

**ORAL HISTORY OF JUDGE MICHAEL W. FARRELL
SECOND INTERVIEW
NOVEMBER 10, 2014**

This interview is being conducted on behalf of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewee is Judge Michael W. Farrell. The interviewer is Lory Barsdate Easton. The interview is taking place at the District of Columbia Court of Appeals on November 10, 2014. This is the second interview.

Mrs. Easton: Yes, we're [back to the University of Notre Dame].

Judge Farrell: What inspired me at Notre Dame were a couple of teachers in the English department who taught me, really for the first time in my life, to read novels, to read fiction, to read literature. So, I majored in English, and at the end of four years I graduated with a degree in English. I was *magna cum laude* because I was dutiful, I studied, did all my work, I wasn't a rebel, and, as I say, I don't think the courses were so demanding, and I succeeded in doing fairly well. But at the end of four years I was about as immature as I was when I started college. I had no idea what I wanted to do. These professors, who evidently thought they saw something in me as an ability to write and to read literature and to interpret literature and to be a literary scholar, urged me to go on to graduate school and try to get a Ph.D. in English. You probably don't remember because it was, I think it was before your time, a little bit, but at the end of the Fifties, beginning of the Sixties, everybody who had any—not everybody but many, many people who had any kind of intellectual pretensions went to graduate school with the anticipation that they would get a master's and a doctorate and teach in college. The government was throwing money

at people to do graduate work. There were grants all over the place, particularly after the Russians launched Sputnik and our country decided we gotta get a little more intellect, and so the government was making money available. Foundations had tons of money for graduate studies. Law schools didn't enter my mind because the teachers that influenced me so much considered law school to be selling yourself out to the world of commercialism and business. So, to make this part of the story short, I packed up and, after a year in the Army—I'll tell you just a little bit about that—but after a year in the Army as a reserve officer, I went off to the University of Chicago with a Woodrow Wilson Fellowship to study English and to begin the process of getting a Ph.D. in English, even though I really didn't think I wanted to do that. I really didn't think I had the ability at that point at the ripe old twenty-two to do serious literary criticism and make something of myself in that way. But first let me, before I get to that and the thereafter, yes, indeed I was in the Army Reserve while in college. I graduated with a commission of second lieutenant. There was no war going on then, so we all had our choice of what branch of the military, of the Army, we wanted to go to. I was an Army officer, and I said, well, I want to go into the Signal Corps because Fort Monmouth, New Jersey, was the headquarters of the Signal Corps and it was fifty miles from my home. I had nothing in the world that qualified me for the Signal Corps, which was electronics, radio technology. I didn't know AC from DC. But it

looked like a good place to spend six months, which is all I had to serve, followed by several years of reserve. So I spent six months at Fort Monmouth, after minimal basic training, and I was the head, basically, of the Signal Corps Museum for six months, which consisted largely of babysitting for stuffed pigeons. You remember during the Second World War, carrier pigeons were very important, they transmitted messages. After they died they would send them to taxidermists, stuff them, put them in the Signal Corps Museum, and my job was basically to dust them off occasionally and do things like that. I'm exaggerating only slightly. So, a rather boring six months. Nice little job as a second lieutenant. Very, very fortunate, pure luck, because the Korean War was long over, the Vietnam War had not begun. I was a reserve officer, owed the government only six months active duty. My classmates, when I graduated from Notre Dame in 1960, a number of them, similarly in ROTC, signed up for regular Army, they had three-year tours of duty that took them up to 1963-64. Their duties were extended, they ended up in Vietnam, and at least two of them got killed. So you know it was just pure accident that I wasn't one of them. But I had no desire to be a regular Army officer. So that was that.

I finished that up in '61, started at the University of Chicago because it was paid for by a fellowship, and I found out in the course of the year that I really didn't like it. As I said, I was beginning what I will call

seven or eight or nine years of “drift.” I was pretty immature. I didn’t really enjoy reading literature at that time. I really didn’t think I was very good at reading poetry and interpreting poetry and things like that. And, while I did okay in my classes at Chicago, I really didn’t think that I wanted to be there very much, so I only lasted a year and I terminated the program, I didn’t continue. I liked Chicago. It was a very nice city. The campus is very nice. The professors I had were wonderful, including one professor who wrote a book you may remember about trout fishing in Montana—Norman Maclean, *A River Runs Through It*, Robert Redford made a movie. Wonderful man, Maclean, I can still remember his face, taught a fine course in American Literature. But at the end of March or April or May, I said to myself, I don’t know what I’m doing here. I really don’t know whether this is what I want. Because a Ph.D. meant two more years of classes and a thesis and so forth. So I came back home and my mother and father said, well what the hell are you gonna do with your life now at the age of twenty-two or twenty-three? I said, “You know, Dad, what I think I’m going to do is to go off to Europe and learn a foreign language,” and he said, “Well, you know you got your B.A. in English, you don’t want to teach?” I said, I don’t see myself doing that for the rest of my career. And so I went to Germany, because, through college, I had had a certain amount of exposure to philosophy, as you would at a Catholic college, and I developed a kind of an interest in

