

Arkansas Supreme Court Project
Arkansas Supreme Court Historical Society

Interview with
Justice Elana Leigh Cunningham Wills
Little Rock, Arkansas
November 2, 2013

Interviewer: Ernest Dumas

Ernest Dumas: OK. I have something I have to read here first and then ask your permission for the oral history archives at the University of Arkansas and the Supreme Court Historical Society to use this. I am Ernie Dumas and I am interviewing Justice Elana Cunningham Wills. This interview is being held at the Fletcher Library in Little Rock, Arkansas, in Pulaski County, on November 2, 2013. The audio recording of this interview will be donated to the David and Barbara Pryor Center for Arkansas Oral and Visual History at the University of Arkansas and the Arkansas Supreme Court Historical Society. This recording, the transcript and any other related materials will be deposited and preserved forever in the Special Collections Department, University of Arkansas Libraries, Fayetteville. And the copyright will belong solely to the University of Arkansas and the Arkansas Supreme Court Historical Society. OK, is it Elana or Elana?

Elana Cunningham Wills: Elana, Elana.

ED: Elana, OK. Well...

EW: Long A.

ED: Judge, unlike all the other interviews that I've conducted you're kind of in early or mid-career, and all the others at the twilight of their careers, so perhaps in another twenty or thirty years somebody, not me, will have to come back and complete this interview.

EW: OK.

ED: In the interim you may have served another ten or twenty years on the Supreme Court.

EW: OK.

ED: Well, let's begin at the beginning, your birth. When were you born, exact date?

EW: I was born August 10th, 1962, in Paragould, Arkansas.

ED: And your mother and daddy?

EW: Both from Paragould or grew up in and around Paragould. My mother was Wilma McHaney. That was her maiden name.

ED: M-C-H-A-N-E-Y?

EW: Correct. And my father Darrel Cunningham.

ED: Were they both from Paragould?

EW: In and around Paragould. My father was from Paragould, too, but went to what was called Oak Grove High School back then, and my mom went to Paragould High.

ED: Paragould. Did you know the Meriwethers?

EW: I've heard the name but I didn't grow up there. I grew up in Jonesboro so...

ED: OK, so how long did you live in Paragould?

EW: I didn't. I was born there.

ED: You were born there.

EW: My father was in the Army; he was on active duty in the Army.

ED: Was he a career military man?

EW: No, he was in the Reserve for many years and retired a full Colonel in the Reserves. But he was on active duty when I was born. I hope I've got these dates right. I was born in '62. I think he graduated from college in '60 and went on active duty. My older sister was born at some point in Augusta, Georgia, at a military base there. And then he...I think the story is, he dropped my mother back off at my grandparents' house in Paragould because she was due to give birth to me in about six weeks, and he went back to finish his military duty, and I was born early, six weeks early—not long after he dropped her off at Paragould.

ED: Because your grandparents lived there?

EW: Yes.

ED: What were their names?

EW: My mother's parents, Roy and Icamae McHaney. My grandfather had a paint-and-glass store in Paragould for a long time called Roy's Paint and Glass. That is my mother's father and mother. My other grandparents were J.P. and Elaine Cunningham, in Paragould. He had a grocery store distributorship. For a long time when I was a kid he had a big red-and-white paneled truck and had a candy distributorship. He would distribute candy around to the little grocery stores, and when we used to go their house he would let us walk through the big candy truck packed with candy and pick out candy that we wanted. That was a...

ED: So these are trucks that went around the countryside?

EW: Yes.

ED: Yeah, I remember those as a child. I lived way out in the country about ten miles out of town in south Arkansas and these trucks would come by. They'd have not only candy of all kinds but other little knick-knacks. I mean, you'd get shoe polish or...

EW: You can imagine as a kid that was a wonderful thing.

ED: Yeah.

EW: For us to go walk through his truck.

ED: Oh yeah.

EW: And then my other grandfather's paint-and-glass store we thought was a fascinating place, too, because my mother and grandmother used to drop us off there while they'd go shopping in Paragould. He had, of course, the paint wheel that spun around and put the colors in the paint and the paint shaker, and he had glass. He put in windshields and had a glass business, too. He used to let us sit up at this table, at a young age with pieces of glass and use that little tool with the wheel and cut glass. We thought that was really fun, too, but I don't know if my mother actually knew we ever did that, but...

ED: Both sets of grandparents were in Paragould?

EW: Yes.

ED: So as a youngster you spent a lot of time, I guess, in Paragould?

EW: I did. We didn't live in Paragould; we lived in Jonesboro.

ED: Yeah.

EW: Most of my growing up.

ED: But that's, what, twenty-five miles?

EW: Yeah, twenty, twenty or so. And we used to drive back and forth a lot on the weekends to visit my grandparents. A lot of my weekends were spent going back and forth to Paragould to see them.

ED: And you said you had an older sister?
EW: Yes.
ED: Was it just the two of you?
EW: No, I have an older sister and a younger brother.
ED: What about your older sister? Are both of them still alive?
EW: Oh yes. My older sister, Sue, grew up Sue Ellen.
ED: Sue Ellen one word or two words?
EW: Two words. She was a year older, a year and few months older. And I have a younger brother, Jon, who was probably a year and some months younger than me but was two years behind me in school, and my sister was one year above me in school. So yes, they're both very still with us.
ED: And where are they?
EW: My sister lives in Virginia with her husband, near Richmond, in Midlothian.
ED: And her name now is what?
EW: Sue Weinstock.
ED: W-E-I-N-S-T-O-C-K?
EW: Yes. She married a boy that we knew growing up in Jonesboro in high school and college, Michael, and from a family that we were friendly with. They have two boys who are now up and grown. One's in college and one's up and out of college. Actually, my daughter goes to college an hour from her in Charlottesville.
ED: Charlottesville, at the University of Virginia?
EW: Yes. And so that was a big factor in her going there, I guess. For me, it was that my sister was so close by.
ED: Good.
EW: And then my brother now lives in Fort Smith, where my parents live now. I grew up in Jonesboro. We'll get to this, but at some point they moved to Fort Smith.
ED: OK.
EW: Later in the...
ED: Well, let's go back.
EW: OK.
ED: So the three of you and you grew up in Jonesboro. What did your father do? You said he graduated from college in?
EW: 1960 from A. State [Arkansas State University].
ED: OK.
EW: He grew up in Paragould and commuted back and forth and worked his way through college, actually. He was just given a distinguished alumni award from A State and gave a long speech with some of the history about how this came to be, which was fascinating for me. I'd heard most of it. He worked his way through school at the radio station, working at KDRS at A State. And so he...
ED: What did he do at the station there? Was he a...
EW: On air.
ED: Did he do the popular songs or?
EW: I think so.
ED: Those kinds of things.
EW: I think so.
ED: People called in there?

EW: Yes. Yes, I think he did all of that.

ED: Yeah.

EW: And that was his high school, I mean, that was his college job.

ED: He was kind of a DJ, a radio DJ?

EW: Yes, and he graduated from college. Then, like I say, he went on active duty in the military. And then came back and eventually went to get a master's degree in radio and TV from the University of Illinois. So I was probably a baby—might've been one or two when we lived in Illinois, my older sister and me. He got that master's degree and came back and took a teaching job at A. State—ASU—teaching in the Broadcasting Department, radio and TV.

ED: Was it consolidated with the journalism? Was it journalism and broadcasting or were they separate departments.

EW: You know, I don't know. You'd have to ask.

ED: I've forgotten.

EW: You'd have to ask him.

ED: I used to go up there occasionally.

EW: He taught there for years when I was in elementary school and afterward. Then at some point, when I was in the fifth grade, we moved to Athens, Ohio, so he could get his PhD and my mother could get her Masters Degree. My mother, then, well I guess we'll get to her. She was a schoolteacher. I may need to back up with that, but I'll tell you about my dad first.

ED: Yes.

EW: And then we'll back up for my mother. He got his PhD. The three kids and my mother and father lived in this apartment complex in Ohio for a year. We were enrolled in school; I was in the fifth grade in Ohio. That was different, living in a big apartment complex. But I remember him typing, typing, typing, typing on that PhD for part of that year—on his dissertation. We lived there, I guess, about one year, and I think that was the year that we rented our house in Jonesboro. We had a little house near the college in Jonesboro, and I think that was the year of the great tornado that came through Jonesboro and destroyed a lot of the schools and the high school.

ED: I remember that. I remember that tornado.

EW: Our house was OK. Any rate, when we came back I went to the sixth grade in one of the churches; we had to hold classes where we could. So, anyway, he got his PhD and finished his dissertation and came back and was still teaching at the college. And then at some point after that he took a job as assistant manager at the local TV station, KAIT-TV. So he was assistant manager there for a few years and then was promoted to manager. He managed that TV station for, I don't know how long—quite a few years—until I graduated from college, probably. So, it would've been at least maybe ten years.

ED: So that was his career, basically?

EW: He was in broadcasting.

ED: He was a broadcasting station manager.

EW: He was a station manager there and at some point was promoted to president of what was called Sigma Broadcasting. So then he was over...they sold the station in Jonesboro, eventually. It was the Hernreichs who owned it. And I can't remember, but...

ED: Hernreichs, H-E-R-N-R-E-I-C-H?

EW: I think that's right.

ED: I think that's right.

EW: They sold that station and that's when they moved to Fort Smith. He went to manage the ABC affiliate in Fort Smith and it was KHBS/KHOG, Fort Smith-Fayetteville. And so he managed that TV station for a number of years. At that time he was also the CEO of Sigma Broadcasting, which had some radio stations and some TV stations. So they moved to Fort Smith when I was, I think, in my first year of law school. So Jonesboro was my hometown but now my parents have lived in Fort Smith for a number of years.

ED: So they're still there?

EW: Yes.

ED: They're still at Fort Smith?

EW: Yes, and my brother, too.

ED: Did you ever entertain the idea of broadcasting, going into that yourself?

EW: You know, I don't think I did. Maybe I should have but I didn't. I don't think that was something that I thought about. It was interesting. He was the station manager in Jonesboro, but during my formative years, I guess—middle school, high school and college—he also did a little on-air. He did a commentary sometimes on the nightly news, so every other night he would do a commentary about current events or some topic. So we would go out sometimes and people would recognize him from being on the news.

ED: Was he controversial?

EW: No. I was thinking about this last night. He usually would lay out an issue, make sure that people knew both sides of it or were informed on it, and then he I guess invited them to draw their own conclusions about the answer. So my mother used to tease him and say: "Oh, there's Darrel sitting on the fence again." You know that was the way he conducted himself. We were not allowed, for example, to have political signs in our yard or, you know, to take any kind of a partisan position because he didn't want to cast any aspersions on his objectivity as the station manager.

ED: Yeah, yeah.

EW: You know, at the station.

ED: Color their coverage of the news.

EW: Yes, so that felt wrong to me growing up— to, you know, take a really strong partisan position on something, because that was our background.

ED: Yeah. Well, I had some trouble with that because as a reporter most of my life, you know, you were strictly down the middle, and then later I had to start writing editorials.

EW: Right.

ED: And at first it was hard. Later, it got awfully easy.

EW: Right, and so that's my father. And he worked at the Fort Smith station until they eventually sold it. Then he went into banking for a short time and I don't think he thought that was for him. He partially retired after that and for many years was the Executive Director of the Community Foundation in Fort Smith. He just retired from that probably in the last few years, two or three years maybe.

ED: And your momma?

EW: She had three babies in diapers in Jonesboro when my father started teaching, I guess, and decided to go back – not to go back, but to go to college. She had three young kids. I mean, we were stair-step, so we were probably age maybe, four, five, three and two or something like that.

ED: So she enrolled in college with three...

EW: Babies in diapers. Well, and my great...

ED: That was a...

EW: I had a great aunt—my mother's Aunt Clevie and Uncle N.J....

ED: Clevie, how do you spell Clevie?

EW: C-L-E-V-I-E is the way I've always spelled it. And Uncle N.J. McMillon...

ED: N.J.?

EW: N-period, J-period, yes [Newell John].

ED: OK. M-C-M-I-L-L-A-N?

EW: O-N.

ED: O-N. McMillon?

EW: McMillon.

ED: McMillon without an i?

EW: No, i.

ED: Except, M-I-L-L-O-N?

EW: Yes.

ED: OK.

EW: And she was and still is a sweet, sweet lady. They lived very near the college. We lived in faculty housing, I think, at the time—little houses along Driver Street, I remember, back behind the college. They're not there anymore. But she lived very near there and so she kept all three of us while my mom took college classes. Later, she had a little daycare center and kind of did that informally. But I just saw her last month. She's eighty-eight, I want to say. She was a wonderful, wonderful person to do that.

ED: So did your mother enroll fulltime or did she kind of parse it, you know, doing summers and everything, probably?

EW: You know, I'd have to ask her that, but I think she was pretty well fulltime. She was getting her education degree. When I was in the first grade she was doing her student teaching. She taught first grade for years in Jonesboro. Years later, I would meet people in high school or college and they'd say: "Oh, your mother was my favorite first grade teacher. I just loved her." That was kind of a special or neat thing. At some point along there, she moved to the library and became a librarian in the elementary school and then later at the middle school. Then when my father transferred to Fort Smith and got this new job in Fort Smith, she finished out her contract and, of course, went there and did a few different things there. She was a Realtor for a while and did some other things. Then she finally ended up at what was then Westark Community College, working for them. Then she just retired two years ago as Director of Library and Media Relations for the University of Arkansas at Fort Smith. She worked there many years doing that. So she was a librarian in her later career.

