

Mr. Kapp: This interview is being conducted on behalf of the Oral History Project of the District of Columbia Circuit Court. The interviewee is E. Barrett Prettyman, Jr. The interviewer is Robert H. Kapp. The interview took place at the offices of Hogan & Hartson L.L.P. on the 4th day of September, 1996, shortly after noon.

Mr. Kapp: Barrett. You spent much of your career at the Washington law firm of Hogan & Hartson. I wonder if you could tell us how you came to be affiliated with Hogan & Hartson?

Mr. Prettyman: One of my classmates in law school was Stanley Harris, who later became a judge on several courts here in the District of Columbia and the United States Attorney. And we had become good friends, and when it was time for me, during my clerking days, to begin thinking about what I was going to do next, I was contacted by Stan, who had put in a good word for me at Hogan & Hartson, and he suggested that I come there. I learned later -- I did not know this at the time -- that when word was circulating about me at the firm, someone, and I believe it was Nubby Jones, raised a question as to whether the firm should take me or not because, he said, "If he doesn't work out, how do we get rid of him?" *[Laughter]* He's the son of a D.C. Circuit Judge, and it would be very embarrassing for us if we had to kick him out." But fortunately for me, a counter view prevailed, and I think the thing that swung it for me in terms of Hogan & Hartson was a call from Joseph J. Smith, Jr., who at that time was a partner at the firm in the

antitrust area. He said that he had a huge antitrust case involving Pillsbury Mills, that he was almost the only one working on it, and that if I would come to the firm I would be putting witnesses on the stand in a very short time and would have great responsibility in the case. That appealed to me a lot, and so I did apply and was accepted, and I did come with the firm during 1955. And, I might say, I was indeed putting witnesses on the stand very shortly. I probably should have been disbarred. *[Laughter]* But it was a huge Section 7 antitrust case, involving Pillsbury's acquisition of several companies, and I spent a good deal of time interviewing potential witnesses around the Southeastern United States, counting cake mix types in stores, and then putting witnesses on the stand in this proceeding before the Federal Trade Commission. That case went on for some thirteen years, and we ultimately won it in the Fifth Circuit on rather unusual grounds.

Mr. Kapp: Can you tell me a bit about what the firm was like in those days?

Mr. Prettyman: I was around the 26th, 27th, or 28th lawyer, something like that, with the firm. And everyone knew everyone extremely well. You not only knew them and their wives but you knew their children and grandparents. It wasn't so much that we were socializing all the time, it's just that you were so close to people that you knew their various family stories and what was going on with them. The office quite obviously was relatively small. We were at 14th and G, which has since been refurbished and looks quite nice today but was, I

wouldn't say rundown, but it was not in the greatest shape in those days. I don't quite recall how many secretaries we had, but most of the office work in terms of deliveries and cleaning up and so forth was done by one fairly elderly gentleman. And it was simply like a large family. We were divided up into specialties but far, far fewer, of course, than we have today. In fact, many of the specialties that we have today, such as environmental law and food and drug law, we didn't even know about in those days. It was in many respects a wonderful way to practice law, very warm and comforting and personal, and yet I myself have not regretted growing larger because we did not have as many of the facilities and services as we have today. You couldn't leave a draft brief on someone's desk and expect to see it typed by morning. You couldn't transmit documents the way you can now. In order to type something that was several pages long, you had to have any number of carbon papers. And of course if you made a mistake, you had to do it all over, and everything took a lot longer. Research took a lot longer. We had none of the facilities that we have today, like Nexis, Lexis and so forth, and so the practice was at a much slower pace -- necessarily so. It wasn't that the lawyers were not as smart as those today, because many of them were extremely bright. It was simply that the whole practice was necessarily slowed down because things took a long time to complete.

Mr. Kapp: What was the nature of the practice or how would you describe or characterize the nature of the practice in those days? Of the firm?

