low-income defendants. In the Defenders, he gained working experience with clients and explored his passion for public service.

After graduating with a JD from Harvard Law School, Coffin was eager to leave the East Coast. He passed the bar in Missouri and joined his older brother in San Diego who worked for the Navy Judge Advocate General Corps. Despite his interest in defense work, Coffin describes the twist of fate that led him into prosecution as “the best thing that ever happened to my career”. Coffin was hired by the US Attorney’s Office for the Southern District of California during an era of rapid growth. The 1970 Controlled Substances Act expanded federal criminal jurisdiction of drug offenses. Because San Diego was a border city, the office was always busy. Coffin began trying cases immediately. The steep learning curve of jury trials was softened by Senior Judge Thomas Murphy’s mentorship.

Before long, Coffin was managing a heavy case load with aplomb. His career aspirations well in hand, he was able to refocus some of his attention towards his social life. Coffin met his future wife, Penny Teaff, in 1971 and they married in 1973. Their family grew with the births of Kimberley, Laura, and Colleen between 1975-78 and they decided they wanted to raise their family far from the city. Coffin had fallen in love with the Pacific Northwest on a fishing trip and when an opportunity arose in Oregon, relocation was an easy decision for the family.

In 1980, US Attorney Siz Lezak hired Coffin to staff the relatively new Eugene branch. With the support of District Court Judge James Burns, Coffin empaneled the first grand jury in Eugene. Grand jury in place, he was able to expand criminal prosecutions and hire additional criminal prosecutors. Coffin served as the head of criminal prosecutions for twelve years. His family continued to grow with the births of Corey, Mary, Brendan, and TJ between 1981 and 1989.

In 1992, Coffin was selected to fill the vacant magistrate judge position left by Judge Michael Hogan’s elevation to District Court. In Coffin's 24 years on the bench, he presided over a number of significant cases. His decision regarding a key case testing the Americans with Disabilities Act was particularly impactful.

Coffin commands language with the ease of someone with a long and easy relationship with it. He is a masterful storyteller, a skill that has served him well throughout his career both as a prosecutor and as a judge. The stories and cases he recounts in his oral history are riveting both because of his excellent memory as well as his sense of humor.

Interview One, May 2, 2018

Family History

MK: This is Makaela Kroin, oral historian of the US District Court Historical Society. Today is May 2, 2018 and I am in the chambers of Judge Thomas M. Coffin, magistrate judge for the United States District Court for the District of Oregon. Judge Coffin, we always like to start with some basic background information—if you could give me your full name and your place and date of birth.

TC: Thomas Michael Coffin. I was born in St. Louis, Missouri on May 30, 1945.

MK: Thomas Michael—is that a family name?

TC: Uh, Thomas—I was named after my mother's father, Thomas Ryan. Michael—I'm not quite sure where that name came from but my mother was born to Irish and Polish parents. Her mother was Polish. Her dad was Irish. She was born in 1914 in St. Louis. My mother's side of the family was Irish Polish of European descent. My father's side of the family was English. His roots go back quite a ways.

MK: Do you want to go back quite a ways now and tell me what you know about your family history?

TC: Well, sure. My father's side of the family—our ancestry—you could trace it back to 1066 when the first Coffin that we have a record of, in terms of our genealogy, Sir Richard Coffin came over from Normandy with William the Conqueror. He was actually—I guess you would call it—the equivalent of a general in William the Conqueror's army. He participated in the conquest of England at that time and was rewarded with an estate in Britain. From there, the Coffin family ended up with their beginnings that we can trace back to.

From that lineage, was the first settler in our family that came to the United States—at that time, the colonies. And that was Tristram Coffin who came over in 1642, so fairly early in the nation's history. At that time we weren't a nation. We were a colony. He came from England and there was a civil war going over in England at the time. So to escape that, he came over here with his wife and sailed to Boston and ultimately he ended up purchasing Nantucket Island and settling there. His wife was apparently quite a spark plug because she made some very potent beer which she was charged with selling at greater than the set price that they had for beer at that time. She was acquitted at trial because she was able to prove that her beer was more potent than the beer that they had the price ceiling on.

So, anyway, in 1659, I think it was, Tristram purchased Nantucket Island and he settled there and then other settlers came. In 1671, he was apparently—based upon his business and his investments—was the wealthiest landowner in Nantucket Island. Ultimately, in 1671, he was appointed the first magistrate judge on Nantucket Island. He and his wife had nine children and from there, came all of his Coffin descendants. So, it must be in the genes because my wife and I have seven children and here I am a magistrate judge *[laughs]* out in Oregon.

MK: How did you imagine his work was as compared to yours?

TC: Probably quite a bit different, although the English did have the common law system. Based on their system, there was the notion of due process and fairness and jury trials and the ability to present your case to a neutral judge or magistrate. So, quite a bit different from the European system on continental Europe that had really no history of jury trials but England did. And so that's what was brought to this country. He would have been part of that, for sure.

MK: Now I'm curious to hear, because you mentioned an Owen Coffin.

TC: Oh, yes! Owen Coffin, who was a descendant of the Coffins, he didn't have any descendants because of what happened to him. He died before he married or had any children of his own. From Nantucket Island, the Coffin family essentially, they got into different trades, but one of the main trades they got into was the whaling trade and they became whalers. In 1821, the whaling ship, the Essex, sailed from Nantucket Island. On board was Owen Coffin, who was a young man at that time. He was probably something like a third mate on the ship. He was a crew member. They went on their sailing voyage. They would go out during that time period for two years or so. And so they ended up in the South Pacific where quite a few of the whales lived in the season. They came upon a large herd or pod—whatever you call them—I think it's pod—of whales. They began harpooning the whales and taking them to the mothership. Most of the sailors, or the whalers, were out in these smaller whale boats, chasing the whales while they just had one or two crew members stay back on the mother ship to tend it.

What happened on that voyage and what happened to them and the crew was the basis for a novel that was subsequently written by Herman Melville. There was this large bull sperm whale, because the pod was all sperm whales, that was about 90 feet long, that charged the mother ship and butted its head on at midship. Apparently the whale knocked itself unconscious for a while but it came to and charged it again and stove in the whole side of the ship. All the whalers that were out in the whaling ships saw what was happening and they rowed back as fast as they could to the mothership. But the damage was so great that they tried to get some provisions off of there but it sunk.

That incident itself was the basis for the recent novel, *In the Heart of the Sea*, that became a movie feature just about a year ago or so. The whalers themselves survived but they only had several whaling small craft and they could only get a few provisions out of the ship before it sank. Then they were over 2,000 miles from land and they made out for land. I forget how many months they were out there. Owen was on one of the small whaling boats. After a while they ran out of food and a shipmate died. In order to survive they basically cannibalized the deceased that had passed away and that kept them for awhile but then they got to where they were on the verge of starvation again and no one else had died naturally. So they drew lots to see who would volunteer to be killed so that the shipmates could feed off of that person. Owen Coffin came up with the short end of the straw. They ended up shooting him and surviving off of his remains.

Ultimately, the crew was rescued, those that had survived after a journey of—my recollection is something like three months at sea. One of the rescuers was another Coffin who was captain of this merchant ship that found them. His name was Zimri, Z-I-M-R-I, Coffin. He also was based in Nantucket. They rescued the whalers who came back to Nantucket. The survivors told their story to a newspaper. I forget the name of the newspaper, it was probably in Boston, who published the story about how this had happened. This whale had stoved in the ship and the events that had transpired on this voyage. This incident happened in about 1821 or 1823, somewhere in there. A young man read about the story in the newspaper. That young man was Herman Melville. It inspired him to write the novel, *Moby Dick*, which is considered to be one of the greatest American novels that's been written. That's kind of an interesting history.

MK: That's very interesting. It's remarkable.

C: Yep.

MK: Many American families don't have that direct knowledge of their ancestors or their lineage or their stories. At what point did your father's ancestors start moving west?

C: Well, they scattered out, I would say probably after the United States was formed and the Constitution was established. This nation was established basically in 1776 with the Declaration of

Independence and then the Constitution after the Revolutionary War in 1789. They were still all located back in the Eastern part of this country back then but then with Westward expansion as the nation began moving westward, my family started to emigrate westward too. I would say beginning in the mid-1800s, somewhere between 1830 and the Civil War. I know we had family in the Midwest during the Civil War.

I have a family bible that was basically published right at the end of the Civil War and it has a list of the Coffins that were at that time located in the Indiana area. We had gotten that far. My dad—he was born in Indiana. His father was Elijah Godfrey Coffin. He had a hotel in a small town in Indiana. My father's mother died shortly after he was born. To my knowledge, she was bitten by a rattlesnake or something. She died. My grandfather, Elijah, he was in his fifties when dad was born. Dad was the youngest of his children. He sent my father when he was relatively young to live with a revolving group of siblings who were older than he was. He basically passed from household to household and lived with his different siblings. He ended up in Chicago because a number of them lived in Chicago at that time. My dad used to tell us that he—because the Coffin side of the family was not Catholic—they were all raised with their English roots being in the Protestant tradition.

The Catholic side of the family, which I am, was from my mother's side of the family. Her parents were from Irish and Polish backgrounds—very Catholic people. She was raised Catholic. My dad, when he was growing up, he went to whatever religion his siblings were going to and was exposed to all the different religions that they were practicing. When he met my mom, he then became Catholic. Most of the Coffins with their background were not Catholic because England at that time, they had Henry the VIII who formed his own church and kicked the Catholics out.

MK: Your father was born in Indiana in what year, and what was his name?

C: His name was Kenneth Coffin and he was born in 1914. He was born on Bastille Day, 1914. My dad met my mom. I think he had come down to St. Louis on a trip or something and met her. They got married and he relocated. She didn't want to leave St. Louis. He got a job and lived in St. Louis. I grew up on the northside of St. Louis.

St. Louis had a ethnic flavor to it. There were a lot of immigrants in St. Louis. A lot of people settled there—I think mainly because St. Louis for the longest time was at the hub of a lot of trade and what then was the outer limits of the United States. If you look back at the history of our country, St. Louis was established by the French as a trading area because it's right on the Mississippi. You could travel the Mississippi all the way down south and north and center. That was a big commerce hub. It had a lot of French influence there with the French traders. That's the city that Lewis and Clark set out from when they discovered the Northwest passage. They did that in 1802. There was a lot of immigration during the 1800s from Ireland, from Germany, from Poland. We had all those ethnic groups that settled in various locations in the St. Louis area.

MK: Do you know what brought your mother's family to St. Louis?

C: The Ryans—they immigrated initially from Ireland. It's an interesting facet of our family history. The two people I'm named after—Tom Ryan. Tom Ryan was the name of both my mom's dad and my mom's grandfather. My grandfather and my great-grandfather were both named Tom Ryan. They came to St. Louis. My great-grandfather was in St. Louis around the 1880s. There was a fellow who was a sailor from the Netherlands named John Nooter. John Nooter had been a sailor during the era of sailing vessels, as opposed to steam. He had been a rigger. A rigger is the sailor that climbs up to the mast and sets the sail. He was probably one of the last riggers in the 1880s. He immigrated to St. Louis and he started a business where they would clean and service smokestacks.

Everybody in St. Louis at that time used coal to provide their energy needs. They would build these huge smokestacks over a hundred feet tall because they wanted to get the smoke as high up as they could so they would keep it from affecting the air that they breathed down below.

Well, they called people who serviced smokestacks riggers because they would do the same thing they used to do on sailing vessels which is climb up the smokestacks and service them, clean them out, repair them if damaged, et cetera.

John Nooter was a rigger and great-granddad Tom Ryan was also a rigger who worked for John Nooter. It turns out that granddad Tom Ryan was servicing a smokestack and he fell off to his death. That happened right around the turn of the century—so right around 1900 or so. His son—my mom's dad, Tom Ryan, Junior, also worked for Nooter. He also was a rigger. In 1927, St. Louis had a horrible tornado and afterwards, immediately afterwards, Tom Ryan, Junior, on behalf of Nooter, went up to a smokestack because it was damaged by the storm. Along came a strong wind that blew him off and he died. So both my mom's dad and granddad died the same way working for Nooter and servicing smokestacks.

Later, my mom's brother, Bob Ryan, married Alga Nooter who I think was the granddaughter of the founder of the Nooter company. He married her and he became president of Nooter Corporation, in large part because the Nooters felt sorry that his dad and his granddad had died working for the company. So, that's kind of an interesting little vignette about our family's history. To this day—and I wonder if it's genetic—one of my daughters, Kimberly, and I share this absolute fear of heights. *[laughs]* I tell you, if I get up too high on something and I look out over a ledge or a building or a bridge, my feet go out from under me. She's the same way. I'm wondering if that's *[laughs]* genetically handed down from what happened to our family way back when.

MK: Now, how did you learn most of the stories that you know about your family? Are there storytellers in your family? Did you learn from your family or later on?

C: I learned pretty much from my family, from both sides of the family—the Ryans with my cousin, Colleen Ryan, who is the daughter of Bob Ryan, who is my mom's brother. She did a lot of research on her side of the family, on the Ryan-Nooter side. The Coffin side—there's been a lot of historical interest in New England about the Coffin family. There was a lot of research done by the New England faction of the Coffin family because it's pretty hard to find a family with earlier roots in this country than the Coffins. They came here in 1642 with Tristram. That lineage, in New England especially, people were very interested in their historical roots. I think they all along had interest in preserving the genealogy, where people are from, and how far back their families go. That wasn't hard to catch up with. We have the Bible from the Civil War era that records a lot of that history. If you go back to Nantucket Island now—I haven't been back there, but some of my siblings have—they have museums with all this history back there. I remember when I was a kid in 1958, Life Magazine came out with a story about the Coffin family. They wrote an article about the history of it back then.

MK: Was there something at that time that sparked that story?

TC: Yeah. There was a [reunion]—I didn't go to it. I was only thirteen but some of my relatives did go to it. There was a reunion of the Coffin family back in New England. I think they had it at Martha's Vineyard or something. Life Magazine covered that reunion. The family came from all over to get together at that reunion, all over the country. I remember they had a—I don't know what ever happened to the article but it was 1958 that they did that, is my recollection. Somewhere around that time period.

MK: Was there ever a reunion with the non-American branch? The Anglo-Coffins?

TC: I don't think there was a reunion. Not that long ago, my daughter, Kimberley, and my brother, Bob, went to England. They went to the estate that had been in the Coffin family, that I think was the estate that Sir Richard Coffin was given by William the Conqueror. It had been in the family for over a thousand years at any rate. They visited that but I haven't been there. I can try to find out more about that, the English side of the family.

MK: I'm just curious. Yeah. So it sounds like you heard some stories from your family and then the rest of it is somewhat easily accessible.

TC: Yeah. Okay.

MK: So you mentioned that your father had many siblings and he was raised by his siblings in many ways.

TC: Right.

MK: How many siblings did he have? Do you recall?

TC: Do I have?

MK: Does your father—or did your father have?

TC: Dad had about seven siblings. I think there were about eight in his family. Yeah. I've been to a reunion in Chicago where I met—I'm trying to remember who I met. I met my uncle Ted. He settled in Chicago. There was an uncle named Berwin. There was an uncle named Pliny. There was an aunt named Zona and an uncle named Erwin. Berwin and Erwin. I met a number of them and they all pretty much had their roots in the Chicago area. Chicago was the biggest city next to Indiana where they were all born.

MK: And you said that he was exposed to many different religions growing up because of living with different cousins. They sound like maybe an eclectic bunch. Maybe it's just the names.

TC: I know. *[laughs]* Yeah. I remember he told me about the one religion that he had the most trouble with when he went there. Somebody was a Holy Roller. They would literally have to get on the floor and roll around as they prayed. He found that to be kind of unusual. *[laughs]*

MK: Safe to say. Most people find that unusual. *[laughs]* And so what was his life like? What did he dedicate himself to professionally and what were his hobbies?

TC: My dad was an engineer. He worked for Nooter himself. They would design fabricated tanks and things like that. Anheuser-Busch would buy a lot of their brewery equipment from Nooter Corporation to make their beer in. They would also build chemical storage vats and things for Dow Chemical.

You know the St. Louis Arch? Nooter bid on that project and they were glad they never got it because Pittsburgh Des Moines Steel ended up with it—being awarded the bid to build the St. Louis Arch. That was built in—I think they started that project in 1959. I remember when I was in high school watching it go up. It was fascinating. But that's the type of business Nooter was in too. They could do stuff like that—build a structure like that. They're still doing business as far as I know.

My dad was an engineer. He had a quiet life—family man. He and my mom had five children—raised us all in a small middle class neighborhood in North St. Louis—educated us—sent us to good schools—invested a lot of money in educating their children. I got a great education. I went to high school at St. Louis U. *[University]* High which quite frankly was probably one of the best high schools in the St. Louis area. It probably still is.

MK: A public or private institution?

TC: It's a Jesuit school. Yeah. The Jesuits are really into the high school education and the educational institutions around the country. From St. Louis U. High I went to Benedict College which is a small college in Atchison, Kansas.

MK: Before you go ahead much further, would you tell me a little more about your mother's life? Did she have a vocation and avocation? What was she like?

TC: My mom she was raised—her mother died in childbirth. Her dad was killed when she was about fourteen. She was born in 1914 and he fell off the smokestack in 1927. My mom essentially was raised by a Szespanski who was her dad's sister. Actually, yeah, that was her dad's sister, a Szespanski. No, not sister. Yeah, that's right. It was her dad's sister and she had married a Szespanski, just like her dad. Tom Ryan had married a Szespanski. The Szespanski that raised my mom, her maiden name was Ryan and she married a Szespanski. In other words, two sets of Ryans married two sets of Szespanskis.

MK: It was meant to be for those families.

TC: Yeah. She was raised by her dad's sister and taken into that side of the family and she went to the University of Illinois, got a degree in sociology, came back to St. Louis, was working. Back then, women had a hard time getting jobs in anything other than secretarial work and nursing and stuff like that so she was working as a secretary in an office, met my dad. They got married in about 1938 or so. My oldest brother was born in 1940.

MK: Do you know the story of how they met?

TC: I think they met on a blind date. My dad was—I think by then—I can't remember quite frankly whether he was living in Chicago when they met. I think he was living in Chicago and they met on a blind date. She had a friend up there that fixed her up with him and so they started going out together and then they fell in love and got married.

MK: Did she insist before they got married that he practice Catholicism or was it once the children came along and baptisms were an issue?

TC: I think it was more gradual than that. It was once children came along, yeah. Because he was not Catholic when my oldest brother was born. I think he converted. I believe he had been Catholic before I was born so somewhere in there he converted.

Childhood

MK: And so your oldest brother was born in 1940. What's his name?

TC: Richard.

MK: Richard. And where in the line—when were your other siblings born and where do you fit in?

TC: I have another older brother, Robert, who was born in 1942. I came along in 1945. Then I have a sister that was born in 1950. Her name is Carolyn. And then I have a younger brother who was born in 1952 and his name is Steven.

MK: So you were the middle child.

TC: I'm the middle one, yeah.

MK: Do you have some early memories of your family and your siblings and your parents?

TC: My earliest memory that I have, I was still a toddler and I was still crawling and I found—maybe I just started to walk—but I was in the kitchen. I saw a bottle of what I thought was milk. It was white. Back then, they had shoe polish that you would apply with an applicator because it was liquid. A lot of people had, for example, white shoes and they get scuffed up so they would put this liquid white paint on it. It probably had lead in it. Who knows what it had in it back then. I thought it was milk and I was going to drink it. My grandmother, the one who raised mom—we called her oma. Oma is Dutch for grandma. She was there and she came in and she saw me with this and she screamed bloody murder and grabbed it before I could drink it. That, quite frankly, is my earliest memory because it scared the hell out of me. *[laughs]*

After that, my memories—we moved to the place where I grew up in shortly after that because we were living in a different house when that happened. I just remember springtime. I remember the beautiful storms that would come in that I would watch and was fascinated by. I had a great boyhood, childhood growing up. A lot of good memories. I got outdoors a lot. I played a lot of sports, had a lot of friends. We lived in a neighborhood that everybody knew each other. It was perfectly safe. Nobody worried about me walking to school all by myself.

Things were so much different then. About everybody in the neighborhood served in World War II and were coming back from the war and settled down. They just were friendly people who got along well and looked after each other. Crime was low. You didn't hear the stuff back then that you hear about today. It seems like what's normal today is stuff that never happened back then. I mean, I could go out and play all day. My parents never worried about me just being gone, riding my bicycle, hanging out with my buddies and doing things. Didn't have cell phones. Didn't have any way to keep tab of, you know, didn't have all this structure that exists today. Did not have video games.

I remember we got the first TV on our block. My dad won it at a raffle at the company picnic. It was this black and white little TV set with rabbit ears on it. I remember people coming to the house because we were the first TV on the block to watch TV, the neighbors. I remember watching the broadcast of the 1954 World Series on our TV. The New York Giants with Willie Mays were playing the Cleveland Indians. I remember watching that. The first World Series telecast that came to our neighborhood. *[laughs]* Everybody sitting there watching the TV set. I had a great childhood. I went to a local grade school. I got a really good education—Catholic grade school. Tuition was two dollars a month.

Early Education & Influences

MK: Did you enjoy school?

TC: I did. I did. I learned a lot. I mean, the teachers were all nuns and it was very structured but they were very good teachers. I got a great prep from them to prepare me for high school.

MK: Did you excel in certain subjects that you remember at that early age?

TC: I excelled in spelling. They would test us in spelling and I had a really good memory. I was blessed with a real good memory. I still am, in fact. So, I could see a word, and almost like a photographic memory, and could spell it afterwards. They prepared you then for the basics to get you ready for high school. So, you didn't do so much reading of novels or anything like that but you learned how to write and how to spell. You learned how to form your sentences correctly. You learned how to use commas, periods, colons, et cetera. You learned basic math because they were gearing you towards the more difficult mathematical subjects that you really got exposed to in high school. I think we learned all the way up to basic algebra in eighth grade. I always did well on that. We had history that we studied. They taught us about the history of our country—history of

the United States. World history—we got exposed to that as well. Not so much reading novels although I did start reading in grade school on my own, some novels. I'd sit in my room and read. I enjoyed doing that. I read a lot. So that was basically the grade school. Of course we also had religion courses that they taught at this Catholic grade school that you learn. You were taught that as well. I did pretty well in grade school. On the grade scale, there was myself and a girl that was in my class and we always pretty much got the highest grades all through grade school.

MK: And it sounds like your parents supported it and educating you as a huge goal of theirs, providing books and things at home.

TC: Yeah. But education back then was relatively cheap, private education. It was, like I say, it was two dollars a month and if you were a parent and you had more than two kids, they would never charge you more than four dollars. So, five kids going to, I don't think we were all in grade school together. I suppose, yeah, 1940 to 19—yeah, there was probably no more than three of us in grade school at the same time but they wouldn't have to pay six dollars. They'd have to pay four dollars. Think about that today—just incredible. Because the parish would subsidize everything and the teachers didn't cost anything because they were all nuns and they were all being supported by their own order. This is what they did, just like at the hospital. That's why things were basically, it was an example of charitable donations that would pay for the education of the kids. That's what was happening.

And then in high school, it was affordable. I tell you, my education at St. Louis U. High, I count to be the greatest preparation that I got in terms of an educational background for everything in life. I mean, my high school education was absolutely awesome, that I got exposed to. From literature, classical literature, that we studied, English—that's where we really started to read. I learned Latin. I read books in Latin. I read the Iliad and the Odyssey in the Latin version. It was a classical education that focused on classical literature—Dickens, Moby Dick—that's when I read Moby Dick, was in high school. Les Misérables, which by the way, that as a novel is considered to be one of the greatest novels ever written. It was written by Victor Hugo.

That novel has influenced me so much in my career because I learned from reading Les Misérables that justice involves a lot of gray. Justice is not a rigid concept, a black and white rule. Justice involves balancing a lot of intangibles. Les Misérables is the story of a convict who is a good man who was a poor person convicted of stealing some bread, sentenced as a galley slave, escaped from being a galley slave and ended up becoming a mayor of a town in France. [He] did a lot to help people, was a very good, charitable person with a lot of empathy in him and then this inspector from the police became suspicious of his background and began hounding him. The inspector was the classic, rigid, rules are rules, if you violate the rule you have to pay the price, no gray areas at all, and he hounded this person and that's the theme of the novel.

I learned from that novel, you have to temper justice with mercy and compassion. I learned that empathy and compassion are key ingredients in what makes us human. If you don't have that, and you are not empathetic with other people's plights and you're not compassionate, you are missing something in your spirit, in your soul. You are missing something that makes you fully human. I have brought that understanding with me throughout my legal career as a prosecutor and as a judge. I have always embraced the idea that you have to balance the dispensation of justice with a large measure of compassion and understanding in order to truly achieve a result that is just as opposed to excessive or really unjust.

This is why I've never been a fan of mandatory minimum sentences. I've never been a fan of this concept where politicians can factor in all the different things that you need to take into consideration and outcomes—a computerized sentence to be imposed. I've always been of the idea that that is not justice. That's a machine that's trying to apply a rigid black and white formula to achieve a result but that's not what we do as human beings. I have applied that principle time and time again, not just as a judge, but when I was a prosecutor. I'll come to some cases later on where I can describe exactly that thought process that's always been a huge part of me. Like I say, that all stems back to its roots that I got in my education and my upbringing because that is always

something that I was taught. You've got to inject mercy into the situation of what is an appropriate punishment for something someone has done.

MK: Now, we started by you mentioning that *Les Misérables* was a major influence because of these very reasons. What was it that resonated with you when you were a teenager in high school at that moment. Had you been already been interested in social justice?

TC: Yeah, I would say so. I was very much always passionate about social justice. I never in my life can remember where I was that much influenced by a desire to go out and acquire a lot of material things, to be rich. That never has really driven me. I can get by with just what I need and I don't need that much. Most of the things I enjoyed doing in life weren't things that took money for me to do. As long as I had food and a roof over my head, I was happy. I was never really that impressed or driven by the desire to accumulate expensive things or whatever. I was always kind of driven by a compulsion to want to help people. That was always a big motivator for me. How can I help you? If I have certain gifts and skills I'm happy to use them to better the world and things around me. That's why I went into the seminary for a while. But then I realized that was not really the place for me. I did that right after high school. I went for a year or so.

MK: Were there mentors, teachers, figures that stood out as role models that you remember as a child or even through high school?

TC: I remember, well of course, my father was a very big role model. So was my mother. The parish priest functioned as a role model. A lot of the neighbors on the street were role models. I remember a very kind neighbor, Jim Cody, that was always involved in community activities. He did a lot to help kids and things like that. Coaches that I had that basically were encouraging and functioned as role models. I wasn't that involved in political figures. I can't think of anybody really that I would consider a role model that was [a politician]. I didn't read that much about politics at that time. I would say mostly growing up, my role models were teachers that I looked up to and that I admired and parents.

Then I would have role models that I would pick up on from the books that I would read. I would basically, I suppose, structure them as ideals that I would like to live up to in terms of who I would like to be like. I remember another novel that I read in high school, *To Kill A Mockingbird*. Atticus Finch—he became a role model for me—very important. I always wanted to model myself after somebody like that. That's exactly what I mean about somebody that wasn't in it for the money—was in it to do the right thing. What other book did I read that I remember inspired me so much? *The Grapes of Wrath*. That was a big influence—how not to be with the cruelty that was practiced against these refugees from the Oklahoma Dust Bowl moving out to California—how terribly some of them were treated and unfairly. So, I would have all these things going on in my head in terms of constructing—who do I want to turn out to be like? That was a big influence on me. I think it was so important to get exposed to that. Movies that I saw at the time that came out, most of them had this positive message for you. What was the movie? *It's A Wonderful Life*.

MK: Jimmy Stewart.

TC: Jimmy Stewart. Yeah. I mean, to this day, I remember that movie. It's exactly like, "Oh, okay. What would this world be like if I'd never been born?" What an interesting concept. And here's this movie that shows you all the good things you did that would not have happened if you hadn't been born. I would watch a movie like that and I'd say, "Yeah!" I hope I can have that kind of effect with my life. That's what I want. I don't need to be like that nasty, selfish banker that's hoarding everybody's money. I don't want to be like that. I want to be like Jimmy Stewart, in terms of using the money to help people—loan it out.

Quite frankly, I think that's one of the things that our country today needs to recognize because you look at the movies that are coming out today and there's so much graphic

violence in video games and all of that. I can tell you that in terms of my life's influence, where life imitates art, the art that I looked at when I was a kid growing up, was pretty much positive in terms of a lot of the movies that were coming out. They basically tried to emphasize the good in people.

I see art coming out today that kind of desensitizes people to violence and to all sorts of different things that are counterproductive to having a healthy society. You see what's going on today in terms of politics. Nobody can get along. People insult each other. Their idea of discourse is to get on Twitter and call each other names. That has a spillover effect, I think, in terms of exactly that—modeling. If you expose kids to that, what do you expect they're going to do as a result? If this is what they see, this is what they're going to model. Yeah.

MK: Yes. And it sounds like you had some very powerful, positive modeling and influences. I'm also curious, were the people in your neighborhood, were your parents, were your teachers, the nuns, were they asking you to reflect on what you wanted to be, what you wanted to be like when you grew up? Or were you just naturally reflective.

TC: I was just naturally reflective. I don't think at that age they were really trying to channel me into any one particular thing. I think I was just naturally reflective on a lot of these matters and influenced by some of this. They influenced me in the sense that they were exposing me to these—they would show the movies, they would have the books assigned, et cetera, and then I would take it from there.

Sports

MK: Tell me a little more about the sports that you played growing up.

TC: When I was growing up, quite frankly, we didn't have the organization in kids sports that we have today and I think that was a good thing because what we would do when I was a kid is we would organize our own sports. We'd go out and we'd play sandlot softball. We'd go to the playground and play basketball. We'd go to a soccer field and play soccer. We'd play football. We wouldn't have any coaches. We would organize ourselves.

My grade school class typically was about 35 kids of which about half were boys. You'd have that pool to draw from and also you'd go a class down and a class up and get all pretty much in the same age group. We had two baseball fields in the neighborhood that were owned by a religious order that were never occupied and we could go there almost any time and play ball. We would communicate—call each other, and say, "Let's meet and play some baseball today!" We would go out there and get together and we would play all day. We wouldn't even keep score that much because we would keep changing teams. If there weren't enough of us to have two full baseball teams we would play what we called rounders where you'd have three guys or four guys batting and you'd have everybody else playing the field. We'd have eight in the field because we didn't use a catcher—eight in the field and then depending on how many we had—maybe there's four batters if we only had twelve guys show up—maybe five if thirteen showed up. You would move around. You'd start out pitcher, first base, second base, short stop, third base, left field, center field, right field, and that was the order in which you came in to bat once somebody made an out. So if a batter made an out, then the pitcher would go in and everybody else would rotate around so the guy that made the out would go to right field because that would be that last guy to come in again.