ED: So you spent all those years... You went all the way through the public schools of Jonesboro?

EW: Yes, in fact, I went to Head Start in Jonesboro for the first grade.

ED: Let's see, we didn't have kindergartens until 1973 or so.

EW: Is that right? I know I didn't go to kindergarten. I didn't know that was the reason.

ED: Well, they didn't have. Dale Bumpers, when he became governor in 1971, funded the first kindergartens.

EW: Well, this would've been about '68, I guess. And there was a Head Start program, which was pretty new, I think, at the time.

ED: Yeah. That was a new program.

EW: And if you met the criteria you could go, or if your parent was a teacher, I think, and worked for the school district you could go, so that's how I went to it. They had an enhanced curriculum, so that you wanted to be there. My parents wanted me to be there.

ED: Yeah, Head Start would've been the... That would've been about the first because it was part of the LBJ war on poverty. That was one of the outgrowths of that. It would've been about '67 probably.

EW: OK, it was either '67 or '68 that I was there.

ED: Probably one of the first Head Start programs in Arkansas.

EW: So, yes, went all the way through elementary, Hillcrest Elementary, McArthur Middle School and Jonesboro High.

ED: Your parents, talk about your parents. Were they tough? Were they strict parents?

EW: I wouldn't say they were overly strict. I would say they were fairly strict. I mean, there were a lot of expectations placed on us. I used to joke that I would bring home a report card with all A's and a B and my father would look at it and say: What happened here? What happened with the B? But not overly strict. Looking back, I've been very, very fortunate in my parents and grandparents and extended family, They were strict but I don't think overly strict. You know, we never really wanted for anything or felt constrained in what we did. Education was stressed a lot in our family. My father and mother were—I think this is correct—were both the first ones to graduate from college in their families. And so I remember my dad at the dinner table. We would be talking and he would find some way to work in a vocabulary word. He would sit and wait for us to ask what it meant, and if we didn't he would have to himself talk about what it meant. But then, you know, both were teachers at one point so it was highly stressed in our family.

ED: What activities in school did you... Were you an athlete? Did you play basketball or anything?

EW: Well, I was a...

ED: Or a cheerleader or anything?

EW: I was a tomboy.

ED: OK.

EW: My older sister was very bookish and feminine and loved to write stories and read. And I was outside playing if the weather was at all cooperative. So I played basketball, football, baseball—whatever we were playing—with the kids in the neighborhood. So I wanted to be outside most of the time. We had a big expansive, what now would be called a green space I guess, out behind our house. We used to build forts back there and play army and just pack a lunch and go all day, you know, and be outside. That was what I wanted to do. I took piano lessons for a long time but couldn't practice very much, because I would rather be outside.

ED: Experienced that, too.

EW: So...

ED: Practicing piano. I just couldn't do it.

EW: Yeah, so I was kind of a tomboy. I think I loved sports, everything from skateboards to... but mostly it was basketball. I didn't play basketball in high school, though I should have. I regret that, looking back, but that was so long ago that Jonesboro played three-on-three half-court for the girls.

ED: Yeah, in those days that was fairly common. I don't know what year that they switched over.

EW: I think it was the year either I graduated or maybe by my senior year that it changed but, I just, I guess I...

ED: It became just like boys basketball...

EW: Right.

ED: Up and down the whole court.

EW: But I guess I wasn't in favor of three-on-three half-court so I...I guess now I wish I had played basketball. I played on the tennis team.

ED: Oh, the high school tennis team?

EW: Yes, for most of my years there—I think maybe tenth, eleventh, and twelfth. I can't recall.

ED: Play in a lot of tournaments?

EW: Yes, we would travel and play, you know, in our conference. I remember playing in Helena and Blytheville. I'm not sure what other towns we played in but, yes, I did do that. I played on the volleyball team in middle school. I always liked sports and I still do. I still try to keep active, I like to ride my bike and hike and walk.

ED: So you graduated from high school what year?

EW: 1980.

ED: 1980. And then you enrolled in Arkansas State?

EW: Yes. I mean, there was never a question, I think, that I was going to go there. My father and mother both went there. My father and mother had three kids in college at the same time. Like I said, we were right there together, so...

ED: Your sister was already there?

EW: She was already in college there.

ED: And was she a year ahead or two years?

EW: One year ahead. And I remember him saying to me, my father, that if I would live at home and go to Arkansas State in college he would send me to graduate school anywhere I wanted to go, which was his way of encouraging me to go to graduate school since he had been through a masters and PhD and my mother had a master's as well. So that was the deal, I think.

ED: OK. But, you missed out on the dormitory experiences?

EW: Yes.

ED: And so forth?

EW: Yes. I had what some people would say is an atypical college experience, although I think it's very common for a lot of people in Arkansas.

ED: Oh yeah, yeah.

EW: So, but there were good things and bad things about it. I had home cooking and, you know, all the support I needed, I guess.

ED: You didn't have to eat that lousy cafeteria food?

EW: That's right, that's right.

ED: You didn't have to engage in food fights in the cafeteria.

EW: That's right.

ED: Those were fairly common in my days.

EW: Right.

ED: To protest the cafeteria food.

EW: Right.

ED: We had big food fights sometimes. It was terrible. OK, so you go. What did you major in?

EW: My degree is in finance.

ED: OK.

EW: So I started out and I had a lot of accounting classes and business classes. And actually I wish I hadn't done this either: I "clepped out." [College Level Examination Program]. We used to call it clepped out back then...

ED: Right.

EW: ...of a lot of hours, so every English class, I think, that I needed I clepped out of so I didn't take that much. I should have because I think I would've really enjoyed that. But I clepped out of a lot, like thirty hours. It was a lot.

ED: Wow, that is a lot.

EW: Yes. In hindsight, I wish I had done some. My father also insisted, and mother, that we work while we were in college, so my brother and sister and I all had jobs while we were in school.

ED: How did you clep out of English classes? Were they like literature?

EW: There were tests.

ED: So you'd have tests on literature? So you...

EW: You know, I don't remember. I remember taking them.

ED: Yeah.

EW: I may not have the numbers right, but I remember thinking it was almost a year of college that now I wish I would've taken because I think it really would've been edifying.

ED: As far as I know that wasn't possible when I was in college. I don't remember anything about clepping out.

EW: Well, now they do the A.P. credits, I guess is what they call it.

ED: Yeah, same thing I guess as A.P. credits.

EW: Right.

ED: Yeah.

EW: Yes. But a lot of business classes. I remember taking a lot of philosophy, though, in college.

ED: Really?

EW: Just because it was kind of in counterpoint to all the business classes, statistics, and accounting and banking. It was a contrast to that.

ED: Well, were you able—since you clepped out, were you able to graduate earlier than four years?

EW: No, it took me four years but I had a very light last year. I worked maybe close to thirty hours or more a week while I was in college.

ED: What did you do?

EW: Well, I worked for a while in retail mostly. I worked for a while at Dillard's. I worked in the men's suit department at Dillard's. I had worked earlier at a women's clothing store. Then I worked at a music store, sold records and stereo equipment and things like that for most of it. Then my last year I quit because I wanted to get my gradepoint way up because I knew I was going to try to get into law school. So that last year I had...I think I had a 4.0 the last year I was there. I didn't have great grades before that, but I did better that last year because I wasn't working so much.

ED: You thought you needed to get your grades up to go to law school?

EW: I wasn't sure. I didn't know. I wanted to do the best that I could do, so I thought I needed to raise it a little bit. I always tested better than the grades I made. I probably should've applied myself a little more.

ED: Any activities in college?

EW: I'm trying to think—mostly work. You know, it was a hard schedule to keep your classes and work.

ED: Well, yeah, yeah.

EW: So no, I didn't. I remember playing some intramural sports and I was in a sorority that my sister was in, too, so that took up some time. But mostly worked and tried to get my grades up.

ED: What sorority were you in?

EW: Alpha Gamma Delta.

ED: Remember any—and I should've asked you this about also with the public schools—teachers that were particularly outstanding, had a greater influence on you?

EW: I remember, I guess, in middle school having a history teacher, Dorothy Rauth, I don't know if you know her.

ED: How do you spell her last name?

EW: R-A-U-T-H. Her husband was connected with the University in some way.

ED: This is at ASU or?

EW: This was in the eighth grade.

ED: Eighth grade, OK.

EW: And her name was Dorothy Rauth. She was just a wonderful history teacher, I remember. And she was a friend of my mother's. My mother taught school, too, so they were friendly. I remember her being a big influence on me. Then in high school, a few different teachers, I guess. Another history teacher named Carey Walker, who was a lot of fun and made that subject very interesting. I had a class called Problems in Democracy that Marge Heber taught that was very interesting. We would mix it up in class and argue about current events and issues, and I thought that was very interesting. I had an English teacher named Mrs. Parker who was particularly good. So I had some great teachers along the way. Usually, they all knew my mother, because my mother either taught or was a librarian at the middle school for years.

ED: Well, you said you majored in finance. What about your minor, did you have a minor?

EW: No.

ED: Oh, no minor.

EW: Not really. I almost had enough hours in philosophy to minor in it but didn't.

ED: Probably took eighteen hours?

EW: I don't remember.

ED: Twenty-four maybe, I don't know.

EW: I don't remember, I don't think it was that much.

ED: Well, did you always want to be a lawyer? Was that your idea before?

EW: You know, I don't think so. I don't know what I thought when I took finance. I think I had in my mind I was going to be a stockbroker and thought about it some when I was getting near graduating college. Then I had second thoughts. I liked school, I was good at school, so I thought that I would enjoy law school. The story is...and I don't remember

this very well, although when I was appointed to the court my dad...Roy Ockert. Do you know him?

ED: I know Roy.

EW: OK. He and my dad knew each other, so he called me after it was announced that I was appointed to the court and we talked for a few minutes. Then I think he talked to my dad and my dad told him a story and he wrote an editorial about it in the *Jonesboro Sun*. It would've been September of '08, I guess, when I was appointed to the court. My dad told this story that I didn't really remember, I guess, in sequence. He said that my sister had come to him when she was getting ready to graduate from college and asked about law school. She wanted to go to law school and he talked her out of it. He told her he wasn't sure if she would like it and he wasn't sure that that was a good career. So she didn't go. She got married and then ultimately got an MBA from Xavier University in Cincinnati. She didn't go, so when it came time for me to get ready to graduate from college and I asked about law school he tried to talk me out of it, too. This editorial goes through this. Although, my dad tells the story, I guess, better than I could because he remembers it from both of us. I wasn't having any of it. I said I was going. I said this was the deal, you know: If I stayed here and went to college I could go to graduate school. So I said I'd like to go and so that's what I did.

ED: So Roy and your dad were good friends?

EW: I don't know if I'd say good friends, but they knew each other well enough for them to call and talk about that.

ED: Yeah. Well, about three years ago I was in Jonesboro and he asked me if they could use my column in the *Jonesboro Sun*. I began sending my column to the *Sun* to the great dismay of the readers of the *Jonesboro Sun*, for the last three years.

EW: Well, he –

ED: But Roy's responsible. He's to blame so that the people of Jonesboro...

EW: Yes.

ED: ...can blame him for things said.

EW: Well, we were just in Jonesboro for homecoming for ASU and, as I said, my father got an alumni award and Roy Ockert was one of the other two honorees.

ED: Oh, I didn't realize he went to ASU.

EW: He got one of the distinguished alumni awards.

ED: Good.

EW: He got up and made a speech and told the story about his history and how he got there. It was all very interesting.

ED: Well, Roy asked me to use my column and then immediately retired. I don't guess there's any connection between the two, but I sure get a lot of emails from people in Jonesboro almost every week enraged about my...

EW: You do? OK.

ED: ...my columns up there because they put my email address at the bottom of it.

EW: So you get them, huh?

ED: I get them.

EW: Well, he wrote an editorial when I went on the court and I didn't read it for months. I don't get the *Jonesboro Sun* so I didn't know it was published until I read it later at my folks' house, and it recounted my dad telling this story.

ED: Well, did you go, I've forgotten, to Little Rock or Fayetteville?