Mr. Prettyman: Well, as I say, we had departments, but of course they were really small coteries of people. We had a tax department, for example, with Seymour Mintz at the head of it. But my guess is that we didn't have more than three, four, five people in it. We had an antitrust practice, but that was essentially Joe Smith, George Wise and myself. And there was what you might call an administrative law section. The biggest part of the firm was the trial section, and we were in court a lot. Unlike today, trials really went on in those days. And I remember seeing people like Frank Casey, for example, coming back from court all the time and telling us about his adventures there. So in some respects it was more concentrated and in far fewer areas than we think of today.

Mr. Kapp: Was it predominantly local or national in scope in those days?

Mr. Prettyman: We were thought of, externally, as primarily a local firm. We were just trying to break out of that image. We had a lot of local clients - - PEPCO, the Evening Star, Washington Gas Light, Riggs and others. But we realized that a growing firm simply was not going to make it with an image of being a local firm. And so there was a good deal of effort put into obtaining clients outside the city and trying to expand our practice. That did not happen overnight. It really took a lot of effort and time and turmoil for us to shake the local image and to branch out into having not only a national and ultimately an international clientele, but a national and international type of practice where the cases went far

beyond Washington. As I say, that took a long time and it was at least ten years from the time I came to the firm before we began becoming recognized as something other than a first class Washington firm.

Mr. Kapp: In those early days of your association with the firm, who did you regard as the key people in the firm?

Mr. Prettyman: The one who occurs to me first is Seymour Mintz. While Mr. Hartson was still there, he was not as actively into the practice as he had once been, and while he was titular leader there were others whom I thought of as being somewhat stronger in terms of bringing in business and actually engaging in the practice. There were a number of people, and among the more advanced ones, so to speak, were people like Nubby Jones, Ollie McGuire and Duke Patrick. As examples of real leaders in the firm who led groups, brought in business, and were extremely competent, I would, in addition to Seymour Mintz, name Lester Cohen and Paul Connolly as examples of people whom I greatly admired.

Mr. Kapp: And what ultimately happened to Paul Connolly? Did he stay with the firm, leave the firm or what?

Mr. Prettyman: Paul got together with Edward Bennett Williams, a preeminent trial attorney in Washington, who himself had been with the firm prior to the time that I came with it. And they wanted to form their own firm and invited a number of us to go over with them. Some did, such as Dave Webster and Jerry Collins, and some didn't, including myself. Although I admired both of those men

greatly, I personally was concerned, first of all, that the new firm would not be able to break out of the criminal mode sufficiently and become a true, all-around firm, and secondly, I was quite happy at Hogan & Hartson. I was starting to come into my own, and I simply didn't see any particular need to make a transition. Not only was I not unhappy but I felt that my ambitions were being achieved a step at a time, so I didn't go.

Mr. Kapp: Other than the work....

Mr. Prettyman: May I say incidentally that while Paul was still with the firm, he was my lawyer at one point. When my book came out in 1961, a gentleman who had been a hero in the book sued me. This was a former prosecutor who had gotten into trouble and gone to jail, and after he got out of jail he investigated the case of a fellow prisoner and discovered new evidence that saved the prisoner's life. So as I say he was a hero in the book, but unfortunately he had mental difficulties and ended up back in an insane asylum in Massachusetts, and got out just long enough to sue me for libel. I think he sued for something like \$600,000, which scared the hell out of me *[Laughter]* I could see my house going down the tube and so forth. I got Paul to represent me, and the gentleman fortunately filed in two jurisdictions and then dismissed in one, and on purely a technicality Paul was able to get the case dismissed wherever it had been filed. The plaintiff by then was back in the insane asylum again, but I certainly admired Paul for his very innovative work in that case.

Mr. Kapp: Well you mentioned your book. You haven't told us the title or the subject matter of the book. Would you like to talk about that a bit?

