

7-23-2001

## Wathen, Daniel oral history interview

Jeremy Robitaille

Follow this and additional works at: [http://scarab.bates.edu/muskie\\_oh](http://scarab.bates.edu/muskie_oh)

---

### Recommended Citation

Robitaille, Jeremy, "Wathen, Daniel oral history interview" (2001). *Edmund S. Muskie Oral History Collection*. 401.  
[http://scarab.bates.edu/muskie\\_oh/401](http://scarab.bates.edu/muskie_oh/401)

This Oral History is brought to you for free and open access by the Muskie Archives and Special Collections Library at SCARAB. It has been accepted for inclusion in Edmund S. Muskie Oral History Collection by an authorized administrator of SCARAB. For more information, please contact [batesscarab@bates.edu](mailto:batesscarab@bates.edu).

## **Interview with Daniel Wathen by Jeremy Robitaille**

### *Summary Sheet and Transcript*

#### **Interviewee**

Wathen, Daniel

#### **Interviewer**

Robitaille, Jeremy

#### **Date**

July 23, 2001

#### **Place**

Augusta, Maine

#### **ID Number**

MOH 296

#### **Use Restrictions**

© Bates College. This transcript is provided for individual **Research Purposes Only**; for all other uses, including publication, reproduction and quotation beyond fair use, permission must be obtained in writing from: The Edmund S. Muskie Archives and Special Collections Library, Bates College, 70 Campus Avenue, Lewiston, Maine 04240-6018.

#### **Biographical Note**

Daniel E. Wathen was born November 4, 1939 in Easton, Maine to Wilda Persis and Joseph Jackson Wathen. He graduated from Easton High School and Ricker College in Houlton, Maine (1962), University of Maine School of Law (1965), and the University of Virginia School of Law (1988). He was appointed to the Maine Superior Court by Governor James Longley and served in that capacity for four years. He was then appointed Justice to the Maine Supreme Judicial Court by Governor John McKernan. He was a Justice for ten years, then Chief Justice for ten more years. Justice Wathen retired from the bench in 2001, and joined Pierce-Atwood law firm in Portland, Maine.

#### **Scope and Content Note**

Interview includes discussions of: Easton, Maine community; Aroostook County after the Great Depression; childhood during World War II; law career; finalist for Federal District Court judgeship; legal needs of Maine's poor; Muskie's passion for particular issues; role of the Chief Justice of the Maine Supreme Judicial Court; the changing role of the judiciary in the State of Maine; drug courts; IOLTA; Muskie Civil Legal Services Fund; Frank Coffin; Buzz Fitzgerald; Dirigo Project; Independents in Maine; Elmer Violette; Justice David Roberts; King Harvey; and the Equal Justice Project.

## **Indexed Names**

Brennan, Joseph E.  
Bush, George W. (George Walker), 1946-  
Coffin, Frank Morey  
Cohen, William S.  
Curtis, Kenneth M., 1931-  
Fitzgerald, Buzz  
Ginsburg, Ruth Bader  
Gore, Albert, 1948-  
Harvey, King  
Longley, James, Sr.  
McIntire, Clifford  
McKernan, John  
McKusick, Vincent L.  
Mitchell, George J. (George John), 1933-  
Nicoll, Don  
Noyes, Elizabeth  
Roberts, David  
Robinson, Charles  
Scalia, Antonin  
Schlick, Edward C.  
Souter, David H., 1939-  
Violette, Elmer  
Wathen, Daniel  
Wathen, Joseph Jackson  
Wathen, Wilda Persis

## **Transcript**

**Jeremy Robitaille:** We are here at the chambers of the Maine Supreme Court in Augusta, Maine with Chief Justice Daniel E. Wathen, and interviewing is Jeremy Robitaille. For the record, could you please state your name and spell it?

**Daniel E. Wathen:** Daniel E. Wathen, D-A-N-I-E-L, W-A-T-H-E-N.

**JR:** And when and where were you born?

**DW:** November 4, 1939, in Easton, Maine, up in northern Maine.

**JR:** From The County [Aroostook County].

**DW:** That's right. Are you from The County?

**JR:** I'm not, I'm from Lewiston actually.

**DW:** Well, with that name you could be from The County.

**JR:** This is true, this is very true. And what are your parents' names?

**DW:** Joseph Jackson Wathen and Wilda P. Wathen.

**JR:** Okay, P, that's just a middle -

**DW:** Persis.

**JR:** How do you spell that?

**DW:** P-E-R-S-I-S.

**JR:** And were they also from Easton?

**DW:** Yes. My father was Canadian by birth, he came from New Brunswick, and my mother came from Wade, Perham, that part of the county.

**JR:** And what were their occupations?

**DW:** My father was a, started out as a railroad station agent, telegrapher, and then eventually when he was twenty-five or so, went into the potato business in Easton and was a potato broker, shipper, and worked in potato shipping operations most of his life. My mother was mostly a mother, but at the time that I went to, by the time my brother and I went to college, my mother then went to work, sometimes on a farm, sometimes in potato processing plants, and she eventually became a supervisor of the women at a large processing plant.

**JR:** And how would you describe their social, political, and religious views?

**DW:** Well, my father was a Democrat, and my mother was a Republican. My mother was Protestant, fairly con-, is, she's still alive, is fairly conservative politically, but probably not on social issues. My father was more liberal and was Democrat by conviction that if you're a working person, that was the party that you should belong to. And was not particularly, he was raised a Church of England, or Episcopal Church in Canada, but never was very, didn't practice much after he grew up. But, and so stayed at home, never attended church, but had, was very, had very deep thoughts about religion which he didn't often express. But, quite religious but not organized church. My mother was quite the opposite and always attended church. And I've followed both of them at different times of my life.

**JR:** Were they at all involved in the community, politically or otherwise?

**DW:** Yeah, my mother was quite active in the Republican Party; was frequently a member of

the local Republican delegation. My father was not so actively involved. And although he was I think part of the Democratic town committee, you have to understand that there weren't very many Democrats in the town and so I think probably, if there were six Democrats, they were all on the town committee. And, I don't think he ever attended a state convention, whereas my mother did.

**JR:** So, tell me what it was like growing up in the county, just sort of maybe like the social, political, ethnic dynamics?

**DW:** Well, Easton is south of the St. John Valley, and so it's primarily all English. There weren't more than a half a dozen Catholic families in town, so it was largely Protestant. And, we had one African-American family, and they were local and had been there forever, and I don't think we really recognized that they were any different, and I don't think they recognized they were any different. So it was a, it was sort of a homogenous community. And there was a fair degree of difference between the farmers' families; farming was really quite lucrative back in those days, the forties and fifties, and some of us who weren't farmers' families, but since we all worked, particularly in the spring and the fall, from a very early age, everyone would participate in the harvest. And so no matter whether you were from a poor family or a well-to-do family, you tended to earn your own clothing and that sort of thing. And it produced a sort of a uniformity, or a leveling of those differences, and it was really pretty idyllic, I thought. We grew up without recognizing a lot of differences. The school system that we went to was a single town school, still is. The high school had about a hundred students in it, and you were a member of the same class all twelve years. Probably went to school with, you know, a total of about thirty kids and about twenty of you wound up graduating from high school all together, spent your whole life together, knew everybody in town.

And the difference is that you, not only do you know the other people but you know them for two or three generations. I mean, you know their parents, their grandparents, and their great grandparents, so there's a depth of relationship. But I can, I haven't lived in Easton for, since I was, well for forty plus years, and yet I can go up and meet young people that I've never met before but I really know them probably very well because I know their predecessors very well.

And so it's a, it was a very nice place to grow up, a lot of forgiveness for minor problems they would overlook. And the community really played, and continues to play, a pretty strong role in influencing, I would say I was raised by the whole town because I was frequently in trouble for, I liked to live on the edge, and the whole town was sort of responsible for, just through a daily process of teasing, you know, very strong informal social controls. Mostly for the good. And I often speak about the value of communities, and I use that as a, Easton, as a sort of example of what a strong community, how it does provide controls.

