

# ORAL HISTORY OF THE HONORABLE WILLIAM B. BRYANT

## Chapter 6

Private Practice: 1954 – 1965

Interview Date: October 13, 1994

**Bill Schultz:** Judge Bryant last time we talked a lot about the U.S. Attorney's Office. I want to ask you whether you ever asked for the death penalty and what your thoughts were on that issue.

**Judge Bryant:** I thought I had told you this, but, anyway, when I was in the U. S. Attorney's Office we had the death penalty in the District of Columbia for first-degree murder and for rape. In the case of rape, the jury had the function of imposing the death penalty if it saw fit, and I had a case where a young girl was baby-sitting in one of these apartment complexes and she was about 15 years old. A young Black girl baby-sitting for a white family.

A man who worked on the maintenance staff there went into the apartment and ravished this girl. He raped this girl. When I got the case and it developed, I got involved in it, I guess more than I should have. I was offended by it. Usually I get in a case and try it and I don't have any emotional involvement, but what this guy did to this little girl kind of got to me. I didn't like it. I thought it was the kind of thing that he should be put to death for. I had never thought about the death penalty prior to that time, but it was available. I was mad.

I went to trial and I put it to the jury that it would be a good idea to make it safer for society to get rid of him. And then I went down to my office and was waiting for the verdict and I was doing something else and not long thereafter, pretty shortly thereafter, I got a call that the jury was in, you know, the jury verdict. And it was in Judge Letts' courtroom on the second floor.

When I got the call that the jury was ready; I know that I broke out in a sweat. I got so scared. I got scared to death. I realized what might happen and I lost my nerve. I told Vic Caputy

— he had the office next door to me – “Vic, take my verdict, I got to do something.” Vic went upstairs, and then I went upstairs and looked in the courtroom from the outside, and I saw the jury come back in and the foreman stand up. And I saw the clerk read, and I couldn't hear anything, but I saw the jury foreman move his mouth once and he said guilty and nothing else.

I don't ever remember being so relieved in all of my life, and then I realized what the death penalty was really to me. Now I didn't have any question in my mind about this guy's guilt – no question in my mind about it. And he was. He was found guilty and the evidence was overwhelming against him. But at the same time, I was worried that that jury might bring back the death penalty against that man and I got scared. I didn't like that. I don't like the death penalty.

**Bill Schultz:** What made you so concerned, do you think . . . .

**Judge Bryant:** About that?

**Bill Schultz:** About the death penalty.

**Judge Bryant:** Well, I had heard of cases where people had been sentenced to death who shouldn't have been sentenced to death. They had a case, for instance, in the District of Columbia where a man was sent to the electric chair, and I don't think he should have been sent to the electric chair. He was a custodian or custodial worker at the Washington Cathedral. He went up there, and was doing his work, and there was a library or librarian or something up there, a young white woman, who allegedly scolded him about some work that he was doing or hadn't done or something of the sort. In the process of doing it she was alleged to have called him some kind of nigger, and one word led to another, and he got mad and hit her. He hit her with a table leg or something, a piece of wood, and she died.

His name was Fisher, I think, and Charlie Houston defended him. Charlie Houston defended him and Charlie's defense was mental capacity, insanity or something of the sort, temporary insanity or something of the sort. The jury convicted him of first-degree murder. I

don't think that under the law the first-degree murder count should have gone to the jury, because there was evidence of passion, you know, no premeditation or anything like that. This man worked up there, it was a matter of sudden heat or passion or what not — certainly no first-degree murder, deliberate premeditative murder.

The judge let it go to the jury. I think it was Holtzoff, I'm not certain. That was one of the cases that I thought was a bad case for the death penalty. Then I had heard of people who were perfectly innocent who had been executed. I realized that I just didn't want to be the catalyst in any situation where somebody was killed. I figured that if I didn't ask for the death penalty the jury wouldn't have brought back the death penalty, and if they had brought back the death penalty I would have felt directly responsible, and that's something I can't live with. I never will forget that.

**Bill Schultz:** When you practiced law did you ever have a client who received the death penalty?

**Judge Bryant:** Yeah, Mallory. Mallory was sentenced to death. The jury went out, and I was appointed to represent Mallory. Well, the jury went out and when they came back in they asked Holtzoff a question, if they found the man guilty and don't impose the death penalty will he be out or what can happen. When we got word to return to Holtzoff's courtroom, I thought that we had a verdict. I was sitting at the table and I never will forget it. I was sitting at the table like this, and realized my heart was beating. I had to get away from the table.