We would do that all day. Everybody got to play. Nobody sat on the bench. There's no coach screaming at you. There's no parents there giving you a hard time if you make an out. Somebody might say they were safe, somebody else might say they're out and so you'd work it out by yourselves. Everything was voluntary and we had a great time and we learned the game. We learned it probably better than we would have learned it if we had some coaches there. We learned it by doing it! So yeah, the first time up you can't catch the fly ball but nobody benched you. Nobody yelled at you.

MK: So, the older kids would teach the younger kids?

TC: Yeah. You just do it. And so that was my whole experience in grade school. By the time I got to high school, though, the games were organized and I didn't really play any. I think I played one year on the junior varsity football team. I wasn't any good at it and didn't like it that much.

MK: What position were you playing?

TC: Well, I started out, I tried to play running back but that didn't work out too well and so then they switched me to a defensive position but I didn't get in the games that often. I continued to play sandlot soccer and that was probably my best game as I was growing up. When I went to college I did play organized soccer at the collegiate level. I had learned enough by playing soccer as a kid to develop the skills to actually play in college. I enjoyed doing that. I got along great with the team. The coach didn't know anything about soccer but he was just a teacher at the school. That was one of his jobs that they assigned him to do was coach soccer and he knew nothing about soccer because he had never played. He was from the South. Most of the soccer players on the college team that went to St. Benedict's—most of them were from St. Louis. St. Louis, because it's such an ethnic community, they have a lot of soccer players, always did have.

Memories of St. Louis

MK: Can you tell me a little bit more about your memories of St. Louis as a diverse or place with a lot of different ethnicities? Was that something that stood out while you were growing up? Was your neighborhood also diverse?

TC: The ethnic flavor of North St. Louis where I grew up was basically Irish and Polish. The basic ethnic flavor of South St. Louis was German and Italian. The university city, which is kind of in the middle of the St. Louis area, that was essentially where the Jewish families lived. The inner city of St. Louis at that time was pretty much African American. One of the problems that St. Louis had is that it was historically it was pretty much divided among segregational lines. I remember that during the 1950s I lived in the north St. Louis area and I remember after I went to college coming home and my family was selling the house we were in growing up and moved to west St. Louis.

What was going on at the time was the African Americans were starting to come out to the suburbs and because St. Louis had such a segregated history, the phenomenon of what was called "white flight" occurred. Whole blocks, as soon as an African American family moved to a block, the people would put their places on the market. In fact, realtors would go around to families on the block and say, "You better listen to us and sell soon or else your house is going to drop." It was called blockbusting.

So that was kind of the very unfortunate racial divide atmosphere that existed in St. Louis during that time period. That's a big part of what happened with the Ferguson problem. It's something that St. Louis, just like the rest of the country, needs to address and to deal with. Yeah. There's this ugly strain of racism that exists in the nation. St. Louis was not immune from it when I was growing up. The schools that I went to were pretty much not diverse. St. Louis U. High had a few people of color there but it was pretty much not diverse. It wasn't until I went to college that I began seeing more diversity.

My college roommate was African American for one of the years that I was in college. I think the great countermeasure to racism is interaction. You start interacting with people who are different than you and pretty soon, you develop understanding, friendships, and see that a lot of these prejudices are just that—they're irrational, racist prejudices that are not of any validity. That was part of it and I can see still strains of that in that area. I don't go back much anymore. That was something that I remember.

MK: Are there specific events or occurrences that you remember growing up that highlighted what you're talking about?

TC: I remember comments about African Americans that were just racist in nature. I remember working in the summertime around blue collar workers. I remember racist remarks from them. I remember their put downs. I remember just the absolutely disrespectful and disparaging comments that would be made. I remember this one big burly truck driver that worked at this one place and other white workers were bragging about how he just beat up somebody of color—how proud they were and stuff like that. It was ugly stuff.

MK: Anti-Semitism as well?

TC: There was some of that too that was directed. I remember comments that were anti-Semitic. I remember strains of prejudice being addressed to people because of their Jewish ethnicity. It was not as blatant or as often as towards the African Americans.

MK: How did that play with your sense of social justice that you were exploring growing up?

TC: I never bought into that. I was always of the opinion that it was wrong. Quite frankly, even though I was exposed to it as a kid, I've never had the feeling that the color of a person's skin or their religious beliefs gave rise to any rational basis to look down on somebody or to discriminate against that person. I was not, fortunately, imbued with that hatred and prejudice. When I had my roommate in college, during the summertime, I would hang out with him and his buddies, go to his nightclubs. I'd be the only white guy there. I would date an African American that he would fix me up with. I never could see—to me it's like discriminating against someone because of the color of their hair, you know—oh a redhead! It's just an attribute that has nothing to do with personhood. You might as well discriminate against someone because of the color of their eyes or something. It made no sense to me. It never has.

MK: Yes. And at that time you had the Civil Rights Movement was really taking off. Do you remember any moments standing out? Or would that have been a little later when you were in college?

TC: I remember during the Civil Rights Movement, talking a lot, I would travel a lot with my roommate. We would drive to school and back. He was from St. Louis too and school was in Kansas. We would talk about, for example, that it was a shame that we could not travel together in the south or we'd be killed. If Jim and I were to travel to the south, we would be targeted if they saw a black person and a white person travelling together. That was back around the time of the Civil Rights Movement in Selma and Alabama and places like that. That's back when those civil rights workers—Chaney and some of those other workers from the East Coast were killed and buried in an earthen dam in the south. I remember those days. One of my high school classmates that I'm still in touch with now, he was actively involved in those civil rights marches. He went down and marched with Martin Luther King Junior in Selma and also in Chicago. He's a very progressive product of a Jesuit education himself. He and I were buddies in high school.

Family Life

MK: When Richard was born in 1940, was your mother a stay-at-home mom?

TC: She was a stay-at-home mom. That was traditional back then, yeah. It was very unusual to see a working mom in those days. The idea was to work while single but if you were raising a family, the idea was to stay at home.

MK: What was your family life like? What was it like being the middle sibling? Did you all get along?

TC: Yeah, we all got along great. I liked the middle class area that I grew up in. I remember thinking I wouldn't want to live out in the rich part of St. Louis. Probably back then the richest part of St. Louis where all the wealthy people lived was Ladue. I remember sometimes going through Ladue and seeing all these mansions, just hugely expensive homes. I remember thinking, "I would not want to live there." I liked where I lived. I liked living in a neighborhood with a bunch of middle class people around and having a lot of friends that we used to go out. Everybody was living close together. It was a great place to grow up in.

I remember an instance when I was ten, speaking about how we got along, and this is kind of an interesting perspective of the change in times from when I was growing up and today. I got a new bicycle. I was so proud of it. I would ride it all over the place. Our driveway had an incline to it. I would ride my bicycle—I liked to ride down the driveway into the street so my two older brothers, Bob and Dick, were supposed to be my look outs. They were supposed to tell me when it was all clear. My brother Bob, who denies it to this day, he claims it was Dick that did it, but it was Bob. He gives me the all clear and I fly down the driveway on my bicycle and along comes this guy driving this brand new 1955 Pontiac.

Now, cars back then in 1955, were like battleships. They were heavy, all metal. He was coming up the street just as I flew out of my driveway. He broadsided me and I flew up in the air and I came down on his windshield and I remember looking at him and his wife and they had this horrified look on their faces. Then I remember that I was being thrown, because he slammed on the brakes. So I was being thrown off the car and I was going to fall under his wheels. I remember my mother was watching out the window. I remember her screaming. I reached out and, now, back then they had these hood ornaments. If you look up the hood ornament for a 1955 Pontiac, it's Chief Pontiac. He's sticking out of the hood and it's a figurehead of the head of a chief with feathers on it. I grabbed Chief Pontiac and that stopped my momentum enough that I didn't fall under the wheels. Finally, when he came to a complete stop, all this just took seconds, I was flipped off on the side of the road. I was banged up. I had a big lump on my ribcage so my dad takes me to the hospital and they x-ray me and I'm fine.

So I come home from the hospital and all I have is bruises, no broken ribs. The next day, the guy that hit me and his wife came by the house to check on me. He's checking on me and I'm fine. The driver looks at my dad and says, "Well, the least I can do is buy your son a new bicycle." I'm saying, "Yeah, yeah, yeah, yeah!" *[laughs]*. My dad—and this was exactly my dad—he was a real straight up guy, very honest, and would not ever tell a lie. My dad looks at him and he said, "Oh, no. No, you won't." He said, "It was all my son's fault." *[laughs]* He said, "He doesn't deserve a new bicycle and I won't hear of it." "Dad!" So, there goes my bike.

I look back on that and I'm thinking to myself, "How would that play out today?" My dad wouldn't even think of even filing an insurance claim, much less a lawsuit or take a replacement bicycle. That was a lesson for me because I admired that in my dad as I look back on it. He was honest. He was not going to fake anything or try and take advantage of this guy. He was going to own up to it and own up on my behalf to say it was my fault. It wasn't my fault—it was my brother's fault—but it wasn't this guy's fault! That really was a good lesson too, that I got from him. I kind of carry that in the back of my head when I do all of these cases and the civil lawsuits and all that. How would my dad react to this? I know how he'd react. He'd tell the truth. He wouldn't try to blame somebody for something that his fault. He would own up to it. That's the kind of lessons that I got when I was growing up. It was a great time period of my life. It prepared me for what was to come.

After college, after that experience—I was fortunate because when I went to college it was right before marijuana use hit campus. When I was in college, the four years in college at St. Benedict's, no one smoked marijuana so that bypassed me completely. I don't know what I would have done but I wasn't exposed to it. A year later when I was at law school, I contacted some people back at my alma mater and I'm told that nobody drank beer anymore, everyone smoked pot—in one year! That's another thing I didn't have to deal with when I was growing up was the

problem of soft drugs like that. Although I will say that the drug that was being pushed back then were cigarettes and I did pick up smoking.

MK: Did your parents smoke?

TC: My dad was a heavy smoker. My mom quit smoking but she smoked for a while. Every male on our block except one smoked. My dad, it ended up killing him, because he smoked for the longest time. He got to be a chain smoker. I was exposed to it, second hand smoke, back then that was not an issue. In fact, they were still denying that smoking did you any problem back then.

MK: Maybe one more question and we should wrap it up for the day. How are you doing? Do you want to wrap up now?

TC: No, I'm fine.

MK: Okay. What were your family traditions? Were there celebrations or holidays or watching baseball games or things like that? Religious ceremonies?

TC: Well, we always celebrated the religious holidays- Christmas, Easter, Thanksgiving. The practice back in the Midwest was that you'd have family get togethers, a formal meal, a celebration during the holiday. Those were fun. We didn't get together that much with extended family because our relatives were in other cities. So we didn't do that much. We did gather in our own family. That was always something to look forward to—family gatherings—and we all got along.

MK: Was your mother a good cook or baker?

TC: She was. She liked cooking and she did a good job of it. She was kind of a midwestern style cook—a lot of meat and potatoes—stuff like that. We ate well. We ate well. I can't complain at all.

MK: Did you go to, I read somewhere that you're a big Cardinals fan, did you go to baseball games growing up?

TC: Oh yeah! I started going to games when they played in the original St. Louis ballpark, Sportsman's Park. Stan Musial was playing for them. I loved to watch him play—so, all during the fifties. You could go—and believe it or not—get in for a dollar to sit in the bleachers. A lot of times I went and sat in the bleachers. I enjoyed that very much. Then I followed it off and on as I got into high school and all that. I started to go to the new ballpark. I went there and it got more expensive. And then TV came along and you could watch the games. You didn't have to get out. It takes some of the flavor away.

The thing about baseball that I like is that you can go with your friends and you can sit there. Baseball is such a slow moving game that you can visit with each other all through the game and enjoy the company—have good conversations. The game was kind of like out there as a sideshow. I tell you, I liked watching soccer games even more—amateur soccer games. St. Louis has some really good soccer. I would go there, there'd be just a few spectators. I would enjoy that too. Yeah, sports, watching sports. I was into that.

MK: I'm curious if you had, did you play music? Were there other hobbies besides the ones that we've talked about so far?

TC: I always wanted to play music but I never—it was not something that my family indulged me in. So, unfortunately, I didn't turn out to be a member of the Rolling Stones. *[laughs]*

MK: If you had, you might not have escaped the drugs. *[laughs]*

TC: Exactly. *[laughs]* I don't know if I ever would have had any musical talent. I never took a lesson. Any idea I had of playing the guitar, it just never went anywhere. But nobody in my family was really musically inclined. It wasn't there. Yeah. I missed out on that part.

Interview Two, September, 4 2018

Seminary and Religion

MK: Today is September 4, 2018. My name is Makaela Kroin. I am the oral historian for the US District Court of Oregon Oral History Project. Today I am doing the second interview with Judge Thomas Coffin in his chambers. Good afternoon, Judge Coffin.

TC: Good afternoon.

MK: Last time we were recording, we covered a significant amount of your family history, from your forebears all the way back to Nantucket and before, *[laughs]* through your parents lives and your early years. You recalled a happy childhood, a family that placed a lot of significance on education. You talked about some of the formative role models in your life, both in the people you grew up around as well as literature and movies that influenced you and that you were exposed to and how those models reinforced your idea of tempering justice with mercy and compassion and empathy. We talked a little bit about what it was like growing up in St. Louis, what it was like to be the middle child, so going through those realms, those topic areas. Is there anything that comes up that you wanted to add before we move on?

TC: No. I think we kind of covered it last time. We're at the point where I'm in St. Louis, I'm done with high school and I'm off to college.

MK: That's where we were, yes.

C: Okay. Well, my first year at college I went to a seminary in St. Louis. I decided though that being a priest wasn't for me. After that year, I transferred to St. Benedict's College, a liberal arts college in Atchison, Kansas. I went three years there. I majored in economics and I graduated with a 3.98 out of 4.0 average from St. Benedict's, summa cum laude. I applied for law school and I was ambitious enough that I applied for Harvard Law School. I remember one of my professors laughing at me.

MK: Oh really?

C: He was thinking that I was out of my mind to think that they would even consider me. But they accepted me.

MK: Before we go on to law school, do you mind if I try to fill out a little more about seminary. I'm curious what made you want to go to seminary? Was it because you'd been to Catholic schools up to that point?

TC: I'd been to Catholic schools. I was a pretty devout Catholic, still am, for that matter. I thought it fit in with some of the things I talked about last time—my viewpoint, my values, et cetera—wanting to help people and serve people. I thought the best way to do that was to become a priest and work within the confines of the priesthood and the church and minister to

people. But after about a year in the seminary, I decided really my talents lay elsewhere. I still wanted to do community service and so that was still a big part of my objective.

I never really growing up and through the inculcation of the value systems I was given by the people—my parents, my classmates, my friends, my teachers, and everybody that I admired, I never really was focused that much on making a lot of money and becoming rich and having a mansion to live in and being able to have all the trappings of wealth. That never really was something that was an objective of mine. I always really was thinking that what I wanted to do with my life was to serve others. A lot of that comes from my formative education, especially in high school, where I went to a Jesuit high school. The Jesuits are probably, there are a lot of intellectual orders in the Catholic Church, but the Jesuits are probably up there at the top with a very intellectual approach to things, very philosophical, always seeking to understand the why's of things. One of the things about the Jesuits is they always ask the question why? Why? And they're very socially conscious. They're very much into social justice and with the emphasis on the gospel values of serving the poor, the needy, the hungry, the sick, et cetera. That really appealed to me.

MK: I can see why seminary would have been one avenue to explore a career or a life in service to others.

TC: Yeah.

MK: You say that your talents lay elsewhere after a year of being there. It didn't feel like the right fit. What was it that didn't make it feel like it wasn't going to be your life's path?

TC: I'm not sure I can exactly pinpoint it but it was too restricted, in a sense—too rigid of a framework where you were basically—the emphasis was on being obedient to a hierarchical structure in the church. I always thought that obedience was more or less at the bottom of the virtues because there is a lot of harm done by people who think they're being obedient when they're being obedient to a command structure that tells them to do the wrong thing. That was a part of it. I went on to college and I basically took a lot of liberal arts courses. I loved English literature. In high school I had the benefit of a very good education in terms of writing and English and other languages. I studied Latin for four years in high school and I read a lot of the classical literature in Latin like Homer and Cicero. That kind of exposed me to a wide variety of education. One of the benefits about the Jesuit education that's kind of rare at the high school level is a number of your teachers have doctorate degrees because the Jesuits send them on to higher education themselves in the formation of their priesthood. They'll come out with a PhD in history, English literature, whatever, and they'll teach at a high school level. How often do you see PhD's at a high school level? You simply don't find that. So I got a very remarkable education from the Jesuits at high school. That translated into my becoming, I think, a better than average writer. I also got some writing—took some writing courses in college. I think that prepared me pretty well for my next step in my education which was law school.

MK: When you were questioning, in your last year of high school, what to do next, who were you, were you being given advice by any one or few people in particular? You mentioned the parish priest at our last session that was a role model at one point in your childhood. Maybe that wasn't the same person that was counseling you but what made you decide to try the seminary first?

TC: Because I thought that was my calling at that time. I thought I would give that a shot because I was so much involved in the church at that stage in my life. I had been ever since I started because we lived—I don't know if you read Bruce Springsteen's book, his autobiography.

MK: No. I haven't.

TC: Yeah, he kind of grew up in the same environment I did where everything focused around the church. We lived close to the church just like he did. It was just a block away. And you did everything there. You had your social life there. You had your educational life there. You went to the church there. Everybody in our neighborhood pretty much was Catholic and everybody went to the Catholic school. Tuition was only \$2 a month. Then they topped that off if you had a lot of kids. You wouldn't pay more than \$4 a month. So everybody's kids went to grade school there beginning kindergarten through eighth grade. That was pretty much the environment that you grew up in.

MK: It was the center of that community.

TC: Yeah. Looking back on it, there were things about it that now I see were too overwhelming for a child—too much mind control was practiced—too much negativity was inflicted on the students—too much of an approach of guilt in terms of a motivating force and fear. Looking back now that I'm older, I can see all that but back then, I thought this was the way it was supposed to be.

I was always a kid that was pretty savvy about how to basically negotiate my way through things. Right now, what I do is I do a lot of settlement work. I was always a very analytical person.

I remember when my mom—this is a story—I was in second grade, my mom was having a difficult pregnancy with my little brother and so she and dad sent me and my two older brothers to a boarding school in St. Louis run by the Sisters of St. Joseph. We stayed there all week—lived in the dormitory—went to class there. It was very regimented. And I remember one time—the nuns at that time—they were very physical in the way they would discipline the students. Today you would call it abuse. A lot of corporal punishment was handed out. I remember one time one of the kids of my second grade class didn't know his spelling lessons so all of us had to stay there late after supper and until past bedtime until everybody knew their lessons. Finally, when we all knew our lessons, they sent us to the dormitory to go to bed but by then, the lights were out in the dorm. I was in the back row in the dorm. I don't know how many kids were in there, like fifty. And so I stumbled around and tried to find my bed and I thought I found my bed and I started to climb in and some other kid was in there. It was his bed. And he woke up and he hit me and I yelled, "Ow!" My bed was next to his so I got in my bed. The next thing I knew, this nun—they would have a nun who had a room by every dormitory room to be the monitor—she got up and flicked on the light in the front of the dorm room and said, "Alright, who made that noise? Own up to it!" I knew that whoever made the noise, if I admitted it, I would get a spanking. And so I said, "No. I'm not going to own up to it." And so she said, "Whoever did it, own up to it or else I'm going to spank everybody." That was what they did—group punishment. I thought to myself, "Well, let's see. I'm in the back row. There must be forty kids before she gets to me. Even if she lasts that long her arm will be tired." *[laughs]*

MK: You went through that process in your head? *[laughs]*

TC: Yeah—second grade! I remember that. *[laughs]* Sure enough, she started on the first row. And you would hear—these kids were asleep! And you would hear, *swat!* *[mimics child yelling]* and go to the next one. *Swat!* *[mimics child yelling]* Go to the next one. She did about three or four and she got tired and went back to bed. *[laughs]* So, yeah, it was stories like that. That's what I was exposed to growing up. Looking back on it, it left scars for sure. I mean today, we look at that and we say, "How the hell did we ever have a model like that in the church?" We know a lot better now. But back then that was the way they were. That was just the way they were—corporal punishment. A father was considered to be not fulfilling his responsibilities if he didn't administer corporal punishment. You got spanked, you got beaten with a belt, you got slapped in the face. People back then considered that to be the proper way to raise kids. That's kind of what I went through growing up. That left scars for sure. But other than that, it didn't leave any permanent scars that left me psychologically unable to put it behind me. I did get a great education.

MK: By the time you were eighteen and you were starting seminary, maybe those were some of the considerations that made you think this was too rigid.

TC: Too rigid. It was too rigid. I finally figured it out that this was not psychologically good for me. I needed to do something else. I needed to be, like I said, I figured out that obedience *[laughs]* was the least of all virtues in my opinion. I always wanted to be questioning and not just say, "Do what I tell you." That's what they would do. They would say, "This is the way it is and you have to believe it," and "Don't question authority," and I always questioned authority.

Integrity and Authority

MK: Do you remember another story like that where you were questioning authority? But you do say that you were very savvy, so did you just reflect on that in your head thinking that it's not fair?

TC: I think my family, my siblings share this trait too. We're all basically, pretty questioning and we all are essentially very committed and impassioned to do the right thing and to pursue justice for everybody. It was always big—the compassion that I displayed in myself and one of my older brothers, we became trial lawyers. I went with the Department of Justice and I was committed to doing justice there. My older brother became a personal injury lawyer. He was very committed in upholding the rights of his clients and seeking justice for them when they had been mistreated. We pretty much shared that.

MK: That was your eldest brother?

TC: That was my—I had two older brothers and one younger brother. One of my older brothers became a trial lawyer, the one closest to me in age. I always admired him as well.

MK: In your household, was there room for questioning authority or an encouragement of asking questions?

TC: I would say that my father was a model of honesty and integrity. He was firm but he was honest and he instilled that quality in all of us, how important it was to be truthful and to be a person of integrity. He had no use for people who were phony. I'll give you a story about my father to illustrate that. I remember when I was ten—

MK: Is this the story of the bicycle?

TC: The bicycle, I already told you that.

MK: I remember that story.

TC: That was my father. Because he was just an honest guy and the thought of suing the driver that hit me would never have crossed his mind because in his mind, I was the one in the wrong. He wouldn't even let the guy buy me a new bicycle. *[laughs]* I certainly got that from my dad, that it's very important to be honest and a person of integrity. That was instilled in me. I don't think he was quite the type to question authority that I became. I always had a very inquisitive mind. For example, getting back to the church, women aren't priests. I would say, "Why can't they be priests? Explain this to me." Still I haven't gotten the answer. *[laughs]*

MK: Did you ask the nuns that?

TC: Not at that time. I was too—that was not something you dared ask back then. You know, you just accepted it's the way it is but as I got older—and that was before I got exposed to the

Jesuit education too. As I got older, I began to question a lot of things. And I still am in life. Why do we do things this way? What's behind this way of thinking? Just the fact that it's always been done? Well, that's not really a good reason?

MK: And who did you ask these questions to? Your older brother? Your parents? Friends?

TC: Friends as I was getting older and now, quite frankly. I ask them a lot of my wife and my children who are all grown. We have seven children. Four women and then my wife, that makes five women in my family unit. Of course, they have inquisitive minds. They would always be asking me, "Why? Why? Why? Why? Why?" They're all so bright that you can't get away with some sort of insubstantial answer. They'll pick it apart. They're all very firm, feminists, in terms of asserting their own prerogatives and rights so a lot of my development has been certainly informed by the interaction with the females in my family. That certainly has opened my eyes to a lot of women's issues.

Then it also would open my eyes to the issues of people of color. When I was in college, one of my roommates was African American. He and I had a lot of friends in college that were African American. I hung out with them and that really opened my eyes to their thinking. I remember thinking, my roommate's name was Jim Nofles. We would travel together to and from college and our homes in St. Louis. This was during the era of the sixties and the Civil Rights Movement. We always talked about how we couldn't even possibly go down to the south without getting murdered. If they saw you in the south, traveling with someone who was black and you were white, they would figure that you were down there to cause trouble. This is what happened in Mississippi. They were just traveling together in a car and they get pulled over and murdered down there. So, I always thought that nobody can be racist in my generation. We're getting to mingle with people of a different color, we're getting to know them, and we're putting aside our prejudices. And that was true to an extent but not everybody had that experience. I always thought going to school with people who were African American was such a positive step in ending racism. Not everybody I guess had that experience and they still—that's probably why the South fought so hard to keep itself segregated, because they didn't want the races to mingle. They knew that if you mingled, you would lose that philosophy—that mindset. Unfortunately, you see that coming back in this country today.

St. Benedict's College

MK: What made you chose St. Benedict's after the seminary didn't work out?

TC: My older brother went there, the guy I was telling you about. He was there at the time. It was a small college and I wanted to go to a small college. I didn't want to go to a big state university.

MK: What was the application process like when you were choosing a college?

TC: You took the college boards. I always got good grades. I got high grades in grade school. I was pretty much at the top of the class. In high school I probably didn't have the highest grades in class because there were a lot of bright kids there at St. Louis U High but I was up in the top quarter of the class. In college, I was first in class. I did well on the college boards test. I always got up in the 99 percentile. From college when I took the LSAT, I was in the over 99 percentile which is why I got into Harvard because I was at the top, like 99.9 percentile. I just always did well on tests. Most of the tests tested your general knowledge of certain subject matters but it also tested your analytical, your logical reasoning, and I always had a gift about that. In fact I always said I was analytical. [*laughs*]

MK: So then you said you were at St. Benedict's for three years?

TC: Yes.

MK: Does that mean you finished all of the requirements in three years?

TC: Well, I had the one year at the seminary and that transferred.

MK: It did transfer?

TC: Yeah. It transferred. Yeah, because they didn't teach us only religion at the seminary. They taught us all the basic courses that any college would teach and they were fully accredited so they all transferred over.

MK: I see. What was it like moving from St. Louis to Atchison? I imagine that it was a bit of a culture shock. Having your brother there was nice.

TC: No, it wasn't really. St. Louis and Atchison were close enough that I would get home enough. I think that's about 250 to 300 miles away, something like that. It was an easy drive. You could make in six or seven hours, something like that. I would come home for Thanksgiving, Christmas, Easter, and in the summer. Everybody there in college was pretty much from a similar background. St. Benedict's at that time was all male. There was a Benedictine female college across town in Atchison. Now they're combined the two campuses and so now it's fully coed. Most of the kids there were from St. Louis, Chicago, Iowa, pretty much the Midwest. Most of them came—were the product of Catholic high schools. I played soccer, I was on the soccer team there. That was enjoyable. I was always kind of—not a bad athlete. I wasn't the greatest athlete but I had speed and because of my speed I was of value on the soccer team. I was faster than most of the other players. So even though I wasn't as skilled, I could catch up. I was a defender.

MK: Tell me, you said that one year you had an African American roommate. Do you remember other roommates? Tell me a little bit about your social life and how college changed it. Being independent from your family for the first time, perhaps.

TC: Yeah, we had to learn skills like cooking and house cleaning and taking care of ourselves, taking ourselves to the doctor. One of the things I remember about college is that I was still smoking then. Smoking was still prevalent and it was before all the healthcare information came out about the bad habits of smoking. That's probably why I took up smoking which is a habit I had until I got married and had our first child. Then I quit, thank god!

So, yeah, you learned to be independent. It's a good progression going from high school years to being ready to get out into the adult world. I never seriously dated anyone in college or even law school for that matter because I always had this mindset—I was not going to get serious with someone until I was ready to support a family. That was the first thing I was going to do was get my education completed to where I was in the career that I wanted to be in. Then I would start thinking seriously about starting a family. But I was always pretty focused on that. I didn't want anything to distract me from my career plans. I think a lot of people make the mistake of getting married right out of high school or something and then that's kind of the end of their educational process because it is so hard to get through an education process when you're trying to support a family.

That was my social life. It was pretty much focused on going to ball games, athletics, et cetera, going out to the pizza place on Friday night and Saturday night in a small college town. I did a lot of maturing in those years. I was very disciplined in my study habits. I was very much more focused on study than on my social life. I always had a good memory so I didn't have to—I could study and grasp the subjects with a quick read. I didn't have to go over everything as much as other people did and I could retain the concepts.

MK: What drove you to be so disciplined? Was it because you knew, you had an idea of what your goal was?

TC: I had an idea what my goal was. I had an idea my goal was to, like I said, I had priorities and my goals. Education was very important to me. That was always emphasized to me. I think because I displayed—not to pat myself on the back or anything—but I displayed a fairly high level of intelligence all the way up through grade school, high school, and college. I was always intellectually, kind of at the top of the class. Everybody encouraged me that I needed to focus on—keep up the academics—don't waste this gift that you have—take it as far as you can. So, I did that and I couldn't stand failure. I think the only F I ever got in my life was in a typing class [MK *laughs*] in high school where I tried to learn to type and I'm not mechanically inclined at all. We had these old typewriters and one of the tests he would give you was—you'd have to put a blindfold on and then he'd dictate something for you to type and you had to do it by feeling out what key it is. I never could do that. I remember I got a minus, a below zero in one typing test. [*laughs*]

MK: Wow! Ignominious defeat. [MK and TC *laugh*]

TC: Fortunately, typing was not something that they reflected on your transcript.

MK: That's fortunate.

TC: [*laughs*] I know.

MK: So, you experienced that type of failure, just a taste, and that was enough.

TC: Yeah. Yeah.

MK: By the time you arrived at St. Benedict's, did you have the idea already that you wanted to eventually go to law school because of your older brother?

C: Yeah—not just because of him but because of some of these movies that I saw and books that I read. *Inherit the Wind*, *To Kill a Mockingbird*. So that inspired me. In part, that inspired me because it emphasized the values that I had—truth and justice and fairness. I was driven to the cause of justice. *Les Misérables*. That was a novel that influenced me and taught me that good and evil are not just these black and white concepts where if you just apply the rules you come out on one side or if you break the rules, you come out on the other side. It's a lot of grey in what is just and what is fair. That really appealed to me.

MK: What did your eldest brother do?

C: He went to Notre Dame. He became an engineer, a mechanical engineer.

MK: Like your father, right?

C: Like my father. He started thinking that he wanted to become a lawyer and so he then went to law school and became an attorney. He's not a trial lawyer. He worked for a while in the Department of Justice for a drug task force attached to the St. Louis office of the US Attorney. Ironically, my roommate that I told you about, the African American—

MK: What was his name?

