

CENTER FOR FLORIDA HISTORY ORAL HISTORY PROGRAM

ORAL INTERVIEW WITH: Dan R. Warren. Esquire

INTERVIEWER: James M. Denham

PLACE OF INTERVIEW: Daytona Beach, Florida

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D= Dan Warren

M=Mike Denham

M: Today is May 26, 2010, and I'm with Dan Warren and we're here to discuss his activities and his career in the Middle District of Florida as an attorney and also as a prosecutor in the early 1960s. Mr. Warren, good morning.

D: Good morning.

M: I'm looking forward to getting your insights about how the Federal Middle District of Florida was created, particularly in the early years, but also your role in representing cases in that venue. Can you tell me a little bit about the first time you heard that there was this new federal district being created in the 1960s or did you even think about it at the time?

D: Yes, I did. During the '50s, when I first started practicing law in 1952, any case we had in the Federal District Court would have been in Jacksonville, because at that time, Volusia County was in the Northern District and the Middle District hadn't been created. There were three districts in Florida. There was one in Jacksonville, one in Tampa and one in Miami. But after the passage of the Safe Street and Crimes Act, during the Johnson Administration in 1968, and passage of the RICO Act [Racketeer Influenced and Corrupt Organizations Act], which vastly expanded federal criminal authority in the states, crime began to take off and the Middle District was created. George Young was the first judge in that Middle District, and the federal courthouse at that time was located in the post office in Orlando on the second floor. And the courtroom was there and the judge's chambers were there. So my first experience in the Federal District Court, in the Middle District, would have been in the old federal courthouse in Orlando.

M: When was the first time that you actually practiced before federal court and how different was that for you to learn your way around?

D: Well, I have to go back just a little bit because I was a World War II veteran. I had stayed in the Reserves in the Air Force, but I got out just before the Korean War broke out. But then I got back in the Reserves shortly after that conflict was over. And I was in the Ready Reserves in the Flamingo Wing down in Miami, Florida. And they had a program in the Air Force at that time to have reservists who were lawyers be admitted to the Supreme Court of the State of Florida. So in 1956, I flew up with a group of other Air

Force Reserve personnel. I was a tech sergeant at that time. And we were all admitted to the Supreme Court of the United States. And Chief Justice Earl Warren swore me in as a lawyer permitted to practice in the Supreme Court.

M: And that was in Miami?

D: No, that was in Washington.

M: Oh, you flew up to Washington, D.C. That must have been really exciting.

D: It really was. And the thing that really amazed me about Chief Justice Warren was the fact that -- we were introduced, by, I think, it was the Attorney General [Harmon?]. We were introduced to the court one at a time. The Chief Justice then stood up and recalled each name of the ones that would be admitted to the Supreme Court and welcomed them to the Supreme Court. And I was so impressed that he could do that from memory.

M: And of course, your name and his name, what a coincidence.

D: There were a whole slew of us that were being admitted that day. It wasn't just me.

M: How many were in the group that day?

D: I would say there were 15 or 16.

M: From Florida?

D: Well, from all over the country. The Air Force had a program of lawyers who were in the Reserves.

M: How many Florida people were there; do you remember?

D: I don't remember but there were maybe five or six from our area.

M: So that was in 1952?

D: '56. But there wasn't really that much difference, getting back to your question. There really wasn't that much difference between practicing in the federal courts and the state courts, although you really got a much better trial in the Federal District Court than you did the state courts. And other than the Procedural Rules of Evidence, they were virtually the same with differentiates and variations, nuances between the Rules of Criminal and Civil Procedure in the state than those in the federal court. But it wasn't much of a change. One nice thing about our judicial system, it's all based upon the Anglo-Saxon common law, and so most states, if you're familiar with the procedures other than local rules, you're pretty much at home in any court in the United States.

M: Even federal versus state?

D: Oh, yeah.

M: Now I would imagine that for a lawyer though, you had to become fully conversant

with the federal statutes and that would be a whole other dimension of preparation; would that be correct?

D: It would be. But, you know, just like researching any other, back then, we didn't have the Internet, so we had to do our research from books. But it took a great deal of research if you were in a complicated case. But other than that, I mean the precedents were pretty well --

M: So did you ever get a chance to practice in the Supreme Court.

D: I had one case I came close to it. I filed a Petition for Certiorari with the Supreme Court and they actually required briefs to be filed. But in the final analysis, they didn't accept my case. But that's the closest I ever came, although I filed a number of briefs there.

M: Can you remember the first time that you presented an argument or entered the Middle District or the Southern District before the Middle District and what that was like for you?

D: I have appeared in Federal District Court in Jacksonville, in Orlando and in Miami. The first case that I had in Jacksonville was a bank embezzlement case and it was a visiting retired federal court judge out of Philadelphia who came down and tried the case. And he was from the old school and I want to tell you, he was a terror in that courtroom. And in that case, I was representing the executive vice president of a bank in Ormond Beach in which he was charged with false entries and misapplication of bank funds. He was the loan officer. Had a hung jury. After a week's trial, had a hung jury in the case and we had to go back and try that again. But that was one of the first cases that I tried in the Federal District Court.

M: Do you remember the year of that?

D: I don't remember the year but I tried a number of cases in Orlando. The bulk of them would have been in Orlando or Jacksonville and one in Miami in which I represented the chief engineer of ITT Community Development Corporation, which was the big Palm Coast project. And he was charged, they sued him civilly for taking kickbacks and that case originated in Miami and it was subsequently removed to Orlando. And Judge George Young presided over that case. I had one civil rights case, a 1983 action, that I filed in the Middle District Court in Orlando. We won that one.

