

Arkansas Supreme Court Project
Arkansas Supreme Court Historical Society

Interview with
Darrell Hickman
Pangburn, Arkansas
November 16, 2012

Interviewer: Ernest Dumas

Ernest Dumas: I am Ernie Dumas and I am interviewing Justice Darrell Hickman. This interview is being held at his home at 909 Main Street, Pangburn, Arkansas, in White County on Friday, November 16, 2012. The audio recording of this interview will be donated 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 solely to the University of Arkansas and the Arkansas Supreme Court Historical Society. Would you please state your name and spell your name and indicate that you are willing to give the Pryor Center permission to make the audio file available to others?

Darrell David Hickman: Darrell David Hickman. What else did you want?

ED: Your consent for the Pryor Center and the Arkansas Supreme Court Historical Society to use this material.

DH: I certainly do. Of course, they don't have exclusive right to my life so if I want to write the same thing I'd have a right to.

ED: Sure.

DH: I can do that.

ED: You can do that. All right. Well, Judge, let's start at the beginning as we usually do with these, with your birth—the date of birth and your mama and your daddy and where.

DH: I was born in Searcy, Arkansas, on February 6, 1935. My father was Paul Hickman and my mother was Mildred Hickman.

ED: What had been Mildred's name before that?

DH: She was a Jackson from Boone County.

ED: She was from Boone County and your daddy was from...

ED: He was from here. He was born in Letona [White County], about three miles south of here. They met...His daddy was a railroad man and then when Daddy graduated from high school in 1928 he went to work for the M&NA Railroad and was assigned to the water service up there in Harrison. She was a beauty operator up there and they met and got married. I think it was the day or two after he got laid off from the railroad during the Great Depression.

ED: OK. And you were born what year again?

DH: 1935.

ED: '35. So your daddy had been laid off from the railroad. Was he unemployed then?

DH: Yeah, during the Depression. They had a very difficult time for several years.

ED: Did you have brothers and sisters?

DH: I had an older brother.

ED: What was his name?

DH: His name was James and he was born a little over a year after they were married and then I was born. They were married in...Let's see...'32. James, I think, was born in '33. Somewhere along there. Then I was born in '35. So she had these two kids and he didn't have a job during much of this time.

ED: Probably had to depend on commodities and...

DH: Well, his father and mother lived next to him and they had a garden and everything. Mama was a beauty operator, although I am not sure she was able to do any of that the first two years. He had odd jobs that he'd try to do. You know, he was building furniture and taking it around the county, trading it for chickens and produce and stuff. But they lived out of my grandfather's store there.

ED: At Letona.

DH: No, this was in Searcy.

ED: This was in Searcy by that time. OK. So, when did he get a job again?

DH: Well, I think the first job he got...There was a service station there and my granddaddy had a grocery store and I think he worked that and apparently Texaco came along and

bought the store and station, and he got a job with them about '37. That's when he went to work there and he finally...Allied Transport out of Joplin, Missouri, put a station in there eventually. It was kind of a substation. They hauled automobiles all over the southwest...new ones. And so he finally went to work for them right before the war. That might have been in 1940 when he had that. That was a good job driving a truck. In the meantime, my mother had opened her beauty shop sometime in the late '30s out of our house.

ED: All of this in Searcy?

DH: Yeah. Yeah, out there in the east end of town.

ED: East end of Searcy. So, what are your earliest memories? I guess about the beginning of World War II?

DH: They were before that. Like a lot of people, I didn't have many memories before maybe three or four years old. But we were at the edge of town and my mother was working in the beauty shop and Daddy seemed to be gone some. We played with the neighborhood kids. There were a lot of kids around and we played with them. Of course, the war came along and things began to change quite a bit.

ED: How did they change?

DH: Well, you couldn't get any bubblegum. That was a big change for me. [Laughs.] I had an uncle who went into the paratroops and Daddy...He had two kids and was too old to be drafted at first. He went to work. He lost his job as a truck driver for Allied. I think it was in early '42 when they decided they were going to have to do something else in the war effort and so he lost his job driving a truck and came back home. He struggled during the war. He worked down there in Jacksonville at the powder plant down there, where they made ammunition for a while. Then finally got back on the [M&NA] railroad toward the end of the war. Then the railroad shut down [after the war].

ED: Yeah, a lot of people got jobs down in Jacksonville at the Jacksonville Ordnance Depot, or whatever it was.

DH: They had to form carpools because gasoline was rationed and we didn't have a car there for a while during the war because we couldn't get any gasoline or anything. We had a nice car in '41 and both of them were working. We went to California [in the summer of 1941] and it was almost a new Chevrolet. They had to sell that and we didn't have

another nice car until end of the war, after the war. But he had some kind of allergy to powder and his arms swelled and so I don't know how long he worked down there. He had to do something else.

ED: So you started going to school in Searcy?

DH: Yes. We had two schools. We had a private school through Harding College. They had a little (what we called a) grade school and a high school there. It was mostly for faculty and local people and there was Searcy High School. I would have started in '41 but I was born in February so I would have had to wait until I was six and a half to get in at Searcy. So my mother put me in Harding at the age of five and a half and I started over there. I went through the first eight grades there.

ED: What was it called? Harding...?

DH: It was called grade school or elementary school. Training school.

ED: But it was run by Harding University?

DH: Yes.

ED: Then in high school you went to Searcy High School?

DH: Searcy High School.

ED: You played football?

DH: One year.

ED: One year. Your senior year?

DH: Yeah. I was a manager when I was a sophomore, which was a good experience. There were three of us. We had a ball, the three of us. The coach had us tape, and we were taping ankles, giving rubdowns, washing all the jerseys.

ED: And you played as a senior?

DH: Yeah, I did.

ED: What position?

DH: I was guard.

ED: Did you make all-district or anything?

DH: I didn't make first team.

ED: Oh, did you not?

DH: I did letter, but I didn't make first team.

ED: OK. All right. So then, after you graduated high school, which would have been...?

DH: '52.

ED: '52. What did you do then?

DH: Well, let's see. I went to Harding. I wanted to go off to school somewhere. I sent off for brochures from colleges and that sort of thing. I had an idea that I wanted to be a mining engineer or a forest ranger or something. I sent off for these brochures to Montana and places like that. The only school in Arkansas that had anything similar to that was down there. A&M had a little forestry school down there.

ED: Arkansas A&M in Monticello.

DH: I guess it is, yeah. My parents couldn't afford it and my brother was already at Harding and it was understood that if I were to go to college but it would have to be Harding. Well, I didn't want to do that. But I enrolled at Harding and I didn't know what to study or anything. My brother was studying science courses and I don't know if he decided to be a doctor then or not. But I started taking science and it was a disaster. I had no aptitude in mathematics or chemistry or anything. So my first year was kind of a bust, as they say.

ED: Well, it was general education anyway. You were getting a general education, which is what you're supposed to get your first two years.

DH: Well, yeah. But I took trigonometry and chemistry.

ED: Oh, did you?

DH: Yeah. We found out quite early that we were not up to it.

ED: So then did you go all four years at Harding?

DH: No. I went two and a half years. The next year I came back and changed my major entirely and I was going to get a degree in political science and history. I started making good grades and after I'd been there a couple of years I decided I wanted to be a lawyer so I looked into that program. You had to have three years of undergraduate work to go to the university [University of Arkansas at Fayetteville] to get a law degree. I transferred in the middle of my junior year to the University and took one semester there and then went into law school the next fall, which would have been in '55, I guess.

ED: And law school was what? Two years?

DH: Three.

ED: Three years then.

DH: They had a four-year program. Back then, you did not have to have a degree to go to law school. You had to have eighty-something hours. I think it was eighty-six hours of college. But, if you had two years, you could get into the so-called “four-year program,” which was two years undergraduate and four years law. But that was a horrible program. The guys were burned out completely after they’d been there three years. Now, of course, you have to be a graduate of a college to go to law school. They gave us an LL.B. [Dogs barking.]

ED: Yes. OK, we’ve got your dogs downstairs. A little barking.

DH: I don’t know if that guy’s going to shut up. We may have to go down there and discipline him.

ED: All right, we’ll talk over him.

DH: I don’t know. Let me see what I can do.

ED: Well, OK. We’ll just pause here and let you take care of that. [Pause.]

DH: I had one of the best experiences of my life...After my first year in college, which was a bust, as I said, I went out west to Van Horn, Texas. I had an uncle out there who was kind of the overseer of teenage boys in the family that needed help. I went out there and lived with him and my aunt for six or seven weeks.

ED: What was his name?

DH: Wayne Jackson.

ED: Wayne Jackson. OK. Van Horn, Texas.

DH: Yeah. He’d been a member of the 517th Parachute Infantry Division and fought in World War II and was the family war hero and had a jewelry store out there and later had an oil company and two service stations. So I went out there and went to work on a bridge gang. I went out there to live with him and a lot of it was just to get away from home and get a change and try to get a job.

ED: This was after you got out of the university?

DH: This was after the first year of college.

ED: After college. OK.

DH: First year. I went to work on a shovel out there. Ten hours a day helping build a bridge. That’s when I decided maybe I better continue my education.

ED: How long did you work out there?

DH: I worked out there about six weeks. Then I came back.

ED: Didn't you at one point go up in the northwest someplace?

DH: I did. That was after my sophomore year in college. Then I went to California. I still had this wanderlust idea and I was going to go to Alaska. I went to California and spent three summers out there working with the [United States] Forest Service out of Fresno, California. That was really one of the best experiences of my life.

ED: How so? What did you do?

DH: Well, I was a scaler for the U.S. Forest Service during the summer. My job was to measure the board feet of the timber that was cut at a sawmill. I worked six days a week at the sawmill for the full three months for three years: '55, '56 and '57. That was, except for my last year in law school. I went up there three years in a row and had a good job.

ED: What did it pay? Do you remember?

DH: It paid \$1.55 an hour.

ED: That was good.

DH: It was.

ED: Awfully good.

DH: Yeah. I was able to buy a car and I was able to buy all my clothes for school and have a little spending money. It paid about half of my college expenses.

ED: Was it a union job out there?

DH: No.

ED: No unions, huh?

DH: No union.

ED: OK.

DH: No, that came much later. Most of the guys I worked with were from this part of the country—Carolinas, Tennessee...

ED: They were all college students going out there?

DH: No. No, there were very few. I was the only Forest Service employee at the mill. There were some summertime college students working for the Forest Service...

ED: Well, how did you get that job?

DH: Well, my aunt worked out there at a bank and I was on my way to Alaska and my friend had written a letter home and said you better not come up here, I'm going to quit my job and so forth. So my mother called me and read me the letter my friend had sent me. I was on my way and found that out, when I was at Fresno, that my aunt there...

ED: He was in Alaska.

DH: Yeah, he was in Alaska. I was going to go up there and make some money. So I was there in the Valley and she had a friend, a girlfriend of hers, who had a boyfriend who was a truck driver up there in the mountains around those lumber camps, and there were a couple of lumber camps. I had been looking for a job in Fresno and couldn't find anything. So this guy took me up to the mountains where these lumber camps were and I went to both of them to try to get a job. Well, actually, he went up there to try to see this secretary that worked for the Forest Service. That was his interest. So I went by the Forest Service with him. A little old ranger station there [Dinkey Creek Ranger Station]. Turns out they needed a scaler. And so that's how I got that job. I couldn't get on at the lumber camp, which paid more money. But I got that scaler's job and I came back every summer.

ED: So you were a federal employee?

DH: Yes. Temporary GS-5.

ED: So you were able to get that job two more years in the summer?

DH: Yeah, and I could have had it forever if I had wanted it. It was a pretty good life, really, and I was going to stay in the Forest Service. One of my bosses, a guy named Jack Rose, had graduated from the University of California Forestry School and I was going to apply to go to the University of California. Well, I was a non-resident and you had to have a "B" average and you had to pay out-of-state tuition and all that. I sent in my application, but you had to have two years of language and a "B" average to be able to get in and I didn't have either. I came back the next year and started taking German and got my grade-point average up. But I had decided that I was going to be a lawyer by then.

ED: OK, so you're down in Texas and you spend some time there with your uncle.

DH: Yeah.

ED: And then you come back.

DH: And I go into Harding and change my major to political science.

ED: And to Fayetteville to get your law degree.

DH: To get my law degree.

ED: All right, what did you do after you got your law degree?

DH: OK. I joined the Navy. John Echols and I. He was my roommate.

ED: Where is he from?

DH: Well, he's from Arkadelphia and he was in the Smith firm down there. [Smith, Williams, Friday, Bowen, Eldridge & Clark at that time] Did Herschel Friday's bond work for him.

ED: I remember that. OK.

DH: John and I were roommates up there for a couple of years and so we both decided to go into the Navy program for lawyers called "Law Specialists" at that time. And so we studied for the bar and passed the bar in September and then I went into the Navy.

ED: You were in the Navy three years?

DH: I was in there six.

ED: Six years?

DH: I was going to make a career out of it.

ED: Six years in the Navy.

DH: Yeah.

ED: So you went in...?

DH: That's '58.

ED: '58 through...?

DH: '64.

ED: '64.

DH: Yeah.

ED: So where were you stationed?

DH: I wanted to see the world and they sent me to Memphis. Hundred and ten miles from home.

ED: Is that where you spent the duration?

DH: No, after I'd been there a couple of years I wanted to go to sea and you had to have a regular commission to go to sea. So I signed up to get a regular commission and they sent me to an aircraft carrier, which was under construction in Brooklyn, called U.S.S. Constellation (CVA64) and I was the legal officer. We put it into commission in October

'61 and I spent two years there. Then I decided it was probably best if I got out of the Navy. I was having some personal problems...

ED: You never got to see the world then?

DH: Well, I got to see a good deal of it on the ship. We made a cruise 'round South America and we made one West Pac cruise, which was to Japan, and you go to the Philippines and Hong Kong and Okinawa. So I got to see parts of South America.

ED: South America and a little bit of the Far East.

DH: Yeah. And we went to Cuba at that time for a shakedown cruise and to Trinidad. Stopped in down there. One of those little islands, vacation islands.

ED: So you decided after six years you're not going to make a career out of it.

DH: Right. Yeah.

ED: What was your rank then?

DH: I was a lieutenant. You got a commission as a lieutenant and I was up for lieutenant commander when I got out. But as a lawyer you got a direct commission as a lieutenant. At about the time I got out I was eligible for promotion to lieutenant commander.

ED: Had you gotten married?

DH: Yes, I got married before I went in the Navy.

ED: And that was part of the problems you're talking about, personal problems?

DH: Yes.

ED: Difficult to have...

DH: Well, it just wasn't working out very well in the Navy. I had two kids.

ED: By the way, what are the names of your two kids?

DH: Well, Dana's the oldest and David's the youngest. Then I have Torrie by my second marriage.

ED: OK. All right, so you get out of the Navy in '64.

DH: That's right.

ED: And then what?

DH: Well, I looked around to try to find a job and, of course, I had a law license in Arkansas and nowhere else. I intended to come back home. But I didn't intend to settle in Searcy. But I looked around and didn't find anything that satisfied me. I didn't want to go to a big law firm. I talked to Jim Cole down there in Malvern and Levine and Williams down

there in Pine Bluff. So I decided, well, the best thing to do is just go home and open up a practice. And that's what I did.

ED: Home to Searcy?

DH: Yep.

ED: And so you put out a shingle and had an office there?

DH: Put out a shingle and Ed Lightle [James Edward Lightle] was moving out of his office and rented me his and I hung it out, and then four months later Lloyd Henry called me in and said he needed a deputy prosecutor. So I went in with him and became deputy prosecutor for White and Woodruff counties the next year in 1965.

ED: Let's go back. You said Ed Lightle. He was with a law firm. Wasn't he part of a law firm—Yingling and Lightle—with several of them at that time?

DH: No. Ed had been by himself. Ed Lightle...

ED: He was in the state Senate.

DH: Yes, he was. He was our state senator.

ED: Harvard grad. Very distinguished.

DH: Yes, very much so. A fine gentleman and he graduated from high school with my father. He was very generous to young guys coming to town. So I just rented his office for fifty bucks a month and opened it up. Of course, that's a pretty difficult thing, starting a law practice. They do not knock your door down, even though I was a hometown boy. So I was glad to get the deputy prosecutor's job the next year. Then after that, a year later, I decided to go off on my own in Searcy. I found out it would be better if I was by myself because I knew so many people in White County and being in a firm you can't necessarily represent who you want to. You have to consider the other firm members. So I opened my office across the street over there in Searcy.

ED: Where in Searcy?

DH: Well, right across from the [courthouse] square. Connie Quattlebaum had built a building across from the jail and the prosecutor's office and it was facing the square and it's still there. I don't remember the address of it [120 West Race Street].

ED: So, what kind of practice did you have there?

DH: General practice.

ED: Whatever walked through that door.

DH: That's right.

ED: Divorces...

DH: Criminal work. I didn't do any workers' comp. I didn't do any serious estate planning. I sent that to friends of mine in Little Rock and any serious corporate work. But any work of a general practice.

ED: Well, was it fairly ruminative?

DH: Well, it was a living. I was making a pretty good living. I was able to make a pretty good living.

ED: And those years would have been...?

DH: Well, let's see. That would have been '66 through '71. And that next year in '66 I ran for the legislature.

ED: You ran in '66?

DH: Mmm hmm, yes.

ED: That was a seat in the Arkansas House of Representatives from a district that represented Lonoke County...

DH: And White.

ED: And White County. Both full counties?

DH: Yes. That's before they went into districts and there was an open seat there. Bill Foster [William F. Foster of England] was the representative from Lonoke and, unfortunately, a Searcy lawyer ran against him and Jim Harris and I ran for the other seat. I had to spend a lot of time explaining that I was not the Searcy lawyer running against Bill Foster. Now Jim was a local boy, too, but he's a lot older than I am. I did real well in White County. I carried it well. My brother told me he'd take care of Lonoke County and he did. I got beat by two to one down there. [Laughs.]

ED: Did he live down there?

DH: No. He implied he had a lot of friends down there. He was up in Walnut Ridge and he was a doctor up there and had all these friends. Bob Smith up there was president of the Arkansas Rice Growers Association and several other people from there were in with the Faubus administration [Governor Orval E. Faubus] and they had all these friends down there. Well, that was the year they decided they were going to throw all the Faubus

people out. So people saw me walking around town with these guys and they didn't vote for me.

ED: Well, that's right. '66 was a big, big year.

DH: They cleaned them out.

ED: That was a year we elected, I think, four new members of the Supreme Court.

DH: That's exactly right. That's when [John A.] Fogleman ran.

ED: And J. Fred Jones and Conley Byrd and Lyle Brown. Of course, Faubus decided not to run again.

DH: That's right.

ED: He saw the handwriting on the wall. Winthrop Rockefeller was elected governor.

DH: That's right.

ED: Jim Johnson got the Democratic nomination [for governor] because Frank Holt was considered to be part of the old guard machine.

DH: I helped Frank that year. Yeah, it was that year, in the fall, that I helped him. We did pretty well in White County. Of course, my mother grew up with the Holts in Harrison. So I'd known them before that. But, anyway...

ED: It was a big year. A lot of people got turned out in the legislature. Old-guard guys. Joe Purcell beat the incumbent [Bruce Bennett] [for attorney general]...No one knew who he was. From municipal judge, traffic judge, in Benton, he defeated Attorney General Bruce Bennett, who everybody considered unbeatable.

DH: Well, that was the year I learned in politics that you better follow your own instincts and don't listen to these people who tell you they're going to help you get elected and don't associate with people that may have a lot of negative impact on your campaign.

ED: So that's what happened. You got...

DH: I had a good lesson.

ED: So White County was the larger county.

DH: Oh yeah. I carried it by nine hundred votes but I got beat by two to one down there. I think I ended up losing the election by six hundred votes. So I didn't listen to much advice after that about anything in politics.

ED: Were you ambitious at that time? You intended to have a political career?

DH: Well, yes. I was going to try to be a prosecuting attorney. That was the direction I was headed in. If I had an ambition it was that. That was the extent of it. Yes.

ED: 1968. I think the first time I met you was in 1968. We had another governor's race at that time in the Democratic Primary and Ted Boswell, a trial lawyer from Bryant, Arkansas, ran. He was kind of the reformed candidate running against the old guard (the machine).

DH: We were classmates at the University of Arkansas.

ED: You were classmates at the University?

DH: In law school. But I met you in Beebe in 1966 when they had a political rally down there. You don't remember me but I remember you.

ED: OK.

DH: Because I remember later we had conversations about it and we were standing around under the tree or something and you had asked me about my opponent and I told you it was Jim Harris and I told you what I thought. "He's a pretty good ol' boy," I said. That apparently impressed you. You said later you were going to look up and see how I turned out, since I seemed like a nice young man. [Laughs.]

ED: Well, but in '68...That was a year Ted Boswell ran and probably was elected [if the votes were counted honestly].

DH: Oh yeah.

ED: Counted him out in the first primary. [Boswell lost the runoff spot to Virginia Johnson, who was defeated by Marion H. Crank in the runoff primary.]

DH: I still had ambitions, I guess. Although, I had put my personal ambitions aside. When Ted came up I decided to do everything I could to help him get elected. I went to work in White County and went to Little Rock and that's when I met you and got to know you and other people down there because I was working on his campaign and traveling around the state and met a lot of people. Of course, Ted and I had classmates at that time who were reaching prominence in the law profession throughout the state and they helped us. And that was the key, really—organizing these people and getting them to help us was the key to him succeeding in places like White County. We actually led the ticket here, which was a first time anybody had led the ticket against the so-called "Faubus Machine."

