

ORAL HISTORY OF THE HONORABLE WILLIAM B. BRYANT

Chapter 10 Reflection on Lawyers and the Law

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Bill Schultz: Judge Bryant, today I want to talk to you about some general observations that you might have of over the last 50 or 60 years since you have been a lawyer, and over the last 80-some years since you have been living in Washington. First of all, let me ask you to reflect on the changes in the criminal justice system that you have seen in the time that you have been involved in it as a lawyer, and then as a judge.

Judge Bryant: I think that the criminal justice system underwent some sort of dramatic changes during my time as a lawyer. Up to 1949 or 1950, or thereabouts, the criminal justice system wasn't too respectable. I think that is true because of the availability of counsel. Some people who were charged with crimes, ordinarily most of the people who are charged with crimes, are in that position as a result, or come out of circumstances that are wanting. I mean, they have no assets, and the type of representation that got under the criminal justice system was often very poor, and the type of reception and consideration they got in the criminal justice system was equally casual.

I remember looking in our earlier reports for our circuit, for instance: I think most of the criminal appeals, or a great number of them, were decided with a one-line per curiam, "We find no error affecting substantial justice, affirmed." No discussion, no nothing, just affirmation.

Of course, I saw it when I first came and sat in the courtroom over there, that system sort of demonstrated this. The people who came had little intelligence and little representation. The people they appeared before weren't too sensitive and gave them the short end of the stick. And one of the reasons they did it was because they knew, for instance, that the guy's representation wasn't too good. They knew that whatever they did — nobody would ever seek any judicial

review, and some would ultimately get it, that the judicial review would be rather casual and short shrift, as existed in this circuit.

Some people dissented. Judge Edgerton would dissent in some of these criminal cases, but he was a lone voice in the wilderness, really. When Bazelon and George Washington and Charles Fahy were appointed to this court as three additional members when the circuit went from six to nine judges, when they came to the circuit things began to change dramatically. Bazelon, and Fahy and Washington began to take a more careful review of what had gone on in the trial court, and they were sensitive to what were obvious shortcomings, and they made it known in their opinions and they reversed some cases. Bazelon particularly incurred the wrath of a whole lot of folks. Prosecutors, judges — trial judges and what not.

Bill Schultz: Was this before the Supreme Court handed down *Gideon v. Wainwright*, the right to counsel case?

Judge Bryant: Yeah, yeah, yeah. And I saw that happen when I was sitting in the courtroom over there watching people get appointed to represent people over there in the Municipal Court. I saw what the judges did. I saw the quality of representation that these people got. The lawyers weren't too good. With the coming of Bazelon and that group, and the coming of the Prettyman program. I am not certain of the entire history of the program, but this group of Georgetown students, the Prettyman group, I think was the brainchild of Bazelon and that group. With the coming of better representation, and a little more oversight of what went on at the lower level, the criminal justice system began to shape up. Also, with the composition of the Supreme Court, with Warren, and Brennan and Frankfurter to some extent, and Black, the criminal justice system sort of took on a different view, a whole different light it seemed to me.

Bill Schultz: Now you worked with the police as a prosecutor, you cross-examined them as a defense lawyer, criticized their practices in cases such as *Mallory*, and then

you have observed them as a judge. What observations do you have about police practices and how they have changed, how have they been affected by the change in the law?

Judge Bryant: Well, the policemen are aggressive, as they should be in law enforcement, and they are resourceful and they have always been. So far as I know, they consider themselves good against evil, and they can justify a whole of things on that basis. I think it is realistic, let me put it this way, some policemen are so anxious to do right in their own conception of what's right, so anxious to be effective, that they go overboard.

There are those who think it's just unthinkable for law enforcement officers to not tell the truth. Well I know that the rank and file of them do, I think. But I also know that there is a sizeable portion of them that won't. And the reason that I know this is because I've had that personal experience. As a defense lawyer, early on I caught a policeman in an out-and-out lie on the witness stand, and it was embarrassing to him, and the prosecutor dropped some charges. When he came out in the hall later on, he laughed and said, "Well, you got me". And he sort of joked and he said, "Well you caught me," or "Got me," or something of the sort.

I was a little embarrassed for him. He was a Black officer and I didn't get a whole lot of satisfaction out of pulling the cover off of him, but I told him, "Well that doesn't have to be, why would you do something like that?"

And he told me, "Well I'm out here fighting these guys, and I know they are guilty, if I have got a guy and I am satisfied he's guilty, I know what it takes to send him and goddamn he's going." That's what he told me. Well, there were some instances in the narcotics squad. They had a fellow who would plant drugs on people and charge them with drugs. He ultimately went to the penitentiary as a result of it. He was terrible. I knew that happened as a defense lawyer, and then when I was a prosecutor, I remember prosecuting some guys for burglarizing a store or robbing some store and I think there were four of them. Well, a sergeant on the robbery squad, a fine guy, I'd known him for a while and I thought he was a good officer, he was a good officer,

but during the course of the trial when the defendants put on their case, one of these guys had put on some testimony, got on the witness stand and told the story that was self-serving to himself and far from the truth.

It didn't bother me, I wasn't worried about it because I knew the facts were against him, and I figured on cross-examination he was gone, but he was on the witness stand. I went back to my office, and when I got there his sergeant came down and said to me, "Mr. Bryant, why can't I say so-and-so and so-and-so?", whatever it was. And I got kind of shook a little bit, I was on the phone and I didn't want to look at him, I didn't know what to do. So I looked at him and I said, "Did that happen?" His name was Richard Meister, so I said, "Dick, did that happen?" He said, "No it didn't happen." But he was lying and he knew damn well he was lying. So I said, "Don't worry about it, it's all right". And I didn't insult him, I don't know what my duties were, but I wasn't thinking about reporting him or anything like that, it didn't cross my mind, maybe I should have, but I didn't. But the thing that bothered me about it was that he wasn't a close friend of mine, and I don't think he knew me too well, and I just had the feeling that I wasn't the first person during the course of his police career that he made that proposition to or else, why pick on me?

That sort of sobered me too, so when I came to the bench, judges who had been prosecutors and judges who were government-minded they would resent any attempt to rigorously cross-examine a policeman or uncover him, Holtzoff particularly. In giving an instruction for instance, he would summarize the evidence, "So-and-so testified so-and-so, so-and-so testified so-and-so, but the officer testified such and such a thing." With obvious deference to the officer's testimony.