D: And then I had represented [Thompson Whirlpool & Rubber Company?]. Cape Kennedy was being developed into a space station, we sued a power engineering company out of Sioux City, Iowa for breach of contract involving the crawlway between the vertical assembly building and pad 39A. And that was a big lawsuit in the Middle District in Orlando. And that was presided over originally by Judge Young and then a retired judge from Missouri came in and actually tried the case.

D: Then I had one that I represented two defendants in the first RICO case that was filed in the federal courts in Florida in Jacksonville, with Judge [Gerald] Tjoflat, who was a federal judge at that time but later became an appellate court judge on the Fifth Circuit Court Of Appeals in New Orleans. So I tried that case with him. And then I had other drug cases that I've tried in Jacksonville. But the bulk of them would have been tried in

the Middle District either with Judge [John] Reed or with one of the other judges.

M: Well, I'd like to go back and talk about some of those reflections about those cases. What I'd like to do now is I'm trying to kind of keep in chronological order as best I can, if we go back to your time as county prosecutor --

D: Well, I was never county prosecutor. I was the state attorney.

M: State attorney, I'm sorry.

D: For the Florida Seventh Judicial Circuit.

M: Right, Seventh Judicial Circuit. And of course, your embroilment in the St. Augustine controversy and of course your wonderful book, *If It Takes All Summer*, thoroughly covers a lot of that ground in a wonderful way. First of all, what I'd like to do is ask you since the book's come out, is there anything relevant to the Middle District, Judge [John] Simpson or the pleas that you made in that court, that you have thought about that gosh, I wish I had put those in that book. Is there anything that you left out that you think would be relevant to a study of the Middle District?

D: Well, I'm sure that there are a number of things would be left out but I think that Judge Simpson should be a case study for anyone that wants to understand the position that a federal judge would be in dealing with the civil rights issues in the '60s. And one nice thing about the federal system is that appointments to the federal bench are for life and judges generally are free from any political pressure to render justice. And I think that that was the hallmark of Judge Simpson. I mean he was interested in only one thing and that was preserving the constitutional rights of individuals that appeared before him and especially under the First Amendment. And it really didn't make much difference to Judge Simpson whether he was ostracized by the community in Jacksonville or not but he was going to do justice in the case regardless of the consequences. And to me, that was his enduring legacy in the federal court was that he rendered justice without fear from any pressure group in St. Augustine or in the judicial system. And he was certainly subjected to it, I want to tell you. It was a monumental task but he is one of the great legal scholars I think in the history of Florida.

M: Can you run me briefly through the thinking on your part when you're faced with grappling with these issues, what was going through your mind when you first decided to go to the federal court in Jacksonville?

D: Well, I didn't go, I was really forced into the court in Jacksonville in a way that I really didn't anticipate. I had been appointed as the governor's personal representative in St. Augustine during the racial crisis in 1964 under a statute that had been passed by the legislature in Florida in 1955 that gave the governor extraordinary powers during times of civil strife to use extraordinary measures and the governor had called me up and appointed me as his personal envoy in St. Augustine. And I had no idea that he was going to do this but after it sunk in and the task that I had before me, I realized that there were only a couple of things you really can fall back on in times such as that and that is the values that you were taught as a child and I knew that segregation was wrong and I knew that SCLC [Southern Christian Leadership Conference] had a right to demonstrate and that we had a duty to protect them.

D: But the unintended consequences that would flow from that was an incident that occurred on the 19th of June of 1964, when the marchers had decided to march at night through the old section of St. Augustine. And the march route that they chose took them by the old slave quarters or park in the middle of St. Augustine where the Klan had gathered. And that night, there was a large number of Klansmen there and they had been brought to fever pitch by two racial agitators, Connie Lynch, so-called preacher from California, who was a master in stroking the racial hatred. And I knew that if the marchers were permitted to walk through that narrow straight between the park and where the church is in the old city of St. Augustine, that there wasn't anything that we could do to protect them. And I had told Sheriff L. O. Davis that I didn't want the marchers to be able to march on that street. They could march down Bay Street up to the old fort but I didn't want them to go back in the old section of St. Augustine because we couldn't protect them. Andy Young was there and he resisted. But we didn't allow them to march in the area that they said that they wanted to march. And that led to filing a petition by the SCLC in the Federal District Court in Jacksonville to hold the governor and the attorney general and the chief and everyone else in contempt for interfering with a ruling that Judge Simpson had previously entered a couple of days before that that permitted the marchers to march in St. Augustine at nighttime wherever they wanted to. And that's what got us into the Middle District.

M: So they actually went there for relief?

D: They went there for relief. Well, the governor had, I think it was either Florida Highway Patrol or Wildlife, they flew down a little Cessna 182 to pick me up. And we went up to Tallahassee and met with the governor and the attorney general and his advisors on how to defend the state and the governor in these contempt proceedings before Judge Simpson. And much to my amazement, the governor's advisors wanted him to use the old interdiction --

M: Interposition.

D: Interposition that John Calhoun had suggested back in 1828, had used that under the Tenth Amendment of the State's right to defeat the federal court. So that was the issue.

M: That was their scheme and did they direct you to use that theory?

D: I objected to it. I said, Listen, I thought when the South lost the Civil War, it put that issue to rest and you're not going to win, you're not going to be able to defend yourself on that issue. You've got a perfectly legitimate issue to present to the federal court that I don't think that he will acknowledge and that is that -- and the way I put it when I testified before Judge Simpson, I said, Judge, I don't care whether you call out the 101st Airborne or you call out every marshal at your disposal, I said the marchers are marching through the old city of St. Augustine and there are young children in the march and we don't have a person to protect them and I don't want the blood of any of these children on my hands. And that was the thing that convinced him, not the issue, the injunction. The day after it was over with, Andy Young stopped me in the hallway and said, Mr. Warren, you killed us because that was the one thing we couldn't justify. And it really boiled down to the fact that we had used every available source at our command to protect them but under the circumstances, as was proven when John F. Kennedy was shot in broad daylight in Dallas, Texas, that the combined power of the federal

government and the State of Texas couldn't defend him in one of America's major cities in broad daylight from being assassinated.

