

UFLC 41

Interviewee: Robert Morel Montgomery, Jr.

Interviewer: Denise Stobbie

Date: October 27, 1987

Robert Montgomery was born and raised outside of Birmingham, Alabama. He went through school there, including the University of Alabama. After graduation in 1957, he entered the military for two years through ROTC, and then came to the University of Florida law school, where he graduated in 1957 with a J.D. Lately, he has been devoting time and energy in philanthropic endeavors, particularly in the community and the arts.

His father was an outstanding criminal lawyer in Birmingham, and Montgomery attributes his interest in law and early success to that exposure to the profession. After UF, Montgomery went to work for Howell, Kirby, Montgomery, and Sands in Jacksonville, a firm which dealt mostly with insurance corporations. Montgomery was fortunate to receive considerable case work early, which is somewhat unusual for a novice lawyer. As Florida grew, the firm expanded into Daytona Beach, West Palm Beach, Boca Raton, and Ft. Lauderdale.

By 1975, Montgomery diverted his practice from corporations to the plaintiffs. He speaks at length of insurance companies and the trouble dealing with management, and how the consumer usually loses. Malpractice in particular was a bone of contention for him. As a result, Montgomery formed his own company, Rumger, to insure lawyers, and has been quite successful.

Montgomery vividly recalls how rough times were when he was in school here, but those hardships built a strong camaraderie among the students. He would like to see a different manner of selecting students for the law school, but has no suggestions at present. Competition is tough; even he acknowledges that when he was in school, the attrition rate was quite high. He recalls course work with professors Henry Fenn, V. W. "Danny" Clark, James Day, Karl Kastin, Frank Maloney, and Clarence TeSelle. He notes how different – how specialized – law is today. To this day, he holds the highest regard for the University of Florida law school and feels a tremendous debt of gratitude to the University for providing him the training to make a successful career.

Montgomery's advice to fledgling lawyers is simple: work hard, always think of the client first, and be trustworthy. On ethics, his counsel is equally succinct: "If there is a question of whether it is right or wrong, do not do it. That is how simple ethics is."

S: This is Denise Stobbie interviewing Mr. Robert Montgomery, a 1957 alumnus of the University of Florida College of Law and a senior partner with the law firm Montgomery, Searcey, and Denney. Would you please state your full name and your date of birth?

M: Robert Morel Montgomery, Jr.; June 9, 1930.

S: You started your higher education at the University of Alabama. What was your

major there?

M: Chemistry, with a minor in biology.

S: Were you raised in Alabama?

M: I was born there in 1930 and lived on the outskirts of Birmingham, in a place out in the country called Roebuck Springs. I attended public school in Birmingham at Woodlawn High School, where I graduated in 1948. I went to the University of Alabama from 1948 to 1952. Then I spent two years in the service in the Korean War. After one year in the service I married my wife, whom I met at the University of Alabama. In September, 1954, after I got out of the service, I entered law school with the GI Bill.

S: How did the move to Florida come about?

M: We were always vacationing in Florida. My wife's family at one time lived in Tallahassee. Her father was with Metropolitan Life Insurance Company. I had always loved Florida, and coming here was the best decision that we ever made. My grandfather had been a lawyer and my father was a lawyer, but I just did not feel that I could go back home and practice law with him. I wanted to be independent, so we came here on the GI Bill. Mary worked as a secretary with the psychological clinic at the University during the time we were here, so she was working and I was going to school on the GI Bill.

S: Did she attend school, also?

M: No. She graduated from the University of Alabama. That is a rather funny story. In Georgia there were only had eleven grades. In other words, you went through eleven years, and then you either got out of school or you went to college. In the state of Alabama we had twelve years. Consequently, she was a year ahead of me, so there was a year that I had to pull at the University of Alabama before I graduated. We obviously could not get married until I got out of school. She was an airline stewardess for Delta from 1952 until we got married in 1953. Then, of course, the Korean War was on, and I did not know when or if I was going to have to go overseas. They handed me my degree in one hand and my orders through ROTC in the other. So we were married the last year I was in the service.

Another reason for coming to Florida was I had discovered that Dean Henry Fenn from Yale was the new dean at the University of Florida College of Law. Everyone had great hopes for the law school at that time. They were studying from the same materials and the same format used at Yale. That intrigued me, because I did not have the money – or the grades, for that matter – to go to one of the Ivy League schools like Harvard, Yale, Princeton, or

Columbia. So that also motivated us to come to Florida.

S: It seems that it would have been easier on you to stay in Alabama. With your father's background and your grandfather's, you would be more established there.

M: Yes, but everyone has a little rebellion in their nature at that age anyway. I guess I have always had it – I just wanted to get away. Of course, I had a lot of help from my wife Mary, and from the GI Bill, which is the greatest thing that ever happened.

S: Had you always planned on studying law?

M: I had, but my father had not. He wanted me to be a doctor. He said, "As long as I am paying for your education, you are going to take what I tell you to take." I said okay, and that is why I majored in chemistry and biology. I was actually in pre-med at that time.

S: Were you interested in law?

M: I had not the slightest desire to become a doctor.

S: How far back did your desire to be a lawyer go?

M: I used to tag along with my dad, who was quite an outstanding criminal lawyer in Birmingham, since I was a tyke. They used to hold court on Saturdays, and even when I was in the small grades – first, second, third, fourth – I used to go with him to court on Saturday. I was always interested in hearing him in sensational cases. He represented many notorious folks, and he had a great deal of notoriety himself. Listening to him speak to his clients over the telephone, having them come to the house, having to meet a murderer or the fellow who held up the First National Bank in Birmingham – that was quite fascinating. I think I probably had a leg up when I went to law school, and also when I began practicing law, because of the experience I had in the home, both with my grandfather and my father. I do not think you can be around that atmosphere and not have it rub off, insofar as the way you treat your clients, the respect you have for the court system, and things of that nature.

S: When you entered law school, were you putting yourself through school?

M: Yes, we put ourselves through. We got no help.

S: Was that a choice? Was your father still interested in your pursuing a medical degree?

M: He was not happy with my going to law school. He felt that the law was, as he used to call it, the queen of all professions. But at that particular time, I guess there were a lot of young lawyers who were not making it; all the young doctors were. I think he probably looked at it through an entrepreneurial eye, as opposed to considering what I wanted to do. But he was dead set against my becoming a lawyer. As a matter of fact, he and I hardly spoke for several years after I went into law school. My mother and father divorced when I was quite young, so, consequently, there was no family unit, and I did not have a mother to argue for my position.

