

An Interview with Harvey B. Stephens
Illinois Supreme Court Historic Preservation Commission

Harvey B. Stephens, a graduate of the University of Chicago Law School, has been in private practice with the firm Brown, Hay & Stephens in Springfield, Illinois since 1960.

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Justin Law, Oral Historian, Illinois Supreme Court Historic Preservation Commission

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Matt Burns, Director of Administration, Illinois Supreme Court Historic Preservation Commission

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Abstract

Harvey B. Stephens

Biographical:

Harvey B. Stephens was born in Springfield, Illinois on February 17, 1934, and spent his early life in Springfield, Illinois. After graduating from Springfield High School in 1951 he attended and graduated from Bowdoin College in Brunswick, Maine in 1955. From 1955-57 he served in the U.S. Army, in the Transportation Corp. in San Francisco, California. After finishing his military service, Stephens attended and received a law degree from the University of Chicago in 1960, and was admitted to the bar that same year. Stephens has been engaged in the private practice of law from 1960 until the present with the firm of Brown, Hay & Stephens. Stephens and his wife Judith have three children.

Topics Covered:

Parents and family background; early life in Springfield, Illinois; Scouting; WW2 and the home front; Springfield in the 40s; adolescence; Springfield High School; Cold War, Soviet Union and communism; Korean Conflict; deciding to attend Bowdoin College in Brunswick, Maine; college and fraternity life; football; political and social outlook as a young man; conception of his generation; the draft; ROTC; service in the Army Transportation Corp.; San Francisco, California; University of Chicago Law School; Chicago; law school memories; 1960 election; returning to Springfield; Judith and marriage; Cuban Missile Crisis and Kennedy Assassination; local bar in Springfield in the early 60s; early law practice; prominent attorneys; Paul Powell investigation; State's Attorneys; local politics; Leigh Kagy; memorable early cases; early appellate work; memories of judges; gambling in Springfield in the late 40s; desegregation of schools in Springfield; definition of "northender"; memories of courthouses; civic involvement; court appointed attorney work; memorable cases and appellate work; banking in Springfield; bankers associations; changes in banking law; branch banking; banking cases; U.S. Supreme Court appellate work; Brown, Hay & Stephens law firm; changes in the profession of law; cameras in the courtroom; judiciary and the media; enhancing public awareness of the judiciary; bar associations; politics of the judiciary; role of the lawyer and judiciary in society; pro bono work; preservation of legal history; change in the local bar over time; change in legal work over time; cases he continues to struggle with; future of the profession; legacy.

Note:

Readers of this oral history should note that this is a transcript of the spoken word, and that it has been edited for clarity and elaboration. The interviewer, interviewee, and editors attempted to preserve the informal, conversational style that is inherent in such historical sources while also editing for clarity and elaboration. The Illinois Supreme Court Historic Preservation Commission is not responsible for the factual accuracy of the oral history, nor for the views expressed therein.

Harvey B. Stephens: An Oral History

LAW: This is an oral history interview with Harvey B. Stephens. Today's date is April the 28th, 2015. We're in his law offices here in Springfield, Illinois, and today we're going to discuss his background. Mr. Stephens, when and where were you born?

STEPHENS: I was born in Springfield Hospital, Springfield, Illinois, on February 17th, 1934.

LAW: Tell me a little bit about your parents.

STEPHENS: My father, Robert A. Stephens, Jr. was an attorney here in Springfield, he was a graduate of Wabash College and Yale Law School and before he worked in this office he was an Assistant U.S. Attorney for three years. My mother was a graduate of Wellesley College and she and my father were married after he got out of law school and she taught for [Springfield, Illinois] School District 186 for a year, year and a half, but because she was married she wasn't allowed to continue and she was not employed after that, she was very active in a number of organizations.¹

LAW: Ok, now what about your grandparents?

STEPHENS: Well my paternal grandparent, my grandfather R. Allen Stephens was born and raised in Mattoon, [Illinois] his father was an itinerant Methodist preacher, his wife was Helen Bennett and she was born and raised in Mattoon, [Illinois] her father was a lawyer in Mattoon and a judge, he died in January 1st, 1900. Both Helen's, my great grandparents, the judge, he and his wife were both natives of Maine, having been educated in Maine.

¹ See also, *State Journal Register*, July 12, 1976, pg. 20, and, *State Journal Register*, April 4, 2003, pg. 17. Also see, *State Journal Register*, August 23, 1996, Local section, pg. 1.

LAW: Do you recall the judge's name?

STEPHENS: Charles Bennett.²

LAW: That's correct, that's right.

STEPHENS: Charles Bennett also served on the board of the Illinois Industrial University which was the predecessor of the University of Illinois. On my maternal side my grandfather was Harvey M. Solenberger, he was raised in northern Illinois at Polo, attended Northwestern University for two years and then transferred to the University of Chicago and graduated where he met my grandmother who was Pearl Hood, she was a student in the social worker school. They were married, well they graduated University of Chicago in [19] '02 and they were married, I think, in [19] '03, he moved to Springfield, [Illinois] to go to work for the Mutual Benefit Life Insurance Company like in [19] '03 or [19] '04.

LAW: Do you have any memories of your paternal grandfather?

STEPHENS: Yes.

LAW: Any that you'd like to share?

STEPHENS: Well he was an active, outgoing person. An active gardener and a couple of times he took me, as a five or six year old, when he was going to court, I remember one time in Hillsboro, [Illinois] and other times, we always went there for Thanksgiving, I always sat at the children's table because I was the oldest of a number of grandchildren.

LAW: He lived there on Park Avenue?

² Charles Bennett's wife was Susan Cleaves Bennett.

STEPHENS: Yes, 1700 Park Avenue, he actually built the property. He moved to Springfield at the request of Mr. [Logan] Hay and Mr. [Stuart] Brown to join the law firm here in 1919; acquired the property and built it at that time.

LAW: He was also involved with the [Illinois] State Bar Association.

STEPHENS: As a practicing lawyer in Danville, [Illinois] as a young man, he had become active in the Bar Association. Logan Hay was President of the Bar Association, state bar, and he recruited him to come over and become the first Executive Director, but it wasn't a full-time position, instead he ran the Bar Association and was a full-time practicing lawyer.³

LAW: Now he graduated from Mattoon High School and I was wondering if he ever shared with you any memories of Mattoon?

STEPHENS: No.

BEN: (Adjusting lighting).

LAW: Did your grandmother ever share any memories with you of Mattoon?

STEPHENS: Not of Mattoon, really, but she was trained as a librarian, she had a library degree from the University of Illinois. I don't know that she taught school there, she was on the school board in Mattoon, well she wasn't, her mother was on the school board, she influenced, she always was bringing me books to read, Caldecott [Medal & Honor] Award Books, and etcetera; she picked out books for me to read.⁴

³ See also, *State Journal Register*, July 27, 1942, pg. 1, *Chicago Legal News*, Vol. 49, pg. 547 (1916-1917), and Frederic Crossley, *Courts and Lawyers of Illinois* (American Historical Society: Chicago, 1916), pgs. 516-517.

⁴ See also, *State Journal Register*, July 30, 1944, pg. 5.

LAW: Now what about your maternal side, Solenberger, I'm guessing you were named after your grandpa Harvey.

STEPHENS: Yes.

LAW: Any memories of him?

STEPHENS: Oh yes, very much so 'cause he lived to be ninety-six and he made his living selling insurance, he was an outgoing individual, wonderful individual, spent a lot of time with him and in fact when I graduated from high school my folks were tied up and so he took me on a trip down through Kentucky and everything for five days before we came back.⁵

LAW: And Grandma Pearl?

STEPHENS: She was an active woman, she suffered from arthritis, so in later years she wasn't that active but she had an extremely sharp mind. In her earlier days she was a horse woman.⁶

LAW: So this generates your father, Robert A., and mother, Helen, any memories you'd like to share of them from your youth time?

STEPHENS: Well (laughing), you know, what do you want to share about your dad and mom? My father was an intense and patient man, meticulous, worked hard because the law business – well of course during WWII there weren't many lawyers, he joined the firm in [19] '29 and then you have the [Great] Depression, you have all the issues with all of that; it was not an easy period of time. He loved to garden, during WWII we had maps

⁵ See also, *State Journal Register*, April 1, 1975, pg. 17.

⁶ See also, *State Journal Register*, May 3, 1967, pg. 4.

on the wall that showed the progression of the wars because he had two brothers, one of whom was a Navy flier, the other one was in Judge Advocate General Corps and so was not in the front lines. He was quite interested in Scouting, active in the Methodist Church because his father had been extremely active in the Methodist Church. Though my mother was born and raised in the Congregational Church here so father used to go to the Methodist Church for one service and then join mother for the other service (chuckling). But I was always expected to do a lot of things the right way and that was just it. As I say he was active in Scouting, he had a [Boy] Scout Troop, he was off and on as Scoutmaster for about fifteen years, he used to train Scoutmasters, his father had been active in Scouting, his father's the one that developed the Lincoln Trail that you hike in from Springfield to here, that was the first approved Scouting trail and, so, he had that idea. Father had a heart attack when he was sixty-two and lived to be seventy-six but his health was never that good afterwards.

LAW: Now you were involved in Scouting too weren't you?

STEPHENS: I'm involved, not to the extent, I'm an Eagle Scout, and when I came back I did some work with the council, I was not involved with a Troop.

LAW: What are your memories of Scouting in the [19] '40s, what were your activities?

STEPHENS: Well Scouting in the [19] '40s was, to me, an active thing, it still had the emphasis on outdoors. We had first-aid meets which we practiced at and worked at very hard. We had at least two camporees a year where we would go out and camp and be in contests with other Troops which was quite interesting. During WWII I would go two weeks in the summer to Scout camp and participate in that, swimming, etc. That was the

only camping experience I had, there weren't any other camps or not much during the War, but that was the extent of it.

LAW: So, you've kind of given a couple of memories about WWII, Scout camps and the map on the wall. Any other memories of that period or of the War, how do you remember the War?

STEPHENS: Well I remember the War when my mother told me on December 8th, [1941], I can still visualize it, she took I and my brother aside and said now listen, "War has started, Japan has attacked us, and we don't know what's going to happen, your father may have to go to war," actually because of his age he did not. But during the first couple of years we had air raid practices, blackouts, etc. There were a number of other things, you had gas stamps, you had rationing, we collected grease and took it to school, we had paper sales, all of the – then you had so much less communication then, you just listened to the radio. And we knew some things about my Uncle who was in the North Atlantic [Ocean] as a Navy pilot and then came home in [19] '41 or [19] '42 and went to the Pacific [Ocean] and flew off a carrier in the Pacific for two years, so, we had all of that. I remember where I was when V-E Day [Victory in Europe Day] occurred, we were having dinner at New Salem, [Illinois], (inaudible), there used to be a restaurant at the entrance to New Salem which was a favorite place to go to.⁷

LAW: Now this was before the War but do you have any memories of

[00:15]

the [Great] Depression, I know you were quite young?

⁷ The Wagon Wheel.

STEPHENS: Uh no, not really. The first house my family owned was on South Fourth Street, sort of a large bungalow but my mother had some help then, a woman, my brother was an asthmatic, three years younger than I was.⁸

LAW: Robert?

STEPHENS: Robert, yes, but interestingly the woman who was probably first generation German, I guess, who came to help with us or take care as so many families did at that time, she was probably seventeen or eighteen, she's still alive.⁹

LAW: Wow.

STEPHENS: We talked to her the other day. But then we moved in [19] '41 over on South Park [Avenue] and, actually, my father told me you should never live closer than two blocks to your parents and we ended up buying a house that was, and South Park was here (gesturing to how close the houses were) and our house was here (laughing).

LAW: So tell me about the city of Springfield, [Illinois], in the 1940s, what do you recall about growing up in Springfield in the [19] '40s?

STEPHENS: Well, it still had a downtown, an active downtown. I forget when the street cars went out but there was good public transportation. Obviously without cars many people rode the buses. Washington Park, frankly, is just about the same as it is today except they've changed the roads and a few other things. The city had not expanded west at all during the [19] '40s, really, what is now Leland Grove was probably the extent of the

⁸ See also, *State Journal Register*, January 30, 1988, pg. 21.

⁹ Agnes Roth.

expansion. If you look at where Hy-Vee is, that was a farmhouse (chuckling). Now the Esquire Theater was there because we used to go to the Esquire Theater.

LAW: That's what I was going to ask you, if you had any memories of the Orpheum Theater?

STEPHENS: Oh yeah, the Orpheum was of course down here on 5th [Street], it was quite a showplace. And remember at that time you had the Orpheum, you had Henson Robinson [Company] was downtown there and then you had the old Illinois Bank building which they tore down and then built up another one in the [19] '50s and then they tore that down and built the present building there today.

LAW: What did young people do for fun at that time?

STEPHENS: Well, there wasn't a whole lot. During the summer I was primarily a gardener, working in the family garden, I played football during high school, I was manager of the baseball team in high school, 'cause I graduated in [19] '51, so, it was coming out of that. We had the [Illinois] State Fair, we could ride the bus and go to the fair and spend all day at the fair. My family, we were not members of Illini Country Club, any Country Club, and really the park, well we moved in [19] '41, Washington Park, when we lived on 4th Street I would go over to the Iles Park which is there between 6th [Street] and Ash [Street], you know, that was a nice park at that time, there used to be a ball diamond there. We also had the St. Louis Brown's Three-I [League] baseball team here. Roy Sievers played here, I remember, a couple others. It was the Three-I League which I guess is a Class B league and it was at what is still Lanphier Park out here, but they'd have good crowds at that. You also, my father and a lot of people – high school basketball was big and Springfield High School had an old gym, in fact the gym still

exists but they got newer ones, but they always played their games in the Armory [Building].

LAW: Now tell me a little bit about the Armory.

STEPHENS: Well the Armory was used for a lot of social events and everything and so Springfield, when they were playing the games in the Armory, and the city tournament was in the Armory, the balcony, there was a whole group of business people and everything else, my father had, they had season tickets for the high school games and that was a form, obviously, a form of entertainment. The Beaux Arts Ball, one or two years I was in high school, was held in the Armory, it was much more of an event than it is now. At that time most of the senior girls would be maids, not just those that were involved in the association. Other than that we had dances every two or three weeks in high school. There were a number of clubs, some of which still exist. There was a club called Pill Rollers, it was a boy's club that was founded by a guy named Charlie Dungan, who ran a drugstore on the corner of MacArthur [Boulevard] and South Grand [Avenue], if you remember there used to be a triangle there and there was a drugstore there.

LAW: The Pill Rollers.

STEPHENS: Yes.

LAW: What kind of music did they play at the dances?

STEPHENS: Well the music of the time, which is a little bit old for you (chuckling), you'd call 'em Golden Oldies, okay; I mean you had the [Your] Hit Parade on the radio.

LAW: Would you have local big bands?

STEPHENS: Just local bands, yeah, there was three or four.

LAW: Did you enjoy that kind of music?

STEPHENS: Yes.

LAW: Was there any other places people went for dancing?

STEPHENS: Not that I paid any attention to if I knew about it.

LAW: Now you attended Springfield High School.

STEPHENS: Yes.

LAW: Tell me about Springfield High School in the late [19] '40s.

STEPHENS: Well, it was then as I believe it is today the best school, scholastically, and it had very good competition. It was a big school, we had close to probably three hundred and fifty/four hundred people in our class, four-year school, diverse. It had, what you would call, college courses or people that were going on to college, with some excellent teachers. And then it had an Ag [agricultural] school, it had mechanical drawing, it had secretarial classes, so it was sort of the whole gamut. You had Lanphier High School at that time, you had Feitshans High School which was the predecessor to Southeast [High School] and you had Cathedral [High School] and Cathedral being the boy's school which was up in the north end and then you had Sacred Heart-Griffin and Ursuline as the two Academies/girls schools. During the [19] '40s a number of the more intelligent Catholic boys were at Springfield High School. It was good competition, almost all of us took Latin for a couple of years, good English and math, I'm not scientifically bent so I took one science course. I did take French while I was there which was unusual, they had

French and German. The English teacher Elizabeth Graham, you might have heard of that name, she was a great friend of [Poet] Vachel Lindsey and a super teacher and did a good job of teaching us how to write. I look at the course level that my own sons and my grandsons have gone through in high school today and what you fellas went through and you get so much more than what we were getting at the time. I mean, my advanced math was advanced algebra and I did take trig [trigonometry] in high school but there were no calculus courses, but that was true of all high schools then. It's just that we have done a good job of increasing the educational level in the more competitive thing. But as I say, the most interesting thing about Springfield there was a lot of school spirit, a lot of things were done through the school and there was competition between the schools, not as much in the academic side, clearly in the athletic side. I guess when I was there Springfield High was probably dominant, at least in football and in basketball but of course you had a whole different mix then, you didn't have the number of African Americans who were good athletes.

LAW: Would Springfield would it have been considered a white school?

STEPHENS: It had more white (people) just because of the geographic boundaries. We had in my class, there was, I can recall the names of several of them, one man Nelson Cummings, he ended up being head of the Urban League in Madison, Wisconsin, he wanted to go to the University of Illinois to play football and they wouldn't recruit him and he went to one of the Texas African American schools and did well and as I say I saw him years later in Madison when I was up there on business one time. His two sons played for him, graduated from Northwestern [University]. But he had a sister, Theresa, who, she served on the school board here, and an active woman. But most of the African

American families that were in Springfield High School were those who, well, they had to geographically live in the area, it wasn't any attempt to keep them out, that's the way the geography was divided up. And actually Feitshans, which is now Southeast, was much more white. Remember the African American population of Springfield has really grown over the years.

LAW: Ok, now I wanna ask you about a couple historic events from that period. What are your earliest memories of the Cold War?

STEPHENS: The Cold War, well we didn't like the Russians. Yes, I remember learning about [British Prime Minister Sir Winston Leonard Spencer-] Churchill's ["The Sinews of Peace"] speech on the "Iron Curtain" because it was at Westminster College which is out in [Fulton], Missouri, it's the only school that ever offered me a football scholarship (chuckling).¹⁰ I was going through – at that time the colleges would come to the schools and set up booths and you'd walk around and talk to people and I was talking to the person at Westminster College and he asked a bunch of questions, I had no interest really except I knew I was going to go to an all-male school and he said, "Well, if you come with us we'll get you a scholarship,"

[00:30]

I went home and told my dad that, he said, "That school isn't good enough for you, you gotta go where they make you work." (chuckling) But I guess the Cold War, you know, we really didn't understand even as a young person even when I was in college you didn't really understand how bad [General Secretary of the Central Committee of the

¹⁰ See, <https://www.nationalchurchillmuseum.org/sinews-of-peace-iron-curtain-speech.html>

Communist Party of the Soviet Union Joseph] Stalin was and everything. I remember seeing, I can still visualize the map father had up of the [Nazi] Germans' campaign in the [19] '40s on the wall, we had a sun-porch, of where he marked and how they got all the way to Stalingrad, [Russia] or something and then it didn't happen, I mean the Russians were successful. But the excesses of the Russians we never really understood, but we were always relying on, who was their foreign minister, and why we felt that we'd never go to war, I think, was it [Minister of Foreign Affairs Vyacheslav Mikhailovich] Molotov or somebody like that, there was a Russian Foreign Minister who wasn't as aggressive as Stalin or his successors.

LAW: So your understanding of the Soviet Union was that informed mainly by your parents, newspapers, radio, combination?

STEPHENS: Yes. It's interesting, my father taught a course for a Citizenship [in the Community/Nation/World] merit badge and he would explain different types of government and I still remember he had an interesting outline of the Soviet Union type of government. And he used to make the comment and he talked to me about it more than once about the fact that, "Doesn't this look great on paper but that's not how it works," and then he'd talk about the practical politics of it and I don't know if that's because he was living in Springfield, Illinois, (chuckling) seeing practical politics on a day-to-day basis or otherwise.

LAW: Now what about the Korean Conflict?