ED: Well, the so-called "Faubus Machine"... Their candidate that year was Marion Crank of Foreman, Arkansas. He had been the speaker of the House of Representatives and was, also at that time, an employee of Witt Stephens. I think he was kind of the public relations director for the Arkansas Cement Corporation, which was a subsidiary of Arkansas Louisiana Gas Company run by Witt Stephens. So he was the candidate, the designated candidate, and got the nomination. Ted Boswell and Virginia Johnson, wife of Justice Jim Johnson, was running for governor and she squeezed in a day or two after...

DH: By about four hundred votes.

ED: About four hundred votes and the word was... Marion Crank's campaign manager told me that they managed to switch some votes down in Union County. Bruce Bennett was running as well that year.

DH: Yes he was.

ED: And he had finished a distant fourth. So they switched some votes around from Bruce to Virginia and she made the runoff instead of Ted Boswell. I was always convinced that if he'd made the runoff he would have beaten Marion Crank and would have beaten Winthrop Rockefeller.

DH: I thought so, too. We didn't have enough muscle in our campaign to know how to handle that sort of thing. Ted's brother was campaign manager and he was really good. I was, of course, not that experienced. We had Sam Boyce [of Newport] and old Tom Johnson down there who were kind of old political guys out of the Young Democrats. But we did not have an organization that knew how to combat that sort of thing and how to deal with a runoff-type situation where they were counting votes. But, anyway, that gave me a lot of experience and made me a lot of friends in Little Rock and was really the reason I later got elected chancery judge when I decided to run a few years later.

ED: And you had also... No, I guess it was several years later when Joe Purcell was running for governor.

DH: Two years later.

ED: 1970.

DH: Yep, two years later.

ED: He runs for governor and he finishes... Orval Faubus makes a comeback in 1970.

DH: And Dale Bumpers gets elected.

ED: There were eight candidates and Dale Bumpers is last but he comes on strong at the end and Joe Purcell kind of faded. I remember you worked hard in Little Rock for Joe Purcell in that campaign.

DH: Yeah. Boswell wanted me to help him and I liked Joe and thought he was a good man. I'd looked into Bumpers. I even went down there to meet him and saw this guy Deloss Walker and I went in the office there and I was going to meet him. Dale had come by to see me and I had been noncommittal and I went down there and I had heard Deloss Walker talking on the phone in the other room and the more I heard him talking on the phone I decided I didn't want to be any part of this. He sounded like he was going to sell some soap there rather than...

ED: That's exactly what Deloss Walker's strategy was. He was kind of the campaign consultant/P.R. guy for Dale Bumpers.

DH: I had been indoctrinated by Boswell and Purcell into being an issues man and I thought I had principles. So when Boswell called me and asked me to help Joe I decided to do that rather than Dale Bumpers. We did well in White County. But, of course, Dale won the race.

ED: You were kind of frustrated by Joe in that campaign, I think.

DH: Oh yeah. His ad man and I... There were two of us. It was [Jim] Faulkner, I think, from Pine Bluff.

ED: Yes.

DH: He [Purcell] was determined to go on one of these fifteen-minute orations on television like he'd always done and we tried to get him to buy some ads on television, you know, and he wasn't going to do it. And that was at the time when they'd rent thirty minutes and everybody would give these long-winded speeches—just beginning. Of course Dale Bumpers was a master at it.

ED: And Joe Purcell was just deadly.

DH: He was losing votes as he spoke.

ED: He had gone down and somebody told him he needed to improve his techniques and he'd hired a guy down in Dallas to help him with his mannerisms and gestures and so forth.

DH: There was a guy named Smith and I think Jernigan was down there. A guy named Jernigan down there, kind of his campaign manager [adviser].

ED: George Jernigan.

DH: Yeah. I can't think of this Smith guy. He was a lawyer.

ED: Yeah. His brother was a chancery judge down there.

DH: Yeah, he's his brother and he'd worked...

ED: Bob Smith.

DH: Yeah, Bob Smith in the attorney general's office. Well, I went down there and talked to Joe and he was kind of in the doldrums about a month before the election. So I sat down...I had been watching the thing and I sat down and decided...Of course, he needed a boost and he'd been the attorney general and I felt like his strong suit was on crime. We were having...Crime was an issue back then, you know. We were having an increase in crime and he was attorney general and everything. So I wrote a speech for him or program outline of what he was going to do about this. I don't remember all of it but he came out with a strong statement about what he's going to do about the penitentiaries and he was going to do some of the funding through court costs of D.W.I.s and all these things. I'd had some experience as a prosecutor on some of these things. Well, he got two editorials out of it. He got one in the *Gazette* and the *Democrat* immediately, and felt like he had a shot in the arm and was going pretty good until he fell into this nonsense about how to handle the publicity. Whether he would have won or not I don't know. But...

ED: I think after that he got almost no publicity the rest of the election.

DH: No, he never did. And his campaign people encouraged him to do this talk. They were not doing him a favor.

ED: Well, the polls showed Faubus with a lead and Joe safely in second place pretty close to the end.

DH: Yeah. Well, that was two failed candidates I'd worked for, and I decided the next time somebody ran it was going to be me and I was going to run for a job that paid. [Laughs.]

ED: [Laughs.] So that would have been...?

DH: '70.

ED: 1970. You decided to run for...

DH: Chancery judge.

ED: Chancery judge in...

DH: 1971.

ED: In 1970 I guess was when the election was.

DH: No, we had the election in '71... Was the chancery judge election.

ED: OK. Well, actually it was '72.

DH: I took office in '72.

ED: You took office in '73.

DH: You're right. I've got that note right here and I don't even know it. You're right!

ED: But the incumbent was Kay Matthews.

DH: Yes.

ED: Kennesaw Landis Matthews.

DH: Kennesaw Mountain... Landis Matthews.

ED: He had been a member of Orval Faubus' administration and a lawyer and a consultant and held several jobs in the Faubus administration. Then Faubus had appointed him to a Chancery judgeship and then he ran for another.

DH: They created one for him.

ED: They created one for him and he got elected to that.

DH: That was Third Division.

ED: Third Division of the...

DH: First Chancery Circuit.

ED: First Chancery Circuit Third Division.

DH: Lonoke, Prairie, White and Pulaski Counties.

ED: OK. So you had White County in that district. You had a base there. But Pulaski County was the overwhelming vote.

DH: Oh yeah.

ED: So you filed against this guy. Did you really seriously think you could defeat this guy from Pulaski County? I guess you did.

DH: Well, it was yes and no. It was rather an impulsive thing. I really wasn't disappointed in Kay when he first got the job. I probably voted for him. I think Ruby Hurley ran against him and I probably voted for him because the chancellors (we had three of them) they'd each come to White County once a month. But one of them wouldn't try any cases up here. Kay started trying a lot of cases so the lawyers would pick who they would want to try them. Jernigan was the other judge and he was a popular judge.

ED: John P. Jernigan?

DH: Yeah. He was very popular with...Let's see. He didn't get elected...Williams was still on the bench then.

ED: Guy Williams?

DH: Yeah. Jernigan was running that year, as I recall. Well, I have my dates mixed up. I think Jernigan and I both ran when I ran against Kay. Somebody was in there besides him.

ED: I'll check that out.

DH: OK. Anyway, we began to see some erratic behavior by Kay on the bench and began to have some problems. I don't want to go into a great deal of detail but...

ED: He carried a gun for one thing.

DH: Yeah, he did. But he was becoming abusive to the people, to the lawyers and to the clients. I had a couple of cases where this happened, and I don't want to drag it out or anything, but I remember one of them was when I was representing this woman (she was in a divorce and she had these older teenage boys involved) and it was one of those volatile situations where the man was very jealous and she was really a good woman and he was being abusive. I was representing her and we got into court and I was trying to get a temporary hearing to get her a car so she could go to work (she worked for a dentist). And while she was on the stand, or while the man was on the stand, they got into it over the fact that one of the older boys had a motorcycle and Judge Matthews lit up over that word—motorcycle—and started in on a tirade about he wasn't going to have any kids riding motorcycles and everything. We stood there and the upshot was I asked him about the woman using one of the family cars and he said, no he wasn't going to let her have a family car to drive. I remember up until that time I never had any problem with the judge, even disagreement. I asked him, I said, "I'd like to speak to the court in chambers," and he said, "Anything you have to say you can say in public right here in front of everybody." I said, "Well, Judge, I am really disappointed. I've never heard any such thing. All we are asking for is to use this vehicle and she's got to have it to go to work." He said, "Well, that's the decision of the court." The guys told me later (I didn't know this)...The guys told me later he said, "Well, if you're not satisfied with the way I run things you can get somebody to run against me." I don't remember him saying that, but I was really disappointed. And then I had a case later on. It was a custody case. It was a

tough, hard battle and I was representing a man...Let's see...Yeah, I was representing the man, "Tuffy" Yarbrough. His grandchildren were involved. He'd hired me to represent his boy and we went in there trying to get these kids because we thought the woman was neglecting them. I had John Paul Capps, who was our representative here, as a character witness for the boy. I called these people and when I got John Paul Capps up there he started testifying and after he'd said something he [Judge Matthews] said, "I want everybody to know that I'm not going to be influenced by these witnesses coming in here and so forth," implying that John Paul Capps was trying to influence him because he was a man of some authority and so forth. It just stunned me. He just chewed Capps out and, in fact, chewed me out by saying that he wasn't going to be influenced by people like that. I didn't know what was going on. I was stunned by it. So was Capps. Such a mild-mannered...

ED: One of the sweetest guys you'll ever...

DH: ...Gentleman you ever heard. Here he was abusing him. I went back over to my office and we lost the case. This was the last instance. There had been several before that. I can remember sitting in the courtroom one time and it was midnight and I was sitting in the back of the room with a lawyer from Newport who was representing Bruce Anderson.

ED: Anderson was the architect?

DH: No, he owned a restaurant down there in Beebe.

ED: Yeah, Bruce Anderson owned this big restaurant, famous restaurant, in Beebe. Later he started one in Little Rock.

DH: We were sitting in the back of the room and it was midnight and Kay is still trying cases and we didn't know whether we were going to be there at three o'clock in the morning or not, you know? I mean, this was some of the erratic behavior. I won't go into all those things. But, anyway, I went back to my office after that trial [the Yarbrough trial] and I was sitting there and I found myself trying to explain to one of my clients who had paid me good money why we had this crazy judge. [Laughs.] I said, "This is ridiculous! The reason we have this guy is because we're putting up with him." I had heard somewhere or other that the lawyers in Little Rock were looking for someone to run against Kay. So on an impulse I picked up the phone and called him—name is Isaac Scott.

ED: Ike Scott with the Wright Law Firm.

DH: I called him up and said, "If you guys can get up my filing fee I am fixin' to run." It was an impulsive thing that I did. It was not long before the election. Only a week or so. Maybe two weeks.

ED: Before the filing deadline?

DH: Yes. So I scraped around and we got enough money raised to get me into the race and I went down and filed and announced. I said why I was running against Kay and I laid it out pretty hard on why I was running, because he was so abusive to these people.

ED: Did you mention there that he carried a gun?

DH: That came out later.

ED: That came out later. That kind of became an issue in the campaign.

DH: I found out all kinds of stories once I got into the race. Then I started hearing the stories from Pulaski County. I tailored my ad to that on television. I said, "If you've been in Kay Matthews' court you know why I am running for chancery judge."

ED: He had also been involved in... We won't go into it. It's too detailed to... But in Arkansas Loan and Thrift.

DH: Yeah.

ED: When Joe Purcell had filed the suit against Arkansas Loan and Thrift in 1967, the case got assigned to Kay Matthews' court and he sat on it for some years until the federal...

DH: But you asked me if I thought I could beat him. After I filed I went to bed for three days sick to my stomach because I realized that I had bitten off a great deal. But then I started to work and when I got into Pulaski County and started seeing all the support I could get down there among the lawyers... I think the day I realized I was going to win I was making the circuit of all the lawyers down there and I went down to this law firm, the Smith Law Firm... Of course, I had John Echols in there and Buddy Sutton and Boyce Love and the Wright boys were all friends of mine. But Bill Smith took me in the conference room...

ED: This is William J. Smith, Bill Smith... I guess that was the largest law firm in Arkansas at that time. It was Smith, Williams, Friday and...

DH: Well, it was the most powerful law firm and you had the Wright Firm and the Rose Firm but some thought the Wright Firm was more prestigious. Bill Smith... They were a first-class law firm. Anyway, he'd been Faubus' lawyer for years. So he took me in the

conference room and he peeled off five one hundred dollar bills and told me, “You’ve got to beat this guy.” I told no one about this conversation or the meeting. It turns out that they represented some banks and the Wright Firm represented some savings and loan companies and Kay was giving them fits in court. Their people were tired of it. That’s the day that I realized, “I’m going to win this race.” [Laughs.]

ED: Do you remember what the vote was?

DH: I beat him four thousand votes. I carried Pulaski maybe one hundred or two hundred votes. I carried Lonoke County about the same margin. I carried White County four thousand votes and I lost Prairie County (they always stayed to the end with the incumbent).

ED: Prairie County, which was a Screeton.

DH: They told me...Jerry told me himself...

ED: Jerry Screeton ran Prairie County.

DH: Jerry told me himself that I wasn’t going to get any votes down there but that they thought I was a nice young fellow. After the race was over the first call I got from the lawyers was the Thweatts, down there in Duvall’s Bluff, welcoming me to Prairie County, that I was their new judge. [Laughs.]

ED: [Laughs.] I am sure the Thweatts supported Kay, too, didn’t they?

DH: Oh yeah! They didn’t make any bones about it. No, they were nice about it.

ED: Thweatts. They were two brothers.

DH: Oh yeah. They were legends. They had John Dale, who was a legend.

ED: John Dale Thweatt and James Thweatt, right?

DH: Yeah, that was his nephew.

ED: Nephew. Uncle and nephew.

DH: Yeah, that old man was a legend.

ED: Yeah.

DH: I had several cases in Prairie County and knew the Thweatts, and I had filed a lawsuit down there against...Sammy Weems being on the other side.

ED: Sammy Weems from Des Arc and a lawyer down there and prosecutor.

DH: And later on a thorn in everybody’s side, mine included later on when I was on the chancery bench.

ED: He got disbarred later on, I think.

DH: Yeah.

ED: He got into a lot of trouble.

DH: He ended up in my divorce court, you know? That was a donnybrook. So, anyway, we won the election and so I was on my way to being a judge.

ED: So in January of '73 you were sworn in as chancery judge and you served four years as chancery judge, right?

DH: No, no. As I recall the terms were four with circuit, six chancery, eight Supreme Court.

ED: OK, but did you actually serve six years?

DH: No.

ED: You served four of the six years?

DH: Yeah. I was about two years into the term. A controversy arose in the legislature over around Russellville in Conway County. They wanted to redistrict over there because of this bitter conflict they were having over there between Streett and...

ED: Alex Streett, Russellville, was a prosecuting attorney for the district. Russell Roberts of Faulkner County was the circuit judge for the district, Marlin Hawkins was the sheriff of Conway County and Guy Jones a state senator [from Faulkner County]—they were the political bosses.

DH: A bitter political fight was going on over there and they got [State Representative] Lloyd George... They wanted to break it up—the district. So every time they'd go to the legislature on something like that everybody would back away from them as though they had leprosy. Nobody wanted to fool with these districts. We had districts all over the state. Well, it happens that White County was... And you had districts for the chancery court that would run to some counties and districts for the circuit court that would run to others and we were one of those counties. The White County Circuit Court District was the First Circuit and it ran to Helena, five counties: White, Woodruff, Lee, St. Francis...

ED: Maybe Cross?

DH: I don't know where Helena is.

ED: Phillips County.

DH: Phillips. Our chancery district (I was part of that district), we ran the other way. We went to Lonoke, Prairie, and Pulaski. Well, it didn't make any sense, really. But these things

were put together in a patchwork way, you know, over the years. We wanted out of the Little Rock district as chancery court and some of us in White County wanted out of the district with Helena. We wanted a smaller, more cohesive district like ours. So when that controversy arose. [Representative] Lloyd George introduced a bill down there and he said, "I'm going to redistrict everybody. You let me do this and help me with this [speaking to the judges and the bar]." So he introduced a bill down there. Well, it was dying a slow death in the legislature. Well, I was interested because I wanted to give White County a district of its own with its own counties—circuit and chancery together. So I went to Lloyd George and Marcus Halbrook.

ED: Marcus Halbrook was director of the Arkansas Legislative Council.

DH: Yeah, and I had read that bill. I told Lloyd that there's some provisions in there that are unconstitutional. You're not going to get this thing through. And if you do, they're going to throw it out and the judges are just going to sit back and wait on it. They're not going to do anything. But I said, "I'm interested in helping you on this because we want our district changed and there are a lot of changes that ought to be made." Well, also what was holding it up was some of these districts wanted other judges, you see, to add to the circuit. There was pressure to do something, to redistrict the whole state. So he and I and Halbrook sat down and drew a new bill. Of all things, it went through. The lawyers were delighted with the legislature to get this thing going. They [the legislature] came up and gave us sixty chancery judgeships and sixty circuit judgeships. They told us to appoint committees to come in and tell them how they wanted the districts set up, and they gave us money to do it. As a result, I think the Judicial Council appointed the committees to serve to draw the districts. Well, I got appointed chairman of the Chancery District with Yocum down there at El Dorado, I think. He was a chancellor, wasn't he?

ED: Yes, he was from El Dorado. Yocum. I don't remember his first name [Henry S. Yocum Jr.].

DH: Yeah. The other guy was from Trumann, Arkansas, from Eastern Arkansas. I can't think of his name. But, anyway, the three of us. So we worked together and redrew the whole state and everybody had some influence. Well, we got the thing settled for Russellville. We settled their problem. We settled the one that I was involved in. So it would end up that Pulaski County would have Perry County and the reason they had Perry County was

because they had these [travel] expense accounts. They'd get two hundred dollars a month and the judges wanted to keep their expense accounts, and that was the justification for that. There was really no justification for putting poor old Perry County in with Pulaski but there they are and there they'll stay, I'm sure. But, anyway, we got Lonoke, Prairie, and White as the new circuit district and chancery district. Well, I was going to run for re-election in that district because, although I was probably the only person that's ever been elected to a job in Pulaski County...

ED: Who didn't live there.

DH: ...Who didn't live there, I didn't want to live in Pulaski County. Besides, it was the second toughest caseload in the state. I would have appreciated a little slower pace in life. I think Cecil Tedder was going to run for circuit judge and so we were content. Then Lyle Brown resigned from the Supreme Court. I thought, "Well, if you ever want to be on the Supreme Court..." I had learned something about politics and getting elected. I knew that was a big step, but I had had four years of experience in Pulaski County, I'd had quite a few cases which involved publicity. I mean, I had declared the expense accounts in Pulaski County for the county judge and county officials illegal and enforced the provision in the Arkansas Constitution that you could only draw five thousand dollars a year as a county official, and the Supreme Court upheld that. That caused a tremendous upheaval in the government all across the state and two years later they changed the Constitution. That was one of the big ones. The other one, of course, was...

ED: What was the other? Yeah, let's talk about the other big case. Because you did get a lot of publicity from the big cases, controversial cases.

DH: We had this thing...In 1970...David Pryor got elected governor and his main program he was going to have was a new constitution.

ED: That was 1974.

DH: Yep.

ED: This would have been the legislative session of '75.

DH: All right. So they had that and somebody challenged it because of the way they were going to choose some of the delegates. They were going to elect some and then they were going to appoint some of those legislators. Jim Guy Tucker was attorney general and he was representing the state. I think Jackson down there, that Jackson boy...

ED: Cliff Jackson, who called himself an independent but he was working for the Republican Party. He filed a suit.

DH: He filed the suit and I got to looking at the cases and back in 1970, when they had the other constitutional convention, there was a case involving, I think, Harvey, the senator from Newport.

ED: Yes, Senator Robert Harvey.

DH: And they said he couldn't serve.

ED: Yes.

DH: Well, I said, "I saw that and being an old country lawyer I believed what I read." I didn't know that politics is supposed to enter into law. I thought, "Well, that's the answer. You can't have these people as delegates." Well, Bob Leflar, my old law professor who was the most respected legal mind in Arkansas, I guess (except George Rose Smith), had come out in the press ahead of time and said that it's OK [to have legislators as delegates].

ED: Well, he was going to be the president [of the Constitutional Convention].

DH: Yeah, he said it's OK.

ED: He's the president of the Constitutional Convention.

DH: So I ruled it unconstitutional. There was all kinds of gnashing of teeth and everything else. We got it immediately to the Supreme Court and it was only a matter of time and four to three. They upheld me. Poor David Pryor, who's one of the nicest guys I've ever known (and who was the best governor, in my opinion, in terms of being a personable guy that I ever knew), he made the statement sometime along in his career, "I believe that chancery judge is the most powerful office in the state." [Laughs.]

ED: Well, the Supreme Court decision came down, I think, maybe the day that the convention began.

DH: We were weeks away from it when I made my decision.

ED: They were assembling at the Capitol in the House Chamber when the Supreme Court...It was a Monday morning when the Supreme Court, or whatever day it was...The Supreme Court decision came down upholding your decision and abolishing that Constitutional Convention. They came back in two years, I think, and did it right.

DH: Yeah, they had one.

ED: It went down in defeat but they were properly elected delegates and unrestricted...

DH: And I read the law and felt that they had to be elected. I disagreed with my old law professor. But I thought that was the original intent of it and I thought that was the fairest way to do it. The other big case, and I don't know how many I have... There were a lot of them getting publicity there in Little Rock but not necessarily statewide. I was telling you about that Broadway zoning case and it was attracting the attention of the people there in Little Rock who made things happen, so to speak. But we had that capital improvement out there with revenue bonds. They were going to build this mall there on the Capitol with all these revenue bonds. You remember that?

