

**May 12, 2010**  
**Daniel J. Meador**  
**Oral History Interview**

Daniel J. Meador, an alumnus of Auburn University, is James Monroe Professor of Law Emeritus at the University of Virginia School of Law. After earning a law degree at the University of Alabama, he served in the Army with the Judge Advocate General's Corps during the Korean War. After further legal studies at Harvard University, he worked for a year as law clerk to U.S. Supreme Court Justice Hugo Black. For most of his professional career, he taught law at Virginia, but also served at various times as dean of the University of Alabama School of Law, and as an official in the U.S. Department of Justice during the Carter Administration. In this interview, he discusses his career, his writings, and his perspective on the judicial scene in the United States. Dwayne Cox, Director of Special Collections and Archives, conducted this interview. David McRae, Graduate Assistant, prepared this transcript.

Cox

Today is May 12, 2010. I'm here with Professor Daniel J. Meador, retired James Monroe Professor of Law at the University of Virginia, Auburn graduate, to conduct an oral history to record Dr. Meador's recollections of his life and his career. We're following an outline that will be filed with the interview, and the first topic on the outline, sir, is your family background. Can you talk a little bit about that?

Meador

Well, very briefly, my father came from Marengo County, where his family had been for several generations. Everybody there came from South Carolina. Everybody within fifty miles of where he grew up was either from South Carolina or the children of people from South Carolina, and his mother's family was from a place called Rembert Hills, in Marengo County, and he grew up in a nearby place called Myrtlewood. I've written all that up in a book called *Rembert Hills and Myrtlewood: From Cotton Kingdom to Great Depression*. So all of that is recorded in that book. My mother's family came from Cahaba, in Dallas County, which was the first state capital, as you may know, and that's where I spent a lot of my childhood. I did not get to Myrtlewood, Marengo County, very much growing up, but I spent a lot of time in Cahaba, with my mother's family, and I think that had a lot to do with my interest in history. Growing up, I realized we were in a very historic spot, and I explored it for myself considerably. I have written up my mother's family in a book called *At Cahaba: From Civil War to Great Depression*. So anyway, that's my family background, roughly.

Cox

Okay. What about your education? I know you went to the Citadel....

Meador

I did. I went there a year, and as you know, it's a military college, like VMI. They are two very similar places. And I came home from that. There are various reasons why I didn't go back, and I won't go into all of those, but I do not regret not going back. It was an interesting year. In fact, I had some very good instructors there that I remember very well. But I didn't go back, and I came to Auburn. That was sort of almost by default, because my father graduated here. I had an uncle who graduated here. I had two other uncles who attended here, but did not graduate here for various reasons. So I came here. Incidentally, in connection with this interview, the other day I went back and found my father's *Glomerata*. He graduated here in the class of 1908, and I went through his *Glomerata* the other day. Amazingly, in his ... graduating class, with the whole institution, which was then, of course, Alabama Polytechnic Institution, there were 95 graduates, for the entire institution in 1908. So we've come a long way since then. But that was a fascinating book ... to have. And I have a *Glomerata* from 1948 I found among my disorganized books, exactly 40 years later, so it was interesting to compare them. Anyway I came here, and I pursued what they called a pre-law curriculum. It was essentially, though, what I chose were mostly history courses, so, in effect, I almost had what amounted to a history major here. My major interest here and activity here was in the debate team, and we ... had a good debate coach, a young instructor named Richard Bjerberg. It was a Dutch name.... And we took a lot of trips to tournaments. There were debate tournaments all over the place. And we had a team, we would typically go in a group of four, ... two two-person teams. I can recall going to Mississippi State College for Women in Columbus, Mississippi; Ole Miss at Oxford; LSU; Tulane; Spring Hill in Mobile; and some of these were regional tournaments. There was an annual debate tournament, or used to be, at Spring Hill called the Azalea Debate Tournament, and they'd bring in teams from all over the Southeast. Same was true at Tulane. It was a southeastern regional tournament. That was the most fascinating aspect of my Auburn experience, I would say, and its educational aspect, because we had very substantive topics to deal with, and it required a good deal of research to prepare, and so on, and then of course, it was great public speaking experience. And they had interesting features at some of these tournaments. In Tulane, I remember, they set up a scheme whereby you would draw a topic out of a hat, and you had ten minutes to prepare to present that topic to a panel of three judges. And I'll never forget my topic was ... "Can Catholicism stop Communism in Italy." I had ten minutes. I cannot tell you now what I said, but anyway I had to go in before these three judges and present it. Fascinating things like that connected to these debate tournaments. So that was really the outstanding part of my Auburn experience. I was also a member of the KA chapter here. But I was not a big into that, I guess you would say. I mean, I enjoyed it. I ate meals there, and one thing and another, but I was not heavily on the fraternity scene, I would say. So anyway, from there I went on to law school at the University of Alabama, where I spent three years in law school.... When I got to law school, within one week, I said, this is for me, this is where I really belong. This is what I've been waiting for all these years.... I really took hold of that. It was fascinating.... And I went through three years there with that, and graduated. And at that time, the Korean War was underway. I had an ROTC commission. And after I graduated, I went with a Montgomery law firm, realizing I'd probably be called to active duty. They had deferred me to finish law school. And I stayed in Montgomery maybe two months, two and a half months, with the firm Hill, Hill, Stovall, and Carter. And then I did get called to active duty

in the artillery. Went to Fort Bliss, Texas, and then on to San Francisco, with an anti-aircraft unit. And then I was transferred to the JAGs, since by that time I had graduated from law school and been admitted to the bar. And I transferred into the JAGs, and I went to the JAG school in Charlottesville, Virginia, and then on to Korea, where I spent a year trying court-martial cases. Came home, and meantime, ... I was a little uncertain about whether I might want to go into teaching or practice, but I figured either way, it would be a good idea to refresh myself in the law, so that's when I applied to the Harvard Law School for a year of graduate study, and I was admitted there, and spent a year up there, which was a fascinating year. And then is when I was appointed law clerk to Justice Hugo Black, and spent a year in Washington. So that's my education, basically. Formal education, anyway.

### Cox

... You got a little bit into employment history with the Judge Advocate General's corps and your clerkship with Justice ... Black. Talk more about your employment history, the jobs you've held and what you've done.

### Meador

... Okay. Well, from Justice Black I came to Birmingham and joined as an associate the law firm of Lange, Simpson, Robinson, and Somerville. And it was to a great extent a litigating firm, which was my interest. My interest has always been in litigation and courts. And I stayed there, and that's when I began to really sort of think I wanted to go into teaching for a career, and eventually I made that decision. In fact, I was there two years with Lange, Simpson. And then, of course, there's always the problem of how do you get into teaching from the outside. And in those days, well, they still have an annual meeting of the Association of American Law Schools. And that's where all the aspiring young teachers go to see about getting hired somewhere. It used to be called the slave market. And so I looked at the slave market. Meantime, when I was in JAG school in Charlottesville, I had met the dean of the University of Virginia law school, a man named F. D. G. Ribble. I had met him during that time there in the JAG school, and I had a good friend in Richmond who also knew him well, and he put in a word for me with Dean Ribble. So I met him at the annual meeting of the Association of American Law Schools. We had lunch together, along with another faculty member. I got home, and in about a couple of weeks he called me and said, we'd like you to come up here to meet the whole faculty. So I did, I went to Charlottesville, and met the whole faculty, and got back home, and about a week later I get this offer to join the faculty. So that explains how I got to Virginia. And I was there eight years. I think that in many ways, that's one of the most interesting periods in my life. Those eight years there on the Virginia faculty. It was really a very fine group of professors, and the students were all fascinating, and it was an enjoyable period. And I went then, I spent a year in England as a Fulbright lecturer, and that turned out to be of course a fascinating experience. I didn't know what to expect, and they're not very good about telling you about this in advance. Each year, in England, under the Fulbright program, there was a lectureship in law, one allotted to the field of law every year in England, and they pass it around among universities. And you just took whatever came up your year. My year, the University of Southampton was up to get it. So I assumed I would have some duties there, something to do. Not so! They provided me with

an office, secretarial help, and so on, but I might as well have been anywhere. My job, what I found out when I got there, was to accept invitations from other institutions to come and lecture. The Fulbright office in London, in September of each year, puts out a list of all the Fulbright people in England for the year in all fields, like history, mathematics, physics, law, whatever, and that list was sent to every university in the United Kingdom. They were told they could invite anybody on this list to come lecture, and it would be up to the lecturer to decide whether to come or not. So my job essentially was to receive invitations, and ... it turns out that in the entire year I had eight invitations to come lecture. Southampton was one of them, where I was, but seven others. And they went all the way from Exeter out in the west, north to Aberdeen in Scotland. And of course that enabled me to travel a great deal over the United Kingdom, but I think the most interesting part of that year for me was something entirely apart from Fulbright, and that is, the American Bar Association was then very much interested in the idea of providing appellate review of sentences. We did not have that in the United States, strange as it may seem. A sentence in a criminal court was not appealable in the United States in the 1960s, whereas they had had it in England since 1907. And so the ABA commissioned me to study appellate review of sentences in England, and prepare a report. That opened the door for me to an enormous array of high public officials, and judges, in a way I never would have had otherwise. I got to know a lot of the judges there in the royal courts of justice. I was invited several times to sit with them on the bench, and this sort of thing. So, in the end I wrote up a report about it. For me, that was the most interesting educational aspect of my Fulbright year in England. The lectures, you know, once I developed two lectures, all I had to do was dust them off and give them again in some other place. And I did that all right. But I think the... study of sentencing review in England was really the highlight of that year.... And it was during that year that I was offered the deanship of the law school in Alabama, and I accepted that. So I moved back from England, and moved on to Tuscaloosa, where I was for four years.

### Cox

What were some of the issues at Tuscaloosa?

### Meador

Well, that was a fascinating time. That's an interesting chapter in the history of the law school there. Frank Rose was president of the University, and I had an interview with him. He called me and asked me would I have any interest in being considered for the position. I was not anxious to leave Virginia at all. That was a fine place, and I was perfectly content to be a professor of law at Virginia. But, Alabama was home, and this was my alma mater, and that had a special attraction. But what really did it for me was, his statement about his commitments for the law school. The most memorable statement he made, and the one that really persuaded me, was, "I want to do for the law school what I've done for the medical school." Well, I knew a good deal about what he'd done for the medical school, because my brother was on the faculty there. And they had plowed enormous amounts of money into the medical school. They had attracted nationally recognized medical professors, and so really brought it up to a level of national recognition. So, when he said he's going to do for the law school what he's done for the medical school, that was a powerful statement. And so anyway, I took the position and came



down. The law school at that time, I don't want to be overly critical, but it was not really in good shape .... I had one observer describe it as having evolved into a state of "insular lethargy".... I thought it was a quite a less interesting place than when I had been a student. A lot of the faculty members there when I was a student had gone, and it seemed a quiet kind of place. The teaching faculty was not particularly distinguished. There were two or three pretty good teachers there. And Dean Lee Harrison, the outgoing dean, was viewed as a master classroom teacher. He was very good. They did very little writing, there was very little scholarly publication there. It was viewed, in the whole field of American legal education, as sort of a typical Southern state university law school. Which was to say okay, maybe, but not outstanding. And I was determined to change that. In fact, I would not have taken the position without Frank Rose's commitments. And with the ... objective of lifting the level of this place substantially into a place of recognition. As I used to put it, the best law school between Charlottesville, Virginia, and Austin, Texas. So I came in with that, and the main challenge immediately was to raise private money. It was clear that state money alone would not do the job, and that took enormous amount of time. I'd say at least half my time was spent raising money. We had a law school foundation, which was an excellent group of people, really interested in this, and dedicated to it. And we launched into fundraising with almost a frenzy. And we were quite successful. We more than doubled the size of the library. We provided the visiting lecturers. We provided a lot of other sort of amenities and scholarly aspects to the place that did not exist before. Scholarship money for students was a big part of it. So we went at it, and I would say for two years there, from 1966 to '68, we made a lot of progress, and had a momentum going. There was a vice president of academic affairs named Alex Pow, who was very supportive and interested in the law school. He shared our objectives, and he was the one who handled the budgets, and he was good to us. But then he left in '68 to become president of Appalachian State University. That sort of marked a change in the general atmosphere there. His successor was a person new to the university, a much older man. And he just did not seem to have the interest in the law school that Pow had had. And after '68, the ... increases in our budget from the university were not nearly as great as they had been. And Frank Rose seemed to lose some degree of interest. He still made the right sort of statements publicly about the law school, but internally I sensed the ... commitments simply did not seem to be there the way they had been. That was the last two years.... But we still ... did a lot of good things in that time, and I still felt we were making good headway. What happened then, at the end of three years Frank Rose resigned, which I considered a considerable loss to the law school even though his interest seemed to wane a bit. He still was the man who brought me there, and had commitments, and he was stating these commitments publicly and all that, and there was no way to know what his successor would do or be. Well it turned out the Board of Trustees appointed David Mathews, who had been there as Frank Rose's assistant. I had known him, but only casually. Now he was appointed president. And that really brought a marked change in the administration's attitude to the law school. Mathews clearly did not have the commitments to the law school that Rose had had. In fact, he ... pretty much expressly said that our ambitions to build a law school of national recognition needed to be modified, and we should aspire to be a good state law school for Alabama. Well, that was not my ambition. So, I was really in a quandary. When all this developed in the summer of '69, I was really in a quandary about what to do. Could I stay on here with these diminished ambitions and so on? And really, would it be good for the school for me to stay there when I really didn't have ... the heart in it the way I had? So while I was deliberating over that,

purely by coincidence, I went to the annual meeting of the American Bar in August, and had dinner with the dean of the Virginia law school. He was a man named Monrad Paulsen, and he was there with a professor named Hardy Dillard, who was one of my very favorite people, who had been dean, and he had just then been appointed to be a judge on the international court of justice in the Hague, and was leaving the law school at Virginia. So ... out of the blue at this dinner they asked me would I be interested in coming back and taking his position? I was really stunned by this. That development, coupled with my grave doubts about staying on at Alabama, in light of the changed attitude of the administration, the culmination of those two things led me to decide it would be better for the school if they got a new dean under the circumstances. So I did resign, effective in June of 1970, and returned to Virginia, and have been there ever since, with some excursions off to the side here, there, and yonder.

### Cox

Well, talk about your ... career at Virginia and some of the excursions.