Mr. Prettyman: What happened was that I wrote what I thought was a book on a very interesting case that my Father had had, and I'll talk about that in a moment. And I sent it through a friend to Harcourt, Brace in New York, and they wrote back and said this really isn't a book, this is more like an extended article. And indeed it was ultimately published in the American Bar Association Journal in a greatly shortened form as an article. But they said, we like your work and we like the way you write and we're very interested in the Supreme Court, and could you write something about the Court that would be of interest to the layman? While I had been at the Court I was always fascinated by the death penalty cases that came through there, certainly not in anything like the number in which they go through the Court today, but still they came along and they were highlighted by special tabs on them, and they kept the Justices up and were of great concern. And so I decided to do a book on the Supreme Court's treatment of the death penalty with the hope that there would be sufficient interest in the various cases so that the lay reader could read it with satisfaction. I went through all of the death cases that had passed through the Supreme Court, going back to a time in the Roosevelt days when people would still be alive and records would be extant, and participants would still have memories of relevant events. And then I did some investigation on a number of those cases that looked promising, to see what had happened after the

Supreme Court decisions. As a result of that, I chose six cases of people who had been condemned to death and whose cases had gone to the Supreme Court. I then did extensive research into each case, in many instances interviewing people who had been involved, and submitted a first chapter to the publisher. The publisher apparently liked it and encouraged me to go on. So I did that book, one chapter at a time, sending each one to the publisher until I had finished the six cases and the Introduction and the Conclusion. I had some wonderful experiences doing it. The book was published in 1961, and it won several awards, including the Edgar as the Mystery Writers of America Best Fact Crime Book of the Year.

I made some friends as a result of that book, at least one of whom lasted until just a couple of years ago. This was a young man who had been a law student in California and in order to make money to go to law school he hired on in a wealthy home to be a dog sitter and baby-sitter and bartender, and so forth. And he began having an affair with the wife in the household, a very intense affair, but it didn't last that long and she finally threw him out. It had been somewhat of a flirtation for her but it had been very, very serious for him, and one night, it was on the 4th of July, he stepped back into the house and waited for her in her bedroom. When she came in, he began a speech that he had prepared about why she should come back with him. And he was very intense about it, very serious about it, and in the middle of it, since it was very late at night and she had been partying, she fell asleep. He didn't remember what happened, but he did remember leaving the

house covered with blood. They were never able to find the knife used, but he apparently cut her very badly, choked her, and killed her. He was picked up by the police and questioned for a number of days, and from the very beginning he asked for a lawyer. But he was not given a lawyer. When he was convicted and sentenced to death, his case went to the Supreme Court on the ground that he had asked for and been denied a lawyer, and the confession he had given had been taken involuntarily after several days of interrogation. And in an opinion for the Court which I found quite astonishing, Justice Clark for the majority held that yes, in the ordinary case he would have been entitled to an attorney, but since he was a law student he was presumed to know his various rights, and therefore they affirmed the conviction. And he thereafter came within six days of being executed in San Quentin. At the last moment the Governor, Edmund Brown, commuted his sentence to life without possibility of parole.

At some point during this, I went out to talk to him, because I thought he had an interesting story. And we really became, not close friends, but good friends, and he in fact he wrote an autobiographical section for my book which I included. I, in turn, was helpful to him in getting his sentence later commuted to simply life, so that parole was possible, and I did that only after consulting at some length with the prison's chief psychiatrist, who assured me that this man had killed in a sudden fit of frustration as a result of a whole lifetime of being rejected; that this rejection by the woman falling asleep while he was giving her his

blandishments was the ultimate rejection of his life; and that he would probably never get another parking ticket. He was not a repetitive criminal, the psychiatrist told me, but rather somebody who had folded under extreme pressure. So I was in contact with Governor Brown, and we ultimately got his sentence reduced, and then years later, after spending many years in the general prison population, he in fact was released from San Quentin. Thereafter, he became a vice president of a small company and as I understand it sat on the boards of two other companies and lived a perfectly normal life until he retired, probably about 8-9 years ago. He ultimately died in retirement of natural causes a couple of years ago. And we were in contact during the whole time, and in fact at one point my kids and I stopped off to see him in California.

