

UFLC 53

Interviewee: Justice Raymond Ehrlich

Interviewer: Denise Stobbie

Date: December 20, 1990

- S: [This is an] interview with Justice Ehrlich, December 20, 1990. I am going to have to take you back in time again. Before we get into your law practice, let us talk a little about your undergraduate degree in chemistry, and why you did not attend medical school, why you went into law school. In the first interview, you said it was kind of the path of least resistance, and there was not really any clear reason why you went to law school. I wondered, with a background in chemistry, why you did not look for a medical school.
- E: At that point in time, I was just not at all interested in medicine. In the service, I was on board ship, and had an appendectomy at sea. We had a large medical staff aboard because we were amphibious transport, and at landings we took casualties aboard and treated them. At that point in time, I became interested. After they took my appendix out, I watched every surgery they did aboard, and got interested in medicine. But, at the time we are talking about, I was not at all interested, although I had almost a complete pre-medical background. I could have gone into medicine, I believe, but it would have cost a lot of money, and my folks did not have it. I might have been able to scrounge and work something out, but I just had no inclination at that time.
- S: OK. But you did want to stay in school. You wanted to further your education beyond the bachelor's.
- E: I had to do something, as I perceived it, that would help me put groceries on the table.
- S: And you thought law would do that?
- E: Yes. I was always interested in political science. I was president of the International Relations Club and the Anti-War League – all that sort of thing. But chemistry just tied me up.

As a coincidence, I had a teacher in high school who got me interested in chemistry. The gentleman is still alive, and I visited with him, in Lakeland two, three, four weeks ago, and just fussed at him for getting me all stirred up about being a chemist when I did not have any really native talent.

But as I say, even though I spent all that time studying chemistry, physics, and calculus, I had these other interests that were totally unrelated to science – that is, history and political science. I thought I knew everything, and wanted to be on the debating squad, yet I did not have time to do anything. Once I got out of

chemistry, I did do some collegiate debating, and things that I really was interested in. Had I been able to go back in point of time, I would have undoubtedly majored in political science. But that will not get you a livelihood, [and I would have] ended up going to law school anyway. That is where my interests really were: current events, politics, that sort of thing.

S: So that was really just a sidetrack for awhile.

E: I got sidetracked. It took me three years to get off.

S: Let us move on to leaving UF, because we have talked about your law school days in detail [UFLC34, 5/1/86], and you going to Jacksonville. I would like to know something about your mentor, as you called him. Mr. Markham? What is his full name?

E: J. Henson Markham.

S: Is he still living?

E: No. He died twenty-five years ago. He was a 1925 or 1926 graduate of the University of Florida. He was president of the student body.

S: Was he a UF law school graduate?

E: Yes. He had a combined program. He finished in either 1925 or 1926. I think 1926. When he gave me a job, he was on the Board of Control. That was the predecessor of the Board of Regents. [He was] just completely immersed in the University. The University of Florida was his life. He was a big talker. He liked to talk, and I perceived that part of my job was to listen to him. He wanted a sounding board. He confided in me everything that he was planning to do on the Board of Control. He wanted some changes in the presidency, and wanted to get more money from the legislature, and what the problems were. The gentleman who is still alive, Thomas J. Gurney, was chairman of the Board of Control at the time. He was a great man. He was just up to his eyeballs on behalf of the University. [He] believed in public education [and] public health. He just thought that one of the ways that you could really get the legislature to give more money to the University of Florida was to have a great football team. He used to carry the roster around in his pocket to talk to people about some of the players and their size. He was a classmate of Dennis Keith Stanley, who, I believe, was an All-American at Florida. He was the first dean of the College of Physical Education, Health, and Athletics [1946-], and this was part of the overall program. They were going to get us a great football team, and [he would say,] "That is going to help us get a lot of money. And we are going to be a great University."

- S: Was the idea that the money raised through the football . .
- E: No. Just having a good football team . .
- S: Was enough.
- E: The legislature would feel more kindly. FSU was not in existence. Well, FSU had just come into being, but Florida was the behemoth. And FSU did not [have a football team.]
- S: It was all women then, I guess. Still.
- E: No. In 1945, or 1946, the legislature repealed what was known as the Buckman Act, which said there shall be a girls' school and a boys' school. I think it was right after the war, and they had a lot of money, and the Board of Control was giving it out, the governor was, for higher education. Mr. Markham wanted to build up the University of Florida to be the Harvard of the South. But his idea was, if we could get a crack football team the legislature would be more generous in funds to the University. He believed it, whether it was true or not. He was a great man, [and a] hard worker. He was a very intense man, a big, heavy guy.

Shortly after I went to work for him, he had a heart attack. I had been with him a couple of years. They called me from the court house, and I ran down there, and got in the ambulance with him. He came out of that all right, except that it kind of curtailed his activities. It changed his outlook on life. We did not call him [a] born-again Christian. He was always a fine religious person, but this made him more insightful, in terms of what life is all about, and our relationship with God. He became very evangelical. He would preach and talk to anybody who would listen to him. He had a little book that he was impressed with that he just gave out by the hundreds. He gave one to a classmate of mine who was practicing law, who kept it. This classmate's son was a law clerk of mine up here. Before he left, his father had died, and he had a copy of that book that Mr. Markham had autographed and inscribed, and he gave it to me.

- S: What was the name of it?
- E: I have it at home. It was by a popular guy. I just cannot remember it. But he was a good man. He was a kind man, but his health, in 1957, had gotten pretty poor. He just could not work anymore. He would sit behind his desk all day long. I did the work, and called him "boss." They were his clients, and I was terribly fond of him. He went downhill, health wise. There came a time in 1959 when two of us--the younger fellows in the firm--wanted to get with a fellow named John E. Mathews, Jr., and set up our own firm. Mr. Markham had told

me many times, "You go on and do what you want to. You go on." And I said, "I cannot. I am not going to leave you." When we set up the new firm, we insisted that he go along. We worked it out with him financially. He set the terms, and we said that is what we would do. I never would leave him, because he gave me a job. I was loyal to him, and I could never walk away.

He stayed with us until he died in 1964. He was a philosophical guy. He was not a money grubber, ever. Money meant nothing to him. He never had any money.

I learned an awful lot from him. He was a mentor, particularly in the law, but also how a lawyer was to demean himself. I have given a lot of young lawyers, or law students, counsel, and I have done nothing more than pass on to them what he gave me. Some of it is not particularly proper. For instance, he used to say, "[It will] take you ten years to be a good lawyer, and what you do in that ten-year period is terribly important, only insofar as it qualifies you to practice for the next forty years. If you set the foundation and develop the work habits and the ethical considerations, then your next thirty-four years are going to be great."

I started practicing at twenty-eight, and he said, "At thirty-eight, you are going to practice at least until you are sixty-eight. If you have got to do that last thirty or forty years--depending on your age--that is what you are living for, building up for. Your first ten years is just to get there." It makes a lot of sense. The only problem is, on today's market, I think the people come out of law school much better qualified and better trained than we did. It does not take ten years, necessarily. Young folks [today] are not willing to carry a partner's briefcase for three, four, or five years and sit behind him in a courtroom. They want to get out and try cases. But his counsel, and theory, and principle was still good, I think.

S: Well, in terms of maturity, also. They may come out of law school with more information, but maybe not so much on the [maturation].

E: Yes. Today they are. That is correct. But the ethics, and the code of ethics, [were] terribly important to him. [He was] utterly intolerant of lawyers that deviated from the strict code. He had it in school, but here was a man that I listened to. He indelibly impressed on me what it was to be a lawyer. And I attribute an awful lot of that from listening to him, because he would talk.

S: What about his practice? What kind of lawyer was he?

E: Well, this was serendipity at its best. I wanted to be a trial lawyer, and there was no way that you could do [then] as you can today and learn it in the public sector. There were only two or three people in the state attorney's office. We have [the] criminal court of records. There were no public defenders. There was nowhere, and no way, at that time, to get training to be a trial lawyer, except if

someone gave you a job, and [your employer] was a trial lawyer. This fellow wanted someone to help him, and he was a trial lawyer. I had never contemplated working for insurance companies. That was not my philosophy, [or] my outlook. And yet, here I ended up that way, and stayed in that business for thirty-five years. He had a good clientele. We did not make big money at all.

S: So it was insurance companies?

E: Insurance defense work. He and I, that is what we did. The firm represented corporate clients, principally. On today's market, it was a very small-time firm. There were five of us, two young people and the three older folks, until we went out on our own in 1959. But the senior man of the firm, a fellow named H. B. Osborne, had been Chairman of the Board of Bar Examiners for sixteen years in those days. It was his son who came to practice with us in 1948 or 1949. He and I continued to be partners the rest of his career. So my thirteen years with that old firm served me in good stead.

When Mr. Markham got sick, I ended up trying cases that I probably would not have tried had he maintained his health and been able to go into the courtroom. But from 1957 on, he just did not do anything, and so I had the responsibility. The clients looked to me and accepted me as running the show, although in my conversations with them, I always referred to Mr. Markham as the boss. I could have [run the show] if I had been of the kind. [I could have] walked away and the clients would have gone with me. But I just was not raised that way, and I could not. He was my friend and he gave me a job when there were not many jobs around, I will tell you.

S: You really developed a loyalty.

E: I did. That is my nature. He befriended me, and I could never leave him.

S: Was that just the way you were, or was that because of the kind of person he was?

E: I am basically a loyal person, but he was kind to me. [He] gave me a start, [and] helped train me and he was fair with me. He was always very fair. He used to fight with the other partners to see that these two younger fellows, Osborne Jr. and I, got a better shake. We were aware of what he was doing. He was my friend. He was my friend.

S: What about his style? What I am going to lead up into is what kind of influence he had on you, and your style.

E: Well, I guess it goes without saying. Unconsciously, I am sure the manner in which I practiced law in those days mirrored the way he did. I know that is true. Of course, as you grow older in the practice, you change. Times change, and you have to change. But some of my friends used to call me "Little Henson." Yes. He had a profound influence on my life.

S: How would you describe him in the courtroom? His style, his manner?

E: He was a good trial lawyer. His style would have difficulty surviving in today's environment of the practice of law. There was no detail too small for him. We did not have paralegals, and I used to do his research. But until I came along, he said, he did his own. He reminded me of a biblical prophet. He believed in his cause, and he was very forceful, very demanding of himself and others, and [of] work habits. He used to work seven days a week at all hours of the day and night. And I did, too. He was a good lawyer. He was a good, competent lawyer. But as I say, on today's market, people who practice like he did would have a lot of trouble making a living and keeping clients, I guess, because the tempo is faster.

S: Not the same amount of attention to detail?

E: That is correct. Fees were hard to come by in those days. I think the insurance companies were paying us just ten dollars an hour.

S: As far as him being demanding of himself and others, I think you were already a hard worker. We have talked about that in school, so you came in there with a work ethic.

E: Well, I did. That is correct. It did not offend me. I was not married. I did not have a car. [I was] making \$125 a month, so I did not have trouble spending money. It was not difficult for me to work long hours.