### Meador

Well, the Virginia career, I loved teaching. I did not want to be a career dean, by the way. That was another aspect of the Alabama deanship. When I took it, I said to myself, to my wife and some others, that I could envision doing this for up to seven years, but I didn't think I would want to go longer than that. I thought I should give it at least four. It turned out that's what I did, I did four years there. And so this opportunity to get back to Virginia, I thought if I'm ever going back into teaching, there will never be a better opportunity, so I'd better take this. So I got back, and my teaching interests over the years have all been in relation to procedure and litigation, courts, structure and jurisdiction of courts and so on. So I taught those sorts of subjects at Virginia. And I particularly got interested in appellate courts, the courts of appeal, the supreme courts, state and federal, and that's been my major interest in teaching and in writing and research over the years. And I got into English courts during my Fulbright year. I really became well versed in the English court system and procedure. Then, I got into Germany. And, if you ask me how I did that, I really can't reconstruct it. I had always had an interest in Germany, ever since high school. I was in high school during the war, and of course read ... a whole lot about Germany then, and I had these remote ancestors from Germany who came to this country. And for some reason or other I studied German in college. So anyway, I got into ... the German court system also, and ... made numerous trips to Germany, visited many courts over there and talked to the judges and so on. And one of my little side excursions from Virginia is that I spent three months in East Germany in 1983, under the aegis of an organization called IREX ..., which is the International Research and Exchanges Board. Its mission, this was during the Cold War, was to exchange scholars between the United States and Eastern Europe. And so I went under its aegis. They brought scholars out of Eastern European countries over to this country. So I went under their aegis, which opened up a lot of doors to me. That's a very tightly closed society, that Communist regime in East Germany, and I would not have gotten in to see the judges or law professors without the IREX, sort of, imprimatur. So that was ... a great experience. My wife and I lived in East Berlin in the apartment that they provided, in a building occupied entirely by foreigners, and under heavy surveillance, I'm convinced. They got us all

together in one building, to keep an eye on us, I think. But anyway, there were ... four law faculties in East Germany, at four universities. In the old days, there was a law faculty in every German university, but they cut that down in the East to four. One was Humboldt University in Berlin. One was in Leipzig. One was in Jena. And one was in Halle. I visited all four, and interviewed professors. I tape recorded. Only one professor declined to be tape recorded. All the others, much to my surprise, agreed to be tape recorded. So what I would do, I would record the interviews. As I say, I had studied German, but I never achieved a high level of fluency in German. So I taped the interviews in the morning. I would set this up, typically I would spend a couple hours with the interview in the morning. Then I'd go back to my hotel room or apartment, and spend the afternoon going back through the tape, and dictating an English translation onto another tape, so I had an English translation of it all that I worked out during the afternoon, when I had time to figure out some of these German words or what not. And that was the way I operated for about a three-month period there. I came back and I wrote that up in a book called *Impressions of Law in East Germany*. My other major diversion during these years at Virginia was with the Department of Justice in the late '70s. When Jimmy Carter was elected President, he appointed Griffin Bell attorney general. Now I had known Griffin Bell for probably, oh, I don't know, 12, 15 years at that point. He and I had been involved together in several projects with the American Bar. As I said, one of my major interests was appellate courts, and he was a judge on the U.S. Court of Appeals for the Fifth Circuit. So ... we came together on several projects having to ... do with appellate courts. I had known him pretty well. He got me involved in the Justice Department transition team. After Jimmy Carter was elected in November, he asked me if I would participate in a small group of transition for the Justice Department. I did that. One of the things that Jimmy Carter had agreed to was to provide for so-called merit selection of federal judges. They would create commissions, which would make recommendations, when a vacancy occurred on the bench, this commission would recommend three or four well-qualified persons, from which list the President would choose one, and appoint. They were going to set this up in every circuit, in every federal judicial circuit. So in December, he asked me if I would draft an executive order creating these commissions, which I did, with the help of a former law student of mine. We worked, I can remember working very hard from around New Years Day into the first week or ten days of January. And ... that was the very first order Jimmy Carter signed on Inauguration Day as President, he signed the executive order creating these commissions. The other thing he dealt with on Inauguration Day was amnesty for persons who had gone to Canada to avoid the draft in the Vietnam War.... Those were the two things he did on Inauguration Day. So anyway, meantime, Griffin Bell wanted to get me into the Justice Department. His first proposition really did not appeal to me. There was something called the ... Law Enforcement Assistance Administration, LEAA. That was largely an administrative job doling out federal money to state police and state law enforcement agencies. That did not appeal to me much. He came in with two very strong ideas about the Justice Department. One was that the department needed to be non-partisan, non-political. One of his favorite phrases was "the neutral zone," we need to be a neutral zone, free of politics, immune to political pressures in the administration of justice. That was a big point with him. The other idea he had was, that the Justice Department should work constantly and affirmatively to improve the system, to improve the court system, the legal system, and so on. So, that ... appealed to me very much, that was right down my alley. And he called me, and we talked about that, finally agreed that he would create a new office, called the Office for Improvements in the

Administration of Justice, OIAJ, and he asked me if I would head that office and organize it. So I was appointed an assistant attorney general in charge of that office. And I had virtually a blank check to rove all over the system, identifying flaws, shortcomings, proposing legislation to cure them, and so on. Now this was something the Justice Department had worked at only sporadically over the years. It ... depended on ... the interest of the attorney general. Some attorneys general were interested in this, some not at all. And there was a beautiful precedent set by Edmund Randolph, the first attorney general. Two years after the government was organized, he wrote a detailed report to Congress, spelling out the shortcomings that he had identified in the new judicial system they had just set out, and recommending legislation to cure them. So there was that great precedent there in Edmund Randolph. But over the years, some attorneys general were interested in that, some not at all. Bell's idea was the department should have a constant, continuing, permanent interest in this subject, and he was going to create this office that would be able to do that. That would be its primary mission, to improve the system, to identify problems and develop solutions. So that's what we did. I had a staff, put together a staff from various existing agencies in the department. I had a staff of about twenty lawyers, three or four social scientists, and the rest were clerical types. About 36 people in my staff in that little office, little compared to the rest of the government. And we went to work, and we developed a lot of bills on various subject, dealing with things that probably are of no particular interest to the general public, like the jurisdiction of federal magistrates, the diversity jurisdiction of the district courts, retirement systems for judges, tenure of chief judges, a whole array of things that I say are of no particular interest to the general public, but very important to the system. We developed bills. I testified a lot before the House and Senate judiciary committees in support of our bills. One of Griffin Bell's ideas, which I fully shared is, that the United States attorneys, in each of the districts of the country, should not be appointed by the President, as they were and had been from the beginning, but should be appointed by the attorney general, so that they would be responsible to the attorney general, as they should be, and nominally were. But ... he discovered soon after being in office that these positions were really senatorial patronage appointments. The way he discovered it was when he was in ... some Midwest city, and went into the U.S. attorney's office, and saw on the wall a picture, not of the President, not of the attorney general, but of his senator.... That really brought it home to him, that we ought to do something about this.... So anyway, he and I developed... I wrote a lot of his testimony by the way. So that was one of my jobs, writing testimony for him to present to these committees on various subjects dealing with this system, and so I prepared his testimony, advocating that presidential appointment cease, and it be up to the attorney general. Well we didn't get anywhere with that. The patronage was too deeply entrenched to change that, but ... a good many of our ideas never got anywhere, but many did. We had a mixed bag.

### **New side of tape.**

The major accomplishment of OIAJ, was the creation of the U.S. Court of Appeals for the Federal Circuit. Now, to understand this, this country is divided into eleven numbered judicial circuits, with a court of appeals in every circuit, plus the D.C. Circuit. So there are twelve regional circuits out there. Right here, we're in the Eleventh Circuit in Alabama, with Georgia and Florida. Patents were presenting a real problem. In the patent field, you could appeal to any one of these courts of appeal.... There were some provisions about the appropriate circuit, but



there was a wide choice of places to appeal patent cases. So what had happened over the years, you had inconsistent patent decisions. Say the ... Ninth Circuit decides this patent is invalid, the Second Circuit might say it's valid. And the Supreme Court was not straightening these out. They were not resolving these conflicts adequately. Every now and then there would be a rare occasion they would take one, but in the main not. So there had long been a movement to create a ... single nationwide appellate court for patent cases. There was a similar movement in the tax field. You had a very undesirable situation. One circuit would say, this transaction is subject to federal income tax, another circuit would say it's not. So you had taxpayers in different parts of the country paying different amount of taxes depending on where they were geographically, which seemed to be intolerable to a lot of people. There was a great need for uniformity in tax law and patent law and some other fields too. So our challenge was what to do about this. How do we remedy this situation. And this took a long, sort of convoluted process, but to make a long story short, we came up with the idea of creating this new court by combining two existing courts. There were two very odd courts sitting out there. One of them was called the Court of Customs and Patent Appeals, and the other was called the Court of Claims. These courts had been around a long time. So what we did, was merge those two courts. We abolished them, put them together in a new court called the United States Court of Appeals for the Federal Circuit. ... Unlike all other circuits, it was not regionally or territorially confined. It had nationwide authority. Appeals could come to it from anywhere in the United States. So this was the first time you had an intermediate federal appellate court not territorially limited, but nationwide in scope. That was a major innovation in the system. And it went through Congress with amazing speed. Unlike most bills dealing with courts and what not, they get bogged down and take years, this one went through within a space of about two and a half to three years, which is lightning speed in Congress.... I'll never forget the signing of the bill. The bill was introduced in the Carter administration. We had a big launching ceremony in the White House. And it was signed by Reagan, and they had a big ceremony in the Rose Garden at the White House, to sign the bill. And I was there. I was standing between the two judges of the courts that were being abolished. One of them was on one side, one was on the other, ... they were there to see the signing of their death warrants. But ... the judges on those two courts carried over into the new court, so they're not losing their job, they were just being transformed into a new organizational structure. Anyway, off to the side, as Reagan made an introductory statement about the bill, and then ... when he started signing, silence fell over the crowd, and I heard some voice off to my side say, "this brokered marriage is about to be consummated." That was a very satisfying experience to see that brought about. As I say, I think that was the major accomplishment of our office. But we had several other bills that were passed that have had a very salutary effect over the years since, I think.

Cox

Now, did that court deal primarily with patent cases?

Meador

Patents make up over half of its docket, but by no means all of it. In fact, it may be even less than half now. They have a wide range of jurisdiction. There's something that sits in New York called the Court of International Trade, which is a trial court. Appeals from that court go to this new court. Appeals in government personnel cases go to this court. Appeals from a variety of agencies, the Department of Agriculture, Department of Veterans Affairs, a whole bunch of them, appeals come to this court out of those agencies, so that's quite a mixed jurisdiction.

Cox

... What about the rest of your career at Virginia in the law school?

Meador

... Well, I came back from the Justice Department onto the faculty in 1979. At that time, we were creating this new program in the law school, called the Graduate Program for Judges. And they asked me if I would serve as director of that program. And I was probably, if I do say so myself, ideally positioned to do that by this time as a result of all my other work. I really knew the judges of this country pretty well, state and federal, and the courts.... I skipped over a whole bunch of stuff I did earlier.... I was, for several years, was invited by many state supreme courts and courts of appeals to come as a consultant on their procedures. So I had been to probably twelve or fifteen states as a consultant. So I was ... very widely acquainted, I would say, in the American judiciary, state and federal. So anyway, this idea of the graduate program for judges was this. There had been long on the scene the idea of judicial education. That's something that caught on in the 1960s, the idea of holding education programs for judges. But these were short courses, like a week or two weeks, they would go off and undergo a course or two for a week or two weeks, but there was nothing more elaborate than that. So this idea was, we would create an academically-oriented program for judges, that took a substantial amount of time, two summers for six weeks each summer, and that would result in the award of a degree. They had to write a thesis in addition to the coursework in the summer. It would give them a degree which we call Master of Laws in the Judicial Process. And so that was established commencing in 1980, and I was the director of that for fifteen years.

Cox

These were federal and state judges?

Meador

Both. Primarily appellate judges, although there was a scattering of trial judges. It was designed for appellate judges, state and federal. Most of them were state, though that makes sense, because most appellate judges in this country are state judges. And they would come for two summers, write a thesis, and if they did all of that successfully, they would get this degree. And ... I found this to be an extremely interesting experience, getting to know these judges, and talk to them while they were there. And they took some very substantive academic courses, to a

great degree interdisciplinary, things like law and social science, law and economics, and legal history, jurisprudence. These were not aimed primarily at... Most of the other courses, by the way, for judges, were more practically oriented in terms of, how do you write a judicial opinion, you know, or how do you manage the docket, this kind of thing. This was not oriented that way at all. This was academically oriented, something they really couldn't get anywhere else. It was unique. And I served as director of that for fifteen years, and then relinquished that. And two of my colleagues took over, one for a couple or three years, then another one. But what happened there is, funding ran out, and ... we could not, for a long time, this program was funded by something called the State Justice Institute, which had been created by Congress, funded by Congress, to make grants to aid the courts of the country in various ways. In fact, I served on its board for a while. Then Congress ceased to fund it, or drastically reduced it. It used to get a funding, it never was, you know, heavily funded, relatively speaking, in the federal sphere. I think the most funding it ever had was maybe \$15 million a year. So that's pocket change in the federal sphere. They cut it down to about \$5 million, I think, and with that, the ... State Justice Institute stopped funding our program at Virginia. It made up most of our funding, not all of it, but it ... was probably 3/4 of our funding. And when that stopped, the program just died. By that time I was out of it, but the dean and some others worked hard to get private funding, but were never successful in getting enough. So the program was discontinued, amidst all kinds of howls of protest, because it was very popular, widely admired, enthusiastically supported by everybody who had attended it. But nevertheless, that was the fate of that, which was too bad.

### Cox

What else about U.Va. Talk about law school politics, some of your outstanding students, impressions of your colleagues.

