

**Arkansas Supreme Court Project**  
**Arkansas Supreme Court Historical Society**

Interview with  
Howard W. Brill  
Fayetteville, Arkansas  
May 19, 2017

Interviewer: Ernest Dumas

Ernest Dumas: I am Ernie Dumas and I am interviewing Howard W. Brill, the chief justice of the Arkansas Supreme from 2015 through the end of 2016. This interview is being held at the Leflar Law Center at the University of Arkansas Fayetteville, in Washington County, on May 19, 2017. The audio recording of this interview will be donated to the Arkansas Supreme Court Historical Society and to the David and Barbara Pryor Center for Oral and Visual Arkansas History at the University of Arkansas. The recording transcript and any other related materials will be deposited and preserved forever in the Special Collections Department, University of Arkansas Libraries, Fayetteville. And the copyright will belong to the University of Arkansas and the Arkansas Supreme Court Historical Society. Judge, could I have your consent for the recordings and transcript for the University of Arkansas and the Supreme Court Historical Society to use these materials in whatever way they choose for research . . . ?

Howard Brill: I consent to using this interview in those ways.

ED: OK. Let's start at the beginning with your full name. Howard W. Brill. What does the W. stand for?

HB: Walter.

ED: Howard Walter Brill. You were born . . .

HB: I was born in Englewood, New Jersey, in 1943.

ED: The date?

HB: October 18, 1943.

ED: In Englewood, New Jersey. Where is Englewood?

HB: It is across the Hudson River from New York City. Both of my parents were from the Bronx, and shortly after they were married in 1941 they left the Bronx and moved across the Hudson River to New Jersey and I was born in New Jersey.

ED: Were you the eldest child?

HB: Yes, my parents had one other child. I have a sister who is three years younger than I am.

ED: What is her name?

HB: Her name is Carol Hatfield. Carol lives in Dade City, Florida. She is a retired schoolteacher.

ED: Your parents were married in the Bronx. What did your father do? Were they native New Yorkers?

HB: My mother's family came to the U.S. just before the Civil War, from Germany. My father's family came earlier, from England or Western Europe, we think. Both families settled in New York City. My mother worked in an office building as a secretary and my father worked for Western Electric. First, he worked in the

office of Western Electric and then in New Jersey on the assembly line making telephones.

ED: This is a manufacturing facility across the Hudson River from the Bronx?

HB: Correct.

ED: Did she continue to work?

HB: No, when I was born she did not continue to work. She did not work outside the home for approximately fifteen years.

ED: Englewood is just a continuation of the city. The city never stops up there. You leave New York City and you don't know you've left the city except the buildings are not as tall.

HB: Right.

ED: Do you have a rough idea what the population of Englewood was?

HB: No, I don't. My father was in a critical industry during the war, and he was not drafted until 1944. When he was drafted, the war was coming to an end. They were now drafting older men because they needed more individuals, so at the age of twenty-six or twenty-seven he was drafted. He went into Navy training in upstate New York and then sometime in the spring of 'forty-five as an enlisted man he was put on the USS Macon, a heavy cruiser I believe, and did a journey down to the Caribbean on its shakedown cruise. His ship went down to Cuba and went to, I believe, Haiti. At that point, the war came to an end and he was released. He never was outside the Caribbean during his Navy service.

ED: Was he on a ship preparing to go to the Far East in 1945? To Japan?

HB: I think so.

ED: That was the next step.

HB: I think they were preparing to go to Japan.

ED: Dale Bumpers was on a ship going to Japan when they dropped the bombs. He always adored Harry Truman. He figured he wasn't coming back.

HB: My father was discharged early and we have old home movies of my father coming back in his Navy uniform and I was a two- or three-year-old boy running to him. And my sister was born in 1947. Sometime in 1948 my father decided that the family should leave the New York City metropolitan area, and he requested and received an assignment from the other branch of Western Electric, which was the Bell company. He went to Bennington, Vermont. He was basically a telephone lineman. We moved to Bennington and I started kindergarten. We were in Bennington, Vermont, from the summer of 1948 to the summer of 1954.

ED: There couldn't be more distinctly different places than Bennington, Vermont, and the eastern shore of New Jersey.

HB: That's right. It was a total change. Of course, my parents had spent their whole lives in the metropolitan area. That's all they knew. But, they had some other relatives who were relocating to Massachusetts, not far from Bennington, Vermont, so when this opportunity came along to move to Bennington we moved up there.

ED: He was a lineman. He climbed the poles, ran the lines into houses.

HB: Uh huh.

ED: That was pretty good work in those days.

HB: It was good work, but I remember him saying that it was no fun in December and January to be out there in Vermont climbing poles and stringing lines after ice storms.

ED: I bet not. But you were going from New Jersey to about the most bucolic place in America. Bennington is not far from Hartford, is it?

HB: Bennington is in the very southern part of Vermont. It is probably ten to fifteen miles from the border with Massachusetts. I can remember as a boy we would drive down every winter to Williamstown, Massachusetts, and go to Williams College, which had a big ice festival. They had all these animals and creatures made of snow and ice on the grounds of the campus there. We had relatives on my father's side of the family who lived down there in North Adams, Massachusetts, and Great Barrington, Massachusetts, and we would go down to see them. So we were right there at the intersection of New York, Vermont, and Massachusetts. For big shopping, we would cross the state line and go to Albany, New York. I was there in Bennington from kindergarten through the fifth grade. I have wonderful memories of Bennington. That was the home of the Green Mountain Boys, so I learned about Ethan Allen and Seth Warner and Remember Baker. We would go to the battlefields. We weren't far from Fort Ticonderoga. So I enjoyed very much growing up in Vermont.

ED: There was a lot of Revolutionary War history there.

HB: Exciting history for a boy in elementary school.

ED: Did you take a lot of interest in history?

HB: I took a very early interest in history. My father worked for the telephone company for two or three years and then, perhaps because of the weather, he looked for another job. He found a job selling Electrolux vacuum cleaners.

ED: Going door to door?

HB: Door to door. In the old days, you knocked on doors. My father was a natural salesman. He loved people. He loved talking to people. He loved asking them about their families. He had that gift of being able to do that. After moving to Bennington, we bought a brand-new house. As the finances of the family improved, we would take a vacation every year for two weeks or so. I remember one year the four of us went up to Nova Scotia. Another year we went to Pennsylvania to the Amish country. Another year we went down to North Carolina. So every month in May or June we would take about a two-week trip. My father would always sell enough vacuum cleaners in a given time period that he and my mother would qualify for a vacation. Western Electric would take them to the Waldorf Astoria in New York City for four days. My sister and I were left with my grandparents so my parents could go down to New York City.

ED: Did you go to the Waldorf?

HB: No.

ED: Have you ever been in the Waldorf?

HB: No. Walked by it. Never been inside it.

ED: It was a great hotel. I stayed in the Waldorf four or five days. There are much more lavish hotels now than the Waldorf. In 1976, I guess, the Democratic National Convention was in New York City—the Jimmy Carter convention. [Governor] Dale Bumpers was there and there was some talk about his being

tapped for vice president. That is the year that Dale Bumpers should have run for president. He would have been elected president rather than Carter.

HB: Yeah.

ED: That has nothing to do with this story. Stop me when I start to do these things.

HB: Sure.

ED: So how long were you there? Through the fifth grade.

HB: Six years.

ED: So you were ten or eleven years old?

HB: About ten and a half when we left Bennington. I can remember that in the summer of 'fifty-three we took a trip to Florida. We had taken trips in other years to North Carolina and one to Pennsylvania. This year we took a trip all the way to Daytona Beach, Florida, and shortly thereafter my grandfather retired and moved to Florida. Six or eight months later my parents made the decision that they would leave Vermont and we would move to Florida. He was going to transfer with Electrolux from one location to another. I was frankly sad to leave Vermont. Number one, I had friends there. Number two, I loved history. Number three, as a fifth grader I had a negative view of living in the South. The civil rights movement was just starting. We were not yet to desegregation. We were not yet to sit-ins, but I just had a sort of generally negative view about the South.

ED: There was the little matter of the Civil War and slavery.

HB: Yes, so my parents said, we are moving to Florida. Awwww, I didn't like that. We sold everything in our house, all our furniture, and we moved down to Florida and moved into a small upstairs apartment.

ED: Where in Florida?

HB: Daytona Beach. We moved to Florida in the summer of 1954. From 1954 on, as long as they were alive, my parents lived in Daytona Beach. So most of my memories of growing up are of Daytona Beach, Florida, except for those wonderful idyllic years in Vermont.

ED: We need to go back briefly. What were your father's name and your mama's?

HB: My father was Edwin Lois Brill Jr. I would have been the III except my mother did not like the name Edwin, so she said this little boy is not going to be the third. My mother's first name was Catharine Linsmann. I tell people my mother's name was Catharine, her mother's name was Catharine, her mother's name was Catharine, and her mother's name was Catharine. Four Catharines in a row, all spelled in the same old German way. My wife's name is Katherine, spelled differently with a K. We have a daughter whose name is Catharine, spelled with a C. We moved to Florida in the summer of 1954 and I started school there in September 1954.

ED: In the sixth grade.

HB: Yeah.

ED: Daytona Beach was a pretty big city . . .

HB: Hmmm.

ED: Probably a hundred thousand or so.

HB: Probably now. It wasn't at that time. Probably forty thousand, with more in surrounding communities.

ED: But much bigger than Bennington?

HB: Much bigger than Bennington.

ED: You started in the sixth grade and had to make new friends. Did you ride a bike to school?

HB: I rode a bike to school. For three years, I rode a bike to school, to elementary school and middle school. And then, I think I rode a bike to school in the eighth grade, to high school. Grades eight through twelve were all in the same school.

ED: I noticed in your resumé that throughout the papers that you delivered and the articles you wrote you kept returning to sports, a lot of baseball.

HB: Yes.

ED: Were you into athletics?

HB: I was not an athlete.

ED: But you wanted to be?

HB: Maybe. Growing up in Vermont I had a little radio. I can remember lying in bed at night, playing with the radio and listening to baseball. My father was a New York Yankee fan. My mother was a New York Giants fan. I became a Brooklyn Dodger fan. So my childhood memories, from an athletic standpoint, were listening to the Brooklyn Dodgers on the radio. These were the mid-fifties . . .

ED: Jackie Robinson . . .

HB: Jackie Robinson, Duke Snider, Carl Furillo, Roy Campanella . . .

ED: Gil Hodges . . .

HB: Gil Hodges. I knew them all.

ED: [Elwood] Preacher Roe.

HB: Yes. Preacher Roe . . .

ED: From Arkansas.

HB: Yes. That's when players would stay with the same team for a long time. You'd get to know them. I remember debating with other guys. Who's the greatest centerfielder? Is it Mickey Mantle, is it Willie Mays, or is it Duke Snider? The centerfielders for the three New York teams. Before we left Vermont, I said to my father, can we go to New York City and see a Brooklyn Dodger game and go to some of the museums? So he and I went down to New York City. I don't recall how we went down there, whether we drove or took the train, but we went to New York City, stayed in a hotel, but the Dodgers, unfortunately, were not in town so we went to Yankee Stadium and saw a game at Yankee Stadium. I said I wanted to see some museums.

ED: Was [Joe] DiMaggio still playing then? It was probably Mickey Mantle.

HB: DiMaggio had retired, after the 1951 season, I believe. Mantle was maybe a rookie, probably his first or second year. I told my father that I wanted to go to some museums that had something to do with history. He talked to someone he knew, who said you probably need to take him to the Metropolitan Museum of Art, because he wants to see coats of armor. For some reason, I was interested in the Middle Ages and knights and things like that. So I remember going to a museum and a room where they had coats of armor, horses draped in armor and things like that. So it was a wonderful trip my father and I had to New York City.

ED: So you were not an athlete, an aspiring athlete? I always wanted to be an athlete. My brother was a big athlete and I always wanted to be, but I weighed about one hundred thirty pounds, so . . .

HB: [Laughs]  
ED: But you were familiar with sports and athletes.  
HB: Yeah. I followed sports all my life.  
ED: But you didn't participate in high school at all.  
HB: No.  
ED: You didn't go out for basketball and quit in frustration?  
HB: I didn't do anything like that. In Florida, I did two things from a sports standpoint, both very low-key. I played some tennis in summer programs at the playgrounds, and I did similar things with baseball, probably the sixth, seventh and eighth grades. But I did not do anything in high school.  
ED: Were you a bookish kid?  
HB: I was a bookish kid. I'll tell you one other thing I did from a sports standpoint. Somehow, I got interested in archery. My parents found an archery range in Daytona Beach, and they showed me how to catch the bus and then take another bus and go out to the archery range. During the summer I would, by myself, take my bow and arrow on the public bus and go out to this archery range and shoot arrows into a target for a couple of hours. I don't recall how we paid for that. I don't know how it got started, but I still have the bow and arrows.  
ED: So they let you on the public bus with a bow and arrow?  
HB: Somehow.  
ED: Did you have a quiver on your back?  
HB: Yes, I had a quiver. I don't think you can probably take a bow and arrow on a public bus today.  
ED: You can take your gun, but you can't take a bow and arrow. You can take an assault rifle, at least in Arkansas.  
HB: [Laughs]  
ED: You read a lot early on, everything you could get your hands on?  
HB: Yeah, as my wife and I have been cleaning our house, I have come across some book awards that I received at Bennington for summer reading programs, where I would read a lot of books and write little reports on them. I read the Landmark books. Somewhere around the third, fourth, or fifth grade I discovered the child history books, of which I still have a whole collection, about thirty of them. So I would read about D Day, or Balboa, or the Pony Express or the Magna Carta. . .  
ED: A lot of history.  
HB: Yes, a lot of history. I loved to read. I remember going to the public library and reading both *The New Republic* and the *National Review*, to gain opposing viewpoints. I started subscribing to *Time* magazine, and underlining new words to look up in the dictionary. I have kept up my subscription, and now I have fifty-seven years of *Time* in store somewhere.  
ED: In high school, were you in the Honor Society, or whatever scholastic organization there was?  
HB: I came to high school . . . Let me give you the geography of Daytona Beach first. Daytona Beach is divided in half by the Halifax River, which runs north and south. On the east side of the Halifax River, you have a narrow strip of land commonly called The Peninsula. It is perhaps fifty miles long, starting at St. Augustine and going all the way down. It is about half a mile wide. That's where

all the hotels for the tourists are located. That's where the beaches are. That's where the attractions are.

ED: From St. Augustine all the way down . . .

HB: All the way down.

ED: I once had a heart attack at St. Augustine. I'm familiar with the town.

HB: On the other side of the Halifax is what is called the mainland. There was, shall we say, perhaps a classic distinction between the two sides of the town. On one side, the peninsula, the high school was called Seabreeze. I lived on the peninsula. I lived about three blocks from the beach. I could walk from my house to the beach. On the other side you had one high school called Mainland High School. Those two schools never competed in sports. The tension between them was so great that they did not compete.

ED: Was it a class thing? Was one school African-American?

HB: No. There was a third high school called Campbell High School. It was located on the mainland.

ED: That was the African-American school.

HB: Correct. I will tell you, Ernie, that in Bennington, Vermont, I do not recall any non-Caucasian students in the entire elementary school. There was one elementary school in the whole town.

ED: That may still be true today.

HB: It may still be true today. But I expect that there may be Hispanics and people from the Middle East and others. When I was in elementary or junior high school in Daytona Beach I don't recall anyone but white students. And certainly in my high school there were no black students. When I was in the fifth or sixth grade *Brown v. Board of Education* came down, but desegregation did not come to Daytona Beach while I was in school. It did not. So the mainland and the peninsula were just two different societies. Now, my parents were not well off at all. The house we wound up buying in Daytona Beach was a small house.

ED: It just happened to be on that side of the river.

HB: It just happened to lie on that side. It was not near the big, fancy homes but a couple of miles south, still on the peninsula, and that was in some way—I don't want to say prestigious—just class.

ED: What was the source of the wealth?

HB: Tourism. That's all it was. When I was there, there were, of course, some attempts to bring in some industry, so there was a small industrial park. They brought in a GE manufacturing plant. They brought in some others. The other thing that gave Daytona Beach, even in the 'fifties, such notoriety and continues today, is that it was the home of NASCAR. On the peninsula, about five or ten miles south of our house, is where the NASCAR races would take place every February and March, and they were on the beach. There was an oval that was two miles on the beach and upon the asphalt and back on the beach. If you go there today, you can still see the remains of the grandstands on the oval. I can remember, as a boy, realizing that this is February. Fireball Roberts and Lee Petty and the other great NASCAR drivers were all coming to town. It was a big deal, even then. I was there when they started building the Daytona Speedway, not on the beach but on the mainland. So, you had tourism, you had NASCAR, but you did not have much in

the way of industry. These are my memories as a child, and I haven't checked it out since then. Certainly up and down Daytona Beach you had hotels, and the hotels existed for that trade from basically February to Labor Day. They came in from Georgia, Alabama, Mississippi, South Carolina—families coming to spend their week at the beach. That's where they went.

ED: Did you spend a lot of time on the beach, swimming?

HB: No, I was not much of a swimmer. So I would go over there, and walk on the beach and run on the beach . . .

ED: It's kind of hard to swim in the ocean, along the beach, isn't it?

HB: Yes. I can remember taking swimming lessons in a pool, but I am not a swimmer at all. My wife, Katherine, swam competitively in high school. She is a certified lifeguard. She still swims a mile three times a week. So I am not a swimmer, and my wife is an excellent swimmer.

ED: The class distinctions between the two high schools were pretty obvious, you say? Was it the feeling that those are lower-class kids over there?

HB: I don't think we focused on it. I think the fact was that we never talked about the school, Mainland. But we did not compete against them in sports. I can remember that on one or two occasions I would have to go to Mainland High School for a competition or something and it was like walking into a different environment where I had not been. I just don't know my way around. I don't think I knew any kids from the mainland. The church we attended was on the mainland. Most of the churches were on the mainland. Most of the population was on the mainland. Not just the African-American population but also most of the growth, most of the space, most of the expansion was on the mainland.

ED: But there would have been a sizable African-American population; there was just not any social interaction . . .

HB: No, there was not.

ED: It probably was like South Arkansas. There was none except . . . We happened to live way out in the country [in Union County] and I lived among them. They were my playmates, but they didn't have a school. They didn't get to go to school.

HB: My first interaction with African-Americans was during three summers in college. I worked for a motel on the beach. I was a desk clerk. I would work sometimes the night shift but typically I would work from 7 until 3 or something like that. Our housekeeping staff was African-Americans. During those days, when I was twenty or twenty-one years old, when I took my lunch break I would sit down there and talk to some of the young women who were housekeeping staff, and I was amazed to find out that some of these young women were going to Bethune Cookman [a historically black college at Daytona Beach] or they were going to Florida A and M [historically black college at Tallahassee, Florida]. They were going to college.

ED: Good African-American colleges.

HB: Yes, so I would be talking to them and I would say, "Look, I am a sophomore in college and you're a sophomore in college. We've got a lot in common, although we, or our paths, have never crossed before.

ED: You had some awareness, before you went to Florida, about this distinction. Segregation.



HB: Yes, I knew something about it, before we moved down there. One reason I knew about it was because I was a Brooklyn Dodger fan and I followed the career of Jackie Robinson very closely. I knew about segregation in major-league baseball before Jackie Robinson came there. So, through sports, I learned these things, although I had never experienced it. And Jackie Robinson had played some spring-training games in Daytona Beach; a statue of him stands in front of the minor-league park.

ED: Do you still have old classmates from high school that you keep up with? Do you go back there for . . .?

HB: I went back for my fiftieth high school reunion. Other than that, I have no ongoing connection with anyone from Seabreeze High School.

ED: What year did you graduate?

HB: 1961.

ED: Seabreeze High School.

HB: Our nickname was the Sandcrabs. The Seabreeze Sandcrabs. The school is still there, but in a different location. It is still the only high school on the peninsula.

ED: But it is integrated.

HB: It was integrated both because there was mandated busing in the 'sixties, but, in addition, housing patterns have changed.

ED: Housing is all integrated now? Is housing still pretty segregated, or do you know?

HB: I don't know.

ED: You graduated in 1961. Was history your big interest in high school? Did you have a notion about what you wanted to do when you were in high school? Did your father encourage you to do anything, say that he'd like for you to be a lawyer or an engineer?

HB: In high school, I took every academic course there was. There were no AP [advanced placement] courses. There were no advanced courses. There was one math course a year, there was one English course a year, there was one social studies course. I took all of those. So I did not have the breadth of options, opportunities, and challenges that students have today. They were not offered. I took four years of English. In my sophomore year, I remember reading Charles Dickens. In my junior year we read great works in American literature . . .

