

ORAL HISTORY OF JUDGE ARTHUR RAYMOND RANDOLPH, JR.

Third Session, Friday, May 17, 2002

Mr. Prettyman: This is E. Barrett Prettyman, Jr. and I am beginning the third session of the oral history of Judge Arthur Raymond Randolph, Jr., of the D.C. Circuit Court of Appeals, and it is Friday, May 17, 2002.

Judge, before we get into your second tour at the SG's office, at what point in your career did you get to know Bill Bittman?

Judge Randolph: I guess in 1974.

Mr. Prettyman: In what connection?

Judge Randolph: He came over with a partner from Hogan & Hartson to meet with Jack Miller because of a problem that he had. The partner was Austin Mittler, and Jack called me in and the two of us sat down at the Miller, Cassidy firm, and Bill laid out what his problem was, which dealt with his representation of Howard Hunt, and he was receiving cash payments for legal fees in rather odd circumstances – envelopes taped in a phone booth – in the Hogan & Hartson offices –

Mr. Prettyman: In the building downstairs – ?

Judge Randolph: Yes. In the building – I've seen the phone booth. It is probably not there any more. No need for phone booths now since cell phones. And then cash deliveries at Bill's house on Bradley Lane. And then there was another circumstance – the allegation at the time was this was money being paid so that the Watergate burglars, which included Howard Hunt

and Gordon Liddy and several Cubans, were being paid off to keep quiet about what they knew regarding White House involvement in the Watergate burglaries. Bill took the money as legal fees. The money, from what I understood, was money that Herbert Kalmbach had collected from various corporations, including American Airlines, whom we also represented during this period of time. And a good many other large corporations – I can't remember them all – but a number of the Fortune 500 were making illegal cash payments to the Nixon reelection campaign.

Mr. Prettyman: Did you say legal or illegal?

Judge Randolph: Illegal. Well anyway, that was the genesis of the problem and Jim Neal was the Watergate prosecutor at the time, who was a former Kennedy Justice guy and knew Bill when he was in the Department of Justice. Bill was the prosecutor of Jimmy Hoffa in Chicago. Also, Bobby Baker here in the U.S. District Court. Do you know the famous story about Bill's closing argument?

Mr. Prettyman: In which case?

Judge Randolph: In the Bobby Baker case.

Mr. Prettyman: No.

Judge Randolph: It was against Edward Bennett Williams and, in fact, when Bill passed away about a year ago and his son, Bill Bittman's son – it is an irony to all of us given the Watergate thing, but Bill Bittman's son, Bobby Bittman – who you'll know, I am sure, as the head of the Monica Lewinsky investigation for Ken Starr. So Bob Bittman called me up because he knew his father was very, very ill. He had cancer and didn't have very long to live and asked if I could help him get a transcript of the closing argument in the Bobby Baker case where Bill, his father, went up against Edward Bennett Williams and won. And Bittman's house on Bradley

Lane was directly across the street from Ed Williams' house and I was told that after Bill won that case Edward Bennett Williams would never talk to Bill Bittman again.

Mr. Prettyman: Really?

Judge Randolph: Yes. They did not have a conversation again, even though they were neighbors and saw each other in the yard and everything. So I wound up finally locating in the Archives the transcript and, unfortunately, Bill passed away too early to get it retrieved. Someday Bobby is going to go out there. It is out near College Park where we found it.

Mr. Prettyman: Did you read it?

Judge Randolph: No. I haven't seen it. He was going to go out and bring me a copy of it. But the closing argument took place in the Ceremonial Courtroom. Bobby Baker – just for the record was the boy Friday appointment secretary of Lyndon Johnson, the deal maker, when Johnson was in the Senate – and he got charged with and ultimately convicted of taking bribes, all of which Lyndon Johnson claimed he knew nothing about.