particularly some German philosophers like Immanuel Kant, Hegel, people like that. So I said why not go to Germany, spend a little time learning the German language and reading these people—but still not having any idea what I wanted to do with my life. I had saved some money, from working summers and so forth, and it was very cheap then in Europe as a student living in the hostels and things. So in 1961 or 1962 I went over to Germany. I got myself a job teaching English at the Berlitz School of Languages in Frankfurt. Eventually I went up to Hamburg, then down to the University of Mainz and took courses. I attended interpreter school, learning German, and then took college courses. 'Stayed there for about two years just learning the German language. Enjoying it. No responsibilities at all. The kind of thing a young person now couldn't possibly do, having \$100,000-200,000 of student loans. Nobody had that kind of debt back then. We were so lucky and we didn't realize it. And it was so cheap to live, particularly in European countries, because the dollar was king, and so I just basically wondered around Germany for a year and half or two. 'Worked partly teaching, going to school, making a lot of friends, having a lot of fun, and then finally my father called one day and said isn't it time to come back and get serious? And so I said okay, I'll come back and get serious. About '63 or '64, after Kennedy died, came back and said well what the hell am I going to do? I have to have some kind of job. So I took a job teaching German at a high

school in New Jersey. Private school, Saint Peter's Preparatory School in Jersey City. 'Taught German there. Liked it. Decided I liked it enough to go over to Columbia University, enroll in a course in a master's degree program for teaching of German. 'Picked up that masters in a year and a half, that wasn't very hard. I enjoyed Columbia. And then I enrolled at NYU, New York University, in their Ph.D. program in German. Still deep down inside maybe not certain this is what I wanted to do, but I had developed a certain fluency in German. I liked German literature. I loved to dabble in German philosophy and things like that as a hobby and read that kind of stuff. So I enrolled and spent two, three years continuing my teaching in the high school up there in Jersey City and doing night classes at NYU. And in about '67 or '68—you see I'm rushing you through the Sixties because nothing really happened of interest—I went over, I finished my comprehensives for the doctorate at NYU in '67 or '68. I picked up another fellowship—remember I told you these fellowships were there for the taking—went over to Europe to write my dissertation, and, like so many young people in that era, never finished my dissertation. One reason was that I discovered that the subject I was going to write my dissertation in, I didn't know anything about. It was nominally about a wonderful Swiss novelist by the name of Max Frisch, F-r-i-s-c-h. But the topic I had chosen with the advice of a few teachers at NYU had to do with Max Frisch and depth psychology and

how it influenced his novels, his frame of mind. He was a neurotic as a novelist, and I discovered quickly I didn't know a damn thing about depth psychology and—

Mrs. Easton: Now this is depth—

Judge Farrell: D-e-p-t-h, depth psychology, psychology of the mind and of the unconscious, not you know rats running around a maze, not experimental psychology, but clinical psychology. I didn't really know much about it. I think the topic was a little bit over my head that I chose for myself. But I worked away and plugged away at it for year and a half. Came back in '69 and discovered the job that I thought I had teaching at NYU as an instructor, provided I finish up my scholarship, was gone. I was teaching as a graduate assistant at NYU in a wonderful little campus they had up in the Bronx, called University Heights campus. You clerked in New York, but you're not a New Yorker, or are you?

Mrs. Easton: I'm not.

Judge Farrell: No. They had a wonderful campus up there. But this was the late Sixties, we're in the thick of the Vietnam War. Modern languages fell off the table in terms of interest, nobody was signing up for them among the undergraduates. Undergraduates wanted to discuss politics. And so the enrollments were way down. NYU was in a financial crisis at the time, for a lot of reasons, and they sold their campus up there to the City College of New York. It's now the City University of New

York. They consolidated their humanities departments down to Washington Square where their headquarters was and abolished my department where I was supposed to have a job. So I came back, had no job, had my dissertation about half done, didn't know what to do, didn't like the subject of my dissertation—I think I had gotten through about two of Frisch's novels and had about three more to go through and I wasn't sure whether I even understood what I was writing, but I was doing it because I wanted to finish up the damn thing if I could. In the back of mind I was saying to myself, do I have a future here when enrollment in languages is way down? I'm not going to be the most gifted scholar in German literature on the earth. I'm not going to get probably hired by Harvard and the others who will survive in this area. And I was not alone; there were a lot of people at that time on the Ph.D. career teaching path in college who were having serious second thoughts in the humanities because the jobs just weren't there. In a way the bottom fell out of the humanities in the end of the Sixties, probably because of the war. And the best and the brightest, strange to say, started thinking law school. So by the early Seventies, the focus had really shifted heavily toward—for humanities specialist graduates—toward law school because you had a career there, and so many of the Ph.D.s in the languages and so forth ended up managing McDonald's restaurants and things because the jobs weren't there in languages.