ED: Did you have to memorize and recite in class *Thanatopsis* [poem by William Cullen Bryant]?

HB: Yes. Well, not that. But we had to memorize passages from *Julius Caesar* [Shakespeare]. I enjoyed all of that. I took all the history courses available. I took the math courses up through trigonometry. I took two years of Latin. When Latin finished, I had a choice between French and Spanish. I went to the principal and said, "Couldn't we have some German here?" I had some German heritage. There was no demand for German, and we had no teacher, so I took two years of French. So I had four years of English, four years of social studies, four years of science, four years of math, five different courses a year. I had no real dreams or plans about what to do, except I loved math. Neither one of my parents had been to college. No one in my family had been to college. I was the first person to go to college. My parents thought I was a little different. I was bookish. They didn't quite understand me. They would see me in my room not only reading *Gone With*

*the Wind* but also reading Dostoevsky and reading Dickens and reading Jane Austen, and they're saying, "What is he doing? We don't read these books." But my mother did devour magazines and we received both the morning and afternoon paper. I think they were a little bewildered by me and they didn't know what to do. But they just always assumed I was going to college. So when I'm a senior in high school I apply to five colleges. Let me back up. When we went to Daytona Beach, my father tried to sell vacuum cleaners, but after two years he realized you can't sell vacuum cleaners door to door in Florida for two reasons: Number one, no one is home during the day. They're outdoors, away from the house in Florida. Second, people didn't have carpets. They had terrazzo floors; they had tile. He could not make a living selling vacuum cleaners. So he tried several things. He tried selling insurance. That did not work. He tried delivering milk. For a while, he would get up at four o'clock in the morning and go out and deliver milk door to door. That was exhausting; that didn't work. My mother took several part-time jobs. She became our church secretary one day a week. She did that for thirty-something years. She did some work for the Civil Service Commission, part-time as a secretary. For a while, finances were so tight that she would type envelopes for someone—a penny an envelope or something like that. She had a typewriter at home, and she would type these envelopes. Sometime around 1956 or 1957, my father met someone at church, who said, "Ed, would you like to join me in my store. I'm starting a new store. I did this in New York, and I'm going to do it in Daytona Beach. I'm going to start a retail store selling hearing aids." My father needed a job, so he joined the hearing-aid business. He started in the hearing-aid business in 1957 and became the owner of the business in 1959 or so. He stayed in it until about 1987. The name of the hearing-aid business became Brill's Hearing Aid Center, and the slogan he used in the business was "Ed Brill Cares." He did that because of his personal skill in dealing with people. People would come to see him and would respect him and he would deal with them and they trusted him. So after 1959 we are living a little more comfortably. We had lived in a rental house for five years, I think, until my parents bought a small three-bedroom house in 1959. My parents stayed in this house from 1959 until the year 2000. For forty-one years they lived in this little house on the peninsula. When my sister and I finished college, my parents started doing some international travel, which they enjoyed immensely. So back to high school. I'm finishing high school. My parents know I'm going to go to college, but they really can't give me any advice. They're sort of bewildered. So I sat down and said I'm going to apply to five colleges. In retrospect, I say to myself, "What was I thinking?" I applied to Dartmouth because it was in New Hampshire, which was near Vermont. Number two, Johns Hopkins, because I had probably read about Johns Hopkins, maybe because of its international programs, maybe its general reputation for academic excellence. I applied to Princeton, another elite school way up there in the North. Number four, I applied to Duke because in our family trips to North Carolina in 1952, I think, we drove through Durham and I remember driving up to the main entrance to the Duke campus and seeing through the trees the Duke chapel and I said, "Wow!" And then, as a backup, I applied to the University of Florida, because you had better apply to a state school because

these other schools are very expensive. So I've applied to three very elite schools and I've got Duke, which is beautiful. It is a Southern school that is on the rise but it did not yet have the prestige that it has today, and the University of Florida. My counselor at high school helped me, because they knew that I had academic potential and I could go to one of these places. They helped me fill out the paperwork, which was much simpler than it is today. I received letters back from one or two schools that said something like, "There is no scholarship money at this school for you; shall we continue with your application?" I was admitted to Duke and to Florida. I don't know if I got in any of the others, but it came down to Duke or Florida. Without thinking about the money, because high school students don't think about the cost of college, I said I want to go to Duke. The question was, how are we going to pay for this? There was no scholarship money from Duke. As I recall, my grandmother . . .

ED: They didn't have the student-loan programs then.

HB: There were some private loans. My mother, my father, or someone, my grandmother maybe, cosigned a loan in the amount of two thousand dollars, or something like that. So I accepted the invitation to Duke.

ED: That would have been 1961. But you don't know what you're going to do there?

HB: No, I don't.

ED: You had an interest in math and history but law hadn't entered the picture. Did you know any lawyers?

HB: No. Let me stop and mention two other things about my interests in high school. I was in the marching band. It was an extracurricular activity.

ED: What instrument did you play?

HB: I played the flute. Up in Bennington, Vermont, we had a program in elementary school and I played the fife, because of the Fife and Drum Corps, the American Revolution. So we get to Daytona Beach, the music teacher comes around, and I said, "I play the fife. Do you have a fife?" They said, we don't have fifes down here, but we have flutes. So my parents took out an installment loan and we obtained a flute. I played the flute from probably the sixth grade through the ninth grade. I was in the marching band in the ninth grade. At the end of the year I decided not to be in the marching band the next year. The band director came to me and said, "I see you're not taking band in the tenth grade. That means you won't be in the band, you won't be in the marching band. Why not?" I said, "Well, Mr. Dean, I want to go to college and I need to take more academic courses. There are only six class hours in the day and I can't take band." That's what I told him. I think the main problem, in retrospect, was that there were like eight people who played the flute. Seven of them were girls. I was number eight. I felt uncomfortable, frankly, being around girls. And I was the last flute. But I had one enjoyable year as a member of the Marching Sandcrab Band. We went to Tampa for the big Gasparilla Festival, stayed over there a couple of nights and marched. We marched in other parades. We went to Tallahassee and competed in competition up there at FSU Stadium. So I had some wonderful experiences, but I felt uncomfortable because I didn't have too many friends there and all the other people playing the flute were girls. So I gave the director that excuse.

ED: You needed to play the tuba.

HB: I needed to play something.

ED: The tuba.

HB: Something else. So I dropped out of the band. In retrospect, I wish I had kept that up because I think a musical skill is something that is very enjoyable and if you keep it up you can just get out and play the flute.

ED: I regret all of that myself.

HB: [Laughter] Another thing about high school. Another course that was very fundamental to me—I guess I had one elective each year—was speech. I knew at that point that I was shy. I did not like to get up in front of people and talk, so somehow I decided, or someone told me, that I should take this speech class. So I was in there for one semester . . .

ED: That had to be terrifying for you just to sign up for it.

HB: Yes, yes. I also took typing, which was very important and helpful to me. But I took this speech class, and we had to get up and give speeches, for different purposes. I remember giving a speech on Charles de Gaulle. I had become enamored of Charles de Gaulle. I read about him and I clipped things out of *Life* magazine about Charles de Gaulle. When I stood in front of my classmates and spoke about de Gaulle, they were probably wondering, "What is going on? Why is he talking about Charles de Gaulle?" It is now our senior year and we are about six weeks from graduation and the announcement comes out that we have five students who will speak at high school graduation. We're going to have tryouts. So I think I will try out. I did not tell my parents, because I didn't want to put pressure on myself or raise expectations. So I tried out for high school graduation speech. I was selected. At that point, the speech teacher said this was the tradition: she wrote the speeches. We did not write our own speeches.

ED: She wrote the speech for you?

HB: Yeah. Now, you could improvise and do a few things. She said, "Howard, you are going to give the fifth speech. These other four will go first and you will be last." I gave the speech and after I gave the speech at high school graduation my picture was on the front page of the paper—the daily paper. We had two hundred people in my graduating class. The graduation was at a big civic auditorium. My picture was on the front page and they quoted something from my speech. They said his speaking style was reminiscent of John Kennedy at his inauguration. There was some version of "Ask not what your country can do for you but what you can do for your country" in my speech. I don't recall whether I said to my teacher "I want this" or if I did it on the spur of the moment or how it happened, but there was some version of it in my speech. I don't have a copy or a recording of my speech, so I don't know how it happened. I never heard it again, but that was according to the newspaper.

ED: You graduated in May, and it would have been in January that Kennedy delivered his inaugural address.

HB: Five months after his inauguration. And, of course, for young people at that time—you will remember this—it was just exciting. It really was exciting. I followed that campaign. I watched all the debates, ate all of that up, read everything that I could.

ED: I covered John Kennedy when he came to Texarkana. So he could say he campaigned in Arkansas, he came to Texarkana and made a talk there standing on State Line Avenue, with one foot in Texas and the other in Arkansas. I covered it for the *Arkansas Gazette*. And then [Richard] Nixon did the same thing at Memphis. He crossed the bridge over to West Memphis. I was there as well. Go ahead.

HB: So, those are a couple of things from high school, being in the band for one year and taking a speech class and speaking at graduation.

ED: That was pretty good preparation, both for lawyering and teaching.

HB: It was. I remember going to career day at high school and there were different tables set up. I spent a lot of time at the table talking about teaching. I suspected that teaching would appeal to me. But when I went to college I did not have in my mind to be a lawyer or to be a teacher. When I went to Duke my first semester and I had to put down my academic interests, I probably said my interest was mathematics, because I loved math, I was good at math, I had top scores in all these math things. So even though I read a great deal and did well on the verbal, math is what I thought I would be doing when I went to Duke.

ED: In those days, it was popular to want to be an engineer.

HB: I didn't know whether to be an engineer, a theoretical mathematician or what, but math was what I was going to do.

ED: My daddy had no education—he went to the sixth grade—but he thought we [brother and I] ought to go to college, although no one in the family had ever gone to college, but one thing he did not want us to do was to be a lawyer . . .

HB: [Laughs]

ED: My mother later explained many years later that during the big oil boom down at El Dorado he and some other fellows drove oil trucks back in the 'twenties for a woman who had a lot of oil interests. But he and the others never got paid. They finally went to a lawyer in El Dorado and hired him to sue her. They won a judgment.

HB: Good.

ED: But they never got a penny. They went to the lawyer and he said, "My fee came to more than the judgment," so he kept the judgment.

HB: Awww.

ED: I think the lawyer may have wanted them to pay up. So he thought that's what lawyers do. So all he knew about was engineering. You go to college to become an engineer. So what did you major in?

HB: I went to Duke, and I went through orientation and registration. The adviser said you've got these high test scores. You need to take at least one advanced course. You can choose any of these here. I said to myself that for my elective I want to get something out of the way that I'm not too excited about, so I'm going to take the religion course. At Duke, we needed one year of religion to graduate in those days. So I took Old Testament Advanced, or honors, for people with good test scores. And I took calculus, among other things. About a month into calculus I said: "What am I doing? I do not understand it." I didn't understand the purpose of it. Maybe I could figure out how to do it. So all of a sudden I said I don't think math is for me.

ED: You withdrew from the calculus class?

HB: No, I stayed in it. I signed up for German. I was excited about that. It was my dream to study German. I had these five courses and mandatory PE [physical education]. In the honors religion course, I had to write a paper. The class was Old Testament, so I chose and wrote a paper on "The Causes of the Maccabean Revolution." The Maccabees were revolutionaries in 160 BC. I talked to the professor and he said here are a couple of books to read. So I pulled these books out and I wrote the paper. In those days, the final exams were in January. So I came home to Daytona Beach for Christmas, and studied for a couple of weeks and after New Year's we had another week or so of classes and our final exams. And then there was about a week off, like the third week of January. About that time I get a telephone call, or I guess a message that was in some ways—I don't want to say a turning point in my life—a very significant event. I get a note from a dean who says you need to come see me. So I go to see this dean. I'm eighteen and three or four months old, pretty shy, and not very comfortable in situations. This dean calls me in and says, "Howard, your religion professor has given us your paper entitled 'The Causes of the Maccabean Revolution' and he thinks there's plagiarism here." He starts talking about how serious this is. I start to cry. [Pause] He talks to me for a while and he says let's go talk to the professor, and we get in touch with the professor. The second semester has started and the professor finishes teaching his class and comes to talk to me. He's very kind and he's got my paper. He says, "This sentence here, this sentence here, and this sentence here, there's no quotation marks but they come right from this book." I think he had the book there. And he said, "Here's your paper and there's no attribution. It's the same." [sighs] I don't know if I said to him but I would've said, "Well, I have a list of all my sources and this book is listed as a source." And I would have said to him—I think the paper was perhaps fifteen pages—"Here on page three I've cited this source and here on page six I've cited this source. On page eight I've cited this source. Now I did not cite the source on page one and I should have. I should have cited it on page nine. I should have. And I didn't put quotation marks, but . . . This is sloppiness and there are some mistakes, but I recognized the value of this source and put it in the list of references at the end and I cited him in certain places but I didn't do it here. I was not consistent in doing it." I might be so shy that I didn't say those things. I don't know. I don't know. And he said, "I'm sorry but you're wrong." And he said, "Number one, you're going to have to flunk the course. You're going to get an F in the course. Number two, I have to turn you in to the judicial board." At that point, I may have told my roommate Ken. I may have. I may have called home and told my parents, but I probably didn't. In those days, I'd call home once a month and I'd go to a pay phone and call home, collect.

ED: You didn't want to disappoint your parents.

HB: I didn't want to disappoint them. I remember a few days later I was called in, in the evening, before the student judicial board. These are juniors and seniors, all men. They've got their suits and ties on. They're the future lawyers and judges. They were a pretty distinguished group. I'm just a frightened eighteen-year-old kid. I explained things to them and, again, I don't know if I gave my defenses. I don't know. I don't know. I guess I waited outside and they came back a short

time and said, "This is plagiarism and you are expelled from school." I don't know if they told me that or if the dean told me the next day. So I not only failed the course, but I'm kicked out. At that point, I had to call my parents and say you've got to come get me. I don't know what I said. I can just imagine them getting off the phone and . . . They were not the type who cried. They may not have understood the seriousness of it. They may not have understood the word plagiarism. So I had to stay there for a day or two while they drove up to Durham and picked me up, six hundred miles, packed up my stuff and took me home. I remember going in, the three of us, my parents and I, going in to see the dean, who was called "the great white father." He looked like that; he had that Old Testament prophet image.

ED: Is this the dean of arts and sciences?

HB: Yes, or something like that. He explained to my parents why they had to do this and he used a Bible verse. I tried to find this Bible verse, and I can't quite find it and I can't quite remember it, but it was something like, "You put iron into a fire and it becomes purified and it becomes stronger," or something like that. I think he was trying to say to my parents and to me, "Howard, you will become better because of this. This is difficult for you but you will survive it. You will become better for it." So my parents took me home. I remember my mother saying, "We have already paid the tuition. Do we get our money back?"

ED: For the second term?

HB: Yes. They were very concerned about the money, because they didn't have the money. And the dean said, "Oh, yes, you will get your money back and the bookstore will buy back your books." So sometime the last week of January or the first week of February I'm taken home in disgrace. That's what I thought. I have failed. I've let my . . .

ED: My life is over.

HB: My life is over. It was just a very bad experience.

ED: That would be life changing.

HB: That would be life changing in many ways. So I went home and I needed a job, so . . . I didn't know how to look for a job, because I had never had a real job before, and that's when my father put me in touch with someone who used a hearing aid. This man, Jimmy Taylor, operated a motel on the beach, and he needed someone to be a clerk at the motel. So in March 1962 I started to work in the motel business, which was very beneficial because, number one, I was put behind a desk and I had to learn to talk to people, smile at people and welcome people and to be positive. I don't remember anyone ever teaching me how to do that, but it was important for me to learn. Then, sometime in April or May I sent in the paperwork and I applied to Duke. I said, here's what I have done—I would like to come back in September. I have sat out a semester and I would like to come back. Duke wrote and said, yes, you can come back. I knew all along that I wanted to go back to Duke, sure, I could just transfer and go to the University of Florida or I could go somewhere else, but I said "No, I . . .

ED: You've got to succeed there . . .

HB: I've got to succeed there. I've got to succeed, for myself. I've got to overcome this, even though it was going to cost more. I was a semester behind, more than a

semester behind. I wanted to go back to Duke to prove that I could do it. So I worked all summer, the summer of '62, and September my parents took me back to Duke for me to start again. That was a life-changing experience.

ED: So you go back and start your life path again. Did you think more about what you were going to be taking, about your . . .

HB: Changed in several ways. One, because I was not a freshman and was not there anymore I did not have a choice of where to live. I was stuck in an extra room in a fraternity house.

ED: But you were not a fraternity . . .

HB: I was not in a fraternity. It was a small little fraternity call TEP, primarily Jewish, I believe. They might have had twenty guys there. They had an extra room, so that's where I was. The second thing was I said I want to graduate with my class. I have to take an extra course each semester to get back on track. So I took an overload and I worked very, very hard. Even my grades, aside from this F, weren't very good. They were maybe B's and maybe a couple of C's. They weren't very good. I said I've got to improve. So I'm taking more classes, I'm more disciplined, and I need better grades. So I became very motivated. I remember sitting in this fraternity house. At Duke, there are no separate houses. The fraternity section is part of a dormitory, with separate walls and entries. I remember sitting there and occasionally I would interact with some of the brothers. During the Cuban missile crisis I was sitting down there and watching the Cuban missile crisis on television. We would be talking about what was happening down there in Miami. . .

ED: I was in basic training then. The sergeant was listening to the radio. The Russian ship was cruising across the Atlantic and heading to Cuba with the missiles, and the sergeant said, "Train hard boys, you're going to be killing Russians in a few weeks." I thought, what in hell have I gotten into?

HB: [laughs]

ED: Go ahead.

HB: So I go back to Duke determined. For the next four semesters I took an extra class each semester to get back on track, and my grades improved, either because I was more mature or because I worked harder. I switched to history and political science, so I started taking more and more of those courses. I had some courses that I loved and some professors that I loved, so I became convinced that that's what I wanted to study, history and political science.

ED: Any particular professors there that you remember?

HB: One person was Robert Rankin. He was a senior political science professor. He was on the U.S. Commission on Civil Rights. He was actively involved in civil rights across the nation. He taught an advanced course on political science, political theory. I enjoyed his class and I enjoyed working with him. This was around 1963 or 1964.

ED: V.O. Key was no longer there, was he? Was he at Duke? Wrote *Southern Politics*.

HB: Hmmm. I don't think . . . [Actually, Key never taught at Duke but at Johns Hopkins University and Harvard University.] I remember working in the motel business in the summer of 1963 and watching the March on Washington.

ED: I was there.

HB: You were there?



ED: I participated in the March on Washington.

HB: With what group?

ED: None. I was a reporter at the *Arkansas Gazette* then. I took vacation and went up there and marched part of the way.

HB: You were finished with basic training then?

ED: I had finished my Army duty [in the spring of 1963] and was back at the *Gazette*. And then I covered Kennedy a couple of months later when he was in Little Rock and. . .

HB: For the dam . . .

ED: For the Greers Ferry Dam dedication, three weeks or so before he was assassinated. I covered him at Greers Ferry. Go ahead.

HB: Duke was still all white.

ED: Rankin was not a black professor?

HB: No, he wasn't. As far as I know there were no African-American professors. I can remember going to a couple of meetings with twenty, thirty, forty people focusing upon desegregation. There was talk about how this was going to happen, when this was going to happen, how active the push should be. When I was there, I believe, one or two African-American students were admitted to the graduate school. But I don't think there were any African-American undergraduates when I was at Duke. So I took these extra courses to try to accelerate myself. I finished my sophomore year and my grades were much better. We're now in fall 1963. We've had the March on Washington and my classes are going well and sometime during my junior year—I'm now in a regular dormitory—and someone said, "We have elections next year. Why don't you run for president of our little dormitory group?" I said, "Why me? I'm not involved. I'm not a politician." Someone said, "Well, why don't you just do it." So, to my amazement in retrospect, I ran and was elected president of Canterbury Dormitory. My senior year I was president of Canterbury Dormitory. What did we do? I don't know what we did. I don't think we had any power. I do remember calling some business and renting a TV for our little dormitory so we could watch the election of 1964. So I made arrangements and they brought in a TV and we watched the election returns. I was just eligible to vote.

ED: That was LBJ [President Lyndon Baines Johnson] and Goldwater [Senator Barry Goldwater of Arizona].

