

UFLC 66

Interviewee: Benjamin Frederick Overton

Interviewer: Samuel Proctor

Date: October 28, 1994

P: It is October 28, 1994, and I am with the Florida Supreme Court Justice Benjamin F. Overton. We are working here in my office in the Florida Museum of Natural History. I am going to start off, Ben, by asking you for your full name, please.

O: Benjamin Frederick Overton.

P: Where and when were you born?

O: I was born on December 15, 1926, in the warm community of Green Bay, Wisconsin.

P: What was your family doing in a strange place like Wisconsin? How did that happen?

O: That is where they came to.

P: From where?

O: My mother has an entire German heritage, and my father has an entire English heritage. My father's family came over in 1850 with the Overton name.

P: From England?

O: Yes, from England. They settled basically in the Oshkosh area. They started north of there. The family farm still operates outside of Oshkosh, Wisconsin. It has been a dairy farm since 1896; and it continues to operate as a diary farm today. My family and I went up and saw it in 1989. William Overton [operated it]; he is the son of my father's uncle.

P: They came over then as farmers from England and continued as American farmers?

O: They came over from what I call the Norfolk area. I have been there. We have been able to take our family roots back to Norfolk County at Saltbox, which is along the sea there. Also, there is a village called Cockley Cley, which has a small church, where we [traced] our family back to 1772. There has always been a Benjamin and a William in the male members of the family. They were more or less poor farmers in that particular area. If you have been in that area, you can see why that is. That Norfolk area, which is what I call the pregnant part of Great Britain on the North Sea, has a lot of rocks. The tidal flow is about

thirty-two feet. We have made two trips over there to travel that particular area. We did find where my great-great-great-grandfather was married in 1804 in Cockley Clay; the book was still there.

P: So your father's family has been here for several generations; that is, several generations in the United States?

O: Yes. And still on my father's side, his mother was a Tibbetts and a Forsythe, who came over eighteen years after the Mayflower landed.

P: Tibbetts?

O: Her name was Tibbetts. She comes from the Folsom family. I have a will dated in 1534, but John Folsom was born in 1615 in Highland, England. He immigrated to America in 1638 on the ship *Diligent*.

P: This is on your father's side?

O: On my father's mother's side.

P: What was your father's name?

O: My father's name was Benjamin Hillman Overton.

P: Where was your father born?

O: My father was born in Oshkosh.

P: What business was your father in?

O: My father went to work for the railroad as a traffic or a rate man. He became a rate expert as such. He was one of the first lay practitioners who was admitted before the Interstate Commerce Commission. He became a practitioner; I believe he had certificate number thirteen which was issued in the 1920s.

P: Did he have any college background?

O: I think he had two years of college at Oshkosh Normal School where he met my mother.

P: Did he continue working in that all of his life?

O: When we left from Oshkosh he was with the Northwestern Railroad. He went from there as a traffic man to Duluth, Minnesota. The matter of being there in

that capacity was to help communities, or that particular community, obtain beneficial freight rates. That basically was what that type of position did or accomplished.

Before I entered elementary school, we moved to Winona, Minnesota. There, he did the same thing. He represented Winona, Minnesota, and La Crosse, Wisconsin, two cities that are thirty miles apart along the Mississippi River. We lived in Winona, Minnesota. He spent two and one-half days a week in La Crosse, Wisconsin.

I spent my elementary school years in Winona, Minnesota. My father then got a position with Gateway City Transfer, which was a trucking company. He was vice president but he was doing the same kind of work, in the field of rate-making. His responsibility was to justify the trucking company's rates or tariffs for goods the trucking company carried. As you can imagine, during World War II, because of the gas shortage, truck lines were not doing very well.

Finally, in 1944, there was a very substantial cutback in the trucking industry, but my father was able to go back to representing cities. He received a job in St. Petersburg, representing the city of St. Petersburg and the county of Pinellas in the same capacity, with an office in the Chamber of Commerce in St. Petersburg.

P: Is that what brought the family to Florida?

O: Yes. I finished high school in Wisconsin where we had moved when he went to work with Gateway City Transfer. I spent all my junior high school and senior high school years at La Crosse, Wisconsin. I graduated from high school in 1945. My father had gone down to St. Petersburg in the fall of 1944. My mother and I stayed in La Crosse, and I finished high school in June 1945. That was the end of the war in Europe. V-J Day did not occur until August of 1945. Nineteen forty-five was the last high school class when everybody just assumed that when you graduated from high school, as far as male members were concerned, you went into service.

P: You were able to escape that, were you not?

O: No. I went into service within three weeks from the time I graduated from high school. I was in basic training at Camp Robinson, Arkansas, when V-J Day occurred.

P: What a lovely place. Before you move into that part of your career, I want to go back and get some biographical information on your mother. What was her full name?

O: My mother's full name was Esther Matilda Wiese.

P: That is the German part of your family.

O: Yes. There is an interesting thing, from the standpoint that we do not see much down here: there was a commemorative biographical record made of my grandfather, her father, Frederick H. Wiese, who came to Brown County, Wisconsin. I did not know him because he died before I was born.

In fact, one of the things that is interesting from the maternal side of the family is that my grandmother had four children, four girls. My grandfather had provided her with a shoe store, and he also had other investments. She put the three daughters who were physically able through college, with the first entering college in 1917. The other daughter had severe rheumatoid arthritis. That occurred in her early twenties. She ended up being institutionalized in Milwaukee, and the other three girls paid the cost of her care. Those other three girls were my mother, my Aunt Martha, and my Aunt Louise. I am the only child on my mother's side; so, you can see that my two aunts looked on me as their child.

P: You had three mothers, three women to keep an eye on your behavior.

O: Yes, I had three mothers. My Aunt Martha, the oldest, is a graduate of the Chicago Art Institute. She was an accomplished pianist, and an accomplished artist. She married an architect, and they did not have any children. She went on to be the Director of Interiors for all the Webuilt stores out of Chicago, which is [a chain of department stores] similar to what we have in Dillard's now. She did all the interior design for all of them at the time when malls were just coming in.

My Aunt Louise went to the University of Wisconsin, and was one of the first women to become a registered pharmacist. In fact, she received her pharmacy certificate at the age of twenty. My mother went to Oshkosh Normal School, and became a teacher. All three girls had gone to college and had college degrees, which in that era was very unusual.

P: That was really an outstanding record.

O: Particularly when at the time, her husband, my grandfather, had died. My Aunt Louise became the head pharmacist at Gunderson Clinic in La Crosse, Wisconsin, which is known as a "little Mayo" in that geographic area. The last I heard they had 220 doctors. Even when she was there, they had between fifty and sixty doctors. They provided medical care in a different way because the physicians received a fixed salary through the clinic. The clinic did all the billing; the doctors did not do any of the billing. That is still how it operates today.

- P: You were born in 1926; do you have any memory of the impact that the Depression had on your family? Was that a serious kind of a problem?
- O: Dad had a job. We were first in DePere, Wisconsin, and then in Duluth, Minnesota, but by 1932-1933 we came to Winona, Minnesota, which was during the Depression, and stayed until 1939. My father had a job at that time.
- P: So you had something to eat and a place to sleep.
- O: That is right. I cannot say that I was deprived in any respect in that regard. Everything was very good. I could walk to school. We had a nice house, [although] it was not anything special. Dad had a car; he had to have a car because he had to drive from Winona to La Crosse for three days a week. I do not recognize that there was any major effect on us as a family by reason of the Depression.
- P: Did you grow up in a close-knit family?
- O: I am an only child. I do remember what I was doing in my elementary school years. It is interesting to me to see people nowadays take their children to school, if they are not on the school bus route. Very seldom do they let them walk alone to school. I cannot remember when my parents ever took me to school except for the first day, or first couple of days. I was within six or eight blocks of elementary, junior high, and high school. I either rode my bike, or I walked. In winter it would always be below freezing. I never knew what the inside of a school bus looked like, except on those few occasions when we took the bus to go to the football games. When we went to basketball games, we took private cars. We did not take a bus to play basketball.
- P: You could play outside in those years without supervision. So much has changed now.
- O: It has. I live in a really nice neighborhood in Tallahassee, and I thought about that when I saw both parents standing with the children at the school bus [stop]. These are not really young children. You can see the concern that the [parents] have. We also noted yesterday, coming out of St. Petersburg just when school was out, how many parents had met their children at school and were walking them home. It was really different in my era.
- P: When you came to St. Petersburg, you were already a graduate of high school. You graduated from what high school and on what date?
- O: I graduated from La Crosse Central High School in June 1945.

P: You moved to Florida immediately afterwards because your father was already here living in St. Petersburg?

O: Correct.

P: So he had already established a residence, and you and your mother moved in there. Then what? You went into service? Pick up with that.

O: I went into service three weeks after I graduated from high school, and I went to Camp Robinson, Arkansas. After I went through the basic training, they sent me to military police school. When I went to the port of embarkation, it was as a military police[man].

P: And then where to? The Pacific?

O: No, I went to Virginia. It was just outside of Petersburg, Virginia. The [army] camped [us] there, in Petersburg, Virginia, which is an inland [area]. It was a port of embarkation where they moved you on out to the ships that went out of Norfolk and Newport News from that particular location. I did not go that route. I went to Fort Riley, Kansas, and I went to Kansas City.

P: They were getting you farther and farther away from the water.

O: Basically, my military police unit was assisting in the transportation of troops moving through Kansas City, which was the hub where all the troop trains came in.

P: They are moving the forces back from Europe.

O: Yes, moving the troops back. I spent most of my time both there at Kansas City and at Fort Riley, Kansas. And then I was discharged in March 1947.

P: What was your rank?

O: Pfc. [private, first class]. They say I was a provost sergeant, but I still came out as a Pfc.

P: You went in August 1945, and you came out in March 1947. You immediately began thinking about college.

O: Oh, yes. I was registered at the University of Wisconsin, but my mother said, "You are not going to be 1600 miles away from home." I had gone up and talked to Harry [A.] Stuhldreher [1901-1965; Wisconsin football coach], because I

played football, basketball, and tennis in high school. To be honest with you, basketball was my first love. When I came out of service, I went to see Harry Stuhldreher, one of the four horsemen of [the University of] Notre Dame.

- P: Your mother nipped [in the bud] the business of going to Wisconsin.
- O: Correct. The manager of the Chamber of Commerce had a son who was going to go to Stetson [University, DeLand, Florida]. My parents wanted me to look at that, but they also wanted me to look at the University of Florida. I came up here, and also went over to the athletic department. [Ray] "Bear" Wolf was the football coach. I went over to see about playing basketball, not about playing football. They asked if I had played football, and I said yes. When I entered here in June of 1947, I played in the summer football practice. They started the summer football practice in June. They then had three weeks off, and they started again because it was after the war. My professor in English, I believe his name was Harper, did not want me to play football. You would know him--he went to Florida State. I had him for freshman English.
- P: Was it Clifford [Pierson] Lyons [Chairman of Division of Language and Literature and professor of English] or [Charles Archibald] Archie Robertson [Chairman and professor of English]?
- O: No, and he went to Florida State University and became dean.
- P: You will remember it. You came up first to talk to the people here, and then you registered.
- O: I registered and started here in June 1947.
- P: You came here in June 1947, and you were here for the beginning of summer school.
- O: That is correct.
- P: You preceded, by just a few months or weeks, the beginning of coeducation.
- O: That is right. When I first came here, it was not coed.
- P: The campus was already buzzing with returning veterans.
- O: Yes.
- P: Did you come under the G.I. Bill?
- O: I came under the G.I. Bill, that was the other thing that they were saying. I

started out living in Murphree Hall, where the football players and basketball players were. I lived there my first year. I sat on the bench with the basketball team under [coach] [Samuel] Sam McAllister that first year.

P: Were you on a scholarship at all, an athletic scholarship?

O: I received some of my meals, but not really. They asked me to use my G.I. Bill.

P: You used your G.I. Bill, and it was supplemented by the little bit that you got from the athletic department?

O: Yes, I think the only thing we got were some meals at times, but I also got a place to live in the permanent dormitories.

P: Which was very rare.

O: Yes. As you know, when [freshmen] came in they ended up out at the airport.

P: Being carted back and forth on that bus. You were no draw on your father?

O: Yes, they supplemented my education. I am very fortunate. My parents were strong. My father did not want me to work. He said, "I want you to put your time and energy into going to school." I think most of the time I took a full load every semester.

P: But you had lost two years in the military already.

O: I think I clepped [CLEP denotes the College Level Examination Program] twelve hours to start with.

P: You went into the University College program.

O: That is correct. I think the hours that I clepped were the social science hours.

P: History of course; thank you very much.

O: I joined Pi Kappa Phi [national social fraternity]. I had played basketball in the service. All of a sudden, it did not seem to be much fun anymore. I was carrying fifteen or sixteen hours. I decided that I could not do it. I started playing tennis; I also went out for the tennis team. I decided that there were not enough hours in the day to do that.

P: Were you a good student?

O: I was not a bad student. Until the semester before I got married in law school, I had never gotten a *D* or an *E*.

P: You had to study for what you got though?

O: I had to study, and my average was somewhere in between 2.5 and 2.8.

P: You were a *B* or *C* student.

O: Yes.

P: Did you have to struggle?

O: I did not have to struggle like a number of people who were my friends. I know that. I thought I was able to do a *B* or *C*, and I really was not worried about it until the semester I got married, before law school. I had never gotten a *D* or *F*.

P: What made you decide to go into business administration?

O: At that time, they had a transportation and public utilities major. Most of the courses that I took were transportation and public utilities. I could check a freight rate in a tariff when I was fourteen. Basically, I knew that part of the transportation industry. I did not know much about public utilities. Business administration had one of the most well-respected transportation departments in the country.

P: Were you already thinking about law school? Was that your objective?

O: It was. My father wanted me to go to law school. He was lay practitioner, doing the same thing as lawyers were before the Interstate Commerce Commission in the CAB [Civil Aeronautics Board]. Going to law school at that particular time, there was the diploma privilege and if you graduated you were admitted to the Bar without an examination. The matter of staying in law school was something else. Even after the first semester, the number of people was substantially less than the number you started with.

P: Who was the dean of the law school then?

O: I started with Dean [Henry Anderson] Fenn [dean, UF College of Law, 1948-1958]. He and I started at the same time.

P: When was that?

O: I think he started in 1949. I started in 1949.

P: He did start in 1949, he came here from Yale. We have him on tape.

O: I started with Dean Fenn. I guess my outside interests were mainly with the student government.

P: What were your activities with student government?

O: I basically represented my fraternity, and the political aspects of the membership in the Varsity party. I ran and served on the executive council representing business administration. I was minority leader for the Varsity party when Earl Faircloth was president [1949-50]. The following year [1950-51], I was a member of the president's cabinet as secretary of men's Affairs. I was active on the student government activities. Many of us who had been in service, and who were enlisted personnel, went ahead and joined ROTC because we only had to take the last two years. And we got thirty-five dollars a month, which was a lot of money at that time.

I was involved with the Scabbard and Blade [military fraternity]. I was company commander of one of the companies. I was active in Alpha Kappa Psi, which is the business fraternity.

P: With your leadership role on the campus, why were you not Blue Key? Of course that was a political thing then as it is now.

O: It was a political thing. It was probably one of the things that hurt me more than anything else. It was not to be tapped, particularly that [last] year [I was in law school].

P: You were, of course, tapped later on in the 1970s, in 1975.

O: When they told me I had been tapped for honorary membership, my wife said, "Well, you finally got it." I was active in Phi Alpha Delta [law fraternity] with another extremely good lawyer and close friend, [C.] Harris Dittmar. He was president (justice) and I was vice president (vice justice). He went to Chester Bedell's law firm [Bedell, Dittmar, DeVault, Jacksonville, Florida]; he is still there, and is a senior member of that firm now. He and I went to the national convention [of Phi Alpha Delta in the summer of 1950], which was the year Justice Elwyn Thomas of the supreme court [of Florida, 1938-1969] was coming in as the national president. [Richard] Dick Ervin [state attorney- general, 1948-1964; Florida Supreme Court justice, 1964-1975] and Charles Tom Henderson [later deputy attorney general] were on the [national governing body of Phi Alpha Delta], and both of them were very active.

Through PAD [Phi Alpha Delta], I got to know Dick Ervin. He came down during my last semester in law school in the fall for homecoming, and he visited the

PAD. Marilyn and I were newly married at the time, and we had him over to our little apartment. It still looks the same over on Sixteenth Street; it was a duplex. I believe that, as a result of that personal relationship, I was able to obtain a position at the attorney-general's office as a special assistant to the attorney-general. He took one law student out of each class; one out of Stetson, one out of [the University of] Miami, and one out of [the University of] Florida. I was the one out of Florida. At that time, it paid \$200 a month.

P: That was good money.

O: At that time, most of my classmates were not getting \$200 a month. I felt very fortunate that I had that opportunity.

P: The campus was an exciting place at the end of the 1940s, with all of the returning veterans, women coming on to the campus, J. Hillis Miller was the new president [University of Florida, 1948-1954], and there was a lot of building going on. Talk about the campus as you remember it at that time, during the years you were here.

O: I think it was an exciting time. I have been fortunate during my life to be involved with different things at the time of change. One of the things in my second year in law school [1950-51], the North, South, Tolbert, and Weaver Halls were built. They decided they were going to put all the freshman boys in those dormitories, and they were going to take graduate students as monitors. I had lived with a fraternity brother of mine on the fourth floor of Fletcher Hall for the three years after I moved out of Murphree Hall. I moved out of Murphree to a fourth floor corner room of Fletcher, overlooking the College Inn.

P: It is now the Purple Porpoise.

O: Going back to what you were asking about the construction, this was a change, putting all the freshman in four dormitories. I was a monitor for one of the floors at Weaver Hall. Because I had some relationship with the athletic department, I got half of the freshmen football team. That was during the [Richard] Rick Casares [prominent football player under coach Raymond Bob Woodruff] years. He came in as a freshman; actually he was not on my floor. I had an exceedingly good group of young people. In fact, on that floor I had the son of [Arnulfo] Arias, who was the president of Panama [ousted by the Panamanian National Guard in 1968].

I had a blonde, blue-eyed coalminer's son playing halfback on the football team; [he was taking courses in] pre-engineering. The interesting thing about it was that although I had half the freshman football team, we had the highest grade point average out of all four dormitories at the end of the year.

P: There were no drugs and no guns in those days?

O: No, nothing like that. And you had ways you could control them [students in dormitories] too. I remember a young man who did very well in engineering. He played all four years, but he really looked at athletics as an opportunity for an education.

P: Who was he?

O: I cannot remember his name. If I looked in the yearbook [catalog] I could find [his name], and point him out. One other [student] claims that I am the reason he graduated from law school and went on was a young man from Jacksonville; his name was Thomas McAliley. He became a prominent lawyer. They were opening this program for people to come on in as monitors. McAliley worked for his meals, he worked to get his tuition, and he had done everything on his own to get an education. He really wanted to be a monitor because it was going to be a make-or-break for him, whether he could continue in school. I had recommended him for [the monitor position]. They took the recommendation, and he still credits me with the fact that he was able to get through the University of Florida. You had a group of young people who were looking at education as a way out, and as something that was truly going to be a benefit to them.

P: Many of them were the first members of the family ever to go to college.

O: That is correct, those two in particular.

P: Of course, the G.I. Bill made it available to a huge number that would not have been able to afford it otherwise.

O: Not those two, because that was a different era, that was after the G.I. Bill. These were the youngsters coming along who did not have the G.I. Bill. That was another kind of a major change that was occurring at the University. All of a sudden you had [such youngsters]. [In contrast] when I joined the fraternity, veterans were making up the entire fraternity, with the exception of eight or ten [members].

