

2012.3.35

WHITFIELD SMITH
March 24, 1988 (4:00 p.m.)

Recording begins in the midst of JAMES MACKAY's welcoming comments and introduction of guest speaker WHITFIELD SMITH.

MR. MACKAY: . . . a venerable native of the community, we came up with the popular clerk of the Superior Court, who was born here, and is going to tell us now—[to MR. SMITH] and you got a full hour. And after we adjourn, we're going in—[to a member of the DeKalb Historical Society in charge of reception afterward] We will have our refreshments today, is that right?

OFF-CAMERA VOICE: Yes

MR. MACKAY: Well, everything's on tap. [To MR. SMITH] We're going to have a little reception for you in there. And I'll caution you—we've got Admiral Howell here, we've got some eyewitnesses, and I don't think we have any tape recorders here [*Audible chuckling from audience*], but a fellow running for public office ought to inquire about that. [MR. SMITH laughs.] But we're honored to have you here, and you can remain seated or stand up. Don't be embarrassed if some of us contradict you. [To audience] Whit Smith, clerk of the Superior Court of DeKalb County. *Audience applause*

MR. SMITH: Ladies and gentlemen, I appreciate that. I think since the seat is comfortable, and I've been standing up all day, I think I'm going to sit down for a few minutes. If in a little while I can get up and walk around, we can just take that in stride. I had the opportunity and wonderful privilege of viewing some of the past "I Remember Hours" that have been taped here; and I couldn't help but notice that, as wonderful as they were, they did not make mention of the date or time that they were recorded. And I think for posterity, if nothing else, and being somewhat of—cast in the position of archivist for the county records, we ought to memorialize this and at least say that this event, this happening, this serendipitous occasion took place on the twenty-fourth day of

March, 1988, starting at 4:00 in the afternoon and will continue until I either run out or get stoned, one of the two.

MR. MACKAY, *from audience, off-camera*: Eastern Standard Time

MR. SMITH: Eastern Standard Time. I appreciate the opportunity to talk to you. I was flattered and at the same time not really sure what Jamie [Mackay] meant when he said, "I want you to come to talk to the [DeKalb] Historical Society and other folks at an 'I Remember Hour,' and Andy Robertson has just finished, and we would like you to be the next one." And all I remember about Andy was that I bit his daughter on the hand back when I was crawling around [*audience laughter*], and that maybe I don't remember much at all by comparison with some of the wonderful speakers that y'all have had here. I sure don't have that long a remembrance of DeKalb County, and I do remember when my grandfather's drugstore was where the MARTA station is on East Court Square. My father's office—he was a physician here—is now a vacant lot next to the Presbyterian Church, and the house that we tried to demolish when I was growing up still is there on Lamont Drive; but beyond that my remembrances pale in comparison to what this group that's assembled knows about DeKalb County history. So I thought what I might do is tell you a little bit about more modern history of DeKalb County in terms of the judicial system, maybe one or two vignettes and stories about various judges and people we've had in the courthouse, tell you a little bit about how things are now, in hopes that the tape will survive twenty-five or thirty years and that at that time be appropriately "I Remember."

So to give some sort of credentials—because everybody wonders who it is that's talking or on what authority they know what they're talking about—and I'm not sure that I have any, but I am an attorney, I started a practice here in 1975, and I practiced down on Church Street in a house. I had the pleasure of appearing before the bench here in DeKalb County under several judges, some of whom are still here, some of them have gone to just rewards—whether that was by defeat of political office or that's because they died. I was elected as clerk of Superior Court in 1981 as a result in 1988 [*inaudible*] and have had the privilege of serving as your clerk since then.

One of the things that—one of the stories that I tell about my limited time in practice was the occasion to appear more than once before the Right Honorable Oscar Mitchell in the State Court. I want to take a minute just to share it with you because it's such an interesting story for lawyers, and maybe y'all would appreciate some of it. Oscar, of course, was judge of the State Court for years. I think they invented dirt just right after he went on the bench [*audience laughter*]. But Oscar's the type of person everyone has an opinion about, and it's pretty much set in stone one way or the other. But he always seemed to rule [*inaudible*] appropriately—now, you weren't sure how he got there, but it always turned out right. [*Inaudible comment under his breath*]

He had a habit that always bothered me at the time; and now that I'm on the other side of the fence, I understand it. We would have calendar calls in the court system; and that's the time when all the lawyers will bring their clients, and we come into the courtroom and would answer whether or not we were ready to try the case and get a time for when the trial would start. Sometimes it'd be jury trial, sometimes bench trials—that's without a jury. And it was not uncommon for Judge Mitchell, during a simple calendar call for a non-jury-type calendar, to inquire what the case was about. Well, the calendar call function was just to get up and say, "Your Honor, we're ready for the plaintiff," "We're ready for the defense"; and they'd say, "Fine, you're number three in line" or "number five, and we'll get to you as soon as we can."

