This is Tamar Chute, Associate University Archivist. I'm conducting this oral history interview of Judge Robert Duncan on June 15, 2010. We are located in the University Archives conference room. Judge Duncan, thank you for participating.

A. Good. I'm delighted to be here and I'm honored to have been asked to sit for this interview.

Q. Excellent. We're going to start, I don't know that we'll go exactly in order, and you may answer things however you want. But the first question I have for you is, just tell me a little bit about yourself growing up and how you decided to come to Ohio State.

A. I was born in Urbana, Ohio, which is 40 miles west, born in 1927. Urbana then was a town of about 10,000 people, and in 1927, it was basically a farm community with a number of small businesses and some small manufacturing plants. Some residents from Urbana worked in Springfield and Dayton. I was an only child, my mother and father separated when I was two, and I was basically reared by my father, grandmother and grandfather. We lived in a predominantly African American community called "Gooseville." The street in front of our home was not paved. Almost all of us living on the street had no inside plumbing or central heating. So it was not the most prosperous part of the community. I don't want to overstate the fact that we had some challenges of living because it wasn't terrible. Although we were poor, I don't know that I knew that, because our house was neat and tidy with lace curtains, needlepoint and hardwood floors. And a living room that nobody dared go in except on special occasions. It was a great
community in which to grow up. As a kid, you could get out of the house and ramble all over town.

Many of Urbana’s African Americans have ancestry to freedmen who came from Virginia and some parts of North Carolina to Ohio long before the Civil War. My great, great grandfather was born in Ross County in 1920, and got married and then moved from Ross County to Champaign County in the 1830’s. So we’ve been around, at least that part of my family has been in Ohio for a long time. Urbana’s schools were excellent, and we had sort of a conventional mid-western education. I remember that in elementary school all of the teachers but one were women, and most of them unmarried. They were strict disciplinarians, but they really cared about whether or not kids of all races were doing well in school. So it was a nurturing, firm, sort of old fashion education.

I really benefitted from the then-existing culture in the African American community. You have to remember that my grandparents were the children of ex-slaves or freedmen. So they were searching for a way to make things better. I constantly heard their remark “once you get an education, nobody can take it away from you.” It was a culture of respect and a worth ethic – everybody worked. So it was a rather structured environment where education was viewed as precious. Good manners were mandated. My grandmother preached, “Manners will take you where money won’t”, so that culture, together with a rather traditional kind of education benefitted me mightily. In high school, there were basically three curricula to pursue: a college prep, commercial
oriented business courses, and a sort of manual arts or vocational program. Our schools had no discipline problems or truancy problems. Few students ever changed schools.

Q. Was there only one high school?

A. A public high school and a small Catholic school. My high school was excellent. For instance, I had the same 11 and 12th grade English teacher that my father had. She was a stalwart. Either you learned what she was teaching or you didn’t pass. I am sincerely grateful to her. Almost every time I write something, I think of “Ida Neer’s Rules of Grammar.” As a lawyer, a lot of what I do has to do with writing. And I still remember her pounding grammar concepts in our heads like “when two independent clauses of a compound sentence are separated by a long conjunction, that conjunction should be preceded by a semicolon and followed by a comma.” 12th grade English was all English literature and great books. I will always remember that she required us to recite Hamlet’s soliloquy entirely.

The community, in the 20’s and 30’s, and into the late 40’s, was completely segregated except the public schools and the library. And I remember having my first ice cream soda here in Columbus at a drugstore at 17th and Long, right next to the recently remodeled Lincoln Theatre. We didn’t have a car. A neighbor had a car and brought his son and me to the Maryland Park swimming pool on the east side of Columbus. That was the first time I had ever been in a swimming pool.

So in sum, my childhood was great. It was a caring community where I felt that if you were trying to do something other than go work in the plant, there were a lot of people of
both races who were willing to help you. However, my reminiscence of the then segregated community remains bittersweet because I have often thought, “How could they do this to me? What did I do?” And one of the things that is really troubling about living the black experience is that there are so many signals given to you from all sorts of different places that there is something wrong about you, if you don’t watch out, you’re inclined to believe it’s yourself. So that’s a quick capsule of what sort of background that I had. All of this has made me firmly believe that culture and attitude are so important in your life. What kind of culture do you come from, and what are the values? How do you keep thinking positively under some trying circumstances?

Q. So you took the college prep classes basically in high school. You just had to go that path of the sort of tracks; I would say we call them nowadays. When you were getting close to graduation, how did you decide Ohio State was the best place or at least the place?

A. That’s right. I had it backwards. I had decided where I wanted to go before I knew what I wanted to study. I had a cousin who was a graduate of Columbus East High School. She graduated at 16 and already was at Ohio State. So, my aunt here in Columbus was going to allow me to live with them on the east side of Columbus while I went to Ohio State. Now my other consideration for higher education was at Wilberforce, which was in the 30’s and 40’s probably along with Howard and Hampton, one of the premier historically black colleges in the country. And back in the late 20’s it was probably the premier institution for blacks in the world. Dr. E. B. DeBois was on the faculty. It also had outstanding athletic teams. It was devastated by the depression. But anyhow, when I graduated high school in 1945, it was still a very popular institution for African Americans, and great athletic teams. My male second cousin also from Urbana graduated
high school with me. He also was coming to State. Early in life I fell in love with Ohio State. I attended my first football game at Ohio State in the horseshoe in 1936. Ohio State played Iowa and my uncle, who was a football fanatic, brought me to the game. And subsequently, I would maybe get two or three games a year and sit in cheap seats at the north end of the stadium. We would come from Urbana and park in the cow barn area on West campus. So with help from almost everyone in our family I was able to afford to attend one of the world great universities. Thank God for land grant institutions. So in fall quarter 1945, I was an OSU freshman. I recall that my fees were then $35 a quarter.

I rave about the quality of education at my high school; however, there was no counseling. One of the great problems with being the first of your family to go to college, and I'm not trying to disparage the culture that I came from, however, there were elders telling you that you must get an education, but nobody was advising me what kind or about curricula options. We had no African American professionals in the Urbana community. No doctors or teachers. I really entered college with no hope of doing anything specific, except just being there, in my mind. Amounted to achievement.

Q. Well, I guess at that point you didn’t necessarily have to say what your major was going to be when you arrived, did you?

A. I had to decide something. I enrolled in journalism because I was fairly good at writing. My problem in education has always been with under achieving. I made very good grades in subjects that I liked, and only tried to work hard enough to get by in the other courses. And the problem with the way I grew up is nobody really said, "Hey look, you've got to
work on this a little harder. It is important that you get math.” My grandparents and my father knew that I had to do homework, but that was about it. They didn’t know the quality of my homework product. I came to college with no real goal, motive or sense of ambition to be anything. I just knew I wanted to be educated.

Q. So what did you take your first year?
A. I know I took history, zoology, geography, certainly military science, and physical education. That’s as far as I remember. And did quite well in those courses because it was almost like I had all of those in high school. And they were all things I liked.

Q. So you lived with your aunt?
A. Lived with my aunt.

Q. And then you commuted every day to campus?
A. You’ve got to remember, this was 1945. World War II had just ended. There was still overt racial segregation in Columbus. I would say that 95% of the African American students at Ohio State lived on the east side and commuted to campus by street car. I lived near Taylor Avenue and Long Street on the east side. The street car, which we called “Big Yellow”, would be full of students going to campus.

I firmly believe that a great part of higher education is out of class as well as in class. And this is what makes education rich and interactive, at least it should. And it did. But most of all the out of class activity for me and my African American contemporaries in the 40’s and early 50’s was on the east side of Columbus, not on campus. There were no African Americans living on campus. I think in late 1946 or early 1947 the first African American women moved into Canfield Hall.
I remember my first day on campus. And I remember riding up on the street car with my cousin, and she went off to her class. My first class was in University Hall, a history class. People were extremely friendly. Upon entering the classroom, I met another African American guy from Ironton, Marty Gibbs, who is still a friend of mine. Next I had a class in Derby Hall, and he did too. After class we walked across campus to the old Ohio Union, which is now Enarson Hall. I remember walking into the grill room on the ground floor. There was a juke box. And I remember hearing the Nat King Cole Trio on the juke box playing “Route 66.” And I looked around the room and there were all these coeds and I thought, “This is where I need to be. This is a wonderful place.” It was a great first day. And I suppose that sort of emotional effect of being at the University has never left me through all of the subsequent 65 years.

Q. So the grill was on the first floor and it served anything to any student? Or did you order or was it more like cafeteria?

A. It was like a soda fountain, soft drinks and sandwiches. On the second floor there was a pool hall, ping pong tables and a big grand lounge. On the other side of the ground floor was a large commons kind of cafeteria. And meeting rooms upstairs. I spent a lot of time in the old Ohio Union.

Q. And do you feel like you were there more than other students because of racial issues?

A. Oh absolutely. It was a Mecca for African Americans. Customarily we sat in an area on the second floor which we called “The Corner”. On the second floor there was a piano, and from time to time students played all sorts of music. There were some really good pianists.
Q. The people that you rode on the street car with, did they become sort of the people that you do activities with outside of class, or did they just sort of become travel partners?

A. Both. In the 40’s, as I mentioned just about all of the social activity was on the east side. There were a large number of African Americans at OSU. In 1946 and 1947 we started getting an influx of service men, coming to college on the GI bill. They were somewhat different than the ordinary college students. They had been though a lot, and were older and more outspoken. They were serious students, and were wonderful members of our community. Black Greek letter organizations had large chapters. As an aside, I think my second week at the University there was a Kappa Alpha Psi Fraternity rush party on the east side on Hamilton Avenue. One of the first persons I met at that party was William “Deke” Willis, a great football player. And he was just a delightful person and I’m fortunate to say, with all his honors, his jersey retired in the stadium, along with a member of all of the football halls of fame, he was a sports super star, and even a better person. And fortunately for me, we remained close friends until he died year before last.