EW: Fayetteville.
ED: You went to Fayetteville for law school?
EW: Yes, yes.
ED: OK.
EW: 1984 to 1987, I guess that would've been.
ED: And who was on the faculty then. Do you remember some of your teachers?
EW: I'm trying to think. Yes, I had Al Witte.
ED: Al Witte, OK.
EW: I had Professor [Robert A.] Leflar.
ED: Did you?
EW: R.A. Leflar, he was the advisor on my *Law Review* case note and I had him for Torts and Conflicts.
ED: Was he still teaching?
EW: Oh yes. I had him...
ED: What did he teach?
EW: Maybe my first law-school class ever. I think this was a torts class, first-year torts. He was teaching and I had been warned that the first day he was going to call on a pretty girl, so, you know, all the women in the class were on guard, I guess. And so the first...
ED: And you also wanted to keep your distance a little bit?
EW: A little. But there's no way, I don't think. So that first case that we had been assigned to read was—they were teaching the history of tort law—some case from the 1300 or 1400s from England. I had read that case forward and backward; I could've probably recited it backward. I was prepared, I was ready. He used to bang on the table like that and started the class, and sure enough called on me first thing and asked me: "Miss Cunningham," he said—he was asking me about the citation of the case right under the title, the parties' names, and it said something like F and then a number and then P and then a number. He said: "Now what does this citation—what do those letters in this citation stand for?" I had no idea. I didn't know. It was Latin: the Latin abbreviation for folio and placeto, volume and page, and that was the question that he asked me that I did not know the answer to.
ED: And he knew you weren't going to have the answer.
EW: Of course, of course. But that's why he asked. So yes, I had him. I had Professor Witte. I had Professor Dick Atkinson for property and, I think, for decedent/estates. He was wonderful; I had a great rapport with him. He was later the dean for a while. Who else?
ED: Do you have any other Bob Leflar stories?
EW: Oh –
ED: They're all apocryphal or not. I don't know.
EW: OK, I'm pausing here to think. He used to give great parties at his house.
ED: Yes, I understand.
EW: Up on the hill.
ED: Yes.
EW: And he used to put ice in his washing machine and put Old Milwaukee Beer— I think it was Old Milwaukee—in the washing machine. He had a great...I think it was a Fay Jones house, up in –
ED: I think it was.
EW: Up on the mountain. It was lovely. He was a character and he loved pretty girls, I guess.

ED: He did. And there's another story somebody was talking about. They were at some kind of function, and some beautiful woman walked by—very shapely. This would've been toward the end, when he was in his nineties, I guess.

EW: He was in his eighties when I was there, maybe, eighty, late eighties.

ED: Yeah, so this was when he was his nineties and he watches her walk by and says: "Ah, to be eighty again!" But there are a lot of great stories, Judge Billy Roy Wilson, you know him?

EW: Yes.

ED: We'll have lunch and he frequently will tell a Bob Leflar story. Most of them I think are not true, but they made great stories.

EW: Yes. Well, I'm trying to think about any other professors, but those are the three that stick out in my mind.

ED: So you graduated in?

EW: 1987.

ED: '87.

EW: May.

ED: Now, when we get to the proper point, we want to talk about your courtship and marriage and all of that.

EW: OK.

ED: Does that come in later or now?

EW: Later.

ED: Later, all right.

EW: OK.

ED: We won't do that now.

EW: OK.

ED: Unless there's ...

EW: OK.

ED: ...some other courtship you want to talk about.

EW: It's later on after I was a lawyer.

ED: OK, OK.

EW: So.

ED: So you graduated?

EW: '87.

ED: '87. And then what did you do?

EW: I went to work for the Rose Law Firm. I had clerked for them between my, I guess between my second and third year of law school. I was a law clerk that summer in Little Rock and I lived downtown. I don't know how many—several weeks—however long the clerkship was.

ED: Now, did you know any lawyers in Jonesboro very well that might have been some kind of inspiration?

EW: Not really. I had a business law class at Arkansas State that Jim Lyons taught, and that was interesting. But I didn't really know anyone else that well. Nobody in my family was a lawyer. I used to talk to my mother's father, my grandfather, when I started talking about going to law school or when I was in law school. He used to tell me that I had relatives in Little Rock who were lawyers, but they were distant cousins and I hadn't met

them. That was the McHaneys, because he was a McHaney; my grandfather's name was McHaney.

ED: Yeah, McHaney & McHaney, I guess, was a law firm.

EW: Yes, they're some kind of distant cousins.

ED: OK.

EW: He used to always tell me that and that I should get in touch with them and meet them and that, in fact, a distant cousin had served on the Supreme Court—E. L. McHaney.

ED: The McHaneys represented the *Arkansas Gazette*...

EW: Is that right?

ED: ...in the later stages when—I think I'm right about this—we were involved in the litigation with the *Democratic Gazette* over antitrust violations, which the *Gazette* lost. It was not the McHaneys' fault, but I think they were involved in that case as well.

EW: So I didn't really have any...I guess I didn't have any lawyer role models.

ED: Yeah.

EW: You know.

ED: OK.

EW: Nobody in my family was really a lawyer that I knew.

ED: Did you know the Penixes, for example, back in Jonesboro—Mary?

EW: We knew of them and knew them but we weren't close friends with them.

ED: Yeah.

EW: So I now know their son, who's great.

ED: Oh yeah? Is he a lawyer?

EW: Charley.

ED: OK.

EW: No, he's an architect.

ED: Architect, OK.

EW: And his former wife is a lawyer, I guess.

ED: Deacon—the Deacon Law Firm, and the other lawyers up there?

EW: Yes, I knew them. I knew them certainly.

ED: So you're at the Rose Law Firm as a law clerk?

EW: Yes.

ED: I mean, not as a law –

EW: After I graduated, yes.

ED: So you were a law clerk there for a while?

EW: First, I was a law clerk for the summer and then graduated from law school and was hired as an associate.

ED: OK.

EW: In the commercial section.

ED: In the commercial section. What does the commercial section do?

EW: A lot of banking, bankruptcy work, foreclosure, commercial transactions.

ED: So who else was in that section with you?

EW: I'm trying to remember.

ED: Was Wilson Jones in that?

EW: He was more in the estate-planning section.

ED: In estates, yeah.

EW: So no, it was more Charlie Baker, Allen Bird, Gary Garrett...Let me think, I'm trying to think...Tom Thrash was there at that time. I'm leaving some people out. I'm trying to remember.

ED: Well, I'm trying to think. Let's see, by that time the Rose Law Firm had several women. You weren't crashing a barrier. It wasn't an old boys club...

EW: No, no and in fact...

ED: there at the Rose Law Firm. They were one of the earliest, I guess.

EW: In fact, the commercial section was not housed in that building proper. We had rented... This was before they expanded the building.

ED: Now, at the time were they still over on Third Street across from the McMath Law Firm, or had they already moved down to YMCA?

EW: No, they had moved to the YMCA building.

ED: OK.

EW: That's where I clerked and that's where the firm was when I worked there, but they had run out of space in that building so we had rented the fifteenth floor of the Tower Building.

ED: Oh, OK.

EW: For the commercial section.

ED: So you weren't housed over with the rest of them?

EW: I was not housed over there, but when I clerked I was over there, but I was housed in the Tower Building the year I was an associate.

ED: I didn't know they'd ever been over there.

EW: Eventually, they expanded and added on to that building and had more room.

ED: But that was after you left?

EW: Yes. Yes.

ED: But you were not the...Let's see Hillary was there—Hillary Rodham Clinton?

EW: Yes.

ED: Did you have any association with her much? You were just housed separately so you probably didn't?

EW: We were housed separately and she was in a different division. She was in the Litigation Division. I clerked when she was there. I did some work for her when I was clerking. But I remember we went to file a lawsuit one time in federal court and we had another lawyer down from New York, I think—another woman lawyer. So we all went over to file a lawsuit on behalf of Maybelline, I think. It was some dispute over a mascara product and we filed the lawsuit in federal court and drew as the judge Elsjane Trimble Roy.

ED: Yes.

EW: So we laughed at the fact that we had a mascara case and it was a woman judge and all women lawyers.

ED: Yes. Let's see, Jane Dickey was there?

EW: Yes.

ED: She wasn't in the commercial she was in?

EW: Bonds.

ED: Bonds, she was in bonds.

EW: In the bond, securities section.

ED: Along with George Campbell.

EW: Yes.

ED: And those people.
EW: I did some clerking for him, when I clerked I worked in that section some.
ED: OK. George Campbell was a great...
EW: Bill Kennedy...
ED: Great friend of mine. We had lunch together every Wednesday for quite a number of years until he...
EW: Is that right?
ED: You know he took off on that last cruise...almost around-the-world cruise.
EW: Yes.
ED: He was so excited about it. He was looking forward to going to Antarctica and he kept us informed by email. He'd write us along the way. And then he got down to Tierra del Fuego, got sick and died there.
EW: I remember that.
ED: At the hospital in Tierra del Fuego, about four years ago, something like that.
EW: I remember that.
ED: Yeah.
EW: I do remember that.
ED: We had this lunch with all these old Paragould guys. You know he's from up—well, they were not all from Paragould. I think George was maybe from Piggott.
EW: OK.
ED: Jack Meriwether was from Paragould, Bob Meriwether was from Paragould, George Campbell from Piggott and a bunch of others. I was the only outsider. I was from El Dorado so that was our lunch group for many, many years, all these old guys from up there in the corner of the state.
EW: He was certainly there when I was there, sure was. But there were several women at the firm then. There was Catherine Lassiter, Catherine Hughes, now.
ED: Yes.
EW: Was there.
ED: I don't know whether...
EW: Several other associates.
ED: Was Gail Stewart there then?
EW: I don't think so.
ED: She wasn't very long...
EW: I don't think so.
ED: when she was there. Gail Stewart Nunn, I guess it is now.
EW: I don't think so.
ED: OK. So you didn't get to know, say, Vince Foster?
EW: I did know him.
ED: You knew Vince?
EW: Certainly when I was clerking. I remember he was very kind to me. He took me to lunch one day and we had a nice visit.
ED: Wonderful gentleman.
EW: Such a gentleman.
ED: Yes.
EW: Such a gentleman. He was very kind.
ED: Were you shocked by all this stuff—suicide and all of that?

EW: Yes, yes. Shocked but also, I don't know, just sympathetic, I guess.

ED: Yes. Well, it was sad. I guess it was good that he was dead he didn't see what happened as a result of that—all the savagery that grew out of that terribly sad episode.

EW: He was a wonderful man, so yes I was very sad to see that.

ED: He was depressed. My wife knew him. She served on a committee with him for some years and she adored him, thought he was a perfect guy. But I gather he always had a tendency to depression.

EW: I didn't know that.

ED: Yeah. All right, so you were there. Any cases that you were involved with at the Rose Law Firm?

EW: Well, I spent a lot of my time in the commercial section working on a bankruptcy estate. We had been appointed, or one of the partners had been appointed, as the trustee in a big bankruptcy case. It was a money-order company that went bust. Part of the job of the trustee was to collect all the assets of the estate. It was kind of contentious because, you know, money orders are usually sold through little mom-and-pop groceries and convenience stores. The company that issued the money orders went bankrupt and left a lot of the customers of these stores holding worthless money orders. They would come back to the mom-and-pop shop and say, give me my money for this. Well, the mom-and-pop store was not supposed to do that, was supposed to send the money to the bankruptcy trustee so it could be dispersed through that process. But a lot of the mom-and-pop shops had refunded or given money back to these customers. These were low-income people who didn't have checking accounts, mostly. So part of job of the bankruptcy trustee was to sue these mom-and-pop shops to try to get the money back that they should've forwarded to the bankruptcy estate. So I spent a lot of my time on that money-order bankruptcy case. I also did some foreclosure work and worked on some banking issues. Now, I don't know if there are any memorable cases but that one, but I spent a lot of time on that. One of my other partners was appointed on a criminal case. You remember this was back before we had the big public-defender system that we have now.

ED: Yes, yes.

EW: So you would get appointed on a case here and there and one of my partners was appointed on a death-penalty case. I'm trying to remember. I don't think it was a direct appeal. I think it might've been a habeas or a...I don't think there was a Rule 37 back then. So I helped with that along with another associate in the commercial section. That was fascinating to me.

ED: Who got that case, do you remember?

EW: I think it was Jim Blair who was appointed.

ED: And not the Jim Blair from [Fayetteville]...

EW: No, no. Not the same one.

ED: Not "the state's greatest lawyer."

EW: No, this was a partner, I think, in the litigation section of the Rose Firm...a younger fellow—not the same one, no. Anyway, that was fascinating. I worked on that some.

ED: Well, I spent some time with the Rose Law Firm back in those days because they represented the *Gazette*—had for many years. I think mainly stuff like FOI, and we were always back in the late fifties, sixties and seventies...

EW: And was that Phil Carroll?

ED: Phil Carroll. We were always being sued for libel, and because after the '57 school crisis the *Gazette* was an easy target. You could go to court and get a...you could sue us for libel and get a cool fifty thousand pretty easily. So Archie House, who was there...He'd had to go home soon after I got there.

EW: Yes, yes.

ED: Archie House had gone home soon afterward and I guess Mr. Meek went home, too, as well. Sometime I'd have to deal with Archie and Phil Carroll...I'd write something and they'd have some concerns about it. Should we publish this thing? And I'd have to go over and meet with Hillary and Vince and Webb [Hubbell] and sometimes with Phil Carroll to have them look over my copy and decide whether it could be published. And Hillary...the worst opinion she ever wrote was an opinion to the *Gazette* that said they should not publish an article that I had written.

EW: Is that right?

ED: She was wrong. But at any rate, they didn't publish it and it was a great piece. It should've run. But, at any rate, that's my only bone to pick with Hillary.

EW: OK.

ED: But, to be fair to Hillary, I think the publisher of the paper had told her he did not want to release the story, so I think she probably did what she thought the client wanted in that case. But I was enraged by the five- or ten-page opinion, which was full of bull, but any rate...But, later, Vince [Foster] told somebody that that's what happened, that the publisher didn't want to publish that story. But that has nothing to do with us though.

EW: OK.

ED: So then you – in 1988, you leave and go to the attorney general's office?

EW: I do.

ED: How did that happen?

EW: Well, you know I...

ED: Were you kind of unhappy being this...over there doing that commercial stuff?