S: So at that time there were some lawyers who were having a hard time making it?

M: It was tough back then. I was the last man in my class to get a job, and I started at \$300 a month. My first big raise was \$25 – after six months. I believe after my first year, my salary was \$375.

S: Was that a problem just in Florida, or the Southeast?

M: I think it was universal. Back then, lawyers were trained to carry a briefcase for years; you did not just go in and try a lawsuit. That is one of the things that I changed as much as I could. In the first place, I tried to receive a liveable wage once I got to be a partner in the then firm of Howell, Kirby, Montgomery, and Sands. That was the senior Mr. Charles Cook Howell, one of the most famous railroad lawyers and legal personages in the state of Florida. It was then Howell and Kirby. I persisted and used every means I could to get a job with them. I would not take no for an answer. William M. Howell, who still practices in Jacksonville, and T. Malcolm Kirby gave me a job in February, 1957. I began working for the then Howell and Kirby firm of Jacksonville. They represented what was then the Atlantic Coastline Railroad. Mr. Howell had represented Atlantic National Bank. But primarily it was insurance defense work--representing insurance companies. We had more business than we could say grace over, so all of a sudden, right out of law school, I started trying lawsuits. This was a real break in the mold.

My first year out I must have tried a dozen cases, which was a lot of cases. Of course, you could try a case in a day. We represented insurance companies on all types of subrogation work. We did not have no-fault back then. The Florida Rules of Civil Procedure had just taken affect in 1954. The firm seemed to like what I was doing, so all of a sudden I was a young lawyer at twenty-eight years old making quite a name for myself, simply because I was always in court. I represented 7-11 in regard to the blue laws in Jacksonville. People forget that thirty years ago you could not buy a loaf of bread on Sunday, much less a beer, because everything was shut down. So we attacked the blue laws, and that was one of the first that I had a lot of interest in. It was a lot of fun. I represented the Southland Corporation, which is 7-11.

S: They could not sell anything on Sunday?

M: No! They would come out and arrest you if you opened up on Sunday. It was a city ordinance. That sure is silly.

S: That is amazing. I can understand prohibiting the sale of alcoholic beverages, but not bread, eggs, and milk.

M: Ultimately, we did away with the ordinances as a result of certain pieces of litigation.

S: How much interest was there in that? I imagine there was quite a bit.

M: Quite a bit in the state of Florida. The old Howell-Kirby firm started the first branch office concept. We had an office in Jacksonville, but then we started finding ourselves going more and more to Daytona Beach, which is in Volusia County. We thought about opening an office down there, and we did. When we got situated there, we found out that we were going a little bit further south. Then, all of a sudden, Sputnik came, and the boom was on in Brevard County. We opened an office in Rockledge, and there was a lot of activity there. We were still doing primary insurance work. Then we were asked by several of our good companies and our self-insured clients, like Ryder Truck Lines, if we would open an office in south Florida. We said no for a long time.

One week in Jacksonville I tried two cases at the same intersection. I had the same investigating officers and the same independent medical expert. I said, "This is crazy. I am getting bored to death." So we had a meeting--the firm was pretty large then, with twenty-five or thirty lawyers--and I said, "Why not open an office down in south Florida." I had never been to West Palm Beach before, but in 1966 I opened the branch office here in West Palm Beach--Howell, Kirby, Montgomery, D'Aiuto, Dean, and Hallows. I had an office here in West Palm Beach, an office in Boca Raton, which was also expanding, and then I opened an office in Fort Lauderdale, so we were the pre-eminent law firm on the coast at that time. Our work took us to Jacksonville, Rockledge, Daytona Beach, West Palm Beach, Boca Raton, and Fort Lauderdale. We then opened in Orlando, and our final office was in St. Petersburg. That is when I got an ulcer and decided the best thing to do was to put everything under one roof here.

In 1975, I changed my philosophy completely, away from representing what I call the "vested interest"--banks, railroads, and insurance companies--to the plaintiff's side and the commercial side. I do not represent any insurance companies anymore. That was by choice, although everybody thought I was crazy.

S: Why the change?

M: I was pretty much the darling of the insurance companies at that particular time. I was trying an awful lot of cases, and I was pretty good at what I did. I had a case one time that meant a lot to me. I defended a case for a corporation up in Martin County and won it. It was a little girl with brain damage, and she would never work. Between you and me and the gatepost, the lawyer on the other side was just not good, and they lost. I said, "No more." Coming back from the trial, I told my wife that I was giving up working for insurance companies; I was not going to do it anymore, and I quit. As I said, everybody thought I was crazy.

S: Had that been coming for some time?

M: Yes, I was getting dissatisfied with the management. They were changing the claims practice and using the M.B.A. boys – that is, the money boys – to substitute the good, solid claims personnel they used to have – the professionals. If you were in an accident, they would get right out there and take a statement. You were in partnership with [your company rather] than being a problem to them. As far as I am concerned, the whole atmosphere changed, along with the whole insurance industry. It was just not fun anymore. I was finding that I was fighting more with the top management of the company than I was the opposing lawyer. Some pretty good alumni were glad that I made that choice, because when I told the insurance companies I was no longer going to represent them, these young fellows got those accounts.

S: What type of work did you choose instead?

M: Representing persons who were injured and who had been bringing suits. I also did a lot of commercial litigation, in other words, partnership breakups, minority stockholders suits, certain aspects of securities law, such as churning accounts by brokers and negligent handling of accounts in some of the brokerage houses. We look at ourselves as somewhat of a boutique. This is all we do. We do not probate wills, we do not write wills, we do not close loans. We do not do anything except litigation; we are litigation lawyers.

S: How many lawyers are in your firm today?

M: Twenty, but we have 110 employees.

S: Any more branch offices?

M: No, no more branch offices. No, ma'am. This is it. What you see is what you have got. I have this building here and a little park out there. We have other offices next door where we keep support personnel, like paralegals and investigators.

S: You said you had an ulcer and you pulled it all under one roof. Why?

M: I had an ulcer and decided that I wanted to consolidate everything.

S: Just to simplify things?

M: Yes. Jacksonville spun off – everybody just kept their offices and went back to business. The firm broke up in 1975.