Mr. Prettyman: Of course. [Laughter]

Judge Randolph: But the closing argument took place in the Ceremonial Courtroom on the 6th floor because so many people came to see it, and Bittman had some reputation from his – he was an Assistant U.S. Attorney in Milwaukee, then got called into Chicago to prosecute Jimmy Hoffa. And at the very last minute the lead trial attorney took sick and Jack Miller asked, “Do you have any real hot-shot young guy that would be willing to undertake this?” Anyway, Edward Bennett Williams got up and gave this absolutely spellbinding closing on behalf of Bobby Baker, and Bill stood up and – I don't know the exact words but it went something like this: “Ladies and Gentlemen of the Jury, you have just heard the greatest trial lawyer in the

United States give that closing argument on behalf of the defendant.” He said, “He was brilliant. He was spellbinding. His statements were in some ways inspiring.” He said, “I can't possibly even come close to that because all I have are the facts.” [Laughter] So anyway, Bittman got into trouble because his client, Howard Hunt, was a wild man and gave Bittman a memorandum that seemed to suggest that Hunt was extorting money from the White House. I think it was addressed to Jeb Magruder or John Dean. Or both. I can't remember. I don't think it had an address on it. And so Bill was really concerned when all this blew up; the Washington Post was running a new article every day and Woodward and Bernstein had their Deep Throat source. And so on and so forth. And he didn't know what to do. But the long and short of it was that we had a very trying summer. I remember meeting on weekends out at Bill's house trying to figure out what to do. What kind of strategy. And ultimately turned the memo over to Jim Neal and he was furious that he hadn't received it earlier and made Bill Bittman the target of his investigation and was going to indict him and told us that was his intention, to indict Bill Bittman, and as a courtesy invited Bill Bittman to go before the grand jury. And every criminal defense lawyer knows that when your client is about to be indicted the last thing in the world you do is put him before the grand jury and, of course, I had virtually no white-collar criminal experience. But Jack Miller was head of the Criminal Division when Bobby Kennedy was Attorney General. And we talked to Bittman until we were blue in the face long into evening after evening because he wanted to go before the grand jury and we didn't want to let him. And I guess now that he is gone I can tell you what his strategy was. He said, “Look, he is going to indict me. That will ruin my life. And in this climate I will be convicted. It doesn't matter what I do because the whole town is abuzz with Watergate and to win an acquittal would be very, very difficult. And

my only hope is not to talk Jim Neal out of it but to talk the Grand Jurors out of it.” Which is unheard of. It never happens.

Mr. Prettyman: Right.

Judge Randolph: So, he said, “I am going. I have got nothing to lose.” And he did. He went before the grand jury and he was there forever. I remember standing out in the hallway with Jack, and it just went on and on and on. And the long and short of the story is that he did it. He talked them out of indicting him.

Mr. Prettyman: Amazing.

Judge Randolph: They would not indict him. Incredibly courageous performance. There were a good many other people who would have just given up and melted away. But he was a fighter.

Mr. Prettyman: A tough guy.

Judge Randolph: Yes. Absolutely. Then what happened was that I went back into the government – which is what I guess we were going to talk about – and by the time I came out again in 1977 the D.C. Bar had a special prosecutor to disbar Bittman. That was not public. Nobody knew about it because it was a proceeding that was under investigation. And I wound up representing Bill for three years, I think, with all kinds of – I don't think there was much evidentiary material that wasn't known – but putting it together was another thing. And ultimately we were successful, and they never brought a charge against him.

Mr. Prettyman: Wow. Nine lives.

Judge Randolph: Yep.

Mr. Prettyman: Well, let's see. Then you did go into the Solicitor General's office

in 1975. What drew you back there?

Judge Randolph: Well, Larry Wallace called me up sometime in December and asked me if I would consider coming back as a Deputy Solicitor General to Bob Bork, whom I had met when he was coming through but didn't know him. I have a philosophy and maybe it is not a good one, but sometimes it is: when an opportunity comes along like that, I always ask myself what would I rather be doing at the moment because I might not even be alive next year or next month for that matter. So I've always made decisions about career moves or whatever – it was a very simple calculation – would I rather be practicing law with Jack Miller and John Cassidy, whom I dearly love, and are really close friends and that is really fun, or would I rather be back in the Solicitor General's office as a deputy with some control over what I can argue and brief, and it was an easy call. The money was another thing, and heck, I didn't care about that very much at that time. So I said, “This looks like fun.” So that is why I did it.