C: Jim Nofles. N-O-F-L-E-S. He was an extremely intelligent person. Very gifted. His father was a doctor. I hung out with him, went to his house, double dated with him, went to African American nightclubs with him and I would come back from law school and visit with him. I noticed he had gotten involved with some—Jim always thought that he could use drugs and not be conquered by drugs. He was always like a moth circling close to the flame. It didn't work out well for him.

What happened was he got addicted on heroin and by this time, I had graduated from law school when all this happened. I was in the US Attorney's Office in San Diego, so I'm flash forwarding a little bit. I could see that happening when I came back from law school when I was still going to law school from the people he was running around with. He ended up selling heroin for this organized crime African American drug ring in St. Louis. We're talking about a major syndicate. He sold heroin to some undercover federal agents and they arrested him and turned him into an informant. I found all this out later. Based on his being an informant, they put wires on him and recorded conversations as he bought drugs. These agents were able to get a wiretap on the organization. After accumulating enough information through the wiretap, they arrested all the members of the organization, about thirty of them or so.

I mentioned Jim in connection with my brother Dick because after he had initially been arrested and before he started cooperating, the agents had forwarded his case to this drug task force, what do you call it? This drug agency that Dick worked for. [*Coffin note: Drug Interdiction Task Force*] He saw Jim's name and he said, "I can't work on this. He's my brother's friend." So they gave it to someone else and then Jim turned informant and they busted the whole ring including the ring leader and then they went through discovery and the US Attorney's Office released the affidavit in support of the wiretap application and they were able to figure it out that it was Jim Nofles that was the informant. They went out, picked him up, tortured him, and killed him. [*MK gasps*] Then I found out about what was going on after they killed him. I didn't even know any of this was happening.

At this time, like I said, I was in the US Attorney's Office myself back in San Diego. I called the agents that had worked on the case and I said, "How could you do this?" I knew all about how discovery works. They don't mention the informant by name. They call him a confidential informant but they gave the affidavit to the attorneys, the attorneys gave it to the clients, the clients all got together and it was set out in the affidavit—"CI [*confidential informant*] bought heroin from so and so on such and such a date." "CI bought heroin from this guy on a different date." Et cetera. So they all got together and they said, "Well, Joe, you were the one who sold him heroin. Who was it that you sold it to?" "Jim Nofles." And so they figured it out.

I said, "Why would you expose him like this? Why didn't you put him into the witness protection program? Why didn't you take some steps to protect him?" They had lame excuses. It's always someone else's responsibility. I always as a prosecutor considered it my moral as well as legal duty to protect my witnesses. I would never have let something like that happen to a witness. It infuriated me that they would just use somebody and then after they got what they wanted out of him, that they would just throw him to the wolves, which is what happened to him. That left a bad taste in my mouth. It motivated me to make sure that all the agents that I worked with knew that if you're going to use somebody as a witness, we're going to protect that person. I always tried to follow that formula.

MK: What a strange twist of fate that that case landed on your brother's door at first.

TC: Well, he had to disqualify himself. He couldn't. I understood that because you don't want to have a case where you are personal friends with the person—that's been to your house and have had dinner with.

MK: Any other classes stand out at St. Benedict's?

TC: No. I minored in philosophy, majored in economics. Yeah. I liked the classical philosophers like Plato, Socrates, Aristotle. That branch of philosophy was very much into logical reasoning, deductive reasoning, analytical reasoning. I think that formed a lot of my, certainly helped form and enhance my analytical skills.

MK: Were you a member of any clubs or societies?

TC: No. I never was that much of a joiner. I didn't want to join any of their Young Republicans, Young Democrats, whatever. I didn't want any part of that. I was elected for one year, the president of the B Club, which was the athletic club which typically, the president of the athletic club, the B club is an athlete, one of your stud athletes, which I was not. I was a soccer player. But they elected me, and even the guy I thought they'd elect was Darryl Johns, another African American friend of mine who was a star basketball player at St. Benedict's. He was an All American and we won the national championship with him playing. But instead of electing him, and he didn't want the job—he promoted me. So, I said, "Alright, I'll be the president of the Athletic Club".

So, my basic job was to manage the money and the coach wanted me to use the money that we had. What we would do is we would have parties, mixers, whatever they were called—serve beer, charge money to get into the dance and for the beer, and then we'd put the money in a bank account. So, we had a couple thousand bucks in the treasury for the B Club and the coach wanted me to buy blazers for the team to travel with—the soccer team. I decided, I heard about this new band in St. Louis, Ike & Tina Turner, and so I hired Ike & Tina Turner to come and play at a mixer. This was when they were kind of starting out and they would go around and play college gigs. I spent everything in the treasury—I think it was like two or three thousand bucks to get Ike & Tina Turner to come to Atchison. *[laughs]*

MK: Instead of getting the blazers? *[laughs]*

TC: Yeah. *[laughs]* But everybody loved it except for the coach. *[laughs]* I met Ike and Tina! Oh yeah! I paid Tina. I gave her a check and I remember Ike was backstage and he wasn't talking to anybody. *[laughs]*

MK: That story took an unexpected turn. *[laughs]*

TC: Yeah. *[MK laughs]* They would play at St. Louis nightclubs back then. That's where they started out.

MK: Popular party!

TC: Yeah, I know. *[MK laughs]* I launched their career. *[laughs]*

MK: Who knew? What did you do over the summers? Did you work?

TC: I worked for summer camps for boys. I had one time I worked for my uncle who had this boiler factory and I did odd jobs there. But I was a camp counselor for a couple of years. I enjoyed that. I enjoyed working with youth, doing camp work, getting outdoors and things. Then law school.

MK: And so you paid your own way through college?

TC: No. I didn't pay my own way.

MK: Oh, no.

TC: But college was cheap. My parents could pay it. At that time, room, board and tuition at St. Benedict's was something like \$1200 a year. That was to live there, eat there, and pay the tuition. So, just think of that. What is it now?

MK: It's like \$40,000 at some places, and more.

TC: Yeah. Actually, I think St. Benedict's was less than \$1,000. It was Harvard that was like \$1,200 when I went to Harvard.

Harvard Law School

MK: And so, when you decided to go to law school, did you apply at multiple schools? And where was your older brother who was already at law school at that point? Where was he?

TC: He went to Washington University in St. Louis but I wanted to go to Harvard. I applied to Harvard Law School and I think I also applied to Washington U but I didn't really want to go there. I didn't want to go to St. Louis. I really wanted to go to Harvard. Harvard accepted me.

MK: Why Harvard and not Yale or Princeton, or any other? What about Harvard stood out to you? Was it reputation or something that you'd heard?

TC: Reputation, yeah. I had never been to the East Coast really but Harvard was probably the top ranked law school. It's always between Harvard and Yale. Harvard had more openings. Yale was a smaller law school. Harvard has a class and each class is three classes—1Ls, 2Ls and 3Ls. Each class is about 500 students. Yale has a total of only like 500. So Harvard had three times the enrollment as Yale. I had the grades. I took the LSAT. I was at the top of the chart on the LSAT. The other thing I had that Harvard really—they tried to diversify in a number of factors, one of which is where you went to undergraduate school. They had never had anybody from my college at Harvard Law School. No one had ever gone there before so that was in my favor. And so they accepted me.

MK: Where there in person interviews at that time?

TC: I had an in person interview. What they do is—they don't make you go to Harvard to be interviewed. They find somebody in the local area where you live. I was interviewed by a law professor who taught at Washington U. in St. Louis. I interviewed with him and he knew my brother. Apparently, he made a favorable recommendation.

MK: Tell me about what that transition was like, moving to Cambridge and starting law school, for you, for your family.

TC: It was a culture shock. I had never been any place like the East Coast before. The first day that I was there, I flew in, checked in to the dormitory and I went out to Harvard square and I went to this pub. I'm sitting there getting a beer and there's two guys that I'm in between. One of them is from Britain, the other one is from Ireland and they're arguing with each other about the British rule in Northern Ireland and all that stuff that was going on at the time—independence and the way the British treat the Irish, and the Potato Famine, and on, and on, and on. *[laughs]* I'm sitting there listening to all this. The British guy then looks at me and says, "Who do you agree with?" *[TC and MK laugh]* And I said, "I'm with the Irish guy." *[laughs]* Who bought me a beer and then that was it. The British guy got mad and turned away in a huff. I figured, "Man! These guys really mix it up back here." *[laughs]*

I remember my first year there. Now look, you're looking at a guy that went to college in a small town and when I was out of money, I would go to the local pharmacy in Atchison—there was only one pharmacy and I had my checking account in a St. Louis bank and I would go in and write out a check. I wouldn't buy anything. I would just write out a check for ten bucks and cash it there and he'd give me ten bucks and take my check. So, my first year at Harvard Law School, I go down to New York to visit a friend down there during Thanksgiving because I didn't go home for Thanksgiving. It was too far. I just stayed up there. I'm out of money so, I figure, I'll just go to a pharmacy. And this is Manhattan. And so, I'm going to write a check on my St. Louis bank account for some money and not buy anything, right? That's my game—that's my mindset. I'm standing in line and there's this woman in front of me and she's got something in her hand. It doesn't have a price tag so she puts it on the counter and she asks the guy behind the counter, "How much is this?" And here was his response, quote, I'll never forget it. "What do I look like, lady, an information booth? Put your money on the counter and I'll give you the change. *[laughs]* And then she says, "You crook! You just want to overcharge me. You don't put a label on this saying what the price is. I want to know what the price is." And I'm saying to myself, "Okay. I'm going to go give this guy my check and not buy anything?" I said, "I'm going to make his day if I do that." *[MK laughs]*

It always amazed me the way they interacted—strangers did on the streets. I would walk down the street—some guy named Al Lowenstein was running for Congress and somebody came up to me and he said, "Here's this Al Lowenstein button." I said, "I don't know," and he said, "No!" and he would stick it on my shirt lapel and pin it in. "You wear this!" "Alright." And I'd walk another half block and somebody would come up to me and say, "Take that Al Lowenstein button off or I'm gonna take it off for you." I said, "Fine!" *[laughs]* And so, I figured, "Wow!" I wasn't used to that. It's just the way they interact back there is very aggressive and very confrontational, but I finally figured out, this is their way of jousting with each other. They have these barbs that they go back and forth and you have to, if you're submissive to them and don't come back with a response, man, they'll just walk all over you and make so much fun of you and be so rude to you. I could never get used to that kind of rudeness because we weren't like that in the Midwest. I mean, in the Midwest it's a lot friendlier. "Have a good day," and "How are you," and all that. But back there man. And you see a lot of that culture I think back east in their politics and everything that we're not used to. So that was a big culture shock. I did, after three years of law school, I was so fed up with that kind of culture that I looked at a map and decided I was going to go someplace the farthest away from the East Coast that I could. That happened to be San Diego.

MK: That was about as far as you could have gone! *[laughs]* So did you get better at the verbal repartee just to be able to manage those interactions? To not get stepped over?

TC: No, I never did. I never did, it just was not part of my makeup. I was always trying to be polite. Man, I would have been eaten up back there. That's what they do. I see it on the bench out here, after I got on the bench. You can always tell an East Coast lawyer. Man, they're used to being very aggressive. More than once, I've had to tell them, "This is not how we act out here." But that's the way they're conditioned to act because otherwise they'll just be chopped up. *[laughs]*

MK: Now, you probably felt to a certain extent, or maybe you didn't feel this way, so correct my characterization if it's wrong, but maybe you were a big fish in a smaller pond when you were going to a small liberal arts school in Kansas whereas when you were at Harvard law school, you were with a lot of very gifted and talented people. How was that transition?

TC: Oh yeah. You're absolutely right. There is nobody at Harvard Law School that wasn't the sharpest knife in his or her drawer when they were in high school and college and that sort of thing. I mean, everybody there was the cream of the crop, at the top of their classes. They were all used to being the top student. So, at Harvard, the faculty tried to basically motivate you by putting the fear in you that, "Look to your right, look to your left, because the person next to you won't be here

at the end of the school year," meaning they'd flunk out or something. So, they tried to motivate you in that way by fear. A lot of the students had a lot of anxiety. I interviewed, they had Inns of Court back there where they would try to recruit the top of the class to go join their Inns of Court.

MK: What is that?

TC: Inns of Court. I-N-N-S. It's an English tradition where in England, if you're a barrister you would join an Inn of Court. You would be affiliated with that Inn in your practice of law. That was your social and professional club. At Harvard Law School, they would have the Lincoln Inns of Court, et cetera. They would name it after famous lawyers. So, I went to be interviewed by one and they would, of course, I was a Harvard Law student but that wasn't good enough. "Where'd you go to undergraduate school?" "St. Benedict's."

MK: That didn't score any points?

TC: *[laughs]* Even if I'd have passed that question, you know, the next question would have been, "Where did you go to prep school?" So, very elitist, and I decided, "I'm not interested in this." This was not in keeping with my egalitarian mindset. So I quickly toned down my any ambition I had to join one of these elite clubs back there. I also didn't see any value in trying to compete for a spot on the Harvard Law Review because that's where the Supreme Court recruits their clerks and we're talking United States Supreme Court. They'll look at the Harvard Law Review, the Yale Law Review—so, the very top of the top of the class. In order to compete for that, I mean, you had to have no life whatsoever, other than the classroom and studying. It was hard enough to study the material just to get the grades you wanted to get in law school. But to get to the law review level after you were done studying and preparing for the course, then you had to go down to the law review offices and churn out the types of work to contribute to the law review that they published.

I wasn't going to go there. I would have no life for three years and it was hard enough to have any kind of a social life outside of law school with all the work you had to do. So I settled in. In three years, my grades were good. I finished in the top twenty percent of the class which they don't tell you exactly what your ranking is, unlike college, so they'll tell you if you are at the top of the class. You had some idea if you were summa cum laude, you were in the top five percent. If you were magna cum laude, you were in the next five percent. If you were cum laude, you knew you were in the top twenty percent. So, I was cum laude, so I knew I was in the top twenty percent. So, out of 500 in my class, I would be in the top one hundred somewhere. They don't tell you exactly where. To me, I was very proud of that. I certainly got a good education there. I can't think of a better education that you're going to get out of a law school than I got. Everybody—the faculty members at Harvard are just absolutely brilliant. There is just so much to learn there.

MK: Did you have any professors in particular that you were inspired by more so than others, or worked more closely with than others?

TC: None of them really interacted that much with the students outside the classroom. Our classes were so large. But yeah, I have fond memories of some of the faculty. Like Alan Dershowitz, I think I had him in my first year in criminal law and I think it was his second year of teaching actually. He was very bright and very entertaining.

I remember Clark Byse who taught us contracts in the first year. He was like all of those professors. He was so witty and so intelligent. I remember something from him. He had a practice where he would affect your grade if you were absent from class. It would also affect your grade if you were unprepared for class and he would keep a seating chart. The practice was if you weren't prepared for his class, then you had the option of not sitting in your assigned seat and you were marked absent. If you felt you were prepared, you sat in your assigned seat and then he would call on you if you raised your hand. Or he might call on you even if you didn't raise your hand to answer

a question. I remember, in one class, this student was not prepared so he didn't sit in his seat. He sat in the back. Byse asked a question and the kid thought he knew the answer so he raised his hand. Byse called on him. He gave the wrong answer and Byse looks up at him and says, "Mr. Jones, you have achieved a first in the history of Harvard Law School. You were both absent and unprepared in the same class." *[laughs]*

MK: Oh no. *[laughs]* He was trying to redeem himself but it didn't work out.

TC: It didn't work out. Their classes were so challenging and so analytical. You know, my analytical skills were obviously okay going in there. They were really well honed coming out of there. I learned how to basically frame an argument, how to respond to questions. I learned, I had to write a lot because their exams were pretty much exams that you took in writing, essay exams where you answered. So I learned how to phrase legal arguments and legal responses. It's a great education. It prepared me for everything when I got out. I mean, a Harvard Law degree really opens doors out in the legal world. If you have a Harvard Law degree, you're not going to have a hard time getting a job when you get out of that place. So, it was well worth it. I was so glad I went there.

Summer Vacations in ROTC

MK: And did you, during summers when you were at Harvard did you have to work? Or were your parents supporting you still?

TC: I would come home to St. Louis, the first year there. The second year and the third year, I was in ROTC [Reserve Officers' Training Corps]. There was a war going on and so that occupied my summers. I ended up dropping out of ROTC.

MK: So, Vietnam, while you were at Harvard?

TC: Did I what?

MK: It was the Vietnam War while you were at Harvard?

TC: Yes. Because I was at Harvard from 1967-1970 and Vietnam was going on then.

MK: Does that automatically keep you out of the draft or no?

TC: They ended the student deferment. That's why I joined ROTC.

MK: Oh, I see.

TC: I learned enough in two summer camps at ROTC to know that I was not a good soldier. *[laughs]*

MK: If obedience was not at the top of your list of—

TC: No. And I'll tell you some stories from there. For example, speaking of my focus on justice and fair play and obedience not being the best virtue, when I arrived in Fort Benning, Georgia for the first summer of ROTC, the captain—we were in a company of 300 cadets and the first day we were there the captain brought out his pet goat. He had a pet billy goat. He told all of us that the cadet, each week, who had the worst performance would be assigned goat duty for the following week.

MK: Which consisted of what, exactly? Milking the goat? Cleaning up after the goat?

TC: Oh, we had to take the goat everywhere, clean up after the goat. Goats defecate constantly. Feed the goat and take the goat with you when they went out on bivouac and stuff. They called that cadet the goat man. So, I was the goat man for six weeks.

MK: Oh no. *[laughs]*

TC: But here's what happened. For example, one time we're out on bivouac.

MK: And what is bivouac?

TC: It's when you go out and set up a camp and then you're not staying the barracks and you go out and you do fieldwork and field exercises—maybe military exercises. You play war games and stuff like that, so you camp out for the night. So we're out there on bivouac and it's Saturday and they had the Catholic and the Jewish chaplain come out on Saturday to give sermons to the Catholics and the Jews. We go off to services and the Protestant cadets get to play softball. So then, Sunday comes and the drill sergeant says, "Alright. All those that go to the Protestant services, they're over here. Anybody who goes to the Protestant services goes over there. Anybody that doesn't go to the Protestant services you have latrine duty." And I said, "Excuse me? We have latrine duty?" "Yeah, you have to go and service the latrines." And I said, "Well wait a minute. Yesterday when we went to services, the Catholics and the Jews, they got to play softball. They didn't have to do latrine duty." "Captain's orders."

So, I organized a boycott by the Jewish cadets and the Catholic cadets. I said, "This is discrimination." The drill sergeant came back with the shovels. I said, "We're not going," because I was the spokesperson. He said, "What do you mean you're not going?" I said, "No. This is discrimination and I'm going to write my congressman that you make the Catholics and the Jews do latrine duty because they went to the Catholic and Jewish services while the Protestants got to play softball." He went back and told the captain and the next thing I know he comes back with the softball and the baseball bats and we got to play softball.

MK: Oh, really?

TC: So, I won.

MK: You won?

TC: But I got to be the goat man. So, that's standing up to the abuse of their authority. I did that constantly back then. I was not popular with the chain of command. It was just not meant to be.

MK: *[laughs]* It's a great story though.

TC: *[laughs]* I know.

MK: So two summers of ROTC, that was about all you could handle.

TC: Yeah. And then I didn't get drafted so I lucked out. I would not have been—I just wasn't cut out to be a military oriented person.

Vietnam War, Politics, and Social Unrest

MK: Did you take part in any of the protests of the war that were taking place during those years?

TC: [laughs] That's an interesting question. I went to one anti-war protest at Harvard where they marched to the ROTC building and you remember at that time there were a couple of underground groups called the Students for a Democratic Society, SDS, and the Weathermen who were prone to do things like blow up buildings and stuff like that. This protest was led by the SDS I think. There must have been about several hundred of the students gathered around. The leader of the protestors said, "Alright, I vote that we burn down the ROTC building. All you in favor of burning down the ROTC building, raise your hand." And so a smattering of arms went up. "All those opposed to burning it down, raise your hands." The majority raised their hands. They didn't want to burn it down. This must have been the Students for a Democratic Society. I don't think the Weathermen would have asked. [laughs]

MK: Probably not.

TC: So then the leader says, "Okay. We're going to take a re-vote. Would everybody who voted no, leave." [laughs]

MK: Very democratic

TC: Yeah, the anti-war protests were very prevalent at that time in the Boston area. The Boston police had what they called the "goon squad" to deal with them. What they did was when the students were protesting, like I remember one that they had at the Harvard yard, the regular police would come out and try to disperse them. They would be on the ground. They'd have all their protective gear and all that stuff on. They would have their bullhorns and they would be out. "Alright, we hereby declare that this gathering is illegal. Please disperse. You have five minutes. You have to go." If they didn't go, they used tear gas maybe.

The goon squad would sit in buses and they were the biggest, beefiest football player type guys you ever saw in your life. And they were armored from head to toe. If they were deployed, their mission was to just go crack heads. That's how they would do it. If the regular frontline police could not disperse the crowd, they would call for the goon squad and they would come storming out of the buses and they would start wailing away on the students and start beating the crap out of them. I was at Harvard Law, at the Harvard Square one time and although I wasn't in the protest group, I was just watching and I could see the goon squad in the buses. When I saw them, I wasn't participating in the protest so I was not, in fact, I was behind the goon squad. When I saw them being deployed I just went back to the dorm. Yeah. There were some pretty rough times—some of the protests back then.

MK: Did this inflame your sense of justice?

TC: Well, I was never going to be violent. I was never going to participate in any kind of violent demonstration. Looking back on those times, that was such an unfortunate part of our history and I never did agree with the purpose of that war. One of my relatives, so to speak, was an outspoken opponent of war, Reverend William Sloane Coffin. He was a chaplain at Yale at this time. He was an outspoken opponent of the Vietnam war. That was a very unfortunate chapter in our history. I feel so sorry for the people that went there and got killed by it and damaged by it, psychologically, to this day.

MK: I think when we were speaking last time, you mentioned that you were not interested in politics very much growing up. At this point in your formative years, did you feel drawn to politics in any way because of the injustices or the things that you didn't agree with that were taking place?

TC: I did not involve myself actively in politics to the extent where I was interested in running for office or being active in anybody's campaign for office. My interest in politics generally didn't go

beyond just exercising my duties and my right to vote. That, I did, and I would follow the candidates with interest and basically study what they stood for but I wasn't involved in the campaigns themselves.

I suppose I didn't see myself as somebody that was that good at talking to large groups of people at rallies and things like that, or wanting to do the behind the scenes vote gathering initiatives, gathering signatures, et cetera. To me, that was a lot of work and at that grass roots level and I didn't see, quite frankly, the value of it. I suppose part of it is it's such an overwhelming political system. Now I think with the Internet, you may be able to reach more people with that kind of grass roots movement.

I was never involved in big time politics. I also thought it was kind of, the politicians themselves did not appeal to me, and what they did—the speeches. You see it today too. They're really not very analytical in their political speeches, or rational. It's all about slogans and try to sum up everything in ways, with slogans. Make America Great Again. Okay, what the hell does that mean? So, it didn't lend itself to me. I'm the type of person that likes to write out my thoughts and be rational and objective and hopefully someone will read them and maybe agree with them or try to respond to them in a rational way as opposed to standing up there and shouting back and forth at people. I look at our political scene today and everybody is posturing and they don't listen to anybody else. I look at other systems like, I enjoy the British way of discussing things because they seem to be a lot more sophisticated and less crude and more analytical in their comments as opposed to name calling and things like that. We seem to be into a lot of name calling. It never really appealed to me because of that.

MK: Can you maybe reflect on some of the other things that were happening at the time you were at law school? I'm referring to the Civil Rights movement. We talked a little bit about Vietnam already but, women's rights, civil rights. How were you experiencing them?

TC: When I started at Harvard Law School, I was amazed at the lack of diversity in the faculty and in the student body. Just then, they were beginning to be more diversified. When I look at my Harvard Law School yearbook from my graduating class, without exception, every faculty member is a white male. You'd look at the yearbook photo and they're all lined up. The only woman in the photo is white but she's not a faculty member. She's the librarian. We've come a long way since then. Harvard, to their credit, they began to diversify during the 70's in particular. That's when they started to diversify a bit in the student body. We had some students of color. They were starting to try to diversify in that area. They were also seeking to add more female law students than they had in the past. I forget when the first female student came to Harvard Law. They were there when I was there but there weren't that many of them. Probably they didn't start admitting females until sometime in the sixties is my guess.

I remember the assassination of Martin Luther King in—what was it—my second year of law school. And then Robert F. Kennedy was assassinated shortly thereafter. I remember both of those assassinations coming, weren't they a month from each other, something like that?

MK: Very close.

TC: I remember, it was like in April and May or something like that, June maybe, because I remember they came so close to one another. Everybody was shook up by one and then the other one happened. I think Martin Luther King was assassinated first and RFK second. Yeah. There was a lot of unrest on campus because of that. But I wasn't involved in marching or being proactive in the Civil Rights Movement. I kind of regret that now. I had a good friend from high school that was really involved with the Martin Luther King movement. He would march down in Selma and also Chicago. I admire him for that. It wasn't part of my portfolio or so at that time. I just wasn't, I don't know, like I said, my friend Jim Nofles and I used to talk about how we couldn't even go together in the south. We kind of wanted to go down there but at that time, it was just not a safe option to do.

Harvard Voluntary Defenders

MK: Were there areas of the law that you were particularly drawn towards at Harvard that then influenced your career choice?

C: I liked criminal law. I joined the Harvard Voluntary Defenders program and I worked as a volunteer giving legal assistance to indigent defendants in the lower tiered court system at Harvard Law. I thought I wanted to do defense work as opposed to being a prosecutor and *[laughs]* I ended up doing the opposite when I got out of law school. I was really drawn to trial work and being in the criminal justice system.

MK: Do any of the cases that you volunteered to work on stand out as influencing your decision to go a different direction from defense to prosecuting or just stand out in general?

TC: I remember going over to Plymouth, Massachusetts on a case to defend these two hardened criminals who were charged with stealing a pay telephone. They actually took it out of the phone booth. They took it to their apartment and then stole all of the coins in there. The police obtained a search warrant to search their apartment and the probable cause that they articulated in their search warrant was completely and utterly deficient. What it amount to was this—I forget their names, call them “Joe” and “Willy”. “No one had ever stolen”, this was what they put in their affidavit. “No pay phone had ever been stolen before in Plymouth. Joe and Willy got out of prison a month before the pay phone was stolen. Joe and Willy were in prison for stealing, therefore, they must have stolen the pay phone.”

Based on that, they went to the judge who gave them the search warrant. They went to Joe and Willy's house and they found the pay phones. They were right. I filed a motion to suppress. I argued that there wasn't sufficient probable cause shown. It was a classic case of no probable cause, just conjecture. The judge came out after I filed the motion to suppress. I had filed it a week before the hearing. The judge comes out, “Mr. Coffin, you go to Harvard Law School, right?” “Yes.” “Tell me this. Do you know how many search warrants have ever been issued by this court?” “No. I don't.” He said, “They're very rare. They're very rare. Normally, the police don't even bother to ask for search warrants. You expect me to suppress the evidence when they ask for a search warrant when they hardly ever ask for one?” I said, “Well, that's the law.” He laughed at me and said, “Motion denied.”

Now, these lower courts were not courts of record. So, if you lost in the lower court, you were automatically entitled to a new trial in superior court. These were called misdemeanors courts and they weren't courts of record but as the name implies, they could only handle misdemeanor charges. They could have charged it as a felony but it would have been in superior court. In misdemeanor court, the level of penalty was less than a year. After he ruled, my clients wanted to talk to me. They said, “Well, what do you think we should do?” I said, “Well, go to trial. You have a perfectly good case. You can ask for a new trial in the superior court and you have a very good motion to suppress because there's no probable cause here for the warrant.” And they said, “Well, what would you do?” I said, “Well, there's a chance that you could lose in the superior court. You're asking me what I would do and I don't have a criminal record so this would be a big deal to me but looking at you two guys, you've got long rap sheets.” The judge, I forgot to mention, the judge announced he was going to put them on probation. “The judge is telling you that you won't go to jail if you accept his ruling. Do you really care about two more misdemeanor convictions?” “Nah, you're right.” And so they gave it up. I remember that. I remember that one.

I remember another one where there was an informant. I was representing a hardened criminal. I set forth another affidavit in support of the charge. They wanted me to find out who the informant was. And I said, “Why do you want to know?” They said, “Well, we could pay them a visit.” I said, “No. I'm not going to go there for you guys so forget it.” So that kind of opened my eyes to the realities of doing defense work for some of these people charged with felonies and that

sort of thing. The clientele that you have is something that, I mean, some of them are more sympathetic to you than others. That kind of opened my eyes a little bit to defense work. It's not like you're Atticus Finch defending an innocent man all the time, you know. *[laughs]* Yeah.

MK: So, you graduated from Harvard in 1970, is that right?

TC: 1970, yeah.

MK: We can stop here. This would be a logical place to stop for the day.

Interview Three, October 5, 2018

Moving West after Law School

MK: We left off as you were finishing at Harvard. You shared a little bit about some of the voluntary defender cases that you took early on and kind of changed your trajectory.

TC: I thought I wanted to be a criminal defense attorney. When I graduated from Harvard Law School, I went out west and I stopped off in Missouri and took the Missouri bar exam, passed that, and then headed to California where my brother was in the navy. He was a lawyer in the Navy JAG [Judge Advocate General] unit and stationed in San Diego. I went there and I applied to the federal defenders' office in San Diego and they did not hire me so I went across the street and that's where about the best thing that ever happened to my career occurred. I applied to the US attorney's office and they did hire me which is very unusual because today, it would be impossible for a law school graduate to start right off the bat at a US attorney's office.

Back then, the US attorney's offices all across the country were undergoing a growth period because Congress was enacting new federal legislation that criminalized federally a lot of conduct that previously had only been actionable in state court. For example, they began expanding their federal criminal jurisdiction over drug offenses. The US attorney's office in San Diego was initiating an expansion phase and so they hired me. So I started right off the bat in January of 1971 and they started to assign me cases to try. If you know anything about how this works, for new attorneys coming into an office, there are the older attorneys that are there, the ones that have been there for a while. They already have their caseloads and so they basically look through their caseload to see what they want to assign to the new guy. They pick the worst cases imaginable to give the new guy because they just figure, "There's no chance we're going to win this one. Give it to Coffin." That's how I started.

I was assigned to the court of a wonderful judge who was quite famous in his own right. His name was Thomas Murphy. He was a senior judge from the Southern District of New York. He was nationally famous because he was the prosecutor in the Alger Hiss trial when he was the first assistant US attorney in the Southern District of New York. That was a notorious trial in the fifties. Based on his background in that case and other cases he had handled, he was promoted to the bench and served on the Southern District of New York court.