### Meador

All right. Well, let me ... start by producing a document here, which ... you could attach to this interview, I suppose. In this document, I asked the law school alumni office to give me a list of all Auburn graduates who had attended the University of Virginia law school. They produced this list, but it only goes back about fifty years. Now, I haven't had time to talk to them about it. I don't know whether, prior to this time, there were no Auburn graduates who came to law school there, or whether they just didn't go back any further in time. I don't know. But, there are about 35 names on this list in the last ... 50 years, who have come to Virginia from Auburn. One of them is now the chief justice of Pennsylvania.... And there have been some others.... I mentioned Bailey a while ago, the son of your one-time president here, Ed Bailey. He's in New York City. Then, you may recognize some of the names there. There's George McMillan. I think he ran for lieutenant governor.... Morris Savage, he was on the Auburn Board of Trustees for some years.... Anyway, I thought I'd had that over to you.... I was curious about this myself.... But anyway, talking about the faculty and students at Virginia, in the academic world, you often get faculties that are contentious, or you know, they get little cliques, and fights within them. We never had that. This was an extremely harmonious faculty. That's what made it so pleasant. Very harmonious, everybody got along with everybody. And one of the traditions at Virginia is the quality of student life. A lot of law schools are cutthroat, students in competition

with each other, and so on. We don't have that. It's very ... harmonious.... They're mutually supportive. And this is a long tradition.... When I was in the Justice Department, there was a woman working with me who was a Virginia law graduate of two or three years earlier. And she was telling me, that around Washington, she had run into people from all sorts of different law schools. All of those looked back on their law school experience with displeasure. They didn't like it. I went with her to a meeting in Cambridge, Massachusetts, once. We got out of the plane, got a taxi, and some woman got in with us. In the course of the conversation it turns out, she was a University of Pennsylvania law school graduate. I said, what did you think of law school? She said, I just hated it. So, she jabbed me in the ribs. She said, see what I told you? So anyway, that is a big part of the scene there, I think, the pleasant atmosphere, the convivial, collegial nature of the enterprise, and that's one of its strong points. When I had joined the faculty there originally in 1957, there were seventeen members of the faculty including me. Today there are about 85. Now I've been retired since 1994, but I taught another year, I've been out of teaching since '95, so there are a lot of these people I scarcely know now. A lot of the new appointments and so on.... So my memory of the institution really ends along in the mid '90s.... I have an office and go in frequently, but it's over in another building, so I really don't see these people much. But in my time, there were some very, very able people on the faculty, very enjoyable to work with. We've always had an interesting array of students come through there. They've gone on to various things. At one time, we had seven members of the United States Senate among our alumni. That's diminished greatly. I don't know what happened there, but today we have Nelson from Florida, Whitehouse from Rhode Island..., Kit Bond from Missouri, but he's leaving at the end of this year, I think. So there are three, I think maybe that's all we have now in the Senate. And of course, Janet Napolitano, who's Secretary of Homeland Security, she's one of our graduates. We've had several state governors in my time. Evan Bayh, United States senator, ... Evan Bayh from Indiana, that's four senators, that's right, but he's also leaving at the end of this year.

### Cox

Did one of the Kennedys go to U.Va.?

### Meador

Two of them, Robert Kennedy and Ted Kennedy. When I arrived there, Ted Kennedy was in his second year of law school, starting his second year of law school. I got to know him rather casually in that time. I had him in a small group section that I taught for a semester, but I didn't know him really well. His roommate was then known as Varick Tunney. He went to California and became John, his full name was John Varick Tunney. He was the son of the boxing champion Gene Tunney. And he got elected to the Senate, he and Ted Kennedy both got themselves elected to the Senate. They were roommates in law school. So I got to know Tunney a little bit in that time too. There have been a lot of interesting people come out of there. Many of them, many of our graduates end up in New York with major firms, Washington with major firms, San Francisco, Los Angeles firms, a lot of ... people do that sort of thing. And then there are those who go back home, like McMillan here in Alabama, Morris Savage, that sort of thing.



Yeah, ... it's been quite an experience. Good students, I've thoroughly enjoyed that experience. Could hardly have been better, I think.

### Cox

... You've alluded to your publications, but can you talk more about your publications and what you think were some of the insights that they brought to the legal profession?

### Meador

Well, in no particular order, I've already mentioned this book I did after East Germany called *Impressions of Law in East Germany*. That was published by the Virginia Press, the University of Virginia Press. After Justice Black died, I did a book on his library. That was an unusual situation there. *Justice Black and His Books* is the name of that book. He had an interesting personal collection in his study, in his house in Alexandria. He had an upstairs study, book-lined study. Probably a thousand or more volumes in there, I'm guessing. And he had distinctive reading interests. He was particularly interested in ancient Greece and Rome. His view was, that in over two thousand years, ... human nature and interests and reactions have not basically changed, ... and he would read ... these books, he was a great note-maker in the margins. And he would put notes in these books along the way, commenting on all he read about. And he ... saw in all these Greek and Roman experiences, problems that they faced similar to those he'd seen in his own time, and their reactions to them and so on. He would make notes, I remember, like "like FDR," ... in the margins ... and then sometimes he'd write in that, "Not so," he would say.... And then in the back of the book he would construct his own index in pencil, inside the back cover. He would, you know, put little key words with pages. That was his own personal index to points in the book that he found of particular interest. So, that's the way he read, pencil in hand, making notes in the margins, creating an index in the back. Greece and Rome were a big thing with him. Also the English constitutional revolution of the 1600s were very big with him. He saw in there the sort of the roots of our own constitutional conceptions and so on. So he was into that. The founding period of American history was very appealing to him. He had a lot of books dealing with the post-Revolutionary period, the constitutional formation time, that sort of thing. No fiction. He almost read no fiction at all. I think his view was that real life is already interesting enough, you don't need to read fiction.... Every law clerk knew these books. He was big on identifying rare volumes that nobody else ever heard of. He could find these things. He read rare book catalogues, and one thing and another. And he had some obscure volumes that he would give to law clerks to read. His favorite book of all, I think, was one called *The Greek Way* by Edith Hamilton. This was assigned reading for every clerk. Somehow this book absolutely fascinated him. So after he died, it occurred to me that there's an interesting story here about him and the relationship to his books, and so I undertook to do a catalogue. I didn't do this, I engaged a couple of people under my direction, to catalogue his entire personal collection. This is non-legal collection. I didn't get into the law books. He had ... hundreds of law books and stuff like that. I didn't get into that. This was non-legal, personal library. And so we catalogued it over a period of about a year. Made up this detailed catalogue of every book in his collection, and we put this together in this book, and I wrote an essay about it, maybe a, I don't know, a fifty/sixty page introductory essay about his reading habits and reading interests

and so on, and that book was published by the press at Virginia, called *Mr. Justice Black and His Books*. Now today, those books, nearly all of those books, are in the Hugo Black Room in the University of Alabama law library. Not all of them, I think some of the family sort of pulled out a few. But I would say 95% of his personal collection is in that room there, ... and my book is a guide to that collection, essentially. So that was one of my publications.... I've done a law school case book, teaching book for law schools, called... I co-authored it with two other law professors. It's title is *Appellate Courts: ... Structures, Functions, Processes, and Personnel*, is the subtitle of it. It's a law school teaching book.

Cox

This is a case book?

Meador

Yeah, a case book, that's right. Then, I've got a publication called *American Courts*, which is now in its ... third edition, it's in its third edition now ... That is designed for first year law students, or foreigners who want to know something about the American judiciary. It's sort of a succinct treatment of the entire American judicial scene. Then I've got another one called *Appellate Courts in the United States*, and it is devoted entirely to appellate courts, state and federal, again designed primarily for law students. Let me think. Other publications I've had. Let's see. As far as books go, law books, that may be about it. And I've done numerous articles, I don't know how many dozens over the years.

Cox

What are some of your favorites? What are the ones you like the best?

Meador

Articles? Actually it would be hard to pick out any two or three. They all deal in one way or another with courts, litigation, judges, etc. I can't really pick out any. And some of them deal with Germany and England too. Yes, I've gotten into that, as I've mentioned. But I can't single out any one, two, or three, or four ... outstanding in my mind.... Right now, ... over the last four or five years, I've been involved with a couple of law professors. One is Paul Carrington from Duke, and Roger Cramton from Cornell.... They took the initiative in developing some proposals concerning the Supreme Court, and I joined in with them to help develop and publicize these proposals. We held a conference at Duke in 2005, in which law professors from all over the country came and contributed essays. And ... this has been published in a collection of fifteen to twenty essays called *Reforming the Court*. And what all these proposals deal with, is the structure and internal procedure of the United States Supreme Court. In fact, I'm going to a conference in July on this subject. And we proposed that Congress pass a statute requiring the appointment of a new justice every two years. So that would guarantee that each president got at least two appointments to the court. See, one of the problems is, the uneven distribution of appointments across administrations. Taft in one term appointed six. Carter in one term

appointed none. Others have appointed three or four or five, others appointed one or two. It's quite uneven and unpredictable. And we thought that is not altogether desirable, so under this system, each president would get at least two. And this would eventually result in more than nine justices, so the solution to that is, that if you got more than nine on the court, the nine most junior in service would sit to decide cases on the merits. The others would continue in office, but with other duties, such as, participating in making rules for the lower federal courts, sitting with the nine if one of them were recused or disabled, sitting on the courts of appeals, all these things. They would continue in office doing those other duties, and so on. Well that's one proposal. We have another one, that deals with the internal *certiorari* process ...

Cox

Talk about that.

Meador

Well, as you know, the Supreme Court's ... jurisdiction is now entirely discretionary, with a minor exception. Four justices to grant review, to grant *certiorari*. ... That's been there in place for a long time. There are a lot of problems ... about that. One is this. The fundamental explanation for judicial power, according to John Marshall, his justification for the power judicial review, is, that the court has no discretion. It must decide the issue presented in the case, if necessary to decide the case. That was his justification. That is no longer true. The court now has discretion to decide or not to decide ... a case. So it undercuts the entire explanation for the judicial power. Also, another complaint about it is, that the justices don't pay enough attention to the everyday mundane issues that are important to lawyers and judges, but are not fascinating hot-button issues that may attract the attention of the justices. So, the cure for all of this, and this was an original Cramton-Carrington proposal, but I joined with them in sort of polishing it up, is that we would create a panel of US circuit judges that would meet periodically, four times a year, a panel of five circuit judges would meet, and they would decide whether to grant or deny review. So they would create a mandatory docket for the Supreme Court. The Supreme Court would have no discretion. It would have to decide what they served up. So you would restore something like Marshall's original justification. Anyway, that's one of... All of these, ... you might imagine, are very controversial. They've excited a lot of controversy out there. We've had two conferences so far. One was at George Washington law school last fall, and another one coming up in July, and they get a lot of interesting, lively debate. So I think in political terms, none of these is likely to go anywhere, but they're out there for discussion, and who knows, someday somebody might pick up on them. In the meantime they're interesting to talk about....

Cox

... You've written some fiction.

Meador

There are three novels.

Cox

What about those?

Meador

Well, I'll give you the ... titles first. The first one was *His Father's House*. Then I have *Unforgotten*. Then I have *Remberton*. Three of them.... Ever since my college days, I had in the back of my mind, a sort of bee in my bonnet, as they say, to write a novel. I don't know quite how I got that, but I did. I was fascinated with the idea of fiction, and so on and so on. And the years went by, and I was too busy on other things. I finally get into the 1980s, and decide, you know, ... I've been thinking about this for years. If I'm ever going to do it, ... I just have to get down to it. Meantime, there's an aspect of my life we have not mentioned, that had a big effect on this, and that was, I lost my eyesight in 1977. And they came on then in the 1980s, they began to develop this so-called talking computer, which, this screen reading program.... Everything you see on the screen, it would read to me. That enabled me to write and edit all by myself. I could write and edit. And once that ... came on, I got ... a setup, ... around 1985 I acquired one. That opened the way for me to write a novel, or write anything else I wanted, which was a big breakthrough. So with that I decided, you know, I keep talking about and thinking to myself to do a novel. Either, as they say, put up or shut up. I'd better get down to it here, if I'm going to do it, so I started. I had this idea. It ... goes back to my fascination with Germany. I had this thing, sort of, to get out of my system about Germany, and the divided Germany. German twentieth-century history is catastrophic beyond imagination. It's always fascinated me about the disasters that beset Germany in the twentieth century. And I somehow wanted to write about it, get it out of my system. And that was the motivation of the first novel, *His Father's House*. It takes place in the divided Germany of the 1970s, but it also flashes back into the two previous world wars. That was that one. And it took me, I remember this distinctly. I started writing it, and part of the secret of doing a novel is persistence. You have to stay with it, day after day. You can't say, oh well, you know, I'll come back in a week or two, three. Stay with it. And in eighteen months time, I had this written. I remember distinctly reaching the last page of the last chapter, and I said to myself, for better or worse, I have now written a novel. It may never be published, it may be no good, but at least I have written a novel. It took another, well, from that point I undertook revisions. I would think I spent another year and a half revising it. Then came the arduous process of seeking a publisher. And I had a lucky breakthrough. I finally stumbled onto an agent, who took it on and got ... it placed with Pelican Publishing Company in New Orleans. So that came out, and they sent me on a thirty day book-signing tour, which was a fascinating experience. This was right after I retired from the faculty, so I was unleashed from the academic calendar, had no teaching responsibilities. And I went on a thirty-day book-signing trip by car, all the way from Charlottesville, down through the Carolinas, as far south as Orlando, Florida, back up through Atlanta, Nashville, Louisville, Cincinnati, Indianapolis, ending up in Chicago, thirty days on the road at book-signing events. That was an eye-opener.... That was the first novel. Then the other thing I had to get out of my system was the Korean War. I was always bothered by how it became known as the Forgotten War, and I was always bothered by that. It's an extremely important event ...



## New tape.

... and the second one I wrote was called *Unforgotten*. Incidentally, people have asked me over the years, are these novels autobiographical. Well, the answer is yes and no. There is an old adage, you should write about what you know. And of course I did that to a very high degree. I did almost no research for these novels. I simply wrote them out of my own experience and memory and insights, so there are bound to be autobiographical features in these, but it's certainly not completely autobiographical in any sense. [There's?] plenty in these books that I never did, but there are autobiographical aspects to all of them, I think. But anyway, *Unforgotten* was on Korea. And again, I had something I wanted to get out of my system about the Korean War, and I tried to do that in this book in the guise of a ... novel, through the experiences of ... one man who went to Korea in the army, and so on. He was later nominated to be a judge, a federal judge, and ... I'd rather not give the whole thing away, but what he did in Korea came back to haunt him in his senatorial confirmation process. Anyway, that was *Unforgotten*. Then I get to *Remberton*, the third one. Incidentally, the basic point of origin in all three of these novels is a fictional small town named Remberton. Now, there are people who say it bears a remarkable resemblance to Greenville, Alabama, which I cannot deny. In fact, on the cover of *Remberton* is a picture of the courthouse in Greenville. And I remember I was at a book signing, and somebody was standing there looking at the book and said, that looks like the courthouse in Greenville, doesn't it? Anyway, ... it's set almost entirely in Remberton, in this fictional town of Remberton, and it involves a story of a man who's been gone thirty years, and he comes back later on. There are some substantial flashbacks into the Second World War, there. But it plays itself out in Remberton, hence the title of the book. So those are my three novels. Doing them is a tremendously interesting, I would call it, intellectual diversion. It takes me off into a world of my own that I can create and live in for a while I'm doing it, and ... I've become real friends with these people, these characters in the book. And there are two ways of writing a novel you hear people talk about. One is to outline the whole story in advance. The other way is no outline, you just start. I am of the latter view, I cannot outline, I've never been able to outline, I cannot see my way through to the end. What I do know is where it starts, what happens here at the beginning, and I can see it maybe a quarter of the way through, but then after that, I'm playing it by ear.... I used to read these articles about how, when you create characters, they tend to take over the story, and that is true. In fact, William Faulkner said once, that his job was just to create a character, set it in motion, and then trot along behind it and try to overhear what he was saying. There's a lot to that. I didn't believe it until I experienced it. It is there. These people, I reached a dead end sometimes, where do we go from here, and all of a sudden, it would break through. This character would want to do or say something, and carry on to the next stage. So anyway, it has been a fascinating process, and I'm not sure I'll do another one. I have some thoughts about another one, but I've been sort of diverted on some legal projects lately.