Well, anyway, not to dwell too long on this, I was confronted with what do I do next when that job wasn't there. I had happened to meet a woman in France, French woman, little bit older than myself but we had just met casually, she was from the Washington, DC area. She was over there chaperoning a group of American students on some kind of thing and I ran into them when I was in Paris, just wandering around to make a visit, my first visit to Paris. We talked and we got—I couldn't say we really got to know one another, but we exchanged addresses and so forth. When I came back, I had some communication with her from New York, as I was trying to figure out what to do next, and she said, you know there's a job opening down at the place where I teach now. She had just finished her first year teaching at a prep school out in Rockville called Georgetown Preparatory School, not connected with the university, but same religious order, the Jesuits. She had previously been the president of the school in Falls Church called Congressional Schools of Virginia, a private school. So she said, you know, why don't you apply, you got nothing else to do. You're not really wedded to New York. You're not even sure you want to stay in German as a career. You can come down here, teach for a couple of years, and decide what the hell you want to do. And now it gets fun, because I did that. I disappointed my folks up at NYU, they thought I should just kind of hang around up there, get the dissertation done come hell or high water, and then get a college job. I wasn't confident I could get a

college job anywhere I wanted to be. The jobs weren't there. So I packed up and came down to Washington in '69. Have I brushed through the Sixties too fast? Those ten years?

Mrs. Easton: It's a pretty rapid tour for a pretty long and exciting decade.

Judge Farrell: Yeah, I just basically was teaching high school and doing graduate school and it was costing me almost nothing. Impossible now, I was spoiled in that way. I have no doubt that if I was really struggling financially, I would have been more productive, maybe accomplished more. As it turns out I think I accomplished a lot from the standpoint of my life because during those ten years, what I call my "wander years," you know my *Wanderjahre*—like Wilhelm Meister, his *Wanderjahre* [referring to Johann Wolfgang von Goethe's novel *Wilhelm Meister's Journeyman Years*]—I got exposed to an enormous amount of stuff that you could only get exposed to if you were a young man of leisure, if there weren't pressures on you. I was able to read widely in German literature and in German philosophy and I fell in love with Nietzsche and Freud and Marx and Wagner and Darwin and all the things I had never really been exposed to at the University of Notre Dame where they didn't want you reading stuff like that. (Laughs.) But anyway, it was a wonderful kind of escape from an upbringing that was fairly restrictive.

Mrs. Easton: But you ended up teaching at a Jesuit school. (Both laugh.)

Judge Farrell: I had to, because it was there. And it was very difficult for me in a way because I, you know, I wasn't religious by that time. They were very good to me. I came down there, they thought that I kind of qualified because I had taught at a Jesuit school—high school in Jersey City. So they didn't have any worry about me polluting the minds of the children with secular ideas, I was just there to teach German. Anyway, the interesting thing is that—[Brief interruption as someone enters the room.] Hi Frank!

Frank: I put a legal journal on your desk. You need to take a look at it.

Judge Farrell: Very good! Thank you. I came down, I taught for a year, guess who my boss was at Georgetown Preparatory School. She was now the chairman of the modern languages department, this woman I had known from Europe! Within a year and a half we were married. She had been divorced for a number of years. We just got along very, very well. She was somewhat older than I, but I didn't care, I was in my mid-Thirties and the interesting thing is that as the chairman of the department she was the one who came around to monitor my classes as I was teaching these young men German, it was a boys' school. And she said to me fairly quickly after about six months, she said you're a lousy teacher. You think you should be teaching college. You're not teaching college, you're teaching high school, she said. And I also was teaching English at the time, literature, because they needed somebody there, and she said you are teaching the best students. She

was very perceptive. “I see, you know, I come in and watch; you’re teaching the best students, unconsciously—you’re putting the questions, then you’re engaging in dialog. They don’t really need you.” It was an exaggeration, but it’s the kids who aren’t that gifted who need you and you’re not really happy being with them. “Michael, why don’t you really think about something else?” And I thought about that a good deal. I stayed another year or two there. Eventually no more German, I became chairman of the English department because there was need for that. And meanwhile though, at her suggestion, I started looking around for law school. Because I started thinking, wait a minute, English didn’t go anywhere, German really didn’t go anywhere, Ph.D.—you didn’t have a career there ahead of you. You’re a reasonably smart guy. You’re married now, or you’re engaged, you’re going to be married. You’re probably not going to have kids, because she had already [pretty much raised hers], and I was thirty-five, I wasn’t really looking to raise kiddies. I said, but nonetheless, you’ve got to help support a wife, you’ve got to have a family, you’ve got to do something to finally make your father satisfied that you’re doing something with yourself. So I looked around for law schools. And I said, why not American University, because American University was ten blocks from where I lived, and it didn’t matter where I went at that point. Harvard wasn’t going to let me in at thirty-five. Yale wasn’t going to let me in at thirty-five. It