M: Now I'm trying to remember the chronology here, President Kennedy had been assassinated within a year of this; correct?

D: He had been assassinated in November of 1963 and this occurred in June. So seven months later. So it was fresh in everybody's mind of what one person with a rifle can do in broad daylight. Not to mention the fact that they could do it in nighttime where there's dimly lit streets and alleyways, there was no way in the world that we could protect them.

M: Now, if we go back to Governor Farris Bryant's office and those conversations, did they mention that these are the strategies being used in Alabama and Arkansas and --

D: No. That never came up. There was never any consolidated effort here. I think that this was sort of a -- we had a little bit of a political ploy to it.

M: That's what I wanted to ask you.

D: Because the issue was really the state's rights and if you go back and look what just recently happened in Kentucky, where Ron Paul says that perhaps he doesn't agree with the Civil Rights Bill because it invades private property, if you go back and look in the '60s, you will find out that that was the same cry that southern segregationists used to try to defeat passage of the Civil Rights Bill. He was an avowed segregationist but I mean he followed the line that most southern politicians followed during that period of time.

M: Governor Bryant?

D: I liked Bryant. I had worked for him in '56 when he first ran against [Leroy] Collins -- and I worked for him again in 1960 when he was elected.

M: Did you campaign for him in '70 when he ran for the senate?

D: No, I didn't campaign for him. He had had a meeting over in Tampa and he had invited all of his former appointees to join with him over there, but I didn't go. I kind of opted out of politics during that time. I was very busy. I had a large family and I had my hands full earning a living and making sure that their education was taken care of.

M: If we go back to Judge Simpson, he was promoted out of the Middle District --

D: Yes, he was.

M: In '66?

D: Something like that.

M: Now, did you have any other cases before he was promoted out with him?

D: Not with him. I had other cases, [William] McRae for example, Judge McRae.

M: Yeah, I'd like to talk about him a little bit, soon.

D: I had cases with McRae, and as I said, we -- and Judge [George] Carr, I think it was Carr from Lakeland, or something like that, I had a case with him. And Judge Tuttle was on the Fifth Circuit Court of Appeals, but his office was in Jacksonville in the same building that we grew up using the library, and if you wanted to borrow a book, take a book out or anything like that, you had to get Tuttle's approval to take it out.

D: But you know, at that time, going back to the '60s, there was a different atmosphere that prevailed among lawyers and judges. It wasn't unusual if you were in Jacksonville to walk into one of the judge's chambers and tell the secretary who you were and you'd just like to pay your respects to the judge. And you would be ushered into his office and you would sit down and chat with him. No business but just paying your respects. And we used to do that quite often. Judge, I'm just up here on some other matters and I thought I'd come by and say hello and see how you were doing. But you can't do that anymore.

M: Well, obviously, we're going to look at all that security stuff a little bit later. Can you give me a, I guess beginning in '64 was the first time you came before federal court, correct?

D: No, I had a civil case before that with Ike Adams in the '50s before Judge Simpson.

M: And that would have been in the Southern District?

D: No, that would have been in Jacksonville.

M: Which was the Northern District, correct?

D: Northern District, right. You had the Northern, Middle and Southern.

M: Right.

D: But the middle district at that time didn't take in Volusia County. The Middle District was in Jacksonville. And then when case loads began to shift from Jacksonville to Orlando, they took out Volusia and put it in the Middle. But the Middle District was actually in Tampa is where the main office was. That's where the United States Attorney was for the Middle District. He lived in Tampa. Florida, if you go back and look at the statistics population-wise, it wasn't until the late '60s that the population in Florida began to really take off. When I first came here, there were about three million people living in Florida, and today, we have, what, eighteen million that live here? But until we got air-conditioning in, air-conditioning in the summertime, it was almost unbearable.

M: Things probably almost shutdown.

D: Yeah, no question about it. People went to the mountains or wherever. But when the air-conditioning began to come in and people wanted to get away and the economy began to pick up and people wanted to get away from the cold in the north, that's when they began to come to Florida primarily in the wintertime. That's when crime began to pick up.

M: Everybody says post World War II. But really it's late '50s.

D: When it really became standard for homes that were being built, it would be in the late '60s. And that's when population began to explode in Florida.

M: Now, when was the last case that you tried in the Middle District Court; do you remember the most recent?

D: Nashville, Tennessee. That would have been about, well, I'm 84 now, that would have been about ten years ago, I tried a big drug case up there in Nashville, Tennessee.

M: Now, did that emanate out of Florida?

D: Out of Miami. Well, Miami, Key West.

M: Before we move on to some of the other judges, can you tell us any other interactions you might have had with Judge Simpson since '64?

D: I guess I argued the last case that he ever sat on in the 11th Circuit Court of Appeals. It used to be that a panel, and still is, of the 11th Circuit Court of Appeals would come to the population centers like Jacksonville, and a three-judge panel would sit in Jacksonville rather than in the . . . Court of Appeals in Atlanta. And I had a case before Judge Simpson, he was on the panel. And I never will forget this as long as I live, it was a criminal case, and the Assistant United States Attorney was the one that had tried the case in Orlando and I had taken an appeal. And they had sort of a make-shift courtroom where the panel sat at that time in the old courthouse in Jacksonville. And the judges had to come from the hallway into the courtroom and then walk past the attorneys and then get up on a dais. And as they entered, Judge Simpson was the last judge to come in, and he saw me sitting at the table for the defendant/appellant. And he stopped and came over and shook my hand, which the Assistant United States Attorney was flabbergasted. Just before the oral arguments started, we greeted each other like old friends. He looked at me and said, What's that all about, and I said I'll tell you later. But he died before the panel could render a decision in that case. That's got to be the last case that he ever did as an appellant court judge.