HB: Right. I had voted absentee. I had followed all that 1964 campaign. I remember Goldwater's speech at the Cow Palace in San Francisco, when he threw down the gauntlet and the people cheered him. I was a Nelson Rockefeller [New York Governor Nelson A. Rockefeller] fan. I did not think that Goldwater should get the nomination. Two other interesting things from Duke that I will mention. Sometime in late '63 or early '64, Martin Luther King, who I think had been awarded the Nobel Peace Prize, was on his way to Norway to pick it up, I think, and he came to Durham. It was announced that he would speak at Duke University. It was an afternoon during the week and it was in an auditorium that might hold two thousand people. I wanted to hear Martin Luther King. So I walked over there dressed like a normal college student. When I walk up to the auditorium to enter, lined up outside to go in are hundreds of African-American

students all dressed in their Sunday clothes. They had been brought over from North Carolina Central University, a historical black college about three miles away. We went in and the Duke students, all white . . .

ED: I'm surprised that in 1963 there was not some integration there. Our little old college in Arkansas was integrated in 1955, the little college I went to.

HB: Which one?

ED: Henderson State Teachers College [at Arkadelphia, later Henderson State University], where I started.

HB: That was a public school; Duke was private.

ED: A guy named John Taylor and I integrated Henderson . . .

HB: [laughs]

ED: John was the quarterback from Peake High School in Arkadelphia.

HB: OK, an athlete, yeah.

ED: But he didn't get to play. And he didn't get to live in the dormitory, or eat in the campus cafeteria. But he was a student. And he was with Martin Luther King at Memphis when he was killed.

HB: So we went to Duke Auditorium, which was right next to Duke Chapel. I sat down in a ground-floor seat with all white people and the black students from the historical black college were in the balcony. And Martin Luther King spoke in his eloquent style. After he spoke and as the white students were leaving, everyone in the balcony stood up and in a very moving, dignified way sang "We Shall Overcome." I just stood there stunned and amazed. Wow! As I mentioned, I had had some interaction with college students when I was working in a motel during the summer, housekeepers. These are well-groomed, articulate, dignified people, singing, and here we are . . . The other significant event, or I suppose lack of event, was during my last year at Duke—it's now March 1965 . . . I'm going to say something and you're going to say, "I was there." In March 1965, a fellow student comes to me and says, "Howard, next week is spring break, what're you going to do?" I said, "I've got to stay here and work. I've got these three papers to write." He said, "Why don't you come with me?" I said, "Where are you going?" He told me and I said, "Aw, no, I don't know, I've got to stay here and work." He invited me to go to Selma and walk.

ED: I wasn't there. Now, Roy Reed was there. You know Roy?

HB: No, I haven't met Roy. In retrospect, I said, I had a chance to participate in that and I turned it down because where would I sleep, where would I stay, what would I do, how would I pay for this, what about this, what about that? I had to write a paper and I didn't go there. I have used this incident as a lesson for my children. You know, there are opportunities that come to you in your life and you've got to seize them. They may not come again.

ED: This was the day at the bridge, the Edmund Pettus Bridge in Selma?

HB: The bridge. This was after the first clash. Martin Luther King said we're going to march from Selma to Birmingham, or Montgomery.

ED: You should sometime read Roy's account of the Pettus Bridge thing. It was the lead story the next day in *The New York Times*. It was a great story. The whole film *Selma* was based on Roy's reporting. Roy's character was in the film. He lives out here at Hogeye.

HB: Yeah, I know. So those are some of the things that stood out as I was finishing my Duke years. My grades are stronger, I'm taking classes that I enjoy, I'm excited about studying. I did take a class my senior year, an elective. It was called Introduction to the Law. There was a guy who was a political science professor who also was a lawyer who put together a creative course with his own materials. We read about the courts, we read a few decisions and I remember saying, "Wow, this is fun, this is exciting." In addition to taking courses on political science, jurisprudence and theory, and history, this Introduction to Law course was what first got me to thinking about the law. In addition, during my senior year I wrote a paper on the Warren Court and Double Jeopardy. I remember going to the Duke Law School library to do research. I get to my senior year and the question, what am I going to do next? Sometime in September or October of my senior year I do two things. I say I think I'll go get a graduate degree in history or political science and I apply to the University of Virginia. Sometime in November, UVa admitted me. Again, I'm not thinking about how I am going to pay for this.

ED: It was probably cheaper than Duke.

HB: It probably was cheaper than Duke. I do know that my father's business was doing better. Somehow my parents had found a way to pay for my three years at Duke, without any outstanding loans.

ED: So you finished up in three years?

HB: Three and a half.

ED: So you graduated . . .

HB: With my class, May 1965. One day, early in my senior year, I was talking to one of my roommates—this was September 1964—and I asked him, "Ken, what are you doing next year?" He said, "I'm applying for the Peace Corps." I said: "Peace Corps? I know John Kennedy started the Peace Corps. It's got a great reputation, but you've got to be macho." That wasn't a term in those days, but you had to be macho. You've got to climb up mountains and go down cliffs, and kill chickens, strangle them and eat them raw. You've got to do all that stuff. He said, "No, no, it's not like that." He told me that he had requested, I think, Latin America. I thought, well, this might be interesting, so I get an application for the Peace Corps. I sent it in and on the application you were able to check different boxes. So the box I check for the Peace Corps is Sub-Saharan Africa. I chose Sub-Saharan Africa for two reasons. You didn't have to speak Spanish and I didn't want to learn Spanish and I did not want to be put in some village and told to organize the people, because I wanted more structure. And I wanted to go to Sub-Saharan Africa. I had been raised in the South. I had been in a segregated society. I've been in places where there were different water fountains. I know all about this. I want different images, different experiences. So I applied for Sub-Saharan Africa. In December, just before Christmas, I get a letter from the Peace Corps that says, "We are inviting you to Peace Corps training for secondary education in Nigeria." I had probably requested education also, because I wanted structure. I didn't want to do agriculture. I didn't want to do health. So I chose education and Sub-Saharan Africa. And the invitation said Nigeria. This is mid-December 1964. They sent me a whole packet of stuff and one little brochure said: "A Message to Parents of Peace Corps Volunteers." Because I was a very quiet person and

confidential, my parents did not know I was applying for the Peace Corps. So I take this little brochure, A Message to Parents of Peace Corps Volunteers, wrap it in Christmas paper, and put it under the Christmas tree. We're passing out and opening presents and I give them this little thing and they open it. They were in shock. They said, "Well, where are you going?" I said Nigeria. This was about the time there were headlines in the paper about missionaries being killed somewhere in Sub-Saharan Africa.

ED: The Congo, [Joseph] Kasavubu, [Patrice] Lumumba . . .

HB: Yeah, all that. They're just saying, "What is he doing?, what is he doing, what's going to happen?" They didn't understand. They just trusted me because I was a scholar. But I'm sure they were just stunned. Sometime in January or February 1965, UVA wrote me and said, "Oh, by the way, we've decided you can't come after all. We are rescinding our invitation because your grades in the fall semester weren't up to our standards." But at that point I had accepted the Peace Corps so I'm coming to the Peace Corps. My mind is set. I'm going to the Peace Corps and I'm going to Nigeria. So for the rest of that semester I was focusing on graduation. I was trying to get my grades up so I could graduate a little higher. It was 1965, when we're sending large numbers of active-duty military into Vietnam. All this is happening about the same time. Duke was a great experience. I loved it, life-changing in many ways.

ED: Obviously. So you graduated in 1965, and did you go to the Peace Corps?

HB: Came home to Daytona Beach and for the first time in my life I got on an airplane. Back in those days, not as many people flew. My parents didn't have the money to fly, so I got on an airplane for the first time in my life, flew to Jacksonville, then to Chicago—I'd never been to that part of the world—got on another plane and flew to Kalamazoo, Michigan. I was met there and taken to Western Michigan University. There are about eighty-five people who are there for a summer of Peace Corps training at Western Michigan University. The first thing that happened was that we were divided for language purposes. I had been reading about Nigeria for four months because I knew I was going to Nigeria. I had decided that I did not want to go to the southern part of Nigeria. The southern part of Nigeria was the home of the Igbo and Yoruba people. The northern part of Nigeria was primarily the Hausa people. I said to myself that I wanted to go to the Hausa language group. Why? The Hausa people are overwhelmingly Muslim; not only did I want to go to Sub-Saharan Africa but I was also aware that this is my chance to live in a Muslim society. When I saw these language groups, I went to the director and I said if it is possible I would like to be moved from one group and put in the Hausa group. They asked why and I don't know if I gave them a reason or not. But they said they thought they could do that because the groups were more or less equal in size. So I was put in the Hausa group. I knew all through Peace Corps training that when I went to Nigeria I would be going north to what was predominantly the Muslim region. I had ten weeks of training at Kalamazoo, Michigan. About halfway through that training, the director told the eighty of us, "twenty of you have already been student teachers, or teachers, experienced teachers and the other sixty of you have to do some teaching." We had some instruction and then for three weeks I and four other people got in a car

every morning and we drove about thirty miles to Battle Creek, Michigan, to Battle Creek High School. I was assigned to a summer class of U.S. Government. These were obviously students who didn't want to be there during the summer. They've got better things to do, but they probably need a make-up class or something. So I did three weeks of teaching in U.S. Government. I came away excited. I came away excited about being in front of students. I loved interacting with them. I loved everything about it. At the end of three weeks they were asked to evaluate me, and I was given the evaluations. I still have some of those evaluations, and I sometimes go to my law students and say, "Let me tell you what my first students said about me," and I read some of these humorous things, such as, "Tell more funny stories. Kick the talkers out of class. There are people just complaining. Bring better girls into class. Don't go to Africa and work for eleven cents an hour." Humorous sort of things. But I loved teaching very much. Peace Corps training was exhilarating. In addition to our languages, we had classes on education and health and culture. We were psychologically screened; at the group sessions, I tried not to say anything. You've got eighty people. We are fired up. We have answered the call of John Kennedy. We are on the way to change the world.

ED: So, did you?

HB: Well, I did not change the world. I think in a small way I had a positive interaction with my students over there. I went home to Daytona Beach for a week, and then I flew to New York City. I spent about sixteen hours walking around New York City by myself doing different tourist things. I met a friend from Duke, and he took me to the World's Fair the next day. That evening he took me to JFK [airport] and I met the other eighty volunteers. We boarded a charter plane with volunteers going to other countries and we flew to West Africa. We arrived mid-day in Lagos in the first or second week of September. It is hot, humid, stifling. We were taken to a dormitory, where we stayed for a day or two, and we received our school assignments. We went into a large cafeteria or meeting room, and each received a piece of paper and our Peace Corps medical kit. My piece of paper and kit were labeled Secondary School Sokoto. I knew that Sokoto was the heart of the Muslim culture of Northern Nigeria. I knew that it was on the edge of the Sahara Desert. I knew that it was about fifty miles from French-speaking Niger. Frankly, I was very pleased. I was pleased because this was as close to the desert as you could get. This was the heart of the Muslim culture. The city had historical significance. So I was pretty fired up. I did not want to go to a large city. I did not want to go to a capital city. So I've been put into, if you like, a provincial capital and a region with a lot of history. I'm pretty excited. A day later, we boarded a Nigerian airplane, a commercial plane, we make one or two stops and I finally got off the plane at Sokoto. I am met by the principal of my school, who is a British guy, Mr. Whitehouse. He says: "Welcome. I know that you trained to teach African history, but you speak English and your primary assignment will be teaching English here." I was assigned to this school with five hundred boys. It was a residential school. The boys came from little villages all across the province. They were selected after the equivalent of the eighth grade, based upon their English ability on written tests,

and they were brought to this residential school. They stay there for three months at a time. They lived in dormitories with mosquito nets hanging down over them. They ate all their meals at the school. Four hundred fifty were Muslims, about twenty were Protestants, about twenty were Catholics, and about ten were heathens, to use the terminology there. I lived about two miles away in what we would call a government residential area in a small two-bedroom house.

ED: By yourself?

HB: With another Peace Corps volunteer. So I lived there for two years and four months. The next day I went into class to start teaching. I taught the equivalent of ninth-grade English, ninth-grade math and eleventh-grade English, and some eleventh-grade literature. And a little African history.

ED: English literature?

HB: English literature. We read Shakespeare.

ED: Wordsworth . . .

HB: Yes. Some. And, of course, it's the original stuff. It's the curriculum that had been prepared in colonial times. Nigeria had only been independent for five years when I arrived. I was there for the fifth anniversary of independence. I can remember walking into the class for the first day . . .

ED: Nigeria was a British colony, right?

HB: British. It was based, of course, on the British school system and all the boys wore uniforms. I go into class the first day and the boys are wearing uniforms, khaki shorts and white shirts, and twenty-nine of the boys had little white caps on. One boy had a yellow cap on. When I walk into the classroom, the boy with the yellow cap gives some sort of command and all the boys jump up and stand at attention. I walk in and I really don't know what to do. So, I said, "Good morning class." And, in unison, they all shouted, "Good morning, sir!" They're still standing there and I don't know what to do.

ED: I am familiar with that routine. At ease!

HB: No one had prepared me for what to do. So I say, sit down. They sit down. That boy was the equivalent of the monitor. He was in charge of that classroom. They followed his instructions and he would work with me. It was like the sergeant, I guess, giving instructions to all the privates. I took a piece of chalk and turned to the board and said, "My name is Mr. Brill." I took the chalk, turned to the board and started writing "Mr. Brill." As I start to write, I hear people snickering. I turn around and look at them and they all get very serious. I turned back to the board and I continued writing. And then I hear more little laughing back there. They are sheepish and looking down. I said, "What's going on? Is there something strange? Is there something unusual about my name?" I wondered if it was some strange, offensive word in their language. One little boy finally raises his hand. His name was Labarani Gusau, and he said, "Sir, sir, we have never had anyone use chalk with their left hand." I said, "If I try writing with my right hand, my writing is worse." He said, "Well, sir, your left hand is dirty." I said I washed it the same way. He said, "Sir, in our culture the left hand is dirty and we do not use our left hand for most things. We only use our right hand."

ED: And you're lefthanded.

HB: I'm lefthanded. I said, "I'm sorry. In my culture, we use either hand." I learned that in the Muslim culture the left hand is dirty. And if you think back to the study of languages the word—I think I have the right word from Latin—for left is *sinistra*, or sinister. The Latin word for right is *dextra*, or dexterous, so there's a different connotation that comes from left and right. I explained that to them and they became accustomed to that. After the first day, that never came up again.

ED: You did not have to convert to writing righthanded?

HB: No. But I can remember one day being in the staff workroom. There's no air-conditioning, there's no glass. There may have been glass, but basically the windows were open all the time so the air can blow in. I was in there with one of the Hausa teachers—one of the African teachers on the faculty—and a student came to him and had a Koran. The student held it in his right hand but the student gave it to the instructor toward his left hand. And the teacher basically said, do not do that. "Do not give me a Koran that I should hold in my left hand. I'm not going to hold a Koran in my left hand." I realized how important that belief was in that culture. I realized right off that there were things that I had not read about. I did not know. It was going to be a learning experience—a very wonderful learning experience, but different. I use that story about my left hand in my class each year, at the end of it, because in my Remedies class we teach a concept in the law which is known as the doctrine of unclean hands. So I always tell my law students when that little boy, Labarani, spoke up to me that was the first time I learned about the doctrine of unclean hands. But Nigeria was a wonderful teaching experience for me. I loved being in the classroom. I loved the exams. I loved grading papers. I loved interacting with students. I loved it.

ED: Two years and four months.

HB: Two years and four months. I was supposed to finish in two years.

ED: Did you come back home during that period?

HB: I never came back home. I never called home. We sent letters back and forth. I did make tape recordings, old-fashioned tape recordings on reel-to-reel tape, and I would send those home periodically so my parents could hear my voice. I still have those tape recordings. I don't know if I have a way to play them anymore, but I still have those tape recordings somewhere. As I'm getting to the end of my two years, which would have been August 1967, I'm trying to decide what to do. Number one, I thought about medical school. I even obtained some science books. As I'm reading these chemistry and biochemistry books, I said I can't understand these and I don't think I can do this. So I forgot medical school. I thought about graduate school and I looked into it a little bit, but I wasn't excited about it. So I thought I would try law school. At this point, I thought I would go to the University of Florida. I did that because I had read an article in *Time* magazine. Since I had been reading *Time* magazine since 1960, I subscribed to the international edition. I was amazed when my copy came to the school in Sokoto every week, perhaps a little late. *Time* said in an article about law school that it probably does not matter what law school you go to; your rank is more important. There are quality educations at state law schools. I had already been to a quality undergraduate school, Duke, a private school, so I thought I'd go to the University of Florida. I applied to the University of Florida.

ED: At Gainesville.

HB: Gainesville. Florida wrote me back and said on your application you explained that you were expelled from Duke University. We want more details. I had to write Florida a letter about why I was kicked out of Duke. I tried to put it in terms that included my defenses, the fact that I had sat out a semester, I had come back to Duke, I had taken more classes to try to show all that. The law school at Florida told me that I could begin either in September or in March. I wanted to travel, so I said I would begin in March. I asked the Peace Corps if I could stay another four months. The Peace Corps extended my tour, so I stayed until December 1967.

ED: So you came home and went to Florida.

HB: Yes. I will tell you two or three other things about Nigeria before we leave Nigeria. The first Christmas in Nigeria we had three weeks and I wanted to do something that was educationally productive, so I made arrangements and I went to the center of Nigeria to a town called Jos and I did some research into pre-European tin mining. I rented a bicycle and I bicycled around the hills to different places where there was evidence of pre-European tin mining. I wrote up a little report and I sent it to an engineer in New York City who had asked me to do this. It was not significant research, but it was fun. I traveled to a different part of the country. I went to church service on Christmas day in Jos, Nigeria. Jos is not Muslim and is more Christian than anything else, so I was there for that Christmas, 1965. In the spring of 1966 we have about six or eight weeks without classes. In Northern Nigeria there were no classes in April of May, maybe because it was the hottest, driest time of the year. During the hottest, driest time of the year the British teachers under contract would go back to England. We did not have school and everyone had a school holiday. I worked with the Peace Corps and went down to the southern part of Nigeria. I went to a small town called Itu and I spent four weeks working at a leper colony. This was a leper colony run by a Presbyterian church. This colony was for people who had been expelled from their villages because they had leprosy. They were moved to this colony and there was medical treatment and services. These people would probably never go home. They would never go back, because they had the visible symbols of leprosy. I spent four weeks there. I helped a Peace Corps volunteer. We were building houses. I also worked with some little boys who had leprosy and had been kicked out of their villages. I played basketball with them. So I had four or five weeks down there in eastern Nigeria basically in the middle of the jungle. I have left the desert, the southern edges of the Sahara, and I'm down here in the jungle working at a leper colony.

ED: How many lepers there?

HB: A couple hundred.

ED: So you had all ages, including children?

HB: Yes. I've got pictures of them. These boys were eight, ten, twelve years old. They are there until they die. Whenever there were visible signs of leprosy in those days they were an outcast and expelled.

ED: Everybody thought they might get leprosy.

HB: Yes. So I traveled around that part of Nigeria. That was my primary exposure to southern Nigeria and to the jungle, the tropical rainforest. Then in December of



1966 under Peace Corps rules I could take "a vacation." My vacation was that I traveled by lorry, on the backs of pickup trucks or something, all the way across the top of Nigeria to a town called Maidaguri, which is now the center of the Boko Haram insurrection. I traveled from there across a small strip of land and arrived in Chad. I spent four or five days there in the capital of Fort-Lamy [now called N'Djamena]. I got on a truck and spent twenty-four to thirty-six hours traveling south across Chad to the Central Africa Republic. I arrived at Bangui, the capital. I went to the U.S. embassy and they said how did you get here? I said by land. They said, no, no, no—no one comes here by land. I said I did. They said, "you're the first American who came here by land in at least a year." I stayed there a couple of days.

ED: Did you hitch a ride on a truck?

HB: Not quite. I would go to a big lorry park and find out what trucks go to which destinations. They'd say, this truck is leaving in three hours and it's going to this place and you pay this much money. You climb in the back. That's what I did.

ED: In the bed of the truck?

HB: Yeah.

ED: Were they pickup trucks?

HB: Yeah, well big vehicles called lorries. Big open trucks. No protection against falling off, no protection against anything. If it rained, they just flipped over and that was it.

ED: You didn't have insurrections in those days.

HB: I'll get to the insurrections. We're coming. This December 1966 trip was a three-week trip and my goal, in this roundabout way, was to climb the highest mountain in West Africa. I've crossed Chad, I've crossed the Central African Republic, I catch a flight on a U.S. Embassy airplane halfway. Then I get a lorry and get to the capital of Cameroon, which is called Yaounde. Then, I take a train a couple hundred miles to the other major city, Douala, and then I take another train down to Buea, which is at the base of Mount Cameroon.