In 1971, he had basically become a senior judge. As a senior judge, you're assigned around the country if you care to travel. He wanted to come to San Diego so here he was in San Diego and there I was the first assistant US attorney to try cases in front of him in San Diego. He was a wonderful mentor. I was brand new—right out of law school—didn't know what I was doing. After every trial, he would take me in his chambers and critique me and give me tips. This went on for the two months he was there. I probably tried 6 jury trials in that time period because we were a very busy district.

First Case as Prosecutor

TC: I remember the first case I tried. This dog case I'm about to tell you about. It involved an ATF [Bureau of Alcohol, Tobacco, Firearms and Explosives] firearms prosecution of this guy by the name of Donald Wiener and he was the owner and operator of some porn movie houses in San Diego. Back then, prosecutors were still charging obscenity cases. This was the old "no redeeming social value" test of pornography that had to be met. And this was Justice Potter Stewart famously saying, "I know it when I see it. I can't define it."

This DA [district attorney] in San Diego would prosecute Wiener every time he showed an allegedly pornographic movie—*Deepthroat*—stuff like that. Every time he prosecuted him, the judges would throw out the case saying, "Not enough evidence here to declare that this is obscene." You can't prove no redeeming social value. This happened no less than seventy times. They were all misdemeanor prosecutions. On about the seventy first time—and this was my case—he was charged with conspiracy to show a pornographic movie which raised it from a misdemeanor level to a felony level, technically. He had reached the point where he never even looked at the charges anymore. They never went to arrest him. They just sent him the notice with a court date and he would always just hand them over to his attorney and never even read them and they'd all just be dismissed, so he never paid the slightest bit of attention to them. While he was under indictment this time for a felony, he went and he bought a gun and he filled out a form that asked, "Have you ever been convicted of or are you under an indictment for any felonies," and he said, "No." Later, that charge was dismissed but in the meantime, ATF filed this charge against him and the US Attorney's Office brought it to a grand jury charging him with a felony for making a false statement. So, that's what the case was about.

I went to trial in front of a jury, in front of this judge I was telling you about—Murphy. He testified—Wiener testified. His lawyer testified. The jury was sitting there thinking appropriately, "What a bunch of crap this is," and there I was making my closing argument to the jury and I'm trying to talk about the sacredness of the law and how we had a solemn duty to uphold the law and I'm holding a law book. I look at the jury and they are unanimously laughing at me. [*laughs*] And so that's how I started my illustrious trial career, with the jury actually openly laughing at me during my closing argument.

Of course I lost the case and Judge Murphy would take me back and he would give me the critiques. I went through this process in front of him and I started out when I was a trial lawyer being too rigid in my approach to everything. I would write my questions out. I would write my opening statement out. I would write my closing argument out. It was just too wooden of an approach to be successful. With Judge Murphy's help and with my own common sense, I figured out, this isn't going to work. I realized that to be effective, you have to—number one—be yourself, not try to be somebody else, not try to imitate somebody else in your approach to cases but you had to be yourself. Really, what I had to be and what any good trial lawyer has to be, in my opinion, is to be a good teacher. What you're trying to do is explain your case to your pupils which are the jury. Like any good teacher, the best teachers are the ones that can take the most complex subjects and simplify them by examples and comparisons so that the student can understand them and grasp what you're talking about. Conversely, the worst teachers are the ones that can take the most simple subjects and make them hopelessly complicated to the student. In order to be a good teacher, you have to speak to the jury—to the students, in ways that they understand. The last thing in the world you want to do is pontificate—speak Latin to them. I've seen trial lawyers quote Latin to a jury and come off pompous like that. You have to get down and basically explain things to them in language that they can relate to and use comparisons that they can relate to. I began doing that. I quit writing out my questions. I quit writing out my arguments, my opening statements, my closing arguments. I just began speaking extemporaneously. I had a good memory so I could remember the facts of a case no matter how complicated they may have been. I could remember them and I could draw them up and I could basically give a closing argument without having to write everything out.

Once I began doing that and I began speaking to a jury just like—it's sort of like telling a story to your friends. If you walk down the street and you see a bank robbery, and there is a shootout in front of you, and then you go home and your spouse asks you, "Oh what happened

today, dear?" You don't write things out and just woodenly read it to your spouse. You just tell your spouse in common language the narrative. "God. You can't believe what happened today. I walked down, here's a shootout going on in front of me and I ducked under a car." Et cetera, et cetera. That draws the attention of the jury and they pay attention to you when you do that. When you get up and start just reading from a script, they wander. They look away. They look down at their feet or something and they just don't relate to that. But if you can engage them like you're talking to them in a conversation, that's when they will listen to you and they will absorb what you're saying.

That's what I began to do. I got pretty successful at it. I kind of rapidly tried a lot of cases in the office and I got to the point when I was trying pretty much more cases than anyone else. It was a busy district because it was a border district and we had lots of cases that we prosecuted and many of them went to trial. I began a career as a trial lawyer down there where rapidly, within several years, I got the point where I was considered the go-to prosecutor in the office down there in terms of trying cases. I wasn't by any means the head of the office, that would be the chief of the criminal division but I got to be quickly the one that they assigned the most difficult cases to try.

Memorable Early Cases

TC: One of the cases I tried early on was—it was *[laughs]* one of the funniest things to happen to me at a trial ever in this case. I had a case that involved a massive drug cartel that was bringing in tons and tons of marijuana from the Mexicali area south of the border to the Riverside area to sell along with cocaine, heroin, and everything else. They had one load that they brought in that was the subject of the case that I was trying. It ended up where the drug smugglers got into a firefight with the Riverside Sheriff's Department. Shots were exchanged and one of the smugglers was shot and killed.

That case ended up in federal court and I was the prosecutor on it. There was an informant in the case that had worked undercover with the drug cartel to arrange for the purchase of all this marijuana and other drugs and he was going to be a central witness in the case. A fascinating guy—his name was Michael Bohannon—to my knowledge. How much of this was true, I don't know, because I always suspected that he had a cover because he worked undercover. I didn't even really know if Michael Bohannon was his true name but that's what I was informed. I believe he had been a former football player for Southern California. The guy looked like a werewolf. All you could see on his face were his eyes and his nose and little bit of his mouth. Everything else was hair. I am not kidding you. From his eyebrows all across his face and his chin, he looked exactly like a werewolf and he was smart as a whip. I was prepping him in his testimony.

One of the initial purchases he had made from the drug members was heroin. Back then, they commonly packaged heroin in condoms. That's how they sold them. They would take an ounce and they would put it in a condom. I asked him, "When you bought the heroin, how was it packaged?" He said, "Oh. It was in a rubber man." I said, "Michael, this judge we're in front of is Judge Clifford Wallace." He was on the district court at that time. He ended up being chief judge of the Ninth Circuit. Everybody knew Judge Wallace was a very strict, religious person. He was a bishop in the Mormon church and he wouldn't tolerate foul language in the courtroom. So, I thought saying rubber was a little too racy and I said, "Okay, Michael. When I ask you this question at trial, instead of using the word rubber, I want you to use the word prophylactic." "Okay, man. Got it." So, he's up there on the stand and the courtroom was jam packed because there was a lot of interest in the case. I get to the fateful question. "And how was the heroin packaged when you bought it?" Answer. "It was in—it was in—what'd you call that fucking rubber, man?" *[TC and MK laugh]* Right there. I thought, "Oh my god." Everything was dead silent. I looked at Judge Wallace. Oh, his mouth was open, like, "What just happened?" So, I did my damage control. I said, "I think you mean prophylactic." "Oh yeah! That's right, man!" *[laughs]* So, anyway, that was one of my early cases and there were convictions in that case. I had, quite frankly, I didn't lose a case during that time that I was down there in terms of prosecuting cases.

I remember another case I tried and this kind of explains to you what my philosophy was. It was not uncommon for college students to be hired by smugglers to bring load cars in across the

border because the smugglers would figure these young college students wouldn't look suspicious to the customs people and they were likely to just let them on through without searching the car and they would get paid a couple hundred bucks. So, I had this one case where there was this young eighteen-year-old. I think she was a San Diego State student. She was stopped at the border and she had a couple hundred pounds of marijuana in the trunk. She—as they all do—denied knowing it was there. Back then, if you were convicted of smuggling marijuana, there was a mandatory five-year prison sentence, maximum twenty. I've always hated mandatory minimum sentences but that's what the statutory scheme was. You could—if the prosecutor allowed it—you could plead guilty to not paying the taxes on the marijuana—what we call a tax count. Everything is taxed—even drugs, as stupid as it sounds. Nobody pays taxes on drugs if they're smuggled in. You could plead guilty to not paying the tax and it was a two-year felony and you could get no mandatory minimum. You could get probation.

So, she happened to be the daughter of a family that had some wealth. Her father, I remember, would not accept the notion that she would commit any such crime and so they refused adamantly to plead. So, the dad hired the best lawyer in San Diego, criminal defense lawyer at that time, one of the best. His name was Lou Katz. We went to trial. She put the government to its proof. The typical defense was, "I'm just a naive college kid. I was down there," somebody said, "Hey. Would you do me a favor? Would you take this car across the border? I've got my brother up there who's waiting for it. Blah-blah-blah." That was basically her defense. The jury didn't buy it and she was convicted.

And now, here she was, convicted of this mandatory minimum, five years, at eighteen or nineteen years old. She was devastated. Her life was ruined. The day after she was convicted, I called up her attorney, Lou Katz, and I say, "Hey, Lou. This is Tom. Will you take a tax count now?" He said, "What? Are you kidding me?" I said, "No. I'm not kidding. I'll dismiss the smuggling charge. She can plea to the tax count and she can get probation." As a youth offender, the record would be wiped out if she completed probation. And so, that's what she did. My philosophy was—I don't need to ruin this kid's life. She made a mistake. She doesn't need to go to jail for five friggin' years over it. It's too harsh. She's never going to do this again. She got the holy hell scared out of her at the prospect of going to serve hard time. I didn't need to do that to her. That's kind of the approach I took. This is the *Les Misérables* background. What's just and what's fair? It's kind of a grey, flexible concept and it always has been with me.

Some of the best things that I did as a prosecutor was to give people breaks that I thought didn't need to go to jail or didn't need to serve time. For example, I had another case—this was after I came up here—involving a woman that her boyfriend was a meth cook. She would help him with the meth cook operation. They were both arrested. She jumped bail and they were fugitives for a year. Then they were caught and then they were brought back to court. He was convicted of a felony. He was the mastermind. I gave her a break even though those people would argue she doesn't deserve one. She did it plus she jumped bail. She made some bad judgements, but I led her plead to a misdemeanor. Because of her age, her record was wiped out. Twenty years later, I get a postcard from her. She says, "I just wanted you to know that because you gave me this break, I was able to go to pharmacy school in Canada and become a pharmacist. I never would have been allowed to do that if I had been convicted of a felony. I met my husband who is a pharmacist. We got married and we have this family. None of this would have happened except for the break you gave me." That was one of the best things I ever heard from somebody that I dealt with on a professional level. I've always felt—I don't need to break people. I always wanted to be fair and be as fair minded as I could. That came up in another story I'm going to tell you a little bit down the road here.

Gustavo Guerra Case

From that case, I went on to get more and more of the larger cases in the office. One of those cases was Gustavo Guerra. Gustavo was a drug cartel boss stationed in Tijuana. He literally smuggled tons of drugs across the border. We were constantly catching his loads being driven by

his mules. Some of his mules flipped and testified before the grand jury about all the stuff they had brought in. The grand jury returned an indictment against Gustavo Guerra. Gustavo had Parkinson's disease. On one occasion, he went to Chicago for treatment. We located him there in Chicago and arrested him and brought him to San Diego to face the charges. It was a huge case. The newspapers were all over it because of the sheer amount. It was one of the largest drug prosecutions in the Southern District of California that had taken place up to that point in time.

MK: What year was this?

TC: This would have been 1972, I'm going to say.

MK: Still very early in your career.

TC: Yeah. It was 1972, maybe '73. It had to be before August of '73 because this happened before I got married and I got married in August 25, 1973. So, I was still single at the time this happened. I'm getting ready. Gustavo is in custody. Nobody's going to let him out on bail. I'm in my office getting ready to fill out this discovery form that we had to fill out in every case. In it, the prosecutor is supposed to tell the defense attorney whether there was a search warrant executed, whether there was electronic surveillance, any electronic wiretaps, anything like that. I'm filling out the form and the case agent is with me and I'm asking him questions. One of the things we have to answer is, was there any wiretap. I had never been told there was a wiretap so I was going to fill it out no and the agent, whose name was Henry, says, "Tom, don't put me on the stand." I said, "Henry, what are you talking about, don't put you on the stand?" He said, "Well, I don't want to lie." I said, "Well, what do you mean you don't want to lie?" Basically, he told me that they had obtained a wiretap on Guerra's phone at his residence by bribing the Tijuana telephone company and he said, "All this was done,"—and I don't doubt that it was done with the knowledge of the state judiciales down there, "but it can't come out because they will deny it and we will have serious problems with our relationship with Mexico." I said, "Well, Henry, I can't lie. I've got to fill out this form truthfully. I am going to have to fill it out." He said, "Well, do me a favor. Would you at least wait until tomorrow until you file anything? I want to tell my boss about this."

So, the next thing I know, his boss calls my boss, the US Attorney Harry Steward, and Harry Steward talks to me. He says, "Well, what should we do?" I say, "They didn't get anything out of the wiretap so it's not like the case is going to be hurt because they seized nothing. I just have to disclose it and on we go." The head of the narcotics office, Henry's superior, called the head of BNDD [*Bureau of Narcotics and Dangerous Drugs*] in Washington D.C. who interceded with the attorney general of the United States and I guess sent some sort of memo to the attorney general of the United States basically saying, "If this comes out, we're going to be thrown out of every country that we work in. This will be a disaster. We can't let this happen." So, with that, the attorney general of the United States who at that time was John Mitchell, sent a directive to the US attorney, my boss, directing him to dismiss the case without explanation—directing me to dismiss the case without explanation. Now, think of this. Here was all this publicity about this huge drug cartel kingpin that we arrested splashed all over the media and I'm supposed to go into court and without explanation dismiss it. How's that look?

MK: Wow. What a difficult position!

TC: So, Harry Steward, the US attorney tells me this and I said, "Harry, okay, but they don't tell us when we have to dismiss it. I have an idea." He said, "What's your idea?" I said, "Well, I've always been struck by the fact that Guerra would not make any effort to hide the drugs that he had his mules bring into the United States." He would send them all in in pickup trucks with canopy covers and didn't take any measure to put them in, like they typically do, in secret compartments—a lot of times, they'd get like big oil tankers that would have secret compartments in them where you could hide tons of the stuff to make it harder for customs to find the stuff. But he would just

take his and just put them into the back of a pickup truck and cover it with a canopy and send them right across the border and they always got through. And I told Harry Steward, I said, "Do you know, I've always thought he's got somebody on the take. He's not taking any precautions. Let me try something."

So, I called Guerra's attorney, a really good lawyer in town. His name, ironically, was also John Mitchell. I said, "Hey, John. I tell you what—on Guerra, I got a hunch that he's got some border people on the take. If he agrees to cooperate and flip on whoever he has on the take, I'll dismiss the case when he's done cooperating."

So, he talks to Guerra, confirms that he's got two guys on the take. I was right and he was willing to become a witness against them, stay in custody until they were prosecuted and the case was over with in exchange for a dismissal. I said, "You've got a deal." The FBI began investigating the two immigration officials. Byrne and O'Donnell were their names—one was customs, the other was immigration. I forget which was which. One of the issues to firm up the case was that Guerra's wife was the bag lady. She was the one that would bring up the cash for the payoff and so we had to get her testimony as well. She was an American citizen. Her name—if I remember right—was Marilyn. I can't remember her last name—Guerra, but I can't remember her maiden name. We wanted her to come up and meet with the FBI and testify before the grand jury. She wouldn't come up. She didn't trust us. She thought we were going to—if she crossed the border—we were going to arrest her and throw her in jail. I thought, alright. We'll go down there and talk to her.

We went down to Tijuana at night. We were going to meet at a public restaurant. This was a restaurant I'd been to before. They were one of the restaurants that invented the Caesar salad—it was in Tijuana—a famous restaurant down there. So, we were going to meet down there. It was me, an FBI agent, and John Mitchell—Guerra's lawyer. We all went to this restaurant which we thought was going to be a public setting. We get to the restaurant and there's nobody in the restaurant but Marilyn and her bodyguards who are lined all around the restaurant. Most of them were off duty, state judiciales that were also on her payroll. So, we started talking to her, had dinner, and she finally got to the point where she trusted that we weren't going to do anything and she agreed to cooperate. She started to cooperate and then she would come over and she would testify. She told us later that her bodyguards had orders to shoot to kill us if we made any sudden moves because she still thought that we were going to try to grab her and take her across the border to get her up there. With her cooperation and with Guerra's cooperation, I dismissed the case. Byrne and O'Donnell were convicted of charges and of bribery. That was that case.

Now, here's the interesting part—a year later, I have another big case. It's another case where the case agency is the Bureau of Narcotics and Dangerous Drugs, BNDD. This case involves a big heroin conspiracy based in Thailand. There were two defendants that were arrested in Thailand. They were from California. They went over there to score a bunch of heroin and bring it back here. They were arrested in Thailand and the Thai authorities turned them over to the American authorities for prosecution in the United States and so I had that case. I'm in my office getting ready to handle that case and I get a visit from the new head of BNDD in San Diego who replaced the guy that was head when I was prosecuting Gus Guerra. He comes in. He says he wants to talk to me and I say, "Oh yeah, what about?" He said, "Well, I don't know if I want you prosecuting this case." "Why not?" He said, "Well, because of the way you handled the Guerra case." I said, "What do you mean?" He said, "Well, you dismissed the Guerra case." "Yeah." "Well, word is, you took money under the table to do that." I looked at him and I said, "You son of a bitch. Don't you know what happened in that case?" "What do you mean?" I said, "It was your agency that insisted that I dismiss the case." I told him everything that happened and I even showed him some of the memos that went back and forth that I had kept and he was like he had seen a ghost. So, they created this false narrative to cover their rear ends—blaming me for the fact that Gus Guerra's case got dismissed. So that taught me something about working in the government. Sometimes you have to really be careful that people don't cover their mistakes by trying to shift the blame to somebody else. I was going to be the fall guy for that particular case. My children, especially, are interested in that part of that case because here I was—I essentially had risked my life to go down there to turn something positive out of this mess that had been handed to

me and my reward, ultimately, was to be painted as somebody that was corrupt. That was the narrative that was used to cover the mistakes that were made by those that I basically bailed out of the mess they had created.

So, I went on with my career down there. I ended up with one other case I want to tell you about down there that kind of also explains the philosophy I had about being fair and impartial as a prosecutor. Some of the rules I lived by—I would never lie to somebody. I was always going to be truthful to them. For example, in the Guerra case, I was not going to lie and say there was no electronic surveillance when there was. I was really firm about that. I'm not going to sell my integrity in order just to get a prosecution—conviction out of a prosecution or anything like that. I was going to try to be—not only would I not lie—I was going to try to be completely fair and impartial. I wouldn't treat people differently based on their status in life whether they were big powerful important people or whether they were just the little guys—that's that San Diego State student, for example. Yeah, she was the little person—not big and powerful, but I was not going to treat her any differently than I would for somebody that was a very important person in the community.

So, the case I'm about to tell you about involved very important people in the community. This was a massive labor union trust fund embezzlement investigation that was started by another attorney in the office and I was assigned by the US attorney to take over the investigation and the grand jury. What it concerned was a local union—labor union 89—Local Number 89—which were the laborers, laborers are construction workers, unskilled basically construction workers like hod carriers—cement pourers—as opposed to carpenters who were more skilled. Carpenters had their own union. This was the laborers Local 89. They had these trust funds, these pension funds—health and welfare funds set up for the benefit of the union members. These funds were managed by trustees and the trustees consisted of an equal number of labor union officials, like the president of the labor union, the business manager, et cetera and business people in the construction industry, like owners of a construction company. They would serve on the pension fund.

This case involved an investigation into various schemes that had been created to divert money from the trust fund to the trustees both on the union side and on the business side. They would take, for example, they would get extra money to go on their trust business. They would get more money than their expenses were. They would get health benefits that they weren't entitled to. They would get pensions that they weren't entitled to. So, there were various different ways they had of diverting money from the trust assets to themselves. They had an attorney who was advising them about this. It was a pretty complex case. There were something like sixty subjects of the investigation that at one time or another had been trustees or people associated with the management of the trust fund. I had to basically sort this out as to who, if anybody, should be prosecuted. Quite frankly, there was probably probable cause to name as many as sixty of them as defendants. I wasn't going to do that.

When you try to prove something like embezzlement, there's a state of mind that you have to prove. It's called specific intent. Did you have the intent to steal? None of these people had criminal records. All of them were pillars of the community—the union president, president of a construction company, et cetera. So how do you sort out who had the requisite intent and who didn't? Intent can be hard to prove.

I'll tell you a little bit about the example I used in the case in front of the jury at closing argument. I came up with a formula in my mind. I wasn't going to indict anybody unless I could show that they engaged in three separate types of embezzlement. One wasn't enough. Two wasn't enough. There had to be at least three. Now, some of them had as many as—I forget how many ways there were to embezzle now but they were like eight or something. Some of them had all eight. But I insisted that you have at least three. So, out of that formula, the grand jury indicted a total of eighteen defendants—or was it nineteen? I think it was nineteen defendants. I offered most of these guys misdemeanors instead of felonies and about eight of them took that offer and pled to misdemeanors. All of those guys got probation. Eleven went to trial, including the attorney for the trust fund.

That was the longest trial I ever participated in. It was a three-month trial. I was the lone attorney on the government side. I never liked to work with anybody else. I always wanted to be the lone wolf because that's how I worked. I didn't like to stop to explain myself as to what I was doing. I was very instinctive. I was very flexible in the courtroom. I didn't want to be held back by somebody that I had to constantly explain myself to. So, three months in trial. At the end of the trial, here's the closing argument I made—this specific intent concept. I tried to come up with an example. How do I explain this to a jury what the specific intent to steal is? How do I make this case fit these facts? What example do I come up with? And this is what I mean about how you have to explain things by using comparables like a teacher would. I used the example—I said, "Look. What's this concept of stealing? How do you illustrate it? Well, here's an easy one. At night, somebody puts on a mask. The grocery store is all locked up. They jimmy the lock and they go in and open the safe, crack the safe, and steal the money. Intent to steal—easy—classic case. But how about this? You go to the grocery store and you buy something for eight dollars. You give the clerk a ten dollar bill. She makes a mistake. She thinks you gave her a hundred dollar bill so instead of giving you two dollars in change, she gives you ninety two dollars in change and you know that—that she made a mistake. What do you do? Do you give it back to her? That's what you should do and say, oh, I'm sorry ma'am, you made a mistake. Or, do you recognize the mistake and decide to take advantage of it and stick it in your pocket and walk out of the store? That's stealing too. If you're given the opportunity and you take advantage of the opportunity knowing that you're not entitled to it—that's stealing."

That's the example that I used, because all of these guys, all of these defendants, they all had character witnesses. Priests, rabbis, you know, men of the cloth, people that were unimpeachable in the community. One of them called a judge—yeah—a state judge as a character witness. I knew they were all going to have character witnesses and they all did. That's what I was confronted with. I'm not complaining that that's what I was confronted with. That was really what the case was about and I was trying to be fair and I recognized some of these folks could make a mistake. That's why I had the three strike rule. They were all convicted. They all went up on appeal and their convictions were all affirmed on appeal. Well, one defendant, a business leader—his name was Robert Little—he had only three strikes and the court of appeals affirmed two of them as having sufficient evidence and the third one, they said, "We don't find sufficient evidence on this one." They reversed that count. It didn't make any difference because he got the same sentence on all three so he was still looking at—I believe it was two years in prison. It was kind of a pyrrhic victory for him. But I saw that and I said, "Damn. I never would have indicted you if I'd known you only had two and the Ninth Circuit says you only have two. So I called his lawyer. This is kind of like what I did with that young woman. I said, "Guess what? I see that your client had one of his counts reversed and so I'm dismissing the case." He said, "You're what?" I said, "Yeah." They all knew my formula. I repeated it to him. I said, "You guys all knew you had to have three. He only had two and so I'm going to dismiss his conviction."

I went back into court and the judge allowed me to do that. I just said, "The government hereby moves to dismiss the case against Robert Little." He was a business guy. He was on the business side of it. None of the labor people complained because they knew that I was a person of my word and they knew about my formula. I mean, all their lawyers had discussed this with me. I'm telling you, I had people come into my office in terms of plea negotiation and they knew, for example, one lawyer knew I was a very active Catholic. So, he started telling me about his client, was a very active Catholic, went to daily mass, et cetera. I said, "I can't distinguish between people because of their religion. I can't go there. I'm not going to say you get a free pass because you're Catholic but you over here—you're not religious so to hell with you." I said, "That's not what I can put into the formula." I had to look at everybody and say, this was my three strikes formula which was the best I could do because I can't read minds. That was the best I could do under those circumstances. But I had reached a point in my career, which I look back on it now—and quite frankly—I can't see anybody else being able to do what I did, where I could go in and drop a case and even the US attorney wouldn't criticize me. The judge wouldn't criticize me. The other lawyers in the case wouldn't criticize me as being unfair because they all knew me so well. That's what I'm

really proud of because I could make those kinds of decisions and I could do it and people would accept it because they accepted me as a person of integrity which is something that I really treasured that I would have—that I would be viewed upon in that way because that's a precious asset to have in the legal profession—when people find you to be credible and a person of integrity. I've always striven to not abuse that.

There was one other case I'm going to tell you about when I was in San Diego that's a very—it's the last case I tried down there. I was chief of the criminal division when this incident happened. I think it's kind of pertinent to what's going on today, quite frankly. It was an eighteen-year-old Hispanic woman that was trying to sneak into the country to join her husband. She was an undocumented alien. Her husband was an undocumented alien. He was working up in the L.A. area and he sent for her. She came up from a small village in Culiacán. They sent for her cousin who was a resident alien. Her name was Josefina to go meet her at her aunt's house in Tijuana. The aunt's name was Secundina. From there, they put her in the trunk of Josefina's car, brought her up to the border at about one in the morning on a Sunday morning to try and sneak her across only she was found by immigration. So, they separated her. Her name was Maria Lopez from her cousin. They sent her cousin, Josefina, back to L.A. and with Maria, they sent her, on foot, back to Tijuana at one in the morning.

At that time, that border area was a war zone and she never made it. Her body was found the next day. She had been raped and murdered. I got involved with that case as chief of the criminal division. I worked with the FBI in putting together that case. We didn't have DNA back then. This was years before DNA so all we had was trace evidence like hair follicles, paint flecks, semen analyses but we couldn't get DNA out of that. We focused on the perpetrator who was a federal protective officer by the name of Michael Kennedy. We did a search warrant at his house and we found some incriminating evidence that we then used to help build the case—hair evidence. We got his head hairs and his pubic hairs and they were identical. The word they used was 'microscopically indistinguishable' from the head hairs and the pubic hairs—foreign hairs found on her. His uniform had paint flecks on it that matched the paint from the floor of the room where she had been killed. There was other evidence that was circumstantial evidence that we used in the case. He was convicted but I asked the immigration officers that returned her to Mexico at that hour of the morning. I said, "Why did you do that? Why didn't you wait? Let her cousin take her back or let her aunt come get her? Knowing what kind of environment, why on earth did you do that?" Well, they just kind of shrugged and I said, "Well, how would you want your, if it was your daughter, how would you want her treated?" And they looked at me like, "Well, our daughter wouldn't do such a thing." I said, "Well, of course not. Your daughter is not from a third world country and has to sneak up here to scabble out a livelihood." No empathy.

See, that's the problem, where we lack empathy with people that are coming here to try and basically just eke out a living given what they go through or flee from death squads where they're coming from. And how do we treat those people? So, that case really stuck with me. It really colors my view of what's going on now down at the border now, in my mind. I mean, the thought of separating kids from their parents is, to me, so cruel and inhumane. Lack of empathy, and this is why I say that people that approach the law black and white, with such rigidity, and I've had people that I know, my classmates from high school, we discuss some of this stuff, what's going on at the border now. They'll email me and say, "Well, what is it about the word illegal that you don't understand?" I'm saying, "What is it about the word human you don't understand? Humanity? Compassion?" I've always tried to emphasize that in my approach to what I do.

So, that was the last case I tried down there. Then I came up here and was in the US attorney's office up here beginning in December 1980.

MK: Okay. So that took us from 1971 to 1980 and those were the cases that really stood out to you. Before we move on to the next chapter of your career—

TC: Okay.

Dating, Marriage, and Children

MK: I'd like to ask a few other questions about the things that were going on in your life at that time.

TC: Go ahead. Oh, sure.

MK: We can talk about meeting your wife, we can talk about, I'm curious about learning more about how you mentioned you preferred operating as a lone wolf. I'm curious to learn more about your relationship with your colleagues. If you want to take me through any of those topics.

TC: I met my wife on the fourth of July, 1971. That was my first year in the office down there. I started in the US attorney's office on January the fourth, 1971. I met her roughly six months after I started. She was a friend of one of my colleagues in the office who was an Assistant US Attorney who knew my future wife's family. I was going to have a fourth of July party. I did have one and my colleague thought I should meet Penny and so she told Penny about the party. Penny came to the party. I lived at that time in an apartment that was right on the boardwalk of Mission Beach. So you walk out my sliding glass door and you're on the beach, right down to the ocean. So that's where I lived and there was a boardwalk right outside my sliding glass door and I had a little patio right next to the boardwalk. We cooked this fabulous fourth of July pinto bean dish and meats and all that stuff. Penny came along and we struck it up. I got really interested in her, really fast. At that time, I was, let's see, this was 71 so she was twenty three and I was twenty six and so we started to date. She had another boyfriend at the time and I was dating around at the time but that quickly ended and we both just started to see each other to the exclusion of anybody else. We seriously dated for about a year and I proposed and we ultimately got married on August 25, 1973. We dated for just about, it would have been, a little over two years before we actually got married but we got engaged at, I'm going to say, after a little over a year and a half, we got engaged. During the course of our dating, that's when I had this notorious run in with the Hells Angels that I was telling you about. Did we get that on tape?

MK: No. That would be a good story to revisit.