Bill Schultz: When you were a prosecutor....

Judge Bryant: That's why, the present celebrated case is the O.J. Simpson trial, and people are saying, "Boy that's ridiculous about framing him." Well it may be ridiculous, but

the business of framing somebody is not completely off the boards, and I gather that some of these people who are in L.A. who are in that battle have had some of those experiences like I have had, and they know that it could be, I really don't know. I thought our police department was a pretty good police department to an extent. But what I am saying is, it can happen. I think the police department in the District of Columbia has gone downhill, as I think they have in other jurisdictions. And I think it's for this reason.

Apparently the manpower pool for police forces for a long time was military personnel, retired military personnel. People go into the military forces at a very young age and come out or retire after a few years, still very young, and they go into the police department. And they have been prime sources for good police officers, they have some experience, some discipline and what not. In recent years, the services being what they are, a person gets a pretty good education in the services. So now when he comes out, after retirement he's equipped to do other things. They go other places, other than the law enforcement field, and law enforcement people have to resort to a different grade of personnel. This department has suffered particularly, severely, because in addition to that dried up source of manpower they had a mandate to increase the police force by a certain number.

Bill Schultz: Right, by 2,000.

Judge Bryant: Not too long ago, and the authorities sort of yanked people into the department who had no business being police officers. That has shown up, that has been a visible defect in the police department. I don't know to what extent other cities are affected by it, but this city has certainly suffered as a result of it. I've watched the kind of people that have taken the witness stand in my courtroom over a period of time and I have seen them deteriorate. The police department doesn't help much.

Bill Schultz: So the quality of legal representation has gotten better, and the quality of the police has gotten worse?

Judge Bryant: Yeah, the law enforcement people are worse.

Bill Schultz: Now, what about criminal defendants. What changes do you see in the type of persons likely to be a criminal defendant?

Judge Bryant: I see the violence now that I never was exposed to. When I was a youngster growing up, to read about somebody being killed was something that you read in the paper maybe once, not more than three or four times during the year, in the whole city. Nobody was killed in any sort of way. And among the three or four or not more than a half dozen that you might hear about. In those days probably two of them were domestic things where people had in passion given way to their emotions, and people had been killed in domestic squabbles or something of the sort. But the business of the type of violence we have now was unheard of.

Bill Schultz: What do you think were the reasons for that?

Judge Bryant: Well, I think the major contributor to it is the media. I mean, I know about people being poor and disadvantaged and all of that, but people have been poor and disadvantaged a long time. People were poor and disadvantaged when I was a kid coming up, but, for instance if people ... I sentenced a guy, he was a bank robber, I sentenced him and I had to give him 24 years in the penitentiary yesterday morning. And he told me frankly that, "I messed with banks but I didn't do this one." He's the kind of guy that the policemen or FBI agents arrested, and asked him about what he had done, and he said he had robbed about eight banks. He said well, tell me what they are. He said you guys figure it out and laughed.

But involved in it is a lot of threatening behavior, you know, like dangling handcuffs in front of people, and pointing a gun at them and oftentimes the guns are plastic guns or wooden guns or so forth. These guys are determined they aren't going to hurt anybody, these robbers and housebreakers they weren't going to hurt anybody. But now these youngsters, it seems like the primary focus is to hurt somebody and then rob them. It is not a question of robbing them and making a getaway through violence, but the question is having a trigger and shooting people. I

think the drug business, on the one hand, and the media on the other, are the major contributors to the problem.

Bill Schultz: By media you mean T.V.?

Judge Bryant: Television. You see with television you can go in the poorest house in the city, and you may not find any food in there, you might find a bare kitchen table, but you will find a television set on, at least one. And television is America's babysitter.

I know what those pictures can do for you. We got our education in what the filmstrip could do during World War II. We did some marvelous things with filmstrips during World War II in terms of training people, indoctrinating people and training people with the filmstrips. You take guys out of the back woods of Arkansas or Tennessee, Maryland or Michigan and put them in these Army units, military units, and subject them to some basic training and some concentrative specialized training films, and so forth and so on. But now little kids are looking at the comics, and they are violent, and you flip the dial, if you have got cable you flip the dial from one end to the other and all you see except the public broadcasting stations, all you see is violence. You see a gun, violence, violence, sex, violence, sex and in between that you get a barrage of advertisements of things that cost a lot of money, cars, clothes, you know, all the other luxuries of life, that's all you see. That's frightening.

Bill Schultz: Now you mentioned drugs, what was it like during prohibition when alcohol was illegal?

Judge Bryant: We had the violence during the prohibition days. I think most of the violence that you see now in the streets, most of the executions and kids shooting each other, they are so-called turf wars. We had the gangs in Chicago, the Capone gang, and so forth, and organized crime. That's all that violence involved, fighting over turf. You go out here you see so many young people involved in violence. You see, Bill, a lot of people that come out of Southeast and far Northeast, come out of housing projects that are run-down, public housing.

They are second- or third- or fourth-generation right there. I had a trial, for instance, some youngster who lived in the house with his grandmother and some uncles. The grandmother came in, she was brought in in a wheelchair to testify. The grandmother had lived in the place where she lived all of her life. The grandmother had lived there all of her life, and she had a couple of sons, and both of them lived with her, and she had a daughter who had a son who was on trial in this case. A lot of these youngsters are the end result of three or four generations of that poverty and mismanagement.

Everybody doesn't make it out of the pack. Human beings are just like animals. Some of them make it, and some of them don't. Some of them get caught in those housing projects and live there, grow up there and live there until they die. They don't expect anything, and don't care about life. If they make today, fine, but apparently, I don't think they have any fear of dying.

And you put them in a penitentiary and in many respects they are better off in the penitentiary than they are in the streets, because then all of their problems are solved. They don't have to worry about where they are going to sleep, or whether they are going to eat or not. They get a little bit of medical attention in the institution. You really don't get any out in the streets.

Bill Schultz: Do you have any ideas in terms of solutions?

Judge Bryant: I've got some ideas about how to drain off the horrible effects of drugs in the community. What do you call them — decriminalize them or medicalize them or whatever term you want to use to let true addicts have access to it. Try to educate them just like cigarettes, try to educate them, educate them. You are not supposed to use them, you ought not use them, but, you see, the drug problem is a medical problem. And I don't visualize resolving a medical problem within the context of the criminal justice system.