Mr. Prettyman: So you went over and met –

Judge Randolph: I had an interview with Bork and then I talked to some of the other deputies and they told me that he was just an absolute delight to work with and gave the deputies a great deal more responsibility than Erwin Griswold had. Bork was a great delegator and he got involved deeply when there were cases he was particularly interested in, either because of their importance or it was an area he cared greatly about. But, by and large, the office was run by the deputies and that made it even more fun.

Mr. Prettyman: Sure. And you remained close friends? What prompted you to write the article that you did in the Chicago Tribune, the op-ed piece?

Judge Randolph: That was during the confirmation. What prompted me? I thought

Bork was getting criticized unfairly. By that time, he was a man I had known for a decade and knew his legal analysis as well as anybody. We worked together for several years and we would talk about cases in great depth and I thought there were a great many misrepresentations made about him during that time and I thought it was particularly cutting to him to have Phil Kurland, whom he considered a friend, I mean he was shocked. And the op-ed article was really about something Kurland had written or testified, I can't remember. And I knew that Bork took that rather hard. And I thought, well, it is not for him to respond to whatever Kurland was saying but I thought I would.

Mr. Prettyman: Well, we have skipped ahead a bit and I want to get back, but I just wanted to mention that you were so close to him that when he withdrew from consideration for the Supreme Court, you went with him to the White House.

Judge Randolph: Actually, he didn't withdraw. We can talk about that, but it was in 1987 and the question on the table when I went over to his house and the head counting was being done, and it was clear that he was not going to win confirmation by the Senate, and the question was whether he should withdraw or put them to a vote – make them vote.

Mr. Prettyman: As long as we are there, let's cover that and then we will come back. Had he decided when he left the house what he was going to do or did he not decide until he got to the White House?

Judge Randolph: We went over to his house in Washington. He was living in the Palisades and George Will was there and I guess it was Bob, my wife, Lee, Bob's wife, I think his son, his oldest son, was there and George Will and myself. And it was unanimous that he should not withdraw. And so we started writing a speech that he gave at the White House the following

day announcing that he wouldn't withdraw. That he wanted a vote. And he got it. I don't remember what the numbers were.

Mr. Prettyman: Well, what I read was obviously wrong, then, because I read that you went with him to the White House, that he then went upstairs to the president's quarters alone, and that he told the president that he would withdraw.

Judge Randolph: I went with him to the White House. I went into the Map Room and he went up to see President Reagan and told President Reagan that he was not withdrawing.

Mr. Prettyman: Not withdrawing?

Judge Randolph: Yes. And then he went down and gave a speech in the White House Press Briefing Room.

Mr. Prettyman: I am glad to get that straight. Alright, going back to your SG days, during your two years there this time, 1975 to 1977, you argued some 13 cases in the U.S. Supreme Court, and I note that eight of those were argued in one term. That was certainly a busy term for you, wasn't it?

Judge Randolph: Gee, I don't recall it.

Mr. Prettyman: Well, why don't I stop the tape for a minute while we double check.

Judge Randolph: Although it may be because you have the dates that it was in different terms –

Mr. Prettyman: It's true. I checked those – let me see –

Judge Randolph: Oh, it's not worth going back –

Mr. Prettyman: I had my own set of tables here –

Judge Randolph: Boy, you have done a lot of work, it is very impressive.

Mr. Prettyman: The way I have it is one term was from here to here – I have seven cases but I think you argued – so I guess it was seven instead of eight – but, in any event, you had a busy term. [Laughing] And you were now the Deputy SG so you were No. 2 in the office?

Judge Randolph: No. There were several other deputies. Danny Friedman was one. We had our own personal – the deputies split up the office in terms of jurisdiction. I had –

Mr. Prettyman: What was yours?

Judge Randolph: I had, I guess, the strangest mix. I had all the ICC, I had all immigration, I had all of the environmental cases which involve not simply EPA at that time but also a good many other things coming from the Land and Natural Resources Division. I had an odd mix of other things which I can't remember. I did do some – the last case I argued when I was deputy was a criminal case and I did some civil too.