P: Of course, they [the veterans] were older and more serious minded than those who came before and those who would come afterwards. A lot of family men joined.

O: I think I took off two summer sessions, but I was always there for at least one summer session. In a number of incidences, I did two summer sessions.

P: You were living in the dormitories which were very close to Flavet, the largest of the veterans' housing units on campus.

O: I had some friends who lived in Flavet, particularly friends from law school.

P: That certainly changed the complexion of the campus, families and women coming in.

O: It did. It was kind of interesting, in that context, when to begin with when you had 10,000 men and no women. And in the first influx of women, there were not very many that came in that first year, in comparison to [the numbers of women] who came into Tallahassee. The change that occurred could be seen by how people were dressed. Initially, [the men] wore, almost like a uniform, tan pants and a white t-shirt.

P: Which is what they had left after the war. They could not afford to buy anything else, so they wore what they had.

O: After 1950, and I place it when North, South, Tolbert, and Weaver Hall opened, there was a new generation. There was a group of youngsters sitting there talking about things, and I thought to myself, "They do not know much." We were saying at that time, "They are so young!"

P: We are still saying that. Was athletics part of your life on campus throughout your tenure here?

O: Not after that first year.

P: You played tennis just for the fun of it?

O: Yes, and I had played tennis in high school. In fact, they wrote it up in the annual.

P: You said you were a member of the executive council, but were you not also a member of the president's council?

O: I started off as the secretary of student affairs. In time, it ended up as secretary of men's affairs. That was the year they decided they better split the office, and have both men's and women's [secretaries], since women were now on campus.

P: What did you do? Did you work with Dean [Robert Colder] Beaty [dean of men] and the people in his office?

O: That is correct.

P: Did you all handle disciplinary problems?

O: The biggest dispute at that particular time started out with what to do on the matter of arranging seats at football games. That had become a problem because of stadium size, block seating with fraternities, and complaints of independents that they did not get the type of seats that the fraternities got.

P: They were getting squeezed out.

O: We eventually set up the reserve seat ticket system. Before that time, there were no reserved seats as such, but they did allow fraternities to block out seats.

P: Had they already expanded the stadium?

O: It occurred while I was there.

P: What were some of the things you could do for entertainment on the campus, as an unmarried student? You were unmarried before you got married, of course.

O: It kind of came around to the matter where it focused on two events; one was called Fall Frolics, and the other was called Spring Frolics.

P: The Military Ball.

O: And the Military Ball. I was involved with all three of them. Fortunately, I was not the social chairman at the fraternity. That was a thankless job, I think, at that particular time. And everybody, particularly fraternities, felt that you needed to bring a date up. It was a time when if they dated somebody here, then there were so many restrictions [placed] on the girls here, that were not [placed] on the ones that you dated and brought up. So most people brought the dates here, but that could also be very expensive.

It was a time when you had to dress differently than now. You had a formal, black tie, dinner jacket event. The Military Ball was a formal event. The girls were all supposed to have long dresses, which they all did [have]. At the Fall Follies you had an informal [dress code]. The fraternities ordinarily married up because you brought in a band, whether it was that of Harry James or Tommy Dorsey. They played both on Friday and Saturday night; that was the formal dance. They had a concert on Saturday afternoon. The fraternities went 50/50. Fifty percent went Friday night, and 50 percent went Saturday night. On the off nights, you had an informal theme party at the fraternity house. You married up with a fraternity that was going on the other night that you were not going on. You would each hire the band for both nights. You would be able to get them for less. Pi Kappa Phi, my fraternity, always married up with Sigma Nu. We did a

lot of things together, both politically and socially for that matter. We never actually went to the dances together because we were on opposites ends. And you would put up the dates at the White House Hotel, and the Thomas Hotel; you would try to get reservations for your dates.

P: Then they lodged dates in fraternity houses and moved the boys out.

O: Well, we did not do that. Actually, we did do it one year, and it did not work that well, so we did not do it after that.

P: Were you one of the guys who went to Tallahassee frequently, on weekends, with your little beanie cap on?

O: I did not do it that frequently. I went up there maybe twice. But I did go up there to help install my fraternity, Pi Kappa Phi. It was kind of interesting because I got to know five or six years later that one of the Pi Kappa Phi men who was installed up there was Alan [C.] Sundberg [Florida Supreme Court justice, 1975-1982].

P: You became closely associated with him?

O: Well, I became associated with him before I came on the court. Although he started practicing law about five or six years after I did, we had known each other. Our wives were junior league provisionals together, and our kids knew each other. In addition to that, we were close enough that he was my designated campaign manager when I was a circuit judge in 1966. I did not have any opposition. He used to say that his only experience in politics is being Overton's campaign manager, and he did not have any opposition. There had been three people who were related indirectly through the university, but also by being on the court.

The other is Parker Lee McDonald [Florida Supreme Court justice]; he and I knew each other here at the university, although we did not know each other well, but we were acquaintances here. We were appointed as circuit judges by the same governor, Farris Bryant [governor of Florida, 1961-1965]. Parker Lee was appointed at the head-end of Farris's term, and I was appointed at the tail-end of his term.

As far as the other circuit judges were concerned, we were both young bucks because we were both in our thirties. You are not supposed to be in your thirties and be a circuit judge. There were about one hundred circuit judges at that time, so we were the youngsters there. We were officers at the circuit judges conference. Our wives and children got to know each other. Before either of us were on the [supreme] court, we got to know each other.

P: Who was the third one?

O: The third one was Stephen Grimes [Florida Supreme Court justice]. He is chief justice [of the Florida Supreme Court] now.

P: Did you know him back here on campus too?

O: Steve was in my law school class.

P: I see.

O: It does not come out that way by what the books show.

P: I thought he was a little younger than you, that was the reason I wondered.

O: He is by nine months, but that is it.

P: I thought it was a couple of years.

O: The reason this is so, is because in his last semester in law school, he got called back to active duty in Korea by the navy. He did not finish law school until two and one-half years later.

P: That is the reason that I got him mixed up.

O: Steve and I knew each other here at law school. I had developed a relationship with the Holland firm. Stephen Grimes, [William] Bill Henry, who graduated in June, and I graduated in February, as did Henry [M.] Kittleson. All three went into Chesterfield Smith's law firm [Holland and Knight in Miami], and each was one of the original seven in that law firm. They had a street office over in Bartow, when the senator was there.

When I was [Spessard] Holland's [US Senator from Florida, 1946-1971] campaign manager, over on the west coast in the St. Petersburg area, I would go over to Bartow to see them. I was making bi-weekly trips, and probably more than that. We kept the relationship going, so I probably knew Parker Lee when I came on the court better than I knew Alan. I have had three friends who have come on the [Florida Supreme] Court, and served on the court with me, which is somewhat unusual.

P: Did you have a car as a student?

O: I never had a car until my wife and I got married. Then her mother and father gave her a car.

P: Cars were relatively rare on campus.

O: Oh yes, I had a bicycle.

P: You moved around with it, but you could not get back to St. Petersburg very easily on a bicycle?

O: Well, you either took the bus, or you bummed a ride.

P: That is another changed situation. Nobody was afraid to pick you up in those days.

O: I think I did it twice, but it was really kind of difficult. If you were going to Tampa, it was not that difficult. If you were going to St. Petersburg, it was not that easy to do. I was ordinarily able to figure a ride somewhere along the way. I did do a couple of trips on the bus.

P: Tell me about your wife. How did you all meet? When did you get married? Who is she? What is her name?

O: Marilyn Louise Smith. Smith is her maiden name.

P: You married one of the Smith girls. Where did you meet?

O: We met on a double date because I was dating one of her good friends. In fact, one of her good friends was my date for the Military Ball. They were both in school together. [Shows a picture] She is the one on the left.

P: Which one is your wife?

O: She is not there.

P: I thought she was dating one of your friends. You were dating one of her friends. I thought maybe one of your friends was dating your wife.

O: Marilyn and Jeannette were classmates together at DePauw University in Greencastle, Indiana. They are both from St. Petersburg. Marilyn's family has been in St. Petersburg since the mid-1920s. I had dated Jeannette Gahan for two years, and then she started dating somebody else up at school. I had met Marilyn before. Actually, Marilyn was up at Williamsburg, and I was up there in summer camp.

P: Williamsburg, Virginia?

O: Yes. They had sent ROTC [officers] up to Fort Eustis, Virginia. She had come out to one of the USO dances with the people she was staying with. They were old St. Petersburg friends, and their daughters had come out there. They came back to the barracks and said, "A girl named Marilyn Smith was asking if you were here." I did not go to the USO dance, but I found out where she was. I called, and we met on the next weekend. The end result was that we started dating. Marilyn said to Jeannette, "I am not going to date him if you are still interested in him."

P: You did not realize what a prize you were.

O: It is interesting, you know, just three or four weeks ago, I got a telephone call. [A voice came on] and said "This is Donald." I said, "Donald who?" He said, "Your cousin." I said, "The last time I saw you, you set me up on a blind date with Marilyn." I was right; it was forty-six years ago. He had come down to St. Petersburg. He was [a cousin] on my father's side; he was my father's nephew. He had come down to St. Pete, and I was dating Jeannette. I set him up with Marilyn, but we had double dated because they were two good friends. That is how we got started. We had a very substantial wedding.

P: Meanwhile, she is in Indiana, and you are in Gainesville.

O: That is right, except for when you are home for holidays.

P: So you all romanced long distance. In those days, you wrote letters too.

O: Yes, we did.

P: When were you married?

O: We were married June 10, 1951. [Shows pictures.]

P: You look happy, and she looks beautiful. You were married in the Pasadena Community Church in St. Petersburg. Now you have three children?

O: We have three children.

P: Give me their names and birthdates.

O: William Hunter Overton was born on January 29, 1953. He went to Boca Ciega High School in St. Petersburg, and he went to VMI [Virginia Military Institute] undergraduate. He went to law school at South Texas College of Law in Houston. He is now a county judge in Pinellas County.

P: So he is not a Gator.

O: No, he is not a Gator; well, he is in a way. He said, "I came up to so many ballgames with you, that I might as well be one."

P: Is he married?

O: He is married and he has two boys, who are my only grandchildren.

P: What are their names?

O: There is William Ernest and Brian Hunter.

P: Your second child?

O: My second child is Robert Murray Overton. He is our artist. He was born on March 16, 1956. He had a learning disability that we were fortunate to find with the help of my aunt, at a time in the middle 1960s when they did not find learning disabilities. He is one of those people who had an above-average IQ and still could not read. With the help of my aunt, we sent him to Vanguard school in Lake Wales. He came out so that he really could compete satisfactorily. He has a perceptual disability. It is a matter of perception in what he sees in the form of letters. He graduated from high school. He then went to junior college and to the Daytona Beach Junior College photography school. He is a pretty accomplished photographer. I am assuming you have Allen Morris's *Florida Handbook* on Florida government; a number of the pictures in there are his pictures. For the last eight, nine, or ten years, all the cabinet pictures are his pictures. Almost all the supreme court pictures are his. He is with the Division of Tourism. A good bit of the promotional pictures that you see about the state, that are in the advertisements, are his.

P: So he is an accomplished photographer. Is he married?

O: He was married, and is now divorced. He married Kathryn Suggs, and they were divorced about six years ago. Last month, on the first of October--and I never miss any football games, but I missed that one--he married Lynn Chapman, an assistant attorney general. He said, "I never thought I would marry a lawyer." [Laughter]

P: But he has no children from the first marriage.

O: No children from the first marriage, and he just remarried. I performed the wedding ceremony.

P: Now you have a third child, a girl.

O: That is my Gator.

P: What is her name?

O: Catherine Louise Overton.

P: And you call her Cathi?

O: Yes, she spells it with an "i". That is how she does it. She did have a nickname. She spent her first two years [of higher education] at Randolph Macon Women's College.

P: What was her birthdate?

O: Her birthdate is December 29, 1960. As I said, she went to Randolph Macon Women's College for two years, and then came here. She graduated in education. She wanted to be a teacher all along.

P: So she is a Gator?

O: She is a Gator. She graduated from here with honors. She has her master's degree in administration from the University of South Florida. She is teaching in the Pinellas County school system. I cannot believe that she has entered her eleventh year of teaching school.

P: Is she married?

O: She is married, and her husband's name is Michael Mead. She is in a very interesting school from the standpoint of what we were talking about, which was about how things have changed. It is an elementary school, which they call a fundamental school. She had been in a lower socio-economic school for about her first eight years of teaching. The elementary school she is at is a school of choice. It is not a magnet school or a gifted school. In fact, the demographics of the students have to be the same [as the rest of the school system]. However, the parents have to commit to being involved, including attendances at PTA meetings. The students will receive homework, and the parents check to see that students do their homework. They sign an agreement to that effect. If the parents miss the third PTA meeting, and there are no exceptions or excuses, the child is out and back in the [regular] program. There is no busing to the school. The parents have to bring the children there. The school that she is in is basically in the black area. However, one-third to one-half of her class comes from the highest socio-economic area in Pinellas County.

P: They try to get a mix?

O: They do, and the demand for it is so great that they are on a lottery. They only come in on a lottery. There is a dress code; there are no tank tops, no shorts, and they must wear shoes and socks. There is a dress code for the teachers; no tennis shoes except on special days, or for the ones teaching physical education, and no jeans.

P: They would not fit in with the University of Florida younger faculty at all anymore.

O: Catherine was leaving there and coming up here one weekend for the Auburn game. She said her principal turned and looked at her in a funny way even though she had a nice pair of slacks on. The slacks were bright orange! [Laughter] She is my Gator. Her husband does not like football, but she loves it. She was raised with it.

The second son, Robert, did have a good high school career. In fact, he had seven touchdowns from over twenty yards out. His brother said, "I never ever could catch him." He could run a 4.5/40 [40 yards in 4.5 seconds], and he played tailback. He was on a private school team, but that private school went to the championship the year after he left. He had two exceedingly good years. Catherine was in the same school with him. She was little sister, so she really got to know him. She is very knowledgeable on the matter of football. She is coming up this weekend without her husband.

P: Let me ask you something. You were a married man on campus. How did you support your wife? Or did she work?

O: She worked in the library.

P: Oh, she was taking care of you.

O: She had already graduated from DePauw University. At that time, it was not a matter of women applying for jobs, there still were not many women with four-year college degrees. When we went to Tallahassee, she got immediate employment in the admissions office at Florida State University.

P: But here she worked in the library?

O: Yes, here she worked in the library, for seven months.

P: I may have known her, since I was here at the time. I had an office in the library. I bet she and I knew each other, and that we would recognize each other.

Now, your folks are still living in St. Petersburg?

O: They were. My mother died six weeks after I went on the supreme court in 1974. My father died in 1983. My wife's mother died in 1956, and her father died just two years ago this November.

P: When did you graduate?

O: I graduated in February 1952. My mother even kept the commencement book, which I did not know until later.

P: As you reflect back on your student days at the University of Florida, did anybody make a special impact on you? Was there anybody on the faculty that had a lasting influence on you?

O: I think probably Dean Beaty, whom I got to know through student government, and also through this program in which we were putting all the freshman into the dorms.

P: You worked with Dean Robert Beaty closely?

O: Yes, I did. Also there was, I want to say [Albert Alexander] Murphree or [Biron Helton] Walker, but I am not sure that either was the correct name of the English professor that I first had.

P: Is there anybody on the law school faculty?

O: I knew Frank [Edward] Maloney [Dean, UF College of Law, 1958-1970] before I even came to law school. He was the faculty advisor [to the fraternity].

P: I was going to ask if you knew him through the fraternity program?

O: Frank and I became really good friends afterwards. In fact, after I came on the court, Frank was no longer dean, but he was still on the faculty. They had a major drug problem in the fraternity. He said, "I think we are going to lose it." The one thing that I probably regret more than anything is that he was not here to see the resurgence [of the fraternity] to a position better than it ever was, on the matter of what they were able to do.

P: He and his wife Lucille are very dear friends of ours.

O: We see Lucille on occasion. I had Dean Fenn. I came into the law school at the same time as he, and we had already developed a relationship. Although, I do not think I took a course with him. Moreover, I got along with [Clarence John]

TeSelle [professor of law], even if everybody else was fussing about him. I took four courses from him, and I just got A's and B's from old man TeSelle.  
[Laughter]

- P: Of course, the law school was still down in the old building near the corner of Thirteenth Street and University Avenue, in Bryan Hall. It had not yet moved to the new complex, which came years later.
- O: The faculty was really in a transition stage when I was there. I recognized it. [William Dickson] Macdonald [professor of law] came to the faculty then, and also [Robert Barbeau] Bob Mautz [associate professor of law] was on the faculty at that time. There were all kinds of new faces all of a sudden coming into the faculty. The so-called "Crosbys" were not doing any good. I do not know whether you have heard the term "Crosbys." Have you heard that before?
- P: Is that Judge [Harold] Crosby [Escambia County Circuit Court, First Judicial Circuit of Florida]?
- O: Yes.
- P: No, I have not heard it used in that term.
- O: The Crosbys, during my era in the law school, were important in certain classes. Harold Crosby, as you know, was a court reporter in his very early years. He took and transcribed notes from the classes that he took. You could buy the Crosbys, for instance, for Jimmy [James Westbay] Day's class [professor of law]. You look at these notes, and you go straight down the page, and Jimmy Day would not vary one word on the lecture. Neither would [Dean] Slagle [professor of law]. Nobody would go into either of those two classes without their Crosbys. What Harold had done was he gave those notes to the *Law Review* to sell, so that they had money for the *Law Review*. Of course, the universities would not be allowed to do that kind of thing today. [Laughter] But that is how the *Law Review* got some of its initial funding, by selling the Crosbys. If you asked anybody in my era about the Crosbys they will tell you how important they are.
- P: We have Hal on tape too, and he talks a little bit about that. I wanted you to tell it from a student point of view.
- O: There were certain professors that you certainly had to have the Crosbys for because they would not vary their lectures one bit.
- P: Did you work with Mrs. [Ila Rountree] Pridgen [law librarian] at all?
- O: I knew Mrs. Pridgen, but I did not work with her that closely.

P: We have Mrs. Pridgen on tape also. We have not missed many of them. So you graduate in February 1952, and you leave Gainesville, and go where?

O: I went to Tallahassee to become assistant attorney-general.

P: Who appointed you to that [position]?

O: Dick Ervin.

P: And that is because of that earlier relationship that you had with him.

O: I have often said I have been very fortunate in my life with the people I have been involved with. Of course, one of the things is that Dick gave me my first job. I was able to serve on the supreme court with him for nine months because I was appointed in March 1974. He did not retire until January 1975.

P: How much was he paying you?

O: \$200 a month.

P: So that early on, you pointed out what a lucrative job that was.

O: Most of my classmates were probably getting between twenty-five and thirty dollars a week.

P: And your wife was working of course.

O: I cannot remember which salary we lived on, but the other salary we put entirely in the bank. We thought we were doubly blessed.

P: By now you had a car.

O: We had a car that was fully paid for, because her parents had given us one. She had one earlier. But neither one of us had a car at the time we were getting married. They had told her that she could either have a car or be a debutante. That was back two or three years before we were married. She said, "I will take the car, but not right now." Basically, we ended up with a new car, fully paid for, which was a magnificent gift. We lived in a little one-bedroom duplex on Sixteenth Street, which looks exactly the same [today].

P: Are you talking about the apartment here?

O: Yes, the apartment here.

P: Then you moved to Tallahassee.