## Cox

... One thing that is on the outline that we haven't really touched on is your professional service. You were on several boards of directors, chairman of the ABA committee on federal judicial appointments. Can you ... talk some about that?

Meador

All right, I would be glad to. On that ABA, let me correct you slightly. I was chairman of the ABA Standing Committee on Federal Judicial Improvements, not appointments.... Federal Judicial Improvements. It's a standing ABA committee. It was a natural carryover from my work in the Justice Department. And I worked with that for several years, and we produced a big report on appellate courts and so on. I ... mentioned earlier the State Justice Institute, created by Congress. I was on its ... first Board of Directors. So I was on that board for, I guess five or six years. I was on the board of the American Judicature Society for several years. That's a national organization that promotes... One of their major interests in life is promoting merit selection of judges, non-political processes for appointing judges. That's its really big thing, although it does some other things too. And then I was with the American Society for Legal History for a while. I was chairman of the advisory editorial board on the *Journal of Legal Education*. I don't know what else I've been on, but those are the main ones.

Cox

What about your awards? You've got a number of awards, Thomas Jefferson Award, Raven Award ...

Meador

Right. Well, the Thomas Jefferson Award is given annually to a member of the University of Virginia faculty.

Cox

The law school or the entire faculty?

Meador

... Entire university. Oh yeah, the entire university. It was established in 1950, and they give the award once a year to a member of the faculty. And I did get that. The Raven Award, there's a Raven Society at the University of Virginia, which of course takes its name from the poem by Edgar Allen Poe. He attended the university for a year when it first opened. In fact his room is preserved there.... And the Raven Society was established around 1907, and it took its name from the poem, the Raven Society. And the Raven Society maintained Poe's room on West Range there at the university. And it's a society composed of... It's great claim to fame is, number one, it's university-wide. All schools are represented. And, it has both faculty, students, and alumni in its membership. It brings together these elements of the university. That's what its mission in life is. And it has programs from time to time. And they give an award to faculty members ..., so I did get that. And then there was the Alumni Association Award. Again, that's given to a member of the faculty. I think they give maybe two a year, or something like that. So those were the internal university awards that I got.

Cox

American College of Trial Lawyers Litigation Award.

Meador

Yeah. It's full name is the Samuel E. Gates Litigation Award. And the American College of Trial Lawyers is a national organization. They view themselves as very elite and choosy. You know, ... they claim to invite into its membership only the very best trial lawyers, a claim some other people would dispute, but that's what they say. And they give this award annually to someone that has made some sort of contribution to improving the field of litigation, you know, so I did get that back along the way.

Cox

What about the Monroe Professorship? ...

Meador

That's a chaired professorship. It's one of the three original chaired professorships at Virginia. The other two were the James Madison and John B. Minor Professorships. They were ... created around 1910. They were first chairs in the law school. Now there are many chairs, but they were the first three.... That's when I mentioned a while ago that, when Hardy Dillard was appointed to the International Court of Justice, he had that position, and he left, and that's when they invited me back from Alabama to take that position. That's how that came about, you know. Hardy Dillard's one of my all-time favorite people in the field of legal education. He was a great raconteur, fascinating personality. He sort of took me under my wing when I first arrived at the law faculty. For some reason, he sort of took to me and I took to him, and I view him as a kind of mentor, I guess you'd say, in my early years on the law faculty. So it was a great pleasure to be able to succeed him in his position.

Cox

... I've written down a number of follow-up questions, but before I get to those, are there things that weren't on the outline, or that you wanted to discuss that you haven't discussed?

Meador

Off hand I'm not thinking of any. I'm sure there are, but there are none is leaping to mind at the moment.

Cox

... One of the things you said earlier in the interview was, you talked about at one point that there were no appeals of criminal convictions ...

Meador

Sentences.... Convictions have always been appealable, but not sentences. Right.... When the trial judge entered a sentence, that was final, no matter how egregious it might be. No appeal from a sentence in the ... United States.

Cox

State or federal?

Meador

That's right. With a minor exception here and there, but basically speaking, there were none by the 1960s. So the American Bar got interested in that idea. In fact, several people were suggesting it, you know, and I was one of those. And the English courts had experience since 1907 with it. And that's what I was commissioned to study. And it has now become universally adopted in this country. As far as I know, appeals from sentence are allowed everywhere now.... And it came out in the '60s, with that report and the other efforts at that time.

Cox

What were the pros and cons of that issue?

Meador

Well, one of the arguments against it was, the appellate court was in no position to assess this. It depended on so many factors that the trial judge could take into account. He had seen the defendant throughout the trial, heard all the evidence about the offense, and about the defendant, etc., that he was in the best position to make this determination, and not the appellate judges who had nothing but a typed record. That was one of the arguments. And of course another argument was, it's sort of what they call the floodgates argument, that is, once you allow this, you just open up to all kinds of appeals, you know, every disgruntled defendant's going to appeal his sentence, even though it may have no merit. [It?] basically comes down to about that, I guess, plus the usual objection to anything new. If you live with the judiciary, you soon find out, anything new is going to be resisted.

Cox

... Well, what about the floodgates argument? Did that turn out to be true?

Meador

No. No, I don't think so. Well, of course it added to the volume of appeals, but it turned out to be entirely manageable. The courts basically developed pretty expedited and efficient procedures for dealing with these sentence appeals. So ... it has not been a major problem.



Cox

Are there still states that don't allow appeals?

Meador

Not to my knowledge. But ... I've been out of this now for several years. I'm a little bit out of touch with the current scene, but I believe these appeals are allowed in every jurisdiction now.

Cox

... You said this happened during the sixties.

Meador

That's when the movement began to change it in this country.

Cox

Was this part of sort of the legal profession's role in some of the ... changes that began ...

Meador

Well, ... it was part of a considerable revolution in criminal procedure in the sixties, spurred to a great extent by U.S. Supreme Court decisions in the criminal field. We had a lot of ground-breaking decisions dealing with the criminal process, about the introduction of confessions, the *Miranda* case that everybody's heard about probably came along then, right-to-counsel decisions, all of that was going on. And so, interest throughout the country in the criminal field was growing greatly. A lot of clamor for improvements. It was part of that in a way.... Here was an area that seemed odd, you know, not to allow any appeal at all from the sentence. And it was part of that whole '60s interest in the criminal field, I think.

Cox

Was that part of your interest in ... how courts worked?

Meador

Somewhat, although I never concentrated heavily in the criminal field. Where I did get involved in considerably was dealing with habeas corpus. That became a subject of considerable interest to me, and I did write some things on it. I had three cases in the United States Supreme Court on habeas corpus, so I got into the criminal field sort of by the side door, so to speak, in habeas corpus cases.

Cox

Well talk about that, the habeas corpus cases.

Meador

... The first one, one of them, dealt with the right to council in, it's what they call a *recidivus* proceeding. In Virginia, a lot of states have this, after three convictions for felonies, ... you can get an enhanced sentence, merely on the ground you've been convicted three times before, that adds to your sentence now. Well, this man, out of all of these on the court appointment, this man had been convicted and sentenced under the *recidivus* statute, and he maintained he had no counsel. And the question was, is there a right to counsel in a *recidivus* sentencing procedure, as distinguished from the felony trial itself. That was the question, and that's what I argued the Supreme Court. And it was interesting because of this. At that time, there was an old case called *Betts v. Brady*. It held that, in a state criminal case, the defendant was entitled to counsel only under "special" circumstances. So over the years since, there have been a lot of argument about what amounts to "special" circumstances that entitled the defendant to counsel. And that had been whittled down and whittled down to the point that in almost any case you'd have "special" circumstances. So I had an alternative argument in my case. One of them was that ... this case involved special circumstances, and I had a list of things that made this case difficult or "special," all of them legal questions which would exist in almost any case. There was really nothing "special" about them. But that was my argument. My alternative argument was that *Betts v. Brady* ought to be overruled, that it had been so whittled down and watered down by subsequent decisions, it had no longer had any real force, and the wiser thing to do would be to overrule it and acknowledge that, and hold that a defendant was entitled to counsel under any circumstances in the state court, where there was a risk of substantial prison term. And I won it on that ground. They did not overrule *Betts v. Brady*. That came two years later, there was a case called *Gideon v. Wainwright*. They overruled ... *Betts*. But I presented the issue to them before that. I was the last step before *Gideon*.... So I missed it by a hair.

Cox

... What was the name of your case?

Meador

... *Chewning v. Cunningham*. *Chewning v. Cunningham* I believe was that case. Yes.

Cox

But it led up to *Gideon v. Wainwright*.

Meador

Yeah, it was the last step before *Gideon*. They were on the brink.... And then I had another fascinating one. This was *Jones v. Cunningham*. Here was the question in that case. Habeas corpus, which we inherited from England, is a process through which one can challenge a restraint on liberty. You can take any kind of restraint of liberty before a judge to have a determination as to the legality of the restraint. That's the idea of habeas corpus. Okay. My man, he had filed a writ of habeas corpus in the district court while he was in prison. It was denied. He took an appeal to the U.S. Court of Appeals for the Fourth Circuit. While the appeal was pending, he was released on parole. So the argument was, on behalf of the state, to dismiss the case, it's now moot, he is no longer restrained of his liberty. And therefore habeas corpus is not available. Well, my challenge was to show that even though he's out on parole, he is still restrained of his liberty. That was my argument.... Well, a kind of restraint. He couldn't change his residence, he couldn't own a firearm, he couldn't change jobs, all of this without permission of the parole officer. So I said, all this adds up to a restraint on liberty to which normal citizens are not subject. That was my argument.... Great exercise here in legal history. This was a case for legal history. I went back into England, and the early colonial period in this country, to show that habeas corpus had been available to persons who were not physically locked up. Indentured servants, for example, could get habeas corpus. Child custody cases were available for habeas corpus. So ... I dredged up a whole lot of history. And the court decided that way, essentially copying my brief....

Cox

This was the U.S. Supreme Court.

Meador

Oh yes. I had laid it all out for them. Right. There it was.

Cox

... What was that case?

Meador

*Jones v. Cunningham*.... And then, the third one I had up there was called *Case v. Nebraska*. *Case v. Nebraska*. And the argument there was... My argument was that the due process clause of the Fourteenth Amendment required a state to provide a corrective process for convicted criminal defendants. And the state of Nebraska did not have an adequate corrective process. That was my argument.... And what happened is, while this case was pending, the Nebraska legislature passed a new statute which did seem to provide the kind of corrective process I was arguing for, and the state immediately moved to dismiss the case as moot. And my argument was to try to salvage my case. I had a student who wrote a paper on it, and his paper was called, "Is the *Case Case* a Case?" ... So I argued that the case ought to be remanded to the Nebraska court, to the federal court in Nebraska, in order for that court to determine whether the new statute did provide an adequate corrective process. See, we didn't know that yet, and therefore

the case should not be dismissed, but should be remanded for consideration of that question. Well, I lost on that one. I lost that. They dismissed it. But Justice Brennan wrote a long dissent essentially copying my brief....

Cox

Did you have any other cases before the Supreme Court?

Meador

I've had a couple or three in which I was on the brief, but not on the argument, yeah.

Cox

... I wrote this down, and maybe this is an unfair question. It's a pretty general question, but all of your work has been on how courts work, what courts do. What do you say about that? How do courts work? ... What are some of the things that hinder their effectiveness?

Meador

Well that's an extremely broad question, of course, extremely broad question. High volume is a big part of the problem. That has brought on, the whole judicial scene changed beginning in the 1960s, for ... various reasons. There was a huge upsurge in the volume of cases in courts, unprecedented, dramatic, record rise in volume of cases.

Cox

Why was that?

Meador

Well, ... a whole combination of different things. Partly was, in the criminal field, the provision of free counsel for defendants, which was rather new across the board. That, coupled with, for some reason, increasing litigiousness in society.... These are those complicated questions that nobody really can explain succinctly. A whole combination of factors in there at work, I suppose, increasing heterogeneousness of American society, breakdown of other institutions such as the family, the church, etc., etc., and going on for all of this. Nobody knows for sure. But that brought huge amount of attention to the courts, and that's what really got me into all of this, and the Justice Department work, etc. Volume is a big problem, of course. If you had half the cases, you'd have much less volume, really. Efficiency, time, protracted time for litigation, expense of the litigation is a big problem, very expensive now in civil litigation.... There's ... been a big movement, beginning in the '60s, called the Alternative Dispute Resolution movement, ADR. And the argument there was, we need to develop alternative procedures to the courts, that there are better ways to do this, less expensive ways to do this, etc. So that now has caught on very widely. These ADR programs are everywhere now. Mediation is a big part of it.



They have created mediation services. Arbitration is a big part of that. So that has caught on in recent decades very much.

Cox

Alternatives to the court, ... as a result of that great growth in volume.

Meador

... How to cope with it, right. And also an argument, it's not just volume to help the courts relieve their burdens, but there's an argument this is a better way to resolve disputes. It's better than having adversary litigation in the courts. There's a better way. That's one view of it. ... Everything is controversial here. That's controversial. A lot of people see this as an undesirable diversion from the courts, that it's subverting the [?] regime of law, so to speak, when you get off into mediation, and arbitration, [?] outside the legal order in a sense. Some people don't think that's good. You know, talking about, I have to mention these things as they come to mind, some of my experiences in litigation. When I was in Birmingham, with the law firm there, I had one case in the Alabama Supreme Court that they let me handle. I was [?] new, and I wrote the brief and presented the oral argument. And it had a seemingly simple question. Here it was: the Public Service Commission had granted a certificate of service to a truck line in Birmingham, and the certificate authorized them to provide service within 25 miles of Birmingham. The question was, where do you measure the 25 miles from? And there are two positions. One is the center of the city, the other was the city limits, and that made a lot of difference. And this was challenged by a competing truck line, which I represented. Our position was, you measure it from the center of the city. And that meant a difference of maybe twenty miles in the radius of service out there, so ... I made the oral argument, and I won that case. The center of the city, right. There's a marker in Wilson Park, at the head of 20<sup>th</sup> Street, that identifies the center of Birmingham, and our position was, it should be measured from there.