I don't think that the criminal justice system is designed to do that, and I don't think it ever will do that. An addict is an addict. We have talked about the people who are addicted to tobacco, for instance, and how hard it is for them to break it.

From time to time I have people come in on violation of probation, and those hearings are usually in a courtroom where there is nobody there but the individual, the prosecutor and the probation officer. I take advantage of the situation to question people about why, what happened to them, and why they did it.

I had a guy, the name escapes me. He wasn't a violent guy, but he had been a drug addict for quite a while. He had been in and out of trouble, and I had put him on probation, and he was brought before me for violation of probation. We got into a rather frank discussion about it, and I said, "Well, you fell off of the wagon, what happened to you?" He said well, he couldn't help it, he had no place to go, no place to turn, couldn't get no help, and he didn't have any money.

When I said something about a job, he said, "Well you know ain't a whole lot of jobs out there, and the people who are hiring people, they are not anxious to hire anybody who's got a criminal record, and I've got a criminal record, and so I just kind of didn't feel good about myself."

I said, "What do you mean?" He said, "I just got despondent and got depressed." You hear people talking about getting high? To the average one of these junkies in the street and coming out of that kind of background just described to you, when he says he wants to get high he wants to get to ground level, he's so deep in a trench of depression and what not, he just wants to get where you and I ordinarily are from day-to-day. He wants to get away from his situation, to be removed, ground level to him is high.

And when I realized that, I felt so sorry for that guy. I didn't take his probation away from him. I just didn't do it because he hadn't committed any crime. I mean he hadn't committed any violent crime. He just tested positive for these drugs. I thought it would be a shame to put him in jail because he is sick. That's what it amounted to.

Put a man on probation, he's not supposed to use drugs, and he comes in and they test him, and he gets a positive reaction, and they want you to put him in jail. I just think it is

criminal if I put a guy who is sick in jail for that. He wasn't caught with any drugs, and he didn't commit any crime, but he had tested positive for the drugs, so he is sick. And you ask me to put him in jail? You can go somewhere else. I just can't do that.

I just think that if you take the profit out of illicit drugs, you run the hustler off the street. He might commit some other crime. Maybe the guy who is selling drugs for a quick buck, if he doesn't have any drugs to sell, maybe that guy will come in your office, and steal out of your house, and when you get out of your car he might put a gun in your face and rob you. Maybe he will do that, but I don't know, you know what I mean?

And maybe you will redirect that because that violence is there, the same things that fuel that violent behavior, that television is still there. He is poor, he doesn't have any money, but he is saturated with the good things of life and violence. He is saturated with them. And I suspect that a number of these people who are out here shooting each other because you are selling drugs on my corner and that kind of thing would resort to high crime in the city, you know, robbing stores, robbing banks, robbing people, I guess.

And I think that maybe, I don't know, it could be. It could very well be, and this is a horrible thing to say. It could be that the present situation involving drugs among these folks who are flotsam and jetsam of civilization, that the violence and crime is almost isolated within that group, do you know what I mean? Almost isolated within that group.

Now the rest of society might very well feel sort of comforted by that. Do you know? Seriously, they might very well feel sort of comforted by that. And that's a hell of a thing to say, but I think that's a fact of life, that's a fact of life. Because there is no reason to think that some guy who is shooting and trying to make it, and going to violent ends to get some money, is going to stop going to violent ends to get some money when you take his medium of exchange out of the picture.

Bill Schultz: But you would still decriminalize drugs?

Judge Bryant: Yeah. Yeah, I would decriminalize the drugs because I think we could yank a lot of people out of the drug culture if we decriminalize drugs. I think a lot of people get hooked badly with the drugs because they start out fooling with them.

Let me put it this way, I think there are a number of youngsters, particularly that is true with the people who are not in the ghetto, a number of teenagers get involved in drugs, get hooked, and they are afraid to go to their teachers. There is no person they can go to and seek help without unveiling themselves as criminals. They have violated the law. They have crossed the line. They have become lawbreakers. And I think that is one of the deterrents to really some people seeking help very early. And I just don't think it is humane to make criminals out of people who are sick, and I think addiction of any kind is a sickness.

Bill Schultz: But some people say if you decriminalize drugs then they would be widely available and more people would use them.

Judge Bryant: I don't believe that

Bill Schultz: Why not?

Judge Bryant: I don't have any statistics or any data to support it one way or another, and I don't know whether in these countries where they have rather liberal laws, I don't know whether the data in those countries would reflect that a lot of people might resort to drugs who wouldn't. I tell you one of the reasons is this, if I had a program, I would try to guard against that, and this is how I would do it. If you would open up a dispensary or small medical unit in each fire house, let's say in the city, and let it be known that a real addict could come and whatever his drug of choice is, he could consume that drug on the premises, you can't take it out, you cannot get it unless you test positive.

So there is no chance, so far as I am concerned, of somebody who is not an addict getting any drugs out of that firehouse. If he doesn't show up as an addict, if he doesn't test positive for the drug, he's not going to get them. Not out of the system that I would set up, so that system

would not create or entice people. And you see, an addict that can acquire the drugs at the firehouse and use them, he's not going to have them to sell. So the only way these new people are going to become addicted is that they are going to resort to the illegal drug dispenser. So the business of making drugs available to the addict is not going to contribute to somebody who wants drugs, and wants to get them free.

He might go and find some illicit dealer and get some drugs so that he can qualify to get new drugs, but that's not likely. You see, what you would do then, the poor drug addicts who are petty thieves and petty law violators to make some money, the incentive for that kind of crime is gone. And the guys who are selling the drugs, well hell, nobody is going to buy them if they can get them free, so he is out of business. He's got to find something else to do.

I think my idea is a good idea, besides being a humane idea and a sensible idea, and an economically feasible idea. I just don't think you contribute to a problem. I don't think you exacerbate a problem. I really don't. Availability of drugs, then everybody would use them, that just don't make sense.

Bill Schultz: Now what about juries, how have juries changed over the time you have been watching?