ED: Yes. Somebody sued and got into your court.

DH: Yeah and this was another one of those lawsuits. They had all kinds of architects working on this thing. They were building a parking lot out there behind this new building. They were going like crazy out there building it. They filed a lawsuit and I told them that revenue bonds were illegal and it just stunned them, you know. Here we just stopped everything. It's a twenty-five million dollar project or something. I don't know.

ED: Well, there would be more on the revenue bonds later when you get to Supreme Court. We'll talk about that later.

DH: Bill Foster, who was a good friend of mine who was from Lonoke County...

ED: State Representative William F. Foster of Lonoke. Yeah.

DH: He was the sponsor of that thing. He was the sponsor of that bill and he was sitting there while all of this was going on. He and I were good friends and I think they felt pretty good about their case. Anyway, when I ran for the Supreme Court... I'd cost him and his friends a chunk of money and all sorts of things. I don't know whether from an economic standpoint it might not have been a good decision. But that wasn't my problem. Anyway, when I was running for the Supreme Court I thought, "I better go see Bill Foster first." I went down to...

ED: England.

DH: England and I went in to see Bill at his oil company and... I don't remember... I said, "Bill, you wouldn't let twenty-five million dollars stand between friends, would you?" He said, "You're in my court now."

ED: So did he support you?

DH: He didn't oppose me. He said, "You'll probably get elected." I thought the world of him. He was such a fine man.

ED: Great gentleman.

DH: Yeah. But that's one of the things you have to deal with when you are an elected judge. You have to deal with those things sometimes. But, mostly, judges don't have to do it because they don't run out and get opposition and so forth.

ED: Well, chancery judge is usually a pretty quiet job. But somehow...And you don't read too much about chancery judges, because of divorce and domestic cases...But somehow all these cases, I guess, would just turn up. You were lucky.

DH: They were illegal exaction cases, a lot of them were. You would file a declaratory judgment action in chancery court to have something declared an illegal exaction and stop something. So you had a lot of this legislation involving that. Some cases had to be filed in Pulaski County.

ED: There was a lot of that kind of stuff going on.

DH: There was a lot of litigation. Oh yeah.

ED: '70s and '80s. So much of that.

DH: But we had the old 1874 Constitution and everybody had been trying to skirt around it rather than amend it. Just like these expense-account things. I just enforced the thing. We had a case with a savings and loan and they were charging one percent for an origination fee and I declared it as interest. Well, that kicked it over the ten percent on many of the loans and they were having to gnash their teeth against this usury provision in the Constitution because the principle on the loan had to be forfeited. Eventually, the lawyers found out that if they had filed it over there with Hickman he'd probably do something with it. They didn't really know what he'd do.

ED: So they would probably wait until the next case would go to Hickman then they'd go down and file it.

DH: They would do that.

ED: They'd be shopping—judge shopping.

DH: They got to where they'd do that, you know. So I was getting that stuff. That helped me when I decided to run for the Supreme Court because I had a lot of support from the lawyers around the state and a lot of the judges. There were a lot of trial judges that told

me...And I got some help from them. I remember Bradley over there in Blytheville and Lyle Brown and some of those people down there because they had admired what I had done on those things.

ED: Lyle Brown was kind of a maverick on the Supreme Court. He'd been a chancery judge, or a circuit judge down in Hope.

DH: Circuit judge.

ED: He was prone to do the same thing on the Supreme Court—take the unpopular stance on some highly controversial cases.

DH: Well, we had a good judiciary when you added it up overall. We knew in Arkansas where you would get judges that were fair. Lyle Brown had a reputation of welcoming lawyers from outside his district and giving them a fair trial. So did Bradley over there around Blytheville. I could name several others around the state...You know, Tom Butt up there. So we had a fairly independent judiciary—people who were not political good ol' boys. And most lawyers in Arkansas, being somewhat of a populist state in many ways, wanted judges to just give them a fair trial. Now there were parts of the state where the local lawyers controlled everything.

ED: Yeah. A prime example of that would have been in the Fifth Judicial District, where with [Circuit Judge] Russell Roberts local lawyers always won the case.

DH: Yeah.

ED: Nobody could go into that county, any of those counties, and win a case against a local defendant or plaintiff or local lawyers. You just couldn't.

DH: Well, we were beginning to break these things up, except in Eastern Arkansas. When we got around to redistricting, all these guys around there have got such good manners, you know, and when we began to make new districts for the chancery judges and circuit judges they told us, "Ours are just fine." I said, "Well, what do you mean they're just fine?" "Well, we want you to leave us alone," they said in no uncertain terms. Well, that really galled me because I knew what was going on in Eastern Arkansas. They had this thing going with these big ol' districts over there and they controlled everything and when you went there to practice law you had to know their rules and everything and that was one of the districts that needed to be busted up. It was too big. It was just too big. Jonesboro, and West Memphis, and Helena and everything and I blew my stack. I wrote

Yocum down there and the judge over at Trumann, Arkansas, and told them...Boy, I just went on and on about how we've got to do something. Well, Yocum got up (and he was a real fine gentleman) and he calmed me down a bit and we tried to work with them. We never did get anything done, but we tried to nudge them a bit. But never did get anything done though.

ED: All right. This is in 1976. You're running for the Supreme Court. I've forgotten who was running. John Purtle was one.

DH: Yeah, as soon as Lyle Brown announced I realized I was going to have to make an announcement. You've got to get out there early if you want to go. I decided I wanted to make a change. That would be a wonderful thing to do, to be on the Supreme Court. I had a desire to participate in something like that. I had tried a multitude of divorce cases and custody cases and I really didn't care much to do that anymore if I had a chance to do something else. So it was only a matter of days before I announced. Well, Purtle was there, too, talking, apparently. John Purtle in Little Rock.

ED: He'd been a state representative.

DH: He'd been a state representative.

ED: A couple of times.

DH: And he'd helped me when I ran for chancery judge. He was the guy that said something about the gun that Kay Matthews carried around with him all the time. Then Melvin Mayfield from South Arkansas...

ED: He was from El Dorado. Circuit judge in El Dorado.

DH: Circuit judge. He decided he wanted to run and so there were three of us in it. I didn't have a lot of money, but I felt pretty confident. I had these friends all over the state that I had met when I worked for Boswell. I knew how to run a campaign. Had some experience. In those campaigns a good deal of it comes down to lawyers and business leaders you know and maybe the newspaper people. So I just felt confident. I had about twenty guys there that I met with and I said, "If you all can raise me twenty thousand dollars I believe I can make this race." And that's what we did. They didn't raise any more. I don't have much raising ability—ability to raise funds.

ED: So you raised about twenty thousand?

DH: Yep. I knew we were ahead but I didn't know how much. So we got in with forty-something percent of the vote [in the Democratic preferential primary]. I think forty-one maybe. Everybody else was down there lower.

ED: Who finished second? I forgot.

DH: Melvin Mayfield.

ED: Mayfield, apparently...And he was later on the state Court of Appeals.

DH: Yeah, he came back later and got elected to the Court of Appeals from his district.

ED: District job down there. Apparently he was a great lawyer, a bright, sharp guy. But he apparently was pretty brittle with people and acted kind of like royalty.

DH: He did that. But the worst thing that Melvin did that I found out about was that he was a procrastinator. He wouldn't decide his cases. No telling what they said about me, but that's OK. It's probably all true. But, I found out in Fort Smith...There was a very prominent law firm over there. I didn't know him [Mayfield]. I had some friends over there [in El Dorado] but I didn't know him. I went in to see the senior partner [in Fort Smith] and he said, "Well, I've been hearing some things about Judge Mayfield and I'm going to look into that." I'm sure I ended up getting his vote for that reason. Melvin had the same problem on the Court of Appeals. He couldn't get his opinions out. Wouldn't do it. I liked Melvin personally. I liked his wife. He had a lot of good qualities but that was one...I don't think he could have made it anyway. I think I had enough going for me. Northwest Arkansas and Pulaski County decided these things. I realized that pretty quick. That's where the votes are. So I concentrated nearly all my...I let him have South Arkansas. There wasn't any sense in going down there and spending money on gasoline in his district. It really puzzled Melvin because, you know, a lot of those guys...We had ol' Bob Compton. They run from El Dorado and they don't know Arkansas. They're down there at the bottom of the barrel looking up.

ED: That's Robert C. Compton, who was a former president of the Arkansas Bar Association.

DH: And a nice guy.

ED: Nice guy and brilliant lawyer.

DH: Absolutely.

ED: Ran for governor once in 1970. One of the great trial lawyers.

DH: Oh yeah. But they had Bruce Bennett down there and that was about the only trophy they showed off, you know, in statewide office. We got into the runoff and I didn't know what to do. I had never been in a runoff. So I finally decided, "Well, you're going to have to run this thing out of an office. You can't run all over the state in a period of ten days." So I decided what I was going to do. I was going to spend all my money on radio in the counties that had a runoff for county judge or sheriff. I figured that would turn them out. So I did and I bought my television and I called my friends and I think I spent about seven thousand dollars in the runoff. We easily won that. But there was a sheriff down there named Hickman in one of Melvin's counties and I led the ticket in that county because they thought I was... Well, Melvin had to go over there and spend some money over there to tell those people I'm not related to that guy. "You're not supposed to be voting for him." So you run into all sorts of interesting things. Walter Davidson's daddy was chairman... Walter Davidson was a brilliant corporation lawyer in Little Rock.

ED: Yes.

DH: And was also a friend of mine from law school, and his daddy-in-law was chairman of the Democratic Party in Greene County. I had some friends up there, but that was my best connection. His daddy was going to take care of me. But, in those days, at that time we didn't have much of a Republican Party, certainly not anywhere except up in Northwest Arkansas. And chairman of the Democratic Party was a very powerful person. They appointed all the judges and clerks and people would call them and ask them who to vote for. These are people who would call and ask on a race like the Supreme Court race, where they didn't know [the candidates] very well. Well, it turns out that I didn't carry Greene County. Melvin Mayfield carried Greene County. I called up Walter and asked him about it after this was over with—of course, after the race was over and I was elected. He called his father-in-law and said, "Well, what happened to Darrell up there?" "Oh, I didn't know we were supposed to be for Darrell!" he said, "I thought we were supposed to be for the other guy." [Laughs.] In a race like that... You know, in a race like that, these people don't know who you are and so some funny things happen. But, anyway, I got myself elected to the Supreme Court.

ED: Took office in 1977. January '77.

DH: I was in my early '40s. Yeah.

ED: And the court at that time...it had been fairly intact for about ten years.

DH: Ten or eleven years. They got elected in '66.

ED: '66.

DH: Four of them came in.

ED: Four of them came in. So four out of the seven. Then, I guess, two years earlier J. Fred Jones had retired.

DH: He had retired when I took office.

ED: He retired and so did Lyle Brown. Both of them retired.

DH: Yeah, I took Lyle Brown's place. Elsjane Roy got an appointment for Lyle Brown because he retired before his term was up. I didn't get a full term, you know. I ran for the balance of Lyle Brown's term, I think.

ED: Yeah, which was two or four years.

DH: Yeah, I think it's four years. So when I got there J. Fred was walking out the door. He had been one of that original seven. So Lyle Brown and J. Fred Jones were gone and the original five were there. That was Chief Justice Carleton Harris, George Rose Smith, John Fogleman, Frank Holt and Conley Byrd.

ED: OK. Let's take a break here. [Pause for a break.]

DH: You just tell me when you're ready.

ED: OK. We're back. Judge, before we move into the Supreme Court stuff entirely, let's go back and talk a bit more about your chancery career—that four years, I guess, that you were in chancery court. You did a lot of cases outside...I guess you tried across, not just in your judicial district, but in trials in other places...you got assigned to cases.

DH: Well, they would call you and see if you wanted to do it. I enjoyed doing that. Actually, I probably did a better job in Pulaski County being a judge than I did in White County, where I knew a lot of people and all the lawyers and everything. You're much more comfortable as a judge and you can handle your objectivity much better when you don't know anybody and you don't know anything about the situation. You go up there to try a case and...I remember I went to Conway to try a very bitter case up there where a man was stalking someone and Judge [Richard] Mobley had disqualified and it was, you know, a very volatile situation. I went up to Russellville and tried a case and that was also a volatile custody situation. The deputy sheriff walked me out of the courtroom. I walked

right through the crowd, you know. I remember another one—we had a very interesting case and I wanted to try it and didn't get a chance to. The Mississippi River changes course, like a lot of these rivers, and you lose land and get land. There was a strip of land up there in Yell County across from Russellville that people had a dispute over for a while. I was going to go up there and settle that lawsuit. Van Taylor was the judge up there. They [the parties] both put it off. I think they were both afraid of what the decision would be. So I enjoyed doing that. And they appointed me once to go down to South Arkansas and I can't remember the old judge's name down there [Royce Weisenberger], but he was really quite a gentleman. He was from Hope...I think Carleton Harris called me on that. It seems like that's the way it was. I don't know whether Judge [C.R. "Dick"] Huie, who was his aide out there at that time, [assigned me]...But, anyway...

ED: He was head of the judicial department. C. R. Dick Huie.

DH: Yeah. Anyway, that was a pretty simple operation back in those days. But, anyway, that's how they did it. The chief called me...Chief Justice Carleton Harris called me so I was to go down there and the old judge (and I can't think of his name) wrote a letter to me and told me he wanted me to stay at his house. Well, Carleton saw that letter and, of course, the man had disqualified from the case and he said, "I don't want you going down there and staying at his house. I'm going to get someone else to try this case." [Laughs.] But that judge had made this *faux pas* because, you know, I shouldn't be staying around him if I'm going to try this case. And he disqualified. But, yeah, I enjoyed that and then I enjoyed, later on, as I came back and retired, trying these cases. But I didn't know the political situation in Pulaski County. I didn't know the realtors and all these people were fighting over this case out there on Broadway, where they had a new ordinance. I didn't know all the ins and outs between the aldermen and all that stuff. They had all those petty political wars down there and I didn't know these people.

ED: And that was an advantage.

DH: A tremendous advantage as a judge because it didn't make me any difference.

ED: And, I guess, the longer a judge stays in office in a local community it's harder for him.

DH: It is!

ED: Because he knows everybody and it's very difficult to be entirely objective.

- DH: Now you've got a system set up where they use retired judges. I don't remember Elmo Taylor, my circuit judge, ever recusing from a single case. And, you know, people come in front of him that he's known and had dealings with and he'd gone to church with and all these things over the years, and you know it's difficult to do that.
- ED: You told me a story... We talked about your beating Kay Matthews in the race for chancery judge in 1970. But then right after that you swapped places. You were the judge and Kay Matthews came before you as an attorney.
- DH: Oh, yeah, I was telling you that story. I had a tough campaign and I had beaten a sitting judge and some people didn't think that had been done very often, and it hadn't at that time.
- ED: It was very rare.
- DH: Jack Holt [Sr.] had beaten his circuit judge back years ago [in northern Arkansas]. But, anyway, it had been a bruising campaign. It was not a judicial campaign where the two people put the flag or the robe around them and go around talking platitudes. I had accused him of misconduct on the bench, so to speak, and I'd come out hard against him. So I knew there was going to be some hard feelings about it. One of the first things that happened to me... I went down to Pulaski County and, of course, I was still a country lawyer, and I went in there in the office and one of the first people who walked in there was Kay Matthews. Kay was the kind of guy who would walk in and do whatever he wanted to do. He came in and slapped this order down on my desk and said, "I need you to sign this!" and it was an order to cut this woman's leg off. [Laughs.] I was a little stunned by it.
- ED: She was mentally incapable.
- DH: She was incapable at that time. Apparently, she had diabetes and she was going to die and he had these papers and Kay and I had just been through this very tough race and I didn't know whether this was something he was doing to test me or whether he was in there as a lawyer on legitimate business. Well, I gave him the benefit of the doubt and signed the order and Kay and I never had any disagreements much after that. Though, really, I think he was sorrier at his helpers than he was at me because they assured him he didn't have a problem getting re-elected.

ED: OK. Let's move forward to the Supreme Court. You take office in January of '77 and, as we mentioned earlier, you have these five judges—Chief Justice Carleton Harris who's probably been there twenty years before that...

DH: Yeah.

ED: ...and four other judges who have been there and working together for eight, or nine or ten years.

DH: Since '66.

ED: Since January of '67. So what was that like? Did you think you had a lot to learn? Did you...

DH: Well, I had some doubts about how I was going to be able to handle that job. I knew it was going to be a complete change. It was going to be a scholastic-type job that involved some writing and research and everything. I had done some of that on law-review articles and things like that. But there was no formal induction of Judge Hickman. Carleton Harris called me up a couple of weeks before January and said, "I've got your cases ready," and he sent them to me—a stack about a foot and a half tall of briefs. I was a little taken aback and he said, "We'll be taking those up on..." (I don't remember what he said...Second of January or something.) There they were. They just briefly explained that my number was number seven. Conley Byrd had called me and said, "Elsijane [Roy] has been number seven." They had these numbers out there for seniority and, of course, the chief was always number one, George Rose was two. "Elsijane's been number seven but she's been reappointed and the question has been raised, since you have been elected, should you be number six or seven." I said, "Well, I don't care!" [Laughs.] "I'll be glad to be number seven." The only thing they didn't tell you was you had to answer the door, get up and answer the door. That's what the junior man had to do.

ED: The seventh-ranking member had...Somebody knocked on the conference door you had to get up and answer.

DH: That's right. That's your job. I sat there and looked at those cases (and this was over the Christmas holiday) and I saw, well, you've got a lot of work to do here. They were assigning you cases of over one a week. We'd get nearly two cases every week. That was your responsibility to write the opinion in those cases if you agreed with the majority. Well, that's a lot of work to do. But there was a lot of reading to do, too, and you had to

do it every week. Well, those were the cases I got so I showed up out there and it was one of those days when ice and snow was on the road and he [Judge Harris] wanted to know who I wanted to swear me in. I said...I told Carleton Harris, "Just you swear me in. That's OK. All I want to do is be sworn in. No ceremony or anything." So I went out there and my wife and two of my children were there and I think a neighbor friend or something showed up and I went to work. There wasn't any...We didn't send out any invitations, engraved invitations, or any of that stuff. These guys, they were laboring pretty heavy and I found out they were writing about ninety-five opinions a year, at that time. That was before the Court of Appeals. In fact, that was the year they decided they were going to have to have a Court of Appeals.

ED: So ninety-five opinions. That was for the whole court, right?

DH: No, that's apiece, per year.

ED: Ninety-five cases apiece is what you were expected to write?

DH: Somewhere in that neighborhood.

ED: And any dissents or concurring opinions in addition to that that you felt necessary to write?

DH: Yeah. As it turns out, you make those decisions after oral argument on a Monday. You start on those opinions by Tuesday, and if you don't get them turned out by Thursday at noon when you've got to circulate them then you're a week behind.

ED: So you'd have to write that opinion in about two or three days.

DH: That's right.

ED: And then on Friday you meet...

DH: And approve or disapprove it.

ED: And what...? You go around the table and if it's your case you tell them, "Here's the case," and you tell them what your position is?

DH: I fell into an organization that was probably the best-functioning appellate court in America because of George Rose Smith.

ED: Explain that.

DH: All right. When he went out there they were behind on cases. I don't know how many cases the Supreme Court was running behind on. They had some archaic system of

assigning cases and everything and he convinced those people to let him take this thing over and tell them how to do it.

ED: That would have been about 1948 or '49.

DH: Yeah. That would be early on. At that point, he got them to making some unpublished decisions to get them out of the hole and caught up. He got them caught up and he devised a system. Some courts use the system of the first senior judge speaks first and then—I think that's what the Supreme Court of the United States does—they go down the line. He gave us numerical numbers and all the cases were assigned mathematically. It starts out with the chief. He'd get one, then the second person would get one and then around. There was a back-up judge for each case. The person that was assigned the case had to present it to the rest of the judges. They had read the briefs by then and they'd probably come to a tentative decision. It would go around the room then. If it started off with me and I was seven (and let's say number six was the back-up), I would speak first. Then the number six judge would speak up and either agree or disagree. Then it would start around the room until we got through. Now, if we had a consensus at that point, if it was a very simple decision, then you'd just put that aside and take up the next case. So you'd have somewhere between twelve and fourteen of those decisions that you'd go around on Monday. Then, as I said, you'd start work on your opinions and you wouldn't conference again until Friday of that same week. That was the conference on the opinions that had been written. That was not a decisional conference. The decisional conference was on Monday. You'd get it out of the way. Anyway, George had this court functioning better than any court, even with a heavy caseload. We were not behind. You know, you talk to some of these other courts in other states and they'd be a year or two behind. Doctor Leflar was sent up there to New York to try to straighten them out. I don't know whether he ever did or not. But it [Arkansas's] was a model system. There was some criticism about it—that it might be too fast. But, I doubt it. When you're focused on something and you're responsible for something you have to do it right and I think the best in people probably comes out. But, anyway...

ED: Essentially you have two or three days to write your opinion and you have to get it to them so everybody can read it and be prepared Friday to discuss it and see whether anyone has changed their mind, which case you'd get a dissent.

DH: Yeah. And the decisional conference is much different than the one on the written opinion. You haven't seen the written opinion. You were free to write the opinion the way you wanted to. But, of course, it would depend on the complexity of the case. You'd have to get a consensus from the other judges that would tell you, "Well, this is what's going to be done." But the way you went about writing it, of course, was the way you wanted to. But George Rose Smith was also probably the best writer in America as far as judicial opinions go, and he actually had a school for judges to teach them how to write opinions. And he wrote a law review article about opinion writing that was widely studied. And he took me to that school that he had for judges...