TC: So, we were out for a double date with a colleague of mine who was an older guy, in his fifties. He had a Mexican girlfriend who was also in her fifties and he liked to go bar-hopping. She was very familiar with south of the border. She knew a place down in Rosarito Beach where you go down there and people would open up their homes and serve dinner to you. We went down there and we had a lobster dinner. You'd eat right in their living room. They'd cook it and they'd bring it to you and they'd serve you drinks. It hardly cost anything. Then, we were coming back from that and he said, "Hey. I know this country and western place out in Lakeside, California." Which was a suburb of San Diego. "Let's go there." I said, "Okay. Fine, I'm good." We go out to this place called the Kentucky Stud which, the last time he had been there, about six weeks earlier, it had been a country and western place, a bunch of cowboys. Only, what he didn't know, was that about two weeks before we ended arriving there, the Hells Angels from Lakeside had taken over the bar, as they are prone to do. They will come in basically, they will say, "This is our bar from now on. Everyone else get out." They got into a big fight with the cowboys, beat them all up and took over the bar. So now, it was no longer a cowboy bar. It was a Hells Angels hangout.

So, we walk in there and I'm with Penny. She's a quite lovely young lady. As soon as we walk in, Shelby—he was my colleague—he's in his fifties and his date is in her fifties, so they weren't interested in her at all but who are they interested in, of course, but Penny. This guy comes right up to me and he says, "Hey, man! I want to dance with your rib." Rib, being Adam's rib. So I got it. I got it. I said, "Oh, well, thank you. I'm honored but I have to decline. I'm sorry." He said, "No. You don't understand." And he tells me his name which I forget now. He says, "I'm the president of the Lakeside chapter of the Hells Angels and I am telling you—I am going to dance

with your rib." So, I'm thinking to myself, "Alright, how do I get out of this?" I had my federal prosecutor's ID in my wallet, or in my pocket. Do I pull that out and show it to him or will that make matters worse? Will they decide that they want to kill me just because I'm a federal prosecutor? Or kill me because they've gone too far and don't want to get in trouble? Either way, it's the same result. Do I play that card or is it best not to play that card? While I'm thinking, he looks over at the bartender and says, "Hey. Give me my piece." And I look up at the bartender and the bartender says, "Yeah. You know, I make them check their guns when they come in." By this time, his gang is gathering around. I had this inspiration because I had a \$20 bill in my wallet. So, I pulled out the \$20 and I said, because I had eye contact with the bartender, when he was telling me about the gun. I said, "May I please everybody in here a drink, on me?" *[makes poof noise]* They all ran to the bar. *[laughs]* I grab Penny and we got out of there lightning fast and never turned back. Never went there again, as you might imagine. *[laughs]*

MK: That seems like a reasonable— *[laughs]*

TC: I figured—you know—my negotiating skills were nascent at that time. They got better as the years went on and I became so involved in settlement work which is what I do now. In the back of my mind, I figured—this guy is not going to back down. This is his gang behind him. He can't afford to back down or he won't be their leader anymore. He's gotta do one of two things—he's either got to dance with Penny, which is not going to end well. My thought was at the end of this thing, she's going to be raped. I'm going to be dead. We're both probably going to be dead. Or if I refuse, he's going to get violent in front of his gang. He can't back down and so I decided, maybe there's a graceful way out of this. That's when I had the inspiration to buy them all drinks. That gave him his way to declare victory, I guess, because he got everybody free drinks. That's what you always try to do when you negotiate, is give everybody a win-win. *[laughs]*

MK: Oh.

TC: We ended up coming up here. I got married, started to have kids, Penny and I did. We moved off the beach. We moved inland—ended up, ironically, moving to Lakeside, the scene of the near disaster.

MK: Oh, wow!

TC: Yeah. As our family grew, we had our third child in San Diego. Then she got pregnant with our fourth. As our family was growing, I just did not want to live in Southern California and raise a family. We would ask our babysitters, for example, "Hey. What do you guys like to do on the weekend?" It was always, "Go to the mall, hang out, pick up guys. Go to the beach, hang out, pick up guys." I thought, "Well, I want to get my kids out to the country." I took a fishing trip up here and fell in love with the Northwest. They had an opening. They opened a branch office of the US attorney's office in Eugene. I think they opened that office in the mid-1970s and they were looking for an experienced federal prosecutor. I fit that bill so I applied and got the job. We moved up here in December 1980. What delayed our trip—I would have been up here earlier but I had that homicide case that I had to try. I had to try that three times because the first two trials were hung juries. I first went to trial in June. Hung jury. Second trial in October and the third one was, I think, in November. And that was the unanimous verdict, the guilty verdict. After that was over with, we took off and came up here. I started as the criminal prosecutor here in the Eugene office for the US attorney's office. From 1980 to 1991, the end of '91, I was in the US attorney's office up here and then in 1992, beginning in February, I was put on the bench up here. So, did you want to talk about my career up here beginning now or do you want to do that next time?

MK: Let's do that next time. I'd like to, let me just check on time here, I've got about five minutes before I have to, I'm going to be crossing the hall to speak to Judge Alley next at 3:30pm.

TC: Oh, okay.

MK: But let's just talk a little bit about your relationship with your colleagues between 1971 and 1980.

TC: I had a great relationship with my colleagues. Everybody down there got along pretty well, quite frankly. We, typically, did not assign pairs of attorneys to try cases. For one thing, there were too many cases. If we paired up on every case, you couldn't handle as many cases as we were handling. We, typically, just assigned one prosecutor to one case. Sometimes we had outside agencies that would come in and they would want to assign their attorneys if they had one to help with a case. That's one of the reasons why I would never do a tax case when I was down there because the tax division was insistent of having some tax attorney oversee the case and I didn't want to work with them. Call it selfishness if you want. I don't think it was being selfish. I just am a person that thinks fast on his feet and I believe in being very flexible. I don't have a script that I stick to. I'll give you an example of that. Like in the Local 89 case I was telling you about. All these character witnesses that were called, for the most part, I didn't have any questions of any of them. Most prosecutors that I know would have had some sort of litany of questions to ask every character witness. I was just waiting for a good point to ask a question. There was finally one guy up there. He was a minister. He was going on and on about this one defendant who was a union official defendant and about how honest he was and how he would never steal and about how he would never do anything that he was charged with.

There was one type of theft that they did where they were charged with where they'd go on these trust conferences and they would give themselves two or three times the amount of money than actual expenses were. I asked the minister, "Hey. Tell me—did Mr. so and so tell you that when he went on trust business he would charge the trust three times what the expenses were?" He said, "I'm glad you asked me that because I asked him about that and he assured me that that never happened."

Their position at trial in front of the jury was that it did happen but, "We were told by our lawyer that it was okay—that it was part of our compensation." I asked him that one question and he answered it in a way that kind of blew all of the defendants away because they were all taking the position in front of the jury, "We were told by our lawyers that it was okay to do this, that it was part of our compensation." Here's this guy who knows that it's wrong to do it because he lies to his pastor about it. I said, "Thank you." That was the only question I asked. I didn't need to ask anybody anything else because I would look at the jury and they would frown at all the crap they were being told. They didn't blame the character witnesses because the character witnesses believe it. Then I asked the judge that was called as a character witness. I had studied all the records. I've got this good memory. I had the ability, because there were something like ten or eleven years worth of minutes for all the four different trust funds and they all met about once a month. Do the math. That's every year, there'd be something like forty-eight meetings and forty-eight meeting minutes times ten. I studied all of those minutes and I could remember where things were. I remember that the judge had testified. The president of the union, a guy by the name of Solomon, he had at one of the meetings, moved the trust to approve a one-hundred dollar donation to the campaign of Judge so and so for Superior Court. So, I asked Judge so and so, "By the way, did you ever take any money from Mr. Solomon on behalf of the union when you were campaigning?" He said, "No! Never did!" "Thank you." As soon as he got off the stand, I said, "Your Honor, I'd like to call attention to exhibit so and so—the minutes of such and such a date. May I read it please?" "Yes." Then I read where he had called for the approval of the donation, Judge so and so, and the jury heard that. That was it. I would do that and I would pick my spots. That's what I mean about being flexible. I didn't want somebody else there that I would have to—because when you pair up, people want to be assigned, "Okay, you get this witness. I get that witness." I couldn't do it my way if I did that. I just didn't want to be hampered with trying to choreograph what somebody else wanted to do. I wanted to think on my feet. A lot of

what I did was completely reactive. That's what I love about cross examination because cross examination is just reacting to the testimony as it unfolds in front of you. I didn't want to be basically, have to explain myself to other people on my team when I did that. But it didn't get in the way of anything. There was one case and one case only that I remember where I was ordered to team up with somebody. He was from the SEC. He was a nice guy. I suffered through it and did it but normally I just did not like to share it with people.

MK: Well, I might ask you about that next time but for the time being, I'm going to wrap it up.

TC: Okay. Good. Alright. Good.

MK: Thank you again.

TC: You bet.

Interview Four, April 17, 2019

Relocation to Oregon

MK: This is Makaela Kroin. It is April 17th, 2019. I am in the chambers of Judge Thomas Coffin. We last left off talking about your time as a US attorney in California. At the time, you were the chief criminal—

TC: Chief of the criminal division.

MK: Chief of the criminal division. And in about 1980—am I right—you relocated to Eugene?

TC: Yes. I did. I came up here because I wanted to relocate my family that was growing from the hustle and bustle of San Diego and southern California to a more sedate, country type setting. I came up here on a fishing trip with my brother and I fell in love with the Northwest, and I began looking for a job up here. I put in at the Spokane US Attorney's office, the Seattle US Attorney's Office, the Boise US Attorney's office—well—I didn't put in at Boise. I took a trip to Boise and I wasn't that impressed with it. And the Portland US Attorney's Office. I took a trip to Seattle. It was too much like San Diego in terms of the congestion and everything else.

Oregon was perfect for me so I interviewed with the US Attorney at that time, Sid Lezak. He was looking for an experienced federal prosecutor to staff the office, that had been opened recently in Eugene because the attorney that had been there doing the criminal work, I think the office opened in something like 1975. The attorney that had been doing the criminal work transitioned to Portland. She is now the Attorney General of Oregon, by the way, Ellen Rosenblum. I fit the bill because of my experience so he hired me. Originally, I was to start in like the end of 1979 or early 1980 but I had a criminal case that I needed to handle down there—a very complex homicide—tragic homicide case with a federal protective officer who had waylaid an undocumented Mexican woman at the border, raped her, and killed her. I had to try that case three times in 1980 because the first two times ended up in a hung jury and the third time the jury convicted him. The third trial was in December of 1980. Right after that was over, my wife and I packed up and we moved up here.

We arrived here right before Christmas of 1980. In the meantime, I had done a house hunting trip up here and I found the place of our dreams—this farm on the coast fork in the Creswell area with about seven acres. From there we raised our family, over the next, well, what's it been? 1980 to 2019 so thirty-nine years we've been there raising our family so it worked out perfectly.

I began my career up here doing all the criminal prosecutions in Eugene. When I first got here, we did not have a grand jury in Eugene. I had to go to Portland to present cases to the grand

jury. I requested the chief judge to convene a grand jury in Eugene. He agreed—that was Judge James Burns. So we started with a grand jury down here. When I first got here, the criminal caseload was fairly low on an annual basis. With the grand jury in place, we expanded our criminal prosecutions to where, quite frankly, they started out being only a couple dozen a year, to I was handling a caseload of probably ninety felony cases a year with the grand jury in place. We also were handling cases from Medford, not just Eugene division, and from central Oregon, Bend, et cetera. Our caseload was beginning to increase with the grand jury in place. Now they have a grand jury in Medford as well. They established one down there. They still don't have one in Bend. They come over here to present their cases to the Eugene grand jury.

MK: When did they convene the Medford grand jury?

TC: You know, I can't remember exactly when they did that. I'm going to say it was probably sometime in the early 1990s because the caseload down there started to increase so it made sense. They also now have—they had a part time magistrate down there when I came, and that transitioned to a full time magistrate. The Eugene division and the Medford division expanded their caseload. In fact, in the Eugene office, we hired some more prosecutors—federal prosecutors—to staff the Eugene office because of the increase in caseload. So, the office went from just me on the criminal side to about three other Assistant US Attorneys and then they made me the supervisor of the criminal aspect of the office.

MK: Were you involved in the recruitment of these other prosecutors?

TC: Yes, in a way. I mean, I was in part of the interview process but the person who made the hiring decisions was always the United States Attorney. When we started hiring new criminal prosecutors here, the US attorney was Charles Turner. He was ultimately appointed after Sid Lezak, his term expired. We ended up hiring some new Assistant US Attorneys and the office started to grow and the caseload started to grow even more. So, we started to handle quite a few more criminal cases than we had before I transitioned up here.

MK: Were these mostly drug related cases?

TC: Yeah. At that time, when I got here, mainly our criminal cases were drug cases. Methamphetamine was the huge scourge in the community and in those days many methamphetamine suppliers were making their own methamphetamine here in the state with labs—clandestine labs that they set up. I had a number of cases involving organized crime elements that came up here, like the Hells Angels—the motorcycle gang—the Hessian motorcycle gang. They had set up meth lab operations and started to distribute methamphetamine. The DEA responded to that and our office responded to that by prosecuting some fairly substantial labs and trying to deter the infiltration of that element into Oregon. We were successful, quite frankly.

We also began to crack down on the suppliers of the methamphetamine chemicals and equipment to the meth lab operators because you have to have certain chemicals and glassware and everything else to produce the methamphetamine and so we began prosecuting some of those suppliers. One of the cases I was involved in was against Eugene Scientific which was set up as a chemical supply company but in reality, over ninety percent of their business was to meth dealers and they would be paid with cash and everything like that. We prosecuted them for aiding and abetting and conspiring to manufacture methamphetamine—shut them down and it became harder for the lab people to get what they needed.

Also, legislation was passed that outlawed some of the chemicals that you needed to make methamphetamine, and make it more difficult. The methamphetamine lab problem kind of disappeared and it was replaced by—methamphetamine didn't go away by any means, but the manufacturing shifted out of state. Then we began to see large quantities of methamphetamine coming in from Mexico. It would be transported up here and sold. That's the nature of the beast

right now, in fact, is that it comes in from—you don't see much in the way of homebrew, so to speak, in Oregon. Now it's all being made down in Mexico and then shipped up here.

MK: When you arrived and you were the sole criminal federal prosecutor, there were a couple of other civil prosecutors?

TC: There was one civil—one attorney that took care of civil work. He was later joined as the office began growing by a second attorney that was assigned to do civil cases.

MK: But largely you were independent. How did you go about setting up your office and organizing in this new state, in this new place? How did that transition work?

TC: Well, the transition, I was kind of unusual when I came here in the way I worked because I've always been—when I was in San Diego I was always given free reign. [*phone rings*] Excuse me one second. You might want to shut this off.

MK: Of course. [*recording stops*]

MK: All set.

Major Cases as Prosecutor in Oregon

TC: So, you were asking me about transitioning up here. When I got here, there was this big contrast between what I was used to down in San Diego and what I encountered up here. The main contrast was down in San Diego—being a border town—we had tons of federal prosecutions down there. I had a lot of independence as a prosecutor, as a trial attorney, and then when I became chief of the criminal division, in making independent decisions about prosecutions. When I got up here, I encountered a culture where the US Attorney's Office considered itself to be not the primary law enforcement enforcer in Oregon. There was a lot of deference that they gave to sending cases to state court for prosecution.

When I got here, I found out that the agents—the federal agents—DEA, FBI, and other agencies were taking their cases to the District Attorney's Office. Part of that was the reticence of the US Attorney's Office to accept prosecutions unless it was a clear need to do that and not defer to the state. I came from an opposite, prosecutorial culture—which is why I got the grand jury in place. They gave me a lot of discretion because that's why Sid Lezak hired me, because of my background and that I had been chief of the criminal division of a very large US attorney's office. That's what he wanted to staff the Eugene office in terms of overseeing criminal prosecution. I began accepting more and more cases for prosecution. I was kind of hampered by having to go to Portland for the grand jury. That's why I lobbied for and got a good grand jury here in Eugene. That resulted as I knew it would inevitably, in more and more federal criminal prosecutions. I met with the agents and I said, "Look. I want to stop this practice you have of running to the DA's office with your federal cases. You come to me and we're going to accept prosecution over cases we have jurisdiction." So that's why it escalated and we began going from just a relatively small number of criminal prosecutions every year to where it got to the point where we had to hire more federal prosecutors to come in. It also had an effect on the defense bar in the area because federal defenders increased their staffing to keep up with our increased caseload. More private defense attorneys were appointed to the CJA, the criminal justice panel, to where they would be appointed on large cases. I was here as a supervisor and as the main criminal prosecutor in Eugene from 1980 until 1992 when I was appointed to the bench after twelve years of serving here.

MK: Now did those changes, which would have been substantial for people here—did that cause any friction with the district attorneys or did it make sense?

TC: It surprised them. They weren't used to it. The district attorney at the time I came here was Pat Horton who was kind of a controversial figure. He did not have the best relationship with local law enforcement—the sheriff's office and the county commissioners. I kind of started out having somewhat of a conflict with him as he was trying to figure out what was going on—who is this guy who is here now? He's taking more criminal cases into the federal system and this is a new development. Actually, we got along pretty good after several incidents that happened.

One of the incidents was, there was a theft of cocaine from the evidence locker over at the district attorney's office. They used to have their own set of investigators. They would make drug arrests and they would store the evidence in a locker at the district attorney's office. There was a substantial amount of cocaine that was stolen. There was an investigation into the theft of the cocaine and the state was investigating it. I called the state attorney and offered to assist in the investigation because they were finding it difficult because they were investigating the district attorney's office and they were meeting with a certain amount of resistance. I called the state's attorney, a guy by the name of Bob Hamilton who was in charge of their investigation, and I offered to make him a special assistant US attorney and I would help him with the investigation. That was not received well at the DA's office. There was some concern that the investigation would basically result in charges against people in the district attorney's office unfairly—that they would be targeted out of some sort of political reasoning or motive, whatever you want to call it.

The way this case turned out is through our investigation, we developed evidence that there were two people involved in the theft that were—one was a Lane County DA investigator by the name of Stan Meyers and the other was a Eugene police officer assigned to INET [editor's note: Lane Interagency Narcotics Team, LINT], a narcotics investigation team by the name of Randy Belair. We ended up convicting both of them. Stan Meyers' attorney at the time made some noise in the news about how his client was asked about whether the district attorney, Pat Horton, by my office had anything to do with the theft of the narcotics. There was a lot of publicity about it. I made a statement to the news media that that was incorrect. We had not implicated or intimated that the district attorney was involved. What had happened was Stan Meyers had made reference that the district attorney was somehow involved in the theft and in response to that reference that he made during our investigation, we said, "Put up or shut up. You want to take a lie detector test on that?" He withdrew his comments and I pointed that out. I didn't think it was fair for the district attorney to be smeared with an allegation like that which was lacking in substance and which was attributed to me. So, I set the record straight. That really surprised the district attorney.

From then on, we developed a relationship where we trusted each other and everything was smooth sailing. That kind of helped us going forward to have a good relationship. So, there was a little bit of rockiness there at the beginning but things settled down and I think the order was put in place where federal cases were coming to our office. State cases were going to their office. Everybody seemed to have a better relationship.

Some of the cases I had when I was a prosecutor were—we didn't have the type of cases up here that I was used to in San Diego—had a couple. I had one case where these two renegades from the Midwest came out here. Jeffrey Frost was one of them and the other one was—I'm trying to think of his name now. Anyway, the two went on a crime spree. I'll think of his name in a minute. Over the course of about ten days, they kidnapped thirteen people including a couple. They began their crime spree—Robert Knott—that was his name—Robert Knott and Jeffrey Frost. If memory serves me correctly, they were from Wisconsin or Minnesota or some place.

They began their crime spree in Las Vegas. Their car broke down. They kidnapped an elderly couple who stopped to give them aid, stole their car, went back to their motel room, ransacked the room, left them tied up in the room, took off for Oregon. [They] came to Oregon, kidnapped a person in eastern Oregon, left them tied to a tree in the woods. He miraculously escaped. From there, they kidnapped a couple who owned a motel in Yachats who had a toddler—a baby at the breast. They repeatedly raped the wife. They played Russian roulette with the husband. They went to Washington state and they took a farm family hostage. They then took a—

let's see. There were some kids there. They held a gun to the kid's head. The father was there. The mother was there in the farmhouse. Then they decided to call a tow truck to make their getaway because the police were closing in on them. They took the mother as a hostage and then they took the tow truck driver when he arrived as a hostage. Then they got in the tow truck to escape.

The police set up a roadblock. There was a shootout and Frost was killed in the shootout, as was the mother of the child. She was hit in the crossfire—did not survive. He [Knott] was prosecuted here for the kidnapping and rape spree. His defense was insanity. That didn't fly. He was found guilty and sentenced to life in prison where he committed suicide ultimately. That case was pretty notorious. I had not seen a crime spree like that ever before. It was kind of a sensational type case.

So, I had that case. That was probably the most serious case I had here in Oregon that I prosecuted. Then, in 1992, I put in for the magistrate judge position. That opened up because the then magistrate judge, Michael Hogan, was appointed to the district court so we needed to have a replacement for him. I put in and was fortunate enough to get the appointment and have been here ever since.

Prosecutorial and Leadership Style

MK: I'm curious—before we move to that period, can you tell me how did you set up your staff? How did you organize your staff when you were working as a prosecutor here?

TC: My staff—you mean the other attorneys in the office?

MK: Yes. And were you—I know that you spoke about preferring to be a lone wolf on cases. Did you have to change your style? Did you still try cases in front of juries?

TC: No. I'm a firm believer in hiring good people, trusting them, giving them space to use their own skill set, and being available if they need some guidance, having an open door and encouraging them to come to me for advice and any assistance I could give them. I was treated, largely, that way. Hands off. Go do your job. We can trust you. If you have any questions, come back and we're here to help. I thrived with that because I am not a linear thinker. I am instinctive in a lot of what I do. I'm very analytical. I'm very—if I say so myself—perceptive about my tactical choices in the way I handle cases. For example, I've seen attorneys who will prepare for cross examining somebody by writing out all of the areas they want to cover and then going down those areas faithfully in their cross examination. I was not like that. In the first place, I found out when I started trying cases. Don't map out what you want to do and write it all down. It's too wooden. It's too rigid. It's too inflexible. I learned to put that technique aside and not use it. I've been blessed with a good memory. I could remember what I wanted to do without having to write everything down. My instincts would lead me where to go and I could tell when I was cross examining somebody for example. I could tell by their demeanor when I was in an area that made them uncomfortable. I would develop that area and if I thought that that was a weak spot for them, that was their Achilles heel, I would continue to go there as long as I was making progress and establishing what I wanted to establish for the jury. For example, that he's not credible. If I thought I achieved that goal, that's all I needed to do for the most part and I would end my cross examination because I did not want to get into another area where he could rehabilitate himself in front of the jury. I wanted to leave the jury with that impression. That was the way I was as a trial lawyer.

When I had trial lawyers working in the office under my supervision, I trusted them because we hired good people. I didn't need to micromanage them. I didn't need to have a lot of meetings with them to go over what their strategy was in a case, et cetera. They knew I was there if they needed some guidance and they would come to me when they needed guidance and I would give it to them but I wasn't going to look over their shoulders and make them uncomfortable—use up their time in the office by having meetings to explain themselves that weren't, in my opinion, necessary. So, I followed that. Quite frankly, I think that results in a healthy office. If people are not

worried about somebody looking over their shoulder, yeah, do we make mistakes? Yeah, everybody makes mistakes. That's how we learn. Learn from your mistakes but give them the freedom to develop their own style and their own way of approaching their cases. But I think the key is that, when you hire someone and you go through—these positions in the US Attorney's office are very much sought after by attorneys. The caliber of applicants that you get is very high. Given the pool of applicants that you have, you're pretty assured when you hire someone out of that pool, that you've got a very qualified person on your staff. I don't need to meddle in their day-to-day handling of their cases but I'm there for guidance when they need it and they would. They'd freely come to me.

MK: In your role as supervisor, what were your daily tasks like? I'm sorry. It's partially because I'm unfamiliar but maybe you can tell me more about what you were doing in that role as opposed to—

TC: Well, in the first place, I had my own cases.

MK: You still did have your own cases.

TC: Oh yes. I did not give up my caseload. I averaged about twice as many cases that I carried than other attorneys in the office. One of the reasons I could do that is because I was very expeditious in my approach to my work. I did not waste my time with a bunch of meetings. I didn't partner up with other attorneys. I didn't go to meetings to explain, you know, in three hours that this is what we're going to do and strategize and do all this. I did all that on my own. I didn't call in the investigative agents to explain myself to them as to what I was going to do. I prized the efficiency of the way I would handle my cases. As a result, I could handle about twice the average of cases in the office and not fall behind in my work. I had my own caseload to deal with.

MK: And how did you decide what cases you would take and what cases the other attorneys in your office would take?

TC: I would typically—if there was a particularly difficult and sensitive case, I would take it. If there was a more average type of case, it would be just assigned out. I specialized, for example, in white collar cases. If there was something less complex, more average in nature, I'd just assign it out to the others. I'm trying to think. We had some special prosecutors that were in a DA's office and they would be made special assistant US attorneys to handle criminal cases—mainly drug cases—that involved their DA's office's jurisdiction. For example, let's say you had a drug case out of Lane County and we had a Lane County deputy DA who was wearing the hat of the special assistant US attorney—that case would go to that special attorney. Let's say it was investigated by a Lane County deputy sheriff. So, we had some of that too. We had special prosecutors that were also under my supervision. They would get cases that arose from their jurisdiction. They would want to prosecute it in federal court because federal court had stronger laws. For example, we had a system where we could detain people without bail if they were dangerous to the community. Most state jurisdictions don't have that.

MK: I connected with—I went back to the list that you sent me of people to talk to about that you've worked with throughout your career.

TC: Oh yeah.

MK: One thing that stood out was that even defense attorneys characterized you as friendly and fair and that was not always—it can be an adversarial relationship so the fact that you were able to maintain friendships with these people was something that they thought was remarkable. How did that transfer to your work in Oregon or how does that characterize your—

TC: Same thing. I've always been an honest person and I just don't play favorites. I try to be fair. I have always considered it to be a duty that I have as a prosecutor to be as objective as I can be and to be as fair as I can be. I was never focused on getting a conviction as opposed to doing justice. That's why I think I told you that story about that Local 89 case. After the Ninth Circuit reversed this one count on this defendant and I had this three count minimum standard and that left me with two, I dismissed the case even though the other two counts were affirmed and he had a prison sentence ahead of him. Because to me, I never would have indicted him if I'd have known that that third count did not have sufficient evidence to sustain a conviction. So, I did what I could to erase that decision I made because I said, "Okay. I'm going to accept the Ninth Circuit's decision. I was wrong." I was not going to just stand by the fact that the jury convicted him when I knew that I never would have indicted him in the first place had I known that.

I've always believed in doing the right thing. I never hid evidence from people. If I had something that cut in the favor of a defendant, I disclosed it to the defense attorney. I always had an open door if someone wanted to come to me and talk to me about what they thought was the right thing to do under these circumstances of the case. I never shied away from listening to them. I told you that other story, I think, about that San Diego student that had the drug conviction.

MK: Yes. You did.

TC: I think that's probably what they're talking about because I was in this to do the right thing. As I also think I mentioned, one of the big motivating factors of my life is not just my religion but reading a novel like *Les Misérables* and justice is not a black and white thing. There are people out there that think justice is a rigid set of rules that you apply without regard for all of the circumstances. I never thought that way. People who think that way, to me, are not confident enough in their own abilities to see the abstract nuances. So they think, "Oh maybe there's something unfair about this. You're treating this person different than that person." But this person may have different circumstances that help you understand that maybe it's justice with this person to be forgiving and compassionate as to what happened. I've gotten letters from people that I've prosecuted thanking me for giving me a break. This woman that was young and she ended up being a pharmacist in Canada which she never could have done if I'd have insisted on a felony and that sort of thing. So, I've trusted my instincts with who I'm dealing with. I've always tried to dedicate my career to doing that.

MK: I'm really curious how you managed to balance your work life with your family life and your spiritual life. How did you balance those while still being so incredibly productive at work?

TC: I attribute it to being gifted with the ability to get to the point quickly. It doesn't take me a lot of time to analyze something, retain it in my head, and make a decision. I'm not indecisive. I am very grateful for the fact that I have the abilities that I brought to my career—memory, et cetera. I don't have to write things. I can remember things. I can analyze things and draw up comparables, other cases that I've had. One of my favorite subjects in college was philosophy and logic. I think that was a big key to it, that I didn't waste my time. Look, when I was handling twice the caseload as other attorneys in the office were handling, I not only was home to my family every night and I never fell behind in my work, I would go out and I would coach soccer during the soccer season. I would go out to the field and be able to do that. I did not neglect my spiritual life either. I just found ways to make time for it because I didn't waste time.

MK: I'm wondering if it's because you innately trust your own instincts and your intuition that, knowing that there's so much gray everywhere, still being able to come to quick decisions as opposed to being paralyzed by the uncertainty all around us.

TC: Yeah. That's a big part of it. I had a lot of confidence in my own ability to come to the right conclusion and not second guess myself and not worry about being criticized from above. Look, I'll go back to that case that I have in San Diego, early in my career—that drug cartel leader, when I was ordered to stop—

MK: Guerra?

TC: Guerra. When I was ordered without explanation to dismiss that case and the US attorney called me in his office and said, "You've got to dismiss." No explanation. I said, "Well. They didn't say when." I had an instinct that this guy had border guards on the take. I went to his attorney and we took it from there. So, that's the kind of confidence that I had in my instincts and the kind of ability, I suppose, I had to think of alternatives. Am I going to go in there and dismiss this case without explanation or is there another way around this? I would think about this. I would think hard about this. I'm the type of guy that when I went to sleep at night and I had a case and closing argument was coming up, I would think about it in my sleep. I would turn these things over in my sleep and I would wake up in the morning and say, "Oh yeah. Why didn't I think of that before?" I would get some sort of inspiration. Now, maybe that's not a good thing. I don't know because you sort of just run things—but that's the way I was. I would just think about these things so much and analyze them. I was pretty confident in my instincts and doing that.

Family Life in Oregon

MK: So, when you moved to Oregon, you had three young children and Penny was pregnant with your fourth.

TC: Yep.

MK: In Oregon, how did your family adjust?

TC: Oh, they loved it! It was the best move. My wife trusted me to come up here. She didn't see the property before I did. She didn't come up, take a trip. She was too busy with the kids. But she fell in love with it right away. She trusted me to do it. The kids, they look back now—it's the best thing that ever happened to them. They were so fond of growing up there. When they were in high school, some of them wanted to move into town so they could hang out with their [friends]...because we sent them to high school in town as opposed to in the Creswell area. As high school kids do, they wanted to hang out with their buddies. Now, looking back on it, they're so happy—they're so fond to come back and visit every chance. They have such fond memories of the place. My two daughters down in Southern California, man. My one daughter lives down in San Diego. She was always a San Diego child. She was born down there. She was our first born. It's the climate up here. She's glad to be back down there but in terms of living conditions and the environment, she loves to bring the grandkids up and spend as much time as she can in the summer.