One interesting sidelight story to that was that he called me at one point and said, "I've got big news; I'm going to get married," and I congratulated him. And he said, "There is one small problem, I have not told *[Laughter]* my fiancé about my background". I said, "Well, John, you just simply can't do that. If you marry her, the luckiest thing that will happen is that some reporter will come up to her door some day and ask, 'How's your killer husband doing?,' and the worst thing that can happen is that you simply die and then the papers will print your history and she will learn about it for the first time on your death. You can't do that to her." He said, "Well, would you come out and hold my hand while I tell her?" *[Laughter]* So I said that I was going to, I think, Nevada in a few weeks and I

would fly on from there to California and meet her and try to help him through it. By the time I got to California, he had told her. She was just a wonderful woman. It had obviously been a horrible shock for her. So I spent a day or two with them, and as I left she said, "Barrett, can I see you alone for a minute?" And she took me into a side room, she took my hand, and she said, "Needless to say, this has been a terrible shock, but I've adjusted to it. I am convinced that the John I know and love today is not the person who committed that crime." And then there was a long pause, and she looked at me and smiled and said, "But I don't think I'll read your book for a while." [Laughter] So, anyway, the book had a modicum of success. It had wonderful reviews. It never sold enough copies to send me into retirement or give me a chauffeur-driven limousine, but what I liked about it was that -- well, you always worry that something like that is going to ruin your whole reputation and be an embarrassment, and it wasn't.

Mr. Kapp: The title of the book was *Death and the Supreme Court* was it not?

Mr. Prettyman: Yes.

Mr. Kapp: I know that you've continued or you've maintained your interest in the death penalty and have represented people who have been condemned to death and I also know that you're presently handling such a case. Would you like to talk about that a little bit?

Mr. Prettyman: Well, the next thing that happened in the death penalty field was really a result of the book. I had gotten to know Katherine Anne Porter pretty well, which we can talk about a little later. And as a result of that I was with her at a National Institute of Arts and Letters function in New York City when I ran across Truman Capote. I was introduced, and he said, "Well, this is really interesting because I was going to call you." He said that the two killers in *In Cold Blood* had read my book and that they had insisted that he read it, and that he was going to do a TV documentary on the death penalty for ABC. He needed a lawyer to work out the legal problems -- for example, to get permission from the wardens for us to go into prisons, to get permission from the people awaiting to be executed and from their lawyers to interview them, to handle all of those kinds of details. So I of course said I would. He became a paying client. And we mapped out a trip which certainly has to be one of the most schizophrenic, strangest trips I've ever taken, because during the day we would be in these really terrible prisons interviewing people in shackles who were waiting to be executed, and at night we'd be in the very finest restaurants in whatever city we were in, with waiters in white gloves waiting on us hand and foot. It was a very strange trip. We interviewed not only prisoners but lawyers, such as Ed Bennett Williams, and judges, such as Skelly Wright, and governors, such as Ronald Reagan who was then Governor of California. This would have been in the mid-1970's.

And that in itself is an interesting story. We arrived at Reagan's office late one morning, and he said, "Oh, let's don't do this right away. Nancy's got some lunch for us out at the house. Let's go out there and we'll worry about the interview later." So we got in a car, and he was then living not in a governor's mansion but simply in a house out in a neighborhood. We arrived, and Nancy Reagan was on the doorstep, and we went in -- it was Truman, myself, Pidey Gimbell (whose husband did the shark movie and who was handling the sound for us), and Nancy and Ronald Reagan. And we sat around the dining room table for what must have been a couple of hours, having some wine and a great lunch, with Reagan telling us these wonderful stories about Hollywood during the War and old Hollywood stories before and after the War, and he was hilarious. We had a wonderful time. Afterwards, at ease as a result of lots of good wine, we went back to his office, and I, for some reason, conducted most of the interview. I'm not exactly sure why. But at one point I said to him, "I understand that you are strongly in favor of the death penalty." He said, "I certainly am," and I said, "Well, do you believe that it actually works as a deterrent to crime?" And he said, "I do. In fact," he said, "I know of one instance where somebody was down on his back with a knife to his throat, and he yelled at the criminal, 'don't do it, don't kill me, you'll get the death penalty.' And the fellow dropped the knife and ran away." And I said [*Laughter*], "Well, if you believe in it this strongly, I assume you are in favor of bringing it home to people. That is, the deterrent aspect works best when people are really aware that they are