ED: Oh, that he conducted?

DH: He and several other judges and lawyers. It was a writing school.

ED: So you went up there to that. Where was that?

DH: It was down there in Florida and it was in February or March right after I went on the bench. He thought I might have some promise, which at times I did. [Laughs.]

ED: Well, his basic...I guess from my standpoint as a reporter covering it...Was that the essential element is simplicity and succinctness. You needed to be direct and clear to the point and not get sidetracked. His opinions were always the crispest, shortest opinions, sometimes four to five pages typically, whereas Judge...

DH: Less!

ED: Or less!

DH: His were two or less.

ED: Yes. Sometimes Justice Fogleman would write a dissent that might be twenty-five pages. Or J. Fred Jones, as I recall, was also a very wordy judge. He wrote these long, long, long opinions filled with all kind of factual stuff.

DH: He'd quote things.

ED: Long quotes.

DH: He was doing that when I went in to take over his office. Because he was still writing an opinion...

ED: Oh, was he?

DH: Yeah. [Laughs.] J. Fred was still trying to get one out as I was walking in the door. I don't think he ever did get it out. J. Fred would tend to quote things from cases as

justification for it. But this is what they taught you in the school: The thing we had to remember was the first thing you do is you ask the question. You know, the legal question.

ED: What is the essential question of the case?

DH: That's right. The whole essential question of the case, if you can state it right then and there. Then go on and decide and tell them what the decision is as soon as you can rather than let them wait for all this verbiage. Well, most of us as lawyers and people, we think we know how to write and tell a good story, so you want to tell this story.

ED: And leave the suspense until the end.

DH: That's right. To show everybody what a good writer you are. And you want to write beautiful dictum as they call it. It doesn't have anything to do with the main issue. And it always gets you in trouble later on when you have to rely on dictum. Just state what the problem is and the question. Of course, in many cases, that was easy and in some it was not so easy. Occasionally I would go back to sucking my thumb and not write a short opinion when I got into a tough case and I might wander on and think I had something significant to say when I should have just left it alone. The longer I stayed on the bench the better I got about not writing dictum.

ED: Any other big characters on the court? I guess George Rose Smith being kind of the godfather. He was...

DH: Yes he was.

ED: He was the model. Though, there were people on the court who (I think) were not terribly fond of him.

DH: He was not the model when I went on there. They were all contemporaries of his, so to speak, and he did not have the respect and admiration of those as he did of those who came after me. Because George was the best judge I've ever served with, certainly as an appellate judge. I don't think he would have ever made a good trial judge. This guy came up from Alabama and his mama was George's secretary and he wrote a law review article about George [*for the Arkansas Law Review*] and he interviewed most of us. He interviewed me and Conley Byrd and Steele Hays and these guys about George and he was going to show that George was the ideal judge. I'd written a nice thing about George when he retired from the court saying that. I was very proud of it. It was only a short page

or so. I had tried to sum up just what a great judge he was. He was! He was the hardest working man I knew. He was the most brilliant man I had ever worked with personally. But he [the writer of the *Law Review* article] said that “all of you agree that he had a temper.” At one time or another he had expressed himself to these other judges and hurt some of their feelings.

ED: Well, I think when I was talking with Judge Byrd about that he related an instance where they were having some disagreement. It might have been one of your cases in which George got flushed and finally called him a son of a bitch in a very strong tone and a couple of judges (...I think maybe Chief Justice and... I don't know whether Frank Holt or John Fogleman...) jumped up to try to make sure they didn't come to blows or something.

DH: Yes, he did, but Conley provoked him. Nobody jumped up to separate them. That incident occurred before I got there and involved two other judges. Every court has a dynamic, if that's the proper word to use. Every group has a dynamic and they can either work together...There are always forces that don't agree on the way things are done and so forth. I went into a situation where the dynamic on the court was in place and essentially they had a good working majority that had worked together for ten years. They knew each other, they knew how they felt about cases, they'd worked with each other long enough to know each other's personalities, and there was a little bad blood there. It was between Conley and George. That gets in the way of how the group works. And here I was coming into this and not understanding all this background, these personalities and everything. George would always invite everyone out on Friday after the conference to go eat pizza and chicken over at...I don't know...One of those places. I think they went out of business...Over there in North Little Rock somewhere. I can't remember. Later, we went to Shakey's Pizza Parlor. Well, Fogleman always went but nobody else did. Well, I went with them for a while, you know.

ED: So it would be Fogleman and Smith and...

DH: Occasionally me, and I think Purtle may have gone one time. But that was what we did. Of course, George was his entertaining self. At that point, he had shucked the role of being judge and this other side of him, which was amusing and clever, you know, and that sort of thing...

ED: He was a funny, droll guy. He never smiled but he had a great sense of humor.

DH: And after he got elected he made a tour of the state and he used to go around to these bar associations and things and make these very clever, entertaining talks. I mean, the guy was brilliant! Ol' Henry Woods talks about one time he run into somebody and somebody asked him, "Do you know that guy down in Arkansas?" They had a crossword puzzle in *The New York Times* and George sent it in ink. In a record period of time he'd solved the thing and George made a crossword puzzle for *The New York Times* every year.

ED: Yes, he did. For many, many, many years.

DH: I mean, this guy was up there in the genius category.

ED: And I think the Sunday *New York Times* puzzle is the most difficult one.

DH: Yeah.

ED: And I think the ones that George Rose Smith did were Sunday crossword puzzles because they were very difficult puzzles.

DH: Yeah. So he did all these clever things and he used to have this little joke where one time there he wrote this opinion...

ED: Was it an April Fools' thing?

DH: Yeah! He wrote this thing...

ED: He did a lot of April Fools' things.

DH: I don't think the chief was very amused about it. In fact, I think West Publishing Company, which published our opinions, actually published one of those things one time.

ED: One of them got cited in one jurisdiction in the east.

DH: And he did one when he left. He wanted to make sure when he retired he left a memento and he wrote this one about the Cheshire Cat, or something about Alice in Wonderland. But you didn't know it unless you saw it and he slipped that one by us. [Laughs.]

ED: [Laughs.] And it got published?

DH: No! No, it didn't get published. But, anyway, we had him. Of course, Carleton Harris...I had more admiration for Carleton, I guess, than any man I had ever served with. It was much better when he was there than under any chief because he was almost a grandfather image to us. You've got all these personalities out there you have to keep in check, you know, and you've got these ambitious people, strong-minded people (and they should be

to be a good job), and he had to keep these people in check and keep them moving and keep the job going. He was a wonderful man. He was an absolutely wonderful man. He had some experience in politics. He'd been a chancery judge. He'd been in the legislature. He was a Baptist lay speaker and he was just a wonderful guy and totally ethical and nonpolitical in my opinion. He may have had some politics in his early careers and everything, but the court to him had become pretty well his life and he was very proud of it.

ED: He was very protective of the image of the court. He did not want...He was always...He did not want the court looking bad in any fashion.

DH: That's right. And one of the first things he did...I was a very young man. I was in my early '40s and they'd had all this time to work together and he'd been there over twenty years and he had an apartment in Little Rock (he's from Pine Bluff). He used to tell me, he'd say, "Darrell, I have..." I don't remember what word he used but... "I have the poorest house of any chief justice in America." He had a little house down there in Pine Bluff that he lived in.

ED: So he commuted every day?

DH: Well, he was living in an apartment by the time I went down there because he couldn't commute. It was just too much for him. But, anyway, I've forgotten now what I was going to say.

ED: About how he had the poorest house of any chief justice in America.

DH: Yeah, he said that. But, anyway, he was not a greedy man or anything and the court had become a great deal. Things were going so smoothly when I went in there. Now Conley did some work in the legislature to get money for the court.

ED: So he was the designated person in those days to work with the legislature?

DH: Yeah. They didn't make you do these things. The chief never made you do these things. He really had no power to appoint an associate justice [to do that], but all of us had collateral duties. Conley liked the politicking in the legislature. He liked to go over there and talk to them. So Conley did that. Of course, George ran all the machinery on the court as far as the briefs getting filed and getting them to us and that sort of thing. And there were all these other committees. But the chief had such a good hand on things. Things were so simple in those days. For example, when I went out there I was appalled

to find out that they typed their opinions on these typewriters and made eight carbon copies. Now, you can imagine what a nightmare that is if you know anything about typewriters and erasing errors on those kinds of copies. I couldn't believe it! I was able to persuade them right to get a Xerox machine down there. But they hadn't seen that, you know. Fogleman, every once and a while, would write these long opinions and he'd use that Xerox machine, but it was understood that he'd have to go back the other way. They easily agreed to do that [change to photo copies].

ED: So you were responsible for the Xerox machine?

DH: That was my great contribution, among others. But, anyway, Carleton called me up right after I came on the court. Of course, I was commuting at that time. I was driving from Pangburn (started out in Beebe). I was commuting. I wasn't living down there in Little Rock. So he called me up and he wanted me and my wife, as I recall, to go out and have a drink, and John Fogleman picked him up and we met them and we went out somewhere and had a drink that evening.

ED: With Carleton Harris? Carleton drank?

DH: He would only have one.

ED: Because he's a good Baptist.

DH: That's right. He'd have a highball. That's what he called it. He called it a highball and he wanted to meet me and welcome me to the court, and that was a personal gesture on his part. I loved the old man. We'd go down...He was smoking in those days and he knew he shouldn't and he would save his cigarettes. He would put one out so that he could save it so he wouldn't be smoking so many. But I'd always enjoy it. Sometimes we'd go down about three o'clock in the afternoon to the coffee shop and I always enjoyed going down there and talking to Carleton because he'd tell me some of his stories when he was a young man and was in the legislature and when he was a trial judge. But, there were a couple of things that he did...I went to a judicial conference up in Mountain Home one time and Carleton got up and made a speech. This was...I think I was on the trial bench at that time. Yeah, I was on the trial bench. He got up and made a speech and he was chewing out somebody about some judge who wasn't getting his cases in and what a disgrace he was to the judiciary and something was going to have to be done about it. Well, I went home to check my records to make sure I wasn't the guy he was talking

about. Well, I found out later who it was and we had a judge down there in South Arkansas who was not doing a very good job (down there around Lake Village or somewhere). Of course, that was down in Carleton's stomping grounds. That impressed me that the chief would do something to try to take care of that. That was before we had any way to discipline judges. There wasn't anything you could do, really. We had another situation come up, which I thought was very interesting. We had a situation down there in Southeast Arkansas where Judge Steel, who was one of the best trial judges in the state...

ED: Nashville, Arkansas.

DH: Yeah. I think his nephew was prosecuting attorney.

ED: Well, the Steels were the prosecutors and circuit judges and court reporters and just about everything else down there.

DH: And if you went down there...If you were a stranger and you went through town and got picked up you'd be in one of those things like in the old west, you know. We had a case come up on that. Carleton came down hard on it and said, "We can't have this sort of thing." And that kind of broke it up, you know. He really impressed me that when we got into a tough case and you had to wade through the folderol of law and had to get down to what was right or not you could count on Carleton Harris. He was going to be there. He's going to be there at what's right. He welcomed me there and he made me feel welcome and offered me all the help I needed. I just loved the old man.

ED: Well, it was kind of a remarkable period for the Supreme Court, throughout that whole period of the '70s and '80s, because there were a lot of big cases with political implications. I don't know whether you call them political cases but involving the political system, acts of the legislature, constitutional amendments...

DH: Lots of them.

ED: ...that came along and the court made some highly controversial decisions. They were controversial with the political establishment...with the governors and legislators. Let's talk about a couple of them.

DH: OK.

ED: Because you're involved in some of them.

DH: I guess the biggest case that I was involved in (and I didn't even write an opinion on it) was the revenue bonds. We talked before about how I had some experience with those as

a trial judge. Well, I don't remember when this came about. I was well into my term by then. I must say that it takes you a while as an appellate judge to get your feet on the ground. I mean, I had come in and I had to be running to keep up. When I first got there I had to do my work and I didn't have time to look up left nor right. There may have been some cases that came up...I remember one involving a rate increase by the utility companies that I wanted to get in on. But you also had a rule that if you were going to dissent from an opinion you only had a week to get your dissent in, unless the other judge consented to give you more time. I only had that denied to me one time. But, let's look at it this way: The judge who's assigned the case knows that he or she is probably going to write the opinion and they've made up their mind how they are going to decide that and they've done a lot of research on it...probably. Their clerks have done research on it because that's what we usually did. We used our clerk to research our cases so that we'd be prepared to write the opinion. The only one who didn't do that was George Rose because he knew so much law that he'd look through the cases and pick out the cases that were interesting or unusual and he would assign his clerk to that case because he would see these other cases and he pretty well knew the law in them and it wasn't going to be a problem. So that judge is all ready to go. Well, you go into conference and you've read the brief and everything and you're prepared to vote and you say, "Well, I'm going to dissent." Well, he's got this opinion. There's no limit on what time he has to prepare the original opinion. He doesn't have to get it out on Thursday. He doesn't have to get it out in two weeks. So he can concentrate on that and get his opinion out. Well, then that's thrown at you and you've got a week to research and write a dissent. Well, if he doesn't give you time and you've got to be doing your other work in the meantime, you know, you may come up short. I found myself in that situation where we had a tough case and I needed to do some work on it and I just couldn't come up with anything in a week.. So I wasn't about to write anything that would not amount to anything. The case went down, noting I dissented. I don't know whether I would have been able to change the decision or not.

ED: But you were about to talk about the bond case.

DH: Yes.

ED: Revenue bonds. Although you didn't write the opinion you were the pivotal person that got that done because you persuaded George Rose Smith to go with you on that, right?

DH: That's exactly right. I got some other guy to go with me and Bob Brown came by and I'll tell you what happened on that. But, anyway, these revenue bonds came up out there and I'd been on the court several years, I'd already had my feet on the ground and felt comfortable in my job, and I knew a little more about how to pick and choose how you were going to use your time and what you were going to write about. Well, here comes these revenue bonds. Well,...

ED: Let's go back, just for the history...The Constitution of Arkansas says, or at that time, from 1874 I guess it said, that in order for the state to go into debt it had to be a statewide vote of the people.

DH: That's right.

ED: But instead, back in the '30s (I guess), somebody came up with this idea of revenue bonds and the court all those years skirted around it and let revenue bonds...

DH: They had actually decided they were OK.

ED: They were OK and you don't have to get a vote of the people because they are "revenue bonds" [as opposed to bonds that were general obligations against the state treasury].

DH: And the idea was that they would, for example, go out here and (I'll give you one that's easily understood) they'd want to build a dormitory over at Arkansas Tech and, of course, at that time, we were on a pay-as-you-go system in Arkansas and there were a lot of provisions against borrowing money, like you said. You certainly couldn't have a bond issued to borrow money. So they came up with the idea that "well, these aren't regular bonds, these are revenue bonds." And when you get into bonds the question is: Is the credit of the state at stake? Does the state have to pay these bonds off? Because if somebody's not buying the bonds you can't sell them. No one is going to loan you the money and sell your bonds. So they said, "We'll take the revenue that we get from these students that pay in on the dormitory and we'll pay these bonds off with that revenue." So the legislature passed laws like that involving a lot of things around the state, at the universities and so forth. Well, we got into the '70s and '80s and the bond people had become pretty ingenious. So we had, of all things...I don't remember if it was the Rose

Law Firm or not...But they used revenue bonds for the Rose Law Firm [building in downtown Little Rock].

ED: They did.

DH: And they had the La Quinta Inn somewhere. So when those things got out there I got to researching and I said, "Well, the Constitution doesn't allow this." Well, I had these precedents there in front of me that they'd allowed people to do that. Well, I found out that in the history of the court (and I am sure this was true of every state in the Union) judges had decided that maybe these constitutions didn't really have to be followed strictly at all. We'll just overlook this.

ED: Because they were all written in the 19th century and things couldn't work under those old laws.

DH: Well, the Reconstruction guys had broken the State of Arkansas with these bonds and they weren't going to have them anymore. And then they couldn't get the Constitution changed. Every time some interest group would try to get the Constitution changed they'd try to pad it with something or do something about the title to mislead the people and they couldn't get them passed. So the court was an avenue to do that.

ED: Yeah.

DH: So the court nodded at it and blinked at it and said it's OK. So we had this precedent there. Well, I, being young and brash, was not that impressed with precedent if it's a violation of the Constitution. I mean, here you've got it clearly. So I got in and started researching this and found out the horror of horrors—the Supreme Court building was also built with revenue bonds. And here we were sitting in the room that was violating the Constitution. I thought that this was pretty amusing. I even made that pitch to my fellow justices and it didn't go very far, I'll say that. Anyway, I had written two dissents about this thing and gotten nowhere.

ED: In earlier cases?

DH: Yeah! There were a series of them coming up. Like I said, a motel. There's supposed to be some public purpose in bonds, you see. It was ridiculous to think there was a public purpose in these things. But they said...Their argument was circular, "Well, the state is not guaranteeing these bonds. These are revenue bonds." But, in the case of Hot Springs, they had an amusement park down there (and I think that was eventually the case where

we threw them out)...But, what would happen with some of these revenue bonds...they didn't have the revenue to pay them off. So the next session of the legislature they'd pass a bill to bail them out. So here was the state supporting the bonds. So it was a shell game. So we got this last case and I guess it was the Hot Springs case that we had, where we had that amusement park or something down there. I don't remember what it was. It went belly up and so somebody sued down there—John Norman Harkey [a Batesville lawyer] or somebody. I don't remember who sued. I think it was John Norman. Well, I was pretty well prepared for the research, but I realized we had already decided two cases. No one is going to go along with me on this thing. As an appellate judge you finally reach the point where what are you going to do? Just keep riding this thing and irritating these people who don't want to hear you? We had a good policy about listening to the other person, but if you abused it you got some pretty long looks. So I just turned out a very simple dissent this time. George Rose was the guy that...he had the case. He had written the opinion upholding it and I passed around the dissent...At the next session George Rose says, "He's right." And boom!

ED: He flipped over to your side?

DH: Boom!

ED: I've forgotten whether everybody went along or was it unanimous.

DH: No, it wasn't unanimous.

ED: It was a split decision. [The case was *City of Hot Springs v. Creviston*, 1986. Justices Robert Dudley and Steele Hays wrote separate opinions in which they concurred with the majority that Hot Springs had improperly used tax funds to bail out creditors but dissented on reversing the precedent on the legality of revenue bonds.]

DH: But it wasn't much of a split. He was enough. He was enough.

ED: When he flipped that was...

DH: Well, he had the prestige and that sort of thing. George tried to do the right thing always and I saw it almost as a moral issue: upholding the Constitution. Of course, when we came down with the decision the stock market in New York City did something to the Arkansas bonds and you can imagine what Stephens, Inc. and all these people...

ED: Oh, it was an earthquake. I remember the earthquake! All the big law firms, all their bond houses, Stephens, Inc. and the bond houses, the big law firms that did bond opinions...It was chaos!

DH: I didn't write a thing. I was perfectly happy with the decision. I wasn't even going to say, "Attaboy!" George wrote the opinion. [Justice Robert] Dudley wrote a dissent and...I don't remember. Somebody else may have written a concurring opinion. Man, they swept it aside.

ED: Well, word got around that you were responsible, though.

DH: [Laughs.]

ED: It was pretty widely acknowledged in legal circles that this was Hickman's doing.

DH: Bob Brown, who wrote an article about George Rose Smith in the *Arkansas Lawyer*...When George retired he wrote a very good article about George Rose and they put his picture on the front page. I've got it in there. I've got it. He asked George about the most significant six cases he'd had anything to do with. He'd asked him about this bond thing. He told Bob that it wasn't his doing. "That's Judge Hickman." Well, Bob Brown came to me and was talking to me about his article. I said, "No, George deserves credit for that." [Laughs.]

ED: Or blame. Whichever. It was blame at the time.

DH: Yeah. He was the guy that did it and I was glad. But he should have gotten the credit for it because it wouldn't have been done without him. It wouldn't have been done. The other...Of course, we had a case where we declared the juvenile court system illegal and they had to create these new juvenile courts.

ED: Did you do the opinion on that?

DH: No, I did the concurring opinion. I think Steele Hays did the opinion and the issue had been before us before and failed. But we decided that the system where the county judge had jurisdiction but delegated it to another person to make decisions was wrong. They simply couldn't do that so we threw it out.

ED: They were not equipped to deal with juvenile...

DH: No, we said it was unconstitutional. You couldn't do it. And I wrote a concurring opinion because I knew that there would be chaos out there about what to do about these cases. So some of my experience as a trial lawyer and everything came in and I told them,

“Well, you’ve got two kinds of cases involving juveniles. You’ve got the criminal cases and the neglect cases. You send the neglect cases to chancery court, and you send the criminal cases to circuit court until you can create some juvenile courts.” And that’s exactly what [state Senator] Max Howell and those guys did. They went out there and created these courts. So we now have a court devoted to people who are a good deal of a problem to us all.

ED: Well, that was the genesis of the juvenile-court system?

DH: Yeah.

ED: Currently.

DH: Yeah. I was trying to think of some of the others we had.

ED: Let me bring up one.

DH: OK.

ED: This is obviously a very political case. 1982. Remember Bill Clinton had been defeated for governor for reelection in 1980...

DH: Yeah.