The jury came in, and when the jury came in I thought they were going to return a verdict, and Holtzoff said, "Members of the jury the court has your note which reads that 'if we find the defendant guilty and don't impose the death penalty will he be . . .'" what happens or something of the sort. "And the answer to that question is 'no.' The answer to that question is this, if the jury finds him guilty and doesn't impose the death penalty then the court must sentence him to a term of not more than 30 years. But at the time that the court sentences him to

a term of not more than 30 years, the court also must impose a minimum sentence so the sentence would be not less than ten. The minimum must be one-third of the maximum and the sentence would be not less than ten years nor more than 30 years. And that means, of course, that at the end of ten years the parole board, over which this court has no control, . . . .” The jury went back, stayed about three or four minutes, and came back and found him guilty with the death penalty.

I think that is one of the reasons why the Supreme Court took the case because of the death penalty. And you know, that kind of weighed very heavily on me from that time on. Then I went to the Court of Appeals and I got this two-to-one affirmance and Bazelon dissented. I finally got to the Supreme Court, but until the time this guy's conviction was reversed, I mean you know I had a lot of moments thinking about Mallory going to the chair. Those are my two experiences with it and I didn't like it. I never was called upon as a judge because when I got to be on the court, I think the death penalty had been abolished. I never had a death penalty case. But I had two skirmishes with it, once as a prosecutor and once as a lawyer, both sides — as a prosecutor and as a defense lawyer.

**Bill Schultz:** You got out by the skin of your teeth both times.

**Judge Bryant:** Skin of my teeth both times, that's right. No kidding, no question about it.

**Bill Schultz:** Now when you left the U.S. Attorney's Office to go into law practice, were there any experiences you had there that were particularly valuable?

**Judge Bryant:** You mean in the U.S. Attorney's Office?

**Bill Schultz:** Yeah.

**Judge Bryant:** You see, in the U.S. Attorney's Office. Well let me put it this way, before I went into the U.S. Attorney's Office I had a lot of courtroom experience but most of that courtroom experience was in the Municipal Court over here. It wasn't in the felony court, it

wasn't in the U.S. District Court. And then when I got in the U.S. District Court I was exposed to all of the common-law and federal criminal jurisdiction and we tried cases day after day after day. Also, I had that three or four months in the grand jury, which is a good experience, but when you got in the trial section and trying cases every day, every day, every day. Well, let's put it this way, out of a month you might find yourself not in trial maybe three days. With that constant trial experience, you had to gain a lot of experience in trial. So I had that experience.

**Bill Schultz:** What about the experience in dealing with police officers?

**Judge Bryant:** Well, I had good experience both in the private practice before I came in here and after I left the U.S. Attorney's Office. We had a pretty good police department. These guys were pretty good people and we had pretty good professional groups on the robbery squad and the homicide squad and the general what did they call it, the housebreaking and general assignment squad. I never had any problem, except I did get a shock when I was trying a house-breaking case.

Three hoodlums had gone into one of these furniture stores up here on 7<sup>th</sup> Street and burglarized it. They were on trial, and during the defense one of them got on the witness stand and was testifying and he wasn't making any hay so far as I was concerned. I was satisfied that the case was whole, but when the court broke one evening I went down to the office. And while I was down there a detective in the case came down there and sat down and said, "Mr. Bryant, why can't I testify that so-and-so?" I was on the phone and I kind of got a little disturbed. I didn't look at him. I said, I never will forget the guy — I won't name him, but his first name was Dick — I said, "Well, Dick, did it happen?" He said, "Well, no it didn't happen but he's out there lying, you know damn well he's guilty." And I said, "Well, I guess if it didn't happen I guess that's some kind of reason why you can't testify to that, I think we are doing all right."

That was the first time I had that offer made to me, but it came from a guy who had been on the force a long time. He wasn't a bad guy, but he was satisfied, and I was satisfied too. There

wasn't any question about this guy's guilt, and the guy was lying. But we didn't need that kind of help, you know what I mean? But he was outraged by it, and he wanted to testify. And of course as a lawyer, before I came over here, I had caught policemen lying.

The fact that they would commit perjury wasn't any great surprise to me. But that wasn't widespread. At that time I will say that that was not widespread. I mean I have had policemen come in and it was easy enough to lie, but they wouldn't lie at all. They would be straightforward about what happened.