Well, on occasion he would inquire, "Colonel, tell me about the case." And you would be expected to explain a little bit about your case and, thinking that that was just purely an inquiry, "Tell me about the case," we'd go into it a little bit. And then all of a sudden you realized that you hear the judge say, "Well, now, Mr. So-and-so, tell me what you think about the case." And you'd find that, in the middle of calendar call, you were actually trying your case in front of the judge. "And that's fine. I'll—we'll take that under discussion and consideration." And at the end of the calendar call, one of the calendar [*inaudible phrase*] call the case and rule right there. So you didn't waste your time going to trial; you had sort of a bench trial [*audience laughter*].

He had one other interesting habit that he used and that was when you were actually on trial on a case and had a jury, and you had an opportunity to give your argument, opening statement, and argument in closing is normally how it proceeds. And at some time during the trial the judge would usually make up his mind how he thought the case ought to be. Now, back in the good old days and up until very recently lawyers were noted by a long, yellow legal pad; so, of course, every judge would have a yellow legal pad on the bench. And the lawsuits that we had, all the pleadings would be wrapped up in the—in big rolls, tied with a big rubber band, and Judge Mitchell had the habit, as you proceeded during your case, of unrolling the pleadings and reading them. Of course, you'd hear it go "Pop!" as the rubber band was pulled and as the scroll started to roll, and you listened to the—you'd listen to the judge flipping the pages while you were diligently trying to give your argument to impress the court, who was supposed to be listening to what you were saying, but reading. And at some point during the plaintiff's case or during the defendant's case you would inevitably hear the tearing of a yellow page, where he would [inaudible—sounds like "set" or "said"?]—where he would have written his decision [*audience laughter*] as to how it was going to turn out. Now, as [inaudible phrase]; but sometimes it would happen during the opening statements or during the main case. It was not that he would necessarily rule that way, but I'm sure it was just simply a note that he would make to himself. But you could hear the yellow pads start to rip, and a minute or two later you'd hear the pleadings roll back up; and you'd know that that yellow piece of paper was being wrapped around the pleadings, and then you'd hear the rubber band get strung on it—it would go, "Pop!"—and at that point it was all over [*audience laughter*]. And you just hoped that it happened while you were the plaintiff and that you had [inaudible] enough case. Now, I always wanted to, and never had the guts to do it, but I always wanted to turn around after I heard the rubber band pop and say, "Your Honor, I appreciate the opportunity to have been before the bench, and we rest," [*audience laughter*] and let it go at that.

Changes have taken place in the DeKalb County court system in recent history. We have become, for the purpose of the judicial branch of the government, a burgeoning

metropolitan court. It is not a sleepy, rural, pastoral scene where we come to court in the spring and in the summer [sic—means winter] and in the fall again. It used to be, up until almost—almost eight years ago, a time when we knew that we would have court in the spring and in the fall and the winter; but during the summer everybody took a vacation. And you knew, come July or August, there would not be any court. Well, today we hold court—jury and nonjury alike, civil and criminal alike—fifty weeks out of the year. And the only two weeks that we don't have jury trials—we hold nonjury trials during those weeks—but we don't have jury trials during the weeks [sic—means week] between Christmas and New Year's. Now, we very seldom have jury trials the last half of the week before Easter, and we very seldom have jury trials the last half of the week of Thanksgiving. But any other time there are trials going on, both civil and criminal, always jury-type trials in the DeKalb County Courthouse. You probably don't realize it, but right now we've got on any given day ten to fourteen judges trying jury trials. We now have eight Superior Court judges and five State Court judges. When I started in the judicial system, we had five Superior Court judges, as I recall; we had three State Court judges. It was not uncommon to go by the courthouse on an afternoon and find lights off in the courtroom, because the judges had finished all the business and had gone on to other matters of judicial inquiry. But today we not only have every courtroom in the courthouse in use, we are also making use of the new county auditorium facilities that we've built—Maloof Auditorium—for the county, to give the judiciary a little more space and for us to have our jurors a place to sit when they were in use. And now we're using the county auditorium for that, and we have dubbed it the "courtatorium." Just like high schools and grammar schools have "cafetoriums," we have a "courtatorium."