Cox

Was that marker established as a result of your...

Meador

O no, it had ... been there for years, right....

Cox

Well, my ... follow-up question ... to how did the courts work, was how has that changed, and I think that you have ...

Meador

Well, ... let me mention another major change in the appellate field, which is where my major interest is.... The introduction of so-called staff attorneys, that is a major revolutionary change in the American appellate courts, and I was heavily involved in that movement. I now regret some of my efforts in that direction. There was a time in which judges had law clerks, that is, an individual, personal assistant. They're sometimes called elbow clerks. They work right at the judge's elbow, very personal, intimate relationship, one clerk, one judge. That had been around for years. What happened beginning in the 1960s was this movement to introduce what were called central staff attorneys. These would be lawyers employed by the court as an entity, not working for any one judge, employed by the court as a central staff to assist the court as a whole. They would write memos about cases, they would draft orders of one kind or another, a lot of different things they could do. Well, ... the National Center for State Courts was created in 1972. It's a major organization now, with headquarters in Williamsburg. But it started out with Winslow Christian, who was a judge on the California Court of Appeals. He was its first director, based in Washington. It was Winslow Christian and a secretary in three rooms. That was the National Center for State Courts in 1972. Now it's a major building and organization in Williamsburg with dozens and dozens of staff. Anyway, Winslow Christian, his very first project was what he called the Appellate Justice Project, and it was to study the possible use of central staff attorneys, a very novel concept then. Only two or three courts in the whole United States had anything like that. And I was appointed reporter for the project, and we established demonstration projects in four states, Virginia, Illinois, New Jersey, and Nebraska. And we ... funded the central staff attorneys for those four courts, and we studied their operations for two years, at the end of which we wrote a report to see how they operated, what the pros and cons were, etc., etc. And this report was very positive in its tone. It, you know, recommended this as a means of meeting this unprecedented volume we've got here, you know, how to handle and manage it, enable the courts to survive this floodgate of appeals. And from then on it caught on. ... And now it is widespread indeed. Quite controversial. You have courts now that have as many as 80 central staff attorneys working for the court. Huge in many courts now. And there's a lot of controversy about whether there's an undue delegation of judicial authority here to these employees, instead of the judges themselves, deciding cases. All of that goes on. But it's entrenched now, and well-established. It's become old hat now, central staff attorneys, everybody has them. But it was very novel when I first took this project.

Cox

And this was when you were with the attorney general.

Meador

No.... I was on the Virginia faculty, in the early '70s.... I was just a reporter for the project. I did that in addition to all my teaching duties. There's another publication I haven't mentioned, that came out of this project, called *Appellate Courts: Staff and Process in the Crisis of Volume*. That was that publication.

Cox

And ... that was a law review article?

Meador

No, no, it's a book..., published by West Publishing Company, right....

Cox

... You mentioned some work you did on the process for U.S. attorney appointments, and how that's basically a political process. Can you say any more about that? ...

Meador

Well, I'm not sure I can. It goes back to 1789, [?] the original judiciary act, establishing the federal court system, provided for United States attorneys, so it's one of the oldest offices we have in this country, a United States attorney for each federal judicial district, appointed by the President to represent the United States in all matters in the district court in his district. So they've been there a long time, and it's entrenched now in the political patronage system, which, you know, often works out very well, but sometimes it does not, but I'm not sure there's a great deal more I can say about it.

Cox

There have been some questions about that recently, about whether or not it was too entrenched in the ... patronage system, and whether or not it was overly politicized.

Meador

Griffin Bell and I jointly wrote a law review article. First I wrote his testimony, as I think I told you. We converted that into an article, that was published in the *Journal of Law and Politics*, which is published at the University of Virginia. So we have an article that we joint-authored. I really wrote it, his name is on it.... He was full of good ideas.... He's a creative thinker. Yeah, he is.

Cox

So you think that that system is not ... likely to change?

Meador

... I don't think so. As I say, it has no political traction.

Cox

Talk about some of the differences and similarities between federal and state courts.

Meador

Well, things have changed in that to a great extent also. Time was, ... let's say up until the Second World War, and even for a little while after, the federal courts in this country were very small. In fact, when I was growing up, in Montgomery, for example ...

**New side of tape.**

... the federal court was upstairs in the post office building, on the second floor of the post office building in Montgomery. In fact, it was referred to by a lot of lawyers as the Post Office Court.... Yeah, it was a very minor thing. Most lawyers never went into federal court at all. This was true all over the United States. They were small potatoes in terms of the volume of business they handled, very small. Then we began after the Second World War particularly, we began to get more and more congressional legislation, creating all kinds of statutory regulations, systems, regulatory systems, various new rights, new causes of action, and the list goes on and on, Americans with Disabilities Act, just all sorts of other regulatory provisions that began to bring cases into the federal courts. And we have the diversity of citizenship jurisdiction, which means that, if you have citizens of different states who were in opposition, litigating against each other, the federal district courts have jurisdiction over that case. That's one of our big points, by the way, in the Justice Department, that this jurisdiction in many cases made no sense, that it ought to be curtailed, and restricted in ways that it has not been. So federal courts began to grow and grow and grow, and today, what you begin to get, not just post office courts upstairs, huge buildings of their own. In Montgomery you've got one, the Frank Johnson Courthouse. In Birmingham you've got the Hugo L. Black Courthouse, huge buildings of their own now, and they occupy... Most lawyers who are in litigation are also in federal court now, a great deal. There are very few lawyers who are in substantial cases at all who don't have federal court business these days. So it has loomed so much larger in the totality of the legal sphere than it did up until the Second World War. There used to be one judge in the Middle District of Alabama, in Montgomery. Now I think there are what, five, six, seven judges there, maybe more. I don't know. I haven't kept up with it.

Cox

Talk about ... the ..., other than the obvious, the characteristics of ...

Meador

Yeah, I was going to mention this, here's the thing about it, there is now... In fact, I've written about this, a very substantial overlap in the business of federal and state courts these days, far more than there used to be. Duplicating jurisdictions. There is a considerable amount of that, and I've always viewed that as something of a problem, that we don't really need that, at least



not in most cases. It's inefficient, dysfunctional, to have these duplicating jurisdictions. And I have advocated various measures about that. In fact, I actually put forward the radical suggestion at one point that the federal and state courts ought to be combined. I did this in a lecture at the University of Alabama law school about ten or twelve years ago. Published as a law review article. Of course that didn't get anywhere. That ... hasn't deterred me though, putting forward ideas that are fatally doomed. But anyway, ... that grew out of my belief about these duplicating overlapping jurisdictions, that we've come to a point now, where the two systems really could be merged into one. Now that has all sorts of problems how you implement that idea, and they're not easy, and that's one of the reasons why it's not likely to happen, I suppose. But you do have that. That's a major part of the American scene now, is the duplicating jurisdictions of the federal and state courts. And of course we have the major differences in their structure. Federal judges are appointed by the President, with tenure during good behavior, which means for life, in practical effect, whereas state judges hold office for terms of years, six, eight, ten, in some states, and many of them are elected. So there's quite a difference in the composition of the courts, that is, the nature of the judges who hold office. The difference is not so much in quality, although there is some of that in there. Not so much in quality, but in the tenure of the judges. If you are litigating before a life-tenured judge, it's somewhat different compared with litigating before a judge holding office for six years who has to run for reelection. That's the major difference.

#### Cox

... Talk more about that, about elected versus appointed judges.

#### Meador

Right, well, I'll have to immediately disclose a bias. I think elected judges are very bad, and I've done a lot of work to try to do something about that. I appeared before the Birmingham Kiwanis Club about four years ago, and made a talk about ... There's a movement in Alabama, has been for a good many years, to abolish election of the appellate judges, that is, the judges of the two courts of appeals and the Supreme Court. To create a nominating commission, which has been the big thing with the American Judicature Society from its beginning, that the ideal way for state judges to be chosen is to have a nominating commission, which is to be made up of a mixture of lawyers and laymen, appointed variously. The bar association would put some on there. The governor would put some on there, and so on. So you'd have a mixed kind of a, bipartisan or non-partisan body, that would screen prospects for the bench, and recommend three as being well-qualified, and from that the governor would appoint one. Now that's been the American Judicature Society proposal for about nearly a hundred years. And ... that is the proposal for the Alabama appellate judges. And the bar association has been backing that now for about fifteen, eighteen years, but it gets nowhere politically. Anyway, I made this speech in the Kiwanis Club, which was later published in the *Alabama Lawyer*, which is a state bar periodical, about that. I keep hoping that that will come to pass, but it hasn't so far gotten much traction beyond the bar association. I interviewed Artur Davis about a year and a half ago. My curiosity was piqued by, who is this character? So I contacted his office and said, could I pay him a visit and discuss his positions?... I did that, and that was one of the things we talked

about. He is not in favor of it, except where a vacancy occurs in the middle of a term, and the governor then has to fill it. You know, the governor can fill it by appointment if it's in the middle of a term. And he ... would be in favor of a nominating commission in that situation, but not otherwise, he says. So I don't ... see this going anywhere soon, although I certainly hope it would. It would be a vast improvement, I think.

Cox

What is the ... source of opposition to that?

Meador

Politically part of it, you've got right now, I mean it depends on which party ... is dominant. Years ago, when the Democrats had most of the judges on the court, they were opposed to that. Now the Republicans have most of the judges, they are opposed to it. They figure, they calculate they will lose ground somehow, if you go to this system. And they don't want to give up the advantage they have at the moment. This is a very short-sighted view in my view. But that's what they say. As you can see now, the Democrats are now on the other side. It depends on, I guess, whose ox has been gored, as they say. That is the biggest thing about it. And then there's the argument ... , you're taking away the vote of the people.... That's a big argument. You're going to take away my vote. Well, the vote is almost meaningless. The public doesn't know these people. There's been studies and surveys that show the general public doesn't know who these candidates for these judicial positions are, doesn't know anything about them.... It's really a kind of meaningless election. Party labels are the controlling factor here. They just vote, you know, for a Republican or a Democrat for the court. Don't know anything about qualifications or anything else.

Cox

... You talked about your work with Justice Black, your work on his library. Any more anecdotes about Justice Black?

Meador

Well, I guess there are really a lot of them.... It was one of the most fascinating years of my life. At that time each justice had two clerks, except the chief justice had three. And Douglas never had but one by choice. He didn't want to. But all the others had two. And it was a great year.... The clerks were a little collegial body unto their own.... We had a private dining room in the court building, just around the corner from the cafeteria, and we would eat there several days a week together. In fact, almost any day you were there for lunch. We would eat, and we had speakers come in. We invited speakers from around town to come in and have lunch with us. The ones I can remember now would be Dean Acheson, former secretary of state. We had Henry Cabot Lodge, who was then the UN ambassador, the United States ambassador to the UN. We had Eric Sevareid, who was a big TV news man. We had him. We had Harold Stassen, the perennial presidential candidate. He was then, he had some position in the administration, I

forget what it was at the time. We had the solicitor general, who was then Simon Sobeloff. Each justice, we had each justice come to lunch with us. So we had ... all nine justices at one time or another during the year, each one had lunch with us once.... I remember one most vividly about that, was Felix Frankfurter. He said, all right now, I'm going to go around the table and let each one of you ask me one question, and I will collect all the questions before I answer any of them. So he went around the table, each one of us asked a question. He didn't take any notes or anything. Came back, and ... he went back around the table and answered each question. A remarkable, I thought, intellectual performance. Anyway that was a big part of the year, these associations with other clerks and these luncheons.... And Justice Black, ... his technique; process was, when he was assigned a case to write the opinion, he would jump in and read all the briefs and the record. Then he would do a draft himself in longhand of his opinion. The secretary would type it up and give each one of us a copy. We would then have a day or two to go over it. Then we would meet with him, and sit down, and go through that draft line by line, even word by word. This was a tedious process, but fascinating. And it would go on for hours, all day long. And this was in the time after his first wife had died, and before he remarried, so he was living alone in his house in Alexandria, which made it easy to continue work into the night.... We would get up to about 5:00 or so, and then we would agree to resume at his house, at maybe 7:30. Sometimes he would have us out to dinner at his house. He had this cook from Alabama named Lizzy May, who was ... the sister of his messenger. His messenger was Spencer Campbell, and the housekeeper and cook was Lizzy May Campbell. They both came from Jemison, Alabama. He had brought them both with him from his Senate days, and they were there. Anyway we would go on into the night in his study with the same process, sitting there with his draft, going through it. Now, ... a lot of arguments ensued, some major arguments, but on substance, we ... never really got anywhere. He was clear in his mind what he was deciding as a matter of substance. Where we did have some influence and could talk, was in choice of language, organization, and believe it or not, commas. My co-clerk believed in commas. He was heavily oriented toward commas. Justice Black was the other extreme. He wanted minimal commas, ... or no commas. Now I was somewhere in between. I shared a little bit of both views, you know. He didn't use commas enough, I thought, but my co-clerk wanted too many. That would lead to a considerable argument at times over commas. So eventually we'd get through the process, and then the secretary would re-type the draft, and we would look at it again. But the next time through was much quicker and easier. And that's the way he produced an opinion for the court.

### Cox

What about the case method of legal education?

### Meador

Well of course it's been modified considerably over the years. The ... pure case method has long been watered down through the introduction of other types of materials, and you get now a lot of just text in casebooks. You get interdisciplinary material.... In its origins, back in the late nineteenth century, ... a casebook was just exactly what it said. It was a book of cases, nothing else, just opinions of courts. That was it. That has been modified considerably now over the years. Casebooks now are much more than just cases. And the so-called Socratic method I think

is considerably watered down now, nothing like the rigors of the classroom that it used to be, which is unfortunate in some ways, I think. Now you tend to get much more lecture, I think. I have to say this [immediately?] though. For the past ten or twelve years, I have been removed from the process, so I have to qualify what I'm saying here, because I don't really know what may be going on right today.... But by the time I retired, all this was very evident, ... a lot more lecturing than you used to get, a lot less calling on students for the sort of rigorous examination you used to have, and so on. Some of which I think is justified, but there are some losses in there too.

### Cox

You talked about some of the changes in the law in your lifetime, and you were on the board of the Legal History Society. You talked about how the case method has been modified. Any other developments in the history of the law that you would care to comment on?