M: Do you happen to remember what year that was?

D: I can find out when he died. I'm sure when --

M: Well, that would be easy for me to check. I don't want you to have to worry about it.

D: But the incident was so funny that, you know, the United States Attorney, didn't know what the hell, he didn't know of our prior appearances before Judge Simpson. I had known Simpson, Billy Judge, who was my law partner after I left the State Attorney's Office, was a good friend with Simpson, they were good friends.

M: What I want to do is maybe go through some of the other judges, but before we do that, can you talk a little bit about the prosecutors that you have known, a little bit about them, that you can recall the memory of --

D: Well, I tried this bank embezzlement case that I was telling you about.

M: Try to stay chronological, I guess, as we go along here.

D: With Joe Hatchett. Joe Hatchett was an Assistant United States Attorney at that time. And Joe was a good trial lawyer. So I tried that case with him in Jacksonville with the visiting judge from Philadelphia. And then with Judge Carr, I tried another case, I never will forget this one as long as I live. I had just made my final closing argument and the jury was out and I got word that my oldest son had been killed in Honduras. And I just went to pieces. And Judge Carr was so nice to me, you know, trying to console me and so forth. But I remember that incident just like it was yesterday.

D: And then with Judge Tjoflat, that was the first RICO case and that would have been in the '70s. And that case was one of the biggest cases that I was involved in. I represented two defendants at that time. Then the ones in Orlando, I had a civil rights case, I had the case Thompson Whirlpool and Rubber Company and I had a number of criminal cases that I tried.

M: Of course those were all defense; can you remember the prosecutors, did they send in -- were there assistants --

D: Yeah, they were career prosecutors. You found that in the federal system that you got a uniform. Of course, they had guidelines that they had to follow and their decisions were pretty well made by higher ups in --

M: Insofar as how they're going to prosecute the case and --

D: Yeah, it was more uniform than in the state system. But it was very difficult to defend those cases because in the federal courts, conviction ratios in drug cases were 95 percent, so you very seldom could win a case in the federal courts based upon, you know, some Motion to Suppress or things like that. They were well prepared and even there were trial notebooks. They had all the latest cases and they were just, you know, it was a big, big change between federal prosecutors and state prosecutors.

M: Now, the federal prosecutor, there would be one in the Middle District, one for the Southern District?

D: No, there were more than that. These would be Assistant U.S. Attorneys.

M: Right, assistants, but I mean the head guy. The head guy would be political. Can you run through some of those that you remember? Did you ever have any interaction with them?

D: No, very seldom did you deal with the U.S. Attorney.

M: Did they ever practice in court really or appear in court?

D: I don't think that I ever had a United States Attorney in a case that I ever had. They were all handled by the assistants.

M: Now, I know it would have been, I guess as a person who understands both the law

and politics, can you remember appointees that you thought, wow, that's a surprise, that's somebody that probably doesn't deserve to be appointed, or he must be the senator's friend or something like that, as far as prosecutors go?

D: Well, as far as U.S. Attorneys go, the U. S. senators of the state had virtual control of that. They were the ones that determined who the U.S. Attorney was going to be and --

M: Same for the judges?

D: Same for the judges. And then, of course, the president would appoint the federal judges. They had to be confirmed by the House. So those cases were strictly along the political lines. But I very seldom had interaction with the U.S. Attorney.

M: I guess though, as a person who is practicing in the court and also an astute person who understands politics and the dynamics of federal politics, are there any U.S. Attorneys that you remember, oh, my goodness, I can't believe this person or you just never even thought about it?

D: No, I wouldn't have entertained that thought. I mean, I knew that the process was political and that the person who held the job would be a political appointee. But most of these United States Attorneys were highly competent individuals. And the Assistant U.S. Attorneys were career prosecutors. So they worked in the highest ethical standards. I have a high regard for the federal courts.

M: Did any of the assistants ever make it, in your memory, to the U.S. Attorney level?

D: No, but Joe Hatchett made it to the federal bench, and he invited me, every time he got appointed, he was a Justice Of The Supreme Court of Florida, and they have, you know, the robing ceremonies. He always gave me an invitation to come to those ceremonies. I always went. But I can't remember any other individual in the U.S. Attorney's Office that went up the ladder so to speak.

M: Did you ever have any interaction with Fred Merkle?

D: Yes, I had some very personal interactions with him.

M: I mean he was the U.S. Attorney for the Middle District, correct?

D: Oh, Merkle?

M: Yeah.

D: I thought you were talking about --

M: No, no. Merkle.

D: No, I didn't have any interactions with him. Did with Judge [William] Mehrrens in Miami.

M: Okay. Can you --

D: In fact, there was a very famous case, not famous, but it is for me, where he was overturned by the Fifth Circuit Court of Appeal.

M: And so his name was again?

D: Merthens, M-E-H-R-T-E-N-S. Federal Judge.

M: Can you remember practicing before Judge McRae?

D: Yes, I can. I had a very important case with McRae, I remember it vividly. He was a good judge. I liked Judge McRae.

M: Judge William McRae.

D: William McRae.

M: What about Judge Melton?

D: Never had a case before Judge Melton as a federal court judge, but he was the state court, circuit judge, during the St. Augustine racial crisis. And he is a real, real excellent, one of the finest judges we ever had in Florida. The FBI, when they were investigating him for federal judge, they said he was the only judge they ever run into that they couldn't find any negative thing about him.

M: And that was Judge Howell Melton?

D: Howell Melton. He was a tremendous, tremendous circuit judge.