The African American fraternities and sororities were strong and classy. On Sunday afternoons, at the old Spring Street Y at the corner of Fifth Street and Spring Street, near downtown, these organizations had meetings. The building was full of students. Everybody dressed up on Sunday. And generally on Saturday night there were athletic events. The fraternities all had basketball teams.

The Columbus African American community, business people, professionals, and almost everyone seemed to help students. Churches were extremely helpful in welcoming and
making students feel comfortable and providing meals and that sort of thing. Mentors from the business and professional community were active in mentoring students.

Q. So were you in one of the fraternities?

A. As a member of Kappa Alpha Psi Fraternity, in my junior year, I became the student national vice president. I had been the president of the local chapter. I want to point out that all of the African American Greek organizations were structured with an academic emphasis. If you didn’t get your grades you could not be a member. Students who did well academically were campus heroes, as were those in graduate and professional schools. You can find positives about a segregated community. As I have noted, but the racially segregated one I experienced on campus was demeaning. I did not have the full college experience.

Q. So were there sort of student advisors on campus but then the African American students were not advised by them?

A. First, there were very few African Americans in traditional on campus student organizations. One of the great problems I had with my undergraduate education was that I did not have a personal relationship with any faculty member. Maybe some of that may have been my fault, because I think there were some faculty people that were really interested in speaking with students, but you had to show a little initiative, and perhaps I didn’t. We just didn’t have enough sit down time with people who could get you excited about learning. I’m high on the relevance of counseling and advising and the development of a learning attitude. But it is really beneficial to have a faculty person in your life, and take you to task and say, “Look, you can do some things that you don’t think you can do.”
Q. So once you graduated from undergrad, what?
A. I graduated from the College of Education in three years summer quarter 1948. I wanted to be a teacher at the secondary school level. I had a very positive student teaching experience.

Q. So you started in journalism and somewhere in the middle there you just decided you would be a teacher?
A. I think maybe it might have been because I liked the flexibility of the then existing education course requirements. I wanted to avoid taking a foreign language. I will always regret that.

Q. I can sort of appreciate that.
A. There came time late in my second year when I really got interested and excited about learning. I took a course with Prof. Foster Rhea Dulles, a world class political scientist. The course discussed the U.S. political process from World War I through the end of World War II. There were grad students in the class, and I was dazzled by the in-class dialogue and amazed by the quality of knowledge of my classmates. The dialogue usually continued after class. I was so eager to keep up that I began to read news related periodicals. That was my first recollection of really doing something extra and finding some joy in learning.

Q. So when you graduated with education you decided you were going to be a teacher?
A. Yes, but there were problems. Getting employment as a teacher at the secondary level was limited by racial segregation. African American students in the College of Education who aspired to teach at the secondary level did student teaching at Champion Avenue Junior High which had all black students and faculty. When I graduated in 1948, there
were no African American secondary school teaching opportunities other than at Champion.

Q. So did you end up doing student teaching then?
A. I did the student teaching. I really liked it too. At Champion there were outstanding teachers who were great mentors. But there were no secondary level jobs in Columbus. I still was immature and not very aggressive, and I didn’t really know what to do. My mother lived in Chicago. For many years my mother worked at Spiegel’s, the catalog place on 22nd Street. I decided to go to Chicago. And so again, for African Americans, getting a job at the second level – even in Chicago – was very difficult. I did a little substitute teaching. Also, I began to work at a downtown hotel as a bellman. I made more money as a bellman than I was making teaching. I was floundering. So I decided to come back to Ohio State. I decided to attend law school.

Q. Was there an admission? Like did you have to do some sort of admission thing?
A. In 1949, there was no requirement to take a law school aptitude test. As I recall, if you had a degree, you could be admitted to the College of Law.

Q. Okay.
A. So there I was in law school at the old Page Hall. And I still didn’t know whether or not I wanted to be a lawyer but I knew what I didn’t want to do – “hop” bells.

Q. Right, well sometimes that’s half the battle.
A. But I can’t say that I had a driving ambition to be a lawyer. As I mentioned, I sort of had the academic bug and liked to learn. I loved Ohio State.

Q. What do you think the difference was in terms of being here as a law student versus being an undergrad?
A. Well, for me it was dramatically different because law school is incredibly demanding. It took so much more time and effort. It takes hours of sit-down studying.

Q. Were the groups, were the students a combination of African American women, was it all men, or what was the makeup of the class?

A. There were seven African Americans and, I believe, four women. The attrition rate was awful. About half of those who started were gone after the first year. Four African Americans and four women graduated.

Q. Okay. Obviously by the end of the first year you had decided this is what you wanted to do.

A. No, I still had no idea what I was going to do. I sort of had this weird affection for the challenge of law school. I liked and respected the excellent faculty, even those who were consistently Socratic. It was a great intellectual challenge. But again, I think I underperformed. And one of the great challenges in law school is to stick with it until you finish. I as sort of like, “Well, I’m doing alright. I will give these people until 10:00 pm and after 10:00 pm, that’s it. I’m not doing anymore.” And I think that one of the things that I discovered later on is you’ve got to finish. And if it means staying an extra hour or forty-five minutes, that’s what you’ve got to do. I could have been a much more successful student if I had understood the value of extra effort and thoroughness.

I seemed to have, for a long time in life, sort of confused achievement with excellence. Just being in law school, for somebody who came from where I did was an achievement. The pursuit of excellence is something different entirely. Later, I found out that there is great benefit from pursuing excellence and making yourself do your best. So, I spent
about seven years as an adjunct teaching at the College of Law, and doing all I could to get people to finish, do something extra and pursue excellence.

Q. So, you think it’s very similar today?
A. Law school?
Q. Yes.
A. I think the fundamentals are very much the same. Like everything else, it’s more complicated. There’s more law. The students are better, brighter intellectually. The information age is here. Law school is a marvelous kind of intellectual didactic which is one of the best in the academy.

Q. Were there mentors? You talked about how in undergraduate school there weren’t really any mentors. What about in law school?
A. There were mentors. Law school is somewhat structured. If you made high flying grades or some law professor liked your writing style or something about the way you responded in class, there were opportunities to be hired as a research assistant or some sort of work under the tutelage of a professor. I never had any of those kinds of experiences.

I was befriended, had been befriended by the late William Saxbe. Bill Saxbe as an OSU grad, graduate of the College of Law School, then Speaker of the House of Representatives. He’s from Champaign County. He knew my family. So, fortunately he got me a job in the Statehouse. For the remaining years of law school I worked in the Office of the Treasurer in the Statehouse. And I came to know people in state government. That was another outstanding form of education.

Q. Did you live close to the Statehouse, or did you live close to campus?
A. While in law school, I lived in a rooming house with three other students near the corner of Fifth Avenue and Fourth Street. It was almost walking distance but my roommates were former GI’s and had cars.

Q. Now once you graduated, did you continue working?
A. No, the Korean War was going on and I had been deferred. I had a military commitment. I went to the Army for 2-1/2 years. So, I will be forever grateful for my legal education at OSU. But I ran into a problem with race in I think my second year. John Bowen, now a local lawyer, was a class behind me. John and I were pledged to Phi Alpha Delta, a legal fraternity. At that time, there had been no African Americans in any legal fraternity at the law school. So somehow the national organization found out that we were black. Pledging us violated its constitution’s “whites only” policy. So they told the local chapter they couldn’t admit us. A majority of local chapter members decided that they were going to vote to defy the national organization. The local chapter’s vote fell one short of that needed to bolt the national organization’s ruling.

However, shortly thereafter, I was elected Class President. Almost everybody in the law school, except probably the two guys or three guys that voted against defying the national ruling, were appalled by what happened. And I think it helped everybody think about problems like this. In the early 50’s things were changing. One good thing about being as old as I am is that I’ve seen change.

So I went to the Army after law school. Another interesting story about the Army. President Truman signed the Executive Order to desegregate the Armed Forces in I
believe late 1948. The Army was just in the final stages of desegregation when I went in December 1952. I reported to Fort Hayes and rode a train to go Fort Meade, Maryland. It is military slang, it was a repo depo. So I got on the train. It was integrated. I was riding with a dear friend of mine, Dan Guy, also a lawyer who later became a highly regarded professor of law at Ohio Northern. But anyhow, we were on a train together -- a very integrated train. At Fort Meade, got segregated again. Dan Guy, who is white, goes one way. I go another way with the blacks. A few days later, I got on a segregated train to Fort Knox, Kentucky. We board another train to go Camp Breckenridge, Kentucky. This is an integrated train. I never had another problem with race in the military from that day forward. The whole integration of the Armed Forces was the best affirmative action transitions this country has ever known. And it worked effectively and efficiently, and still does.

Q. So you were in the Army for 2 years? Were you ever deployed? Or were you mostly state-side?

A. I went to Alaska.

Q. You went to Alaska. Okay.

A. I went to Officer Candidate School. The Korean War ended shortly thereafter. And so I went to Alaska and began to do some things which were associated with the law. I handled court martial matters and other administrative matters for a regimental combat team.

I served my time and came back to Columbus. Then I began practicing law. In 1954, there were no African American lawyers in law firms in Columbus. Black lawyers
couldn't rent office space in the downtown area. Most African American lawyers practiced solo or with one or two lawyers sharing office space. Others worked in governmental agencies. I began to work with a lawyer, Lawrence Curtis, on the east side of Columbus, just an absolutely fine man. He was showing me the ropes of how to do a general practice. I was terrible at it. I never felt I was doing anything well. So I didn't like it. And finally my mentor and dear friend, the late Attorney General Bill Saxbe again, who then was elected Attorney General of Ohio, hired me an Assistant Attorney General. In the Attorney General's office, I was assigned to a trial section. After I tried my first case, My God, I thought, I can do this. Now for the first time I really think I can be a lawyer, and from then on I sort of got immersed in the profession and committed to doing the things that are necessary to try to reach some level of excellence.