The bar in Florida was not a very large bar. He had a statewide reputation. He was known all over the state as being a good defense lawyer. Part of that was that there were not that many lawyers. Most of them came out of the University of Florida, and he knew--we all knew--so many lawyers. We knew everybody. He had a good reputation. Somebody knew that I [was working for] Markham, that I had to meet his standards, so that was always a plus when I came on the scene. He had a statewide reputation as being a good, hard-working lawyer.

S: Who were some of the clients?

E: There were a number of insurance companies he represented. Liberty Mutual Insurance Company was one of his clients. The forerunner of the current CNA,

which is Continental National American Insurance Group, was one of his clients. Zurich Insurance Company was one of his clients. There are a lot of them that are non-existent today. The firm represented the Southern Railway System. We represented a lot of oil companies and mining interests in Florida. But Mr. Markham was just exclusively insurance.

S: So that is all you did, too.

E: Yes. Well, I did some flunkying for the two older people. I used to do some research and handle some real estate closings for Mr. Osborne, and run errands for him. I worked for the whole firm, but principally, it was Markham.

S: OK. So as the young man in the firm, you would just work wherever you were needed? Is that how that worked?

E: I think Mr. Markham was eleven years my senior. His partner, Mr. Kopp, was ten or eleven years his senior. Mr. Osborne was ten, eleven years Mr. Kopp's senior. That is the way it turned out. But I did a lot of real estate work for Mr. Osborne. I did some railroad work for Mr. Kopp, but principally it was the insurance work for Mr. Markham.

Let me say this, too. Mr. Osborne had a statewide reputation, and Mr. Kopp had a statewide reputation. Back when Mr. Markham started practicing law in Jacksonville, he got a job with a firm called John C. Cooper. It had twenty-six lawyers, and that was the biggest firm in the state. They practiced all over the state. That was right after the boom broke, and they represented a large vested interest. Mr. Cooper was the premier lawyer, and that helped these people--Osborne, and Kopp, and Markham--to develop acquaintances in the bar all over the state so that they were known. Then Mr. Cooper's son came in the firm. He was a great lawyer, and when Mr. John C. Cooper, Jr. left the firm in 1938, [he] went up to the Institute of Advanced Study at Princeton, and became the foremost authority on air law in its infancy. And so, with these big figures in law, they were known. Lawyers in Miami knew all of them. This big firm spawned half a dozen or a dozen federal judges. They had worked in the firm, and had left and gone throughout the state. The old firm was a well-known firm, and, as years went on, it busted up and busted up. They finally busted up in 1939, when Osborne, Kopp, and Markham left. And it left a residual firm. But it spawned half a dozen top-flight firms. The Florida bar in those days was a relatively small fraternity.

S: OK. So Osborne, Kopp & Markham was one of the firms that came out of that.

E: Out of the old John C. Cooper firm. There were a number of them.

S: Well, that must have been a big firm, then, in that time.

E: It was. The firm [had] twenty-six lawyers. They handled all the foreclosures down in Miami, and all the other stuff in those days, because Jacksonville was larger than Miami then.

S: Well, then, in 1959, I guess, whenever it was that you really took over Mr. Markham's practice, did you continue to represent the insurance companies?

E: Yes. I became friendly with a young lawyer in Jacksonville named Johnny Mathews, Jr. His father died as chief justice of the Supreme Court of Florida. We called [Johnny Jr.] Jack. He said he wanted to go into politics, but he would not do it as long as his father was living. His father died in 1955, and so in 1956 he ran for the legislature. He and I became close friends. He ran for the legislature and was elected. And he was practicing alone, and he asked me, "Why don't we get together?", because we became best friends. I said, "I cannot leave Mr. Markham. He is ill, and he is not doing much." I just did not want to walk away from him. I never would do it. Well, anyway, Jack was re-elected, and he then became partners with a man named John Mathews McNatt, and it was McNatt & Mathews. In 1959, he said, "McNatt wants to go on the bench. He wants to be a circuit judge. My relationship with Governor [LeRoy] Collins [Governor of Florida, 1955-1961] is such that I think that I can get him that judgeship, and that would leave me with his [practice]." He had a good insurance practice. He said, "If we can get together now, this is the ideal time. I will have McNatt's clients." The upshot was, McNatt got appointed to the circuit bench, Mathews and I and young Osborne then formed the firm of Mathews, Osborne and Ehrlich. Mr. Osborne Sr., who was slowing down, and Mr. Markham, came along with us. And so, I inherited, essentially, Mr. Markham's clientele. Young Osborne inherited his father's clientele. And Mathews got Mr. McNatt's clientele.

S: So you were an insurance firm?

E: In our trial practice, we represented insurance companies. We still represented the oil companies Mr. Osborne represented, and the mining companies in Florida, and the Southern Railway System, and some life insurance companies. Young Osborne handled the non-insurance end of the old firm. He represented the railroad, Southern Railway System, a number of life insurance companies: Equitable Life, Sun Life, Texaco, Gulf Oil, and a bunch of others. Mathews and I, of course, hired people. We had some young people [who] came in. When Mr. McNatt went on the bench, he said, "I have a son, and he is in the army, and when he gets out, I want you all to take him in." He came with us when he got out of the service. We hired people and we continued to grow. When I left, we had about twenty-four, twenty-five people.

There was a clear understanding between the three principals--Mathews and Osborne and Ehrlich--that Mathews would pursue politics, and that one day he would run for governor. [Part of the understanding was] that we would always support him politically, which meant that when he was in the legislature, he [would be] taking time off, and if he ran for governor, he would be taking time off, and the firm would absorb that. That was always the understanding. He served three terms in the House, and then he was elected to the Senate. When he resigned from the Senate in 1970, he was president of the Senate. But he ran for governor in 1964, and struck out, and he ran in 1970 and struck out. When Mathews got out of politics, he had a statewide reputation as a great constitutional lawyer. Up until that time, the firm never really made any substantial money. A lot of his time was spent in politics. When he was president of the Senate, he was out of the office almost full time. When he got out of politics--when he was defeated for governor--he devoted his full time to the practice of law, then he got clients. He would not represent anybody if they were going to be up in front of the legislature. We started growing in 1970, [and] started making money once he got out of politics.

- S: I am surprised you were not already making money representing the insurance companies.
- E: No, you do not. No, ma'am. Nobody made any money representing insurance companies. It is like a barber. The only way you can make money is you have to cut more heads of hair. We had to work longer hours, because they did not pay you the same rate. It was always a reduced rate. In our firm, when Mathews represented a non-insurance company client, his fees were generally twice what we could get from the insurance companies. He attracted some plaintiffs' business, too. He was the rainmaker, or the real business-getter in the firm. He was a great lawyer. If anybody had a constitutional problem, Mathews was the guy. [Reubin] Askew [Florida Governor, 1971-1979] called on him many times to represent him in some litigation where constitutional questions were at issue. We did not get paid for it. He was [on] the Constitution Revision Commission in 1967 or 1968, and in 1978.
- S: He was on that?
- E: He was on both of them, and he was a member of the committee called Styling and Drafting. It was a three-person committee of the commission that put things in the proper style, language. Judge Taylor of Tallahassee, and Judge Barkdale of Miami, and Jack were the people responsible for putting our current 1968 constitution [together]. [They were] responsible for the terminology and the language.

- S: During that time, while he was involved in these constitutional questions and practice, did any of that rub off on you? Did you get involved in any of that?
- E: Yes. I had partners who were very interested and active in the bar, and I did nothing but work. I helped Jack in his political campaigns. Anytime somebody came to talk to him about business or politics, he would always bring them over and introduce them to me. What little reputation I had statewide, I attribute in some substantial measure to Mathews. When you run for governor, you are pretty well-known statewide. These people knew that Jack and I were the closest of friends, and that I was his confidante, and they could tell me things that were only meant for Mathews' ears. And sure, I knew a lot of folks all over the state, principally because of my relationship with Mathews. Then, in some measure, I got involved in litigation with Mathews that brought me into contact with some of the best lawyers in Florida.

When somebody would introduce me to a stranger, just to say my name would [have] meant nothing to them. [To say], "This guy is Jack Mathews' law partner," meant something. That is the way I was introduced. Or if I introduced myself to somebody, I would say, "I am Mathews' law partner." It was a means of identification, because Jack knew them all. I was not a stranger anymore once I could identify with him.

- S: OK. So you got involved in what kind of litigation with him?
- E: Well, he had one big case representing Buckeye Cellulose, and I worked with him on that for awhile.
- S: And these were constitutional [cases]?
- E: No, no. These were just lawsuits, just plain lawsuits. Money. Just money. There were other cases; I do not remember them. But I remember that one. I would [also] cover for him. He would have a conflict and I would go somewhere and cover his calendar for him, downstate or somewhere else.

Jack had a great ability to delegate work. He could really delegate it. And he had clients. He would come in and say to me, "The legislature has passed a statute setting up the Florida Insurance Guaranty Association. That association will take the place of an insurance company when it goes broke, and will settle claims, that sort of thing. They want me, but you are going to have to take them through the courts to get the statute declared constitutional." So I handled that for him. I appeared in front of this court, and got that statute declared constitutional. There were many other occasions. I cannot remember them all. They were his clients, but he could not do the work, and he would palm it off on me. That was fine.

He got associated in a case representing Pepsico. He could not do the work. I stayed on it for years. I traveled all over the country. The client, ultimately, would accept my work. [Jack] would be called in. If there was a problem, he would sit with us. We had a close working relationship. He got the clients, and we did the work, which is not uncommon.

S: By doing that, you developed a reputation of your own.

E: Well, I suppose in some measure, I did. You develop a reputation if you handle big cases, or important cases. Yes, I suppose I did develop somewhat of a reputation.

S: So what are some of those big cases and important cases?

E: You mean that we worked on?

S: That led to you having a reputation.

E: Well, I do not know that you can just point to any one case. We handled a large volume of cases, but it brought us into contact from time to time with lawyers from all over the state. They would be suing one of our clients in Jacksonville. And so you met lawyers in that fashion.

S: Did you do much travel throughout the country?

E: Not throughout the country. I did an awful lot of travel within Florida. See, Mathews and Osborne went to Harvard. I went to [the University of] Florida. Their classmates were scattered all over the country. I had a half dozen or two dozen classmates and they were down in Florida. We got cases referred from their classmates.

Osborne got a case one time; it was a litigation. He said he was not going to try it, and so I handled it. Good Lord! I stayed with that thing. [I] got in it in 1973, and it was still going when I got on the court. I tried it in Ocala one time for six weeks, then went back to Ocala from September to February. [I] got married while I was trying that case. That involved a substantial amount of out-of-state travel, but principally it was in-state.

S: What kind of case was that?

E: It was an acquisition. U.S. Industries had acquired a Leesburg company, and it went sour. Everybody sued each other. It was finally wrapped up, I think, last year. [The case lasted] from 1973 to 1989.

- S: So, like it or not, you were pulled into a big practice and developed a reputation. It must have been exciting, the different clients that Mathews brought in.
- E: You do not look at it as exciting. It is work, and that is what you are in business to do: to handle [the work] effectively, give them your best shot, represent the client's interest, satisfy the client, and hopefully come out with the desired result. [One must] recognize that you are not always going to come out with the hoped-for end result, but that is what we shot for.