### Meador

Well, one thing I think we've already mentioned is, is the influence of social science, the interdisciplinary character of a lot of law study, and the influence on courts of the social sciences, in various ways. The sorts of studies social scientists carry out, statistical studies, analysis of this, that, and the other. Psychology is coming in in a big way, there are studies in that. We have two people on our faculty who are very big into law and psychiatry.... In other words, non-legal fields influencing the courts and law study, is probably the biggest changes, I would say, in the last century or so, but other than that, I don't know what I'd have to say. Of course, litigation and the law is heavily reflective of what's happening in society. What goes on out in society determines what courts do. So, insofar as society has changed, you get changes in the law, and court decisions and statutes and so on, constantly changing in that respect. Yeah, ... it's always interested me, the influence of, it's clear that the English law had enormous influence in the United States. You had, in a sense, what was going on in the English courts was transported, transplanted across the Atlantic on the North American shores. Recently, I've undertaken to do a study of the Alabama Supreme Court in its first years, when it sat in Cahaba. For six years, the state capital was at Cahaba, and the Supreme Court held its very first meeting in May 1820 in Cahaba. It was created in Huntsville the year before.... In the biological world, you have a difference between conception and birth. The same is true in Alabama state government. The government was conceived in Huntsville in 1819, it was born in Cahaba in 1820. The Supreme Court met for the first time in May 1820 in Cahaba. And the first volume of reports, known as Minor's Reports, Henry Minor was the reporter of decision, and his entire first volume consists of decisions rendered during the Cahaba years. They're all in one volume. After that it moves on to Tuscaloosa. And I've been through that volume pretty carefully. And it is just overwhelmingly obvious, the influence of English law here. Decisions, [you know it was a?] common law system. Very few statutes of course. It was common law, ... common law and equity, and all of that came down into the Alabama Supreme Court decisions. So we just inherited their system. They weren't inventing one from scratch. And ... that's true of all the United States, except in Louisiana, which has a civil law background. But that's fascinating to me, how that whole English system was transported over. Now the influence of that is of course



waning as time passes. The more distant we get from that formative period, the less you see of English law influence. But it was very heavy in the first century of this country or so.

### Cox

... What about the concept of equity? How do you still do that?

### Meador

Oh, it's very much there, but we no longer have separate equity courts. We had separate equity courts, separate equity procedure, in England. That's where it developed. It developed because the common law courts... As it turned out there were three major common law courts: the Court of King's Bench, Court of Exchequer, Court of Common Pleas. Which made no sense of course. They had overlapping jurisdictions, and then ... eventually merged. That's where I got one of my arguments about merging federal and state courts. I used the historical analogy of these three common law courts. It became evident after decades that you had overlapping jurisdictions here, which made no sense. They put them together in the 1870s, they combined them into one court called the Supreme Court of Judicature, they put them together in a new, unified trial court. That was law. Equity remained separate in this country for a long time after that. Equity developed, to go back to that, equity developed because these three common law courts became fairly rigid in this system called Forms of Action. And there were certain situations in which you could not get relief in the common law courts. It just, it was not within their realm of purview. And so the king came along, the Chancellor was the Keeper of the King's Conscience, that's what they called him. I've often wondered, if I could have somebody as a keeper of my conscience, I wouldn't have to worry about it, you see... Well the king didn't have to worry about it, he had the Chancellor. The Chancellor was the Keeper of the King's Conscience. So these petitions would come to the king for relief, called extraordinary relief, meaning it was relief beyond what the common law courts could give. So the king referred them to the chancellor. So the chancellor would entertain these petitions for relief, for extraordinary relief... The catch phrase was "inadequate remedy at law." If you could show you had an inadequate remedy at law, you could get before the chancellor, and he might give you relief. And that's how equity started. And his relief was different from a law judge. In a law court, you don't get an order for someone to do or not do something, you get a judgment, that ... the plaintiff have and recover of the defendant \$50,000. That's a judgment, which the sheriff can execute, but it doesn't order the defendant to do anything. It creates a debt, what's called a judgment debt. The chancellor could order somebody to do something. That's where we get the injunction. So you could order the defendant to do or not do something directly, and if the defendant failed to do it, to be in contempt of court, put in prison. So that was the power of equity, and it was a separate court because of that, became the Court of Chancery in England, and we inherited all of that over here. And eventually, of course, it's all been combined in the twentieth century, the merger of law and equity in a single court, with a single procedure. But we still have it. All the equity doctrine is still there, it's simply administered through a unified procedure in one court. But all the equity law, the remedies, the doctrines, they're still there, as part of the law, part of the legal order.

Cox

So the concept of an injunction came out of the Chancery Court?

Meador

Right, exactly, right.

Cox

You talked about the cases that you tried before the Supreme Court, and you've been an observer of courts, and particularly appellate courts. The Supreme Court is an appellate court. Talk about the Supreme Court and some of the people who have been on the Supreme Court that you have...

Meador

Some of the people who have been there, yeah. Well, of course in my time, the court consisted of Chief Justice Warren; Black and Douglas, the famous pair; Felix Frankfurter; and then the rest of them were less illustrious, I would say. We had Harold Burton, Tom Clark, Sherman Minton. Let's see, who else did we have? I forget the others, but ... the main thing that strikes me about the Supreme Court, and this has become a favorite hobby horse of mine, is the change, the radical change, in the composition of the court. People today don't really realize that, but up until the 1970s, the court was composed in a radically different way from what it has been since. So the first time in American history now, in the last couple decades, we have every judge, justice on the court, has come there from a court of appeals. Not a single justice ever served in a legislature of any sort, or ever held elective office. That is in frightening contrast to what was historical pattern. When I was ... there with the court, for example, we had ... three of the judges had been former United States senators; one had been a governor; one had been chairman of the SEC; one was a big city mayor; and that's the kind of people that served on the court historically.

Cox

Taft was President.

Meador

Yes, of course, yes, right. Up until the 1970s that was the pattern. And ... it's sort of mystifying to me how we drifted into this. Today people assume it's always been that way, people who have grown up in the last 20, 30 years, assume the court's always been this way. Not so. Now I've written about this several times, published articles in the *National Law Journal* and the *Legal Times*, about this. In fact, I got exercised about it, last year when the vacancy occurred, and this year again. I have developed three disqualifications for the court, three negative factors that a nominee should not be. Should not be a graduate of an Ivy League law school, should not

be from the east coast, and should not be a court of appeals judge. Should not be any one of those three things. We need more geographical diversity, we need more diversity in experience, educational background. The court is the least diverse it has ever been in its history right now. When you have six members graduate from Harvard Law School, all but one comes from the northeastern Atlantic seaboard, the only one is Kennedy out in California, that is, after Stephens leaves. So I've been very strong on this the last two or three years, to no avail obviously. I've had many lost causes in my day, I'm accustomed to them.

Cox

So you would say that the current court meets maybe a visual test of diversity, but when you peel the layers away ...

Meador

Well you don't have to peel them very far, right....

Cox

Now, how and why, you said it was a mystery to you how we drifted into that, can you ...

Meador

Yeah, ... one theory is that, as things got more partisan in recent two or three decades, became more ideologically driven, that that has pushed the Presidents into picking court of appeals judges because they are ... more of a known quantity. You have a track record there of cases they have participated in. You can read that and see their positions, what they're likely to do or not do. It's a safer bet to try to get somebody that you hope will go along with your own views about what decisions ought to be. Now that is probably the leading explanation of it, I think. I don't have a better one. But it's unfortunate.

Cox

What about the current court. Do you have any ...

Meador

Well, as I say, I'm very bothered by this lack of diversity, geographically and in experience. The lack of any members ever holding high elective office bothers me. You have no former governor, no former member of Congress, no one who served in the Cabinet. There is no high public service experience there at all. And they come out of the court of appeals. Now some of them have been, early on in their lives, have been lawyers for a while, but, there's clearly a lack... Now I think it's very important to have that kind of experience, to understand the legislative process, for example, when you're interpreting statutes. It's very helpful to know how statutes are made. Also, people out of those positions are more accustomed to the art of

compromise and dealing with others in arriving at decisions. That's very important in appellate courts, to be able to compose differences, and avoid as much as possible dissent. People coming out of that kind of background tend to have more ability in that direction than others.

Cox

What about some of the hot-button issues that the court's faced, not just the Supreme Court, but what ... they call the litmus test issues?

Meador

Right, the hot-button issues. Well, the first one that usually comes to mind is abortion. But what about it though?

Cox

Just your ... thoughts about it, as a legal and a political issue.

Meador

Well, you've got, of course, the ground-breaking decision on it was *Roe v. Wade*, to establish the constitutional right to abortion, as a kind of a spinoff from the right of privacy which had been established by earlier decisions. So that's there, from 1972 on down. And I think the question would be, whether you would ever get a court who's willing to overrule that. I've always said that would never happen, and it could possibly happen, but who knows, there's no way to predict that. The court has, in some subsequent decisions, tried to cut into that a bit. They have upheld restraints on abortion. They have ... not tackled the fundamental decision, but they've upheld various legislative restraints on the process and what not. But I continue to think it is unlikely to overrule *Roe v. Wade*, but I would not bet the family farm on that, as they say.

Cox

You mean [this subject?] would be so politically unpopular, or ...

Meador

Probably so. The court is I think in a vague and indirect way influenced by opinion out there. And also it is now such an entrenched part of the fabric of American society, that it's very difficult to uproot it. Even though you might think it was wrongly decided at the time, nevertheless it's been there now for what, forty-odd years, and has become very much woven into American life. And it seems to me that makes it unlikely you will get an overruling.

Cox

Did you think it was wrongly-decided at the time?



Meador

I had mixed feelings about it at the time, I did.... I can understand the arguments both ways. And at the time, I never really resolved what I would have done if I had been on the court. I remember being very ambiguous about it. But what I am clear about now is, I would not overrule it, right, right.

Cox

Well, were there better arguments than the privacy argument?

Meador

Well that was, of course, ... the hook on which the court hung its legal decision. In terms of constitutional right, that was what was at stake in *Roe v. Wade*, not a question of policy, whether you think abortion is a good or bad thing, but whether the Constitution gave the woman a right to an abortion.... And as I say, now ... I'm persuaded that this case should not be overruled.... At the time being, there was a good deal of doubt about that, and controversy about it. Justice Black, for example, he was off the court by then, but he had dissented in the earlier privacy case, and in light of that, it seems to me doubtful he would have gone along with the majority in *Roe* against *Wade*. But I don't ... really know, you'll never know. The ... argument was, of course, that this ... whole idea of privacy is an amorphous thing that you really can't find in the Constitution. Well, there are a lot of things that you don't find [anywhere?] in the Constitution.... That argument doesn't carry a whole lot of weight with me.

Cox

What about, another hot-button issue, capital punishment, a federal and a state issue?

Meador

Right, right, well, as you know, the Supreme Court held it unconstitutional as applied in the case that came before it ...

**New tape.**

... Well, on capital punishment, I have a couple of views. As a constitutional matter, I do not believe it is unconstitutional, for historical reasons, and so on. However, as a matter of policy, that's another question for me. The Supreme Court, ... as I said when we stopped, they held it unconstitutional under the case that was presented, but then, later, in another case, it upheld a state statute providing for capital punishment. The press has often reported that as saying, when the Supreme Court reinstated capital punishment. I strongly object to that. The Supreme Court did not reinstate capital punishment. The states reinstated it. The Supreme Court upheld it, but didn't reinstate it. Anyway, now the court has hedged it about with so many qualifications and

restrictions, that litigating a death case becomes enormously expensive and protracted. That has almost persuaded me that as a legislative matter, policy matter, we might do well to abolish it altogether. I reserve the luxury of indecision on that point. If I were a legislator, I'd have to face it, and my inclination would be to abolish it, except maybe in a few extreme situations, mass murder or something of that sort maybe. But anyway, ... that's not my position right now, but as far as the constitutionality of it, I think it's constitutional under the federal Constitution...

Cox

What about gun control? That's another hot-button issue.

Meador

Right. As you know, the Supreme Court recently held under the Second Amendment, that it provided some sort of individual right to ... I think that decision's wrong. There's another little principle of constitutional interpretation I would invoke here, and that is: where the question is seriously in doubt, ... seriously balanced, the arguments on it, you could maybe go one way another, it's not very clear, then I think deference to the legislative judgment is in order, rather than the judges making it. And that was that case, I think. It's very unclear historically, exactly what the meaning of that amendment is, but here you had a legislative judgment about gun control, and my view is, the court ought to have deferred to that in this sort of situation.

Cox

... Why is it so cloudy, what that historically means? Is the evidence just not there to ...

Meador

Well, first place, the text itself is unclear, "A well-regulated militia being necessary to all, the right to bear arms shall not be infringed." ... The whole argument is over that introductory phrase, you know. Does it limit it? Is it contemplating only militia service, or not, you see?... There's just very little in the records, historically, about exactly what was meant. And ... you get that with a lot of provisions, it's not all that unusual. That's the problem with the so-called originalist approach to interpreting the Constitution. There's no way really, in many cases, to know what the original intent really was.

Cox

What about other hot-button issues, or ways ... that the courts have been politicized?

Meador

Well, of course, one of them looming out there is the homosexuality question. I don't know what to say about it, except it's looming out there, and sooner or later, in one form or another, will get to the Supreme Court. What it will do about it, I just don't know. A lot of it, you know,

historically speaking, over time, the Supreme Court has not been seriously out of step with public opinion, in the long range way. So, the whole state of American public opinion will probably have some effect on that decision, whenever the time comes. And I don't know how that cuts... I'm not saying the justices consciously study public opinion, but there's an unconscious kind of atmospheric setting there that I think affects decisions.

### Cox

I guess one of the biggest questions before the courts during your lifetime and my lifetime, ... maybe more yours than mine, but the issue of segregation, racial segregation. Can you talk about that and how you observed that?

