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Interview with Dan Wathen by Andrea L'Hommedieu

Daniel 'Dan' E. Wathen

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George J. Mitchell Oral History Project

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Daniel E. “Dan” Wathen
(Interviewer: *Andrea L’Hommedieu*)

GMOH# 152
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Andrea L’Hommedieu: This is an interview for the George J. Mitchell Oral History Project at Bowdoin College. The date is September 29, 2009, and I’m at the offices of Pierce Atwood in Augusta, Maine, with Former Chief Justice of the Supreme Judicial Court of Maine Daniel E. Wathen, and this is Andrea L’Hommedieu. Former Chief Justice Wathen, you did an interview for the Edmund S. Muskie Project at Bates College several years ago, where they asked you a lot of questions about your family background and growing up, so I won’t repeat those questions today. I’d like to start maybe in law school, and how your legal career began.

Daniel Wathen: Well, I went to law school, began in 1962, with no great sense of conviction. I had graduated from a small college in northern Maine at the time, Ricker College, and had enrolled and was accepted in a graduate program, and at the last moment my brother, who was a lawyer, the first in our family, came along and said, “Why aren’t you going to law school?” I said, “Well, I don’t have the money to file an application.” So he paid for my application. He wanted me to go to D.C., but I went to University of Maine, because it was just converting and becoming University of Maine, which was a good thing.

So I went there, and did very well in law school and really enjoyed it. Law school was sort of my niche in life. I’d been a mixed story up until then, I had flunked out of college a couple of times and then I was a dean’s list student, so I hadn’t really found my place in life, and law school was it.

AL: Was it the professors there who contributed to it, or was it the study?

DW: I think it was mostly, well the professors were great, and [the school was] very small, and it was just exactly what I needed. But I think the law was what I was interested in – I didn’t know it at the time – and what I was good at, and so all of a sudden I was doing what I really liked and doing very well at it. And they were very supportive, particularly Dean Godfrey, who was the patron saint of the law school.

AL: What was he like?

DW: Oh, he was a fantastic guy. He described the admission, my admission as, that he looked at my record, and that it appeared that I had had an epiphany of sorts in my junior year, and he said, and went with the epiphany, because before that it was bleak. So he, and he was very supportive of me. I’m not bragging, but I became the top student in the class, and became the

editor-in-chief of the Law Review in the second year, which was very uncommon, so I was editor for two years. But everything that was written and went out of the law school the dean was involved in, so most of what I know about legal writing, and writing in general, I learned at his knee, because we sat and edited the Law Review, and I worked on some independent projects for the legislature at the time and he was deeply involved in every one of them, because it reflected on the law school, that was his mantra.

But he was an exceptional person. Strangely enough, he wasn't a great classroom teacher, he was quite boring. I mean he was good, you got the material, but he was boring, and he taught professional responsibility and estates and trusts, I mean it was not the, and it was a big snore. But every student really loved him and they all felt, and it was true, that he was really our mentor and one who had us really, our interests close to heart. And so you come out of it thinking, 'boy, I really had a close relationship with the dean,' and then years later you think, 'yeah, I did, but he had a close relationship with everybody else at the same time.' Of course the school was small, which helped him do that, so. So that was, I give him a lot of credit for my getting involved in the legal world and doing well.

And I liked it so much, law school, I think I could have, if I could have stayed as a law school student I probably would have, because it was just, it was an endless joy to work on whatever there was, and you got a lot of support and a lot of favorable comments about your work, and you felt like you were doing great things. So it was a great time in my life, with the dean and the others there.

They had a superb faculty at that time. It was small, but the law school was small, and that was the pur-, the design was that they were going to become fully accredited, which they did in the first year that I was there, and that they were going to focus on the quality of the law school and not the numbers. So there were only ten of us in the first year class that I was involved in, so it was like a private seminar with some of the best professors they've ever had, like Harry Glassman, and there was a Professor Waite who was particularly good at real property, and others. So it was a great time.

AL: And were most of your classmates from Maine? It's pretty heavily Maine oriented, isn't it?

DW: Today, yeah, and it was then, although I think at that time there were, out of the ten of us I think there were two, I know there were two at least, one was from New Hampshire, another one was from Massachusetts, and so actually I think the numbers were about like they are today. I think they're still predominantly mostly Maine, but still a pretty good, probably thirty or forty percent from other states.

Maine draws a lot of people to the law school, and the clerkships, because even though they're not from Maine, they've gone to summer camp in Maine or they've vacationed in Maine, so they consider Maine. So when you interview law clerks, for example, we'd get applications from all over the United States. We would say, "Why are you interested in coming to Maine? You're

going to law school in California, or Texas.” “Well, I went to summer camp here and I’d like to come back.” That’s the Maine attraction.

AL: Right. So eventually you did have to leave law school.

DW: Right, eventually I got kicked out of law school and had to go to practice, and I came to practice here in Augusta with my brother, who was at that time a partner, he had been in the Attorney General’s Office for three years and then had started a firm with others, a three or four man – and it was men in those days. Interestingly enough, there were no women in law school when I went to law school until the last year, and then there was one woman, so it was a man’s world at that time.

AL: And this was -

DW: ‘Sixty-two to ‘65, yeah. So I started practicing here in Augusta with my brother and three or four others. The firm eventually became Wathen & Wathen but it was known by a number of names before that. And my brother had developed a practice representing a lot of state agencies, because of his prior work with the Attorney General’s Office. And the Attorney General’s Office was very small at that time, four assistant attorney generals, one deputy, and the attorney general was a part-time, ceremonial office, so - I mean today the Attorney General’s Office, I don’t know, there’s 125 lawyers at least, I would guess.