O: We lived in a duplex again, which was a one-bedroom apartment, on Fairway Drive in Country Club Estates. It was owned by Ray Marsh, who was chairman of the Parole Commission at the time. He had been there a long time, and he had a house next door. And then, just around the corner, the back yard came down so that you could see [the house where] Justice [William Glenn] Terrell lived. It was an interesting neighborhood, except the streets were clay, and it was on a hillside. When it rained, my wife would not drive the car down that street. She had seen two of the neighbors cars drive into the ditch, and she was not about to try it.

P: Smart woman. How long did you stay on that job?

O: You were supposed to stay on for six months. You could then get an extension for another six months. Marilyn had become pregnant with Bill. We decided we would come down to St. Petersburg because her parents were there. We had to make a choice whether to stay up there or go down to St. Petersburg where both parents were.

P: But you could not extend. You had it for two six-month periods, which took you to February 1953.

O: It was six months, and then you could extend if you wanted to extend, but we chose not to.

P: Oh, you chose not to. I thought you had extended it one time.

O: No. We chose not to because of [Marilyn's pregnancy]. I ended up in the practice of law with Arthur Ratcliffe. Originally, I was going to open [my own law office] although it would have been difficult.

P: You had saved a little money then from Tallahassee.

O: Oh yes, I saved an entire salary. It ended up that we were able to put enough money down on a house.

P: In St. Petersburg?

O: In St. Petersburg. I ended up out at St. Petersburg Beach with Arthur Ratcliffe.

P: Had he been in practice for a while, or was this a new practice?

O: He had been in practice for a while. He did not want to do anything in court. Basically it was an arrangement where he would give me work. I had to pay for

my own secretary. He would give me office space because he wanted to be able to do some work on matters he [referred to me]. This is what my mother kept, you see. This was the book that I did not know existed. His name is Arthur T. Ratcliffe.

P: I see that your address there was 204-207 Gulf Beach Bank Building at St. Petersburg Beach.

O: You will see that there was an announcement also in the paper that is there.

P: I noticed that you are listed here as special assistant attorney-general to Richard W. Ervin. Ratcliffe himself came to Florida in 1948. He was the city attorney for a number of communities, and formerly for the city of St. Petersburg Beach. Was he considered a prominent attorney in St. Pete? Was this a good move for you?

O: It was a new area at the beach. Originally, I was going to be downtown. He knew I was coming in, and he said, "If you want to come now, I've got a number of these things that I do not want to do." He did not want to do any divorces. He had enough real estate and probate [work] and that is what he wanted to do. He is still living, and still doing [that type of] legal work.

P: The point is that it was a good career move for you.

O: That is correct. Art Ratcliffe is a very professional lawyer. He has extremely high ethics, and he still practices law.

P: Did it have the potential of a good income for you, relatively speaking, for the time?

O: Yes, it did. We were able to get up in relatively short period of time where I could take home, net, \$400 a month. At that particular time, that was a pretty good salary.

P: It seemed to have a good future for you?

O: He did not want to do the city attorney work if he could help it. There was only one other law firm out on the beach at the time. So eventually I became the city attorney for St. Petersburg Beach.

P: I have that; you accepted this work in 1954. Was that an appointed position or an elected position?

O: It was an appointed position. I ended up [involved] in some interesting things.

P: Who appointed you to that?

O: The city council. Now that was an election that got some national publicity. As you can imagine, you end up with [controversial] elections where there are two different groups or cliques. In this instance, the "out" group was elected. At that time, Art was not serving as the city attorney for St. Petersburg Beach, which was just the north half of the island at that time. He was city attorney for Bella Vista Beach and Don Cesar. Hank Baynard was city attorney for Pass-a-Grille. There were three [council] positions up, and they [voted at] one [time] for all three. One of them was contested due to the qualification of the candidate. The end result was that it got national publicity.

[The newly elected group] appointed me as the new city attorney. They appointed a new police chief, and a new fire chief. The old group also had a meeting and they maintained the old appointments. So we had, for a period of six weeks, two city attorneys, two police chiefs, two fire chiefs, and two mayors.

P: Who occupied what office? Were you in the official office?

O: I was involved in the lawsuit. I had enough sense not to [represent] myself. Carroll Runyan, who is a well-known lawyer down there, took the lawsuit, which we won. It had to do really with how long somebody had to be a resident down here before somebody could run for office. That is what the issue was. Eventually, it went all the way to the Supreme Court of Florida, and we prevailed.

I ended up not only as the city attorney then, but became the city attorney that consolidated that whole island, which was Pass-a-Grille, Don Cesar, and Bella Vista Beach, and St. Petersburg Beach. We drew up a charter which stayed in existence almost unchanged until eight or nine years ago, which kind of surprised me. Someone brought to my attention the fact that not much in it had changed.

P: What kind of cases would the city attorney handle?

O: I think it was a very interesting position for a young lawyer to have. First of all, you are present at all the council meetings. So you get asked all kind of questions concerning [the council's ability] to do this or do that. In most instances, when things come on up from the audience, you do not have a chance to say, "You are going to have to give me some time on that." There are some limited things that you can do that with, but most of the time you cannot. You try to make sure that you know municipal law, what they can do and what they cannot do.

Then you have to learn to be diplomatic in your answers, not only to the council members, but also to the audience. The other thing, from a young lawyer's standpoint, that this [position] teaches you to do, is after you learn all this

legalese, you have to try to explain it to somebody in the vocabulary that they can understand.

You are drafting ordinances on a regular basis. You are giving advice regularly on zoning, variances, and development. We did end up doing the sewer bond issue, but in that instance, at that time and still now, you have to get outside counsel to assist you on the matter of doing a bond issue.

You did not prosecute many cases in the city court. That was not really part of the job, although there were occasions for that. The main thing was doing the necessary legal work for the city in carrying out [its] operations. Particularly you are talking about a city that does not have a city manager, does not have a full-time mayor, does not have a full-time chief executive. Sometimes the city attorney, in those types of cities, ends up to be almost like a city manager or an administrator.

P: How large was the community?

O: It started [with a population of] 5,000, but then with the consolidation, it ended up being about 8,500. You serve at the pleasure of the city council. You could have a job today, and the next day you were no longer employed.

P: You held this for three years, until 1957?

O: Until 1957. I moved to practice law with Hank Baynard in January 1957.

P: This was Henry Baynard?

O: Henry S. Baynard.

P: When did you go back in with Ratcliffe?

O: I went in with Ratcliffe right after I came [to St. Petersburg Beach].

P: Let us say when did you return to your association with Ratcliffe, after you left the city attorney job?

O: The city attorney job was not a full-time job by any manner. In fact, there were times at the time that I ended up [acting] as city attorney of St. Petersburg Beach. Art was still city attorney of Buena Vista. I covered him [from time to time] on his meetings down there.

P: So it was a part-time job. You were paid, this was no volunteer kind of thing.

O: You were paid. From a young lawyer's standpoint at that particular time, it was

important that you had a monthly stipend that you received from the city.

P: It also gave you some visibility in the community.

O: That is correct.

P: So you held both of those jobs until 1957. Then you move in with Baynard.

O: I think I went in with Hank in 1957. I remained the city attorney for almost a year when I was with Hank. I think it was not until the end of 1957 that I left there.

P: What kind of practice did Baynard have?

O: At that time, they had the Gulf Beach Bank and the Madeira Beach Bank. The Gulf Beach Bank was where my office was with Art, on the beaches. They also had 50 percent of the work from the St. Petersburg Savings and Loan Association. They were also the retained council for the *St. Petersburg Times*, which eventually also took over the *St. Petersburg Independent*.

In the firm were Hank and [William J.] Billy McLeod, who graduated from this [University of Florida] law school in 1949. Billy was a very special individual who died too young. He had gone to New York University to get an LL.M. in tax in 1956-57.

I ran for the county prosecutor's office in November 1956. The county prosecutors office at that time was a part-time office. You could practice law, and still be the county prosecutor. Hank said, "I want you to come with me, but I do not want you to come with me if you win." He was talking in his blunt fashion. He said, "I have talked to people, and they think you are what I need."

P: He did not want you bringing that political baggage with you.

O: It was not the political baggage; he wanted my time.

P: Was he considered *the* prominent lawyer, or one of *the* prominent lawyers in St. Petersburg?

O: Yes. I do not think there is any question about that.

P: So this, once again, was a very good career move for you.

O: That is correct. I worked with some very superb people both from an academic and from a personal standpoint.

P: Did the firm now carry your name also?

O: It did not do that until about 1960. It became Baynard, McLeod, and Overton.

P: Originally, it was Baynard and McLeod?

O: Baynard, Baynard, and McLeod.

P: Who was the second Baynard?

O: Robert, who had an office there, but he had more [individual] business ventures, which included the bridge down at Boca Grande. Robert had all kinds of investments with his brother.

P: Henry and Robert were two brothers, they were not a father and son arrangement.

O: Right.

P: Which one went into politics?

O: That was Hank.

P: Later?

O: No. Hank had already concluded his deal with politics at that time. Hank had been in the senate in the 1940s, and was Holland's leader in the senate [Spessard L. Holland was governor of Florida, 1941-1945]. He won [elections for senator] then, and in the 1950s. He decided not to run [for governor] in 1952. He had won the first two or three *St. Petersburg Times* awards as the outstanding senator. When Dan [T.] McCarty [governor of Florida, 1953] died [September 28, 1953], there were those who wanted Hank to run instead of LeRoy Collins [governor of Florida, 1955-1961]. Nancy, his wife, did not want him to run. He had already determined not to run in 1952. He and Collins were close, and he and Holland were extremely close.

P: And that helped open doors for you then.

O: I was the young lawyer. It was a matter of being Holland's campaign chairman. All of a sudden I get a call from Hank, who says, "I am at a meeting, and we have just elected you chairman."

P: "Thank you very much." [Laughter]

O: Well, Hank was a senior law partner, and [someone] you [cannot say "no" to].

P: "Thank you very much, what am I supposed to do?"

O: I was brought into the firm to do primarily the litigation, the courtroom work.

P: Were you good at that?

O: That is what I was trying to do.

P: You felt comfortable doing that.

O: Yes. Hank did not want to go into the courtroom anymore. Billy McLeod, who had been an assistant state attorney, did not really want to do it. He wanted to emphasize on tax when he came back. He was going to be one of the first people in the state with an LL.M. in taxation. You have to understand, this was in 1956, and from New York University.

P: The University of Florida Law School had not started its tax program yet.

O: So I was going to do the court work.

P: The firm accepted all kinds of cases?

O: We did, because we did the work that was necessary for the Savings and Loan Association. We prepared all the documents for all the mortgage closings, 50 percent of all the mortgage closings.

P: That means you did a lot of commercial work. How about criminal cases, did you take any of those?

O: No. Just where a client got into trouble, we would do the very preliminary work.

P: But you were not saving anybody, [representing] a murderer or anything?

O: No. Basically, we divided it all up. Billy mainly took care of the Savings and Loan Association, and I backed him up. I took care of the loans for the two commercial banks, which ended up being four, this was the Gulf Beach Bank and the Madeira Beach Bank. There were not as many [loans] as there were with the Savings and Loan. At that time, commercial banks did not do any long-term lending. They did construction loans. They ended up getting a commitment from the Savings and Loan Association for a long-term loan.

P: But you could finance your automobile purchase through the commercial bank.

O: We did not do any of that. What we did mainly in the way of legal work were the

collections or foreclosures.

- P: The day of the big bank chains had not yet arrived.
- O: No, not at all. The other [client] that probably caused most of the work was the *St. Petersburg Times*; its representation took time, not just from the standpoint of the libel cases, the claims for libel, but also from the standpoint of the business end. I was not involved that much in that.
- P: Nelson Pointer was already aboard the St. Petersburg paper?
- O: Hank Baynard was as conservative as you could get, and Nelson was [leaning the other way]. Hank would go to dinner parties at Nelson's house, and [the next day at the office] he said, "Well, I made some comments, and we are probably not going to be representing them after last night." [Laughter]
- P: But they probably respected each other.
- O: I think Nelson respected Hank more than probably any other individual. I remember we did have a libel case on it. The statute allows you to make a retraction, and if you make the retraction and correction, you had to put it in the same type of place you put the story in. In most instances, in dealing with media law, such occurrences do not occur in a big-type story. They occurred, in this instance, out of a [story by] the business editor. But it ended up with a front page story on the B section, and they put a ring, a border around it.

We determined that there were inaccuracies in it. Frankly, anybody reading it would not have gotten any different impression if they had read the [corrected] version. We made [the corrections], which is really kind of interesting when you are writing for the press, and you are a lawyer. We did a rewrite, and said, "You need to publish this. State what it is, and put it on the front page in B section. Put a green border around it." I do not know why the green border got to Nelson, but the green border got to Nelson. And I remember sitting in the room when Hank said, "Nelson, you have hired us to give you advice. If this is going to mean anything, you are going to have to do what we tell you to do. Now put the damn green border around it, or go get another lawyer." [Laughter] Actually, it won the lawsuit. We won it on the pleadings.

- P: So you got the green border.
- O: It is a case that went to the District Court of Appeals with a written opinion filed on it. The other part [of the work] representing the media would be when you get telephone calls from the media client. You would get many calls saying, "Let me read you something. Can we do this?" I remember listening to Billy

McLeod. The executive editor called us and said, "We want you to tell us whether we can publish this or not." Billy said, "What you are telling me is that it is libelous, but you want to know whether it is defensible or not." Similar to the speed one had to make decisions with city council, you do not have the time for that type of thing. Particularly not when they were running those deadlines or when they are up against them. They may call you late in the afternoon, or they may call you in the evening. In fact, Billy and I had a loose-leaf notebook with a digest of every case on libel and slander in Florida, not only at the office, but also at the house. You would get telephone calls on whether they could do it [publish] or not.

It was also at a different time as far as the media was concerned. We had one editor, Tom Harris, from the *St. Petersburg Times*, and he probably read every word in that newspaper. He never left there until 2:30 or 3:00 A.M. I used to say that he was the best libel lawyer that I knew because he would pick it up before we would. That is why he would call. [Now] you do not really have people or even just one person who basically has control of what is going out, who really reads every word now, as if it were his life, and it was his life. My wife worked a short period of time for the *St. Petersburg Times* before we were married. He was down there then. She thought that he was number one in all respects.

- P: Ben, how long did you continue this activity, this private practice? From 1957 until when?
- O: I was with Hank and Billy until I was appointed to the circuit court in 1964. I had a one-year hiatus where Billy said I gave him ulcers. My reserve unit was called to active duty by Kennedy in 1961, and I spent a year then on active duty.
- P: You were not caught then in the Korean situation?
- O: No. I was not called in the Korean War. I really was thinking that I was going to get something like what Steve Grimes [supreme court justice] had gotten, but I did not. They did not take anybody in the army who had prior service even as an enlisted person. But those who had ROTC commissions and had no prior service, like Marshall Criser [lawyer, later president of the University of Florida, 1985-1989] who was in ROTC with me at the time but had not had prior service, they all got called.
- P: My brother Sol got called too; he was in the same situation as Marshall. He was a lawyer in Jacksonville, and his practice had just opened up when he got called. But you were holding a reserve position in the J.A.G. [U.S. Army, Judge Advocate General], were you not?
- O: No, not at that time. I did not transfer into it. I had come out with [a

commission in] transportation, and my [wife's] family has always been involved with boats. This was a boat company in St. Petersburg, with landing craft. The 231st Boat Company [was ready] when the Berlin call up came. Most people do not realize that there was a Berlin call up by Kennedy in 1961.

P: Shortly after his inauguration.

O: No, we got called up in August 1961.

P: So it was several months later.

O: Yes, several months later. We went on active duty, and [I had to leave] the law firm. I put one car on blocks.

P: Did it actually take you physically away from St. Petersburg?

O: Oh yes. We moved to Fort Eustis, Virginia.

P: With your three kids?

O: I moved with the three kids, and lived in post quarters. We were in substandard quarters first. In fact, we moved three times.

P: What rank did you hold?

O: Captain. It was kind of interesting in the matter as to what it was because at that time we were doing pretty well. We were close to [earning] \$20,000 per year.

P: And you really had to take a change in your standards of living.

O: Well, Marilyn and I had talked about that, and we moved into quarters on the post. We went down and we thought we were going to stay [there]. Hank had said, "You tell me if you have problems." But we were going to live on what we were making, and we were able to do it. Marilyn and I talked about it [afterward], and we did not seem to reduce our living standard at all.

P: You did not go into this with great enthusiasm did you? Leaving a lucrative law practice, a home, and family?

O: It is kind of interesting. Our company clerk was Martin Dyckman.

P: Oh. [Laughter]

O: It was an unusual unit. The boat company was designed to operate a major

port. Consequently, the company had thirty-two warrant officers. They were all ship's officers. We went to Fort Eustis, and we took over that major port unit company there [that] went immediately to France. So we took over their boats. We had an FS [small freighter] ship, which is a 200-foot light freighter, that I was supposed to command, but they decided they needed me elsewhere and not out on the water. That is another story because I ended up being a strike readiness officer. This [has to do with] early deployment and being able to move in twenty-four hours. They had eight units of which we were one. They put me into the battalion to make sure that eight units could all be ready to move. In fact, one of the interesting facts is that I did not go with them. We sent two companies out to Christmas Island.

P: Was all of this as a result of the construction of the Berlin Wall?

O: I think so.

P: Even earlier than that, the blockade of Berlin?

O: Yes, I think so. But anyway, it ended up with our taking over a light freightship, two 700-foot seagoing tubs, four sixty-five-foot tubs, two tea boats, eight little toots, which are forty-five footers. There [was also] the matter of managing money and everything else with that because you have got separate messes on everything, including the 100-ton floating crane. We were supposed to move to Lapalisse, France [about 70 miles northwest of Lyon], in December, but they canceled the order three weeks beforehand and they did not move any [army units] overseas.

P: So you stayed at Fort Eustis?

O: I stayed at Fort Eustis and brought two of the boats back.

P: You were there then from 1961 to 1962?

O: Right. Just as soon as we got back, and we had not been back two weeks, we are all of a sudden on alert again because of the Cuban crisis. They filled up Tampa Bay [with amphibious units], which a lot of people do not realize. All the amphibious people we had been working for, the regular army, ended up in Tampa Bay. You would not believe how many.

P: But in the meantime, you had already moved you and the family back home?

O: Yes, we were all back home and they knew that the unit was there and the boats were there, so if something happened, we were going to be activated again immediately. We were already in position.

P: Life was a bit uncertain for you in those years.

O: We took on another representation, which we had taken on when [Farris] Bryant had been appointed.

P: Bryant had been appointed to what?

O: Not appointed, but elected.

P: Ferris Bryant had been elected governor of Florida.

O: That had happened in 1960, and he took office in 1961. I had been on what was called his advisory committee, but was really his patronage committee.

P: For Pinellas County?

O: Yes.

P: You had played an active role in his campaign?

O: Yes, and Baya [M.] Harrison [Jr.] was on it. There were five of us [on this committee]. When we came back, our firm had been appointed to do all the condemnation work for the state in that county.

P: This was before or after the election?

O: Well, before. This was one of the reasons why Billy said I gave him ulcers. He did not have to try any of the condemnation cases because I got back in time to try the condemnation cases. He had to do some things on the cases to get them filed. They got a young lawyer to come in and help. I say that from the standpoint that it ended up [influencing] the matter of growth [of the law firm]. I did the condemnation on the Bayway.

P: The Bayway?

O: On the Bayway going across from [an area] right [from] the Skyway, and coming into Don Cesar. I did all the condemnation on the widening of Gulf Boulevard coming on up [St. Petersburg Beach] from there. I also did the condemnation on the Ulmerton-Walsingham Road, the thoroughfare that goes all the way across the county. I did some on the interstate as it was coming in.