Judge Bryant: Not much. I really don't think much. I really don't see the difference. I really don't. Let me put it this way, I seldom get surprised by jury verdicts. I noticed the U.S. Attorney in the District of Columbia, a long time in this courthouse, got to the point where if he got a conviction it was news. They got hung juries and acquittals in a lot of cases. And these young people, these young D.A.'s would come out and they would cry and scream, and of course it wasn't their fault. It wasn't a lack of their skill or prosecutorial resources but juries, Black jurors aren't going to convict Black people, but that's not so.

They will convict them if they have got the evidence, they will convict them. I can tell them, I've told prosecutors during the course of trials, you are spinning your wheels. I've told

them that, and the reason I've told them that is because I knew they weren't going to get any conviction. And it wasn't on account of the fact that the jurors are Black, it was on account of the fact that they didn't have good cases, and on account of the quality of the testimony that they got from the police officers.

The testimony is slipshod, their methods are slipshod, and they create loopholes that they ought not create for the prosecutors. They are not too bright, and the business of overtime, the policemen are making much more money sitting in a courtroom. I tried a case, and some guy has been picked up off the street during a drug bust, and instead of the policeman who arrested him, or let's say maybe the policeman and his partner coming in to testify, you have three, four or five policemen coming in to testify. One guy saw this, and one guy saw that, and one guy arrested him, and another guy made out the paper work, and so forth and so on. All that to come down to the courthouse.

Now when you try the damn case all of the evidence is in, closing arguments made, jury charged and you are waiting for a verdict. These officers are sitting in the damn witness room, sitting up asleep, drawing overtime. Now, what happens in the case, and the young prosecutor really doesn't have any idea of what a good case is, and what isn't a good case.

I had a case where a man met somebody on Southern Avenue, drove a BMW up, made a U-turn, and parked behind a guy. The policeman was driving by in a van, and looked down and he saw a guy sitting in a back seat. He apparently had some drugs, and the people in the front seat turned around, and they got out and approached the car. The guy in the back seat allegedly put the drugs down between the seat and what not, and they locked him up.

So the guy in the BMW had gotten a call, and he's gone out to meet these people who come in to buy these drugs. So he pulled behind him, and they got out of the car or he got out of his car; anyway, they were sitting in the car in these people's driveway. So the prosecutor comes

in and his witnesses, besides the police his lead-off witnesses are the man and woman who are apparently the drug buyers.

So the guy gets on the witness stand, "What's your name?" "So & So." "And were you at Southern Avenue & such & such a place at such and such a time?" He said, "Yeah, yeah I was there, but we weren't going to buy no drugs because we didn't have no money." Nobody asked him any questions or anything, "We weren't going to buy no drugs because we didn't have no money." So somebody said, "What in the hell is he talking about?"

Now the police arrested this man, they take him down to police headquarters, and they interrogate him, and he didn't have anything to say. Well, here's what happened. The police arrest him, and take him down to headquarters, and talk to him. And this policeman who was talking to him was supposed to have gotten a full-blown account of his drug activities, of where he got his drugs, and so forth and so on.

He got his drugs from up on the corner from a guy named Jones with a gray felt hat on with striped shirt or something of the sort. "Well, did you ever go up there to see the guy with the gray felt hat?" "No." "Why?" "Well I had him, I didn't go by him." "Oh you did, huh? Well he told you that?"

Now the incidental, the police report which indicates that such and such a time they observed this, and they arrested him. They have got these blocks, and they have a block down there for the defendant's statement. And in there, it is typed, "The defendant made no statement," in this block. Now the guy who made out this paper work was another policeman and he's someplace else in the place.

Well, when the guy testifies to that, and then somebody faces him up with this statement, "Well I didn't make that", well nobody is going to believe that. Jurors aren't going to believe that, do you follow what I am saying to you? Jurors are not going to buy that.

So they are hung up, 11 to 1 for acquittal. So they say, "Can we talk to the jurors?" And I say, "Yeah, if you want to." So when they talk to the jurors, and when the jurors found out that they were going to try him again, they laughed. But the D.A., a nice young boy, came in about a week or ten days later, he came in for a trial date. I said, "For what?" He said, "In that case." I said, "OK you can get a trial date, do you want one quick?" He said, "Yeah." And I said, "Now while you are at it, why don't you get the date for the next one?" He said, "I don't understand your honor." I said, "Why don't you get a date for the next two or three times you are going to try him." I said, "Have you ever heard of the snowball?" He said, "Your Honor, we've got a solid case." I said, "Okay, fine."

He came back in about a week and moved to dismiss it. But that youngster thought he had a case, he thought he had a winnable case, and there was no way in hell he could win that case. And I know he went back, and he thought about these Black jurors, they won't convict him, he was firmly convinced that it was a color proposition, and that's the kind of cases that get brought in here.

The cases fall apart with that kind of slipshod police work, contradictory statements and what not. And people know about the Guidelines, people know that when a guy gets convicted now he's gone. People are going to say, okay, fine, but I want to be pretty goddamn certain that when I say thumbs down on him, he's thumbs down, and I don't blame them. I can't blame a juror for that, and that's what they run into. They put on cases with big holes in them.

Bill Schultz: Do you think the jury system is a good system for trying criminal cases?

Judge Bryant: Yeah, yeah, I think it is.

Bill Schultz: Do you think that it is better than when the judge makes the decision?

Judge Bryant: I think so.

Bill Schultz: Why?

Judge Bryant: Well, my experience. I came up as a practicing lawyer, and I've been before a lot of judges. In the first place, a lot of judges have only one-sided experience. They come out of law school, and they get a job. The only job that they have had dealing with people is in the prosecutor's office. They get that experience, and they go on the bench, and that's the only side they see. They tend to rely on the prosecutor, and they are government-prone.

I think that the jurors come with broader actual experience. Crime occurs in the streets, in the neighborhoods that most judges don't live in. And a lot of things that people testify to are real, honest-to-god life situations that a lot of people can't even visualize or contemplate because they don't have any feel for it. The first thing they think is that it's a lie, it's a lie. In close factual situations, do you know what I mean? I've seen that happen. I think that juries are pretty fair safeguards against the tendency for judges to rely on prosecutors and lean in their direction.

I remember I told you about Judge Tamm. When he came to the bench he was a trial judge. He had been the number two or three man in the FBI for years. He had never practiced law in his life. He was named to the trial court and he was a diligent, very conscientious fellow. I understand he spent the whole summer — that was when the courthouse would close down in June and open up in September after Labor Day, despite the fact that we had all of this common-law crime and everything else — I understand he read all, or as many of the criminal cases that we ever had.