But at that time it was very small, so when people left they often wound up representing some of the agencies in state government that they had served previously, and that’s what happened with George [Wathen]. He had been here and been in practice for close to ten years by the time I came along, so I represented a lot of, with him, a lot of state agencies, sort of the independent state agencies. And today most of them are covered under the FAME, the Finance Authority of Maine, but at that time there were a number of separate agencies, like Maine Guaranty Authority, Maine Industrial Building Authority, Maine Recreation Authority, Maine Municipal Bond Bank, all of that. And the other half of our practice was traditional sort of trial practice, a lot of personal injury work, we represented both insurance companies defense and plaintiffs, which was the routine at that time. There were probably only twenty-five or thirty lawyers in the state that did personal injury work, and they tended to do both sides. Not in the same case, but. And so that was my practice, and I started here in ‘65 and did roughly fifty-fifty of trial work and transactional work.

AL: And what was your brother’s name?

DW: George, George Wathen. And my brother died young, I think he was forty-one, in about 1971, and so the practice sort of became mine at that stage, with still four or five others involved, but it was sort of my practice. And it was in that, in connection with the financial work that we did for state guaranty agencies where we met George Mitchell, that was our, that was the beginning of that. And in the ‘60s, in the later ‘60s when my brother was still around, there was, I think George was at that time – George, too, had gone to, my brother went to law school in

D.C., and George [Mitchell] had gone to law school in D.C., I think it was Georgetown that he went to, or George Washington, but I think it was Georgetown, and he was working for Senator Muskie and was part of Muskie's staff. And among the projects that we bumped into George on was, there was a famous and infamous sugar refinery project in northern Maine -

AL: The sugar beet, yes?

DW: Yeah, Vahlsing was the gentleman who was prominently involved with it, but there was a Vahlsing Potato Company, which was a potato processing plant, which had been built - I actually worked there when I was in college, building it, I worked there one summer. My parents both worked there eventually. This was in my hometown, this Vahlsing sugar -

AL: Is that Houlton?

DW: Easton. And so sometime in the late or mid-'60s, just about the time I came around here, the sugar refinery, which was a major undertaking, it was designed to give northern Maine a second crop, and had a lot of problems and was eventually, didn't succeed. But there's a happy end to that story nonetheless for my hometown, and for the economy in Maine. But in any event, it was in that context that we first started bumping into George, that he was -

AL: He was representing Freddy Vahlsing?

DW: Well, at that stage he was on Senator Muskie's staff, he was sort of staff to the project. And this was being financed by loans, guaranteed loans from the Economic Development Administration, which was the federal side, and by this Maine Industrial Building Authority that was the side that we represented. We usually had a first mortgage, and the feds had the second mortgage on a plant and equipment and things like that. It was about a thirty million dollar project, in the 1960s, so that was a lot of, a huge project for Maine.

And my parents were working for Vahlsing Potato Company at that time, my mother was in charge of the women in the processing plant, they employed maybe like four hundred women and she was sort of the foreman of the processing workers. And my father, who had been a potato broker all of his life, did the buying and the weighing in out front as the potatoes came in. And this, they were at the end of their careers at this stage, so it was a very nice thing for them.

And in that process they actually, when George started coming there, first as a staff for Senator Muskie and then eventually, and I'm not sure, I think it was in the late '60s, eventually he left government employment, came back to Maine and went to work in Jensen & Baird and a private practice, and began to represent one or both of those companies in a variety of things. So in that context, my parents became acquainted with George I guess before I did, and my brother probably had known George better than I because he was more involved at that time.

AL: Did your parents have impressions or recollections they shared with you?

DW: Oh yeah, yeah, it was always, the thing that I remember most was that my mother was very impressed with George. And of course, since her sons were lawyers, she assumed that we were all on the same page I guess and so she would, before I had really met George, she would tell me, 'oh, George Mitchell was up the other day,' and what a wonderful guy he is. And I would, I was sort of like, who cares? I mean, you know. Yeah, okay, so you met a lawyer, big deal. Of course, I was young and filled with myself at the time and didn't really think that anybody else deserved a lot of attention. But in any event, she and my father became very friendly with George and very, they always spoke, every time I got a letter she would say, George Mitchell was here the other day. And so it was in that context I began to know him.

And I think about, I think it's around 1968 – it's funny how some of these dates stick with you – the potato processing plant got into a serious environmental situation, because it had a bunch of crappy potatoes at the end of the season and their process for taking care of the waste was inadequate at the time. And so they got into, there was an international incident where the Canadians blocked the Prestile Stream, where it went into Canada, and every agency in Maine was after Vahlsing, Inc. for what they were doing.

The sugar refinery and the potato processing plant were side-by-side, and served by a common steam processing electrical generation. In other words, the utilities were jointly owned in the center of this, one side was this huge sugar refinery, and on the other side was this huge potato processing plant, all in the town of Easton. And to this day, those two plants still pay probably ninety-five percent of the taxes in Easton, I mean it's the, it is the Easton economy, with the addition of some farming and some woods work. So Vahlsing, Inc. was the one who was in trouble, but it reflected as well on the sugar refinery, and the sugar refinery was having agricultural problems at the time.

So that was when I first actually began to have direct contact with George, because he represented Maine Sugar Industries, the clean one of the two, and I representing Vahlsing, Inc., the less clean of the two, during that period of time when there was so much furor that particular summer over the environmental problem. So that was when I really started knowing him a little bit.

AL: What was, you'd heard a lot about him before you met him.

DW: I certainly had, yeah.