**JR:** This will probably play on more like what you, like, you know, stories or anecdotes that you heard from your parents, but, what did you know of like how things like, first of all the Great Depression, but also like the oncoming of WWII affected your community, and maybe like The County, in general.

**DW:** Well, I was born in November of 1939, so I was born right on the eve of WWII. The

Depression, just from listening to my parents talk, was a very profound influence on their attitudes, and indirectly on my attitudes. They, it was very common for them to say, well, you know, if you had been around in the Depression you would understand the value of a dollar, and you would understand that you can't go and buy these things. And they would often say, you know, 'I remember so-and-so, you know, who didn't save their money, when the Depression struck they had to go around and borrow money and borrow things just to live'. And so it was, it was sort of drilled into them, and certainly drilled into me, that you had to be reliant upon yourself, you really couldn't trust banks, and that you ought to not spend your money until you get it. And that was a pretty strong message. And sort of the, my father always sort of made that also a little motivational, he would say that, you know, working with your hands you can make a living, but if you actually want to make money you have to use your head. And the Depression was a period of time when people were really forced to be fairly inventive as to how they'd get by. And he did it by trading cattle, and anything that he could make a dollar on, he would do and he was always expounding that to me as the way you have to go, to think about these things.

The war, I have a very distinct memory of going to a movie and seeing a news film, and I think I must have been like four, or three or four, but I have this memory of seeing a news clip at a movie of Germany invading Poland with the tanks rolling over it. I think it was Poland, I'm not sure, but the tanks rolling over the hedgerows and all of that sort of thing, a blitzkrieg, and it just absolutely frightened me, I mean I can still remember it now, to see this invasion. And of course, I suppose I was concerned that, you know, could the same thing happen here? And I have a little bit of vague memory about seeing coupons that were given out for, so you could get sugar and that sort of thing. They used to, they looked like money only they were made out of cardboard, I think, and they were little red tokens. And I can remember those. And I can vaguely remember that there were some things that we went to Canada to get because of shortages. We used to go over there and get wool and sugar and that sort of thing. It was easier. And we lived right on the border so going to Canada was not a unusual event.

And then, my final memory is that we had German prisoners of war who came, we were farming at that time, and we had a crew of POWs who came from Houlton Air Base every day by truck, and we had forty of them that picked potatoes in our fields. And I was a kid of probably five years old by that time, and in the afternoon my mother used to put me on the back of the truck and we'd drive through and give them bananas or chocolate bars or something. And they would come to the truck and I would give it to them as we walked by, and they were very appreciative. And they weren't fed very well, and this was hard work, so they were very appreciative of everything we gave them. And I remember that only one of them, who was a medical doctor, could speak English, and that somehow always struck me, that you know, what is a medical doctor doing out here picking potatoes. But they used to crowd around me because they hadn't seen kids and they, you know, it was a big thing.

And the other thing was that they came in groups of eighty, with one guard, and so forty were on a neighbor's farm and forty were on our farm, and the guard, with a machine gun, rarely spent any time with either one of them. He tended to go over and hang around with the civilian crew because there were young women working over there. And where were these people going to go anyway? So it was, and when they left us they wanted my father to hire them to work in the potato house, because they said, you know, this is much better than what we're going to do. I

think they were going to work in the woods in the winter time, and they said, this is much better, we'd rather work for you than whatever it was. So that's my memory of WWII.

**JR:** Tell me about your time in school, elementary school, high school.

**DW:** Well I went to Easton schools. And was an exemplary student until I got to be about in the eighth grade, when I became fairly rebellious. And my parents were very supportive, and demanding, but basically believed that you had to give kids a fair amount of freedom. And so between freedom and rebellion, I managed to get into a fair amount of trouble as a young boy in a small town, from that point on. And I basically just tried to do as little as I could and get by, and I would occasionally miss and get a D when I meant to get a C, and had an undistinguished high school career. I was suspended from school several times for just being rebellious, and I had sort of a problem with authority, I challenged it. And I wound up graduating. I tell this story (people sometimes think I'm lying), but I wound up graduating I think sixteenth out of a class of seventeen.

And the only reason I was able to get into college was that I did, I always did very well on standardized tests, and so that got me into college. But when I went to college, it wasn't any different. I flunked out of college twice, hadn't really made any change.

And eventually, only after I got married and settled down, did I then start to do well in college and I eventually became a sort of dean's list student, and then went to law school at the University of Maine School of Law, and there I really sort of came into my full measure as a student. And it was the first time I really had enjoyed what I was doing. I liked college towards the end of it, after I buckled down a little bit. But, and law school, I really liked law school, and so I did very well there and was, you know, the highest in the class and all of that, editor of the Law Review and all the things that law students are supposed to do. So it was not a straight line, it was a very, a long journey.

**JR:** All right, and where did you go to college?

**DW:** I first went to University of Maine and flunked out of there the first semester. I then went to Ricker College, which was a small liberal arts college in Houlton, and flunked out of there and, within about a year after I went there I guess. And then eventually after taking a semester off I came back and graduated from Ricker College.

**JR:** And while at Ricker did you, how did you involve yourself besides academically, like in the community or in extra curricular stuff at all?

**DW:** Well, yeah, I was, through the two, couple of years that I was corking off, I did, I involved myself in negative ways, but after I came back and settled down I, my extra curricular activities usually had to do with speaking. I became a member of the debate team, and we did very well, even though I'd never debated. I'd always done some public speaking and drama, and I did that, and of course by that time I was married, and before I got done college I had a child, and so I also worked driving a school bus for the town of Houlton and did other things for work, so. And I did a little bit of, I don't know whether it would be teaching, or, I led some student

discussion groups and that sort of thing.

**JR:** Okay, how about in law school?

**DW:** In law school; I went to school full time. The dean asked me not to work outside, and got me a scholarship that made it unnecessary for me to work. And so I was on a, we did a moot court exercise, but I think the principal thing that I did in law school was the Law Review. And I was editor-in-chief of the Law Review for two years, which is a little unusual, but the school was small then and it was thought in my second year that I should be editor that year, and so I was. And so that was almost a full time occupation beyond law school. And I also did some, at some stage in there I did, I served as a clerk for a legislative study committee, and I wrote a report for them on sovereign immunity which eventually became a part of the legislation making some changes. So it was all sort of, oh, and I worked summers in my brother's law firm here in Augusta, so it was almost all professional involvement at that stage. And, between law school classes and that, I put in long hours, eighty or ninety hours a week was, it was a lot of, but I really liked it very much, you know, and that's why I put it in.

**JR:** So you were admitted to the Bar, the Maine Bar, in '65?

**DW:** Nineteen sixty-five.

**JR:** And then you went full time to work with your brother in his law firm?

**DW:** That's right.

**JR:** And what did you focus on, what sort of law did you focus on in that firm?

**DW:** Well in the beginning I did virtually everything, and particularly in trial work I did court appointed criminal work, privately retained criminal work, any civil work that came along. And I, so I got a lot of trial experience right off. Eventually, I sort of focused on two areas. I did a lot of personal injury trial work which, both for claimants and for insurers, and then I did a lot of financial work for large industrial building, large industrial projects. We represented a whole host of agencies, state agencies, that are now under the rubric of FAME, Finance Authority of Maine, but there was a Maine Building Authority, the Maine Recreational Authority, the Maine Municipal Bond Bank, there were six or seven, all sort of government supported financing, and we represented all of those. And so that was a, those two things, personal injury litigation and corporate finance, were the two big chunks of time.

**JR:** And in your early stages with the law firm, how would you describe your political leanings, and if they had been changed from when you were younger?