And I told you about Freddie Smithson, he wasn't going to rule in your favor if it meant that some criminal was going to walk out. They go in without knocking, and then they testify that they went in, and knocked, and they approached the place very quietly, hugging the building line because they didn't want the people to know they were coming, and obviously they went in without knocking, motion denied.

And that's the guy, a prosecutor questioned a defendant of mine, and he wanted to know, "You arrested him?" "Yeah".

"And where was he?" "Sitting in a place knee-deep in numbers slips behind the adding machine."

"You had conversation with him?" "Objection." "Overruled."

I objected because I knew that he didn't have any conversation with him that was admissible conversation — what about it, I don't have anything to say, I'll get a lawyer.

"Did you have further conversation with him?" "Objection." "Overruled."

"What did he say?" "He said that he wasn't going to say anything to me without a lawyer."

So I went up to him and I said to him, "Your Honor, with all due respect."

Now there's a case that I had won on a motion. I knew I had won on a motion, with no-knocking, but I went up to the court and I said, "With all due respect to you, I don't think the prosecutor is fair. I know it is not fair to my client. Your honor, he is not fair to the court." I said, "He is trying to convert this man's exercise of not one, but two constitutional rights into some evidence." And I said, "That's not allowable under the rules."

"Objection sustained." The light hit him, you know what I mean? He realized I wasn't trying to blind side him. I was trying to protect him really. But I think the jury system is a safeguard against the government. And the government pays the prosecutor, and pays the judge, it pays everybody, the cosmetics of it don't look good. I mean, the prosecutor has everybody if you have the judge, the prosecutor has everybody on his payroll and under the present situation he's got the defense lawyer, too. Everybody is on the government's payroll.

Bill Schultz: You once told me that the jury has six to seven hundred years of experience.

Judge Bryant: Yeah, you get twelve people on a jury and you have got a lot of experience. A lot of experience, and a lot of these cases involve human experience. You take, for instance, the ordinary homicide case where a colorable defense of self-defense is involved.

You know what I mean? Somebody on a jury has been close to some sort of situation like that in some form or fashion, either by virtue of a relative, or friend, or himself, one way or another. An average judge, what the hell, an average judge now, even more so now than then, the average judge now is raised on wire. You know, a lot of them are raised on wire. They go to college, law school, clerk, prosecutor's office, corporate firm and judge. So he has no experience with raw human situations. And I've seen that. I've seen that with well-meaning judges. Well-meaning, honest, fair-minded people, just don't know, if you haven't been there, you just don't know.

Bill Schultz: What about the U.S. Attorney's Office. How has it changed over the years?

Judge Bryant: Got a lot more people.

Bill Schultz: Yeah? How many people when you were there?

Judge Bryant: When I was in the U.S. Attorney's Office in 1954, I left the U.S. Attorney's Office in 1954 this court had common law jurisdiction, plus the federal crimes, and we had I think in the criminal division we had, I can count the men: one, two, three, four, five, six, seven — we didn't have over 15 prosecutors. And the appellate section consisted of four people.

Bill Schultz: The whole U.S. Attorney's Office?

Judge Bryant: The whole U.S. Attorney's Office, the appellate section consisted of four people.

Bill Schultz: What about now?

Judge Bryant: Oh Christ, I don't know. Hundreds? We've got more people in the civil division now than we had in the whole U.S. Attorney's Office. And, Bill, as I say that was a time when we had our jurisdiction which we have now, plus the jurisdiction which these people over here have. You know the criminal jurisdiction which they have over here. I can be completely absolutely certain that we did not have 20 people, I count 15, as I remember. We did not have 20 people, but now we have a lot of them.

Bill Schultz: What about the criminal defense bar, how has that changed?

Judge Bryant: From now?

Bill Schultz: Yeah.

Judge Bryant: A whole lot different. The Federal Public Defender Service is an excellent office, and the lawyers now by virtue of the Public Defender Service. We have a local public defender service, and I think the forerunner of it all was that Prettyman program. The lawyers are good. The appointed lawyers are good, good lawyers. By-and-large they are good lawyers and I like to see them. And there is so much difference. I think the quality of justice on the criminal is a zillion times better than it ever was by virtue of the Public Defender Service, and that's the way it ought to be. And I guess, as I remember, Bazelon fought like hell for that.

Bill Schultz: Let me change the subject. I am going to ask you to talk about race relations, and just reflect a little bit on the difference in what it is like to be Black in Washington today versus 60-80 years ago. Just your reflections on what the differences in terms of opportunities, in terms of integration or segregation, and just general life style.

Judge Bryant: A different world. In terms of opportunities it was a different world. Somebody now can aspire to something without actually dreaming. Do you know what I mean? People can make some choices, and entertain the notion that I am going to be so-and-so. I am going to prepare myself and I am going to be so-and-so. Now it is not perfect. He might have

some resistance, but it isn't the type of resistance that was there when I was a little kid growing up.

There were just barriers, I mean for instance in the government services Black people don't apply for anything other than messenger jobs, they had messenger jobs for Black people. You didn't go to the Civil Service Commission, when I was a youngster you didn't go to any one of the government departments and apply for a government job as a clerk, a file clerk, you just didn't do that. And then gradually it was a little better, but then it was still at a point where jobs were menial and the promotional ladder was cut off at a very low level. And the types of jobs you could do, were, as I say, rather menial.

Professional positions were just about closed off to you. You know I told you when I went to law school what my grandfather told me. He said, "You must be a damn fool, Negro lawyers don't amount to anything." He told me that in 1933. It was 1933 when I went to law school.

Bill Schultz: I gather there probably was some basis for it then.

Judge Bryant: Yeah, I didn't have a whole lot of people to point out to him, and say, oh no, you are wrong. I couldn't do that because the few lawyers were struggling for recognition and hadn't really attained it to the point where they stood out as role models. They hadn't reached that stage. Charlie Houston was fighting like hell in the courts for some sort of recognition. Lawyering wasn't a Black man's job, not lawyering. It was all right to be a doctor, or a dentist, or a teacher in a completely segregated school, but you are dealing with your folks. But when you start talking about fooling around with the law, you are dealing with the system. You are dealing with the police department, which was predominately white. You have one Black lieutenant in, I think, the whole force. And you are dealing with the prosecutor's office that was absolutely lock, stock, and barrel white. And the guy designated as the assistant United States attorney who was a warrant clerk.