STEPHENS: Well Korea was real to me, if I didn't go to college I went to Korea. At that time you had to get deferments for going to college. When I was graduating high school

in June of [19] '51 one of the colleges I had chosen to go to was Bowdoin College in Brunswick, Maine, and they had summer school. My father came in and visited, we talked about it and he says, "Look, as I see things you're gonna have to go to war or at least go in the service," he says, "You really can't get a job right now," I was just seventeen, he says, "Why don't you go to up to summer school at Bowdoin and see if you like it, and if you don't like it," my back up was Wabash [College] in Crawfordsville, Indiana, or Haverford [College] outside Philadelphia, [Pennsylvania] he said, "Either one of the those will take you." Now you have to remember this was a different type of college admission, my application was on a 7" by 9" form and I sent my grades and they wrote me back and said, "If you'd like to come you can come," and that was true of the three schools I had applied to and because my parents had always gone to single-sex schools I was going to a men's school. But, having said that, then when I got to college of course everybody at that time, Bowdoin, well, like Illinois College, they had ROTC [Reserve Officers' Training Corps], all of us took it the first two years and then you would decide whether you'd opt-out, which you could, or stay in it, I stayed in it. Friends of mine would opt-out and then they'd immediately go in the Air Force or something else, but what was more realistic was that my fraternity brothers who flunked out after the end of the year would immediately be drafted and I had two of 'em, I can still remember one of 'em, left in the Army, four months later he was in the front lines in Korea. Eighteen months later he came back having been discharged, he was going to school someplace else around the Boston, [Massachusetts] area, he had a different attitude about what college was like and what it was for. So it was a real type of feeling and I had classmates who went through the ROTC program and served, I remember one of them, a

tall gentleman, he was a flautist and when I was serving in the same group, the Transportation Corps, in San Francisco, [California] I got talking to some officer who had served with him, he said, “He was the most interesting character,” but here this guy ended up in the front lines of Korea too. You see Korea didn’t end until [19] ’53, well [U.S. President Dwight David “Ike”] Eisenhower got it ended in [19] ’53 so when I got out of college in [19] ’55, Korea, we still had troops but we weren’t fighting.¹¹

LAW: So you mentioned Bowdoin College?

STEPHENS: Yes.

LAW: Now why that particular school out of the three?

STEPHENS: Well like I said they had summer school so I went up on the chance that I might like it or not.

LAW: Ok, so what was it about it that you liked?

STEPHENS: I didn’t know any better, it was great (laughing). No, I was in Maine in the summer, which I had been to once in my life, I had only seen the school once for about twenty minutes, it was friendly, the courses I had that summer I had a tough English course, of course I wasn’t prepared, really, for college English and I had a couple math courses and I did well in the math courses. So I liked it, the people I met were nice, nobody from the middle west was there, even during my four years in Bowdoin I was probably one of ten people that didn’t live in the Mid-Atlantic States or Maine or the New England states, so it was a totally different experience and I just liked it. So I came home in September, school at that time didn’t start until, fall semester, until the last week

¹¹ The armistice ending the Korean conflict was signed on July 27. 1953.

of September, so I came home when I finished right around Labor Day and my father said, “What do you wanna do?” I said, “Well if it’s alright with you I’d just assume go back,” and he said, “Ok.”

LAW: Did you live in a dormitory?

STEPHENS: I lived in a dormitory the first year. The college did not have central dining function, the college, when I was there, was ninety-five percent fraternity, it had fourteen fraternity houses and you were rushed for fraternity the first four days you were there, you served as a pledge for the first six weeks and then that was it, you were initiated, and as I say all freshmen had to live in the dorms and these dorms were ancient and novel, my dorm had been built in 1828, it had been modernized, they closed off the fireplaces.
(chuckles)

LAW: Now, you joined the Theta Delta Chi Fraternity?

STEPHENS: Yes.

LAW: You also played football in college.

STEPHENS: Yes.

LAW: Any football memories?

STEPHENS: Well it was an interesting time, the first year they had freshmen football and I played freshmen football. The next three years, the second year we had two platoons which you have now but then, interestingly enough, the major colleges got through in the NCAA [National Collegiate Athletic Association] that you couldn’t have two platoon football because it was too expensive to recruit all these players. Now think of the

program today compared to that. So we had to be able to go both ways, you played both defense and offense and if you came out in the first quarter you couldn't go back in until the second half unless you were hurt, the quarterback was the only one that could go in and out. So, my last two years I was playing both defense and offense, the first year I played primarily defense but I always called it the "play for fun league," I weighed a hundred and seventy pounds dripping wet and was a nose guard, a linebacker or an offensive guard.

LAW: What were some of the schools that you were playing?

STEPHENS: Well, we played, at that time we played, Williams [College], Amherst [College], Tufts [University], Wesleyan [University], Colby [College], Bates [College] and [University of] Maine. Maine was a school that had big time football and big time players, the rest of them all were schools of the same ilk, Bates and Colby were co-ed, Tufts was co-ed, Wesleyan wasn't at that time, the rest of them were all men's schools.

LAW: Did you work while you were in college?

STEPHENS: No, except my senior year they offered me a teaching position and I was a Teaching Fellow in mathematics and I taught trig and basic calculus my senior year. It's strange, I graduated in January, remember I told you I started in June, so I could have graduated in seven semesters but those New Englanders are smart, they had a rule you had to pay for eight semesters whether you went there for eight or not. So, I again negotiated with my father and said, "Can I go back in the fall and play football and take a couple of courses and enjoy it," well he decided that was alright because he knew I was gonna have to go in the service and so when I went back, I walked into the fraternity

house and there was a note from the head of the mathematics department and they asked if I wanted to teach and so I did teach; I in effect graduated in January and taught for the spring semester and took two other courses.

LAW: Now how did Brunswick compare to Springfield?

STEPHENS: (Chuckles) Brunswick was probably a town of ten thousand then, it did have a Navy air station outside of it but it was a small town, totally different from Springfield.

LAW: Now did you have dances there too?

STEPHENS: Well when we imported women. (chuckles)

LAW: Now how did that work since it was a male school, how did you get dates?

STEPHENS: Well there's girl's schools around and on football weekends people would come in, you had, by rail they'd come from Boston, [Massachusetts] or Portland, [Maine] and those who had cars, but you had winter house parties, you had spring weekend, the Ivies three or four days, you'd be surprised the women were able to find a way to get there. (chuckles)

LAW: Ok, how would you describe your political and social outlook at this time, as a college person?

STEPHENS: I was primarily a republican. On the social outlooks I was still learning, I had come out of a middle-western environment, I think the story I love to tell is when I joined our national fraternity they had just removed the restriction on having Jews as members and it had occurred at the prior national convention and had been led by our house and

the delegate from our house at the national convention who got it passed was Stew Cooper and he was a Jewish boy from New York.

[00:45]

But when I came home my first winter talking to some of my friends they were telling me, one of whom was going to DePauw [University] over in Greencastle, [Indiana] he said, “Well you know we let a Catholic in the house this time,” so it just shows the difference of it. As far as that I remember the [Governor Adlai] Stevenson campaign in [19] ’52, people ask me about Stevenson, I said, “Oh he’s a democrat,” I was for Eisenhower, you know, within the (frat) house and actually I was at the [19] ’56 Republican Convention.

LAW: Did you come from a republican family, is that kind of where your politics came from?

STEPHENS: Yes.

LAW: Did you have a concept of being part of a generation?

STEPHENS: Yes and no, I always believed because we’re coming out of WWII, I always believed that I was part of a group that we, you know, we didn’t have a lot of money, we didn’t have a lot of things, the economy, and yet at the same time I always believed and I think a lot of my classmates, there’d always be a job for us because there were not a lot of us so no matter what we wanted to do we’d always have an opportunity to get a job. But generation, the way we study it today and all that, no I don’t see that, it was more of an evolving thing. Because when I started college in [19] ’51 there was a few people who were the leftover from the WWII who had returned from the War, those were the big

classes and they had a different outlook and then all of a sudden here we are the so-called youngins.

LAW: But now, if we call it a generation, how did it compare or differ from your parent's generation?

STEPHENS: Oh, we were starting to travel, communications was getting better, we were not as rigid. You have to understand, Bowdoin, when I was there probably thirty percent of the students, at least thirty/thirty-five, were from Maine, some of them from rural backgrounds but they were also the best and the brightest so they were uncannily smart. But Bowdoin was more of a cross section, it didn't have a lot of prep school boys, it didn't have a lot of the Exeter's [Phillips Exeter Academy] and Andover's [Phillips Academy], it did have a fair number of boys from private high schools because at that time in New England you didn't have a lot of good public high schools, especially in Maine, people lived at home and went to an academy or a school because that's where you got the better level education.

LAW: Now you also mentioned that there was a draft at the time.

STEPHENS: Yes.

LAW: What were your thoughts upon the draft and how did it work?

STEPHENS: Well the draft at that time was not a lottery, you had various classifications and there was an exemption for college and then there started to be a hue and cry that, "Well why are the college students getting all these breaks?" And so then they started to modify it a little bit, but when I was there, during the time I was in school, there was never any lottery system at all. But if somebody wanted an exemption they had to apply to the local

draft board and in fact later on in the [19] '60s I served as a voluntary attorney for the local draft board here primarily dealing, counseling people who were conscientious objectors and of course this was during Vietnam and so you had to figure out whether it was Canada or their objection and whether their objection was genuine.

LAW: How many do you think, how many people were conscientious objectors?

STEPHENS: Oh, well there were the Quakers to start with, you had some of the [Jehovah's] Witnesses; it was primarily almost always based upon religious beliefs.

LAW: But what about when you were the attorney?

STEPHENS: Oh I would probably would handle fifteen to twenty cases a year.

LAW: And this is here in Sangamon County, [Illinois]?

STEPHENS: Yeah.

LAW: Tell me about that a little bit more, how did the draft function during the Vietnam War in Sangamon County?

STEPHENS: Well at that time you had lottery, so it was all lottery and if you got a low number you're either going or not and you could play the lottery game. Because it was lottery if somebody was married with a kid they might be able to get some objection. You had a draft board of three volunteers and you had one or two people administering it, I can't recall the ladies name now, and if somebody needed to talk to an attorney, a senior lawyer here got me involved in it because he'd been doing it, and they'd call me and I'd go look at the file or the person would come in and talk to me and we'd try and figure out what they wanted to do for exemptions to go or not to go and some of them are

legitimate, some of them are hardship cases and I remember one or two the person had been in the service and served, I guess, in Korea and then somehow was getting drafted back in again and so you wanna go in and argue why. There was some equity in it, the local board had the authority to grant the exemptions which always creates an issue depending on who knows the local board.

LAW: Did you ever see anything like that?

STEPHENS: Here I didn't, no, but I am assuming it happened. How do we think [U.S. President George Walker] Bush came into the Air National Guard? (chuckling)

LAW: Now let's go back, you were in the ROTC.

STEPHENS: Yes.

LAW: Before we talk about your years in the Army, any memories of ROTC that stand out?

STEPHENS: Uh well you drilled once a week, you took a class for non-credit and you were taught military history, tactics, etcetera and so forth, drilling was rather an innocuous part of the disciplining. Between your junior and senior year you went to summer camp and you spent between, you spent six weeks in summer camp where you had extensive training in all phases, I was in the Transportation Corps so you had basic infantry training plus Transportation Corps.

LAW: Ok, so what were your duties once you were in the Army in the Transportation Corps, I guess you would have been a Second Lieutenant?

STEPHENS: Correct, I was commissioned and a Second Lieutenant, went into service in June of [19] '55 and then you go to Basic Officer Training [School] or Initial Course and I was

there until September and then I got stationed in the Port of Embarkation in the city of San Francisco, [California] it was a terrible War that I fought, and I was in charge of or worked with other people in moving dependents, i.e. families, to and from the Far East and at that time we used Military Sea Transport [Transportation Service] Ships which were government operated vessels to move ‘em, we’d load ‘em and unload ‘em and all the rest and did some, we started to do some air but most of it was sea and we worked in the port and so it was basically a nine to five job.

LAW: What were your impressions of the city?

STEPHENS: Of San Francisco?

LAW: Yeah.

STEPHENS: Loved it!

LAW: Tell me about San Francisco in the mid [19] ‘50s.

STEPHENS: Well I was stationed at Fort Mason which is right there on the [San Francisco] Bay, it overlooks Alcatraz [Island] and it’s the end of Van Ness Avenue and it’s just a wonderful city, it was a fun place to be as a young person and as my father said when I came home after two years, “Well I hope you got it out of your system, you’re going to law school now.”

LAW: That was my next question, why did you decide to study law? Was it kind of expected?

STEPHENS: You know, that’s something I have pondered now (chuckling) after I’ve been practicing all this time. I don’t know if it was expected, it was expected that I would go to graduate school, well, because it was just expected, all my grandparents had college

degrees, some of them had advanced degrees, it was just expected I'd go to graduate school and to me law school interested me, I was just starting to get into politics then, and so I just decided I'd go to law school. I didn't have this burning desire, I wasn't told I had to do it, I thoroughly enjoy it.

LAW: Now, why the University of Chicago Law School?

STEPHENS: Very simply, they gave me a hundred percent scholarship.

LAW: Tell me about that program.

STEPHENS: Well University of Chicago under [President and Chancellor Robert Maynard] Hutchins, who took over in the [19] '30s, became a liberal institution. The law school in the [19] '50s, well really right after WWII, had become a sort of cloistered group, it was primarily students who had gone to the [University of Chicago] Law School who had gone to [College of The] University of Chicago Undergraduate and then University of Chicago. And for some reason they decided they wanted to grow the law school, they had excellent scholars, they went out and bought a nationally known faculty and they also offered scholarships to graduates of approximately eighty liberal arts colleges and in my initial class of a hundred and fifty there were, I think, seventy of us who were on a hundred percent full-ride scholarships, all of us having come from different colleges, a lot of us having been in service. But I had one from Wittenberg [University], but there was another fella' from Bowdoin but he was a different year than I was, but it really diversified the class. The second reason was I had been accepted to Yale which was my father's law school and he said, "Now look, if you're gonna practice law in Illinois you don't need to have another set of friends in the East [Coast]," he said, "You might as well

come to Chicago,” and of course the fact that I had a hundred percent tuition played a lot on his mind (laughs) but that’s where it came

[01:00]

and I’m very happy I went there.

LAW: So what were your first impressions of the city of Chicago?

STEPHENS: Well as a boy I used to be put on the train because one of my uncles was the head of the Germanic Language Department at the University of Chicago and he lived on 57th and so I would be put on the train and sent to Chicago to visit him in the summer, so I knew something about the South Side of Chicago, especially The Museum of Science and Industry, one time I knew every exhibit in the museum.

LAW: Was this your mother’s brother?

STEPHENS: No, it was my father’s brother-in-law, my father had one sister and this was her husband.¹²

LAW: Ok, so you kind of had some experience with the city of Chicago but you had not lived there?

STEPHENS: No I never lived there until when we moved back, well, it’s interesting, the University of Chicago was an enclave because in, what, the late [19] ‘40’s they decided they were gonna stay in the South Side and so they tore down a bunch of buildings, built a bunch of new residences and everything else and protected that area, so, surrounding, the immediate are area surrounding the University which was heavily African American

¹² George and Mary Metcalf.

but you didn't think much about it because the University itself was, we were sort of a self-contained community.

LAW: Was there a resident hall specifically for law students?

STEPHENS: Uh, there was a graduate resident hall and that's what I lived in yes.

LAW: Let's talk about the University of Chicago Law School. What strands of legal philosophy were you encountering at the law school, if any, and how would you describe the legal philosophy of the school?

STEPHENS: That's interesting, uh, we were, well it was competitive, the teaching method, which I know people have criticized, was you walked into the classroom and they called your name, you stood up, and you had to answer the questions and you normally were never gonna give the right answer and they kept going after you. You had the basic courses but we also had a course called Elements which was legal theory, that was instrumental in getting you to think. We had a man teaching Contracts who had defended the Rosenberg's [Julius and Ethel Greenglass Rosenberg], or been involved in that, and he was a thoughtful person in forcing you to think, in fact I still remember he said before our first – we never got any exams, at the end of the quarter you wrote an exam was primarily, was what was your grade, it, to me it's the highest form of trade school, but, you talk about philosophy. He said to us, "Now, I expect you to know about contract law and I haven't been talking about it in lectures, now go read the Hornbook [Series] because I expect you to know contract law." The other professors they were bright, bright people, [Professor Bernard D.] Meltzer who taught labor law and evidence had been with [Justice Robert H.] Jackson at the Nuremberg Trials as a young lawyer, [Dean

Edward Hirsch] Levi of course was spectacular, I still remember [Professor Soia] Mentschikoff who taught us commercial law and [Professor Roscoe Turner] Steffen's who taught negotiable instruments and banking law. My father had had him as a banking law professor at Yale and they'd hired him to Chicago.

LAW: This is the future Supreme Court Justice?

STEPHENS: No, no.

LAW: Go ahead, I'm sorry.

STEPHENS: Anyway, the constitutional law courses were taught by [Professor Francis A.] Allen and [Professor Phillip B.] Kurland, Kurland had clerked for [U.S. Supreme Court Justice Felix] Frankfurter so he had a conservative view. Allen wrote, was a clerk for the Supreme Court and drafted the opinion in *Sweatt vs. Painter* which got rid of restrictive covenants in housing and later became dean at a Michigan law school, but he was very much on due process.¹³ We were taught to argue due process, today it's things that even newspaper writers talk about but in that day it was how far can you push due process. Tax wasn't as complicated, though I thoroughly enjoyed it. It was a challenging experience and yet they also had a professor, who I chose not to take, by the name of [Professor William W.] Crosskey who took a whole other view of the [U.S.] Constitution and probably part of [Associate Justice of the U.S. Supreme Court Antonin Gregory] Scalia's present views of the Constitution come from what he had, so you had these diverse views and you also had an Economics course being taught because they were also arguing between law and economics and then of course our Tort professor was one of the

¹³ See *Sweatt v. Painter*, 339 U.S. 629 (1950).

first ones to try and analyze juries and he got in trouble because he got a bunch of jurors to tell him what went on in a federal case in, I guess, Colorado and people got upset about it; Harry Kalvin [Jr.]. It was an interesting group, they were challenging, they were fun, in fact [Professor Nicholas DeBelleville] Katzenbach was teaching there and Katzenbach became, if you remember, [U.S. President John Fitzgerald] Kennedy's Attorney General, he was what, in Little Rock, [Arkansas], I think.¹⁴ So anyway, but they were always available, you could always talk to them, you had a good feeling.

LAW: Do you recall a professor named Karl [N.] Llewellyn?

STEPHENS: Oh yes, wonderful man, he was a piece of work, he challenged you. I was on the National Moot Court [Competition] team and we won the Regional's and we went to New York and the day before we made our argument he and his then wife Mentschikoff had a place in New York or were staying at friends and they asked us to come over and he grilled us before the argument, the worst problem was we drew the side of the case we didn't want but he critiqued it afterwards, but he was a challenging individual.

LAW: You talked about the professor that was involved in the Rosenberg Case, do you recall the name of the professor?

STEPHENS: I can see him, white haired, I'll think of it in a minute, (chuckles) keep going.

LAW: What about Malcom [P.] Sharp?

STEPHENS: That's it, Malcolm Sharp was the one, yeah.

LAW: Did he ever talk about the case?

¹⁴ Stephens is referring to Katzenbach's participation in the integration of the University of Alabama, and his famous encounter with Gov. George Wallace at the "school house door."

STEPHENS: I didn't talk with him about it but he had this theory of contracts of how there had to be a meeting of the minds. Which, (chuckling) if you think about it, having been into some nasty contract fights since then, there was never a meeting of the minds.

LAW: So it sounds like you were encountering all different kinds of philosophies of the law?

STEPHENS: Oh, I would say yes, we were told, at the start of my senior year, early in the fall, the dean called us together and you have to understand this is Ed Levi who was just a brilliant individual but a practical man and he said, "Look, too many of the graduates in last year's class flunked the Illinois Bar Exam," he says, "I don't expect that to happen again," he says, "We're not teaching you to pass the bar exam but damn it go take the course and study it so you can pass it."

LAW: Now you had a constitutional law class, what were some of the big constitutional law issues at that particular time in the late [19] '50s?

STEPHENS: Well, due process.

LAW: Due process.