I think the firm had a good reputation within the bar and within the judiciary. Mathews was an acknowledged top-flight lawyer with an expertise in constitutional law that not many folks had. He was looked up to. He was looked up to, generally, in heavy litigation. Our relationship was an unusual one. We had offices across from each other, and a day did not go by that he did not come in to talk to me two, three, four times. Or I would go in and talk to him. [We would talk] not just [about] what is the state of the weather, but about something [that] has come up, some problem, or some case, or some political gossip. We would gossip about politics because he was still in politics. He did not like it, but he ended up doing some lobbying work. If I had a new client, I always took him over, and of course introduced [the client] to him. [I was] proud to have [my clients] meet this guy, and [when] we would tell them he ran for governor, their ears picked up. He was close to [President Jimmy] Carter. Whenever Mathews had somebody, he always brought them over. Any political gossip he thought I ought to know, he would come in and tell me. It was a very close relationship.

When he got sick and left the firm, and could not practice any longer, Osborne got sick at the same time, and he dropped out. So I was there. Of course, we had set up firm where Mathews and Osborne were the top layers. Then we had a second layer of younger people: John McNatt, Jr., and Jim [James E.] Cobb, and Bob Gobleman. Then we had another layer. The theory [was] that the old folks, at one point in time, would slow down or leave, and these younger people would [replace them]. They were working with our clients.

When Mathews left, the big business-getter was gone. And it was not fun for me, because I was practicing law like I did before, but I did not have him or Osborne to talk to and interface with on a daily basis. While the younger guys and I got along fine, I had more management responsibilities than I ever had. I never messed with management, and now I had management. I just was not terribly happy.

- S: When was that?
- E: In 1981.

S: OK. So they left the firm about that time?

E: Mathews got sick, I think, in 1979. We recognized in 1980 that he was not going to come back, and he withdrew at the beginning of 1981. In this interim, Osborne got sick, and we knew he was not going to come back. Osborne had a client, Blue Cross and Blue Shield of Florida, and when he dropped out, I stepped in and started representing Blue Cross and Blue Shield. That was a lot of work at that point in time. They got involved in a lot of litigation. I am here to tell you--this is the gospel truth--if Mathews had maintained his health, I would still be practicing law with him.

To show you the serendipity of the whole thing, when he ran in 1964, we did it on a shoestring, and we had some young people working for us--going out in the organization and working different areas of the state. And one of those people was a man named Jim Apthorpe. When Jack was defeated, he got Apthorpe a job with Secretary of State Tom Adams. Apthorpe was clearly a top-flight person, and he soon became Adams' number one man. When [Reubin] Askew was lieutenant governor candidate--Mathews was running in 1970, and was defeated again--Apthorpe came over and was Askew's number one man, as it would be. There came a time when Askew left and went out [and] ran some development companies. He was on the Judicial Nominating Commission for the Supreme Court.

S: Askew?

E: No. Apthorpe was appointed by Askew, I believe, to be on that commission. He called me in 1981, and said, "There is a vacancy on the court." [Arthur J.] England [Jr., 1975-1981] was resigning. "Why don't you put your name in?" I said, "Jim, I never have thought about being a judge. I just never have even thought about it." He said, "Well, think about it." He called me back a couple times. I do not know how much time went by, but there came a time when I called him, and said, "How about sending me the papers? I will think about it some more." And so, on the last day that I could submit them, I submitted them. I never even told my wife that I was going to do it. That is how stupid I was. But I was talking about how adventitious it was. Apthorpe was on the commission, and he was in Mathews' 1964 campaign. I never would have put my name in as an applicant. I knew of the vacancy, but I never would have put my name in except for the urging of someone on the commission. I am convinced that I never would have made the cut--the three nominees--except that somebody on the commission, like Apthorpe, knew me. But there were some others who knew me. Buddy MacKay [present lieutenant- governor of Florida] was on the commission. That is my recall. I am reasonably sure he was. But Apthorpe was my friend. He knew me.

S: He knew you how?

E: He worked in Mathews' 1964 campaign. We worked together, and we were friends. We maintained the friendship after he came over here and was working in the Secretary of State's office. When he worked in Askew's office, we were still friends.

S: Why did he think you would make a good Supreme Court justice?

E: Ma'am, you have to ask him. I do not know.

S: Why do you think he thought that?

E: I do not know. He liked me. I do not know. But he did. Then, when I made the cut, and I was one of three, then of course the governor made the appointment. Here again, Apthorpe was friendly with [Robert] Graham [governor, 1979-1987]. He knew Graham's brother very closely. [He also knew] a fellow named C. DuBose Ausley, who is a very prominent lawyer. He is on the Board of Regents. He had managed Mathews' 1964 campaign. His father and I had worked together on the Florida Railroad Association. So Duby and I were friends. We referred business to each other. He was close to Graham. There were a lot of people who were friendly with Graham, who knew Mathews, and knew me through Mathews, I suppose. I can tell you right here and now that I was not selected to be on the court because I was the most qualified, or the best lawyer of the three, or the best lawyer in Florida, or any of those reasons. It all worked out, but I never have deluded myself. Justice Stephen H. Grimes [January 9, 1987-], who is on the court with me now, was one of the three nominees. I know what a great jurist he is. And Judge Alan R. Schwartz, Third District Court of Appeal, was the other one. He is the premier district court of appeal judge. I think if Graham were to say, "Who is the smartest, and who is the best one of all?", I do not think he would have picked me.

S: You are terribly honest.

E: Well, I am very candid about it. That selection was not unique, believe me. How does a governor pick a [justice?] He does not go look at his transcript to see what good grades he made or where he went to school, necessarily. It is a whole host of things.

S: Well, in your case, they did not have judicial opinion, or any kind of case . .

E: No, they did not have any. Of course, I had to turn in some briefs that I had written. I had practiced in front of the Supreme Court, many, many times. One

of the worst lickings I got was the last case I argued in front of the Supreme Court in June 1981. I argued it in June, and I came on the court in December. They decided it, adversely to me, in August, and I have never forgiven them for it!

I am saying that in jest, of course.

I have talked with a governor on one occasion, who was going to appoint a justice to this court, and I remember things that he was looking for. This particular governor, who will remain anonymous, wanted a good lawyer, and he wanted someone with [an] impeccable reputation. He wanted somebody who could interface with people. [He wanted someone who] was not a stick in the mud. [The governor wanted] an overall evaluation that [the nominee] was going to be, ultimately, a fine jurist. It just was not any one thing that went into it. Anyway, in my case, I can attribute my coming up here to all these different facets in my career, and happenstance, and just luck. The sun was shining on my side of the street. And I do not care who they are, ninety-nine times out of a hundred, it is luck, and things just happen to fall in place. If they do not fall in place, you do not get it.

S: How unusual is it for a Supreme Court justice not to have been a judge previously?

E: That was very common in the old days. Now, not recently.

S: Because I know it was [common] for judges, but I did not know about Supreme Court [justices].

E: Justice B. K. Roberts [September 1, 1949 - December 1, 1976] was appointed right out of the practice, when he came on in 1948 or 1949. My partner Mathews' father [John E. Mathews, Sr., October 23, 1951 - April 30, 1955] came on in 1953 out of the practice. Collins appointed Campbell Thornal [May 9, 1955 - November 4, 1970] to the court right out of the practice. He appointed Stephen C. O'Connell [October 21, 1955 - October 15, 1967] to the court right out of the practice.

I have to tell you, in those days, you did not have a Judicial Nominating Commission. The governor was not limited to three nominees. He could pick anybody he wanted to.

S: [This was] before your time?

E: Yes.

S: I thought [that is what] you were talking about.

E: I think the truth is that most appointees to the court came from the practice.

Now, the governor has three nominees, and he is limited to those three. Those three are the people who impress the Judicial Nominating Commission. I guess the people that come up before judicial nominating commissions now--who have established track records, either on the trial court bench or appellate bench--are the ones that are higher profile than "John Podunk," who is a lawyer. I am just guessing. I do not know. These last three recommendations were all judges. When Justice Rosemary Barkett [October 14, 1985-] came on the court--I am trying to go back in time--three district court of appeal judges were the nominees.

When Leander J. Shaw, Jr. came on the court before Barkett, there was Shaw, Alan R. Schwartz, and Gavin K. Letts--three judges. When Stephen Henry Grimes came on the court, there was Grimes, Zeemer, and Harry Lee Anstead--three judges. Gerald Kogan [January 9, 1987--] was a trial judge, and there was Schwartz, and a lawyer, and a lawyer. And a lawyer from Miami made the cut, but he did not get it. So I come back. Fate was very kind to me.

S: Well, in either event, whether you are a judge or a lawyer, a lot of it is the contacts, the people on the nominating commission being familiar with you, your work, your personality, and all of that.

E: Well, they do not just live in isolation. These nominating commissions get inundated with calls and letters from people saying, "I want you to know that John Jones is the greatest." You have to. There were people on the commission that did not know me. I unabashedly would go to somebody whom I knew who knew a member and say, "Look. If you feel it in your heart that I would be a good justice, I would be very appreciative if you would say something; pass on your thoughts to the member of the commission. If you do not, I will not be the wiser. If you do not feel like you want to do it, that is sure fine." That is all I ever said. But I cannot help but believe that a lot of my friends that I asked to do that did do it. [They said], "I am telling you Ehrlich is a good man," something like that, because they [the members of the nominating committee] all did not know me. Apthorpe knew me, and there was a fellow on [the commission] from Orlando who knew me, and Buddy [MacKay] knew me, but not well. He knew me as Jack Mathews' law partner. I knew three of them. That is all.

S: And how many were there on the commission?

E: Nine.

S: You said you had argued before the Supreme Court many times before.

E: Yes.

S: So you were very familiar with the appeals process. It was not something new to you.

E: Yes. I was familiar from the opposite side of the rostrum, mind you that--opposite from the other side of the bench. I knew nothing about the judicial process. That was brand new to me. I had to learn that from scratch. Nobody tells you anything. You come in, and [all you get is] "Welcome aboard." I got sworn in on a Thursday, [December 3, 1981] and the following Monday, we were on the bench. We had, as it turned out, twelve or thirteen death penalty cases. Of course, I read the briefs, but the death penalty cases were all new to me, and so I had a lot of work to do. And then, of course, that summer, 1982, I went up [to] NYU [New York University], [which] has a school for new justices, and that was very helpful.

S: What was that? About becoming familiar with different areas of the law?

E: The judicial process. How does a judge go about deciding a case? It is not, "I like it," or "It is my feeling." There is a process. How do you do it? What is the judicial process? It is a matter of learning. That is what they teach you: how [to] write opinions, [and] that sort of thing. And, of course, you learn an awful lot from your colleagues. You write an opinion and circulate it, and they all vote on it, and they criticize it. That is what we wanted. I want them to tell me where I did something wrong. [If] it goes out under my name, I do not want anything goofy in there. You learn from your colleagues.