Q. What were the cases like that you were doing?

A. I had a number of jobs. The first job I had was the litigation of workers' compensation cases. Many were jury trials. So I learned to be a litigator. Later on, I wrote a book on the trial of workers' compensation cases. In 1958, Attorney General Saxbe was defeated for office. So I had to leave the office to work at the Bureau of Workers Compensation. Next I was hired by Russell Leach as an Assistant City Attorney in Columbus. Later, Bill Saxbe was re-elected as Attorney General. He asked me to come back. So I became Workers Comp Section Chief, supervising maybe 20 lawyers. An interesting aside is that two of the lawyers in the office at that time who reported to me were the late Chief Justice Tom Moyer and former Senator George Voinovich. After law school, both of them were in that section for their first job. I am honored to say that over the years we remained very good friends.
Subsequently in the Attorney General's office, I became Chief Counsel. The Chief Counsel was basically responsible for all the legal work in the Attorney General's office and reported directly to the Attorney General. In that position, I came to know James A. Rhodes, who was Governor of Ohio. And Governor Rhodes used to get to work early in the morning, like 7:30. Fortunately, I was an early riser and was in the office by 7:00 am. There were at times at 7:30 Rhodes would call for lawyer. I think my great avenue to success was getting there early. Then I started a long relationship with Governor Rhodes.

When I was Chief Counsel, I think one of the first cases that I had in the United States Court of Appeals for the Sixth Circuit involved the Ohio State University's Speakers Rule case. Distinguished civil rights advocate from Cleveland, Jack Day, brought an action against the Board of Trustees of the Ohio State University claiming that the Speakers Rule which limited the right to speak on campus concerning certain subject matter -- was an unconstitutional restriction on speech. I think he was right. I represented the University in that case. However, I prepared the case for argument, and before the hearing the University changed the rule. The case became moot. I had a great sigh of relief.

Q. Obviously because of the position you were in you had to take the University's side even though you didn't necessarily agree with them.

A. Oh yes, that's a dilemma that lawyers face with some frequency. It is a lawyer's job to represent clients and advocate the best legal position and argument that you can.
Q. Did you work with the University on any other cases while you were in the Attorney General's office?

A. I don't remember. It seems that there might have been some matters involving construction of facilities at Ohio State. I do remember doing legal work regarding the construction of the Ohio Historical Society building.

In 1966 there was a vacancy on the Franklin County Municipal Court. Governor Rhodes appointed me to an unexpired term. I had to run for election in the general election. I won the county wide election. In 1965 there were no big fund raising campaigns for municipal court. I think maybe I spent all of $3,000.

Municipal court is the people's court. It was just a wonderful job because I really learned a lot about people and got to know many lawyers. The court was a great vista on the real world from the bench. And it was a great learning process. And I loved the association with the lawyers and I learned a lot about the law. But a lot of it is reactive and you sort of deal by your wits and sometimes take chances on people. I think that's what judging is all about in many respects.

One Sunday afternoon I was home watching the Cleveland Browns. One of the Governor Rhodes' assistants called me and he said, "The Governor wants to see you." And I said, "When?" He said, "Right away." So I drove to the Governor's mansion on Parkview in Bexley. The Governor came down wearing a golf sweater. Justice of the Supreme Court of Ohio, Paul Brown, was there. The governor said, "Duncan, I am going to appoint you
to the Supreme Court of Ohio. And I'm going to appoint you -- Paul, Attorney General, and you're going to run for Governor next time." I thought the man was kidding me, I really did. So that's how I got on the Supreme Court which turned out to be a most enlightening experience. It was a court composed of great jurists who warmly welcomed me to the court, and really helped me get a good start. There were interesting and important cases which came on for decision. The Warren court had decided a number of landmark cases regarding criminal constitutional standards. Certain members of the Supreme Court strongly disagreed with the direction of this area of law that the U.S. Supreme Court had taken. And we had sharp differences of opinion about criminal constitutional standards, but at the same time were friends. It was done in a most professional setting and to a person, respect was all around the table. Moreover, the court was not as busy as today's (2010) court. So the summer recess allowed time for study and reflection. To this day the Supreme Court of Ohio closely reviews cases; I found the consideration given to each was far greater than I had ever imagined.

Q. What time period was that, give or take?
A. I was on the court from 1968 through 1971. So it was just a great experience. And I learned a lot.

Q. What do you think were the most significant decisions you oversaw in your time period as Judge?
A. In July of 1971, I was appointed by President Nixon to the United States Court of Military Appeals in Washington. It was a three judge civilian court, which is the criminal court of last resort for the military. At that time, we were getting a lot of cases from Vietnam. And among those cases was the case United States v. William Calley that arose
from actions taken by Lt. Calley during military action in March 1968 during the Vietnam war. Generally, this conflict took a heavy toll on Americans serving in Vietnam, and certainly and specifically on Calley and others who served with him. They often were fired upon by non-uniformed old men, youths and even women – who otherwise appeared to be non-combatant civilians. American soldiers suffered heavy casualties during the TET offensive including many deaths from mines and booby-traps. Lt. Calley, an infantry platoon leader and others in Company C participated in a major offensive against a number of hamlets which were harboring enemy personnel. Unfortunately, Calley’s platoon was involved in the mass killing of captured un-armed civilians – many were women and children. Before being killed, some of the victims were raped – some were beaten.

The incident generated worldwide outrage and is referred to as the My Lai massacre. Lt. Calley and others were tried at Court Martial for criminal acts at May Lai. After a 10 month trial, at which Calley claimed that he was following orders of his superior, Calley was convicted and sentenced to life in prison. President Nixon ordered Calley released from prison, pending appeal of his conviction. In 1973, the U.S. Court of Military Appeals reviewed the case. The conviction was upheld. Calley’s sentence was later adjusted, and he served four and one-half months in confinement. This case was the subject of incredible national and international media attention and debate. It was the most widely publicized case that I ever participated in.

Q. I’ve read some about it.

Q. So you were on that court beginning in the early 70’s?
A. Thereafter in early 1973, I got a call from my friend and mentor, the Honorable William B. Saxbe, at that time was a United States Senator. And he asked me would I be interested in coming back to Columbus and become a Judge of the United States District Court for the Southern District of Ohio. I said, "Yes," and came back in 1974. And I was on that court from 1974 until 1985.

Q. How did you find it different coming back after having been gone for a couple of years?
A. Not a lot of difference, except the Columbus community had grown in population. The United States District Courts in our scheme of things are the real arenas of jurisprudence in the United States. Cases involving the constitution, the statutes of the United States, freedoms, individual rights, interstate commerce activity, are extremely important to civil rights and to business. The Congress in 1964 passed the Civil Rights Acts, and there were many cases regarding race, gender, national origin discrimination. The United States District Court was the real litigation arena, and I was enthusiastic about being a Federal District trial judge.

Q. So you were in that position until '85. And then did you retire at that point or where did you go next? I have your CV but I'm sort of also talking so that we can record it.
A. In 1985, I resigned and joined the Jones Day law firm. The Firm was excellent, dynamic and fast growing.

There came a time in 1985, when I had an offer from a very prestigious large law firm that asked me to become a partner. And it was a law firm to become a partner. It was an outstanding law firm. There was a new Columbus office that had about 20 lawyers. I saw that this law firm was destined to be one of the largest and best law firms in the
world. So, I always wanted to be in a law firm. If you'll go back to the old days because of race I couldn't get into a law firm. I had two children in college, and it was a tremendous financial shot in the arm. One of the disparaging things I can say about the federal court system is, maybe courts everywhere, the pay is just abysmal. It is just unrealistic. But anyhow, so I went to work in the law firm. As you can see, my life has been going from one thing to another thing. I always find something intriguing about the offer to do something I've never done before.

Q. What kind of cases primarily did the law firm concentrate on?

A. The law firm had almost every kind of business imaginable. It would generally represent large corporations. I developed a specialty in employment law and civil rights cases, many of the same kinds of cases that I had while on the district court. I also picked up another area of practice in antitrust law, got some experience trying anti-trust law cases.

Q. When in the mix did you start doing adjunct work for the Moritz College of Law?

A. Two things. Almost all of the time that I worked at the federal court downtown I had two externs, OSU law students.

Q. You had to evaluate them or whatever?

A. Yes, they were excellent, and helped out at the court. I can fondly look at them now. They have been extremely successful and honorable lawyers. But I actually didn't start teaching at the law school until I came to work at the University. Or was it one year before? I'm having time amnesia here, I can't really remember. But I started teaching at the law school because Greg Travalo, who is a distinguished professor at the law school, and also a military officer, called me and asked me, would I have any interest in making up a course to teach. At the time he and I were trying to encourage more people to study
international law. We needed something to sort of lure them into international law. And so we designed a course we called "The Law of War and Use of Force". At that time, the United States had made a number of armed incursions into other countries. It was interesting to explore the international law that was applicable. Many of the same basic principles that this course discussed are also principles involved in civil disputes between entities or persons of different nations. So we're using this as sort of a teaser. At the same time it was frightfully interesting; you may remember we had incursions into Panama and Grenada and later on Bosnia. We studied the U.N. Charter. The Security Council of the United Nations established the court for the trial of cases arising from the former Yugoslavia. We taught that course for maybe three years. Then there was the Gulf and Iraq. Now the international law of war is a huge academic specialty, and scholars are going to the Hague and doing scholarship things and looking through manuscripts and transcripts. And then subsequently the law school hired a very knowledgeable woman who was really a scholar and has had a lot of experience to teach this subject matter. She subsequently got lured to another law school.

Then for a number of years after that I taught a course on trial practice. I called it the art of judging, and my whole notion was to just turn the bench around and try to get the students to think like a judge from a judicial perspective.

Q. Now, when President Gee asked you to serve as Vice President for Legal Affairs. what did you think? Did you think. "Oh, that's definitely what I want to do?"