STEPHENS: Yeah, when does due process apply? *Sweatt vs. Painter* which was the first time in due process was getting rid of racial covenants but where do you apply it to next step, does it apply to state action? That was the primary thrust, but you went back and looked at some of the qualifications of elected officials, I mean you went back to some of the basics, you dealt with the power of the federal courts. But it's amazing. I had a case where I argued that states couldn't tax exports on the import-export thing because the state was trying to put a personal property tax on grain that was being shipped from northern Illinois to New Orleans and going overseas and I used that argument and won in

state court, later on somebody lost that argument but that's alright. The Constitution, free speech, we were starting to hear about free speech, but remember this is [Associate Justice of the U.S. Supreme Court William Orville] Douglas, *Brown vs. Board of Education* wasn't there yet, I don't think, no *Brown vs. Board of Education* was the [19] '60s I think, so it wasn't there, so you were starting to get some of these ideas. But you still had [*Plessy vs. Ferguson*, 163 U.S. 537 (1896)] "separate but equal," we had African American classmates who the state of Georgia was paying to come to University of Chicago because they didn't want to provide schooling for 'em.¹⁵

LAW: That's one question I wanted to ask you about, do you recall the make-up of your class as far as gender and race, ethnicity, age?

STEPHENS: Well age was, we were all, most of us were, had been in the service, so we were twenty-one to twenty-five for age. Gender is interesting, there was three girls in the class, one of whom was African American and she left at the end of the winter quarter because she said, "I'm getting a good education but the only way I'll be able to get a job is if I'm number one in my class and I'm not going to be that here," and she went to Brooklyn Law School and was number one in her class. The other two women, one of them became a judge in Minnesota, very successful, but that was it. I think we had two African Americans, one of them I think was part of the Johnson family which is a successful black business on the South Side of Chicago and I'm not sure of that. It was not a, it was a lot of people like me alright.

[01:15]

¹⁵ See, *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

LAW: Do you recall something called the “Jury Project”?

STEPHENS: Well the “Jury Project” was Calvin’s project, I never paid a lot of attention to it because I understood a little bit about Torts and my practice (chuckling) hasn’t evolved much.

LAW: Ok, what about the “Bigelow Program”?

STEPHENS: The “Bigelow Program” was a program that was, they had brought people who had graduated from law school in for a year to help you in writing, and were, we had some type of writing project helping you on research and everything. And often they were people who had graduated from foreign law schools, primarily the English law schools or maybe Australia but I mean the English-speaking law schools.

LAW: Did the wider world ever impact the law school, maybe? This could include politics in the city of Chicago, politics in Illinois, foreign policy, [U.S. Senator Joseph Raymond “Joe”] McCarthy, that (McCarthy/McCarthyism) is a little bit earlier, but still?

STEPHENS: Yes, (chuckling) it did in a number of ways. At my initial introduction to law school they had a dinner with all the faculty and everybody there, after you had been there about a week, and I was sitting at dinner with somebody I had just met and we were talking about going to see the Bears game at Wrigley Field and I still remember Dean Levi was sitting at the table and he happened to look over and he said, “Well, if we’re doing your job this will be the last Bears game you’re going to see because I expect you to be in the library on Sunday.” We, there was a group of us, about eight or nine, who someone how got involved through Young Republicans, now this was not a strong group, and during our senior year we were used to drive for [U.S. Vice President Richard

Milhaus] Nixon whenever he was in Chicago and this would have been just before the sixtieth convention, this would be [19] '59 and [19] '60. And what they do was, they get five or six of us, and we go out to the airport and wait for Nixon to fly in at midway. Think about what we do today for 'em and what we were doing then (laughing). And they'd get off the airport and travelling with him would be the Washington Press Corps which would be Marcus Childs and Bob [Robert J.] Donovan and some of these big old names. So we would be driving the press corps and that was a wonderful education because they wanted to know something about Illinois politics and what we'd all been reading in the [Chicago] *Tribune* or something like that. But that was that side of it and then also I worked as poll watcher twice on the South Side which was an interesting experience because I recommended to the Democratic Precinct Committeeman that he shouldn't be standing in the voting booth and he suggested I didn't understand the law which I had just read which said that you have to be fifty feet from it and of course that's when also the Precinct Committeeman was allowed to help on the voting machines and so somebody would come in and say, "Well I don't understand how the voting machine works," and so they'd open it up like this and the Committeeman would stand there simply and the older woman who was having trouble, she says, "Well I wanna vote for this, this and this," and he would say, "Well that's fine but in the meantime you need to hit the straight ticket button at the top," it didn't make any difference on the rest of it. But this was when there was a man by the name of [Edward Joseph "Ed"] Derwinski who was a congressman and this was the first time he was running, republican congressman from the South Side, and he did get elected. But you see if you go south of 70th [Street] you get into the Beverly area in Chicago and that area has been strong, white, heavy

Catholic area, etcetera, and Derwinski served, I think, about twenty-five/thirty years, he had a relatively safe district.¹⁶ So, we paid attention from that side to what was going on in the city but, you know, there still wasn't a lot of television, and you weren't dealing with any form of, some people had portable typewriters, I didn't type, and they'd type their notes, everything was written in long-hand like you're doing right now. (laughing)

LAW: The election, 1960, any memories of the debates or the election?

STEPHENS: Well, yes and no, first of all I was studying for the bar exam, the [Republican National] Convention was in Chicago. I ended up being, as a volunteer, in charge of Nixon's largest reception room, [New York Governor Nelson Aldrich] Rockefeller was still running against him, they weren't sure Nixon had the nomination and this was a great big room in the Hilton [Hotel] and we had tapes of Nixon's visit to Poland that we would show to people who came through, but, it was, I worked there about four or five days and it was a wonderful experience. Got to know a man by the name of Charlie [Charles K.] McWhorter who was Nixon's Chief of Staff as Vice President. McWhorter later did not stay with Nixon and if you look at the history he became the chief lobbyist for AT&T [Telecommunications Company], he had a tremendous following of people, I always got a Christmas card from him. He was also one of the founders of the Newport Jazz Festival and was also a sponsor of Interlochen [Center for the Arts] in Michigan. But this whole group, McWhorter was the one that said to us, I made some type of, "How you gonna get a crowd out, how you gonna get excited?" And he says, "Ah it's simple Harvey," I said, "What do you mean?" "You get a bunch of people and then you get a bunch of drums behind 'em, you start beatin' the drums and yelling," and you look at

¹⁶ Congressman Derwinski served from 1959-1983, and later would become the first cabinet level Secretary of Veterans Affairs.

how people get people today, you know, but the same type of thing, it was a relaxed atmosphere and I remember after Nixon got the nomination Judy and I we stayed in the room, we didn't actually go to the convention center, but later there was a party afterwards up at The Drake [Hotel] and we were there and he came in and did all of the appropriate things. The debates, I didn't have television so I didn't watch the debates.

LAW: Did you listen to them?

STEPHENS: I listened to them some and I worked for Nixon here, actively, and was – you know there was an attempt, there was a meeting after he lost the election on having a recount on Illinois and I went to a meeting on that but people realized it wasn't going to go.

LAW: Some people have said that if you listened to the debates on the radio Nixon won but if you watched it on television Kennedy won.

STEPHENS: Probably true, but I remember the same thing, Kennedy was coming to Springfield, both Nixon and Kennedy came to Springfield and when you come in this building [current U.S. Bank Building and Brown, Hay and Stephens Law Offices] there used to be that you could walk up a set up a stairs and there was a window looking out there, it's no longer there when they rebuilt it but in the original building, and Kennedy was always late and we came down in [19] '60, my wife and I, to watch Kennedy drive by, we didn't want to be seen on the street 'cause we were too good of republicans ok, and I still remember seeing him come by; it was an interesting time.

LAW: What was the attraction to Nixon, was it just because of the republican background or was there anything in particular?

STEPHENS: Primarily the republican background and I thought he was a capable, competent person, you know, I mean you don't know which books to read on Nixon these days and maybe we need somebody, as long as they aren't as paranoid about what's going on.

LAW: So, in your biographical sheet that you filled out for me, when I asked when you started at Brown, Hay & Stephens you gave me the exact date of September 12th, 1960. I was just curious how you remembered that exact date?

STEPHENS: 'Cause I went and looked it up, (chuckling) I guess.

LAW: Ok, so you get out of law school, why private practice and why back to Springfield?

STEPHENS: My father's influence, he said, "You can go to work in a major firm," I didn't have quite the grades to get in the top ones but if I really wanted to work at it I probably could have gotten a job in Chicago or someplace else in the city, but he said, "If you like people, and I think you like people, then you need to be in a private practice i.e. in a place like Springfield," because though I have enjoyed a corporate practice otherwise really we're dealin' with people all the time and we're actually dealing with a client. And so that's why, plus, you know, family and actually it's worked out wonderfully, I don't have any objections but really planning, no, I didn't really look very far for a job I just decided I'd come back.

LAW: Now you had also gotten married.

STEPHENS: I got married, yes, in 1959.

LAW: To Judith.

STEPHENS: Yes.

LAW: Did you want to share how you guys met?

STEPHENS: She was working at a resort in Rocky Mountain National Park and I was working as a tour escort and I was bringing busloads of people through, and this was in the summer of [19] '58 and when I got to the resort, I had been in Colorado before with my folks, so I said to the young people there, I said, "Where's the action?" And they asked me where I went to college and when I told them I'd gone to college in Maine they said, "Oh, there's a girl from Connecticut here," well she was actually from Massachusetts and New Hampshire but they didn't know the difference because they hadn't been east of the Mississippi [River], most of them. So anyway, she was gonna go to school in Denver, [Colorado] she graduated from Lasell Junior College [Lasell College] and was gonna continue her education in Denver and by the end of the summer she decided she would go back to Massachusetts and I came back to law school and we saw each other and got engaged in January and got married the following September and we were together thirty days before we got married and it's lasted. (laughing)

LAW: Well I generally ask people, "How did becoming a husband and I guess, later, father affect your work life," but you were kind of, you were married from the beginning of your work life.

STEPHENS: Exactly.

LAW: I just wanted to ask you about a couple historic events.

STEPHENS: Go ahead.

LAW: A few years after you came back to Springfield there was the Cuban Missile Crisis and I just wondered if you had any memories of the Cuban Missile Crisis?

STEPHENS: Not really. Our first child, Winifred, who was born in [19] '62 was severely handicapped and fortunately we had our second child two years later. But during the [19] '60s I was obviously trying to build a law practice because

[01:30]

my father had a heart attack in [19] '62 and was out of the office for four or five months, I was trying to deal with his clients who I didn't know who they were, etcetera, and on the family side it was just a situation that we had our hands full and we had to deal with it.

LAW: One other historical event, what about the [U.S. President John Fitzgerald] Kennedy Assassination?

STEPHENS: Oh very much so, I can tell you I was having lunch in the Leland Hotel which goes back a number of years and Judy and I were sitting there because we received a gift to go and buy a movie camera so we could take pictures of our children and we'd gone to lunch together, which was unusual, and a doctor walked in and said, "I understand Kennedy's been shot," and so we walked back and I came back to the office and I still remember spending a lot of time here talking with one of the older gentlemen by the name of Leigh Kagy who had been a mentor of mine about this. You know, though I had worked for Nixon and everything and I didn't like a lot about the Kennedys, it was an exciting time, the Kennedys brought something to the White House and though they didn't always do it right, they were on the other side of the political fence, it was an exciting time and then to have 'em wiped out. And we actually, we left, we went to a trip

to Indianapolis, [Indiana] we visited her friends who had lived here, in Indianapolis, and then watched [Lee Harvey] Oswald get killed.

LAW: You saw that live?

STEPHENS: Yeah.

BELZER: I think that's about time Justin.

LAW: End of the tape?

BELZER: Yeah.

STEPHENS: Thank You!

LAW: Ok, thank you.

STEPHENS: I hope I haven't bored you or made too many wrong statements.

LAW: No, no, perfect.

[Total Running Time: 01:32:31]

END OF INTERVIEW ONE

BEGINNING OF INTERVIEW TWO

LAW: This is an oral history interview with Harvey B. Stephens. Today's date is May 22nd, 2015. We're in his law offices here in Springfield, Illinois. This is our second interview and today we are gonna focus on his legal career. Mr. Stephens I thought we would start with, you got out of law school, you came down here in 1960.

STEPHENS: Correct.

LAW: So when you first came to town, what are your memories of the composition of the local bar, in terms of race, ethnicity, gender, age? Who were some of the prominent attorneys at the time? Were most lawyers general practice, and was the local bar politically and socially engaged? Now we can unpack that and maybe do one at a time.

STEPHHENS: Alright, let's start with the makeup of the bar. I think there were approximately maybe three hundred or three hundred and fifty lawyers at the local bar of which about two hundred were involved in actual practice. The others were all ones who worked for state agencies. There were no large firms, [Brown, Hay & Stephens] we were probably, I think, six or seven at the time, Sorling [Sorling Northrop Attorneys] was probably about the same amount. There were a lot of two and three person partnerships. There probably – we had Betty Frazee as a partner, I believe there were two other lady lawyers.¹⁷ There was one old African American lawyer and that was it as far as diversity was concerned.¹⁸

¹⁷ According to an article in the *State Journal Register*, Sept. 24, 1967, pg. 28, there were six "lady lawyers" in Springfield at that time. Of the six, one practiced in Litchfield, and two were engaged in government work. The three others were engaged in private practice in Springfield.

¹⁸ Clarence B. Davis practice law in Springfield for over forty-five years. He died in 1973.

LAW: What about age?

STEPHENS: Age, just a normal set of age, I mean the oldest lawyers then when I came back to town were probably in their sixties; it was just a cross-section.

LAW: Were most of the lawyers, did most of them have their offices nearby the courthouse?

STEPHENS: Yes, the courthouse was right across the square here where the old courthouse is, and the majority of them did, yes.

LAW: That's kind of changed a little bit over time.

STEPHENS: Oh yeah, this building had Barber and Giffin and Brown, Hay, Harvey Beam, Joe Cavanagh, Bob Brunzman. The Reisch Building had the Grahams, it had Gillespie, Burke & Gillespie, had some sole practitioners, had Routman & Lawley who did a lot of ICC [Illinois Commerce Commission] work. And then the Ridgley Building had a fair amount, that's where, oh I can't call his name, Heckenkamp was the understudy for the old criminal defense lawyer there.

LAW: Fuiten?

STEPHENS: No, Fuiten was also with Heckenkamp, but the man before him was Johnny, I can't call his name.

LAW: Alexander?

STEPHENS: No, no, Johnny (reaches up to grab one of his books) Curren, Johnny Curren, he was the dean of the criminal defense bar at that time. And then of course you had a State's Attorney's office that probably had five lawyers in it. You didn't have the magistrates' system, you had a justice of the peace system. Justices of peace did not have

to be lawyers. And then the U.S. District Attorney here had, I think, two lawyers. Bankruptcy court, bankruptcy judges at that time had no lawyers. You asked, “Were you politically active?” I’m gonna put that in two ways, one, “Did you rely on political affiliation for work or jobs?” And clearly there was a part of the bar that was that way, I mean there were the democratic lawyers and there were the republican lawyers, and some of them just switched positions, this was before we had *Rutan [v. Republican Party of Illinois, 497 U.S. 62]* and they just switched positions, for example, I remember [Simon] Friedman he worked for, at one time, well maybe in the [19] ‘60s, he was in private practice but he also worked for the then Secretary of Education or department, whoever it was, and then Ray Page got the job and then he left and a republican lawyer took the same job and I mean – so there was that group. There was another group which we engaged in some of, in fact as a young lawyer I started doing, you would be employed to represent, you wouldn’t actually do lobbying per se but you’d represent trade associations, the lobbying was not as well organized and you worked with the legislature. In 1962, legislative reference, you didn’t have to have all the bills drafted there. I drafted a bill and ran it by them and then walked along the side of the house floor to find a sponsor to put it in (chuckling), as an amendment to a bill; I mean, it was a much more open situation. But most of the offices, well not all of them, but a number of the offices – Giffin, Jim Winning had been the parliamentarian for the speaker of the house, when I came here Paul Gordon Jr. was here and he’d had the same job under the speaker of the house, so, you know, there was that interplay, but as I say that’s a different kind of political work. A lot of people, you had about ten savings and loans then, all of them required title opinions from lawyers so various lawyers represented various savings and

loans. We represented, at that time, the First National Bank and the Illinois National Bank, we did all the real estate work, I mean, we did all the title work for them, so there was a lot of title work being done. Title insurance at that time, you only used if you had a situation where you were totally uncomfortable with what your conclusion was as to title. Everyone examined abstracts, one of my early jobs as a lawyer was I was given an abstract and I said, "What do I do with this?" "Well here's how you diagram it," and you sat down and read it through; I doubt there's any young lawyers who could read an abstract today (chuckling) but you history folks should love that 'cause there's more history in those. But, so you had the real estate practice relating to people getting loans and real estate closings, at that time you didn't have standard real estate contracts so the [Illinois State] Bar Association and the realtors hadn't gotten together with all that so you – you know real estate was a part of, a real part of the business. A second part, primary part of the business, other than litigation, I'll talk about litigation here in a moment, was estate work because you had the Illinois inheritance tax, with the Illinois inheritance tax when somebody died all of their assets were frozen until you got consent from the Attorney General's office to release the assets. So this meant somebody came in to see you and you filled out the form to tell them whether there was or was not gonna be that, but also that led to much more probate work, and of course with people of more means, at that time, your marital deduction under the estate tax law was half, and the personal exemption, federal exemption, was sixty thousand dollars. So you could have had somebody who had a four hundred thousand dollar estate leaving everything to his wife and you had a taxable federal estate tax, you had to file a return to get it done. We all

then, some firms, we did, when I started, we probably among the lawyers in the office prepared about four hundred income tax returns in a year.

LAW: For businesses and offices and stuff?

STEPHENS: Individuals, individual tax returns, and it was just a service that we provided. It was a way, frankly I wish we still had it, from one side, because you got to talk to a client once a year and you got an idea what's going on and if they needed to change something or what the issues were. Today you couldn't possibly, well there's several changes, obviously all of the computerization, but secondly the complexity of the code today vis-à-vis what we had then. I have my original code, I think it's up there, it's about (gesturing with an inch-and-a-half space between his fingers) that thick, say about an inch-and-a-half, now it would take three volumes; the government has not done a nice job of clarifying that. So that was part of the practice. You had firms that were insurance defense firms, they represented insurance companies, doing defense, and that was, when I came back, was primarily the Gillespie office and also Giffin & Winning. We, at that time, represented Memorial Hospital and did both their corporate, did their – they had insurance so the insurance companies chose the lawyers there, but we did the corporate work and medical staff issues, collection work, everything else. So, there was a fair amount of estate planning being done to avoid taxes, and of course you didn't have LLCs [limited liability companies] so if somebody wanted limited liability to start a business you organized a corporation for 'em. And, even then, S corporations, that is a corporation that is taxed under sub-chapter S of the internal revenue code as a partnership were relatively new, so most of the time you had and we probably organized or represented on an ongoing basis thirty or forty small corporations, and we didn't do a lot

for ‘em but we helped ‘em with their minutes and talked to ‘em about something else that there wasn’t much of, we talked to them about profit-sharing plans, profit-sharing plans in the [19] ‘60’s were just coming in, accountants wanted them so we talked to them about those. But, it’s a general practice but I’m trying to give you a picture of the community. You knew almost all of the lawyers, I didn’t know them all but I probably – say of the two hundred and twenty active lawyers I knew the names of all of ‘em, I could put a face with ‘em, see ‘em on a regular basis, and of course when you’re in a building with another group of ‘em. When we moved back I was married and about ten wives of lawyers had my wife and three or four other young women, lawyers’ wives,

[00:15]

I mean there was a lawyers’ wives group, but they made a point of having these women in, talking to ‘em, telling them what’s going on, telling them some of the issues if they hadn’t been exposed to that before, so there was a fair amount of and there was a lot of camaraderie, I mean, there was a few people that yelled at each other but not often.

LAW: Prominent attorneys at that time, well known attorneys? Who stood out at the time?

STEPHENS: Well frankly my dad was a banking expert. One of the Barbers, probably Clayton then, as a senior. On the Graham side, Graham seniors were still alive, I’m talkin’ about ones who were up in their eighties or nineties, but Hugh Graham II was a well respected lawyer, he primarily had the Catholic business.

LAW: What about on the criminal side?

STEPHENS: Criminal side, as I say, you had Johnny Curran, you had Bob Wiener use to like to get some big cases.

LAW: Jack, you mean?

STEPHENS: Bob.

LAW: Bob Heckenkamp?