S: How do you feel about big firms as opposed to small firms?

M: You know, that is a very interesting question. I do not know what I think about it. I know that I could not operate in that atmosphere, because the only way that you can do as well in a large organization as you can in a small organization is to use lower echelon folks to make your money for you. If you work forty hours a week, fifty weeks a year, that is 2,000 hours. It is very difficult to honestly bill out on an hourly basis more than 2,000 hours, considering bar work, cultural activities, civic activities, family outings, two-weeks' vacation, pro bono, etc. It is extremely difficult to get 2,000 billable hours a year. A person can say, "Yes, I worked 1,500 hours," and you may work twelve or fifteen hours six or seven days a week. But you are going to find that a lot of those hours are non-productive. So the only way a large firm that charges on an hourly basis can do this is to have a lot of young folks. Of course, as they rise to the top, they consequently are more protective and are looking to be in management. All of a sudden, there is no place to go – you are top heavy. So what happens? You lose good people. Our philosophy has been to keep our people the best we can through a bonus system in which their achievements are recognized. That is the reason we have kept our lawyers at twenty. We have about 118 employees all told.

S: Let me go back and touch on a few things that you have already talked about. You said that you started the branch idea with the old Howell, Kirby firm. What kind of response did you get from other firms and other members of the profession at that time?

M: A lot of animosity, because we were encroaching on their turf. We were in a unique position because we represented these companies on a national basis. In other words, persons from Hartford, Boston, Philadelphia, and New York were hiring us in Florida, as opposed to persons in Florida cities hiring us. Naturally, when we went to another city, we already knew the leadership and top management of the various corporations that we represented, so it was only natural for them to follow us. That did not sit very well with a lot of people. Others did not care, but persons doing the same type of work did not look at it as very kindly.

S: Has that changed with the branch idea being so widespread?

M: I think so. With the explosion of the population here in Florida, there is just enough for everybody. If you are good, people are going to come to you. You have to have confidence in what you are doing and confidence in yourself. I know in the plaintiff's work, in doing what I do, it is absolutely contrary. Everybody is helpful to everyone else, and they are cooperative in sharing experiences and ideas. I think lawyers from the consumer or plaintiff side are more welcome coming into the community than they would be representing the commercial business.

S: You said that you were not having any fun anymore representing the insurance companies. How about now? Are you having fun again?

M: Oh, yes, I love it. I love difficult, challenging cases. Like today, in this atmosphere of medical malpractices, it is extremely difficult there in front of the jury. Jurors are highly critical of lawyers. They complain that those of us in the legal profession are the cause of this whole crisis in which doctors are going on strike. It is very difficult to get a fair and impartial jury in this day and age.

S: If you are representing the doctor?

M: If you are representing the plaintiff.

S: The plaintiff? I would think that the jury would be more sympathetic, then.

M: No, because they say it is the high jury awards that have prevented these good doctors from staying. They will not deliver babies anymore, they have closed down trauma centers, and they have closed down emergency rooms. Whenever they are interviewed, they always blame lawyers, but it simply is not so. The statistics I have been privy to say that that is an absolute fallacy. So it is a very sad thing. It is very tough for the consumer today.

S: Well, at the same time, people want the doctors to be held accountable, though, if they do something wrong.

M: Not most of the jurors, believe it or not. It is a terrible atmosphere. Or if they do want the doctor to be accountable, they do not like to quote "big verdicts," whatever that is. For example, there is case I am going to be trying Monday on behalf of a young man who is thirty-two years old, and half of his body is paralyzed. He is going to need physical therapy, and [financially] it will hurt him terribly as far as his work is concerned, so a couple of million dollars is just not all that much money. So these are very difficult times.

There is a mood of change toward taking away the right of trial by jury and

putting it into a workers' compensation type of thing. I have had rules changed because of results of cases that this firm has tried. The change is for the protection of the consumer. Thanks to the tort system, corporations are not going to do anything that they do not have to do. I have a case right now where the person has been terribly harassed on a debt. She really has no compensatory loss – \$100 – but the punitive damages can only be three times the compensatory. So what? Do corporations care about \$300? They thumb their noses at that. This is the thing that disturbs me about what is happening. The tort system is a wonderful system, and if they would just leave it alone, it could correct a lot of wrongs.

For example, take 1937 when Hitler went against the synagogues. In one fell swoop, overnight he burned them, vandalized them, beat the rabbis and the cantors, tore up their music – utterly desecrated them. Now, if they had had punitive damages, that would happen only one time and they would be out of business, just like the Ku Klux Klan was put out of business for hanging that kid in Mobile, Alabama. Corporations that are amoral, that have no consideration for the public, ought to be put out of business. A person who puts out a defective automobile, and knows it is defective, balances the cost of deaths and injuries with the cost of recall, and chooses deaths and injuries over recall! They ought to be put out of business, for they have no right to do business anywhere. A person who fails to appropriately test their products – like thalidomide – ought to be put out of business. An amoral company that runs amuck has no right to be in business in this state, or in these United States, as far as I am concerned. I started in an insurance company. Did I tell you that?

S: No.

M: That is another aspect. About three years ago my office manager came down to see me and said they would not renew our insurance. Several weeks later he came in and said, "I cannot find insurance coverage anywhere." I said, "Alright, go out and get a big deductible – \$500,000." He came back and said, "I cannot even get a \$500,000 deductible." I said, "Get a \$1 million deductible." He replied, "No \$1 million deductible." There was absolutely no market; they would not write trial lawyers. Now, whether this was by design or otherwise, I do not know, but it angered me so much that I called my accountants – Levanthol and Horvath, which is a very excellent accounting firm – and said I wanted to self-insure. I said, "I want to start right now taking money and putting it aside to be my own insurance company." They said, "That is wonderful, but you cannot do that except with after-tax money. The money you put aside you have to pay income tax on as it generates income." I thought, how do the insurance companies get away with it? He said that is because they do it correctly, through what is known as I.B.N.R. I said, "What in the world is an I.B.N.R.?" It means "incurred but not reported." That means they do the same thing--they put the money aside; the money continues to grow and build, but they pay no

income tax on it. They always generate losses because there is a claim around the corner for which they are going to have to use that money to pay. We know that something is incurred, but it has not been reported to us. I thought that was absolutely ridiculous. So I looked into it and decided to start an insurance company. I started it together with my partners Chris Searcy and Earl Denney, and called it Rumger. If you take my initials – which are R.M.M. – and put a U on it, you get Rumger. That is what some of the folks used to call me behind my back – affectionately, I hope. They would say, Rumger is going to do this or that; so we named it Rumger. We went through and capitalized the company with twice the capitalization of that required in Florida. We made it a stock company in Florida, on par with Traveler's and the rest of them. We had re-insurance with a \$1.4 billion company, Franconia. We are writing at the present time primarily trial lawyers. The reception that we have gotten has been wonderful.