We are a collegial court. I write the opinion; it is [in] my name, and how it is said is my language, but it is the wishes of the whole court, or whoever signs on. If somebody does not like the way I say it, if I do not change it, they say, "Well, I am not going to vote for it." If everybody votes on it, it is a collegial [effort]. I am speaking my voice, my language, but I am speaking for the court. It is something to be learned.

S: I imagine.

E: I can tell you it is.

S: But before you went up to NYU, you had already . .

E: Yes. I floundered around. It was a learning process, [and I was] doing the best I could. We had conferences at least once a week, and I listened, and I would ask questions. I was a lawyer; I knew what we were doing. Here again, I just worked long hours. I did not take any vacations.

S: Did anyone on the court help you especially?

E: No. They were all very kind, and very considerate. You have to remember, I

put my name in, and I made the cut. I was one of three [who made the cut]. I was on a Blue Cross case out in Houston, Texas, to take depositions. The people [representing the other party in the case] stayed at the same hotel. They gave me a ride in to where the depositions would be taken. Where we parked, I had to climb some stairs with these two bags. When I walked up, I felt chest pains, and I knew what it was. I had done medical malpractice work. I sweated it out. I cross-examined and worked all that day. As fate would have it, I got a telephone call--I think that day, or maybe the day before--saying that Governor Graham wanted to interview me that night when I got back from Houston.

S: That same day that you had had . . .

E: Same day of the onset. I would carry my briefcases a hundred feet and set them down. [Then I would carry them] another hundred feet and set them down. When I got into Jacksonville at dark, I went to the office to tell them I was back, and then went over to the hotel, and was interviewed by Graham. I was not about to say to the governor [that I was not feeling well]. Of course, I knew I had chest pain, and it probably had something to do with the heart.

We had a very pleasant interview. He never asked me my political leanings, or how I felt about any problem. He said, "Who are your favorite judges?" I said, "Oliver Wendell Holmes, Jr. [1841-1935, Supreme Court justice, 1902-1932] and Benjamin Nathan Cardozo [1870-1938], are the two Supreme Court justices, and Judge Learned Hand [1872-1961] of the Second Circuit," who never made it to the big court. We just talked generally.

I called my doctor, and I was to go in and have a physical the following week. I said, "I think maybe you better check me." He checked me, and he said, "You need to go into the hospital and have some diagnostic tests." I said, "I will let you know." The upshot is, I went into the hospital, and they ran the tests, and said, "You have five arteries blocked." I said, "What are the chances of living?" [The doctor] said, "Well, a hundred people in your position--with those arteries blocked--have no surgery. In five years, none of you will be alive." [I said], "Let us go ahead." They scheduled me for surgery. This was all hush-hush; nobody knew it.

S: The surgery?

E: Nobody knew that I was in the [hospital]. [I] told my firm that I was going out of town. You do not tell people things [like this]. This was critical.

S: Yes. Not at that time.

E: They were going to roll me in for surgery at noonish. So I called the governor

about ten o'clock, and told him what the problem was. I just said, "Look, if you can wait and see whether I come out, whether I am going to live through this thing, fine. I would be very obliged. If you do not want to do it, I certainly understand." I went through this terrible surgery. About five days after surgery, my doctor came in one morning and said, "I had a very interesting telephone call from the governor. He wanted to know what your progress was, and I said you are going to be fine." Three days later, [the doctor] came in and told me [the governor] called again. That made me very appreciative, that he was considering it. He was not saying, "Look, this guy has had bypass surgery. He is not fit to be a judge," or something like that. It made me feel pretty good. When I went home, and did not hear, I kind of got apprehensive. Then he called me one day and [wanted to know] was I still interested. I said, "Yes." He said, "I am prepared to offer it to you." He did not say, "I am offering it to you." He said, "I am prepared to offer it to you." And I said, "I am prepared to accept it."

I remember vividly when he first called. I have a lot of friends who are practical jokesters. When the maid said, "Governor Graham is on the phone," I knew it was one of my clownish friends. [Laughter] And when he came on, I said, "Is this really the governor? Because I have friends who play jokes on me." He said, "Yes, this is the governor." So that is how it happened. There have got to be some funny things helping you to move along like that. So I said to him, "What is your timetable?" He said, "Well, I am going to Japan in November, and I want to be there [for the swearing-in], so we are going to set it up for the first week in December. This was the middle of September, [so I had] October and November to convalesce. I came up here ten weeks post-surgery. They kid me downstairs. The clerk's office and my secretary say, "If you just knew how you looked when you came up here." I was very gaunt. I had lost a lot of weight. "We just said, `You'll never live. You'll never survive.'" We laugh about it now, and it is a funny story.

S: You fooled them all.

E: Yes. Of course, my wife was still in Jacksonville. I stayed at the hotel until we bought a home. She did not move up until April, so I was living alone. She would come on weekends. Meanwhile, I was trying to stay on a lowfat diet. It was kind of strange. I did not know what to do.

S: Had the governor intended to make the decision beforehand, and then he put it off?

E: I do not know. I never discussed it with him. My observation and my knowledge of Graham [is that] he took the appointing of judges, no matter what judge it was, very seriously. Every one of the candidates for county court, county judge, circuit judge, district court of appeal, or supreme court, were

interviewed by his folks. He had one guy, or gal, who did nothing but background work on [the candidates]. He took a long time to select Justice Leander J. Shaw. He had some problems. He had Shaw, and Judge Schwartz, and Gavin K. Letts. Gavin Letts and Schwartz have a statewide reputation as being the premiers of the district court of appeals. So he took a long time.

Now, he did not take very much time when he appointed Rosemary Barkett. The word was that he was going to appoint [a woman]. She was able. Before I put my name in, I called DUBY Ausley, and I said, "Look. Apthorpe has been bugging me about putting my name in. I am giving some thought to it, but I do not want to do it if the governor is going to make it purely on affirmative action. If a woman is on there, and he is going to automatically give it to a woman, or a black is on there, and he is going to automatically give it to a black, I do not want to go through the problem."

I do not know that this needs to be in print. Ausley told me afterwards he had played tennis with the governor, and asked him. The governor said, "I will not make the appointment on affirmative action. I will use affirmative action concepts only if I have two or more who are equal, and both of them are neck and neck. But [if] there is [an] affirmative action aspect, woman or black, then I may well use it." I called Apthorpe, and I said, "Well, I am going to do it. Send me the blanks." I have a feeling that if a woman was [one of the nominees], he would have probably picked a woman, and I would not have blamed him. If a black had been on it, and he had picked a black, I would not have blamed him. I would have probably done the same thing myself if I had been governor.

S: But as it turned out, they were not the three.

E: No, they were not. But they were good. Grimes is a superb jurist. Schwartz is the best. I was the luckiest, that is all. I was the luckiest. You can have all these things, but you have to have a little luck.

S: You had been pretty lucky before that, too, with getting the job in Jacksonville.

E: I had twelve appointments that day, and this was the last one. Jobs were tough. There were not any. They had a council of war, and they said, "We will give you \$125 a month for the last seven months of 1946. Then in January [1947], we will give you \$160 a month. The following year, we will bring you up to \$200 a month." I was delighted.

S: That is quite a story of your appointment.

E: That is the truth, and I have not embellished it. I have not tried to make me look

like a hero, because I was not a hero. I just happened to be at the right place at the right time. Whatever qualifications I had apparently appealed to Graham. I am confident that friends of mine who had his ear told him, "This fellow has got something the others do not have, namely, he is coming out of the pits. He has tried cases for thirty-five years, and you ought to have somebody on that court who has tried cases recently." There was not anybody on the court at that time [with recent experience], except Alan C. Sundberg, [June 2, 1975--January 4, 1983]. Sundberg came on to the court straight out of practice. He was the only one on here who came straight from the practice. I am assuming that was the one thing I had that the others did not have.

S: I have so many questions from what you just said. Let me ask you a couple of them. One thing, how did the heart trouble come about? Were you overweight?

E: No. I do not know. I think stress played an awfully [large] role. I am told that I was clogged up with cholesterol. I ate everything. I would eat anything that would not eat me. I was not aware I had a problem.

S: Did you exercise at all before the problem?

E: I had a routine for twenty years. I am a creature of habit. I would leave the office at 6:30 p.m., and I would go to the YMCA. I began running back in the late 1950s and early 1960s. [There was] no place to run. I just ran around. I used to run a mile, and then worked out every night, and on Saturday half a day. I would come in at noon on Saturday. I did that for twenty years. I have to believe that had I not done this, I would have had a real coronary a long time before. Working out and running would take the tension out. I would come from work, and I would be all tense. Even when I was in Ocala for this seven-month trial, I would get up early in the morning and run. And maybe that night I would run, just to get the tension out. I think it was tension.

S: I am surprised you got blocked arteries, then, seeing that you had that kind of routine, unless you really ate everything in sight!

E: I loved cheese, all dairy products, pork, sausages. I ate everything that was good, because if it is good, it is bad for you. If it tastes good, you are supposed to spit it out.

S: I know you still walk. You have a walking routine now.

E: I try to walk four miles every day.

S: After work?

E: The heat was so bad this summer that I would get up at five in the morning. That makes a long day, but I have been continuing it. I did not walk this morning because I took a stress test this morning [as part of an] annual physical. Tonight I am going to walk. If I have got to get in real early, I only walk three miles. I like to come in before anybody else does. I do it now. I do not miss many times. But I do watch my diet. I was invited out to lunch today, and I said, "Give me a steamed vegetable plate." Now you know, that was not the greatest dish in the world.

S: It is good for you.

E: It was good. I eat up here. I cook brown rice and bulgar wheat and keep it in the refrigerator. I have a big old pot, and I warm some up at noon, and that is what I eat at noon. I love itt!

S: Just the rice and the . . . ?

E: Bulgar wheat and brown rice.

S: Nothing else with it?

E: I put some powdered milk in it, skim milk, and heat it. I cannot wait to get into that.

S: I will have to try that.

E: You have to develop a taste. Of course, in the morning, I eat a huge breakfast of oat bran and fruit. At night time, I try to eat beans and rice to get my protein, because I do not eat much meat. I do not eat any red meat if I [can help it.] You have to sometimes. I eat some chicken and some fish, mostly fish. I just stay on vegetables and fruit. But I have to confess, this time of the year, being invited out, it is just impossible to stay on a rigid diet. Now I am fortunate. Justice Kogan on the court noticed that a lot of his friends were dying, having heart attacks. He got concerned, [although he] had never had a coronary. He went out to the Pritikin Institute in California, and stayed twenty-eight days. I, on my own, tried to adapt to the Pritikin diet. Somebody gave me a book. When he came on the court--he has been on for four years--he knows all the answers [to the questions] "Can I eat this?" or "Should I eat that?" He knows all the answers.

S: It is the Pritikin?

E: Yes. He is the guy that started this "watch your cholesterol" routine. Justice

Kogan has been very helpful to me. The whole diet was. I do my darndest to stay on it.

S: As far as your walking, where do you walk? Around your neighborhood?