**DW:** I was, with a split in my parents between Democrat and Republican, I became a Republican. And I'm never sure why. Just that most people in town with the exception of my father were Republicans, and my mother was, and I was very, quite conservative when I was young. When I look back on it now, it's clear to me that I was far more conservative then than I am now. And so without giving it a lot of thought I registered as a Republican whenever I first



could. And I think I, from the beginning, my voting was probably, didn't, was not consistent with my registration, that I tended to vote for people on considerations other than party membership.

In practice here in Augusta, since we did a lot of state agency work, we were essentially apolitical; we didn't, neither my brother nor I engaged ourselves in partisan politics. And we were supportive almost scrupulously of each side in the exact same amount. If we gave five hundred dollars to one candidate, we would give five hundred dollars to the other candidate on the other side. So we were, that was our mechanism, and being in Augusta we did, were engaged in, we did give a fair amount of money to political candidates. Not huge money, but at that time probably it was considered, but always equally.

And just on a personal level, I, as time went on I became more and more, or less and less conservative in my own views. And, you know, if I look back at who I voted for over the last twenty-five or thirty years, it usually has more to do with people that I know, people that I respect, and their views on certain issues that are not necessarily the partisan issues. So I'm, I think I've sort of gone on a perspective from being fairly conservative, probably most people now would say I'm fairly liberal on some of my, particularly on social issues.

**JR:** Okay. So, if you didn't involve yourself politically, how did you involve yourself in the community though, otherwise?

**DW:** When I was in practice, the practice was absolutely consuming, so I didn't have a lot of community involvement. I pretty much, it was practice, and then the, after I'd been a lawyer for ten or twelve years, what I began to be involved in was outside activities, like I was on the board of the bank, local bank at the time. And I was, and I liked that just because it was sort of a break from my involvement in practice. And I was on the hospital board here in town. And I served on a couple of state agencies, a couple of state boards, and the first time that I really did anything that is even remotely like judging was, I was on the state employees appeals board. And so those were my involvements. But I didn't do, I didn't, I wasn't a, I didn't have time for being, you know, like a Junior Chamber of Commerce, or Chamber of Commerce, or Kiwanis or Rotary or any of those. I didn't do any of those things. I was pretty much consumed by practice. And then when judging came along that sort of, your ability to participate in those things is pretty much gone. In fact I had to give up the two boards that I was on which I, those I did like, and I was sorry to have to do that.

**JR:** What sense did you have of politics at the time? I know you weren't involved and tried to remain apolitical, but what was your awareness, your understanding of Maine politics and national politics?

**DW:** Well, you know, being here in Augusta and practicing in state agency work to some extent, I was always aware of what was going on in politics. But sort of more of the interest of the practicing lawyer, rather than a personal interest in how it was coming out. And then, so I would say very much aware but most of the time not passionately involved in one, or committed to one or the other. And that's certainly been true since I've been a judge, that I'm aware of what's going on. If I have views on it, I never express them because they can too often come up

in litigation and so you're not supposed to be stating your views before you've heard cases. And I think that's my, I'm comfortable with that. I'm not, I don't want to be out making speeches about what I think should be. I'd rather be in the position of being interested in it, watching it, and then maybe some day if I have a view on it that comes up in the context of a case and a decision. And often that isn't really based on political consider-, most of the time it's not based on political consideration at all. It's just based on what the law is and what the precedent is. I've dealt with cases that involved things like school vouchers and that sort of thing, where there's a heavy political content. But the way in which I'm most comfortable in dealing with them is a matter of legal reasoning which has nothing to do with political content.

**JR:** Okay. During your period in your law firm, and I guess after when you became a judge, did you have any contact with Senator Ed Muskie?

**DW:** Yeah, my contact was that I, sometime back in the fifties when I was in high school, I remember Ed Muskie coming to town, running for governor. And I remember the bus pulling into town and I remember seeing him distinctly. And I think my mother actually voted for him, that was the, you know, the Muskie Republicans were the ones that put him into office, and I think actually my, I recall my mother voting for him. And I told him that, that I thought that was the only bad thing she ever did in her life was to vote for him. And I know my father voted for him, so I remember that, and remember favorably his tenure as governor.

And then I didn't really have much more contact with him. You know, he was a national political figure all the time I was in school and growing up and going into practice, but I didn't have too much contact with him. Occasionally in, when I was in practice in the late sixties, we would have some litigation or some financial dealings that would have a Washington connection, and I, in that context I might have contacted his office. But usually would have dealt with Don Nicoll or someone else, and not directly with Senator Muskie.

The, I think the next time I bumped into him in a formal sort of way was when he was in the position of selecting a nominee for the federal district court, and he eventually selected George Mitchell. I was a superior court judge in Maine at the time and even though I was a Republican and recognized that he wouldn't make that selection, somebody suggested that I ought to try, be included in the group, because it would be helpful if I ever wanted to do that in the future. And I did, and I was one of the three finalists that he considered, but I never fully expected it. But in that context, I met him.

Then my real meeting with him came really after he had been secretary of state and then retired and went into private practice, and by that time I was the chief justice in Maine. And he had become engaged and heavily involved in the legal needs of Maine's poor, and so we sort of had a, our objectives came together, and this had to be in the early nineties. And he would come up each year, and I would meet him in that context, and so that was really where I learned, I worked with him more closely and got to know him a whole lot better on a personal level than I ever had before. And I consider it to be really one of the advantages that I've had is that I did have that chance to work with him in that period of time.

**JR:** What were your impressions of him, especially in that context when you got to know him

pretty well?

**DW:** Well, I learned of his passion. He was passionate about a lot of issues. I also learned of his anger, which is sort of legendary, that he was a, he didn't tolerate foolishness very well. And I learned that, the thing that I really liked was, I do a lot of public speaking, and I learned of his, and had a chance to watch him do a lot of public speaking, and I think I, that part of it I learned the most from. And I had, at the same time, there was a fellow named Ed Schlick, who had previously been involved in a lot of the Muskie campaigns. Ed was doing some work for the court system on a public relations matter. And so Ed used to give me a little background and history on the prior speech making of Muskie, and so it was sort of a neat kind of opportunity to study someone who by that time was really a polished public speaker. So I came away with the impression that he's really a, he really had some amazing talents, and that his commitment to principles was very strong and that he was willing to do something about it.

**JR:** Did you really have a sense of like his politics, while he was a senator especially? Perhaps issues like civil rights, Vietnam, environment, and like your impressions of that?

**DW:** Yeah, but I think that came more from just knowing his history and his record. I don't think that we ever sat around and discussed his environmental record, but I knew that he'd been a strong leader in that area. And that he took some pride in the changes that had been made in Maine, in the rivers of Maine. I think I learned more, there was one incident that I was impressed, impressed on me his, he was quite a partisan politician, and I at one point was speaking about him at some award ceremony or something. And I said that I had seen him when I was fourteen years old, I'm not sure if that was exactly right, when he came to town, and I said in a B-A, Bangor-Aroostook Railroad bus. And he later said to me, "I never rode on a Bangor and Aroostook bus in my life. I wouldn't ride in a Bangor-Aroostook Railroad bus." And that was because the Bangor and Aroostook Railroad was a strong Republican influence. I didn't know that then, but it was pretty clear that he did. And this was, you know, this was thirty years after the event, and when the Bangor and Aroostook was no longer an influence of any sort, but he, so it was, that sort of impressed upon me that he understood where his support came from, and remembered it; and where it didn't come from.

**JR:** Do you think that partisanship was, that it had been a weakness for him?

**DW:** No, I don't think so. I mean, I suspect he knew that I was a Republican and that never interfered. And certainly there were a lot of people involved in the legal services that he and I were working on together who were Republican, and so no, it didn't have that. But I think the old hard-core kind of partisan politics he didn't forget, but I never felt that he was. I got the impression, working on these projects with him, that he was really sort of a pragmatist and what he wanted to do was make a difference in the lives of people and not, he wasn't hung up on who got the credit for it, really.