There've been lots of changes in the clerk's office over the last eight or ten years. I'd be happy to take credit for them, but I think a lot of them's because we've become more involved in judicial work; we have a higher workload. We used to have jury service that required jurors to come in and sit with us for a week, and we'd use them as we could. We found that, as a result in the Georgia legislature in 1984, emancipating all those folks

that previously had been ineligible to serve as jurors—*aside to MR. MACKAY*: I like the way I put that—“emancipate.” Now that everyone serves on jury service, it tends to be infringement on folks’ times, and we need to be sensitive to the needs of the general public. And what we have done is change one week of jury service to two days or one trial, whichever lasts longer. Most of the trials we have in DeKalb County tend to last about two, two and a half days. And we do have some that last longer, but those tend to be the exception rather than the rule. But we have jury trials every week, every day. We have ten trials going on this afternoon. It’s a Thursday afternoon—that’s sort of uncommon, what used to happen in the judicial system when a lot of work was [inaudible].

We’ve had to modernize the office. We’ve thrown away our last quill pen [*audience laughter*]. Don’t have quill pens anymore. We’ve brought in the use of computerization. We’re in the process of using the computer to track all the lawsuits, civil and criminal, in the system. The files now—once the case is originated, it comes across our filing desk, the information about the case, the attorneys involved, the parties involved, the type of case it is—it went in a computer. And that then becomes not only the index but also the docket books and case action summary of all things that happened on the case. It gives us an ability to take a look at our case load to see how we are doing. Sometimes cases might just simply get lost. The attorney is waiting for the judge to take some action, the judge is waiting for the attorney to take some action, and somewhere along the line the lawsuit just sits and flounders for a while. We can’t afford for that to happen. We file too many new original actions each year. We had last year—at last count we had some 12,000 civil cases that were filed for the first time in 1987 and between 2,500 and 3,000 criminal indictments that were filed. We are almost able to dispose of that amount of data, but there’s always a little more coming in than there is going out; and that’s one of the reasons for the addition of judges and space. But it’s a healthy activity; and with that many files floating around, it’s important to be able to keep track of those, so we’re doing that [inaudible phrase].

We've come into the twentieth century kicking and screaming. We used to file everything on legal-size paper, 8½-by-14 [inch] paper. Now we find that we can do the same thing on 8½-by-11 [inch paper] and do it correctly. That happened about four years ago. We—as attorneys we were 8½-by-14 people in an 8½-by-11 world, and the only person's filing cabinet that lawsuits would fit in would be the attorney's. If you're in business and you got from your attorney a lawsuit or documents that were always too long or too wide, and you got to fold them up, and then they were too narrow and too short; and so you had to go out and buy a separate filing cabinet for them. We figured out that lawyers were just like everybody else, and we could manage to figure out how to do things on 8½-by-11 paper. We could even do it on white paper. It is not uncommon to see lawyers carrying around white notepads. And it's quite a dilemma when you ask for a legal pad, because they're not "legal" anymore; they're letter-sized.

One of the things that we've had to do as the county became more populous—you know, the clerk's office handles real estate matters—space is a problem. The courthouse is not like a [inaudible—sounds like "mitten"?] that can expand; we only have so much space. Of course, once we fill it up, we have to find innovative ways of reducing what we have. If you ever get a chance to come over to the real estate record room in our office in the second floor, you can see an old history of bookbinding, some of the most beautiful, hand-tooled leather, gold-ribbed binding on books from the late 1800s, early 1900s and about twenty-two inches tall, seventeen inches wide, weigh about fifty pounds apiece, guaranteed to give a small person a hernia to pick the book up. And we now have come of age and everything, so 8½-by-11 paper is reduced down to the small size; it fits on a library shelf, all of our indices, if [inaudible—could be "you haven't been down there" or "you ever go down there"].

We don't do a lot of things that you we to do. We used to be a place where professional engineers and architects and doctors had to register and veterinarians had to register to—their certificates in order to ply their trade in the county. And now we have veterinary boards, physicians' boards, and architects' boards that are state-wide and

designated—now the state does it. We don't have to keep those anymore. Up until this coming year all of the corporations that were home-based in a given county or incorporated in a particular county had been required to file those documents—a copy of those documents—with the office of the clerk of the Superior Court in their home counties. The legislature realized this year that that's a nice thing to have, but it's a massive space problem. And, since they're also filing those documents with the Secretary of State, maybe we could do away with filing the rest of the documents in one place and not have to file it in two places. And in their wisdom they have chosen to centralize filing of those papers in the Secretary of State's office, and that's going to alleviate some of our filing problems. But be at peace; if you wanted to come to DeKalb County to take a look at a corporate charter, we will still have them. The Secretary of State will send them to us on microfiche, and we will have them available for you.