M: Okay. Judge Ben Krentzman?

D: No, I never had anything with him.

M: Did you ever practice before Judge Joseph Lee?

D: Never had any cases with him. Judge Reed? John A. Reed. Excellent lawyer. Excellent judge. I really hated to see him leave the bench. In fact, I wrote him a letter when he left.

M: In 1977, President Carter appointed George Carr to the bench. Can you tell us a little bit about him besides the incident that you mentioned before about --

D: Well, that was the only case I had with him. And that was in '78.

M: So that was the only real memory you have of --

D: Only real memory, but he was really, really a fine man. He gave you an excellent trial. You can tell. You know after you have been practicing law as long as I have, you know when a judge is fair and impartial and I mean it's no big secret. But he was a very fair person. By and large, I found most federal judges, some of them could be a little overbearing but by and large, when it came right down to the legal issues that were involved, you got a fair hearing and I think they rendered the best decision that they

possibly could with the exception of maybe one judge that I recall. I enjoyed practicing in the Federal District Court.

M: Can you remember Judge William Castagna?

D: Never had any cases with him. I know who you're talking about.

M: What about John Moore, a Reagan appointee?

D: No, I never had anything with him.

M: Okay. Judge Kendall Sharp?

D: Oh, yeah. I had a lot of cases with Sharp. He was a good judge. I had a number of cases with him.

M: Who was the first woman judge that you remember in the Middle District Court?

D: It's funny that you should ask that question. I was just trying to think of her name because I had two cases with her.

M: Would it be Susan Black?

D: Name another one.

M: Susan Bucklew?

D: No.

M: Ann Conway?

D: Ann Conway, yes. I had a couple of cases with her.

M: Would she be the first woman?

D: She would have been the first, yeah.

M: Do you know about her background?

D: No, I don't. I don't know anything about her background but she was a good judge. I had one case with her in which there was a hung jury and we were waiting for the jury to come back and the marshal came out and there was all this disturbance. I couldn't understand what was going on. Apparently, one of the jurors had locked herself in the women's restroom and wasn't going to come out because she was being harassed by the other members of the jury to return a verdict that she was against. And she had sent word to the judge to rescue her out of the restroom. I had never had a case like that before. The judge declared a mistrial. We had to try that case over again. Judge Conway. That was the funniest incident that I ever had. Bailiff comes in and says, Your Honor, one of the jurors has locked herself in the restroom and won't come out. That's what you really call a hung jury.

M: Well, that brings me to another subject, which I didn't anticipate and that is juries. I will hang on that thought just a second. I want to continue with your reflections of judges. Judge Young, your memories of Judge Young?

D: Great judge.

M: Judge George C. Young.

D: George C. Young, correct. Fact is, before he was appointed to the federal bench, I had had a case with him as a private lawyer. He was out of Jacksonville. And his mother is buried here in Daytona Beach in the cemetery, in one of the older cemeteries. I had a case involving the cemetery owner and I know Judge Young was quite upset over what was going on at that cemetery because his mother was buried there. But he was a really, really good judge.

M: Is he from Orlando?

D: No, I think he was from Jacksonville. I'm just not sure, but I know that before he went on the bench, that he was with a large law firm in Jacksonville. We had a case together. But he was a delightful person. And he was so down to earth. When I'd go to the Federal District Court, they had a little cafeteria, I think it's on the fifth floor, or maybe the third, something like that, and I would go down there and get coffee or have lunch or something like that, and Judge Young would come in and get in the line just like everybody else and have his lunch and whatever. He was the first judge over in the Middle District. And he sat in the old courthouse that I was telling you about, federal courthouse in the post office.

M: Did you ever go in that place?

D: Oh, yeah, I tried a number of cases there. I tried one case involving the power engineering company. That case was tried there. I tried another case there, as a matter of fact, I've tried two or three cases there in that courtroom.

M: We mentioned Gerald Tjoflat, is that how you pronounce it?

D: Tjoflat.

M: Did you ever try any cases before him?

D: No, but he sat on that Fifth Circuit Court of Appeals case that reversed Mehrtens. He was the chief judge on that. And he presided over the first RICO case that the United States Attorney filed in Florida. That was in the early '70s. See RICO, the RICO statute was passed I think in 1972. The RICO statute really changed the way we think about criminal law. It had gotten to the point where you couldn't try individuals for each one of the crimes that they may have committed and give them a due process hearing. I remember my frustration as State Attorney with how crime was escalating in Florida and this idea of every single act of a crime spree had to be tried due process.

M: Individualized with each individual?

D: Yeah, individualized. And it was becoming more and more apparent to me at that

time that something had to give in the criminal justice system. So I had been asked to speak to the Halifax Civic Organization in 1967. I was then president of the Florida Prosecuting Attorneys Association. And they were going to make an award of a law enforcement officer who could achieve the greatest success in the criminal law. And they asked me to choose someone and I did. I chose a young detective from Deland that had solved a case that I thought was very unique. And they asked me to be the principle speaker at their first meeting. And I chose a topic that we had to change the criminal law to deal with crime sprees and we had to think about law in a different way. And I gave them an example of one case that I had in which a guy got on a crime spree in Florida, in Georgia and Tennessee, there were some 32 felony cases, and how long it would take for each one of those cases to be resolved.

D: Well, low and behold, I guess the Justice Department was thinking along those same lines because RICO came out and changed the concept of how we deal with crime sprees like that and the creativeness idea of criminal enterprise. And they also changed the concept of how you join a criminal conspiracy. At the time, you had to commit an overt act in the furtherance of the criminal conspiracy. But under RICO, all you had to do was join the conspiracy, and then every act that the conspirators committed whether you were involved in it or had any knowledge of it or not, it was attributed to you. So when I did the first RICO case, I was representing two gamblers who were gambling on football. And they were caught up in this massive criminal conspiracy that was being operated out of Tampa and Orlando that included prostitution and drugs and all different sorts of criminal activity. And they were co-conspirators.