EW: I think maybe getting appointed on that criminal case had something to do with it, too. I'm not sure. I mean, I guess I had been there less than a year, I was working on bankruptcy and commercial transactions, and the criminal case was so much more fascinating to me. I had some friends at the attorney general's office. And that was kind of a rough year for the firm. I mean they were wonderful lawyers there, but that year they had...

ED: What happened?

EW: Well, I'm not remembering it all correctly but there was...

ED: Because five or six years later, when all the Whitewater stuff came down, it got...

EW: Yes.

ED: They pulled the law firm into it.

EW: Yes.

ED: And did such great damage to it.

EW: I don't remember all the details. There were some indications that the firm might split a little bit.

ED: Yeah, OK. I remember that now.

EW: So I remember that there was some strife and several people left around the time that I did.

ED: Yeah, I've forgotten. It was the lawyer that it all revolved around, who now lives up in Heber Springs.

EW: Yes.

ED: I can't remember names anymore, but I'll remember.

EW: Anyway, it was a stressful time.

ED: Yes.

EW: For the firm and several people left. I had several friends at the AG's office and I just thought it might be a better fit for me. You know, you don't really know until you start practicing law what's right for you. And, you know, representing banks and doing bankruptcy work and foreclosure work was particularly difficult for me. I just needed more of a mission, I guess.

ED: I'm sure you didn't like foreclosure work, did you?

EW: No, and in fact I was...

ED: I don't think I would like that.

EW: I do remember this. I don't know if I was just being paranoid or not, but I was looking for a car and went to Walt Bennett Ford one day. I was looking at Saabs or shopping for a car and I heard over the loudspeaker them paging someone to the detail department. You know, so and so come to the detail department. It was a name that I thought was the same name of someone that I was foreclosing against, on a farm in Augusta on behalf of the John Hancock—I still remember this—the John Hancock Mutual Insurance Company. I didn't know whether this was the farmer who was now working in the detail department because I was foreclosing on his farm or not, but I just walked straight out of there. I said, OK, I've got to... I couldn't. So that was a factor, I guess. I did not like doing foreclosure work. But, mostly, I just think I needed more of a mission. My parents were both teachers for a while, and I just liked the public sector, I guess. So I had some friends at the AG's office, I interviewed, they had an opening, and I thought what I wanted to do was write criminal briefs—appeals.

ED: So you thought you were going to go into the criminal part of it?

EW: Yes. Yes, because I had participated in this criminal case that we were working on and found it fascinating. So I interviewed and I think they had an opening in the criminal appeals section. I interviewed with Steve Clark, I remember.

ED: Did you know Steve before that?

EW: No. No, I did not.

ED: You know he was from up there in Jonesboro.

EW: No, I did not know him, though, before that.

ED: I think he was from Jonesboro [actually Leachville] and went to Arkansas State, but I'm not certain. He has some connection.

EW: OK.

ED: His roots were up there somehow.

EW: OK.

ED: From Jonesboro.

EW: I did not know him, I guess, beforehand. Anyway, I interviewed with him and with one of the deputies in charge of that department and was hired. But they decided they needed help not so much in the criminal department but with attorney general opinions. They had a deputy who was doing criminal opinions and was in charge of it, and they had one lawyer who was pretty much trying to handle all the opinions. They formerly had that

function dispersed throughout the office, so in addition to your regular civil-division duties or your criminal-division duties you were sometimes randomly assigned an opinion to get done. Well, it wasn't anybody's fulltime job so sometimes they would get stuck in drawers or get forgotten. Sometimes one lawyer in one division would issue an opinion on a topic and another division would issue one on a topic and they would conflict. At one point, I think it got so bad that they threatened to hold paychecks until you got your opinions done. So eventually they consolidated that function into one division or lawyer. But there was mainly one lawyer trying to do it who was being inundated with too much work. She was trying to do it with one law clerk and so they asked me if I would be willing to do work in the opinions department, and so I said yes. So that's where I started. Elizabeth Walker was the lawyer who was trying to do the...

ED: Did you know her before?

EW: I did not.

ED: She was not one of your friends?

EW: No, I did not know her then, but she's one of my best friends today. We worked together for twenty years and probably have been friends for coming up on thirty years now, I guess. So we worked together. I didn't know her before I started but was immersed in it pretty quickly.

ED: So you never worked in any other division. Did you have a state agency...where you represent state agencies? I've forgotten how it's organized.

EW: That's under the civil department.

ED: OK.

EW: The civil department has a litigation department and a state agencies section. So no, by the time I went there they had opinions and it was a kind of a separate function. It was housed under the criminal deputy, who was R. B. Friedlander at that time. She was the deputy over that department.

ED: R.B. Friedlander. I'd forgotten about her.

EW: You might have known her husband Jay.

ED: I knew Jay.

EW: OK.

ED: And I knew R. B., too.

EW: OK.

ED: They're still around?

EW: No, I think that –

ED: They left?

EW: They moved to Florida, I think, years ago.

ED: Florida, OK. Yeah, yeah, I remember R. B. Friedlander.

EW: So I started there, I think it was July of '88

ED: So there were a lot of women then? You had R.B. and –

EW: Oh yes.

ED: And the woman at -

EW: Oh yes.

ED: So you weren't crashing any...

EW: Oh no.

ED: Breaking any ceilings in these places?

EW: No, not there, not there. But I liked the work. I liked it a lot. I mean, it was fascinating to be in the middle of things. That office is really a dynamic legal environment. If there's a legal issue in the state usually it passes through there at some time or the other, so I thought it was very interesting to be kind of in the thick of current events. If there was some controversy in the General Assembly or with the Governor's Office, you know, you usually get that question, so that was very interesting.

ED: Were you surprised about what happened to Steve? I was.

EW: Yes.

ED: I always thought he was a good attorney general and a gutsy attorney general.

EW: Yes, yes.

ED: Called them like he saw them. And I don't know how...

EW: I was.

ED: he got in the frame of mind to do that. Of course, it was foolish. He didn't have to...

EW: Right.

ED: He didn't have to disclose...

EW: Right.

ED: the guests at lunch or anything, but...

EW: Yes, I was surprised. And, you know, he had just announced his campaign to run for governor...

ED: Yes.

EW: not long before that, and it was a stressful time at the office, I can just say.

ED: I know it was.

EW: I mean, yes, I was surprised. Of course, the salaries—it's no excuse, but the salaries in his office were so low back then, and we didn't know how they [elected officials] lived or functioned, you know.

ED: Well, it was a lot better than it had been. Until the 1970s, it had been \$6,000 a year.

EW: Right.

ED: Until 1974 or '76, I think...[1974]

EW: Right.

ED: when we changed the Constitution to give him [the attorney general and other constitutional officers] a little more money, but...

EW: So that was a very stressful time, I remember. And I hadn't been there very long, I guess, when that...

ED: It would've been '91, probably.

EW: Around '90. And then we had a temporary AG, Ron Fields, for a while.

ED: Yeah, it was '90. It was '90 when that happened or maybe '89. It might've been late '89 when all that started.

EW: I was surprised. He was a great boss, I have to say.

ED: Yeah.

EW: He had his problems but he really stood behind his people, too.

ED: Yeah, he did. He's kind of made a comeback now.

EW: Yes, yes. I'm happy for him.

ED: But, I've seen him out. I called him and had him come down to address the state ACLU banquet, which they have every year. We got him to come back with Phil Kaplan to debate the creation-science/evolution case.

EW: OK.

ED: Steve defended the creation-science law.

EW: Right, that was before my time there.

ED: Yeah, that was before your time. That would've been in 1980... that would've been '81, '82.

EW: Right, right.

ED: So that was his famous case and he did a great job. I'm glad to see Steve making it back, to a certain extent. So you worked under—that was a short time under Steve Clark?

EW: Yes.

ED: And then, I guess, after that it would've been Winston Bryant?

EW: Yes. He came in. I guess it was '91.

ED: So you had Winston Bryant?

EW: Yes.

ED: And then you had Mark Pryor?

EW: Yes.

ED: And then you had Mike Beebe?

EW: Right.

ED: And then you served for a while under Dustin McDaniel?

EW: Yes.

ED: So you...

EW: I think over a year, yes.

ED: So, there's usually a lot of turnover. Usually, attorney generals bring in a lot of fresh stuff.

EW: Right. Well, I think Winston Bryant did more so than maybe some of the others because that was right after the Steve Clark, you know, all of that controversy. So I remember him maybe changing more attorneys than some of the other ones did.

ED: Did you have to go in and talk to him and see whether you were to stay or not?

EW: I'm trying to remember, but I think he made everybody submit a resume.

ED: Yeah.

EW: And a cover letter that said where you wanted to work. So then he had his choice of who to rehire or not; so yes. Pretty much we did that with every one. I don't know if we did it exactly the same way with every new attorney general who came in, but it was understood that you may or may not have a job. I guess it was not a given.

ED: So different kind of personalities.

EW: Oh yes.

ED: Winston Bryant is not as bubbly as...

EW: Right.

ED: And outgoing as Steve.

EW: He was fun to work for though because he sort of had a populist image.

ED: Yes.

EW: And liked to sue people.

ED: Well, in many ways I thought he was one of the best attorney generals of the last...

EW: It was not dull.

ED: Thirty or forty years because he...

EW: It was not dull.

ED: He was willing to do the kinds of things that I think that were probably not popular with the legislature and the powers that be.

EW: Right, right.

ED: Environmental stuff

EW: Yes.

ED: I think he made a bunch of environmental and consumer initiatives. I hesitate to call him dull, but he was not an exciting figure, not a great speaker or anything else. Any other cases? So you just wrote opinions?

EW: I wrote opinions.

ED: And a lot of them to legislators?

EW: Oh yes. Probably the majority, I think, were to legislators. State agency heads, the constitutional officers, a lot of them FOI [freedom of information] opinions, ballot titles and popular names.

ED: Yeah, you probably wrote more FOI opinions than anybody in history.

EW: Well, I don't know. My friend Elizabeth Walker still works there.

ED: Oh, OK. She's still there.

EW: So she's probably eclipsed me by now. She took my job when I left and went to the court so...

ED: As I recall... Would it be fair to characterize your... well, not just your opinions but most of them from the AG's office... as being for openness—interpreting the statute for maximum disclosure and openness, because that's what...

EW: Well, that's—that's what the act itself says, too.

ED: Yes. And then George Rose Smith's great opinion, the first opinion, I guess, in the *McCord*...

EW: *Laman v. McCord*.

ED: *Laman v. McCord* or *McCord v. Laman*, which, to just lay it out, says “no, you're going to interpret this always liberally in the public interest, toward disclosure and so forth.”

EW: Oh, yes. And we tried to hew as much to the statute and the intent as we could. It was difficult, because sometimes, you know, the office in the civil department would have clients, maybe, whom they're representing who might've taken a different view. So the opinions division really had to set itself apart and be independent from that.

ED: Because the agencies did not want to disclose? They felt like they had a compelling interest in maintaining...

EW: Could be, sometimes...

ED: some secrecy around things like...

EW: Right.

ED: bids or whatever, you know.

EW: So it was important for the opinions division to be kind of...

ED: Separate.

EW: independent and separate from that.

ED: Did you get any pushback from time to time from other parts of the office and agencies about that?

EW: I wouldn't say pushback. They knew that we were going to keep that separate and that they could make their case. If they wanted to submit something in writing for us to look at and if the other interested party wanted to submit something in writing for us to look at, we could look at it. But I don't know if we would get pushback. You know, ultimately it's the attorney general's call on what happens, but we tried to hew as much as we could to the statute and just do our jobs.

ED: Did you have many instances where your opinion went to the attorney general and he said: “No, I don’t think so”?

EW: Very rarely. I mean, that would be very rare. But there were times, yes. I mean, we always felt—the lawyers who worked in the opinions division—that we had ethical responsibilities in performing and doing opinions. You know, if we weren’t comfortable with the results or with what was written we would not put our name on it. Our name usually appeared down at the bottom, along with the attorney general’s.

ED: Yes.

EW: So that would be very rare. Usually it was enough of a controversy or there was enough dispute about the correct interpretation of the law that maybe the lawyers in the Opinions division themselves would be split on it, or have a different view. So that would be rare. We were talking about Steve Clark. He used to have an expression that stuck with me, which was: You never do anybody a favor by giving them bad advice on the law. If you issue an opinion that’s not really legally accurate, that may be temporarily, politically important but it’s not of any real value...If you could predict with a good certainty what the outcome of a legal issue would be if push came to shove when it goes to court, that’s pretty valuable information. So that’s what we tried to do, because then everybody knows how to conduct themselves. But, something temporarily expedient, you know, you lose all credibility if you do that, and most attorney generals are smart enough to know that.

ED: Steve, as I recall, was pretty bold. He told the Legislative Council, no, you don’t have the final say on regulations.

EW: Review and advice?

ED: Yeah, review and advise. You can advise but the governor can go ahead and do what...

EW: I think that was a little bit before my time. I think that happened in the...maybe a year or two before I was there.

ED: I think it did and I forgot what the issue was, but it didn’t fly very well.

EW: Oh, I think he was punished for that for, you know, several years after that.

ED: Oh, he was, yes.

EW: By the legislature and I think we wrote an AG opinion one time—I can’t remember this exactly—saying that it’s really no coincidence that the only state agency to ever really challenge that process was the Game and Fish Commission.