S: As an established firm, why did they cancel your policy?

M: You have got me. I guess we had had some losses in the past. One reason I went into the business was I found out it was happening with trial lawyers all over the state of Florida. They just could not get coverage. Now that I have Rumger, it is interesting to notice what a little competition will do. Now the insurance companies are coming back into the state and competing. I had a letter from one of the larger companies saying, "This is a new company. I know that they are well-intentioned people, but they do not have the experience and they do not have the longevity." Concerning experience, we hired as president the person who was in charge of all the hospital liabilities for the state of Ohio, Duane Crone. Joe Lundy was vice-president in charge of claims of one of the largest insurance companies in the country, and he is my consultant. We are doing so well because we are back to the style of insurance business where we are your partner and not your problem. We want to know about your lawsuit. We are not going to cancel our policyholders – we want to help them. We put out a "risk of management" memo to all of our policyholders about how to stay out of trouble. Every policyholder we have has personal contact with the president. It is going to continue that way. If you have a problem, you call the president. If you have a real problem, he is going to answer the telephone. If you do not think we are doing our business right, we want to know about it. Having been on both sides of the fence, with all this wealth of experience that we have, I feel that we know what we are doing.

S: What is your position in the insurance company?

M: I am chairman of the board.

S: How do you fit that in with your trial work?

M: I do not know. I think probably the busier you are, the more time you find that you can devote. I will tell you what it does do: it puts you in a position where you have to make decisions. You do not have time to procrastinate. Procrastination is terrible. I am not talking about "shooting from the hip." I am talking about getting the available information. Once you marshal the facts upon which you are going to have to make a decision, make it! By mulling over it or agonizing over it, people waste an awful lot of valuable time. I guess that is the reason why I do not get befuddled with everything I am involved in. I have a holding company, a leasing company, Palm Beach medical consultants – we have got an awful lot of things going on.

S: Is your firm now self-insured?

M: Well, no, it is insured by Rumger. We are one of Rumger's policyholders. We believe in our product.

S: Getting back to the torts problems of medical liability insurance, you said if they just left it alone, it would be better off. I know they have been studying that now.

M: Insurance companies have paid millions of dollars in false advertising. They give you examples of cases which, if you track them down, you will find that they are advertising falsely. They have used, unfortunately, members of a very learned profession, the physicians, as their point people. They have gotten them into a great frenzy, claiming that the lawyers have done it. We are perfect targets. The frenzy has been created so that insurance companies can raise their premiums inordinately. It is an abominable situation. I know. I am in the insurance business. I can see that it is incredible. I generate losses – I am always going to be generating losses, because I am not going to pay any income tax. I do not have to take my losses into consideration or report what I am making on my invested assets. It is just on what my premium is. I know what my administrative costs are. There was something in the paper that says that a lawyer-owned insurance company had a substantial first quarter loss. That is right, and I am going to have a substantial loss in the second quarter and next year, and forever I hope.

This is old hat, but the insurance companies are not subject to anti-trust laws. They may get together and dictate what is going to be in the policy and how much they are going to charge – all of them together. Now, if Pan-American, Continental and Delta Airlines got together, they would put the presidents in jail, all three of them, for anti-trust violations. Insurance companies are not that way. I think the leadership of the medical profession, the F.M.A., is beginning to understand where the problem really lies: the problem is regulation. I am not a great supporter for regulation, but when you have a monopoly – and that is what you have when you have no anti-trust, like the phone company – you

have public service commissions and hearings. They have to bring the books in to show how much money they make, how much money they lose, how much they pay in dividends, how conservative they are in their expenditures and expansion, and things of that nature.

S: So do you think the system is working as is?

M: Yes, but I am very concerned about the half-truths and the deliberate provocation of these false issues by the advertisements of insurance companies that the public has swallowed. Take contingency fees, for example. I have never had a client object to a contingency fee – that is, charging the client a portion of what they receive. They have always been very grateful. I have had some whale-big cases involving multimillions of dollars. Who is objecting? The vested interests – the manufacturers, the insurance companies of those manufacturers, corporate America.

I am an entrepreneur. I am in business, I have 118 employees, and I am probably one of the biggest businesses in this county insofar as employees are concerned. My attitude is different than what I know the attitude of corporate America is. The contingency fee is being attacked because they do not want lawyers to compete against those to whom they must pay a large hourly fee. Right now I can match any lawyer they have out there--dollar for dollar, man for man, and hour for hour. If they spend an hour, I will spend two; if they spend a dollar, I will spend five if necessary. They want to do away with that system and make it like it is in England. They look at it and said, "Oh, what a wonderful thing in England." Well, if you are hurt or injured in England, the only way you get into court – I was just in a symposium in London a year or so ago on comparative law – is for your union or legal aid to do it. If your union does not do it and legal aid does not do it, forget it. In these big cases when you take on corporate America, like General Motors, they are going to spend you right out of court. Do you think a union or legal aid is going to put up \$100,000 for you? No way. So that makes it very difficult. It saddens me. The individual is not going to be affected that much. I can turn around tomorrow and represent a lot of folks. I can generate activity for myself personally, but I look around and see the guy on the street – the consumer – and I really feel that he has been done wrong. The system is a great system, but it is being tinkered with terribly.

S: Let me go way back to your school days. You said that while most young lawyers for a while were just carrying around briefcases, doing research, and that type of thing, you were trying cases your first year out. Were you prepared for that when you left law school?

M: Well, with my father's having been a lawyer, having been around the court house, being in the service and probably having a little bit more maturity as a result of that, I felt prepared. Then, of course, I had good teachers. The firm that I was

working with, Bill Howell, Mal Kirby (Malcolm T. Kirby), and the senior Mr. Howell, were just excellent teachers. The door was always open, and they gave me a great deal of confidence. But I was scared. I had some funny experiences with the judges when I was trying federal cases. Back then you could be called and a clerk would say they have a bank robbery or there is an employee who is pilfering funds who needs a lawyer, and you are it. They did not have a public defender back then, you were appointed by the judges. So I was trying Mann Act cases and all kinds of cases.