was going to be night school anyway because at that point I had to support myself and I had this nice job as chairman of the English department, it paid okay, and so I said, why not go to American University Law School at night. And I did. I enrolled there in 1970 and succeeded over the next three and a half years, nights and summers, in getting my law degree—in all honesty, without having, at the time, fallen in love with the law. I was schizophrenic, you know: You spend your whole day teaching literature, fiction and things like that, and poetry, and at the same time studying contracts. It was a little bit hard to know what your loyalties and interests were. Nonetheless, and I don't mean to be self-deprecating, but American University wasn't at that time the shining-est star in the firmament academically. You could do reasonably well there as a night student by being a little bit of a grinder, doing your work, reading your cases. And I managed to do okay. I don't think I was in the top of my class but I succeeded. The courses weren't, as I remember, hugely demanding, but they were okay. Within five or six years, American University became much more selective, like many law schools. Why? Because the competition was greater. More and more kids were going into law school, and now I think it's a damn good law school, but at the time it wasn't so great, particularly the night school. So I did that for three years while I finished up my little tour of being an administrator/teacher at a pretty good private high school, with my

wife nagging me all the way to stick with law school. You didn't stick with your English, she said, you didn't stick with your German, you're going to stick with this and you're going to get a law degree and then we're gonna— you're going to practice law or do something. And I owe it all to her. Because she really was—I think she wakened my mind and my eyes to the idea that I was kind of a frustrated college teacher who wasn't going to teach college because he never got the doctorate, so law may be the kind of the thing to do. And that kind of then ends my academic career and begins my professional career. Before we go forward, you may want to fill in gaps; if you do—

Mrs. Easton:

Well I want to go back to a couple of things. But, I'm particularly interested actually in your going to night school, which at that time, I mean how big was your class? How many students?

Judge Farrell:

You know, there may be forty or fifty in each class, thirty, forty or fifty. It was mostly adjunct professors, a few of the regular faculty. They had some good people. But American U. was really at the beginning of a transition. Half a dozen of my teachers had been there from the beginning of American University Law School, going back into the Fifties or earlier, and were at the end of their careers. There wasn't a lot of scholarship or publications, it was kind of a third tier law school, I think. But there were some gifted people in my classes, very hard working because they were night students. A few people who ended up becoming judges: Reggie Walton, of the United States

District Court here. Irma Raker, who became a judge on the Maryland Court of Appeals. They were all in my class, struggling night students like myself, and we had fun, but you really only had so much time in the day to devote to your law studies.

Mrs. Easton: Well this is a pretty exciting era. You're in law school in a time when there are really significant developments in the law, in civil rights and you're at American right here in D.C., so—being a night student and having a day job, did you have time to even think about those things?

Judge Farrell: No, no, and when I kind of began, we were at the end of the Warren Court era. There was the excitement of criminal law and so forth, that kind of intrigued me. But I think there later on became more excitement associated with American University because the succession of deans then became very much interested in international law and the way Washington related to international law and so forth. But, at my time, I can't sincerely say that being a student at American U. engaged me more with the political life of Washington than if I had been at UVA or anywhere else. It was essentially just a—almost a chore to get the degree and to move on and do something different. As it turned out, being in Washington was very much a help to me because the wife of a judge in Montgomery County was secretary to the president of the high school, so, you know, this is where connections help. I was fortunate enough by that time, probably thirty-six years old, to get a clerkship the next year for this judge who

was a trial judge in Montgomery County, and who immediately got moved up to the Court of Special Appeals, their [Maryland's] intermediate court of appeals. And that's how my law career began. But you still want to fill in my "wander years" in my twenties [and Thirties]. But AU was—I don't think there was a lot for me, a lot of excitement associated with it. Maybe for the day students more, that had more time. I was just so filled with responsibilities of teaching and administering and also being a student that I was basically—you did what you had to do and you hoped you passed your courses.

Mrs. Easton: So, you mentioned criminal law kind of caught your attention in law school. Do you remember anything about your professor, or what was it that—

Judge Farrell: No, I think it was largely because we were kind of studying cases— I took a couple of criminal procedure, criminal law—I think we were studying these cases, almost as they came out because of the Warren Court. A number of the Warren Court decisions had been in the mid-Sixties and earlier, but they were still very fresh and this was a kind of a little revolution in criminal law. So, people found it very interesting and your classes would be kind of sitting around and waiting, when's the next case going to come down, to make that kind of excitement. And I remember going up to a few oral arguments in the Supreme Court at the time, when I could squeeze out the time, and watching Justice Douglas and others, great men, and even Hugo Black,