ED: The highest mountain in West Africa?

HB: Yes. A little over thirteen thousand feet. I decided I wanted to climb it. I had had this dream. Don't ask me why or how I had this dream. One morning I go out walking on the side of this mountain and I get to about, I don't know. . . I had walked a couple of hours and I realized this is a bigger task than I thought it was going to be. So I go back to my hostel and I say to myself I need a little more preparation, because I think it is going to be a two-day hike. I get some crackers, a couple of bananas and maybe a little juice and I head out on this trip early the next morning. This is totally foolish, ridiculous, the type of thing that young people do when they don't plan. I'm finding these trails, going up these trails through the forest. There's no one else on them. Late in the afternoon I get up there to, say, ten thousand feet, above the tree line, and there's a place that's obviously a camp, a rest stop or something. I stop there. And then an organized group of French campers comes down from the summit. They had all the equipment, they had backpacks and, most importantly, they had water. They looked at me and they probably wondered, what is this stupid American doing up here without anything? They gave me some food and they gave me some water.

They said you've got about two hours the next day to reach the summit. They're going down the mountain and I'm going up to the top. I sleep in a little hut that night, but I am very cold. The next day I get up to the top and I find some sort of symbol or some kind of geological marker that says you are at the top. I've lost all my pictures from this three-week trip, so I don't have any pictures of this trip. I get up to the top. I'm not doing well physically. I get back down to this camp at ten thousand feet. I'm desperate for water. All I can find is some dirty water in a dirty pot or something. I said I can't drink this but I'm really thirsty. So I took a couple of pots or pans, punched some holes in them and tried to filter this stuff. I drank it.

ED: Instant diarrhea?

HB: Fortunately, no. Somehow, I stumbled down the rest of the mountain and get back to this little rest house I was staying in. I stayed there a day and then I said, I've got to get home now. I've got ten days to get back to Sokoto. I thought the best thing is to go back through the heart of Cameroon and then go north. So I get one train, then the next train to Yaounde, I look for a lorry and I go about a day north and I get to this town called Garoua. I find a Peace Corps volunteer or some European. I stayed there for a day. I head out to another road and try hitchhiking. I get up there and wait for about five hours to cross the border into Nigeria. Nothing happened. You can't get across. So I leave and go back to this American and spend the night again. The next day I go to a lorry park and said I need to get to Nigeria. Is there a truck going to Nigeria? I'm willing to pay. They said you get here at nine o'clock tonight, you pay and we'll get you across the border. I go back there at nine o'clock at night and I pay the money and we get on this lorry and we headed out on a place where there were no roads. I'm sure we were smugglers. We went across no roads but dry riverbeds. Somehow, at six or seven o'clock in the morning, we get into Nigeria and they drop me at a guesthouse, European-style guesthouse. I was just exhausted and I went into this place and said I want to pay some money and stay here a night. You have some food, a restaurant here. I got into this guesthouse and I just sat there for a day or so and rested. I found some more traditional ways to get back to Sokoto. When I finally get back to Sokoto after three weeks one of my co-teachers said, "I don't know what you were doing over there, but you look terrible. You've lost a lot of weight. You're very, very skinny." I had not eaten well for three weeks. Some of these places what I would do was go to a little roadside stand or a small grocery, and I would get a tin of sardines, a loaf of French bread and a beer, and sometimes bananas. That's what I would live on.

ED: That's not bad fare.

HB: In retrospect, I survived all that. I sent a tape recording to my parents later with this whole story. I'm fortunate to have survived all of it. I never got sick, I never had any real diarrhea problems, dysentery or anything else. In retrospect, I was very fortunate and protected in this very exciting trip.

ED: It is kind of amazing you didn't get any sickness. Any other big trips while you were in Nigeria?

HW: Yes, in 1967 I had a new housemate, Mike, and Mike was a French teacher. In March and April, when school was closed, during the dry season, we headed north

into the desert. We crossed the border at Birni-N'Konni, about fifty miles north of Sokoto, and entered Niger. Our destination was the legendary city of Timbuktu. We made it, saw the mud-built mosques five centuries old. This month-long trip included a twenty-four-hour train trip from Bamako to Dakar; a trip on a freighter from Dakar to Abidjan; and some bizarre taxi trips. One common Peace Corps expression was "WAWA," or West Africa Wins Again. We used that phrase frequently on the trip, during difficult and frustrating times, but we saw and experienced West Africa in a fascinating way.

ED: You mentioned that Nigeria had celebrated its fifth year of independence soon after you arrived. Were there other political developments while you were there?

HB: Yes, and they transformed Nigeria, probably for the worse. Four months after I arrived, the first military coup came in December 1965, when the military replaced the civilian government. By the way, during my Peace Corps years, I wrote a series of columns, perhaps every six weeks or so, sometimes with photos, that were published in my hometown paper, the *Daytona Beach News-Journal*. When the coup took place, I received a telegram—only one I ever received in Nigeria—from my paper asking for a column about the coup.

In May 1967, the South secedes—it became the country that was called Biafra. All of a sudden, there is civil war. In my town of Sokoto there was a little community of Ibos. Most of them worked for the federal government. They were the educated people. They were the elite. In about twenty-four hours all of them got in their cars, their trucks and they left town. They headed south. They knew there was going to be violence and ethnic cleansing, to use today's terminology, and they got out as soon as they could. Shortly afterward, the civil war started. All the Peace Corps volunteers in the South were told to get out. They were told "you've got twenty-four hours to get to the ocean. You'll have boats there. We'll take you out." Up in the far northern part of the country where I was there was no fighting. We were hundreds of miles from the fighting, so I continued my Peace Corps service while the civil war was going on. When I got back here I would read about the civil war, I would read about Biafra and the famine that was hitting Biafra, but I was never affected directly by the civil war. My students in Sokoto were passionate about the civil war. They were passionate about keeping the country together. The leader of the military government [General Yakubu Gowon] was compared to Abe Lincoln. He's fighting to keep people together but they want to secede. We need to keep them in this one country. The Ibos were not in my school, the Government Secondary School. Either they were sent back to the South to go to school there or there might have been some small, private Christian schools, but I think most of the school-age children were back there in the south going to school.

ED: Was it primarily religious strife?

HB: From the standpoint of my students and the people in the north, when the Europeans came to Nigeria they came to the South and started educating everyone in the South. The people in the South got the good jobs in the government.

ED: And they were Christian.

HB: And they were Christian. They were converted. The people in the north were Muslim. Muslims had come down from the desert and they had converted the

north half of the country to Islam. The people in the north said: "We've been Muslim and had Islamic culture for five hundred years. These people in the south, they had nothing until the Europeans came. And then, coming from nothing and learning English, they get all these good jobs and they think they are in charge." So, it's religious, it's cultural, and it's the fact that the people in the south became part of the colonial system. Put all that together and you have civil war.

ED: So you got out just as all the nastiness began.

HB: I got out. I left in December 1967. I bought a plane ticket. The Peace Corps gave us a plane ticket home. We could convert that to cash and buy a different plane ticket. Say my plane ticket was a thousand dollars. I met with a KLM agent and I say, here's where I want to go. The Peace Corps had given each of us some "termination money," and I used that to help purchase a plane ticket. My plane ticket had twelve to fourteen stops on it. My first stop was Johannesburg [South Africa], so I fly from the capital of Northern Nigeria, Kano, to Johannesburg. I spent a week in Johannesburg, the heart of apartheid. I wanted to be there. I wanted to see South Africa. I did the things that you do when you are in South Africa. I went to Pretoria, I went to the Voortrekker Monument [Pretoria], I went to Kruger National Park to see the animals. I had that experience of being in an apartheid society. So I am coming from West Africa, which is now independent, and I'm going down there where there are separate water fountains and separate park benches. Apartheid was so much worse than I remembered in the segregated South—so much worse. I took a train trip to Pretoria and I would be in the class with all the white people on the train and there were cars and cars of Africans, and we would stop in Soweto, one of the townships, and thousands of Africans would get off and go into Soweto where they lived.

ED: Did you visit in Soweto?

HB: No. You didn't do that. Maybe a few Europeans did, maybe a few journalists, maybe a few missionaries, but basically Europeans didn't do that.

ED: Mandela hadn't come along yet, or was he in prison then?

HB: He was in prison.

ED: Who was the other fellow who died, was killed, in captivity?

HB: Biko?

ED: Yeah, Steve Biko.

HB: So I was there for a while, and then I had to get from South Africa up to my primary goal, which was Tanzania. I had been told that if you go to South Africa and you get a South African stamp on your passport you cannot get into east Africa, because those countries don't want you coming from South Africa. I had gone to the U.S. Embassy and I had explained the situation. I had traveled with two passports. One passport I only used in South Africa, and it had one stamp in it: South Africa. When I left there, I wondered, from the standpoint of plane flights, how do I get to Tanzania. So I left Johannesburg and flew to Salisbury, Rhodesia, which is now Zimbabwe but which was then still under white control. I spent a couple of days there and took a day trip to Victoria Falls. Then I flew to Malawi, which was sort of the bridge between white Africa and black Africa. I spent a day in Malawi, and then from there I flew to Dar es Salaam [capital of Tanzania] and spent two days in Dar es Salaam. The reason I'm doing all this is

that I have an objective. It is to climb Mount Kilimanjaro. I fly to Moshi, which is the city closest to Kilimanjaro. I stay at a hotel, and tell them I want to go to the top of the mountain; what do I need to do? They said, you pay some money, we'll get you some equipment, and we'll put you on an expedition. I pay the money. I knew this beforehand, so I had saved the money and put it aside. One morning there are five of us who head out. There's me, two young guys from the U.S. who are teaching somewhere in east Africa, and a married couple from, I believe, Norway. In addition to five Europeans, there are twelve porters. They carry our stuff.

ED: You obviously had read Hemingway; you were going to look for the leopard carcass.

HB: I had read Hemingway, and the *Snows of Kilimanjaro*. I had seen the pictures. That was my goal. It was a five-day hike and the first day you go from four thousand feet at the hotel to nine thousand and you sleep in a hut. The second day you go from nine thousand to twelve thousand and you get above tree line. That day was Christmas Eve. I had a terrible headache that afternoon, and I think it was just the altitude. The porters carry all our stuff and do all our cooking. We just walk. They carry our stuff. They are barefoot, probably. The next day is Christmas Day, my headache is gone, and we walk from twelve thousand to sixteen thousand and primarily we are going across barren land, just gradually rising. Kilimanjaro has several volcanic cones. Kibo is the one with the snow; that is my destination; the highest point is called Uhuru Peak. That is my goal, a little over nineteen thousand feet. There is another cone, which is visible in the other direction, that is much rockier, much more dangerous, much more difficult, which is about seventeen thousand. An English guy had just died on that mountain. So we're not going that way, we're going over here. The evening of the third day we get to these itty-bitty little tin huts, at about sixteen thousand feet. Our guides said get to bed; we're getting up early. They get us up about two o'clock in the morning and we head out. We soon reach where we're going, that is, the time for the ascent. Instead of going across, now we're going up. Our goal is to get to the top about sunrise. Why? Because when the sun comes up it gets treacherous. We are going back and forth through loose rock called scree. We're going back and forth, zigzagging up to the top. It's about five o'clock in the morning and I'm not doing well. One of the porters is not only carrying my stuff, he's pushing me, encouraging me to go on up. Sometime around dawn we get to nineteen thousand feet. We get to the lip of the crater. They said, "you have made it." I have a picture of myself on the top of the mountain. They said if you want to go around to the other part of this ridge, this lip, there is a marker over here that is maybe fifty feet higher, but they said basically you are here. So I just sat there and rested for an hour or so. Then we headed down. Once we got off the rocky slope, we picked up speed and I think we went all the way to nine thousand feet and slept in the hut that night. The fifth day we walked back to the hotel. It was a great experience. That's why in a roundabout way I went through all those countries. You know, we're nowhere near the Supreme Court yet, which is the reason for this interview. My wife said this morning, why is it going to take three hours?

ED: No, this is better than the Supreme Court. So you get back to the U.S. . .

HB: I traveled through Europe. I go to Ethiopia, Greece, Vienna, Amsterdam, Germany, Ireland, and I get home. I did not hit the big tourist capitals of London, Paris, and Rome. I had other things I wanted to do. It's January, it's February. It's cold, cold, cold. I'm traveling by myself. I had a lot of interest in Ireland, Irish literature and William Butler Yeats. In Ireland, I took a train out to Sligo and then bicycled out to Yeats's grave. I've always enjoyed Yeats; don't ask me why. Sometime in high school or college I got interested in Yeats, so I went to his grave, just beneath Ben Bulbin mountain. I spent three months traveling basically from mid-December to mid-March 1968. I spent three or four days in New York City, reminiscing, looking at things, walking around, and then in March I'm back at home, I have a weekend in Daytona Beach, and then I start law school.

ED: At the University of Florida.

HB: Correct.

ED: Now you know you are going to be a lawyer.

HB: Yes.

ED: But you're still thinking about teaching. Was that . . .

HB: I didn't know what I was doing. I didn't know why I was going to law school, I didn't know what I wanted to do, I didn't know anything about lawyers, I had read a lot of books about lawyers, a lot of books.

ED: But you didn't know any lawyers?

HB: I didn't know any lawyers at all. I'm going to law school, but I don't know why. [laughs]

ED: OK. I'm familiar with that. So this is March 1968 when you start law school. What does that take, two years?

HB: Two and a half years.

ED: Any experiences in law school that were decisive?

HB: I did not enjoy the first year of law school. I did not like any classes. They did not appeal to me, but my grades were good. Second term of law school, again I was not excited about anything, but my grades were good. The University of Florida is on the quarter system. After the second quarter, I was invited to be on the *Law Review*. I must have been in the top ten percent of my class. I started writing. After one or two quarters on the staff I ran for editor. I became an editor and later I became the editor in chief of the *University of Florida Law Review*. In legal terms, that's considered prestigious. That is a steppingstone to different positions in law school and law firms in the future. At that point I was doing well in law school and then about halfway through law school, in late '68 or early '69, I received a letter in the mail from my draft board.

ED: How old would have been then?

HB: Twenty-five, I think. My draft board said come for your physical and prepare for your induction. I did two things. I wrote my draft board and said I am here in school at Gainesville and instead of going for my physical in my home town, can I go for it in a closer city?

ED: You were 1A, weren't you?

HB: Yeah. I wrote my draft board and I said I believe you have discretion or ability in how to classify people. I have served my country for two and a half years in the Peace Corps and I request consideration of that. This is early 1969. At this point, I

said maybe I should be a schoolteacher again. So I looked for a teaching job. When I found one, I dropped out of law school.

ED: You hadn't had any education courses?

HB: No. So in March 1969 I left law school and I started teaching world geography at a high school in Live Oak, Florida, at Suwannee High School.

ED: Where is Live Oak?

HB: Just south of the Georgia border about seventy-five miles north of Gainesville. About a week or two after I became a schoolteacher, which would have given me a different type of deferment, my draft board writes me and basically says, "We appreciate your service as a Peace Corps volunteer and in light of your service as a Peace Corps volunteer we are rescinding your draft notice." That was left up to every draft board. I had other friends in the Peace Corps who did not have that experience with their draft board and were told to show up for active duty. So my draft board, for reasons I never understood, was going to give me a deferment, because of my Peace Corps service. There is no doubt in my mind that if I had been drafted I would have either gone, obeyed, or I might have enlisted in a different branch, which, as you know, is what other people did at that time. It's clear that I would have served but first I wanted them to consider that I had already had spent two and a half years. So I finished my three months of teaching at Live Oak, Florida. I had a wonderful time. It was world geography. I'm talking about Africa. I'm talking about the world. I've got stories. So I had a great time. But again I said to myself that I really like this teaching business. I went back to law school. I had five quarters to go. I was on the *Law Review*. I did some teaching of legal writing as a third-year law student. At this point, in late 1969, I turn twenty-six. I'm not going to be drafted. I'm finishing law school and making plans for the rest of my life. By now, I'm engaged to Katherine.

ED: Last name . . .

HB: Price. She was born in St. John's, Newfoundland. Her father was active-duty Air Force. He was at a base there. She was born there. She with her parents lived at ten different places growing up. She spent three years at MacDill Air Force Base in Tampa, three years at Homestead [Air Reserve Base] in Florida and for her senior year in high school she went to Goose Bay, Labrador. She graduated at Goose Bay, Labrador, and came back to Gainesville to attend the University of Florida. We met at Gainesville at the University of Florida. I first saw her at church in May 1968, she was, and is, a stunning redhead, but did not talk to her for several months. She had started in Florida in 1965. I returned to the University of Florida in March 1968. We had our first date in November 1968; we went to see *Carmen*. We were married in July 1970, six weeks before I graduated from law school.

ED: You finished law school in . . .

HB: August 1970.

ED: So then what did you do?

HB: My dream toward the end of law school was to join the IRS and be a tax lawyer. I loved everything about tax. It got me fired up and excited. I applied with the IRS. They offered me a job in Boston. Katherine and I said, "Well, we don't know about Boston . . ." People told me the type of law you do with the IRS in Boston

is not the best thing, so we turned down Boston. That was a foolish thing to do, because Boston is a great place for a young married couple to live, but we turned down Boston. They offered me Richmond. We said, "Aw, we don't want to live in Richmond. Richmond is sort of the heart of the South, the heart of the Confederacy. We don't really want to live in Richmond." They said, where do you want to live? We gave them a whole bunch of possibilities. About that time, an appellate judge by the name of Robert Mann comes to the law school and starts interviewing. He puts the charm on me and we decide to go work for him. I become his law clerk. We move to Lakeland, Florida, after graduation.

ED: Is Florida divided into two federal districts?

HB: Five districts.

ED: This is a U.S. district judge?

HB: State. State judge.

ED: The equivalent of our circuit judge.

HB: No, it's appellate level.

ED: So it's a regional appellate court.

HB: Right, for central Florida, basically.

ED: You become his law clerk.

HB: Yes. We move to Lakeland. I become his law clerk. My wife, Katherine, becomes a first-grade teacher at a Catholic school.

ED: As his law clerk, do you write a lot of his opinions.

HB: No. My nine months there were not a very positive experience. I wrote memos for him. I did not write opinions. He did his own opinions. I gave him things and he wrote his own opinions. Although he put the charm on me and he was a wonderful guy and he was charming, somehow we never clicked. We never clashed, but we never developed anything positive.

ED: Is it an elective judicial system in Florida?

HB: It's elective. He charmed me, I was impressed, and I thought it would be wonderful, but it didn't turn out to be that way. I went through the motions and did the work, but I view the difficulty as mainly my fault. I was not comfortable talking to him, he was not comfortable talking to me. Once or twice I would try drafting opinions, but I never saw anything that showed up in the formal opinions. I cannot go back and say I had a role in that opinion. So that nine-month experience has almost disappeared from my mind. It looks good on paper. I tell law students clerking for a judge may be wonderful, but it depends upon your relationship with that judge, your interaction with that judge, and what you're going to be doing. It looked good on paper, it was good for my career, it looked like good credentials, but I would not rave about the experience. But I attribute that a lot to my general immaturity.

ED: How many judges were on that court of appeals?

HB: Five.

ED: Were they elected in partisan elections?

HB: I'm sure they were partisan, yes.

ED: At least at the time. It could have changed since then. We supposedly have changed from partisan to nonpartisan elections for judges.

HB: [laughs]



ED: Then what?

HB: I was there for a year. I looked for a job with a law firm. Nothing came along. I didn't get any offers. I wrote the University of Florida and said it appears that you need some full-time people teaching legal writing. I'm available. Eventually, I was offered a job not just teaching legal writing but as the head of the legal-writing program at the University of Florida. For the following year, my wife and I lived in Lakeland. Gainesville is about 125 miles north. So I would get up very early Monday morning, leave the house and get to Gainesville about eight or eight-thirty. I would stay at Gainesville Monday and Tuesday. I had a big office with a very big closet. I slept in my closet at the law school on Monday night. I had a sleeping bag.

ED: Did you have a cot?

HB: Nope. I just slept on the floor, in my sleeping bag. Big office, big closet.

ED: Did you have a blow-up rubber mattress?

HB: No. Just a sleeping bag that I would use in a tent. Tuesday morning, I would get up very early, six o'clock or so, make sure I was cleaned up and looking good, and I would leave around three or four o'clock and drive back home to Lakeland. Thursday morning, I would get up, again at five o'clock, drive from Lakeland to Gainesville, spend all day Thursday in my office and drive home. So I would be up there Monday, Tuesday, and Thursday. I did that for nine months, because I did not want to relocate, and my wife loved her job teaching first grade and did not want to move.