**Bill Schultz:** Did you ever have any policemen lie that were your witnesses in a trial?

**Judge Bryant:** No. And I asked guys. You see I never tried to groom a witness. When I had a police witness I figured he had some training and I would bring him in and ask him, what happened, and listen to him. Then when he got through, if there were some questions I wanted to ask him, I would ask him. But I would make certain that he would just tell me what happened. If you ask a guy what happened, he will come out and tell you. I never had any experience, I never had any policeman offer to lie to me but once, and I don't think that I put on testimony that was not straightforward when it came in. They had a pretty good police force.

**Bill Schultz:** So after you had been in the U.S. Attorney's Office for what four or five years, you got the opportunity to go to work for the Houston firm. Tell me how that came about.

**Judge Bryant:** Well, to be perfectly frank with you, it was kind of shocking to me. I was in the office working and one day Joe Waddy, I think he came to see me, or asked that we get together. He came to me and asked me about coming into the law firm. And I was kind of surprised because I told you about the experience I had when I tried to go in that law firm. I mean just as a student, I got rejected. I told you that. And I was completely surprised.

Joe came because of this. When he went into the law firm there was old man Houston and Charlie Houston and Joe was the third man. And then Charlie Houston died and they brought in Bill Gardner. Bill Gardner was a Harvard Law School graduate and I don't know the circumstances under which he went into the office. But they brought Bill into the office. So there was Mr. Houston, old man Houston, Joe, and Bill. And then Mr. Houston died. When Mr. Houston died that left just Joe and Bill in the office.

There wasn't a lot of business there when old man Houston passed away. I think the clients he had probably went somewhere else. I don't know how much prominence Joe had developed with the public and Bill was relatively new. So they had some civil practice, but it wasn't lucrative of course. They didn't represent any firms and business organizations and there wasn't any criminal business at all. Joe didn't handle any of that. And Bill hadn't been in the courtroom for any purposes, really. And I told him, "Yeah."

I don't know why I did that. I talked to Astaire about it. I had the two kids, and I was on this payroll over here and I had some responsibilities. But at the same time, I really had always wanted to be independent. I had always wanted to be independent and I was willing to take some risks to do that. Astaire was apprehensive about it and I was too, but I went over to that office and two things attracted me to the office.

I had never met Bill Gardner. But I met him and kind of instinctively liked him. And Charlie Houston had a well-equipped law library. They had the front office and in the back — they had one floor of a building — and in the back of that building — it was a long building — he had a library. They had in that office F.2d up-to-date, L.Ed of the Supreme Court Reports up-to-date and you know with the service, West Publishing's advance sheet service, and our Circuit's up-to-date stuff, Am.Jur., up-to-date, and that's a pretty good library for a small office. No Black lawyers had any office equipped like that.

Of course I had been over here and the law library was on the third floor. I have always been at home in the library, and I use it a lot. And that library over there attracted me. We would work in that office without going out a lot of times. And I must say this, I guess, being human, I was kind of attracted to the situation because of the history of my relationship. I just said to myself, well I be damned, you know what I mean. I just felt that way about it. And I went in the office and that was one of the motivating reasons. It really was.

**Bill Schultz:** Now you practiced with Joe Waddy who became a judge, Bill Gardner who became a judge, Ted Newman . . . .

**Judge Bryant:** And Ted Newman was in the office while I was over there for a little while and he became a judge. And the rest of the people who were in the office and became judges came after I left. Like Annice McBryde, another boy named Gardner, who is no relation to Bill who is over there as a judge, and Emmet Sullivan who is a judge. They were all in that office. Isn't that funny? Per capita they have produced more judges than any law firm in the city. I guess in the country.

**Bill Schultz:** Wasn't Judge Hastie in that firm?

**Judge Bryant:** Yeah, Bill was in that firm. Bill was there when I was in law school. He was teaching and was in that law firm.

**Bill Schultz:** And was Spottswood Robinson in that firm?

**Judge Bryant:** No, Spottswood went to Richmond, he went back home when he got out of law school. He practiced in Richmond and then he went to the Defense Fund in New York.

**Bill Schultz:** And Justice Marshall?

**Judge Bryant:** Thurgood, no. He was not in the office.

**Bill Schultz:** Can you tell me a little bit about Bill Gardner, Judge Waddy and Judge Newman?

**Judge Bryant:** Joe was the oldest one. He had been in the office a long time. Bill was relatively new and at the time Bill was working in the evening at the Post Office. But he was a good, solid lawyer and paid attention to whatever business he was working on. He would leave early in the evening and go to the Post Office, I think he would have to be there at 4:30 or 5:00, I don't know. But he worked over there, I think, four hours a night. And then he left there and came back to the office. That was his routine.