I can't help but make mention of the fact that last month's speaker, Andy Robertson [former mayor of Decatur], just walked in [audience laughter]. Andy, I want to stop and address for a minute—you're not going to be recognized; sit down [audience laughter].

ANDY ROBERTSON, *from audience, off-camera*: I just wanted [inaudible].

MR. SMITH: That's right. [Inaudible comment] Some of the things that you had to say about me last month were accurate. Others were not. But I appreciate those things that you said that weren't accurate—they sounded pretty good.

ANDY ROBERTSON: I thought you like to be noticed.

MR. SMITH: I appreciate it [audience laughter]. Telling folks that the "I Remember Hour" probably was more appropriate for folks of your ilk; and me, because I'm not old enough to remember anything, I am reminded by my mother and by you that at least on one occasion by walking down Vidal [Boulevard], I think we had a run-in, I met [sic; means "made"?] the acquaintance of your daughter—I think it was my mouth and her arm [inaudible phrase] [audience laughter]. That's about as far back as—I'm not sure I remember that. He tells me that's the situation.

We're talking a little bit about the judicial system and the changes that have been made. We've gotten into electronics, computers; we don't handwrite anything anymore, it's all on computer. We use facsimile machines to transmit documents back and forth from the courthouse to the various attorneys' offices. We used to have legal-sized [8½-by-14-inch] documents; now we have letter-sized [8½-by-11-inch] documents. In case no one has told—and I'm sure they would, given half the chance—the reason that we used to have legal-sized documents? You know why things were on 8½-by-14 [-inch] pieces of paper? Well, because, when the—when we first starting having the judicial system, judges used to ride circuits, like Methodist preachers, something MR. MACKAY can harken back to. And when they rode circuit, they did ride in a Cadillac or Chevrolet; they rode on horseback. And they didn't have any filing cabinets they could put on the horseback; they had these saddlebags, and they put their papers in the saddlebags. And the reason he had 8½-by-14 [-inch paper] was so that you could write in the center of one side of the paper; and when you folded it and folded it the second time and put it in your saddlebag, then if the rain and weather hit it, it might dog-ear it and run on the sides, but when you got to where you were going and you opened it up, there it was still enough there in the center to do the work that needs to be done. I am told--I have no personal knowledge [audience laughter]—that that is it. And we still have some of those in the courthouse. We have our own archives.

One of the things that most people don't realize about the office of the clerk of Superior Court, although we're there as administrators of the judicial system to make sure that the judges have everything they need and the records are all there, we are also archivists of sorts; and we maintain all the court records and real estate documents for the county. And we have either the original paper itself or on microfilm, and we go back to the late 1800s, early 1900s and forward. And if anything happened in DeKalb County, and it's not in there, it's in here, or it's down at the [state] archives. We have an interesting print shop on the premises, where we actually convert the original documents to hard-paper copies to create the deed books or file records, and from there we microfilm them

and we send copies down to the [state] archives and original silvers—silver duplications—to the archives and keep two copies on the site and then store one off-site, so the three buildings have to burn at the same time before we lose documents. We have a full printing facility, five cameras—overhead microfilm cameras running from 35 millimeter to 16 millimeter; and we have a full-fledged archivist [inaudible] processing things that you don't really think about but are there. We haven't gotten to the point of buying paper in huge bulk in rolls and cutting it ourselves yet, but that may end up being something that we end up having to do.

All of you—each of you—have more history in DeKalb County than I'll ever have at the time; and if you have any questions, I'd like to stop for a minute and see if I can maybe answer some questions about the court, court personnel, [inaudible] something that the office has done—*[Stops to acknowledge question from the audience.]*

AUDIENCE MEMBER, *off-camera*: You've probably been asked this question numbers of times, but some people seem to get jury duty very frequently and others not a lot. Is there no way of—after a person's had it, you know, four or five times, and somebody else hasn't had it once at all—a way of shifting that?

MR. SMITH: Well, that shows you the randomness of the process, as well as the fact that we're charged with having upright and honest citizens as jurors. So the randomness of the process shows that if you get called more than once every four years, it has to be random because we surely wouldn't want you back that soon. And those that don't get chosen, it just—the upright, outstanding citizen rule falls into play.