P: Interstate 75?

O: Well, it is now 275. Those were all major road changes in the county that are

still major roads. In fact, I look now at what used to be totally undeveloped area.

P: And so once again you are representing Pinellas?

O: Well, no, in these cases I am representing the state of Florida. We represented the state of Florida during the Bryant administration. I tried about thirty condemnation cases involving about 1600 to 1800 parcels. We could put as much as 100 parcels in one case. In 1964, a vacancy had been created on the circuit court.

P: How was the vacancy created?

O: By way of a special Census Act, which was a way to get an additional circuit judge for each increment of 50,000 more population. Each circuit was required to have one circuit judge for each additional 50,000 of population. And if by a special census you could show that you were entitled to an additional judge, then the legislature would create that by an act. If the population of that county has increased by this number, you would be entitled to an additional judge, so you would not have to wait until the regular census.

They had created a seat for one more circuit judge, and basically it [was organized] by the representative and the senator from Pasco County because of the election of Richard Kelly and they wanted another judge in Pasco County. To be honest with you, there was not anywhere close to enough work for a second judge in Pasco County. I had not been involved in it at all.

P: Why did they want a second judge there if there was not enough work for him?

O: So that they could take the cases to another judge other than Kelly.

P: I know his reputation.

O: I will tell you later how I became involved in that process with him. I succeeded him when he resigned as chief judge, and I became chief judge after him. He became involved with the discipline matter brought before the Judicial Qualifications Commission [JQC].

P: We will get to that. I want that story here because I would like to hear it from your point of view. Anyway, you said there was not enough work in Pasco.

O: I had understood that somebody from up in the north end of the county would be appointed. All of a sudden, I get a telephone call from Governor Bryant and he said, "People tell me that they would like to see you take this circuit judge vacancy." And he said, "I need to have an answer by tomorrow."

P: You had no rumors of this ahead of time?

O: I did not.

P: So this came as a bolt out of the blue?

O: For me, yes. Apparently, the advisory committee had kept me out of the loop on this.

P: But Baynard knew about it.

O: Well, apparently they had talked to him. I said, "Hank, you need to come in [on this]." The other one who called me was Dean [Harold L.] Sebring [Florida Supreme Court justice, 1943-1955], and he said, "I want to have lunch with you." This was before I talked to Hank really. He said, "Bring Marilyn along."

P: Who was Sebring?

O: Dean Harold Sebring, who was at the time dean at Stetson Law School. We had lunch at the Suwannee [Hotel in St. Petersburg], and I told Marilyn that she needed to come along. Basically what he told me was this. He said, "I want you to [take] this [appointment]."

P: Is this Dean Sebring advising you?

O: Yes. He said, "I want you to know that you are going to see your contemporaries making more money than you are, but I think that you are the type of individual whom we need on the bench and who will enjoy the challenge of it." Of course, as you know, Sebring was a circuit judge in this circuit before he went on the supreme court of Florida. One of the things he said, which in our generation, Sam, we would understand, was, "You are going to have to learn to wear Schwobilt [an off-the-rack men's clothing store] suits." He said, "You are going to have enough money in retirement, so it is all right." At that time, in 1964, according to my tax returns, I was making right at \$32,000 for the year. For that year for a young lawyer who was thirty-seven years old, that was good.

P: That was a lot of money.

O: The circuit judge's salary was a supplement; it was \$22,000.

P: And you had three children.

O: I had three children. I talked to Marilyn, and she said, "Are you going to be

home on Saturdays and Sundays?"

- P: I can see that you married a very practically-minded woman.
- O: Anyway, we went back to the office, and I talked to Hank. I said, "I am seriously considering doing this."
- P: What intrigued you about the thing? It was a big cut in salary, and you had arrived at a particular position in the community by then.
- O: I will tell you the other thing that intrigued me about it. Six months before, Alan Anderson, a close friend, with whom I became close because his father-in-law did to him what Hank [Baynard] did to me in the Holland campaign, he became the treasurer. He was with the law firm of Fisher and Sauls. Alan had gone on the bench a year before, in fact, I will never forget the day that he went on the bench. It was the day Kennedy was killed. We became extremely close friends, and you will see that he spoke at my investiture at that time. He encouraged me. He took the same kind of pay cut because he was making the same [amount] a year earlier.

Hank in his own inimitable way said, "What in the God-damned hell do you want to do that for? You are just now making money." In the end, they were extremely supportive, Hank, Billy, and everybody. I used to tell people we would go to lunch regularly. When I got up on the court up here, I would go to lunch. I would tell people, "I am going to lunch with Hank and get my monthly chewing out." Hank was noted for doing it if he did not like certain things that were going on.

- P: Was that kind of an ego thing? The idea you would no longer be Mr. Overton but you would be Judge Overton? I mean in your inner heart.
- O: I think both with Alan and me, it was a matter of whether we could stay on the bench at that particular time, and continue to be a judge even beyond the next election.
- P: By the way, you would have to then be elected.
- O: Not only that, but at that time, it was a partisan political election. And in prior elections, two Democratic judges were defeated by Republican opponents who were really not well known and not very prominent lawyers at all. The bar was upset. Both Alan and I were Democrats.
- P: You thought this might be only a temporary thing?
- O: Well, probably most would think that you have only a fifty-fifty chance of staying

there being a Democrat in Pinellas County.

- P: That is right, because it was becoming increasingly Republican by the 1960s.
- O: Not too long after that, the only people who were Democrats in office were five of us who were circuit judges, Sheriff Don Gennng, and the clerk, Pete Mullendorf.
- P: But Ben, you were not taking this, if you were making this decision which you obviously did, [with the view] that this was *not* going to be a permanent thing for you.
- O: That was the other thing that Dean Sebring really wanted to make a point of. I have expressed that in some remarks that I have made to the legislature in the matter of the judiciary: "Do not do this [accept a judiciary position] if you do not want to do this for the rest of your professional life. The point that he [Dean Sebring] was making was that the judiciary should not be a stepping-stone to a better law practice, nor should it be a place of retirement. You had to look at it from the standpoint that this position is a position that you want to be in for the rest of your professional life.
- P: Did you make the decision within the twenty-four hours that Bryant had given you?
- O: Yes. At that time, it was the tail end of his term.
- P: He had to know quickly.
- O: He had to know quickly. It was in December, and within less than two weeks, I was on the bench and the investiture was on December 28 [1964].
- P: What I am saying is that he gave you approximately twenty-four hours. You talked to Sebring, you talked to your law partners, and you talked to your wife, and you make up your mind.
- O: That is right.
- P: As you look back on it now, when you are ending your judicial career, did you make a wrong decision, do you think, back in 1964?
- O: Oh, no, no.
- P: Do you think you made the right decision?
- O: Oh, yes.

- P: You said earlier that you had been a lucky man, and it seems to me that you made the right decisions in the 1950s, when you moved from one position to the other and made the right career change. Do you think that this was the good career change for you? In terms of your own personality?
- O: I have had extremely strong support from my family, and from the people I have been associated with. Art Ratcliffe is still a personal friend. Also Hank Baynard remained one, right up until [his death]; and we did a special thing for him in the 1980s [for his 50th year as a lawyer], and I [presided at that function].
- P: So you never lost your old associates or your friends in any way?
- O: No. Billy McLeod is a really special individual. He is one of these kinds of Floridians that you do not get a chance to do an oral history of. He is a graduate of this law school here. He appeared in *The Guadalcanal Diary* [Richard Tregaskis, *Guadalcanal Diary*, New York, 1943]; he was a company commander of the headquarters company [on Guadalcanal in the 1st Marine Division]. If you read *The Guadalcanal Diary*, it tells you about the McLeodian line. The McLeodian line was a clothesline with knots in it that got you to the latrine at night without lights.
- P: Did you regret the fact that you did not become a hugely wealthy man as a result of this decision in 1964?
- O: It is a matter that is kind of interesting. People have told me things to do in the matter of investments. I have not been really wealthy, but I have been able to give my children a full education. They did not have to take out any student loans.
- P: So professionally and personally you made the right decision in December 1964.
- O: You have got to like what you are doing. I am not saying that I did not like what I was doing at that time. I think the challenge in the judiciary is very different. That probably surprised me more than anything else when I first went on the bench. I say this in the context of being a lawyer who was trying between 125 active cases at all times, most of which were in court. Then I went on the bench, and I am doing fourteen or fifteen cases a day. Even though I had 125 cases [in my private practice], I would seldom be working on more than one, two, or maybe three during the course of one day. But on the bench, by the end of the third day of regular motions [or bench trials], at the end of Wednesday afternoon, it was difficult for me to go back to what I was doing on Monday. Because that [Monday's work] could be thirty or forty matters removed from what I was doing [on Wednesday].

I had a discussion with Hank about that. About that and [another surprise], I was surprised at the lack of competence of some lawyers. I had not been exposed to as much of that as I thought I had been as a practicing lawyer. As a result, I used resources; you cannot do that anymore because they changed it in 1973. I had some legal issues before me that I was not comfortable with. I did not think that the lawyers involved had good skills. I would call immediately a lawyer who I knew practiced in that particular area of the law [to do some independent research for me].

There was particularly one who shared offices with Hank, Leonard Cooperman. I said, "Leonard, I need some help. I have not the time to read all the applicable law, and you have been involved a lot with such cases." I would try to get some separate *legal* help on the [major issues]. I [did not discuss] the facts of the case, but I was just not comfortable with the law that some lawyers were citing to me. In 1973, [the new Code of Judicial Conduct] said you cannot do that anymore. You can get [expert] help, but you have to notify everyone. That was a good rule, and I do not disagree with it. That was a change.

I think there are still some of those problems today. Now, particularly on the Supreme Court, I have two young lawyers who help me at times. I know lawyers who see the opinion coming out must wonder, "Now where did he get that?" But I, and other justices, do a substantial amount of independent research.

Another thing that I became involved with, early on, was continuing training of lawyers. This was just after I came back from service between 1962 and 1964. During 1963 and 1964, we put on the first program that the Florida bar had put on. I was on that program doing an examination and a cross-examination of an expert witness. We did it in six locations in the state, from Pensacola to Miami. I developed some friendships along that route. You learn by teaching, as you well know.

I am trying to think of the name of the senior lawyer of a Miami firm who was a classmate of Senator Holland. He was still an active trial lawyer in his seventies at the time. You are talking about a generation gap, the two of us were a team and did this examination and cross examination of an expert witness.

P: This was not Mershon was it?

O: [H.S.] Sawyer. Not Mershon, it was [Herbert] Sawyer, from the Mershon, Sawyer [law firm]. Here you have a thirty-five, thirty-six year old lawyer and a seventy-two, seventy-three year old lawyer. He was *good*. We really had a good time. You would go in and you would have different experts that you would

go over [the examinations] with. So we got to know each other. It was the first continuing educational thing that the bar or the legal community had, and it was new. I stayed involved with that, in fact, with one of my classmates [J. Nixon Daniel, Jr. from the University of Florida law school], who is from Pensacola.

P: I know Dixie Beggs out there.

O: Well, his law firm. By the way, Dixie was the chairman of the nominating commission that nominated me to the Supreme Court.

P: It was Dixie Beggs.

O: Yes, Beggs. I became vice chairman of the continuing legal education committee while I was a circuit judge. I then became involved, again with Dean Sebring and John H. Murphree. I will tell you that I think John Murphree does not get the recognition for one of the major things that he did for judicial training. Up until the 1960s, the way an American judge learned his job was on-the-job training. He did not get any information any other way.

John Murphree was chairman of the National Conference of State Court Judges. In 1964, he was part of putting on the first National Judicial College program for new judges. It was sponsored by the National Conference which is an ABA [American Bar Association] function. Tom [Thomas Campbell] Clark [1899-1977, US Supreme Court justice, 1949-1967; US attorney-general, 1945-1949] came on as chairman of the board of that National Judicial College. John Murphree was not only chairman of the National Conference, but he became a member of that board and served on the board for eight to ten years. He was also on that first faculty.

Another individual who was on that first faculty, which tells you a little bit why you would talk to me about it, was Dean Harold Sebring. They had it at the University of Colorado that first year. I went to the third class of that college in 1966. I became involved for over twenty-five years with the college, and still am, but not to the extent that I was. I think everything during that particular period changed both from the lawyer's standpoint and the judge's standpoint, on recognizing that there had to be some continuing legal education.

I use the phrase, and I cannot remember where I picked it up--I would like to say that it is mine, but it is not--"The uneducated are those who stop learning". Particularly in this day and time, now, the legal profession is going through one of the greatest changes it has ever seen. There are some law firms and some lawyers who do not really recognize what is happening as a result of technology.

P: Ben, let me go back for just a minute and pick up something I want to make sure

that I get in the records. When you come on to the bench as circuit court judge in 1964, what was the judicial circuit? And what area did that cover?

O: The sixth judicial circuit, [which was] comprised of Pinellas and Pasco counties.

P: All of Pasco County?

O: Yes.

P: So it covered a pretty wide geographic area.

O: Well, in a way. It is very unique in number of respects. At the time, it had what amounted to a metropolitan area and it had a rural area.

P: It had St. Petersburg.

O: Here, we can identify in another way the problem [Richard] Kelly faced [as a judge]. They had twenty-two lawyers in Pasco County, eighteen of whom disqualified Kelly from any case that they had [coming before him].

P: This was a new judgeship, was it not? So this means that you have to create your own staff? You did not inherit a staff.

O: That is correct. I brought my secretary with me from the firm, whose name was Evelyn Lawyer and who was a really very special person. Again I have been blessed. She just had a sense of what should be done and how it should be done. She was very diplomatic, and was a good people person. But she wanted things to be done in a very proper way. She probably added much to the decorum of my office. Other staff and personnel just adored her, as did the lawyers. She had the press eating out of her hand.

P: You had just the one court in Pinellas County? Did the Pasco cases come to you? Or did you have to move back and forth?

O: We had Judge Kelly up there, and we ended up with a position for another judge up there.

P: But you stayed in one place, and the cases came to you.

O: I came in, and the position really ended up in St. Petersburg.

P: I see.

O: At that time, it made it unique as far as a circuit because the county seat was in

Clearwater. There was a county building in St. Petersburg, and we had more judges there than in Clearwater because St. Petersburg was where the work was.

P: The old nineteenth-century concept of the judge getting on a horse and pursuing a circuit was long gone.

O: Not really. [Laughter]

P: History is still continued? I meant that to be funny.

O: The circuit was different. We did not have a criminal court of record to do felony cases, as all the other metropolitan circuits had. A number of counties were much smaller than Pinellas County. The circuit court in Pinellas County heard all criminal felony cases. They were all heard in Clearwater. When I came on the bench, we rotated that. We did a week of criminal trials every six weeks. I would go to Clearwater for a week every six weeks. Then when Judge Kelly had his problems, we took our turns driving to New Port Richey and to Dade City, which involves a round trip of 120 miles. My point is that we did do a "circuit" and it was interesting in that you went from a metropolitan part of the circuit to a rural part of the circuit to try cases.

P: When were you up for election? How long did this appointment last?

O: Until 1966.

P: So it is for two years and this is a new position, not filling in for anyone. Are circuit court judges now elected every two years?

O: At that time, they were up for election at the next general election after they were appointed. Then there is a six-year term.

P: I voted absentee yesterday, and I was voting for circuit court judges.

O: They will be elected now for a six-year term. In other words, my term in 1966 was for a six-year term.

P: How much of a politician did you have to be in 1966?

O: There were a number of people who really helped with this. First of all, there was Don Genn the sheriff. He had made sure that I had speaking engagements at all of his deputies' clubs, which he had all around the county. They were like mini-civic clubs that met once a month. And then Pete Mullendorf [helped]. I think one of the things in my favor was that I did not have

any opposition.

P: Who is Pete Mullendorf?

O: He was the clerk of the circuit court at the time.

P: The Republicans did not field anyone?

O: No, I had no opposition, and I think they knew that I had the strong support of Genng. I cannot remember if there were some other races with people they could run against or whether there was an open seat. I think one of the things that may have intimidated people was the fact that I had been Holland's campaign chairman in 1964 again. Number one, they knew that I had a semblance of a political organization. Also, because Senator Holland's organization was conservative, I would have taken a lot of votes among the people that they depended on for *their* votes on the Republican side. At that stage still, Republicans did not outnumber the Democrats. In one respect, when you are looking for somebody to run, you are also looking whether the candidate or the opponent have these campaign organizations. Number two, they also knew that I represented the *St. Petersburg Times*.

P: So you were the "in" candidate then, the strong candidate obviously, and nobody was going to really threaten that situation.

O: Well, except that in the prior elections, and particularly in 1962, they had defeated some circuit judges. Alan Sundberg, who is a personal friend, was my designated campaign chairman.

P: You ran in 1966, and you were elected for six years. Did you run again in 1972? You were then not yet on the supreme court.

O: That is correct. In 1970 the legislature changed [elections of circuit judges] to a nonpartisan ballot. In 1966, it was a partisan ballot; you were a Democrat or a Republican. In 1972, it was a nonpartisan ballot.

P: That is the way it appeared on the ballot yesterday.

O: That is correct. That is the way it still is today.

P: Did you have to be concerned, in those early years, about funding? PACs [political action committees] and those sort of things were not yet born.

O: No, there were no PACs. There had been [politically active groups]. To be honest with you, in the Holland campaign in 1958, I think all my women

volunteers came from the medical auxiliary because of the fact that they were concerned about socialized medicine, so that you still had interest groups.

Let me say this. One thing that the Republicans still have in Pinellas County is a very good, basic, grass roots organization. Their committee precinct woman or precinct man is required to contact every registered voter within their precinct every year. They know now and they knew back then how to count votes, which precincts were theirs and which were not, and what was worth spending time on and what was not. At their particular precincts, at 4:00 in the afternoon they knew who voted and who had not voted, and they started on the telephones to get everyone out to vote. We did a little bit of that in the Holland campaign. Actually, we did quite a bit of it.

It was a matter of getting to *your* people and making sure you have them out to vote. For certain precincts, just forget it; the time and effort would not be worth it. In your area with your people, it was a matter of being able to make a list and know which are your people and whether they voted or not. And then at 4:00 P.M., go out and make sure they get there. Have cars available to get them and take them to the polls. All that is now part of the game.

- P: Ben, this is an ethnocentric question coming from a Gator, but you were saying before that you learned very early on that there were different quality lawyers. Some were good, and some were not so good. Were those that were trained at the University of Florida among your better lawyers that appeared before you?
- O: Probably and generally yes. It is interesting, but I never [connect the lawyer to the law school] unless it is somebody I really know. I guess when I looked at the ones who were not [good], they did not come from the University of Florida. I had not ever thought about it.
- P: I was hoping that you were getting ready to say that, "Without any question the best lawyers appearing before me were those who graduated from the University of Florida."
- O: I can tell you that I do not think any of the worst ones who appeared before me came from the University of Florida.
- P: I notice that during this period you also served as a part-time faculty person at Stetson Law School.
- O: Yes.
- P: How did that happen?

O: Vic Whele had taught out there, and then I started teaching there in 1970 and 1971. He had taught the second semester of civil procedure and trial practice. I started doing the same thing. I took a limited class in trial practice; I would only take twenty-four [students]. Civil procedure was a lecture program. I lived five minutes from Stetson. I took an 8:00 A.M. class one year. From Stetson I could still be in my chambers by 9:00 or 9:05, after doing a fifty-minute class. I found it was beneficial to me and it really made me do things in the area that I needed to do. And I taught trial practice from 7:00 P.M. until 11:00 P.M. I used my own courtroom. Rather, the first [few periods of] teaching I did out there [at Stetson]. After the second week I would teach in my courtroom in St. Petersburg. I am teaching now at Florida State University. I have been teaching Florida Constitutional Law, and am trying to put a book together on the Florida constitution. I think it has made me a better judge. Sometimes some of the students ask questions that no lawyer would ask of a judge.