S: So a judge would just appoint a lawyer. Any lawyer?

M: Sure.

S: That was without pay?

M: Sure.

S: Could you refuse if you were busy with another case?

M: Well, you would have to have a damn good reason. You could say, "Judge, I am starting a case Monday," and he could say, "Fine. I have another one for you Tuesday." No, you did not get by with that. That was just a part of practice back then. If you were a criminal lawyer and you really knew your business, you would get called upon often.

S: Do you remember offhand when they started using public defenders?

M: I think it was *Wainwright v. Gideon*. Is that when it was?

S: I will check the date on that.

M: It was when you had to have effective counsel. It seems to me it was after 1966 or 1967.

S: Justice Atkins had just talked about that in an interview I did with him, and he said that that was how he got work after he graduated. He looked around and could not get on with a law firm because they did not need any help. Because there were no public defenders, he just told the judges that he would represent anybody. So he found work that way and got some experience under his belt.

M: Sure, that is right.

S: Coming straight out of law school, you went right with the firm.

M: Right with the old Howell-Kirby firm.

S: Had you had any trial practice experience in school?

M: No, they did not have it. In torts, you had one little mock trial, but that was it. It was nothing like they have today. What we used to call things are not called that anymore. They did not even have the Uniform Commercial Code back then, or the Uniform Deposition Act. There are so many uniform acts at the present time, you only have one set of rules. We did not have them back then. It was all trial by ambush. In criminal cases, you never knew what anybody had. Never!

S: Would you say you liked things better the way they were then, or the way they are now?

M: Oh, who knows? I would not exchange my experience for anything. One of these days I would really like to send my transcripts from the University of Alabama to the law school and change just the dates, and I bet I could not even get in the front door. As a matter of fact, a year and a half after I was in attendance and had successfully completed at least a year at the University of Florida, the dean called me one day and said he did not have my SAT and asked if I had ever taken it. I said yes. He asked if I remembered when. and I said, "Yes, it was about 1951." He said, "You have to get it. We need it for your records." It took another several months to get it. I came in with a bachelor's degree from the University of Alabama and showed them my degree, and I was in law school. They got my transcripts a little later on. This testing business really disturbs me. I do not know what would be better, but everybody in the whole university system is saying, "We have X number of merit scholars, and we have this and we have that." Well, that is really good, but what are they going to give back? What kind of people are they? How hard did they have to fight for those grades? Are they grading easier today? With the emphasis they are putting on SATs, I would bet that at least half, maybe three-fourths, of my buddies who went to school with me and graduated in 1957 would not have been accepted. Some of them have been extremely successful leaders in my state. I really dislike the emphasis they put on grades, but I do not know the solution. I do not know what the criteria should be.

S: They do try to look at more than just grades and test scores.

M: They do? Since when?

S: The admissions committee looks at backgrounds, etc.

M: But with their minimal requirements, if you have a C average, you do not have a snowball's chance of getting into law school.

S: Depending on all of the factors. They put those people into a big holding tank, and they put the people with the really high undergraduate grades and test scores together. If they are high enough, they are considered automatic admits, if they want to go to the University. All those others receive much deeper evaluation by the admissions committee as far as where they received their degrees, what kind of work experience they have, their age and maturity.

M: Well, that is good. I am glad to know that they are doing that.

S: But it is hard, with that many people trying to get into school.

M: Has the number of applications been reduced somewhat?

S: We still receive a lot of applications. Nationally, the applications are down, but our school still receives about seven applications for every one student that gets in, so it is tough. The reason they want the top students is to keep the standards up. They figure that with better students, the quality generally is higher.

M: Oh, yes. They made no bones about that. I remember Dean Fenn, in orientation in the old auditorium, said that in your senior year, on the second floor there is a classroom where you will have to take a mandatory course in whatever, and there are X number of seats in that classroom. You would look around and say, there are a lot more folks here than that classroom takes. So they were telling us in a subtle way that there was no way that we were all going to graduate. The attrition in my class was bad. As a matter of fact, the last semester we had a veteran – a marine officer, as I recall – bust out. I had another friend who ultimately went to another law school. It was tough. I do not care whether you were a veteran or what. You gave your professors proper respect. You might be a little lax sometimes, but even out in a social atmosphere, you never took liberties with your professors. Even though I had been in the service and was an officer, I treated them with the utmost respect. Of course, Mr. [Clarence John] TeSelle just scared everybody to death. In fact, I just sent \$5,000 to his scholarship. I carried Mr. TeSelle with me in the courtroom for a long time. I would not dare go in his classroom or in a court room without being prepared.

S: Why did the professors have that respect? Were they that good at teaching?

M: Just by the very nature of the times. It was a time when you gave your respect. Even those professors whom we maybe thought less of, it was always "yes, sir" and "no, sir." If they told you to do something, you did it. If you did not do it,

they would bust you out.

S: So it was easy to get in, but it was not so easy to pass.

M: Oh, no. I think there were 137 students in the school when I started, and I know there were about thirty-four in my class in January. We were a tight class. In fact, I was looking at some old law school photographs the other day.

S: When people would bust out, would they come back?

M: No.

S: That was it?

M: Well, there was probation, but you never knew who was on probation. It was pretty secretive. A lot of them left, and I am sure it was not just for lack of ability. I do not know if there was any such thing as a student loan back then, but if there was it was very nominal. It was a full-time job – at least it was for me.

S: Did you do any outside work?

M: Yes. I used to work at Malone's Bookstore anytime that they could use me.

S: So you had a little extra time?

M: Yes, sure. During book rushes, Bill Zenah used to hire me – bless him! Malone's is not there anymore. It used to be a college bookstore.

S: Was that located on University Avenue right across from the school?

M: Yes.

S: Are there any other professors that you can think of who prepared you for practice?

M: Sure. I think Professor [James Westbay] Day was a marvelous teacher. All of my professors were good. Even though Karl Krastin gave me a D in Constitutional Law, I still respected them all. They are responsible for my being in a position to practice law.

S: There were quite a few new professors then. Toward the late 1940s, the old guard professors were finally starting to retire.