AL: What was your impression upon meeting him?

DW: Well you know, his, he has a very engaging smile and style, and he's very good at meeting people like my parents, I mean he's sincere and he called them Joe and Wilda and really knew them in a good way. And I don't think George ever went up there that he didn't stop and say hello to Joe and Wilda on the way. At the gate he would talk to Joe, and then he would go in and talk with Wilda. So, he has a real twinkle in his eye, and a sort of a sly smile, I mean a subtle smile I guess I'd call it, which is really engaging. I mean when you get to meet him, you

know, I can understand why my mother thinks this is the best thing since wrapped candy.

And the thing I remember about it, we were talking, even though these were two publicly traded companies, publicly owned, Freddy Vahlsing, Jr. was the CEO of each of them and he was the force in both companies. And I can remember we were talking at the beginning about who was going to represent which one of these companies, whether it was going to be me or him. And George, with a big smile, said that he thought I deserved, in effect, that I deserved to represent Vahlsing, Inc., and that he would go in the other direction. So even then, it showed you that he knew what he was doing.

So yeah, so I learned to, I met him, and I worked with him not a lot in that, but I mean we were in contact. But our, to this day I think our principal contact is my parents. I mean we always talk about Joe and Wilda. If I'd see him somewhere, he'd say, when they were alive, he'd say, "How is Wilda, I haven't seen her for a while?" Or, "How's Joe?" you know, so on and so forth. And I think Joe testified in a case that George handled, I call my father Joe, and Wilda, my parents, and so he and, that was a bonding experience for George and Joe. In any event, that was the, so from that point on, no matter where I met him it was, 'oh, how is Joe, and how is Wilda,' and so that was -

AL: Can you talk to me about Freddy Vahlsing? He was, he's been described in powerful ways. What was your impression of him?

DW: Well, Freddy, I had known his family, Vahlsing, Inc. had always been in Easton, my hometown, and they were at the, before the processing plant began in 1960, they raised potatoes in Aroostook County. They were sort of the bedrock of the fresh potato market in Easton, although there were a number of others at the time, but they were one of the largest ones. And then in New Jersey they raised vegetables, and in Texas. The father was in charge of it at that time, Fred Vahlsing, Sr., and he was a much revered person up our way, and he had - The people who ran the organization for him in Easton were the Litz brothers, all Germans, and they were the salt of the earth up there, they were really great people; tough businessmen, but very reliable, handshake everything.

So this was sort of a dynasty that had been in our town for a long time, and Sr. would come to town once a year and would have Texas cowboy boots on, which you don't see often in northern Maine, in those days you didn't see it very often. So in the '60s, when he started talking about building a potato processing plant his son, Fred, Jr., had just graduated from Princeton or wherever as an engineer. And he took, that became his project, to build the potato processing plant. And with his engineering background he was deeply involved in every aspect of it, I mean he, Freddy was a guy who just threw himself into whatever he did, he was just obsessed with, and money was no object, and he would build something, tear it apart and rebuild it again, and that was his genius, and also his failing. I mean he was, he probably did a lot of things that he didn't need to do, and would have been better off if somebody else had handled it.

But in the process of that, building that potato processing plant, he became the symbol of that

organization, and as they needed financing – we also, I wasn't around for most of that, but my brother had handled the financing of that, we had a state guaranteed mortgage on that plant, and that plant was always very successful, with the exception of the environmental problems which it had, but financially it was successful.

So Freddy was this sort of mad scientist type, obsessed with getting done whatever he set out to do, and as these projects came along he became more and more deeply involved in relationships with the government because he needed EDA loans and state loans. And he was a salesman, I mean Freddy, he had started out in his company, even though he was an engineer, selling vegetables, that was what his, and he was a salesman. And particularly he could do things on the phone, he could run the world on the phone, and so he would often have a desk that had four phones on it, and people manning all four phones. And if you got a call from him, they would say, would you hang on, Freddy's calling, and you'd listen to somebody else's conversation that he was talking to on one of the other phones. And they kept them lined up so that there were always three or four people waiting. So he was a different kind of guy.

But the interesting thing is, you'd think, well that kind of a guy, he probably had this opulent office. Well he didn't, it was a little rat hole down in Robbinsville, New Jersey, and the desk had the four phones but that was all there was room for, was the four phones and four people, and that was, but he could run the world from there. So he became well known in government circles, and in Maine circles, as someone who could get things done and was, would build a very successful potato processing plant in northern Maine.

AL: Is he still living?

DW: No, he died probably fifteen, twenty years ago. And the other thing was, he worked nonstop, and he had planes and he flew back and forth, and like his father he wore Texas cowboy boots, and he was constantly flying back and forth. He always had a pilot with him; he was a pilot himself but he usually had one with him, because he was so distracted by what he was doing.

So it was a lot of fun to work for Freddy because you got flown all over the place, you were always, but he would have people backed up, I mean, and he didn't make great use of people because he had them waiting while he did other things. Everything focused on him. I mean, he was a bit of an egomaniac, but a lot of people, when they're successful in life, are.

But I think what happened with the sugar refinery, people had the tendency to blame Freddy for getting into the sugar refinery and, because it was a marginal call as to whether the state should even be in that. But I think actually what happened was that there had been, there was a national company, Great Western Sugar Company, I believe it was called, who came here first and did a feasibility study, at the request of Senator Muskie and the Maine delegation, and the Maine delegation was seeking to get a second crop for Aroostook County, because potatoes were the only thing. They'd never been successful in encouraging the development of a second crop. They had a few crops, like peas and broccoli and that sort of thing, but they never achieved

commercial level.