I think I remember was still there. I remember being excited by the whole thing but that was basically it. Other areas of the law really didn't attract me that much at the time; it was just a matter of studying what you needed to study to get out. The question, of course, in my mind at the time, all the time, is, "What's the next step? Am I going to go into practice, be a trial lawyer, that kind of thing, or what else is there?" The advantage of being in Washington is that you had options, and one of them came along for me. While I was clerking in Maryland for—I loved the clerkship in Maryland for a year, it was just the most wonderful fit because I discovered that, after all, I did know how to write. It's just that it wasn't writing dissertations on literary interpretation, it was writing judicial opinions. My judge, who was a trial judge at heart, he had filled a position on—Governor Marvin Mandel of Maryland appointed him to the intermediate court of appeals because John Moore, my boss, the judge, was a big democratic politician in Montgomery County. [INTERVIEWER'S NOTE: Per the Maryland State Archives, available at <http://msa.maryland.gov/megafile/msa/speccol/sc3500/sc3520/002900/002973/html/2973bio.html>, John P. Moore was in the Montgomery County House of Delegates (1962-1966) and then served as a judge on the Montgomery County Circuit Court from 1966 to 1973 and then on the Court of Special Appeals from 1973 to his death in 1982.] Marvin Mandel was going to move a Democrat from Montgomery County,

and he did up there. I don't think my judge was ever terribly happy in his six or seven or eight years on the appellate bench before he died, because he had spent so many years as a trial lawyer and a trial judge, and he found appellate work kind of dull, I think. The result was for me, he would trust me with an enormous amount [of writing], not like Judge Winter [for whom the interviewer clerked] who had a scholarly background and who probably had his own writing style. Judge Moore basically trusted me a lot as a mature young man who he recognized could put ideas together fairly well, could read legal briefs, and give him a pretty good sense of how cases should be decided. So he'd say, "Mike, go ahead and draft the opinion." I did that all year. I had another clerk, too. And there was a certain luxury associated with it, because if you got it wrong, as I did on a couple of the cases, you had a higher court in the state to reverse you to pick up your mistakes. You know, not like here in the Washington, there's only one. (Both laugh.) But anyway, that's how I transitioned slowly into professional law from law school, because I had the luck of that connection with the judge through his wife. And then, as I started to say, the advantage of being in Washington came next because an old college friend of my boss's, the judge's, was a senior attorney at the Department of Justice, in—guess what—the Criminal Division. And I got in touch with him, had dinner with him, and he said, "Mike, you know, from the judge, it sounds like you're a pretty good writer, you like appellate work,

you're thirty-five or thirty-six years old, you'd probably make a crummy trial lawyer, partly because you're so used to being able to go home at four o'clock in the day as a school teacher!" (laughs) where for a trial lawyer, everything begins after five o'clock and so forth. So at that time, I was trying to decide what to do. I had an offer from a couple law firms in Montgomery County to get into their trial practice, personal injury and stuff, didn't really excite me, and so I took this job at the Department of Justice because it seemed to be a good fit. After a year of writing opinions, I had become confident in my ability to write pretty well. And it's the sense of the judge—you're advocating a position, or you think it's the right one. And, that led then to my next career, part of my career, at the Department of Justice. But we do want to finish up back filling on before that—anything?

Mrs. Easton: I wanted to find out—so this old college friend, now it was Judge John Moore—

Judge Farrell: John Moore from Montgomery. M-o-o-r-e, yeah.

Mrs. Easton: Who was his college friend, who was at DOJ, do you remember?

Judge Farrell: He was at DOJ, his name was Phil Monahan, M-o-n-a-h-a-n, a veteran Department of Justice attorney who was in the Appellate Section, Criminal Division.

Mrs. Easton: He was in the Appellate Section?

Judge Farrell: Appellate Section of the Criminal Division, yes, that's why it was such a natural fit. That's why Phil Monahan said to me, "Mike, you'll be able to go home at four o'clock."

Mrs. Easton: That predictability of the appellate calendar.

Judge Farrell: He was not telling me the truth; actually, I burned a lot of midnight oil there. But nonetheless, you know, you didn't have to worry about clients, you didn't have to worry about witnesses, whether they were going to show up. It was paper record stuff.

Mrs. Easton: So, what was your first job there in the—

Judge Farrell: So, there I was an assistant in the—I forget what my title was, but just an assistant in the Criminal Division of the Appellate Section of the Department of Justice, one of the staff of twenty or twenty-five lawyers, who did basically two things. And it was really very, very interesting. In a way it was the most interesting stuff I found myself doing for the first time in my life—at thirty-five years old! It was a combination of what to some people would seem dull, much of it was writing oppositions to petitions for certiorari in the Supreme Court. Can you imagine? Telling the Supreme Court why they should *not* take a case. And of course, since they don't take many anyway, it probably didn't matter whether you wrote an opposition. But the government wrote an opposition in every criminal case in which somebody petitioned for certiorari. Later on, they got wise and said we're not going to respond to certiorari petitions unless (a) we think we have to,