going to get the death penalty and what that means.” And he said, “Yes.” And I said, “So I assume you favor putting executions on television.” And there was a long silence, and he looked at me finally and said, “No I don’t.” And I said, “Well I don’t quite understand. I mean, what could bring it home to people, what could make it more of a deterrent, than their actually watching somebody getting executed?” He got quite upset. For some reason, he had not thought of it, and he really didn’t have a ready answer. He knew he was opposed to televising, but he had some difficulty articulating exactly why that would be a bad idea. In any event, the interview sort of went down hill from there [*Laughter*], and it didn’t last as long as we’d hoped it would.

That tape had a very strange history. It got back to ABC just at a time when they were having a big shake-up in management, new management coming in. They said the film was too grainy and too much of a downer, and they weren’t going to air it. And it just disappeared. Years later, word began to get around that it was in existence, and a great deal of interest centered on it. I had heard that it was shown in Canada once but never on U.S. stations. Then I began getting calls from ABC and from other people asking where in God’s name this tape was, because it obviously has a great deal of historical and other interest now, and as far as I know it’s never been located. Lord knows where it is. It’s probably in somebody’s vault somewhere, but to this day I don’t think it’s been shown on television. And I’ve certainly never seen it or heard more anything about it.

Mr. Kapp: We're still I think talking about the death penalty. Maybe we've gotten side tracked a bit here but --

Mr. Prettyman: Oh, I think I should complete that story because it did result in one unusual case that I had. We interviewed a fellow out in Colorado waiting to be executed. His name was Garrison. And I had talked to his lawyer, of course, about getting permission to interview him. When I got back to my office after the trip with Capote, I received a call from his lawyer, who said, "There's nothing more I can do. He's about to be executed. If you want to take over, you can, but I'm washing my hands." During our visit to Garrison, while riding to the prison, I had heard a strange story to the effect that his trial attorney -- not his current attorney but his trial attorney -- had been disbarred for conduct apparently having nothing to do with his particular trial. When I looked into it now that the case had in effect been tossed into my hands, I found that indeed his trial attorney had been disbarred for stealing typewriters and various other kinds of office equipment during the night. He would sneak into offices and steal these things, and that was concurrent with his representation of Garrison in his first degree murder trial. So his lawyer was representing him during the day and going out and stealing all kinds of equipment at night. And we did get a stay in the Supreme Court and ultimately they reversed, at least in part, because you couldn't have that kind of dual reputation where a lawyer's supposed to be giving his best attention to a first degree trial when his real interest is in protecting himself from getting

arrested. So that was one matter that resulted directly from that series of interviews we did.

Mr. Kapp: And you're still handling a death penalty cases on a *pro bono* basis?

Mr. Prettyman: Yes, I am. I have a gentleman in Florida whom I've represented now -- along with a number of others in the firm, including Walter Smith, Sally Determan, Steve Routh and others -- for about ten years. He's a very interesting person, and I obviously can't really tell you about his case because of the privilege, but he's a very interesting man and I've come to know his family quite well, particularly his mother. We've helped her get a new set of teeth, and worried about his brothers and sisters, and really almost become part of the family.