ED: And he’s running again in 1982 and one of the big issues was utility rates because we had discovered that Arkansas ratepayers were going to have to pay, as it turns out, four and a half billion dollars to people down at Middle South Utilities for a nuclear power plant in Mississippi called Grand Gulf and also a nuclear power plant in Louisiana named Waterford. We didn’t need the power from either of those plants but we were going to have to pay of the cost for building both of them. The Federal Energy Regulatory Commission said, “No, you’re going to have to... That’s the deal down there. You’re going to have to pay for them.” So it was highly unpopular. People were mad with the power company over the rising utility rates. So Bill Clinton, who had tried to stop it in his first term, sees this as a big issue and they designed a constitutional amendment and an organization called Ratepayers Fight Back run by two young lawyers named Scott Trotter and Walter Nixon (Wally Nixon, who had been part of the Clinton Administration).

DH: Yeah.

ED: So they drafted this constitutional amendment and it turns out to be ten thousand words long. It established a whole new system of utility rate regulation. The Public Service Commission was going to have to be elected. It called for the election of public service

commissioners by statewide election. It set up the whole regulatory system, all in the Constitution, and it was ten thousand words long, which I think is about as long as the U.S. Constitution in its entirety.

DH: I know. I wrote the opinion.

ED: Right. So Bill Clinton and Hillary Clinton helped write the amendment. They were backing it secretly and it gets on the ballot. I mean, they get the signatures and it goes out there and it's going to be on the fall ballot and somebody challenges this amendment—whether it legitimately can go on the ballot. And it gets to the Supreme Court and about two weeks before the election the Supreme Court rules—and you wrote the opinion, which was kind of dynamite at the time.

DH: Yes, it was the first time...Of course, the first thing that struck me about it was the ten thousand words. There were two things about constitutional amendments: The legislature could refer three of them each session to the voters. It didn't make any difference what the ballot title was on the three. This is constitutional law.

ED: Yeah.

DH: However, when you have a constitutional amendment by initiative, the ballot title has to be approved by the Supreme Court. It doesn't have to be approved, but if it's challenged, it must not be misleading and...

ED: It has to be totally fair.

DH: ...it must be understandable.

ED: Must be understandable. Must be fair and totally impartial.

DH: Well, the first thing that struck me about it was that I sat down and read it and it took me forever to read it. There was no way I could comprehend what they were talking about. It was so complicated with so many terms and all of this legal stuff. There was no way in the world the average voter could figure out what that was about.

ED: They would have to walk into the voting booth and read this...The ballot title was probably a thousand words.

DH: Yeah. I timed it and it was five minutes.

ED: To read it?

DH: Yeah, in an average voice and me being a literate person. And there were also things we found misleading. The unions were very much in favor of this and they'd slipped some

things in there and the question was whether they'd been open about what influence they were going to have. So we also said that. It wasn't a unanimous decision, but it was certainly a consensus of the majority of the court. There wasn't any question about it. And there, again, George Rose Smith was the big support behind me. We did have one judge who disagreed with it.

ED: Probably John Purtle I'd imagine.

DH: Yeah. He, in fact, he was out in a moonlight candle vigil outside the court [protesting the decision].

ED: Oh, was he the one that did that?

DH: Yeah. He was out there helping those people that, you know... And Bob McCord of the *Democrat*, he never forgave me for that. Every time he got a chance to write about the ballot title... Eventually the Supreme Court totally capitulated and came up with this idea of submitting the ballot ahead of time, you see, to the Supreme Court instead of waiting until later. The mechanics of it before and now are that you've got to submit your ballot title to the attorney general and the attorney general's got to approve it.

ED: Yeah.

DH: So they're supposed to catch anything. But, they're under so much pressure to approve these things that they... What's his name over there? [Chief Deputy Attorney General] Rodney Parham would approve these things. He was a very good lawyer and he tried to make sure... Well, and this one, there was so much in there they had to throw everything in the ballot title so it wouldn't be misleading. And, as a consequence, you just couldn't understand it. Well, this bothered a segment of our political system and everything and they probably didn't forgive me for that among other...

ED: Well, they set a precedent. There have been a number of other cases after that and the court has been pretty stern about saying ballot titles must not be misleading. They've had a pretty strict standard since that case. So they've struck a whole bunch of things off the ballot because they were trying to sneak some partisan coloring in the ballot title and popular name...

DH: Oh yeah. They did. They never failed to do that. You remember that constitutional thing where they were going to approve the constitutional ballot one time? The title said "For or Against the Proposed Constitution of 1970." They colored that so it wouldn't look like

they were doing something with the Constitution. We threw that thing out. And back in the days of [Governor Orval E.] Faubus the railroad lobby was always trying to get a law in there. You remember that full-crew law they were always trying to slip in? The bankers came in with their “fair interest rate” and all this stuff, you know.

ED: You’d have a title with “Fair Interest Rate...” or something like that.

DH: Yeah. All these things.

ED: So that kind of corrected all that.

DH: Well, it slowed them down and sobered them up to where you’re going to have to make sense out of this thing so the people will understand it. That’s what it did and that was our duty. Although, as I said ironically enough, the legislature could propose anything and you couldn’t take it up to the Supreme Court questioning the fairness of the ballot title. That’s what that was. But there were a lot of things in the old Constitution that were very endearing. I found out right quick there was a provision in there that says there can be no local or special legislation. And they have a part of the legislative session that is always called, “local and special legislation,” where they get together and pass these laws to help their counties out.

ED: Yes. Well, that case finally...They finally had a case on that five or six years ago...

DH: Did they?

ED: ...where the court ruled on that. But the legislature still comes around and finds some way to get around it.

DH: Oh yes.

ED: So they’re still passing local and special legislation.

DH: They’re incurable. They’re simply incurable.

ED: And one decision about five years ago that struck that down was on a suit by Mike Wilson out of Jacksonville where the court ruled that when it’s local legislation you can’t do it. But they found a way to get around it still.

DH: Oh yeah.

ED: They’re still passing that stuff out there.

DH: Well, my mind is not good enough to recall many of those things now, but the truth of the matter is it was an exciting time in our history because we were dealing with this document [the Constitution], which had been ignored, but it was either going to have to

be changed or followed, and the court was pretty good about... We enforced the usury provision (ten percent) and the court had always done that and the bankers and the people realized you're not going to get around this unless you change the Constitution. Of course, during the period of inflation, when you had eighteen percent, they realized they better get to work and try to get it changed.

ED: Well, they did and the legislature proposed a constitutional amendment. I think Jim Guy Tucker helped draft that.

DH: Yeah, he did. Yes he did.

ED: It got drafted... This would have been about 1984, so probably.

DH: Yes. Yes.

ED: So they drafted this constitutional amendment to raise the ten percent usury threshold, which had been there since 1974.

DH: Yeah.

ED: But the legislature mucked around with it...

DH: Yeah. Yes, they did.

ED: ...until they finally passed it. And it didn't do exactly what they intended it to do.

DH: Yeah.

ED: So there was a suit brought and it went to the Supreme Court and ya'll, to the dismay again of the whole financial establishment—the bankers and all the retail houses, Dillard's and everybody else who did installment credit... The court said, "Well, it actually means what it says, this amendment." So, in effect, you did not have floating interest rates after all, as they'd hoped.

DH: Yeah.

ED: So they had to come around again and draft a new...

DH: I actually didn't think that one was so bad, that title. But the court did throw it out.

ED: What you said was... What the court said in that instance was that the amendment, which had already passed...

DH: Yeah.

ED: ...didn't mean what they thought it did.

DH: Yes.

ED: It wasn't the remedy that the banks and all the lenders of credit thought it meant. So, again, they had to rush back in and come up with a new constitutional amendment and get it passed a couple of years later.

DH: Well, it took them exactly eight months to get new bonds approved by a constitutional amendment after we'd thrown it out.

ED: Yes. You find out that government can work real fast when the financial establishment needs it to.

DH: [Laughs.]

ED: All right. Well, that case, the usury amendment...Richard Adkisson was the chief justice at that time.

DH: That's right.

ED: He'd gotten elected. He didn't run again right after that and I always wondered if that was because of that amendment. I think he wrote the opinion.

DH: I don't think it did, but I wouldn't know. I might say, at this point, when I went on there I was elected as an associate justice of the Arkansas Supreme Court. My duty was to be a judge. It was not to be an administrator. The chief justice is the administrator of the court and it wasn't my business to meddle in his. Now, he asked us...Carleton conferred with us (and I guess all justices) on certain things and we did decide, as a group, who our clerk would be and who our librarian would be and who the clerk of the Court of Appeals would be. But, those duties were all the administrative duties...All the administrative duties were the responsibility of the chief. You know, he had to keep the finances. He was responsible for the legislation to keep the court going and all these things. I made up my mind when I went on that I wasn't going to meddle with the chief. My job was to make decisions. So whoever came on as chief justice I gave them not a minute's trouble about their job. I wasn't going to do it. So I got along with all the chiefs for that reason, I think. I didn't give them any grief. That's not true of all the judges. Some love to meddle in administrative affairs and they'd bring things up in conference (we didn't have much of this while George was there, all these details)...But some of them would want to bring up some of these collateral matters and bring these things before the court that were administrative matters. And I felt like if the chief wants us to help him on this, he'll ask it. Otherwise, it's his job. That's what he got elected for. So, I respected the chief's

position on that and I think that's the position that judges should take. We had a little trouble with the Court of Appeals, you know. When I went on there they'd already decided they needed a Court of Appeals because the workload was too much.

ED: Conley Byrd had led that fight I think, early on.

DH: To get it?

ED: Yeah.

DH: Yeah. Well, I didn't know who had led it but by the time I got there the consensus was reached that it was time to do it. Of course, the explosion in caseload was largely the result of criminal appeals because the [U.S.] Supreme Court decided that everybody needed a lawyer and you've got a right to an appeal and so all these cases were just coming up there and adding to it. So I got on the bench and some of us did some campaigning for that. We got that passed and the new Court of Appeals judges were all appointed and they were all well-respected former judges or lawyers and they put their shoulder to the wheel and picked up the load pretty quick and our caseload dropped. So after, I guess, a year and a half or two years, it dropped back to the high forties where you'd write some 40 opinions a year. I don't think they do that anymore. I think they've given them [the Court of Appeals] nearly all the caseload work out there. But, I really... Working with those original people was really a wonderful experience to me. They were all dedicated professionals and so forth. Even though you got some bad blood on there later on, you're going to have it in a group many times. The best year I had when there were no feelings on the court of any kind and everybody was convivial and could disagree without problems, that was the year John Stroud and Richard Mays were there. As I recall, that's the best year we had, in my opinion as far as my experience was. Everything went really smooth.

ED: That would have been probably about 1980 or so, I guess. [It was 1980.]

DH: Well, Fogleman was the judge, I think. Carleton had gotten sick and had to quit.

ED: Conley had retired and Richard Mays took his place, I think.

DH: I don't remember who Stroud replaced. [It was Fogleman, who vacated his position to become chief justice by appointment.]

ED: I don't remember.

DH: But that was it. Those guys were really easy to work with and surprisingly professional. I mean, these were good lawyers and they came on and fit right in. John went on to be on the Court of Appeals as a judge. Richard was just a wonderful guy to work with, you know. He surprised us all because George Rose Smith, every year, would add up how many opinions we had written and how long our pages were and he'd rate us one to seven as to who got the average lowest number of pages. George was always first. Well, guess who was lowest one year? Richard Mays. It wasn't George Rose Smith that wrote the shortest opinions it was Richard Mays. [Laughs.] And I thought that was wonderful. I think I was third.

ED: Well, let me mention the case...Probably the case in which you were most quoted of any case of the Arkansas Supreme Court in many years.

DH: [Laughs.]

ED: The words even spread nationally I found out when I Googled it.

DH: [Laughs.]

ED: And that was the...Well, the case was *Clark v. Union Pacific Railroad*. That was the Godzilla case. You remember?

DH: Yeah.

ED: A little background: Back in 1978 the Supreme Court had ruled that the property tax system was unconstitutional because you had these...The Constitution said that taxes had to be levied...

DH: Market value.

ED: ...Equally, at market value and equally across the state.

DH: Yeah. And there wasn't any assessor in the state following that.

ED: Nobody was following it.

DH: There were no chickens or cows...

ED: So you had property in some parts of the state being assessed at twenty-one, twenty-two percent of the market value and in other counties the property would be assessed at maybe two or three percent of market value. But, nevertheless, when the state would distribute school money based on those things there was this vast...[Pause to help Judge Hickman with his microphone and to take a break.] All right, to continue that...As a result of that Supreme Court decision there was this horror that you had to reassess,

reappraise, in every county, all the property statewide. There was a great fear, as a result of that, that there would be mammoth tax increases. People's taxes were going to go up a thousand percent or something...their property taxes. So the legislature—and Bill Clinton was governor—tried to draft an amendment to fix that so that when you had all these reappraisals it wouldn't drive up property taxes excessively. It was a nightmare. I was following it out in the legislature. It got to be...They just kept amending it, kept changing it and it got longer, and longer, and longer, and longer and more and more complicated. Because the whole tax system was complicated anyway. So, finally, they came up with this amendment to the Constitution and it passed in the legislature. It was a nightmare. Everybody knew it and it became Amendment 59 and it passed at the next election in 1980. This thing passed and became law and nobody understood it.

DH: Well, they got all the schoolteachers and superintendents and mayors and all these people out here in the establishment to help them.

ED: Yeah, so everybody passed it although nobody knew anything about it. So, anyway, it wasn't long before a case comes along and it's *Clark vs. Union Pacific Railroad* in which...I don't remember the case exactly but I think the railroad wasn't going to...The question was whether they were going to have to pay a lot more property taxes on their new equipment and so forth and the case goes down to Pulaski Chancery Court and Judge Lee Munson goes along with the railroad and they don't have to pay these taxes. Then the case gets kicked up to the Supreme Court. The Supreme Court ultimately then upholds Judge Munson and you wrote a dissent (the Godzilla decision). Of course, in the news business, I guess you're always looking for news, something colorful, and this...And there had never been an opinion I guess that struck a chord with the news media more than yours did. So I'll just read your dissenting opinion, at least how it started: "Amendment 59 is the Godzilla of constitutional amendments. Nobody knows what it means. It was the child of fear and greed spawned after our decision in 1979, which held that the Arkansas Constitution required that all property be assessed at market value." So, as I recall, your dissenting opinion is what made the news.

DH: [Laughs.]

ED: At the end of the opinion you sort of invited people to challenge the whole thing. That there ought to be a lawsuit to challenge the constitutionality of the whole thing and not just this little particular provision. That never happened.

DH: I didn't really have enough basis probably to say that. I probably hadn't researched it enough to say. I was thinking, of course, of equal protection of the United States Constitution.

ED: Yes.

DH: Or something like that. But I'm not sure I did enough research to...

ED: You mean to kind of invite a lawsuit?

DH: Yeah. Right.

ED: Well, but I think you were right and let me read another part of that decision toward the end: "It is clear that in some counties the tax rates may never equalize, which would then mean that taxes on personal property would never increase. Amendment 59 does not say that new millage voted cannot be applied to personal property and I would not interpret it that way. Union Pacific Railroad, one of the appellees, received preferred treatment in Amendment 59 and now seeks to avoid paying personal property taxes to fund this three-mill tax increase. Union Pacific reminds us that they are in the same category as owners of pick-up trucks in Cross County. I would not want to overlook that consideration. I doubt that the pick-up owner in Cross County would mind the dollar or so he would pay to the local school district if the Union Pacific Railroad Company would pay the hundreds, or perhaps thousands, it owes. I would reverse the judgment." So you had said in that same opinion that not a handful of people in Arkansas pretend to understand Amendment 59 and even those who do disagree on what it means. Anyway...

DH: I stand by that statement.

ED: It is an absolutely true statement and when you say there were very few who claim...I was one of the few who claimed to know and I think I was one of the few who really understood it because, as a reporter, I was there throughout every step of the drafting of it. I talked to Marcus Halbrook [director of the Arkansas Legislative Council], who did part of the drafting for the legislature and he told me at the end, he said, "I begged Bob Harvey [state senator from Swifton] to pull this thing back. I've written all this stuff. We don't have a clue what this means. None of us do."

DH: Yeah.

ED: “I wrote part of it, others would come in with amendments that some lawyer wrote and that would get tacked on it. We don’t know what it does.” He’d ask Bob Harvey to pull it down so that we can redraft this thing because it’s a monstrosity. Bob Harvey said “It’s too late in the session. We’ve got to get it passed this week or never. We’ll come back and fix anything that needs fixing in two years, after it’s ratified in the general election.” So you were right about that. The majority was wrong in that case and you were right about the net interpretation of the...

DH: Well, none of us had had the experience in taxation or dealing with the legislature or all these complicated things to know the results of it. I’m not going to tell on anybody but I’m just going to say that we didn’t know what it was all about, and this brings up the other question sometimes. Of course, these so-called “test lawsuits” and friendly lawsuits, I came to detest them because the whole judicial system in our country is based on controversy. The way we decide these cases is one side has a lawyer and the other side has a lawyer and they’re representing conflicting interests and they have something to lose in the case. In the so-called “friendly lawsuits” we’d get these lawsuits out there where they would challenge something and they’d get some friends of theirs over there to file the lawsuit and then they’d defend them and bring them to the Supreme Court. I remember one case, and this was a practice... The big law firms down there would be representing these financial institutions and these others and they couldn’t afford to give their clients advice on whether this would pass the Supreme Court, so they’d file a lawsuit—a test case. But usually the person on the other side, in my judgment, didn’t have the incentive to properly bring the issue to us and that’s what we needed as an appellate court. We needed information and we needed strong arguments on one side (and facts) and strong arguments on the other. I remember my good friend Hardin down there, who eventually became U.C.A. president...

ED: Lu Hardin.

DH: Lu Hardin. We had one of these bond cases and it was about some housing up there around Russellville. Well, he had been the lawyer that was, in my opinion, going to take the dive. He had filed the lawsuit and brought it to the Supreme Court saying it was illegal, and a big firm was going to defend it because of the revenue bond law. Well,

when we announced the decision that the revenue bonds were OK and he lost the lawsuit he said, "Hooray! I lost the lawsuit!"

ED: Yeah, that was the idea.

DH: Well, I didn't think that was much of an incentive. I tried when I was lawyer...I had a case against A.P. & L. They were increasing rates by not going before the commission, but charging interest and stuff, in my opinion. Because they wouldn't have to go in front of the commission, they had all these fees and interest they would charge to get some revenue. So I had a suit in Pulaski County in front of Judge [Tom] Digby and took it on up to the court where they shortened the days they could charge you and all this stuff. I don't know whether I had a good legal argument or not. Well, when I got there, I found out that Kenneth Coffelt [Jacksonville lawyer] had tried one of these cases and Kenneth wasn't prepared at all in the case and it was just a slam-dunk decision because the court didn't have a good case in front of it. Our whole system depends on good lawyers bringing the facts before you. Now, the judges aren't supposed to shirk their responsibility. They've got their clerks and everything. But it certainly helps if you have two opposing people who have got a lot to lose and that's what we ran into. Of course, I was going to mention that almost a fun case I had...Because I loved constitutional issues and legislative issues. I don't know why but I did. I think it goes back to the fact that when I first started practicing law I didn't have anybody to help me and I had to find out how to file a suit, I had to go in front of J.P. courts [justice of the peace courts], I had to read the Constitution and all that sort of thing. That brought up that municipal judge thing. You know we had a flap about that and I had concluded...We had a municipal judge up here in Searcy. He was Charles Yingling. He only ran in the city of Searcy but he had countywide jurisdiction. And I couldn't understand that. I mean, that's not the way it's supposed to work, you know, having jurisdiction beyond the territory of your constituency. I found out that the city of Little Rock had a case that they'd run through the court out there and got the Municipal Court in Little Rock countywide jurisdiction on some things. Well, by the time the '70s had rolled around, some people had decided to do some things with it and that's when the county judge down there created the Pulaski County Municipal Court and Tommy Robinson was involved in it. Anyway, I think Bill Beaumont was there on it.

- ED: Bill Beaumont was the county judge. Tommy Robinson the sheriff.
- DH: They wanted their own court. They didn't want to have to go through the Little Rock Municipal courts. So they created their own and it came to us and I did a lot of research on that and that's when I really got into the thing and decided it wasn't legal. The Constitution did not permit such a court. Well, it was upheld; my dissent didn't prevail. But now, today, they have finally decided (and it goes into effect, I think, this January) that the judges are elected countywide. But that was a bad thing and a bad decision the court made back then. That's what happens when you don't follow the Constitution, but they didn't want to redo it. I won't go into all the legal details but, to me, it just didn't make sense. It wouldn't make sense to anybody else. But that was the law and that's what we put up with. But they finally corrected it.
- ED: Speaking again, before we leave the Godzilla decision...I Googled it the other day...Well, this morning I Googled it...This morning, before I came up here to just see...Godzilla and Supreme Court and so forth...And it turns out in the last fifteen or twenty years there have been a number of references to it. You know, opinions and so forth: "This is the Godzilla of amendments." In the *Citizens United* decision, the U.S. Supreme Court's *Citizens United* decision on campaign financing, which came down in 2010, I saw reference to it: "The Godzilla of Supreme Court decisions."
- DH: You think maybe they read my dissent?
- ED: So maybe your decision has gotten some circulation out there around the country and it's...
- DH: Well, you've got to have a sense of humor, too, and I guess that's what I had. I don't know why that struck me. You had all these Japanese Godzilla movies and this is just a horrible thing and I guess I just thought that's a good way to describe this thing—a horrible monster. But I enjoyed constitutional issues and issues from the legislature. I got that Game and Fish case and that's the only case of mine that George Fisher ever made cartoon of.
- ED: What was that case?
- DH: Well, the Game and Fish [Commission] people decided they were not getting enough money. They weren't able to go over there and knuckle under to John...What's his name? Over there in the House?