**JR:** I understand that Governor James Longley appointed you to the Maine superior court.

**DW:** That's right.

**JR:** And how did that come about, how did you get that appointment?

**DW:** Well, just a, I knew some of the people who worked in the governor's office. I really didn't know the governor personally. My brother had known him. And as sort of a fluke I went over to, I was on a State Employee's Appeals Board hearing, and I went in and the governor's chief aide asked me, "If the governor were to consider appointing you to the superior court, would you accept it?" And I hadn't really thought too much about, and I thought, 'well, I'm a little young to do this right now but', to myself, 'but why not?' I mean, I don't know whether I'll ever get another chance. So I said, "Yeah, I guess I would," but I didn't really think that it was, I was being asked. I just thought this was sort of an inquiry. I suspected there would be a follow up interview or something, but in fact, before the afternoon was out, the governor appointed me. So that was, I went down and there it was, hanging on the wall. So that was about as much thought that went into that.

And my thinking at the time, I was thirty-seven, and I thought, well, it's a seven year term, I can always, if I don't like it or, at that time it didn't pay very well, I can always go back to practicing law at forty-four and it won't be a big, and I do know I want to be a judge at some point. So that was the way I got started on it, and four years later I was appointed to the supreme court by Governor Brennan, and so that sort of meant that I had another seven years to think about and by that time I was, thought, well, I'd like to be chief justice some day, and I didn't know that I had any real reason to think that I might, but I thought, I think I'll at least stick around until that opportunity presents itself, or it goes by. And as it turned out I was lucky enough to be appointed by Governor McKernan. So, if my apolitical background is sort of borne out by my appointment process. I was first appointed by an Independent, then by a Democrat. And only, you know, after I'd been a judge for fourteen years, was I finally appointed to anything by a member of the Republican Party, which is what I was registered as. But traditional appointments in Maine have not been political for the last thirty-five years really.

*End of Side A, Tape One*

*Side B, Tape One*

**JR:** This is Side B of the interview with Chief Justice Daniel E. Wathen. And going back to, you were talking about your appointments, how would you, I guess maybe, just ask your impressions of those three governors that appointed you specifically from like your position in the court, what your impressions of them were from that perspective.

**DW:** Well, I think the, all the governors I've known are, have been lawyers, and they've all been people that I didn't, some that I knew very well, but others that I, even though I didn't know them well personally, like Longley, I knew of them. And so, my understanding of Maine politics is largely that it's really a pretty small world and that people that you know tend to become governors, and that they all come from sort of typical kinds of Maine backgrounds, that political power and authority in Maine is not, doesn't belong to anyone, it's earned, and that these are true products of Maine that you see taking these positions. And, you know, I often, in talking with younger, like, model legislators or, you know, Boy's State/Girl's State kind of things, I often tell them, you know, that people that you're meeting today may very well turn out to be the political leaders of tomorrow. But, you know, I went to law, one of the, in law school one of the upper

classmen at the time turned out to be Joe Brennan, turned out to be governor. And when I took the Bar exam there was a quiet fellow there taking it with me, Bill Cohen. And you know, Joe Brennan came from a longshoreman's family in Portland, and Bill Cohen came from a baker's family in Bangor and, you know, so that the typical Maine story is sort of like that.

And certainly Muskie was the same kind of background, and so there's a, and my experience with all the governors that I've known have been that there are very few strictly partisan issues, that there's really a question of trying to do what's best for this little, small community of Maine. And there may be disagreements about what, the methods, but there's virtually never a disagreement about the end result. And there's really very little self-aggrandizement in Maine. You don't see people trying to create some project so that they'll have a job for their families or things like that. You see people trying to do the right thing for the state as a whole. And they certainly try to take credit for it when that's done, to elevate their political views, but they aren't really motivated by their political views to that extent.

So I think regional loyalties play as much a role in Maine as political loyalties. That if you're from the county and you're in politics, then really the question is what's right for the county. And if you're from Washington County, I don't care whether you're a Democrat or a Republican, you've got some core issues that, to that region; same thing with Portland, as far as important stuff.

So I've always, Maine politics is very personal, very open and accessible. I mean, I don't care who you are, you could probably call and talk with a political leader. And you could certainly go and visit them at some point. They're pretty much available for people to meet and talk with, and they get out and get around a lot. They've all done that. So it's a, I think an honest environment in which to work. And from a judge's perspective, that's really very important because we, particularly as the chief justice, and I have some administrative responsibilities, we really can't and don't want to engage in games playing. When we submit a budget request, we want to say honestly what it is; we don't want to say we want twice as much in the hopes that we'll get something less. And so it has permitted us to be completely honest and open and candid, and my relationship with the legislature is exactly the same way. If they ask us something, we tell them the best we can and we don't think about what are the political implications of this.

It rears its head in strange ways. The, we provide judicial impact statements for pending legislation, and there'll be legislation dealing with, you know, gun registration or abortion, all the hot button political issues, and we're, we provide, we say, "If you enacted this, this is the impact that this might have upon the court system." And obviously if it has a financial impact, it's a negative for passage because that means it has to go to the Appropriations Committee. But there's never any attempt to influence our impact statements on those scores. We honestly say, "This has the potential for causing so many hearings in a year, and that would be this result." And so it's a very honest process, and I think unusually so.

**JR:** This may be kind of too much of a general question, but how would you describe your role as chief justice on the Maine Supreme [Judicial] Court?

**DW:** Well, the, as, on the opinion, you know, on the court side of it, I'm really just one of seven justices of the supreme court, and one among seven equals, there's no distinction there. On the administrative side of it, I'm sort of like the chief executive officer of the third branch of government. And so I have some administrative responsibility, some, sort of employer kind of responsibilities, and I have the prime responsibility for maintaining relationships with the legislature and the executive, particularly with reference to budgetary matters but it also includes every other thing that comes along. So it's a, it's really a very exciting job because you do have this aspect of being the final part, of a team of seven, that is the final arbiter of matters of state law, and, with the exception of the Supreme Court of the United States, the final arbiter of matters of federal law. And then also to have the, some direct hand in attempting to provide a good and adequate court system for the people of Maine.

And we're challenged; Maine's court system is very small by comparative standards, and thinly funded and thinly staffed. But we've made a lot of progress, and we've done some things that are very different. Like we have juvenile drug courts now, we have adult drug courts, we have a very different system for handling divorces than we had even six years ago. So there's all sorts of opportunities for innovation. And the court system of Maine, despite the fact that it's small, it has very good people in it. The judges are exceptionally good judges, they were not selected, they were all appointed by the governor, confirmed by the legislature. They were not selected on the basis of politics, they were selected on the basis of competence and merit, and they are uniformly good, good to excellent. And then we have about four hundred plus people who work in clerk's offices, and court security officers and that sort of thing, and they are all the salt of the earth Maine people. There are very few exceptions to that, and they will make a system work no matter what.

So, you know, we have fifty court locations from Fort Kent to Kittery, and some of them are very small, some of them are very large, and we have really excellent service in all of them. And some of the rural ones are probably the ones that are the hardest to staff, but they provide the best service really, so they really, like the district court in Fort Kent, for example, I think is really a very important part of that community and vice versa, you know. They're, it's not some distant office; it's part of, people go in there to ask questions about what they need to do on a variety of things, so the clerk is a real asset to that community up there.

**JR:** I think this next question, I think you spoke to some of it but I have some specific examples to rack your brain about. And the question is just, how you would describe the changing role of the judiciary in the state of Maine during your tenure, and that speaks to, I'm thinking about maybe getting more public attention to needed reforms. Like Frank Coffin and the court reform, there was a task force to unify functions of the state courts, that was headed by Vincent McKusick, and also (*unintelligible word*) to take bargaining out of violent crimes, and more just to like keep judges more aware of like available programs around the state. If you could like speak to some of that, to all those?