M: So they were actually brought under the whole net --

D: Right. And they couldn't understand how they were involved in a conspiracy to commit prostitution when they were taking bets on football games. And that's all they were involved in. They were incensed that they were thrown in with this drug crowd and all sordid aspects of criminal activity around the state and they were just out to take bets on football games.

M: So how many co-conspirators were there named in this?

D: I think there were 13 named, Harlan Blackburn, and Harlan Blackburn was -- we call him the Colonel from Orlando. And he had this syndicate that really was operated by [Santo] Trafficante out of Tampa. And he ran Central Florida. Harlan Blackburn ran Central Florida.

M: I remember him, growing up.

D: The Colonel.

M: That would have been in the early '70s.

D: Early '70s, yeah.

M: So they're snagged in with Blackburn's group?

D: Blackburn's group.

M: Now, did each one of those co-defendants have an attorney representing them?

D: Yeah, they did.

M: So that would have been a trial that would have just been a morass.

D: Fact is we had pretrial hearings in Ocala where they have a federal courthouse and we had them in Jacksonville. But Tjoflat presided over that case. That was the first one.

M: Now, did you represent them in the court, in the court cases in Orlando?

D: Yeah. No, it was in Jacksonville and Ocala.

M: Walk me through the logistics of a case like that. There's an indictment, the 13 co-conspirators are listed in the indictment. So how does everybody get their time or how does the court decide?

D: You try them together.

M: So all 13 of them are there in the same room?

D: You try them together, yeah.

M: In the same room at the same time?

D: Oh, yeah.

M: How did you try to divide them off or split them off or get them separated from that group?

D: Well, I'll tell you how I tried to split one off, before Judge -- in the Middle District in Orlando, and I was defending a young man who was one of the big drug cases that was prosecuted in the Middle District. And they must have been a dozen lawyers in the courtroom. And they would take you in alphabetical order. So when they got down to my name, which is Warren, I was usually the last lawyer to ask questions. So when we got up to do the closing argument, I came up with this brilliant idea that when it came my turn to make the closing argument to the jury, that I would make this appeal, I would say, You know, when I was growing up in North Carolina and going to school, we used to call everybody in the class based upon the alphabetical order of your name and you would be seated in that order. And I was always seated in the back of the classroom. And I was the last person to be called upon. And low and behold, I'm in this courtroom today and there are 12 other lawyers in here and they're still using the same procedure and I'm always the last one to be called upon. So ladies and gentlemen of the jury, I'd like to ask a personal favor of you, for one time in my life, would you please take, when you go back to consider the guilt or innocence of my client, take my client first. And I thought that was a brilliant idea that they wouldn't go over all this testimony before they got to my client but would have to consider it first and I could probably get a better reading from the jury if they considered him first because he was the least culpable of all them. Only one act had he been involved in in the case and that was a very tenuous hold that they had on him but it was there. But it didn't do any good, they convicted him.

M: Hoping that he's the minor character so they just want to get everything over with.

D: That was the judge before Judge Reed.

M: Now, were there ever any objections by the other side to that kind of an approach?

D: No, no.

M: Now, would you say that that was your most memorable RICO case or how many other RICO cases did you have?

D: Well, I only had about three RICO cases.

M: Do you remember any of those that stick out in your mind, any of those other two?

D: Well, I remember that one in Orlando very well because of that incident. But that was a massive drug case. They had the drug leaders even made their members take lie detector tests to make sure that they weren't stealing the drugs from -- they were bringing in huge quantities of marijuana and cocaine and dropping them down in the Everglades. They had seaplanes and they'd drop them along power lines. And then there'd be trucks out there to pick them up and take them.

M: So that was Trafficante really coming out of --

D: No, that wasn't a Trafficante. This was after the Trafficante and that group had been broken up. This was after that. See drugs didn't really begin to take off in Florida until the late '60s and the early '70s. And law enforcement, at that time, was very disorganized. But when they began to get task forces in to concentrate on drug prosecution and so-called war on drugs, which really started during the Nixon Administration, which has been an unmitigated failure.

M: Well, I'd like to talk about that a little bit. But I'm trying to connect I guess Blackburn to Trafficante or that timeframe.

D: He was one of Blackburn's chief lieutenants in this big --

M: Now, wait a minute. Blackburn was a lieutenant --

D: To Trafficante.

M: Okay. Trafficante's lieutenant.

D: The way they did this, they divided up the state so that you had individuals in the various locations. And Trafficante, he was what we'd call a layoff man. If you were gambling for instance back in the '50s and the '60s and the '70s, Bolita was a big gambler like -- actually gave much better odds than the lottery does today. With Bolita it paid off either 60 to 1 or 70 to 1 depending on how strict law enforcement was, if it was less strict, they'd pay 70 to 1. If the law enforcement wasn't that tough, they'd pay off in 60 to 1, where the lottery is about 14 million to 1. But anyway if you take like Trafficante and what's his name, Blackburn, Blackburn would have a number of writers around Central Florida that were writing Bolita tickets. And then everything came in to his house

and they would add up all the odds as to what the odds were, which number might hit and how much he had to pay off if that number hit. If you had too much riding on a particular number, you'd call up Trafficante and you would lay off the bet, a portion of the bet, and he would insure up to a certain amount, you had to pay him a certain percentage of what you had taken in.

M: Kind of like insurance.