or (b) the Court orders us to, and that's the way it's been ever since. That was one part of my job. More interesting was when the Supreme Court granted certiorari. Then we would write what they call the merits brief for the Supreme Court—for the government in the Supreme Court cases. And that consisted of two areas. Your admiration for me is going to soar when I tell you this. One of them is criminal cases, and I wrote over, over five years, from '74-'78, four years, I wrote maybe a dozen drafts of briefs in criminal cases in the Supreme Court—I'll tell you more about that in a minute—in criminal cases. The other part: Somewhere along the way, somebody decided I should work on Indian cases, and so I acquired a little, mini-mini-mini expertise in issues of law affecting the Indian tribes. Because, in some way I never figured out, the Criminal Division Appellate Section had responsibility for those cases, even though the Civil Rights Division should have and probably did in other years. So, I was doing these kinds of cases, and I wrote a couple of Supreme Court briefs in Indian cases too, although to this day I don't really think I knew very much about the subject. The interesting thing about these merits briefs is that—this is the way the Department of Justice is already [still] operating, or it always operated. What they call the operating division — civil, criminal, environmental is the lands divisions, and things like that—they write the first draft of the briefs for the Supreme Court, when the Supreme Court has a case. Then you send that draft up to the Solicitor General's office. And what

we used to say, only half-jokingly, was the assistant solicitor general would then proceed to throw your draft in the trash can and start all over. (Both laugh.) Right? Because this was our cynical view of it, if you wanted to really be a hot shot in the Solicitor General's office and impress your bosses, you had to show them that you were more original and more gifted than anybody else, and the only way you did that was by starting all over again. Something of an exaggeration because by the time I finished there, I think a few of my briefs were good enough that they went through sort of unscathed. But not many of them. There were a lot of egos in the Solicitor General's office at that time. One of them was Judge Frank Easterbrook, now on the Seventh Circuit. And Frank *knew* that he was smarter than most people, and so he would give your drafts a look, but he wouldn't feel bound by them. And there were other people, too. But it was a fun experience. The other part, the most interesting part about my job there was, we also did appeals, we wrote briefs and argued cases for what they used to call the "Strike Forces" which were kind of elite groups set up within the Department of Justice to prosecute organized crime around the country. How did they relate to U.S. Attorney's Offices? In many areas, they took over the organized crime cases from U.S. Attorney's Offices, prosecuted them from Washington, and then we did the appeals. In other offices, like in New York—the Southern District, the Eastern District—they really weren't welcomed very much because the prosecutors up there,

you may know from experience, thought that they were the cat's meow. They thought they were pretty smart. They knew what organized crime was. They knew how to prosecute it. They didn't need, you know, these little pointy-headed intellectuals from Washington to come up there and take the cases. The result is I didn't get much to do in New York, but I got a lot to do in districts all over the country for four years in the way of briefing appeals for the government in criminal Strike Force cases, and going out and arguing them, and it was a lot of fun. I mean, it taught me an enormous amount about legal writing, appellate writing, in a fairly short four-year period of time because we were busy. We did a lot of these things. And it was just the excitement of appearing in all the circuits, or most of them, and being beaten up by the succession of panels of judges, many of whom would ask you, the only thing on their mind was—California for example, the Ninth Circuit—what are you doing here? Why is the government wasting money sending a Washington lawyer out here to argue this case? Can't a U.S. attorney from San Francisco argue this? And you'd have to say, "Your Honor, we're from the Department, we do the Strike Force appeals." They couldn't have cared less if we did, you know.

Mrs. Easton: How interesting that they were protecting their local prosecutors' appellate experience. (Both laughing.)

Judge Farrell: So, that was the four years there. It was interesting stuff I think. I got to know some wonderful people whom I really revered as lawyers.

One fellow's name was Andrew Frey from the—oh you've had contact with him one way or another?

Mrs. Easton: Oh yes, definitely.

Judge Farrell: Yeah, Andy Frey was the chief deputy responsible for criminal cases, a marvelous legal mind, who I think more than anybody else, shaped significant parts of the criminal law during the Seventies into the Eighties because there was a lot of it. [INTERVIEWER'S NOTE: Per his bio on the website of law firm Mayer Brown, available at <https://www.mayerbrown.com/people/Andrew-L-Frey/> Andrew L. Frey served as Deputy Solicitor General in the U.S. Department of Justice from 1973 to 1986.] The Supreme Court was doing a lot of law-making in areas, like double jeopardy law—you know, there aren't many criminal law issues around anymore, like the olden days. There were then; Frey had an enormous amount of influence on the way the federal government's position was developed in these cases, and I kind of revered him, because he was up there on the fifth floor, in the SG's office, and I was down here in the Criminal Division, but we had contact through time. He read some of my briefs. And I just thought he was—I would go up and watch him argue cases, and he was just a wonderful example of fine appellate advocacy. But not only he, there were other great people in the department at that time. Ed Levi [Edward H. Levi, U.S. Attorney General 1975-1977] was the attorney general when I began, from Chicago. I actually got to