### Meador

Right. When I came on the court, I arrived in August of 1954, and the *Brown* decision had come down in the previous May, just two or three months earlier, that basic decision holding public school segregation to be unconstitutional. So, in my year there, what came up was what's been referred to as *Brown II*, the so-called implementing decision. And that was before the court in my year there. And it was argued in the spring of that year.... It had been scheduled for argument in the fall, but Justice Jackson died. He died there about a month after I arrived on the court. I only saw him twice, walking along the corridor going toward the conference room. I never met him. And he died. In fact, I remember the law clerks attended the memorial service for him in a body, in National Cathedral in Washington. We went as a group in the memorial service. And then the entire court left and went to Jamestown, New York, for the burial.... When that happened, the court was reduced to eight, and so they rescheduled the argument. They didn't want to hear it with an eight-justice court. And Harlan was appointed in March to take his place, and the court then rescheduled the argument, I think in May. And I listened to most of that. It went on for two or three days, on the implementing, what to do about how you implement this, what was the appropriate order to be issued, and so on. So, during that entire year, we never discussed this case with Justice Black. That was a common experience. The court, I think there were two reasons for that. One is, the court had imposed an uncommon amount of secrecy over the decision-making process throughout the *Brown* decision. For example, opinions being circulated were not circulated in the ordinary means, by messenger mail, messengers carrying the drafts from one chambers to another. They were hand-delivered directly to the justice, and they were not discussed. And that was true throughout my year there. Justice Black never discussed this, because I think the stamp of secrecy was over the process. And secondly, Justice Black usually, he'd been on the court about seventeen, eighteen years when I got there, he pretty well had his positions worked out in his mind. He knew what he wanted to do, and I think he probably thought it was useless to discuss this. I mean, he knew what ... his position was, I think, and he didn't need to discuss it or get any help with it. Anyway, we did not discuss it at all. But I did listen to the arguments, and then they came down with this decision, with the famous line "with all deliberate speed" in the decision, attributed to Frankfurter. Two or three years later, Justice Black told me that he thought they would have done better to order immediate admission of the students in that case, which meant in five different jurisdictions, five public school systems. His view was, they should have ordered

immediate admission of those students, those plaintiffs, in those cases. Now he told me that two or three years later, that the "all deliberate speed" thing, he thinks was not working well. So that's about my involvement in those cases.

Cox

Any other cases that came before the Supreme Court when you were a clerk that you'd like to talk about?

Meador

My year there was a relatively quiet year. There were no real blockbuster decisions, no hot-button questions, as you say. It was a relatively quiet year. There were some interesting cases. To me, the most interesting one was a case called *Toth v. Quarles*, and it was interesting to me because it was a court-martial case, and I had been trying court-martial cases in Korea for a year. What was up there is, that Toth had been in the Air Force, stationed in Korea. He had come home, been discharged, honorable discharge, and was at a job in Pittsburgh. And along comes the military police and arrests him, charging him with an offense committed in Korea while he was on active duty with the Air Force. And the question was, could a civilian now be constitutionally tried for an ... offense committed while he was in the military, while he was subject to military jurisdiction, but now had nothing to do with the military, a complete civilian, and so on. That was the constitutional question. Well, it was argued in the spring, ... no, it was argued in the winter, after Jackson's death and before Harlan came on the court. So it was argued before an eight-justice court. And Reed was assigned the majority opinion, holding the ... jurisdiction here to be constitutional. Justice Black, in his chamber, we worked on a dissent, he was dissenting. So we spent a lot of time drafting this dissenting opinion. When Harlan came on the court, they scheduled the case for re-argument the following fall, suggesting to me that they were divided four-four on this question. So the case was argued in the fall, and was decided after I had left the court. But at that time Justice Black's dissent had become the majority opinion of the court. So it was the opinion we worked on as a dissent, that appeared in the fall as the majority opinion. That was a very interesting case, I thought. It also illustrates the way that Justice Black can take an entirely different view of an issue from other judges.... I mean, the majority with Reed at that time, the then majority, viewed this as whether, under the grand jury requirement ... You see, in a military case, you don't have a grand jury in ... a court-martial. And the question was whether the requirements in the Constitution of a grand jury applied in this case. And they held not, and therefore it was constitutional. Justice Black took an entirely different view of the question presented. To him it was a question of whether Congress, under Article 1, has the authority to subject a civilian to military jurisdiction. And he held it did not. That was his approach, and that prevailed in the end.

Cox

You talked about your time in Korea with courts-martial.... Elaborate on that a little bit more. Were these routine cases? Were there ...

Meador

Right. Well, that was a fascinating experience.... They were everything. I was with the headquarters of the Tenth Corps.... I was in the Judge-Advocate section, JA section, Tenth Corps.... When I got there, the war had reached the stalemated period. It had bogged down. Both sides had sort of dug in. The lines did not move a great deal, although they would exchange hills, costing thousands of lives, to exchange this hill and that hill and so on. That was going on. But it was pretty well stabilized, and so this Tenth Corps headquarters, we were on the east side of Korea, above the 38<sup>th</sup> Parallel, we were probably fifteen miles north of the famous 38<sup>th</sup> Parallel. The line in the east went up north, ... it was more northern than it was in the west. We were up there. And a whole tent city had grown up around Tenth Corps headquarters. Dozens or even hundreds of tents, with a grid laid out of streets. It was a tent city. Our courtroom was a tent, and our offices were a tent across the road from the courtroom. To answer your question, we had everything.... Many court-martial cases for offenses that you encounter in the ordinary civilian world, like larceny, assault and battery, rape, robbery, homicide, we had all that. On the other hand, there are some distinctive military offenses that you don't have elsewhere, like absent without leave, AWOL; desertion; disobedience of an order; sleeping on post; all these things are distinctive military offenses. We had all of those too. We ran the gamut of ... everything there is in the Uniform Code of Military Justice. And the interesting thing about that was, that you would rotate sides. You'd be on the prosecution side maybe for two or three months, then you'd switch over to the defense side for two or three months. I became a great advocate of that, because it helps retain perspective. You don't get so committed to one side that you begin to sort of represent a cause rather than a case. And I came back and advocated that. The only place in the United States that I know of that tried that system was in Minnesota, Hennepin County, Minnesota, which is I believe Minneapolis, yeah. They tried that for a while, and I don't know what happened to it. I've always meant to follow up on that. I knew they got into it experimentally, and I never did really follow up. I think it's gone, probably.... That's not likely to catch on in this country at all. But ... it was a good thing to do over there.... I had some very interesting cases. One is, it was highly unusual. There was this lieutenant, an artillery lieutenant, up near the front lines there with his unit. And one day the colonel, chief of a corps artillery, dropped by for a pop inspection, unannounced. And it was a line of trailers lined up there, with a tarp hanging over [there?]. He opened up one of the tarps, looked in the trailer, and saw a pile of dirty laundry. And he charged this lieutenant with dereliction of duty. So this dirty laundry in the trailer... Now it so happens that this lieutenant was a graduate of the University of Michigan law school, and had announced his candidacy for Congress back in Ohio. He was about to rotate home in a month's time. Now can you imagine the newspaper headlines in Ohio.... The lieutenant charged with dereliction of duty in Korea. You talk about a political kiss of death. That would have been it. But anyway, I prosecuted that case, that was my job. I had a very difficult time handling that case. The colonel who charged him would not appear as a witness. He sent an assistant, who happened to be standing there with him and saw the dirty laundry. He was the chief witness for the prosecution, and the only one. All he could do was testify he was there and here was the dirty laundry in the trailer. And of course we had evidence that the lieutenant was the commanding officer of the unit. And I had army regulations that stressed command responsibility. The commander is responsible for everything in the unit, even [though?] he has no actual knowledge of it. That was the legal



position of the prosecution. Well, the court went out after we rested our case. They were back in ten minutes, and acquitted him. And for the first and only time in my life, all of these officers sitting on the court came around and shook hands and congratulated the lieutenant. So I thought it just as well he was acquitted. I didn't have my heart in that case.

Cox

You mentioned earlier your novel, that had to do with Korea, and you said that it had to do with a situation that you fictionalized, and came back later to haunt him. Can you elaborate on that?

Meador

That was slightly inspired by this case, actually.... It's not the same situation, but it was the idea. Yeah, well part of the novel takes place in Korea. And there is a court-martial in it. Now my hero is not a JAG officer, he's an infantry lieutenant. But he was tried by court-martial, for disobeying the order of a superior officer. Now, let me reconstruct it in my mind. Yeah. What happened is, he was in this infantry unit that had been ordered to attack Hill 1080. And he took a position this was a suicidal mission. He had been there, he had had a lot of experience with these hills. And he went to his commanding officer and complained it was suicidal, made no sense. And so he finally requested from the captain, his commanding officer, could he see the battalion commander about this. Could he present his argument to the battalion commander? So the captain agreed. He got the battalion commander's permission to see this lieutenant. So the lieutenant went down there to see the battalion commander, and he presented his argument, which was rejected entirely by the ... battalion commander on the ground there. We have no discretion in this matter. We take our orders from the higher authority. They have ordered us to take this hill, and we have to carry out orders. Well, the lieutenant didn't like it at all, let the battalion commander know he didn't like it. But, he went on back to his unit. The battalion commander then relieved him of duty on the ground that he was unreliable in this attack. He couldn't be trusted, given his attitude about it. So he relieved him of duty, and charged him with disobedience of orders. Well, the question was this. He relieved him of duty, took him out of the line, he was in no position to obey or disobey the order, he wasn't there anymore. So, the legal question presented was, could there be such an offense as anticipatory disobedience? Anticipatory disobedience. That was the argument of the prosecution in this case. And the argument for the defense was, there was no such offense. That you had to have actual disobedience under the code. That was my case in the novel. And that's what came back to haunt him later.

Cox

How so?

Meador

He was nominated to be a federal judge, and came before the Senate Judiciary Committee. And they called a member of the court-martial to testify to what actually happened. And ... they

acquitted my man, but you had a rule ... in the court-martial proceeding that it took 3/5 to convict, have a 3/5 vote to convict. And they had several votes for guilty, but not 3/5. So, it was revealed in the Senate committee hearing that they had a majority voting for guilty, but not 3/5. And so here he was, actually found guilty by a majority of the ... court, but ... technically not, because of the 3/5 rule. So, that was rather damaging revelation, you see.

Cox

Well was he confirmed?

Meador

No, he withdrew.... The thing is that wasn't the whole story. Back in Korea in this attack on the hill, one of his men refused to go forward in the attack, some private or corporal or somebody. This was in the height of the frenzied attack, ... heavy action going on. He ran back, and jerked the man up by the collar, and pulled the .45 out on him. The man was [?], I'm going to be killed, but he said, you gonna be killed up there, or by me right here? He got a choice, and he threatened to kill him right there, .45 stuck in his chest. Well then the man went forward, and was badly wounded. Paralyzed for life from the waist down, confined to a wheelchair. And he appeared in a hotel room in Washington, where my man was staying, and threatened to kill him. He pulled out a .45 on him, it was a reverse situation. He now was going to kill him, you know, instead of being killed. And my man grabbed the pistol away from him, and there was a fight. And in the fight, the wheelchair-bound man was killed. So the question was, was this a homicide, or was it an accident. So all of that adverse publicity came out about this nominee for the federal bench. You know, this shooting in the hotel room, combined with what happened in Korea, all that together. So my man concluded that given all of that, there raised these serious questions, which made it inappropriate for him to become a United States judge. And so he thought the wisest course was to withdraw.

Cox

Now was this all inspired by the actual case of the dirty laundry, or was it kind of a composite...

Meador

Well, that was a little inspiration for it, in the sense that we had a man here who got in trouble in Korea, with a potential adverse effect back home. It was kind of a remote inspiration, but wasn't close at all to the actual facts....

Cox

You talked about the cases that you argued before the Supreme Court. What other litigation have you been involved in?

Meador

I've tried habeas corpus cases in the federal district courts, at the trial level. I've been in, oh, I must have been in five, six, seven of those, way back. This was in my first stage at the University of Virginia, during the early to mid '60s. Since then, I have been involved in litigation almost not at all. I did participate in writing a brief in a couple of cases years later. I even now forget exactly what the issues were in those cases. It was not a big thing for me. I just was one of two or three lawyers working on the brief. Other than that, I have not really been in litigation in a courtroom since then.

Cox

You talked earlier about how during the 1960s the amount of business that the courts received increased, and you talked a little bit about what you thought were the causes for that. Can you elaborate on that?

Meador

Well, it's sort of hard to elaborate, because they were many and complicated. I think I mentioned this earlier, changes going on in society, a lot of people attribute it to alleged breakdown in family life, eroding influence of churches on people's behavior, urbanization, demographic changes, creating more possibility of conflict, particularly in urban situations. All of that was part of it, I think, and maybe a very big part of it. Also, some sense of increasing litigiousness, unwilling to settle earlier. A lot of people thought that was part of it. People used to be more willing to drop things, or not pursue them, really no longer willing to let them go. Had to fight them out, go to court, all of that. So it's hard to assign any one cause, it's a complicated array of factors.

Cox

... But you saw that unwillingness to settle as an issue?

Meador

I did, yeah, right, I think so.

Cox

... Any thoughts on how that change in thinking came about?

Meador

It's very difficult to say. It's like saying, how did we get into ... so much partisanship in politics? It's hard to say. It's difficult to understand. People just got, somehow they got more contentious, cantankerous, I don't know what caused it.... It all plays back into some of these other factors I just mentioned. These are all interrelated sort of things, I think.

Cox

I heard George Will used the term "culture of victimization." ... Have you heard that, is that part of this?

Meador

Probably so, yes. A sense of being victimized, and wanting to sort of fight back, or get retribution for it, or something. Oh yeah, I think that's so. It's a whole bunch of complicated, subtle societal factors here.

Cox

... Who were some of the ... judges that you observed who were the good judges, and maybe some who were bad judges?

Meador

Well one of the finest in the United States in my time is an Auburn graduate, Judge John Godbold, who died last December. Do you know of him?

Cox

... I do know of him.

Meador

Yeah, well I knew him very, very well for a long time. As a matter of fact, I almost went with his law firm in Montgomery way back, firm of Godbold and Hobbs. Hobbs is also now a federal district judge, retired. They both went on the federal bench. John Godbold went on the U.S. court of appeals. He became, I would say, one of the four, five, or six best federal appellate judges in the United States in his time, and was so recognized widely. He is the only federal judge ever to be chief judge of two different circuits. And that came about, he became chief judge of the Fifth Circuit, by seniority, that's how they become chief judges, by seniority. He became chief judge of the Fifth, which at that time ran all the way from Florida through Texas. Congress severed the circuit, divided it, and created the Eleventh Circuit out of Alabama, Georgia, and Florida. At that time, John Godbold was chief of the Fifth, and when they created the Eleventh, and assigned the judges in these three states to that court, he was the senior judge in that group, so he became automatically chief judge of the Eleventh Circuit. So he was chief judge of two different circuits. That's never happened before in American judicial history. He had that distinction. And then he was appointed director of the Federal Judicial Center. He took leave of his court for three years to serve as director of the Center, and that says a whole lot about how he was regarded in the federal judiciary, because that's a very important organization in the federal court system. And he served for three years in that capacity. And he was widely recognized, I think, as being an outstanding judge. And he was very, very good. I mean he's, in

my mind he's almost a model judge. He is a model judge, I would say, in terms of ability, intellect, judicial temperament. Everything you want in a judge, he was it.