Mr. Prettyman: Hmmm. They were, in effect, outside your immediate area of responsibility?

Judge Randolph: Right. I would get drawn into cases. Two come to my mind One which was not in my jurisdiction was Buckley v. Valeo, [22] which was the campaign finance case, and the other was Gregg v. Georgia, [23] which was the death penalty case.

Mr. Prettyman: How was this second stint in the SG's office different from your first one, other than the fact that you were now deputy? For example, was it now easier because you knew a lot of the people and you certainly knew habits and you knew what the agenda was, and so forth? Or was it more difficult?

²² Buckley v. Valeo, 424 U.S. 1 (1976).

²³ Gregg v. Georgia, 428 U.S. 153 (1976).

Judge Randolph: No, it was easier. And the main difference was, the main difference was that I was not – by and large although I did a good deal of it – was not writing the first drafts of briefs. What I was doing was working over briefs that the assistants to the solicitor general – which I had been doing – had done. And they were all really well worked through, the briefs were by that time, ‘cause they had gone through a draft and the division from which the case came and then the assistant had worked it over so that by the time I got it – by and large a good many of them were very polished and that made it fairly easy. Although there were a number of incidents where they were not so polished and there were a number of cases where I basically did the brief myself, not many, but that was the main difference. And then the opportunity to choose the cases that I wanted to argue was also there.

Mr. Prettyman: Had the position that the SG would take been finally decided by the time the brief got to you?

Judge Randolph: Almost always

Mr. Prettyman: So there were very few incidences where you rewrote because you wanted to take a different position.

Judge Randolph: Right. But we had meetings to decide such things.

Mr. Prettyman: How many attorneys were in the office the second time around?

Judge Randolph: Probably 12 to 14, somewhere around there. I can't remember them all.

Mr. Prettyman: Had the personnel changed dramatically since you were there the first time?

Judge Randolph: It had changed, and I had not been gone that long – two years – but

Bob Bork had done some hiring. He hired, let's see if I can recall – he hired Ed Korman, who is now the Chief Judge in the Eastern District of New York. He hired Danny Boggs who is now on the 6th Circuit. These were all Assistants. Frank Easterbrook is now on the 7th Circuit.

Mr. Prettyman: Great way of getting on a court. [Laughing]

Judge Randolph: Either that or he made very good judgments about people. And then he also hired – this is a name that will probably be a surprise – he hired Robert Reich as an Assistant.

Mr. Prettyman: Really. I didn't know that.

Now, in these Supreme Court cases you appeared with or against some outstanding appellant advocates, including Moses Lasky and Robert Rifkind, Jack Greenberg, Bruce Ennis, Roy Englert, Charles Horsky, Francis Shea, Andy Frey. Did you feel like you learned from any of them or were you so experienced now that you just sat back and enjoyed?

Judge Randolph: I don't feel that I learned anything. I had my own way of doing things and don't tell me not to do it that way. I don't know whether it works, just this is the way I do it. It's me.

Mr. Prettyman: During the second tour at the SG's office, you had the experience of arguing two cases three weeks apart, SCRAP [24] and Alaska. [25] Two companion cases on the same day, Delta Mining [26] and National Industries, [27] and three cases over a two-month

²⁴ Aberdeen & Rockfish R. Co. v. SCRAP, 422 U.S. 289 (1975).

²⁵ United States v. Alaska, 422 U.S. 184 (1975).

²⁶ Kleppe v. Delta Mining, Inc., 423 U.S. 403 (1976).

²⁷ National Independent Coal Operators Ass'n v. Kleppe, 423 U.S. 388 (1976).

period, Andresen, [²⁸] New Mexico [²⁹] and Sierra Club. [³⁰] Was any of that particularly difficult that you remember now? Or was it all in the normal course?

Judge Randolph: I probably thought it was difficult back then but I didn't –

Mr. Prettyman: You are not having nightmares about it still?

Judge Randolph: I guess I was fortunate because I could pack a good deal of work into a single day. I was fairly described as an insomniac and I would get by on four hours of sleep. I would have dinner and I would go to work again until one or two in the morning. And then –

Mr. Prettyman: Do you still do that?