ED: Tell me about legal writing—is it how you organize and prepare a legal filing?

HB: Yes. Legal writing covers different things: writing memos, writing appellate briefs, writing court documents, perhaps writing mortgages, contracts and other legal documents. As you know from teaching journalism, it is labor intensive. There should be a lot of writing, drafting, and feedback. I enjoyed that very much. I had fun teaching legal writing.

ED: You've taught it since—here [UA Fayetteville] as well?

HB: Yeah. I did that for nine months at the University of Florida. After those nine months, my wife and I say to ourselves, what are our future plans? We both said let's go up north. Let's leave Florida. We didn't like what we thought was the future of Florida. It's become too tourism-oriented. There's no change of climate. Let's go somewhere else. So we look around and we apply at the University of Illinois. I chose Illinois for two things. I could teach legal writing and I could get an advanced degree.

ED: Champaign, Illinois.

HB: Yes. And my wife applies for the graduate program in education. So we move to Champaign and we spend one year in Champaign. I teach legal writing. She gets a master's degree and does some official student teaching, and I obtain a masters of law degree. So we were there around twelve months. During those twelve months I ask myself, what am I going to do when I leave? Some of the other instructors teaching legal writing looked for a permanent job on a law-school faculty. I said I don't know how I can be a law professor when I've never been in a courtroom. I've never worked with clients, I've never billed, I've never done any of those things that lawyers do. I need to go to work for a law firm. So I interviewed with

law firms. I interviewed with law firms in Kankakee, Lasalle-Peru, Springfield, and Rock Island, Illinois. We had no interest in living in Chicago or working in a large big city firm. I took a job with a firm in Rock Island. It was a three-person firm. I became the fourth lawyer.

ED: General practice?

HB: General practice. It was started by a guy with a background in eminent domain, and he had these two younger guys under him. I joined the law firm and I was with him for almost two years. My wife got a job teaching in a Lutheran parochial school, and we had two years in Rock Island, Illinois. We had wonderful friends, we enjoyed Illinois, but after about one week I figured I would not be spending the rest of my career in that particular law firm. I realized that the law firm did not have a sense of service, did not have a sense of community. The head guy was sort of money-focused. I said this is not my style. In retrospect, I should have gone to a different law firm. If I had gone to a different law firm, I might have stayed there. While I was there, I did have the chance to teach real-estate law at Blackhawk Community College. I also wrote a book review for a journal, with the hope of improving my academic credentials.

ED: What kind of practice did you do?

HB: General practice. I did a little bit of everything. I did divorce, I did wills, I did contracts, I did a little litigation, but no criminal work.

ED: Bankruptcy?

HB: I did a couple of bankruptcies. I did a little bit of everything. I tell my students now that I did not go to some big firm and do some highly specialized, high-profile work. I did not do antitrust work, I did not do securities litigation, I did not spend months working on one case. I did a bunch of different things. Very general, which I think prepared me for the type of teaching that I do. I did a little bit of everything, but nothing very deep. So I've got some good stories I can use in the classroom, even though they are forty years old. I remember coming home to my wife after a week or two and saying, "I don't think I'm going to stay here forever and ever." But I knew I couldn't leave too soon. I knew I had to stay at least a couple of years. In November 1974, I told my boss I'm going to take a few days off. What I did not tell my boss was that Katherine and I flew to Washington, D.C. I attended the law-school conference, and I interviewed with ten law schools. So I secretly went away to look for a job.

ED: There were deans from various law schools around the country?

HB: Search committees.

ED: So it was organized for that purpose?

HB: It's the recruitment conference. It takes place every year in Washington.

ED: Was somebody from U of A there?

HB: No. I talked to a bunch of schools and following that I had a couple of invitations to go places. I had a couple of places I turned down. I turned down Suffolk University, because that's a proprietary law school in Boston and that was not my ideal of a law school position. I interviewed at Mercer [Macon, Georgia]. Nothing came of that. Then I got a telephone call from one of my mentors at the University of Illinois, who said, are you still looking? I said yes. He said, "I just got a call from my friend, Wylie Davis. Wylie is the dean at the University of

Arkansas, and something strange has happened at the University of Arkansas. The legislature had decided to divide the law school in half. They're going to separate the Fayetteville campus from the Little Rock campus and as a part of this statute passed by the legislature . . ."

ED: [State Senator] Max Howell's doing, I think.

HB: Correct. ". . . They're going to give the Fayetteville campus seven new faculty positions. Would you like to interview? I'll put you in touch with Wylie Davis." I said, "Yes." So, sometime in April I tell my wife that I've been invited to visit Fayetteville. I fly down to Fayetteville to the old Drake Field, and I'm met by David Newbern. David Newbern takes me to his house over here in the historic section. I meet Carolyn [Newbern], and I meet their daughter, Alistair.

ED: Did he play the banjo for you that night?

HB: Not at that point. The next day he brings me to law school. I spend a day talking to various people. "This is Bill Clinton. Some people said he ran for Congress and lost, but he's on the rise." I talked to Al Witte. I talked to Ray Guzman. I talked to a lot of people who are well known in Arkansas legal circles.

ED: Hillary was there then, wasn't she?

HB: Hillary was there then. She was here. I talked to all these people, had a good visit, fly home, and about a day later I get a telephone call from Wylie, who says the faculty has voted and they would like to offer me a job. I call my wife at home and said they've offered me a job and I need to think about it. She said, "No, no, no, you don't need to think about it. Call them back and take the job. Just take the job!!" I did have an offer of a position at Southern Illinois in Carbondale, but I never seriously considered that, although the salary was higher.

ED: Had she ever been to Arkansas?

HB: My wife spent fourth and fifth grade in Blytheville, Arkansas, because her father flew B-52s. So she had memories of growing up in east Arkansas. When I described Fayetteville to her, she said, "Are you sure that's Arkansas? That doesn't sound like Blytheville."

ED: There are no cotton fields.

HB: There are no cotton fields. So I called up Wylie and said, I accept. I went home that night and I said, OK I need to tell my boss what I am doing. I did some research and I said to myself, "He's going to fire me because you don't need to have a lawyer doing work when he's going to walk out the door. They're not going to trust you with anything." So I checked to see if I could get unemployment compensation. I went in the next day and said, "Herb, I have enjoyed working here for two years, but, as you know, I used to teach and I really enjoyed teaching and I've been offered a job at a law school." I think he was dismayed that I had not told him earlier that I was looking. I said I would like to stay until July 1. To my amazement, he let me stay until July 1 and paid my salary through July 1. So all through May and June we're packing up, we're getting ready to sell our house, and saying goodbye. We were getting ready to sell our house, we're going to get a truck, we're going to drive to Little Rock and up to Fayetteville, and I'm going to start my teaching career. I'm excited. In the first five years of our marriage, my wife and I had lived in four different places in four jobs. I was tired of doing it.

ED: Did you have family by that time?

HB: No. No kids. We've been married five years, no kids. We're free to move.

ED: Had you ever been to Arkansas?

HB: No. The first time was when David Newbern met me at the airport. When I arrived here I was told—I learned this when I was here in April 1975—that the law school was in the middle of a building program. That room over there [pointing], the classroom wing, was built in '73, '74, '75. The law school enrollment expanded significantly when the war in Vietnam was coming to an end. A lot of people were coming back, a lot of people wanted to come to law school, the law school needed more space. So, the building opened and my office opened just about that time. So I moved into a brand-new office. I was met by Assistant Dean Steve Clark [later attorney general of Arkansas]. Steve Clark walks me down the hall. He says, "Howard, these are brand-new offices. Which one do you want?" So I chose my office. A day or two after we arrive, Katherine and I are having our fifth wedding anniversary. We call Steve on the phone and say, "Steve, what's a good place to go to dinner for our anniversary?" So, he says there's this place just off Leverett Street called The Farmer's Daughter Restaurant. It's an old house that's been remodeled." It's no longer there. So Steve Clark recommended where we went for our wedding anniversary. That was July 2, 1975, and we enjoyed our dinner. I've been here ever since.

ED: David Pryor is governor.

HB: David Pryor is governor.

ED: Clinton had just lost the race for Congress. You were on the faculty with both Bill and Hillary. She was on the faculty as well.

HB: Yes. Bill started in '73. Hillary started in '74. When I joined the faculty in '75, the other new faculty members were Ellen Bass Brantley, new on the faculty . . .

ED: Ellen was on the faculty? I guess I didn't recall that.

HB: She was here for a year before she moved to Little Rock.

ED: OK, I guess that's when she began her association with Hillary.

HB: F. H. Martin joined the faculty. He later went on the Highway Commission before he died. A couple of other faculty members joined. So we had a group of new faculty members. It was an exciting time.

ED: Of course, David Newbern would be on the faculty, and then he would be off the faculty, going down to Mountain View to run the Ozark Folk Center . . . serving as a judge, and so forth.

HB: Right.

ED: Of course, Robert A. Leflar was here. He was a distinguished professor.

HB: Distinguished professor. He had been away for a year or two, visiting somewhere else. He came back. Under the rules of that time, retirement was mandatory at age seventy. Each year, we, the faculty, would pass a resolution saying we encourage and invite Robert Leflar to return and teach at law school again. He said he would do that without pay. So we would pass a faculty resolution and send that to the Board of Trustees, and the Board of Trustees would invite him to participate again. So, for a number of years he was not paid for teaching.

ED: So you could be a faculty member, but you just couldn't be paid?

HB: Correct. There was some way around it. Under the federal law, there were some exceptions.

ED: That wasn't a federal law, was it?

HB: Yeah. There was a law against age discrimination, but it was different for faculty. That has since been changed. I may be wrong about the details, but a number of years we passed a resolution and he taught without pay. I think there was some sort of provision in the law . . .

ED: I know Max Howell had a bill . . . He didn't sponsor it, but got someone else to sponsor it for him and he got the bill passed for mandatory retirement of judges at the age of seventy. It wasn't mandatory, but you lost your judicial retirement benefits if you ran and were elected after the age of seventy. That was intended to get rid of Murray O. Reed, a chancellor in Little Rock he didn't like.

HB: That is the statute that was the basis of litigation last year [*Landers, et al., v. Stone, et al.*] The Supreme Court upheld that statute by a vote of five to two. Paul Danielson and I dissented. It's interesting that Max Howell was behind it.

ED: That was the idea. I'm not sure it was the reason that Max didn't like Murray Reed, but Judge Reed rendered the decision in 1966 or 1967 throwing out the state's old evolution law, the 1928 initiated act that prohibited the teaching of evolution in Arkansas. I might as well tell that story here, because it might figure when we're talking about the independence of the judiciary. I was covering the Supreme Court at the time. Murray Reed was the Pulaski chancellor when the Arkansas Education Association and a biology teacher named Susan Epperson at Central High School in Little Rock filed a lawsuit [*Epperson, et al., v. State*] challenging the constitutionality of the evolution law. The attorney general, Bruce Bennett, defended the law. Judge Reed ruled that it was a violation of the First Amendment speech and establishment clauses. It goes up to the Arkansas Supreme Court and they sit on the case. The chief justice at the time was Carleton Harris, a wonderful man. All the judges revered him. But he was terrified of a decision, because evolution was dynamite.

HB: I know.

ED: When mention of evolution got in the newspaper we would be flooded with letters to the editor. He thought it was going to damage the court. In conference, it came out four to three to uphold the statute and overrule Judge Reed. The three dissenters were George Rose Smith, J. Fred Jones, and Lyle Brown. The four upholding the law were Carleton Harris, Conley Byrd, John Fogleman, and Paul Ward. I asked Conley Byrd about it when we did an oral history several years ago, and his memory was not very good about it, or else he just didn't want to recall it. "Tough case," was all he would say about it. Justice Harris apparently told the justices that "we can't go out of here divided." It was so controversial that it would just destroy the court. We've got to get together and work it out unanimously. It was kind of like Earl Warren did with the U.S. Supreme Court on the *Brown v. Board of Education* decision. He made them resolve their differences to reach a unanimous decision. They sat on the case and haggled and haggled. John Fogleman wrote a mammoth majority opinion upholding the law. It apparently was filled with citations, pages of them. I think Lyle Brown wrote a dissent and J. Fred Jones and George Rose Smith concurred. They sat on the case for much of a year. I was covering the court and was wondering, when is that decision going to come down? On the last day of the term, they came down with

the decision. Judge Lyle Brown's law clerk later told me what happened. So I'm relying on the account of Pierce Wilson, Brown's law clerk, who is now dead. J. Fred Jones and George Rose Smith finally caved in and said they would go along with the majority but they couldn't sign on to Fogleman's opinion. OK, we'll go out with an unsigned per-curiam order, they decided.

HB: [laughs]

ED: It was an unsigned per-curiam order, two sentences long. At the last conference, again according to Pierce Wilson, Lyle Brown said "all right, I'll destroy my opinion," and he threw it across the table, and he said he wanted his name listed as dissenting. He said something like "we can stay here for five years and I'll still dissent." Then it goes up to the U.S. Supreme Court and it overturns the state and holds that the Constitution does not let states prescribe school curricula that is tailored to any religion.

HB: I appreciate all that history.

ED: When the marriage case came down, or didn't come down, I was reminded of the evolution case, how divisive those kinds of cases can be. OK, where were we?

HB: We were back here at the law school and we were talking about Leflar and who was on the faculty. That's where we were. When Wylie called me on the phone, he said you can teach any first-year class you want because we have all these new faculty members coming. I chose civil procedure. I did not like it in law school, because in law school we had not gone beyond the nineteenth century. After practicing law a couple of years, I had the idea of using skills in writing and in drafting assignments in a civil procedure class. He said you've got civil procedure. He said we also need you to teach professional responsibility or ethics and I said OK.

ED: So that was your first involvement with ethics, and you had a class in ethics. Had you had a class in ethics when you were in law school?

HB: Before Watergate, classes in ethics in law school were very minimal. The growth of ethics in law school came after Watergate. We've got all these lawyers at the White House and they are engaged in unethical conduct or even criminal activity. We need to teach the lawyers better.

ED: We're probably going to have another phase of that after the current situation.

HB: I know. So, number two, I'm going to teach Legal Ethics. Number three, I'm going to teach Remedies. I said to myself "Remedies"? What is that? I never had that in law school. Fourth, he said we'll have you teach some legal writing. So before I came down here I knew what my four courses were going to be. I contacted David Newbern, who taught Remedies and Civil Procedures. I said give me some advice about teaching these classes. I contacted Professor Milt Copeland and asked him to give me some advice about these classes.

ED: Get their syllabi, and so forth?

HB: Yes. So before I came down here I knew what I was going to be teaching and I started mentally preparing. We arrived July 1. We were in an apartment on Leverett Street for a short time. We buy a house. We go to Florida to see my parents for a couple of weeks. But I felt prepared because I knew what I was going to be teaching, although I had not read the books and knew nothing about Remedies.

We've been going for three hours. Shall we take a break and figure out what we're doing?

ED: Sure, let's do that.

[Break]

ED: OK, judge, we're back from lunch. We've got you situated and on the payroll at the University of Arkansas School of Law in 1975. We talked about the people who were on the faculty there at that time, including Bill and Hillary Clinton. They were not there very long after you got there, because he ran for attorney general in 1976, got elected and both of them moved to Little Rock. She joined the Rose Law Firm. Did you have much to do with the Clintons, any experiences with them, either or both of them?

HB: I'll tell you two stories. The faculty used to gather on Friday afternoons, to play volleyball. A faculty member had a volleyball court, so faculty members would gather there to play. Bill was a very enthusiastic volleyball player. He would be out there on the front line spiking the ball. As I recall, Hillary did not play volleyball. I recall her sitting on the sideline.

ED: She used to play softball. I played softball against her. She was better than Bill at softball.

HB: I remember her sitting on the sideline. She might be observing, but she was reading a book. Unlike you, I don't remember playing softball with her, but I don't remember her being actively involved in sports. Over the years, I've had conversations with President Clinton, where he would always ask about the Razorbacks. But I don't recall her being a sports fan of the same type. Second, I remember sitting in faculty meetings, usually over lunch, where we would be discussing issues of faculty governance. She was very involved in faculty governance—some issues about the future of the law school—and he would sometimes be sitting in the faculty meetings reading the sports pages. They were both enthusiastic members of the law school. They both had very positive relations with the students, but those were two stories that I particularly recall. They had offices up there on the second floor. There's a plaque up there at his office that says this office was occupied by Bill Clinton.

ED: Is there one in front of hers?

HB: Her office was destroyed in remodeling and it is now a corridor linking parts of the building, but there is a plaque where her office used to be. We have recognized them with those two small plaques.

ED: In these faculty governance meetings, was she sort of acerbic or combative?

HB: I don't recall that. I recall her participating . . .

ED: Very collegial?

HB: Both of them were very collegial. She, of course, started our law school clinic. She was heavily involved in that. When he ran for Congress [1974] he did not ask for a leave of absence from the law school, so he was both running for Congress and teaching at the same time. When he ran for attorney general, he did take a leave of absence so he was not on the faculty teaching during that Democratic primary, which was the spring of 1976.

ED: She started the law school clinic. That is representing indigents, right?

HB: It's representing indigent criminal defendants and also representing people in civil litigation where you cannot afford a lawyer. She put that program together when she came here in 1974.

ED: She was involved nationally with legal aid.

HB: Correct. So our clinic started when she came here. It has evolved significantly since she came here, but she put together the framework.

ED: The reason I ask about the collegiality was that all of my dealings with Hillary wound up sort of unpleasant for me . . .

HB: [laughs]

ED: I always had a great deal of admiration for her, but I think it was not reciprocated. She once killed a story of mine that I had spent a lot of time on at the *Gazette*. It was an investigative story that I didn't particularly want to do. A big businessman, a liquor distributor, had been indicted for the theft of a lot of property. The FBI and the Little Rock police were involved. When I wrote the story, which I was assigned to do and had not instigated myself, I had to go over to the Rose Law Firm and meet with Vince Foster and Webb Hubbell, who spent a long time going over this mammoth piece of copy I had written, which was mainly transcriptions of some old tapes made from body mikes that the FBI had strapped to the chest of an ex-con. Vince and Webb asked me some questions and didn't see any problem with the story—no libel—but the next day about a ten-page opinion from Hillary arrives in which she recommends that the *Gazette* not publish the story because it violated the privacy rights of members of that family. There were a lot of quotes from the guy in there making derogatory references about members of his family. Hillary always had this obsession with privacy. I think that was the root of most of her political problems—the State Department emails and so forth. I protested at the time, but I really didn't disagree with her. I later had some other difficulties with her, which got me chewed out by my boss, the publisher, at lunch one day. We had that little conflict in 1982. Bill had requested lunch with us—my publisher, the editor and me. He was running to try to get back in office. She tore my ass up. It was over a constitutional amendment that they had written. I don't know if you remember the ratepayers' utility amendment. I had written editorials critical of him for signing a petition to put the amendment on the ballot. She jumped all over me at lunch and my publisher switched and went with her and chewed me out about it. I got the last laugh, because about a week before the election that fall after Clinton had endorsed the amendment I got a call from [Justice] Darrell Hickman, who said, "Dumas, are you going to be out at the court this morning?" I said, no I don't go down there anymore since I've been kicked up into the ivory tower at the *Gazette*. He said something like you need to get out here because we're going to kick that goofy ratepayers amendment off the ballot. The court said the ballot title was so long and so confusing that it took Hickman ten minutes to read the ballot title although the law said voters were permitted only five minutes in the voting booth. But all that is neither here nor there. Any stories you can tell about all those years of teaching that is, perhaps, life-shaping?

HB: I would not say life-shaping. I will tell you two general areas that have been very important to me in my years at the university. I was asked by [Professor] Al Witte



around 1992 if I would be interested in being on a faculty athletic committee, and I was. Three years later, when Al Witte stepped down as faculty athletics representative, [Chancellor] Dan Ferritor asked me to serve as faculty athletics representative. For fifteen years I was the FAR. I was the liaison to the SEC [Southeastern Athletic Conference] and to the NCAA [National Intercollegiate Athletic Association]. I tell people that during those fifteen years I saw the best and worst of college sports. I worked with outstanding young student athletes. I met some wonderful coaches. On the other hand, I saw the money influence in college sports. I had to investigate a number of violations, or potential violations, of NCAA rules. It was a wonderful fifteen-year experience.

ED: So that was your role as faculty representative, to investigate violations, if there were allegations that someone had paid . . .