He did it time and time again, because I have been in the office when he went to work, and I have been there when he came back. He did that for a couple of years after I went there. I know he did it for a couple of years. I will always say that Bill Gardner had the best legal mind I have ever encountered. A good, solid guy with a lot of common sense. A good lawyer. I loved to practice with him. It was a good office and I got involved with a lot of things.

**Bill Schultz:** Was Joe Waddy a little older than you?

**Judge Bryant:** No, I think Joe might have been a couple of years younger than I. I think we were within a couple of years of each other.

**Bill Schultz:** Did he go to Howard?

**Judge Bryant:** Joe went to Lincoln. He went to Lincoln up in Pennsylvania and then he went to Howard Law School.

**Bill Schultz:** But you didn't know him in law school?

**Judge Bryant:** No.

**Bill Schultz:** Now, 1954 was the real turning point, the time of *Brown v. Board of Education*. I want to ask you about your memories of that year and the decision.

**Judge Bryant:** Bill, I really don't have any stakes to hold onto there because I was in this office when that stuff was developing and I don't know whether I was in the office here or had left the office when the decision came down. The decision came down at the end of the year, didn't it? I don't know. But I remember that there was a lot of rejoicing in the office. I remember

discussing it with Frank Reeves who was practicing law at the time and a handful of lawyers around.

**Bill Schultz:** Were you surprised that it was unanimous?

**Judge Bryant:** Yeah, I think we were. We were surprised that it was unanimous. I was surprised that it was unanimous. But I don't think I followed the Court real closely. I hadn't been following the Court to any extent then. I started following the Supreme Court very closely after I got out of the U.S. Attorney's Office. After I got over there the courts really meant a whole lot. You got interested in the personalities and the records, and so forth and so on.

On Saturday, I got this habit from Bill Gardner, Saturday morning was our sitting-down day. Our sitting-down day was this kind of thing. We had the slip opinions coming in from F.2d, and the Supreme Court, and from the District of Columbia Municipal Court of Appeals. So on Saturday mornings we would go down and read the slip opinions and then we would go to lunch. And unless there was some actual work that had to be done, that was our day. We used Saturday — it was a good day — we used Saturday to read all of the slip opinions, and then we would talk.

That's when I became aware of who wrote the opinions and how the mindsets were, and so forth and so on. And then later on when I got *Mallory* and got a chance to argue at the Supreme Court and I met the law clerks — Dan Reznick and a boy named Cohen — I think he clerked for Frankfurter. And then I don't know, that kind of grew on me.

**Bill Schultz:** Now when *Brown* came down do you remember, did you have any sense that it was going to change your life or affect your life in any way or the lives of your children?

**Judge Bryant:** When *Brown* came down I had some idea that it might affect the lives of the children. I didn't give it a hell of a lot of thought. Chip went to St. John's High School and Penny went to St. Anthony's. And I think that those high schools had been integrated

to some extent before *Brown*. They weren't public schools. And I think Astaire had the idea that was going to happen to them anyway. So I don't think I realized then that this was going to be a big difference to me.

I think that the implications in *Brown* were that, we, as I recall it — when I say we I'm talking about Spottswood and Joe and Bill and Frank Reeves and a handful of us, George Hayes, who was following the stuff that was going on. We had the feeling, that well, the walls are crumbling now. Really going to clear the field, level the field. And we were pretty happy about that, pretty happy about that.

I remember Frank Reeves and George Hayes. George Hayes had been in the picture a long time and I remember him saying, “Well I can finally get my breath a little bit.” He's a good lawyer. And George Hayes went to Brown University. I think he got his law degree from Howard University, but George Hayes was as good a lawyer as you are going to find anywhere.

**Bill Schultz:** Where did he practice?

**Judge Bryant:** Right next door to me, 613 F Street.

**Bill Schultz:** Oh, he had his own firm?

**Judge Bryant:** Yeah. Cobb, Howard, Hayes and Windsor. He practiced with old Judge Cobb, and Perry Howard was a Republican national committeeman from Mississippi. You know, when the Blacks had that little unimportant political organization in the South in the post-Reconstruction South, all the Blacks were Republicans but it didn't amount to nothing but old man Howard was a wheeler-dealer from down South. He and a fellow named Montague Cobb who was a Municipal Court judge for a while and George Hayes practiced together for years. Next door was old man Houston and Charlie was there for years.