ED: Yes.

EW: Who had this separate, secured source of funding.

ED: Well, they thought they answered only to God.

EW: Uh-huh.

ED: Yeah. Well, Governor Beebe needs Steve Clark to advise him on this insurance stuff now. The Legislative Council is—but you don’t need to express yourself on that.

EW: No, no, no, no. I won’t.

ED: OK. So how many of you were in the opinion section?

EW: It varied over the years. As I said, I think that when I was hired it was only one other lawyer and then...

ED: Just two of you then?

EW: Yes.

ED: And then it got to be larger.

EW: I think the average is usually three to four. I think they have four right now, so typically it was three or four.

ED: Well, did you vote?

EW: No.

ED: Do you arrive at a consensus?

EW: No.

ED: Are you passing around certain...

EW: It's assigned. For example, the deputy of the department—and I was the deputy for several years—as opinions would come in I would assign them to one of the lawyers in the division, or I would keep it myself and do it. It usually would depend on the deadline; on some things we had firm deadlines. FOI opinions, you know. There were some opinions under the Freedom of Information Act that we had to do in three days—the ones on personnel records. We had ballot titles for initiated and referred measures that had to go out in ten days. Sometimes we had interlocal cooperation agreements that were due in thirty days. So, you know, depending on deadlines, depending on the subject matter, sometimes you had a lawyer who was more well versed in certain subject matters than others. If it was a school issue, for example, or if it was a taxation issue, you might give it to a particular lawyer. We did not come to a consensus. It was assigned. The assigned lawyer would work up a draft, give it to me for my review and I would edit it and change it, whatever, talk with them about it, maybe disagree, maybe agree. And then it would go to the chief deputy attorney general, who would read it and approve it. And then ultimately to the attorney general's desk and he would read and approve it. Different attorney generals did it different ways. Some would read every word of every opinion, some would want to sit down and have a meeting where we could discuss the opinions and hash them around back and forth. And when the attorney general approved then they would be issued and go out.

ED: Did you have any or many instances in which legislators would lobby—not only ask for the advice, ask for an opinion, but then call and lobby? I mean, that's what legislators do so...

EW: Well yes, we did sometimes. Sometimes, what we would typically do—how we would handle that—would be to say we'd be happy to accept any written material anyone wanted to submit, but if we did accept some we would always give the other side an opportunity to do the same thing. But, you know, usually we would have other employees in the office sort of run interference on that for us. We'd have a chief of staff or we usually had a person who was assigned to be the legislative liaison and they could kind of help. Maybe they would accept that information and try to keep us insulated from that, so that we tried to do that.

ED: Well, I assume that legislators would—that they would ask for an opinion that they wanted?

EW: Sure.

ED: They wanted a certain answer.

EW: Sure.

ED: Yeah.

EW: Right, but we tried to just keep our heads down and do our jobs. We always would give people the opportunity to submit stuff in writing. A lot of times lawyers would want to do that, want to make an argument.

ED: So did you do ballot titles [on initiated acts and amendments], too?

EW: Yes, yes.

ED: That might have been the hardest part. Was it?

EW: I would say that and I have said this before. It was the most frustrating duty that I performed at that office. Different AGs approached it in different ways, I guess. It's a very frustrating duty and I... When I was working for Winston Bryant we had a lot of ballot titles submitted and, you know the task of the attorney general is to be neutral on the proposal and yet to summarize it fairly and accurately. Well, the sponsor has to try to summarize it fairly and accurately first. Usually, a lot of times, they didn't do it to the attorney general's satisfaction, so we would try to edit that ballot title and make sure it was accurate and that the voters were not being misled by what they were being asked to vote on. Well, the problem we would run into is that sometimes it's difficult to make a silk purse out of a sow's ear.

ED: Yes.

EW: That's the problem. You have a measure that may be neither concise nor clear nor, you know, sensible and yet we're required to write a ballot title that is concise and clear and convey an accurate picture of what voters are being asked to vote on.

ED: So, did you just totally rewrite the ballot titles?

EW: We could. The AG has that authority.

ED: But, typically, the people who submit these things, these initiatives, do they have their own ballot titles?

EW: Yes.

ED: They prepare a ballot title?

EW: They're required to submit a popular name and a ballot title along with it. So it was just frustrating to try to do that when the real problems were not with the ballot title but were with the actual text of the measure, which we may not know how to summarize if we don't know what their intent is or what they're trying to do. So we can't tell the voters what it is they're trying to do or summarize it in a ballot title. It's very frustrating to try to do that. Like I say, different AGs approach it in different ways. Some had more of a *laissez-faire* attitude. Let them sink or swim on their own ballot titles' merits, which is very frustrating. Then they go and collect all the signatures, spend all the money to do that...

ED: Then the Supreme Court...

EW: Only to have it struck down.

ED: The Supreme Court strikes it down.

EW: That's a waste of time. So the process we have now—and I noticed there was an editorial cartoon about it not long ago. I don't know if you saw that. Oh, I wish I could remember. I'm going to mess this up.

ED: This is one that Dustin McDaniel's...

EW: Yes. I forget what the cartoon was. I'm sorry I brought it up because now I don't remember how it went. But someone was saying something and they said, "Yeah, Dustin made me rewrite it three times before..."

ED: Well, they're still having to rewrite the marijuana initiatives, and they're just having to rewrite them over and over again, and the gaming things.

EW: Well, it's frustrating. So I think when Mark Pryor came in he really took a hard look at what is wrong with this process and asked how can we get this fixed. So I think it was decided that if the text of their measure was too unclear or too uncertain for it to be summarized fairly that we had to send it back and say we can't fix it for you but you're

going to have to fix it. Clarify this before we know how to summarize it in a ballot title. That's led to a process of really sending it back and sending it back and sending it back until it's... You know, the attorney general could take it over and completely redo it for them but it's not his measure. He doesn't know their intent and if he does that then it becomes his measure. So that's tricky.

ED: And he helps pass a bad amendment.

EW: Yes, so that's very touchy. I spent a lot of time on a solution—I don't know what year it would've been, maybe when Mark Pryor was attorney general—researching how you would fix this process. I really believed the Constitution does not require a measure to have a ballot title unless and until you get your signatures. So I think, you know, there may be a solution somewhere there.

ED: The I & R amendment doesn't require a ballot title at the outset?

EW: I think the way you read it it's not required until you submit your signatures to the secretary of state. The statute providing for the attorney general's review is not in the Constitution. It's a statute that was passed in the '50s saying that the attorney general should review it. So, I don't know if that's a solution but it's worth thinking about. That's what I thought at the time I was researching it—that perhaps we should not have a ballot title until you get the signatures and then you can tack one on after the signatures are collected. Then if something's wrong with the ballot title maybe it could be fixed. It wasn't something the voters saw when they signed the petition, so...

ED: Speaking of the initiative and referendum law, I forget what amendment number it is.

EW: Seven.

ED: Seven, yeah.

EW: Well, actually it's Article V, Section 1 now. It's all incorporated into that provision.

ED: Yes. But there's this fascinating question about that amendment, about whether initiated amendments that are adopted after the initiative process can be amended by the legislature with a...

EW: Two-thirds vote.

ED: With a two-thirds vote, including constitutional amendments. You're familiar with that issue?

EW: Yes. There's a case that resolves that question.

ED: Well, it's a case in which the court essentially said, well, they [the legislature] couldn't amend initiated amendments, but the amendment does say that, does make it possible. But did you write the opinion? There's an attorney general's opinion saying this. Did you write that opinion?

EW: I think I did, yes.

ED: Yeah, OK.

EW: I think I did, citing that case, probably.

ED: Yes, yes.

EW: Edgmon. Edgmon, is that the case? [*Arkansas Game and Fish Commission v. Edgmon*, 218 Ark. 207, 235 S.W.2d 554 (1951)].

ED: Was it a Game and Fish?

EW: Yes, I think it was Edgmon, maybe. I'm not sure if I've got that right.

ED: Right, in about 1948 or '58 or some prayer or song in there.

EW: Yes, yes.

ED: But I've always wanted to find some way to test that, whether the Supreme Court had to address it directly. I think that was maybe some dicta in that case, where they said... Well, somebody had raised this issue.

EW: Right.

ED: So the legislature then could change the term limits law and make it twelve years, sixteen years, set it by an act.

EW: Yeah, I think the answer to that is "no" if it's in the Constitution. Now, if it's an initiated act, of course, they can do it by two-thirds vote.

ED: Yeah, that's obvious. But, you know, if you go back and look at the history of initiative and referendum back in the first decade of the last century, there might be some support for my viewpoint.

EW: You know there were two amendments.

ED: Yeah.

EW: There was one adopted in 1910 and then the other one came in later.

ED: Yeah, then they came back later and had to fix it up later. But what we adopted was what was being circulated by William Jennings Bryan and others, the fathers of this whole movement around the country. In Alabama they took it up with the legislature and down there they debated that very question and decided to take it out and not allow constitutional amendments to be amended by the legislature.

EW: Well, I guess.

ED: And we didn't do that here. I always wanted to go back and see whether I could find something—I've never done it, gone back and looked at the *Gazette* and the *Democrat* when it was debated in the legislature to see whether that issue came up and if it was acknowledged and they realized what it said—see if it was just a wording problem, you know or something like that.

EW: Right. I think it may depend on how the measure was defined, as an act or a measure.

ED: Yeah, it's a measure and it defines measure as anything.

EW: Right, right. I was under the impression that our amendment might have been borrowed from Oregon. I can't remember if that was the first 1910 amendment or the later one.

ED: Yeah. I looked around and did some work on it five or six years ago. I looked at a bunch of states and it may have been Oregon. Alabama had the same wording. Alabama looked at it and took that out but then didn't pass it. So they don't have initiative and referendum. I don't think they have initiative and referendum down there. Anyway, I wanted to get on record...

EW: OK, OK.

ED: That you're the author of that opinion. [Op. Att'y Gen. 2001-025.]

EW: Yes.

ED: And I don't disagree with that opinion, by the way. It would be pointless if I did since I'm not a lawyer. All right, so Mark—he's attorney general two terms or one?

EW: One.

ED: That's right.

EW: 1999, I think, to 2003. And he was in law school with me.

ED: Oh, was he?

EW: You know, he was in the class below me in law school so we knew each other.

ED: Oh, OK. So you all were in the same class?

EW: He was in the class below me.

ED: OK.

EW: He was a little bit younger, so...

ED: So you didn't have any doubt about keeping your job after that?

EW: Well, you never know but I guess I didn't too much. But that was fun; it was fun to have him there.

ED: Yeah, and then Mike Beebe.

EW: Yes. He came in.

ED: And he served one term?

EW: Yes, 2003, I think, to 2007.

ED: Yes, 2003 til 2007. So any change in the way things were done?

EW: Every AG has kind of a different focus and a way of doing things. I served on Beebe's transition team, I guess, when he came in as AG. They all have a different way of doing it. He was very hands-on. I'll have to say that.

ED: Beebe?

EW: He read every word of every opinion, delighted when he found a typo or something that he could correct for us. He was very hands-on, I would say, involved in everything.

ED: Probably had the longest legal career preceding that job than anybody else.

EW: Maybe since I was there I guess, in my experience, yeah.

ED: Yeah, I don't know of anybody who would've had more experience before going way back. We had some pretty lousy attorney generals further back—Bruce Bennett, from my hometown.

EW: Before my time.

ED: Yes.

EW: Before my time.

ED: Ray Thornton, who was attorney general one term, had lots of experience. So any other opinions that kind of stand out that were tough?

EW: You know, I was there for years. There's just so many it's hard to pick some out.

ED: Oh yeah. How many opinions a week did you probably go through?

EW: You know, I don't know if I can gauge it by the week. It varied from attorney general to attorney general, too, how many we did. I think we usually did three to four hundred a year, however that breaks down. I think by the time I left I had done a couple of thousand maybe, or more. I'm not sure. So there were a number that stood out but that kind of run together now. It was always more difficult during the legislative session. Usually the time factor was... you're in a time crunch. Usually at the session they would call sometimes one day or have a thing that was coming out for a vote the next day and they would need it overnight so we would have to work all night to maybe get an opinion out, whether it was something constitutional or what's the vote requirement on this or that.

ED: Does it require two-thirds or three-fourths or...

EW: Yes, yes.

ED: Or is it a tax...

EW: That came up a lot so we had several of those. There were the big constitutional issues that were always more fun for me, I guess. The big substantive issues were fun. I remember having one on a vote requirement issue once. I got to where at the end of my career there I would think that the chronology of the law was so much more important. Sometimes you would see a legal issue, a statutory construction issue or a constitutional construction, and you couldn't really answer it without knowing the history of the law or

how it evolved. For a lot of years when I worked there Bob Fisher was there. Do you remember Robert Fisher?

ED: Yes.