HB: Yes. So the general approach that we developed under [Chancellor] John White in particular was that if there were serious allegations there was a three- or four-person task force that investigated. There would be someone from the Athletic Department, which might be the director of compliance, me as the faculty rep, and it would be Scott Varady or Bill Kincaid from the university general counsel office. The three of us would do investigations. Sometimes we would bring in someone from the outside to help. Typically, we brought in a former NCAA employee who was now in private practice who had a full-time business helping universities. The three of us on campus and sometimes this guy—his name was Chuck Smart—would do investigations. We would sit down and interview coaches, we'd interview athletes, we'd interview boosters, we'd interview other people to try to get to the truth and determine whether there were any violations. On three occasions, I was part of the team that went to the NCAA committee on infractions when we had major charges—once involving football, once involving basketball, and once involving track. That's basically when we were found guilty and were arguing a case on appeal to these committees. So it was a wonderful experience. I was able to use my legal skill in another way, a rather high-profile way.

ED: Were there any repercussions around campus from all that? Athletics is so big.

HB: Well, sometimes there were repercussions. They never came from faculty members, but they might come from coaches, and they might come from student athletes. I can recall calling a coach one day and saying, "Coach, your player is not eligible. He can't play." He was very unhappy about that and he started telling me all the reasons why this person should be eligible to play. Another time I got a call Friday morning from an assistant football coach who said the plane is about ready to take off and this player needs to get on the plane. I say the player is not eligible and he can't get on the plane. I had an unpleasant telephone conversation with that coach, who tried to tell me why this player could get on the plane. He said this player is "a difference maker. This player could bring us the national championship. He needs to be on the plane." I said I'm sorry but he is not eligible. He did not get on the plane. We won the game without him. When the guy finally did become eligible, in a week or two, we did not win the national championship. So I learned after a while to take these comments from some coaches with a grain of salt. I was the FAR for fifteen years and I enjoyed it immensely. I told the dean

here at the law school that work constituted probably twenty percent of my time, the time spent on athletics. I told the dean that I did not want a reduced teaching load but I wanted some tolerance if I could not do all my committee work and if I could not do all the research. I said part of that time was being spent on athletics.

ED: So it was a law-school job. The person had to be a lawyer?

HB: Didn't have to be a lawyer. I was replaced by someone who was not a lawyer.

ED: So it was kind of like an FBI job, like a Jim Comey. It was probably not a job most professors wanted to have.

HB: That's right. But it was rewarding. I worked with great people. I had stories that I could use in class about what works from some of the experiences we had.

ED: I noticed in a lot of the papers you did there was a lot about athletics.

HB: Yes.

ED: It was owing to those experiences?

HB: Yes. And the second general area that became very important to me was participation in the legal life of Arkansas. I wanted to come to Arkansas in part because there were only two law schools in the state. The state is smaller and I thought it was possible to have an impact on the legal profession. So right after I came here, I took the bar exam to become an Arkansas lawyer. I wanted the credibility to say I am licensed to practice in Arkansas. And I became involved in the Arkansas Bar Association. Almost from the beginning I volunteered for the Arkansas Bar Association. I became active and I had a number of roles with the Bar Association over the years because I made that decision in the beginning. I met key people: Webb Hubbell, P.K. Holmes, Vince Foster—we were all on committees together back in the early 'eighties. So that gave me a role in writing the rules for lawyers and in writing the rules for judges. That decision to become active in the Bar Association and public life in Arkansas was very important. Those are the two things, in addition to my teaching and basic research, that have sort of been a focus during the years I've been in Arkansas.

ED: And you drifted over into legal ethics, which is the thing that you're recognized for. But it's not something you set out to do.

HB: I did not set out to do it, but when I came here Wylie asked me to teach that course. I found that other people did not want to teach that course. I found that I enjoyed teaching that course.

ED: You had never had that course yourself?

HB: I never had that course, and it was just developing after Watergate. I became involved in committees. I started writing about it. Little by little, I developed this role, dealing with ethics in Arkansas. That has been very fortunate. My major research was my book on damages. A publisher came to the law school in 1982 or 1983 and he was looking for Arkansas professors to write books about Arkansas law. I said I teach civil procedures so maybe I can write a book on civil procedure. The publisher said, "I hate to tell you this, Professor Brill, but twenty minutes ago I was down the hall from you. I was talking to David Newbern. He's going to write the book on civil procedure."

ED: Torts had never been a big thing with you either.

HB: It had not been a big thing with me. And this publisher said, how would you like to write a book on damages? I said OK. That ties in with my course on remedies. So I started writing this book on damages.

ED: Torts, remedies, damages are all essentially the same things? Are they interchangeable?

HB: Well, damages are the end product. When you win your lawsuit, what do you get? Attorney fees, court costs, punitive damages—how do you calculate the damages? It's at the end of a lawsuit. So, my book on damages has a chapter on torts, but not so much on how you prove it, but how much do you receive if you win. It neatly ties into my course on remedies. I'm now in the sixth edition of this book on damages, and my son Christian co-authored this most recent edition.

ED: These are essentially textbooks?

HB: They are more books for lawyers than for students. I do not use the damages book in class. I do not require students to buy it. It's purchased by practicing lawyers and judges.

ED: Somebody interested in the law can purchase those books and get a pretty good understanding of torts and all of that.

HB: Yes.

ED: So those are the two experiences you had in addition to teaching.

HB: In addition to teaching and research, those are two extra tasks that have been rewarding.

ED: So faculty can practice law themselves. How did that change come about?

HB: There were always a few faculty members who were actively engaged in the practice of law. The key example is a professor, Mort Gitelman, who retired about ten years ago.

ED: Yes, Mort did some work for the ACLU. I was the president of the ACLU for a few years and . . .

HB: He would take cases. There was a backlash from people in the legislature about that. He was the best example, and there were some other examples of people who practiced law. The problem was that to practice law you had to be licensed in Arkansas, and some faculty members do not want to be licensed in Arkansas. Probably half the faculty today is not licensed in Arkansas. Technically, they cannot go into court and do anything. But Mort was, and he was the leading example of a faculty member who also did some consulting or practicing. Of course, Dr. Leflar was licensed in Arkansas and he may have consulted with law firms and lawyers, but I'm not aware of that. Fred Spies might have.

ED: I think he did, and might also have done some work for the ACLU, as a cooperating attorney. But there are a couple of cases on your resumé where you were an attorney of record.

HB: Yes. The primary case was *Firestone v. Little*. I was here in Fayetteville, and I had a telephone call from a law professor in Illinois, Ron Rotunda [Ronald D. Rotunda], who said there was a case in El Dorado, Ark., and would I be willing to consult on it. I said, well, yes. I drove to El Dorado and we had dinner at the old Holiday Inn motel one evening—myself, this law professor from Illinois, [Phillip] Phil Carroll from the Rose Law Firm [in Little Rock], and a corporate attorney from Firestone. The reason we were there was because of a lawsuit against

Firestone. A wheel rim had exploded and flown off a logging truck, and part of this rim had hit this woman, Artie Little. She sued Firestone. Firestone had suffered a default judgment because the lawyer in Ohio did not get the paperwork done on time and did not file an appearance. So Firestone is now convinced that this is an example of Southern justice at its worst, and he wants Phil Carroll of the Rose Law Firm to help out. The Firestone attorney also brings in the Illinois professor and me. The four of us are sitting there along with Jodie Mahony [Joseph K. Mahony, an El Dorado lawyer and member of the Arkansas legislature]. There are five of us sitting there trying to figure out what to do about this case. The next day we went into court in front of [Circuit] Judge Melvin Mayfield. I made the argument in front of Judge Mayfield. We lost. Firestone then says we are going to appeal to the Arkansas Supreme Court. And Firestone says they need a better lawyer. They already have Phil Carroll. They want a better lawyer and Firestone says there's a lawyer in Washington, D.C., who used to be the dean of the Harvard Law School and used to be the solicitor general of the United States, and his name is Erwin Griswold. So we're going to bring in Erwin Griswold on this basically run-of-the-mill personal-injury case from Union County.

ED: Melvin was the circuit judge and later went to the state Court of Appeals.

HB: He was a circuit judge. Yes. So we gathered there at the Supreme Court for oral arguments and Erwin Griswold, the former solicitor general of the United States, comes down from Washington to make the argument. Firestone won on appeal. A rather technical argument, but it won.

ED: Before the Arkansas Supreme Court.

HB: Before the Arkansas Supreme Court. So that was my first involvement in real litigation in Arkansas. It was exhilarating. It was fun, just the high-profile nature of it. But they were good stories I could tell in class in a variety of ways. So I said if more opportunities like this come along I'm going to take them. Over the last thirty years, I've had a lot of lawyers call me and ask if I would consult on a case. They fall into three categories. Sometimes, it's just a phone call and I just give advice. Sometimes, I just review documents and send them a short email or something. Sometimes they want me to do more and I do more in addition. Maybe I write an opinion letter, maybe I give an affidavit, and typically I would bill the law firm for that. There have been a handful of cases where they actually want me to testify. My approach then is to evaluate the case and I will say to the lawyer, either I do not agree with your position and you do not want to hire me because you don't want my opinion—and I've told law firms that—or I will say I am comfortable with this position, I think I can defend it, I think I can present it, and if you want and if it is consistent with my workload here at the law school I will become involved. So that's why there are probably five cases over the years where I've gone that far and have actually participated in litigation up front.

ED: Were you there when Judge Mayfield ruled? You don't have a Melvin Mayfield story, do you?

HB: No, I don't. [laughs]

ED: If you read Donnie Corbin's interview, that's how he got the circuit districts altered because of his experience with Melvin Mayfield.

HB: I don't know. I'll go look at that.

ED: Mayfield threw a book at him and hit him in the chest at a conference one morning. Donnie had been out duckhunting on a lake. His secretary comes out in a boat and tells him you've got to be in El Dorado this morning. He rushes to El Dorado for the hearing and Judge Mayfield chews him out and throws a book at him and hits him in the chest. So he gets back to his office and calls Marcus Halbrook, the head of the Legislative Council, and tells him draw up a bill to change the circuit court boundaries to take Lafayette County out of Mayfield's circuit. It got done. [Corbin was a state representative from Lewisville at the time.]

HB: [Laughs] OK.

ED: I'm looking at your resumé and your articles. Here's one: "Take me out to the ballgame: Baseball players before Congress."

HB: About twenty years ago, I decided I needed to develop another course. I loved all my classes, but I wanted something else. So I went to the faculty and I said I would like to teach a one-hour for-credit course on baseball and the law. It will be an elective. I will teach that as an overload after my regular courses. I will teach it every other year if I can get twenty-five students. So the last twenty-five years or so every other year I will say to the student body, if twenty of you, say, sign up for this course I will teach it. Every time, I have twenty or so students. Each week, we have one case from the law of baseball. So we have the Curt Flood case, we have the Pete Rose case, we have the fight over Barry Bonds' seventieth home run ball—the fans fighting. We also have the litigation over the lights at Wrigley Field. Each week, one different area of the law. Following up on that, I discovered that every June in Cooperstown [Ohio] at the Hall of Fame there is a symposium on baseball and the American culture. They invite people of all disciplines to submit proposals: poets, writers, sociologists, economists, journalists. All you have to do is be prepared to talk for thirty minutes about your own interest in baseball. I've spoken there three times.

ED: All on the subject of baseball and the law.

HB: Yeah. And all three of those papers have been published. So after the presentation, I convert it into something I can publish. So that's why you see those three articles on baseball. The last two times I have done it with my son, who is a lawyer in Columbus, Ohio, and the last two articles have been co-authored with him.

ED: Well, while we are on this, let's go back and talk about your children. We haven't covered that. We'll get back to this law stuff, but let's be sure we've covered that.

HB: My wife and I have three children. We have a son, Christian, who is thirty-nine years old and lives in Columbus, Ohio, and is a lawyer, and he is married to a pediatrician. They have three children. I have a thirty-seven-year-old daughter, Elizabeth, who lives in Durham, North Carolina, and is director of a free health clinic. And I have a son, Andrew, who is thirty-five years old and who lives here in Fayetteville. He works for a mission organization, Lightbearers, and he and his wife have five children.

ED: Anything else we need to talk about from your teaching career?

HB: I don't think so. I love teaching. I get fired up about going into the classroom every day. That's why I was more than willing, eager, to come back to the law school because I was coming back to something I enjoyed.

ED: You never had any interest in politics?

HB: I had run for office twice. I lost twice.

ED: Tell me about those.

HB: In 1968 I'm a law student in Florida. There is a congressional election coming up. I don't like the Republican candidate, and I don't like the Democrat. I found a statute that said you can register as just another person and they will count your write-in ballots. I registered.

ED: As a write-in.

HB: As a write-in. I got twenty-three votes. [Laughs]

ED: You didn't have any notion that you could win.

HB: Oh, no, no, no. I did it for fun, and I suppose in some way to take a stand, to give a different viewpoint. I had just come back from the Peace Corps. I'm all fired up. I'm in law school. I read this newspaper article. There is a new statute. You can register as a write-in. I got twenty-three votes, out of, perhaps, 160,000.

ED: You can do that in Arkansas, too, or could. It never is reported in the papers but the historical record shows all these write-ins.

HB: In 1986, there is an open spot on the Fayetteville School Board and I run for it. There are four people in the race and I came in with, I don't know, forty percent of the votes. The winner got forty-nine. The other two got 11 or 12% percent of the votes. The issues turned out to be school-district lines and books in the schools. So, I got beat. That's the last time I entered politics.

ED: You never had any ambition to be in the legislature.

HB: Never thought about that at all.

ED: So we come down to 2015 and Chief Justice Jim Hannah is very ill and he resigns shortly before he dies.

HB: I was in Russia with law students. I've taken students to St. Petersburg seven times since 2003. I returned from Russia around August 14. I am met at the airport by my wife and, driving back, she says in passing that there are two political developments that I should be aware of. Number one, Conner Eldridge has stepped down as U.S. attorney and the rumor is he is going to run for the U.S. Senate. Second, Jim Hannah has stepped down from the Supreme Court because of his health. I said to myself that is interesting but I put both things out of my mind. I knew Jim Hannah slightly. I had dinner with him once or twice at the law school. I did not know him well. I prepare for law school orientation. I meet the students. Classes begin on Monday. It's late August, four days before the start of the semester. I'm in my office at eleven o'clock on Thursday morning and the telephone rings and it's someone from the governor's office. She says there's a vacancy on the Supreme Court, as you probably know. Would you be interested in serving as chief justice? Wow. Yes, I said, I would be interested. Any attorney in Arkansas would have said the same thing. That afternoon, I had a telephone call from the governor. The governor said thank you for being interested. Before we go any further, he said, I need to find out if this is something that you could work out with the law school. I said I'm sure I can work it out. Do you want me to

talk to the dean? No, he said, let's wait. He called the next day and left a message on my phone: Please talk to the dean and see if this is possible. Friday afternoon, I alerted the dean that I had talked to the governor and that he was considering me. I told the governor that I had alerted the dean. He said, can we meet Monday morning at the Chancellor Hotel in Fayetteville? I said yes. That weekend, my wife and I talked about it. We frankly prayed about this possible opportunity and how to respond if it came. I also said I needed to notify one person in addition to the dean. I called Don Bobbitt, president of the university. At that point, I was the chair of the search committee for the new chancellor of the Fayetteville campus. We were about to select candidates to interview. So I notified Don Bobbitt and said I can't give you any details, but there is a possibility that there is going to be a major change in my position in the next week. I'll give you the details as soon as I can. Monday morning, I teach my Civil Procedure class. I leave a few minutes early and go down to the Chancellor Hotel. I have about a fifteen- or twenty-minute meeting with the governor. It's almost all about things unrelated to being chief justice. It's about his son, maybe my son, a few other general things. He said there's been a lot of controversy about the court. It's been in the papers. There apparently is tension there. There apparently have been some leaks going on. There are all sorts of things. Are you aware of that? I said generally yes, but I have not followed the details. He said he understood that it could be difficult. I said I understood that. He said he had several names on his short list. It sounded like most of them were either sitting judges or retired judges. He said I was the person outside the box. Near the end of this fifteen- or twenty-minute conversation he said—and it was not very dramatic—well, I'm ready to name you if you're ready to serve. Something like that. I said yes. He said, OK, can we do the press conference tomorrow? I said yes. He had an aide there. He said, what time do we have tomorrow? The aide said ten o'clock. So he said OK, see you at ten o'clock tomorrow in Little Rock. So I walk out of there after fifteen or twenty minutes knowing I'm going to be named chief justice. I called my wife and told her. I went back to the law school and told the dean at, say, noon, that I won't be able to teach. I go to my other class at one o'clock. I walk in there and said I want you to know that I'm sorry that I will not be able to teach this class this semester. There was an associate dean there with me, and I said this class will not be offered this semester. It's not possible. I said I'm sorry but I can't give you any more details. Goodbye. I walked out. The dean stayed behind to basically say we will buy back your textbooks and things like that. So I pick up Katherine and we drive to Little Rock. We had told our children over the weekend. On the way to Little Rock our son Christian in Columbus, Ohio, was texting us and saying there are things out there on the web, on the blogs. First, rumors that the governor's list is down to four people and he tells me who the four are. I'm not one of the four. About an hour later he said there were more blogs and they've got two people named. Then he said there's a notice that's just been posted and it says Professor Brill, professor at the law school, told his class at one o'clock that he was cancelling his class, could not teach and did not give any details. Apparently, somewhere around seven or eight o'clock that night something went on a blog that I was going to be named. So around nine o'clock or nine thirty in the morning my

wife and I leave the hotel, drive over to the Capitol and I can't find a parking place. She says you're going to be chief justice and you don't have any place to park. I drive around and finally find a place to park, we get to the governor's office around nine forty-five, we visit with him in his chambers for a short time, our son Andrew arrives; there is a press conference, the governor says a few words, the press is there, and they ask a few questions. I remember two questions in particular: Question number one: The Supreme Court has had a lot of negative controversy and a lot of publicity about fighting and quarrels, charges and accusations in the last six months. What are you going to do about that? I said I'm not looking back. I'm not concerned about that. I'm focusing on what lies ahead. Then someone said, what is your judicial philosophy and who is your role model as a Supreme Court justice? I said to myself, those are dangerous questions. You do not want to answer those questions, because you get yourself locked in.

ED: You should have said, John Marshall.

HB: I said my philosophy is to uphold and I will apply the Constitution of the United States and the Constitution of the state of Arkansas and the statutes of the legislature and the rules of the Supreme Court, the traditions and the case law of Arkansas. That's what I'm going to follow. There were one or two more questions and I was out of there. My approach was I didn't want to look back, I didn't want to get locked in, I didn't want to have to clean house, I wanted to avoid all that. That's the approach I took in the press conference. There were four members of the court there. Those four members of the court and J.D. [Gingerich] took me to the court. They gave me a quick tour of the Justice Building and the clerk's office in particular. They showed me my office. I went out to lunch with four members of the court. By the way, when we went to lunch, they showed me the big bonus, the real perk that comes with being on the Supreme Court. You know what it is? It's the secret parking garage.

ED: Oh, yes. That is big.

HB: Secret parking garage. And I got my pass code so when I went there on September 1 I can go right into the Supreme Court. They said not only that, but when you get in here you're going to have a spot with your name where you can park. I said "wow."

ED: That's the biggest perk there is.

HB: Then Katherine and I drove home Tuesday afternoon, saying to ourselves, this is really happening. I had three or four days to mentally get ready to be on the Supreme Court. That's how it happened.

ED: The governor didn't get into any particulars about the disputes on the Supreme Court.

HB: He knew there was friction. I suspect he knew more about it. He wisely did not want to tell me anything.

ED: Much of it, I imagine, was on Max Brantley's blog.

HB: Yeah.

ED: Which is part of my situation. Because I write for the *Times*, I'm associated with Max. I think I'm looked upon as Max's twin or toady, or vice versa.

HB: So I met with four members of the court that day. I had telephone calls with Justice [Courtney] Goodson and Justice [Paul] Danielson in the coming days. I



also made a call to Chief Justice [Jim] Hannah and talked to him on the phone briefly.

ED: At that time, I guess he must have been near death.

HB: Well, this was August and he did not die until January.

ED: He was supposed to do one of these oral histories with me and had talked about it several times, but he became so ill and there was so much unpleasantness, too, that I think he just didn't want to deal with all of that. So you start on the court in September.

HB: September 1. I drove down there the night before, got to the court about seven thirty or so, because I was eager and I could get into the building. I walked over to the Court of Appeals and talked to the people over there. I had arranged for Paul Danielson to swear me in. When he came in about nine o'clock he gave me the nonceremonial, but still official swearing-in. I was effectively empowered. I began signing legal documents and doing paperwork.

ED: Did you have some grounding about how the court worked, how cases are assigned, the old George Rose Smith system?

HB: Yes and no. On three occasions, I had been a special justice of the Supreme Court.

ED: So you knew how that worked.