MK: While we're talking about your family, can you give me the names and dates of your children—when they were born and their names? I don't think we've done that yet.

TC: There's Kimberly. She was born in March of 1975—March 29. Laura was the next one—January 13, 1977. Colleen was the third—November 24, 1978. Then there was Corey—March 4, 1981. Mary—she's the easiest one for me to remember because her birthday is my birthday. Mary was May 30, 1983. Brendan was born on Earth Day—April 22, 1985. And our last child, TJ, was born on July 25, 1989.

MK: And so, they all would have then graduated from high school in the Eugene area?

TC: Yeah. They all graduated from Marist High School in Eugene. Yeah. They all went to University of Oregon. Laura went on to law school. She went to University of Oregon Law School. When Dave Frohnmayer was president of the University of Oregon, I wrote him a letter. I knew Dave. He used to be a practicing attorney here. I said, "Damn it, Dave. I sent seven of my children to University of Oregon. You'd think you could give me a tuition discount." He wrote me back and said, "No tuition discount but I really admire your wisdom in sending them here." [Laughs]

MK: Maybe I'll have to talk to Penny about what it was like to raise the children with you working full time but what other tidbits would you like to share about raising the kids while you were working?

TC: Well, parenthood is not for the meek. [Laughs] We've had—as every parent I'm sure has, but with us, multiply it by seven—you have episodes that come up that scare the hell out of you. Accidents. Emergencies. Illnesses. I always prayed for them to be protected and in my heart, I believe that those prayers have been fruitful. I remember Laura, for example, when she was about 11 or so, she liked to collect birds' nests. We had this fir tree in our backyard, and she would climb trees. She was climbing up towards the top of this doug fir tree and at that time it must have been 60 feet tall. She was going to take this—what she thought was a bird's nest. She had this inspiration, "Maybe I better ask dad about this". So, she climbed down the tree, came inside, and said, "Hey, Dad. I'm going to take this bird's nest down. Why don't you take a look at it?" I take a look at it and it was a hornet's nest. That hornet's nest, I saw it up there and I said, "Holy cow!" It's about 60 feet up in the air. That day or the next day I had this DEA agent that I knew. I told him about it. He offered to come out with his repeat shotgun and at night—you have to approach them at night to take care of it. We got out there underneath the tree at dark and he pumped about three rounds into that hornets' nest. We jumped back in the car underneath the tree. There must have been thousands of hornets that spilled out of that thing and attacked the car and splattered on the windshield. I've never seen anything like it. I just thought to myself, "My god! If she had taken that thing, she would have been dead without question!" The fall would have killed her plus they would have attacked her and stung her. Stuff like that. Happenings like that. I had one of my kids go off a cliff in the car and they were perched above a deep lake on the hill. By the grace of God, the car got wedged between two trees and he was able to climb out and come back up to the road. You get calls in the middle of the day. The car is found perched over a lake. Where is my son? It takes its toll on you! But I wouldn't trade it for the world. It's been a joy. It's not for the meek that's for sure. [Laughs]

MK: I'm curious to get your reflections on the way that the criminal justice system evolved from when you first started in the US attorney's office to when you arrived at the moment when you took up the magistrate position and how that influenced your career and just your reflections on it.

TC: My reflections on my career as a prosecutor are all good. I had great experiences. The cases were—I never had a dull day going to the office. Never had a dull day! If I had to say what's evolved over the years, it's that I think fewer cases go to trial now. More cases are resolved through pleas. I think that's because Congress changed the laws to where the prosecutor has so much authority in terms of what to charge. The consequences of being found guilty after trial implicate much greater sentences. The incentives for a defendant to plead guilty are much greater now. Back when I started, mandatory minimum concepts were few and far between in terms of the laws. The judges had discretion on what sentence to impose. Like for bank robbery, anything from probation to twenty years. The judges had basically all the discretion at sentencing. We could make recommendations, but they weren't binding on the court. Now the prosecutor has a lot of say in what the sentence is by virtue of what the prosecutor charges.

I've never like mandatory minimums. I've never liked mandatory guidelines. I think that represents what I've always been critical about is that we can sit down and hammer out a rigid set of rules to apply to certain conduct and having a computer do it. These are all the things to consider, et cetera. Things are more gray than that to me. I think it also detracts from the human side of the criminal justice system—Les Misérables. Trying to basically come up with a rigid rule for everything. I'm against that. That makes us into robots. I think that's what's changed a lot. And I think we don't see as many trials as a result. We have fewer trials. We were a busy district in San Diego. I'm telling you. There were trials all the time going on down there. I really benefited from the experience I got. There are few attorneys you're going to find with as much jury trial experience that I was able to get. You can't find them anymore. They just don't have the opportunity.

Elevation to the Bench

MK: I guess that brings us to when you had your next major career transition.

TC: Being a judge.

MK: Being a judge.

TC: Yes.

MK: Going from what we were just talking about, having a little bit more discretion choosing what you're going to charge someone with and then being on the other side of that, did you find that mentoring those prosecutors that you'd worked with for so many years meant that you continued to work with them although in a different role?

TC: Yeah. When I took the bench, obviously, I stepped over from the US attorney's office, so I knew all of the people with the US attorney's office. I also knew a lot of the defense attorneys because I had been dealing with them in the US attorney's office all these years and I had a good relationship with all of them. I am proud of the fact that here in Eugene, that we have a very good relationship between the defense bar and the federal prosecutor's office. In my career, I've been in courts where there was not that good relationship, where people were at each other's throats and they did not get along. The judges were very harsh toward some of the attorneys practicing in front of them. Here, we had a good relationship. You hardly ever saw people get at the point where they were hostile to each other in court rooms, saying things that were personal, attacking of their integrity and that sort of thing. Trial work is very stressful. It's stressful enough without the antagonism. When you get along with people and have a civil relationship with them it really helps in terms of alleviating that stress. My brother is retired now but he was a personal injury lawyer in San Diego. He was ill one time and he would always call me to ask me for advice. He was telling me that he had this trial coming up and he didn't quite know how to handle it because he was suffering from this immune system disorder and he was asking my advice on how to handle it. I said, "Well, Bob. Have you tried to talk to your opposing counsel and tell him what's going on so he can agree and stipulate for a set over?" He said, "Are you crazy? If I did that, he would even ratchet up the pressure to move it up." So that was down there and I'm thinking to myself, that's terrible! We should not deal with each other like that. We should be accommodating. That was always my approach to things. I think that approach—I see that still being carried on here and I think that's a very healthy thing that people, for the most part, do get along and you don't see that in other jurisdictions necessarily. We maintained that relationship. I've been on the bench now for twenty-seven years. I like to look out and see that legacy of getting along continues down here. It's very important.

MK: Tell me what becoming a magistrate judge was like. I believe that there's some training that happens and there's a ceremony. Can you take me through that?

TC: Well, yeah. You go back to magistrate judge school. My challenge was, I knew the criminal law backwards and forwards because I had done that as a prosecutor. So that's part of the training. They teach you about federal criminal rules and all that. But that stuff I already knew. What was different to me was the civil caseload and how to handle civil cases. That was the challenge to me. But it really wasn't that difficult because whether it's criminal law or civil law, the tools that you use are the same. You find out what the facts are and then you research the law as it applies to those facts. Then you basically look up the case law. It gives you the precedent that you apply to the case before you.

What was different when I became a magistrate judge is that the criminal stuff was easy to me—the arraignments, the bail hearings, and what I did as a magistrate judge in addressing the criminal cases, I could do that in my sleep already. The civil cases, [that] was new territory but it didn't take me long to adjust to that. Like I say, you apply the same tools with a different standard of proof. Instead of reasonable doubt, it's preponderance of evidence. You're dealing with a wider variety of civil disputes. They're not criminal cases anymore. You have everything under the sun that you may be dealing with—civil rights cases which could involve discrimination in the workplace, could involve an alleged unlawful arrest. I knew that—police action and all that because I was involved so much in probable cause standards as a prosecutor. Excessive force cases. Then you have all of the panoply of other civil cases that you have as a judge. It could be malpractice cases—medical malpractice involving diversity of citizenship. It could involve social security cases—you get a lot of those. So, I had to learn all the laws pertaining to that. Tort cases. Personal injury cases that were in federal court for a number of reasons. There's a wide variety of civil cases that you get. After I presided over a few trials, I got the hang of it because I tried so many cases as an attorney and I had been in front of so many judges and I saw the way they handled things. It didn't take me long to assimilate into that role. What I really started doing as a judge that I do probably more than any other judge on our court is settlement work. I do a lot of settlement work. I enjoy settlement work.

MK: I remember that you've talked about your negotiating skills and how that's gotten you out of some—

TC: Oh yeah. The Hells Angels! *[Laughs]* That's the ultimate challenge, isn't it. Keep your date from being raped and you from being killed! Yeah.

MK: That's another moment in life when you need those skills!

TC: Yeah.

MK: Walk me through, did you have to go through FBI background checks when you became a judge?

TC: Oh yeah.

MK: Can you tell me about that?

TC: Yeah. I've been checked by the FBI more than most people. Yeah. As soon as I was hired as an assistant US attorney, they do a background check. Every time I got sensitive information clearance, they had to do a background check on me. I was exposed—even when I became a prosecutor. When you're given certain sensitive information, they want to double check that. That's pretty much standard. Of course, when I applied for the magistrate judge position, they do another background check. I've been checked out. *[Laughs]* They know everything about me. *[Laughs]*

MK: Does that affect your family as well? Do they have to talk to your family when you're going through that?

TC: Sometimes they do. Penny was worried when I was dating her. Before we got married, I was working for the US attorney's office. I met her actually after I was hired by the US attorney's office but then after that, there was another investigation for some reason. I can't remember why. We were dating, living on the beach and she was worried they were checking her out because she saw this guy. He parked his car. This is on Mission Boulevard in South Mission beach. I don't know if you've ever been there but it's a surfer area. So, the only guy on Mission Boulevard that was wearing a suit. *[Laughs]* He gets out of his car in the middle of the day and she knew it was an FBI agent. She thought he was there to check her out. You have to ask her about that. But other than that, no. I never had any trouble getting through. I've never done anything. *[Laughs]*

MK: No. I just wasn't sure if that was a memorable experience but it sounds like it's happened so many times that you're used to it. Your family is used to it.

TC: Yeah.

MK: Was that a career goal of yours—to become a judge?

TC: Never!

MK: No.

TC: No. My career goal was to become an attorney. I was perfectly happy in the US attorney's office. But then when this position became available, I decided, well, it offered higher pay and we had kids going to college. So that was attractive. I thought, "Well, I'll try this. Why not?" So, I put in. I was fortunate enough to get the position. I was very happy to do that. It worked out really well. Yeah, but I always thought I had the right personality for it.

MK: It seems like most of your skills would have transferred into this position so seamlessly.

TC: Yeah. Because I've always tried to be objective. I've always tried to be fair which is a basic component of being a judge.

MK: And your ability to make complex matters understandable for people.

TC: Yeah. That's a big part of it. Absolutely.

MK: So in 1992, I've just been doing a little bit of background research and I read an oral history that was conducted with Judge George Juba who was the first magistrate judge in Oregon.

TC: Right.

MK: From what I understand, Oregon was one of the states that really embraced the magistrate judge system very early on.

TC: Yes.

MK: But even in 1992 there were probably still a lot of changing, developing, evolving of what it meant to be a magistrate judge—what you could try, what wasn't appropriate, the types of cases.

TC: Well, when I got here it was pretty settled.

MK: Oh, okay.

TC: When I was appointed, you could not preside over criminal felony cases. You had jurisdiction to preside over petty offenses—criminal cases—without a jury and for misdemeanors with the consent of the parties because on a certain type of misdemeanor, the defendant would have the right to have the district judge try it. So that was the criminal side. I did a lot of petty offense trials, obviously because you have jurisdiction over all of the Forest Service, BLM [Bureau of Land Management], citations they issue, and people come to court and we have what they call a CVB docket—Central Violations Bureau. So pretty much, in terms of trials—on the criminal side of things—that's what you were dealing with—CVBs, petty offenses and et cetera—misdemeanors.

You could not try felony cases even with the consent of the parties. You can't do it. On the civil side, you have jurisdiction to try civil cases if all the parties consent to you doing that. If you don't have consent but a case is assigned to you as a civil case—because here in Oregon, we assign cases off the wheel—the civil case goes in and then the wheel randomly selects the judge. So here, for many years, there was only me and Judge Hogan, the district judge, on the wheel. So, I would get half the civil cases, he would get the other half. Now there's me. Well, not me anymore. I'm off the wheel. There's Judge Kasubhai, and there's Judge Aiken, and Judge McShane. Judge Kasubhai, the magistrate judge now, will get one third of the cases assigned to him. When you're assigned a case as a magistrate judge, if you have consents, you have that case through trial. You will try the case. If you don't have consent, you will handle the case up to the point where it's ready for trial and then it will go to the Article III judge. In the meantime, you may be called upon to rule on what they call a dispositive motion, like a motion to dismiss or a motion for summary judgement. If you don't have consents, you do what we call a findings and recommendations. You make findings of the facts and then you make a recommendation as to whether the motion should be granted or denied. Then, depending upon what you conclude in your F&R, each party has the ability to object to your F&R and then those objections go to the district court judge who then tries the case from there on out. That's the way the system works. I've had a number of consents and a number of trials with consents over the years, in which case where I have consents, I try just as if I were a district court judge—have the jury trial, empanel a jury, try the case.

Casey Martin Case

TC: One of the most notable cases that I tried in my career was the Casey Martin v. PGA Tour case. Are you familiar with that case? Casey Martin was an aspiring professional golfer. He was a very good golfer. Right now, today, as we sit here and talk, he's the golf coach at the University of Oregon Men's Golf Team. Back in 1998 or late 1997 maybe it was, he had played golf at the University of Stanford. In fact, one of his teammates was Tiger Woods. He was aspiring to be a professional golfer. They have a qualifying school in Lakeland, Florida where as many as a thousand aspiring golfers go to try to qualify to make the PGA Tour. A certain number of golfers, if they do well enough, they go from qualifying school to the PGA Tour. A second tier of golfers, if they score high enough, will go to the—at that time—the minor league PGA Tour which is called the Nike Tour.

He was at qualifying school and he did well enough that he was going to make the final round. Here was his problem—he's got a congenital disability which impairs his ability to walk. He could not walk the golf course anymore because of this. It was a vascular problem in his leg that prevented him from being able to safely walk the golf course. At the beginning of qualifying school—they call it Q school, so I just call it Q school—all the golfers could use carts. As they weeded out the surplus amount of golfers trying to make the course, at the final stage, you had to follow PGA Tour rules—no carts. You walked the course. He could not walk the course. He filed—through his attorney, Martha Walters, who is now on the Oregon Supreme Court—he filed a lawsuit seeking equitable relief from the court, allowing him under the ADA, the accommodation of a golf

cart as he finished the course. That case was assigned to me. The parties consented to my jurisdiction. I heard the case.

The first appearance on the case was sort of an emergency application for a temporary restraining order against the PGA from barring him from using a cart. It was an emergency because the final was coming up very shortly. I heard the application and I under the standards applicable to TROs—temporary restraining orders—I found that the balance of hardships tipped in favor of Casey Martin and he should be allowed the cart. It didn't address the merits of the case. All I did at that stage was do a balance of hardships. I found there was no hardship to the PGA. There would certainly be a hardship to Casey Martin because he couldn't compete. So, he finished using a cart and he qualified high enough that he made the Nike Tour. Then we had thereafter the trial on the merits as to whether or not that accommodation should continue as the regular golf season began.

That case went to trial in February of 1998. I presided over the trial—no jury because he wasn't seeking money damages. All he was seeking was what we called equitable relief which is tried only to the court, not to a jury. The equitable relief being the accommodation under the ADA of a cart so that he could compete. That case was national news because by the time it went to trial the whole golf world was focused on it—"My god, what are we looking at here? Are we looking at a court telling a professional sports organization to modify one of its rules of competition?" It brought a lot of interest into the case and focus on the case. I presided over it, heard all of the evidence.

It was interesting. On the first day of trial, I took the bench and I'm not a golfer. I'm a soccer player, you know, I'm not a golfer. I took the bench and I announced to the parties, "Look—I want you to understand. I'm not a golfer and so I'm not familiar with the rules of golf so please take your time and explain the rules of golf to me as you make your presentations." That night, I went home and I turn on the news and there's the commissioner of the PGA Tour telling the press what a shame it is that a non-golfer has this case. *[laughs]* And so I thought to myself, "Well, isn't that interesting?" I also don't have a disability. Why doesn't he say that a non-disabled judge has this case? And it kind of capsulizes what judges do. We don't have expertise in all of these areas that we're called to hear. For example, a medical malpractice case—I'm not a doctor. I don't know anything about surgical techniques and that's what lawyers have to do. They have to explain to the court what the facts are, what the standards are, put on the evidence. That's what you listen to. My brother, when I was appointed to the bench, said I would make the perfect judge. You know why? Because he is a trial lawyer. He hated going before judges who thought they knew everything about the case that he was bringing. He wanted a judge that was like a blank slate, didn't have any preconceived ideas that he could inform. So, he described me as being a perfect judge because I don't know anything about anything. *[laughs]*

MK: What kind of backhanded compliment is that? *[laughs]*

TC: I know. With that in mind, we had the trial. I will tell you this. To me, all the arguments that the PGA Tour raised about the ADA didn't apply to professional sports, et cetera, et cetera. A golf course is not a place of public accommodation. All those arguments aside, and I dealt with all of them—to me, the crux of the case was, would giving a cart to this plaintiff give him a competitive advantage or not? If, from the evidence, I was convinced that he got some sort of competitive advantage, I would not have given him the cart. I listened to that evidence. The trial lasted a little bit over a week. Not one golfer who testified opined that a cart would give a competitive advantage. In fact, the evidence was to the opposite. I heard testimony that golfers when offered a choice between riding a cart and walking the course, preferred to walk the course. I heard evidence that the reason for that was golfing is very stressful. Walking helps alleviate the stress. It also gave a better feel for the conditions of the course like the wind. So, it just gave them a better feel for the course than hopping in a cart and driving to the next hole. At the end of it, I decided he has no advantage with a cart. He needs a cart and the ADA does apply to professional golf and I ordered that he be accommodated. That decision—I wrote an opinion—I explained myself as best I could in

terms of the facts and my specific findings of facts and it went up to the Ninth Circuit. They affirmed. It went up to the Supreme Court and they affirmed. So, that's probably my most noteworthy case that I did in the civil arena. Another one that I didn't have consents on but it was assigned to me was this climate change lawsuit that's going on now. So, I won't talk about that too much because it's still going on. But those are probably the two most noteworthy cases that I had.

MK: How do you prepare the attorneys for a trial? What makes for a good trial and how do you prepare people for that?

TC: We have a pre-trial conference and we go over the issues. We make rulings in advance of the trial so we don't have to waste time during the trial. At a pre-trial conference we have the parties file trial memorandum. We'll review those. We have them get together and confer about which exhibits they are going to object to from the other side so they have to go over the exhibits. In the pre-trial memorandum, they'll also submit a witness list and a synopsis of what the witnesses are going to testify to. If there's going to be any objections to the witness' testimony or to any witness exhibits we want them to tell us what the objections are. If they're not going to object, then we will automatically admit those exhibits at the pre-trial conference. So, what we try to do is we try to handle all of the objections before a jury is impaneled so that we don't have to waste the jury time during the trial itself by having some lawyer pop up and say, "I object to that testimony," or "I object to that exhibit." We want to get as much of that out of the way in advance as possible. That's a big part of managing, and that's what's different about federal court, quite frankly, than state court because they don't do that in state court that much.

MK: The pre-trial conference?

TC: Yeah. The pre-trial conference. A lot of times they deal with these things during the trial and they waste time.

MK: So that would be a criticism of that system? Or would that be?

TC: It's a criticism to a certain extent, yes. I understand why they do it. Counties are different. In Lane County, the trial judge is not assigned until the day of trial for a civil case. So, they don't know who the trial judge is going to be until the case is called. It's assigned then out to a trial judge. There's no opportunity to do a pre-trial conference and so when objections pop up, they do it during the trial. That's just the way they manage their cases because they have so many cases. They don't know who is going to be in trial and who is not until the case is ready for trial and then off it goes. And then, "Oh. This judge is available. You try it."

MK: And so, similar to when you first started in Eugene as the sole federal prosecutor of criminal cases and then you were the sole magistrate judge in Eugene, you had a lot of independence.

TC: Well, yeah.

MK: In some ways, to organize your—

TC: We always have independence as a judge because you don't—for a number of reasons—you don't go to the district judge for advice on a case because that district judge, if there's no consents is going to be ruling on what you do. If there are consents and you have the case, then it's fine to go and say "Hey. What do you think about this issue that's coming up before me? What would you do?" You know, because you know that person's not going to be performing the function of ruling on something you've done.

MK: And how much of that did you do? Consult with district judges or others?

TC: I must confess not much [*Laughs*] because of my personality. I didn't really ask because I would just make up my—that's just part of my makeup. I am just independent about this. If I feel I'm right, I go ahead. If I'm wrong, so be it. Throughout my whole career, I haven't really been one that just consults with a bunch of other people about what I should do. It's always worked for me for the most part. Like, I didn't in the Casey Martin case—I wasn't going to ask anybody what I was going to do. For one thing, I probably would not have [*Laughs*] gotten the advice that—I got a lot of criticism after I ruled in Casey Martin.

MK: What was that like?

TC: It didn't bother me. The criticism I got was—I don't want to make it sound like it was from my colleagues on the court necessarily. I mean, I would get mail from people that would castigate me for my ruling and that sort of thing. I did have a couple of judges from around the country that let it be known that they didn't agree with my decision. In fact, one person who told me that he disagreed with my decision called me back fifteen years later and said that I was right. [*Laughs*] Yeah. And I thanked him for it. I've just always been independent and confident in my own decision making. I never really considered myself a team player. [*Laughs*]

MK: But in the same way of thinking about relationships and collaborations, mentorships were important to your career and you have continued to mentor others.

TC: Yeah. Absolutely. Absolutely. But that's different from partnering.

MK: Yes.

TC: When you bring somebody on as a partner you give them equal say in what's going on and that's not mentoring. That's basically having some sort of partnership with somebody that now you have to convince that this is the way to do it and I never wanted to do that because I always wanted to have the final say on how I was going to handle something which is one of the reasons why my career as a prosecutor, I am proud to say, I never handled a tax criminal case, you know why?

MK: Yes. I believe I do. Because then you would have had to work with the—

TC: Tax division.

MK: The tax division.

TC: They insist. I said, "Fine. Find somebody else." And I could get away with it because I had reached a point in my career where they valued my services in the office that I was at and did not insist that I take any tax cases. [*Laughs*]

Settlement Work

MK: Would you like to talk a little bit more about the settlement work that you've been doing over your years here?

TC: Sure. Sure. Yeah. What I like about settlement work is it's a challenge. It's a challenge in a number of ways. In the first place, it's a challenge in that you're dealing with the brightest legal minds in the business. These attorneys in federal court that handle civil cases in particular are extremely sharp attorneys. When you go to a settlement conference you know you got to be prepared to deal with somebody that really knows what they are doing. In the second place, the

way I approach settlement work is a challenge because I do not employ what I will call the compulsory method in trying to settle cases. I will not try to twist arms to settle a case.

Here's the challenge in settlement work to me. Now mind you that both sides have polar opposite views of what the result of the case should be. For the defendant, you want to win the case. That means no money goes to the plaintiff. For the plaintiff, you want to win the case. That means you get tons of money coming from the defendant. Okay—so there you are. You're dealing with very sophisticated people. Not only the lawyers, but in the typical civil case you have an insurance company or a business executive on the defense side. They are very good at what they do. Insurance adjusters are very sophisticated. They handle and analyze tons of cases. So, here's the goal of a settlement conference—to convince each side that a resolution is in their best interests. So, how do you do that? Nobody, and I tell people this, "I don't expect you to do the other party any favors. I expect you to do what you think is in your best interests to do."

Approaching each side that way, how do you fashion a resolution? That's the challenge. What you do is you analyze the issues and you do it impartially. You tell them, "You've got to be realistic." It's like, when you go to your doctor when you have an ache in your side, and you don't tell the doctor you feel great. You have to acknowledge that you have an ache in your side in order to get a good diagnosis. So, you have to do the same thing here with the facts of your case. You've got to be prepared to be realistic and honest with your analysis with me or I can't do you any good. I'm like the emergency room doctor. If somebody comes in and says they're fine, "Fine! Go home." I'm here to help you recover from this in the best way possible but to do that you have to be completely candid with me.

So, that's one challenge and you're dealing with, like I say, people who are very sharp at both sides. Usually, the defendant is more sophisticated in litigation than a plaintiff. I'm not talking about the plaintiff's lawyer, but I'm talking about the plaintiff himself or herself because most plaintiffs, a lawsuit is a once in a lifetime thing for them. Most defendants, a lawsuit is a regular experience for them, especially insurance companies. This is what they do. They defend people who are being sued so they know their stuff. A plaintiff, the challenge in there more often is getting them to have a realistic understanding of their prospects because a lot of them are very emotional. They have to be patient.

Unlike presiding at a trial, where you rule from the bench, you have to come down off the bench. I don't wear my robe. I'm just down at their level when I'm talking to them like I'm talking to you. We're having a conversation on an equal plane. It's an informal process. Nobody makes a record of it. I'm there to engage them and talk to them and see if, you know, I can convince them. "Okay, look at this. Have you thought about this? Have you considered this? What does this mean?" I look at everything. I look at the facts of the case. I look at the law in the case. I look at how credible are the witnesses in front of a jury. I look at whether the law is a novel thing like the ADA case—the Casey Martin case—very novel, or whether it's well settled. I look at the credibility issues. Which side has the witnesses that are more—it always helps if you have neutral witnesses that don't have a dog in the fight. Are the facts contested or are they agreed upon? Most times they're contested. We go through everything. What's at stake? How much money realistically in terms of damages are there? Is the fight over liability? Is the fight over damages? A lot of times you get maybe liability is not contested but the damages are. Most of the times, both are contested. What are the types of damages? How firm are they? Are the damages disputed?

So, we go down everything. There's a whole laundry list of issues that affect settlement work and we try to see what we can we agree on and what not. What are the risks? What do you think the risks are? You got to be honest with me of you losing this case. Are they ten percent? Fifty percent? The way I put it is, if the case is about one hundred dollars and there's a fifty-fifty chance that the defendant may win or the plaintiff may win then a reasonable settlement value in that case is somewhere between forty and sixty dollars. If the plaintiff wants ninety-five dollars, they're not going to get it. If the defendant wants to pay five dollars, they're not going to get it settled. So, they've got to be reasonable. That's how I do it. What's really important to me is to maintain my credibility at these settlement conferences. I don't tell one party in one room one thing and the opposite thing to the other party in the other room. I'm consistent. Having done this for so

many years now, I've done, without exaggerating, I figure I've done about 1,800 settlement conferences.

MK: Wow.

TC: So, there's nothing new under the sun that I see. I've developed, I think, a reputation with the parties that I don't say one thing in one room and a different thing in the other room just to get the case settled. I'm pretty consistent. And I'm good at reading people. I'm good at gaging. For example, they never really want to tell you their bottom line. I always try to find out what their bottom line is. They don't want to tell me what their bottom line is because then they think I'll just use that as a floor and then go from there. That's fine. I understand that. But after talking with them for a while I can pretty much gage what it is. And then when I find out what their bottom line is and if that's not good enough to get the case settled, I get a sense of how far I can push them to adjust their bottom line to get at them. They might not even know it themselves but I can pick up clues. I can pick up clues from the way they maybe look away, dart away, when I ask them a pointed question. I just can read them pretty good. I've developed that from doing so many of them because I've had all sorts of different types of people that I've interacted with. I really like it. It's really challenging to me. A lot of judges don't like to do settlement work. I do.

MK: If you're inspired and stimulated by challenges, then that makes sense.

TC: Yeah. Exactly.

MK: Are there other cases that you want to talk about that you presided over or other stories?

TC: I can't think of any right now. Yeah. I really like ADA cases because it suits my personality because the ADA is all about flexibility. Whenever you start talking about what is reasonable accommodation, you open the door to exactly what I like—flexibility. What is fair? I think the ADA, when it first came out, businesses were terrified of it because they didn't know.

MK: [Sneezes] Excuse me.

TC: “Oh my god. What does this mean?” Businesses like rigid rules. You punch in your clock. [Laughs] You get paid and then you punch out and you're not paid anymore. That's what businesses like. Now you're asking them “He punched in but he needs an accommodation to whatever it is.” That takes time. He may have to have more restroom breaks or something or more lunch breaks or whatever it is. All of a sudden, they see that as—that's what the PGA was so nervous about—the slippery slope. If we give this guy a cart, every golfer out there will be asking for a cart. The slippery slope—“We'll have to have medical staff to basically examine all of the golfers with bad backs.” You know, the slippery slope argument. They're always worried about that. None of that happened.

I had another example, another case under the ADA I'll tell you about. I had an ADA case brought by a high school student who was a football player at Marshfield High School. He had to repeat a year because he had a learning disability. The OSAA, Oregon State Athletic Association, has a rule of eligibility when you're in high school. They have two aspects of eligibility—an age limit. If you're nineteen, you're ineligible, so you have to be eighteen—no more than eighteen. And then they also have an eight-semester rule. You're only eligible for eight semesters. Two semesters every year, four years. He had to repeat a year because of his learning disability. He loved being on the football team. He wasn't any good. He was a bench player. He got in toward the end of a game or something when it didn't matter anymore but he loved the practices. He loved the structure of it. He loved being with his teammates and coach. It meant a lot to him. So, he came back for one more year of football. He was within the age limit but it would have been his ninth semester and they wouldn't give him an accommodation.

I had the trial. I heard all of the arguments from the defendant about the slippery slope about how they'd have athletes faking disabilities so that they could get an extra semester—that sort of thing. And I gave him his accommodation and now they were worried about when I was fashioning my order—they were worried about—"We're going to be sued a lot. It's expensive. We're a nonprofit organization." I said, "Here's what I'll do. I'll keep jurisdiction over any of these requests for accommodation by student athletes for three years. Just come straight to me." You know how many applications they had, that they brought to me? None! Not a one. So, as time has gone on, they've become more comfortable with the way to deal with the ADA in a way that's not overly burdensome which is part of the reasonableness factor. How burdensome is this? So, I enjoy these ADA cases when they're assigned to me. I enjoy dealing with them because it's right up the alley of getting flexible solutions to doing justice.