know him mildly at a social event once and touched this guy who I thought was really an impressive professor type. There were other wonderful people, Dan Friedman [Daniel M. Friedman] in the solicitor general's office, and Ken Geller [Kenneth Steven Geller], and people like this I got to know somewhat. So, I kind of enjoyed the experience. I missed one of the great luminaries in the Department of Justice because she had retired by that time or moved on, [namely] Beatrice Rosenberg. Bea Rosenberg, who was legendary up there, had headed the Criminal Division Appellate Section but left shortly before I began. But I met interesting people, and they valued my work. I became a kind of a supervisor deputy in my last two years, reviewing other briefs and so forth. And then, the question became what to do next. 'Always does, you know? Andy Frey called me up one day, it's an amazing coincidence, and said, "Come on up and talk with me." He was simultaneously doing the same thing with a woman who was the head of the Lands Division, Lands and—I forget what they call it, Environmental, whatever. Her name was Kathryn Oberly.

Mrs. Easton: Oh, yes.

Judge Farrell: Who happened to succeed me on this court a few years ago. Andy called us both up there, we didn't even know one another at the time, and he said, "I'd like you both to come up to the SG's office." He had had some departures, and I said give me time to think about it. Number one, I knew what a dreadful grind that is. It's exhilarating to work

there, but it's around-the-clock work in the SG's office. I was thirty-eight years old, thirty-nine years old. I wasn't sure I wanted to. He said, "You can do it. You won't kill yourself." I said, "I'm not so sure." About two weeks later, I got a call from a gentleman by the name of Earl Silbert, who was the United States Attorney for the District of Columbia [1974-1979], who said, "Mike, I want you to come over here and be deputy chief of the appellate section in the U.S. Attorney's Office because the head of it, John Terry"—a judge on our court, and this is all incestuous, you know (laughter)— "John is losing interest in arguing cases, in the big cases in court, and besides that he has ambitions to get on the D.C. Court of Appeals. How about coming over and being deputy for a couple years and then taking over our appellate section and arguing our main cases." I agonized with it, I agonized with it. My wife, it was very simple to her: Which of the choices is going to get you home at seven o'clock at night for dinner. The more important thing—I made a rational decision, I think, at the time. I said to myself, "I want to be a judge." By this time, I was convinced I wanted to be a judge. I had clerked for a judge and loved it; I had done appellate work, nothing but; I hadn't the slightest qualification to do trial work; and I knew that going to work in the Solicitor General's office did, does nothing for you in terms of a judgeship down the road because the only people that, at that time, and I think since, who have ever gotten judgeships from that court, were put

on what is now the Federal Circuit—the business court, the patent court. It used to be the Court of Customs and Patent Appeals. Dan Friedman, Oscar Davis— these are great DOJ legendary names—and finally my friend William Bryson, Bill Bryson, who is on the Federal Circuit now, just took senior status I think. These are the only jobs they could get because they had no constituency, they had no senator, no rabbi, as a SG pointy-headed intellectual. So I told Andy, “I’m sorry.” He said, “You’re making a big mistake.” I said, “Yeah, easy for you to say.” (Laughs.) So, in 1978 or 1979, around then, I left after four years, four and a half years of DOJ and came over here to the U.S. Attorney’s Office. Before we move on from there, anything you’re missing?

Mrs. Easton: Well I want to be respectful of your time, because we are at forty-nine minutes.

Judge Farrell: I want to be respectful of your time, you’re not, you have—

Mrs. Easton: This has been a wonderful session, and I think what makes sense is, if you know, because we surpassed your forty-five minute stretch, we can pause here and resume in a couple of weeks after I’ve had a chance to go through and see if there are gaps?

Judge Farrell: That might be good, because we’ve covered about fifteen years, and when we come back, you might have some questions and things to fill in.

Mrs. Easton: That sounds great, why don't I get this transcribed, and if we can calendar a date in December to get together and go through and finish up all of the pre-law and go into more depth—

Judge Farrell: That would be wonderful.

Mrs. Easton: —in the DOJ transition and first jobs, because I think it's a very interesting thing to start a legal career at a point when you're mature enough to really be able to make decisions.

Judge Farrell: Well, it is true. When I look back, if I had gone to law school in 1961 or 1962 when I got out of college, I would have had no idea why I was there. Because I would have had no sense of what the law is. I had no passion for it. I had no real interest in it. As I told you, people regarded law back then as somewhat grubby—at least the professors did. And so in a way, from the standpoint of a career, it is much better that I moved into that, or got moved into that, career path fifteen years later. The other side of it is, it kind of makes you seem like you've lost fifteen years of your life by wandering around in academia and achieving not a hell of a lot there. But, I'll tell you, the older I get, the more I realize that years are not wasted. I mean, I have talked more about this. I have an ongoing passion that I've always had for things like German literature and literature of other languages, Italian, and things like this, and a passionate interest in philosophy an avocation, as a hobby. I can't talk intelligently to professors about it, I'm sure, but I enjoy it and I read it. And I've always kept this interest. And, that

wouldn't have been possible without the ten or twelve years at somebody else's expense. To wander around and expose yourself to these, to good minds, to courses, to professors, without having the pressure of having to pay off debt and get a job—so I've been the most, one of the most, fortunate people in that sense.