Judge Randolph: Heavens, no. I don't do that at all. But, as a matter of fact, one of the consequences of my staying up late, and I won't call it insomnia – had an impact on one case that – I don't know how exactly one can measure this, but I am fairly certain that it made a very substantial difference, and that was in the death penalty cases. We were – I think that that was one of the first major cases that I got involved in when I went back.

Mr. Prettyman: Gregg?

Judge Randolph: Yes, Gregg. And Bork said, “I am going to take this out of the ordinary and I am going to assign you an assistant and it is going to be you, me and this assistant.” And I said, “Well, who is the assistant?” And he said, “It is this guy I hired named Frank Easterbrook.” And I didn't even know who Easterbrook was. And I thought, Oh, my

²⁸ Andresen v. Maryland, 427 U.S. 463 (1976).

²⁹ Kleppe v. New Mexico, 426 U.S. 529 (1976).

³⁰ Kleppe v. Sierra Club, 427 U.S. 390 (1976).

goodness, this is going to be a lot of work for me. Well, Easterbrook produced what was just a magnificent draft. And I worked it over and then Bork worked it over. And then we went and filed it. It was 100 pages long, the brief. Occasionally, I go back and look at it and I think it said everything there was to say about the death penalty. And it was, I think, a first-rate product. And that's bragging – but I think it was. But I think we had devised a strategy because at that time the Supreme Court had held the death penalty unconstitutional because of procedural flaws. I can't remember the name of the case.

Mr. Prettyman: Furman? [³¹]

Judge Randolph: It might have been Furman. We had to change two votes. We were amicus in the case because all of the cases were coming from – but we got argument time on behalf of the United States because the United States had a number of statutes.

Mr. Prettyman: White was one of those whose vote you had to change.

Judge Randolph: White and Stewart were the two votes we had to change. And in the face of the Supreme Court striking down the death penalty – I think 39 states reenacted it. And I think that was what was going on here. So we had to change those. And we were up against – Tony Amsterdam was on the other side, and he had been a professor of mine at the University of Pennsylvania. He is a brilliant, brilliant advocate and writer. So we knew we had our work cut out for us. And so, one of the difficult things that we had to deal with at the time was the notion that the death penalty had no deterrent effect. And there were studies by Marvin Wolfgang. And there were studies by other people – criminologists, and so on and so forth. And we dealt with those studies in an appendix to the original brief and pointed out that we thought

³¹ Furman v. Georgia, 408 U.S. 238 (1972).

they were flawed. And we were pointing out that what they do is they compare a state where they had the death penalty with a state that didn't have the death penalty and then say, look, the murder rates are comparable, therefore the death penalty has no deterrent effect – not a very sophisticated analysis. It didn't even take into account whether the death penalty was being used in the state that had it. It didn't take the demographics into account or anything else. But, nevertheless, it was there. Well, anyway, as I am working on the brief I am listening to – there was a program called The Tomorrow Program with Tom Snyder – it was after the late night Johnny Carson. And I had the TV on in the background. I was working on the brief. And Tom Snyder had a debate between Ernest van den Haag –

Mr. Prettyman: Oh, yeah –

Judge Randolph: [continuing] who was a philosopher at NYU, and Louis Nizer, who was a famous trial lawyer. And the debate was about the death penalty. So I, I had then heard so many debates. It was the big thing back then. In fact, I debated David Kendall down at Duke about the death penalty. And I wasn't all that interested. But I had one ear to the television and my eyes on the paper as I was writing. And suddenly I hear Louis Nizer say, “And that professor at the University of Chicago who did that regression analysis and proved that eight lives are saved for every execution – he will never publish that thing.” And I said, “What the heck is this?” So the next morning I come into the office and I called Louis Nizer. There was a kind of ballet between his secretary and mine about who was going to get on the telephone first. Some silliness. So I got on and I said, “You mentioned a study.” He said, “Oh, yes.” I said, “Can you give me any more information about it?” He said, “Well I don't have a copy, I just heard about it from a friend of mine who is in the Economics Department at the University of Chicago.” I said,