M: Like Mandell Glicksberg. But he did not do much. Bob [Robert Barbeau] Mautz was the assistant dean – a real Yalie. I still remember a limerick about Dean

[Frank Edward] Maloney. It went something like this:  
There was a young man named Rex,  
who had a small organ of sex.  
When arrested for exposure,  
he announced with composure,  
"De minimus non curat lex."  
Do you know what that means?

S: No.

M: "The law is not interested in trivialities." We all used to tell terrible jokes about him, but he was a very well respected and extremely good professor. Dean Fenn, of course, taught Future Interests.

S: So he did teach?

M: Oh, yes. I took a course with Dean Fenn. Danny [Vernon Wilmont] Clark in criminal law was superb.

S: What kind of teacher was Fenn? He was such an imposing figure.

M: No-nonsense, absolutely no-nonsense. He would give it to you, and he would expect you to get it. Throughout the course he might answer questions and explain it to you. That was a very difficult class. P. K. [Philip Keyes] Yonge taught Procedure. That was a relatively new course. The rules and procedures course had just come out in 1954 when I started law school.

S: So he had to do a lot of preparation to teach.

M: Sure.

S: What about TeSelle? He had to be very old by then.

M: Yes, he was in a wheelchair, he had a cane, and he would chomp on that cigar. He would say "MONT-gomery!!!!" I had been an officer in the Korean War with responsibility for several hundred kids, putting them through their basics to go out and get killed. But, boy, I tell you, I stayed away from him. We would get up and recite the cases, and he would ask you questions. If you gave him an answer he did not agree with, he would say, "SIT DOWN!!!!" You never knew what the hell he was putting in his book – he was always writing. I never knew of anyone in that class who did not tremble. If you could ever push him around in a wheelchair, he might pass you. He was unpredictable. But, boy, I will tell you one thing, when I got out of that class and started practicing law, I sure knew my evidence up one side and down the other. I think anybody who got out of

that class had to know what they were doing.

S: So his methods worked?

M: They worked for me, I will tell you!

S: He was in a wheelchair by then?

M: Yes, he was crippled.

S: He had walked with one cane, and then two canes, and finally ended up in a wheelchair.

M: I think he got by a little bit with his cane, but most of the time he was in his wheelchair.

S: How did he get to and from school?

M: He would just appoint somebody from the class. Various persons from the class would pick him up, put him in the car, and bring him to school.

S: Do you ever remember doing that?

M: No, I did not do that. Listen, he scared me to death! I did not even want him to know who I was. As far as I was concerned, I wanted to be "Number Four" or "Mr. X."

S: So he had students come to his house and help him?

M: Yes.

S: So he was physically handicapped, but that did not do anything to him mentally.

M: [Whistles] I should say not! You would think you knew the case so well, but there would be an obscurity that would just pass you by. And, boy, would he pick up on it. And he would tell stories about lawyers who had been friends of his and what had happened in a particular case.

S: There were many new professors, many of the faculty members who had been there since the founding of the college had retired.

M: Well, the only new ones I had were Vernon Clark, Jimmy Day, and, of course, Deans Fenn and Maloney.

S: Maybe I should not say "new," but new as of the late 1940s. Do you feel that they were up on all the laws?

M: Oh, yes. I am so fortunate in my education; I really am.

S: Well, that is good to hear, because I have interviewed a lot of our alumni who were here in the late 1940s, such as Chesterfield Smith, and they were saying that some of their professors at that time needed to retire.

M: None of mine needed to retire. I wished some of them would have retired about halfway through their class!

S: Were you a good student? Were you studious?

M: I was right in the flat middle of my class. Oh, yes, I studied – I really and truly studied. I set out a certain time of the day religiously – that was my job. Some people say they did not study that much, but I did. Whether it was necessary or not, I do not know. But I will tell you one thing, my strong study habits in law school stood me in very good stead once I got out. I was used to hard work. I was used to concentration. I was used to putting things together. I was used to running scared.

S: Was your wife supportive of you during those years?

M: Oh, absolutely. As I said, she worked as a secretary first and then for Dr. Justin Harlow in the psychological clinic. That is what she did the last two years I was in school.

S: You served on the *Law Review*. Did you have to be one of the top students? How did you get onto *Law Review*?

M: Bob Smith, the former judge from the First District Court of Appeals who now practicing in Tallahassee, asked me to write an article. I did, and he edited it. Thanks to Bob Smith and his editing abilities, it was published. I do not think grades had a whole lot to do with getting onto *Law Review*. I do not see how they could if I was on it – I was flat in the middle of my class, whatever the grade level was. They gave us bar exams, which consisted of three days of writing, never any multiple choice. I liked it because there are so many exceptions to the rules on an objective test. I do not think you could get a good idea of how much someone knows by a multiple-choice examination. I have seen some of the multiple choices in national and so forth, and I could argue with anybody over how one answer is better than the other.

S: Did you have to take the bar exam before you began practicing?

M: Oh, yes. Those started around 1950.

S: Did they do the character background check on you?

M: Oh! I almost did not get in. I was in the Sigma Chi fraternity, and we used to go get beer because Tuscaloosa was dry. For parties, we used to get in the car, go get the beer, and bring it back. Well, a couple of us went down one time and got picked up for speeding, or some minor infraction, and all that beer was in the back. That is called violation of the prohibition law. It was a misdemeanor, and no big deal. We drew straws, and I got the short straw and had to pay the fine of \$25 or so. On the application for the bar exam, there was a section where you had to put down any infraction. The school really wanted to know about that, and I was scared to death I would not get to be a lawyer because of that one infraction.

S: After all the law school and everything?

M: That is right. I had to write a lengthy explanation. It was a misdemeanor, but still violation of the prohibition law.

S: Did the students get together for social occasions?

M: Oh, yes. We had the John Marshall Bar Association. But we got together primarily between class. There were just not that many of us. We would go out for a smoke or whatever. You got very friendly, and you knew everybody in your class intimately. You knew when someone was sick in the family. As I said, the classes were small. You would sometimes have an hour or thirty minutes between classes, and, instead of going in the library, you would stand outside and pass the time by talking, so you got to know your classmates pretty well. When you were a freshman, you would know the junior class. When you were a senior, you knew your junior class. It was kind of funny: you knew a class above you when you were a freshman and a class below you when you were a senior. Then we would go out to Maloney's house once a month for ethics class.

S: At his house?