Mrs. Easton: Now, your father was a newspaper man.

Judge Farrell: He was a newspaper man.

Mrs. Easton: And, he clearly was a very significant influence in your undergraduate education, decided where you would go.

Judge Farrell: He did.

Mrs. Easton: What was his view of your turn to law?

Judge Farrell: I think he was bewildered by it. He was getting older. I was second youngest of eight children, so by the time I was out of college and into graduate school, he had lost his job and the newspaper had fired upper management. He had an alcohol problem. He had all kinds of problems in his own life. I think he was just bewildered by the fact that this young man, his son—without costing my father much—was wandering around in Germany and in Europe through a good part of the Sixties, not seeming to accomplish anything, when my two older brothers went right into business and were married by then and so forth. So, I think he felt kind of fearful for what was going to become of me. He didn't really know why I seemed to take an interest in these kind of unpractical subjects. But he wished me well. And so I had this

reputation among the family, the grandchildren, everybody else, of being kind of the wandering student. You know, Uncle Mike, someday he'll settle down, but he's the kind of free spirit in the family. That kind of thing. But, they never put any pressure on me, God bless them. They never tried to force me to come back and do something meaningful, like go to law school. But, they may have been a little disappointed that it took me so long to kind of find my footing.

Mrs. Easton: And, during law school, which was while you were still in the high school and—

Judge Farrell: Teaching high school, yep.

Mrs. Easton: —running a department, as well as teaching, and then in an incredibly busy time, clerking for a judge, working at DOJ, learning to be an appellate lawyer, doing both appellate briefing and Supreme Court briefing and arguments, and Indian law as well as criminal law, did you have time to read any German literature?

Judge Farrell: Oh, yeah!

Mrs. Easton: How did you stay in touch with that?

Judge Farrell: Oh, yes, I did. Oh, yeah! In a way, once the pressure got off me, of picking up the Ph.D., finishing the damn dissertation—I'll tell you, incidentally, the dissertation was sitting in my closet about half finished for many years thereafter. And my wife after a number of years—we were married for twenty-five years—at some point during that, she said to me, “Why don't you dust off the dissertation, do something about

it.” I made inquiry at NYU and discovered that they had what they called a “matriculation fee.” For each year that you didn’t complete your Ph.D. work, the fee was \$1,500 or something like that. And that was to discourage people from doing exactly what I did: Letting it hang around and not finish up, going off to Europe, cavorting, you know, running around, having fun, and not getting serious and finishing it. And so it would have cost me, over ten years, it probably would have cost me \$15-20,000, a lot of money then, to get it, and I said, “Who needs it?” But in a sense being freed of that freed up my curiosity, my interest in German literature just as a fun thing, as a passion, so that I still read it regularly now. I read—I have my old favorites, Thomas Mann and people like this, and Kafka. I do that and I enjoy it. Although I’m still convinced I would have been a lousy teacher of it. And, I also—it gave me an abiding interest in languages so that when my first wife died back in 1995, I taught myself Italian, and I’m an equally avid reader of Italian fiction now. But it’s just a hobby. Everybody has their hobbies; this happens to be mine. And my view is that once you’ve learned one language, foreign language, the second one is not that much more difficult, at least to read it. I can’t speak Italian very well, but German I can. Anyway, that was kind of fun.

Mrs. Easton:

Oh, that’s wonderful.

Judge Farrell: And then, there's my great passion which I must have got from college, despite myself. I'm an avid reader of Henry James. And this is my life, in a way. A mini-part of my life but I, for some reason, as I've gotten older, have fallen in love with his fiction for the last twenty-five years.

Mrs. Easton: Oh, how wonderful.

Judge Farrell: But, anyway—

Mrs. Easton: Well, thank you.

Judge Farrell: There's something nice about being a dilettante.

Mrs. Easton: Well, and being relieved of any pressure to pursue it.

Judge Farrell: As my wife tells me, my second wife, she says you are one of the luckiest people who's ever walked this earth for all the reasons that I've explained to you. Between wars, you lived in an era when it wasn't expensive to be an endless student. You lived in an era—this is where she gets kind of nasty—where white guys had all the opportunities, all the judgeships went to white guys whether they were talented or not. And it's hard to say no to any of that. She's not wrong.

Mrs. Easton: Sounds like it puts you in a place of gratitude. (Both laughing.)

Judge Farrell: So, I'll walk you down, and then we'll, at your convenience strictly, we'll meet again.