Mr. Kapp: Returning now, again, to your early days at Hogan & Hartson. You mentioned your role in the Pillsbury antitrust case. What other kinds of things were you doing in those early days or was that a full-time occupation?

Mr. Prettyman: It took most of my time early on, and I might say that eventually we got a reversal on a very odd ground. The then Chairman of the Federal Trade Commission, Edward Howry, during an intermediate stage of the case had gone to testify before Congress, and Congress had grilled him, really taken him over the coals in regard to this case and why it hadn't been concluded adversely to Pillsbury before. And one of the points we made in our brief was that he had

been grilled in such a manner that he was no longer capable of exercising his independent judgment in the case. Indeed, the Fifth Circuit reversed on that ground and ruled that Congress had intruded into his quasi-judicial reasoning and that he was no longer capable of an independent judgment. And I argued that case with Joe Smith, and that just happened to be one of the points that I was given to argue, so I was really quite thrilled with that. But that case is still looked upon as somewhat of an oddity, because not many cases have been reversed on the ground of Congressional intrusion into the workings of administrative agencies.

Mr. Kapp: Was your work in those days exclusively in the antitrust area or were you doing other things as well?

Mr. Prettyman: Oh, I was doing miscellaneous things here and there, including some *pro bono* cases, but I was considered by the firm to be part of and assigned to the antitrust section.

Mr. Kapp: How would you compare your experience as an associate in what was a fairly substantial law firm, even in those days, with the experience of the associates with whom you've worked in more recent years here?

Mr. Prettyman: I think today's associates on the whole are probably smarter, but I also think that they are less sure of themselves and a little bit more removed from the center of the workings of the firm. We always knew exactly where we stood, because if we didn't we'd go and ask somebody. We knew all of the partners, we knew everybody in the firm. There were no strangers. One thing I

have observed over the years is this, and I've asked both teachers and students about it and I've had it confirmed. In those days, we were extremely anxious to make ourselves known and recognized. If we were given an assignment, we might stay up all night to make sure that somebody knew we had worked on it and that we had ideas and input. It was almost as if we were going around with our hand up all the time. Years later, I had a Supreme Court case, and I got a group of associates together, and I said, "Now here's my case. And I've got to dramatize this situation to the Court, I've got to give them some analogies to make them realize how serious a situation this is. I want you to think about it and come to me with your ideas. Don't worry about how good they are; I'm just looking for ideas." Now I don't think it's just an old man talking to say that in my day, I certainly would have been waiting on the steps for that partner the next morning and given him 10-15 ideas, dying for him or her to look to me -- well, it would have been him in those days -- to look to me as the person with the most ideas or the best idea, or at least somebody who had tried hard. When I gave that assignment to those associates, one or two came up in the hall over the next week and kind of tentatively suggested something. But otherwise, they didn't come to me at all. And in trying to figure this out, the professors tell me that it's the same in the classroom, that very few raise their hands, most are not trying to be recognized or known. Quite the contrary. They are trying to fade into the background. I don't understand this phenomenon, and I may be overstating it, but I do honestly think that there is a

difference in attitude. I don't quite understand how today's associate expects to become known and recognized in the office, much less in the profession. How are you going to get new business unless you're out there in front of people, making speeches and writing articles and being at the forefront of your profession, so that when people think of your area of the law, they think of you? But anyway, as I say, I may be overstating it, but there's a kernel of truth here somewhere about the difference in attitude between associates in those days and associates today.

Mr. Kapp: In what way, if at all, do you think the legal profession has changed in the time between your arrival at Hogan & Hartson and today?

Mr. Prettyman: Too many ways even to mention them all. Certainly civility is at the top of the list. In those days, if you wanted something done, you called your opponent and agreed on the phone, and that was the end of it. You didn't even have to confirm it [*Laughter*], I mean, it was just done. In the courtroom, there was always civility toward the court and to your opposing counsel. Not necessarily because you just wanted to be nice, but because that was the way to get in the good graces of the judge, by always being civil and accommodating to your opponent. Which did not mean that you didn't fight hard, but it meant you fought well within the bounds of recognized decorum. And I see a lack of that today that I think is deplorable. The whole concept of lawyer advertising would have sent most of my contemporaries to their graves. It was inconceivable that anyone could actually advertise. And of course that's well accepted today among many lawyers.