STEPHENS: Bob, well you got Bob Heckenkamp and then you had two Wieners, Jack and Bob. Jack was more of the patrician, if I can use that word for him, but that's sort of how he, but Bob was a go-getter, I mean Bob was hustling every moment of the day, nice guy, well I don't know nice guy or not, he and I never clashed, I mean we knew each other and everything, and then, those are the primary defense people. And, as I say, Johnny Curran was still alive when I started, on the defense side. There wasn't that much criminal business really. Oh, well, G. William Horsley.

LAW: Ok, yeah, I recognize that name.

STEPHENS: He loved to defend the African Americans who were charged with murder. He was, you know, Horsley has an interesting history, he worked in this office as a legal secretary before he went to law school, and he couldn't take short-hand (chuckling) so he used to try and write it down in long-hand and then try and fake what the lawyer was saying. As my father told me, my father could remember what he said (chuckling) so you had to be careful when you typed something up. He wasn't here long, but he then went to law school and he played [U.S. President Abraham] Lincoln, you know he was in the state legislature and he used to play Lincoln in a lot of plays, and in the early [19] '60's, late [19] '50's when a black would be charged with murder for shootin' up another one, Bill would often show up as a defense attorney, and it was a dramatic performance, it had nothing to do with the law or innocence or guilt of the individual.

LAW: Ok, what are your memories of the State's Attorney at the time, Raymond Terrell?

STEPHENS: Well, Terrell wasn't the State's Attorney when I came back, [James Waldo] Ackerman was.

LAW: Ok, that's right, he was elected in 1960.

STEPHENS: No, he ran for congress in 1960, I think he was still State's Attorney then, and then Terrell got elected. Oh, Terrell, he was a very good State's Attorney. My brother worked for him for two years. He was sound, he was a good trial person, his friends thought he was a big lovable bear, he was a big man, ran a good office. When was [Richard A.] Hollis, Hollis was after him I guess, ok, yeah.

LAW: The dates I have is, Ray was 1960 to 1968 and then.

STEPHENS: Ok, and then Dick Hollis, ok.

LAW: Right.

STEPHENS: 'Cause Hollis had the [Secretary of State] Paul Powell investigation.

LAW: Yeah, yeah, any memories of Hollis?

STEPHENS: Uh, straight-shooter, just not a lot of personality, but a good lawyer, and, as I say, he got Paul Powell dumped in his lap.

LAW: What are your memories of that case?

STEPHENS: (Chuckles)

LAW: Well, you observed it, I guess.

STEPHENS: Well I observed it in different ways. Paul Powell had a couple of bank accounts in the First National Bank also here, but they weren't in his names they were in the name of his long-time secretary and office manager, two ladies. Well, this is the reason I remember on Hollis, they came over one day with a subpoena, the investigator for Hollis came over to the bank and wanted anything we had on Paul Powell, bank's records, anything you have, I mean, it was a brought piece so I went over and I said to Dick, "What are you looking for, tell me what you're looking for and then we'll rewrite the subpoena so that we can respond to it," and Dick said, "I don't know," he said, "Unless somebody talks I'm not going to be able to indict anybody," and of course Nick Ciaccio had been Paul Powell's chief of staff and Nick wasn't gonna find his tongue under any kind circumstances and nobody else was. But the interesting story about these bank accounts is that [Robert B.] Oxtoby represented the estate and he sent a letter to us where, asking us to turn over these two accounts, Paul Powell's name is nowhere on these accounts, I mean no place, I said, "Ox, I can't do that," and I said, "You're gonna have to subpoena those or petition the probate court to turn these over," and he said, "Fine, I'll do that," I said, "I'm gonna file an answer that gives you the signature card and tells you what it is, and that's all I'm gonna give you," so he made some allegations and did that. Heckenkamp represented these two women, I called Heckenkamp and I said, "Bob, we got these two accounts," it was seventy or eighty thousand dollars, I mean, it wasn't peanuts, I said, "The estates asking for these and they're in your clients' names," he said, "My clients don't know anything about this," I said, "Come on Bob, don't give me that nonsense." But, basically what happened was we turned them over because the court

ordered us to because Oxtoby alleged that it was Paul's money. But, Powell was a "wheeler-dealer," I never had any dealings with him but, I mean, that's the way it was.

LAW: It was kind of his reputation.

STEPHENS: Oh, more his reputation, people knew it, people who did deal with him. We, at one time, the First National had a banking relationship with him and then he wanted Allen Lucas, who was a lawyer here who was with Powell, came down and wanted us to do something and, the management, didn't like the looks of it, they asked me to look, and we just passed. But he was alright with that if you treated him that way.¹⁹

LAW: Ok, after that would have been Joe Cavanagh.

STEPHENS: Good lawyer, I graduated from high school with him, (chuckles) he started practicing with his older brother, the Cavanagh family had a span of like, (gesturing with his arms, a large span of time) here on the seventh floor, I referred a couple of matters to him where we had a conflict, and as a State's Attorney he was good, he was competent. He got himself on the bench which is where he wanted to be because he didn't want to work that hard. I mean, he was a decent judge but after he got his twenty years or twenty-five years in he quit.

LAW: Now he had a fairly close election in [19] '78, I think he lost by like one hundred and twenty-four votes, but then like the next year he was made an associate judge.

STEPHENS: Yeah.

LAW: Does that sound right to you?

¹⁹ Allen T. Lucas, democrat, was a State Representative from Springfield, 1955-1969.

STEPHENS: Yes, yes, yeah.

LAW: I think he ran against Dick Cadigan?

STEPHENS: Yeah.

LAW: Do you recall a lot of close elections for judge?

STEPHENS: Yes.

LAW: Any come to mind?

STEPHENS: Friedman and Terrell, I think Terrell beat Friedman by like a hundred and forty/a hundred and fifty votes the first time, somethin' like that, and then Friedman got in the next time.²⁰

LAW: Ok.

STEPHENS: No, there was, the Democratic Party, when I, shortly after I came back to town the Democratic Party got tired, this was in the [19] '60's, of the Republican Party domination, and so they ran for county board a bunch of "Young Turks," [young people eager for radical change to the established order] most of whom were democrats, some of whom were republicans, so they got people on the county board who were interested in more than jobs. At the same time the county chairs, they got a couple people elected in county offices which they had not done before, and, so they were a force in the local politics and, of course, part of that was, being Springfield, everybody has some affiliation

²⁰ Judge Simon Friedman, a democrat, did have a close election for County Judge in 1958, losing to William Conway, a republican, by 562 votes. He also had a close election for State's Attorney, running against Terrell, a republican, in 1964, in which he lost by 846 votes. Judge Friedman was eventually appointed to the bench in 1972, filling the vacancy created by the death of Judge William Chamberlain, a democrat. He was elected to that position in 1974, and served until 1990. Judge Raymond Terrell was appointed to the bench in 1983, filling a vacancy created by the election of Judge Ben Miller, a republican, to the Appellate Court. He was elected to that position in 1984, and served until 1991.

or works with some party and on the judgeships – remember you didn't have associate judges, you had associates but they weren't appointed at one time, I mean, you finally came to the appointment system after 1970 but before that everybody ran, and, so you needed party support to do it.

LAW: Was it your impression that the city was democratic and the county was republican or was the city split?

STEPHENS: The city and county, Sangamon County, including the city, has always been primarily republican, but there's, every now and then the democrats have gotten going.

LAW: So, you start off in private practice, what are some of the first cases that you had? Were you just taking anything or how did it start?

STEPHENS: Well you have to understand that in a law firm like this you have to start working on collections, you hope some friends would come by and you might get a real estate deal or so, but it's whatever you were assigned by the partners in the office, and I didn't have a long period of training, I mean there's certain things I liked, taxes, some of these things, I was working, well, I worked on stuff that my father might give me, but also a man by the name of Leigh Kagy was in the office and he's probably one of the smartest lawyers I ever knew and he was primarily my mentor.

LAW: Ok, he'd been with the firm for quite a while.

STEPHENS: Well he'd been with the firm after he came out of U of I [University of Illinois] Law School, and then in the [19] '30's [U.S. President Franklin Delano] Roosevelt appointed him referee in bankruptcy because there was a cabal of bankruptcy lawyers who were taking advantage of the system and they wanted it cleaned up, and he served,

[00:30]

in the [19] '30s, as referee in bankruptcy, and then joined an East St. Louis firm, Wagner, Connor, Ferguson, I guess he had a name in there at one time, which, this was when St. Louis was still a vibrant community, and he practiced down there, his wife was from Springfield and in the [19] '50s, middle [19] '50s, they moved back to Springfield because she needed to take care of her parents, and he was a sole practitioner when he first came back and my father saw him on the street, talked him into joining with us and so he was in the firm and then he was of counsel until he, I guess until he died.

LAW: Now, what made him a mentor for you?

STEPHENS: He was just bright, you could bounce any idea off of him, in the field of law he was not a tax expert as such, he understood the Bankruptcy Act, he helped me a lot in some tough bankruptcy cases. But as a young lawyer he'd been a trial lawyer so he understood trying cases, he understood pleadings, especially, and he taught me a lot about pleadings when I was doing things and we were aggressive in pleadings compared to what they do today.

LAW: Do you recall your first trial?

STEPHENS: My first trial, no I don't, well I just sat in on a – a man by the name of Albert Smith asked me to sit in his local counsel on a condemnation case.

LAW: But what about, do you recall the first one that you were in charge of?

STEPHENS: Well, that really was this one (Stephens holds up some papers).

LAW: Should we talk about that one?

STEPHENS: Yeah.

LAW: First, I guess, we should identify the case.

STEPHENS: It's the Brotherhood of Railroad, well, there, I'm sorry my eyes.

LAW: No problem, it's the *Chicago and Illinois Midland Railroad Company v. the Brotherhood of Railroad Trainmen et al* [315 F. 2d. 771], 1963, but it started in about [19] '62.

STEPHENS: Yes.

LAW: So, let's talk about that case a little bit.

STEPHENS: This case, a number of years ago we had represented, there are five train unions and we had done some legal work for them. This case involved coal trains going to Havana, [Illinois] to be then having the coal dumped on a barge and taken into Chicago, and the maritime unions weren't getting any place in their negotiations so the unions threw a picket line up around the trains and in order to intimidate the trainmen who weren't supporting them, they allegedly shot at the trains. Now remember the Midland Railroad was a wholly owned, well not a wholly owned subsidiary, but related to Commonwealth Edison, it was part of that, but it was a railroad stationed here, separate business and everything else. Anyway, the railroad went into federal court and filed for a preliminary injunction to try and get them from interfering with the trains because of the violence, and they were alleging these dastardly acts. My father was the one who had worked on matters before, the phone call comes from the Brotherhood, my father's had a heart attack and is not in the office, I get the call, I talk with the senior person here at, Ben DeBoice, he was the managing partner and he said, "Yes, we'd take it, we'd do it," well nobody knew about labor law then except my dad did because we had filed similar

things on behalf of Allis-Chalmers against the UAW [United Automobile Workers] when the UAW used to act up out here. But, so, I had taken labor law in law school, I knew something about labor law, so we went over, Paul “Bucky” Gordon, Paul Gordon and I, and I was primarily involved in putting it all together and it was tried before Omer Poos, the federal courtroom was being remodeled so it was tried in chambers which was interesting because he’d been appointed by [Illinois Senator Everett McKinley] Dirksen, I mean Dirksen had sponsored him, etcetera, here’s these labor union business agents looking up there, and I forget which one of the unions was causing trouble but they were a union that had had problems over the years, and they looked up there and said, “Oh my God we’re gonna lose,” when they see Dirksen’s picture over the judge’s bench, you know, because they realized the politics weren’t quite there. Hugh Graham [Jr.] was on the other side. It was interesting because Poos decided he was gonna order an injunction and he was going to prevent them from picketing, he’s gonna order them not to picket. Well think about it, the law since five centuries before is that you can’t command a person to do something, you can command them not to do something, he was commanding them to do it, and I went to Hugh Graham [Jr.] and I said, “Hugh, equity says you can’t do this,” and he looks at me and he says, “Oh my God,” I said, “Don’t you think,” I said, “I don’t like the order and I’m gonna fight the order, but don’t you think you wanna knock that out to protect the judge,” and of course Hugh was my father’s age, his son and I are still good friends, and he said, “I think we’ll get that modified,” ‘cause Poos was gonna do this. And then, we obviously were told to take an appeal because they didn’t want that type of order out there and we took an expedited appeal, which was quite interesting because I hadn’t been admitted in the Seventh Circuit, so the day of the

argument one of my classmates was John Castle whose father was a sitting judge then, on the Seventh Circuit, his father had been Attorney General down here, so I went into Castle's office and Castle admitted me to practice and he sort of had a smile on his face, he says, "I'm gonna see you later on this morning," and he was on the panel. And it was interesting, I got a split opinion as you saw, I got a dissent and the dissent was the first [U.S. President John Fitzgerald] Kennedy appointment to the Seventh Circuit, because it had been a rather strong republican circuit, [Luther Merritt] Swygert was Kennedy's first appointment there, and then we actually petitioned to go to the [U.S.] Supreme Court and before we got to, we filed a petition for cert [certiorari], but before they acted on it, we were in the process of, before they actually acted on it, either admitting or denying, the case became moot, and so then we went into the Supreme Court and asked, based upon mootness, asked for an order which had the effect of not coming back down, but that was an interesting procedure.

LAW: By saying that it had become moot does that mean the strike had ended?

STEPHENS: The strike had ended, yeah.

LAW: And how did it end?

STEPHENS: Negotiations, I wasn't involved in negotiations.

LAW: Ok, I was wondering how it all ended.

STEPHENS: No, I wasn't involved in the negotiations. And I think as I go back on it, because I haven't reread the cases so you'll have to, the people who were doing the shooting and causing the trouble with the trainmen were pickets around the facility who were representing the maritime union.

LAW: Right, they were loading the coal.

STEPHENS: Yeah, and they were the ones and they were the ones doing the shooting, and Poos' order, I gotta get this back, was he commanded the railroad people to keep driving in, he says, "I'll take care of that," and that's when he ordered, and that's a picture out of the [Chicago] *Sun-Times* when he ordered the U.S. Marshall who happened to be a real nice guy, his name was Marshall, he was a big black man born and raised on the east side, and he had to ride the damn train. But it was an interesting experience, I was as green as somebody could be, I was comfortable in my appellate court argument because I had been on The National Moot Court [Competition] Team in law school and so the appellate court part of it wasn't bad but the trial thing, I mean really, we did what we could in the trial but this type of trial you aren't well prepared for.

LAW: Ok, kind of in the same period, maybe a few years later, is one of the cases that you had me read, *Illinois Road Equipment Company v. Department of Revenue* [32 Ill. 2d 576 (1965)].

STEPHENS: That was a case my father had started and it's an interesting case because they wanted – when an equipment dealer acquires property there's no tax, when they sell the property they collect a sales tax and/or a used tax if it's out of state. What was happening here and what the state wanted to do was when an equipment dealer leased the property they were claiming they then owned it and they had to pay sales tax and/or use tax if it was coming out of the state. And our argument all the way along was a simple argument, this property was always for sale, if they leased it to somebody and three months later the person bought it, the lease was part of the price and they paid, the sales tax was collected, but when it was brought back in and then they leased it out again, we claimed it was

always for sale, and you can see there's some stuff in there on that. And we represented both Illinois Road, we represented about five of the heavy equipment dealers on this, Fabric out of St. Louis, there was one out of Mt. Vernon I think, some other places, but Illinois Road was the one that hired us on that, and we got a favorable opinion, the state couldn't do it that way.

LAW: Was this the first time – now did you argue this in front of the Supreme Court?

STEPHENS: Yes.

LAW: What are your memories of that? Was that your first time in front of the Illinois Supreme Court?

STEPHENS: The Illinois Supreme Court, yeah. I don't remember who was on the bench on that one. No we had been in the Supreme Court once before in a totally different case, we were local counsel on a case where we represented the Illinois Bankers Association. Citizens Bank in Decatur, [Illinois], in [19] '62 or [19] '63.²¹

LAW: So you had been there before.

STEPHENS: Yeah, yeah. That's the case where we got up before the Supreme court,

[00:45]

Chicago counsel had taken a direct appeal and I still remember [Walter V.] Schaefer was on the bench I think still and he asked the lawyer from Chicago who we were associated with, "Why hadn't this case gone to the appellate court?" And the lawyer did not expect that question and didn't handle it well and he looked up and down the bench and he said,

²¹ See, *Northtown Bank of Decatur v. Becker*, 45 Ill. App. 2d 112 (1964). Also see, *Northtown Bank of Decatur v. Becker*, 31 Ill. 2d 529 (1964).

“What do you think gentlemen?” He says, “Do I hear a motion? Motion transfer case to appellate court,” and it went to the fourth district just like that. On the sales tax I forget, father by then was back from his heart attack but he wasn’t arguing, but I would have argued that. But that case, we had a lot of cases against the [Illinois] Department of Revenue because my father had argued the oil production case back in the [19] ‘40’s²² for all the oil companies when they, and had been successful, and then we had challenged, constantly challenged, the enforcement of the sales tax law, and of course at that time the lawyer for the Department of Revenue was a man by the name of Willard Ice I-C-E who was a blind attorney and he was a delightful individual, but I sat in meetings with my father where they would go back and forth, back and forth and Willard would say, “I’m going to get you,” and father would say, “No, we’re just going to approach it this way,” I mean it was a friendly interplay.²³ But we had all sorts of cases over there, I had a case where a guy was selling embalming fluid in the state and they ran an audit for him and we were trying to fight it because the defense was the embalming fluid becomes part of the body and therefore it’s not the end-sale of the product, (laughing) it’s a nice theory. All I can tell you is that after, the man who ran the business, it was a Connecticut business, after it was all over and he listened, he said, “I think maybe I better settle this and get it right,” he says, “They want X number of dollars,” and I said, “Well what was your sales in Illinois?” And he told me and I said, “Well figures should be about this,” and he said, “Yeah, I’ll pay that, a small penalty,” and so I negotiated it out. It was a fun case because the court reporter was a lady here who did, who worked in one of the law offices and then did this on the side and when I was

²² See, *Ohio Oil Co. v. Wright*, 386 Ill. 206 (1944).

²³ See, Willard Ice oral history, <http://www.idaillinois.org/cdm/compoundobject/collection/uis/id/2555/rec/1>

explaining how the embalming fluid, the witnesses were explaining how the embalming fluid would go into the body, she finally said, “Harvey I gotta take a break I can’t take this anymore!”

LAW: I think now might be a good time to ask you about some individuals.

STEPHENS: Please.

LAW: We’ve talked a little bit about State’s Attorneys but let’s see if you have any memories of particular judges. Creel Douglass, anything come to mind?

STEPHENS: Nice man, had his favorites, average lawyer.

LAW: Ever have any cases with him?

STEPHENS: Oh yeah, when his friend was on the other side I’d of lost. They weren’t, I mean, more motion type of stuff and that. If you had something you wanted you didn’t go to Creel. You see, under the old system you filed a case and then you decided which judge you wanted, most of the time.²⁴

LAW: DeWitt Crow?

STEPHENS: Oh yes, he’d been on the bench a long while, I always had a good experience with him, he was good procedurally, he asked a lot of insightful questions, the older lawyers who’d grew up with him used to call him “tight-pants,” I went to high school with his daughter, but he was a good judge, he was a good judge. You see, this was before we had permanent appellate courts, you know, and so he used to sit in the third

²⁴ Creel Douglass was elected a Probate Judge in 1950, and then a Circuit Judge in 1957. He was retained under the new Judicial Article in 1964 and again in 1970. He resigned in 1971.

appellate district also. We didn't have permanent appellate judges, you had circuit judges that sat, but he was a good judge.²⁵

LAW: Simon Friedman?

STEPHENS: Well I think he was excellent, he had a real sense of the facts and circumstances surrounding the case, he knew the people, he listened to the law and he called it as he saw it, and he'd been in private practice here, he'd done other things, I mean, he had a lot of friends, but he was a good judge.

LAW: Harvey Beam?

STEPHENS: He sort of took over the probate area which was his specialty, again a good judge, he'd been in private practice, actually an office on the same floor here, I used to see him, but he was solid.²⁶

LAW: William Conway?