P: Maybe that is good.

O: I really enjoyed [teaching] at Stetson. I probably put a lot more strain on my family by teaching because I taught both semesters. In fact, I was teaching eight hours an academic year.

P: That is quite a schedule in addition to being a full-time judge.

O: And I was a full-time judge.

P: Your wife had asked you much earlier if your Saturdays and Sundays were going to be clear.

O: There is one other interesting aspect of it. When it came to the matter of my appointment to the supreme court, Marilyn said, "We will have some more money." I said, "No we will not. We will have a little less because I do not have the money coming in from Stetson."

P: It seems to me that your married life has moved down, down, down the ladder.

O: I really enjoyed the teaching at Stetson. They are still basically doing what I had done. They have expanded the trial practice course, which they needed to do. The second semester civil procedure is still being taught by a judge.

P: This shows my own ignorance by asking this question, Ben, but what kind of cases come up before a circuit court? Criminal cases are obvious, but what else?

O: At the time I took the bench in 1964, on the civil side of court, it was everything in

excess of \$2,500. We had all types of equity cases. Any circuit judge on the civil side back then would have it much heavier now on the family law side. They handle all divorces and all child custody [cases]. Matters of any equity-type case, whether it is any injunctive type or receiverships, and mortgage foreclosures, all debts, and all contract litigations above \$2,500. Things have changed.

There was personal injury litigation, which was really about one-third of the civil calendar when I was a circuit judge, 30 to 40 percent. I am talking just about automobile accidents or malpractice. That is down to about 10 percent now. Now, we are running at 60 percent [of the time spent] on family law problems in the circuit court. The jurisdiction of the circuit court, as a result of the 1972 changes [in the law], expanded. Juvenile [cases] used to be handled separately.

Probate used to be [handled] in the county court. Now both of those are [heard] in the circuit court.

P: So it really is a big [burden] then for the circuit court [to carry], is it not? Are they not being overwhelmed?

O: Well, no. The matter of the consolidation helped. First of all, certain things end up to be inter-related. In fact, it is one of the things that we are trying to work out right now.

We ended up with problems on juvenile dependency where you have a judge [dealing with] a delinquency with a child or children. And that same child or children are involved in a divorce case, where custody is in issue. You have a judge dealing with them as delinquents, and a judge dealing with them in the custody case. We have tried to say one family, one judge. Let us get them both together. For instance, if a judge is [hearing] the matter of a juvenile, he also has authority to enter an order pertaining to their custody. In the matter of consolidation, there are certain parts of the work that are more stressful than others.

If you are trying an automobile accident case, most of the rules have already been set and you are just trying to keep everybody within the bounds of the law and explain it to the jury. On the other hand, as a circuit judge, you may end up with what I thought were particularly the two most difficult responsibilities that I had as a circuit judge. These are, number one, matters of child custody, and number two, matters of sentencing.

The reason why I say sentencing was hard work is because you have much, much greater discretion as a judge and nobody was going to look over your shoulder. In other words, there were many offenses where I could put the individual on probation or give him a life sentence. It is just as a judge from

Durango, Colorado, said in one of these educational sessions, "That is when I know I am playing God." Mainly because in both of those incidences, whether in the matter of the custody of the children or in the matter of sentencing, there really is no appeal. There were no [appeals] at all in the matter of sentencing. And you see very, very few appeals in the matter of custody. It is almost [in the] total discretion [of the judge]. Those are matters that you really carry home with you.

In those particular types of decisions you are really applying the law and trying to make sure that it remains consistent. This is one of the big responsibilities of the judiciary, to make sure that everybody is treated alike. [As a judge] you know what the principles are and you are keeping them within the confines as it pertains to that particular type of case or issue. But then there are the discretionary acts, and [those] that affect the people before you, the most [significant] are in the area of custody of children and in the area of sentencing.

- P: You served for a while as chief justice, or was it chief judge?
- O: Chief judge of the circuit group for three and one-half years.
- P: How did that come about? Was that an election by the other judges, or was it a lottery where you pick your name out of a hat?
- O: It was a product of Richard Kelly.
- P: I think we are almost ready for the Richard Kelly story. We have reached the point where we need to get the Richard Kelly case on tape, so I am going to turn that over to you.
- O: Richard Kelly was elected as a circuit judge in Pasco County.
- P: Where was he from?
- O: He was from Pasco County, and he had defeated a very popular judge, O.L. Dayton, who is from an old Dade County family. In fact, that is how the political race [originated]. The new residents who lived in western Pasco County, over at the New Port Richey side, opposed the old residents in the Dayton family on the eastern side. In fact, a lot of people have said U.S. [Route] 41 is more of a dividing line.
- P: I want you to tell me what kind of a dividing line this is.
- O: It is more of a dividing line between the two different philosophies like [those expressed by] the Mason-Dixon line [but situated] in Pasco County. There was

no question about that; if you were involved with politics, you knew that. In the western end [resided] the new residents, and the eastern side of the county [held] the old residents. O.L. Dayton and the Dayton family were, of course, the old residents. There had been the impeachment proceeding that was brought later, against Richard Kelly [in the Florida House of Representatives with a trial in the Florida Senate]. The house voted for impeachment. On the senate trial, the senate did not convict for impeachment.

P: What were the impeachment charges?

O: The impeachment charges were [a complaint about] the way he conducted his office. I am not really familiar with [the details of the impeachment] part. But the second thing that came about eventually were charges before the JQC, the Judicial Qualifications Commission, which [acts as] the judicial disciplining commission. The Kelly case before the JQC is the first judicial discipline case in this state. It is recorded and published among cases [decided by] the Florida Supreme Court. Prior to that decision, and during the impeachment process, he [Judge Kelly] had not been performing all the judicial duties [because lawyers disqualify him].

P: He was inactive.

O: Judge Richard Leavengood was the presiding judge, which [position made him] the chief judge of the circuit. In 1966 or 1967, [when] Kelly was the senior now, or next senior to Dick Leavengood, Dick said, "We ought to allow him [Richard Kelly] to be the presiding judge." He was resigning so that Dick Kelly could be the presiding judge. That took some of us by surprise. We could not get him to talk to us about what he was doing.

Dick Kelly became the presiding judge. It did not take six months when [he got into trouble]. In a couple of instances he came down from Pasco County [to Pinellas County] and went in the courthouse. There he called up all of the prisoners who were in the jail, to reestablish their bail. This was *sui sponte*, on his own motion. Now, we *had* a judge in Pinellas County [who was responsible for] all of criminal felonies [which] were [heard] in circuit court. And we had a judge whose assignment was to be the administrative judge of the criminal calendar, and that always went to the Clearwater judge [in Pinellas County]. That judge became just totally incensed [because these were his cases].

In the process, there were some other things with lawyers and with court reporters, things that amounted to be not physical abuse, but harassment. In one instance, he had a court reporter go and stand in the corner for an hour and one-half.

P: That is how we try deal with our five year old granddaughter.

O: Then there was the matter of trying cases. The lawyers were all upset with him because he would require things on cases that were uncontested, things that were not necessary, and really took a substantial amount of time to do. There were a couple of administrative things, but the one I mentioned, the coming down to [the next county] to work on bail was the major thing, I think, that tipped the oilpan over.

We had a rule on the matter of selection of presiding judge or chief judge. At that time, it was not controlled by the supreme court as it is now. We decided we would just modify the rule which at that time did not say that the majority of the judges could replace the presiding judge. But we just had a judges meeting coming up, and we proposed a modification to this rule, to allow the judges to remove the chief judge and replace him.

He kind of surprised us a little bit on that. We were going to pass the rule, and then later on we were going to call another special meeting, at a separate time, to have a vote on [replacing] Kelly. The meeting on the rule had been resolved. As a result of that, and I did not know this was going to happen, on the same day they elected me chief judge to replace him.

I became the chief judge, and it was not long after that that the JQC filed charges against him. Then he insisted [according] to the rules at that time, and this provision is still in the rules, that the judge charged can require the JQC to have him tried in his home county. So, Kelly said, "I want to be tried in Pasco County."

JQC was kind of concerned. They had called me to set up the administrative aspects of [the proceeding]. They had a full-scale hearing. I ended up as one of the witnesses, but I was not one of the major witnesses by any means. My biggest problem was always making sure that they had bailiffs [on hand]. He had a lot of his people that came to the court room.

The JQC recommended his removal. The [Florida] Supreme Court did not remove him; the court reprimanded him. The judges said in their orders that he should not take any cases that were not assigned to him, without the express approval of the presiding chief judge; I was the chief judge at the time.

I got a telephone call every day from Richard Kelly about wanting to get involved with one thing or another. My secretary, Mrs. Lawyer, would not let me talk to him without her also being on the phone. She said, "Judge, you should not talk to him alone." Without doubt, she was a very special person.

Eventually, I had already become active in the [Florida] Conference of Circuit Judges, and this was all during the same period of time. Marilyn kept saying, "You keep getting into these other projects." I was the very first education chairman. This was at the same time I was on the Florida Bar CLE [Continuing Legal Education] Committee. What we were really trying to do was [to establish] a joint effort. Through that, I also became an officer of the Circuit Judges Conference, and was chairman [of that body] in 1973, the year before I went on the supreme court.

I spent three and one-half years as chief judge, and [went] through an interesting time. I thought we ended up with good relations. We ended up with a good circuit, not because of me, but mainly because people were working together. As far as being able to dispose of the case load, we did not have any undue delays in the circuit.

P: What finally happened to Richard Kelly?

O: Richard Kelly ran for Congress, right after I was appointed to the supreme court.

P: He was never exonerated from the earlier charges?

O: No, he was reprimanded; he just was not removed. He was just reprimanded. Then he ran for Congress, and he resigned from the bench in 1974. That whole time was kind of a tumultuous era. One of the things about the judges whom we had, other than him, was that everybody wanted to work together, and they would talk to each other, and cover each other. As a result of it, we were in the top five of all the metropolitan circuits in the country and nationally.

P: Was Kelly himself ever elected to Congress?

O: Oh, yes. Kelly was subsequently elected to Congress.

P: Oh, yes, that is right. I had forgotten about that. He was elected to Congress.

O: He was elected to Congress and that is where he got into the problems with stuffing the money [in his pocket in a sting operation].

P: I have got the two things mixed up. I had forgotten he went to Congress. Is he still living?

O: He was the last I heard. He was back in Pasco County. He moved after they set aside his conviction. I think it was on the basis of the search; no, not on the search but on a fourth amendment issue. He went out to Wyoming. Then he came back.

P: Since you are a good friend of his, maybe I will get you to set up an oral history interview with me. Let me get you on the court now, the Florida Supreme Court. Have we finished the circuit court period of your life?

O: I guess, except for the matter of my involvement in the educational aspects starting with the [Florida] Bar. When I was appointed to the court, I was chairman of the Florida Bar CLE Committee, and I was also chairman of the Circuit Judges' Conference.

P: I have that here, the Florida Bar Continuing Legal Education Committee. I have here that the purpose of it was to present educational courses to circuit and county judges. That was its aim and goal. How were you involved in that?

O: Primarily what we did [for] the first time was consider the matter of how to train new judges. If you remember, we had a consolidation of the court system that was passed [by the legislature] in 1972, whereby we eliminated all municipal courts, city courts; we eliminated all the JPs [justices of the peace]; and we eliminated all the civil and criminal courts of record. We took the separate juvenile courts and the separate county courts and merged them into a two-tier system. That was passed in March 1972, to go into effect in January 1973.

There were two things that were interesting to me in that context. One of these was that my year as chairman of the Circuit Judges Conference was also in the year 1973. The same year when we went from 120 full-time circuit judges to 273 full-time circuit judges. But the fire was lit in the fall of 1972, when we put on a full week of educational programs for all circuit judges in the state in September, and a full week of educational programs for all the county judges in December. These were all the judges who were coming on and going to be judges as of January 1.

P: 1974?

O: No, 1973. About one-third to one-half of them had not been judges before. Also, some of them were exercising new jurisdiction. The circuit judges were all of a sudden going to have more [legal] jurisdiction. Really, there were several [geographical] jurisdictions, [such as] most metropolitan areas, whether it was Tampa, Orlando, West Palm Beach, Fort Lauderdale, or Miami, which had circuit judges who had never tried any criminal felonies before at all. So all of a sudden some of them were going to have to try criminal cases.

The matter of having an educational program for them to begin with was what we figured to be an important step. What flowed from that is that now, in March of each year, we dovetail it with spring break, because we started having [the educational programs] here at the University of Florida. It [the program] now

[has moved] to the Center for Professional Responsibility in Tallahassee. We bring up each new judge who has come on the bench since the prior March. In off-election years there will be in the neighborhood of forty to fifty-five. In the March after election year, like this year, we will have in the neighborhood of between sixty-five to eighty-five new judges.

We started the [educational sessions] with a one-week program in March. We now do a two-week session doing what we call a skills program in January before they even hear their first case; [this is characteristic] for a good many of them. Then we do a substantive law program in March. And then in May of each year, we have what we call advanced judicial studies. In [advanced judicial studies] a limited number of participants take programs in selected areas. In other words, as you know, if you can hold the number of participants down to twenty or thirty you can do a much better teaching job.

P: Yes, than if you had sixty.

O: Now we are at the point in advanced judicial studies where we are running six different programs Monday through Wednesday noon, and six more different programs from Wednesday noon until Friday. The judges can pick and choose particular courses and dovetail them through the week, or they can just take the one two and one-half day course. [The program] was [designed] to get them particularly up to speed in a particular [legal] jurisdiction they are going into, or a jurisdiction where something new has happened. For instance, the new thing we are doing now is a three and one-half [day] program just on domestic violence, not divorces. The other thing that is new now--this is what [the program] is designed to do, and I use it as an example--is to address today's problems.

For instance, a big new problem is *pro se* representation in the family law field. This has just occurred within the last three to four years. Those [persons representing themselves] were there before, but not in such numbers. Two things have occurred: Number one is that 60 percent of our civil calendar is now in family law. This does not include juvenile [cases], it is just family law matters.

The other thing that has occurred is that 60 percent of the family law cases have at least one party *pro se* meaning that the individual is representing himself or herself.

P: I have never heard of that.

O: The one thing that makes a judge's work more difficult is where an individual is representing himself and not really totally familiar with procedures, rules, and how to get information out and into the court system. It has become a very big problem. I should not say problem, but a matter that has to be addressed

because as many as 20 to 25 percent of the cases now have both sides representing themselves. It is one of the programs that we have, how a judge should conduct himself when he has one party or both parties acting *pro se*.

P: So it is an intensive and extensive educational program.

O: That is right.

P: Let us move on now to you and the Florida Supreme Court. You are appointed on March 27, 1974. How did that come about? Did Reubin Askew [governor of Florida 1971-1979] appoint you?

O: Yes, in place of Vassar [B.] Carlton [Florida Supreme Court justice, 1969-1974].

P: Okay. Did [Carlton] just resign?

O: That is right, he had resigned.

P: Why did he resign? I know the court was described as being in shambles at the time.

O: There had been stories written about a trip he had taken to Las Vegas. There were other things, however, I think in these instances it would be unfair not to mention. Vassar had lost his wife. His wife was the one who really wanted him to be chief justice. Vassar did not want to be chief justice [because of] the matter of the publicity or anything else. I guess I was again very fortunate being there at that time. I had been involved with the restructure of the court system because I had been chairman of the Circuit Judges Conference. I did not know Governor Askew other than through this appointment.

P: So it was not a payoff or anything you had done for Askew's campaign, or anything like that?

O: No, I had been out of it [politics] for ten years; from 1964 to 1974 I had been out of it.

P: So you came on as really basically a nonpolitical person.

O: What I am very proud of, Sam, is the fact that I am the first product of the merit selection system.

P: That is what I was going to ask you. Who promoted you and how did they come to make the decision?

O: A new constitutional amendment [provided] that vacancies be filled through a merit selection process. There would be a nominating commission for the supreme court, a nominating commission for each district court of appeal, and a nominating commission in each circuit. So really, all told right now, there are twenty circuit nominating commissions, five district court of appeals nominating commissions, and one nominating commission for the supreme court.

P: Who selects the members of the nominating commission?

O: The members are selected [as follows]: three by the governor, three by the Board of Governors of the Florida Bar, and three by those six. They serve three-year terms, which are staggered. They cannot be reappointed. They must agree that they would not accept a judicial appointment within the area of that nominating commission for two years after they leave.

P: I see.

O: So basically, you end up with a turnover of one-third of each nominating commission each year.

P: So it is a strong effort to get this system out of politics as much as possible.

O: When they send three names to the governor, then the three names they send to the governor are supposed to be all qualified for the position.

P: And you were one of the three names at one time.

O: First of all, Dixie Beggs was chairman of the nominating commission. Chester Bedell was on the nominating commission. John McCarthy was on the nominating commission for the supreme court. Julian Clarkson was on the nominating commission. I am trying to think of who else was a member then.

P: Are you naming the members of the nominating commission that selected you?

O: Yes, I am trying to remember [them].

P: Does the nominating commission put you through any kind of a testing program? Do they do an interview with you or anything?

O: The nominating commission, at that time, [considered] twenty-eight or twenty-six of us candidates. They sent you an application, and you had to give your entire history. They also asked about significant cases you had been involved with and the history of that. You then went before the nominating commission. They had a meeting themselves. I think they had it down to eight of us, whom

they interviewed. There were a number of people there [whose presence] made me believe that I just did not have a chance of being included on among the three [on the short list] because included among those eight were Hugh Taylor [circuit judge, Second Judicial Circuit], Bob Mann [judge, Second District Court of Appeal and later professor of law at the University of Florida], and LeRoy Collins.

P: So you had some very distinguished competitors.

O: And I am forty-seven years old [at that time].

P: I understand.

O: The nominating commission nominated myself, and Alan Sundberg, which is really kind of interesting because here were two [nominees] from St. Petersburg. Alan had been very upset with me because he had asked me if I was going to apply, and I said, "No, Mother is not doing well." Both my father and my children, and [particularly] my second son, who was probably more effective than anybody else, insisted that I do it. I called Dixie, and I said, "If I mail it [the application] today, is it all right?" He said, "Yes." So I mailed it. Alan fussed at me; he said, "You told me you were not going to apply." But in the end I did.

P: Who was the third person on the list?

O: Mallory Horton, who has been one of the original appointees on the Third District Court of Appeals in Miami. He still practices appellate law in Miami, and [is now] about seventy-five years of age. He had nine children, and that is one of the reasons why he left the bench originally.

P: To support his nine kids.

O: I think why I made it was because I was in the middle; Mallory was the oldest, he was right at sixty. I think Alan was forty or forty-one.

P: And you were in between.

O: I was forty-seven. So my forty-seven was not so bad.

P: So those names go forward to the governor, and in your case to Governor Askew. He makes the final selection?

O: Governor Askew made the appointments much faster [than other governors]. There were a couple of news stories in which I was [the subject matter]. One was [published] on March 14. I think my interview was on February 28.

P: The date I have, of the announcement at least, was March 27.  
O: That would have been the investiture.

P: Oh it was? The investiture was March 27, and you were appointed on March 14? That was fast, the appointment and the investiture.

O: Well Reubin [Askew] did that.

P: March 14 was the appointment and the investiture was March 27, the same month. Martin [Dyckman, *St. Petersburg Times*] wrote this article [dated Thursday, March 14, 1974; profile on p. B-1 and editorial on p. A-14].

O: Yes, Martin wrote the article.