In those days, the whole landscape looked like a number of small firms, whereas today the tendency is the other way, to have fewer and fewer really small firms, smaller boutique firms, and more and more really large firms. And of course our firm has been particularly successful in bridging that gap, as some others have not been able to do. I think that's largely because of management.

Mr. Kapp: Many legal observers have commented on the changes that are the product of today's bottom line orientation of law firms and of the profession. Do you share the view that that has brought about a change?

Mr. Prettyman: I think it has brought about a change. It can be overstated; certainly in our firm, although there has been an emphasis upon hours, I don't think it's been taken to the point where family life has been endangered or anything or that sort. That is, I think there is some balance here between the bottom line and the need to have another life. Perhaps it's not balanced out exactly right, but at least I don't see management checking the library at 11 o'clock at night to see if anyone's there. At the same time, there's no denying that when the hours are totaled up, the people who are going to be rewarded most will probably be those, with some exceptions, who have put in the most hours and brought in the most cases. I don't know how to avoid that in a very large firm. Here we have over 400 lawyers, and I think to make each lawyer a particularized case, taking into account all personal aspects of someone's life and practice, is probably impossible to do. We do encourage *pro bono* work. We do have a large, active Community Services

Department. People are encouraged to spend time in professional activities, and certainly I have been given a great deal of leeway in my professional life to engage in all kinds of projects that in another firm might be looked down on. So I see the trend, and in a way it makes me very nervous and sad. But again I don't think it's been taken to such an extreme in this firm that quality of life has been neglected.

Mr. Kapp: What about, if you were starting out today and had the same multiplicity of interests and the desire to pursue outside projects? To be engaged professionally in *pro bono* matters? Do you think that would be as possible today as it was in your day? Your early days?

Mr. Prettyman: If I were to begin here today as a young associate? Well, this may surprise you, but I think I could. I think it can be done. It just takes an allocation of resources, budgeting time, a lot of work, a lot of concentration, knowing what it is you want to accomplish, having some idea of how to get there. So long as you were making progress, I think the firm would sit still for it. I don't think the firm would perhaps be as much at ease at simply letting you go your own way. They'd want some assurance that you were getting something out of it, in the same way that we still encourage people to go into government, so long as the position holds some hope of advancing the person as opposed to just being a way stop where they tread water. That's an indication that those openings are still there. The difference is that I don't see that many people willing to take the time,

the trouble, the risk of working at it. They don't seem to want to write the articles and do the other things that are necessary to make their way in today's world.

Mr. Kapp: You don't think that has anything to do with the incentives being in a different direction?

Mr. Prettyman: I'm not sure the incentives were all that much different in my day. It was more personal. That is, I think people who wanted to do that were allowed to do it, but I don't think the firm was pushing people to get out there and do this, that and one thing and another. I don't know that that's all that much different. There were, after all, people in the firm in the beginning who did not ever do any of that. They simply came to work and put in their time and practiced in their field, and that was it. I have no problem with that, and the firm was not down on them for not getting out and doing more. But at the same time, for those of us who wanted to get out and do more and get involved in all kinds of outside activities, there was nothing standing in our way preventing us from doing that.