HB: [Governor] Bill Clinton had appointed me twice and [Governor] Mike Huckabee appointed me once. So I had sat there on three cases, wrote two concurring opinions, participated in the conferences. In addition, I was familiar with what George Rose Smith had written and I was there when David Newbern and others had spoken at the law school, so I generally knew.

ED: When Jack Holt became chief justice he had sort of worked out in his mind how he was going to run the Supreme Court and starts telling them and the next thing he knows Judge George Rose Smith cuts him off and says, "No, that's not how we're going to do things. Here's the way we do things."

HB: I will tell you that after the announcement by the governor and I get back here, on Wednesday of that week I called Jim Hannah's three staff members. I told them over the phone that I was eager to meet them and to work with them. I did not promise them a job. I am sure they were concerned about what their future employment status was going to be. I asked them to put together a number of things for me for September 1, including such things as the George Rose Smith article and others. When I went in there on the first day, September 1, they had set out my table with all the materials I had called for. We sat down there the first day and talked through a lot of stuff and I told them I was counting on them to give me all the inside information on how things worked, what were the dangers, what I needed to look out for, and generally to hold my hand through this whole process. To give you an example, before the first conference of all seven members of the court my three staff members and I had a practice conference. We sat there and they said, here's what happens and here's what you need to do. Here's what you do first. Here's what you don't do. So I counted on them a great deal to learn what had been done over the past ten years at least. I used that as guidance. Plus, Paul Danielson, of course. As I said at my investiture, the best decision I made was to keep Chief Hannah's three staff members— Sharri Stewart, Raina Weaver and Kathy Kostopulos. And I said that again at the end of my sixteen months.

ED: Did you know Paul already?

HB: Briefly. I had been in front of Paul as a practicing lawyer about ten years before when he was a trial judge. He had been up here to handle a case involving attorney fees in a class-action property-tax lawsuit, and I had been in front of him. I appeared there, and I may have shaken his hand one or two other places. I did not know him well. I had taught Justice Goodson and I had taught Justice Wynne. But other than that and having a few brief conversations I did not know any of them well.

ED: So you didn't teach Justice Jo Hart? I've forgotten where she got her law degree.

HB: Jo Hart was before I arrived in Fayetteville and I think she did some of her work in Little Rock also.

ED: And Rhonda Wood?

HB: Rhonda Wood was a graduate of the Little Rock [law school] and Karen Baker was also from Little Rock.

ED: And Robin Wynne . . .

HB: Robin Wynne was up here in the mid-seventies. He was here when I was here for at least two years but I did not know him at that time. I taught his son twenty years later. I probably taught some other Wynnes over the years.

ED: There were a lot of Wynnes. They were all lawyers or doctors in that part of the state. Well, was there any unpleasantness at the outset?

HB: No, I will tell you—and I have told people this—that my tenure on the court probably has five distinct time periods. There was the honeymoon period, which was, shall we say, brief. Then there was the period of "Let us tell you what happened last year so you know how bad things were last year." Number three, there was the period of the election [March 2016]. There was the period after the election until July. And then there were the last four months. There were different emotions during those five phases of my tenure on the court. During the honeymoon period in the beginning, everyone was very kind to me. I was the new person. However, it dawned on me pretty soon, at least by the second time period, that all six of these individuals had campaigned, had run, had raised money, they had collected signatures, they had gotten votes, they had done all those things. I hadn't done that. Number two, five of them had been on the Court of Appeals. Three of them had been trial judges, two of them had been prosecutors, one of them had been in the legislature. They had a great deal of experience in the law and public life, and I'm just sitting up here in the ivory tower in Fayetteville. I have a totally different background and all of a sudden I'm dropped in there. Another insight came quickly. I, like most law professors, teach in a relatively narrow area. We may have studied everything in law school, but after reviewing for the bar exam, it may have drifted away. My first week on the court my clerks said that my first case, or the one where I had primary responsibility, was a TPR case. I didn't tell them that I had no idea what TPR meant. I teach TROs [Temporary Retaining Orders], but was not familiar with this expression. Instead of asking a foolish question, I looked at the briefs and learned that it was shorthand for Termination of Parental Rights, a proceeding that I was generally familiar with. As another example, early in my tenure, I had criminal cases, capital cases. As I have said, I was hoping for cases on civil-procedure issues, but

instead I have cases where my knowledge is perhaps forty years out of date. I had to put in a lot of time, background time, to try to get up to speed on these issues, and I relied on the experience and insights of my law clerks. And I learned to guard my words in conference. And when the members of the court were talking about all the unpleasantness that had happened in early 2015 I just sat there and said, "Wow, I had no idea all this had happened. Thanks for telling me."

ED: This was not the whole court telling you all this, but individuals?

HB: Sometimes it happened on an individual basis, sometimes it happened with the whole court.

ED: There was some quarreling, I guess, about what really happened.

HB: Yes, there was disagreement about what happened, there was disagreement about what Donnie Corbin had said at some point in the past and what he had said in his interview with you, there was disagreement about what was the truth, there was disagreement on why Jim Hannah and Paul Danielson had released a public recusal, there were comments that "we had to hire lawyers to investigate because charges were filed against us." [Sigh] There were all sorts of things. I'm hearing this from different people. I just said, "I didn't know this. Thanks for telling me this." My goal frankly was to let all of this be poured out, and then we can move on.

ED: A lot of it revolved around the gay-marriage case, I guess.

HB: Yes.

ED: There were a lot of peripheral issues arising out of that.

HB: Someone would say, "So and so said this, but this is true. This was wrong because . . ." I would say to myself, I don't want to sort out the facts. I really don't care what was said last year. Can't we just move on? That was my approach. Leave it behind. Move on.

ED: This would be in conference?

HB: Generally, in meetings; occasionally someone would come to me and say this or that, but the heated issues were in meetings when all seven people were sitting around. I shouldn't say seven people arguing. Some people talking and some people listening, sometimes defending, sometimes someone like me saying can't we just go on and do our work and get out of here? I can tell you, Ernie, that almost always it had nothing to do with the legal issues before us. Our conferences fall into two categories. We sit around and discuss the current issues. Should this conviction be affirmed? Should this initiative amendment be on the ballot? Should this motion be granted? After we do that, we say, what else do we need to talk about. We go around the table. Do you have anything to bring up? Do you have anything? Do you have anything? That's when these troubling issues would come up.

ED: There might have been something that was in the paper that week or a blog that would trigger it, or maybe a Donnie Corbin oral history?

HB: Yes, the comments would be along the lines of, did you see the web page? Did you know the web page for the Supreme Court has Ernie Dumas's picture on it? Why is his picture up there? He doesn't work for the court. Who put his picture up there? Who's in charge of this?

ED: OK. Well, I think I told you how this came about with the oral histories. They weren't my idea. I was approached about it by a member of the Supreme Court Historical Society, which had voted to undertake these oral histories years earlier, and I said I'll show you how to do these things by doing one or two. This was years ago, before any of this came up, in 2012 or so. I did the first ones, fourteen or so, before any of this came up. I had personal relationships with some of the justices or else their families, like in the case of Courtney Goodson and with Jo Hart. Donnie [Corbin] had been in the legislature, but I didn't know him very well. I had done all these interviews for the Historical Society, and they had this little thing honoring me down there for doing all of them. They took my picture and created this website for the oral histories and put my picture on there, to my surprise. I kept getting these emails attaching the minutes of the board of the Historical Society. Well, why are they sending minutes to me? I looked at the minutes and I had been elected to a three-year term on the board, without my knowledge or even consent. I didn't want to be a member of anything. But I thought I ought to serve and I enjoyed it. My term ends this fall, happily. I don't know who was responsible for my getting elected, because the minutes didn't say. My guess is it was Jack Holt. I've become sort of a central figure in all that mess, unfortunately. But nevertheless . . .

So I guess all of that business followed you all the way through your term.

HB: It was up and down. After the election [two new justices were elected], we had basically a peaceful March, April, May, and June. Things went smoothly after the election. I was very thankful for that.

ED: Judicial elections are now basically in the primaries . . .

HB: The first week of March. So I told people all through January and February, when someone asked me about the upcoming election [for chief justice] between Judge Kemp and Justice Goodson, I'm going to be sitting in the conference room for the last ten months of my tenure with either my successor sitting right here or the person who wanted to be my successor and lost the election sitting right here. But I will tell you that March through June were, all in all, pretty peaceful months. Things went smoothly.

There was the question of whether judges should be elected or appointed.

ED: This came up through, what, a Bar Association proposal?

HB: It came up in two ways. It came up with the legislative hearings and it came up with a task force of the Bar Association. There was a legislative hearing chaired by, perhaps, [state Senator] Jeremy Hutchinson, in March. I sat out there and Justice [Karen] Baker testified, and she did so solely for herself, and she had a strong statement as to why judges should be elected. Shortly thereafter, in the next few days, the Supreme Court voted to create a task force or a committee to evaluate and improve the election of judges. A press release came out that a task force of the Supreme Court had been appointed. Justice Danielson and I put out separate statements saying we were not participating and had no comment. I, for one, did not want to be a part of that task force. I wanted to keep my options open.

ED: They voted in conference to do that.

HB: I did not want to take a stand. I said throughout my tenure I had no opinion that I would voice on the election or appointment of judges. I thought to do so would

take away from my role. The legislature was doing something, and then the Bar Association created a high-profile task force that had a committee working March through June involving all sorts of changes and the appointment or election of judges. So there were two things going on. I took the position that I would have no comment on any of those, I'm not involved in any of those, I'm staying away from all those issues. I did not want to lock myself in. I had been on the inside and I did not think it would be helpful and might undermine my position. So I stayed publicly neutral in all that.

ED: I've forgotten how all of that turned out.

HB: The task force of the Bar Association adopted its recommendations in June. The Bar Association submitted them to the Supreme Court in July. They did not submit the recommendation on appointment or election, because that was for the legislature. The Bar Association had many recommended changes to the Code of Judicial Conduct. Some of them were controversial changes. The Supreme Court received those recommendations in July. Usually when the Supreme Court receives recommendations from a committee, the Supreme Court does some review and then sends them out for public comment. In this case, we did not do that. We had those recommendations for July, August, September, October, and November. Just before the end of 2016 we put out a *per curiam* adopting a few minor changes. We did not adopt the far-reaching, more controversial changes recommended by the [Bar Association] task force.

ED: Do you care to say how you felt about those changes?

HB: I support all the changes that were made. I would have made more changes. I would not have adopted some of the changes of the task force, but I would have adopted more changes.

ED: Most of these changes were dealing with campaign contributions, dark money and all of that, gifts to judges . . .

HB: Some of the dark-money issues can only be addressed by the legislature. There were some changes regarding clarifying gifts. I would have been more specific in saying "these gifts should be disclosed, and these gifts should not be taken." I would have adopted one or two changes on recusal, but the far-reaching changes I said I didn't want to have any part of. I thought they went too far.

ED: You're not talking about the appointment or election of judges, but the ethical restraints on judges . . . You thought the bar task force went too far.

HB: In a few ways. The Supreme Court can do nothing about the election or appointment of judges; that issue is for the legislature and the people. That's why I didn't personally want to take a stand on it. The changes that were not adopted had to do with recusal, gifts, and related issues. Some of them I would have adopted, some of them I thought were just unnecessary or unwise.

ED: Did they go too far on recusal? I don't remember what their recommendations were.

HB: They had two primary recommendations on recusal. At the Supreme Court level, a majority of the Supreme Court should be able to say to one member of the court, you're off the case. I don't agree with that proposal. That's not what happens at the U.S. Supreme Court level. Eight members of the Court do not go to Justice Ginsberg and say, "Well, Ruth, we think you should recuse, and we have voted

you off this case.” I don't think it should happen at the state Supreme Court level. Second, there was some language that would have said, for instance, if during your last campaign you received two thousand dollars from this lawyer or this law firm then you should recuse from any case involving that lawyer or that law firm. A dollar amount.

ED: The last campaign. It didn't go back any further than that?

HB: Something like that. I thought, I don't want a dollar amount on that. I want to trust an individual judge to say, "you know, this person may have given me only five hundred dollars but they were big in my campaign—everyone knows they were my strong supporter"—and I want to trust that individual judge and his or her conscience to make that call. I don't want to have some dollar cutoff. To that extent, I rejected that proposal also, because I really feel comfortable with the judge making that call, and for the review mechanism to be an appeal to the Supreme Court. And I also frankly would also trust the opposing lawyer to say, "Judge, I think you should recuse in this case, because it is a matter of public record that this lawyer was the campaign committee chair for the election of this judge three months ago and you should recuse. I trust the adversary system and I trust the conscience of the judge.

ED: You trust the conscience of the judge to recuse. . .

HB: To make that call.

ED: To refuse to recuse when the opposing counsel . . .

HB: Yes. And the review mechanism is on appeal.

ED: But *to* the Supreme Court, not *in* the Supreme Court . . .

HB: No, not at the Supreme Court. At the Supreme Court level, I continue to favor each judge making his or her own judgment call, and then a fellow justice is still free to walk down the hall and say: "You better get off this case. It is not good for this court for you to be on this case."

ED: In the end, leave it up to the judge.

HB: Here's the fallback. Every member of the Supreme Court knows if it is a high-profile case and it's a close judgment call and somebody is unhappy, they're going to ask the U.S. Supreme Court to review it. There's case law in the U.S. Supreme Court in recent years that in truly extreme circumstances they may review a decision from a state supreme court where a justice did not recuse. Those are extreme cases.

ED: That was West Virginia . . .

HB: A West Virginia case involving millions of dollars, I know.

ED: That was so outrageous.

HB: Yes, but at least there is some precedent for saying that this is why you should recuse. But I also frankly trust the press to say, "Look at this." . . I trust the editorial pages to say, "Look, this judge received so much money from this law firm and we've got an important case. It turned out to be a four-to-three decision and he did not recuse!" So, I trust that, too. So I trust the opposing lawyer, the conscience of the judge, the press, and the public.

ED: Well, we see some of that going on right now . . .

HB: I know. We sure do.

- ED: Enough about that. I suppose there's no point in discussing the recent stuff relating to that involving the death penalty and Judge Wendell Griffen. This discussion applies to all of that. You missed the biggest cases, same-sex marriage and the *Lake View* school case, which had come up in the last decade, arose again and went back before the Supreme Court. And then there was a little more bitterness over *Lake View* after that. So I guess in those fifteen months there was nothing as divisive as *Lake View* or the marriage case.
- HB: I think all the cases we dealt with were cases that essentially came to an end after our opinion. I don't think they were ongoing to the same degree as *Lake View* or some of those other cases. They were tough decisions, and I struggled with some of them before deciding what the law required. But I don't think there were any of the magnitude of *Lake View* that are going to come up again. Each of those death penalty cases, when they come back again, they will involve the new DNA evidence or related legal questions, but I don't think there's anything comparable to *Lake View*. Of course, many cases, such as class actions and denial of arbitration matters, were remanded to the trial court for further proceedings.
- ED: Did you have a death case when you were there?
- HB: We had several death cases. We had several individual cases where someone had been sentenced to death by a jury and there was a direct appeal. So we looked at those. I was involved in June 2016 when four members of the court—I was in the majority—reversed Judge Griffen and said that the three-drug protocol was consistent with the Constitution and we did not need expert testimony or fact-finding at the trial court level. I was part of that majority that reversed Judge Griffen. That was a four-to-three decision. The inmates came back to the Supreme Court in July 2016 and they filed two motions simultaneously. One motion was to ask us to rehear our decision. We denied that four to three. Rehearings are denied ninety-nine percent of the time. But the inmates also asked us to stay our mandate to delay the imposition of the judgment, so they could take the case to the U.S. Supreme Court. I changed my vote on that. Let's clarify that answer. I didn't change my vote. I voted—I was the swing vote—to stay the mandate. I said to myself, looking at the rules of appellate procedure, I don't think the inmates will win in front of the U.S. Supreme Court, but given the importance of this case and given the fact that it is the death penalty, I thought they should have the chance to go to the U.S. Supreme Court. So I was the swing vote last July that said we're going to delay things to give the inmates a chance to go up to the U.S. Supreme Court. They got to the U.S. Supreme Court in December and the attorney general responded, and sometime I guess in February the U.S. Supreme Court denied a review of our decision. Then executions were scheduled, and things moved forward. But I just felt last July that, although I thought the inmates would lose, I thought they should have that last chance. As the newspapers or the blogs reported at the time, I was the one who switched. But I viewed the issues differently, because it was one last chance.
- ED: Sure, it was the humane thing to do.
- HB: Yes.
- ED: OK. The other thing you discussed in your CLE [Continuing Legal Education] lecture at the Rose Law Firm last week that was somewhat of an issue when you

went to the court was, who was in charge of court administration, whether it was the chief justice or a majority of the court?

HB: Yes. I believe the question of the leadership of the Supreme Court, and the judicial system generally, is the fundamental question going forward.

ED: That has been somewhat of an issue back over the years, even before the adoption of Amendment 80, which seems to spell it out and says the chief justice shall be the administrator of the courts.

HB: It dawned on me during my tenure that there were fundamental issues about who was in charge of the court. Little by little, that became more obvious to me. When I spoke to the trial judges at the Fall Judicial Conference in October 2016 in Rogers, I said to them very clearly that I was concerned about the role of the chief justice and I was very concerned about efforts to undermine his authority, or the reality that the authority of the chief justice is being undermined. Amendment 80 says that, quote, “the concurrence of at least four justices shall be required for a decision in all cases”. That language, in all cases, clearly covers cases, orders, motions, petitions for review, petitions for rehearing, and so forth. But the constitution also says that the supreme court shall exercise general superintending control over all courts, and, quote, “these functions shall be administered by the Chief Justice.” And statutes also state that the chief shall have that administrative responsibility. Back in October of 2015, when I knew there was going to be an election—Justice Courtney Goodson was running and Judge [Dan] Kemp was running—I took the position with the court that I do not want to do anything to weaken the authority of the chief justice, because there was going to be a new chief justice in fourteen months and I didn’t want that person’s authority diminished in any way. I tried to be consistent about that. But I did see a number of ways in which I thought the authority of the chief justice was undermined in my sixteen months. I’ll give you a couple of examples. For years, the chief justice, all by himself, would decide which cases would have oral arguments. He would just say, “This case needs oral arguments.” He would choose which ones. Apparently, that had been done for years. Sometime early in my tenure someone said this is in effect a “case” and the decision should be made by the court as a whole. We developed a compromise. A staff attorney would give me a recommendation and I would review that recommendation. I would make my own recommendation and I would go to the Court and say something like: “Here is the staff attorney’s recommendation and here’s my recommendation. I believe we should have oral arguments or we should not have oral arguments.” And the court had a brief discussion. That seemed to work fine for the last six or nine months, and this change seemed at least arguably appropriate. The question of whether to have oral argument is an administrative decision that is part of a case. The second and sharper issue had to do with the web page of the court. Who is in charge of the web page? Who is in charge of the AOC [Administrative Office of the Courts]? To whom does J.D. Gingerich answer? To what extent can members of the Supreme Court go to the AOC and say, “I’m your boss and I want you to do it this way. Who is in charge?” Do they have to go through the chief, or do they just go and say something? The web page came up when your interview with Donnie [Justice Donald L.] Corbin showed up on the web page [of the Arkansas Supreme



Court Historical Society]. Someone said, "Why is his [Dumas's] picture there? Who put this up there? Who is in charge? How did this happen?" Someone in AOC had put up the Corbin interview, as all the earlier ones had been put on the court's web page. About the same time, Justice [Antonin] Scalia [of the U.S. Supreme Court] died. The day after he died, all of a sudden the pictures on the web page suddenly changed. Suddenly, we had pictures of Justice Scalia with members of the [Arkansas] Supreme Court, including a justice who was up for election. Again, the question was, who is putting these pictures up? The answer was the pictures were being put up at the direction of a member of the Supreme Court. So the question was, who is in charge? All of a sudden, instead of the chief making those decisions, instead of the chief saying I want J.D. [Gingerich] to do this, or I want so-and-so to do this, it becomes we, the seven members of the Supreme Court, who will decide and we, the seven members of the court, who will delegate it to this justice. This justice will decide which pictures will be up there and this person will decide what is going to be on the web page. This person is going to decide this, and this, and this. I viewed this as micromanaging; I thought it was removing the administrative function that properly, and under the constitution, belongs to the chief. These matters, these decisions were not cases to be decided by a group of four justices. This type of micromanaging is extremely inefficient. There are members who have the votes, four people, saying we want to be in charge of every single thing. I thought that undermined the chief justice. I want a chief justice who is able to go out there and stand up and speak for the court, who can say perhaps, "We have a problem with the issue of, say, bonds and fines in our district courts and I'm creating a task force to look into this." I want a chief justice who can go out and answer questions and speak and carry weight, because he is speaking for the court—either because they back him or because he has the authority to speak for the court. There are statutes that give the chief justice certain powers. I would be dismayed if those statutes were changed. Looking back, I probably should have worked harder to maintain the traditional power of the chief. But at the time I wanted to avoid battles during my remaining months, and I thought that an elected chief—rather than a lame-duck appointed chief—was in a better position to take that stand. And in my lack of experience in this position I assumed that everyone was well intentioned, but I later concluded that that assumption was incorrect. Let me give you, perhaps the best example, of why the chief justice needs authority. In November 2015 I received advance notice, by a few hours I believe, that the Judicial Discipline Commission was filing formal charges against a district judge in Wynne [Joseph Boeckmann]. In the morning the newspaper reported that he was charged with swapping sexual favors from young men for favorable treatment in his court. When, such charges are made, the rules of the commission do not allow the judge to be suspended or removed from the bench or denied his paycheck. But I had no doubt that something had to be done. But when I tried to get the whole court to go along, there were problems, such as, well you know these are only allegations, these are not criminal charges, how does this compare to cases in past years? As I looked at it, he was not being accused of cheating on his taxes or his wife, or what he did on a weekend; these charges were directly related to handling his cases and the

individuals who came into his court; there were numerous charges. So I stopped asking the court to take action. That afternoon I issued an order in my own name, as the chief justice, taking all his cases away from him and assigning them to other judges. I did not take away his paycheck or his title, but he was not able to preside. The next day, when my order was in the press, I find that I am criticized by some justices; they wanted to make it clear that I took this action, not the court. But, Ernie, I will tell you, looking back, of the all the decisions I made, I have no doubt that this order was the proper action for me, acting as chief justice, to take. Because of such experiences, and frustrations, I said to the trial judges at the Fall Judicial Council that the authority of the chief justice is my primary concern. I think if we went back and talked to chief justices from five years ago, ten years ago, fifteen years ago, they had that superintending authority. It was never really in doubt. They exercised that authority. They made these decisions. They may have overstepped some of their power. They may not have communicated with people, but it was recognized that they had the authority to do it.