E: I have a routine. I have a measured [distance]. I can either walk two miles, three miles, or four miles, or 4.4 miles, depending on what route I take. I do it depending on how much time I have. I love classical music, and I have a Walkman. I play classical tapes, and that is the most pleasant hour of my life on a daily basis. I try to think, "What will I play today or tomorrow?" I have a lot of tapes, and so I go out--I bundle up in cold weather and have a reflector on me--and play my favorite music. [It makes me] happy. I do not mind the walk. I am by myself. I do not like to walk with anybody. It is dark, but your eyes will accommodate. At daylight, the birds are singing. It is just a great time of the day.

S: Is this outside of town?

E: No, it is in the Killlearn neighborhood, and I feel relatively secure. I have a little gimick. It is not Mace; it is something like it. I carry it with me for dogs [that might] attack me. The only danger I have is being sure that a car does not hit me.

S: I know that classical [music] is great, and I will do that too, when I am working out. I will put my Vivaldi on.

E: Yes. [I enjoy] the walk in the moonlight with the Moonlight Sonata. There are three sonatas: Appassionata, Moonlight, and Pathetique [by Ludwig van Beethoven]. [I also listen to] [Edvard] Grieg's Piano Concerto [in A minor] and Peer Gynt Suite, Beethoven's [Symphony] No. 6, [Peter I.] Tchaikowsky's Sixth [Symphony], and Beethoven's Fifth Piano Concerto. I just [get] excited trying to plan what I will hear today.

S: And see, I have heard you say that you have nothing besides work. So you do have some other interests.

E: Well, sure. I do not play golf. I love to exercise. I do not have a gym here, but I when I go back to Jacksonville, I am going to join a health club or something where I can just flex my muscles. I am going to keep running, but [I will join the club] just to keep limber. Even as an old goat, I was able to build up some muscles. I enjoy it. I love to sweat, and feel tired, and come home and have a beer and eat.

S: Try yoga, too. Have you ever done that?

E: I have never done yoga.

S: That is a good form of exercise. I do that a couple times a week. Do you split your time between Jacksonville and Tallahassee? Is that what you have done since you have been here?

E: We used to go out about every three or four weeks. When I got to be chief, I went in every three or four months. I just did not have time. We still have a home in Jacksonville, and my wife has three grandchildren. She has two sons. And so that is the big impetus to go home now. We have a daughter here now, and she is pregnant. So that is saving my life with my wife.

S: Why is that?

E: She has a daughter here. The great, gravitational pull to go to Jacksonville is lessened.

S: I was going to ask you about your future plans, of course. I wondered how the work with [Florida Senator Robert] Graham came about. Did he ask you to come up there?

E: He called me one night, and asked me [if] I would come up for six months. I said I had made a mistake one time [by] making a commitment without checking with my wife, and I wanted to check with her. He laughed. I talked to her and called him back, and said, "Yes. I will be happy to."

When he was governor, he had a young lawyer come in every six months--he rotated them--and he has done the same thing in Washington. I am his young lawyer for the first six months of 1991. I am under no illusions of the grandeur of the job. Whatever legal problem he has got, I will try to help him. Hopefully, I can be of some help.

S: He just likes having a legal consultant on his staff?

E: Yes. When he was governor, those people generally did the background checks on the judicial nominees, and other chores. I have talked to some of my predecessors since he has been in the Senate, and he wants to be kept fully advised of any issue that the Senate is considering. If something comes up, I am supposed to give him background, and just be sure he is informed.

S: That could be a lot of work.

E: There is. I do not foresee the pressure that I am under here. My wife does not

believe it, but she still thinks I am going to work nights and weekends. It will be interesting. I worked in the governor's office in 1953, when Governor [Dan T.] McCarty was sick, and his brother John was sort of running the show. I worked there for two months. Then I worked in 1956, I think it was, for a month during the session.

[Going to Washington] opens new vistas for me. I have several options. I can go back and take retired judge status. I have never been a trial judge, and I would kind of like to try it. I can study and be a mediator. That pays--I am told--very good money. Or I can practice law in some abbreviated form. I have half a dozen prominent law firms [that] asked me to talk to them before I made a commitment. This was about the time I committed with Graham, so I did not have any problem. I just said I will not talk before I get off the court, but when I get off, I will be happy to see how you can utilize me.

I do not want to work in a pressure cooker anymore. I do not mind going into the courtroom. I would like to maybe try a case again, with somebody. I always tried them alone. That is a very heavy burden. If I can play a meaningful role in someone's organization, and earn my keep, that I would like to do. I have those options. Any of them will keep me preoccupied so that I can stay current in the law and still do something. I cannot sit home and do nothing. Somebody said, "Why don't you try teaching?" I said, "I am not sure that any law school would hire me in the first place, and secondly, I am not sure that I know enough about law or legal education to be a member of a law school faculty." So I am under no pressure.

S: And you will start with Washington.

E: Well, that is a respite. I have my apartment two blocks from the court.

S: Is your wife going?

E: No, she is a stockbroker, and she has class here in Jacksonville, so she will stay here. But I have an understanding that I will either come home every weekend, or she will come up there. She will love to come up there. [The area] has a lot of stores.

S: There is a lot to do up there.

E: My predecessors have told me that it was very interesting and a lot of fun. My nature is peculiar. I am always very doubting and apprehensive about any new assignment. Anything new always disturbs me until I can get situated, and learn the routine and know what I am supposed to do. Then I get to feeling all right. I am nervous--not shaky nervous--until I know the routine and that I can do it. I

have always thought, "Can I do it?"

S: If you only have six months, that does not give you long to get settled in.

E: Well, I will know in the first week whether I can do it or not.

S: And this other thing that you are thinking about, that would be temporary also?

E: Yes. Temporary.

S: Well, I will be interested to see what you do, as will many, many people.

E: Yes. I think if it comes to pass, you will be very interested.

S: Maybe you should just stay up in Washington and clean up that federal government up there. I think they could use some of the work ethic.

E: [There is] no way they are going to do it.

S: I was listening to H. Ross Perot [American philanthropist and businessman] on the radio on the way up here. He was talking to the National Press Club. He was saying, "We sure need to clean house."

E: It is bad. You know, we speak out of both sides of our mouth. We will say, "You have got to cut that deficit. We want to get that deficit down." [Then we say,] "What kind of grant can we get? We have got to get some money from the feds. Do not let them cut my grant."

I went to the national conference of chief justices. All fifty chief justices have a conference. The federal government still gives grants to the state court law institute. It is worthwhile, but it is still spending money that you can do without. Nobody is going to ask him to cut it. Nobody is going to give it up. [The attitude is,] "Can we get it?" Farmers want to balance the budget, too, but [they] do not [want the government to] cut out price supports.

S: That all may change.

E: You ought to see how much money the University of Florida gets from the federal government. I think you would probably be pleasantly surprised.

S: Yes. I imagine I would, because you do not think of it coming from the federal government. I know we get a lot from the state.

E: [It is] a lot [of money].

S: OK. I will try to keep this as tight as I can. I have got about five more questions for you. I guess that covers your future plans pretty well. And you are just going to think about that some more when you are up in Washington, as far as what you will do--whether to go into practice, or trial court?

E: Yes. In due course, I will contact the folks that expressed an interest in me, and try to meet with them on weekends, and see what they have in mind. [I want to] be up front with them. I told them I am not going to go back in the pressure cooker. I think some of them may perceive that I could--by virtue of having been on the court--help attract big business. I do not know that I can, but somebody may think I can. I will soon find out. Or I can work with younger lawyers on big cases. A lot of things have changed, but I still know the basics. [I could] take depositions. I love it. I would like to go back into the courtroom with help. I do not want to be number one. I want to be number two. I am going to have XYZ witnesses, or whatever. [I do not want] the whole thing.

S: Is there any area of law in particular that interests you now?

E: Trial work. Any kind of trial. That is all I know. Sometimes, in a moment of fantasy, I wish I could have--when I was growing up--done some criminal work. I have never done any criminal practice. It might be fun just to represent a defendant or prosecute a defendant. I just have never done it. I can still put groceries on the table, so I do not have to worry about how much money I am going to make. It would be desirable to make some money, but that is not the prime moving force in my life anymore. It was when I was practicing, but that is not true anymore. I can choose and do what I really want to do--what I think I can do--and still not work seven days a week.

S: You talked about working to put groceries on the table. Did you also enjoy your work? Are you someone who looked forward to going to work?

E: Yes. I enjoyed trying cases. The actual trial work was very appealing to me. It is exciting. It is terribly hard, and it is stressful. That is what I enjoyed. I loved to talk to a jury. I loved to cross-examine witnesses. I enjoyed the facets of courtroom practice.

S: I mentioned to you on the phone I would like to discuss some of your opinions, those that have had the greatest impact on Florida legal history. Did you give that any thought? I also wondered about your style on the court. Have you been outspoken? Have you been one who was willing to compromise, or who had trouble compromising?

E: When you are on a collegial court, you have to work with your fellow justices. You cannot say, "Here is a line, and I will not cross it. If you fellows do not come

on my side of the line . . ." You cannot get along like that. We learned from each other. We all make mistakes. We do not want them to go out under our name, and representing the court. We want the law to be stated properly. And so, although we are all prima donnas, and think we know everything, and subconsciously, we may resent someone saying, "You really have not got this right," your better sense tells you not to be bullheaded, and to check [it] out, and be sure. Maybe this person is right.

I think we have an extremely collegial court. We have our differences, and we do not give in on our differences. I say, "Give in." Of course, you give in on occasions, but we have certain feelings as to what the law is. The law is not black and white, necessarily. It is as you see it. It is black to me and maybe white to you. I am called a hard-liner in bar discipline cases. The Constitution gives only the Supreme Court the authority of the admissions of lawyers--who can get in. We set the rules and pass on everybody that comes in. And we are the only ones that can discipline lawyers--kick them out.

Here again, I think maybe some of my puritanicalism--or whatever you want to call it as far as the practice law is concerned--comes from having worked for Mr. Markham. Having gone on that path, I feel very strongly about lawyers. I have always felt strongly about lawyers. We have a very unique role in society. We are a favored group. We are officers of the court. We are not members of the judiciary, but we are officers of the court. [If] I represent you, I can speak for you. I handle your property, your money, your liberty, and sometimes, your life. All of them are in my hands, and I am responsible. Therefore, I owe you a high degree of fidelity and care. I cannot steal your money. I have to prosecute your efforts with dispatch. I have to be candid. I have to give you my best efforts. I speak for you. I can handle your affairs. I am an attorney in the law. That means I can represent to the court what you are going to do and bind you to it. I am an attorney in fact. I can sign a power of attorney appointing you to represent me in real estate transactions, or whatever. You are an attorney in fact. [With] an attorney in fact, the document has to specify how I am going to represent you and speak for you, very narrowly. But as an attorney at law, I speak for you. That is a privilege. I am inside the rail of the court, and I can represent you before the court.

Therefore, I demand high standards from that person. If you steal, unless you have got some awfully good reason for stealing, you ought to be kicked out of the bar. I guess if a guy came in and said, "I was a lawyer, and my wife was starving," or, "[We] had an accident and the kids broke their legs and had to get medical attention. I did not have any money, and I could not borrow any. Here was some, and my family meant more to me than anything else," [I would feel differently]. But absent that, I am very tough on lawyers.