Let me tell you a little bit about—[I was] being facetious, but let me tell you a little bit about the jury system and how it works and what we do. There was a time that, in order to be on the jury, you had to be--first, you had to be a white male land-owner and probably know somebody. And there was a list, and we used what we called the "key-man system." There's a Jury Commission in DeKalb County that harkens back from its early days, a six-person commission that's charged with actually creating the lists of potential jurors. And under the old key-man system each of those jury commissioners had

somebody that they knew that they would go to and say, "Give me the names of fifteen people you know to be of good character and upright [inaudible]"—the kind of key men who would usually be preachers and pharmacists and doctors and hardware-store owners and livery-stable owners—something that--people who were in touch with the people of the county and who was appropriate. And those folks would be on jury periodically. You have to remember in those days they had trials in the spring and then, after we planted the crops, and then after the crops were in, in the fall. So for someone to serve on jury service was not an onerous task; it was an honor. And it was a big event to have a jury trial—people would come into Decatur from all over the place and have them bring their lunch and spend the time and watch the goings-on, hang out of the windows and watch everything in the courtroom that's going to be in there.

As we have progressed throughout the years, we now use the voters' lists for DeKalb County as our main source for this. And everyone is eligible to serve on jury service who is a resident of DeKalb County, eighteen years old or older. As a matter of fact, as we create the jury lists—the master box, if you will, of potential jurors—we do that by computer; and the process we follow is to randomly select, demographically proportioned to the population of the county, eighteen years of age and older, by race, sex, and age a group that's demographically proportioned to the county. And you—so there are a percentage of DeKalb Countians that follow the category of the white male or black male, white female, black female, other male, other female to take care of [the category of] non-blacks and non-whites; and we have categories of eighteen to twenty-one [years of age] and twenty-one to twenty-five and twenty-four—twenty-five to thirty-four and ten-year increments up. And we take the latest census—in our case the 1980 U.S. Census—because that's the only concrete, hard figures we have on population; and we find what the percentage of the population is according to the census and match that to the voting population and come up with a group of potential voters—I mean, a group of potential jurors from the voters' list. Once we reach that sort of a mix, we randomly select from that group fifty thousand people and designate them as potential jurors, both in the grand

jury and in the trial jury, for the next twelve months. And then, as the judges tell us they need jurors on a monthly basis, we send out our jury summons and say, "Greetings, and welcome. I know you're happy to come. Come on down, we're going to have a good time, try a couple of cases, and just have a gay old time at the courthouse" [audience laughter].

And once you've actually served, then we will not even consider you for service for at least four years. Now, I know you're going to say, "Well, that's not going to happen to me." And the reason for that is we've just recently changed the period of time between service. We did that in January. It used to be that it was mandatory for two years to pass before you could be considered for jury service. In the past there was a tendency for folks to serve on a more regular basis. As we looked through our computer programs, what we found would happen is that, rather than starting over every year with a fresh slate, going from Ground Zero up, we'd take out those that had served and bring new people in. We'd have good addresses on the new people; we'd have good addresses on the people who'd served; but there was no attention being paid to the addresses of other people—people move. And so the addresses would--tended to be bad, and the size of the box, while it would stay the same, the actual number of the people that were eligible to serve tended to be smaller and smaller. So what we have done over the past few years, starting about 1981, was to, on an annual basis, throw out the box. Anybody who was in there, throw out. Then we start over with the rambling selection process [inaudible]. And we get better as time goes by and end up with a pretty good mix.

MR. MACKAY, *from audience, off-camera*: Could you tell us about the plans for the court to grow, in terms of the physical facilities over there—the new courthouse?

MR. SMITH: There are—we are hopeful that we may have some relief for our space problem in the courthouse. The county has seen fit, and those of us in the judicial branch of government and lawyers in the area are appreciative of the fact that the county has seen fit, to have a study done and some basic architectural renderings done for a proposed new courthouse facility. I'd say that we are appreciative of the support of [inaudible] because the group that actually did the study and has done the preliminary