A. I met him at a reception downtown. I was getting ready to retire from the law firm. He said, "I want you to come and see me. I think I've got something you might be interested
"Dr. Gee is extremely engaging, energetic and vibrant and hard to say no to. Later when we met, I was fascinated. He outlined what he had in mind regarding lawyers employed at Ohio State. I was really interested. What he had in mind was to establish a centralized university law office. The goal was to get the University lawyers in one coordinated operation, so that we could operate more like a law firm. There are certain peculiarities about the academy that take a special kind of experience or knowledge in matters such as faculty, students, student affairs state education requirements, intellectual property, federal education law, athletics and many others. The plan was designed to enhance on-campus expertise and save money. The other part of the job was to maintain a positive relationship with the Attorney General of Ohio who, by statute, is counsel for all state universities. The mission was to establish our own first rate on-campus law firm.

Q. What was the reaction of the Attorney General’s office to President Gee and you setting this up?

A. I think they were sort of cautious and not really totally convinced that this was the way to operate. However, Lee Fisher, then Attorney General, was cautiously optimistic about the potential that it had. The model worked extremely well. I think I started out by having nine lawyers total. I think maybe now they’ve got more than 20.

Q. Did the group of lawyers here also connect to the regional campuses, or do they have their own?

A. Both. Some of this is sort of delicate because, over the years developed some relationships with local attorneys and there are instances where it was wise to continue them.
Q. Do you think that having been in the Attorney General’s office and having been a judge, that is was beneficial to you as Vice President?

A. Oh yes, I think so. Knowing state government, at least knowing the basics of state government’s role in higher education I also benefitted from my experience at the Jones Day law firm. There I had certain firm wide administrative responsibilities.

Q. In the time period from coming back, you said you were active in all kinds of different ways at the University. How do you think the University changed from when you were here as a student until that point as being Vice President?

A. There have been monumental changes. I think the University has done a good job over the years maintaining its land grant mission. This University has always been a great value added University. For instance, take the medical school. I think the medical school has always been a good training ground for clinicians and doctors who have done a great job of patient care, as have the University Hospitals. But if there had been a lag, it was research. I think the University is probably behind the curve in the development research activity and high technology. More recently, there has been a much greater emphasis on research, and we’re doing much better. We have righted the ships, and today there is appropriate and urgent emphasis on research and creative new endeavors. However, we remain behind in bringing new utilitarian inventions to the market place.

If I look at a couple of things that I think have been marked changes, first in academics starting back when Ed Jennings was President, efforts began to raise admissions standards and depart from the notion of open admissions. A lot of time over the years has been devoted to conforming to the University’s modern land grant mission. It cannot be
what it was in 1862, when the Morill Act was passed. The needs of the people we serve have changed, and so we have to have a different kind of education for the present and future. There is a clear nexus between Ohio State’s mission and Ohio’s economy. In addition, our graduates must be able to compete in a globalized economy. Moreover, we must find a financial means to make it a reality that all qualified students will be able to come here. The University has maintained its land grant mission, and today we have institutionally benefitted from the substantial increase in academic admission standards. In that regard we are highly competitive with peer universities.

I think the honors program is speculative, one of the best in the country. The undergraduate experience is much improved. Presidents Gee and Kirwin urged more emphasis on research. I think President Karen Holbrook was an excellent missionary for research. In that regard, she made a great contribution to the University. She really beat the bushes to make people cognizant of research and its value to this institution. The medical center is a story in and of itself because that’s half of the operating budget and they’re doing excellent work. Building the James Cancer Hospital and Solove Research Center was a ten strike.

I was the first chair of the Hospital’s Board in the early 80’s. Back then the Hospitals were going through tough times. President Harold Enarson convened a Hospital board with some people from downtown and also some physicians, administrators and faculty at the University. The Hospital board concept worked very well. I was honored to serve as the board’s first chair. During the early days of the board, the concept of building a
cancer hospital arose. It was championed by Dr. Arthur R. James, Governor James Rhodes and John W. Wolfe. They were tireless workers in the mission to make Dr. James' dream a reality. The board members traveled to the M. D. Anderson Cancer Center in Houston. It was the state of the art facility in the country. Admittedly, I was pessimistic. There was $40 million dollars available to build the facility. After seeing M. D. Anderson, I remember saying: "That won't even buy a room much less a hospital!" So I think there was a lot of doubt about whether or not we could build a James Cancer Hospital. Even those around the board. We had some stalwarts, John W. Wolf, Art James, Dan Galbreath, Charles Lazarus, Dean Jeffers, Henry Cramblett. All difficulties were overcome and we now have the Arthur James Comprehensive Cancer Hospital and the Richard Solove Research Institute, a world class facility.

I was there while all of this was going on. It was just a wonderful result and a lot of hard work and perseverance because I mean, the financial challenges of getting that done was unbelievable. But the General Assembly became more generous, Central Administration became generous, and donations were great. Plus, it was the right time. Things in life have a right time, and I think the James hit it at the right time. It has just been an incredible success.

Q. I'm trying to remember, when did the James open?

A. Well that was another story because it was open late because there were construction problems, I don't know exactly what it was, I'm not a mechanical person, but some kind of water apparatus that was on one of the upper floors overflowed. It was awful. But
time wise I can't remember what year it was, what year it finally opened up. I should know that.

Q. Oh no, that's okay.

A. Of course, we've had some incredible athletic successes. That's a great part of the University and obviously I'm a big time sports fan, so that's been a source of just incredible enjoyment. I was a friend of Woody Hayes and knew him well. And what a man he was. Do you want me to tell you my favorite Woody Hayes story?

Q. Sure.

A. When I was working on the United States Court of Military Appeals in Washington, my secretary came in and said, "There's a Mr. Hayes on the telephone." And prior to this time I did not personally know Woody Hayes. I got on the phone, and he said, "You're Judge Duncan." And I said, "Yes." And he said, "Well, I need you to do something for me." He said, well, we've got a quarterback here named Cornelius Green. He was reared by an outstanding woman. She is also taking care her husband who is legally blind, refuses to accept any public assistance and works every day. She's never been to Ohio State to see Cornelius play. We're playing Northwestern, and I want you to see that she gets here." I said, Oh, sure, coach; I'll go by and pick her up and take her to the airport. Woody Hayes said, She won't fly. So I am really perplexed now. The only way that I can get her there is to drive if she won't fly. And he said, That's what I had I mind.

We had three kids and a dog. I figured that we could take the kids, but did not have any place to put the dog. So you know what we did? We picked- up the lady, who was just absolutely wonderful. So we also took the three kids and the dog, who rode on the kids'
laps. We drive to Columbus. Anne Hayes was waiting for us at the Holiday Inn to greet this lady. She attended the game in the Shoe. Customarily, on Sunday mornings after a game, Woody reviewed game film at the athletic facility. However, Woody viewed this lady as very special. Woody and Ann joined us for breakfast. He was dazzled by this woman. I mean, I've never seen anything like it. I will never forget how very nice he and Anne were to her. And she was just outgoing. He was sincerely awed by her work ethic, devotion to her disabled husband and rearing Corny. From that time on, we became dear friends of Woody and Anne Hayes and sort of parents in absentia of Cornelius Green, who still calls me dad. I am still amazed that Woody got completely out of his routine to come and see this woman, whom he knew only by reputation.

Q. Had you ever met Woody before that?

A. No, I don't know how he got my name. Let me tell you of another story about Woody. On one occasion, we had a brunch for some of the OSU football players whom we knew because we knew Cornelius. And Woody and Anne Hayes came to our home. He asked me how things were going. And I said, "Things aren't going good at all." Because I just had a case before me involving the United Mine Workers, coal miners. Some went out on a wildcat strike over a coal mine contract down in southern Ohio. The mine owner sued the union, and wanted an injunction because they were violating the labor contract, by walking out over a mine safety issue. I issued an injunctive order for them to return to work. They refused to obey the order. I then ordered the arrest of certain officers of the local union who were in charge of this walk-out. The US Marshall could not find them. So I was complaining to Woody about it. I couldn't find them. It's just been a bad week and the lawyers were screaming and hollering wanting me to do something to stop this
strike and I can't even find anybody. They hid in the hills. The United States Marshall's office could not find anybody to bring in. So we started talking about labor unions. He then gave me about 45 minutes off the top of his head about the history of the labor movement in the United States. Talking about John L. Lewis and Samuel Gompers. He loved history and knew it well. I've never seen anything like it. He was a phenomenal person.

Q. So pretty much, even before you came and worked as the Vice President, the relationship continued in all these different ways. So was coming back as a regular employee of the University different?

A. Oh yes, it was. Even as close as I had been to the University all those years, I still was far from knowledgeable about the Academy. The Academy is special in many ways. It's such a busy and complicated place. But yet, a wonderful place, and it takes a special kind of understanding. So it was a great learning process. I learned a lot about relationships. And I learned a lot about students. I will never forget, I think it was my first year as General Counsel, one of the areas of controversy when I came here in 1992 was the hate speech because there had been a flare-up of a racial remarks, racial tags in restrooms and things like that. And then there were also some problems with remarks or things written about members of the gay, lesbian, and bisexual community. A lot of universities around the country were thinking about some sort of hate speech rules. An administrator called me about hate speech and what we might be able to do about it. I said, "Alright, I'll look into it. I'll have somebody work on it a little bit and see what's out there." To me, that sounds fairly innocuous. However, the next thing I get is a visit from Lantern reporters. I got in trouble just by suggesting that I would look at something. They asked, "Why are
you looking at it? Will this abridge free speech? Is the President considering curtailing free speech?" And I really didn't have any good answers except this is what I do, I look at things. That wasn't a very good answer. But that is the sort of concern that made the job somewhat difficult.

There are also sort of faculty matters that involve university rules and general law as well. Of course, in other respects the university is overseeing a community of 60,000-70,000 people. There are issues of governance similar to those of a middle sized city – law enforcement, health, housing, finances, compliance with state and federal requirements and many others.