The public looks to lawyers for this high standard. The public expects it of us.

We are not very popular with the public because we have some bad apples, and they think all lawyers are like the bad apples. That is not true. Just a very few [are bad apples]. Our discipline rate has gone up very high. We kick them out left and right. Or [we] discipline them--thirty, forty a month, or more. I had taken that approach. When I first came on the court, they were pretty lenient on lawyers. I think the court has developed a sterner position. The bar, the lawyers, want us to be strict. And I can tell you, lay people, the press, want us to be tough, because the client has to have blind confidence in that lawyer.

S: And they are paying for it, too.

E: Yes. And if the client tells the lawyer something, there is nothing in the law that can pry that from my lips. The only way I can repeat what you have told me in confidence is for you to give me permission. Maybe the minister has that [confidentiality]; I am not sure. But nobody else can do that. You have got to have blind confidence and trust me, and tell me that you shot the person and why you killed him. Then I am not going to betray your confidence. I am going to represent you fairly, honestly, and honorably, and make the state prove every charge against you. I am going to represent you and hold onto that task. So they have got to prove what you have told me to be fact. If they cannot prove it, the law says you walk, even though I know you are guilty. I can never tell that.

[Since] I first started practicing, I have always had a mystical feeling about my brother lawyers--until I got to know them better--because of this unique position that we hold in society. It is very unique, and we have to earn it. We have to merit it. To retain it, we have to do the right thing. Of all the things that I do, I get more lawyers telling me, "Keep up that fight on lawyers. Kick them out."

S: You get lawyers telling you that?

E: Yes. Lawyers never discuss cases with us, and nobody bothers us. Nobody lobbies us. We do not represent people. Our constituency is the Constitution. That is our sole role--to be sure that the Constitution is being followed.

S: What role did you have, then, in the court becoming stricter?

E: I guess just talking, and a lot has been changed in court personality. Just taking a hard-line position and arguing. I am not saying I turned anybody around, but I think if you look at the opinions on bar discipline today, compared with ten years ago, you see a lot of difference. If I played a small role in it, that is fine. But I think I have been consistent throughout.

When I first came on the court, Justice James E. Alderman [April 11, 1978--January 6, 1987] took that approach, and he and I were alone most of the

time. I took that same approach that he took. We have maybe 2,500 people applying to come into the bar every year. And we take in maybe 2,000. We spend over a million or two million dollars investigating these people: character and fitness. Fitness we can generally tell from [whether] you passed the bar [exam], and graduated from law school. What is your character? What kind of character do you have now? You could be a choir boy and get admitted to the bar and turn out to be a [Theodore] Bundy [serial killer]. We know that. Or you can be a bad egg who has changed, and be a great lawyer. We know that, too. Rehabilitation, forgiveness, and all that, are the factors we crank in. I have taken a very tough approach on people wanting to come into the bar.

A guy who has passed [might] show that he has no respect for the law. [Maybe] he got 200 parking tickets--a little, silly thing like that--and he has never paid them. Or he [may be] trafficking in cocaine, or [doing] something that indicates that he really does not understand what being a lawyer is like. Then, the hell with him! He does not belong in here, and we keep him out. If he has been convicted a number of years ago, has he rehabilitated? Has he come around? And we have taken into the bar people who have served time, [though] not many. If the guy has really repented and paid his price to society, and he is bright, and he can do worthwhile work, we will take him.

S: I guess if some bad apples get in, then there is always the weeding out once they are in, too, because you cannot avoid some of those from getting in [who might be] doing things, [but] do not get caught.

E: All of us have a little larceny in our hearts--all of us--[but] 99.999 percent are able to suppress it. But sometimes you succumb to temptation. Lawyers are put in that position, and they do things that they should not do. We do believe in the power of redemption. We have no correlation between those people who we have taken in with some question and whether they turn out bad. Every now and then, we have a bad apple come up, and we check with the Board of Bar Examiners, and we find that we let him in when we should not have. Most of the people that we check out who are questionable, but let in, turn out to be all right. But we keep a lot of riff-raff out. We make them take a bar examination. That is to determine their fitness. I [will be the] first to tell you that is not a necessarily true indicator for how good a lawyer you are going to be. It tells you how good you are at taking tests. [But] until somebody comes along with a better criteria, we have to hang our hat on that.

I have a stepdaughter in California, and she has gone to law school. She has taken the bar about eight times and busted it every time. They grade higher than we do here in Florida. It is harder to get in. There is a reason why. They have a lot of jack-leg (non-accredited) law schools out there. You do not have to go to law school to take the California bar, and so they really want to be certain

that you know some law. They grade very high. When I got on the court, we changed our grading method, and [in] the first group, about 60 percent [passed], where normally 80 percent [pass]. The court does nothing, but we had to change. The pressures were on the [court]. A couple of us said, "This is not all bad." But the majority of the court said that was too high, and we went along.

S: You said now, about seventy-five, eighty percent of them pass.

E: Eighty percent ultimately pass. And there are a lot of people who could be good lawyers, I am sure, that do not pass, and never do practice. One of the happiest moments of my being up here [involved] a dear friend of mine in Jacksonville. His son had taken the bar exam several times and busted it many times. He said he was not going to take it anymore. I asked the young fellow, [even though] I did not know him, to come up here, and I spent a day with him. We talked and talked, and I philosophized. I took him through the court, and I introduced him to all the justices. He promised me he would take it one more time.

The grades in those days came in [twos]. You got one grade, and you got another grade. One-thirty-one is passing. If you make a 129 [on one part], you have busted it. But if you make a 132 [on the other], it will average out. The first one came in; he [had] busted it. He had told me, "When my next grade comes in, you call me, because I know I passed it, and I want to tell my folks." And I [was thinking], "Yeah, sure." It came in, and it averaged out to 131. And he is a good lawyer today.

That has given me more pleasure. There is one soul that I helped salvage, and he is going to be a good lawyer, and he is going to be happy. He is raising a family. Absent that, he would have gone out and sold cars or done something that he did not want to do. I said to my stepdaughter, I do not know whether she should practice law or not. Of course, I know. I am wearing that shoe, and I know how it feels. She is going to take it again, but [her mother] says this is going to be the last time, but we are supporting her.

I have interfaced very well with the Board of Bar Examiners. I was liaison with them. If they had some problem, I am the one that interfaced with them and brought it into court. I get my reading from all these people, and they want to keep out bad eggs. They want the bar to be the best in the country. You ask any lawyer, ninety-nine out of one hundred, if he has thought about it, and he would say, "Yes. I think we ought to have the best, most honorable lawyer there is."

Everybody in the bar is afraid that people will get mad, and amend the Constitution, and take that prerogative away from us. And they can do it. They can take it away from us and give it to the legislature. Then you would really

have something. We have about 45,000-plus lawyers in Florida. I think we have a good bar. The organized bar, that is, the bureaucracy of the bar, I think is a good one, and an honorable one. They are not out to do anybody in. The court spends a lot of time on bar discipline, because it is one of our constitutionally-mandated functions. It is very important.

My colleagues and I may differ on discipline, but both of us have the same objective. One thinks one thing is sufficient, and I may think something else is sufficient. This court is committed to cleaning up the bar. I remember, twenty, twenty-five years ago, lawyers were chasing clients. And that is wrong. The bar would not do anything about it. The bar did not have a real, viable mechanism to bring them to trial. What they would have to do [was], get another lawyer to act as referee, and get other lawyers to volunteer to prosecute him. Whenever they got somebody up to the court, they would tap him on the hand and say, "Now, go home and be a good boy. Are you going to be a good boy?" [The lawyer in question would say], "Yes." [The court would say], "OK. Fine." I said, "I am not going to serve as a referee." A bunch of us young fellows were mad. [My feelings were], "I am not going to waste my time, and send them up to the namby-pamby court, [if] the court is not going to do anything about it."

We now have put this on a professional basis. We do not ask lawyers to serve as referees. We get circuit court judges. We do not ask lawyers to prosecute. We have a cadre of good lawyers who do nothing but investigate and prosecute these people. More and more money of the bar is going into the disciplinary area. The bar is getting bigger, and we have to do it. I can leave the court feeling that we have really come a long way, and these things were instituted before I came on the court. I had nothing to do with it.

Mr. Osborne, my old partner, used to make up the questions. He was chairman of the Board of Bar Examiners for sixteen years. He would make up the questions, and they would give the tests and grade them. We had the diploma privilege when I came in. If you went to Florida, you were automatically admitted. You did not have to take the bar. I graduated, and I had my orders to go in active service. But as fate would have it, they let me take my exams early. I got my orders the day after Pearl Harbor. They let me stay there [for] Christmas and take exams.

I wanted to be admitted to the bar, so I had to come to Jacksonville. Mr. Osborne, as it turned out, interviewed me. I did not know I was going to be working for the man. What did he do? He did not even ask me to come into his office. Out in the anteroom, he talked to me two, three minutes, and approved me. And so that is how I came into the bar. Now, we cannot do that anymore. Everybody in the country wants to come to Florida and be a lawyer. So we have a hired staff of investigators, [and] spend a million dollars a year on

investigations. We have fifteen bar examiners. Three of those are lay people. It is big and serious business.

S: Who pays for that? Who hires them? The court or the bar?

E: Filing fees. When you take the bar exam, or make application to come into the bar, there is a substantial filing fee. It is self-sustaining. I think it is \$500, or whatever. That is to pay to investigate me, and to give me the exam, and do all that. It is self-sustaining. It does not cost the taxpayers anything.

S: How many investigators are there?

E: We have fifteen members of the Board of Bar Examiners. That is my recall. [It consists of] twelve lawyers and three lay persons. Each of them put in about thirty hours a month. That is a lot of time.

S: They are doing the investigations? They are doing all the character [references]?

E: They have gumshoes--retired FBI people--who go out and check these people out. These people study the records that are presented to them, and see if they pass muster. If there is a block, they interview them and have a trial, and make recommendations to us.

S: I do not see how you all have time to do all that.

E: It does keep you hop, skipping, and jumping. It is great. I am proud of it. I think we probably do more in the way of background checking on the applicants than almost any state in the country. We have to, because every rapsallion in the world who is a lawyer elsewhere wants to come down here and practice in Florida. I am not saying that everybody who wants to come down is bad, but we get an awful [lot of applications]. Maybe I am wrong on this, but I think I am accurate. About half the people who are taken into the bar each year come out of law school fresh. I think I am right in saying about half of them are practicing lawyers in other states who want to get admitted in Florida.

S: It is a lot of people.

E: Yes. Look, we have 45,000, maybe 46,000 or 47,000 [members of the Florida bar]. Ten, or eleven, or twelve thousand do not practice in Florida. They practice in Georgia, New York, [and] California. I am very pleased, and proud of what we are doing. I will put our Board of Bar Examiners and our Florida bar hierarchy up against any state's, and will not have to apologize for what we have done in Florida.

S: Besides getting tougher on lawyers, what other major changes have you seen on the court since you have been here?