MK: Just reflecting on the history of the growth of the magistrate judge system in Oregon, when you started here you were the only magistrate judge in Eugene and now there are more in Eugene?

TC: No, there's only one.

MK: Oh. There's still only one.

TC: There's me but I'm retired. But I'm on what they call a retired judge on recall. I don't have a caseload anymore. I'm not on the wheel. I don't draw cases—civil cases, but I can come in as needed to fill in when the magistrate judge that took my place is not available. Right now, I'm here handling the grand jury because the magistrate judge that took my place is at magistrate judge school in Florida.

MK: Oh, okay.

TC: So, they've had some criminal matters and the grand jury was one of them so I came in today. I also came in because you were set up to come here and then I'll have some agents coming to see me this afternoon for warrants. But I'm on recall so I'm still authorized to act as the magistrate judge but technically, I'm also retired.

MK: Now, I read that there was, I think it was probably some time ago, a lawsuit brought by magistrate judges against the government to say that the compensation was unfair because it was not in line with what Article III judges were making. Do you know anything about that?

TC: No. I didn't participate. It's not that they were seeking the same amount of pay as Article III judges but by legislation, magistrate judges were supposed to get within a certain percentage of what Article III judges got and I think that they did not change that part of it but I was not part of that lawsuit so I don't know all the details. No, but we never had pretended that we were entitled to equal compensation to district judges.

MK: Thanks for the clarification.

TC: Yeah. No problem.

MK: Well, we could leave it there for today unless there's anything else that you'd like to add at the moment.

TC: Nope.

[Recording ends]

Recording Five, May 9, 2019

MK: This is Makaela Kroin. It is May 9th, 2019. I am in the chambers of Judge Thomas Coffin and today we can continue to talk about your career here as a magistrate judge. I had the opportunity to talk to some of your family members and they gave me a couple of additional stories that they thought that would be good to fill in and then we can maybe talk about some of the teaching that you've been doing more recently or any other things that you'd like to fill in the gaps with.

TC: Okay.

MK: Do you have anywhere that you'd like to start in particular?

TC: Well, I just want to emphasize that in my career both as a prosecutor and on the bench, I've always strived to treat people with respect and fairness no matter what their status in life was or is and to treat everybody equally and with dignity. I've always tried to make it my approach to not be rude to people and to set the tone of civility because I think that's critically important to what we do in our system of justice—that people have dignity. Especially as a prosecutor and as a judge you have such power over people. If you abuse that power, you can do a lot of damage. The justice system, I think, requires people in positions of authority to be civil and to set the tone of civility and fairness and be even tempered and not berating people. I've been on the receiving side of those who abuse their authority. What do you, for example, if you're a person appearing before a judge and the judge starts into a tirade against you? I've seen that happen. You're not on equal footing so you can't really stand up for yourself in a way that you might otherwise because of the vast difference in the power structure between you and the person that you're dealing with. I've always striven to just not do that and to make people be at ease. I've found that the system—it's contagious. The participants before you, as you go and you take the bench or whatever it is, you're a prosecutor, you're dealing with lawyers as a prosecutor and their clients. As you interact with them, it really does sink in over time, what your personality is and people get more comfortable around you and you can have more open discussions. If they can trust you—trust is such a big part of what we do in our system. Your credibility is so important. It can be difficult to establish your credibility over your career and so easy to lose it if you don't stick by your word and your integrity. I wanted to make that comment because I like to think that I brought that value and incorporated it into what I have done in my career.

MK: That's clear. And also, you've mentioned a couple of times when your credibility or your honesty was questioned by others who wished to blame you for their own faults and so you had to work to rehabilitate that immediately to maintain your credibility.

TC: Yep. Over my career, judges are passive. Attorneys are probably more the movers in the system and judges are the referees. But even so, as a judge, you can have so much influence because you make the ultimate decision in a case. It's so important that you eliminate any biases in your approach to the position and that you recognize and work on some implicit biases that you might have and make sure that those don't influence you in your decision.

MK: And humans, like you said, imitate or begin to assume the behavior of those around them so to be a model of respect and honesty—

TC: Yeah. You really do set the tone. The lawyers that come in and out of your court on a regular basis, they really pick up what that tone is. Then you see it spread among themselves. I think that here in this courthouse, in fact, I just recently was on a panel of a number of attorneys, including myself with a lot of experience in the criminal justice system. I was the moderator. On the

panel we had attorneys and myself with roughly 200 years of cumulative experience in the system. One of the things that developed from that panel discussion was the civility that exists in our courthouse and how much of a difference it's meant over the careers to have that and how people can trust each other and take their word at face value and how they're not rude to each other, how they're polite. How you can have different positions and still be able to communicate with each other in a way that's not negative. Look at politics today—the name-calling that goes on. That approach to things—it's awful. The flavor that's out there and the divisiveness and even the violence that you see because people are so polarized and they characterize someone that is of a different viewpoint as an enemy and that sort of thing. It's just not the way society should be.

MK: And when there's a vacuum for a role model of integrity, tribalism—

TC: Yeah. Exactly. Exactly. Unfortunately, one of the things that has really concerned me recently is the erosion of our democratic values, the attacks against our very constitutional foundations to our framework of government. It's very distressing to see that because it's undermining the principles that our country has. We're now 230 years into our constitutional government. It's very difficult to witness the attacks on these very fundamental principles in our country that seem to be—not seem to be—they are under assault today—the very notion of three co-equal branches of government with checks and balances. The very notion of a free press and a healthy media—is being really it's the fourth pillar, the fourth estate, so they say of our country—that's being undermined and under attack. Name-calling for judges based on their ethnicity or who appointed them. All that undermines what we are doing or what our nation needs, was founded to be. Where does it end up? It's a sobering thought. I hope we can survive this and come out healthier but it's going to be tough.

MK: I agree. It's a very distressing time and it must be incredibly distressing for someone who has spent a career trying to build trust in the institutions that are meant to serve us.

TC: Exactly. I don't know if you saw this or not but recently, about 800 former prosecutors with the Department of Justice signed an open letter basically rebutting William Barr's summary of the evidence pertaining to the Mueller Report to obstruction. I was one of the 800 because I thought it was very important to sign on to that letter and to express the opinion that we need to stand up for the rule of law.

MK: Are there other institutional efforts by the judicial branch to maintain some guise of integrity in this time of—

TC: Well, this was an effort by former prosecutors, as opposed to the judicial branch because I signed it as a twenty-one-year career assistant US attorney with my experience. I served under four or five presidents. A lot of us did who signed that letter. We served under different presidents with some Democrat, some Republican, over our careers. It shouldn't make a difference what party the president is to maintain the rule of law. If you're in the Department of Justice and you maintain your integrity, that's what you have to do.

MK: Well, speaking of human behavior I'm curious to hear a little bit more. Kimberley talked about a decision that she remembers observing, actually, it was the Casey Martin decision, that she was in the courtroom.

TC: Yeah. I announced that decision verbally, orally, in the courtroom.

MK: Yes. And so, you're reading your opinion and she mentioned that you had had lunch together and you were very calm and you were saying, "Well, all of the attorneys are very accomplished", but you kept things confidential until the last minute. She was on the edge of her

seat wondering which way it was going to go and as you read the opinion, she said there was suspense building in the room and there were some twists and turns and nobody knew what your decision would be until the moment and at that very moment, TJ and Corey began having a little bit of an argument and your wife had to take them out.

TC: [laughs]

MK: That's not actually why I brought that story up but I really did enjoy hearing from Kimberley how your family spent time in the courtroom listening to you read decisions and hearing witnesses being cross examined. I'd like to return to that topic but what I am curious about is the performance, the performativity that you took from your career as an attorney. It's very important and central to being an effective attorney, is being able to not just make things understandable, but to make them impactful. How did that performativity move from being an attorney into being a judge?

TC: I thought the transition was pretty smooth and it was the foundation of being an attorney—was a good building block for being a judge. I learned as an attorney that to be effective, I had to take complex subjects and find ways in which to simplify them in order to explain them to a jury in a way that they could grasp and understand. It's a lot like teaching, where you were basically taking very complex subject matter and trying to get the students to grasp it. You know you're successful when there's this "aha!" moment, you can kind of sense with the students and with a jury. I got to be pretty adept at doing that. I think I told you the story about the Local 89 case about how do you explain this concept of intent to a jury on a very complex fraud case. I had to come up with an example to do that.

I also did it in a rape homicide case that I prosecuted where we had—this was before DNA—we had a combination of circumstantial evidence pieces. Head hairs, other body hairs, paint flecks, pieces of masking tape on a knife, and things of that nature that the defense had an explanation for each one of them individually. I said, "Okay." So they would take that piece of evidence independently and explain it away and then move on to the next one and do the same thing. I explained to the jury, "Well, yeah. You can do that and do it individually but it's not rational to consider everything in isolation." I used the example of a trifecta. I don't know if you go to the horse races but a trifecta is where you pick three winners and then you get a lot more money if all three come in as winners in three separate races. So, I used that as an example. I said, "Look. Let's say at the horse races, you're going to bet on the trifecta and you pick three horses to win, each of which is 100-1 long shot. Is your odds 100-1 that you'll win the trifecta? No! It's not 100-1 because all three have to win. It's 100-1 multiplied by 100-1 multiplied by another 100-1. It comes out, I think, to one million to one. The chances of all three being true, you have to consider them in combination, not separately." When I took that approach, I could see the jury was nodding and they understood it. They were being asked to consider something in isolation but they had to consider it in combination.

MK: Was this the circumstantial evidence for the Maria Lopez case?

TC: Lopez, yep.

MK: Kimberley brought up that case also. She remembers being four or five at the time.

TC: Yep. That case was a big eye opener for me in my career.

MK: And that you tried three times.

TC: Yep.

MK: Was it the third time that you tried it that you used that metaphor that worked?

TC: I used that in all three times. The jury, I found out, the first two juries, the majority wanted to convict. They were split—if I remember correctly—the first jury was split ten to two for a conviction. The second one, eleven to one for conviction, and the third one was unanimous. Jury selection—you find out things afterwards that you didn't know going in as you talk to people afterwards. Some people, especially on a circumstantial evidence case, are not used to making decisions based upon analytical thinking. They want to be told in black and white what happened by, let's say, an eyewitness, and then they can transfer the responsibility for making that decision to that eyewitness. When they don't have somebody that says, "I saw him rape her and I saw him strangle her," you don't have that kind of eyewitness testimony and you have to do the mental, analytical thinking to get to that conclusion. Some people are not comfortable doing that.

In selecting juries in that case, I was always looking for people who were comfortable and used to making decisions. But you only have so many challenges and so you can't get the perfect jury that you want every time. You run out of challenges and so whatever is left is what gets on the jury. You do your best to try and select a jury that is comfortable with the role because it is an awesome responsibility that a jury has, especially in a rape homicide case. But any serious case—and all of our cases were serious, quite frankly. People go to jail if they're convicted and so a lot of jurors are uncomfortable with that responsibility and that burden. And that was the case with the first two juries. I had people on there that weren't comfortable with connecting the dots and coming up with the conclusion. The third time, I mean, you look at all three cases and quite frankly, out of let's see, thirty-six jurors, thirty-three were unanimous in concluding that he was guilty. That's the way I look at it. Every now and then, you're not going to convince everybody. When it's thirty-three against three, you're pretty comfortable with the ultimate result having run it by a jury of peers. The evidence changed a little bit. The first time I tried it, there was a jailhouse snitch that I used as a witness who testified that Kennedy confessed to him that he murdered her and he had credibility problems. I didn't call him the next two times. They attacked him pretty well in cross-examination. He said he was in a jail cell with Kennedy and Kennedy told him that he did it so I put him on because he knew things that I don't know how he could have made up but he had an impeccable background so I said, "He just makes it too messy. I don't need him."

MK: It sounds like it was an influential case in your life as well as your family's life.

TC: Kimberley's story about Casey Martin, yeah. I was pretty tight lipped about my thinking on that case, even from my own family. I wouldn't tell them what I was thinking. I just sat there throughout the whole trial and listened to all the evidence. I will tell you that until—I mean—I put it all together at the end but I was open minded going through that trial. I will tell you for a fact that if I felt that the evidence established that he had some kind of competitive advantage with a golf cart, I would not have accommodated him with a golf cart but throughout that trial I kept listening for, waiting for some golfer to say it gives you an advantage to have a cart and—to the contrary. I don't golf! That's what I said at the beginning. I'm not a golfer so explain things to me thoroughly. What I found out listening to everybody is that actually, using a cart is a disadvantage to an able-bodied golfer. They don't want it. When they were given options to use a cart, they would walk. Why the hell would they do that if it gave them an advantage to use a cart? I asked one of them, I said, "What's the reason you would walk instead of using a cart?" He said, "Well, it gives you a better feel for the course and golf is a very psychological game and when you're walking, you can work off the stress because the stress is really what can impact your shot-making and it helps you to walk to calm down and that sort of thing."

I wouldn't tell anybody what I was thinking. I kept asking those questions. It was interesting in that case because the plaintiffs introduced a pamphlet put out by the United States Golf Association called *Rules of Golf for People with Disabilities*. I thought that was interesting. For example, for someone who's blind, they modify the rules. Under the rules of golf—the USGA is the one that promulgates the rules of golf. They have a rule that a golfer cannot have a coach giving

him or her advice, that you can only get advice from your caddy and not your coach. So, in other words, you can't take a coach along with you on golf links. But if you're blind, you can have a coach and the coach can help line you up over the ball and talk you through your swing. That's allowed if you're a blind golfer. Isn't that interesting? I asked the hypothetical of the attorney for the PGA Tour, I asked him, "What if the day ever comes when a golfer who is blind is good enough to play professionally? Could you allow him a coach then under this modification of the rule or would you say that that would give them a competitive advantage?" He wouldn't answer my question.

MK: He wouldn't answer?

TC: He would not answer the question. The way he answered it was, "Your honor, that does not advance the ball here." So, he avoided the question. I thought it advanced the ball. I mean, it's obviously an unrealistic scenario but who knows? Their argument was you can't alter any of the rules of golf because it would be a fundamental alteration of the game according to the rules and the ADA doesn't require that. To me, it all came down to, does this give him a competitive advantage or does it just let him play the game? I found it was the latter. It let him play the game. The thing about the Casey Martin case that I think is important in terms of its, among other things, its precedent and maybe other areas—how important it was to have a trial to decide the case and to develop a factual record because in just the abstract, and this is what the PGA Tour was trying to do, approach it in the abstract, this is a rule and if you tinker with a rule, it's not the same game. But that's what the ADA is all about because we're always dealing with rules under the ADA. Businesses have their rules. Sports have their rules. Educational institutions have their rules. Everybody has rules and the point of the ADA is, can you modify these rules in a reasonable way to accommodate the disabled?

I'll never forget as I did my history on the ADA, one of the big proponents of the ADA was a guy who had polio who was really upset because he was the son of the founder of Walgreens and he couldn't work in his father's pharmacy because he couldn't fit his wheelchair behind the counter. That's the accommodation. He sponsored the ADA. That's the accommodation that you require businesses to make. Okay—make it accessible. Make your business accessible to employees who have a disability. Make the counter space larger so you alter their game plan, their floor plan. You alter it to accommodate someone who is disabled. That's what you're doing with the rules of the PGA Tour. Figure out if this rule can be altered in a way that it's a reasonable accommodation for somebody who is a proficient golfer but just can't walk. Does anybody really care how he gets to his shot? It's all about shot making. It's not about walking there. Yeah. That was obviously one of the most interesting cases that I've handled. In fact, I see now where John Daly was given a cart because of some back issues that he's got. Good. The ADA is—here we are twenty-one years later and we made some precedent.

MK: Very important precedent.

TC: But without the factual record, if it was just considered in the abstract, it would've been, I don't think it would have survived the appeal. We had to have a factual record and I made detailed findings about why he doesn't get an advantage by using this and those findings were upheld all the way to the Supreme Court.

MK: How did that feel?

TC: It felt great. I was nervous. The Supreme Court, you can get to a link and listen to their arguments. I was listening to the arguments before the Supreme Court. The most vocal justice was Scalia. He was belittling Martin's attorneys in oral argument and he was very sarcastic and had this parade of horrors, you know. What are you going to do, give a little league player who's learning disabled four strikes? Things like that. And I thought, "Oh my god. We're in trouble. My opinion's in trouble." Because nobody else on the Supreme Court really said anything, had any questions. I

guess the other justices were just letting him vent because it was a seven to two affirmance. Scalia dissented and Clarence Thomas dissented. The author of the opinion was, my understanding was he was an avid golfer—Justice Stevens. He authored the majority opinion. They adopted and reference a lot of my findings from the trial which is why I say the factual record is so important. I took a lot of pride in writing that case. Like a lot of my cases, especially my civil rights cases, I authored pretty much my own opinions. I'd get some law clerk help with the legal issues but in terms of writing the opinion, I take pride in doing it myself. I like to write. I always have. I subscribe that to my high school education. I had a really good English literature professor at my high school, Saint Louis U High in St. Louis.

Oral and Written Opinions

MK: When you sit down to write an opinion, what does that entail? Do you have rituals?

TC: Do I have what?

MK: Do you have any rituals?

TC: I do a lot of thinking. I have a very, if I say so myself, a very analytical mind and I'm always turning over in my mind all of the different angles of this. And then I sit down and I put it in writing. I'm trained in the old-fashioned way of writing everything by hand. I do not compose well on a computer. I have to sit down and I don't know what the explanation is. There's some link between writing something out as opposed to trying to type it out. I think better as I sit down and write it out. I think I'm distracted by keyboards or something. It probably goes back to high school where I took a typing class.

MK: I remember. The only class that you—

TC: I got zero words a minute. *[laughs]*

MK: *[laughs]* There might be a relationship there.

TC: So, I just get distracted by that. I think so much better when I just write. I don't know. I see kids today and god, my grandchildren, they're so proficient with these computers and the internet at such an early age and I'm thinking, well, one thing that I think of is, is this really healthy? What's this going to play out in like twenty to twenty-five years when they're older? Are we getting so connected to our technology that we're going to miss out on a lot of stuff? I didn't have any of that stuff when I was growing up. None of it. We had the first tv on our block and I was how old then? I was about, because I remember, my dad won the tv at the office picnic and I remember, so it must have been 1951. I was six because I remember watching the World Series and Willie Mays was playing for the Giants. It was the Giants against Cleveland and Willie Mays made that historic, over the shoulder catch. I saw that on a black and white tv when it happened. That was '51. I was six.

MK: Everybody must have been at your house for that.

TC: Yeah. We had the neighborhood over.

MK: I bet.

TC: *[laughs]*

MK: Again, when you sit down with your pad of paper and your pen to write, where do you, does the location matter?

TC: As long as I have solitude, I'll sit at home and do it. I'll do it, if the weather's nice, I'll do it outside. If the wind's not blowing all of the papers all over the place. If it is, then I'll go back inside and I'll sit in the chair away from a tv or any distractions and I'll just sit down and start writing.

MK: And that's all that you need at that point, right? You don't need to bring the files or the briefs.

TC: I bring the briefing home, yeah. So, I want to make sure that, I'll have it there in a big stack so I can consult it if I want to take something from it. In the Casey Martin case, we didn't have a full transcript at the time I wrote my opinion but I did take notes. I knew pretty much what the testimony was that was important to me—what I wanted to do, I surprised everybody when I did it. I concluded the evidence and I started to jot out my thoughts and then we had closing argument and then after closing argument, I pretty much had my thoughts written out about what I had concluded from the evidence. I took a recess and then it was in the morning, if I remember correctly, and I announced that I wanted everybody back at like two in the afternoon and I was going to announce my decision.

It shocked everybody but I knew what I was going to do and I knew that time was of the essence because the tournament was going to start. The PGA Tour season was going to start in about a week I think or two. I announced my decision, when was it, it was in February, and their tournaments kick off in late February, early March, whatever it is. I didn't want to delay it. I wanted to explain my reasoning at least orally and so I pretty much announced it orally. I indicated when I did that, that I was also going to issue a written decision and the written opinion was going to control if there was any conflict between what I said orally and the written opinion but the written opinion didn't deviate that much. I just kind of elaborated more on it when I put the written opinion out there. It contained pretty much the same points that I said orally. I remember reading that the golf world was kind of shocked that I announced it orally and the lawyers were saying they'd never seen that before.

MK: Really?

TC: Yeah. The trial judge almost always just waited until they issued a written opinion. But the whole world was watching and they wanted to know the result and so, "Well, I'll tell you right now! I know what I'm going to do. Here it is."

MK: Were there other cases that you decided and gave an oral opinion for?

TC: I'm trying to remember. Yes. I've done it before. I can't remember the exact name of the case but I have done it to where I thought, "Here we are and I know what I'm going to do." I'll do it at least in summary form from the bench and then I will elaborate in writing but I haven't had, obviously, you can't do that with a jury trial. You have to have a case where the parties have consented to a court trial or the type of relief. See—in Casey Martin, there was no right to a jury trial because he wasn't seeking money damages. He was seeking what we call equitable relief and those are always tried to the court only, not a jury. So when you're seeking equitable relief—oh, I know another one I did it in. I did it for another ADA case. It was the case of the high school student over in Coos Bay, Marshfield. Same thing there. I issued my ruling orally at the conclusion of the trial and then I followed up with a written one.

MK: And do you do that for expediency's sake? Or is there another—

TC: I do it because everybody's there. They're vitally interested in the outcome, you know, it's very important to them. I see no reason to keep them in suspense when I know what I'm going to do. They also want to be able to plan their futures. Like in that case, I think the football season was

coming up and they may even have started practicing, as far as I know. I was trying to remember. The school needed to know. The student needed to know. The OSAA needed to know. They had to plan for this. They had to restructure their rules if I was going to go and rule in the plaintiff's favor. There's a lot of people that had to, basically, roll up their sleeves and respond to this new change in the way they were going to process these disabled students in terms of their eligibility. I respected that and I wanted to give them ample time to do that.

MK: And is that, to you, more respectful, or is it taking responsibility more when you go and give that orally as opposed to issuing a written statement?

TC: Well, it's several things. One, it is respect for what they have to do. Two, what's my role? My role is to resolve disputes. My function is to get a resolution expeditiously. So, I want people to know, okay, you've done the litigation. I've heard the case and this is the result. Now, go forward and modify your behavior in accordance with my ruling and I'll get out something in writing. The written part is really for the purpose of any appeal somebody wants to take, the losing party might want to take. The appellate court part will take time. I'll get the written part out that they can appeal from in a timely fashion so that they can take the appeal if they want to but, in the meantime, here's my ruling and go and modify your behavior in accordance with this ruling. So, that's why I do it because like in both cases, the PGA and the high school eligibility case, time was somewhat important to them because when you come in and you're seeking equitable relief, a lot of times, it's like, "We got to do this now." If somebody wants to cut trees in the forest, for example, an environmental group is suing for an injunction to stop it, and the loggers are all lined up to go into the forest and in the meantime, the court orders them to stay out until I rule, you expedite everything. So, I'll do it in those cases too. In those cases where the parties consent to me hearing the case and I hear the evidence or the presentation, I'll issue an oral ruling, written one to follow. Yeah. I try to do that because especially, a lot of times in these cases where they're seeking equitable relief, time is very important.

MK: It also, it seems to me—you can correct this—but it seems more personal. You're there. You see the impact of your words immediately.

TC: Sure. Yeah.

MK: You absorb the reaction.

TC: Absolutely. Absolutely. And I'm comfortable doing it. I mean, this is what I did as a prosecutor, is basically, addressing juries orally all the time. I had to organize my thoughts and be flexible in communicating, et cetera. [*Talks to clerk*]

Walter Wencke Case

MK: There's a case that Kimberley remembers that I very much wanted to ask you about. I don't believe it came up in our, I don't think it came up in our recording.

TC: Okay.

MK: It's the Walter Wencke case.

TC: Oh! Walter Wencke! Yes!

MK: [*laughs*]

TC: Yes! She remembers that case?

MK: She remembers the postcards.

TC: Yeah. Walter Wencke was, I don't know if you ever saw this old movie, Cash McCall. James Garner, I think, was in it. He played this guy that would acquire businesses and then he would strip the businesses of cash and you know, then leave behind all of the liabilities and debts. That's what Walter Wencke did. Walter Wencke was a genius in a lot of ways. Harvard educated, spoke seven languages, a business lawyer, ran for congress in San Diego. What he did was, he would go in and he would acquire these businesses that were struggling, had cash flow problems and he would take them over, put in his own hand-picked, toady board of directors, and he would in very complicated ways, transfer out all of the assets of the businesses that were worth something to shell entities that he would then transfer them away from the shell entities to other shell entities to even more and on and on and on until they finally ended up in some entity that he completely controlled. Then he would sell those assets and pocket the money. He would do the same thing with the liabilities only with the liabilities, they would end up in dumpster that he would just walk away from. He would borrow money and all that from banks to finance things and then everything would collapse. When all the smoke cleared, he had the cash and all of the people he fleeced were basically holding all these worthless and negative liabilities.

So, that was Walter Wencke. I ended up trying him on various counts of fraud. It was easily the most complex case I've ever had to try. Well, it rivalled the Local 89 case. But the Local 89 case, no, that has to be more complicated because that damn thing took three months to try. But Walter Wencke took about two weeks to try. I tried the case, a jury trial, before Judge Leland Nielsen. Great guy! I liked Judge Nielsen. We picked the jury. I'll never forget. One of the jurors was a bus driver and as we were picking the jury, the judge asked, "Is there any reason why anybody can't serve on this case?" The bus driver said, "Your Honor," he said, "I don't have much of an education. I'm a bus driver." He was African American. I remember that. He said, "So, I don't know that I'm fit to serve as a juror on this case." Judge Nielsen said, "No. You'll do just fine." So, he was selected. I made my opening statement and I knew that this case was very complicated. I always thought it was important. You have basically three opportunities to educate a jury: opening statement, the trial itself through the evidence you introduce—you have to bring out the evidence but you can't have a conversation with the jury while you're doing that, and then closing argument and now you're back to talking to the jury. So, opening, you talk to the jury and closing you talk to the jury. In between, you put on the evidence. I knew, "Okay, I need to take full advantage of all three opportunities because this is such a gnarly case." So, I made my opening statement and as I make my opening statement, I see this bus driver juror and he's slinking lower and lower into his seat. Then after opening statements by both parties, the bus driver sends a note to Judge Nielsen, it says, "Your Honor, I beg you to reconsider. I heard the opening statements. I have no ability to understand this case. Please let me off this jury." So, Judge Nielsen in court, kind of read the note to the lawyers, then he brought the jury back in and he says, "Nope. You're staying." So, off we go to trial. The case was so weird. Wencke, when he was on the stand—

MK: Oh, he did take the stand?

TC: Oh, he took the stand! Yes. He was going to take the stand. I knew he would take the stand because he viewed himself to be the smartest guy in the room and he was just gonna give me a whipping on the stand. So, when I went to cross-examine him, he tried to intimidate me. He was very Trumpian in his approach, only a lot smarter. He was very sarcastic with me, very insulting. I was very polite and very gracious to him and I just kept asking my questions. He kept trying to attack me and I said, "Thank you," and I asked him questions. This went on all afternoon and I looked over at the jury as this was going on. I could tell the jury was not liking his performance, his demeanor. I always developed a good relationship with jurors. I never portrayed any nasty demeaning traits in front of a jury. I was always polite. I was always, I'd like to think, in my cross-examination, for example, I was just respectful to the witnesses but I would ask them tough

questions. I would pursue a line of questioning that made them uncomfortable but I would do it in a way where I was not disrespectful. I was doing that with him and he was being disrespectful toward me and this went on for hours in the afternoon, all afternoon. I didn't finish my cross-examination by the afternoon recess. I came back the next morning. I could tell that his attorney was really upset with him and his attorney was a good attorney. His attorney was John Mitchell. John Mitchell, by the way, was the attorney that went with me down to Gus Guerra's—remember when I went to Tijuana.

MK: Yes.

TC: So, I knew John Mitchell really well. We got along good. He was the attorney that went with me to get Mrs. Guerra to come up to testify against those two crooked border guards. I could tell John had taken him to the woodshed and told him, "You're not doing yourself any good." And so, the next day, when he took the stand, Walter was a different guy. Now, he was trying to be polite. I saw that and— *[cell phone rings]*

MK: I'm sorry. That's my parking meter.

TC: That's okay. Oh no, you wanna go?

MK: You have a 10:30, do you not?

TC: I have a 10:30, yeah. What time is it now?

MK: It's 10:10. I think I'll be okay for a few minutes.

TC: Okay. So, after about two questions and I saw how he wanted to change, I wasn't going to let him rehabilitate himself and so I quit my questioning.

MK: Ah, you were continuing to cross-examine him the following morning when had become an upstanding—

TC: When I saw that his lawyer had talked to him and I felt, yeah, I've done enough. That was Walter. Walter Wencke looked like President Ford. And I say this because, this is such a weird case. In the courthouse down in San Diego, we had to use the same restrooms as the jurors during breaks which made things interesting because I went to the restroom during a break and Walter Wencke came into the restroom during a break and a juror came into the restroom at the same time that Walter Wencke and I were in the restroom. *[laughs]* We had been at trial for a week and this juror looks at Wencke and says, "You look familiar." *[laughs]* "You look like President Ford. Have I seen you somewhere?" *[laughs]* I figured, I said to myself, "Oh my god. I got the bus driver. I got this juror."

I made my closing argument. The jury goes out and they start deliberating. We had something like thirty counts in the indictment. A week goes by, not a word from the jury. They come in every morning at nine, leave at five—did this for a week without a peep and I thought to myself, "Oh my god. What is going on?" So, at the end of the week, I finally asked Judge Nielsen, because I was worried if we send them home for the weekend and some juror can't proceed, that it's a hung jury and we'd have to start over again. So, I asked Judge Nielsen, "Can you please see if they have any verdict on any counts?" And he liked that idea and he sent a note in, "Has the jury reached any verdict on any of the counts?" And they sent a note back saying, "Yes." I prevailed upon him to take the verdict. So, we take a partial verdict. What the jury had been doing—the case was so complicated. We had thirty counts. They had gone from count one through count nineteen. They had found him guilty on like seventeen of those counts, undecided on two counts and were

still preceding down the road to the other twelve counts that were left. My god. They were going through this so methodically.

MK: Meticulous.