I mean at that time we were raising two hundred and twenty-five thousand acres of potatoes in northern Maine, and we just didn't have anything to rotate them around with. You needed to rotate it, and so they would raise peas or something, break even, or maybe even they'd lose money, but it was a rotation for the potatoes, so everything served. So the goal was that we have a crop that was actually economically viable by itself, that would be a second cash crop for the County.

Great Western came, did the feasibility studies, and said that it will always – and Freddy wasn't involved in it at all at this point, this was Great Western who was going to come, if they did it, build their own – and they came, and their feasibility studies said, agriculturally, it will be a marginal operation. There were some problems with depth of the topsoil in northern Maine, which is not particularly deep, sugar beets need a taproot that goes down, so you're better to have three or four feet of topsoil, and northern Maine, it's typically eighteen inches or sometimes even less. And the pH of the soil wasn't ideal, and there was some question about how compatible the pH was, that was required for beets was with, in connection with some of the varieties of potatoes that were grown, some of them. The processed potatoes were fine; they could grow on beet land.

So the effort was dying, because Great Western wasn't interested. And I think that Muskie, Senator Muskie actually went to Freddy and said, "Would you be interested?" And, "Would you become involved in establishing the beet industry in northern Maine?" And Freddy eventually said yes, obviously, and went to work at it. And he did an absolutely masterful job of building a sugar refinery in a couple of years, he built this humongous sugar refinery, and then all of the support around it, including the farming operations, because it was, the Maine farmers were not anxious to get into raising beets, they were satisfied with potatoes, they knew how to raise potatoes, they didn't want to raise beets, and it was marginal.

So it took on more than just a sugar refinery, they had to have a pretty extensive farming operation, which included leasing some land, hiring people to raise beets, that sort of thing. And eventually they planted beets pretty widely throughout Maine, and so they had to put beet loading stations and they put in eight beet loading stations around Maine, some of them as far down south as Farmington and that sort of thing. So this was the, a pretty major effort.

And the, all of the marginal factors that had been mentioned turned out to be true, unfortunately. And you know, with farming it's always a question of one year you get rain, the next year you don't get rain, and that sort of thing, so some of that played in. But the sad fact turned out after two or three years that you could only raise, on most of the land, and people tended to use their poorer land for sugar beets up there, for most of the land, you might get eight or ten tons of beets to the acre, and you needed sixteen to break even. So you got, it was just like Great Western had said, you weren't getting the tonnage that you needed.

But it was spotty, there were places where they would raise twenty-six, thirty tons to the acre, so

it was kind of hard to know whether it would go or wouldn't go. Some of the locations down in southern Maine, Farmington, they raised some in Bowdoinham too, as well, some of those raised some of the best beets that was ever raised and it was, probably had to do with the depth of the topsoil, those were old river bottom -

AL: Near the Sandy River.

DW: Yeah, and so they would raise thirty tons each to the acre, and right there near the plant, and of course there wasn't that much land down here, there was pretty limited quantities of that river bottom land. Right near the plant, they'd do well if they raised eight or ten tons to the acre. So by the late sixties, the sugar beet, the industry had fallen apart. Freddy became the pariah, he had had, the sugar beet industry had gone down the tubes, the federal government and the state government foreclosed on the sugar refinery, and I represented the State in that.

I had, my work for Freddy during his problems with Vahlsing had been done with the consent of our state agencies, because they wanted to keep it alive, so I was representing Freddy, but with their consent. And so we started foreclosing on the sugar refinery, and Freddy was having, still continuing to have environmental problems, although he cleared it up enough so he didn't have any further incidents, he started using, irrigating that water onto the land rather than discharging it into the brook.

And so he became the pariah, because there was a lot criticism over the agency that had guaranteed the mortgages, you know, it was thought, the Maine guaranteed mortgage on the sugar refinery was something like three million dollars, out of thirty million dollars, that first mortgage on the whole thing. And we only had three million dollars in it, but Maine had to come up with the three million dollars, and it was, politically it was very bad. And there wasn't any market for the sugar refinery. Who wants a sugar refinery in an area that won't produce?

And Freddy struggled and fought as long as he could to hang on to it, and was convinced that only he could possibly make it run, and he probably was correct, if anyone could it would be him. But he became very litigious and so he was not, he was not much loved about that time. Harry Richardson, who was in the legislature, said that they were changing the classification on the books, and this was about the environmental thing, and he said, people had come up to him and said that if this bill passed that it would mean that Freddy Vahlsing would leave the state of Maine. He said, if that were true, he would be standing at the bridge at Portsmouth, beating the drum, as he went out of the state. So it became rather strong.

AL: And this was the Prestile Stream, right, changing the classification?

DW: Yeah, the Prestile Stream was, and is, a great trout stream, it's probably one of the - And I fished it all my life, there weren't any fish in there in those years when they were dumping into the stream, but they all went up the tributaries and the minute they quit dumping, they come back. So the Prestile is still as good fishing today as it was when I grew up, it's still a great trout stream.

So that was, that's Freddy. He was tremendously talented, tremendously driven to accomplish whatever it was that he set out [to do], probably a bit flawed in the way that he sort of, everything had to go through him, and that meant a lot of people stood around waiting while he was doing it, but tremendously talented in terms of building that. And the segue to that is that, to jump ahead, the potato processing plant was eventually sold to McCain's. It's a fine plant, it's been expanded many times, it's the lifeblood of northern Maine, and particularly Easton, very responsible operation, and wonderful example of what can happen.