EW: And if I ever needed a history lesson I would go sit in his office and he would tell me how it was so I would have a better understanding. So I could understand contemporary circumstances of what was going on. It was easier to interpret the law if you knew all of that. So he retired eventually and I lost that. I didn't have that anymore and so some opinions I would have to go to the main library downtown and research, get on the *Gazette*—you know, the *Gazette* microfiche—and research an issue so that I would have an understanding of it. I remember one time having an issue about millages and the five-mill limit on cities to levy property taxes. [Op. Att'y Gen. 2003-036.] They did these later amendments for police pension funds or for library pensions and the question came up: well, if you're already levying the five mills, can you tack these on or does that have to be within the five-mill limit? Well, you couldn't tell the answer to that from just reading the Constitution, you know. There was no way to know unless you went and researched the history of it. So the local attorneys or the Fayetteville attorney or whoever it was had told them, "No, sorry you can't do this; five is the limit and you can't tack this on." Well, the history of it showed that that was the limit and they tried to pass the police pension and the Supreme Court had to issue an opinion that said, "Sorry, no, reluctantly, you can't do that." Well, that's the whole reason they passed Amendment 30, or whatever it was, the police pension. So you have to the history and the chronology sometimes to interpret it. I had to start doing that more and more after Bob Fisher retired because he used to be right there to tell me all of this.

ED: Did you ever deal with Amendment 59?

EW: Oh yes. That's what the Supreme Court has called "the Godzilla of constitutional amendments."

ED: Justice Darrell Hickman coined that phrase.

EW: Yes.

ED: "The Godzilla of constitutional amendments."

EW: We wrote a lot of opinions about Amendment 59.

ED: Well, that was a nightmare.

EW: Yes. We used to say we did opinions on everything from abortion to zoning, I mean A to Z. So I found that interesting, too, and I don't think I would've stayed twenty years in that job if it hadn't been such a varied experience. You learned a lot doing that. It was a great education because you would delve into something new every day and then you would know about it after that.

ED: Well Amendment 59 had to be the worst, most dense piece of legislation ever written and it's in the Constitution.

EW: Right.

ED: I remember the Supreme Court once handed down a major decision on Amendment 59. I forget when it was. I won't mention the name of the justice, a good friend of mine, who wrote the opinion, but he was just dead wrong.

EW: Really?

ED: Yeah, he was dead wrong. And I could understand how he reached it. I think it was a five-to-two decision or maybe it might've been a seven-zero. I think it might have been a seven-zero decision but it was just wrong. And I knew it was wrong.

EW: Right.

ED: I'm not a lawyer but it was a case where you, as you say, understood the background, how it happened.

EW: Right.

ED: And I was out there...

EW: Right.

ED: During the legislature when they were drafting that monstrosity over and over and over again. Because they were facing this court-ordered reassessment.

EW: Right. They're trying to prevent a big, big jump in...

ED: Trying to prevent a big jump....

EW: property taxes.

ED: Bill Clinton got involved in it and messed it up even further and sent down an amendment. It kept getting bigger and bigger and bigger until finally Marcus Halbrook, who was the director of the Legislative Council, in the last week of the session talked to Bob Harvey, who was in the Senate, and John Miller in the House. They were the heads of the committees over initiated amendments. They were the kind of the authors of it [the original amendment] but it kept getting amended over and over.

EW: Well, I know a lawyer who claims to have authored part of it, but I'm not going to say his name either.

ED: Well, there were a bunch of them. You know, the timber industry would go downtown to the Wright Firm or the Friday Firm and they'd draft an amendment, send it out there and they'd put it on the amendment, and then the Farm Bureau. I would be in the committee and Senator [Knox] Nelson or somebody would come in and say: "Well, gentleman I've been listening to the timber industry and they need to fix this," and so they would adopt that amendment. Finally, Marcus Halbrook, director of the Legislative Council, talked to Bob Harvey and John Miller and told them, "This thing's a monstrosity. I've written a lot of this stuff and I don't know what it all means. This is going to be a nightmare. We need to pull this thing back and try to rewrite it so it makes some sense because there's so much conflict." But Bob Harvey or John Miller said, "Marcus, we can't do it. We're fixing to adjourn and if we pull it back now we won't pass it, we can't get it out. So we'll come back in two years and fix it." And, of course, once it was ratified you couldn't fix it.

EW: Sure, sure.

ED: You couldn't fix it. So any rate, the Supreme Court came back and corrected it [the opinion]. I remembered talking to one of the justices after that faulty Supreme Court opinion and telling him, "You've got it all wrong on this thing," and I explained it to him. And he went back and they had a rehearing and they...

EW: Yeah.

ED: They reversed themselves and changed their opinion on it.

EW: Well, I'm glad that they... I mean, they are not always right and the thing to do when you're not right is to fix it.

ED: Yeah.

EW: I remember I hadn't been at the AG's office very long, about six months maybe, and it was a different atmosphere and a different level of scrutiny than I was used to, and I remember being wrong a few times. I remember one day I was reading the newspaper and I cut out this quote; they used to do a quote of the day, you know, in the newspaper.

It was a quote by Ogden Nash and it said, “Confidence is that feeling you have before you really understand the problem.” And I cut that out and taped it to my desk, and then when I left to go to the Supreme Court I taped it there and it’s been taped on my desk now for a long time.

ED: Yeah, everybody acknowledged his mistakes.

EW: Yes.

ED: I don’t know whether you saw this. Last week, Richard Posner, the great intellectual conservative Republican Reagan judge, acknowledging that...

EW: I saw that.

ED: He made a great mistake in writing the opinion—was it Seventh Circuit, or whatever circuit—on the Indiana Voter ID law.

EW: Right, I saw that.

ED: He now realizes that he made a huge mistake and that the dissenting opinion was the one that they should’ve adopted. Now I see that Judge Stevens—[former] Justice John Paul Stevens, who wrote the majority opinion affirming Judge Posner—says, well, given the facts of that case that were before them, he’d still have to rule that way, but he acknowledges that history suggests that they were wrong and that the minority opinion written by the justice from Connecticut was the right one... What was his name? He retired, that little quiet fellow. I can’t remember his name. I can’t remember names anymore.

EW: Not Souter?

ED: Souter, yeah. [Justice David H.] Souter wrote the minority opinion, but, nevertheless... Well, I don’t know how we got into this... I led us into that. OK, so anything else that we should talk about on the attorney general stint?

EW: It was a great job, I loved that job.

ED: OK.

EW: I was there twenty years.

ED: Yeah. Well, I guess the diversity of it.

EW: Yes.

ED: Every day you deal with a different problem.

EW: Something different.

ED: You’re not dealing with a bankruptcy today and bankruptcy tomorrow.

EW: Right. Well, you were a jack of all trades.

ED: Jack of all trades.

EW: And a master of none.

ED: Yeah, right.

EW: But it never ceased to not be interesting. And you could never know it all because if you thought you did it was changing all the time.

ED: Yeah.

EW: You know, the statutes changed all the time... New court decisions come down, so...

ED: Yeah. That’s why I remember some good lawyer friends of mine. They were unhappy and their unhappiness usually arose from having to do the same thing.

EW: Really?

ED: The same kind of law. They were in big law firms and they would be doing the same kind of law every day, and law that they didn’t like.

EW: Right.

ED: Representing clients they didn't particularly like or agree with, and they were very unhappy practicing law, although they had wanted to be a lawyer all their lives. But in your case...

EW: I've been very fortunate.

ED: Just the great diversity of practice. OK, so we come up on 2008.

EW: Yes.

ED: And, September...October is when Tom Glaze decides to retire.

EW: Yes.

ED: And, by the way, I wrote his retirement letter.

EW: You did.

ED: We've been friends for many years and I was supposed to be writing this book for him that I did after that. Anyway, he had Parkinson's for five or six years and probably should've retired before he did. But he loved being on the Supreme Court and I think the next day after he retired he regretted it but he realized he couldn't do it anymore. But nobody ever loved being a Supreme Court justice like Tom Glaze did. So he retires with two years left on his term and Governor Beebe appoints you. How did that happen? Did he call you?

EW: Well, I'm trying to remember. I think I was on vacation when Justice Glaze retired and I think I started getting calls from other people saying, "oh, you know, you might expect a phone call" and I said, "What, I don't think so." I went back to work and one day I did get a call from the governor's office and they asked if I would come and visit with him, and he asked me if I would be willing to take the appointment. So I talked it over with my family and decided I was very happy where I was but it was just too good an opportunity to say no to. I think I would've regretted it, you know?

ED: What did Beebe say to you when you came in? Do you remember?

EW: I'm trying to remember.

ED: How would you like to be a Supreme Court Justice?

EW: I guess. I'm trying to remember exactly what he said. He just wanted to know if I'd be willing to do it and that he obviously thought I was qualified to do it. He said that "I was the list" at that point. I was nervous about that, I guess. I said to him, my only concern was that I really, really, really wanted to do a good job if I was going to do it. And he said: "You will, you will do a good job." So I agreed to do it and never regretted it. It was wonderful.

ED: Now, I just realized that since you said you talked to your family about it we haven't talked about your family.

EW: OK.

ED: So maybe this is the point before we get to the end.

EW: OK.

ED: To talk about your personal life a little more.

EW: OK. I was working at the attorney general's office when I met my husband. He worked there, too.

ED: And his name is?

EW: Jay. It's Frank J. Wills. And the J is actually the initial but he goes by Jay, J-A-Y.

ED: So his middle name is Jay, J-A-Y?

EW: No, his name is actually Francis Julian Wills.

ED: Francis Julian Wills, OK.

EW: But he goes by Jay. Everybody knows him as Jay.
ED: OK.
EW: His father was Frank J. and had an advertising company for years and years.
ED: And where is he from? Little Rock?
EW: Yes, he grew up in Little Rock, went to Hall High. So we met when we were both working at the attorney general's office. He was a litigator in the civil division and I was in opinions and I think I worked there maybe about six months before we had a date. We were kind of fixed up on a date at his supper club. He had a supper club he'd been in for years and we're still in. It's been more than thirty years in the supper club but that was our first date, probably 1989, I want to say. We were married in '92, so we dated for several years before we got married.
ED: And you have one child?
EW: I have one child. She was born a couple of years later in '94, a daughter.
ED: And her name is?
EW: Grace. Leigh Grace, but we call her Grace.
ED: Leigh, L-E-E or L-E-A?
EW: L-E-I-G-H.
ED: Oh, L-E-I-G-H.
EW: Which is also my middle name.
ED: OK. All right, we need to go back.
EW: OK.
ED: Right at the beginning of this and I'll insert.
EW: OK.
ED: Your middle name.
EW: It's Leigh.
ED: Elana.
EW: Elana Leigh.
ED: Leigh.
EW: Cunningham.
ED: Cunningham Wills.
EW: Right, correct.
ED: All right.
EW: Anyway, she gets upset with me because she thinks she should be—it's very confusing—called by her middle name so everybody always tries to call her Leigh but she goes by Grace. But she is a freshman in college.
ED: At the University of Virginia?
EW: Yes, studying architecture.
ED: Architecture. And what's the basis of that? Is anyone in your family an architect?
EW: No, no.
ED: OK. She wanted to do something different?
EW: Yes, I guess we have some willful women in our family who know what they want to do.
ED: Yes, yes.
EW: So that's it.
ED: Now, so Beebe appoints you to the Supreme Court. And let me read this quote.
EW: OK.

ED: “Elana has a comprehensive grasp of the United States and Arkansas Constitutions and federal and state codes that few can match. She will be an objective and fair-minded justice who will render well-qualified legal interpretations while serving on the Supreme Court.” But there was another quote I found. Oh this is Beebe again.

EW: OK.

ED: “I found Elana to be almost matter-of-factly, absent-mindedly professorish in her knowledge of the Constitution.” Beebe said that. What did he mean by that?

EW: Well...

ED: You imagine yourself as being absent minded and professorish?

EW: No. And I think there was a later article where Dustin McDaniel talked about that, too, and said that I wasn’t really an absent-minded professor, but I do know what Governor Beebe meant. I think what he means is he used to come in my office to ask me a question, and I would tell him what the law was or what I thought about that issue very matter-of-factly like “doesn’t everybody know that?” I think that is what he meant. What he doesn’t realize, I guess, is that I would probably see an issue coming down the pipe and maybe an hour or two before he came into my office to ask me about it I would have researched it a little bit. So I would be up to speed on it before he sat down. So I think a lot of time he thought that maybe I knew more than I did.

ED: That you knew everything?

EW: Yes, he thought I knew everything where I really had just prepared.

ED: He just assumed you had an encyclopedic knowledge of case law and the Constitution.

EW: Well you know, twenty years of doing that job you do have quite a bit at your disposal, but I usually would anticipate that there was an issue coming and I would bone up on it a little bit expecting that maybe I would be asked about it so that I could be ready. In fact, it was funny. When he first started as attorney general he had a nickname for me. He used to call me “Radar.” Like Radar O’Reilly, I guess, because he would think I would know what he was about to say before he would say it. But usually I had prepared myself and that is why I would know. It’s not brilliance or encyclopedic knowledge; like most things in life, it’s preparation.

ED: Yes.

EW: So.

ED: OK. So when you go on the Supreme Court you were sworn in...

EW: October.

ED: October.

EW: One of ’08.

ED: So you were finishing out that...

EW: Yes.

ED: I guess fall term of the court. Let’s see, the members of the court at that time would’ve been...Jim Hannah, of course, was the chief.

EW: Yes.

ED: Donnie Corbin.

EW: Yes.

ED: Excuse me, Donald Corbin.

EW: Yes, I call him Donnie, too. It’s OK.

ED: Robert L. Brown and Jim Gunter.

EW: Yes.