TC: I told Judge Nielsen that, "We don't need anymore. I'm fine with just the..." And so, he took the partial verdict. Wencke was out on bond. He disappeared. He came back for sentencing. He was sentenced to five years and then he disappeared. We never found him. The guy—he abandoned his family. He abandoned his house. We went to his house to look for him, to see if we could find anything that might tell us where he was and what I noticed about his house, he left his wife there, he had an adopted daughter that he left there. Apparently, he just took off in the wind. They didn't know anything according to them. He had a dog that was just like my dog, a little miniature dachshund, Popcorn. Looked exactly like our dog. Maybe that's what Kimberley remembers. I was telling the kids that, this guy's got a dog just like our dog. But he took off and he completely disappeared. I'm sure by now he's dead but we figured because he spoke seven languages and I think he had been in the CIA and we figured one of the languages he spoke was Chinese, so we figured he must have gone to China which we'd never be able to find him over there. Yes. She remembers that case.

MK: And how about the postcards?

TC: The postcard? Was she talking about a postcard from him?

MK: Mmhmm.

TC: That was, I thought that was another case where I got a postcard from a guy that was a fugitive. That was Doug Wargo.

MK: Oh, maybe.

TC: He fled too. He sent me a postcard of a bare-breasted Hawaiian hula dancer in which he said, "Wish you were here." *[laughs]* Yeah, is that the one?

MK: I think that must be the one.

TC: That was Doug Wargo. That was another one.

MK: She said she remembered you getting a postcard and just laughing.

TC: Yeah. That was Doug Wargo. He jumped too after I convicted him and he just took off and he would keep in touch with postcards.

MK: You got more than one? You would get them?

TC: I remember that one because it was— *[laughs]*

MK: That sounds memorable. I also really enjoyed the story that Kimberley shared about TJ when he was going through his Charlie Brown phase.

TC: Oh yeah!

MK: Would you like to share?

TC: Yeah. Yeah. Yep! Charlie Brown, right? I remember we had a Dr. Charlie Brown who was testifying in front of me. It was a criminal case he was giving his assessment of the defendant and I was on the bench. Dr. Brown was called. "What's your name, please?" "Charlie Brown." TJ yells out, "You're not Charlie Brown! I'm Charlie Brown!" *[laughs]*

MK: Kimberley said that every member of the family was a character at that time.

TC: Yep! Yeah.

MK: How often, it seems like she has so many memories and it's really, those memories are important to her and her identity, spending time in the courtroom.

TC: Yeah.

MK: Seeing you.

TC: Yeah. I always, if one of my family wanted to come watch, they were, they learned a lot. I think Laura pursued her career with the law. I think that was a big part of it. I remember her, when I was a prosecutor, one of my trials and rooting for the defendant. *[laughs]*

MK: Really?

TC: Oh, you didn't know about that one?

MK: No. I don't know about that one.

TC: I was prosecuting this sheriff's deputy from Douglas County who had been buying cocaine from an undercover DEA agent and so we charged him with possession with intent to distribute cocaine. His defense was entrapment. He was represented by a really good attorney here in Eugene, Bob McCrea. Laura came and watched the trial, part of it. She was about eight at the time. The sheriff's deputy had two little twin daughters that were about Laura's age and when he was on the stand, he was crying about his daughters and the effect this has had on the family, et cetera. I can't remember whether the daughters were in court or not but Laura was in court. That case, the jury went out. Judge Belloni was the trial judge. Judge Belloni kept the jury out until three in the morning.

MK: Oh, wow!

TC: Three in the morning! They came back with a not guilty verdict. So, I went home and I was completely tired and went to bed, got up in the morning and told everybody what happened. Laura cheered *[laughs]* because she said that she had prayed for the guy to be acquitted. *[laughs]* I knew then that she would be a defense attorney.

MK: *[laughs]*

TC: It all comes from bringing the kids to the courtroom and Penny would go watch too from time to time. They all loved the Casey Martin case. I had them at the climate change case, listening. I'm going to really love someday talking about that case.

MK: We'll come back to that when you're able to.

TC: Yeah. Absolutely. Yeah. I have some pretty strong feelings about that case that I'd love to share when the time is appropriate.

MK: I don't doubt it. We'll save that then.

TC: Okay. *[laughs]*

MK: I look forward to that too. Well, your daughters both have theories about why you moved to Eugene and I remember you mentioning that you came here and you fell in love. You thought it was beautiful. You thought it was a nice, safe community, a nice place to raise them and they were wondering if it was related to that very difficult Maria Lopez case that you had been trying.

TC: Maria Lopez certainly affected me. I wouldn't say that it was the catalyst that caused me to come up here but I will say it was the catalyst that really caused me to become very strong in my feelings about civil rights and the way people are treated who are disadvantaged and the way they are stereotyped and the cruelty that we can treat them with. I told you how I, I think I told you how I talked to the immigration people that sent her back. I asked them, "How the hell could you do this?" They looked at me like I was crazy. "Well, what do you mean?" I said, "Well, how would you want your own daughter to be treated?" Eighteen years old! "Well, our daughters wouldn't do this." The lack of empathy. The lack of being able to see the perspective. That's always had a deep effect on me. Right there, the difference between a person's life and literally their death. Do we see them as people or do we just see them as criminals and who cares what happens to you? You're on your own. I see that today, obviously. I see that in the treatment that's going on now down at the border. That's why I wouldn't go down there when they called and asked me to go down and help with their Operation Zero Tolerance last May.

MK: Oh, did they?

TC: Oh, I don't know if I told you that.

MK: No. You did not.

TC: This was in connection with the then Attorney General Jeff Sessions basically having this publicity stunt of zero tolerance at the border where every single illegal would be prosecuted in federal court in San Diego. Everyone because they used to be so selective but now they were going to make a big show of prosecuting every one and they needed magistrate judges to go down and fill in because of all the volume of work and I just refused to go. I was asked by the administrative office, "Why won't you go?" I said, "I'm not going to be part of this campaign against Hispanic people. I'm not going to do it." That's when they not only prosecuted all of these illegals but they took away their kids.

MK: They were separating the families.

TC: Yeah. They announced that gleefully as they snatched these kids away from their parents and put them in cages, lost a whole bunch of them. It just makes my blood boil when I see the United States government taking measures like that. I guess I tend to be kind of outspoken about it but yes. I think we need to be outspoken. I think if we're not outspoken, they'll just steamroll over everybody.

MK: Were there any repercussions?

TC: Nope. Not that I know. Because I'm retired and on recall, they like to call judges on recall and see if they can fill in at places. They figured because I'm from San Diego originally, I'd like to go back there but not for that. I don't want to be part of that.

MK: So, your daughter Kimberley also shared that when you moved, your brother Bob was maybe disappointed or worried that your career took a very different turn than what he thought could have happened if you had remained there.

TC: Bob was more focused on a career that was more profitable than I was ever focused on. I've never been that motivated by money. As long as I had a steady paycheck, which working for the government, I did, I didn't need a whole lot. My wife was the same way. So, we were happy with having a house, a farm, and didn't need the trappings of a lot of wealth because we just took a lot of, we got a lot of soul satisfaction out of just being where we were on an everyday basis. It's like that Grateful Dead song, "Go where the climate suits my soul," *[laughs]* "Going down the road," or something. Yeah. That's us. It was a great move and the kids, I think, really loved it up here. Although Kimberley had to get back to San Diego. *[laughs]*

MK: I should maybe check the time because I know that you have to, it's 10:28.

TC: Okay. They'll be calling me soon.

MK: Okay, so, next time we talk though, I heard that you had a childhood nickname from your brothers.

TC: Pinball.

MK: Yes.

TC: *[laughs]*

MK: I haven't heard about that yet.

TC: Pinball wizard.

MK: And then I'd like to maybe talk a little bit more about the teaching that you've been doing more recently.

TC: Okay, sure!

MK: And if there are any other cases, or if speaking to Penny brings other new things, then.

[Recording ends]

Recording Six, November 1, 2019

MK: This is Makaela Kroin. It is November 1, 2019 and I am in the chambers with Judge Coffin and we are beginning the sixth recording session. Where we had left off, we thought we might revisit a few stories that we passed over and then, where would you like to start, Judge Coffin?

TC: Well, it was something that I neglected to mention last time and my children reminded me of it. The case that I handled involving an undocumented alien who had a seven-year-old child in need of care for a kind of a rare condition. She could only get the type of care that she needed here in the United States. This was a life-threatening condition. Anyway, the child had a very serious condition that affected her cardiac situation and the mother had been arrested in the past. She had an abusive relationship and she had been arrested in connection with a drug delivery and convicted of an offense. She served her probation and everything was fine and then she appeared before me years later after her initial arrest because the Drug Enforcement Agency misidentified

her as someone who delivered drugs on a recent occasion. They got a criminal complaint against her, arrested her and brought her to my court. I appointed an attorney for her.

During the course of discovery, the attorney received a video. She denied that she had delivered the drugs. During discovery, her attorney got tapes from the government that indeed revealed that she was not the person who had delivered the drugs. They had been mistaken in their identity. So, the government moved to dismiss the complaint against her. Strangely enough, the defense attorney didn't want the case dismissed and I agreed with him because ICE was going to deport her as soon as the charge was dropped. So, I didn't want to lose jurisdiction over her. We kept the case alive while she and her lawyers undertook—she obtained an immigration lawyer and they undertook to explore the prior state conviction that was going to be the subject of deportation and whether or not that could be somehow discharged from her record.

MK: Now, would this have been the charge many years before she arrived in your court?

TC: Yes. This was charged many years before.

MK: And what year is this happening?

TC: 2003 is when she appeared before me.

MK: So this would have been during President Bush's—

TC: I think so. Governor Kulongoski was governor of the state of Oregon. I remember that. Yeah. It would have been but the federal government, really, after they realized she had been misidentified in the federal charge, they really were no longer involved in it other than that the case was still there which allowed me to keep jurisdiction over her while her attorneys explored how to get that prior state conviction dealt with so she wouldn't be deported. They found after talking with the district attorney's office that although they were sympathetic to her situation because she was quite young when she got that conviction and she had had no blots on her record since then, she had successfully completed her probation, et cetera, but they said there was just no way to dismiss it. The only way to deal with it was through a pardon which were relatively rare.

We kept the case in my court while her attorneys explored the issue of a pardon. I wrote a letter on her behalf explaining the situation of her unfortunate misidentification by the DEA that led to her coming to the attention of ICE who were going to deport her now. Ultimately, she was pardoned and with the pardon, the deportation, the basis for the deportation no longer existed and that was dropped. She, ultimately, my understanding is she became a naturalized citizen. So that was a good outcome to a case. It shows you how from difficult circumstances, you can get a good result if you are patient and you work with people and if you support them and they have a support system. People rehabilitate themselves which is a very good result to happen in our criminal justice system and that's what you're always trying to achieve, quite frankly, in my view anyway. That's what I've always worked to achieve on behalf of people. Like I said, the last time, the best results that I can think of are those where people turn their lives around and came back and they become productive members of society.

MK: I mean, you have several cases in your tenure where people have gotten in touch with you.

TC: Yeah.

MK: Years later.

TC: And thanked me for giving them a chance. So, if you have a system that, you really need to balance the punishment aspect of the system with the rehabilitation aspect of the system and you're far better off if you can achieve a rehabilitation objective and produce somebody that is now

contributing to the society that they live in. That, to me, is what success is in terms of the criminal justice system, is to turn lives around.

MK: Temper justice with mercy which is a theme that you've talked about quite a bit. I also wonder, how long did that process take between when you decided to keep jurisdiction and you were able to get the pardon?

TC: Yeah. I was trying to remember that and I couldn't find the records of the pardon. She was arrested in '03. I'm going to say it took several years to be able to get the pardon material together, submitted to the governor and then for the governor to act. I believe the governor ended up interviewing her as part of the process and then ultimately pardoned her. I'm going to say it took probably several years to do this.

MK: And with the defense attorneys, were you having to, how were you keeping jurisdiction and delaying the dismissal?

TC: I just kept continuing the case to not dismiss it and excluding time under the speedy trial calendar because as I said, if I had dismissed it, based upon the way things stood at that time with her prior conviction, that was the sole basis for her deportation. She would have been deported but once the pardon came through, that basis evaporated and they didn't have grounds to deport her at that juncture. I think when she was misidentified and arrested by DEA, she had legal status in the United States. She had residency. That was going to be a basis to revoke that and to deport her.

MK: Wow. Well. It's hard not to draw parallels with what is happening on the border and with immigration now and how little justice and mercy are a part of that system.

TC: Well, now that you bring that up, I will tell you that after my retirement, while on recall status, which I am now, several years ago, I was asked by the main justice back in Washington D.C., the Office of the US Courts if I would be willing to go to San Diego for several months to assist in a new operation that they were, the government was going to implement down there. They were going to charge every illegal, every undocumented alien with illegal entry, all of them. They were going to make a big push to prosecute every person coming to the border who was undocumented which was unheard of because they just have such a huge volume of cases that they've always been selective but under this administration they wanted to basically have zero tolerance. I refused to go. I was asked why I wouldn't go and I said, "Because I don't want to be part of what I perceived to be a policy that is based upon animosity towards Hispanics." Sure enough, what happened? That's when they began the separation policy and taking children from the undocumented aliens who they were prosecuting and separating them and putting the children in cages and then many of those children were lost in the system. They didn't keep track of them.

MK: Yeah. They have no way of finding their families.

TC: No. My conscience wouldn't let me be part of some policy like that, some government policy like that. I mean, to me it violates human rights. It's inhumane. It's cited by the Geneva Convention as a form of genocide under the Geneva Convention. I just refuse to be a part of that process.

MK: Could there have been any repercussions for that?

TC: It remains to be seen. The repercussions down there, I don't think that final chapter in this has been written yet in terms of that policy. To me the most disheartening picture that emerges in my mind in terms of our nation's history and tradition is this image of the president of the United States and his attorney general at the time, Sessions, embracing the flag of the United States,

literally as they announce this policy, the separation policy. I thought to myself, "My god. That's not what this country stands for. Taking little kids away from their parents and separating families like that? That's not our country. That's not our values." Yeah. I don't think the final chapter has been written on that policy. I mean, I think as history looks back on this, it's going to be a very great stain on our nation's history.

The Wedding Suit

MK: I think there was another story that your daughter mentioned that I would like to go back to because I don't believe we covered it. This was related to the wedding suit.

TC: *[laughs]* Oh, yes. The wedding suit.

MK: Okay. Would you like to tell that? *[laughs]*

TC: I was in the US Attorney's Office. It was 1973 when I got married. I started in 1971 so I had been a prosecutor now for about two years when Penny and I got married. One of my colleagues suggested that for a wedding suit, I go to Tijuana because there was a tailor down there named Arturo, the tailor. He would outfit me with a wedding suit for the occasion. So, I went down and met Arturo. He measured me and his prices were pretty reasonable and so I ordered a wedding suit. He was going to make it. It was hand tailored and all that. So, as the wedding day approached, Arturo got busted at the border. He had some cocaine and he was in his car. Not a whole lot, probably a personal use amount but nonetheless, he was bringing it across the border and he got busted. Then he was released but he still had court appearances to make in federal court to make for smuggling and that was going on.

My wedding day was coming and I said, "Jeez. I don't want to go down and deal with Arturo anymore but he's got my wedding suit. I paid him in advance." But I said, "I can't go down there now that the guy's a defendant in court." So I sent my brother down there. He was willing to go. So he went down there. My brother, Bob, is a very persistent person to say the least. He goes to Arturo's tailor shop and tells him he's there to pick up his wedding suit and Arturo says, "It's not here." My brother says, "Where is it? Where is it? I want to see it." "Well, it's being made." "Where's it being made? Show me!" Bob thought it was going to be in the back of the guy's shop. It wasn't. So he said, "Okay. Come with me." He drove him out to some remote part of Tijuana and what Arturo would do, is he would hire these seamstresses who lived in these shanties in the outskirts of Tijuana to sew everything together. So he goes to this small shanty on the outskirts of Tijuana and there's this woman in there and the suit is spread out in pieces on the beds throughout the house and she's sewing them up and that's where it was. Obviously, it's not ready to be picked up so Arturo promises that it'll be finished in time for the wedding. Bob comes back and, god! Right before the wedding, two days before the wedding, there's a knock on Bob's door and there's this package. It's my suit. Somebody drops it off from Tijuana. I remember telling Bob when I convinced him to go down there and get my suit that, "Look. I can't go down there because of my position but you, nobody cares about you." *[laughs]*

MK: He was a defense attorney. Is that right?

TC: No. He wasn't a defense attorney. He was a, basically, he was a practicing attorney but he basically did personal injury work, civil work. Yeah. So that's my story. Arturo, I don't know whatever happened to him. I think the case was dismissed. He had no incentive to ever come back anyway because he probably wasn't going to get jail time but why get anything? I mean, stay in Mexico. We've never extradited people from there for a charge like that. I don't even think we could if they were a Mexican citizen.

MK: Was it a nice wedding suit?

TC: Yeah. It was a white wedding suit. *[laughs]* Penny and I both wore white. *[laughs]* I didn't keep it. I don't know what happened to it. It probably wouldn't fit me anymore. I wasn't going to get married again anyway so no reason to hang on to it. *[laughs]*

MK: I'm glad that we got to revisit that story. That's a good story. *[laughs]*

Nickname

TC: Yep. So, what else did I do up here? Did you have anything else from down there in San Diego?

MK: No. I think that was the only story that I wanted to revisit in San Diego. If you want to talk about your brothers' nickname, I don't think we have that on.

TC: Oh. My brother would call me pinball wizard because if you remember the song from The Who.

MK: Yeah.

TC: The pinball wizard was a deaf, dumb, blind kid but he could play a mean pinball. *[laughs]* So, I guess he couldn't figure out why I was so successful as a trial lawyer so that was his nickname for me, just like the pinball wizard, can't figure out how this guy does it. *[laughs]*

MK: At what age did he give you that nickname?

TC: Pardon?

MK: At what age did he give you that nickname?

TC: When I started trying cases and was successful.

MK: Oh, okay! So it wasn't a childhood nickname.

TC: No. It was after I started to have a lot of success as a trial lawyer in San Diego and he never could figure out how could this guy get to be such a good trial lawyer. *[laughs]* And he thought, "Well, the pinball wizard." *[laughs]* Nobody could figure him out either. *[laughs]*

MK: Did you have a nickname for him then?

TC: No. Well, Bruiser. He got that nickname in high school because he was a big kid, football player. Hung around with some other football players and they would get into fights and do stupid stuff like that in high school. *[laughs]*

The Challenges of Settlement Work

MK: Well, I don't have anything else at the moment. Is there anything else that you'd like to? Do you want to talk a little bit about what you're...are you still doing settlement work?

TC: I do a lot of settlement work, yeah. I enjoy settlement work. I enjoy the challenge of it. You're dealing with some of the brightest legal minds, not only in Oregon, but a lot of my cases that I do settlement work on, they have out of town lawyers that come in from the East Coast, California, other places. You're always going up, I don't want to say against because settlement

work isn't like an adversarial position, you're a mediator but you're always interacting with some of the brightest legal minds that you're going to encounter and it's really a challenge to be able to engage these folks and get them to think of things in a way maybe they didn't think of before as you try to convince them to move in connection with their positions on what they want to do to settle the case.

I've always been really at analyzing issues and coming up with maybe a different way to think of something than people have thought of before in an effort to kind of move them off their entrenched positions and get them to say, "Well, maybe we should do this." It's a process that I really enjoy because it's a lot like playing chess really, at a very high level, when you're dealing with people that are as experienced and as capable as the people that I meet in almost every settlement conference that I have. It keeps you on your toes. I enjoy it. It definitely is something that I think makes you constantly aware of—how can I put it? It makes you aware of just how difficult it can be to negotiate and be a peacemaker under very hard lines that are drawn in these cases that people have because when you're a lawyer on different sides of a case, you really do get basically entrenched in your position to where almost any concession you make to the other side may be perceived by your client as being a weakness.

That's the challenge in doing settlement work. I think the key to settlement work is treating people with respect. I never employed an approach that is compulsory. I never did approach a settlement conference with the idea that, "I'm a judge. You people better listen to me." I don't play that card at all. I approach it from the position that we're all equals. Let's talk about this. Have you thought about this, thought about that," without really using any authoritarian ways of trying to get them to agree to a certain result. It sounds kind of strange but my approach to settlement work has always been, the task for me is to make each side believe or accept the notion that this resolution is in their best interest. So, when you think about that, two people that have competing interests, to come to a resolution that in each of their minds is in their best interests, that's a challenge. How can it be in the best interest of the plaintiff if it's also in the best interests of the defendant? I never expect anyone in a settlement conference to agree to a resolution that's in the other side's best interest, not theirs. That's what mediators do if they try to be compulsory, where they try to bend arms to do this, come to this fashion, this kind of a resolution. I never employed that approach. The challenge to me is fashioning an approach that is in both sides' best interests. Given the IQ levels of the people I'm dealing with all the time, that's a big challenge. So that's one way I approach settlement conferences. It also pays to have a sense of humor and to put people at ease, to be sympathetic, to listen to people. Let's not forget the clients. The lawyers are experienced. The clients, typically, are not. Cases differ. Some cases are very emotional if you have a wrongful death case or something and the plaintiffs come with a lot of emotional issues, that you have to listen to and sympathize with. That's part of my work that I like though. It really is and it's challenging.

MK: So, you in those situations, you do spend time with the plaintiff and you hear their story and not just their lawyer.

TC: Yes. That's very important to do that, that they feel that they've been heard. I point out to them that I'm not here to decide the case. I'm here to fashion a settlement that works for everybody. It's important too to point out that lawyers have their job to do in this whole process too. I've seen lawyers that don't do a good job with their clients in cases where emotions are high. For example, where there is a wrongful death and it's two years after the event and I'm doing a settlement conference and the plaintiff, a loved one, is suing over the death of a loved one. It's like the litigation keeps everything just like it happened yesterday in their minds. That's not healthy for them. Lawyers, I think, need to recognize that and realize that their job is not just to compensate the clients financially but to help them get over what happened to help them heal. I've seen cases where the loved ones, it's just like a wound that never heals for them and every time they have to relive it in connection with the case, it just brings back all the pain that they went through the very

day it happened. That's a delicate situation that you have to deal with too. Lawyers especially have to deal with that in my view.

MK: Can you think of a better way for attorneys to handle that so it's not always so raw and relieved?

TC: Here's the trick. A lot of times the plaintiff will have an emotional distress claim case where they're going to ask the jury to compensate them for their emotional distress. To the extent that the emotional distress is still at a very high level, they're going to ask for more in the way of compensation. To the extent that the person has dealt with it, then the compensation from a jury might be less because they have put it behind them. That's a conflict for the lawyers but on the other hand, what's the objective of the lawsuit? Is money the objective solely or is there also an objective of getting some healing in the process because what's best for your client? If your client is going to live the rest of their life being angry and not getting over this event, how good is that for them? Shouldn't you try to focus on getting them to heal from this so they can move on? That's what psychologists do. That's why you go into therapy. That's what PTSD is all about. That's why professionals try to deal with that and get the person healed so that they can have a normal life. You don't want a lawyer coming in and undoing all of that.

MK: On that vein, do you think that emotional distress is not necessarily something that the courts should be weighing in on? Or that really, a morally responsive attorney should try to counsel their clients to go other routes so that they can heal?

TC: I think that's a good question. It always creates somewhat of a conflict with lawyers. What do they do? I come down on the side of help your client heal because that's best for the client. Money is a poor substitute for the healing process. If you're constantly angry and depressed and you can't function, how much is money going to help you deal with that? Shouldn't you take your money and quite frankly, one of the things people do when they pursue lawsuits is they do go to a psychologist because if they don't try to get counseling from the psychologist, the lawyer from the other side, the defense lawyer is going to say, "Have you gotten any treatment? Then you're not that bad because you're not getting treatment." The name of the game is, I think, compensation for the pain and to help you heal and so part of the money should go toward continued care to deal with your PTSD or whatever it is that you need to get professional counseling for.

MK: Seeing that so many more cases are going into arbitration rather than going to trial, there must be a lot of call for your experience with mediation.

TC: Arbitration is a technical term. Arbitration is different from mediation

MK: Okay.

TC: Arbitration means that you submit your case to a third party, not a judge, but it's less expensive than a trial in front of a judge and jury trial and all that. But they decide the case. Mediation is where you go through a process that's not binding. You can walk away from the process and not settle. The mediator does not decide the case. The mediator's function is to determine if the two sides can come together and reach an agreement given all the circumstances. We do a lot of mediation. A lot of it is done by private mediators. A lot of judges don't like to do settlement work because it's, quite frankly, it's easier to just rule from the bench. That way you don't have to convince the losing party that, "You should accept this resolution." Quite frankly, it's easier just to listen to everything and just decide who's right and who's wrong and to issue your ruling than it is to try and get them to agree on an outcome. That's the tougher part is to do that. Some judges think it's—put it to you this way—when I sit on the bench, it's a pretty formal process. I sit up here. The parties sit down there. We speak on the record and evidence is taken and then I

rule. One party wins, typically. One party loses. I'm not trying to make both parties pleased with the result. I can't do that. When I'm trying to settle a case, I come down from the bench. I'm not sitting up here. I'm sitting at the same level that they are and I'm talking to them in a very informal way. No record's being made of our discussion. It's a lot more of a give and take conversation that I have with them. Some judges just aren't comfortable doing that because it is informal and it is more personal. There is more interaction. It takes a different type of skillset to do that. Some people just aren't that good at doing that and others are. I enjoy doing that. I really do.

Retirement

MK: You've found a way to continue to challenge your skills even as you are in semi-retirement. Are you doing somewhat less of that now or do you stay pretty busy?

TC: Somewhat less. Somewhat less. I think not everybody knows I'm still doing it so they don't ask as much anymore. I still get settlement work. I don't want to come in every day anyway. I do want to retire. *[laughs]* So, I'll come in less frequently anyway. I really don't have staff anymore assigned to me so I'm just kind of a lone wolf. The clerk's office will help out as needed but I don't have a law clerk, for example, doing research for me or anything like that.

MK: So what are you filling your days with now when you're not doing that work?

TC: I'm busier now than I was when I was doing that work. *[laughs]*

MK: What are you filling your plate with these days?

TC: Well, I've got seven acres. That keeps me busy and keeps me very active. I've always got something to do around our property. There's always this part of the property to tackle. Firewood to get. Firewood to split. Repairs to make. Then I have seven children that occasionally, infrequently need advice and assistance. I'll go down to San Diego, visit relatives down there. My daughter and her husband, actually, two daughters down there.

MK: I think those are the two daughters that I spoke to.

TC: Yeah. Mary and Kimberly.

MK: Yes. That's right.

TC: I keep busy. I write.

MK: What kind of writing?

TC: I write articles. I am freer now in retirement to write articles on the state of current events, politics, the Constitution. I say politics. I want to refine that. A lot of my articles are about the Constitution and what it means. I point out how this administration is the most anti-constitutional administration we have ever seen. Quite frankly, this president, I have never, and I follow him closely, I have never heard him make a favorable comment about the Constitution of the United States. Every comment he has made has been critical of the Constitution. The First Amendment for example, the co-equal branches of government, the separation of power, the Emoluments Clause which he has described as phony. He has encouraged law enforcement to violate the Fourth Amendment, to arrest people, to target them because of the color of their skin or because they are Hispanic, to use excessive force in arresting them and on and on and on. I've written articles pointing this out. I don't consider that to be political in nature because I don't think the Constitution is a partisan document. The Constitution is, has to be respected by all parts of the political

spectrum because it's our foundational document. You can't have a political platform that does not support the Constitution of the United States. That's called basically, a revolution or something because this is our foundational document and the rule of law. That's the other thing. I've written articles about that, how this administration is really attacking the rule of law and contending that it doesn't really apply to the office of the president. I can't believe some of the stuff that's being said out there about how he can murder somebody in cold blood and nobody can do anything about it.

I will write articles about those types of things. I have also written articles about the distortion of the Second Amendment and how it's being used by the NRA for example, by the arms industry to market military weapons to private citizens and that's a complete distortion of the Second Amendment. I've done my research on that and I point out how the Second Amendment does not stand for the proposition that military weaponry, that citizens are entitled to receive military weaponry. That's not part of the Second Amendment. The Second Amendment is saying, you can have hunting weapons. You can have firearms that are associated with your own self-defense and have historically been that way but not machine guns, not assault weapons, not surface to air missiles, not grenades. You keep trying to open this up to military weaponry and what you end up with, you end up with what we have in our country right now. Unfortunately, the politicians are given cover to not enact sensible gun legislation by this notion that the Second Amendment is a barrier to regulating firearms. It's not. I've written articles about that. I've published a few articles here and there. I recently had one published in *The Oregonian* about my disappointment with today's Department of Justice and how it seems to be becoming less and less of an independent supporter of the Constitution and more and more a personal arm of the office of the president. I do that and I enjoy doing that and publishing articles. I am quick to point out to people that, to me, these are not political issues, these are constitutional issues. These are issues pertaining to the rule of law. Even if I were still an active judge, I think judges should speak out and educate the public about what the Constitution stands for, what the foundational principles of our country are which is why I wrote an article about the separation policy and how that goes against all the values of our heritage. If you want, I can send you copies of the articles.

MK: Please. I would be very curious to read them. One was published in the *Oregonian*. Do you submit them to any other journals or law reviews?

TC: The *Eugene Weekly*. Yeah. I submitted them to something called Medium which is an internet publication thing.

MK: Yeah.

TC: Yeah. I've had articles published there. I've submitted them to the *Washington Post* and the *New York Times* but they haven't run any of them. I'm still trying to get them published in a wider forum because I think, I just read what's going on out there today. People seem to think that this is normal. It's not normal. They don't understand how when you start eroding constitutional principles, what do have left after that? You don't have democracy anymore and that's what's going on. I wrote an article called *2020 Crossroads: ConExit*. I compare it to Brexit. 2020 is ConExit. We're going to vote on a referendum of whether we keep the Constitution or not. That's what it's about because when you look at this administration and what they're claiming, they're basically moving the needle toward autocracy, where the president can do what the president wants. You look at what's happening. He appropriates money for a border wall that Congress did not allocate. He thinks the Emoluments Clause is phony.

MK: Yeah. He's instructing his staff not to comply with subpoenas.

TC: He thinks the impeachment process doesn't apply to him. It's right there in the Constitution.

MK: Do you think that the institutions will be severely eroded enough by 2020 that the election results will have merit?

TC: I think 2020 is going to be the pivotal point at this point in history.

MK: [*phone rings*] I'm sorry. That would be my parking meter.

TC: That's okay. Oh, your parking. I have some articles. You can shut that off now.

[End of recording]

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Resume

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Employment

UNITED STATES MAGISTRATE JUDGE 1992-2016
U.S. District Court for the District of Oregon Eugene Division

ASSISTANT UNITED STATES ATTORNEY 1980-1992
U.S. Attorney's Office, District of Oregon Eugene, Oregon

ASSISTANT UNITED STATES ATTORNEY 1971-1980
Chief of the Criminal Division 1978-1980
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Education

J.D. 1967-1970
Harvard Law School Boston, Massachusetts