“Who is the fellow you are talking about?” He said, “Some professor named Isaac Ehrlich who got a grant to study the deterrent effect of the death penalty and held demographics and did a regression analysis – and he is against the death penalty – and it got this result – he has been checking his data and rechecking his data and he doesn't want to publish it because it came out exactly opposite to what he thought.” I thought, wow, I have got to get this. So I called Easterbrook and said, “We have got to get this thing. Do you know anybody at the University of Chicago who can go over to the Economics Department and talk to this guy? I am going to call him, but I don't want to call him out of the blue.” And he said, “Yeah, I know Dick Posner.” Posner was teaching and he had a connection with the Economics Department. Posner went over and talked to him and told him that he would be getting a call. And I called him up, and he was very reticent. “Yes, I did this study. Yes, I got a grant. No, I haven't published it. I don't want to publish it. No, I don't want to give you a copy.” I said, “Well, please, this is really important.” And finally we negotiated and the deal was that I would not call him as a witness to testify before the Supreme Court if he gave us a copy.

Mr. Prettyman: [Laughing]

Judge Randolph: Tough deal [tape ends -- changes tape]

Mr. Prettyman: You were able to get that study, you introduced it into the Supreme Court, and you were saying that the Supreme Court ruled your way.

Judge Randolph: Well, after they got the Isaac Ehrlich study, what they did is that they set the cases down for reargument the following year. I think it was the following year. Yeah, I am sure it was because then pressure built up on Ehrlich to publish. And he did. He published his death penalty study in the American Economic Review, I think it was. And over

the summer as the cases were still pending, getting ready for reargument, the Yale Law Journal ran a whole issue on that study and I don't know whether Ehrlich wrote in about that study or not but others attacked him. But the effect of it was to neutralize (your word for which I am grateful) the argument that the death penalty had no deterrent effect. And when the cases were reargued, that did not play, I don't think, a prominent role. And Justice White and Justice Stewart changed their votes. And the death penalty was upheld as a result of it.

Mr. Prettyman: And I asked whether any one Justice gave you the most difficulty or asked the most difficult questions.

Judge Randolph: I don't recall any of them being particularly hard on me, in any way, or on anybody. The Court was much more formal in those days and there was not this constant barrage of questions. You had the opportunity to get your argument out at that time. Which you don't now.

Mr. Prettyman: Did you ever have the experience of having almost no questions?

Judge Randolph: One case I think I had a very short argument. It was a case called Andresen v. Maryland. As I recall, I went through my entire argument without a question. And I don't know why but I had a sense that I might get away with that, because I had a number of things I wanted to say that were not in the brief that we had filed. We were amicus curiae in that case and the case dealt with whether Boyd v. United States [³²] should be overruled. A case which the Supreme Court back in the 1800s had meshed together the 4th and 5th Amendments and they had this lawyer, who was arguing pro se by the way, who had been subjected to a search warrant in his office and the police not only picked up a good many files from his clients – I

³² Boyd v. United States, 116 U.S. 616 (1886).

think he was accused of fraud but I am not really sure – but also a good many documents that he had written himself. And he had claimed that that had violated his 5th Amendment privilege against self-incrimination. Which the Boyd case had held, I think wrongly, and so what I did was, I constructed an argument analytically to show why that was wrong and then gave a series of hypotheticals that made it seem so ridiculous. And the only one I recall right now is the idea that the police can seize it – if they find a kidnapper's premises, they can go in and seize his typewriter, but they can't seize the half-completed ransom note in it. Which is utterly absurd. What was the cite on that case?

Mr. Prettyman: What, Andresen?

Judge Randolph:: Oh, it doesn't say. It was Blackmun.

Mr. Prettyman: I believe you said Blackmun actually used some of your hypotheticals in his –

Judge Randolph: He did. As I remember: “[A] contrary determination – would prohibit the admission of evidence traditionally used in criminal cases and traditionally admissible despite the Fifth Amendment. For example, it would bar the admission of an accused's gambling records in a prosecution for gambling; a note given temporarily to a bank teller during a robbery and subsequently seized in the accused's automobile or home. . . . And incriminating notes prepared, but not sent, by an accused in a kidnapping or blackmail prosecution.”