The sugar refinery went through two or three or four years of sitting around and not much happening to it, maybe even longer than that, and then it was sold to Huber Corporation, and they converted it, without changing the plant very much, they converted it into a particle board mill, you know, you chip up poplar, which poplar grows in Aroostook County like weeds, it grows to be sixteen feet high and four feet around at the trunk. And if you leave a field up there unplowed or uncut for two years, you'll have poplar as big around as two or three inches, it just, they just fill it right in. So they used poplar for particle board, and that place has run for thirty years now or more, three shifts a day. They can't make that stuff fast enough, and so Maine's three million dollar investment in the sugar refinery is probably paid back today. I'm sure the state gets more than three million dollars out of it in even taxes off the employees, because the contribution of that to the state.

So it was a disaster in the late '60s, and there were all sorts of shots being fired back and forth about whether the state should have ever been involved in that, but there was a happy ending and it's a huge part of the economy. So that was, George and I met in that '60s period where were involved one side or the other of the Vahlsing operation, and we worked that way.

Some of the next thing that I seem to remember involving George, he was, his practice was in Portland, ours was here, I don't remember that we did a lot together. What year did he run for governor?

AL: He ran for governor in 1974.

DW: Okay, well that was the next iteration I think that came along.

AL: Were you at all political?

DW: Well, I was political in the sense that, since we represented state agencies, you couldn't be partisan political, but you had to be supportive, and so we reconciled that by being equally supportive of both sides so -

End of Side A
Side B

AL: We are now on Side B.

DW: I hadn't been deeply involved in politics, actively; I hadn't been active at all. And I was just thinking, I grew up, my father was Democrat, my mother was Republican. My mother was really quite strong Republican, my father was equally strong Democrat. So I came from a split background. And I had been registered as a Republican, and still am to this day, but it didn't have much influence on my – everybody was in Easton, with the exception of my father, was a Republican.

So when we were in practice here, representing state government a lot, the way that we chose to stay out of politics was that we were supportive of people who ran for office, but if we gave \$500 to one side, we gave \$500 to the other side, and so took no, never took any public positions on them because we represented all of these state agencies. So when George ran for governor I gave money to George, or someone who came on behalf of George, and I was really happy to because, and was really supportive of him, but I also gave money to the Republican, who I think was Jim Erwin.

AL: Yes, it was.

DW: I gave money to everybody except Jim Longley, which was not, that was a flaw in my system because -

AL: Because he was an Independent.

DW: He was an Independent. I don't remember that anybody asked me for it, which is probably the case, but I didn't really -

AL: Well, we didn't have Independents elected at that time, (*unintelligible*).

DW: Well, I didn't even think he was in the running. And as between the two of them, I thought George would prevail. And my mother, a rock solid Republican, she was so enthused about George. My mother I think thought of George, there were just two brothers, the two of us, and she always talked about raising her boys, and I think she really thought of George as just one of the boys that she was, he was sort of a surrogate son for her. So she thought George Mitchell was the best thing since wrapped candy, and it had nothing to do with politics, I mean she didn't care if he was a Communist, she was going to vote for him. So I supported George, and I'm sure I voted for him. And then of course he didn't prevail.

AL: Do you remember how that campaign went? I mean, I know you were an observer, but what, did you feel that some people around that, that Longley was catching up near the end?

DW: Well I did, because the, my barber Duke, who does the polling -

AL: Oh, really?

DW: Yeah, and Duke, that was what he achieved national prominence, was Duke's barber poll was the only one that had Longley leading, and it turned out that he was correct. So I mean Duke has led a poll ever since, and he claims that he's always right but he's often wrong. But yeah, the barber shop that I went to, he had this poll, you voted as you went in to have your hair cut, and Longley was leading. But I still couldn't believe it.

The thing that I remember about it was, and I liked Jim Erwin too, he was a guy I had known, he had been the attorney general, and so I had a similar relationship with him that I'd had with George. Probably not quite as personal, but professionally I'd had some involvement with him.

AL: But he got ill, didn't he?

DW: During that campaign? I don't remember that. I remember his stumbling on -

AL: Just stumbling on issues?

DW: Yeah, he stumbled on a Franco American issue in Lewiston I think, he said something down there that - when you're from York County, you've got to be pretty careful about what you say in Lewiston.

AL: And Longley was from Lewiston.

DW: And Longley was from Lewiston, and Longley had been selling insurance to everybody in town for a long time. So I don't remember. The thing I remember about George was that his smile and personality didn't come through, he was professorial and that, when we get around to his Senate career, that was even truer there, in the beginning of his Senate career. So he didn't, when you saw George campaigning, or you saw particularly television, you didn't really see the George that you knew and so you were constantly telling people, 'he's really a great guy, and he's got...', but he just came across as too serious, and too professorial, is the way I'd describe it.

So he didn't prevail, and my next contact with him was that I, just at the time, just before he became the United States district attorney, which was sometime after that, to my recollection, he and I had a case, a personal injury case, where he was representing the plaintiff and I represented the defendant, the insurance company. So we wound up trying that in Wiscasset, in the Superior Court in Wiscasset, in front of a jury, and it was an interesting case just because of who was involved, with later political connections.

George was representing the son of Fred Payne, who had been a senator, a Republican senator back a few years ago, and I was representing Paul MacDonald who was the District Court judge down there, who had been the Republican secretary of state here in Maine for years and had become District Court judge. And Paul had driven into the rear end of Mr. Payne, and typical kind of whiplash and so on and so forth - I'll tell the story, you may decide to edit it a little bit. But George and I couldn't settle it, so we were trying the case. And there was no question about a liability, we had, Judge MacDonald had hit the guy right in the tail sort of, there wasn't any

issue about it. Plus he had had cataract surgery, and in those days they'd put the lenses in your glasses, and they made it look like Coke bottles, so I mean, I told him to stay out of the courtroom, because he had these Coke bottles, you could just see [them]. So my recollection was, he couldn't resist and he came in and sat in the rear and watched it a little bit. Of course everybody knew who he was.