ED: John Miller?

DH: Yeah, John Miller and those guys and they weren't getting any money. So they decided to start charging for game... They were going to raise the fees on hunters and fishermen. Well, it's in the Constitution that the legislature has to do that. Well, anyway, they had a big fight over there in the Senate. I remember [Senator] Knox Nelson [of Pine Bluff] was involved and they tried to keep it over there in the House. They didn't want this thing to spill over and everything. But it did spill over. Somebody decided they were going to file a suit against the Game and Fish Commission and declare it unconstitutional. I just remember Knox Nelson said something about it "galls my guts" or something because he didn't like all that publicity. He didn't want all that free-for-all. But, anyway, I wrote an opinion and there again I must confess I used a little language at the beginning of it—something about a shootout between the legislature and the Game and Fish Commission. I don't remember the exact phraseology that I used. But I said something about them trying to hold somebody hostage. Well, ol' George Fisher... The only cartoon I had of his signed was about that. The legislature cannot hold the executive branch hostage or something to that effect.

ED: And Bill Clinton was in it.

DH: Yeah.

ED: And you and Bill Clinton and...

DH: Well, that was during the Jimmy Carter administration, where they had all these guys and somebody (I don't remember who it was, maybe Reagan) and they were going to take these Bibles over there to the Middle East.

ED: Oh yeah. To Iran.

DH: [Laughs.] Anyways, that the way it was. But the legislature was not going to... Because Game and Fish did something they were threatening to do something to them. So we threw them both out. The commission could not set the fee for licenses. It was kind of a draw, you know. But then the Game and Fish came back, of course, and got that eighth of a cent [sales tax], which has left them rolling in money.

ED: They can't spend all the money.

DH: Unbelievable.

ED: They can't buy enough trucks to...

DH: That was the beginning of it back then because the legislature wouldn't give them some money or something and they decided to raise the fees and the legislature retaliated against them on something. I don't remember... They had a publication over there and something like that was involved. But, anyway, it was a flap between the "independent" Game and Fish Commission and the legislature.

ED: So they came along in 1996 and had a big friend in the governor's office—Mike Huckabee—and he helped them pass that eighth of a cent sales tax to give them an independent source of money and put it into the Constitution, where the legislature couldn't touch it...

DH: And they had all these hunters and fishermen out here who thought that they were going to get a lot of stuff out of it and they are very disappointed.

ED: Yeah, they just got a lot of trucks and off-road vehicles...

DH: Four-wheel-drive...

ED: Four-wheel-drive vehicles and so forth.

DH: They look like a S.W.A.T. team. All these Game and Fish guys look like S.W.A.T. team members with all the guns and fancy stuff they've got on.

ED: All right. Let's see. OK, just one other matter we ought to discuss. When you defeated John Purtle in your first race for the Supreme Court he comes back two years later and gets elected to the court. And he's a different kind of judge. Purtle's kind of an old populist.

DH: Yeah.

ED: He liked to being a maverick. He enjoyed being different.

DH: Yeah.

ED: And he eventually got at odds with practically the entire court.

DH: Yeah.

ED: And began to turn out, I guess, the most dissents... More dissents, probably, than all the other justices on the Supreme Court combined. In just about every case, it seemed anyway, that he was in disagreement with the rest of the court. In 1984, I guess, Jack Holt, is elected to the Supreme Court as the chief justice. While Judge Holt was campaigning that was also the election that Walter Mondale was the Democratic nominee for president and [U.S. Representative] Geraldine Ferraro [of New York] was the vice

presidential candidate. And during that campaign, in the fall, Geraldine Ferraro comes to Arkansas to campaign. She's at one of the big hotels downtown and had a big Democratic rally a week or so before the election. There are some women from the other side come to picket her, carrying signs protesting her stand on abortion and so forth. John Purtle, justice of the Arkansas Supreme Court, shows up carrying a sign for Mondale-Ferraro and gets into a kind of fracas with these women carrying signs and all of it gets into the paper. So that's on the front page of the paper next day—a justice of the Supreme Court. So anyway, I gather that was not the first time, but one of many instances where the court was saying, “What are we going to do about Justice Purtle?” and I guess Jack Holt kind of confronted that when we he went on the court as chief justice. “What are we going to do about those kinds of things?”

DH: I don't know how it all came about. I have to go back a little bit in time in how this thing came about and I'll deal with John in a minute as an individual. Frank Holt and I used to go out and eat lunch nearly every day. Of course, I'd known his family and known Frank. We got along. We didn't always agree on the court, but we were convivial so I enjoyed his company. We had different attitudes and everything but I admired and respected him. Anyway, we had this school-funding case where we decided you're going to have to have equal funding and you and I had discussed that. That was the predecessor of this decision...

ED: The *Lake View* case.

DH: ...we made now. But we made a decision back then (and I don't know all the details of it)...But we had a school-funding case and some of these little school districts weren't getting any money. Some of them had a lot of money. For example, up here in Oil Trough and that area, They had a plant...

ED: They had a big coal-fires generating plant at Newark.

DH: And they were getting students from everywhere. We'd already had a lawsuit up there where they were raiding one of the adjoining school districts to get some of their students and they had all this money.

ED: AstroTurfed their football field.

DH: Hired Ron Calcagni as their football coach. So, somehow, this case got to us and, of course, I was familiar with it from a personal standpoint. I mean, my kid's going here to

Pangburn and I was kind of surprised he didn't have to take algebra or geometry but he's taking a course called "Family Living," of all things. So, as a father, I had some information about that. So when this case came to the Supreme Court it was, you know... Maybe we didn't know what to do with it but I decided to open my mouth and get into it. And so the court decided that it did have to be equal. The legislature is going to have to make up this money somehow for these districts. We didn't want to fool with the existing taxing system because, quite frankly, we didn't know how to handle that. That's a legislative function. All we could decide is somehow or another you're going to have to equalize this thing so that these kids in one school district have the right to get the same education that kids do in another one.

ED: Which is what the Constitution promised.

DH: It said that. And so we had that and well, here's another one of those things. Well, Frank and I would occasionally go to the Capitol building to have lunch. Well, right after this decision... And I had written a pretty long concurring opinion. I took liberties to do that because you weren't responsible to the rest of the court and you could say what you wanted to in a concurring opinion. I felt some responsibility to the legal community and to the political community to tell them our thinking and why we're doing some of these things. You mentioned one time something about shelling down the corn, but that was an avenue for a judge to say something, particularly when you don't just tell them "yes" or "no" because they have to deal with these problems (like creating juvenile courts and doing these kind of things).

ED: You can give some advice but it's not law.

DH: That's right. And you can say these things and that was something I enjoyed doing. So we were sitting over there and here's Lloyd George comes over to see us. Well, this thing's back in the legislature.

ED: Now he's state Representative from Danville, Arkansas.

DH: Yeah.

ED: Yes.

DH: And George sits down and Frank was not a participant in the case, as I recall. I mean he didn't write the opinion and didn't write the concurring opinion. I don't remember who wrote it. [Justice Steele Hays] But, anyway, we were sitting there...

ED: The case was *DuPree*, wasn't it? [*DuPree v. Alma School District*, 1983]

DH: Yeah. OK. We're sitting there and I'm eating and Lloyd George is telling them these things and Frank is telling him, "Well, that's not what we meant. We didn't mean anything like that. You don't have to do all this." I was silent because I didn't think Frank was right about this. We had told them what they were going to have to do now. We didn't tell them how to do it, but we told them what they were going to have to do. Well, Lloyd George goes back to the Senate and says, "I just had lunch with two Supreme Court justices and we don't have to do so-and-so." I'm up here in Pangburn doing some work to get down there because I'm commuting and I'm up here writing one of my opinions and Bill Simmons, the AP reporter, or whatever his name was, calls me. Frank tries to call me. He's been on the hook down there and the reporters are all over him about what he said and they asked me and I wasn't going to tell on Frank. I didn't lie about it. I didn't mislead. I just hemmed and hawed a bit about it. I had told Lloyd George at the end, "You better read the decision—it's what we said." It's what I told him. I didn't say anything else. Well, Frank had stuck his neck out on that because he was trying to crawfish a bit.

ED: He had probably recused from the case. [No, he participated but did not write an opinion.]

DH: Probably so for all I know.

ED: Frank recused in a lot of big cases.

DH: Yeah. Anyway, John Robert Starr [managing editor of the *Arkansas Democrat*] jumped on it just like a duck on a June bug: "Oh! Look at all these judges hemming and hawing and talking over there at the legislature," and so forth. Then this guy up there, name of Brill, who was an ethics professor...

ED: Howard Brill. Yes.

DH: At the University of Arkansas. This is one of the cases where he said judges are talking out of school, and he mentioned Judge Purtle and his conduct. . Of course, there was nothing improper about telling somebody about a decision. It was just what you told them. I mean, United States Supreme Court judges go around talking about that all the time. You just can't talk out of school. Essentially, what you do is hand them the decision. That is what you do. But, anyway, I didn't think we did anything unethical.

Anyway, he mentioned that and John Purtle and some of these other things. Well, somehow or other it comes before the court by Judge [Justice David] Newbern...He brought it up as I recall. Somehow or other it came up as to whether we had the power as a judicial body, by rule, to discipline judges and remove them from office. I think Professor Brill (whom I knew and who served on a committee with me) had come up with this idea. Professors are wont to think that courts have all this inherent power. I don't know where they get their bottled water or whatever it is. But I have always been a man of the people, and the Constitution does not give the courts as much power as they have taken on themselves and have done all kinds of mischief. It was brought up in conference that maybe we ought to consider passing some rules. There was a proposal made and Jack [Holt] was the chief...I was appalled. As I recall, that was the only time I was appalled in conference. To think that this court thought that it could pass rules to remove a judge. To me, it was just a blatant violation of the Constitution. You're elected, so you can impeach them, but the court has no power over those people to remove them and so forth and so on. So I volunteered to research the question, and I researched all the states. I spent over a month with my clerk. We researched cases all over America about the discipline of judges—how much of the legislation was authorized by Constitution and not. I don't recall a single state court that assumed the authority to remove a judge from office without some kind of constitutional or legislative authority. The court didn't do it. So I took that in to the court after I had my case prepared and knew that I could present it well. I went into it and told them, "Now here's the way it is, and here's the way it is in Arkansas, and I don't think it's right and I don't think it's constitutional, and I don't think you ought to do it. But I do agree we need a mechanism." I said, "I'll be willing to do everything I can to get a constitutional amendment so we can discipline judges." So they appointed me as chairman of an ad hoc committee of judges and lawyers and we went to work and drew up the constitutional amendment. I took it back to the court and they approved it and I told them I would try to get it on the ballot. I'll assume responsibility for going to the legislature and trying to get it as one of the three [amendments referred by the legislature every two years]. I had some experience dealing with these things. So I decided I would do that and that's what I did. I went over there and, of course, I found out that it didn't make any difference how many people in the legislature were for it.

There was one man who decided what three provisions got on the ballot: Nick Wilson.
[State Senator Nick Wilson of Pocahontas]

ED: He was the chairman of State Agencies and Governmental Affairs Committee and that committee chose the three amendments for the House and Senate.

DH: I knew Nick Wilson. I knew his buddy Bill Walmsley. Bill Walmsley had been a friend of mine.

ED: State senator from Batesville.

DH: I knew their little group there and knew them. I knew that they had formed a little club over there. In fact, they invited me over when they first did it in that employees' building or something over there [Capitol Hill apartments, a state-owned building northeast of the Capitol]. They had their own room. What was the guy—Daniels? Was he one of their friends?

ED: Charlie Daniels was secretary of state and he was a close friend and ally of Nick Wilson.

DH: Well, this was early on and I was a young judge or something and Walmsley...I knew Walmsley.

ED: Charlie Daniels might have been labor commissioner then.

DH: He was then. He wasn't where he is now.

ED: OK. Labor commissioner. Anyway, they had offices in the apartment building just northeast of the Capitol building.

DH: Yeah. So as a young judge they invited me over there to their place. This was the little kingdom they were building over there, separate. They were building a little power bloc there. So I knew Nick and I knew these guys. But I also...Of course, I didn't involve myself in any politics or in any races or anything. But I knew what was going on and this is a small state and I knew one thing about Nick Wilson: You don't want to fool with him and you're not going to soft-soap him to do anything that he doesn't want to do. If Nick Wilson decides he wants this thing on there, he'll do it for his reasons and perhaps not for the reasons you want. Well, of course, my reasons were good government, you know. Nick didn't care for judges, as a matter of fact. He had a law license but he had not been... I understood he didn't like his judge up there...Judge Simpson. He probably didn't care for Dudley either.

ED: Judge Harrell Simpson and Justice Robert Dudley.

DH: Yeah. He didn't practice law much up there. He had some other kind of enterprise going. But I knew enough about him to walk gently around him. Now, you don't want to act like a coward in front of him. I mean, I didn't do that. But I knew him and I was going to respect him. I knew Nick had some good in him and even if his motives might be otherwise, sometimes you might get some good out of it. So that was before all the scandal came down on him. Nobody had any idea he was involved in all this scandal later on. But it came down to three and he put it on the ballot. And so I took a big sigh of relief and reported to the court. I got a little applause as I walked into the room and then they said, "Well, now how are we going to get this thing passed?" I said, "Now, I've finished my job." [Laughs.] "You're going to have to do it." Well, Jack Holt took over then.

ED: He did, campaigned around the state.

DH: We suggested that he get... What was the guy? The lawyer's name that became a dean? I can't think of his name. I had it before. That stood in for Clinton there for a while. Bill Bowen.

ED: Bill Bowen. William H. Bowen.

DH: William H. Bowen, who was one of the most prominent lawyers in the state. And then Jack came up with the idea of getting the young Rockefeller on it. He called them and both of them agreed to do it and Jack took the ball and we got it passed. And I think it's one of the best things that ever happened in the state of Arkansas. It's a thorn in the side of a lot of judges because some people abuse it and turn a judge in for any frivolous thing and make complaints against them. But we've had judges removed who otherwise would have had to been impeached, which is almost an impossible process. I don't recall it ever having happened in my lifetime. They discipline judges and straighten them out. I know some of them who've done some things and they get a letter or a call and they quit doing it. It has been a good thing. We also had a part of this [Amendment 73], which was called the "disability provision," but it's never been used and it didn't have to be used because of the way things worked out later. But it was my experience that we had judges occasionally who had become disabled and were still in office, and the question is, "How do you get a judge down there to take care of the business?" You couldn't remove a sitting judge who had a disability. So we had this provision in there that the governor could appoint somebody to go in there as a judge and take over his caseload until this

person's term ran out or he could return to office, you see. Well, that wasn't necessary because later on we got the law passed where you could assign all these retired judges to positions and so that's never been used. But it had two sides to it and I think it's one of the better things we did. But it was not an easy job getting it through the legislature. I couldn't get Mike Beebe to sponsor it in the Senate. John Paul Capps, my representative who is very well respected and powerful in the House, took it. I don't know why Mike couldn't do it but I suspect his local circuit judge was against it. The judges grumbled about it. They didn't much want it. But we went to them openly at the Judicial Council and presented it to them and showed them how we were going to need it and assured them of how it was going to work and were very open. I got the Gordon boy up there at Morrilton who was the sponsor in the Senate.

ED: Allen Gordon.

DH: Yes. You had to get it through them and get it through that committee.

ED: Yes.

DH: And so that's how it...It wasn't an easy job. I didn't enjoy going to the Senate and the House because it's really a tough job as a judge because you're out of your judicial role. They deal in swapping out over there and compromise and, you know, you kind of have to keep yourself aloof from this political stuff. But I went over there twice for the court on salary increases for all the judges. That's back when inflation was so bad. I went over there and worked on that and learned something about how the legislature works. That also came down to two guys: Max Howell and John...What's his name?

ED: John Miller.

DH: Yeah. They decided what's going to happen. I was over there handing out this proposed act we had and some judge up there around Blytheville told them, "Well, my legislator's got a bill introduced so we can get sixty thousand dollars a year." I tried to explain to them that's nothing. It won't amount to a hill of beans. My people told me, "You've got to get this thing by the Joint Budget Committee." When Max Howell and John Miller are dividing up the pie, they're the guys that are going to decide it.

ED: Well, Donald Corbin...Donnie Corbin came along later and he kinda became that...

DH: He's an ex-legislator.

ED: Ex-legislator and he enjoyed that function.

DH: Yeah. I didn't. Conley Byrd enjoyed it. I didn't.

ED: Yeah, well Conley and then Donnie Corbin enjoyed that role of going over there. Of course, nowadays the Supreme Court is *persona non grata* in the legislature because of several decisions the last several years. One, the second school case after the *DuPree* case.

DH: Yeah.

ED: You know, they came along finally...

DH: Oh yeah, spent a billion dollars.

ED: About ten years ago and finally enforced what you said you had to do back there in 1983.

DH: [Dogs barking.] Those are my children down there.

ED: Yes. [Pause to let dogs settle down.] OK, let's try it again. OK, so the second school decision came along (I guess) twenty years after the *DuPree* case, which we talked about earlier. This time the Supreme Court finally put their foot down and enforced it and the legislature passed a bunch of taxes and a little bit of school consolidation. But the result of that is the legislature hates the Supreme Court. Also, I think, the last couple of years the court has handed down some decisions striking down elements of a tort reform bill that the legislature passed but that was clearly unconstitutional. So as a result of this the Supreme Court hasn't gotten a raise in some years and probably won't...I know they won't get one this time. But, anyway, that's kind of a problem, isn't it, for the Supreme Court?

DH: Always.

ED: To deal with these separate branches of government and you just have to deal with it.

DH: That's right. Conley Byrd came over there...He'd go over there and lobby for our money and everything and he came to us one time and told us, "Now, so and so over there has got a son that's a lawyer and we've got to get him a clerk's job." We didn't feel bound to give him a clerk's job. We weren't going to get involved in that swapping-out stuff. So that was a problem with judges dealing with the legislature. I did it but I don't think I was all that good at it. For a brief moment (I hope it wasn't over a day or two) I thought about running for chief justice. Then, no! You're not suited for this sort of thing. I don't want to go over there and have to deal with those people and all those budgets. My personality is not good enough for it.

ED: I guess it's a problem. It's a problem, I guess, even nationally, too.

DH: John Marshall, the first chief justice [of the U. S. Supreme Court...They wouldn't pay them because Thomas Jefferson wasn't going to give Marshall any money because he infuriated Jefferson with this *Marbury vs. Madison* decision, you know. He was infuriated about it.

ED: Yes.

DH: So it's always been a problem. But the judges have kind of taken control and they can...If the legislature gets to the point where they will deny funds to provide justice there is a provision in the law that the judge can do it. I thought there was an interesting case down there in Pulaski County whether this judge was going to get a couch or not because the county judge wasn't going to buy him one. [Laughs.] And I think the judge had decided that he was going to issue an order that they were going to have to buy him a couch. I don't know whether that would have been in the interest of the administration of justice or not. But those were the things that went on. We had these reapportionment cases. I had been involved in one lawsuit after 1970 where we came in—I may have mentioned this before—and broke up all these counties and everything, and there would be a lawsuit filed to challenge the new districts. I was involved in the first case. Odell Pollard [Searcy lawyer and state chairman of the Republican Party] came to me and the Republican Party didn't like the way the districts were drawn. I was hired to represent them and get them thrown out. John Barron was on the other side. He was a Rose Law Firm lawyer and I worked on the case and decided I don't have a case. I can't win this case. This is just not going to happen. The courts are not going to get involved in this. This is a political decision that the legislature and executive branch can make and we don't need to substitute our judgment for it. Well, we had the same thing happen in 1980. I think the legislature and I think the people that do this...You know, I had had that experience with [Governor] Bumpers and these people where they had drawn this district in Searcy. I think they abuse the thing but I don't think the courts are in much position to go in and do it. We had a case in 1980. The big problem was up there in Northwest Arkansas in Siloam Springs. They felt like they had had a really bad decision up there with the creation of one of these districts—and they may have. But the question is, "Are you going to redraw that district? Or are you going to redraw the whole state?"

ED: Once you start you can't...

DH: By that time, I had become more of a conservative judge and less inclined to meddle. I realized we can't do this. That's not our prerogative. It may not be perfect but, unless you find something that shows you're going to have to throw the whole thing out, I don't see how you're going to do it. So we passed on that. We had the liquor cases. They always came up and they were always interesting because you got this wet/dry thing in Arkansas. We had a big case on that. On that one we had special judges and there were some strong feelings about that.

ED: Well, that was the case in 1986 (or '87) right after Tom Glaze came on the court. Is that the one you're thinking of?

DH: Could be. [It was another case. Maurice Mitchell, a special justice, wrote the majority opinion.]

ED: Conway County. Of course, Tom Glaze comes on the court and he'd been in those election wars up in Conway County and Searcy County for some fifteen years.

DH: Yep.

ED: And that's his passion. So as soon as he gets on the court—I think he takes George Rose Smith's place in January '87—the Conway County wet/dry case comes down and Bob Dudley wrote the majority opinion and Glaze was outraged and wrote an angry dissent.

DH: I think that was over election law.

ED: It was over an election law. It was a wet/dry election case.

DH: Election law.

ED: There was a lot of election fraud, apparently on both sides.