Cox

... You mentioned ability, intellect, judicial temperament.... Those are the factors that make a judge good?

Meador

Right, as well as a good solid grounding in the law. You've got to have that too, right.

Cox

What does judicial temperament mean?

Meador

It usually encompasses things like even-handedness, fairness, objective approach, lack of bias toward any class of people or parties or what not. All of that. And sort of even-tempered temperament too. You don't get angry, don't fly off the handle, that kind of thing. All of that I think is part of it.

Cox

Well you mentioned him as maybe the best judge you've ever observed in action. Who was the worst?

Meador

Oh my goodness! Well, there ... are a lot of those out there. There was a fellow in Virginia, whose name is escaping me, a federal district judge. Owen, Owen somebody.... My memory is, after all we're talking forty years ago maybe. I thought he was pretty bad. He would rave and rant from the bench, you know, all of that sort of thing that a judge should not do. But I've not known personally many very bad judges. You read about them, hear about them, but I've not known really, really bad ones. Most of them are all right, OK, you know, maybe not outstanding.

Cox

You mentioned earlier, too, that before World War II the federal courts were so relatively small, and then maybe during, after World War II the federal government got more involved in things legislatively, and it increased the activity and the caseload of federal courts. Anything else you'd like to say about that?



Meador

Well, ... it certainly has transformed the federal judiciary over what it used to be.... It's changed the status of federal judges. If ... you were the only federal judge in your district, you sit in Montgomery, and you've got jurisdiction all the way down to the Florida line, you are the federal district judge. That's a pretty important position there, you're it. If you get five, six, eight, ten, twelve, fifteen, it diminishes somewhat in its status. That was one of Felix Frankfurter's major arguments against the enlargement of the federal judiciary. He said you ... diminish the value of the currency. If you've got a federal judge at every corner, what does the federal judge amount to?

**New side of tape.**

Cox

... Justice Frankfurter's alternative for that?

Meador

He ... didn't vote for them, as I recall. There was a [?] example. Take the U.S. courts of appeals, the circuit judges. For many, many years, when I first came on the scene legally, there were about 65 of those. Now the United States Senate has 100 members. There was a certain mystique attached to there being fewer circuit judges than there were senators. That gave them some kind of exalted status, you know, a special status. And for a long time, that influence prevented enlarging the number of those judges. But that line has long ago been breached. The volume was too overwhelming to hold it. Now we've got about 175 circuit judges, compared to 100 senators. So again, you've got a little devaluing of the currency, as Frankfurter would say. There is no doubt, I think, that that goes on, but there's nothing we can do about it, it seems to me.... What was attempted to be done about it, was somehow reduce federal jurisdiction, that is, reduce the categories of cases that come before the federal courts. So, Judge Friendly wrote a rather often-cited article, "Averting the Flood by Lessening the Flow." The idea was to cut off jurisdiction at the beginning, never let these cases get into the federal courts. You leave them to the state courts, or you simply repeal the statutes in Congress that authorize its jurisdiction. Well, that never got very far. There were too many vested interests, too many special interests at stake here, with a hand one way or another, you know, in these cases, in the interests that were represented by this category of case. So, and maybe the overwhelming force of society, the complexities of society, have prevented that approach. But it never got anywhere. But it was quite fashionable for one time or another, back in the '60s and '70s.

Cox

To try to cut off the flow, or...

Meador

... Yeah, cut off the access to the federal courts, ... and therefore reduce the volume of their business.

Cox

The term state rights has kind of gotten a black eye in recent years, but you've studied state courts, you've studied federal courts, there are certain rights reserved for the states. And you've been talking a little bit about that, where should federal jurisdiction end, can you ...

Meador

Well this is usually described, or talked about as the appropriate allocation of business between the state and federal courts. And that's a continual subject of discussion, there's a whole law school course almost devoted to that, called Federal Courts. And the allocation of business between the two systems is a big theme in that course. And that's really what we've been talking about all along, what is appropriate [to be left at?] the state courts, and what ... should be allocated to the federal courts, and the problem of the duplicating and overlapping jurisdiction is there, and greatly aggravated now. It was not a problem to speak of, I think, before the Second World War. But the enormous enlargement of federal jurisdiction has meant that the federal courts now have jurisdiction over a vast array of business that overlaps much of what state courts do. And how you allocate it is a big, politically controversial question, because there are interests on both sides. And ... what usually prevails is, there has ... been almost no retrenchment on federal jurisdiction. The whole direction is toward enlarging it. There has been almost no cutback on it. [Now very?] modest, for example, in the federal diversity jurisdiction, where citizens of different states are suing each other, there's a jurisdiction amount there, there's a minimum amount that has to be in controversy before a party can invoke the federal diversity jurisdiction. It used to be, many years ago, when I came on the scene, it was \$3,000. It was raised to \$10,000, then raised to \$50,000, then to \$75,000, which is, the last time I checked on it, that's where it is today. You've got to have at least \$75,000 in controversy. So to that extent, Congress has cut back on it some, but that's not a very radical restriction. Otherwise, it's been very little cutback on it.

Cox

Ask you a related question that we've kind of talked around.... Has the arm of the federal courts gotten to long?

Meador

The arm of the federal courts. Well that's the same question, isn't it?

Cox

I'm asking you to express an opinion on it.

Meador

Oh, well, yes, ... I think we could leave a lot more to the state courts than we do. I've been an advocate of that for quite a while.... I would certainly go in the direction of sort of curtailing, modifying federal jurisdiction to leave more to the state courts, right.

Cox

How would you do that exactly? How do you envision it? What's your vision of that?

Meador

Well, I'd have to get into a lot of specific statutes, and I don't have a lot of it at the tip of my tongue. But, ... you could go statute by statute, surveying a whole array of acts of Congress that authorize federal jurisdiction, and make discriminating judgments about whether this is a matter the state courts could handle as well, maybe even better, than the federal courts. And I don't have a laundry list to give you right now, but there are those that ... exist like that, I think. Also, ... in the habeas corpus field, there's a lot of federal district court litigation in habeas corpus. My solution for that, is to authorize an appeal from the state supreme court to the US courts of appeals, bypassing the district courts altogether, and let it go up. And therefore you reduce all that repetitive litigation.... Another idea of that is this, that the federal appellate court would not simply rest on the record made in the state court, it would ... require the defendant there in the case to either assert the position in the federal Constitution or not, causing him to waive it unless he asserted it. So he couldn't assert it later, if he waived it at that point. And it would force him either to waive it or litigate it then, and you avoid future litigation. That was part of my proposal, which hasn't got anywhere, as many of mine haven't. But you raise a very complicated, subtle kind of question, that occupies a semester of law school, basically ...

Cox

... I'm sure it does, ... and it ... gets over into politics.

Meador

Oh, yeah, heavily, heavily, yeah, ... that's what it's all about, really, in the end, when you start deciding what you're going to send to the federal courts and leave to the state courts, all these political interests and economic interests involved.

Cox

... Some people would say ... probably that it would ... be good for the federal courts to have more authority because maybe they're more competent, they're less biased.

Meador

Well, that's a major argument, all because of the tenure situation. That's what it gets back to. Not because they're so much better as individuals, but because of the tenure provision. You've got guaranteed life tenure there, subject only to impeachment, which is almost impossible.... The argument is, there's a greater room for confidence, that the courts will be unbiased, and uninfluenced by local political considerations. And there's a good deal of that argument. It can't be dismissed lightly.

Cox

So you would say that to give state judges a life tenure, or a longer tenure would ...

Meador

I would definitely give them longer tenure. I'm not prepared to argue, for political reasons, I guess, for life tenure necessarily. But I would certainly argue for longer terms. I would give them twelve or fifteen year terms. And some states have that. Very few, most terms are six, eight years, but some do have twelve, fifteen. I would give them twelve, fifteen year terms as sort of a compromise short of life tenure.

Cox

And you believe this would increase the confidence in the state courts.

Meador

Well, it would increase a degree of independence, as a matter of degree, independence [?] or, I would think, indirectly, would increase confidence. That's a theory that's hard to test, right.

Cox

... You talked about, too, how some of the social sciences have influenced the law, how psychology and ... other disciplines are brought to bear. Is that a good thing in some ways, has it gone too far in other ways?

Meador

I think basically it's a good thing. You know, I don't know whether you could say it's gone too far, I doubt that.... It's hard to say.... I think it's a very good thing. The more data and information, and, you know, scientifically verified insights the courts could have in resolving an issue, the sounder the decision would be, I think. So I think [that?] on the whole it's a good thing. Now, you get into a political controversy turf when you get into the field of economics. There is a theory that ... the use of economic theory in judicial decision-making is not always good. But I'm not an economist, I'm not into that in a big way, so I really can't get into that

much. I can appreciate the argument, that... I know on the law faculty, we've got people that have gone overboard in the law and economics field, and they think economic theory is the end all and be all, which I don't agree with. And you get ... that in some judicial decisions now too.

Cox

We've talked some about political partisanship and how that's influenced state and federal courts. Anything you'd like to add on that? Is the level of partisanship we have today somehow greater than it was at one time?

Meador

I think so.... Just take appointments to the Supreme Court. Time was, when a nominee did not appear at all before the Judiciary Committee. The committee considered him and voted to recommend him or not based on the record. They had, you know, everything he'd written and said, what he'd done in life, and I think Frankfurter took a position at one point, way back, it was ... improper for a nominee to appear before the committee.... That has long ago been discarded, and so I think, part of what is... Take Justice Black's nomination. You had something then known as senatorial courtesy, that, you know, senators would approve a nomination of one of their own without much fight. He was approved in about a month's time. You take when Byron White was nominated by Kennedy to the Supreme Court. I think he was approved in two or three weeks by the Judiciary Committee. And you just didn't have this sort of fight back in there.... Some people say part of what's happened are these televised hearings, that I think has not been helpful to the process. And then somehow or another we crept into this ideological fight. Now some people say the beginning of all this was the Bork case. His case sort of was the first one where you had this very protracted, difficult ideological fight. And that has now set the stage for all that followed. And there may be something to that. You know Bork has become a verb now, like, he was borked.... So anyway, it's a terribly unfortunate turn of events, but there it is, and it's hard to know how to break out of it, it's very hard to end it.

Cox

Bork was a smart guy.

Meador

Oh yeah, right, no doubt about it.

Cox

... Where do you put yourself on the political spectrum?

Meador

How would you describe the spectrum?



Cox

... Oh, how would I describe the spectrum?

Meador

Yeah, what is the spectrum that you're asking about?

Cox

Well, just the ... talking-heads spectrum on the Sunday talk shows, gas bags.... If you were on there arguing, what would they have you arguing, the liberal point or the conservative point?

Meador

Neither one.... I reject those labels.... I do not use those labels. I don't subscribe to them, I don't believe in them. They are too simplistic, far too simplistic, there are a lot of nuances in there, ... and that's where I am. I guess I'm in what you would call the center.... Yeah, I'm not ideologically hooked on to anything, other than ... One of my rules about law is, we ought to do what works,... does this work or doesn't it work, does it accomplish a good end or doesn't it. That's [normally?] my test, I don't care whether you label it liberal or conservative. What works is what counts with me.

Cox

Well those terms are part of the ... partisan nature of society ...

Meador

Oh yeah, very much so, they're bandied about all the time, and everybody's automatically put into pigeon-holes, right. It inhibits rational discussion, definitely. It's very bad.

Cox

One question I wanted to ask you, this is really the last thing on my list, although I will be glad for you to talk about things that you feel like we've overlooked. You said you lost your eyesight in 1977.... You just seem to keep on pushing, and it hasn't slowed you down.

Meador

Well you have two choices. You can either do that or sit around and do nothing, right? Which I didn't view as an attractive option.... Yeah, that was quite an experience, and the timing of it was very strange and unusual. It happened after I had gone to the Justice Department under Griffin Bell and been there three months. A very unfortunate matter of timing. You know, I had barely got my office organized and underway. We developed an agenda, and all of that, just

getting ready to get really going, and then it happened. And my first view is, that it really is no way I can continue on this job, without eyesight. Here's a very demanding new program in which the attorney general is very much interested, and it deserves to have a head, you know, who would be fully functional and all that, and I'd be a dog in the manger, to try to stay on in there. So I tendered my resignation, sort of informally at first. But to make a long story short, I resigned four times over a period of two or three months, and each time it was rejected. My resignation was rejected, right? And Judge Bell, his conclusion on it, his pronouncement on it was, you may have lost your eyesight, but you haven't lost your mind.... So I stayed on, right, with a lot of help from the staff there. But that was a rather odd sort of time, to be trying to function in this new business here without eyesight, right.

Cox

... Has that made your other senses more acute, do you ...?

Meador

I don't think they're more acute, but you pay more attention to them. Most people don't listen very well, and they claim they don't remember this, that, and the other. Well, they didn't get it in the first place, because they weren't listening. And also, all of your senses, hearing sense is extremely important, and a lot of people don't pay any attention to that. They go along through life, ... relying on eyesight, ... don't really hear what's going on around them. Without eyesight, you hear everything. Sense of smell is very important. These other senses become much more important. I don't think they're any better, you just pay attention to them more, rely on them more.

Cox

So eyesight can be a distraction, in a way.

Meador

Yes, very much so, definitely.... People's reaction to other people is heavily influenced by vision. And I've contrasted this. My impression of other people is formed audibly, only. Other people form visually, and ... last question.... Which is the truer representation of that person, the audible impression or the visual impression? I think vision can be misleading. They miss the real person maybe sometimes. But the audio misses the superficial. Without the vision, you don't get the physical appearance, the way the person's dressed, that sort of thing. And I've noticed this over the years, that people I meet, who may come into my office, and they'll leave, I'll talk to my secretary to get her impression, it may be quite different from mine, because hers is largely visual.

Cox

... I hope I haven't made a terrible audible impression ...

Meador

No, no, you're doing fine!

Cox

What else do we need to talk about?

Meador

Well, you know, I don't know, ... I'm sure there are things we have not talked about, but I don't know what they are right now. They'll probably come to me tonight when I'm in bed. No, I think ... we've really covered every aspect of my career. It's hard to think of something we haven't touched on.

Cox

Well, ... this has been a lot of fun for me. I've enjoyed it.

Meador

Well, I have too, enjoyed it, right. Well, I feel as though there are some things I might have been better prepared on, had I really thought hard about them in advance. You know, if I had set out to get myself fully prepared on every aspect of my career, gone back into old papers and what not, I probably would have had more to say ...

Cox

Well, if you think of other things you'd like to say, next time you're in town we can ...

Meador

Well, thank you, but I think I've probably exhausted myself on myself, right.