E: I am not sure I can say I have seen any major changes. I guess the biggest area of evolutionary change attributable to the court is the death penalty cases. The Supreme Court kicked out the death statutes in the 1970s. [It was] 1973 or 1974. The legislature re-passed it. The legislature has got a statute that tells you the penalty and how you are supposed to sit in judgment on these people, who have been convicted of first degree homicide.

I came on the court in 1981, and the body of case law from this new statute was just evolving. It had four, five, six years. In the nine years since I have been on the court, this body of case law has been building up. The statutes remain the same, but the case law has built up, building up a body of what we call the common law or the court-made law. I have seen a lot of changes there. Some of them I agree with, some I do not. The legislature has provided that a jury is to hear the case, once guilt is determined, to hear the penalty phase. It is a bifurcated trial. [The jury then] makes a recommendation to the trial judge, who is the sentencer. He is the man who is going to sentence the person. If the jury recommends life--the person be spared--the statute gives the judge the last word.

Before I came on here, the court adopted the principle that the jury's recommendation was very serious and [should] be given great weight. If reasonable people could conclude that death was the appropriate penalty, then the jury's recommendation was to be carried out [by the court]. In the early days, life recommendations were most frequently set aside. We called them override. As the court has developed--and I cannot say I played a real heavy role in that--life recommendations by a jury more likely will ultimately carry the day and be followed. [The recommendation will more often be followed] if not by the trial judge, by this court, than [was the case] ten years ago. That has been one of the biggest changes that I have [seen]. Of course, it is a body of narrow field.

When I came on here, we got three new death cases a month. Now we are getting five new ones a month. That is a lot of litigation in a narrow field. That is the only area I can say that I have seen a build-up where the jury's recommendation, as far as the court is concerned, is going to carry the day much more frequently now than it would ten years ago.

S: That is interesting.

E: I think the court has continued to be very sensitive to rights accorded every

individual under the Bill of Rights. Some people call us liberal--I think we are conservative--in that area. The Bill of Rights, the first ten amendments to the United States Constitution, says thou shalt not do this, that, or the other, or whatever the admonitions are. We want to guard the rights of the citizen, and make certain that the rights guaranteed the citizen by the Bill of Rights, are fully protected.

If a police officer comes to your home, and says, "I have got a warrant to search for marijuana," or whatever, and the questions come to us, "Was that search warrant any good? Was there a basis for its being issued? Was the evidence properly seized under the warrant?" Our role is to make certain [that proper procedures are followed]. That is the only reason we exist. You do not need us otherwise. [The court is] one body of persons [whose role it is] to make certain that the constitutional rights of that citizen are being followed and protected.

The Warren Court went a long ways in setting standards for protecting people's rights in the criminal area. We see it most frequently [in] statements that are taken from someone who is accused. People have a tendency to talk. That is the only thing, I guess, that saves us. We get an awful lot of confessions. Once having confessed and gotten a lawyer, the [defense lawyers] challenge, "Was the confession voluntary? Was he properly warned?" We go the extra mile to be certain that this person's constitutional rights have been safeguarded. If [the accused] says, "Yes. I did it, and I am glad I did it," but the safeguards that the Constitution guaranteed to him were not followed, we have to throw that confession out. [It] is not easy when the guy admits he did it, and we throw the confession out, and they cannot use it. But that is what the Constitution is all about. We think our role is to make certain that the safeguards guaranteed to each of us by the Bill of Rights is fulfilled in every case.

I think the court has steadfastly stayed in that line. Some law enforcement people are very critical of us: "You let a lot of people go free." Well, that is what the Constitution says. If you did not have that Constitution, you could convict a lot of people, and you would not have as much crime on the street, maybe, but the flip side of it is that you would have a lot of innocent people serving time.

- S: Is that how you live with those kinds of decisions? Because I imagine that some of those cases would tear you up inside.
- E: They do. The court was roundly criticized over a case that we had that came out of Orlando. This nice, young lady worked for Disney, and she was on her way home, and she never got there. They found her car, and they found her body in a septic tank three or four days later. There were no fingerprints on the car, nothing that you could tie in. And there was a man who, that same evening,

had his tongue bitten off. He gave the story that he drove around, and there was a parking lot of a bar, and he was going in. He saw a bunch of people, and there was a fight going on. He tried to break them up, and somebody hit him in the jaw and cut his tongue. His story made absolutely no sense. He was a suspect, because, while [the two incidents] were not in direct proximity, it was not terribly far away. His alibi just was nonsense. This was ten years ago, and they decided they would not prosecute him.

He went about his way and joined the Army. Lo and behold, about eight years after that, he was convicted of molesting a woman or some such crime out in California, and the Orange County people got interested again. He was extradited, and on the same evidence that [earlier] they thought was not sufficient, he was tried. The jury convicted him, and recommended death. The judge sentenced him to death. Each of us read that record, and there was not anything in that record that connected him with her--nothing. If she had some flesh in her teeth, [which] would have been a nexus between his tongue and her, fine. But there was not any. Had they found her body immediately, they might have [found some evidence]. But she was thrown in a septic tank for three or four days and the deterioration went on.

Each of us read the record, and we said, "There is not anything to hold him." And we had to let him walk. I never asked anybody on the court; nobody ever asked me what we really thought was the truth. I am not interested in what my colleagues thought was the truth. That is not our function. What I think is the truth is nobody's business. Our function is [to answer the question], "Did the state prove it?" And we all concluded no. That has happened twice since I have been on the court. This one did shake the entrails of the court, because we knew it was going to be high profile. The victim's family never understands what you are doing. They are for "an eye for an eye, and a tooth for a tooth." We got a letter-writing campaign. When Justice Shaw ran for merit retention, they were out to beat him. They politicked against him. [They] said we were soft on crime. We were strict on the Constitution, that is all. This bothers you. This does bother you.

To my critics, I say this: "What is our role? We do not represent people. You cannot lobby us. You can lobby your legislator; he represents you. He is supposed to represent your wishes. You can lobby the governor; he is supposed to represent your wishes. Our role is that we are the guardian of the Constitution, and we are to make certain that the rights of people guaranteed by the Constitution are safeguarded. We do not represent you, and you cannot politick us." Nobody has ever said anything to me about anything up in front of the court. Never. There was a high profile something up in front of us. It was on every street corner. When you would walk up, they would be talking about it, and they would shut up when they saw you, and never say another word until

you left. The public--except these little fringes who would write you--generally would respect that, [and] accept that as the way it should be. Do not stay on the court unless you can take the heat.

This abortion thing almost cost you all the election. And I cannot tell you now how my colleagues feel individually about whether an abortion is proper, or right, or should happen, or should not happen. I have never told anyone how I feel. It is nobody's business. We decided it on the law as we perceived it now. All of us felt that the privacy amendment applied to a woman's determinations to whether she would have the abortion or not. The rest of us were divided 4-3 as to whether the statute was applicable, and whether it was constitutional. This is our role.

I say to my detractors, "You want to do away with the Supreme Court? Fine. You can do away with it. Then who is going to do it?" The letters we got said, "The jury found him guilty. That is the way it ought to be." Is that really the way you want it? You pick twelve people, and let them decide life and death? [We are] trained people, whose mission is a narrow one, highly skilled and specialized, [whose role it is] to determine whether everything that went on in that trial was proper. We know. We operate on an adversarial system. The prosecutor is trying to convict. I know what it is to try a case. You get carried away and you overstep bounds. In a lot of areas, it is gray. If it is gray, you are going to take your chances and go. Prosecutorial misconduct is not uncommon and is not unreal. I tried them, and it is easy to do. When we get through convicting, [the attitude is] "Well, that is good. [The] jury is convicting him."

Our forefathers, two hundred years ago, had the better experience of not having a constitution, and they knew what it was like not to have a Bill of Rights. Unless you have been hungry, you do not really understand what food is like. But when you have been hungry, you understand and appreciate food. You understand your rights when you have been deprived of them. Our founding fathers knew what it was [like not to have rights]: searches and seizures, forced confessions, [convictions] for your religion, not letting you speak, and these things. We have lived with [these rights]. We take them for granted. But people died for them. The Bill of Rights is the most sacred document--forgetting the Bible--we have. It is the only thing that separates us from the rest of the countries all over the world. That is why people want to come here. They do not fear the knock on the door at night. They know that if some guy grabs you and puts you in jail, that some magistrate, who is disinterested, is going to demand, upon your request, for somebody to say, "Why is this bloke in jail?" [Then he would] order him out if you cannot show a reason for having him. That is why people want to come here.

S: So, it is important for people to remember that there may be individual cases that

are going to get through that they are not going to be happy about. But you have to look at the bigger picture.

E: That is absolutely right. Somebody said it a million years before: "Better that a guilty man go free than an innocent man be incarcerated."

S: Who said that?

E: I do not know. I worry enough where we convict somebody, everything looks all right, but he protests his innocence. [I worry] whether he is really guilty or not. We had a case, and it does disturb you. I cannot remember the guy's name. [He was a] black fellow, who had done about eighteen years. He was on Death Row. Somebody got interested in his case. He supposedly poisoned his children. The thing finally came up here.

S: That was not too long ago.

E: Right. Two, three years ago. Before we could rule on it, the attorney general, in effect, said, "Yes. He did not have a fair shake." [He called it] prosecutorial overkill, or whatever.

S: After he had served eighteen years.

E: It was about eighteen years. There were two blacks who were convicted in the old days for rape, that [Governor] Askew pardoned. They were within minutes of being electrocuted. We have come a long way in the past thirty-five years in the area of criminal justice.

S: And you have really gotten interested in criminal justice in that area.

E: Yes. That is half of our cases: the safeguarding of the rights of the citizens. I hear some of my colleagues. Justice Kogan has done a lot of criminal work. He used to tell me some of the things. It was shocking. [For instance,] they would wheedle a confession out of somebody deceitfully. You cannot [do that]. It is very difficult to do that now. People were not represented. A guy did not have enough money to pay a lawyer, and could not get a lawyer to represent him [for] free.

The Supreme Court finally said, in a case that grew out of Florida, "That is wrong. Anybody who stands to be put in jail has to have the guiding hand of the lawyer to protect his rights." That is a great decision. [It] revolutionized law. Thousands of people who were doing time, who had no lawyers, got out. Maybe they should not have gotten out, but the big point was, the United States Supreme Court set the pace safeguarding the civil rights of the citizens.

Civil Rights: A guy could not go to the University of Florida if he was black. [He] could not go to law school. That stuff does not go on anymore. We have come a long ways. We still have a long ways to go. You think about a person who wore a skirt in 1915 could not vote. Even when I started practicing law, a woman could not contract if she was married. If you [Mr. Ehrlich is speaking directly to Mrs. Stobie] signed a deed, and we took an acknowledgement, I had to take you away from your husband, in private, and ask you if this was your signature, and [make sure] nobody has coerced you to sign, and all that falderall. Women did not have any rights. And we called ourselves a civilized society.

As I say, we have come a long way, [but] we have a long ways to go. When I die, I will go out pretty pleased [at] how far we have gone in my lifetime. I am very upbeat and optimistic as to the future of this country, unless they tinker with the Bill of Rights.