DH: Before that, we had the private club case up in Harrison or somewhere because we had this hypocrisy of private clubs. You know, these veterans clubs and Elks clubs and people like that forming clubs where you could have drinks. I lived in a county where they had them. You could go out to the country club and get a drink. You could go to the V.F.W. and get a drink. You could go to the Elks Club. But if you lived in Kensett you couldn't get a drink. You had to...I saw the hypocrisy of it and actually prosecuted some of these cases where they'd get these bootleggers, you know. It had gotten ridiculous because in some of these places you'd simply go in and sign your name and they called it a club. They still do that and it's a farce. It's a farce. Well, we didn't throw it out. We didn't get

into it and throw it out and there were some strong feelings about it. [Maurice Mitchell wrote the majority opinion.] That would have been another case of how far the judges are going to go in legislating. That brings up another subject that became very important to me. That was the idea that the court had exceeded its authority and started legislating as opposed to making decisions. That brings up the biggest mistake I made on the court, which was going along with my genius friend George Rose Smith. This was toward the end of his time. Somebody challenged the rules of evidence in the state of Arkansas. Before we had...At one time the legislature set nearly all the procedural rules of the court. The Supreme Court decided the rules of appellate procedure—how you had to file an appeal and things like that. But they [the legislature] decided when you had to file a complaint how many days you had to file and answer, all of this stuff about arrest. All these things were in the legislature. If you wanted them changed you went out there to the legislature. Well, at one time, of course, in the common law there were no rules. To amplify that, I should say we had the legislature passing rules of evidence in courts. Usually, the Arkansas Bar Association would come in and present a package to the legislature to pass laws on evidence and procedure and the commercial code—that sort of thing. They would sponsor one and usually the legislature would just pass it, the whole thing, because the whole bar was behind it and they didn't want to argue about it. Well, anyway, some young lawyer, some smart kid somewhere, found out that they had not properly passed the rules of evidence at the last judicial session. He'd had a criminal case and they had admitted some evidence, and if that thing had not legally passed they didn't have a right to do it and the conviction had to be reversed. Well, George Rose had the case. He came up with the bright idea: The rules have to be thrown out but we will adopt them immediately and therefore cure it. He said we can't be without the rules of evidence. Why I went along with that today I do not know.

ED: Because it was George Rose's idea, probably.

DH: That's exactly right. It was a weakness in my character. I was influenced by him. And I can remember something about a case we had before where somebody had said (and I'm not going to say who), "You will never hear about this case again! It will never come up again. I can guarantee that this will never come up!" And I suppose that was the lecture I got at the end—that we are going to lose the rules of evidence and we cannot afford...It

wouldn't have made any difference whether we didn't have the rules of evidence. You've got the common-law rules of evidence. It didn't make any difference whether this case was reversed. So what if the case is reversed! If they didn't have a case against the guy it's not our responsibility. That's the prosecutor's responsibility. I went along with it. The court went along with it. Well, I didn't hear about it for a while. But then, toward the end of my term, I begin to hear about it. They decided that since that case existed they had the power to do some other things. One of the things they came along with is... We already had the rules of criminal procedure that this committee had drawn up... All of our procedural rules and some of them were substantive rules. They were not procedural rules on search and seizure. So the court had adopted them as rules of the court— procedural rules. Well, you can't decide the United States Constitution's right to privacy from an unreasonable search and seizure by rule of the Arkansas Supreme Court. That's a constitutional thing. But, anyway, they did it, all these professors and all these lawyers. Well, I didn't know. I hadn't studied that thing and gotten into it. Well, we had this thing in the chancery court and I was one who implemented it early on. When I went on the chancery bench you decided these cases on support and that sort of thing as they came up and you just kind of weighed things in the balance. Well, [Chancellor Richard] Dick Mobley up there [Russellville] was probably the best chancellor in the state and he had adopted a national scale where if a guy made so much money and he had so many kids then he paid so much money. That made sense to me. You had discretion to adjust it either way. But you had something to go on. So I used what was called "the chart." Well, when I first went to Pulaski County I went up to... When I was first elected I visited ol' Dick Mobley. He was a crusty old guy...

ED: Richard Mobley and he was from Russellville, right?

DH: Yeah, a very good judge.

ED: Yes.

DH: Very good judge.

ED: Great chancery judge.

DH: Yeah. Of course, I had beaten one of the fellow chancellors. I don't know if he thought I was properly admitted to the club. But I went up there to see him. I wanted to talk to him. I wanted to find out how he did things because he'd written a little book on it... On how

to handle domestic cases. So he gave me this chart and I went to Pulaski County and I started deciding my cases that way, using it as a guide. Well, some of the lawyers were saying, “Well, Judge [John T.] Jernigan doesn’t use the chart. Let’s go over there,” and, “How can you do this with a chart?” Finally, everybody started using the chart. Well, somebody got the idea that they’d get the legislature—this is in the late ‘80s and Jack Holt is chief justice—to adopt this as a principle of law, that chancery judges need to refer to this chart when they are awarding support and here it is. We’ve got the chart. I think they had some sort of federal grant or something. Well, lo and behold, we show up on Friday and here’s this proposal that we adopt this chart as a rule of the Supreme Court. I couldn’t believe it.

ED: Although, you had been part of that process of implementing it.

DH: That’s right. But I didn’t think we had the right to make it a rule. It’s a substantive issue. Courts can’t decide substantive legislative matters. That’s a constitutional matter and a separation of the divisions and they have to decide that. It’s not a procedural thing. You have to do it. That’s something that ought to be enacted by law. The legislature had dropped the ball and somehow or another had not got it passed. So they’d convinced our chief justice, “If you’ll pass this thing...” So they came in and that’s when I got this case thrown in my face. That they had the rule to do that, you see. Well, I dissented, of course. Since then I recently got a call from some reporter about whether the court was abusing its authority for rule-making. I don’t know what kind of mischief they’ve been up to since I was there on making rules. But they took that case [the rules of evidence case] and, to my great regret, I think they’ve gone too far with it. And that’s not just the only instance of using the rule and making power.

ED: To go back to judicial discipline: Was John Purtle a factor in all that judicial discipline? The effort to move forward with something?

DH: He may have been.

ED: I don’t know whether he was or not.

DH: He may have been. As I’ve said, this idea came from Justice Newbern and I think Brill or somebody outside the court had made that suggestion. It was suggested that maybe the court ought to do something about this. I don’t know. But I know that’s how it came to us. John wasn’t going to go along with it. He was on the court when we had the

constitutional amendment [on judicial discipline and disability] and he thought that we were going to get him.

ED: He thought that it was aimed at him.

DH: Yeah. And I told him, “John, there’s no way that this will apply to someone who is not a sitting judge and there’s no way they can go behind this with some kind of *ex-post facto*...”

ED: Had he already left the court?

DH: He was going to by the time it got passed.

ED: Yeah, he resigned (I think) from the court.

DH: Yeah, he was going to.

ED: Because he said he didn’t get along with the court.

DH: Well, I don’t know about that. We can go into that and he did cause us some personal problems. I’ll go into that a little bit if you want to. But I didn’t have any personal problem with John as a person, but I had a problem with some of his conduct. But I was always straight up and down with him and told him about it. I mean, he got indicted for a felony and his secretary was indicted and he wasn’t going to let her go and she was an employee of the court. He wanted to go on sitting on cases while he was under indictment and we didn’t feel like he should be able to do that. Then he wanted to sit on just civil cases. No, we don’t think it’s right. It’s going to hurt the court. Well, he finally agreed and announced he was not going to sit on any cases. Well, we didn’t know at the time that John Langston, the trial judge, didn’t care whether the case was tried or not. He put it off for nine months and there John sat down in his office. I don’t know what he was doing down there. We had to pick up the caseload. Six of us doing the work of seven until that case was resolved when Bill Wilson got him off. But that was only part of it and John was sensitive about it and thought that. But, you know, John really, with all due respect, brought nearly all this stuff down on himself. I liked him personally. He helped me when I ran as chancellor. He was a maverick and he helped prove some things in that race that helped me get elected, and even though he ran against me, you know, I didn’t bad mouth John and I didn’t have any ill feelings toward either one of them. I think Melvin [Mayfield] probably resented him more in the race than I did. I got the Pulaski County Bar’s support and John was a little surprised by that. He shouldn’t have run. He

found out he wasn't going to get any money. But he ran anyway. I talked to him and told him "no, the amendment won't apply to you," but John would talk out of school. We had a rule: It is confidential what we say in conference and what we do. You can't tell anybody. I had a lawyer one time tell me, "John Purtle told me you blackballed me on a committee." [Laughs.]

ED: [Laughs.]

DH: I didn't blackball him but I was surely against him to be on that committee and now we knew who had gone to him and told him that. In another instance we had these...I shouldn't say these things...It's all gone. John's OK. Like I said, I never had any personal feelings, but John would go out of his way to do these things. John Purtle knew school law and he knew insurance law and I listened to him in both instances. He had been the lawyer for the North Little Rock School Board. He'd been a lawyer for Traveler's Insurance Company. When we got those cases John took on a different light because he knew what he was talking about. But when he would get into criminal cases and things like that...Why, he wanted to put on his victim's hat, so to speak. One time, I was sitting as circuit judge in White County and I got appointed after the Supreme Court took over Cecil Tedder's job. The only criminal work I had in White County was appeals from the municipal court. One day John Purtle comes in and he's representing a guy that's got three D.W.I.s against him...from Little Rock. John wanders in like he always wanders in. You wonder whether he's prepared or not and he has the case. The state's witness doesn't show up. I have to dismiss the case. So John won his last case in front of me. [Laughs.]

ED: [Laughs.] Well, all right. Let's...

DH: I fined the cop for not showing up, I'll tell you that.

ED: You fined the cop for not showing up?

DH: Yeah.

ED: Well, we're going to get over in that in a minute...into your latter judicial days. Anything else that...cases or issues for the court in your years on the Supreme Court?

DH: Oh, I don't think so. The court changed after George left. We lost some of our horsepower. There was no doubt about that. It wasn't the same court. I stayed on four years. I became the senior judge. George took care of all the caseload and everything and

the responsibility was to see that the cases were divided so that when you started out in September all the cases had been decided when you recessed in July and you had to spread that out and so forth.

ED: So you kind of took on that job?

DH: I took on that job and I had John Fogleman (before he left)...He wanted me to serve on the retirement committee of judges because he told me, "I know that you'll try to keep down these special acts in the legislature giving these people the right to retire that are not entitled to it," and so forth and so on. I was later removed...I don't know why...from that committee. When Webb Hubbell took over [as chief justice in 1984] somebody came down one day and told me, "I want the file on that," and Bob Dudley got the appointment.

ED: Oh, really? OK. Well, Webb Hubbell...Bill Clinton appointed him to fill out some...

DH: Dick Adkis...

ED: Dick Adkisson's term as chief Justice for a period there.

DH: Dick didn't come back from the summer break in the fourth year. And you asked why he didn't come back. I think he was weary. I got along all right with Dick. I had been in law school with Dick. We were not the same kind of people politically. Dick and I knew that. I didn't support him when he ran for chief justice. I supported [Tom] Digby. I didn't get involved, of course, but he was not my choice. When I was in Pulaski County there was a little tension there because, you know, he had quite a lot of muscle there in Pulaski County with Max Howell and those guys. But Dick and I got along fine and I called him when we needed some salary work and he'd go to Max Howell. We were an informal crowd. When we shut that door this is not seven guys in robes. We took our coats off. Some of us didn't even wear a tie on Friday and there had to be a lot of give and take and it had to be straight up and down. I just don't think he was suited to put up with all that because we would challenge each other. And that's the reason there aren't many close friends like that, on the court, I think, because you can't let go of a challenge when it involves a case because of friendship or something. When you do it's wrong. So, you know, we...

ED: So you all didn't have close friendships on the court then?

DH: Not many.

ED: Yeah.

DH: And even when George and Fogleman would go out they would have strong discussions in court and you had to be able to disagree with these people. I mean, we're talking about some pretty serious business here—last court of resort for these people. And most of us took the job that seriously. There were a couple of buddies on the court. At times they would vote together and that caused a few little problems.

ED: You want to mention that?

DH: No.

ED: OK. I know what you're talking about but...

DH: No. I don't want to get into that. I don't want to get into that. But after George was gone...He had so much experience in everything that most of us, when we'd go into a problem, George could push that thing to a conclusion pretty quickly with a few words: "Well, this is not right," or, "This is foolish," or, "So what?" I remember one day he said, "So what?" And he was right, you know. He wasn't always right. I want to make that clear. But he was really the pillar of the court and we looked up to him a lot his last years there. Of course, when he's gone you don't have that experience and all those other guys were gone by then. Certainly I was not in George's league because I didn't work as hard as he did and didn't have the brainpower he had. I won't say I didn't have the common sense that you need because you've got to have judges with common sense and ability and experience. You take these old trial judges that have been out here whirled around with all these things and they've got a lot of common sense. We had a good judiciary in Arkansas and I expect we still have one if you compare it to other states'.

ED: Well, let me ask you about that. This is one of the states where we have an elected judiciary. And I don't know what percentage of the states have some other form—appointed systems, merit-selection systems. But that's often been discussed in Arkansas, whether we ought to convert to some Missouri Plan or some form of merit selection of judges or some appointive power rather than having judges go out and face the electorate and then come back and...You know, from time to time having to go out and face the electorate on decisions they've made. How do you feel about that?

DH: Well, I've always felt like it worked OK in Arkansas. It didn't work in Texas. It's too big a state. The campaigns were reaching a million dollars. Down there certain interests bought the Supreme Court at one time.

ED: Oh, I think they still do.

DH: Yeah. But when I ran it didn't cost that much money and it was not that unwieldy a process. The question you would have is whether these people have to get out and face the electorate. Well, we did have rules of ethics and, of course, I think the [U.S.] Supreme Court said later you could talk about anything you wanted to. But we did have rules where you weren't supposed to discuss certain things out there when you're running. It's supposed to be a so-called dignified race, you see, and that sort of thing. So it worked. It worked well. The question is, at some point: Who are these people accountable to? Well, there's some question about the federal judiciary, you know. Who are they accountable to? Well, they aren't accountable to anybody as it turns out.

ED: Well, the idea is that they are accountable to the Constitution.

DH: That's right. But it doesn't work that way.

ED: It doesn't?

DH: No.

ED: No. We found out.

DH: So we had an eight-year term. You were almost insulated from political pressure.

ED: Well, did you feel as that eight years is approaching its end, as you're getting very close to election, if there was a very sensitive, potentially unpopular decision, did you start to think about that?

DH: We're all human. I felt in my mind that we never had a case that would beat a judge. I never saw one. Before I got there you had the *Epperson* case. [*Epperson v. Arkansas*, decided in 1968, was a case challenging the constitutionality of a 1928 statute that forbade the teaching of evolution in Arkansas public schools. The Arkansas Supreme Court upheld the law 6-1, but the U.S. Supreme Court unanimously struck it down.]

ED: That's right.

DH: I don't know firsthand but I was told that the court felt like they would be beat over that decision and therefore they made a decision they felt like was politically expedient. I don't want to sit in judgment of them but that's what I've pretty well been told. They felt

like they saved it [the court]. Now that's...I personally do not think that the Arkansas people are that kind. I have never felt that they're that kind. I have always felt like you can go to them if you are an honest judge and you treat these lawyers right you can survive these things. It's something that has to be done. I've seen as many sorry appointed judges as I've seen elected ones. So right now I'm not there. But I think we're going to approach a time when money gets out of hand. Here again, most of our candidates for the Supreme Court are now sitting judges or prominent lawyers, which is what they have been and we're getting so-called qualified people. Down there in Texas they elected this guy Yarbrough down there at one time and he had all kinds of lawsuits against him and he was a flaky lawyer because they had that senator down there at one time named Yarborough. They've had to try to get rid of him, and they did. And they've had some other problems. But, no, that's where I am. I think we're probably going to approach the time...The Missouri Plan was a great idea except it wouldn't work.

ED: It was a good theory.

DH: Very good theory. But you can't run against a straw man. Now, they did make it work in California. They finally got so sick of Rose Bird out there who was the chief justice and a couple of others that they beat them. But they refused to enforce the death penalty out there and they just weren't going to do it. They had made some other decisions and, of course, they threw them out. I think recently a judge up somewhere in the Midwest got beat on the Missouri Plan. But, generally, they don't get beat. But the other side of it is, most of our judges, probably, in this country, outside of corrupt political machines, are pretty good people. I mean, the judges I've met from the Midwest and even California and Pennsylvania...I went to these schools with them...These are all dedicated professional people, you know? There is no purity in life or law. We have human relations. We have people's feelings involved. That doesn't mean that you are corrupt or incompetent because of that. Well, what is the law? As long as you're being honest about it and not on the take and you're telling these people like ol' Sam Robinson. I mean, what's wrong with it? I tell you what—I would not have been on anybody's list to be appointed when I first got elected.

ED: No. You would not have been appointed to the court.

DH: No. I did eventually get on some lists and get appointed. But I would have never been on the bench if I hadn't run against a judge and beat him like that.

ED: Well, then you decided in 1990 not to run again?

DH: Yeah. I had enough.

ED: You retired. You just didn't run. You just up one day and quit.

DH: That's right.

ED: You retired.

DH: I quit.

ED: And what motivated you?

DH: I was tired of it.

ED: Just exhausted?

DH: The good times were gone. I had worn myself out. We had a new court. They were doing some things that were bothering me a little bit. I had my time in. What was the use of it? I didn't want any more of it.

ED: Also, you kind of wanted to get on your motorcycle and travel around all over the western part of the continent.

DH: I did not have a motorcycle then but that was my goal, to travel. I had some good-health time left and I had put in my time and I felt like I served the public and was entitled to retire. And I loved to travel out west. I go out there two or three times a year and I still do it and I wanted to do that. I didn't have enough money to retire at that time. I was fifty-five years old. But I decided, "I don't care."

ED: Well, while we're on that point you reminded me we need to go back to about the time that you got elected chancellor or whatever... You get a divorce. You remarry.

DH: Yeah.

ED: And who did you remarry?

DH: Kerry Hardcastle. She's from this community, from about three miles south of here.

ED: In Pangburn.

DH: I had been married twelve years and it didn't work out. I had two children by that marriage. So we got married in 1971. I'd known her for a year, I guess. She had a daughter named Torrie, whom I adopted. She was a little over two years old. So we got married and she worked, at the time, for the Welfare Department. She had been a teacher

and the truth of the matter is I guess Kerry saved my life. It all went down a different path after that. A year later, we had us a farm, which I loved...She loves the outdoors. I love the outdoors...And here was this crazy guy running for judge who got elected and that pretty well set our life. We've always loved to travel. She's traveling now and we still are. And that's what I wanted to do.

ED: So when you retired from the court...

DH: I am sure there were some who were relieved.

ED: By my recollection you came in and you had grown a beard I think. You kind of walked into my office down there and said, "I just quit."

DH: I hadn't grown a beard yet.

ED: Had you not? My recollection you were...

DH: If it is I don't remember.

ED: You were looking kind of scruffy.

DH: I probably was looking scruffy. I felt like it. But I decided it was the thing to do: retire. I checked with Bob Dudley to make sure—he'd taken over my job on the retirement committee and you had to be qualified, of course, to draw your check. Well, I didn't have any money in savings or anything. I knew I was eligible to retire but, being skeptical of state government and government agencies in particular, I wanted to make sure I was going to get a check. When George Rose retired Dudley had his check personally delivered to him. I knew Dudley probably wouldn't deliver my check personally to me. But I did want to make sure his committee approved it. And he was on the committee and Gayle Ford and some other people were there and I had my time in. I had two months to spare when I was eligible to retire. So I went down to ol' Bob and said, "I don't want you to say anything to anybody else." So we went into conference and it was the middle of February and I was worn out. Just worn out from all this and I think I had a long criminal case there. In our Friday conference...I can't say enough about how good the procedure was on the Supreme Court. How simple it was. On Friday we took care of all of our decisions. Then we passed them around. If there was any administrative business about the library or anything it came up. Then it went around and we had a rule that you didn't interrupt someone when they talked because you'd get to talking about a case and somebody would say, "You'll have to wait your turn." Some of them got a little long-

winded, but you still had to wait. We got around to the end of the Friday conference and went around the room to see if anyone had anything to say. And it got around to me and I said, “I quit.” [Laughs.] I had passed a note to my friend, Steele Hays, who was my chum at that time on the court. “I quit.” This was before that. Well, they didn’t quite know what to make of it, you know. I told them, “I’m going to retire. At the end of the month I’m out of here.” Well, there was no retirement party for Darrell. He’s not the kind of guy, the lovable guy, that people give these plaques to. Well, Jack Holt, who is somewhat of a prankster...I had written this opinion a couple of weeks before ridiculing again, for the second time, this required C.L.E. (Continuing Legal Education). When they first came up with that idea it was called Mandatory Legal Education. They were going to make everybody go in and take so many hours. And Tom Butt and I...Tom Butt was a chancellor up there in Fayetteville...Tom usually objected to most things that were new and we were simpatico on that. And so I quoted Tom about what this would amount to. Just a bunch of lawyers would get everyone together and make these long and boring lectures and nobody’s was going to learn anything and so forth and so on. Anyway, I had all this stuff lined up and I was having fun writing this dissent. I enjoyed it. Well, I knew at the time I was going to retire. So at the end of it I said something to the lawyers signaling that and I said, “May all of your camels have two humps.” [Laughs.] I had heard this silly phrase somewhere by some country and western singer somewhere and I thought that was the funniest thing I’d heard. What a delight! So I said at the bottom something about taking off on a Roy Rogers song. What was that Roy Rogers song that he sang all the time—“Happy Trails”?

ED: Something like that.