Q. Did the other lawyers who were already at the University, were they helpful, or were they more cautious as to what your goals were?

A. Yes, there were lawyers who had reservations about my coming and making any changes.

Q. What was the most challenging legal issue that you dealt with in the beginning there?

A. At the University?

Q. Uh-huh, when you were here.

A. I think the most difficult matters involved were when the administration proposed personnel and operational changes. Working with the appropriate people on campus to make sure that people understand the basis for the new or changed directions was a challenge. But probably the most agonizing problems had to do with African American students. But there were some demonstrations about issues which I felt were appropriate. I felt one of the problems in those demonstrations was that they tend to ignore things that have been done that are very positive and should be taken into account, and a lack of
understanding that there are no real quick simple solutions for extremely complicated problems. It was agonizing to deal with African American students who I didn't agree with, but I understand the kind of frustration that was being expressed. You just can't go out and say, "If you want to demonstrate I can give you some things to demonstrate that are much more important than this. You're demonstrating for the wrong thing. I could not do that.

Q. Where was your office located?
A. The office of legal affairs was then located in the old Ohio State Bar Association building, which is right across from the Union on 11th Avenue. I had an office there. I also had one in Bricker so that I could be close to the President, Provost and senior staff.

Q. Okay. So you split time. Was student judicial affairs part of your area?
A. Yes.

Q. So you became Secretary of the Board, I have it down in 1993. Were you looking for that position?
A. No.

Q. How did that come about?
A. Well, Madison Scott, who had been Secretary of the Board for years, resigned.

Q. Was it at age 70 you had to retire from the University?
A. No, you need a waiver. I think it's 65.

Q. Is it 65? Okay.

A. I stayed there until 1996. I took the job with a full understanding that I would stay until they found a permanent secretary.

Q. What does the Secretary of the Board do? Or what did you do as Secretary of the Board?
A. Secretary of the Board is extremely important. The Secretary must staff the Board’s needs for its mission. The Secretary interfaces between the Board of Trustees and the administration. If the President wants to know something about the Board, he or she calls the Secretary. And if the Board wants to know something concerning the President, they would contact the Secretary. The Secretary’s office must make sure that members of the Board of Trustees have sufficient information to do their job. Certain information is to be distributed prior to Board meetings. If something happens regarding the university, Board members are timely advised. The Board Secretary meets with the President and Board Chair to aid in the preparation of meeting agendas. The Secretary attends meetings of senior level administrators, and meetings of the University Senate. In sum, in order to do the job, the Secretary must be extremely well aware of important University plans and activities. When I was Secretary I spent a lot of time meeting with the Provost and the faculty leadership. There were other responsibilities. The Secretary of the Board is traditionally a member of the Buckeye Healthcare Plan Board. The Secretary has a substantial role in the orientation of new Trustees.

Q. What do you think that you learned just being Secretary that you hadn’t really known before, or was there anything?

A. I learned all about issues relating to radiation, lab animals, and aircraft noise. I learned a lot about University finance that I never knew. I learned how endowment investments and investment managers are chosen. I learned a lot about how to view and evaluate people. I did learn how to bring people together, how better to understand professional relationships. A Board like a University Board is a group of very bright and successful people. I learned to aid in their relationships with each other. I think the great challenge
for this Board now is to work with people to enhance Ohio's economic future. We have a lot of lost jobs, and are waiting for them to come back. What can we do as an institution to foster Ohio's economy.

I still think there are things that need to be worked out about the regional campuses. Are the regionals really doing what regionals under this configuration ought to be doing? I think the great thing about Secretary is you learn from some really bright distinguished and highly experienced people. For instance, having worked with Mr. Wexner, I can see why he has been such a phenomenal success. And it's the same way with other people that served on the Board. They have some strengths that are just enormous.

Q. Do you think it was beneficial when you became an actual Board of Trustees member, that you had been Secretary?
A. Oh absolutely.

Q. What was the time period?
A. I left the University employment in '96, went on the Board in '98, just as President Kirwin was beginning his tenure. It was an interesting time. The academic plan was finalized and implemented. It has served as a guide to the future. In the development and implementation plan, I worked closely with Barbara Snyder, now President of Case Western University. She was great to work with.

Q. When you were on the Board, what was the structure like of the Board? So you were on certain committees or sub-committees?
A. Yes. The chair of the Board would appoint committees – Medical Affairs, Agricultural Affairs, Academic Affairs, Investment, Student Affairs, and an Audit Committee and
others. Each year the incoming President would appoint the committees for the ensuing year. The problem with this system was it seemed that no sooner would you get people in the Chairs, in Committee Chairs, the year was almost over. When I was on the Board, the tradition was that the most senior Board member was elected Chair and served as Chair only one year. This tradition had efficiency and expediency, but it had some shortcomings. The General Assembly increased the number of Board members from 9 to 15, which I believe was a good move. I think 15 is a better number than 9. There is a lot of work before today’s Board—a lot of committees. The elected Chair now serves a two year term.

Q. How did you run the Board? What did you feel like when you were a Chair were your goals as Chair?

A. The Board continued to work on the academic plan. The effort to raise academic admission standards was implemented and showing signs of success. Funding was a constant issue. When I was working at the University, it went through the throes of funding cutbacks in the early 90’s. Looking at the years since the 70’s in context, I think the state—recognizing the role this University has in its economy—has done very well under the circumstances in funding The Ohio State University. This is Ohio’s flagship University. And it's worked out very well for Ohio State. Ohio State is, in my judgment, on the right path. So I spent a lot of time with funding. We spent a lot of time when I was Chair dealing with this academic plan and trying to operationally adjust to it. We spent substantial time trying dealing with medical center issues. It's just a mammoth organization. It's a growing and it's complex. It's probably one of this community's largest employers. It has the problems of any large business together with taking care of
sick people. Also there was a lot of time spent to oversight of efforts to increase research, and also to support the rapidly increasing status of the James Cancer Hospital and Solove Research Institute.

I am very proud of the undergraduate honors program. It has been a great University success. While it certainly is not cause and effect, but during my time on the Board we built great facilities. The Schottenstein Arena was built, the R-PAC, the natatorium. And of course the remodeled library was started; it is just magnificent. And now the Union and Project Gateway have become realities. I remember early on when we were going through the throes of getting Gateway started. There is still much to do. The University has got to deal with the problem of deferred maintenance. Many buildings are aged, and we could probably spend $50 million next month on this University and not even recognize any change on buildings. I should also mention that donors have been very generous to the University. So the University is really on the right course. I'm very proud of the association I've had with a number of outstanding people here. As I think about it, I worked with Nancy Zimpher. Nancy has gone on to be a college President at SUNY. I worked with Gregory Williams who is former Dean of the Moritz law school and is now President of the University of Cincinnati. Barbara Snyder is doing remarkably well at Case Western. Michael Hogan, our former Dean of Humanities is now President of the University of Illinois. So we've had some real stars coming out of here. I learned from each of them.

Q. Do the student trustees, do you think that was a beneficial addition to the Board? And if you do, then how so?
A. They are of critical importance. They are invaluable. I think they made great contributions to the Board’s work. I think that the student trustees with whom I served were just remarkable young people. I wish they could vote. But the General Assembly hasn't chosen to make that move. But here at Ohio State, they're involved in everything. They sit in executive sessions, and other than the vote, their voices are heard. Most of them were not reticent to express opinions – even regarding very controversial issues.

Q. When you were the Secretary you said you were asked by The Lantern questions of how to vote on the Board, did The Lantern call you or the Dispatch for various comments on certain issues?

A. All the time. The media called frequently, and media persons attended Board meetings. I never felt comfortable with responding. Usually, I said that the Chair speaks for the Board. There were situations where I could relate to the Board’s clear consensus. I must confess, I'm not very good at speaking to the media, and I tend to tell people the straight away truth as I understand it.

Q. Well the problem is that if you don't then later you get whacked.

A. You get whacked, exactly.

Q. You talked about the academic plan. Were there any other big issues as a Trustee member that you think, sort of focuses while you were a Trustee?

A. Yes, trying to get the proper organizational structure for the oversight of the Medical Center. Who reports to whom and that sort of thing has always been problematic. As you know, all committees report to the Board – and the Board has final say. However, a number of committees have distinguished people from the community and they should be made to feel that their decisions are respected.
Q. One more Board question. How do you think as presidents change, how do you think the relationship with the Board changes?

A. As the presidents change? All of the Presidents that I am familiar with were somewhat different. Some are more familiar with certain areas of the University than others. All of them were highly intelligent, hard working and experienced. They communicated differently. I know some presidents who had little personal contact with individual Board members. Other presidents had close contact with Board members. It is a tough decision for a President of a large institution to decide the level of contact and communication with Board members individually. It's a matter of judgment. Of course, all of the Presidents stayed in touch with the Chair.

Q. I guess sort of just thinking about your whole span of time in relationship to the University, what are the positive and negatives that you see over time in terms of how the University has changed?

A. Well I think, as I've already mentioned, the University has changed in the quality of students – especially the Columbus campus. I think the quality of students is much better. The quality of the faculty has substantially improved. We have some academic superstars. That's the backbone of the institution -- good students and faculty. You can argue which comes first, but it doesn't make any difference. You've got to have both if you're going to have a great institution. So I just think we have some phenomenal faculty people here. I think the other part of it is, the University's more recent concentration on being an economic force for the betterment of the economy in Ohio. Research activity has dramatically increased. And as a part of that, the University has more inventions, more things that help people, and more things that will encourage life-long learning. I
think one of the great attributes of higher education which doesn't get enough comment is the fact that it enriches life. It enables people to understand and appreciate a broad range of things. We have big time athletics. I don't know that that's changed. As far as I can remember, we've been in big time athletics. Right now we're probably in some sort of a heyday here.