S: Leave that alone.

E: Yes, ma'am. Leave it alone. The President [George Bush] started playing politics on the flag burning [issue]. He said, "We will amend the First Amendment." Better heads thought very seriously about that. Nobody amended them. Once you amend them, the second time is easier. Conservatives, and radicals, and liberals alike will join hands on that. Only the politicians wanted to amend it.

S: That was an interesting one.

E: You have asked me about cases. Let me tell you, what I write or do not write depends on what is assigned to me. We have a blind assignment downstairs. The clerk assigns a case to me or to the other judges. Nobody has any input. It is supposed to be blind, and I do not know how they do it. I have often wondered how they did it. Whether you get a high profile case to write on depends on whether you get one in the first instance. I have drawn some high profile ones. I do not know that they are as high profile [or] desirable as some others. If I were Justice Parker Lee McDonald, [October 22, 1979 - January 6, 1987] I could point to a case where we changed the practice of picking juries in criminal cases. You cannot discriminate against blacks. That would be my finding. But I did not write that. I joined them. I do not know of a case of comparable stature that I could say with pride, "This is one that I am terribly pleased with."

This [file I am holding] is supposed to be all [the cases] that I have participated in in some fashion. Sometimes cases go out per curiam [on behalf of the court]. They go out [that way] for many reasons. [For example,] if I wrote the first

opinion, but in order to get a majority, I had to incorporate other people's writings in my opinion, I cannot take credit for it. So I say per curiam. In death penalty cases, a lot of people sign them per curiam, because they were concerned about revenge. They do not want to be identified with it. The same thing [happens] with bar cases. I have signed a bunch of them. And I sign all death cases. Bar cases and death penalty cases frequently go out per curiam for those reasons. Sometimes, if I author an opinion, and I have to put a lot of stuff in there that I do not like and am not proud of to get a majority, I do not want my name to be on it. I just sign it per curiam and let her go.

I have done a lot of dissenting, and I have seen the court turn around. I have convinced them that what I was standing for was the proper thing, and the court changed its mind. I cannot identify [the cases], but there have been some. Of course, some of mine have been turned around, too. I wrote a dissent recently that I am proud of. I wrote the opinion, and I am more proud of that than I am of some majority opinions that I wrote. There was a very recent case. I authored most, if not all, of the cases that came up here on citrus canker. The legislature passed a statute saying that this was inverse condemnation. [It] set up an administrative agency to handle all these claims. Millions of dollars were on the line. I said that statute was unconstitutional. Two of my colleagues signed on with me. I am right. I did not carry the day, but what I said in that dissent, I am more proud of than some of the others that I authored, because someday it is going to be harkened to. That is the only one I can really put my fingers on. But if you are interested, I will get the names [for you].

S: I am.

E: I will get the citation with a name, and give you a call.

S: OK.

E: I wrote an opinion. The name of it is Glendening vs. State. The legislature passed a statute. These are very simple. Children by the score, every day, are being molested and battered. [For instance, we get] a five-year-old who says that her stepfather molested her. Those of us who have tried cases know that children are the worst witnesses in the world. You never know what they are going to say. They are unreliable. That is what makes it so frightening. Yet this child's word can send her stepfather to the penitentiary for a minimum of twenty-five years. [It is] very serious. And yet we have got a constitutional provision that says that the accused has got a right to confront his accusers. [It is] very delicate. How can we take this child's testimony and preserve this man's constitutional privileges--his rights--and at the same time, take statements the child has made and rely on them involving this person's liberty? The legislature passes a statute that seemed to comport with a decision out of the United States Supreme Court [of] how this could be done. I wrote an opinion upholding the

constitutionality of that statute. We think that the rights of this person have been safeguarded. For instance, we know that if you take this little five-year-old and put her on the witness stand in front of a jury and a courtroom full of people, she is going to be traumatized emotionally, maybe crippled. People who know this, the psychologists and psychiatrists, will tell you that. The judge finds that it will damage her emotionally--and I cannot remember the terms precisely--that her testimony can be taken out of the court, and read to the jury. The man has a right to confront his accuser. We have said that the testimony of the child can be taken in the presence of the accused, so that he can see her, but she cannot see him [through] a one-way mirror. That child's testimony can be used. Then we permit, under statutory safeguards, professionals [to] work with the child--they have techniques that are unbelievable--to determine whether the child is telling the truth. We have a doll. [The professional asks the child,] "Point out on the doll the portion of your anatomy that your stepfather touched." We let these people come in under safeguards, to testify what the child told them. That opinion upheld the constitutionality of that statute. I am not sure the last words have been spoken yet. The Supreme Court of the United States may kick out the statute. But I felt very strongly that the rights of the accused ought to be safeguarded, because children are terribly unreliable witnesses. You just cannot begin to believe the number of child molestation cases that we have. [It is] absolutely frightening.

S: [You see it] every day in the paper. It is in every day's news. I can believe it. It haunts me. On that, how did you ensure that the accused's rights are being protected, then? By letting him see through this mirror?

E: I will give you [something] one of my aides copied today. She thought it was pretty important. I had completely forgotten about the damn thing. That is the opinion. You can take it with you. You can read it, and somebody down there will help you with it. I thought it was an important case. I wrote the opinion that I thought was fairly important. [Have you heard about] making interest on trust accounts mandatory? It was a progression, and the time arrived where the court was willing to go along. I wrote that opinion. It is not earthshaking, but it will bring in about \$15 million that can be used for hiring lawyers to represent people in non-criminal matters. We used to collect about \$3 million; now we get about \$18 million. It does not cost anybody anything, except banks. This money would normally go to a bank. I am pleased with that. But that is not earthshaking. And I wrote an opinion involving a bar discipline, and I signed it, because I was proud of it. [It had] to do with lawyers taking the Fifth Amendment in bar disciplinary proceedings. I do not think that is earthshaking, either, but here again, I felt that [it was a case] where the rights of the public were concerned, and the public had to be protected. [Therefore], the lawyer could not hide behind the Fifth Amendment. The Fifth Amendment is sacred, but not for a lawyer in bar disciplinary matters. I do not know that that is particularly

earthshaking. I will tell you one I wrote, and I thought nothing of it. When a woman claimed that she had been raped, and the man was tried, the jury instruction came down from medieval times. In this case, I said that instruction was wrong, and we kicked it out. This was just another case [to me], but, my God, I got the press on this! I got big write-ups. As far as women were concerned, this was terribly important. This was just another criminal case to me. We used to tell the jury in rape cases that the testimony of the complaining witness should be rigidly scrutinized, where she was the sole, immediate witness. It was just the man and the woman, and it was her word against his. You do not give that instruction to anyone else. But in that case, you have to scrutinize her testimony very seriously. And we said, "The hell with that."

S: Wow.

E: I thought nothing of it, but I really got the press. But this puts it on an even playing field, that is all.

S: Right.

E: This came down from the English common law. I have to tell you, some men will probably be framed. It is easy to frame a man. Being in here alone with you is a potential [case]. You could get up and run out, and tear the buttons off your blouse, and say, "Ehrlich did it." It is my word against your word. But, by the same token, this was a terrible charge, and we kicked that out.

S: That used to be the norm?

E: Yes. Just because she said she was raped, you have to scrutinize her testimony very carefully.

S: Was that being done routinely up until 1986 by everyone?

E: Yes. It was--in every rape case. We call it sexual battery now; it does not have to be rape. I guess it is an affront to a woman.

S: Yes, if it is not done in other cases, and they do not have to scrutinize the man's [testimony].

E: I did one other one. I am not sure it is even final. It is a long one, and it is terribly complicated. I held it for several years before I ever got it out. It changed the law in a very narrow area. In tort law, if I sue you for hurting me, I have to be able to prove that you caused my harm. That makes sense. We ran into this situation in the 1930s or 1940s. They came up with a drug. Women would take it. The manufacturers concluded that if a pregnant woman had

morning sickness, she could take this drug, DES, and that it would help her. It did. The only problem was, when she had [a baby girl], and the child [grew into an] adult, she would have cancer of the uterus. [It was a] terrible situation. [The client in this case] said, "My mama took it. She does not remember where she got the drug. She does not remember the manufacturer." There was no way she could get any relief. We came out, and we joined some other courts in saying that, if she can establish that four manufacturers sold that drug in Florida during the critical time, [even though] we do not know which [company's pill] the mama took, then they are liable. [They are liable] unless they can prove that, although they sold it in Florida, they did not manufacture and sell a green pill (the girl knew that mama took a green pill), or that they did not manufacture at that time. Unless they could do that, the four of them had to share liability jointly. That is strictly against all tort principles. We have gone that route. I think it may be final by now.

S: It would be anyone who had manufactured that drug? Any of the companies?

E: The concept is, if you manufactured and sold the drug in that market, then you contributed to the risk. She may not have taken your pill, but if you peddled them in that market, then you share the whole risk with everybody else. The big question is, what is [one's] market? Is it the city you live in? Is it the county? Is it the state? Or is it the country? New York has gone the route that the market share is nationwide. We have said that the market will be the narrowest that you could have. The city, county, state, whatever the plaintiff can prove, will be the market. If you cannot do that, then it will be the national [market]. It is a revolutionary concept. We did not originate it. It is to take people who have been damaged--severely injured--and say, we are going to let you recover. These manufacturers can buy insurance and protect themselves. They add the cost of the insurance to the product, and so the general public ends up paying for it. This woman should be protected. Let the public take care of it, albeit by a circuitous route: manufacturer, insurance company, addition to the price of the product.

S: You are right. It is complex.

E: It is. I sweated for years on it.

S: And you just keep working on something like this until you got to where you . .

E: I did. I am slow. I brood. I got to be chief, and [during the] two years I was chief, I did very little writing. When I got out of the chief's office, I said, "[I am going to] finish this devil right now." I am sure they are others, but I am not sure I can give you something that is truly exciting. But I will call you on that dissent.

S: Yes. I wish you would. On the citrus canker.

E: One of my colleagues joined the majority. He said, "We just saved the state about \$300 million." If the constitution says that money should have gone to citizens, I do not think you have done the right thing. That is my philosophy. Sure, it would have cost the state. If it had carried today, it would have cost the state about \$200 [million] or \$300 million. The growers would have taxed themselves, and ultimately would have paid for it. But the people who sustained the loss are going to lose that \$200 [million] or \$300 million. The state is getting out cheap, and that is not what the constitution says. If you take my property, I am entitled to have just compensation, not gimmickry compensation. The approach that the court took opens the gate for abuse. I do not know that it will ever be abused. I felt [that way], and two of my colleagues felt [the same way]. But four of them felt differently, so the majority carries--that constitutional principles were being violated. All of this gives me an ambivalent feeling about going off the court. I know it is time to move on, but this is the center--where things are done.

S: It is never finished.

E: I know, but when you wake up in the morning and nobody is bothering you and you can pursue your occupation, you know that the privileges accorded to you under the Bill of Rights are being given to you. It is not the legislature, [and] it is not the governor that is seeing that that is done. It is the whole court system. Ultimately, we are the final arbiters of our Constitution. This is where the action is. We set policy.

[End of the interview]