P: Vassar Carlton had resigned only on February 28.

O: No, January 28.

P: This is wrong then.

O: He made it effective February 28.

P: It said [*St. Petersburg Times*, p. A-14] he [Justice Carlton] *retired* February 28, so he had sent in the letter earlier.

O: There are two newspaper articles, and I have enough copies to give them to you.

P: Salary for the post was \$36,000 a year. And you were appointed to serve until the next regular judicial election.

O: And then I had opposition.

P: This is a continued article. You look good.

O: That article is by Virginia Ellis [staff writer for *St. Petersburg Times*, March 14, 1974 on p. B-1].

P: Okay, so you say investiture is the same month. I want to hear about how the announcement came to you first. Did Askew call you?

O: I was in a contested divorce case. My secretary came to me although she never interrupts me. But this time she came into the hearing, and she said, "Judge, the Governor is on the phone."

P: You accepted over the phone?

O: Yes. I was actually doing work on the supreme court on the following Monday.

P: You closed up your operation?

O: No, I did both.

P: I see it says that you helped them with the cases, and that was somewhat unusual for somebody to agree to do that. Did you say we can have these [copies of articles]?

O: Yes, I have more of those.

P: Here is another article by Robert Pittman, but this one must [be from 1979, when you chaired the commission that recommended changes in the Florida appellate courts]. But back to 1974, later on that year, you say you [stood] for election and you did have opposition?

O: Yes. I was trying to do everything that I could when I got on the bench. I cannot say that I was a neophyte to the political process. I did try to make sure that I was doing all the things necessary knowing that somebody could run against me. Shelby Hinesmith qualified and said that he was going to run against me. Shelby was a circuit judge then in Miami. He had been [Claude] Kirk's chairman of the war on crime. Kirk [Jr., governor of Florida, 1967-1971] had then appointed him as a circuit judge before he left office. I had already heard that what he was going to do was to try to get as much Republican support as he could. The first thing I did was call Merrill Winslott, and I do not know whether you know him or not. Do you know him?

P: I do not know him well, but I know who you mean.

O: He had just retired as executive assistant for Spessard [Holland]. He stayed with Lawton [Chiles, governor of Florida, 1991-] for two years. I called him, and he had retired in Manatee County. I said, "Merrill, help." What we did was we resurrected a good part of the old Holland organization. The other thing that we did was that we focused on the strongest Republican counties in the state. [We focused on] Pinellas, which was mine. I got the former chairman of the Republican party in Pinellas County, who also happened to be a tennis playing partner of mine. His name was Ed Turvill; I do not know whether you know him or not.

P: I know who Ed Turvill is.

O: A lot of people do not realize that he is one of the few Americans who is a

member of the All England Club. He is president of the Long Tennis Association, and non-playing captain of the Davis Cup tennis team.

P: Maybe we will get him someday.

O: Ed was my campaign chairman in Pinellas County. I was fortunate enough to get the top Republican in Sarasota County [and the top Republican in Palm Beach].

P: It sounds to me like you were a skilled politician, Ben Overton. You had learned.

O: If you are in a political process, you have to play by these rules. Merrill had me set on an ongoing campaign, and we went to forty-seven different counties in the state. Merrill said, "You have to give me six weeks." And so I gave the six weeks before election. Wherever we went, we had people, but there were always a couple of things [I did]. Number one was of course that you go to the media. The interesting thing is that you have them arrange a television [appearance], and you go to the television station. It was surprising to me at that time, how few statewide candidates did this.

P: They have learned since.

O: And you stop by the newspaper. Particularly, Merrill had me stop by the newspaper. The weekly newspapers editors knew what was going on in the Panhandle. I was invariably on at least one of the local radio stations, as well as the television station. I also spoke at some type of bar or civic meeting, and most of the time, lawyers gave me a reception.

P: So you had good exposure.

O: The interesting thing to me of going in and talking to some of the media and submitting myself [to questions] is that not just one, but a number of them said, "Judge, we really appreciate you coming in and doing this. You are the only statewide official that has even thought to do this." And Merrill used to say, "The one thing about those weekly newspapers is that those newspapers are going to stay on the table, the daily one is going to go out." I ended up carrying every county but two. I still do not know what he had in Okeechobee County. I lost Okeechobee County. And out of 95,000 votes, I think I lost Dade by 1,200 votes.

P: You had a very good showing.

O: I got over an 80 percent vote in my home county, which was Pinellas.

P: Let me get back to the court when you arrive there in March, 1974. Am I correct in using the phrase, in saying that it was in a shambles? Vassar Carlton has just resigned and there is a cloud over him as a result of his activities. Hal [P.] Dekle [Florida Supreme Court justice, 1971-1975] and David [L.] McCain [Florida Supreme Court justice, 1970-1975] are both in trouble, and Joseph [A.] Boyd [Jr., Florida Supreme Court justice, 1969-1987] is having some problems.

O: One of the things about an appellate court and particularly a supreme court, to do your job properly, it has to be a collegial body. You have to respect each other's opinions. You have to work with each other because when you write an opinion, you are not writing it for yourself, you are writing it for the court. There are a lot of things that when you craft an opinion, if you were doing it for yourself, you would do it differently. But you know that other people on the court would not like it that way. Since it does not change the result that you are reaching, you write the opinion knowing that you are including the input from everybody who agrees. That is how you should write the opinion. It really reflects a collective decision and it should be a collective opinion.

That body, at the time I came on it, was not a collegial body. Two justices would not ride on the same elevator with each other. Justice McCain, referring to his particular problems, had a very substantial alcoholic problem. You would get on the elevator with him in the morning, and it was like walking into a barroom that had just been opened at 7:00 A.M.

P: I have that information on McCain here, as a result of the research that I did. Of course, it was publicized. The media had this. I understand that both men, Dekle and McCain, resigned while the house committee was investigating separate charges against them. The information that I have and that I wrote on McCain was that on June 15, 1978--this is four years after you are on the court--McCain was "disbarred from the supreme court for undermining the entire judicial process while a justice, by trying to influence lower court judges for his friends." Then I said, "McCain was the first former member of the supreme court to lose his license to practice law." Is that a correct statement?

O: That is a correct statement. The thing about the matter of influence, and it is detailed in that case, but it went to the matter of influencing a decision favorable to a certain labor union as a result of some labor union contacts [made] directly with him, and then his calling the judges on [the lower] court.

P: Now McCain died of cancer sometime in the 1980s.

O: Well, yes, he was still a fugitive at the time he died.

P: McCain was?

O: Yes. Now as to Justice Dekle.

P: What were the charges against him, because I could not find that in the checking that I did.

O: He did not resign, he just chose not to seek re-election.

P: Why was he under investigation though?

O: Primarily, because again he tried to influence a circuit judge's decision in a divorce case. He had contacted Dempsey Barron's [former] law partner, Judge [Warren L.] Fitzpatrick, in Panama City. Judge Fitzpatrick really believed Hal Dekle was trying to truly influence his decision in that case.

P: Or he tried persuade the judge.

O: I have to say this, when I came to court, I think one of the hardest working people on the court was Hal Dekle

P: What has happened to him?

O: He is in Tampa now. He had gone out and taught law at the Oral Roberts Law School for a while, which is in Oklahoma. I think he is back, and he is practicing with his son in Tampa.

P: Now what about Joseph Boyd Jr.? He was reprimanded for allegedly letting his golfing buddy write an opinion for him, but he did not resign.

O: No, and he served until 1987.

P: He kind of resurrected his reputation did he not?

O: Yes. In a way, Joe [Boyd] was really well meaning in one respect, but this was one of the things that judges are not supposed to do, [engage in] *ex parte* communications. This was Ed Mason, who had been on the Public Service Commission, and was an interested party in the case. Somehow Joe had indicated to him that he was having problems writing the opinion, and Mason prepared an opinion and had it sent over to [Boyd's] office. B. K. [Roberts, Florida Supreme Court justice, 1949-1976] had really instigated some concerns about whether Joe was mentally fit or not. The result of it is that the JQC [Judicial Qualifications Commission] had Joe go to Duke [University], and he [Boyd] later used to joke about it. He said, "I am the only one that has been certified to be sane."

P: Not normal, but sane. The point is that you came aboard at a changing, chaotic period in the history of the court.

O: It became a very different court in a very short period of time.

P: For the better?

O: Oh yes.

P: Well? [Laughter]

O: There are some other people that would not say that.

P: We do have one certified normal.

O: What happened is, and you can relate it to the time period, I came on in March 1974.

P: Right.

O: Arthur [J.] England [Jr.] decided to run against Sam Spector for Dick Ervin's seat. So Arthur ran against Sam Spector, and everybody thought Sam Spector would be in. Arthur beat Sam Spector, and Arthur had not [ever] been in a political race at all. I saw him at some of these particular campaign gatherings and things, and you talk about a fish out of water. He really did not like it.

P: Maybe his innocence is what brought the voters ransom.

O: He got really strong support from Dade County. He got a tremendous vote out of Dade County. He beat Sam Spector so he came on the court in what amounts to be seven months later.

P: That was good though, was it not, for the court? He turned out to be a very reputable, substantial jurist.

O: Five months later, in May 1975, Alan Sundberg was appointed to replace Hal Dekle.

P: Dekle resigned?

O: Yes, and that would be [when] Alan came on. I know when Alan came on. Alan came in on June 1, 1975. And [Joseph W.] Joe Hatchett [Florida Supreme Court Justice] came on in July 1975. In the course of what amounts to be fifteen

months, we had a court of four new justices.

P: A brand new court so to speak.

O: At this stage I was forty-eight years old then.

P: You keep celebrating those birthdays, do you not?

O: Yes, I keep celebrating those birthdays. Out of the four of us, I was the oldest. Arthur was forty-one or forty-two; Alan was forty-two or forty-three; and Joe Hatchett was forty-four. We had a get-together for Joe Hatchett at the court, and somebody was talking about the "new young bucks" on the court.

The other thing that was new, that some people had to adjust to, was that we all had children in school. I had one in junior high, one in senior high, and one in college. Joe Hatchett had one in elementary school and one in junior high school. Arthur England had four, none of them were out of elementary school yet. Alan Sundberg had five, and again none were out of high school. So we had what amounted to be fourteen children among the four of us.

When it came to recess, they [the senior justices] said, "Well, we are going to have the recess of the court in August because that is the traditional time." We said, "No you are not." The [school] had changed when the kids had to be back, and the kids had to report in on August 10.

P: So you had an earlier recess.

O: So we moved the recess back, which was the first change that occurred in the court. It also brought, as you probably well know, a different feeling, and that is what ended up bringing me into the chief justice's chair.

P: Now you had a young court, on the basis that I am considering people in their forties to be young, but it was also a "Gator court" as it is today.

O: It became more Gator later on. As far as the "young bucks" go, we had kind of a split there. We had one Gator, one from FSU and Harvard, one from Pennsylvania, and one from Howard.

P: I have got Stephen H. Grimes now, and he is a Gator. He graduated here in 1954. I have Charles T. Wells [attorney, Orlando] as a Gator, who graduated in 1964. I have Harry Lee Anstead [Fourth District Court of Appeal judge], who is a 1963 graduate, and of course you. Do you all not let any FSU people get aboard?

O: We have not yet. [Laughter]

P: I know what it is, you are striving for excellence. Is that what it is?

O: Arthur was from the University of Pennsylvania. Alan, although he was an undergraduate at FSU, was at Harvard Law School.

P: Along that line, Ben, what impact has the University of Florida Law School had on the state judicial history and law making?

O: By far the majority of the members of the court have been graduates of this law school at the University of Florida. You have [James C.] Jimmy Adkins [Florida Supreme Court justice since 1969] who continued on the court then at the time.

P: I have a list of all of the people who were once on the court.

O: And we proceeded up to [James E.] Jim Alderman [Florida Supreme Court justice since 1978]. We have regularly gone up to having four [University of Florida Law School graduates] on the court, and we had four up until the time of Justice [Rosemary] Barkett and Justice [Parker Lee] McDonald leaving; because we had four with those two on the court. Justice Barkett graduated from here as did Parker Lee. We still have a majority of Gators.

P: But you would score the University of Florida Law School as a top college of law as far as its educational program?

O: People have asked me, and I have put the University of Florida at number one.

P: Is that based on more than just loyalty?

O: Yes, it is. Even the percentages who passed the bar exam show that. I used to put FSU and Stetson at about the same [level]. When Sawyer Menchikoff was dean at [the University of] Miami [Law School], I thought Miami was ahead of both of those two. Now Miami has dropped down below those two.

The thing about FSU is that I do not think that they fully utilize what they have available to them, in some respects. In fact, I think in one regard, the government is so close to them, and so many have part-time jobs out of necessity and not as part of the learning experience, that they do not get the utilization that they probably should out of court. Although we are doing an internship program in my office, and now in the rest of the justices' offices. It started in my office through a law clerk, who came from the University of Florida, and became friends with an FSU law professor in 1976. I would take an intern from their law school for a semester. I would get twenty hours of work a week, and they would get six hours of credit for the semester.

P: That is a valuable exchange for them.

O: That has spread now to the rest of the justices. I give Everett [Anderson, law clerk in my office from September 1974 to September 1975] credit for that, and then he took it over to Bill Stafford [US District Court judge, Tallahassee]. Bill Stafford did it with the United States District Courts. He and Judge Paul [US District Court judge, Tallahassee] had taken over. During the course of the last year we just got the District Court to take some [interns]. The court specifically approves, or the individual judge approves the individual [intern] they take.

I have been trying to get the law school here to approve it [the internship program] during the summer school for the University of Florida students. I have had interns the last three summers. It is one of my projects this month, and I have already spoken briefly to the faculty about it. Jeff[rey E.] Lewis [dean, University of Florida College of Law, 1988-1995] told me to write a letter. It provides a good educational experience, and it also provides assistance for the courts.

P: It is marvelous. It certainly gives the students a hands-on line of experience. That is wonderful.

O: There is no question about that.

P: Ben, you have been in the judicial business now for a long time.

O: I have been in it thirty years.

P: I was going to say, a long time. What changes have you seen taking place? I know that is a very big subject to tackle, but I would like you to talk a little bit about that. This is a growing state, I know. There are lots of different kinds of people living here in 1994 than there were in 1954.

O: I think one of the things that has changed, that I see personally, is when I first went on the bench and when I first started trying criminal cases, the only drug case I saw was forging a prescription for amphetamines. It was not until 1967, 1968, and 1969 that all of sudden we had lots of drug cases. I mean, we did not even have heroin in the black communities, until the start of the middle to late 1960s. Then marijuana came on in, with the LSD. The entire complexity of the criminal justice process changed. Because the offenses that you would have would be the same type of offenses as far as the burglaries, robberies, and house break ins. You could already see what drugs had done because these offenses would now be drug related, meaning that the reason why it [the offense] occurred was to get money, or to get something that they [the accused] could

trade for money to get drugs. This was even before I came on the supreme court.

That was totally different, and all of a sudden the justice system has not really as yet figured out what can be done. Too many people think that the judge at the end of the line is supposed to solve the problem. When you get into one of those problems, the person at the end of the line is the one who has the least opportunity to really do something. This was a change that I do not think was for the better, looking at it from hindsight, particularly in what we did with our juvenile justice system.

I came out of a county that is a very unusual one in that they had a juvenile welfare board. They had passed a law that allowed the county to assess one and one-half mills, for the juvenile welfare board, back in 1941. That is still on the books. Their resources were much greater than in other areas of the state. They operated a juvenile welfare system that had an awful lot of community involvement because the people on the juvenile welfare board were not elected, they were really top people in the community. The juvenile judge, although he was not very happy about it, was not only a juvenile judge, but he also ran the entire juvenile justice system including detention facilities. In fact, he said, "If I could just get somebody else to take care of my personnel problems [I would be satisfied]." He had all the people running the detention facilities and all the social investigations; all of those were his employees. However, you had a lot of community involvement. A number of people gave facilities; one of them I know gave the entire home. It was a waterfront home that is still used as a facility for juveniles in Pinellas County. [But the juvenile justice system] had the community involvement.

Then we moved everything onto the predecessor to HRS [Department of Health and Rehabilitative Services], and then HRS. And the HRS people were doing all the work. What it ended up with in most counties was that [the new process] took the local community out of juvenile justice problems, thinking that this was the state government's problem, so let the state government handle it. Pinellas County still has a semblance of control, only because of their juvenile welfare board. Particularly looking at it now, I think moving into that direction was wrong.

I think that one of the things that needs to be done is to get local people very much involved with it. Most judges who hear family court matters, where there is this custody issue, want to have all the information before they make the decision. What many of them do not have is the opportunity at all to have a social investigation made of that family, where somebody will go out to look, see, and report. HRS is supposed to do it, but they say that they do not have enough people to do it.

They cannot do it on regular divorces. All HRS can do is juvenile dependency and delinquency cases. On the other hand, in Pinellas County, local [government funds] the social investigations, and they do it for judges on family law. This is one of the few areas in the state that does it. I had it when I was there, and the judges there still [have this service]. The majority of the judges in the state do not.

- P: What you are saying is that the case with juvenile law has changed very dramatically during the thirty years you have been involved in judicial proceedings.
- O: You have seen the growth and the takeover [of drug related offenses], and the change in the number and the types of criminal cases. I mentioned to you previously the change that has happened in the family law area, and on the other side the regression in the number of civil jury trials. There are other reasons for that change.

Some of those reasons are because of what we have done in this state with our judicial system. Not the least of our work was the matter of mediation and arbitration, and we were being very aggressive about suggesting these things. Some people have asked me in other jurisdictions and in other states why we have done this. My explanation and answer to that is this example. When I was chief judge of my circuit in the late 1960s and early 1970s, in Pinellas County, we were adding between 3,800 and 4,000 new permanent residents a month. When you have that type of growth, that forces you to look at new ways to do things to be able to do what you are already doing. New staff and new structure is not going to catch up with doing it.

We did a number of new things within the judiciary at that time to speed up the process, not the least of which was taking a team approach with the judges where they actively work to cover each other, and to make sure that everybody got their particular cases tried for that week. If your case was canceled, you just did not get up and go home, you took on another case.

This state is looked at now nationally as the leader in the matter of utilizing mediation and arbitration. During my tenure as chief justice, we [initiated] citizen dispute settlement centers. By the time I left, there were fourteen of them all over the state. There are still fewer than twenty. But these centers give the public an alternative, which has to be acceptable to the public, and which [serves] as a means to resolve that dispute. In many instances, that is not only acceptable, but it is also considered as being a better [alternative] because it does not cost as much and it gets finished and done within a much faster period of time.

P: How has science and technology changed law in the last thirty years? Are there many more medical cases?

O: It has given us some very hard cases. Medical technology that was not in existence in the 1970s has forced courts to make determinations and set forth some basic guidelines as to, for example, when you can pull the plug on life support, and when you can discontinue intravenous feeding. We had a case involving a wrongful birth, and [had to decide] when is that an appropriate action.

P: How about organ transplants?

O: In the matter of organ transplants, I wrote the opinion on cornea transplants because the issue came to the court. We have a statute in this state which most people do not know about, that provides if an individual is involved in an accident and does not die of natural causes, so that a medical examiner must be called, the medical examiner is directed to remove the corneas to send to the cornea bank.

Now, removing a cornea does not deface the body. There is no way that you would know that the corneas had been removed from a normal body.

The issue that had been presented to the court is whether or not that removal can take place without the consent of the people concerned or their heirs. There is an interesting series of law cases as to whether or not there are property interests in the dead body. The way the law developed until now is that they [the estate or the heirs] can get damages if the body is defaced, but they have no property interests in it [the body of the deceased].