Mr. Prettyman: Okay, now in 1977 you came back to private practice. What was the occasion for your leaving the SG's office at that time?

Judge Randolph: The administration changed. Jimmy Carter was elected and I had

had my run. I think I reached the point of really diminishing return in the Solicitor General's office. And I was also a little bit concerned about myself because one of the last cases I had argued was Tribal Business Committee v. Weeks, [33] and I was getting, I think, a little complacent 'cause I didn't start preparing for the argument for that case until 10 o'clock the night before.

Mr. Prettyman: Oh my Lord.

Judge Randolph: I knew the case. I figured, well, I will do something spontaneous. I thought, this is dangerous. And so I thought I better hang it up. And Bob Bork was leaving. And he had been a partner at Kirkland Ellis before. And also a professor at Yale Law School when he came up, and Bob and I decided to form a law firm. And Howard Krane, who later became the managing partner of Kirkland Ellis, was going to set us up. They were going to finance us and, as I recall, we had more associates we could bring on than we could shake a stick at. Anyway, that is what we were going to do. And then sometime in late January, I guess it was, Yale had gotten a grant or whatever, for the Alexander Bickel Chair at Yale Law School. And Alexander Bickel, who had passed away, was Bob Bork's best friend. Bob couldn't refuse to be the first Alexander Bickel Professor of Law at Yale. So that whole idea of us forming a law firm went by the way. I had decided to leave and I talked to a number of firms, one of whom I still recall because they wanted me to be the managing partner and head up their Washington office. And I will probably forget the name – oh, it was a firm I had never heard of – I thought I don't want to do that – Skadden Arps.

Mr. Prettyman: Born to fail.

³³ Delaware Tribal Business Committee v. Weeks, 430 U.S. 73 (1977).

Judge Randolph: I make all these great business decisions in my office. But, once again, I made the judgment – I don't know – I have been in somebody else's firm – wouldn't it be fun to have your own firm?

Mr. Prettyman: Did you give any thought to going back to Miller Cassidy?

Judge Randolph: Well, I did. But I talked to Jack Miller and John Cassidy about this idea of starting – I had gotten into this mode of thinking with Bork and I didn't want to give it up. I thought this would be really nifty. It would be a little frightening to walk out with no business. But both of them said, if you want to do that, we will make absolutely certain that there will not be a period of time when you don't have clients.

Mr. Prettyman: That is nice.

Judge Randolph: So I said, Well, okay. How can I refuse? I am going to do this. And I met a guy named Jim Sharp who was a trial attorney and he had an associate with him named Richard Janis so we formed this firm called Sharp, Randolph & Janis.

Mr. Prettyman: Where were you located with them?

Judge Randolph: We were on 19th Street near Sunderland. We rented space from a real estate firm. Bob Bennett was in the firm – I can't remember the name. We did a lot of real estate work.

Mr. Prettyman: How many lawyers in your firm?

Judge Randolph: Oh, yeah. I hired someone you know. Pat Ambrose.

Mr. Prettyman: Oh, yeah.

Judge Randolph: She was the first associate I hired. I had gotten to know her because she was the first in her class at Georgetown and I had been teaching at Georgetown for

four years -- '74, I think, until '78. She was in my class and then she went to the Justice Department. I saw a bit of her there. And she had a year in between clerking for Tamm, I think she clerked for Judge Tamm. Anyway, she was the first one. And then we hired Carol Chomsky, who is now a professor at the University of Minnesota, and a fellow named Tom Lankford, who had clerked for a 4th circuit judge whose name escapes me now.

Mr. Prettyman: What kind of practice did you have?