drawings is a group of folks that have been doing courthouses and courthouses alone for the last thirty years. Unfortunately, sometimes courthouses are built, and they're good facilities, but they're just not built with the understanding that they're going to be courthouses, that they're going to be government facilities. We don't take into consideration that you're going to have prisoners going in and out, that you need separate elevators for prisoners, and you need separate passageways for the general public, that you need some security measures involved, and jurors need space to make their deliberations and a comfortable place to sit, waiting for the trial of a case, and the attorneys need rooms available to them to talk to their clients and witnesses and that sort of thing. And there is a plan resting with the commission at this point for a new facility, which would be in addition to the existing courthouse. It would tie on[to] the west side of the present courthouse and consume the space between the present courthouse and the parking deck. It would be about a nine- or ten-story facility that would be in general keeping with the scheme of the new Decatur look. The only problem is there's a price tag on it. We're hopeful that DeKalb Countians will look favorable [sic] on it; right now it looks like it will probably not cost more than seventy-four, seventy-five million dollars [murmuring in the audience]. But I expect it will—it's a good dream, and we look forward to it, and hopefully someday it will. [Points to audience member to acknowledge question] Yes, sir.

AUDIENCE MEMBER [later identifies himself as a member of DeKalb Historical Society], *off-camera*: Two years ago about this time of year, I stopped in the courthouse in Macon County, Alabama. I parked on the square, walked up to the door, and there was a sign saying, "Please use other entrance during construction." So I used the other entrance, got up to the desk, and asked the young lady what was going on. And she said, "Well, we had an electrical short that started a fire up in the attic."

And I said, "Well, I hope it didn't damage any of your records."

She said, "Oh, it was just a lot of old stuff that nobody ever used." [MR. SMITH and audience laugh.]

[Inaudible phrase] Since my reason for being there was to look at records 150 years old, that just gave me the creeps all over. I know in general where your [DeKalb Superior Court's] records are. Are there, in dead storage, any old records that we as the Historical Society ought to catalog and abstract?

MR. SMITH: We have—let me say that, at this point, no. Any records that we have that are of historical significance are either kept or they are microfilmed and the originals sent to the [state] archives. At my office I--we are sensitive to the fact that the storage facilities for the Historical Society are somewhat limited; and, even if we had material to donate, we'd be hard pressed to find a place to put them there. Besides, it's in a paper format, rather than in microfilm, and that's not an efficient way of storing historical documents [inaudible] preservation [inaudible]. The courts systems through Georgia, fortunately, have a Records Retention Act that deals specifically with court documents; and part and parcel of it is that if it is of historical significance, that the document is to be microfilmed, with the silver original on—in residence at the state archives and then the duplicate copies' being retained by the county, the clerk's office, both on-site and off-site. Therein three places would have to go up in flames before we would lose it.

Now, we do have some records that have no archival historical significance, and those are routinely destroyed: used traffic-ticket books, ledgers from audits, documents that are not originals or the same information is available in archives from some other source, working papers, things like that [inaudible] routinely. But anything that is of particular historical significance, such as court records from courts that are no longer in existence, marriage and birth certificates the probate court would have, anything having to do with the title to real estate or change of name or adoption or legitimation or anything like that, those are all kept on a permanent basis [inaudible].

VOICE FROM AUDIENCE (perhaps MR. MACKAY), *off-camera*: [Inaudible] reassuring.

MR. SMITH: Hopefully we will not have that problem. There are some records that, unfortunately, are a little ragged around the edges these days. As you will recall, we had an incident a couple of years ago—as a matter of fact, it was right after I came on as clerk of the Superior Court. We had a terrible rain storm that blew the roof off of one of our storage buildings out at the Camp Road [Circle] complex, and we ended up with a foot and a half of water in one of our main storage areas. All of our records that were out there that were on top of the pile were water-damaged, and we ended up getting Lockheed Corporation to let us freeze-dry those records; and we were able to save about 99.8 percent of them—of the records. It's an interesting process. They brought out trucks from Lockheed; and we loaded onto the trucks these wet, soggy records and took them out to Lockheed, put them in a pressure chamber—an altitude chamber—and turned the temperature up to heat it up to almost a steam level and then raised the altitude [simulated raising the altitude?], something that maybe Doc Manget would understand—I sure don't. Took it up to an altitude that forced all the water out of the documents, and the heat was such that it caused them to evaporate, and then they sucked it out with some sort of filter system and evidently the same way you freeze-dry food or coffee or anything like that. We were able to save all those records. Those are now, you know--

VOICE FROM THE AUDIENCE, *off-camera*: And along that line they can also introduce ammonia vapor into the air and neutralize the acidity, which is to slow the degeneration product [sic; process? progress?] of any paper and keep it from getting—from crumbling to a powder as it—

MR. SMITH: We went through the decision-making process on that. There was no cost involved to us by Lockheed for the labor, the transportation, or the actual work of the freeze-drying; but there was cost involved in the mode of introduction. We were able to allocate the time and resources here to microfilm everything as soon as it came back. And we took the position that since the paper was ultimately going to deteriorate no matter what happened and that the best we could do was slow it down, that we would all be

better served simply to microfilm and preserve on microfilm what was there in as good an image as we could and right [write?] off the paper.