D: Same thing. And he was known as the layoff man. And of course, Trafficante controlled all of the union funds in the south. You wanted to get a loan from the union, the Teamsters Union, you had to get Trafficante's approval. And Trafficante's lawyer in Tampa was Frank Ragano. And Frank and I had been in law school together. And Frank made a lot of money, you know, representing Trafficante. And that's where Frank got into trouble because he was charging a fee for making these teamster loans, approving these Teamster loans. And then Blackburn would get a cut. It's just corruption at its worst.

M: So no more real RICO cases that you can think of?

D: I don't think so.

M: Okay.

D: I have any number of other drug cases that weren't RICO cases, but they're kind of few and far between. It used to be that they brought quite a few of them.

M: Would you say that RICO may be obsolete?

D: Oh, no, I don't think so. I think RICO has really been applied in a way that business never thought it was ever going to be applied. They thought they were talking about organized crime but it turns out that it affects a great deal of other businesses.

M: Now, when we first got started, you mentioned two major federal statutes, the RICO statute which is a little bit later, but then the '68 statute, the federal statute that you mentioned before, the Safe Street Crime.

D: Safe Street Crime, all that did, the Congress appropriated \$6 billion under that statute to bring state police organizations up to date. And we were just beginning to get into the eye-teeth of the computer age and it was going to connect all of the law enforcement agencies up to the National Crime Information Center so it would allow law enforcement agencies to get records from the federal government very quickly and state governments to create their own criminal information, the FCIC information centers. And it was to really bring law enforcement offices up to date. And then in '70 when Nixon came in, under John Mitchell, they proposed the RICO statute, which I think was passed by congress in '72. And that statute was very important because all of a sudden, it gave federal courts jurisdiction over the bulk of the criminal cases. I don't think you can really underestimate how RICO changed the Federal Court System of dealing with crimes. If you go back prior to RICO, you found only a few federal crimes. You had the Mann Act, would be the interstate transportation for prostitution, you had interstate transportation of stolen cars, fugitives, and very few -- And robberies of banks and things like that, but there were very few federal crimes. All of a sudden, RICO comes in, it just about

federalized all of the criminal laws, because RICO went across state lines.

M: Now obviously, in the political scheme of things, there would be a backlash against federalizing that.

D: Well, I don't think that they realized when they passed RICO that it was going to have such an impact upon state criminal laws. See RICO had what we call a relation back theory which allowed you if you engaged in this pattern; if you committed two or more predicate acts, then you could go back and pick up criminal activity for the past seven years. So I mean, you know, it was a statute that really changed the face of how we prosecute crime in this country. It had a great impact on it, no question about it. The continuing criminal enterprises.

D: And then most states, after RICO was passed, most states passed their Little RICO Acts.

M: To try to clean up what might be left off or --

D: Absolutely. But it increased the jurisdiction of the federal courts drastically.

M: Right.

D: And that's why we took Volusia and put it into the Middle District because so much crime was coming out of Volusia County. And I mean it was overloading the judges in Jacksonville.

M: Now, you mentioned before a comment about how the Nixon Administration or the 1970s mismanaged the war on drugs and can you reflect a little bit about how that kind of --

D: Oh, I don't think they mismanaged it. I don't think that -- they didn't have a handle on it.

M: I'm trying to remember exactly your --comment

D: I don't think they had a handle on it as did most law enforcement. They just weren't equipped. In fact, you'll find that many of the -- there was so much money involved in drugs, as there is today, but it's more centralized today than it was then, it was rather fragmented back then, we had independent operators, now it's more centralized. But it corrupted many state officials with the tremendous amounts of money that were flowing through the drug pipeline. Sheriffs, law enforcement agencies, especially in the state systems, you'll find that many of the judges and law enforcement officers were taking kickbacks.

M: County commissioners?

D: I don't know about county commissioners, but I know law enforcement officers that it affected a great deal. But I had one case in the Federal District Court in Savannah, where my client was also indicted over in Montgomery, Alabama on a big drug case and I was shuffling between Savannah and Montgomery trying to deal with that case. But it had a tremendous impact on the way that we look at crime and how crime is prosecuted.

M: Now, if we go back to civil rights a little bit, after your involvement in St. Augustine, did you do any other civil rights cases before the federal court that you'd like to talk about?

D: Well, I had a case in Orlando before – well, that was a retired judge, it started out with Judge Young, but the actual trial wound up with a retired federal judge from Missouri who had been a congressman and a friend of Harry Truman's. And when he lost the election in '43, Truman, when Truman became president, he appointed this man, federal judge and he tried this civil rights case that I had. That's the only civil rights case I had in the Federal District Court. But my career after St. Augustine, after I left the State Attorney's Office, was primarily doing trial work both in civil and criminal cases and I tried many, many cases to a jury, not just here but I had cases in Savannah and Charleston, South Carolina, Nashville, Tennessee.

M: Now, were those involved in civil rights?

D: No.

M: Were these plaintiff? Were you a plaintiff attorney or were you defense attorney or a mixture of both?

D: Defendants in these cases.

M: Okay. You were defense.

D: I even represented the Church of Scientology in a big law suit out in California. I had to go out to California, the case wasn't there, it originated in Florida. But my practice has been primarily -- I've done a lot of federal work but the bulk of it would be in state courts.

M: If you go back to the federal court, can you comment on juries? What was your experience with juries, how are they selected, did you have ability to challenge jurors?

D: Same process.

M: Basically the same process.

D: Yeah. The same process.

M: Would you say the jurors are about the same as they were in state court or were they better or pot luck?

D: They drew from a wider geographical area in the federal courts than it did in the state courts. And they were less prone to be influenced by publicity because they drew jurors throughout the Middle District and you would get jurors from all over that knew nothing about the case as distinguished from the state courts, if you were trying a case that had a great deal of publicity like say in Volusia County, you would be confronted with a change of venue. But you weren't confronted with that in the federal courts.

M: Were there any incidents similar to the one and the lady in the bathroom that you can recall as far as juries go?