STEPHENS: A good Irishman, (chuckles) he was a piece of work. There was never a funeral that he didn't sign the book, I think, in green ink. He was the county judge, he handled most of the adoptions and he loved adoptions, but his Irish background was there. I asked him one day to marry an old bachelor client who met a lady and it was a perfectly good relationship, I went over and I said, "Judge would you marry them?" He said, "Who is it?" And so I told him, he said, "Oh," he said, "Is he marrying a Catholic?" And I said,

²⁵ DeWitt Crow was first elected a Circuit Judge in 1947, he retired in 1964.

²⁶ Harvey Beam was first elected a Circuit Judge in 1970, by a slim margin of 102 votes. Beam, running as a democrat, defeated Jay Waldo Ackerman, running as a republican, for the judgeship. After the election a lawsuit was filed in the Sangamon County Circuit Court demanding a recount by Ackerman. The suit was later dropped when Ackerman was appointed to the Circuit Court to fill the vacancy created by the retirement of Creel Douglass in 1971. Beam was retained in 1976 and retired in 1982.

“No, she’s a Presbyterian,” and remember this couples in their seventies, he says, “The bishop won’t let me marry them.” (chuckles) The lady, who was a nice woman and she had been taking care of him and they really were just good for each other ‘cause this old guy had been an old bachelor forty-five years, she went and took instruction from the local priest for a period of six weeks or eight weeks and then the priest could marry them. She later on came to me and said, after he died, she says, “Do you think there’s anything wrong with me going back to the Presbyterian Church?” And I said, “Absolutely not.” But that was Conway, he was alright, he was a county judge under the old system and then he, in 1970, because he had to sit on the bench, but he primarily just handled adoptions and things like that, he was excellent on adoptions because he made the parents feel good, it worked.²⁷

LAW: George Coutrakon?

STEPHENS: Oh yes, a very good judge, he’d been the State’s Attorney, cleaned up the county when he decided to clean up the county.

LAW: I wanted to talk to you about that, that period, did your dad ever tell you anything about what that exactly meant or what all happened?

STEPHENS: Well they just shut down gambling. As a boy when I came into this building there would be a cigar counter, you know, cigarettes and that, and there’d be punch boards. Do you know what a punch board is?

LAW: I don’t think so.

²⁷ William Conway was elected a Police Magistrate in 1939, and served in that position until his election as County Judge in 1958. When the Judicial Article went into effect in 1964 he became an Associate Judge. In 1971 he became a Circuit Judge, and he retired in 1976.

STEPHENS: It's a big board like this (gestures with his hands the size, similar to a regular sheet of paper) and you punch something out and you would or would not get money, you know it'd be five dollars or fifty cents or something else, and those were all over. Where the parking garage is across from city hall used to be an old church, it's the Cathedral, and the diocese ran a bingo game there, well bingo is not legal or at least at that time was not and he closed that down. And he had a bunch of "Young Turks" with him, younger lawyers – all the offices, we lent, John Stoddard after WWII was in this office and we lent him for two years to the State's Attorney's office so that they'd have people who were bright, smart and that. Gambling was fairly wide open, the sheriff, one of the sheriffs back in the [19] '50's in Springfield would bring his deposit in each Monday morning to a certain banker here and ask him to count it, put it in, that's what kept the county open. Coutrakan said, "There's gonna be no gambling," and there was support from the community, they had the legal support to do it, I guess there were a couple of raids, I don't remember that, I really wasn't here in the [19] '50's. But after that George was in private practice, well he was in the state legislature as a representative, good representative, and then he got beat and I forget why, and then he was in private practice a little bit before he went on the bench and he was a good judge on the bench, a good judge, I appeared before him in several contested probate matters.²⁸

LAW: I don't know if you know or not but was there an element of organized crime involved in all the gambling?

²⁸ George Coutrakon, republican, was State's Attorney of Sangamon County from 1948-1956, a State Representative from 1956-1964, an Associate Circuit Judge from 1964-1970, and a Circuit Judge from 1970-77.

STEPHENS: Oh of course, sure, I mean you've got the Taylorville, [Illinois] group and you've got a group up here, oh yeah. I don't know the full details, I mean I'd have to go back and do some reading, but no, organized crime was involved.

LAW: I think one of the "Young Turks" that worked with him was a guy named J. Waldo Ackerman?

STEPHENS: Yeah.

LAW: That's another person I wanted to ask you about. Any memories of "Wally" Ackerman?

STEPHENS: Yeah Wally, Wally was really too nice of a guy, he was political, and of course after he got out of State's Attorney's office he ran for congress against Peter Mack and didn't get the job done and so then he went into private practice and after that he was appointed to the, well he got, was he, I guess he became a circuit judge²⁹ and then he got U.S. district judge and he ended up having to decide the school desegregation case, he succeeded Harlington Wood on that.³⁰

LAW: Do you have any memories of that case?

STEPHENS: Just a little bit, I mean, it was contentious and it was a period of time and we had two kids in school.

LAW: Yeah that's why I was asking.

[01:00]

²⁹ Ackerman ran against Harvey Beam in 1970 to fill a vacancy created by the death of Circuit Judge Clem Smith; Ackerman lost by 102 votes. In 1971 he was appointed to fill the vacancy created by the retirement of Creel Douglass. In 1976 he was appointed a Federal District Judge.

³⁰ See, *McPherson v. School Dist. 186, Springfield, Ill*, 426 F. Supp. 173 (1976). Also, see, *McPherson v. School Dist. 186, Springfield, Ill*, 465 F. Supp. 749 (1978).

STEPHENS: But we accepted it, my wife rode as a monitor and everything but there was quite a fight initially and Harlington Wood, his predecessor, had the case and Harlington really didn't want to decide it, sat on it and stalled it and then he got appointed to the Seventh Circuit and Wally got the appointment and Wally told his clerk, who is a partner in this office who was just out of law school, to do the research 'cause they were gonna decide the case.

LAW: Would you say the big issue was the busing or was it the support of neighborhood schools or a mixture?

STEPHENS: Uh, it's really the support of neighborhood schools and the busing, cross-town busing always caused problems. But as my youngest son who started in, I guess the order went into effect when he was like in first grade, it made no difference to them, that whole generation had no problem with it at all and, actually, the way it ended up we lived in the Butler [Elementary] School area, southwest side, when he got to fifth and sixth grade he was transferred over to Iles [Elementary] School by bus, Iles was heavily white and they moved all these people from southwest Springfield, which were white primarily, all the way over to Iles and Iles was an excellent school because they had all the bright kids in it or the ones who came from families who were pushing their kids to do better and everything else. But it was contentious at the time – your whole generation, the diversity issue is just accepted, obviously at that time no. I mean the city, when I was in high school, we had two blacks on Springfield High's football team and we were told at one restaurant that they couldn't sit with us when we stopped to get something to eat and we never went back to that restaurant

LAW: I think by the [19] '70s, I read the case it's been a while, but I think the numbers was like, or were like, maybe ninety percent white/ten percent African American at Springfield High, this is in the [19] '70s, [Springfield] Southeast [High School] was.

STEPHENS: In the [19] '70s, yeah Southeast was, they would have been more black and Lanphier [High School] more too, Lanphier still had a heavy white population because Sangamo [Electric Company] and because of Pillsbury [Mills, Inc.,].

LAW: Now, this is a good opportunity to ask you, when you think or hear the word "Northender" what comes to mind, is that a neighborhood? What makes a "Northender" a "Northender," knowing that you're not a "Northender"?

STEPHENS: It's somebody who probably went to Lanphier, probably worked at Sangamo or worked at Pillsbury, was ethnic white, and of course you had the railroad out there, you had the CINM right in the middle, but that would be a "Northender." Not lower class but more middle class and maybe not as well educated.

LAW: Ok, back to the judges, I got a couple more for yah.

STEPHENS: Ok.

LAW: William Chamberlain?

STEPHENS: A good, excellent judge, died way too young, he was a democrat as you know, worked for Paul Powell in the Secretary of State's office and then got himself on the bench and was good, ran a good courtroom, good judge.³¹

³¹ Former Legal Advisor to Gov. Otto Kerner, and Secretary of State, William Chamberlain was elected a Circuit Court Judge in 1964 and served until his death in 1972.

LAW: Let's see, the only other judge from this period that I haven't asked you about is [I. J.] Feuer.

STEPHENS: I. J. Feuer, average, nice guy, I never really had much to do with him.³²

LAW: Ok, also at this time there was still, well, I'll wait on that actually. Ok, different question, what are your memories of practicing law in what is now the Old State Capital historic site?

STEPHENS: It was a wonderful building, it had its problems, what was the legislative chamber was a courtroom and there were several smaller courtrooms, you've seen it, it had sort of a center area, it had been raised up one floor, as you know, it was three stories higher, I mean it was a story higher so it was a three-story building instead of a two.

LAW: So the courtrooms were upstairs and the offices were upstairs?

STEPHENS: Yes, the Recorder's office was downstairs.

LAW: Ok, all the county offices.

STEPHENS: Most of the county offices, at that time you had a probate court, probate judge, probate clerk, State's Attorney was, I think, on the second or third floor, it was a friendly place.

LAW: Why do you think they decided to give it back to the state and move?

STEPHENS: Well they had to do something because as the population and the needs were growing the county needed more space and so how do you go about getting the money to do it, how do you work it all out, the state was not broke at that time and they worked out

³² I.J. Feuer was appointed an Associate Circuit Judge in 1971, and served in that capacity until 1979.

this wonderful deal to make it a historic site and then in turn they built a county building what is now part of City Hall [Municipal Center West].

LAW: How did the new one, or what is now the old one, compare/differ?

STEPHENS: Well it differed in that it was a modern and sterile building.

LAW: Sterile?

STEPHENS: There was nothing architecturally, it was just sterile.

LAW: We were walkin' by a courthouse the other day and we made the remark it kind of looked like an East German bunkhouse.

STEPHENS: Yeah, just a second (Stephens receives a phone call), go ahead, we got fifteen minutes friend and then we're gonna have to do it long distance, alright (chuckles).

LAW: No problem, yeah, we went by kind of a building from that period and we said it sort of reminded us of an East German bunkhouse.

STEPHENS: Well, the present county building, they had some money and they, you know, they designed it, it has some character to it. You look at that thing and, I mean, it was, they were saving money, it's a square building and they put the jail on top which was the status then but of course that didn't make everything the best in the world because what happened then was that the people who were incarcerated in the summer, the windows would be open, and their lady friends or others would be standing down the street and they'd yell back up and have conversations back and forth, but it was a much better jail than the old jail.

LAW: Now as far as everything was positioned at the newer one, which is now the old one, was it your recollection that the courtrooms were on the fourth floor?

STEPHENS: Fourth floor for circuit court and then I think probate was on third, but fourth floor there was like three or four courtrooms up there.

LAW: And then did the judges have their chambers up there too?

STEPHENS: Yes.

LAW: I don't want to go too far because we don't have much time. Why don't we talk about some of the various civic organizations that you've been involved with.

STEPHENS: Alright.

LAW: That might be a good way to close out our interview and maybe we could meet again and cover what we haven't covered.

STEPHENS: We can either meet again, as you know I'm not gonna be here physically, I'm only too happy if we can set up a time that we will do it by telephone.

LAW: Phone, or I'd be willing to wait until you got back, if you'd be.

STEPHENS: Oh that's no problem, whatever works for you. Send me a transcript of whatever you have.

LAW: I will let you review it and edit it.

STEPHENS: I might clean up the English, ok. Oh, civics organizations.

LAW: Well I wanted to ask, United Community Service, I guess I'm asking about the move for a County Health Department, this is going back to the beginning.

STEPHENS: Oh yes, well, I'm the young lawyer in the office and people wanted a County Health Department, so United Way [of Central Illinois] put together a group and they wanted somebody to work on it and that's what happens in law firms, this is your first civic job and I worked on it with a woman by the name of Virginia Ostermeier, who was a paid person, and we tried to get, I'd have to look back at it, a tax, a small tax to pay for county health and it failed.

LAW: Was that the referendum?

STEPHENS: Referendum, yeah, you had to go to the referendum. I would know better how to run a referendum today than I did then (chuckles) being two years out of law school.

LAW: What was the opposition based on?

STEPHENS: Taxes.

LAW: Pure and simple.

STEPHENS: Pure and simple, people don't vote for taxes, period. But I would go around and talk to various groups, I remember being down in the old Chatham High School and talking to groups down in Chatham and all that and it'd be fine and everybody says, "Well this is a nice idea of another government program and I'm not gonna pay any more taxes." And I forget, you know, we'd say on a hundred dollars of assessed valuation your tax would increase two cents or something like that you know, but it didn't make any difference, it didn't make any difference and that's what killed it. But the other thing is, in a tax referendum the only way you can win a tax referendum in this town, which my wife was successful in winning the last school board election, now twenty years ago, on a tax referendum, is you gotta have the support of both political parties, you gotta have

support of the Catholic Church, you can't have the good Father standing up and saying, "Do not vote for this, this will hurt our schools," you gotta have all of those together, then maybe it will pass. Alright next.

LAW: Public Health, well this is kind of connected, Public Health Counsel, but this goes beyond the referendum? So you just kept at it even after the referendum?

STEPHENS: I may have been on a group, I have little memory of that.

LAW: YMCA, Boy Scouts, Kiwanis?

STEPHENS: Yeah, well YMCA

[01:15]

I was a member and I participated in the membership drives, they used to have what was called the Round-Up every year and you went and solicited people and I did that. Boy Scouts, I of course was an Eagle Scout, I was on the district council for a while and participated in putting on some camporees and things like that, I never got any more involved in scouting but I did some at the adult level. Kiwanis, I think I joined Kiwanis in [19] '67 or [19] '68, I was eventually president, Kiwanis at that time we probably had one hundred/one hundred and fifty members and I went to the National Convention in Montreal, [Canada] which was interesting because that was the first convention when they brought up the question of allowing women and it got defeated, I voted for women.

LAW: My dad is in, well, his local Kiwanis it's changed a lot over the last years as far as men and women.

STEPHENS: Oh yeah, all the service clubs right now in the last ten years don't have the strength that they did back in the [19] '60s and [19] '70s.

LAW: Lincoln Library, on the board, this is later?

STEPHENS: I was never on Levi Ray's board.

LAW: Lincoln Library.

STEPHENS: Oh Lincoln Library, oh yes, I got appointed, I've always been interested in libraries and books, I got appointed and ended up being chair and it was an enjoyable experience. Then the librarian retired, he just died recently, who was a wonderful individual, and we had a search committee but the democrats wanted Nancy Huntley and so that's how it happened. And Nancy's been there ever since and Nancy is a good librarian, I don't think she's promoted it as much as she should. I tried to get, you know they've closed branches, I tried to get them to go to like shopping centers and have a branch that's open, you know, two afternoons a week and would bring books, you know, go to the people, that hasn't, and of course I would go and fight against the city council because the first thing the city council wanted to do was cut the budget, and it's an easy argument to make, "All you gentlemen have to read something here don't you, (chuckles) in order to vote on it?" "Yes," "Well how the hell are you gonna read if you don't get people books to read?" "Oh!" Oh no, first time I was on the board – let's assume the book budget was a hundred thousand dollars, which is not a lot, they were gonna cut it to twenty thousand bucks, okay, well you can't acquire anything new, you can't replace

anything that you need. So, it was a good experience, I did not get reappointed, I forget who came on next, it would have been after Ozzie, Ozzie appointed me.³³

LAW: Springfield Area Arts Council, United Way, Dana Thomas House Foundation?

STEPHENS: Well United Way, I was on that board for a while, didn't do a lot. Springfield Arts Council, I have been a member. Dana Thomas House, I have just been a member over the years.

LAW: You've also been involved in your church.

STEPHENS: I started as a member at First Congregational where I was raised, I was active in that church, we moved to First Presbyterian Church here in Springfield and I was active, I became an elder there, and then now fourteen, fifteen years ago for a variety of reasons we switched and we've been a member of a church in Jacksonville, [Illinois] but I've always been involved some way in churches as deacons or trustee.

LAW: So why then, I guess this is all building to the question of why the civic involvement?

STEPHENS: Oh you gotta give back.

LAW: But why?

STEPHENS: Why? I don't see how people can live who do not have a sense of philanthropy and a sense of doing something for other people and you have to do it. And civic organizations need people who are not staff people, who are not just there for their own aggrandizement, but have some sense of the need, and some sense of doing something. So if you can help somebody or a group, that's why.

³³ Oswald "Ozzie" Langfelder was Mayor of Springfield from 1987-1995.

LAW: That may be a good place for us to stop Mr. Stephens.

STEPHENS: Yes, thank you.

[Total Running Time: 01:20:46]

END OF INTERVIEW TWO

BEGINNING OF INTERVIEW THREE

LAW: This is an oral history interview with Harvey B. Stephens. Today's date is November 17th, 2015 we're in his law offices here in Springfield, Illinois. This is interview three, and we're going to continue discussing his legal career. Mr. Stephens I thought today I would start by asking about the whole process of court appointed attorneys back in the 1960s and what your memories are of that process? How did judges decide who would be appointed, how did you find yourself being appointed and what are your memories of those types of cases?

STEPHENS: Well the majority of cases in court appointment were criminal cases. And in the federal court, and of course we had a U.S. district court here, when I first started practicing in 1960 there was no money available to pay private attorneys to represent the defendants so the judge or the clerk of the district court just had a list of lawyers, primarily younger lawyers in the larger firms and you had no say in the process unless you really wanted to get into this kind of work and you went and asked for the appointment. And the appointment in the majority of the cases in federal court would be simply, there'd be a call from the clerk's office and you have been appointed to represent A, B or C and the party is now sitting in the federal section of the jail, you can go over and talk to him. At that time under the federal, criminal code there was no discovery procedure, it was the habit of the U.S. attorney to provide you with copies of the FBI reports and any other investigative reports they had; but they didn't have to. So you had to rely on the defendant and, or other sources. Most of them were, at the trial court level, were rather serious criminal violations. Illinois being a route between St. Louis and Chicago you had Mann Act violations, you had transporting across lines. Now I did have

an appointment early on defending a man charged with violating a commodity credit code and he was a grain broker out of Decatur and he actually was, I guess was out on bond; a person at one time of some means and some social standing in Decatur. And so I went to Decatur and talked with him at some length and he about convinced me that what was being done, and it was an accounting system of how to account for grain that was stored that the government was supposed to be paying for, I forget the real details. After I finished talking with him and he had a, what seemed to be a straight forward thing, I sat down and discussed the matter with his office manager who was a lady in middle age and had been with him a number of years. And I went through everything with her and what he told me and she said, "Well this is very nice Mr. Stephens but that's not the way it was supposed to be done," (chuckles); so we get into that situation. He then, so I talked back and forth with him and he then I guess went to California to visit somebody. I was able to negotiate, assuming he was charged with five counts, they charged him with one count and it looked like he would get one to three years with potential time off for good time, no fines, so he authorized me to go ahead and agree to that and we appear for the sentencing before Judge Poos. The U.S. attorney at that time, assistant, was a man by the name of Marks Alexander who had been a young attorney with my father in the office in twenty-eight and twenty-nine; so he was an older gentleman. And of course he'd been generous to me, generous is the wrong term, he'd been very fair with me and so we're standing up there and the judge, Omer Poos, as the federal judges want to do asked – Frenchie LaGrande was the guys name, that's it, and he had also not really wanted to come back and his bond had been set at three hundred thousand dollars and a man by the name of Mueller of Mueller & Brass of Decatur had personally gone on the bond. And

Mr. Mueller was in the courtroom the day he was sentenced because he made damn sure he got back. Anyway, Poos asked the question, “And do you have anything to say Mr. LaGrande?” And Mr. LaGrande says, “Yes, if I had the money I’d hire a lawyer and fight this damn government.” At which time I start talking over him, is all I can do, at which time Marks Alexander comes up and says, “Your honor, we have four other counts that we haven’t dismissed and we’d be only too happy to go to trial on him,” about that time LaGrande realizes that maybe he should shut up. And so the judge asked him again, “How do you plead?” “Yes I plead guilty,” and that’s it. He ended up being appointed three years, he probably would have gotten eighteen months if he hadn’t mouthed off and he served about fourteen months; but that was totally different, the usual cases were these criminal cases. In the state court we were just starting to develop a criminal defense pro bono system but there were a couple people who were developing a criminal practice so normally I don’t recall any state court appointments. Now the Meeks case is a case where the Court of Appeals called me up and said you are appointed, again there’s no money paid for it, they did pay for, I couldn’t print the brief but we’d copy it somehow and filed it, and I actually requested oral argument because I wanted the practice before the court and went and argued it, I mean I argued what I could based upon what there was, the chances of winning it weren’t that good. And at that time – and the court did until really the latter part of the sixties, they were kind enough in the official record to thank you for your time; but that’s sort of the extent of it.³⁴ Now we have, of course, paid public defenders on both sides, I mean both in the state and the federal side, and now we have much more extensive discovery than we ever had then. Some of my friends, the same age as I, they would never agree to negotiate a plea after they investigated the case

³⁴ See, *U.S. v. Meek*, 388 F. 2d 936 (7th Circ. 1968).

for the guy because they figured well, the only way to protect yourself was to go to trial.