ED: They made the decisions, although in some cases they might have delegated it . . .

HB: Yes.

ED: Judge, you do this. Judges sometimes would tell the chief, I'd like to do this.

HB: Let me give you another example. Maybe ten or fifteen years ago, the Supreme Court said we have a lot of committees out here and what we need a liaison with each committee. So we will have a justice who is the court's liaison with continuing legal education, we'll have a judge who is liaison with Stark Ligon [director of the Committee on Professional Conduct], we'll have a liaison with the Bar Exam Committee. So early in my tenure I decided to meet with all these committees, the Bar Exam Committee, Stark Ligon, Access to Justice, other committees. I contacted them and said, fill me in on what's going on. I'm the chief. I want to know what is going on. But I soon received the message from some justices that that was the wrong thing for me to do, that I should not be talking to these court professionals directly, but that instead I should go through liaisons. So I backed off. Some justices did not mind if I spoke directly to the professionals, but others certainly did. Looking back, that was probably unwise for me to back off. My analogy is, if you have a general in the Army and the general says I want to go talk to a sergeant, the general does not have to get the permission of the captain to talk to the sergeant. The general can just do it. I thought these people worked for the court. I should be able to talk to them, to find out what is going on. I'm not trying to undermine someone else; I want information. But the message I received from some justices was that you should not be doing that, Chief, because we have a liaison system and you work through liaisons. I was truly dismayed at that. I said how can I find out what's going on if I always have to go through a liaison?

ED: I'm not privy to what goes on in the court, but I gather it's not operating like that right now. I guess if you've got a majority of four on the court, that's how it's going to run.

HB: Or, a chief justice throws down the gauntlet and says, "Here's what I'm doing. I'm going to the public. I was elected by the people. I think I've got the backing of the

legislature, I've got the backing of the governor, of the trial judges in particular, and here's what I'm doing." That may be a dangerous thing to do.

ED: How would you resolve that? Litigation?

HB: I don't know. And remember, I have no knowledge of what has happened since December 2016. One of the things I was able to do during my tenure was I met twice a year with the chief justices of all fifty states. That was very rewarding. I learned how much respect [Chief Justice] Jim Hannah had around the nation. [Hannah retired in 2015 and died in 2016.] How much his colleagues respected him, for his leadership and his role. I also realized that almost in every court there are similar problems, where you've got this Who's in charge? In some states, the chief justice is not elected by the people. The chief justice is either elected by the court, or it is rotated every year, where it is purely administrative. But issues of lack of collegiality, quarreling, of who's in charge are not limited to Arkansas. Ernie, let me go back an hour or so. I was talking about the different stages while I was on the court. There was a time when I just listened and heard people talk about how bad it was on the court in early 2015. About then the issue came up about whether the court should issue a *per curiam* in honor of Chief Justice Hannah. When a justice leaves the court, or dies, it has long been the practice for the court to issue a *per curiam*, signed by all members of the court. When I was told that one had not been issued for Chief Hannah, and when we had appeals on wheels going to Searcy, his hometown, I asked my staff and others to draft an order. I expected, innocent as I still was, that it would be approved and published. But no, someone objected to one sentence, someone objected to other language, someone would not sign anything, others wanted to tell me again their version of the 2015 events. I made the decision to just forget the *per curiam*.

ED: Was there ever a resolution or *per curiam*?

HB: Yes, a few days, in January 2016, I told the court I would issue my own statement. I issued it the afternoon of his death; Paul Danielson did the same, and he spoke at the memorial service. Most, perhaps all, of the other justices then issued their statements. But somehow all this action, or inaction, by the court was reported in the media, and I found the episode an embarrassment to the court, and I can only imagine what the family thought.

ED: This lack of civility has become more public, I guess.

HB: It has become more public. That's unfortunate.

ED: Perhaps because of the [same-sex] marriage case.

HB: I don't know. It would be interesting to talk to chiefs from ten or twenty years ago and say, how were things? One thing that has changed over the years—I know this from [Justice] Paul Danielson and others—is that it used to be that either all the justices lived in Little Rock or they made arrangements to be there every day so you could have collegial conversations. You could be up and down the hall talking.

ED: That was always the case.

HB: Paul Danielson would tell me, that in the past the justices would get together for lunch or something. Now, you have people who are not at the court but perhaps two days a week. Therefore, you miss seeing people in the hall, having a cup of coffee, talking about things, visiting about children and life and the Razorbacks.

Then you are in conference dealing with tough issues and unpleasant issues. So I think we've lost something because of that.

ED: We used to see them at Shakey's Pizza Parlor. There was always George Rose Smith, Frank Holt, who often inside the court would be at each other but good-naturedly—well, not always good-naturedly but always collegial. You'd usually see four or five of them at lunch, sometimes all of them. There was still some friction over the years. I was just an occasional reporter there and they didn't share much. We didn't know too much about what was going on behind the closed doors. But I always thought it was a very collegial court. There were a few individual rivalries, or disagreements. But it was a largely collegial court up until the last two or three years. I don't know whether that's historically true, but it has been since I started covering the court on a regular basis in 1963. My role at first was just to go out to the Capitol on Monday mornings, when the week's opinions were handed down, scoop up all the opinions and come back to the *Gazette* office and write about them. In those days, I had to write about every single opinion. If there were eleven cases, I had to read every one of them and summarize it. That's about all I knew about the court then. I knew the judges, talked to them, but I didn't have much communication with them off the court or much insight into what went on. Let me ask about something else that you said at the Rose Law Firm. You spoke of the relationship between the Supreme Court and the Arkansas Bar Association. I think you said that you were dismayed by the breakdown in that relationship.

HB: Yes. I have worked with the Bar Association for decades, serving on committees, making CLE [continuing legal education] presentations, visiting with its officers. As I mentioned this morning, when I came to Arkansas, I wanted to be involved in the life of the legal profession in the state. I am well aware that there are other bar associations that have important roles, the Pulaski County Bar Association, the Washington County Bar Association, others. But the Arkansas Bar is the only statewide organization. It speaks for lawyers generally. It provides publications. It issues advisory opinions. It is the face of lawyers in Arkansas. I was pleased personally when the president of the Arkansas Bar [Eddie Walker] was willing to speak at my investiture in October 2015. But the Bar Association is not viewed positively by some members of the court. In part, it is because of the task force in 2016 that called for appointment of appellate judges and changes to the code. There are probably other issues that go back years; I don't know. The recommendations from the Arkansas Bar that came in July 2016 were not well received, and I've said I did not support all of them. But the most obvious manifestation of this disconnect was in September 2016. After a quick motion and a second and limited discussion and sudden approval, I had to get on the phone and call Denise Hoggard, president of the Bar Association, and say that a majority of the Supreme Court felt that the bar association should not have a role in the swearing in of new attorneys. The swearing in takes place twice a year, at the court; it is a special event, and the bar association president has traditionally welcomed the lawyers. The majority of the court felt that the voluntary bar association should not have a role in the official ceremony. I told Denise to sit down before I gave her the news; I told her personally that I was dismayed by this

decision. Since then I have told Chief Justice Kemp and the bar leadership that I hope that this rift can be repaired. It serves no purpose and weakens relations between the bench and bar generally.

ED: You have talked about the authority of the chief justice, or what you think should be the chief's authority. As the chief, were you free to talk about anything you wanted? It is hard for me to believe that the chief would be under any restrictions or limitations.

HB: Certainly there are limits based upon confidentiality, which is essential for an appellate court; certainly nothing should be said that would damage the work of the court. But looking back there were several instances in which members of the court were trying to restrain or limit what I might say. In October 2015 I spoke to the Pulaski County Bar Association, for perhaps fifteen minutes, and then took questions. The following week I mentioned that to the court. A justice wanted to know what I had said, and then seemed to say that I should tell the court beforehand where I was speaking and what I was going to say. I thought this was ridiculous, some type of prior restraint. For a while I did casually mention where I was speaking, but I never said anymore. The actual censorship was in 2016. I had given the annual State of the Judiciary address in June at the annual meeting of the Arkansas Bar Association in Hot Springs. I prepared my comments myself, no one saw them beforehand. I had a power point. In thirty minutes I paid tribute to the three justices who had died [Jim Hannah, Ray Thornton, Bradley Jesson], I mentioned some rule changes and others that were in the works, I mentioned some of the more creative motions that I had seen at the court, I suggested that some changes in the Code of Judicial Conduct should be considered and were probably necessary, I talked about the bar exam and the admission process, I used some of the images that I had used at Boys State and Girls State, I expressed my gratitude to the lawyers and judges. I did not think that there was anything at all controversial in what I said. It has been the practice that when the AOC [Administrative Office of the Courts] puts out its newsletter, perhaps every two months, perhaps twenty to thirty pages, it would include the State of the Judiciary talk. Since I had not written out my comments, someone in AOC watched the tape and converted some, not all, of my comments into print. That issue was ready to be released in late July. But I learned in mid-August that the issue had not been released; that without any discussion or explanation, the justice who had become in charge of the court's webpage would not release the issue, but was holding it. My gentle attempts to get an answer failed. Finally, after the newsletter had not been released by mid-September, in the presence of everyone else, the justice said there was a problem with my comments. Two of the sentences might be misunderstood. Someone might interpret my comments as saying that the court was committed to changing the Code of Judicial Conduct. I responded that the print reflected what I had said in Hot Springs, and that I was only speaking for myself, and my words were general in nature. But just to get the issue out, after it had been held for two months, I made changes in a phrase or two. Ernie, I think we both know how this should have been handled. This justice could have contacted me in July and simply said, "I think your words might be

- misunderstood. Do you want to think of changing them?” This would have been the cordial thing to do.
- ED: From what you are saying, you had some stressful times. Did you find a way to unwind or relax or release this?
- HB: Well, when I was home on weekends, I would basically unload on Katherine, and she would listen and take it all in. What I am telling you now, I did not say to anyone else during my sixteen months. I wanted to be positive and try to keep spirits up. But I did find it relaxing to leave the second floor and go down to the first floor, which is where you find the library and the clerk’s office and the reporter’s office and AOC [Administrative Office of the Courts]. Those are the people behind the scenes, who make the court function, who are indispensable, but who get little recognition. And for many of them, their pay doesn’t change and they are locked in at lower salary levels. I found it enjoyable to visit with them, ask about the work of the court, ask about their families, their life away from the court. And they occasionally had holiday parties, and I enjoyed attending them.
- ED: All right, your term ends January 1, 2017, and you returned to the law school and to your first love, teaching.
- HB: Yes. People would ask me in November or December, are you excited about going back to law school? I would try to avoid that question. I would say I’m not thinking about that. I’m trying to finish my job very strong. I’m trying not to be diverted. I knew what I was coming back to. I knew that I was coming back to the classroom. I knew the courses that I would be teaching. It was unlike going to the court, which was a totally new experience. I did what I could in November and December to wrap things up, to give advice to people, to write letters to people expressing some concerns I had about the future, to write a memo regarding the confidentiality of my work, and the work of my staff during those 16 months. I did what I could and left with a sense of satisfaction. I had my last meeting with the governor after Christmas. I requested and had a one-on-one meeting with him. I went to see him, he excused his staff, and closed the door. We sat down and talked. I thanked him for the opportunity to serve. It had been a wonderful opportunity. And then I told him very frankly about some of my concerns about the court. I shared that with him. I said no matter all the difficulties I may have had, I would certainly do it again.
- ED: Did you enjoy your experience as chief?
- HB: Absolutely! It was wonderful. More than I expected, I have a new understanding of the way appellate courts works; I’ve been able to use stories in the classroom, and cases in the classroom. I worked with some great people at the court and met outstanding trial judges; I gained new insights into the legal system. Well, I suppose I should clarify that answer. I enjoyed 90 percent of the experience.
- ED: I have to ask, as a journalist, what was the 10 percent that you did not enjoy.
- HB: Frankly, my interactions with some people were draining, stressful, emotionally exhausting, nothing to look forward to.
- ED: Who were they?
- HB: No comment.
- ED: Back to your last visit with the governor.

HB: I talked about some of my concerns with the court going forward. Not that he can do anything about it. But I wanted him to hear it from me.

ED: Some of those issues will be on the ballot.

HB: They will be. There will be interesting issues on the ballot.

ED: Whether it is tort reform, giving the legislature control of court procedure, which is bizarre . . . It may pass, I don't know. Any final observations occur to you?

HB: I mentioned earlier that after I arrived I kept the staff of Justice Hannah and for the entire time. They were a wonderful staff. They were very experienced. In the beginning the law clerks said to me, "Judge, you write like a law professor; you need to write like a judge." We had ongoing discussions about how to write opinions.

ED: And what is the distinction?

HB: Well, there is a certain format that judges follow. You have an opening paragraph stating the jurisdictional basis for this case, and then the trial court decision, and then the conclusion. Sometimes, my clerks said, "Judge, your writing is like a novel. You're trying to keep people in suspense until the end. They want to know in the beginning who is going to win the case." Sometimes, I hid that conclusion. Sometimes they told me I was trying to lay out all the law instead of just answering the narrow question. They advised me not to give advice to lawyers in my opinions, or to legislators. I used [country singer] Johnny Cash in an opinion. They told me "That's not going to work. You can't use Johnny Cash in an opinion." [The opinion is *Trujillo v. State*, 2016 Ark. 49, on cash-only bail.] I ended up using "Starkville City Jail" and referring to the 1999 resolution by the legislature naming February 26 as Johnny Cash Day.

ED: Darrell Hickman [former justice of the Supreme Court] would disagree with them on that.

HB: The court has an experienced attorney who is the reporter of the decisions, Susan Williams. She is the final word on grammar and style. So I went to her. I said, "Susan, I'm going to put Johnny Cash in an opinion." So when it finally went upstairs again and my two law clerks saw it, they said, "Judge you can't do it. It won't work." Johnny Cash did show up in an opinion, but I learned, only do that in a dissenting opinion. I put that in a dissenting opinion. I wrote another opinion once, a pretty straightforward opinion . . . We had a conference; the decision was noncontroversial. It was straightforward. Basically, we were saying this case was improperly or prematurely appealed. It needs to go back to the trial court. The lawyers will try the case, and it will come up again. I'm assigned to write the opinion and I start off my opinion with a quotation from Yogi Berra. "It ain't over 'til it's over." [Yogi Berra was a catcher for the New York Yankees and later manager of the New York Mets.] Some members of the court did not like that. They said you cannot start a majority opinion from this court with Yogi Berra. So I lost the case. It flipped. Someone else wrote the opinion and Yogi Berra never appeared.

ED: So you lost the majority over that issue?

HB: Someone wrote their own opinion and more people wanted that opinion than my opinion with Yogi Berra. So it was gone. The outcome was the same. It did not change.

ED: OK.

HB: I put Bob Dylan [the folk musician] in a dissenting opinion. [“The Times They Are a’changing,” *Smith v. Pavan*, 2016 Ark. 437]. That case was the dispute over same-sex birth certificates; it is now pending before the US Supreme Court on a writ of certiorari. As I mentioned this morning, William Butler Yeats is my favorite poet. As I was working on a dissent, one of his poems came to mind, and I used it to open my opinion.

[“When you are old and gray and full of sleep,  
And nodding by the fire, take down this book,  
And slowly read, and dream of the soft look,  
Your eyes had once, and of their shadows deep”]

[*Landers v. Stone*, 2016 Ark. 272; judicial retirement case].

I never sat down and said I've got this quote from Yeats or Bob Dylan that I want to stick in an opinion. I didn't do that. But I would be driving back and forth, listening to the radio, talking to myself. I have this opinion, I'm going to write it this way, and all of a sudden it would sort of come to me that I could stick this in here. I didn't plan to do that. It just happened.

ED: My favorite was on Amendment 59, the property-tax amendment . . .

HB: The Godzilla amendment.

ED: Darrell began his opinion, "Amendment 59 is the Godzilla of constitutional amendments."

HB: That's how it's known. Serving on the court was a wonderful experience and I'm glad I had that opportunity.

ED: So, did they persuade you that you couldn't keep the suspense until the end of an opinion? The *deus ex machina*?

HB: No. Well, it depended upon the case. In most criminal cases, I did not do that. I followed their format. I relied heavily on their memos to me. In other cases, it would depend upon the nature of the case and whether I had a strong personal interest in writing. I wrote an opinion in a tax case. It had to do with the Russellville Waterworks and some sewer improvements in Russellville. I've read this case about Russellville, and I'm driving back and forth down Interstate 40. Just before Russellville you see Lake Dardanelle over there and you cross some bridges. I do some research. I had an opening paragraph where I said about the streams, something like: [“The Illinois Bayou begins on the south slopes of the Ozarks in the Boston Mountains. Its four forks merge and provide Class II/III whitewater canoeing. On its downstream route through Pope County, it passes near the communities of Hector, Scottsville, and Dover before joining Lake Dardanelle in the Arkansas River. Although ideal for canoeing and bass fishing, the waters of the Illinois Bayou and the Huckleberry Creek Reservoir are not suitable for drinking by the residents of Russellville. The waters must first be cleaned. Thus begins this tax litigation.” *Walther v. Carrothers Construction*, 2016 Ark. 209] I had this geological description of the water flowing into the Russellville water system. I just felt comfortable doing adding this. I didn't plan it that way. It just came to me.

ED: Did it make it?



HB: Yeah, it survived. It's out there in the decision. But my law clerk had said to me, "That wasn't in the record, Judge. There's nothing in the record that this was a Class II floating stream." I said, "Well, I found it on the web page. The official web page calls it Class II floating." No one objected to that too much, perhaps because it wasn't Yogi Berra.

ED: I'm with you on all of that. One final question. Now that you are back in the classroom, any immediate comparisons between a law professor and the Chief Justice.

HB: When I go in the classroom and close the door, I am in charge, I am the boss. I can ask questions, difficult questions, embarrassing questions, questions with no answer. But as the chief, when I went into meetings, two days a week, and closed the door, I never felt fully in charge. I never knew what might come up, totally unexpectedly. Over the years I have sat in many faculty meetings, meetings on promotion and tenure, search committees, athletic meetings, many meetings with strong feelings and committed persons, but some of these meetings at the court were different. There were times when I was stunned by the lack of civility. It was very disheartening. However, most of the time we all worked together just doing our job.

ED: On that note, we will end.

HB: [laughs] Thank you very much. It's been a great experience. I've enjoyed it.

ED: When I get the transcript, whatever happens to it, I'll give it to you and you can . . .

HB: I can delete.

ED: You can delete. You can make changes. There will be a lot of things to correct. We have both probably misspoken a few times, and we can fix all of that.