**DW:** Yeah, and actually some of it ties in to the, some of the involvement I had with Senator Muskie. Part of the, what came out of his study of legal needs of Maine's poor was that the, only about twenty percent or thirty percent of the legal needs of the poor part of our population were being met. And so largely it was unmet, and the people, even when they were dealing with the

most central issues of their life like food, housing, and their own family, were largely unrepresented. And this came at a time in the early nineties when we were, state revenues had gone down the tube and we were getting budget cuts, and shortly thereafter the federal government withdrew its support for legal services for poor people. And so we were sort of, we sort of were confronted by a situation in which the whole court system was designed on the assumption that people would be represented by an attorney. A very complicated system, the procedures were, you know, designed for attorneys. And yet, increasingly, we were dealing with people who were unrepresented, to the point that probably two thirds of the divorces didn't involve an attorney. And so it became clear that you really can't have a system that's designed for represented people if two thirds of your population is not going to be represented.

And so the shift that I've seen since the early nineties, and it was brought about in part by, Senator Muskie's involvement was to encourage more financial support for legal services. And when that proved to be limited, that sort of became, okay, if we can't provide attorneys, what else can we do to assist these people, achieve a measure of justice in things that really are important to them. And so we became very innovative about how we could do a better job of providing justice and court services to people who were without money. And so the change that I see most prominently in the last ten plus years, I describe as the move from passive adjudication to active intervention. That previously courts were in the traditional role of passively sitting and listening to both sides, represented by attorneys, and then making a determination. That fell apart when you don't have attorneys on both sides. The court passively sits there and looks, and there's two people who have a horrendous problem, but don't know what to do about it. And so it led us to actively intervene and to assist them in resolving, finding out what their problems are and resolving them.

So we instituted something called the family division in the district court that handles all the divorces. And rather than sitting back and waiting for procedural motions to be filed to form up the case, you file for a divorce, represented or unrepresented, and you have children, then hopefully within thirty days you'll be in front of the case management officer who will sit down and say, "What are we going to do about child support? What are we going to do about medical coverage? What are we going to do about all of the issues that relate to your children?" And if there's any problems with them, either send people out to mediation, send them to parenting education, or establish a session of hearings that will resolve them. So no longer just passively sitting there, but actively intervening, trying to find out what the problem is, and helping them resolve it. That's the big shift, and it's a very significant shift. And it's, the same sort of shift is also involved in the juvenile drug court kind of things, and the adult drug court, which is actually just starting, really just underway in the last two or three months.

Some of the other things you mentioned there are really unrelated, like court unification, except that all of these programs mean that it's really important that we make efficient use of all of our available resources, judges and clerks, and so unification was an effort to sort of see, how can we rearrange the work flow through the two courts, the district and superior court, to make it most efficient to the people who require the services. And that's so that we can do things like the adult drug court and the juvenile drug court. And it's going well and, considering the fact that it really changes the way, the function of judges and courts significantly.

I mean, courts are problem solvers now, they're not just sitting there making a call. In drug court, they are a weekly part of a problem solving team that attempts to keep people from abusing drugs or alcohol, and attempts to keep them from doing socially undesirable things, and rewarding them when they do a good job and punishing them when they do a bad job. It's working, and I think it shows great promise, and I think it's the, more and more that will be the direction that courts will go in. There's always going to be a need for the traditional kind of trial services that we've provided ever since twelfth century in England, and that's really been unchanged, you know. You could walk in to a twelfth century court during a trial, and it wouldn't be a whole lot different than what you'd see today in superior court in a jury trial. So it's this combination of preserving the traditional services where it's appropriate, but not relying upon it exclusively. And that's what we did until 1990 was, if you wanted court services it only came in one variety, it was trials, the adversarial system and trials. And we've moved away from that.

**JR:** Speaking to that, the newly instated drug courts, is that something that from your knowledge that has been instituted in a lot of other state courts?

**DW:** Yes, it has.

**JR:** It's kind of modeled after those.

**DW:** Yeah, we were not by far the, you know, the pioneers of that. It was done elsewhere, primarily in the areas where they had tremendous drug problems and didn't know what else to do with it. And then we've had drug and alcohol problems in Maine, but the drug problems have never reached the levels that you'd see in a large metropolitan area, for example. I think, strangely enough, I think probably the alcohol problem, it's a drug; I just state it separately because people don't often think of it as being a drug. The alcohol problem in Maine is probably worse than it is in a lot of other places, or at least it stands out more here. And if you look at, you know, if you look at any serious kind of crime, I think that eighty five percent of the people in the state's prison have a serious substance abuse problem. Eighty-five percent of the parents who are involved in child protection abuse and neglect proceedings with DHS have substance abuse problems. So it's a very pervasive factor in a lot of socially undesirable behavior. And the court, it's rare to see a case that doesn't involve alcohol one way or the other, it's a, it's almost always there. So to begin to do something about that, rather than to just keep putting people in jail for longer and longer periods of time, it's an important thing. And the, it also engages us, I'm not sure if I'm following along with -

**JR:** No, no, please, please . . . .

**DW:** It also engages us in broader, for example, I'm involved in a few substance abuse committees and efforts to do something about it, beyond court. In one of them we're sort of designing an advertising campaign that would sort of be based upon the tobacco advertising campaign which would highlight the reasons for underage, for people not to drink while they're under age, and for people not to drink generally. So it gets you involved in these broader programs.



And at some stage, you know, that program will be looking at, how do we involve colleges, because on terms of substance abuse, one of the most difficult areas to make a change is college.

Because substance abuse, it's recognized that it's a bad thing, but yet it's part of the college culture, that this is when kids go out and first become able to drink a few beers and all sort of activities, and colleges are not particularly leaders in the responsible use of alcohol. In fact, I think that's one of the biggest questions we have now, is how would you engage, effectively engage, colleges in a little leadership on even the responsible use of alcohol.

**JR:** In my research for this interview I just kind of noticed how very much involved you are, and I just kind of want to ask you how you describe, or what place you see yourself as being the chief justice of the supreme court but still remaining very active, you know, not politically but otherwise, and how you see that role?

**DW:** Well, it's been a, when I said the courts have moved into a new function, I think that I have moved into a slightly different function than my predecessors have. And I didn't set out to do that by design. It's probably a combination of the times, plus my own personality. I think I'm far more open and accessible than my predecessors in the past, and I'm far more of a public advocate for a variety of causes. But they're all rooted in the operation of the courts, so that I've spoken a lot about domestic violence, but only on the premise that this is really one of the major trends that are coming through courts as an increasingly heavy part of our business. Substance abuse the same thing, child protection and child abuse and neglect. And so I've become a, in some senses, a public advocate for some issues but always related to the needs of the court in order to do a better job. I've become a public advocate for legal services for poor people, which is the Muskie effort, but again, on the theory that this is important to the system and not just a political agenda that I'm advancing. And I never speak on anything that doesn't have anything to do with the court system.

But, I must say that I think, I probably have walked a line between public advocacy and political involvement pretty closely. I often find myself in a gray area, but hopefully I've stayed to the right line so far. I think the, I think this really came about, the necessity for it came about because of the revenue crisis in the early nineties, and people, we were really, the court system of Maine was hit worse than any court system in the United States financially. And so we had to do things differently and we had to make our needs known, and it was important to not, to, and this was, remember I told you I learned of Muskie's anger, I went to a meeting one time early on in my chief justice's days, and I outlined what I intended to do, which was a series of steps, a lot of it public speaking, to affect the legislature and to affect public and to engage other people. And I remember I presented this two page outline of my campaign in effect of how I was going to go about this. And he sat and listened to it, and then I got up and left the meeting, and after I left he disagreed with it so violently that, I've forgotten why, but he gave a very impassioned plea for, that I shouldn't be doing, in the way that I had described it. But eventually he invited me down to Kennebunk, to his summer home which was a beautiful place, and we sat down with four or five people and we thrashed out why there was, the emphasis was wrong here or there. And as I recall, it didn't change very much, but it was largely a matter of emphasis and method a little bit, and it was a positive change, and he became supportive of what I was doing.