Well some of them, the facts were so egregious that (chuckles) you better negotiate a plea and get a better deal for them.

LAW: They were afraid because the defendant might later come after them?

STEPHENS: I don't think they were afraid of them coming after them but the fact that they would be criticized for not properly handling it or not being experienced. And clearly, let's face it, I'd been practicing two or three years, just beginning to learn how to try a case or, that was involved, and you're thrown into a criminal case with the whole power of the federal government against you, there's a good chance something wouldn't be quite right. Now, in a major criminal case the judge normally would appoint somebody who had a good deal more experience. Why I got appointed in Frenchie LaGrande's case I'll never know because as I say it was involved, the Commodity Credit Corporation and stored grain and a bunch of accounting rules but it was an interesting case.

LAW: Do you remember about when that one was?

STEPHENS: Sixty-one, sixty-two.

LAW: Okay so this was real early.

STEPHENS: Real early.

LAW: I wanted to move on to another case, one of your earlier cases, this is that *Roodhouse National Bank vs. Fidelity and Deposit Company of Maryland*.³⁵ Now was that one of the first times you had represented a bank?

³⁵ See, 426 F. 2d 1347 (7th Circ. 1970).

STEPHENS: No, we had done banking work ever since I came to work here in the office because we represented two banks at that time, competitors which is odd, but we represented the First National and the Illinois National. That case came out of the fact that [Jewell I.] Dilsaver was hired who was an old lawyer out of Mattoon, Jules Dilsaver, and he had been hired by the Roodhouse bank to contest the bond interpretation on the facts of that case. And he knew my father, I forget where the connection was, and he called up my father and father said, "Well, Harvey should work on that with you." That was one of my first experiences with the Bankers Blanket Bond which is a whole separate body of law. The bond, like so many insurance policies, is written only for the benefit of those people who are issuing the insurance. And the argument here is, as you can see and I went back and looked at it today just before you came, the argument is whether it covered all the contracts or was limited and depending on what the word forgery means and what it doesn't mean. And we were able to get a favorable ruling out of Poos on it, it was tried before him and then when it went up we got knocked down. Dilsaver didn't try it, didn't argue it in front of a Court of Appeals, the other guy

LAW: Joseph Spitz?

STEPHENS: Yeah Joe Spitz, he later went on the bench, he had a bad hip, not that that meant anything; awful nice guy. It was just one of those situations where you had a dispute with the bonding company. The banker got scammed by a car dealer. That's very common in the banking business, especially back during this period of time. Remember in the sixties you had, what, four thousand, three thousand banks in the state of Illinois, the town of Roodhouse had a certain degree of expertise but only so much. The man who

was running the bank, a man by the name of Meece, M-E-E-C-E, he was a fairly savvy person but they didn't pay enough attention to what was going on.

LAW: Do you know if they ever found the guy, B.L. Atkins?

STEPHENS: I don't know if they did, I saw that and I have no idea, never followed up.

[00:15]

LAW: Okay. So, I kind of wanted to get into the banking and I guess the way to preface it would be could you give me some background on the firm and the First National Bank of Springfield? Maybe that's a way to get into it.

STEPHENS: Well, let's go back a little bit. Until after World War II there were three banks in Springfield, you had the Marine Bank which was owned and controlled by the Bunn family and then you had the First National Bank and the Illinois National Bank. Mr. Hay of this office, who died in forty-two, was a director of both of those banks, which was highly unusual. Since they were both nationals, of course they were controlled by the comptroller but they were also subject to the Federal Reserve and the Federal Reserve permitted that. So over the years we represented both institutions. My father, during the thirties, and I forget which ones, during the thirties you didn't have FDIC when the banks started going under and so the state banking commissioners would appoint somebody to liquidate banks. And my father defended several directors along the way; he had quite an understanding of director's liability. So when I came into the office we were representing both banks. Albert Schlipf who had been a partner in this office and was the son-in-law of Logan Hay had moved from this office to the bank and was running the Illinois National Bank. My father continued to serve on the board of First National

primarily through the representation of the Hatch family which were controlling shareholders, and he was counselor for, well there was P.E. Hatch and then P.E. Hatch's widow and he was counselor for both of those. And actually Mrs. Hatch came from the Smith family in Alton that controlled substantial interests in the city of Alton. But banking at that time was just beginning to go through a transformation, in the sixties when I was starting. Your primary work for the bank was not regulatory work, regulators weren't that active, they were only concerned about the safety and soundness of the institution. We were just starting to get into installment loans, retail installment sales contracts today were just being authorized under the Illinois law. So you had a whole transformation, you had no credit cards, traditional checking accounts, we also had Christmas clubs where you put a certain amount of money down every week and in the last week of November you were given that balance. And we were joking about that the other day, one of the promotions the First National did in the sixties on its Christmas club account was to give everybody a wig (chuckling) who opened an account and they suddenly realized maybe that wasn't a good idea when one of their larger depositors which was one of two guys who ran the Best Beauty salon here in Springfield came in and suggested they were cutting into their business. But lending was, well it was just the local businesses; you had a lot of relationships. So when I came in the office I started in collections. Confessions of Judgments were permitted in individual accounts, personal accounts, and so if you defaulted I went over and had somebody else sign the confession, I had a judgment against you and then we'd start out the collection process. A lot of this then begins to change, the Truth in Lending [Act] comes in in sixty-nine as a Federal law and we're starting to attack the usury statutes because as interest rates are starting to go

up on the loan side we've got all these limitations and so we start to create or argue for a whole bunch of exemptions. And even when we were arguing for those we used to talk about unconscionable rates and the idea today where we have people paying thirty percent, forty percent, three percent a month, that was the small loan rate which banks normally couldn't get to but today we're seeing all of this because we've gotten rid of interest rate legislation. But we had all the usury statutes and how to work around them and these were questions we had on an ongoing basis. And then of course you have the movement that starts for multi-office banking which culminates in eighty-two when we passed the legislation but I guess it really started in seventy-two or seventy-three.

LAW: Before we get there though I wanted to ask you about a couple of associations, the Illinois Bankers Association and The Association for Modern Banking in Illinois? Just tell me what those organizations were and what your involvement was with them?

STEPHENS: The Illinois Bankers Association was, in 1960, was the sole trade association for commercial banks. Its membership included every bank in the state of Illinois or ninety-five percent of them. It lobbied to protect their interests. Remember, it had both national and state banks. The Harris and the Northern were the two largest state banks and they didn't want any regulation in the office of the commissioner of banks if they could avoid it and so they were very careful on that. In the sixties and even in the fifties our office was local counsel for the IBA and when the lawsuit was filed, *North Town Bank [of Decatur] vs. [Conrad Becker, Director of Financial Institutions] Commissioner of Banks*, sixty-one or sixty-two, we were involved in that, it was handled by somebody out of

Lord, Bissell & Brook in Chicago.³⁶ And that was the first attempt, it was when the Citizens Bank, people owned the Citizens Bank in Decatur caused to be chartered four new banks and there was total common ownership, everything else and the Bankers Association challenged that on the basis of violation of branch banking. So that's the trade association and that's where the IBA is coming into the seventies. In the seventies, and I should know the exact date but I don't have it right here but I'm gonna say seventy-one or seventy-two, the Illinois Bankers Association because of pressure, primarily from the Chicago banks but there were also a whole group of other groups of banks in the state, pressured the IBA to have a committee to study branch banking and multi-office banking through bank holding companies because we could only have single ownership holding companies. That committee which was twelve people, thirteen bankers from various parts of the state including two major representatives from the major banks i.e. First National of Chicago and Continental met for a period of about a year, year and a half, I ended up being a member of that committee because Walter Lohman who was president of the First National Bank of Springfield was a member of the committee and he couldn't go to the first meeting and he asked me to go as his representative and they asked me to stay and I was probably the youngest member on that committee.

LAW: What was the position of First National?

STEPHENS: They wanted to expand as did the Marine and the Illinois.

LAW: Why?

³⁶ See, 45 Ill. App. 2d 112 (3rd Dist. 1964). Also see, *Northtown Bank of Decatur v. Becker*, 31 Ill. 2d 529 (1964).

STEPHENS: Well they're landlocked and you had Capitol Bank having been established out here, you had Land of Lincoln Bank, you had Town and Country Bank, if they had put a branch out there there would have never been a Town and Country and the same with Capitol Bank even though Capitol Bank was created in fifty-one or fifty-two. Anyway, that committee hired the dean of Northwestern's graduate school of business, Kellogg's School of Business, and I'm having a hard time calling the guy's name, I may in a moment, and he provided us with readings and study before each meeting and then had people come in and talk about where banking was going and how the business was going to be done.³⁷ And this was when City Corp was just starting with electronic funds transactions and they were one of the first people to really develop it and we just had a whole bunch of talks.

LAW: What did the committee think of EFT?

STEPHENS: They thought it was important, in fact the reports showed that there could be a bunch of ATMs put up. So, this led to developing a report. The report provided for the state being into, I guess, five districts, the city of Chicago, suburban area and then others where you could have bank holding companies provided for a certain number of branches, though I don't think we called them branches but I'd have to go back and look, I've got the report some place, and also the development of ATMs because ATMs were new then and this was the way people were gonna. You also had a bunch of protections as part of the compromises. So they held a special meeting of the members at the Hilton, approximately eight hundred bankers showed up. Those who did not want multi-office banking were two groups, one were some of the small bankers who owned a bank that

³⁷ Donald Jacobs, Dean from 1975-2001.

supported them and their family and they just didn't want to change, no difference. The second group though was more interesting, it was lead by a lawyer here in Springfield, Conrad Noll, who had chartered approximately thirty new banks and had always gotten five percent of the capital as his fee for chartering the new banks. And he hired a group of people and they were training people on doing this. The result of the vote was like about, it was fifty-five against and forty-five for, so it failed.

LAW: About when is this, just approximately?

STEPHENS: It's seventy-two or seventy-three because this is when it leads to the creation and incorporation of the Association of Modern Banking and the Association of Modern Banking initially had,

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I'm sorry, it's up there someplace, it had about four hundred members. They felt the report was a good thing, hired two lobbyists, republican and democrat, convinced Phil Rock to be the sponsor who was, I don't think at that time he was President of the Senate but he was [assistant] Minority Leader because I think the republicans still controlled the Senate, surprising in today's world (laughing).³⁸ But we went ahead and introduced legislation, drafted legislation, I was involved in the drafting of the whole legislation we went to work on it. It did not get out of committee; we started it in the Senate and were defeated.

LAW: What were the criticisms of the legislation?

³⁸ Phil Rock, democrat, was a member of the Illinois Senate from 1971-1993. From 1973-75 he was Assistant Minority Leader, and from 1975-77 he was Assistant Majority Leader. From 1979-93 he was President of the Senate.

STEPHENS: It was strictly politics, it was the group that wanted, it was the small ones who went to their legislator and said, “Look, I’ve always given you five hundred dollars to run for election now don’t break me up,” because – what are the big criticisms, the criticisms were that the Continental was gonna take over everybody or that the First National was gonna take over everybody. And you realize there were banks in the Chicago area, one of them that was started by one of the labor unions [Amalgamated Clothing Workers of America], the Amalgamated [Bank of Chicago], made a damn good living, they didn’t want the Continental in their neighborhood, okay, so they were fighting it; I mean it was an anti-competitive thing. And of course the other problem was the Illinois Constitution because if you go back and look at the history of the constitutional convention the issue of branch banking almost killed the constitutional convention.

LAW: In 1970?

STEPHENS: Yes. And that’s when they put that provision in, it took three-fifths of those voting on the question and that was the compromise, but the bankers had been fighting that. The same group of people won the small bankers and then those who were getting around the law. So the result of all of this was that’s when the Association for Modern Banking got going. Some of the banks continued membership in both organizations. Then this is when the Independent Bankers Association was created.

LAW: And what was their position?

STEPHENS: Well their position was we’re all gonna remain independent. They were, “stronger” than the IBA, okay. And the result of all of this is you see a whole period until eighty-two, when we finally got the legislation passed, of getting the Association for

Modern Banking was finally successful in passing the law which has since been totally liberalized these days, but I mean basically what was developed in that committee is what led to this.

LAW: Now also during this time you were involved in a case that is in some ways related to this, *McHenry State Bank vs. Harris*?³⁹

STEPHENS: Yes, that's the case that challenged the law. After we got the law passed in eighty-two – the Illinois legislature, and you can tell it by watching what's going on today, is a unique place and at that time once we had it passed through both houses, they can sit on it before they send it to the governor or something, we made sure and the people who were the lobbyists, we had in-house lobbyists and paid lobbyists, we said, "Look, we want to get this on the governor's desk and we want it signed." So, it was passed towards the end of the session, this is when you went to a June 30th session and I think on June 28th or 29th we all went to Chicago and it was signed. I guess, was Edgar the governor?

LAW: Thompson.

STEPHENS: Thompson, yeah. It was signed then. Within thirty days McHenry and the people, those people who had been in opposition, filed suit against the commissioner in challenging the law. So the commissioner has to defend the law and he employed, this was Bill Harris who frankly was in favor of the law, he went to the AG, he didn't want just the AG defending it, and so there was a whole bunch of discussion and they ended up going to Isham Lincoln at that time. Primarily Charlie Bane was a senior partner, and

³⁹ See, 89 Ill. 2d 542 (1982).

Isham Lincoln was, but was a native of Springfield and was known down here; a very interesting individual, he was a Rhodes Scholar. Julian D'Esposito, who's the other name there from Isham Lincoln, had been Thompson's general counsel or chief of staff, that's who the commissioner did. The association asked us to come in and file amici [amicus curiae] but then the Chicago banks then weren't comfortable with Mark [Ferguson] and I so they brought Wayne Whalen in and Mayor, Brown. And it all turned, in my opinion, though you wouldn't get that impression, it turned on what voting on the question meant because we were aware of all of that. And you know people who voted present and you're sitting there watching the change and you, I mean we were totally aware of all of this and there was no ruling from the chair in the senate because we weren't sure how they were gonna rule so consequently we didn't ask them for a ruling from the chair. We thought we had the one extra vote that we needed and I forget which one it is and they flipped over to present, so we had that whole discussion. Simon's argument in the dissent was what Mark and I, Mark Ferguson who was a partner here at the time and did a hell of a lot of work on all of this, we were really concerned, we felt that was needed. You see the politics of banking legislation in Illinois has, before the court, has always been questionable. Now I'm not being critical I'm just telling you that. My father, in the forty-one, sometime in a case called *Boatmen's [National] Bank [of St. Louis] vs. the Commissioner [Edward J. Hughes, Secretary of State, et al.]*⁴⁰ won a case in the Supreme Court on a six to one opinion and on a petition for rehearing he was reversed, the court reversed its position. And this court I felt was favorable towards a change but we had no way of knowing but we thought we had the votes, you know. And it became an interpretation, studying *Robert's Rules of Order* I thought I was gonna have

⁴⁰ See, 385 Ill. 431 (1944).

it memorized, and voting on the question, fortunately, we found the case in Missouri and then the case, I guess in Kansas, because there were no Illinois cases on what voting on the question meant; but that was the culmination of what started in seventy-two. And then after that went into effect the Association for Modern Banking, because the bankers being close with the dollar didn't want to pay for two associations, well I'm sorry that's not a nice way, they decided it'd be better off if they had a united front and so there was discussions on merger and everybody felt that the Association for Banking would be the winner in that and much to everybody's surprise the Illinois Bankers Association won out on that, and then following that our office represented the Illinois Bankers Association for another five or six years.

LAW: Looking back at the criticisms of "branch banking," the fears of too much concentration, or not enough competition or out of state banks or the big Chicago banks taking over downstate, do you think any of those criticisms have bared fruit? What has been the ultimate result?

STEPHENS: They haven't bore fruit.

LAW: And why?

STEPHENS: Because of technology. The banking business today is – how many people in your generation have a checking account, they may or may not, but very few or they have a checking account through a brokerage firm if they have a little bit of money. So if you look at the average age of depositors in banks today you'll find that it is skewed towards people that are fifty or sixty years old and whether that's good or bad a local bank that knows its people that provides good loans services will still be able to do a good job but a

bank, remember, operates on deposits, if it doesn't have deposits it doesn't have anything to lend unless it's got a million dollars of capital. So consequently technology is probably what really defeated those arguments. We are seeing today we aren't seeing many new banks being chartered at all throughout the country. Before 2008 we were seeing some new banks being chartered because they'd have good service and you can go south of Springfield here to Hillsboro, Bank of America bought a bank there but then they decided they didn't want to make Ag loans, well in the town of Hillsboro forty percent of their commercial loans were Ag loans, so a bunch of guys started a new bank ten years ago and it's been successful. So you can compete against the big people but the mere fact of geographic location isn't gonna do it and in today's world I don't know where the future of banking is going. We have the megabanks which I have a real problem with because I was raised in an era when no bank could have more than ten percent of the total assets of the country and of course that's no longer the law. But Illinois is a state whereby we're seeing a lot of consolidation today. If you go back to the problems after 08' and 09' we closed, what, a hundred a twenty banks in the state, a hundred and ten, more than almost any other state; so it's changing. A bank that is located in a community of, it isn't the size it's how well a job it serves the community, but you still gotta go find loans. Fortunately in downstate agriculture has been good recently. But look at Springfield and we have everybody wanting to come into here, you've got the bank from Ashland coming in here, West Central, you've got the bank from Williamsville coming down here, of course it's owned by a Springfield family now but they want to get into this market. Part of that is because of the fact that U.S. Bank, J.

P. Morgan Trust and PNC have almost abandoned this market, they're half the size they were before just because they just aren't in the market. But think about bank advertising,

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go back fifteen years you'd see ads from banks about their services, when have you seen an ad from a bank about a service in the last three or four years, it's not there, it's because they're doing it by electronics. And so this was a moth's back throwback, would it have made a difference in the economy of Illinois if we may have had branch banking like say New York State or someplace like that, twenty years earlier, thirty years earlier, I don't know if it would have, it might have but we didn't have the small cities dying then and everything else. But today I was involved for over forty years with a smaller bank in Litchfield; there're three banks in that town.

LAW: That's what I wanted to ask you about, what was your own experience with the effects on First National in Springfield and the other banks you were personally associated with?

STEPHENS: Well in Springfield of course First National became First Bank and grew to a fairly large institution and then was bought, the ownership decided to sell, they sold to Mercantile which became part of First Bank of Wisconsin and then became U. S. Bank. U. S. Bank is one of the best run holding companies in the country but it has no Springfield ties to people who are running it now. If you look at the total deposits it has, I think the last report I saw was like two hundred and seventy million in deposits.

LAW: Did you foresee that possibility in the early eighties?

STEPHENS: In the early eighties I felt that First Bank would be a survivor and would keep going; unfortunately there was ownership who wanted to sell. I think they could have

survived, they had the group, they had built a group and gone ahead. And you have to see you can survive if you've got a game plan, if you look at United Bank right now, United Bank is I think a billion and a half dollars, it's got a lot of locations, it's picked up a lot of troubled banks; so it can be done in the environment but it depends on what the ownership wants to do. We had public shareholders but that wasn't it and there were some people who were major shareholders, maybe only two or three percent of the total amount but were on the board and were looking to do that. First Bank was in a position, I felt, to survive, they had a good network, they picked up a number of groups and so they had expanded; that's why they were attractive to other people. But it's the story, what are you gonna do when your shareholders get offered a big price, do you take the big price or do you stay with it, that's the decision. First National of Litchfield, that as I say I was associated with until probably eight years ago, it's still going strong, I talked to the president the other day, it's right at a hundred million; it's primarily an Ag lender. As to the president he must be about fifty-five now, his aunt is the controlling person who I was a close personal friend of and he's thought about buying her out and she doesn't want to sell so he's running it and it does a good job. Litchfield's a good agricultural community and has a little bit of manufacturing, so it will survive and it can survive, how long, it depends on when his aunt dies, depends on what her children want to do and it doesn't appear any of them have any real interest in the bank so it probably means it will be sold.