D: I never had one like that before.

M: Did any of the jurors ever say anything to you after the trial or do you ever have any interaction with jurors?

D: They did one time. I remember one case I had, I was going to the parking lot and it was a hung jury. One of the jurors came over and said she wanted to talk to me about it, and I said well, you know, I can't talk to you about it, even though the case is over. I have to get permission of the court to talk to you. As much as I'd like to, I just can't do it. So I filed a petition to allow me to interview the witness but the judge denied it. They are very protective of jurors. In fact, when the verdict is rendered, they will tell jurors that they don't have to talk to any defense lawyers or anyone else about their verdict. And the federal courts, always a good experience except in one case. But that --

M: Would you like to talk about that case or would you rather not?

D: I don't mind talking about it. It's the one with Mehrtens that I had, then Tjoflat. I was representing, as I said, this former chief engineer for ITTCDC. And they had fired him and claimed that he was engaged in kickbacks with some of the contractors that he was dealing with. And the case rose down in Miami, Mehrtens had it, and the lawyers were Judge Mehrtens' son --

M: Now, this is in the Southern District, correct?

D: Yeah. -- was a partner in the George Smathers Law Firm, represented ITT. Now, ITTCDC is a subsidiary but it's a part. And there's a federal statute that says that any federal judge who is related within the third degree of consanguinity with anyone interested in the case can be disqualified. And I filed a motion to disqualify Mertens. And he denied it but he held me in contempt and he ordered me, this is a civil case, ordered me to pay my fee into the registry of the court, which he had absolutely no power to do. And I refused. And he said, well, he was going to put me in jail if I didn't follow his order. And I said, well, I know you are, Your Honor, and I brought along about two volumes of de Tocqueville's *Democracy in America*, that I'm going to read while I'm in jail, which didn't go over too well with him. And he put me in jail. And I hired Tobias Simon, who incidentally was Dr. King's attorney in St. Augustine because he was one of the best constitutional lawyers in Florida.

M: What was his name?

D: Tobias Simon. He took an appeal to the Circuit Court of Appeals and Tjoflat sat on that case. And they rendered a 14-page decision and they started the case off: This is the strangest case this court has ever seen. And the last sentence of the 14-page decision was that the judge had absolutely no power to do what he did. And I sued ITTCDC and collected a substantial amount of money. I can't talk about how much but I did from spending that night in jail. And then Mehrtens after that, shortly after that, Mertens was caught on tape talking to a big drug dealer in Miami and when it was revealed in the Miami Herald, came out that it happened, he died of a heart attack. But he was the worst judge I've ever run in to.

M: Now this was about, this might have been about the time of the scandals in the

Florida Supreme Court; would that be correct?

D: Well, I can't remember when --

M: I think it was '72, '73, '74, something like that.

D: No, that would have been a little later on. That was in around '78, '79.

M: Okay. Now, there was another judge in Miami named Harvie Duval. Do you know that name?

D: I know that, yeah.

M: Do you remember anything about him?

D: Vaguely but I do remember him.

M: Do you remember any, in the Middle District --

D: I think that all was steering cases to certain lawyers for the states or something. I've forgotten what it was. And I did represent one of the circuit judges in Miami who got indicted by the Miami jury. I got that case dismissed. And I can't think of his name. Goodman, or something like that, Murray Goodman. Judge Murray Goodman, I represented him. I got it dismissed. But he was indicted by a grand jury investigating crime in Miami. That may have been about the time that Duval was involved.

M: Do you remember any scandals of any kind in the Middle District in the Federal Court similar to what -- there had been no impeachments or anything like Alcee Hastings but were there any --

D: Well, Alcee, that is a very unusual case. Now, I knew Alcee personally and I've never known but the federal judges actually got together and, you know, they were trying to impeach him but it didn't work. But they got together and had him removed.

M: So do you have a suspicion it might have been a personality conflict?

D: Oh, I don't know. I have no idea. I just know the president of the Black Bar Association I guess got indicted and convicted and went to jail for allegedly bribing Alcee. Alcee had been appointed to a federal judgeship by Carter I think it was. But I know Alcee very well.

M: So the judges themselves kind of ganged up on him then?

D: Well, they didn't gang up, they felt that his conduct was -- I don't know, I didn't follow that case that carefully. So I'm not really in a position to comment. I just know that it happened and I'm not conversant with the details of what happened.

M: Well, I'm pretty much running out of questions here which is probably good for you. Do you have any comments or any questions that I may have missed? Are there other comments that you might have?

D: It's an interesting topic and I think that there's a wealth of information out there that would be of interest as to – especially in the area of how the Federal RICO Statute actually took over the criminal field. And that's the unintended consequences of that act that led to a proliferation of federal cases and changed dramatically the way we prosecute crime in the state.

M: Now, when you did your St. Augustine book, have you ever had the experience of going through old materials at the National Archives relative to the courts and where were those located?

D: My sources were based primarily upon newspaper clippings of the day. I had a scrapbook that we kept. And my own personal recollections of what had happened during that period of time which I reduced to writing. I got a 39-page outline of what happened in St. Augustine. It was done shortly after it happened. And I also dictated about two hours on a cassette tape of my thoughts and experiences in St. Augustine. So when I sat down to write the book, I went back to my outline that I had prepared, and especially the speech I made in Boston, I had done a timeline when I did that speech in Boston, and I listened to that tape and gathered up all the newspaper accounts from Daytona Beach and other newspapers around the state and I've visited the archives in St. Augustine, their historical society, and the public library and City Island here in Daytona Beach. And then I put all my thoughts together.

M: So you really never had any recourse to go to Washington or to Atlanta Records Center at the National Archives to look at things because it really wasn't relevant to your--

D: No. It was my personal impressions of what happened and why it happened.