And so we're trying the case, and it's essentially a whiplash kind of case with no question of liability. One of the complicating factors was that the guy, while he was recovering from this accident, had developed some sort of a problem and had to have a testicle removed. And the doctor, I had a statement from the doctor to the effect that this had nothing to do with the accident; it was just something that occurred along the way. And it was a little unusual that it would have anything to do with a whiplash injury.

So we're trying the case in the first morning – and George tells this story, so, he loves the outcome. The classic statement is, you never ask a question on cross-examination that you don't know the answer to, so that was, I was cross-examining the doctor, and they had, George had insinuated this testicle removal into the case a couple of times but without ever really making a claim for it, but just sort of part of the social history of this guy, 'oh, and by the way, while he was having terrible problems with his back he had his testicle removed.'

So you don't ask a question unless you know the answer. I knew the answer, but the real lesson is, sometimes you don't even want to ask the question if you know the answer. So I asked the doctor, I said, "Now doctor, this testicle removal had nothing to do with the accident, did it?" And I had a report from him that said the testicle removal had nothing to do with the accident. So I asked him, and he said, "I said that, but I'm not so sure." So, *aargh*. So it was about that time that we came, it was coming to the lunch break, so I went out and I called the insurance company and I said, this thing is not going well and I think we ought to settle it, and George will take X amount, and I think we ought to settle it. And the guy said, "Well you know, Dan" – in those days the insurance companies really ran it, they didn't have to go through a committee or anything, the claims adjustor can make these calls for you – he said, "well if you've got an itch that you can't scratch, you better take care of it." So we settled it.

And so George and I went, this was George's last trial in civil practice, or in private practice before he went to the DA, so we went to lunch and we were sitting around, kibbitzing about how I got shafted and so on and so forth. And so I said to George, I said, "What's your deal with your firm, you're leaving, this is your last case, this is the last thing you're going to do, do you get payments?" And he said, "The deal is that whatever comes in today I share in, and what comes in tomorrow I don't." And so I said, "Well, let me call the insurance adjustor," who was in Portland, "and have him deliver the check to your office today." Which was, I've always thought, if you're ever going to do that to somebody, it helps that you do it to someone who becomes the majority leader of the Senate, if you're going to ingratiate yourself to someone.

George did genuinely appreciate that, I know, but it was just the way, we were adversaries, but we were friendly adversaries and -

AL: Professional adversaries.

DW: Professional adversaries. So they did, and that was George's last civil case. I didn't have any dealings with him when he was the United States district attorney because I wasn't doing a lot of criminal work at that time, even though I always did some. And I bumped into him again when Senator Muskie had a panel for the appointment of the federal judge. By that time I was, I had just become a Superior Court judge, and I applied for that position and was interviewed, they interviewed eight or ten people. And I applied, even though I was a Republican and I knew it was going to go the other way Buzzy Fitzgerald had told me, you ought to go through it because it would be good just to, you won't get appointed but you ought to go through it because it would be good to get your name in circulation.

And so I, George and I and somebody else were the three finalists, and unsurprisingly Senator Muskie picked George, and it was the right thing to do. And then George was a judge for a very short time, six months or something like that -

AL: It was a little over a year, I think.

DW: Was it that long? And I was, at that time I was a judge and, I was still a Superior Court judge, and then when he was appointed to take Senator Muskie's place -

AL: In May of 1980.

DW: Was that when that was? Yeah, I was a Superior Court judge, had been for a couple of years, and somewhere he and I bumped into each other and we were talking about the fact that I hadn't become the federal judge, that he became, and I said to him, "I think I would actually like the chief justice of Maine sometime, that's sort of what I'd like to be." And George said, "You will be, Dan, you will be." So that was, I'm not even sure how serious I was at the time. I guess I knew that I wanted to be, but I wasn't thinking, I didn't have any reason to think that I would, I wasn't even on the Supreme Court at that point.

But in any event, that was a word of encouragement, but the irony is that none of that ever had anything to do with it. I was appointed as a judge initially by who? Jim Longley, who was the only guy I didn't support. I was appointed to the Supreme Court in 1982 by Joe Brennan, whom I had gone to law school with; he was a year ahead of me.

AL: Oh, he was in that small group.

DW: Yes, he was a year ahead of me.

AL: So you got to know each other, then.

DW: I did, but not really closely. I mean in those days, no, actually Joe was two years ahead

of me, he was a third year when I was a first year, and third years didn't have much to do with first year students. I mean, we knew each other, and we liked each other. And I had also supported him when he ran for whatever he ran for, and was unsuccessful in those days. So, I hadn't supported him when he ran and he was successful because by that time I was a judge.

So I was appointed by Jim Longley initially, I was put on the Supreme Court by Joe Brennan, a Democrat, and then only when I became chief justice for the first time, I was appointed by a Republican, Jock McKernan, so I had Independent, Democrat and Republican, so politics didn't play any particular role in any of that, including George's involvement.

AL: What attracted you to being a judge? It sounds like you fairly quickly went into that area.

DW: Well, I liked the law so much, and I liked practicing, but because I had, my practice developed really too quickly because first of all, my brother was here and had established a practice, so when I took over we were engaged in a really heavy practice. And then six years after I came here he died, and so I really had the pieces of the practice that had been mine plus everything of his, so six years into practice I really had done about everything I was ever going to do, I was just going to do more of it. And I continued to practice for twelve plus years, until 1977, and it was just a consuming thing, I mean it was just, you never got away from it.