Bill Schultz: And the judges?

Judge Bryant: Oh, you had a Black judge. Judge Terrell was a judge. I think he was the first one a long time ago. Then when he passed away, Judge Scott came on, and then when he passed away, Judge Howard came on. And there was always a token, but I mean, it is shameful that when I came to the United States Attorney's Office I met a guy named Morris Fay, who was the U.S. Attorney and I asked him when he hired me. I asked him a question and I didn't know quite how to put it to him, because I didn't want to offend him, but when the guys went into the U.S. Attorney's Office, the ambition of the guys who were hired was to go to the "big court" — that's the federal court. And the starting point, they didn't hire anybody in the big court.

They started over in the Municipal Court and the turnover was pretty good. But nobody had ever been here, no Black had ever been to the big house, you know, the big court. And I asked Morris Fay, "If I can cut the mustard can I go to the big court?" He said, "Yeah, you can do it." He told me that, and I took him at his word. He didn't live long, but it happened that the people who succeeded him let me go to the big court. I came over here in the grand jury section, and when Eisenhower became president and the guy who was the U.S. Attorney then knew that at any time he was going to be asked for his chips, so he called me, I was on vacation, it was the first vacation that I had ever taken in my life.

Bill Schultz: And the last, I gather.

Judge Bryant: Yeah, probably so. The first vacation I had ever taken in my life. I was in Detroit visiting my aunt with my wife and my kids, and he said, "Come on I want you back here." I came back, and he told me I want to transfer you to the trial section now because, I don't know, I had been in the grand jury section about a year and two or three months. He said, "I don't know what's going to happen to me, you know the administration has changed," and he transferred me to the trial section.

That was a good thing for me. But that shouldn't be, that was in 1953. What the hell, that's only 40 years ago, but I'm talking about lawyers in the system, and that's one of the reasons they have such short shrift in the courtroom. The clients don't have any money, and legal representation in the system is expensive, the clients don't have any money so I can take advantage of you. The judges take advantage of you. The most surprised person in the world was Judge McGarraghy, God rest his soul. Nice old Irishman right up here on the sixth floor.

Buddy Beard treated me like a dog and refused to let me have a preliminary hearing, I've told you that story many times. Buddy Beard treated me like a dog, and refused to let me have a preliminary hearing in a case where two youngsters in college were charged with assault on a police officer. I wanted a preliminary hearing so bad because I knew that the officers were lying and I knew that between the time he told that story and the preliminary hearing, and the time he went to the grand jury, and the time he went to trial, that the protection my grandmother always told me about, that short memory, would be to my advantage.

Bill Schultz: What was that protection?

Judge Bryant: Short memory.

Bill Schultz: Against what?

Judge Bryant: Against liars. My grandfather was walking up and down one Sunday morning ranting and raving and raising hell because he had caught somebody in a lie. And he despised a liar, and he was raising hell about it, "You know a liar is the worst goddamn thing in the world. I'd rather have a thief than to have a goddamn liar." And my grandmother was a long-suffering woman, and she very seldom had anything to say when my grandfather was on one of these tirades. But she asked him why, and he said, "You can lock your damn house against a thief, you can lock up and protect yourself against a thief, you don't have any protection against a goddamn liar."

And she told him, that was the first time I had ever heard her disagree with him in my life, the first and only time that I heard her disagree with him, I mean, I know she disagreed with him, but I mean to express disagreement. She said, "You are wrong Charlie." And he said, "What protection you got against a goddamn liar?" And she said, "The Lord endowed them with short memories." I have never forgotten that as long as I have lived, and that's the truth. That is the basic truth in litigation. That is the one thing. That's the only protection that you have got against a liar, short memory.

That's basic truth, and Buddy Beard was so mean, he was mean to everybody. He treated everybody like a dog. And when I came down the back steps, I said, goddamn I'm going to try to do something about this. And the D.A., you know what he said? "I'm going to continue this for 30 days, by that time the U.S. Attorney will have done with it what he was supposed to do." The U.S. Attorney could go directly to the grand jury without giving a preliminary hearing. And he was such a mean son of a bitch, I came down the back steps and I said, "Goddamn I'm going to try to do something about this."

And the D.A. told me in the back steps going down the hall, "Do what you want to do, the hell with him." I sued him in the district court. I sought a writ of mandamus against him. When I filed it, came over here the next day. They sent it to Judge McGarraghy, and Judge McGarraghy looked like the world had come to an end. He had never thought about nobody suing a judge with a writ of mandamus in his courthouse, and some Black man too. That he had never heard of.

So at the end of the hearing, he said, "Well, I would have given you a hearing, but the motion is denied." So I went to the office.

Well you know, but I never created any rancor about it. I don't think any judges disliked me.

Bill Schultz: Now when you were going through this, the words “affirmative action” probably weren't even in the vocabulary. Now there's a national debate going on about affirmative action. Do you have any views on this?

Judge Bryant: On affirmative action?

Bill Schultz: I am sure you have views, but do you want to talk about them?

Judge Bryant: My view on it is that I think it is altogether proper, but I have a different concept of affirmative action than a lot of people do. A lot of people have the notion about pushing somebody into a spot that he doesn't deserve to be in, and that's not my concept of affirmative action. My concept of affirmative action is making available the opportunity, that's my concept of affirmative action. Now I don't think anybody ought to be shunted away from an opportunity. I don't think any barriers should be placed, or any hurdles should be placed in front of somebody except on anything other than his ability to do it. And that's my feeling about it, and I feel strongly about that.

I don't think pushing people ahead when they are not qualified, pushing people ahead on account of their race or gender or anything else, if you are not qualified to do these things, I don't think in the long run that does any good to them or anybody. I think people hurt that way. I think people get scared that way.

Bill Schultz: I remember that you once told me that there's a saying that if you are Black you have to do twice as well to go half as far.

Judge Bryant: Yeah, that's all I ever heard since the day I can remember hearing the English language. That's all I ever heard at school and at home. You have got to be twice as good as they are, and they meant white folks, to get half as far if you are lucky. And that was true, there was no question about it. But the remarkable thing to me is that there were so many people that I was associated with who put forth the best effort they could to be the best they

could with such meager visible attainable goals. You know, do you follow me? Guys going to professional school and end up in the Post Office sorting mail.