LAW: Okay I wanted to ask about a couple other cases that relate to banking. I guess the one we could tackle first would be the *First National Bank of Springfield*, your bank, *vs. the Department of Revenue*.⁴¹ And what I gathered from this was this was a challenge to the

⁴¹ See, 85 Ill. 2d 84 (1981).

use tax and it involved computer software not being a tangible piece of property. So this is another case of technology intersecting with the law.

STEPHENS: That's right. If you look at the history of sales tax, sales tax is something that's states developed over the years for the purpose of taxing the sale of tangible personal property; that's the way most of the acts were written. Then all of the sudden they decided that that isn't often good because goods were coming in from other states and they were being sold, so that's when you got the use tax which is the complimentary tax. In this case First National had bought tapes, magnetic tapes, with programs for five different functions, operations, and put them into their library and then their own IT people had totally modified them; it wasn't a "standard" program. So we got audited by the department and we contested it and went to an administrative hearing before the department. Now understand that the Department of Revenue's administrative hearings are interesting procedures because the hearing officer is also the attorney for the department presenting the department's case; it's called wearing both sides of the hat. So normally you're not going to win in administrative proceedings. But we decided to contest it because is software tangible personal property when you get technical about what is tangible personal property and especially where we were modifying this software we were buying before we put it into use. So, we lost the administrative hearing, filed an appeal which you do and went to the Circuit Court and the judge was Cadigan I believe, Dick Cadigan, and he ruled with us. So the department took us up, obviously, on a direct appeal to the Supreme Court which they can do and you see the arguments that are laid out there; we had a Tennessee case that was helping us. And it's quite a challenge because during oral argument they're saying, "Well now wait a minute, you pay a sales

tax or use tax on books don't you?" And the question came to me, "Well couldn't you modify the book, couldn't you change the book?" "Well but that's not the author," I mean we were splitting hairs. But, fortunately this made a lot of – First National was doing this but at this time we had association with, this case is eighty-one is it I think I looked up; the Association for Modern Banking is there. This affected all the banks in the state, we just happened to be the one that was going forward with it first and some of them had gone ahead and paid the tax, it wasn't worth fighting. So anyway we ended up convincing the court to go with us. And so then the Department of Revenue for at least – I don't know where it is today because I haven't gone back and looked at it but for the next four legislative sessions they used to introduce a bill to tax software and the Bankers Association opposed it every time and got it killed. The interesting thing about this case, it didn't bother me, was the assistant attorney general's brief in this case filed all this information about software and articles from the *New York Times*, they wanted to supplement the record and something from *TIME* magazine and everything. They had a heck of a good argument, the argument is tangible personal property, when the use tax developed there was no software at that time or it was a figment of somebody's imagination, it was just starting; this was technology, it probably should be taxed. Fortunately Kentucky and Tennessee are not leading states noted to support the government. But it became an esoteric argument. It was a fun case, but instead of really focusing on the history and what is tangible personal property and wouldn't the legislature want to expand this. I mean, you argue legislative intent two ways, it's gotta be broad so it can take care of technology and everything else or you go the other way

and say no, as I was arguing this is what it is, you can't grab it, you can't touch it; but that's where it was, fun case, well not a fun case, interesting case.

LAW: Okay, the other banking case is the one that you took up at the U.S. Supreme Court; do you want to talk about that? Well let's start it this way, how did this case come to you? This is dealing with the Hillsboro National Bank.⁴²

STEPHENS: After Illinois terminated the personal property tax which in effect took away the tax on shares of bank stocks which was personal property.

LAW: This is like in the early seventies?

STEPHENS: Yeah, this was in the 1970 constitution. People asked what we were gonna do about all of this because the practice for many years in Illinois had been that the banks paid the tax, they filed with, I guess, the county clerk a list of their shareholders, the total number of shares each one owned and then came up with a basis for the tax. And I forget how they valued it, I think they valued it on book value, but anyway, which as an aside was a very interesting thing because when I started to represent people who were looking to acquire banks in the sixties, when that is when that was just starting to be, we could go to the courthouse and get a list of the shareholders. So, people asking, primarily at First National here, but the other banks in Springfield because there was a clearinghouse they all asked what are we going to do about this? Well as you can see under the law, because it was being contested what was on, we paid the tax in 1972 but it was paid into, it was held in escrow until they decided whatever the litigation was that was necessary. When the litigation was decided in favor of the banks, so there was no longer a tax, where did

⁴² See, *Hillsboro National Bank v. Commissioner*, 460 U.S. 370 (1983). Also see: <https://www.oyez.org/cases/1982/81-485>

the money go? Now the bank had paid out the money, in my opinion, the money was to come back to the bank. But the government took the position, the IRS, that this was money that should be paid to the taxpayers and the taxpayers should pay tax on it. And there was a question whether they should or should not pay tax on it. I actually met with the district director here and discussed all this and I said, "Just let it go back to the banks." Well the decision was made in Washington not to do that. The first case to go

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before the tax court on the assessment was Hillsboro National Bank and the attorney was John Bullington who was a man that I knew and he took it to tax court and actually tried it before the tax court before we'd really looked at all the ramifications of this and we knew if that case stood we couldn't win. So that's when we decided, because – and I have to tell you every county was doing it differently, but in that county the county treasurer I guess had already gone and paid it out. Anyway, the case had already gotten to the tax court and that's when I talked with a banker here at First National and he said, "Let's contest this, we've got thirty thousand dollars and we think we're entitled to that," and it obviously made a difference to a number of other people. So that's why it's Hillsboro National Bank because I ended up taking over the case but I was unable to create the record in the trial court. Now John Bullington had a done a good job, there are a number of things I would have done differently before the tax court. So that's when we took over the case and took the appeal and the appeal went directly to the Court of Appeals and we went to the Court of Appeals and arguing, and we were arguing a simple case, the Hillsboro Bank took a tax deduction in 1972 for twelve thousand dollars, now let me think this through, they took a tax deduction for twelve thousand dollars, they

wanted the money back, if they got the money back then they would pay in tax. But they were assessed a tax, though they did not get the money back, because it was being paid to the shareholders. And the tax benefit rule is if you get a benefit on one hand and you recover then you lose the benefit however it goes i.e. becomes income then, you take a deduction off of income here and in turn the next year you get a recovery here and you've gotta report that as income because you've already had a benefit of it. But since they didn't get the money back why should they have to pay a tax on it? Government said they had to pay the tax, that is the bank had to pay the tax even though they didn't get the money. So we went to the Court of Appeals and as you saw we got a two to one opinion, a side note on that, the attorney arguing for the government whose name was Ferguson was the same as my partner Mark Ferguson who was working on the brief with me; had the same last name. Ferguson has since become, he's left the government but he is an expert on tax law, he is a learned and excellent writer. So, but we got the two to one opinion but the dissent said that we should go en banc, i.e. request a hearing before the full court, and we did and we got an eight to three opinion against us as I recall. So then, well what the hell, we'd gotten this far, we already knew the argument, let's write a petition for cert [certiorari]. We were utterly shocked when they took it. But of course they took it and consolidated it with the dairy out there, the cattle liquidation case which is a more complicated case involving [U.S. Code] 351 and liquidation of corporations at that time and everything which is a whole different accounting situation than what I was dealing with; I had the simple case, that was the hard case. Apparently somebody in the solicitor general's office or general counsel for the IRS felt they needed to – this was a good case to clear up the law on tax benefit and how it applied to corporate and so that's

why they took it. And of course they only take four tax cases a year at that time, usually, and the government always wins. And of course we ended up, I won and the dairy guy didn't and the fellas who were doing all the work on the three-fifty one liquidations and how you account for that and everything, they lost. But part of what helped was you've read the opinion and the concurring opinions and everything else and you get lost in everything that is there, totally lost. We spent all our time – the basic question I told you is I pay the tax, there is a recovery, I'm now taxed on the recovery but I didn't get the money, give me the money and I pay the tax; that's my argument. And that's the tax benefit rule, that's the original tax benefit rule. There's all these things about accrual accounting, all these things about extending, but that's the basic rule and it always has been. You noticed some of the early cases go back to the twenties when [Guy T.] Helverling was the commissioner of IRS and people like that. So the argument, you said you listened to the oral argument, it was a different type of oral argument because, one, you had this sophisticated part, that the fellow with the liquidation was trying to get through and he didn't have a lot of time and then you had my fact argument and my fact argument was it doesn't fit and I guess that's what sold the day with those that agreed on my side. Now you know Stevens went into a long talk about we're rewriting and all of this and everything else. The court, it was a pleasure to be before the court. I was nervous obviously because you aren't up there all the time but once you're there and they start asking you questions it's something else; that was a fairly good court at that time. That's the essence of it and by doing what we did we saved tax for First National of Springfield, we didn't have an additional thirty thousand of income and if our tax rate was whatever it would have been then, twenty, twenty-five percent we saved that money.

Actually what happened here as an aside is I charged no legal fees on this as long as they paid my expenses because it was a case that we felt, for the industry, should go up. And selfishly if I get a chance to go before the Supreme Court I'm gonna take it (chuckles); it was a little bit of a pleasure. And actually, as I think I mentioned before, I went down a week before, a month before and watched arguments and watched the court; so you're there, you feel comfortable, they're tight on the time.

LAW: How did it compare to the Illinois Supreme Court and the Appellate Court?

STEPHENS: The Seventh Circuit Court of Appeals, they thoroughly enjoy oral argument; different from other circuits. So if you can get them asking questions, that's a real goal, I mean interesting. I had one case up there, maybe it was the Meek case, I forget, where Kerner was on the panel and I was arguing a position, it was court appointment again, I was arguing a position and he said, "Mr. Stephens don't you know I issued an opinion in this case a year ago," and I said, "Yes I do but I don't think your opinion applies to my facts," (chuckles), what more can I do; but there'd be more of that. The Illinois Supreme Court in the case on software was questioning and interesting; the case on banking was, they didn't do that much. Our local appellate bench, the fourth district here, used to ask a fair amount of questions. I felt the Supreme Court, if they got interested in it – you know, this tax benefit rule, you keep, with the basic fact that I was and then they get thinking alright how would that apply in this case, how would it apply in that case. I could stay with a simple fact, not having to argue a bunch of cases and say this case is here and this case is here and to distinguish you could stay with the facts and in a relatively short period of time and elicit one or two questions and I forget what I got for questions, I got some.

LAW: Okay Mr. Stephens now I want to ask you some of the big questions?

STEPHENS: Sure.

LAW: I think I'll start with this, so I read the book *One Hundred-Fifty Years of Law, 1820 to 1978*, about the history of Brown, Hay & Stephens, up to that point, and there was a couple of passages I took note of, and this was relating more to the nineteenth century but I think it may apply to your experience as well.⁴³ The author notes that in that period of time in the nineteenth century the character of the firm's business changed over time and the profession of law was changing rapidly over time because of changes in the society and in the economy and he notes some of those changes. But how I wanted to relate this to you was how did the character of your firm's business change in the twentieth century and how did the profession of law change in the same period of time? If you could identify what some of the big changes were that you've seen in terms of your firm and in terms of the profession of law what would you identify? I know that's a large question.

STEPHENS: Alright, let's break it down. Let's go back to what the profession of law is. The profession of law is to guide people in a civilized society to live within whatever are the, I like to use the term mores but that isn't quite right, and in the English common law tradition as maybe archaic it seemed years ago and in our system we look at what is going on in society and how best to guide people, we don't always look to laws written by the legislature we look to the fundamental basis of what it is. So today, what are we looking at? We still have individuals, businesses, which are living within the society as it

⁴³ Paul M. Angle and Robert P. Howard, *One Hundred and Fifty Years of Law: An Account of the Law Office which John T. Stuart Founded in Springfield, Illinois, a Century and a Half Ago* (Springfield, Illinois: Brown, Hay and Stephens, 1978).

changes. Our role as lawyers is to guide and where there are disputes to attempt to solve those disputes. Disputes are

[01:15]

solved initially by negotiation or by litigation or as were seeing today we're having mediation after litigation; but the premise is the same. When a young lawyer says to me, "Well, do I have to specialize?" Well you may want to because of our advanced, more and more regulations on so many different things today you may want to fully understand that area of the law but you're still dealing with trying to solve a problem or an issue. And we have a whole bunch of rules about – well take something as simple as a driver's license, we have a whole bunch of rules on that, if somebody can't comply with those how do we figure out if they can, if they violate those rules what are the exemptions; this is where the government comes in to play. But as far as individuals are concerned look at the domestic practice we have today, this is an area of the law which in the sixties, first of all you didn't have a lot of guidelines, you had the standard rule momma always wins, you had, at that time, you had to have fault for divorce. That area now, today, because of the changes in society and the way people live and the fact that they leave marriages more often than before, they're encouraged to; we have two lawyers here who are doing almost nothing except domestic. Before, when I started, we'd have one or two domestic cases in this office. The big firms never had any domestic lawyers, you had family law groups. If you'd go to Chicago there were two or three people that were specialists, I'm talking about in the sixties; so that's one area. A second area where there have been changes is corporations versus limited liability companies. If you were gonna start a business in the sixties and you came to me and we talked about creating a simple

corporation for you, it cost us a hundred and twenty dollars at the secretary of state's office, we ordered up a standard set of bylaws, shareholders, told you what to do, explained to you you had to have a board of directors, a couple other things about it but that would limit your liability and you went out and tried to run the business. It was relatively inexpensive but it protected you from liability because again we were trying to address an issue, protection from liability. Starting in what, 1969, we started having limited liability companies coming out of Wyoming where you created an organization that was taxed as a partnership but had limited liability and of course the IRS fought this, fought it tooth and nail, finally they gave up and all of the sudden we have limited liability companies today. If an entrepreneur or a new business person comes in today and talks to me about a business or just an individual who wants to get into a business and were concerned about limiting the liability because of the nature of their business they're gonna be in we're gonna use an LLC or today we have limited liability partnerships; these are vehicles that weren't there. All of this is changing but it goes back to what I said the basic principle at the front end, a person comes to an attorney to solve a problem, that problem can be a dispute, that problem can be how do I do business, that problem can be how do I get licensed to do something; so we're giving advice, we're helping people in businesses.

LAW: With that conception to solve a problem, that conception of your role, would you consider that the tradition or heritage of this particular firm or where does that understanding come from?

STEPHENS: Well I would consider that was the heritage of this firm. We represented a variety of people over the history and you go back, Otto Kerner was investigated and

convicted for lying to a grand jury involving a printing scheme where the printers knew how much so they could rig the bids. We defended Springfield Printers in the late twenties and early thirties on the same damn scheme that happened under Kerner; nothing's new. But these were people that we knew. But still you're still trying to solve a problem. I mean, look at litigation, litigation is somebody's mad about something or there's a dispute about it so you go find out the facts. The interesting thing is we're always looking for a solution that's beyond. You gotta remember in litigation at the time litigation starts the facts are fixed, you don't know what they are totally but they're fixed, you're looking backwards. Our goal was to find an answer for a problem and go forward and that's the way I was trained; looking for a new idea, a different way of doing something.

LAW: Another thing I gathered from the book was that the firm has a kind of history of adaptability, an interest in public affairs, encouragement for training of its people and that the partners were involved in different types of business venture. Would you say that those things that I've listed are still there today, going forward from 1978?

STEPHENS: They are, not to the extent of the nineteenth century, because Mr. Hay and Mr. Brown had substantial business interests, I'm talking about businesses. My grandfather of course did not, his job was bringing lawyers on, expanding in the practice and doing all the work through the bar association and the practice of law. Today we may not have as many people directly involved in businesses per se, but involved in the community yes, very much so, close advisers to major businesses yes, much so. But the opportunity that existed in the nineteenth century where you had certain families that owned certain businesses, and all that, that has sort of gone away. We do a lot of work for Hansen

Engineering and have been fortunate to do that and it has become a major engineering firm and we handle all their mergers and a lot of their other issues; so that's that part of it. The training of lawyers is something that we have always been involved in and my grandfather started the practice back during the thirties of hiring the lawyers during the summer who were coming out of law school or be out of law school just for summer jobs and we've always had summer interns, now right after World War II we didn't have too many. And after I got more involved starting again in the late sixties we've always had summer interns on a regular basis. And part of that is training and it's also a way that you figure out – and today it's a big thing, the law schools have people get summer jobs all the time, there's a lot of things, but when that was being done back then in the thirties or so. And then you see Logan Hay had a tremendous interest in Lincoln and he was one of the major powers behind the Abraham Lincoln Association and of course Bob Stuart, who's in the office now, he's president of the Abraham Lincoln Association so we've continued an involvement in that. We've been involved in various service organizations but of course most of those are starting to die as you know. The whole fabric of society in the last ten years is changing.

LAW: Why do you think that is?

STEPHENS: You tell me, I'm an observer now, okay. Well one of the reasons I'll tell you exactly what it is, instant communication; we all can learn things so much faster. It's just like today I went back into the computer and I wondered if there were any cases we had missed so I put my name in under Illinois cases to see what would come up and, you know, I can remember a lot of them. But just as a thing, and I also did it on the seventh circuit, just for the purpose; now that's instant communication, you get so much

knowledge so quickly, is the information good, not necessarily. The other side of the coin is that it's hard to find a feeling of what I call the common good, people wanting to do common good in society no matter what that is, whether it's the arts, whether it's music, helping somebody else. I think a classic example just happened and it's quite interesting is that the grandson of L.L. Bean, who just died, that's a privately held company, obviously more than successful, this man Leon Gorham died two months ago and it came out that he'd always been just sort of helping people at times and he'd been approached one evening by the person who ran the soup kitchen in Portland, Maine, which is twenty miles from Freeport where he lived, the last fifteen years every week he's worked in the soup kitchen cleaning up and doing the common good, and here's a man who could do anything he wanted; so that's the type of feeling. We don't see that much of it, I mean I'm a great, obviously I'm a great advocate of the common good and philanthropy and working on that, and I don't know why, I mean my son's active in it, I'm happy for him and he does a lot on it, but you know you gotta have that feeling. And it's a change in the mores, it's what drives me nuts to allow somebody like a [Donald] Trump to stand up there and yell and shout and call people idiots and everything else, I would no more do that because I don't think you get any place by doing it that way.⁴⁴

LAW: I just want to ask you some philosophical questions.

STEPHENS: Did you hit record?

BELZER: Just now.

STEPHENS: Okay, he told you to hit record, I was listening (chuckles).

⁴⁴ At the time of this interview, Donald Trump had just visited Springfield on a campaign stop and was the leading contender in the polls for receiving the nomination of the Republican party for President.

LAW: Well I wanted to start with what are your thoughts on cameras in the courtroom?

[01:30]

LAW: And a larger question is how should the judiciary relate to the media and the opposite side of that coin is how should the media relate to the judiciary?

STEPHENS: Well, let's start with cameras in the courtroom. I think the modern technology is such that cameras in the courtroom are alright, they're not obtrusive. In ninety-five percent of the cases nobody's gonna care what goes on. In the major cases that we've seen maybe they've been overplayed but I would like to think that it could be under control. If you'd asked me this question thirty-five years ago I would have said no, I wouldn't think there should be cameras in the courtroom.

LAW: What changed your mind?

STEPHENS: Technology.

LAW: I don't understand?