I think the University still struggles with outreach. What is it that we should be doing off campus for people which doesn't really have to do with the day-to-day education at the University?

Q. How do you think the relationship with the City has changed?

A. It is better than ever. Michael Coleman is a great mayor. He has been a great friend of Ohio State, as has the City Council. We've worked out some problems involving shared authority for policing in the University district. In doing the Gateway project, there was good cooperation with the City. A lot of work remains to be done in the area east of High Street, and it is critical that the University and the City continue to have a good working relationship.

Q. Any other issues?

A. Are you going to ask me something about negatives at the University? That's hard to answer. So many good things have happened. The University has been on the right track, and I think President Gee's comment about the fact that we've gone from a good University to a great University is on the mark. Which brings me to my great complaint about what's going on in higher education? It is the toxic effect of these magazine rankings which I think are an absolute distortion. It seems to be that if an institution is
able to adequately define its mission, then it seems to me a fair evaluation would be to adjudge how well we are doing what we are supposed to do. The magazine rankings seem to be based on the ability to spend money and if you spend more money than you go up higher in the rankings. The evil here is that it's getting to be the only game in town, and you either play or you're left in the dust because so many people seem to rely on the rankings. This University is not going to be Harvard and Princeton, and I don't know that it should be. But at the same time, I have been in a lot of professional situations with Harvard and Princeton graduates and I never felt disadvantaged for one second because I went to Ohio State. We can still train people to be incredibly competitive here without ever getting into the US News and World Report top ten. If you're a law school official and you know a student with a 3.8 that comes in and he wants to go to law school and he has a LSAT score which is not in the top ten, then you get some other kid that comes in who's got a 3.9 and two more points on the Law School Aptitude Test, and then you look at them, and it seems that if this applicant with the lower score is the better person and will do more things for people, and I'd take her or him. Why take the others just to get up in the numbers? It makes no sense to me.

I am also saddened that students, in order to graduate must incur huge debt. Paying that debt limits employment options – too many young people are taking jobs that they really don't want in order to pay their debts. This enormous debt – in my view – conflicts with the University land grant mission. The current system is too burdensome on poor people.

Q. Well thank you.
A. Well. I don't know whether saying this stuff is any good or not but I certainly enjoyed talking with you and spending the time with you.

Q. This is Tamar Chute, Associate University Archivist. I'm conducting the second oral history interview of Judge Robert Duncan on June 29, 2010. We are located in the Archives conference room. Thank you for being here again.

A. It's good to be here.

Q. After our last interview I felt that we hadn't covered a couple of things, which is why I asked you to come back. Also, I thought it would give you a chance, if there's anything you had thought of after that fact, that you thought, "Oh, maybe I should have added that." or something like that. One of the things we talked about a little bit but we didn't really get into was your role during the 1970 student demonstrations. You talked about an opinion that you had written but wasn't published. And so I thought we'd start there.

A. I'm still trying to find it. It is kept locally by the Clerk of Court. After awhile it is sent to Chicago for storage. But I'm still working on finding it and hopefully will get it to you. But I remember the case and it was a class action case involving students, University District residents and others. All of these various component classes were the moving parties in the lawsuit. It was about alleged unconstitutional, unlawful police detention and excessive force.

Q. Were those different groups suing the Mayor or the City?

A. The Mayor and the City of Columbus. The Mayor was one of the named defendants and it's usual that in cases like that, that officials are named plaintiffs. It was a class action lawsuit.
Q. Now as an alumnus, being a Judge, being here at the time, what were your opinions of what was going on campus?

A. Personally, I didn't know much about what had happened since, at least part of the time, I was living in Washington, DC. I don't have any personal recollection of what happened.

Q. It's one of the things we've been trying to get a handle on, what was going on campus, and I figured I would ask you. The second thing that we didn't really talk about, and it doesn't have to do specifically with the University, which is why we didn't bring it up before but I thought if we're going to do an oral history we probably should cover it, was the Columbus segregation of schools. And so I thought I would ask you to talk about your perception of the whole case.

A. Well, it was a big case. Where would you like for me to start?

Q. Wherever you would like.

A. First it was not a case that was originally assigned to me. The case was assigned to my predecessor in office. I inherited his docket, and on his docket was the case, Penick against the Columbus Board of Education and others. It's not a great way to start as a Federal Judge by having a school desegregation case. It was a tough assignment.

Community emotions were high. Parents who were deeply concerned about the future of their children, and obviously education is extremely important. By 1974, when I began the case, there were any number of school desegregation cases around the country, -- Boston, Louisville, St. Louis, Dallas, Charlotte, Cleveland, Cincinnati, Dayton, and others. So there was a lot of law regarding school desegregation cases available.

Q. What year was the case?
A. The case was filed in June 1973. It was filed by the original plaintiffs, 14 Columbus Public School students filed the suit through their parents. And they represented the class of students who were similarly situated.

In Columbus, prior to the case being filed, there had been a lot of agitation toward Columbus school officials to take action to desegregate a number of schools that were segregated. There were a number of Civic Committees convened to investigate and make recommendations.

Prior to the filing of the case, the City of Columbus was enjoying meteoric growth. The district’s student population grew to 110,000. So during the late 60’s and early 70’s, there was a need for more schools. So one of the issues was, where to build new schools. Obviously it takes money. The district initiated a bond levy in 1969, which went down to defeat. There was a lot of negativism about bond levy particularly among certain groups because of uncertainty as to where the new schools were going to be built. A number of community leaders contended that the new schools should be built in a location in the northern part of the city, where both the black and white students could reasonably be assigned to attend. Such locations, they agreed, would have an integrative effect rather than segregated effect on school attendance. So the first levy failed. Thereafter, the school board made certain representations that if a levy were to pass, then the schools would be built in a place where the effort to desegregate or integrate would be furthered. This concept was set forth in a Board of Education document called “Promises Made”. So in 1972 the levy again went on the ballot, and the levy passed. The plaintiffs
contended that inconsistent with its earlier representations, the Board planned to build the schools in locations which would not compliment racial integration – but would increase segregation. Building the schools where planned – would result in these student bodies being one race – white. The original thrust of the litigation was to enjoin the building in the areas – which would enhance segregation. The complaint was amended, and it alleged a full blown school desegregation case, not just an effort to stop the board from building the school where they had been planned. Next, another group of parents acting on behalf of school children intervened in the case, and were represented by lawyers from the National Association for the Advancement of Colored People, which gave legal expertise and some funding to the lawsuit. Thereafter, we had a full blown school desegregation case, like many of the cases that traditionally were brought around the United States and not just limited to the injunctive to the request regarding the building of the new schools.

Q. Did the school system then, so basically had the levy money but it just had to sit on it during this?

A. No, they built the schools. The negative impact on racial isolation resulting from the location of the new schools became an issue in the case. The case was filed in June of 1973. After a number of pretrial procedures, the trial began and lasted from April of 1976 to June 1976, 36 trial days, 70 witnesses, over 600 exhibits. This was a trial to the judge. And the opinion was issued in this case on March 8, 1977.

The United States Supreme Court decided Brown against the Board in May 1954. The court ruled that there cannot be intentional segregation by race in schools. The Court
ordered that school districts found to be unlawfully segregated – be desegregated. Next, a year later, the Court decided a second case (Brown II) and held that court ordered desegregation had to be done with “deliberate speed”. Subsequent Supreme Court cases required that vestiges of unlawful segregation must be removed “root and branch”.

School desegregation court orders precipitated unrest and violence in a number of communities. There was major difficulty in Boston. Boston school desegregation was presided over by Judge Arthur Garrity, whom I knew. He had over, somehow 300 incidents of public unrest. So a lot of people resisted school desegregation orders in other communities. The Columbus case was one of the last large urban school desegregation cases in America. And it had been preceded, as I mentioned earlier, by cases in Cleveland, Cincinnati and Dayton. So there was a pretty large body of law to follow.

Q. Were you surprised that Columbus was sued?
A. I like to think that Columbus was probably somewhat later because the Columbus system had any number of mixed race schools. I think Columbus was probably somewhat better than situations in many communities. There seemed to be considerable hope in Columbus in the 60’s that litigation could be avoided. And a number of organizations and individuals urged the school board to act.

Turning to the litigation – the trial was very professional. The lawyers were very good. And it was not a case where the judge had to decide who was lying and who was telling the truth. Just about everybody was doing their very best to tell the truth.
In order to better understand the issues in the case, some historical facts may be helpful.

In 1881, the Columbus Board of Education abolished separate schools for blacks and whites and required that students attend schools in the neighborhoods where they resided. From 1891 to 1897, there were a number of black teachers in Columbus teaching in mixed schools. Champion Avenue School was built in 1909 and was attended by all black students. A black parent sued the District in 1909 alleging that the establishment of an all black school was illegal under Ohio law. The Common Pleas Court dismissed the case and the Court of Appeals also affirmed that decision, and it held that it was the Board's prerogative to assign students, therefore, it was not an appropriate matter for judicial review.

Q. So it basically said that because the school was built there, that the African American students who were in that area had to go to that school.