P: Last night I heard just a little clip of the news that had to do with raising the question of whether private hospitals could refuse to treat indigent patients and transfer them to public hospitals. Is that a matter of concern to the public?

O: We had the issue; it is what they call patient dumping.

P: Patient dumping, that is the phrase being used?

O: It is called patient dumping. For instance, in this state there is a statute that requires a hospital to take in everybody who needs emergency and trauma care. Yet sometimes they cannot do that. And the issue was whether or not they were patient dumping on Jackson Memorial Hospital in Miami.

P: So these are all kinds of cases that have come up during the time that you have been on the court since 1974 that nobody even thought of prior to that time?

- O: No, you see, people ask why are these [cases] new and different now. [However,] I think one of the things that a lot of people forget, is that it was not until the middle 1970s that we had hospitals which were private corporate entities.
- P: Yes, I know what you mean.
- O: [Before that] the hospitals were either county hospitals, educational facilities, or church-sponsored hospitals. The Catholic Church had multiple hospitals, and still does. It has become different in all the testing laboratories within the hospital. The fact that you have gone to a private entity, as far as the public is concerned, they feel more comfortable suing a private entity, than they would feel when suing, for instance, a St. Anthony's Hospital, which was strictly operated by the Catholic Church, and where you have the mother superior looking at you.
- P: That saint was in the lobby as you walk in, like St. Vincent in Jacksonville. You had better not hide anything there.
- O: Concerning this whole matter of technology, going to the University of Virginia for the LL.M. program was very interesting in this area, because one of the six subjects we had for the LL.M. was "law and medicine," which was co-taught by the dean emeritus of the medical school together with one of the tenured faculty members of the law school faculty. The dean emeritus is the creator of the living will. I asked him, "How did you come up with that terminology?" The name does not really indicate what it really is.
- P: It sounds like an oxymoron, does it not?
- O: It is a very sensitive subject. And we wrote on the matter of life support. We concluded that the judiciary were not very comfortable making those decisions.
- P: You did not want to play God?
- O: Partly that, but also because we did not think that we had all the information that we should have. The courts, and rightly so, are bound by what is in the record before them. On the other hand, you have the legislature that can bring in extra testimony and [all interested parties can] testify as to all different things in a very broad way. In two of our cases, we told the legislature to do something in this area. After we have made the decisions, they have done it.
- P: After the fact.
- O: In part, the political heat is on. As it was in this matter concerning the *Browning*

decision [In Re Browning, 568 So. 2d 4 (Fla. 1992)], which had to do with when you disconnect the feeding tubes.

P: When did that come up?

O: Four years ago. It had different kinds of ramifications because of the right to life [arguments]. While Mrs. Browning could never recover, she was not terminal in the sense that this concept had been [judicially] defined. She could breathe on her own, so that she did not need the breathing apparatus. Trying to draft this [legislation], from a political standpoint and for any member of the legislature, does have all kinds of buried mines along the way. It is not something that is politically saleable. It is not one of those things that you can ordinarily go and tell the public, "Look what I have done! You ought to vote for me because of it." We still have to make determinations on technology. One of the things that we are considering now is computers.

P: Before you get into that business, I want to ask you about the medical thing we are talking about. Is that what motivated you to go to Virginia to take that program there?

O: No. I had been accepted in the first class of that program, and at that time I was involved with the appellate structure commission.

P: This was in the 1980s, was it not?

O: I went in 1982 and 1983, and my degree is from 1984.

P: Did you take a leave from the court, or did you go up in the summers?

O: No, in the summers I took a six-week vacation. The LL.M. program there is such that you have to have the same number of resident hours in class as you would for the regular LL.M. program and a thesis. It was set up on the basis of a class [that would consist] of thirty appellate judges.

P: So it was geared entirely to the judiciary.

O: You went to class five days a week, and had three classes a day. You had two classes in the morning, which were each one and one-half hour classes, and one class in the afternoon. At the end of each summer semester, you had the regular blue book exam. It would be nine hours of blue book exams. You are talking about people who have not taken a blue book exam in over thirty years. I will tell you the interesting thing about it, which we laughed about. It did not take two weeks, and the study groups all were formed, I mean just as if we had regressed [to law school days].

P: Was it geared entirely to the medicine?

O: No, there were a number of subjects. The ones that drove us bananas were "law and economics," and "law and social sciences" on the use of social sciences in the law. We had a good bit on comparative law, not only with the law in England, but also with the continental system and Russia, which had the continental system that [later] basically [merged with] the communist system. Legal history and the "law and economics" tied them together.

They [the teaching faculty] put up a time line and [marked] the important occurrences that occurred in economics and the important economic decisions made by the judiciary starting even before this country existed. It was interesting to see, and that was the purpose of this exercise, that most major economic decisions did not come from the legislative body but came from the judiciary.

P: You wrote an article about that.

O: Yes.

P: "Do Courts Set Economic Policy?" I think you agreed that they do.

O: Yes. We set the duties and [decide on] certain aspects of what people have to do. One of the things that it [the article] made all of us do, without direct influence on our decisions, was to make us look at the economic impact of what we are doing in any particular decision. It is the "what if" type [of thinking]. There are certain decisions that courts make that are policy decisions. In other words, [these are decisions] where the courts have a choice to go either way.

The faculty member at the University of Virginia who teaches "law and economics" is an economist, not a lawyer. We were the guinea pigs because we had the draft of his book, which is now *the* book that they use in that course. We told him some of his phraseology had to change. Of course, you know, judges are not reluctant to say that. I walked out of the second class, and I talked with Paul [H.] Roney [Judge, US Circuit Court of Appeals, Eleventh Circuit], who was in this class with me, along with Susan [H.] Black [Judge, US Circuit Court of Appeals, Eleventh Circuit].

P: She is a Gator.

O: Oh yes. I walked out with Paul, and I told Paul, "I have got a Bus-Ad [business administration] degree and I have had my economics, but he is using terms and definitions that I have never heard of." The other thing the faculty did was tell us

to bring a calculator that went to the seventeenth power. First of all, I did not know there were calculators that went to the seventeenth power. And then I said, "Paul, you went to the Wharton School of Finance, you probably know what he is talking about." Paul said, "Do not look at me! I have not heard anything I am familiar with either."

P: Did they house you on the campus?

O: Oh yes. They have student facilities. They are student apartments that were designed for four students. They gave each family one apartment, and these are two bedroom apartments with full kitchens.

P: You cannot fault the University of Virginia. It is one of the most beautiful in the country.

O: I have talked to Marshall [Criser] about this. There is one thing that this [university] needs, not just for lawyers but also for other professions. At their school of business administration, in Virginia, they had seventy mid-level executives from almost every major corporation in the country [living in campus facilities].

P: Are you saying we need a conference center?

O: A residence place where you can put people. We were there for six weeks. They [the mid-level executives] were there for eight weeks.

P: We know we need one, and maybe we will get one.

O: As I told Marshall, you cannot bring people in for four or six weeks and put them in a [hotel] room.

P: Right.

O: The [apartments] are not large, but from a teaching standpoint look at the ones [available] at the University of New Hampshire. This was before I went to the University of Virginia. [In New Hampshire] the instructor gave you the program to watch that he put on [closed circuit] television, and said it would be on at two nighttimes during the night, at this particular channel, and watch it [in your room]. It is something that [is needed] because now there is always [a need for] continuing education. Consider also that the legal profession requires less [continuing education] than most other professions.

P: I am sure the answer to this is yes. Have you seen about the proliferation of minority rights cases on the court? Take school busing for instance. Are these

matters still influential?

- O: We are getting some. We are not getting as much as the federal courts, which [used to] have all the 1983 [discrimination suits] and the title seven suits. Those are starting to move towards the state courts. The reason why, and most people do not realize this, is that the state courts have concurrent jurisdiction. If the plaintiff, who brings the suit, wants to bring it in the circuit court here in Gainesville instead of bringing it to the United States District Court, then the plaintiff can do that. In many areas of the country, they are starting to do that. First of all, they do it because they feel the judges appointed through certain Republican administrations would not be as liberal as the circuit judges or the state judges who would hear the case. We have certain areas of the state where that is starting to occur. But it is not just in Florida that the title seven and the 1983 suits are starting to come into the state court system. Although one circuit judge said, "What am I doing with this?"
- P: Ben, have you had any cases involving Indians trying to establish the gambling facilities in Florida, or are those federal cases?
- O: We had something that involved the jurisdictional question, what they could or could not do in Hillsborough County. I am trying to think of what the real issue was in that case.
- P: I read something that said the Oklahoma [Seminole] Indians were trying to do something just west of Tallahassee, trying to set up a gambling emporium. That would be a federal issue.
- O: The big thing about it is how far it goes. Is it on their land, and it is an issue as to what is their land, and once they are within [the boundaries of] their land, then what kind of state jurisdiction can you have over it? There are multiple cases like that in Arizona. I wrote the [opinion in] the Indian case. It was a liability case, part of which was whether the Indian tribe could be liable under American laws for [a negligent] occurrence.
- P: If somebody got hurt for instance.
- O: Yes. It is an interesting area, to be honest with you. The only way it is going to be resolved is for the United States Supreme Court to take a case and resolve some of these jurisdictional issues. The federal courts [have made decisions that] are all over the lot. It is one of the things the United State Supreme Court has not been able to do, make sure its own federal courts are consistent with the law. That is where I think we are way ahead of the federal system.

In administering federal regulations and federal statutes, the federal courts have

substantial conflicts [in their decisions]. One example of such substantial conflicts is in the application of the internal revenue code. The United States Supreme Court just cannot take all of those cases that are in conflict, from different areas of the country, or they would not be taking anything else. So they have taken the view that they are only going to take policy decisions. They are not going to worry about these conflicts.

On the other hand, we look at our courts, and we say that one of our primary responsibilities is to make sure that there are no conflicts there. That is one of our primary functions, to make sure that the law is applied evenly in all areas of the state.

P: Ben, what would you consider your most important decisions, or the opinions that have been the most influential in your career? I was going to ask you about *Canakaris vs. Canakaris*. Would you consider that to be one?

O: Well, everybody does. It has the record in my office for the number of drafts.  
[Laughter]

P: What was the case? I just have here that it was a fifty-fifty property split between spouses?

O: No, it was not that. It was an involved domestic case that had multiple issues. For that reason, it is cited for different purposes. There are three separate and distinct legal issues in the case. It is cited primarily in the family law area for the principle of what is [known as] equitable distribution. The judge has to consider that just because the wife stayed home and had to take care of the children, it does not mean that the husband gets all the money and all the property solely because it is in his name. That is the primary [reason] that I think the case is cited for.

The second reason it is cited for is a [principle] broader than the family area. It deals with what we talked about a little bit earlier, judicial discretion. One of the problems was that in the district courts of appeal, in certain instances, appeal judges were second guessing the trial judge. We found that one of the reasons why you give a trial judge discretion, is because no fixed rule can apply to every situation. Primarily, the trial judge has the superior vantage point to hear and listen to the parties and be able to make a determination respecting the custody of children. He or she has the advantage of both listening to the parties and listening to the children. In the appellate court, of necessity, the judge is reading from the cold record.

The other thing I myself did in custody cases is that I would have a court reporter in there. And I would always talk to the children. The first thing that I would do

is try to insist that they [the parents on opposing sides] not make the children make a choice. I said, "You are doing a real disservice to the child if you force that child to make a choice. That child is never going to forget that decision." But if it came to that, I had to talk to the child, and I do not think I ever had a lawyer who objected to it. I would talk to the child without the lawyers or parents, just the court reporter. I would do it many times without the court reporter.

But in the matter of discretion, the other time we give broad discretion to the trial judge, for example, is in the area of granting a new trial. It is a check on the jury system when the judge says [about the jury decision], "This is just contrary to the weight of the evidence in this case." It does not allow him or her [the judge] to say the other side wins, because that is a matter of law. It is a matter of discretion for the judge to say, "I think this has to be tried again," and grant a new trial. The rule is different if it is the second time around. Then the trial judge does not get the deference that he does the first time around. But the most important fact is that the [trial] judge is there. In domestic cases in particular, the district courts of appeal had been second guessing trial judges so that there was no consistency in the law. When we first took *Canakaris* as a case, we were going to try to resolve all the conflicts in the district courts, mainly on how the district courts were dealing with both custody and support and alimony questions.

Finally, we decided that we could not harmonize the decisions of the district courts. So we said, "First of all we will set the standard in what this case [*Canakaris* case] has in it. And it will be not just a standard for [this case], but we will spell out in detail to the district courts of appeal how to review a decision that was discretionary by the district courts of appeal." We used what is called the reasonableness test. If reasonable men could differ on what they would do in the same circumstances, you have to let the trial judge's views *prevail*, because he or she was *there*. You do not second guess from up above. That case is cited a good deal as a precedent for judicial discretion, not just in domestic relation cases, but also in other cases where the judge has discretionary authority.

You asked what *Canakaris* was about. It was kind of an unusual situation. I do not remember whether he was a dentist, but I think he was. He and his wife had been separated for at least ten to fourteen years before they got divorced. I am trying to remember what the facts were as to what the trial judge did, which we thought did not balance at all with what she had contributed. Because to begin with, she had worked in the practice when he first started up. The value of their land and properties had substantially increased. Although she was not asking to divide it down the middle, she was not asking for that at all [but she got nothing].

John Rawls dissented in the district court opinion, and the case was heard in the

supreme court. I adopted part of his dissenting opinion. Here you have two conservative people who have looked at the case, John on the district court and me, at least conservative at times, on the supreme court. Yet we are the ones who are considered to be progressives in domestic relations. But there had to be some fairness, and that is really what it came down to, when people had acquired property during their marriage. There had been a [court-established] doctrine, which that opinion explains. What it [the opinion] depended on was special equity. The majority on the court, and the husband, had used [the principle of] special equity to say that she did not have special equity in the property, so she was not entitled to any of it. Special equity was a principle of law that was first designed by Florida judges on the supreme court to eliminate the harshness of a rule that said if a wife committed adultery, she was not entitled to alimony. The special equity doctrine provided that she could [be entitled to some property] if she created it, or if she caused it to be brought into the marriage. Then she had a special equity in the property.

In this instance, they tried to use that doctrine to say that she was not entitled to anything because she could not prove special equity in the property. He had bought it, and it was in his name. The fact that she had been there and what she had done did not make any difference in the matter. What we said was that there had to be an equitable distribution. The interesting thing about such cases, and *Canakaris* is certainly one of them, is that there was a substantial amount of publicity involved. The other [recent case of mine] that has had a substantial amount of publicity concerning it is the *pro bono* case, dealing with lawyers doing *pro bono* work.

P: I have a note to ask you about that.

O: It is interesting that you look at tomorrow's problems more than yesterday's. There are 1,400 cases that I have either authored or [in which I have] written either dissenting or concurring opinions. There are 650 authored opinions. I do not know whether they told you or if you know that we do not put our names on death penalty cases, or on Florida Bar rules cases. I have been putting my name now on the rules cases because there is no reason for that policy, which goes way back, not to put your name on the bar discipline cases or the death [penalty] cases. That was to indicate you were speaking *per curiam*, for the court; that is what *per curiam* means, for the court. But the opinions, death cases, Bar rules cases, and so on, make up the 1,400 decisions. And what they do at the library, West [Publishing Company] sends them copies of the published cases, so that they bind my cases alone in separate volumes. I have got five volumes of cases through 1990. There are enough [decisions] now for two more volumes. But among them, there are other cases that you think are more important that the media does not think so.

P: What about that single district case that you wrote the opinion on approving the 1982 apportionment plan voted by the legislature, which created the single member districts? That got a lot of publicity at the time because I remember it.

O: The big thing about that case is that the senators did not want to have to run again. What we said in that was, "Sorry, you are going to have to run." The interesting thing about that particular case was that [without a new election] you would have two senators, and one in particular, who would be representing a district in which no one could have voted for that senator, because they [the legislature] had so changed the district.

P: The boundaries?

O: Yes, so that this senator was not in any way involved with representing any constituents within the *new* district lines.

P: Did you all have to approve that funny looking congressional district that Corrine Brown [member, Florida House of Representatives] was elected from, or did that not come up before the state court?

O: That did not come up before the state court.

P: That came out of the last reapportionment.

O: Yes. We had a similar type [of case] in a senate district down in the Tampa Bay area that I dissented from.

P: Of course the congressional side is a federal thing.

O: That is another responsibility of the Florida Supreme Court that is somewhat unique. It is one among a number of what I call our political responsibilities, which the constitution gives us. One of these is to approve the reapportionment plan of the legislature. The second one is giving advisory opinions to the governor with respect to his constitutional duties. Surprisingly, we have not received many from Governor Chiles. We received a moderate number from Governor [Robert] Graham [governor of Florida, 1979-1987, US Senator for Florida, 1987-]. But we used to get almost one a month from Governor Askew .

P: How about [Bob] Martinez [governor of Florida, 1987-1991]?

O: Governor Martinez was also moderate. We had a few from him, but not that many. Both he and Governor Chiles did not ask for as many as Governor Askew did.

P: You did not get any from Claude Kirk because he knew all the answers ahead of

time. Are you all expecting cases involving refugees, the Cubans and the Haitians? Are they likely to develop cases coming into the courts?

O: We had major cases involving Dean [Joseph R.] Julin [dean, University of Florida College of Law, 1971-1980] here at the law school. It was very substantial. I came for the memorial dinner that they had for Dick Julin and I talked to his wife. I said, "You well know what few others know here. We were probably the most sued public officials in the state of Florida, between Dick and myself."

P: On the basis of refugees?

O: Dick Julin had created a program for Cuban-American lawyers.

P: I remember that now.

O: The problem was that many of them could not pass the Bar [primarily because their English was not that good]. First of all, they tried to get the supreme court of Florida to admit them, period. Then they brought suits against Dick alleging he told them that if they went through the course, they would be admitted to the Bar. They brought suits against me because I was chief justice at the time. By the way, most of the suits were [section 1983 suits]. I think I had two file drawers of lawsuits. As far as the Cuban refugee problem, we inferentially had petitions. I do not think we have had a direct case.

P: But with more and more of them [refugees] piling in you are likely to.

O: Well, that is true. It is kind of interesting [how things change] knowing what I know about the problems that we had with the Cuban-American lawyers. Three years ago, I had two research aides. Both of them were children of Cuban-American refugees who came over in the early 1960s. In fact one of them is from here in Gainesville, and his father was a faculty member. [One of my research aides was] Andy Solis, whose father has now retired as a faculty member. He was an excellent tennis player. He played for Alabama because Florida did not give him a scholarship. Then he went to the Law School at Florida State University. The other aide was Cris Martinez, who graduated from here.

P: I know that name of course.

O: She was chancellor of the honor court here. Sometimes I have to act like a football coach during good economic times to do my recruiting. She is a product of these moot courts. I came to the law school here, and she ended up in one of the moot courts among the four [finalists]. She ended up to be the outstanding lawyer in that presentation. I said to her, "If you are interested, submit your

resume." I ended up selecting her.

P: I wanted to ask you about a controversial matter, the death penalty cases. They come before the court obviously. I understand from the research that I have done on you that you have been generally unsympathetic to death penalty cases. Is that a fair assessment?

O: No, the [profession] kind of looks at me as one of the hardnoses. *Miami Review* or *Broward Review* ordinarily put Justice Grimes, Justice McDonald, and myself on the conservative end of the court. It is kind of interesting because Parker Lee was saying at one stage that, "The two old conservative hardnose trial judges appear to be the only two doves on the court." He was talking about cases where the jury had recommended a life sentence, and the judges recommended a jury override. Parker Lee had really been stronger on it than I had been, on the matter of not approving the judge override in those particular circumstances.