STEPHENS: Well thirty-five years ago you'd have a camera twice the size of that sitting there, they had to be set up in certain places, there had to be lights and everything else. Today, judges are operating off of computers anyway. We're seeing more use of computers and or iPads or tablets or something like that and now you can, obviously, you could have two cameras built into the courtroom, you wouldn't have any idea they were there. There's always gonna be people grandstanding but as a practical matter we just have to let that happen; but I think it's well. After all, trials were public for years, trials are public even today, so, you may not be able to get in because you weren't there on

time but why should we deny people access when we have the opportunity to have the access. So I don't have any problems with cameras in the courtroom anymore, I wouldn't have before. I honestly think it might be a good idea if you had cameras in the courtroom in the [U.S.] Supreme Court, I know they are fighting that very much. I think the seventh circuit has just said that they are gonna go to cameras in the courtroom. Here, the local courts – the only good thing about cameras in the courtroom is you wouldn't get the misquotes as you get from the newspapers and that's a plus. I mean there was a quote of something Judge Mills said in one of the local newspapers, in a matter that they were following, and one of the partners here in the office was in the courtroom, he was not representing, and another reporter called him up from a competing news source and said, "Did Mills say what this says in the paper?" He said, "No." And I happened to see Mills the day afterwards at the grocery store, I've known him for many, many years and I made some wise comment to him and he says, "Harvey I didn't say that," and I said, "Judge I want to tell you something, you didn't say that," He said, "Well thank you." So, you'd have accurate information of what's coming from the bench. There's no question that if you got the wrong judge who's trying to get ahead or something we could see all sorts of things, but we've got other ways to take care of it.

LAW: How should the judiciary relate to the media; what should be the nature of their relationship?

STEPHENS: Well first of all, anything that is pending before them, as far as I'm concerned, they shouldn't be commenting on it. I don't think trial judges should be involved in conversations with the media at all. And I really question some of the comments we've

seen recently from some of the U.S. Supreme Court justices, that seems to me that they're going a little bit far but some of them are prima donnas anyway.

LAW: Now what about the media?

STEPHENS: The media, I think the media has a right to ask questions but I think the media should be observers and accurately reporting what goes on and I have no objections if they say that they think this judge is prejudice or anything like that, I think they should. I couldn't imagine practicing – I mean here I know who the judges are but as I get older I don't know them as well as I did before but if I was going before somebody now, which happens infrequently, I would go ask somebody before I went to understand their prejudices or likes or dislikes. But could you imagine in Cook County walking into one of those courtrooms and the person just totally dislikes defense say or totally dislikes women, if you don't know that in advance then maybe the media would pick up on that. The media has the right to do fair commentary as long as it's accurate.

LAW: Has it been your experience that that's been the case here locally?

STEPHENS: Oh yes, on the whole yes, although this one incident was a surprising incident but on a whole I think it has been. I think it's been prejudice one way or the other but that may be because I'm on the other side of the issue (laughing), okay. But I mean a fair comment by the media I don't have any problem with that.

LAW: As a lawyer, what are the best means to enhance the public's awareness of the judiciary and what the judiciary does?

STEPHENS: That's somewhat of a tough question because the judiciary doing their day-to-day job, it's not exciting. The public needs to be told that they are, when people ask me

that these are good judges, that they're doing their job. When somebody rants and raves about A not doing something or B at a cocktail party or something like that, I think you should speak up and just say well this is their job, they're doing what they're supposed to. I mean, every issue that comes before a judge has got two sides to it and so the judge rules in favor of A and B is a great popular figure and everybody says or go the other way and rules against B, the popular figure, and throws B in jail or say he's prejudice and all this, that may not be true because didn't hear the evidence, didn't hear what the facts were or there. So I guess; how do you enhance the judiciary?

LAW: The public's awareness?

STEPHENS: That's a difficult thing to do. We do do bar polls, which, they aren't as strong as they used to be but people criticize them because they're just lawyers telling you what they think the judiciary is, I think its important. And of course we had the problem, we had the Illinois Supreme Court, the two of them resigning because they were getting paid on cases, [Ray I.] Klingbiel and whoever the other one was [Roy J. Solfisburg] and that's a discredit.⁴⁵ We have to at least indicate who are our good judges as best as we can, how to get that word out I don't know. Because, again it's something that the media isn't gonna talk about very often, they're only going to be there watching something that's going on that is a newsworthy story.

LAW: Do you think the public is aware of what the judiciary does and is it accurate, or is it based on TV shows?

⁴⁵ For more on this scandal see, Kenneth A. Manaster, *The Scandal of 1969 and the Rise of John Paul Stevens* (Chicago: University of Chicago Press, 2001).

STEPHENS: Well that part of the public that is in before the courts for some type of violation, criminal violation, is gonna have a very much of an awareness of it. Those people who have difficulty paying bills are gonna have that, they're gonna be aware of it through adoption guardianship and probate also opens a lot of people's eyes to it because probate or the probate proceedings involve guardianships, involve, of course, estates, but there's a lot of arguments there, and those are people who normally are not exposed to the court system. I think they're aware of it through the tort part of it, especially the plaintiff's attorneys. I find a great deal of abhorrence with this ad being run in Decatur right now, "If you had an accident that wasn't your fault call us up and we'll give you advice." Well first of all how do you know it wasn't their fault? I mean that's what bothers me about the ad. And we've got another of others; we've got the horse rider over in Decatur, other's here. The public's aware of those people, they're also aware though that most of those attorneys never try a case because they're only in it for a settlement. But making the public aware of what judges do I don't know, I think as much education, a lot of times they take school children to courts to see what's going on. But what's the case gonna be, not many of them are going to be jury cases and there is a person, he or she is sitting out there making decisions. But the important thing about it is the judiciary is there to make the decisions, right or wrong, and that is so much more important than the alternative methods.

LAW: Are you a member of any bar associations and what is the nature of the relationship between bar associations and the judiciary?

STEPHENS: Well yes I am a member, I'm a member of the Illinois Bar Association and have been since 1960, I'm a member of the bar association in the seventh circuit [Seventh

Circuit Bar Association] which is the lawyers who primarily practice in the federal bar and I'm a member of the American Bar Association. The Illinois Bar Association, at its annual meeting, always has a joint dinner with the Illinois Supreme Court; this has been a long tradition. I don't know how many people actually participate today because the bar has gotten so much larger. The bar association of the seventh circuit I have attended one meeting but I have been a member for many, many years, primarily because a lot of their material is very, very good. They have an open meeting with the U.S. Supreme Court judge and the members of the bar here every year at their spring meeting. It used to be Stevens, I don't know who handles the seventh circuit now; obviously when it was Stevens it was a lot easier because he knew half the members that were there. So the bar association in Illinois used to run discipline, what is now run by ARDC was solely done by volunteer lawyers, under the Supreme Court but in conjunction with the bar association before the Supreme Court decided to create ARDC. In fact, one of the men in this office, Leigh Kagy, used to be one of the people who did initial review on all the complaints that came in.

[01:45]

But with judges there should be freer interaction; I think today, not as much as there used to be. Part of that is because of security reasons and the nuts that are out there. When I first started practicing walking into a judge's chambers and sitting down to discuss, maybe a case or something else you had, it was fairly common, it didn't make any difference. Of course in this community here we know most of the judges. The one's we know we see out and around, you know, so be it. That's a nice question, how should the bar do a better job of getting; okay.

LAW: What is the nature of the relationship between the bar associations and the judiciary; I think I've gathered it.

STEPHENS: I think it's fairly positive. The Illinois state bar today is primarily dominated by the tort lawyers, plaintiffs. But they still have a lot of people involved in the other sections and leading to exchange ideas, if you want to get involved and get involved in a section; it can be very informative. Again, because of communication, people not going to meetings, it's changing. Most of the judges are still regional. Having bar membership I think helps them when they're being considered. Of course, there's a lot of politics in the appointment of associate judges. But that's not much different than it used to be when we elected everybody but we appointed police magistrates.

LAW: That was another one of my questions. What are the politics of the judiciary, how does one become a judge and what are your memories of the political aspect of the judiciary? We've sort of touched on that.

STEPHENS: Well the politics of the judiciary are that in many areas those people who eventually become judges, and Sangamon County is a classic example, worked in the State's Attorney's office and normally were republican in this area.

LAW: Has that been true over the last fifty years?

STEPHENS: When you always had to run for office, including the county judge and the probate judge had to run, yes you had the political parties in it but you – if somebody was head and shoulders above the opponent they might win. Today, with the appointment of the associate judges that's controlled by the judges and that's the makeup of the judges. So yes, there's politics involved in it and in fact there's a vacancy coming up right now

and somebody told me who they're gonna say is gonna be appointed. The same is true in the federal bench of course; the federal bench is definitely involved in politics. I mean, an example, there's nothing wrong with it but one of our partners in this office, Tom Schanzle-Haskins, just got appointed federal magistrate and he had applied for the federal judgeship before. He's been a long-time democrat. And obviously the appointment was the chief judge's appointment, who is [Sue E.] Myerscough, but Myerscough was of course a democrat, she'd applied before and didn't get it; so the politics have always been in it. In Illinois I don't know it's ever gonna change. In 1960 they were trying to get a constitutional amendment to provide that judges would be elected by a panel, I mean appointed by a panel. And you'd have three people on the panel and then you'd have a republican and a democrat and a so-called independent or whatever; Missouri has some system like that or something else. We've always elected and that's carried today, we've seen the abuses of it like the last time around when they went after [Illinois Supreme Court Justice Lloyd A.] Karmeier on retention.

LAW: But has politics ever affected the rule of law in a negative way? Can you get a fair and impartial hearing if it is inherently political?

STEPHENS: Well, in a negative way, that's a little too strong a term. If a person is of a given political background, and political philosophy, and you have a case that may involve that their initial reaction is gonna be to go with their philosophy, and to get them out of that is going to require a lot of very strong argument. So yes, politics are involved in that if you say politics are their own philosophy. For example, the seventh circuit used to be considered an extremely conservative circuit when I first started practicing and then Kennedy appointed some people and it's become more diverse, I mean it's changed. And

this is true of other circuits and you see opinions that are working their way up and you see people who have strong political philosophies about government and about social issues, whatever they are, or business issues and they're gonna rule a certain way; and is that politics or is that their philosophy. Poos was known to not like the IRS, why, I don't know, I mean he comes from Hillsboro, Illinois, but there probably in the course of the last ten years there were five or six IRS cases before Poos which the IRS lost every time and then they won on appeal; so are politics involved, who knows. Politics from the point of view that a party boss or somebody who is controlling the party, through, controls the decision, I don't think so. But what their background is is gonna affect their decision making.

LAW: Have things become more polarized?

STEPHENS: I don't think they're any more polarized than they ever were.

LAW: What is the role of the judiciary in society and what is the role of a lawyer in society?

STEPHENS: Well the role of the judiciary is to resolve the issue whatever the issue is, they are the decision maker. Something is presented to them and they decide it. Now granted you have a jury that's involved, but I mean if you have a jury trial where it's gonna be the jury, but even with a jury the judiciary is in the position to say a verdict notwithstanding the jury verdict; so they're the decider. The role of the lawyer is to understand the issue and in my cases that I talked about earlier, to find a solution and in the litigator's case is to present the best facts that already exist of his client before the decision maker. I mean I kid my litigators here, I say, "It's easy for you guys all you gotta do is find out what actually occurred," I said, "I gotta go come up with an idea to solve the problem."

LAW: What are the benefits of doing pro bono work and have you been engaged in any, well, I'll just leave it at that. What are the benefits of doing pro bono work?

STEPHENS: Well the benefits of pro bono work really take two different forms. One, in our office here, as long as I was here, we'd have a number of cases of people of limited means who needed something to be done and they would come and whether it was pure pro bono or whether it was like of something that would be a hundred dollar fee we'd charge them five bucks so they had a little pride. Pro bono, frankly, is part of our job. If people cannot afford we develop lawyers' assistance, Land of Lincoln, whatever it is, lawyers' assistance day and other things, but those people need representation and that's the purpose of pro bono. I represent the Community Foundation for the Land of Lincoln right now and unless I get something that's litigation I do all the work pro bono because I want to give something back to the community, I want to see this grow; I believe in that organization. And pro bono for people – I mean I had a situation where a long time client came to me and he had a nephew who had been railroaded in a situation in Alabama and we figured out a way to get it worked out as best we could and I said, "I'm just not gonna charge you, this is wrong, the system's wrong." But the real people on pro bono are those who can't afford and they need representation and they need the best representation that they can get. If you practice law only for the dollar, in my mind, it's foolish. That's not the way to do it, you're not gonna have a good practice, you're not gonna enjoy the practice of law.

LAW: What role do you think our commission can play in preserving the history of the courts in Illinois? How can the courts and the commission work together to preserve records, collect oral histories and develop materials or memorials; any suggestions?

STEPHENS: Any suggestions. You could become the central index, eventually, of the historical records in one hundred and two counties. Many of the counties have computerized or put something on, what are, when you flip the things, they look like rolodexes.

LAW: Microfilm?

STEPHENS: Microfilm. But I'm willing to bet that there is no place in the state today that you could go if I want to know about what occurred in, say, Alexander County or someplace else. And you would say, alright, they have this information on microfiche for this period of time so that you could make the inquiry to go get it. Obviously in the wonderful world nobody can afford it, you'd scan everything and you'd have the super computer in the sky but we can't do that, but what's the compromise, the compromise is to be the index. Because we still rely on title firms to do title checks for us because we don't have abstracts anymore. I'm dealing with a question right now of somebody building a building on my client's ground and the building now may have an EPA problem and my client never gave me permission to put it on, that we think, but my client's are beginning to lose their minds

[02:00]

so we don't know if it's right or wrong. I don't have an abstract for that property to go run the history to see so I have to go to a title company and ask. But there're all sorts of records that you may want to check. I go to surrounding counties sometimes and just sit down with the books, where they haven't microfiched. But what are the records – and the county clerk's organization or something. But for the courts to have this, because you

know in fifteen years we're gonna have to stop having one hundred and two counties, or twenty years, because of the fact that there aren't people living there, there aren't people doing the job. The smaller counties the lawyers are leaving, they have less lawyers today and few coming back in, because there just isn't the business; but that's one way. The second way is that, you know, you need to go around and find out from ex-Supreme Court judges and Appellate Court judges what they might have in their files, what did they keep as records. Before my last semester of law school there was a function at the law school and Judge [George W.] Bristow who was a sitting judge in the Supreme Court was there and I got to talking to him, well he was from Danville and that's where my grandfather was from and he recognized the name and everything and I said, "Well, I'm now worried about studying for the bar and everything," he says, "Harvey I've got a whole set of documents that you need to come down and read," so I drove down to Danville and he gave me a whole stack of things to study for the bar exam. Now I took the bar review course but what he did in sort of showing the idea was worthwhile. And that gets me thinking, all these appellate judges they all have clerks today but going, historically, going back ten years or fifteen years they didn't have that many clerks or before, of course, they were all trial judges, they'd all sat by assignment downstate. I'll bet there's a treasure trove of information sitting in some boxes some place; so that's my other suggestion. And frankly I have enjoyed this interplay with you, it makes me think and so I think you're doing a good job there.

LAW: Thank you sir. Okay, do you remember when I asked you at the beginning about the composition of the local bar when you first came to town?

STEPHENS: Yes.

LAW: Okay, so now there's today, 2015, how has the local bar changed over time and what's the composition today; what's your understanding, how has it changed?

STEPHENS: Well it's changed in that you do not have as many sole practitioners. It's changed in that it's probably fifty percent female today. I don't know that for a fact but I mean I wouldn't be surprised if that's it. Some of the local firms are no longer local, Gillespie being one and of course Heyl Royster came in, Giffin's office is smaller, other than that it's, I think it's larger and I do not believe that there's the level of interaction that there used to be. I mean, bar functions, well they've just started again the annual gridiron show which we would have in November or sometime and it was very well written, a lot of people got chewed on; we haven't had that for five, six, seven years. There was always an event in the summer. But the bar meetings, I think, used to be at least monthly or say ten months out of the year and were fairly well attended but that doesn't happen that much anymore. So, the organized bar is not as strong as it was and as I would say I don't think there's the interaction to the extent it was before. But the bar itself, except for the gender thing, I think is an extremely capable bar; you don't have to go out of town to get good advice. Now some people think they do and they can pay four times what we would charge them and we'd give them the same advice in half the time.

LAW: What about legal work and trial work, has that changed a great deal over time too?

You've alluded to the abstracts being a kind of a good example of that; but locally?

STEPHENS: Yes. Locally, we don't have as many businesses as we used to have. I mean, we used to do work for Allis-Chalmers, we didn't do their workman's comp but we did everything else. I forget who represented Sangamo [Electric] but there was that, Sangamo's no longer here. So you have a situation where the business is just not much.

We've been fortunate we continue to do work for the hospital, we used to do a lot of their governance work, we don't do as much of that today but a lot of these things they don't need the help on that. But, you know, a company like Hansen we created and did an ESOP [employee stock ownership plan] for them, so there's a number of things you can do. The nature of the legal work is that it either focuses on advising people on how to solve a problem, businesses, how to deal with that. You have a whole field of employment law that never existed. In 1960 if you called me up and said, "I wanna fire somebody," and I'd say, "Do they have a contract?" They'd say, "No," I'd say, "Fire them," now there's a whole body of law; so that's a different area of the law. As I mentioned domestics has expanded, I don't think it's any better or easier than it was before (chuckling) it's just there's more of it. Real estate has fallen way off because of the fact that we don't go to real estate closings any more or hardly ever. Probate is gone because we don't have the Illinois inheritance tax like we used to and because the federal and state tax now has such large minimums that we do a lot of things to avoid probate, revocable living trust, powers of attorney; so we adapt but some of the more routine things we did for basic business isn't there. Litigation continues to be there, bankruptcy continues to be there though it's become a lot more sophisticated because we see a lot more Chapter 11's today than we used to and we see some Chapter 13's. We still, fortunately, represent a number of banks where people with banking interests, it's not the big one's here that were expanding but we probably represent on an ongoing basis, I guess my son must represent ten to twenty different banks and people come to him to deal with issues.

LAW: Are there any cases you have been involved in that you struggle with today?

STEPHENS: Well now struggle with, if you mean are there situations representing clients where I struggle with them that's one thing but a litigated case, no, I don't struggle with that today.

LAW: It's over, it's done.

STEPHENS: Well it's done with. It may have caused me a great deal of angst, I may be dissatisfied with the result, I may be upset with the opposing person, the opposing counsel, and I may be upset with my own client but once litigation's over with it's over, we gotta go find tomorrow's business. As far as people on an ongoing basis, people who are difficult to deal with, we have that all the time, difficult in that they are not sure what they want to do, they have family situations that are unsettled, they have medical situations that are unsettled; so, everything that affects society we will be dealing with in some way.

LAW: What are your thoughts on the future of the profession, what does the future of the profession hold?

STEPHENS: I continue to be positive about it, I continue to believe that there are problems that need to be solved that require the training that a lawyer has to address an issue and try and figure out a way to solve a problem. I think there comes a unique thinking process and I also believe as people continue to disagree that there's gonna be tons of litigation.

LAW: If you had to do it all over again would you do anything differently?

STEPHENS: My wife and I discuss that often (chuckles). I really don't think so. I often thought, and I mentioned early on, I could have gone to the city to start with, I never

really wanted to go there, I just spoke with a young woman today who's been with us about two years, very talented, and she wants to try something different, a different type of job and I told her, I said, "I want her do what you're happy with what you're doing," but I said, "You know the reason I think you find in general practices, frustrating as it is, at least in this size of a community we are talking to our clients, we are talking to the decision makers, the person who calls us up and asks us to do something is going to be the decision maker. It's not a situation of where you gotta go all the way through it, you may be dealing with somebody at a lower level but at the same time you know that it's gonna be presented and you're gonna be called on the line for it, you've got that opportunity, which means you're dealing with the people who have a variety of talents and are very, very good at it. And it's that relationship; you gotta like people to practice law. I have classmates who are experts in pension law and I can't think of anything more boring than sitting and reading that damn

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pension code, part of the IRS, and writing articles on how you qualify under ERISA [Employee Retirement Income Security Act of 1974] and don't qualify under ERISA and this and that. I'd much rather be dealing with somebody who's gonna be starting a business or do something like that."

LAW: Mr. Stephens what do you want to be remembered for, what is your legacy?

STEPHENS: Well I think the most important legacy is that I'm honest and I can be trusted, after that I don't have any great goals, I haven't written my obituary (chuckles).

LAW: Mr. Stephens that's all I have for you unless there's anything else you'd like to add?

STEPHENS: No, I thank you very much I was somewhat apprehensive about this when it started and frankly you've given me an opportunity to talk on forever and I love it; thank you very much.

LAW: Thank you sir.

[Total running time: 02:16:02]

END OF INTERVIEW THREE

END OF ORAL HISTORY