MR. MACKAY, *off-camera*: Whit, you are modest. I credit you with possibly saving the life of a lawyer and Judge Peeler, and to me it's the most bizarre kind of—anyone approaching that courthouse in the twenty-two years it's been there, your alertness saved the day. And I don't want you to be so modest you won't tell that, unless you've forgotten it.

VOICE FROM THE AUDIENCE, *off-camera*: Tell us!

MR. SMITH: It's been a few years ago.

MR. MACKAY: Tell it, and then you can embellish it.

MR. SMITH: Oh! Embellish? [*Audience laughter*] Those that know me, Jimmy, know that I don't embellish anything. It's just that good when I tell it the first time. [*Audience laughter*]

Courthouse security is a problem. We don't like to talk about it in the judiciary, but it's a fact in life. And when you stop and think about it, the one place that probably has the most ill will in it is the courthouse, because nobody came there because they wanted to. It's where we bring all prisoners to be tried, people with civil lawsuits—"civil" is an interesting word for a lawsuit; I haven't found anything civil about lawsuits at all [*audience laughter*]. Those are the folks that are cast into the courthouse at any given time. And it concerns us, I— [*Aside to MR. MACKAY*] One other story and then I'll get to that. I like to use the [*inaudible—sounds like "Jake's farm porch" or "poach" or "Jake's farm approach"*].

MR. MACKAY: You're coming to the--

MR. SMITH: But I'm coming to it. Hang in with me, folks, I'll get there. I'll never forget—although I've never told my mother this, so this will be the first time for her. But like most lawyers I specialized in whatever my client needed. [*MR. MACKAY laughs.*] Whoever came to the door, "Why, of course, we can handle that." And on one occasion I represented a lovely lady in a divorce matter that was resolved successfully—it was by

jury trial, but it was a successful resolution of the situation. And on the way back to my office, which was on Church Street just about two blocks or so from the courthouse, an easy walk on a spring day, my client opined [sic] that it was a good thing that I was able to win the case for her because she, during the entire two-day trial, had been sitting with a .32 pistol in her pocketbook; it was loaded. And she said she just hadn't made up her mind what was going to happen if things didn't go the way she wanted to. That sensitized to me security measures in the courthouse right there, and I picked my clients a little more judiciously thereafter.

MR. MACKAY: Did she infer [sic] that she might have shot her lawyer and—

MR. SMITH: I didn't ask. I was just happy that the case had turned out the way she had wanted it to [audience laughter].

The incident that Jamie is making reference to [with the attorney and Judge Peeler] occurred in 1984. A friend of mine, a fellow student in law school, has an office here in Decatur that's on the other side of the [building that formerly housed the] Belk-Gallant [department store], used to be. One of his clients had not been satisfied with the way a divorce decree had worked out and decided he would take matters into his own hands, approached my friend and fellow attorney in his office with a gun, had him at gunpoint redraft the agreement, making it more favorable to this gentleman's point of view [audience laughter], and then at gunpoint walked my friend across the street into the courthouse, where he was going to see Judge Peeler, to whom the case had been assigned, and have Judge Peeler sign that document or else.

Well, my friend, the attorney, was of Latin extract and a little on the olive-skinned side—

MR. MACKAY: Be careful.

MR. SMITH: And as he—[aside, to MR. MACKAY] I'm watching my words--and as they came across the street, I couldn't help but notice that he was just white as a sheet [audience laughter]. And I said [to himself], "This Italian boy just shouldn't be white." And I noticed that the person next to him had his arm on his shoulder and his hand and

arm behind the fellow. And my office is on the second floor [of the courthouse]; and as I watched them get closer, I noticed that there was something in the hand of the man walking next to my friend, the attorney. And as they came closer, I noticed it was a gun. I called the sheriff's department and told them that there was a gentleman [in what] looked like it was a hostage situation coming into the courthouse. And much to the credit of the sheriff's department and not to me at all, they marshalled their forces. Fortunately, the attorney suggested to his client that the stairwell was quicker than the elevator, so they got him into the stairwell. And the sheriff's department, like a horde of bees on somebody that just tried to get some honey, got all over that fellow and was able to wrestle him down; and no one was injured. The case proceeded on; the judge declined to sign the change in that order [*audience laughter*].