I can give you some idea of the kinds of things the firm has allowed me to do. I've been privileged to serve as the second President of the American Academy of Appellate Lawyers, and I'm still on their Board; as Vice-President and Chairman of various committees of the Supreme Court Historical Society; as President of the Lawyers Club; as Chair of a Committee to write the Bicentennial History of the D.C. Circuit; as Vice-President of the American Judicature Society; as

President of the D.C. Bar Foundation; as a member of the American College of Trial Lawyers; and as a Board member of the Voluntary D.C. Bar Association. I am currently serving as a member of the D.C. Bar Judicial Evaluation Committee; as an advisor to Media Law Reporter; as a Commissioner appointed by the Chief Justice to the Judicial Fellows Program; and as a Board member of the ABA's Appellate Practice Institute. I've also served as Chairman of the Board of St. Albans School, and I'm a Trustee Emeritus of American University. And I have written or co-written over 25 articles for legal journals, papers or magazines, including on how to obtain and how to oppose certiorari, how to argue before the Supreme Court, the First Amendment, punitive damages, and so forth.

Mr. Kapp: Your commitment to *pro bono* representation goes all the way back to, I know, to your earliest days at the firm. Perhaps you could talk a little bit about some of the *pro bono* matters that you handled in those early days?

Mr. Prettyman: The first one I remember so well because it was the first case I argued in the D.C. Circuit. And it was argued in 1956, which was only one year after I came with the firm. It involved a wonderful character whom I got to know named Ella Mae Work, and she had been convicted of virtually every crime in the District except rape and murder. She had a rap sheet going on for pages [*Laughter*], but she was a wonderful personality, I liked her a lot. In any event, one day she was coming out of her front door when two plainclothes policemen were coming up her sidewalk, and of course Ella Mae knew every policeman in D.C.

(plainclothes or otherwise) on sight and so, recognizing them, she went down her steps to an area directly under her front porch and placed a bag in her trash can. The police saw her and came around and picked up the trash can lid and took out some narcotics that were in the can. And the issue on appeal was whether this little area under her porch was within the curtilage of the home and therefore protected by the Fourth Amendment, or whether it was out in plain sight in an area that was not protected. When I read the record, the descriptions of this area were simply not adequate. You could not tell what this area was like under the porch. So I went out and saw it, and then my sister and I went out and took pictures of it -- needless to say, from the best angle. *[Laughter]* We got the Assistant United States Attorney to stipulate that these pictures could be part of the record on appeal. I don't know how we did that, but in any event they did become part of the record on appeal, and the Court of Appeals reversed her conviction, relying in part on one of the photographs. The photo showed that the trash can was in a protected area -- although the area was open, the can was under the porch and within the curtilage of the home. A footnote in the opinion said that this photograph was made a part of the record on appeal by stipulation between counsel. Well, you don't find many of those stipulations today, *[Laughter]* I can assure you. It's an example of how we were more civil and more gentlemanly in those days. The majority in that case was made up of Edgerton and Fahy, with Fahy writing. But there was a stinging dissent from then Circuit Judge Warren Burger, who for years kept referring to this

trash can case and what an abomination it was and how it was a miscarriage of justice. He used to kid me about it all the time, right up to a relatively short period before his death. So that was my introduction to appellate practice.

Mr. Kapp: Let me ask just one final question here and that is whether in those early days at the law firm, before you left for the Kennedy Administration which we'll talk about next time, whether you felt you had any role models, either in the firm or outside of the firm?

Mr. Prettyman: Within the firm, the person who immediately springs to mind is Seymour Mintz, whom I have admired beyond imagination for all these years and still do. I think he has the most incredible judgment. But he's not just a lawyer, he's a feeling, compassionate, understanding person and I have admired him tremendously. Not to say that there weren't others. Lester Cohen was a gem of a person, and others too -- I've already mentioned Paul Connolly. But outside the firm, my Father of course immediately springs to mind. I admired him so much, he was a man of such incredible integrity. And you have to go back to people I guess I've already mentioned, like my English teacher at St. Albans, Mr. Ruge, and Joe Kelly, who was my boss at the Providence Journal, and others like that. I've also always admired writers and even in those days was just getting to know some people in that area, such as Capote, of course, who had his faults, but I always felt he compensated for those faults with a kind of genius.

This concludes the interview held on September 4, 1996.