ED: And Annabelle.
EW: Yes, Paul Danielson.
ED: Was she Tuck at the end or was she still Imber? I forgot now.
EW: I think she was Imber then.
ED: She was still Imber and I guess she married him by the time she retired.
EW: You mean Henry Tuck.
ED: Henry Tuck.
EW: That was later, that was later.
ED: And Paul Danielson. Is that seven? That would be seven, right?
EW: Let me think.
ED: Hannah, Corbin, Brown, Gunter, Tuck, yeah.
EW: I think so.
ED: No, there's got to be another one, right? Hannah, Corbin, Brown, Gunter.
EW: Hannah, Corbin, Brown, Gunter.
ED: Who else? No, that's six. We got them all?
EW: OK.
ED: We got them all.
EW: Danielson.
ED: So would that have been the first time there were two women on the court together?
EW: I don't think so.
ED: Oh no, because...
EW: Betty Dickey maybe?
ED: She and Betty. So Betty Dickey was on there with Annabelle.
EW: And I don't know about Andree Layton Roaf, I'm not sure.
ED: And Andree, she would've been on there. There might've been three? No, there wouldn't have been three of them there.
EW: No.
ED: But there would've been two on there before.
EW: I'm not sure if she and Annabelle were on at the same time or not, I'm not positive.
ED: Well, did you find that there was an immediate bond with the other woman on the court?
EW: You know I expected that there would be. I think every justice is different. I really thought that I would be...Of course, we were great friends and we got along great, but my chamber was situated between Justice Corbin and Justice Danielson and we really ended up being closer, I guess, just because of the proximity. But there are different bonds at different times with different justices. It just depends on the circumstances. I used to go to lunch a lot with Danielson and Corbin, and Justice Hannah would join us when he could. He was very busy. He had a lot of extra duties on the court. So I was actually closer to Justices Corbin and Danielson.
ED: Well, it's impossible not to be close to Donnie Corbin.
EW: What a personality.
ED: Yeah.
EW: What a personality.
ED: Yeah.
EW: They were all wonderful to me, all of them to a man or woman could not have been nicer to me.

ED: I remember Donnie was in the legislature. He came out of the legislative process and he, I think, took that experience to the court. I think it probably is valuable to have that particular knowledge of how legislators think and work. Donnie also handled a lot of the relationships for the legislature, which is important, too, I guess. He'd go over and lobby for the...

EW: That must have been before my time.

ED: Well, I think he did and still does a lot of it...although the chief, I guess, primarily does that. But Donnie does some random lobbying out there, too. I think he's probably been valuable for the court in that way. But anyway, you found it was an amicable court?

EW: You know, I have heard this before and after my service, I guess, that the court when I was there was a very collegial court. Yes, it was a wonderful environment, I thought. I mean we all...

ED: I think it was that way practically that whole decade.

EW: We got along very well.

ED: I started covering the Supreme Court back about 1963 and I think it was always pretty collegial, although you had little factions like George Rose Smith, who was not terribly collegial with anybody, although nearly everybody loved him. But there were times when there were factions on the court and sometimes pretty tense, but I gather that period was a very collegial court.

EW: We had disagreements, definitely, but it was always done in a very nice way.

ED: So you didn't find it hard, in conference, to research and present your case against the other side and then come back the next day and sit down with the other side?

EW: Oh no. I think when I was there most of the judges were pretty even tempered about that. You have to, as I say, check your ego a little bit. That's the way you get to a good result. I think dissenting was valued because, you know, that's the process, that's how you get to the right answer. I remember being at the AG's office with my fellow attorney Elizabeth Walker and sometimes we'd be in my office or hers, voices raised, shouting, trying to argue our positions and someone would walk by and say, "OK calm down." We'd say, "Will you get out of here, we're working, this is our process." So I think that was possible in the court's atmosphere, too, and then the next day, yeah. It might be a little sticky for one day, but that was the process. You had to move on. You couldn't dwell on anything. The pace was very quick, I guess, when we were taking cases.

ED: You really had to turn out opinions at a rapid pace.

EW: We did. That was the thing that maybe surprised me the most and I had watched that court for years when I was at the attorney general's office and even before that. I didn't realize how quickly they work when they're actually taking cases, week to week.

ED: So you didn't know before you went on the court the internal mechanism...

EW: Yes.

ED: that George Rose Smith and, I guess, maybe Leflar had come up with back...I think when Leflar was briefly on the Supreme Court.

EW: He was.

ED: McMath had appointed him back there so I think they came up with this system how to get us out of...how to keep the court up to date.

EW: I've always heard it credited to George Rose Smith.

ED: Yes.

EW: That he created it. We had an orientation session the first thing when I came over to the court. They oriented you to that system and tried to explain it. When you're hearing it and listening to it, it kind of goes in one ear and out the other. Until you do it you don't really get the hang of it. It takes a couple of weeks or more to get your system down: what you need to do each day to get your work done on the court because it all kind of overlaps. Once you get that one opinion circulated you're already ready to do the next. It's an overlapping process so there's no time to dwell on hard feelings or what anybody said about your last one. You get it out and you've got to move on.

ED: Well, were you intimidated at your first conference?

EW: Absolutely, absolutely.

ED: Whether you should disagree with the chief or something?

EW: Now, I wasn't shy to disagree. I was intimidated before I got there about whether I would be able to do the job. I really, really, really wanted to do a good job. So they gave me my first set of briefs, which was a stack about a foot and a half or two feet high and my first assigned case to read. So I started reading through all of that even before I was actually there because, you know, it's kind of an overlapping process and you have to get prepared the two weeks before for that conference. So when I first started reading the case that was assigned to me I knew I was going to be OK. It was this statutory construction case. It was right up my alley. It had to do with the statute of limitations and a couple of statutes or something. So I exhaled and relaxed a little more once I read it because I knew I could do it. But the first thing I had to do was the Wednesday conferences where they deal with motions and post-conviction cases and several other types of matters in what we called the motions conference. That's before the Thursday conference, when you're conferencing cases. The motions conference is a lot harder to keep up with. I mean, you have a stack of motions on different matters and post-conviction cases to do, petitions for review, petitions for rehearing, things like that, and so it goes pretty fast.

ED: You have to come prepared, having looked at all of it?

EW: All of that and you're assigned some of them to present in conference.

ED: Take the lead on.

EW: And suggest, you know, how you would resolve it so you had to be prepared for that, too. That was a little hard to navigate, that first conference. And then the Thursday conference is more the substantive cases, the six or seven or eight or how many cases you had for that week. That was usually immediately after oral argument when we did all of that. So I knew that first Wednesday conference was a little...I was a little flustered there, but at the Thursday conference I had read those cases backward and forward so I was ready for that and I had my case ready to present. I got a majority on that first case.

ED: Did you get a unanimous?

EW: I believe it was. I'd have to go back and look.

ED: Did you get a unanimous on your first case?

EW: Yes. [*Reeves v. State*, 374 Ark. 415, 288 S.W.3d 577 (2008).] But then I didn't feel intimidated about dissenting. Maybe it was two months I was there before I wrote a dissent and it was the Chief Justice's case.

ED: Do you know what case it was?

EW: It was a case involving collateral estoppel, which if you had told me my first very impassioned dissent on the court would've been about collateral estoppel you could've knocked me over with a feather. [*Powell v. Lane*, 375 Ark. 178, 289 S.W.3d 440 (2008).]

ED: All right.

EW: But that was what it was about. But it was a marriage and divorce, custody or adoption issue. Anyway, I remember writing a long dissent and my law clerk saying something like, "This is a shot across the bow." I don't remember what he said. But I thought, "I'm just trying to get it right. I just want this to be right." I'm not going for, you know...

ED: Did anybody join you on the dissent?

EW: Justice Brown joined my first dissent. He wrote me a nice note and said that he agreed with it and so I was never shy to dissent. In fact, I dissented several times alone, I think. If I felt that I needed to, I would.

ED: But you didn't have George Rose Smith on the opposite side of you either.

EW: No, and I guess that might've been a little more intimidating, but I have to say I still think I would've done it. I don't think from what I hear of his demeanor that I would've worried about losing his socialization or friendship.

ED: No.

EW: Because he was crusty, is what I hear.

ED: He was crusty but a lot of the time I think it was kind of an act with him, too.

EW: Yes.

ED: It was part of his demeanor. I remember Tom Glaze telling me the day that Tom was sworn in as Justice, I think it might've been 1984 or '85. I forget when Tom got elected to the Supreme Court. After the swearing in, he comes over to George Rose Smith, whose place he had taken on the court.

EW: Oh OK.

ED: He took George Rose Smith's place on the court because George was about to retire. And so he said, "George, I just want you to know that I'm taking your place, but I can't fill your shoes." And he said: "I know Tom, I know."

EW: I've heard that story, too, more than once.

ED: But that was typical of him. Any other cases that you remember? There were not in that period of two years not a lot of big cases. We'd already disposed of all those school cases.

EW: Yes, yes.

ED: All the school formulas, all of that stuff had been disposed of, I guess, in 2003 and 2004. Well, I guess it went up to 2006 or 2007 that they were still reviewing those cases, and still had David Newbern and Brad Jesson [masters in the *Lake View* school case].

EW: Right.

ED: As the, what do you call them, the masters, to be sure that the legislature...

EW: Fact finders.

ED: that the legislators were doing their duty under the law. Do you remember any really tough cases?

EW: We had a lot of tough cases, as I recall.

ED: I guess if they're in the Supreme Court they're tough cases.

EW: Probably not any that would...

ED: That's the definition of a tough case?

EW: Not any that would be of great interest, I guess. I don't want to say they're all like collateral estoppel, but there were lots of procedural issues that were tough for me because I'd had the luxury of not dealing with them as much at the AG's office.

ED: Yeah. Not the kind of cases that would probably get a lot of...

EW: Right.

ED: A lot of attention, press attention.

EW: Exactly. We did have some; I remember writing a big dissent about an oil and gas case. If there was a tough case that was likely to split, it was important to get your four votes. I remember I asked not too long after being there, whether we could have food in conference. I'm remembering this and they said, "Well sure," but nobody ever had any food in the conference room and it was breakfast time. It was usually nine, you know, and we had coffee. I said can I bring something for us to eat in the conference room and they said, well sure, if you want to. So I started bringing muffins or baked goods for everyone at Wednesday or Thursday conference or whatever, and they finally started accusing me of bringing goodies when I had a tough case and needed votes. I said, "Well, you've got it backward. When I have a tough case I get a little stressed and when I get a little stressed I bake, that's what I do." So then they said "oh." So after that they joked about trying to stress me out at every conceivable opportunity to make me bake.

ED: Did you bring baked goods for them, too?

EW: Oh yes.

ED: Yeah, OK.

EW: That was the point, yes.

ED: Yeah, all right.

EW: So that was something funny that I remember about tough cases. But, you know, as far as cases go we had a lot of different difficult cases. It surprised me, I guess, how quickly they had to work and how heavy the workload was through the week. I used to spend most of Saturday—a lot of hours on Saturday and Sunday—just reading, getting ready for the conferences.

ED: So did you take work home at night?

EW: Oh yes. Particularly on Tuesday night and Wednesday night before the conferences the next day, because you had to circulate your opinions on Tuesday and then you'd have between Tuesday at one o'clock and Wednesday morning at nine to read everybody else's opinions and decide whether you were going to join or concur or dissent.

ED: So let's take a case. It was a Thursday conference when you'd pick up cases and go around the table?

EW: Yes, yes.

ED: And decide, we're going to affirm or reverse on this.

EW: Yes.

ED: And Elana will write the majority opinion.

EW: You already knew it was your case. It was assigned before that.

ED: Yeah, it was your case, obviously. It was your case.

EW: You just had to see if you could get four votes, then you would write it.

ED: Yeah, you had to get four votes.

EW: And if you didn't get four votes, your backup judge, if he didn't agree, if he disagreed with you he would write it.

ED: Yeah. And if somebody else prevailed then somebody else altogether would write the opinion?

EW: Right.

ED: So that would be decided on Thursday.

EW: Right.

ED: OK, you know now, I've got this case. You're already familiar with the case, you've reviewed it thoroughly.

EW: I've got four votes at least, or all of them.

ED: You've got four votes. And so when do you write? You have your opinion written by the next week, right?

EW: By Tuesday.

ED: By the next Tuesday.

EW: Yes.

ED: You'd sat Thursday, so Friday... Actually, you've got two working days to get your opinion written?

EW: Right, right. And so then you circulate it Tuesday by one o'clock and then you get everybody else's Tuesday at one, too, so you're reading theirs and trying to decide, "Am I going to dissent or concur?" And then somebody might have a question about yours and come to you Tuesday afternoon, too, and say, "Well if you change this, maybe this, what about this—this isn't quite right or ... So it was hectic during those periods.

ED: Did you ever work that hard?

EW: You know, I'm used to working hard and I worked hard at the AG's office but the pace of it, you know.

ED: And the pressure.

EW: And the pressure.

ED: Being a Supreme Court justice, yeah.

EW: Yes. I mean, I remember I worked five or six hours on Saturday and five or six hours on Sunday just to get the reading done so that Monday I could perfect my opinion that I was going to circulate and then be ready for the rest of the week. It was tough. And then, of course, they do take some breaks. They have a recess in the summer and then spring break they have a break. But I was surprised at the pace, at having to keep up. But now a lot of judges, if you have a main case, you've got a backup case and there's usually an oral argument and then there are two or three other cases. Some judges, I think, didn't spend as much time on those two or three other cases because they focused on the case they were assigned to, their backup case and their oral argument. I just wasn't comfortable. That requires a level of trust that I never really had, so I'd spend a lot of time reading all the cases.