MR. MACKAY: But if you hadn't noticed that—

MR. SMITH: I get—well, I'm somebody else.

MR. MACKAY: Claim credit.

MR. SMITH: All right, I'll claim credit. If I hadn't noticed them, we'd have lost Judge Tillman [*sic—means Judge Peeler?*] and the attorney and probably me, too, who knows? They'd have come to file it in my office.

MR. MACKAY: We were shocked by the occurrence in the State Court in which there was serious subversion of integrity of the records on DUI cases. Have you had any pilfering of records in the Superior Court to your knowledge since you've been in that office?

MR. SMITH: To the best of my knowledge and belief, no. Now, we have had some well-meaning attorneys that had worked and would take the original case file out with them, but upon a telephone call to them and they realized that, by golly, they took the original case out. They came right back, so we've not had any problems with that. Our system is such that--

VOICE FROM AUDIENCE, *off-camera*: It's a different crowd of people that you're dealing with.

MR. SMITH: Oh, we have much better criminals than they've got [*audience laughter*]. Let me—we are short of time, and there's one little vignette I do want to tell. I can't imagine how I could consume this amount of time because I'm sure not used to speaking to the public.

As you might imagine, dealing with jurors, you get all sorts of reasons why someone can't serve on jury service. And the best one, the best story I've ever had, I'll share it with you. Bless her, bless her heart, I mean this came—this was real. It came from the person's heart, and I believe every word of it. But we had sent a jury summons to a lady in DeKalb County; and she wrote back, said, "Mr. Smith, I would love to serve, but two years ago my husband passed away, and I have been left to have to take care of my pets, and one of my dogs has a severe disability and requires medication twice a day, and I just simply can't leave that poor dog to come to court. Attached is a letter from my veterinarian attesting to that fact" [*audience laughter*]. It is amazing, once we sent her a reply letter, that she was able to find someone to take care of that dog; and I'm happy to report that the last time I checked, that the dog was still alive, that the lady served on two trials while she was here, and I probably lost a vote. *Laughs* The system works.

VOICE FROM AUDIENCE, *off-camera*: You mentioned storage space out on . . .

MR. SMITH: Camp Road—Camp Circle.

VOICE FROM AUDIENCE, *off-camera*: Do you have that space out there now?

MR. SMITH: Yes. There is a warehouse—we're hoping to get a records—a bona fide records center sometime, but right now we are using the old jail facility as a records-storage facility for DeKalb County government. We far and away are the major user of the facility. Otherwise, we'd take up another two floors here at the courthouse.

VOICE FROM AUDIENCE, *off-camera*: Your retrieval—do you have good retrieval ability?

MR. SMITH: We have good retrieval ability because everything that's out there is also on microfilm in the courthouse. So if you want a copy of the document, we can get it for you on microfilm; and most of the time a certified copy from a microfilm satisfies

most everybody's needs. On occasion someone will want to take a look at the original file. If that needs to take place, we like to have three or four hours to do it; but we can do it in forty-five minutes if we catch all green lights and the police in Avondale [Estates] [audience laughter], [inaudible—not DeKalb, sounds almost like "Fulton"?] County.

VOICE FROM AUDIENCE, *off-camera*: You said you had records from the late 1800s; and I suppose if I was tracing a deed back to about 1840, would they have to go to the archives?

MR. SMITH: They would go to the state archives. And if they went [to find a deed dated] prior to 1822, they'd have to go to the archives and look under another county because we [DeKalb County] weren't [yet] created.

MR. MACKAY: Well, I want to thank you, Whit. I paid a sincere compliment to Whit. Ben Burgess was clerk [of the Superior Court] when I started practicing law, and I always rated him the number-one public servant that I had ever met because of his concern for everybody that dealt with the clerk's office. And I think our clerk deals with the public in a very efficient and even-handed way, and I think we all want government to function that way. The only story he didn't tell is Robin Harris's story about the fellow that was about to get foreclosed on, and he took the law into his own hands and went down there [to the courthouse] with a razor and took the loan deed out of the book and ate it up [audience laughter]. That's what I call resourceful.

MR. SMITH: Unfortunately, we have [inaudible—could be "only" or "all the"] copies [audience laughter].

MR. MACKAY, *to MR. SMITH*: I'd like to ask your mother and you to lead us into the courtroom and let us come in there and greet you in there. Would you be willing to do that? MR. SMITH *nods*. Thank you very much. *Applause*

END OF RECORDING