Let me show you what I am talking about. There is a case in the Supreme Court of the United States, *U.S. Postal Service v Aikens*, I went to school with a boy named Louie Aikens from New York, an accomplished musician, an accomplished student. He was a Romance language man. He majored in the Romance languages, French and Italian, and so forth. Aikens, he graduated from Howard University in 1932.

So he ends up in the Post Office. He got a job in the Post Office, and he got married and he got some kids and he's stuck in the Post Office. You know I told you the story about me not going in the Post Office and avoiding it. Louie got a job in the Post Office. The man who was running the Post Office was a guy named Carlton Bell, I think he graduated from high school, maybe down there in southern Maryland. He was the Postmaster.

Louie was stuck in the Post Office, he had a wife and kids and he filed suit in the early days when the employment discrimination came into being. He filed suit because he was denied promotion in the Post Office Department. He had died when the opinion ultimately came out of the Supreme Court. His son represented him. His son went to law school and was in the office over there with us for a while. But that's the thing that hurt when you see opportunities just shut off to a guy on account of his color. When you say affirmative action, I mean something that makes the playing field level. Just take those shackles off of a guy, let a guy compete.

Bill Schultz: What about quotas?

Judge Bryant: Quotas?

Bill Schultz: Yeah.

Judge Bryant: I don't have no problem with a quota, in a limited sense. When Phil Randolph threatened to march on Washington with the 250,000 people from New York, and Roosevelt said, "The hell with him, let him march," and Mrs. Roosevelt said, "Oh no, no don't do

that,” and Roosevelt signed Executive Order No. 8802. That was at the time during the war, right after the end of the Depression. I think the war might have started or we were at least an arsenal for the democracy. The war is on, the Pentagon is there, E.O. 8802 said that in government employment Negroes should be hired in direct proportion to their percentage of the population. The guy opened the door and he counts X number of people, and said okay and put them on the job. It was that kind of thing, and I don't like that.

But I think this. I think that the government of the United States in the expenditure of public funds has a legitimate interest in seeing to it that its various population groups have access to the opportunities afforded by public funds in some proportion to their representation in the general population as long as they are qualified. I don't see anything wrong with that.

I don't think that an Hispanic ought to get a job ahead of a white guy if he is not as good or better than a white guy. I don't think so. But let's take the situation where we have three applicants for a job. A Black man, a white man and an Hispanic. And the job is one of 100 jobs. And all of the 99 jobs are filled by white men. They have three applicants for the job, one white, one Black and one Hispanic. And let's say they are all precisely equal in qualifications.

I don't see anything wrong with the government saying, “Well I am going to put this Hispanic or this Black in this job.” I don't see anything wrong with using public funds. I think it is in the nation's interest to let the various cultural and ethnic groups that form a part, and contribute to the advancement of the country to realize that they are a part of the country to that extent on an equal basis. I don't see anything wrong with that.

Bill Schultz: I remember you once told me that the Post Office when they wanted to integrate would just announce, “We are going to hire some Black people.” Everybody would line up and they would hire the first 10 people in line or whatever, and when it didn't work out they would say, “See it didn't work out.”

Judge Bryant: Yeah, "They won't work." And that's what happened at the Pentagon. I was in the Pentagon when I saw a lot of people who had no business working. They had no business working, but at the same time, you know what I saw? I saw some who did. And I saw that with the women. The women would go in the stenographic pool. They were organizing and gearing up for the war, so they hired these people, and they came in the stenographic pool, and as long as you were in the stenographic pool you were hired at the GS-2 level and you stayed in the pool until you were attached to a division or branch, an organized branch. But you were in this general pool of stenographers.

They started off with maybe 100 women, this was when the military thing was shaping up. I went into the Pentagon in 1942-43. As the branches and divisions took shape and organized they would take these women and put them on as stenographers and secretaries. And once they got on, they were on the promotional level. They started out in the pool, and about ten percent of the pool were Black women in accordance with E.O. 8802. And then the pool began to shrink as the organization drained off these people. And these ten Black gals were in there.

I remember Rob Winsborough, a guy from Shreveport, LA., who was head of the orientation section, took a girl out named Jennings, who was a Black girl. He took her out of there and took her into his branch. She was the first Black girl to come out of the pool. You know why? She did some work for him when she was in the pool, and her work was excellent, and he took her. Rob took her. Well, it developed that ultimately there were seven women in that pool. There were Black women in that pool who stayed in the pool. They languished in the pool for years, two or three years. They were the best typists in the whole section.

I told you about Col. Burkes, who had that work done for the general and was so happy with it that he gave them all orchids? You know, he said, "Do you see the girls, did you see the flowers? What do you think?" And I told him, "They were the most beautiful badges of servitude

I had ever seen.” He wasn’t running the shop, do you know what I mean? He didn’t know what this was, but it was obvious to me.

Now people talk about reverse discrimination. They want to put it back that way. They don’t worry about discrimination. The very term “reverse discrimination,” they have been annoyed with reverse discrimination. The only thing they don’t like about discrimination is that it is reverse. They want it back like it was, and I don’t want it back like that. If you eliminate the discrimination I’m satisfied.

But these people who yell and scream about reverse discrimination, they mean that, they don’t want that reverse discrimination, they don’t want it turned back on them. They want it turned the other way, like it was, and that’s what Clinton ought to understand. I haven’t heard anybody put it to somebody who screamed about reverse discrimination in those terms. “I’m with you, we are going to eliminate discrimination, that’s what we all want to do. I want to do that too.”

I don’t want anybody discriminating against a white man because he his white. But I don’t want him discriminating against a Black man because he is Black. I want to eliminate discrimination, I don’t give a damn about which direction it is going. I want to immobilize it so that it doesn’t go anywhere. I want to eliminate it. I don’t see anything wrong, in the public sector.

That’s one of the reasons why Clinton is so unpopular. I don’t give a damn what you say. One of the unarticulated reasons why Clinton is so unpopular is because he said I’m going to make this administration reflect America. And he started talking about that diversity. And he meant it and he has done it. And it doesn’t set well with people who don’t like him. And underneath it all that’s one of the things that is hurting him.