ED: So each week you had two big cases, the case you were assigned.

EW: Yes.

ED: And then you were the backup judge on that case.

EW: Yes, on the other case.

ED: So you had to be thoroughly prepared?

EW: For two cases.

ED: For two cases and not just having read them.

EW: Right, and then prepared to participate in the oral argument case.

ED: Yeah.

EW: And ask questions even though if that was not your case. So I was surprised at the pace and at that workload, but it was wonderful. I loved it.

ED: Well, you mentioned an oil and gas case. There was one, a sizable case, a big case while you were there and that was the SWEPCO case, a Public Service Commission case.

EW: Oh yes.

ED: In which, if I could summarize it, the issue was whether the Public Service Commission was correct in issuing a certificate of environmental convenience and necessity, whatever it is.

EW: A CECPN, I think, was at issue.

ED: Yeah. For SWEPCO to build a big coal-burning power plant down at McNabb, the Turk Plant, or whatever town it's closest to. And the Court of Appeals had unanimously held that the Public Service Commission had been in error. I think it was a two to one vote in the Public Service Commission, and David Newbern, who at that time had been a special commissioner, had dissented in that case. So I guess the court held that Public Service Commission had been wrong in severing the need part of it, whether they needed that power, from the environmental aspects of it. That they were wrong in severing it and there was a seven to nothing decision, is that right?

EW: Yes.

ED: Was that a tough one?

EW: Yes. I'm probably not going to talk too much about that.

ED: OK, I understand.

EW: But it was a tough case.

ED: I understand because you're now at the Public Service Commission, sure.

EW: Right, yes. I believe it was seven-oh (7 to 0).

ED: It was seven-oh.

EW: And it was, I think, the Chief Justice wrote that opinion.

ED: Yeah, the chief wrote that opinion. Oh, Robert L. Brown wrote a concurring opinion, as I recall. He didn't dissent but he wrote a concurring opinion in which he would've—and I followed that case pretty closely so I have some memory of it—he would've gone further and said that they didn't meet the environmental standards.

EW: Right.

ED: That clearly it was going to have terribly unfavorable consequences for the environment with how many billion tons of carbon dioxide would be in the air and all the sulfur and mercury and everything else that would be pumped out. So he would've overturned the PSC decision on that ground as well. But you went along; you didn't write an opinion on that?

EW: I did not.

ED: But that was a...

EW: I did not.

ED: But I thought it was remarkable that both courts had a majority—I didn't expect that—to have a unanimous vote in both.

EW: Yeah, I guess I'm not going to talk about it too much.

ED: Yeah.

EW: It was mainly a procedural issue, I think.

ED: Yes, yes. Well, I guess it was good preparation for you to go on the Public Service Commission later.

EW: I guess, yes, it might've been. Although I would recuse, of course, from anything dealing with that.

ED: Sure, in that case, yeah. But then, and then maybe you don't want to talk about this, but after going through all of that, the Public Service Commission and then to the Court of Appeals and gets it overturned and the court says no, you shouldn't have issued this certificate and the Supreme Court says the same thing, but nevertheless the plant was built.

EW: Yes.

ED: They proceeded to build that plant every step of the way before they got the first...They started work on that plant anyway. It seems to me, what's the state for if they're going to build it anyway? But you don't feel like you can...

EW: I'm probably not going to talk about that.

ED: Don't talk about that since obviously you may someday...

EW: They switched and became a merchant plant.

ED: It became a merchant plant. That is how they did it and I guess they were going to do that anyway at the outset if they didn't win. Anyway, it bothered me and I've written a bunch of columns and editorials about it over the years, so that's my thing. What else, any other cases?

EW: I looked back over some of mine trying to find something for you. My husband for my fiftieth birthday did a very sweet thing and went back and collected all of my opinions.

ED: Oh really?

EW: And dissents and bound them into a leather bound volume and put a prologue and an epilogue with the article you read from the newspaper earlier in the front.

ED: Oh, the appointment one, the Beebe quote and so forth?

EW: Yes, and on the back the Supreme Court per-curiam opinion thanking me, for my service and it was really sweet. So I went through there trying to find something interesting and juicy for you. And, you know, there were several but I'm not sure it's anything that you would be interested in from a political standpoint. They're all interesting and fascinating to me and, of course, very important to the parties involved.

ED: Sure.

EW: But, you know, a lot of the dissents or concurrences I think of more fondly than some of the others. You have more fun sometimes writing dissents than concurring.

ED: Well sure.

EW: Because you're writing only for yourself.

ED: Sure.

EW: And you have a little more freedom in writing those. So that was fun for me.

ED: You didn't take any jabs at your colleagues in your dissents?

EW: I don't think that's productive or helpful, so no. You try not to do that.

ED: Like Scalia would do.

EW: No, I just don't think that's helpful or productive in any way. And unnecessary, you know. If I disagree it's on the law—it's just not respectful, I think, to do that.

ED: Well, there hasn't been much of that. I think on the [recent] school case they might've gotten little...

EW: Testy.

ED: A little testy. That's the testiest I've remembered...

EW: Right.

ED: the court being in quite a number of years.

EW: Right.

ED: They used to get pretty testy way back in the eighties.

EW: I do remember one case I wrote that was, I guess, unusual. I don't know if you'd say it was politically important. There was a criminal case where someone robbed someone, put a pistol in their face and robbed them of two dollars that they said this person had borrowed from them before. Give me my two dollars back! And the person admitted they owed them the two dollars so the issue was, was this aggravated robbery? You have to look at the definition of aggravated robbery and did they have the intent to commit theft because they were owed the money or was it really... There were several statutes defining this crime. Aggravated robbery depends on whether it was theft, and if it's theft you're stealing property of another person. So the question was, was the two dollars the property of the person who is holding it or is it property of the one who's owed the two dollars? And so it's a question of what's the fungibility of money. So that was an interesting case and we ended up saying that it was robbery. [*Heard v. State*, 2009 Ark. 546.]

ED: Did you write the opinion on this case?

EW: Yes, yes. And there was a dissent then. Justice Hannah dissented and said there was no intent to steal, but I said the two dollars you've got in your pocket is your money, you know, it's not the same two dollars you borrowed from me. So that's the kind of thing I find fascinating.

ED: Yes.

EW: And it turned on a statute that was given not as much prominence as I thought it should be in the case. It's a rare case where there's not a constitution, a statute, an ordinance, or something the court is interpreting. It's rarely purely common law.

ED: OK. So you leave the court, I guess, January 1st.

EW: Eleven.

ED: 2011.

EW: Yes.

ED: And the election...I've forgotten who took that seat. Was it Courtney?

EW: Yes.

ED: Courtney.

EW: It used to be Henry now Courtney Goodson.

ED: Courtney Goodson. And after that there were three women on the court.

EW: Yes.

ED: Karen Baker.

EW: Karen Baker.

ED: Along with?

EW: Jo Hart now.

ED: Jo Hart.

EW: And maybe four coming up soon.

ED: Yes, yes. A good chance of it, I guess. That'll be interesting with a majority female court. And there may also be a little bit of testiness in that group. The personalities in that group – Jo Hart who is my wife's—I guess Jo married my wife's cousin.

EW: Oh really? OK.

ED: So I know Jo Hart very well. She's kind of a crusty person. All right. And so immediately there's the vacancy on the Public Service Commission and Governor Beebe appoints you to the Public Service Commission?

EW: Yes, yes.

ED: And so there it's a majority female Public Service Commission?

EW: It is. It is.

ED: And you and Colette, the chairman, Colette Honorable?

EW: Sure is.

ED: So you've been on that job two years?

EW: Over two.

ED: Over two years.

EW: Over two.

ED: A different kind of law. There you're specializing in utility law.

EW: It is a whole different subject matter. I did touch on a couple of utility issues, I guess, when I was at the AG's office. And, as I said, we did all kinds of subject matter there. Of course, the AG's office has a division that does utility law. It is a whole different specialized subject matter and it's a steep learning curve for me, but I'm enjoying it.

ED: That's a six-year term?

EW: It's a...I'm filling out a term after Paul Suskie left.

ED: Oh that's right.

EW: Do you remember?

ED: Suskie left.

EW: Yes.

ED: And so you're filling out two years?

EW: I filled out his term and I'm holding over now until a successor is appointed.

ED: Oh, so nobody's been appointed yet?

EW: Not yet.

ED: And so you might well be under another six- year term then?

EW: It could be.

ED: Have you indicated...

EW: It hasn't been decided yet so...

ED: OK. But you're willing to continue that?

EW: If I'm needed, yes.

ED: OK. All right. Anything else that we haven't covered, personal?

EW: OK, we talked about high school, college, law school, job, family. I guess.

ED: Well, politics, have you ever thought about running for a judgeship or something else?

EW: Well, you know I'm young yet so maybe someday.

ED: Sure.

EW: I think a judgeship might be...seems to suit me. As I said, growing up we were almost always nonpartisan, so that feels right to me.

ED: Supreme Court?

EW: I enjoyed that very much so maybe someday. You know, I'm still young.

ED: Would you run for the Supreme Court?

EW: It's a statewide race.

ED: It's a statewide race.

EW: It's a very daunting thing, I guess.

ED: And it's hard, hard work.

EW: Yes, yes. So I'll never say never. I had an opportunity to do it earlier, after I was appointed and I wasn't quite ready to do that so I'll never say never—maybe someday. I just think it's a daunting thing to think about a statewide race. I don't like the idea of people paying money on my behalf to have to do that.

ED: Well, on that point let's talk a little bit about the... I think that most of the justices that I've interviewed have talked a little bit about that—the election of judges versus some kind of merit-selection system, the federal procedure or the Missouri Plan or something. Do you have any notions about that, about campaigning for office, campaigning for a judgeship, raising money? Of course, as a member of the Supreme Court you were an appointed justice.

EW: Right.

ED: And you were not going to be running again.

EW: Right.

ED: So you didn't have to worry about any kind of political fallout from a decision you made.

EW: Right, right.

ED: As I always thought justices did, for example, in the school case and these sodomy cases.

EW: What happened in Iowa or?

ED: Iowa or I thought an amazingly courageous decision at the time back in whatever year it was that Annabelle [Imber] wrote the majority opinion striking down the state sodomy law. And, of course, the United States Supreme Court at that time had not done that. They had upheld those kinds of laws in Georgia. But the Arkansas Supreme Court strikes it down—an elected court, in a state that I think where it was probably not a popular decision. I thought it was a ringing decision and opinion and also Bob Brown wrote a concurrence. I always thought that that spoke pretty well of an elected system, that they could rule that way in a very conservative state, in what I'm sure they must have thought, was a volatile case. So did you have any ideas about that?

EW: Well, you know, I think there are good arguments on both sides of that and there's no perfect system for selecting appellate judges because it's been said that politics are involved usually either way. It wasn't in my case, I mean. I had a different experience, being appointed to the court. I didn't really apply for that job. I guess I was just tapped. I think there are arguments on both sides, and I don't mean to sit on the fence. But I think judges do feel that pressure in a case you're working on if you have to face an election. The good ones don't let it stop them from doing what they think is right—writing the case in the right way. Given my druthers and just me personally, I think I would maybe prefer a merit-selection process for appellate judges; I had a good experience with that. I think it's all perfectly well and good for senators and state representatives and governors—executive and legislative officials—to be elected. Of course, they're supposed to represent their constituents. But I think with appellate judges, the people that elect them have already very conveniently written down their wishes, in the forms of constitutions and statutes and ordinances and laws, and that is for the most part what you're trying to be true to when you're an appellate judge—the Rule of Law. It's a rare case when you have a strictly common-law case and can make new law. So I see a difference between the executive and legislative branches of government and the appellate part of the judicial branch when it comes to elections. I guess for me personally, I don't like the idea of raising money or even under the current system having others raise

money on my behalf. Although it is set up so that the judge is detached from it, which is the most you can do, I guess.

ED: Theoretically.

EW: Yes. So, we do have that system set up. But there are problems with every kind of method you could come up with for getting judges, like if you have a retention election. Sometimes it's not the best to have the judge running against himself because people might be more willing to say oh, you know. . .

ED: I hate that opinion.

EW: Yes, I hate him, throw him out, when they might get someone worse as a replacement they just don't know yet. So I'm not sure that's the best way to do it either.

ED: If you had a retention thing and Annabelle had to run immediately after writing that decision that would probably be the issue in the election.

EW: Maybe there would be increased pressure today. There seems to be more attention paid to judicial elections today, you know.

ED: Oh, exactly.

EW: So I'm not sure about that.

ED: Increasingly. Already in the Supreme Court race for next year the Chamber of Commerce and all kind of groups are lining up and making this important one at this point. It seems kind of discouraging. OK, well this will do it.

EW: OK.

ED: And, as I said at the outset, probably twenty years from now somebody maybe will want to update this interview.

EW: OK.

ED: And see what's happened in the interim.

EW: Glad to, glad to do it.

ED: OK.

EW: My honor.

ED: Thank you so much.

EW: Thank you.