But that, the need to do something back then sort of gave me an opening to do it, and people

expected me to do it, and so there wasn't any, I think if it had been good times financially they would have said, why is he talking so much about these things, why doesn't he just be quiet. But, so that was my, that's been the part of my job that's really interesting to me, and the part that I particularly enjoyed my interaction with him because I could watch him speak. We would speak on Law Day together, he and I, every year for about five years, and I would watch how he would start out a speech fairly slow, draw people in, around, and then sort of like a, well I was going to say sort of like a Baptist preacher, after he'd got everybody drawn in then move on to his passionate points and sort of take them with him. And he was really a master at doing that, and could do it well and you could almost sit and watch it happen.

And so I, he and I, at that time I'd made a speech or two, and he liked the content of my speeches. And there was one that I talked about, that justice wasn't a commodity to be given in good times and to be withheld in bad times, and whatever it was, and he complimented me on that and said that should be, that statement should be prominently displayed and mentioned every time we discussed justice, the sense that you just withdrew, if the money wasn't there you didn't have (*unintelligible word*). So that was a great joy in my job, and the fact that he was around for some of those days of, what in some respects is sort of like a campaign, was very, very interesting to me.

**JR:** Now, I just want to clarify the, that project that you worked on with Muskie in regards to the legal needs for the poor, was that the Equal Access to Justice Project, or was that something different?

**DW:** Well, what happened was, he had a commission to study the legal needs, and then the, his efforts and mine on these annual Law Day activities, was to encourage IOLTA, which is Interest On Lawyers Trust Accounts, which became a source of support for legal services for the poor, encourage participation in that. And afterwards to try and induce the Maine legislature to put some more money into legal services. And we, he was instrumental in improving the IOLTA program significantly, but was never successful in getting the legislature to put money into legal services. We created something called the Muskie Civil Legal Services Fund, but it was unfunded.

And so it was only after he died, when Frank Coffin became instrumental, this is almost completely a Bates project here, yeah, Frank Coffin. And between knowing those two, Vincent McKusick was my colleague throughout all of my judicial service, and, but Frank Coffin and Ed Muskie are really two of the most unusual people you'll ever meet in your life, and certainly two of Bates' more illustrious graduates. So Frank became actively involved. He had just sort of gone into a semi retirement as a federal judge, and it's pretty rare for federal judges to become politically involved in this sense. But he sort of took up the struggle when Muskie died, and we eventually wound up proposing to the Maine legislature a, and federal, the federal funding had been cut at the same time, so that the legal services in Maine had been wiped out virtually. I mean, Pine Tree might have had thirty five lawyers or thirty lawyers representing poor people before those cuts, and I think they were down to like seven or eight. I mean, it was really a very drastic cut. And no other source of support except IOLTA, and so we went to the legislature, Frank Coffin and others assumed the laboring over, but Frank really most prominently.

And the legislature eventually enacted a surcharge on traffic fines, and a surcharge on filing fees in court, and together those amounted to about a million dollars a year and so that, and that went into the civil legal services fund, the Muskie Civil Legal Services Fund, and is distributed to all of the legal service providers, including the Equal Justice Project and others, but it supports basically legal services, Pine Tree legal services for the elderly, the Equal Justice Project which is sort of the outgrowth of all of the legal service providers. It does basically lobbying, which is why it's separate, apart from the other, and the Cumberland Legal Aid Clinic. And so the legal services providers that represent the Maine poor, to the extent that they are in existence, are supported by that fund and that's a far more secure source of funding. The federal funding is slowly coming back, never went away completely, and so together we, we've cobbled together an adequate level of support for that, legal services. They even do a better job of raising charitable givings with a Muskie dinner and that sort of thing, so it's been a great effort.

And, you know, Frank Coffin and Ed Muskie were probably instrumental in reviving the Democratic Party in Maine. Not probably, I think everybody agrees they were, and you know, Ed Muskie was the public speaker, public personality of great passion and force. Frank Coffin is the intellectual giant. And so it's sort of curious that in this one little project, it took both of their contributions before we really had something that was meaningful to people who wouldn't otherwise have any representation.

**JR:** A little bit more about Frank Coffin, and also Buzz Fitzgerald, their role, what, your understanding of their roles or your impressions of that, and also your own role with the Dirigo Project?

**DW:** Yeah, well, the Dirigo Project was something that I dreamed up and created. And Frank Coffin was instrumental in, well in helping me dream it up, but more importantly in helping to find a grant funding to support it. And it was a, the question was if courts are under funded and neglected, and therefore can't do a good job of serving its citizens, how do you, no one actively set out to do that, it was just that people weren't aware of the needs of courts and didn't understand, in the context of what does it mean to me that, you know, that there's an inadequate problem of funding. And so the question was, how can you engage the community in supporting needed court changes.

And Frank had written several articles on this subject, and he had suggested that what you really needed was a small but committed and involved group to sort of serve as a catalyst to bring about support for needed improvements. And so the Dirigo Project was an effort to produce just exactly that kind of a group, and I think there were sixteen or twenty people on it. Buzz Fitzgerald, who had just retired as the chief executive officer at Bath Iron Works, was the chair, and there were leaders from throughout Maine involved. And we had a grant to support it, we had an executive secretary, Ed Schlick was the executive secretary.

And it was a very diverse but powerful group. Buzzy Fitzgerald was one example, there was John [Hanson], I've forgotten his last name but he's a labor leader in Maine of long renown. We had a woman who was low income, been involved as an advocate for the poor forever from Bangor, and sitting next to her was Elizabeth Noyes, the, Maine's leading philanthropist. And so if you went around the table you really got this, this same table that we're sitting at today, you

got this wide representation of people throughout Maine. And over the course of a couple of years they chewed away on what was lacking in the court system, what needed support. They were very instrumental in supporting, for example, the Muskie Civil Legal Services Fund and the surcharge that led to that. But in a variety of ways, they assisted and involved themselves, and would show up and speak. I mean, Buzzy Fitzgerald would come and speak as a supporter of that.

And so we were, it was an exercise to see how you could engage and involve public citizens in court improvement projects, and it worked. And we don't have the formal equivalent of it now but we have a lot of public support and people who speak, you know, privately and publicly upon the importance of court funding. And we need to do a lot more, but that was the effort. So I think we did create that mechanism and there were some tangible results, not the least of which is improved funding for legal services.

**JR:** One last question, this is kind of random, but I did a little, found some information on this and I'm really curious about it. It's in reference to a Maine State Bar Association summer meeting in which there was a speaker, Charles Robinson, a Florida attorney, and from what I know there was just kind of a speech on lawyers redefining themselves and their professions and how, you know, learning lessons from like the medical profession. I understand that Frank Coffin led a panel and you were one of the panelists. I just wanted to get a synopsis of that and what the major issues were at that, I'm very curious about that.

**DW:** Yeah, I think that was a summer or two ago. I think it was in the context of a discussion of unbundling, which is a strange term. And also on the same, and I think Robinson spoke to, he may have spoken to sort of a variation of the issue of multi disciplinary practices, which I sort of see as two sides of the same coin. But the question was, "How can the private Bar be more effective in making legal services available to people who can pay?" In other words, "Is there a way that you can legal services out to people who can pay something, but not what the current charges are?" And unbundling is sort of the low end of that equation. Multi-disciplinary practices is sort of the high end, and it has different problems.

But this, as I recall this whole meeting that you refer to was directed to these two things. Unbundling is a situation where, in our history if you came to me as an attorney and you said, you know, I'm having problems with my wife, my children, or whatever, then I would either accept you as a client, in which case I would have an attorney-client relationship with you and be responsible for whatever happened, or I would not accept you as a client. But I wouldn't say to you, well, I can't represent you because you don't have enough money, but if you want I'll sit down and do a little bit, maybe prepare your pleadings for you or give you advice as to how you might represent yourself in court. I couldn't say that, because you were either my client in which case I had absolute fidelity to you and owed you everything, or you weren't my client. So unbundling is an effort to, it's sort of the distinction between a full service menu and à la carte. The traditional way is that you went to a lawyer and you either got full service or nothing. Unbundling says, no, there may be circumstances in which lawyers are permitted to do pieces, and as long as the client understands that they're only doing a piece, and as long as they only do that piece, that ought to be permitted.