I told Vernon [Jordan], “For Christ’s sake don’t let him take your picture on that goddamn golf cart with him, because every time they make one of those pictures he loses 50,000 votes,”

and he does. He does. There's no question about it. Now that's one commitment that he made that he stuck to. He's sticking to it. You know the judges we get, what has he done here? He's put minorities on the court, and they have been good people. Tatel's a tremendous guy. He put Tatel on the court. He has put decent qualified people in jobs.

Bill Schultz: And not just white males.

Judge Bryant: Not just white males, and they are not token jobs. He put them in good jobs and they have been doing relatively good work. And people don't like that, Bill, and I don't give a damn what you say. And that's one of the reasons why Clinton is so very unpopular.

Bill Schultz: If you think of the other presidents you have watched, who would you compare Clinton to?

Judge Bryant: Lyndon Johnson. I put him in the category in terms of resourcefulness with Roosevelt.

Bill Schultz: Would you talk about that a little bit?

Judge Bryant: I think that Roosevelt came to power at a crucial time in our history. He came to the Oval Office recognizing it was a workplace and he proceeded to go in there and try to do some work, to try to do something about things, and he did do something. Hands-on, he took hold of the Depression era and tried to diffuse that Depression to some extent, and he did. I think from that point of view I think that Clinton is one of the guys who believes that the President of the United States can do a job, and his office ought to do a job, and he is committed to do it. I don't think he is a ceremonial president, sitting around waiting for things to happen.

I think he sees some things he wants to do something about, and he's going to make some mistakes. I think he has. I think Clinton is like most people. I think when a man is put in a position where he can make history, he chooses to make it on the high road. Somebody realizes, I am in a position where I am going to leave my footprints on this land of mine, I'm going to

write my name in the halls of history, he's going to do the best he can to leave a good impression if he can.

So that's why when people get in those positions, and they get free of some of the political constraints and they have some freedom, they go ahead and strike out and do things. I mean old Hugo Black was that way, I think. I think when Hugo Black hit the Supreme Court, I think he could truly say, "Free at last, free at last." Because he was part and parcel of the Ku Klux Klan. He was their boy. He represented everything bad about the Klan. And when he was appointed to the Supreme Court, I felt like somebody had blown a hole in my stomach. But I think when he got to the Court, he truly said free at last, free at last, I think some of our best stuff came out of Hugo Black.

Old Lyndon Johnson — I never will forget the speech he made when he first addressed the Congress. He said when he was a teacher down there in that hill country, down there in Texas teaching those people who were barefoot and undernourished and what not. He was sorry for them, and wished he could do something about it, and wished at that time he had the power to do something about their condition. He said, today I want to let you all in on a secret, I got the power.

I never will forget that, and he said it with conviction and he meant it. And he did much to that extent. I mean the Vietnam War took him down the drain, but he did some things. You know that Voting Rights Act, and all those things, he did some things. He knew the keys. He knew the keys to social progress. He knew that in this country the Voting Rights Act was one of the most critical boosts that you could give a group. He knew that as long as a group was disenfranchised, that they were screwed.

Bill Schultz: You know when I was in law school Earl Warren came down and spoke to a small group and I asked him what was the most significant case that he had sat on, and he said *Baker v. Carr*, more so than *Brown v. Board of Education*.

Judge Bryant: That's right, that's true. Now do you understand what I am talking about? Lyndon Johnson knew that and he wanted that Voting Rights Act. He went there. He wanted somebody to implement it, and that's when he taped old Wiley Branton. Wiley Branton had some connection with Hubert Humphrey. He was on Humphrey's staff in some sort of way, and Johnson wanted him to head up that Voting Rights Commission. And Wiley told him, Mr. President — he didn't commit himself right away he said something about the vice president had him on some task or something of the sort. He said Lyndon Johnson leaned towards him and said, “Wiley, you know one thing,” he said, “you know I'm just an ordinary fellow. I don't know a whole lot about a whole lot of things but one thing I know. You know what, Wiley, the Vice President of the United States, ain't got a goddamn bit of power.”

Wiley said he damn near fell out of the chair. He said he looked at him and got real close to him, you know he would do that, and he said, “You know one thing Wiley. I don't know a whole lot about a whole lot of things, but one thing I am pretty certain of, the Vice President of the United States ain't got a goddamn bit of power.”

Bill Schultz: So did Wiley Branton take the position?

Judge Bryant: Yeah.

Bill Schultz: I guess he had to.

Judge Bryant: But his so-called Great Society thing, you see he knew. I guess he knew that along the way in the political scene you are going to get some scars, and you are going to leave some scars and you have got a pretty good chance of ending up in history as a scoundrel, I suppose. And occasionally you reach a point where you get in a position where you can say, “Free at last,” like the second term in the White House, or appointment to the Supreme Court. And you are relieved of all of those shackles and then you can strike out to write your name. Traditionally, I think that ordinarily if a guy has an opportunity to write his name in the hall of fame, he won't choose to write it on the outhouse wall. Do you know what I mean? He's going to

make that choice. He's going to try to write it on the high ground. And I think Lyndon Johnson was bent on that. I felt sorry for the man, that Vietnam War tore him down.

By the same token, I think that Clinton perceives what's good for America in these times. Do you know what I mean? I think he perceives what is good for America, and I think a lot of people don't. Not because they don't want to, but I think a lot of people are not smart enough to. I think these guys are endowed with some acumen that most of these politicians don't have, I really do. You have got to have a sense of relevance or relativity, the ability to know about a lot of things and how they interact and impact on each other. You have got to have that sense, and a lot of people don't have it. I worry about it.

And one of the things I worry about, I hate to say it, I hate to pick up the paper, because I think there are some guys who are dead set on killing him. I think of all of the presidents, I mean when you think of Kennedy nobody thought anybody was going to shoot Kennedy, but I think of all of the presidents in my time, I feel more apprehension for him than anybody. I really do. I do because he, as I say, I am satisfied that one of the strong currents of resentment against him is that business about diversity.

Bill Schultz: And he attacks the right wing out in Oklahoma.

Judge Bryant: I hope that's not so, but I really feel that way about him. I think with these people showing their resentment that they show and they show the resentment toward the federal government, and they show their resentment toward Washington. The most high-profile target of resentment in Washington is the President of the United States. And he's actively engaged as their protagonist.