P: Would you consider yourself to be a pragmatist? Would that be fair?

O: Probably. I do not talk about it much. I have written about the matter, and I feel that judges, whether a trial judge or a supreme court judge, who are responsible in the matter of whether or not the death penalty should be imposed, should be very careful in what they might express. For instance, I say this in context of the trial judge or circuit judge, there can be no death penalty unless that circuit judge imposes the death penalty. We cannot do it.

P: You cannot do it?

O: We cannot do it.

P: You can override the circuit judge though, can you not?

O: We can override the circuit judge under some particular standards based on the principle [that the penalty] is not proportionately correct. One of our responsibilities in our review process is to make sure that the death penalty is administered as proportionately correct as possible. That [has been] the case [since] I came to the supreme court [which was] after the legislature had passed a new death penalty statute for this state. In 1976, the United States Supreme Court approved that death penalty statute together with the one from Georgia and the one from Texas.

Starting in 1974, I have sat on every death penalty case in the modern era. These cases are, as [US Supreme Court] Justice John Paul Stevens [1920-] said, "different." You do not look at a death penalty case the same way as you look at other cases. Every justice on the court now has a responsibility to write

in the neighborhood of ten death penalty opinions a year. That includes the post-conviction relief. We do have a rule [that provides] if you [as a justice of the supreme court] were assigned the case initially, when it comes back up on post-conviction relief, you have it again, so that once you have it, you do not lose it. I have a number of cases where I have written four or five published opinions for the same defendant for the same incident because of the post-conviction relief process.

They [death penalty cases] are not as much a drain on the court now as they were through my first eight years, or ten years, on the court. At that time, we were the ice breaker. As I said, [our death penalty statute] was approved together with those of Georgia and Texas. It was approved first, so that in everything we were doing, we were in effect making the law and trying to conceive and form the principles and what they would do.

At one stage, during the time I was chief justice, we had about twenty death penalty cases backed up. They were backed up because there were four separate issues. We had to make up our minds on those issues or those cases because they were involved with each of these cases, not all four in each of them, but at least one if not more. I set an agenda for the conference for the court, and I called it my death agenda. I did not want them to start thinking about other cases because I wanted to get those four issues decided. Administratively, it was just like a dam in the court. Until we got those issues decided, cases were not going out. Arthur England said, "Why did you do that?" I said, "This is the only way we are going to be focused enough to really get to it, and not avoid it." What has changed now is the fact that most of the principles have been established, and we are applying those principles. It was a very difficult time during that first eight to ten years, from 1974 to 1984 in particular.

- P: When cases like that come up before you and the court, do you agonize over that? Does it cause sleepless nights?
- O: You think about it. Things that you think about more are the ones where you have people who did not do anything wrong and [who nevertheless] are going to be substantially affected by your decision.
- P: Like the child custody cases?
- O: Yes. Those are ones that truly bother you I think on what you do and what you do with young people on that matter of sentencing. In the death penalty cases, the one thing that you do is try to make sure that you know everything that you need to know. You do have a record in the case, and there are certain things that bring up red flags to you. Sometimes when you have been a trial judge and you have tried those kinds of cases, you sometimes get upset at how people are

represented or how the prosecutor is conducting himself during the course of the trial. You say to yourself, "What in the hell is that trial judge doing not pulling back on the reins?" When you come down to it, you have to make sure that it is fair, that what we are doing is consistent. It is not an easy part of the work. We will have six death penalty cases on the oral argument calendar next week. My staff is jumping with joy, [because] I do not have one.

P: Ben, let me move away from this and ask you about your Romanian adventure. Tell me about it. What brought it on and who started the whole thing? What were you doing over there?

O: Sandy [Talbot D'Alemberte] gets me involved in things along the way.

P: Who is he?

O: He is now president of Florida State University.

P: And former dean of the College of Law at FSU.

O: One of his other projects with the ABA has been a project called CEELI [Central and East European Law Initiative], which was to provide legal aid to eastern bloc countries. It was in early November 1990 when I got a call and he asked if I would be part of the delegation to go over to Romania to assist their parliamentary drafting committee.

P: This is to Bucharest, Romania?

O: Yes, Bucharest, to help them develop a constitution.

P: They had just overthrown the dictator [ten months earlier].

O: If you will remember, the dictator [Nicolae Ceausescu] had been removed from the communist [party headquarters] building by helicopter by the middle of January [1990], or was it in December [1989]? Then he was executed.

P: Yes, he and his wife.

O: Then they had an election. The people who were elected were almost all communist people, officeholders, although they called themselves different names [such as socialists] at the time. They also recognized what the demands of the people were at the time. One of the two Fulbright scholars [recipients of a scholarship named after US Senator James William Fulbright] involved with our group, said six months ago [the slogan] [had been] "freedom now." By the time we got there in November [1990], the [slogan] was "privacy now." It was still a

country in a state of major, major change.

Ours was a delegation that was sent over, and included [people such as] Dean Barron, from George Washington Law School, who is interesting in his own right. He was on the staff of Sam Ervin's [1896-1985; US Senator from North Carolina, 1954-1974] committee during the Watergate investigation. He was dean at George Washington Law School.

We had another faculty member, another academic, from the University of Chicago, who backed out on the last day because his wife would not let him go because there had been newspaper stories of demonstrations in Bucharest. And it is true, [when we were there] there was a ten-thousand-person demonstration walking by my hotel. We also had a volunteer, who I thought was the most impressive member of our delegation. I thought [her presence] gave us more credibility than anything else. The young lady, who was thirty-five years old, had come over to this country at age twenty to marry a Romanian who was [living] here [in the United States]. Ceausescu had let her out of the country during the time he was trying to get the [United States to allow Romania] most favored nation status. She was one of the few that they let out. Her father was a surgeon over there, but had been subsequently imprisoned. She, interestingly enough, finished her undergraduate degree at the University of Columbia. Then she attended the University of Virginia Law School. She became a federal judge's research aide, and ended up practicing law on Wall Street.

P: She went from communism to capitalism.

O: By the way, the law firm she worked for just deals with high technology problems. [Her name was] Gabriella Cacuci.

P: How long were you in Romania?

O: We got there on Saturday night, and left the next Sunday.

P: So you were there a week?

O: We were there a week.

P: Was the hospitality good?

O: They warned us in advance about the water. We were in one of the best hotels and it] was paid for by the Romanian government.

P: Was it the Sheraton?

O: No.

P: One time while we were there we had dinner at the Sheraton. It was all arranged ahead of time too. It was all right.

O: The hotel was named "Bucharest" too. Only one out of five lights in the hallway was on. We had been told there were power shortages, and not to expect hot water except for about two hours a day, because of their energy problems.

One of the things the [Romanians] wanted us to do, and that I had to do [before we left], was write an article on one of the [predetermined] subjects [and submit it] in advance. I undertook to write on the independence of the judiciary. I talked to Dean Barron, and we decided that we would write on an undergraduate college-senior high school level. That is basically how we wrote or tried to write our articles. I had two weeks to get the article done, and then go.

I did one other thing, [since] we have always gone together. I called the Romanian Embassy and said, "Can I bring my spouse?" There were going to be fifty-six delegates over there from all the European countries. We were the only ones outside of Europe who were included. [At the Romanian embassy] they said, "Sure, you can bring your spouse." I said I would pay for her way. We got over there, and out of the fifty-six delegates I [am] the only [one who brought his wife]. [The living conditions were such that] I understood the reason why. I ended up in the conference room, while my wife had the more interesting [time]. All delegates were in the conference room and they did work. I mean, we went from 8:30 in the morning to 6:00 at night.

P: I hope they took her to do a little sightseeing.

O: They assigned her [a person] she called a "Mary Poppins" from the foreign ministry. They asked her where she wanted to go, and they took her wherever she wanted to go. She was originally going to go to the orphanages, but she decided not to go there. She did go to the schools. It was more open than we expected. The chief justice took us to dinner. Gabriella knew where we were going, and I did not know it. She said, "You know this is a communist club and hotel that we are going to for dinner tonight." Gabriella knew everything. And I will tell you, [this club] had everything that every private club has in the United States. It was no different.

P: Except the people out on the streets did not know about it.

O: They did not know about it. And you could tell that by who drove us, and how different [they were from the people on the street].

P: It was an interesting trip.

O: It was. We worked afterwards. We went through three drafts of the [proposed] constitution. [Their leaders later came to Washington, D.C. to discuss those drafts with the members of our delegation.]

P: Have they adopted it?

O: Yes, they did.

P: Is it a democratic constitution?

O: It is, and our main point [of contention] was an independent judiciary. We won partially, not totally. I even considered it was winning the battle because the French and the Italians were arguing for the continental system, which [does] not [have] an independent judiciary. And now [with the new constitution, the Romanians] do have an independent judiciary. It is a little bit different, but it was what I consider to be interesting in a number of respects because of the time. The bullet holes and the flowers were still there. In fact, one of our meetings with one of the leaders of the parliament was in that same communist building where Ceausescu was taken from just nine months ago.

P: Ben, I want to talk about you now. I want to finish this up with getting some information about you. Are you a religious guy? I know you are active in the Episcopal Church. Did you grow up in the Episcopal Church?

O: Yes. My Grandmother Tibbetts, the one on the Forsythe side, was very active in the Episcopal church.

P: Were your parents religious?

O: Well, it was traditional. Most of the time, you do not find many Episcopalians who were raised in the Episcopal church.

P: I know. They switch over later when they become successful.

O: I am one of the exceptions on that. I was very active in the church in St. Petersburg. My parents were members of St. Peters, which is a cathedral down there. I was out on the beach, but we only lived one block and one-half from the Episcopal church out there. I [served as a] lay reader, and I was [a member of] the vestry.

P: I have you as a lay reader, vestryman, and senior warden.

O: When I went to Tallahassee, for one reason or another, I was less active. Although you will see that Bishop [William] Hargrave was at my investiture, and did the invocation. He was the Bishop of the Gulf Coast Diocese at the time. Frankly, we had a dispute in the parish. I had left the vestry a year before. I was supposed to try to mediate the dispute. My wife was really upset about it because we had friends on both sides. It [had to do] with the rector and what the rector was doing. Some wanted to get rid of the rector, and if the rector did not leave, they were going to leave the church. When I got appointed to the court, the Bishop called me and he said, "That is a chicken way of getting out of the job."

P: Have you been involved with the church during the years you all have been living there?

O: We go to Church of the Advent in Tallahassee, which has a younger group [of parishioners]. And that is the reason we went there to begin with, because our daughter was in eighth grade. She really liked the people in that church. It still is a very young church.

P: You are [attending] regularly?

O: Yes. I try to go at 8:00 in the morning.

P: What do you do for fun?

O: Two things. The motor home is there and we did a lot of things with the kids camping-wise. And then I am still a tennis buff, Sam.

P: You still play tennis regularly?

O: I try to. I have three more tennis players on the court.

P: Where do you play in Tallahassee?

O: I live right out at Killearn [Country Club], so we play there. There are a number of private courts in town. They have more private courts in Tallahassee [than you would think].

P: I was really getting ready to ask you if you have one in your back yard.

O: No. In fact, I am going to leave this with you, which was kind of an interesting story a Democrat did on me. I fought them taking that picture.

P: I do not know why. That is a good picture of you. I like that picture. That is a

very good picture of you.

O: I still try to play. We try to do everything together [as a family]. I try to keep the family close together. We took the whole family to the Sugar Bowl game. We originally were not going to do that. During our kids' teenage years, we had a travel trailer. On New Year's Eve, we went to Fort Wilderness at Disney. We had a couple of other people with us, in fact one other judge and his family. We could turn the kids loose there. On New Year's Eve, they would stay open until 3:00 A.M. with live bands and everything else. We were going to do this again with the grandchildren this last year. But we ended up going to the Sugar Bowl. My middle son and his family stayed in a motel. My oldest son, who is now a county judge in Pinellas County, has a motor home, and he and his two children stayed there. We still try to do things together regularly.

P: Do you travel much?

O: Part of the job is traveling.

P: I meant just for fun. Do you go on cruises to the Caribbean?

O: We have done two of the Gator Escapes. Just before we went to Romania, we did the Gator Escape to Scandinavia and Russia. We have been to Russia, which was an interesting trip in itself. You have to understand putting thirty-eight Gators on two cars on a Russian train with a Russian crew that goes for seven hours from Helsinki to Leningrad (now St. Petersburg) and back.

P: The bathrooms do not always work.

O: Well, yes. We had an interesting tour director, she had a number of contacts in Russia. In fact, on the way back, she comes in, and this is dangerous and she knew it, she gave each compartment of Gators a liter of vodka and a big fresh dish of caviar. By the time we got to the border, I will tell you that Russian crew will never forget the Gators.

P: You were ready to start a revolution. Did you all sing?

O: We did another trip, in fact Parker Lee was on that one. We did the Alaska trip two years ago.

P: You enjoyed that?

O: Yes. I do a program at Oxford during the summer. It had been every two years, and then every three years.

P: So you go to England?

O: Yes, for two weeks; [the program] is for judges. [I codirect the program] with Chuck Earhard of Florida State University; it is cosponsored by Florida State University and the National Judicial Bar Association.

P: So you get a chance to get out of Tallahassee occasionally.

O: Regularly. My wife thinks we get out too much.

P: Are you a reader?

O: Not as much as I probably would like to be.

P: What do you read when you do read, history?

O: Probably history. When you are in Tallahassee, there are a number of things, from the standpoint of the court, that you try to do. What we have done recently is pick up talking books and listen to them. Some of the interesting ones were [about President Harry] Truman and [about General Norman] Schwarzkopf, both interesting in the context of how they were presented. Schwarzkopf does the narration himself. And *Truman* is narrated by the author.

P: David McCullough?

O: Yes.

P: Do you know that his son is married to Bob Graham's daughter?

O: I did not realize that.

P: He is very proud of that too.

O: I will tell you who else is Bob Graham's good friend, and who has done a lot of Bob's pictures and family pictures, and that is my second son Robbie. Whenever the [Grahams] see me, they do not ask about anything except how Robbie is doing.

P: Bob sent this [copy of the book] up to David McCullough to autograph for me. Are you going to retire?

O: I have four more years that I have on this particular term. As long as I am healthy and I am contributing, [I will stay on]. I enjoy what I am doing. And I have been very fortunate with the people I have been involved with, all the way

along the line.

- P: You have a reputation of being very popular with your staff, and having great morale in your office. I know that it sounds a little bit vain to admit that, but that is true, is it not?
- O: Let me put it this way. It is kind of the fun part of the job, Sam, to have bright young people [to work with]. When I recruit, I have tried to not just recruit people who can do the academic [work] and have the brain. I have tried to get people who I see have done some other things, and are interested in contributing. Actually, I bring them into the decision making process as to who I should hire next. Frankly, they see things that I do not see. I remember one [person] who came in and she had a really superior record. They told me, "Judge, no way does she fit in here."
- P: That was good advice.
- O: Yes. I look at the fact that they have done some other things. As a result, I have had a president of the student body in here, Jeff Jonason, who worked for me. I have had Cris Martinez, who was chancellor of the honor court and captain of the moot court team. Jeff was a national merit scholar. Cris was multi-lingual, she also spoke French.
- P: Ben, I know we are moving toward quitting time here. There is one area that we have not said a thing about, which I would like you to do and mention briefly if you like. Your love of history was reflected with all the work that you did [at the time of] the Bicentennial of the United States Constitution. Earlier than that, you had worked on the Bicentennial of the Declaration of Independence. Can you sketch out a little bit of that [work] for us?
- O: I think it was interesting because Bob Graham called and asked me if I would do that. He said, "We are behind on this." Chief Justice [Warren] Burger [1907-1995; Chief Justice, US Supreme Court, 1969-1986] had called him directly. To be honest with you, at the time, I did not know whether I wanted something additional to do. But also, it was something I had an interest in. I think it was one of the most interesting things that I have done.

I have learned an awful lot that I thought I knew, but I found out I did not. Also, I think one of the things you look at is whether you are able to accomplish anything with it. When you talk about the Constitution, I think one of the things is that the matter of education in schools may not be [pragmatic] enough. What Annette Pitts [director, Florida Law Related Education program] did with the sponsorship of national moot court competitions was getting students involved in government so that they understand it, and [so that they] also understand the reasons for

certain provisions in the Constitution. One of the things that I am most proud of is that we left something as a result of the celebrations, not just the scholarship at the University of South Florida [for teachers of history], but also a number of the programs that were started and that are still continuing. Not the least of these, and one that still gets regular publicity, is the "Justice teach-in." All seven of the justices on the court go out to various high schools throughout the state during Constitution Week in September of each year. There is kind of a competition as to where the justices will go. We let Annette Pitts choose. For example, I went to Panama City, and that high school won the statewide moot court competition. And they ended up seventeenth in the national competition.

P: It seems to me it was important to call attention to the event itself, and you clothed it in a mantle of education and made it that much more valuable.

O: I have always used a very short quote from Jefferson, which is significant when you think about it: "If this country expects to be ignorant and free, it expects what never was and never will be." The other thing which I think is important, and which has come to me mainly from the comparative law, is that a lot of people do not realize how different we are. That [we are different from even] our closest western allies from whom we received our legal heritage. A lot of people do not realize that there are very, very few countries in the world where they can challenge an act of government before an independent entity that is not controlled by the government itself, or [is not controlled] by the executive or legislative branch. That was one of the primary purposes and functions of the judiciary that was created by Hamilton and Madison as they expressed it in the *Federalist* papers.

When you talk to people and you say, "You know if you were a citizen in England today, you cannot challenge an act of Parliament as being unconstitutional," they look at you and say, "What do you mean, how is that possible?" Or if you were a citizen in France, you cannot challenge an act of their assembly as an individual citizen and say, "You, the assembly, cannot do this." That is really what makes us different. Somehow, we have not done a very good job of getting that message out.

P: Have you lived a full and satisfying life?

O: Let us put it this way, I am still living a full and satisfying life. That is one of the things that I think [makes me] most fortunate. One of the things that you look at being able to do is being able to contribute and make a difference. I stand in the position to be able to make a difference, in certain instances, and to do things to improve what we have. Being on the judiciary has been a challenge not just in the past, but in the future. Right now, in this year, we are seeing major changes in how disputes are going to be resolved, how the practice of law is really going

to be in the future. There will be multiple changes due to technology, but also due to differing needs of the public that we serve.

P: Ben, how old are your grandchildren?

O: One is just twelve, and the other one will be nine.

P: So they are old enough to understand. What are you going to tell them about the future? Are you going to give them any good words of advice of what you expect them to do? They are going to live in a different kind of a world than you and I have been living in.

O: Being able to communicate to people and understand each others' needs and each others' differences is going to be even more important. I think in the future that it is going to be important to be multi-lingual for many reasons. I think there is going to have to be a lot of understanding for which a lot of people would wish certain problems would go away. It is not going to be an easy world to live in, in one respect. But in another [respect] if one can take an affirmative matter and attitude, I think it is going to be a much better world.

P: So you are looking at the future with optimism.

O: I think that is the only way to look at it.

P: And survive and maintain your sanity. Ben, this has been a very pleasant experience. Is there anything that we have not said?

O: There are a lot of things that I reviewed when I went through things [that we have not covered]. When I was chief justice, I ended up presiding over the senate in an impeachment case. I was able to make judiciary remarks to a joint session in the house and senate; Rosemary [Barkett] did it two years ago.

P: Maybe what we ought to do is continue this interview at some later time.

O: I can do it. Or I can send you some other things to complete the file.

P: Please send me everything you can, and we will see if we need to get together again. I have enjoyed this so much I would like to continue.

[End of the interview]