So that was one of the discussions at that, and since then we've actually, we've just implemented a new rule that permits lawyers to do unbundling. And it's hoped that from that, that will permit private legal services to be available more generally to people who can't afford it all, or can't afford some of it. The multi disciplinary practices is on the high side of that -

*End of Side B, Tape One*  
*Side A, Tape Two*

**DW:** . . . large accounting firms, large law firms, and others, to permit lawyers to be engaged in practices that have as partners non-lawyers. And typically, not typically, that's not permitted under the existing rules. If a law firm, because they have a special relationship to clients and the court, a law firm cannot have a partner who is a non-lawyer. This would be, this would allow that to take place. And so that the, you might see, for example, like one of the major accounting firms would have a legal department, would have an accounting, audit department, would have a technology assistance department, and all that. And so you could purchase services, if you were a large multi national corporation for example, you could purchase services, legal, auditing, whatever you needed. And there are also law firms who would like to do that, who could offer business services that are not just legal, but could offer, for example they might have a counseling, or a consultancy dealing with employment relations that were other than legal, that sort of thing.

That has not yet taken place, but that's what that conference was devoted to, was sort of are there better ways of delivering legal services to high, you know, high income situations and low income situations. Can you get services out there in a better way, and that was the function of that service, that conference. Unbundling has been done just, will be getting a little publicity probably in another month or so and will go into operation, I suspect fairly slowly. But I wouldn't be surprised some day to see people, lawyers, whose practice is confined to counseling, you know, *pro se* litigants for people who are representing themselves, as there is currently in California, that's being done. The multi disciplinary practice hasn't yet come to a final conclusion, and I think that's a more, that'll take a longer time. I'm not sure that I know whether I'm in favor of it or opposed to it or what, and the world, the economic world is changing so rapidly that there's a fair amount of ambiguity as to what is it that's in the best interest of the public.

And it's interesting on those issues to look at them, obviously there's some, the legal profession has some concerns devoted towards what impact does this have, this has on lawyers' income, but it also, you know, there's a, you can look at these just in terms of what is it that's best for people, and how can we get services. And it's very interesting and pleasant to analyze it in those terms and to try to bring about an improvement. Like unbundling, and I think unbundling is a definite step in the right direction in providing legal services.

**JR:** In your time in the Maine supreme court and, like the things that we've been discussing about its role's been changed, and your role's been changing, how, or has this affected its, like the Maine supreme courts relationship with the U.S. Supreme Court?

**DW:** No, no, no, not really. Our relationship with them is, you know, on the court side, you

know, cases. And we have, oh, you know, maybe every two or three years there might be a case of ours that is appealed to the Supreme Court of the United States and is actually heard by them.

And that's a traditional kind of court to court relationship, and we're not, if they affirm us, you know, by a decision that's five to four, we're not unduly elated, and if they vacate, they reverse us by five to four it's got us the other way.

We had a case involving the application of federal labor standards to state probation officers that went to the Supreme Court where we were, we were divided with a majority in favor of the point of view, and the Supreme Court made, affirmed it by a five to four decision. And it's become one of the very controversial decisions involving federalism issues, the relationship between the states and Congress, and the federal government, and it's, so we occasionally find ourselves on the cutting edge of these national issues and, you know, in what is otherwise to us sort of a parochial kind of question, you know, which was, "Can the federal government order time and a half be paid to probation officers in Maine?" And that was really the question, and the answer was, our answer essentially was, "No, because Congress doesn't have the authority to waive the sovereign immunity of the state." And the Supreme Court said, "That's right." But that has some pretty significant implications, you know. Does that mean the Americans with Disabilities Act can't be enforced against states and state employees, does that mean, you know, environmental laws and so on and so forth. So it's a, that's the relationship we have with the Supreme Court, pretty much on a case basis.

I've had, I've served on some national committees. I was on an advisory committee on criminal rules, which got me into the national consideration of procedural issues. That's been very, I've enjoyed that a whole lot, and in that context I have some social connection to some of the justices, and I've met them and that sort of thing. It's not a every day event that we go down and meet with the Supreme Court justices, although we know them fairly well. David Souter is a former Supreme Court justice from New Hampshire, who I knew extremely well. We meet, we meet with New Hampshire and Vermont, the supreme courts, every two or three years we have a joint meeting, and so I've met him for years over there and know him very well. And you get, you know, like Scalia, I went to a master's program at University of Virginia School of Law as a judge and got a master's degree at a later point in my career, and Scalia was presence there. He wasn't on the faculty, he was a Supreme Court justice by that time, but I met him there and had mutual friends and we'd talk and that sort of thing. So you do eventually get to know these people. Ruth Bader-Ginsburg came up here, spoke at Frank Coffin's, there's a lecture series named after him. So, you get to meet them all. It's a small world.

**JR:** Yeah, one thing I was kind of curious about was just kind of your general impression of the current nine chief justices of the U.S. Supreme Court. Specifically what I'm thinking of is perhaps the, its relationship I guess maybe to the media and public opinion. I'm thinking specifically just sort of like the election of 2000 and their decision in that, you know, like kind of get your perspective on that.

**DW:** Well, the Supreme Court of the United States is a different court than all of the other courts. They're a different court than the supreme court of Maine. They are truly a court of policy, and not so much a common law, appellate court that's correcting error below. They are there first and foremost to resolve policy issues, legal policy issues that haven't, can't be resolved

anyplace else. You expect them to be, to have divisions and that sort of thing, and they have over their history. The polling that has been done to measure public trust and confidence, and this was done I think for the first time about twenty years ago, and then an identical polling was done a couple years ago, national polling. And they take twenty institutions, Supreme Court of United States, Federal Courts, (*unintelligible word*) state courts, media, lawyers, legislators, everything else, and they, these twenty institutions, and they measure in a variety of ways, and this was done by E. N. Kelvitch Polling, I think, the degree of public trust and confidence that exists for these institutions. The Supreme Court of the United States, in both cases, ranked first in public trust and confidence. And their, it's increased over the last twenty years, from the first to the second it's gone up. Courts generally rank in the upper half of this group. The bottom is, the media ranks absolutely last, and did twenty years ago and is further down now, and lawyers rank next to last, and they're going down rather than up in public trust. So I guess the, what I conclude from that is that I'm sure that, you know, Bush vs. Gore didn't enhance the reputation of the Supreme Court, because there was a lot of criticism and it was, so I think it wasn't an unmitigated blessing for the institution. But I think that the Supreme Court of the United States continues to command our public trust and confidence, and with good reason.

And I think the, you can always disagree, and there's, you know, there's no question the Supreme Court of the United States has made some mistakes. I'm sure we have as well. I mean I, you know, the Dred Scott decision, looking back on it, you know, was a mistake. It's interesting that Maine had the same question presented a couple of years after Dred Scott, and the supreme court of Maine refused to follow the precedent, as a matter of state law of Dred Scott. So I mean those things will always happen in any system, they were, judges are creatures of their times and they, you know, that gives us sometimes a good view and sometimes a bad view of things. And the, but I think that the institution continues to be strong, and it's so much a, the Constitution is so much a part of our life, and the role of that court in interpreting that Constitution is so much a part of our, you know, you can go in, I go in to do a lot of public speaking in schools, you can speak with kids in the fourth and fifth grade, they really understand most of the issues. I mean, they don't know that it's a Fifth Amendment issue, but if you ask them scenarios, you know, if you went out of here today and there was a police officer sitting outside and you drove off, if you ask high school students, "Can they stop you just because they, you know, they say, 'hey there let's stop him'?" They say, "No-no." "Why not?" Well, they don't have any reason for stopping you, they got to have a reason.