And so I really hadn't thought much about it at all. In the back of my mind I always thought, I think I'd like to be a judge sometime, but I hadn't made any plans. And in those days, the whole system was geared for judges becoming judges in their late fifties, I mean there was no pension plan that made any contribution, you had to retire, you had to be a judge when you hit sixty-five or you got nothing. So if you went into it at thirty-five and stayed ten years and come out, you had nothing. So it was designed for senior lawyers being appointed and serving twelve years and that would be the cap of their career, and you got a respectable pension. The salaries were very low; the traditional salaries were nothing in those days.

So I had always thought I would like to do it at some point, but nobody had ever been appointed that was anywhere near my age, for the superior court, not many had been appointed for the district court. So apropos of everything in my life, most of it, that was good, occurred without any planning at all, like going to law school, just last minute thing. I went over to the State House one day, and Longley was the governor, and Joe [Hochadel] was his chief of staff, and Joe said to me, "The governor is appointing some Superior Court judges. If he were to consider you, would you be interested?" And I was thirty-seven years old and I had two kids in high school, and the judges' salary at that time was about one-sixth of what I was making, so it was not a lot. But just walking by in the hall, and I thought, first of all I didn't think it was really, I was being offered it, I thought this was just sort of an enquiry, and there would be an interview and that sort of thing. So I thought to myself just quickly, well, I'd like to do it someday. Who knows, I may never get the chance later on, so if there's a possibility, why not say yeah. So I said, "Yeah, I guess I would."

So I went to this hearing, and I had never, obviously, since it'd never been discussed, I had never talked with my family or folks here at the office. So I went in to the hearing, and Jim Longley in some respects reminded me of Freddy Vahlsing, he was very, he had to get things done, you know. And I didn't really know him; I mean I hadn't met him. He was a good friend of my brother's, but I had never met Longley. So I was in the hearing, and about two o'clock in the afternoon I get a note and it said, "If you get a chance, would you stop by the governor's office when you're done." And I said, "Yes," and sent the note back. And the hearing didn't finish and so by about four thirty I got a note that said, "Come to the governor's office." It didn't say stop by, it said come to the governor's office. So I excused myself and said I've got to go downstairs just for a minute.

So I went downstairs, not really knowing, I still thought there had to be an interview process or something, and I went in. And in those days, they posted the nominations right on the board outside of the governor's office, as you walked in, I think they still do, they're right there. And as I walked by I looked and, my God, I'd been posted, I was nominated for the Superior Court. And I went in and Governor Longley said, "Oh, Dan, I'm so happy to do this." And he said, "George would be very proud of you." And I said, "Well, I am a little young." And he said, "Yeah, but what a tremendous opportunity for service, Dan, I'm so glad, thank you very much for doing it." And that was it.

So I went back to the hearing, and of course I didn't have a chance to call anybody, and the Public Radio has it on *Maine Things Considered* at five thirty. And my wife hears, "Dan Wathen was appointed to the superior court today." My partners hear it in the office, "Dan Wathen ..." and the secretaries, the secretaries of all felt most betrayed, really, because I had never mentioned it to them. Of course I didn't know, but - So I came back the next day, I was going to Bangor to a trial up there, so I come back and I dictated a memo to everybody and said, told them what happened, that I had never had an inkling of this before and that I had just, so that's why I didn't tell anybody about it, because I didn't know anything about it, and so that sort of smoothed things over. And so that was sort of how I got -

AL: A lot of people have described George Mitchell as having a judicial temperament. Having been a judge for many years, what do you think it is, or if you agree, what do you think it is about his personality that makes people think that?

DW: Well see, I don't, I never appeared in front of George as a judge, so my exposure to him had been in every other arena. I don't, I wouldn't describe him as having, I mean he's, I'm sure he was a good judge, and I'm sure he would be a good judge, if that had been his entire career he would have been a standout. But I think, I would see him more as a, in my mind he's more of a peace maker. Yeah, he's got a good attitude which would serve him well as a judge, but his attitude and his appearance is more than that. I mean, I think that his peace making has brought that out in him. And I think it's really that he's thoughtful, careful and deliberate, very deliberate.

When he went into the Senate – I left this out of the scenario – when he was appointed to the

Senate and he started getting some prominence and they would occasionally have him speak on behalf of the Democratic Party, again, he was professorial, he wasn't the George that you knew, you didn't see the smile and you didn't see the humor, you didn't see the concern that he really had. And all of a sudden he took off, fortunately for him, and he, the smile came out and the real George came through after a while. And I think it's that combination of warmth and understanding, and that he, well like he connected with my mother obviously up there right off, and he does that with people, when you meet him personally, because he has that engaging smile and twinkle in his eye. And he has a seriousness of purpose, and he's very articulate. I mean he's diplomatic in that he can say things without saying them.

And so I would say George really has the temperament of a peace maker, which incidentally didn't hurt him as a judge, but I don't think that's the hallmark of a judge that you're seeing in George, I think it's something much better and much more focused on what has turned out to be his life work, and he's really good at it.

AL: And so what year did you go onto the Maine Supreme Judicial Court?

DW: 'Eighty-two, and then I became chief justice in about 1991. I was a Superior Court judge for four years, I was on the Supreme Court for twenty years, and I was a chief justice ten of those years. So I had a good ride, and watched George from the sidelines and was never surprised that he, once he smiled, I was never surprised that he really did well.