Judge Randolph: It was all litigation of one sort or another. It was rather ironic. The first piece of major business I got. And I would take anything, even if it wasn't litigation. A businessman in town called me up, and I won't give his name to respect his confidentiality, and said, "I know a fellow from Florida who is in big trouble in Rhode Island and is this the kind of thing you would do – criminal trouble?" I said, "Sure." I had done some criminal stuff with Miller in litigation, and so on and so forth. The next thing I know I am representing this fellow up in Rhode Island and it was a case – it was in Time magazine – it was called the New England Connection – it was off of Point Judith in Rhode Island – they found a freighter from Columbia and somehow or other the Customs officials boarded it and the thing was filled with marijuana. The New England Connection. And so they found in the ship some telephone numbers that they (the Columbians) were to call and the telephone numbers were of a motel outside of Providence, Rhode Island. And the police got the address and went in and arrested four people, all of whom were from Miami. One of whom was my client. And they seized documents and a gun and a case, and so on and so forth. So I went up there to represent him. You ought to hear the details on this thing. This is the cross-examination of which I am most proud in my life. Well, my client told me that the police knocked and as soon as they opened the door the police just rushed in and

arrested them. They didn't have a warrant, of course. The story of the police was rather different – that they had knocked and asked if they could talk to these guys. And they opened the door to the motel room and the police saw a case – one of these leather sample cases where the flaps come up and close and with a combination lock on it. And it was open, and they saw a gun coming out of it – a gun that they could see – and, of course, that created exigent circumstances – they didn't need a warrant – they wanted an arrest. These were the two stories. I didn't know what I was going to do. But I still remember the detective's name; the lead detective's name was Godbolt. And I started questioning. And they brought the case out. I had asked to see the case. It was this black leather case. And my client told me that he was particularly perturbed that they had seized this because he had just bought the thing and it had cost him \$400. It was belting leather. A really expensive case. Which somehow or another triggered a thought in my mind. So I got the cross-examination. We had a suppression hearing and I was cross-examining Godbolt. I brought the case out and I put it in front of him on the stand. I asked if this was the case you saw in room 520 of the Providence Motel. “Yes, it is.” I said, “Was it in this condition when you saw it first?” He said, “No.” I asked, “What is different about the case?” “Well, you noticed the locks?” I said, “I have noticed the locks. There are jimmy marks on the locks, aren't there?” “Yes there are.” Through lousy cross-examination I got him to then testify that they had closed it but didn't know the combination, got it back in the police station and had to rip it open. My client was sitting there and he said, “That is a lie. The thing was locked and closed and they opened it in the motel room.” How am I going to prove that? The police say one thing, and all the officers will swear the same. And then it occurred to me. I don't know how it occurred to me. I said, “Well, you can open it now, can't you, detective?” He said, “Yes.” I said, “Would you do that?” He

lifted the flaps up and closed them down. I said, "I want to be absolutely clear where this case was when you entered that room. There were two beds and they were side by side. It was not up against one of the beds, was it?" "No." If it had been he couldn't have seen inside it. I said, "It was in the middle of the room. When the door opened, you saw this case in the middle of the room. Is that correct?" "Yes." I said, "Would you demonstrate to the Court exactly how the case was open at the time you saw it?" And he did. And he opened the flaps up. This is a brand new \$400 belting leather case. And you know what happens when you pull those flaps down? They hop right back and close. And he scrambled to open them again. And I said, "Oh, I guess we didn't have them exactly right, Detective Godbolt. You demonstrate again exactly what condition the case was in when you looked inside it from the door of the motel room." And he opened the flaps again. And this time I pulled the case away. And we just stood there and the flaps closed like that. The Judge – now I give him great credit for this. This was a big publicity – Time magazine, headlines, and so on and so forth – and the Judge – his name was Rogers – he said, "We are going to adjourn this hearing. Detective Godbolt, I advise you very strongly that before you say another word, you get counsel." And the long and short of it was he suppressed all the evidence and my client never went to trial. I mean, talk about luck.

Mr. Prettyman: I don't know about luck. I mean that was really good – You didn't even know. You would surmise that with a new bag maybe it might do that. But you hadn't actually tried it.

Judge Randolph: I hadn't actually tried it. This was in police custody.

Mr. Prettyman: I had an experience like that once with the police too.

Judge Randolph: Well, I will interview you.

Mr. Prettyman: Well, the time is about up for your hour here so shall we quit for today?

Judge Randolph: Yes.