M: Yes. He would have speakers there, lawyers from different parts of the state: Jacksonville, Orlando, Tampa. Florida was not very big then.

S: Nothing like now. So you would go up to Maloney's house for that course. That is interesting. Would any professors meet there, too?

M: No, I do not think any of the professors went. But he had guest speakers. He

would give an assignment as far as ethics were concerned, and we would take one of those aspects – we never knew which one – and have a round-table discussion. Then some notable lawyer would get up and discuss it. Also, you asked me another thing and I had forgotten. I likewise stayed in the Army Reserve because you could go away for two weeks and make pretty good money in the summertime.

S: Did you do any other work in the summers? Did you ever work for a law firm?

M: No, I went straight on through, start to finish.

S: You were pretty eager to get out. Was it because you were older?

M: That is right. I was anxious to get out. I had spent two years in the service, and I was anxious to get on with my life. It cut a whole semester off, going straight on through.

S: Were there a lot of veterans at that time?

M: Yes, there was quite a good number of veterans.

S: You told me about your first job and how you came to Palm Beach. Why did you settle on West Palm Beach when you were moving the firm south?

M: Just because we were moving the firm south and I wanted a change. Of course, Miami was the big city at that time. I did not want to go to Miami, but I had a feeling that south Florida was on the go. It was; it was a fast track.

S: You mentioned the blue laws. What other early trials would you say had a great impact on you?

M: Oh, gosh, I tried so many cases.

S: The really early ones.

M: You know, they all kind of blend in. I had so many experiences trying cases when Justice Erlich was my adversary. I can remember the big cases that I learned a lot from. I was pleased to have such adversaries as Ray Erlich, Chester Bedell, Nathan Bedell, Walter Arnold. They were the big guys, the ones with tremendous reputations. They were super lawyers. I remember the judges – Judge Cowboy Simpson, Charlie Lucky, Al Gressley, Spic Stanley, Edwin Jones. All were wonderful, tough judges. Many of the judges around when I first started practicing in Jacksonville have since died. We had the intermediate appellate court. There was only one, and that was in Tallahassee.

Justice Willington and Justice Carroll were sitting up there. We would go to Tallahassee to appear before the [Florida] Supreme Court. At that time, the trial lawyer who tried the case did the brief. Today, of course, I would not dare because the appellate practice is so highly specialized. It was not the age of specialization then. We did worker's compensation, subrogation work, and automobile cases. I tried the first birth control pill case in the United States here in Florida for G. D. Searle back in 1968. But when you really go back, I was representing 7-11, physicians in medical malpractice cases – big corporations. I would go to their headquarters in Hartford and Philadelphia. *Firestone v. Time* was a landmark case that I tried when I was down here in West Palm Beach. That was about 1968 or 1969. That was a very famous case. It came out at the same time as Gertz. It changed all the libel law.

S: What about classmates with whom you had close relationships?

M: Well, I knew the persons who were a little above me and a little beyond me at the time. Reuben Askew, Lawton Chiles, Jose Gonzalez, William Fry, and Bill Hendry were all in law school at the same time I was. My contemporaries now are sitting on the bench or in politics in Washington, and some are retiring. Bob Smith, in the First District Court of Appeals, practiced in the Bedell firm and is now practicing in Tallahassee.

S: You had a good class.

M: Sure, a super good class. Most all of them have become quite successful practicing law. I am very proud to have been in the class. As a matter of fact, I am class representative, so I drop them a line a couple of times a year.

S: Well, you, too, are considered a very successful and prominent attorney. How do you measure success?

M: What is success? Money? Reputation? I think the way you really ought to measure success is by Charlie Cook Howell's saying, "Happy is the man who has found his work." That is it.

S: It is clear you found yours.

M: Yes, I enjoy what I am doing. I enjoy planning with philanthropy. This firm is a very generous firm in community, cultural, and educational affairs. We are very active in our local community colleges, the local youth programs insofar as the educational systems are concerned, the opera, and the ballet. We are very motivated. In fact, we just gave \$100,000 to the armory, which is now being turned into a school, as a challenge grant. We give about a half a million dollars or more away on a yearly basis for community projects.

S: Why is that important to you?

M: Some people do not believe this, but it is true: because of the status of lawyers in general, what we do is sponsor various programs. I do not like to advertise. We just finished sending the high school debate team here to Harvard for a debate competition. We were the predominant corporate sponsor for the drug-free, alcohol-free graduation for six of our largest high schools here in the county. That gets us a lot of press. We hold a spot on "The Today Show" for the purpose of advertising "Arts Line," the Boca Raton Symphonic Pops, the Burt Reynolds Institute of Theatre Training for the kids, and other various things. We give them those spots. It says, "from a charitable grant from Montgomery, Searcy, and Denney" – no phone number, no address. We are not going to get you to come in for a free consultation; we do not do that.

We used to give anonymously. For example, for many years we gave money to the college for an educational chair, the Charles Cook Howell Scholarship. It was \$1,000 a year or a semester, I do not remember which. All of it had to be anonymous because, otherwise, it was advertising. You could not have your name on your door bigger than a certain number of inches.

We wanted to make every effort to elevate the profession the best we could, and we have. Shutts and Bowen just did something for Four Arts over here. Ricci and Roberts underwrites WXEL's (Public Broadcasting) "All Things Considered" and the morning show there. They just did a public service about our Constitution for the Fourth of July. All of a sudden, you find that public broadcasting is being underwritten more and more by attorneys, and other professions are following suit. What we are trying to do is make them follow our lead. Chris Searg is on the board of directors of the Ballet Florida. Earl Denney is on the Board of the Educational Foundation concerned with mini-grants for kids' projects in things like high school biology class so that they do not have to go through all the rigmarole and red tape to get a hundred dollars for a project. The educational foundation has this money that they can dole out without a lot of foolishness from the bureaucracy of government. So we have been extremely gratified at the response that we have gotten. We continue to be as generous as we can, and we like to share our success.

S: You personally have an interest in art, I can see.

M: Oh, yes.

S: I understand your wife is an artist.

M: Yes, she is. But when the children were growing up, she pretty much put it aside. Now she is not active in actually painting anymore, but in collecting. She is interested in museums and things of that nature. Those are interests we

share.

S: Considering the number of lawyers in the profession today and the number of lawyers entering the profession, do you have any advice for young lawyers starting out on what it takes to become "successful"?