But I think part of George's appeal, why he connected with my mother and father and why he connects with people generally, I think George, I don't know much about, I know his family, I know his immigrant family's background a bit, but I think that's really the key to his character, is that growing up with an immigrant mother and father in Waterville, and Waterville's a unique community. I mean there aren't very many places in the world where there's a Jewish and a Lebanese community that are one, really, and you go to the Maronite church up there and, for a funeral for a Lebanese, and the place will be filled with Jewish people, I mean it's – so I think they were bonded by being immigrants, and I think George was, is the product of his mother and father and the pretty basic kind of values that they handed on to him.

AL: And then in 2002, you decided to retire from the court?

DW: Right. And you may not know, I ran for governor for seven weeks, and then I said I don't like this.

AL: In the primaries, the Democratic primary or Republican primary?

DW: Republican primary.

AL: That's right.

DW: And I had always said that I never liked politics, and couldn't stand it and appreciated

people like George who could. I had done everything I was going to do as a judge, so that was the end of that, and I was sixty-two and I thought this is, we're entering a really tough time economically, and September 11th had just occurred, and Maine needs to do some things, and maybe I ought to take a whirl at it, and I think I can put up with what's necessary to run through the process in order to do it. And in the back of mind I was thinking, I'm probably one of the few people who, if elected, wouldn't care if they had a second term, so I could do what I wanted to do and get out, you know.

But the miscalculation that I made was that I just couldn't stand the process. I mean there wasn't anything terrible about it, but it was just, I guess I could come to appreciate why George was professorial, when you know that you've got to have a sort of a veneer to do that. And it doesn't come easily, and it took George years to do it, and so when I saw what a miscalculation it was, I couldn't put up with that for a year, I couldn't dream of spending a year doing that.

AL: And so you came back here, or this is a different, is this the same practice?

DW: No, this is the same, this is the same. Yeah, when I had, became a judge and just poof, overnight, with no advance preparation, we were in this building, and there were four or five lawyers here, and the firm was called Wathen & Wathen, but I was the head honcho at that time. And so I was leaving, and Pierce Atwood, who I'd done a lot of work with, all of this Freddy Vahlsing work had often included Fred Scribner from Pierce Atwood, and others, and Fred called me up and, the very day after I was appointed he called me up and said, "Dan, we're looking to establish an Augusta office that's self-sufficient but it will support us, so that when we come to Augusta we can have a place to do the work that we do." He said, "Do you think your folks would be interested in it?" And I said, "Well, I'm sure they would, because the wind has gone out of their sails pretty quickly here, they're, they'll get by but I'm sure they'd be interested in that." So they met in a day or so, and it all worked out.

People came up to me, other attorneys, they said, you know, you had it really, you had that all worked out. You got appointed and you had Pierce Atwood all lined up to merge. I said, hmm, you don't know, it didn't look that way from the inside, let me tell you, because there wasn't any planning, there wasn't any of that, it was just happenstance, and good happenstance.

So when I got done I thought well, I spoke to a few firms, and arbitrations and mediations were probably the thing that I should be doing, and so I had a chance to come here and another firm or two, but I decided to come here, it's really my firm. And I, for the first – it's been eight years now, or seven years I guess – for the first six I spent most of my time in the Portland office and came up here occasionally, now I spend most of my time up here and occasionally go to the Portland office, because I live here in Augusta, it's convenient.

AL: Is there anything that I haven't asked you that you think is important to add about any of this?

DW: No, I don't think so. I think that, I'm really proud of George in his diplomatic role, and I

think I see the seeds of it in my dealings with him over the years, that I can understand his strengths; and his weaknesses (which aren't very many). So I, no, I think he's an exceptional guy. And sort of like me, I'm sure none of this was planned on his part, I mean he sort of took advantage of what was given to him, and is just an intelligent guy who relates extremely well to people. I'm not surprised that in Ireland, and maybe some day in Israel and Palestine maybe they'll warm to him, but if anybody could do it, it would be George.

And I think that's the pinnacle of, if you were a lawyer or a judge or whatever, I think that in some respects, I think what he accomplished in Ireland is sort of a pinnacle of being a judge. I mean, I would put that up there as – I can understand why that's more satisfying than being on the Supreme Court of the United States, I mean I really can, because I think it's the same kind of thing but it's more, with more of a sense of accomplishment, personal accomplishment. So he's come from Waterville to there.

AL: And the Mitchell Institute, have you been involved in that at all?

DW: Yeah, I have, here and there, I've attended fund-raising, I've participated in some of their events. I think it's a great thing and I've met a lot of the students and I think George's statement, 'everybody deserves the opportunity to excel, they're not guaranteed the right to excel but they deserve the opportunity to excel,' I think that comes, in his circumstances, I think that comes from the fact that he was given the opportunity at Bowdoin and I think that's really where that comes from. And so I think he's doing the right thing there.

We have a, I'm the chair of the board at Maine Community College, and we have a program, I think we actually created it, it's not something that George did, but we have a – maybe, I'm not sure – but we send scholars, we exchange students with a similar college system in Ireland, and they're called Mitchell Scholars, and so we have two students all the time who are in Ireland going to a community college over there, and then we have two over here who are the reciprocal end of that. But I always tell the students that when they go to Ireland, they want to make sure that they publicize that they are George Mitchell Scholars, because it's "St. George" over there.

So that's, yeah, that's all impressive. It's quite a thing that the fund for that in the beginning was his leftover campaign contributions which, that's a good way to use those, it's probably the best use of campaign contributions have ever been put to, and will have a more lasting effect than anything else.

AL: Great, thank you so much.

DW: Okay, well thank you.

End of Interview