A. Yes, everybody who lived in that area had to go to that school, they were all black. And then the other thing that happened was that Champion was staffed with all black teachers and staff. So, when it opened it was a black school. That was the basis of the legal action. The lawsuit was not successful. In the many years that followed Champion continued to be a one race black school. It was important in the Penick trial to hear facts regarding a member of other east side schools. In 1938, Pilgrim was a junior high school which had both white and black students and teachers on the east side of Columbus. In 1938, the Board then designated Pilgrim as an elementary school. An optional attendance area was created, thereafter, white (or black) students residing in the area could opt to go to Fair Avenue school which was basically white. Most white students opted to attend Fair Avenue leaving Pilgrim one race black with black teachers and staff.
More all black schools were opened on the east side with black staff and black faculty and students. Mt. Vernon, Garfield, Pilgrim, Felton, Mt. Vernon were basically black. In 1941, which was when World War II started, all black teachers in the system were employed at Mt. Vernon, Garfield, Felton, Pilgrim, or Champion, all one race black schools. These five schools were attended almost exclusively by black children and the faculties of each were composed entirely of black teachers. The Board acted to segregate the faculties and staff of these schools. For example, in September of one year, the mixed race professional staff of Felton School. Composed of 13 teachers and a principal, was removed and replaced with fourteen black persons. The same kind of 100% black faculty and staff change had occurred at the Mt. Vernon and Garfield schools. In September 1943, the Vanguard League, a Civil Rights organization on the east side, complained to the Board of Education about gerrymandering a follows. I'll read it to you. “A more striking example of such gerrymandering is Taylor and Woodland Avenues, between Long Street and Greenway. Here we find the school district skipping about as capriciously as a young child at play. The west side of Taylor Avenue, colored residents, is a Pilgrim elementary district and Champion for junior high. The east side of Taylor, white families, is in Fair Avenue elementary district and Franklin for junior high. Both sides of Woodland Avenue between Long and Greenway are occupied by white families and are therefore in Fair Avenue district. Both sides of the same street between 340 and 500, street number, are occupied by colored families and are in the Pilgrim, Champion or colored school district. White families occupy the residents between the numbers 500 and 940 and as would be expected, the white school district of Shepherd.” That had to be
done intentionally. That's not the result of anything other than an effort to separate the school children on the basis of race.

Q. Let me ask you just from remembering when we talked the last time, was you talked about when you graduated with your education degree, trying to find a position or like with student teaching, were you looking for, I can't remember what level.

A. Secondary. When Brown I was decided in 1954, there were no black high school principals in Columbus. All black administrators were assigned to predominantly black schools. Earlier, when I did student teaching in 1948, under the then existing policy and practice, black student teachers were required to do their student teaching at predominantly black schools. I don't remember when the policy changed.

Q. So if you had been looking to do younger students, there would have been some black schools that you could have perhaps taught at, but because you were interested in secondary there wasn't anything?

A. In 1948, I don't recall blacks teaching at secondary level (junior or senior high schools) other than at all black Champion. In 1954, all of the high schools, as far as I remember, all of the high schools were racially mixed -- all with white administrators. Columbus East High School was becoming more and more African American, when you got into the mid-50's. And I think the first black high school principal in Columbus was James Wade, and he, I think, in 1956 or 1957 was at Columbus East High School. But to answer your question directly, all of the high schools were integrated as far as I can remember. One other thing as far as this history goes here. The evidence in the case also showed that as late as the 1972-73 school year, there were 250 black elementary teachers assigned to schools in which the student body was 80 to 100% black, which represented
63% of all the black elementary teachers in the system. In the same school year, 34
elementary schools, all of which contained 80 to 100% white student bodies had no black
teachers assigned to them. So that is pretty much what the district looked like when the
case was filed in 1973.

I recall that in 1974, the Columbus Board of Education, in response to an Ohio Civil
Rights Commission complaint, entered into a settlement agreement providing for the
abandonment of the vestiges of the practice of having all black staff people assigned to
black schools, the agreement required the integration of staff throughout the system and
that faculty and staff not be assigned on a racial basis.

Q. Was that done?

A. That was done. In the 60’s and 70’s, there were community organizations urging
desegregation. They asserted that when Brown was decided in May of 1954, the duty to
desegregate arose and school officials had to take away the vestiges of a system of racial
segregation. In 1950, pursuant to a request of the then Columbus school superintendent,
the Bureau of Educational Research at The Ohio State University began a comprehensive,
scientific and objective analysis of the school plan needs of the school system. The
Bureau studied and reported on community growth characteristics, educational programs,
enrollment projections, the system's plan of organization, the existing plan, and the
financial ability of the community to pay for new school facilities. Thereafter, a number
of general and specific recommendations were made to the Columbus Board by the
Bureau. The recommendations included the size and location of new school sites as well
as additions to existing sites. The recommendations were conceived to accommodate the
so-called community or neighborhood school concept. The 1950 concept was related to
distance criteria grounded on walking distance to schools, three quarters of a mile for
elementary, a mile and a half for juniors, two miles for high school. The Board of
Education adopted and relied on the Bureau's recommendations in proposing and
encouraging the passage of bond issues over the years that is to build the new schools in a
location where they would draw from both white and black residential areas. The first
bond levy was defeated in 1969, arguably because of the Board’s lack of commitment to
build schools to lessen segregation. However, a levy passed in 1972.

Q. So it took them three years.

A. Before the election in 1972, a number of groups in Columbus continued to demand that
the Board build the schools in places to further integration. Next, in November 1972, the
Columbus Board voted down a resolution which would have established a site selection
advisory committee to assist the Board in preventing new schools from being built on
sites which would result in racially identifiable one race schools.

Q. Why do you think the school board didn't want an advisory board?

A. My recollection is that the Board was concerned that the advisory board’s
recommendations could well be inconsistent with the school officials’ stated dedication
to a neighborhood school concept. However, the advisory board believed that there was
no inconsistency.

Q. Even though they could see obviously you go down the street and this block is one way
and this block is the other way and it's very obvious. I guess looking back it was
obviously. Maybe if you're in the middle ...
A. Well, and also I think in fairness to the members of the school board who, by the way, were good people. It wasn't a bitterness or anything like that. But from the days back when, in the 40's, when the above-noted gerrymandering took place, the racial situation in schools got better, but in 1973, still not enough to comply with the law. The real point that the plaintiff made in this case was that the Board's commitment to maintaining a neighborhood school policy notwithstanding the legal responsibility after the Brown decision to desegregate the district which, in part, had been intentionally segregated by the Board's predecessors in office was effectively unlawful.

Q. What are optional zones?

A. Let's assume that there is a student attendance area and it is predominantly black but a number of whites still live there. So if white students would go to the school in their district, they would be going to a school which would be predominately black. Assume that there was a school which was predominantly white but in a different attendance district. So what the Board did was to give people in both of these districts an option of going to either of the two schools. So what happened? Well, all the whites opted to go to the predominantly white school. Not all of them, but only a few of them remained in the predominantly black school. Almost none of the blacks opted to go to the white school. Optional zones, in the Pennnec case, were shown to have no other purpose other than to allow white students to opt to attend a predominantly white school.

In addition, the facts revealed that the Board of Education failed to take any action to desegregate the five east side schools that were obviously intentionally segregated long before Brown against the Board was decided.
So based on all of the evidence I found for the plaintiffs, after I made the ruling holding that the District had to be desegregated, the defendants appealed to the Sixth Circuit Court of Appeals, and the United States Supreme Court. My decision was affirmed.

After having found for the plaintiffs it was necessary to design a remedy. In order to desegregate a large district such as ours, there was no effective process of system wide desegregation of a large urban area other than to use student transportation to achieve racial balance.

There were a number of experts around the country who were available to consult with to draw up a plan. But there was another issue that was involved. As I mentioned, most of the schools in the community were already racially mixed, so then the question was, what do you desegregate? The law required that where a substantial part of a district was intentionally segregated, there is a presumption that, as a result, it affected the entire district. It's sort of domino effect kind of theory. In our case, that presumption was not rebutted. Therefore, it was my duty to desegregate the entire district, and to achieve an acceptable level of racial balance. Then the question was, how to do it. I had the extreme good fortune of persuading Dr. Lavern Cunningham to become the Court's Special Master in the case. Dr. Cunningham was a former Dean of the Ohio State University College of Education, and one of the most highly regarded experts on schools and race in the United States. It was really a ten strike for me and I think also for the community because he is a man of great experience and wisdom with a judicious
temperament. As a matter of fact, he'd certainly be a good person to interview, if you haven't already interviewed him. His career in education is world class. A number of judges in desegregation cases hired experts to produce a plan. Dr. Cunningham and I thought that the people who know most about this system were the Columbus school administrators. They know the district better than anyone. Their designing a transportation plan would save the Board a lot of money and abate some of the sting of having some outside people telling school people how to do a job. So we asked them to do so. They drew up a plan. We rejected the first plan. It did not assign enough blacks to the one race white schools in the northern part of the district. We also suggested to them, "Well, look, this entire district is not segregated. Why don't you consider desegregating the parts that are segregated and leave the rest alone as they are. However, we also knew that there were some reasons not to do that. If you did that, that just puts the weight of desegregation on only the students transported for racial balance to and from one race schools. The Board did not do so. Thereafter, they redesigned the plan. They brought back the most well balanced plan of complete school desegregation that had ever been produced in the United States. It was an incredibly efficient transportation plan. After the remedy plan was approved by the Court, there was another appeal to the United States Supreme Court saying that this whole remedy plan was unlawful. The Supreme Court of the United States again affirmed the remedy order and in September of 1979 the first transportation began.

I am proud to note that there are some procedural techniques in this case which were helpful. First is the Court's opinion, which was written at, what we believed to be the
11th grade reading level so that people could understand the basis for the decision. And the Dispatch agreed to print the entire opinion. All throughout the trial I tried to encourage news coverage. I wanted everybody to understand what was going on in that courtroom.

The District was racially balanced after the remedy went into effect in 1979. It stayed in effect, basically, with some tweaking until either late '89 or early '90. Then the school board appointed a citizens committee to review the plan and make some recommendations. They had many focus group meetings so that the community could be heard. As a result, they made a decision that they were going to revert basically to a neighborhood school plan. Also, a number of alternative schools and magnet schools were to be continued and enhanced. This is the basic plan in place today.

One other matter I should point out to you which had to do with the positive activity in the community after the case was decided and appealed to the United States Supreme Court and before September 1979 when transportation first began. The Chamber of Commerce formed a Columbus Metropolitan Schools Committee. That committee was headed by a dear friend, Roland Brown, who was an outstanding business executive. The committee's purpose was to ensure that, whatever the result of the appeal – the community must remain peaceful and obey the law – even though most citizens did not like the result. They even had an ad agency involved, and with some spots on the radio, talking about, keeping the peace. When the buses ran on that first day in September, the Columbus Metropolitan Schools Committee probably had organized many volunteers on
the street just to make sure that there were no disturbances. There was never a disturbance. Over the years, we never had one hearing because somebody wasn't following the order.