M: Well, hard work, of course. You have to be dedicated. That old saying that law is a jealous mistress is absolutely true. If you have a trial, for example, it has to come before anything. Period. It is just like in athletics – you run through your pain. You just cannot be distracted. You have to be happy in what you are doing. You have to choose out of the profession that aspect or area that is most gratifying to you – where work is fun, your avocation. But I think the most important thing is being able to give your word so your adversary can go to the bank on it. You start with your reputation from the minute you do your first piece of legal work. You think always of your client, putting him first above everything. I think that is the advice I would give: to know who you are representing. For example, when I was representing the insurance companies, the cardinal rule was that we were not representing the insurance company, but the insured, the person who sits across your desk. People are not taught that anymore. They look to the pocketbook, the person who is paying.

Being completely above board, if you do not have anything to apologize for or anything to hide, you are in pretty good shape. If there is a question of whether it is right or wrong, do not do it. That is how simple ethics is. If it crosses your mind that there may be something unethical about it, do not do it and you will not have any problem. I think the thing that I am in despair about more than anything is the unfortunate relationships that some lawyers have with others. There are lawyers in this town whom I can call and seal many millions of dollars in an agreement over the telephone. You know it is done; it is a deal. There are some lawyers who you make put everything in writing. They are absolutely untrustworthy as far as I am concerned, and that is regrettable. That is not the way it used to be. When I got out of law school, if you told another lawyer something and it was a mistake, it came out of your pocket and you suffered for it. But you never went back on your word. There were never any misunderstandings or excuses. A man would tell you something and you could depend on it. That to me is probably the most important piece of advice that I could give to the young lawyer today.

S: That is sound advice. I read that you plan to become a counsel to the firm in several years. Is that still the plan?

M: I would very much like to get out of the administration, which has been on my shoulders. The administration is really a big part of the business. Chris Searcy is now the president of the firm, and I am the chairman of the board. We have a board of directors. I have such good young men and women that I really want to

see what they are going to do with the firm. They have their ideas and interests. I think this is the future. They must decide whether they want to grow, and the direction that they want to go. Do we want to be a 200-man law firm? We could be if we wanted to be. We could be a 100-man law firm in two years. I personally do not want to do that. What are we going to do about space? We own this building here, and we have got plenty of parking. Do we want to build another building to fill it up more than it is? I do not know the answers to these questions, but I really would like to be around to see what happens.

S: What about continuing to practice?

M: Oh, yes, I will continue to practice.

S: Forever?

M: For as long as I have my health and do not bungle things, as long as I have my faculties about me and can match intellect. I will certainly not continue if I am debilitated or not mentally alert. I hope my partners will have sense enough to tell me when that time comes.

S: Any other activities or plans for the future?

M: No, just to continue to do what I am doing.

S: Do you take vacations?

M: Yes. Ordinarily my wife and I go to Europe for a month during the winter. But I have not been able to this past year; I have just been too busy. I hope to get away. We take short vacations. It is kind of catch-as-catch-can to regenerate.

S: What is the park you mentioned? Is that a green space park?

M: No, it is just our park. We own a lot next door which was vacant, and we decided to make it pretty.

S: I will have to see that when I leave.

M: Yes, walk out there. We have a sculpture garden out there. I am very proud of it. As I said, we have offices next door also.

S: I think that about wraps it up. Any other interests that you have cultivated? We have talked about the arts and music. Sports?

M: Well, I played football, but I am not as interested in that as I am in civic service

through education and cultural activities. Those are my two main interests. For example, I sit on the Goodwill Board, the Community Chest, and the United Way.

S: Why have you maintained the interest in the law school? You serve as a class representative and as a trustee.

M: Well, another thing that really upsets me is talking to some of my classmates who do not speak highly of the school. I think to myself, if it were not for the University of Florida, where would I be? I am so grateful to have been accepted there. I am grateful for the education. It just pleases the living hell out of me to get some of these big-time lawyers from New York down here who think we wear bib overalls. It is very gratifying to know that my education is not surpassed by any. When I first started practicing law with the Ivy League boys, they could not hold a candle to us. We would kick their butts! I really am just so happy to have been a part of this school. I owe it a great debt, and I think everybody who gets out of that school should have that same feeling. There was nothing in particular that happened to me there, but my goodness, it gave me the opportunity. That is the thing about these doctors going on strike. I cannot believe they would accept the right and privilege to go to medical school and then turn around and strike. I just cannot understand that attitude. I owe the law school a great debt of gratitude for enlarging and expanding my thinking and my intellect, and for the discipline that I got. I was never much of a student before law school. I probably had more hours and fewer quality points than anybody who has ever graduated from the University of Alabama!

S: Well, it really helps the school to have that kind of support – not only financial support, but the involvement of the alumni and moral support.

M: You see, the University itself was kind of foreign to me, because I did not associate with a fraternity or anything like that when I came back. After all, I was older, and I was married. So my association with the University – other than through my wife Mary, who was working in the psychological clinic, was in that very narrow area of the law school. That was the camaraderie, and that was the group that took the place over all the other social activities. Nobody had any money; we were all broke. I remember we used to go to the Suburbia theater. On Friday nights, it was a dollar a show. A number of times I had to borrow a nickel. One night I can remember going next door to a friend's house to ask for a penny, I had ninety-nine cents! I borrowed a penny to go to a movie! They were not the good old days, either.

S: Different times.

M: Yes, different times. But everybody was in the same boat. That was like the middle of the Depression.

S: The law school did have that camaraderie. That is one thing I have found in talking with the alumni. They remember the school, and they remember their professors. I think there was a closeness.

M: Sure thing. You wish you could go back and say thank you--like to old man TeSelle. As a matter of fact, I think I wrote him a letter before he died. They say the road to hell is paved with good intentions. Maybe I just intended to do that. He was certainly a force in my life, and so were the other professors. I do not mean to diminish them in any way.

S: You have two children. Are they in college now?

M: Yes. My son is primarily interested in writing and poetry and things of that nature. My daughter is going to the University of Georgia extension in Columbus, Georgia. She hopes to be a lawyer.

S: What school is your son attending?

M: He is at a little community college up in Charlotte, North Carolina. I cannot think of the name. I just wrote them a check – I do not know why I cannot think of it.

S: I could go on and on, but I think that is a good stopping point. I would like to take a couple of pictures if that is okay with you.

M: Sure.

[End of the interview]