And the other thing, I mean, we're born sort of understanding that so that the Constitution of the United States is not such a great document in and of itself, it's the fact that it sort of reflects our own mind set so accurately. And the court has a pretty prominent role in that and so I think it will continue.

There's a lot of criticism, and there's a lot of support for what they did in Bush vs. Gore, but I think it was obviously a, I was surprised, if I'd been asked to predict what would have happened I would have said they would not have become involved in it, that it would have been left to the political decision, the Florida legislature would have made their call, and then Congress in the final analysis would determine whether they recognized the electors or not. But, I mean I didn't, that was not on the basis of any study, I just sort of, my impression, and so I never really, once they took it on I never spent a lot of time studying what they actually said, but I'm aware of the

criticism of it. But I think the Constitution will survive, they'll survive.

**JR:** Now to sort of, kind of a general question. From your position in the court, what is your impression of, like a general trend, I guess specifically in Maine but also in the United States, for, towards non-affiliated voters, as far as like not being a Democrat or Republican but just being independent (*unintelligible word*)?

**DW:** Well, the, I guess it doesn't surprise me that, and throughout most of the last twenty-five years or so, the time that I've been paying attention to these sorts of things, you know, that basically we have one third a Republican, one third a Democrat, and one third of independent. And we've had, in my own career, you know, I've dealt with two independent governors and I guess in both instances they were previously Democrat, members of the Democratic party, and I think, it doesn't surprise me that that's the way it comes out. I think that there's, like I described to you my own situation of being, you know, born with one parent of each party, adopting the Republican registration but over a period of time sort of, you know, changing my views a little bit and moving from one side to the other in the political spectrum. I can see why people might choose to be Independent today, and the fact that a third of them do doesn't surprise me at all. I think it's a healthy thing, I think the way it works in Maine now is, I think it forces the political parties probably to be more reasoned and principled in what they do, rather than just a matter of strong partisan politics which is a, if they're going to get elected there's a big group out there that don't share that commitment to the organized party. So I'm, I think it's a good development, and I don't know that I'd want to change it if I had any way of changing it.

**JR:** All right. And now just as for your, Don Nicoll wanted me to ask your specific impressions of a couple of people. First of all, Chief Justice Elmer Violette?

**DW:** Oh yeah, Justice Violette was a great guy, he was a, from the Valley, Van Buren, his predecessor, his ancestor was one of the Acadian, you know, immigrants. One Violette went up there, married, and now the family picnic has three or four thousand people that show up. Elmer was, had been, became a superior court justice about the same time I did, a little bit ahead of me, and then he and I went on the supreme court together, the same appointment, there were two of us put on it. And Elmer had been very active in politics; he was a very partisan Democrat, had been long time supporter of Ed Muskie's, had led the fight for public power and, the unsuccessful fight for public power, in the Maine legislature, and had led, and was pretty influential in establishing the Allagash as a preserve. And so, he was a great guy and a good judge, and had all of Ed Muskie's passion for issues, and strong partisan involvement. And then when he became a judge he really didn't, he dropped his partisan involvement, as he had to, and did a great job. Elmer's a, somebody described him as a French patrician, I guess that's it. You know, if he were in Boston he'd be a Boston patrician. And very, very proud, Elmer was very proud of the Franco-American heritage, and he and his wife were supportive of every cause in the Valley.

**JR:** Okay, and how about the late Justice David Roberts?

**DW:** Well David was also from The County, and he was a dyed-in-the-wool Democrat. He was born, I'm sure, as a Democrat, but he didn't, wasn't a fanatic about it I guess. David ran for Congress unsuccessfully back in the early sixties, or mid sixties, and he ran against actually a



cousin of my mother's, Clifford McIntire, who was a farmer from up in Perham. And Clifford McIntire would have been hard to beat in those days, in The County.

And David ran, and David had been the assistant United States District Attorney in Bangor, and he was unsuccessful which was a good thing because I don't think David would have really enjoyed partisan politics. Ken Curtis appointed him to the superior court, and that was the, David had no higher calling in life than to be a judge. He was a great judge and that was what he wanted to do. So from that point on his career was established, he was going to be a judge, and he was a judge's judge. And I don't think, I tell this story, and I think his wife actually said it, I don't think I knew anybody that was more interested in the law than David was, and he would talk about it sort of unending, and his wife as a joke one time said that she often wished that David would have a girlfriend, because maybe then he'd talk about something besides the law. So that gives you some sense of his interest. He retired and died shortly after, and I wouldn't be surprised if it was because he really didn't have, you know, this passion for the law had, he had no other outlet after that point.

**JR:** And one last person, this might be a stretch, but Kingdon Harvey?

**DW:** Well, I know who he is. He's a, he was the editor of the *Fort Fairfield Review*, and I don't, you know, I don't know his political persuasion. I suspect he was a Republican but I'm not sure. But whatever, he was a, you know, an editor who had very strong opinions about everything, and he wrote them every week in this little tiny weekly newspaper in Fort Fairfield. King Harvey, he was called. And of course I grew up, you know, next door in Easton, and we always, you know, "What did King Harvey have to say this week?" about whatever the issue was. So I guess there was, he certainly played a prominent role in my understanding of any public issues that ever came up because I read the column every week like everybody else did.

The *Fort Fairfield Review* still exists. They don't have as strong a editorial position as they had under the King Harvey days. He would, for example, offer an opinion on almost anything, like whether a particular judge was, should have, should be assigned to a particular case, you know. He was unbounded in his views and his ability to criticize, so, but it was a, he was an intelligent man and reflected the county view on a lot of things.

**JR:** All right. Now just, do you have any last words about any other anecdotes or stories about Muskie, about your own career, about the Maine judiciary, any sort of last words you might have?

**DW:** Well no, I think I'd wrap it up by saying that, you know, I've had a great career. I can't imagine how I'd do things any differently. And part of my, the richness of my career has been that when I became chief justice I had an opportunity to work with people like Ed Muskie and Frank Coffin and David Roberts as you mentioned, and Elmer Violette and a whole bunch of other folks. And particularly with Frank and Ed Muskie, to work with them in a non court, non opinion writing way, to work with them sort of in a public issue kind of campaign in effect. And that's been, that's really been a great advantage to me, to deal with, personally with two really towering figures in Maine. And, you know, people who were the governor and the congressman when I was in high school as a rebellious young youth and didn't care whether I ever saw these

folks. To deal with them on a par at some point in your career is really good.

The thing that always impressed me about Ed Muskie was that in these five or six years that he and I would get together on Law Day and participate in activities and speak and that sort of thing, you know, by that time he was a former senator, a former vice presidential candidate, a former secretary of state, former governor and, you know, he was one of the most imposing figures in Maine politics and history. And so I was never quite clear whether I should call him, you know, Mr. Secretary, or Senator, or whatever, but I can, everybody called him Ed, you know, I mean that was just, it was, so I quickly, although not completely comfortably, found myself calling him Ed. And it struck me that he never called me anything except Chief Justice, and, which, you know, I am not the most, well I don't know, I don't mind if people refer to me as Dan, which they tend to do, except in court, and so I don't really demand this formality. But I must confess that I appreciated it coming from him just because I think it was, he didn't have to do that and I think he was, just wanted to convey a sense of respect for the position. Certainly not to me personally, but that was, and I think he did it because the situation was so, he could have done it the other way so easily, you know. Here's someone who has been the secretary of state of the United States, who nonetheless refers to me as Chief Justice, you know. So I always, I never mentioned that to him, but I always, every time he said Chief Justice I always thought, you know, that's really a nice touch. And I'm sure he did it by design, too, I don't think it was an accident.

**JR:** Great. Thank you very much.

**DW:** Well, thank you.

*End of Interview*

*moh296.int.wpd*