DH: I said, “Happy trials to all you lawyers and may all your camels have two humps.” And I was having fun writing that little dissent ridiculing the C.L.E. thing, which I think has turned out to be that sort of thing where they don’t take any tests. Many of them don’t even go or listen. Well, Jack Holt decided that his little closing ceremony—the last day I was there, as I recall, on Friday—would be a surprise. I came in and here we were not dressed for anything. I wasn’t dressed for anything. At the end of the thing somebody comes in the door and there’s a television camera coming in and somebody coming in

with a big cake with a camel with two humps on it and a palm tree on it. That's what they did to me. [Laughs.]

ED: That was your going away.

DH: And I told them, "I didn't think you guys were clever enough to pull off something like this!" It was a great joke. Great joke.

ED: I think you had gotten a mobile home or something. You were going to go out and go up and down...into Canada and down into Mexico and Sierra Nevada.

DH: Well, we were in the travel business. We were in the travel business. I don't remember the exact time...I've had five Airstreams and two mobile homes. Now I have a fifth wheel and we've camped out of our truck. Since we've been married this had been a thing that we've done. I had a little Airstream trailer at the time and my wife and youngest daughter went skiing in Colorado and I had the two dogs and I've got a picture of them right here.

ED: Is this it?

DH: No, that's another story there. But I had it right here. I went down to Big Bend, Texas. I got in the Airstream and took the dogs down to Big Bend, Texas. I don't know what I did with that thing. Two little old schnauzers. No, I don't see it. I laid it up here somewhere. Huh. I had it sitting there but I knew it was going to be getting in the way. I don't see it. Well, anyway, I went down there and I still didn't know whether I was going to get my check or not. You know, I am a believer in...When they put it in your hand then you've got it. Well, I did get my check and so I started traveling then. Kerry and I started traveling regularly and we sold everything two years later. She was working at Harding College. We had a daughter in school out there and we didn't have any government loans and I had to ride the public employees' van three years to keep her in school with ol' Lu Hardin, the old man. So we took off and sold everything and got a motor home. Gave all the furniture to kids. I didn't owe anyone any money. Sold our house and we took off to Alaska and lasted seven weeks and came back. [Laughs.]

ED: My recollection was you were just going to float with the seasons and travel down through the Sierra Nevada and down into Mexico...

DH: That's right. We were going to spend two years on the road.

ED: ...And when it got warm again you'd go back up into Canada.

DH: That's right. That's what we were going to do. And she told me if I got her a mobile home (she didn't like those trailers very much) she'd go to Alaska with me. So that's why I bought that motor home. One of the worst experiences of my life.

ED: Well, then you got motorcycles and you'd been going out traveling all over the country...

DH: Yes. I do that on my own. My friend Garry Brewer and I traveled on motorcycles. Sometimes we'd haul them on a trailer and sometimes we'd ride them. I still do that. I was going to go to New Mexico recently. I usually go before Memorial Day, ahead of the tourists, and after Labor Day. And I go out West and go fishing and take one of my motorcycles and ride around and camp out. That's usually about a ten-day trip. Then, of course, my wife and I travel. We've got a little fifth wheel now and we travel with our dogs. We went to Canada and spent the hottest part of the summer... We went up there in July and August and we spent five weeks. And we're going to go to Florida at Christmas and then we're going to drive out to Tucson and spend about a month out there in January.

ED: But you were going to New Mexico but...

DH: Well, I had a place... I put off my trip after September and I thought I could squeeze it in. They had a gun show out there in Tulsa and I thought, "I'll stop off there and go to that show and then I'll drive on out to New Mexico." I've got a trailer that is custom built for motorcycles and I camp out of it. It'll haul two big motorcycles but I just took my trail bike. I've got a camping outfit in it and I've got plug-in and everything if I want to use it. But I enjoy camping out. When I got out there to Tulsa I was going to leave the next day, last weekend, and in Raton, New Mexico, which is where I was going, it was eight degrees at night and it wasn't going to get much above fifty during the days. So I cancelled it. So I'm not going to get to go on that.

ED: Well, after you left the court that wasn't the end of your judging.

DH: No.

ED: You didn't practice any law much after that. But you got assignments—special judge and then...

DH: The way that... Let's see...

ED: You had a couple spells as...

DH: No, the way that happened is, I wasn't going to practice law and I wasn't going to have anything to do with being a judge and so I let my C.L.E. lapse, so to speak. You know, you didn't have to have an active license. So I wasn't going to go to all these seminars. It wasn't very many: twelve hours a year. I didn't want anything to do with it. So I didn't go to any of those things and we were up here in this old house in Pangburn and we'd been up at the farm. I had a cabin up there and we'd been living out of that motor home and I was down here fixing this house up so we could live in it. It was on the ground and all gutted and everything and my wife was doing a lot of the work. Cecil Tedder died and that was in September of...

ED: 2000 or so?

DH: '92.

ED: '92? OK.

DH: I think so.

ED: Yeah.

DH: Let's see. Yeah. September of '92. OK. Well, the bar came up here and they were virtually unanimous that they wanted me to take that circuit court job. Well, I'd been out of the business and I was rested up and I'd never been a circuit judge. I would have liked to have been a circuit judge. It was a much better job in many respects than being a chancellor—working with a jury and not having to fool with those cases. So I told them, "OK." At that time, Bill Clinton was running for president and he hadn't been governor. Instead, Jim Guy Tucker was acting governor. I don't know whether ol' Bill would have appointed me or not. I was not on his A-list at that point. But, anyway, they all went to him and Mike Beebe wanted me.

ED: He was the state senator.

DH: That's right. And he was the man. He was the man that had the power to get things done by that time and they wanted me because there were some people (one or two people) who just weren't qualified, they didn't think, and the bar didn't want them and they knew I wouldn't run again. They knew I wasn't interested in being in competition, wouldn't run again, and probably had the experience to handle this thing right off the bat. So I told them I'd do it and I was appointed and I went to work immediately as a trial judge and it was the best legal experience that I had.

ED: How long did you do that?

DH: Two years and three months. And I enjoyed trying those jury trials. I made those lawyers try them. They would try to come in there and put them off. No! We're going to try this case. I wanted to enjoy the experience of being a circuit judge and so we started trying cases and I think in the two years we tried about thirty-six cases. Had some pretty interesting cases and I enjoyed it. I did some criminal work down in De Valls Bluff. We had three judges: Jim Hannah, who's now the chief justice of the Supreme Court, and we had Robert Edwards—he was the juvenile and criminal judge—and I was the circuit judge who handled all civil matters and appeals. We were all friends. We went out drinking coffee every day or two and we had a lot of fun, just the three of us, because judges can't talk to lawyers and other people the way they can among themselves. It's a very pleasing thing when you've got people in your business, in your profession, that you can talk to. That was a good two years of my life. And so I was very satisfied and happy and Jim Guy didn't have any hesitation at that point.

ED: And then about 2000 or 2001 you got appointed again.

DH: Yeah. Then I started taking appointments. After I had been a circuit judge I thought, "Well, I've got a taste for this thing. I can handle either kinds of cases—circuit cases or chancery cases. I can use the money." It didn't pay much, about a hundred dollars a day. But I enjoyed doing it and I thought, "I believe I want to do some of this." So I started taking assignments. I did some circuit court work and some chancery work for a couple of years and enjoyed most of it, although I found out that I got what we call "dog cases." These are cases the judge doesn't want. Somebody's messed it up, it's a can of worms, the people despise each other, the lawyers are no good. All of the reasons you don't want to get involved in a case—that's the case they give out for assignments. So you're a fireman. You're going down there to put out a fire. Well, I didn't really mind doing that. They'd give me a court reporter and I could go down there. I had a lot of experience and I was rather enjoying it, you know. I had been on the Supreme Court. I had been a chancery judge. I had been a circuit judge. And I enjoyed it. The first thing I did when I got appointed...I wasn't fresh on the rules of evidence in the sense of the trial work. I wasn't acquainted with them that much. I hadn't been in a trial court in a long time. So Robert Edwards and I went down to Key West to an evidence seminar and I learned the

rules of evidence so that I could make quick, good decisions. I enjoyed that—the mechanics of it. Of deciding yes/no and telling the lawyers, “The reason that’s not admissible is this...” I enjoyed that. A friend of mine was a trial judge in another county. He didn’t know much about the rules of evidence. And several times he’d call me during a trial and say, “I’ve got this case out here and how am I supposed to rule in this situation?” [Laughs.] And I tell him, “Well, that’s admissible,” or, “That’s not admissible.” He’d say, “Thank you,” and then he’d go back and rule. So it was a thoroughly enjoyable experience and I made a little money and I needed a little money at that time. I never had any money. We could use it, you know. But then I realized that on an assignment later on I made a mistake. I didn’t have a secretary or anything and I was supposed to have a little hearing between two lawyers and I missed it. That really bothered me. They didn’t seem too upset with me but I called and apologized and I realized, no, I’m not going to do this anymore. I’ve never had that happen before and I’m not going to do it. However much I may enjoy it, it doesn’t need me. I’m slipping a little bit and if I’m not going to be full-time I don’t need to fool with it. These are things you need to do. So I decided not to do any more of that. So I didn’t do anything at all...I don’t think I had anything to do with the law during that period of time. Of course, I had to go back to C.L.E. when I got appointed to Cecil Tedder’s job. I had to do twenty-four or thirty-six hours of C.L.E. Well, John Stroud was tickled to death. He’d been a good friend of mine and when he heard Hickman had to go back and suffer through twenty-four or thirty-six hours of C.L.E. that he’d griped about he was delighted and he thought that I had failed to do it through negligence. I told him, “No, John! This is my own stupid act.” But the Sam Laser rule kicked in at about this time and you didn’t have to take C.L.E. Tom Glaze was on the court when we adopted C.L.E., which requires lawyers to put in twelve hours every year of legal education. I thought it was a meaningless thing. They do it at conferences. The way the judges got theirs they had two judicial conferences a year and they got six hours for each one. They didn’t even have to pay for it, you know. So it was a farce to me. But, anyway, I enjoyed going through this thing. Here again, they had a special seminar set up where these lawyers, who were hot-shot lawyers in all these fields...you could go to their session and get caught up and learn about everything. So I did that. I went to the Arkansas Bar one year and they had about

twelve hours to offer. So I got caught up. Well, by then, the Sam Laser rule came along. When the rule came up to make lawyers go to school...Sam Laser was one of the best civil trial lawyers in the state and his son-in-law was Tom Glaze, who was on the Supreme Court. Well, Sam Laser said, "I'm not going to do it. I'm not going to go to C.L.E. I'm not going to have some lawyer come up there and tell me about civil cases that I've been trying for forty years and that I know in and out. I'm not going to do it." Well, Tom brought this up with the Supreme Court and they adopted a rule that after forty years you didn't have to go, and that was Sam Laser's rule. So after forty years of having your license you didn't have to go. So I didn't have to go back to C.L.E. after that.

ED: Oh, OK.

DH: So somewhere along in there I qualified.

ED: So...But then by 2001 or so Governor Huckabee appointed you for...

DH: Jim Hannah decided if Darrell Hickman can get elected to the Supreme Court...Ol' Jim, he'd been chancellor down there for over twenty years, probably twenty-two years, and Jim decided that there was a vacancy on the Supreme Court and he was going to run for it. Well, Jim's a very laid-back guy and he's quiet in many ways. He's not now but he was then and has the appearance of being shy, although that's deceptive. He's really not that shy. So he decided to run.

ED: Took Dub Arnold's place as chief justice I think.

DH: No.

ED: No? Not Dub Arnold?

DH: No. No. That's later when he ran for chief.

ED: Oh, it's later when he runs for chief. OK.

DH: So they needed another judge. Well, I had just rebuilt a house here in Pangburn for my daughter, my youngest daughter, and spent a lot of money on it and signed a note. I was going to let her use it. She had a little florist shop over here next to us and she and my wife were in that business and I was going let her take over that note and everything. You know how dealings are with your own children. They're sometimes disasters. Somehow or other that didn't work out and I was stuck with that house and with trying to sell it. So I could use a little money and they came to me this time. Well, it wasn't quite as good a deal as it had been with the circuit judge. They came to me and said they wanted it but

there was another lady down there, a Searcy lawyer, who wanted it too. She wanted the job. Well, they didn't want her. But she had a few more votes for her than they did the first time, and if I had known we were going to have a little Bar election about whether I was to get the thing I would have never agreed to it. Anyway, I had to suffer through that. Yes, they decided—most of them—that they wanted me to be the judge. Well, then they got into the political thing. There was a Republican lawyer down there who wanted the job and Huckabee was the governor and this person had been in law practice with Odell.

ED: Odell Pollard.

DH: Yeah. Who had been chairman of the Republican Party. Then I realized, "Well, they're going to have to do some politicking because Huckabee doesn't know me and I'm not a Republican." I had been a Democrat and always ran as a Democrat. I had all these Republican friends, though, because it's kind of a stronghold, you know, with Dwane Treat, who was the local chairman, and Renie Rutledge and these people. So they went down there and talked to Huckabee. And Beebe went to bat. Beebe was very influential with Huckabee. He had been over there in the Senate and they got along.

ED: Helped him pass the ArKids First law...

DH: Helped him pass the law.

ED: Helped him pass...Huckabee's biggest legislative successes were owed to Mike Beebe.

DH: Beebe went down there and said, "We want Hickman." He told me, "I don't know whether he'll appoint you or not." Well, he did. I think Dwane Treat went down there and told him, "He'll never disappoint you and you'll never have to worry about it." Well, the lawyers and these other people felt this other person was not qualified. But I didn't want to get into that kind of deal. I did nothing—it was all done by these other people. But I was into it and then after being on the bench four days I realized, "You've probably made a serious mistake, Hickman. This new generation of people out here that we have created is totally alien to you. They don't get married anymore. They have children. They have all of these things going on in their lives. They have twenty-five thousand dollars on credit cards. They've got problems that you're not aware of." So I was into it. Here I am again. I had been an old chancellor. I knew how to do it. But I was dealing with a new crowd.

ED: New crowd of lawyers, too, I guess.

DH: Say again?

ED: New crowd of lawyers as well.

DH: Oh, yes. Yes. I'm sure by the time I left the chancery job the vote would not have been as strong for me to get the job as it was because when you get involved in custody cases and everything and you start making those rulings people don't like them. We had a little situation up here where we were having these custody cases and some lawyers were making pretty big money on them and I came down on them. I thought that they were promoting these kinds of cases to make money and I had a requirement that you had to have arbitration. I mean, I want these people to go to someone outside the lawyers and see if they can settle this thing before we go to trial. So I did that in a custody case. I don't think it ever succeeded. We had one lawyer who told his clients, "Don't cooperate." Of course, he was making a lot of money out of them. But I had to deal with that and that was unfortunate. But I did deal with it. You had to make those decisions and they're tough and you're dealing with something that people are not going to be happy about. I had an election case that was interestingly almost...I don't know what you would call it, the word you would use...Almost like George Bush's election in Florida. We had a Republican and Democrat running for county clerk and the Democrat had won by a few votes by the count. Well, the county clerk didn't like the returns and she decided that she was going to order a recount and they threw some votes out and the Republican got in. Well the guy filed a lawsuit. We're talking about a handful of votes. We're not talking about very many of them. We're talking about a handful of votes. And they came in and they dropped that thing in my lap. Well, the coffee shop talk was that Hickman would probably get out of that case because it was pretty hot around here locally. They were going at it pretty heavy between the two parties. There wasn't any doubt about it. The clerk did not have the authority to call the recount. Only the candidate can do that, request it. They can put up money and ask for a recount. Well, Ed Bethune represented the Republican, and if they had not let her do that and put up the money for a recount they would have won the election. But they didn't do that. They decided to go with the case the way it was, with the clerk's recount. I ruled the clerk couldn't do it, which was the law. So the guy, this Democrat, got it. I got a letter from a former schoolteacher down at Beebe. I had gotten where I could write a pretty good opinion by then. I wrote my

opinion. I laid it out—exactly what the law said and you just can't do this. That's the way it is. You have to abide by this law. Of course, there was some feeling that this other person won, got more votes. Well, that's not the way we decide things. You have to decide it according to the law. So this guy wrote me from Beebe. "Let me introduce myself," he says. "I'm a former schoolteacher and I've got all these things. Well, how in the world can you do this, yeah, yeah, yeah..." He went on and on. Well, I sat down and it's the only letter I did not answer in the twenty-two years that I was a judge. I set down and I tried to think about...How do I reason with this person? The press fairly quoted what my decision was. I could send him a copy of this thing. This guy's not going to listen to that. That's not what he wants to hear. So I didn't answer him.

ED: Well, all right. I guess the lawyers...You found out there is a different breed of lawyers.

DH: Yeah, I knew most of them coming along. Watson Bell was in with Beebe, you know, and I'd known him. So I really knew these guys, although I didn't live in Searcy. I still up in Pangburn. But, yes, a different breed and with the judicial commission and all these other things you had a new breed that was quick to turn in the other side or cut them down. You had to protect yourself with a record and I got good at that and it really helped me out. I didn't do anything off the record. There wasn't any of this going on back there. I had a court reporter and it saved me in a couple of...[Dogs barking.]

ED: So the court reporter saved you?

DH: Yeah. I had a record there and there were two discipline cases I had with a lawyer and the record upheld me because I disciplined those lawyers. There it is. That was the rule, of course. You're not supposed to go off record. You can if the two lawyers agree and it's not a matter of substance. Not Darrell. I know what that record's for. If you want to go back there and drink coffee—fine. We're not going to talk about this case except on the record. There were judges all the time who wanted to go off the record and they shouldn't be off the record. So that saved me. I served on the Court Reporters Committee, which was another thing. We had this deal where we had all these what we called "groaners" out here who were court reporters. They were people who talk in a steno mask. They sound like they are groaning over there next to the bench, repeating everything that's said. We have no court reporter school for the stenograph in Arkansas. There are judges that are elected and they made their secretaries the court reporter. Well, they were not

qualified. They would get them some type of tape recorder and they'd get them a mask and they'd try to do it. Well, we finally got a board to regulate the court reporters. But they grandfathered everybody in and you still had that going on. Well, that was kind of a mess so the chief asked me to go down there and straighten it out. They were doing some things that were not proper. They were having some problems with the court reporters. So I went down there and served on that committee about a year. To give you an example of that, they had a test. They gave a written test for the court reporters and they gave a typing and stenographic test where you had to type up a transcript from something. Well, all these reporters that had been grandfathered in, if they let their license lapse they had to take the test. We had two or three of them who hadn't paid their dues and they couldn't pass the test. You had this written test. Well, you get into a matter of judgment on the stenographic record. But they'd give them this test where you have to answer questions about what a reporter should do and so forth and this local reporter was on the board and he was pretty tough with the other reporters and very unpopular, I might add. He was a good court reporter but very arrogant and unpopular. So I went down there and I was having him grade these things. We were going to grade these tests. These people were going to flunk, you know, on this written test, and he says, "Well, we usually cut them a little slack." And I said, "What do you mean you 'cut them a little slack?' You mean you decide they passed the test when they failed it?" "Well, we just cut them a little slack." I said, "We're not going to cut them any slack anymore. Now, if the test is too hard and you want to change the test, that's one thing. But if we've got a test and they don't pass it, they're not going to get a license." So we straightened that out for a while and we had to have some hearings. I had some tearful court reporters in there, you know. Our rules were a little too rigid on getting your dues paid and so forth. So we straightened some of that out. Anyway, I didn't like this idea of "groaners" as court reporters. I had one of the best court reporters in the state—Merle Langston—and she was a stenographic reporter. I'd met this judge in Kentucky who had devised a system where the trial was videotaped and he had invented a microphone that had a switch on it that when a person who talking the camera switched to that person. He couldn't get a satisfactory court reporter so he did this and I decided we needed to do this in Arkansas... That we needed to go to this wire system, which is much more accurate than any other kind of reporting you have. You've

got some procedural problems with it on record. You can't go back and have everybody look at the whole videotape for the trial. Well, anyway, we had the guy down here and he presented it to the court. And Jack was on the court at that time and he went to the legislature and got a grant and we did a pilot study down at Randall Williams' courtroom in Pine Bluff. It's still there as far as I know. Probably let it run down. But the court reporters followed it [the new system] and they weren't going to do it and it's still a problem. This is nonsense that you didn't have a videotape of a trial and devise some kind of record, in my opinion. A lot of the federal courts do it and a lot of the states do it. But we didn't do it because of that [the court reporter's objections]. We also didn't get computers when I was there. We had a couple of judges who were computer experts that I'd run into out of the state and they came down here and made a presentation to the court. They were going to work with one of our judges and we were going to get our clerk's office up to date on electronic filing and records. Nothing came of that because the local judge wasn't up to handling it. They're probably doing something now.

ED: Yeah. They're doing a pretty good job up there.

DH: Yeah, see, we didn't do anything. None of that was done then. Yeah.

ED: All right. Have we covered everything?

DH: No, but we probably covered plenty. [Laughs.]

ED: [Laughs.] More than we ought to have probably.

DH: I just want to emphasize that I always felt like we had a superior judiciary in Arkansas and certainly a superior Supreme Court. The judges, by and large, in Arkansas are competent and honest and they get money but they don't get nearly enough. They're like policemen and schoolteachers. It's part of public service. I always figured if you had enough money to send a kid to a state school or buy a boat or a trailer you have enough money.

ED: That's all the money anybody needs.

DH: But they're not going to give you enough money to send a kid to Harvard and I don't know whether you deserve enough money to send a kid to Harvard. [Laughs.]

ED: Well, all right. We'll wrap it up with that then.

DH: Well, I'll probably regret everything I've said.

ED: Oh, I don't think so.

DH: [Laughs.]

ED: I don't think so.

[End of audio recording.]