The other thing I'd point out from a court monitoring standpoint; in school desegregation remedy matters there are concerns with how the orders are working. Some courts had outside court appointed monitors to go into the schools on behalf of the court and observe what was going on. We knew school people didn't like outsiders coming in and looking over their shoulders. We understood that. Dr. Cunningham and I designed a system of internal monitoring. We required only information from the school officials. What were discipline numbers in the school? Transportation? Everything we could think of that would be relevant to our knowing the status of the implementation of the Court order. We trusted the school administrators to give us good numbers. We were able to look at the data – we met with the Board and staff – we were aware of what was taking place – without ever going into a building. Moreover, I think, enabled the Board to know a great deal more about its schools. In sum, it accomplished the monitoring function without antagonizing the building teachers and principals, and at the same time, gave us sufficient information. We would analyze the data. We frequently met for at least a year, with the entire school board to discuss the issues of desegregation.

Q.  Wow.

A.  There were cordial and professional meetings. I know that most board members did not give up their opinions that school desegregation was a bad idea, but the meetings went well. We made friendships that still exist. As a matter of fact, the chief lawyer for the
Columbus Board at that time was Samuel Porter, who is a distinguished litigator in town, and he and I remain to this day warm personal friends. As a matter of fact, we went to China together in 2008.

Q. Just on a vacation trip? Or what were you doing in China?

A. No, after I left the court I became involved in arbitrating and mediating -- alternative dispute resolution. Sam is also active in that area. So we went on a People-to-People trip to China. We met with Chinese lawyers who also were involved in arbitration and mediation in international matters. Today, in sum, the District is using a neighborhood school attendance plan and is once again a de facto segregated District. Schools in urban areas of the Midwest, northeast, and west coast are probably more segregated now than before desegregation began.

Q. That's what I was going to ask you.

A. And you might ask, was all this a big charade, a waste of time? I don't think so. I think that in many respects the significant lasting legal direction that we drew from Brown against the Board of Education was that the separate but equal doctrine in America's is dead. In effect, the decision outlawed overt racial segregation in the United States. Also, the decision was the precursor of the Civil Rights of 1964. So it was a dramatic change in America. By the way, very few now disagree with the result reached in Brown. I'm sure there are some.

Q. I know this is very much speculation but do you think with the current segregation of a lot of the schools that were desegregated, do you think we'll ever get back to a circumstances where someone will say. "This is right back where we were."
You are in effect asking whether there will be another round of desegregation lawsuits. I don't rule it out. But it seems unlikely. In many respects it's another kind of phenomena in this county that is sort of circular. It's just like, during the 1930's, when we were in commercial matters really sort of apprehensive of business conglomerates and trusts. Then came a big assault on monopolies. Antitrust laws were enacted and we had an era of trust busting. Now what do we see today? We see companies merging. So then, will there be another assault on the conglomerates again? I don't know. Likewise, I don't know what's going to happen in schools regarding race. Student school performance can be correlated to family income. I think the next legal assault may be on the basis of money rather than race.

Do I think there will be another big round of segregation cases? First, you have to find a supporting organization to finance and conduct litigation, such as the NAACP. There is no indication that the NAACP or other organization is interested in bringing school desegregation cases back. The NAACP is concerned with other things – such as closing the gaps between African Americans and non-African Americans in health care, education, employment, housing and other areas of life. America has really changed, but I certainly don't believe we're in a so-called post Civil Rights era. We still have a lot of problems. But things now are unquestionably better. Also, I believe the overwhelming majority of people in the white community were bitterly opposed to transportation to achieve racial balance. Unfortunately, there was no longitudinal study to evaluate the affect of the 1979-1990 period on academic progress. In 1985, I was told by Dr. James
Hyre that there was evidence that transported black students showed improvement and white students remained where they were.

In 1985 I granted the Board of Education’s motion to remove court supervision over the District. Over the objection of the plaintiffs, I dissolved the injunctions. The Board had complied with the Court orders. So there was no imperative I should keep supervision. The court shouldn't be overseeing the schools indefinitely.

I am often asked about “flight” as related to school desegregation. Why is it that white people left the district? I don’t think there’s one easy answer. I am sure that a lot of white people left the district because they didn't want their kids or the possibility of their kids being assigned to a school outside of their neighborhood which was maybe inferior to the one in their neighborhood or attended by a majority of black students. Racism is not dead here and somehow it just seems to be from my life’s experiences that when a school approaches a majority of black students, many white parents do not send their kids there.

I think there are also a lot of black folks that left town and wanted to live in the suburbs. There were some people who didn't leave especially for school desegregation but wanted a suburban life style. There are also people who wanted to move out of the District to live near I-270, where there was a lot of economic activity. They wanted to be close to their jobs. So I think there are any number of reasons why people left the district or did not want to migrate into the district. But there is no question but that a lot of people left the district for suburban safe havens from Columbus desegregation.

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The future for many black children growing up in Urban America – to me – looks bleak. In many areas there are guns, drugs, gangs and all sorts of violence. Where maybe up to 70% of the children live in single parent homes. Unfortunately, they are already educationally behind from day one. In certain areas, peer group activity sets in, and it becomes unpopular to do well in school. There is little out of school help with housework. Obviously school teachers can and must get better. In many urban areas attendance is poor. Families frequently attend a number of different schools. But I just don't see much hope until somehow we change the culture. I am encouraged that a number of special schools – with longer school days, uniforms and first rate teachers are doing very well. Those kids are going to go to college and they're going to do very well.

Q. Do you think the University has any ability or maybe, not a requirement, but sort of obligation, to try to help Columbus schools?

A. Yes, the University has outreach programs. The University has a Young Scholars program in major cities in Ohio, starting at the sixth grade level program where program administrators identify students who have good grades and they are selected become Young Scholars. Thereafter, there are local programs to aid them in school and to monitor their academic performance. Upon graduation from high school, the Young Scholars are given college scholarships. I am sorry I don’t know more about the higher education performance of the Young Scholars.

I think the metro school here on campus is excellent, and I believe their first class has graduated.
On a pleasant note, every now and then I will be somewhere and an adult will come up to me and say, "You're Judge Duncan. Because of your order I was bussed to a school on the east side. It was really good experience for me." I really got a better feeling for people. I understand people who are different from me a lot better than I did. I had good teachers. I finished college and things turned out well. But I want to tell you I'm so glad that I had that opportunity, to have that different kind of a relationship with people in life."

Q. Because you were the judge on the case that's why you continued to monitor. Cause didn't you, I'm trying to remember from before, when you retired from being a judge and went into the private practice, was it about the same time where you said, "Okay, I'm sort of taking a break," or not taking a break but taking down the injunction?

A. The timing of my leaving the Court had nothing to with the Penick case. Removal of the order came in the ordinary process of the litigation. And by the way, the whole notion of when to take down a school desegregation order to this day remains controversial. Earlier Supreme Court cases say that jurisdiction should be continued until all of the vestiges of the unlawful segregation have been removed. Six, seven years ago, the United States Supreme Court decided a case from Oklahoma City. The School Board in Oklahoma City decided that it would no longer do bussing for racial balance for elementary students. Lawyers representing certain black students contested that action. They argued that all the vestiges of unlawful segregation were not gone. The Supreme Court then held that there cannot be perpetual judicial supervision of schools. You have to be practical and reasonable. There was evidence that the Board had acted reasonably.
As a result, today, there is more segregation in Oklahoma City. However, that appears to be what the community, including most blacks, wanted.

So what did I learn from the Pennck case? The Brown case in 1954 set forth egalitarian concepts of equality. The It was a great case for America. But the concept of equality – egalitarianism – in this case cannot be judicially ordered. So, when there were available options – many chose to find a way not to accept the “equality” part of Brown. Court decisions are necessary to settle disputes, but racial equality comes when people believe it is the right path to take. And I think that in many respects is what happened in overt segregation. After the Brown case and after the King years and little girls getting blown up in Birmingham, I think people began to conclude, "This is not right. We can do better than this. As a part of humanity, we've got to change." And I think people did change as a result. I think as a result we have enough people in the most prosperous country in the world elected African American president, and that's big progress. And I don't think the laws, so to speak, caused that great result. But it sure helped push it along and nudged it. So I'm pleased. I think things are getting better. And I also think, thank God for our courts. Courts led the way.

Q. I guess my last question, at least for now, you never know, I might come up with some more.

A. I'm sure you're getting tired of listening to me ramble.

Q. I'm not. Was there anything about either the University or the case or anything else you thought of after the interview two weeks ago that you thought, "Gee, maybe I should have also brought this up?"
A. No, I think I don't know what I said last time, as a result of my living all these years in life and growing up poor, I just wish somehow that there would be more of a total recognition in this country that the problems of so many young people need solutions, and we're getting more and more Latinos, blacks, and poor young people who are just not going anywhere in life. All of us in America are going to suffer because of a large number of who are nonproductive, hostile, and expensive to deal with. Addressing these issues must be higher up on our governmental agenda. I don't know how to fix this but I'm sure there are minds in this country, if properly applied, great universities, that we ought to be able to figure out, what can we do to change this culture. Perhaps we need a "Marshall plan" to foster cultural change.

Q. Well thank you.

A. I can't think of anything else.

Q. Okay, alright.

A. I'm sure I'll have a lot of things to correct.

Q. Oh, I don't think so. I did very much appreciate your description of when you were also a student here and our discussion last time about things like that too, which was very interesting to me. I think it will be greatly beneficial because we just don't have enough about that. I thank you for the entire set of interviews.

A. Well, thank you, thank you.