

Harold G. Clarke interviewed by Bob Short
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Harold Clarke

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BOB SHORT: I'm Bob Short, and this is Reflections on Georgia Politics sponsored by Young Harris College, the Richard B. Russell Library, and the University of Georgia. Our guest

is Justice Harold Clarke, former state legislator and chief justice of the Georgia Supreme Court.

We are honored to have you.

HAROLD CLARKE: Well, I'm honored to be here.

SHORT: Forsyth, Georgia...

CLARKE: Right.

SHORT: You grew up there?

CLARKE: Born there and have -- somebody asked me have I been there all my life, and I said not yet; I hope.

SHORT: Well, tell us about your growing up in Forsyth.

CLARKE: Well, Forsyth was a different world then from what it is now, as is everything just about. For instance, the house in which I was born and which I still own, is being used as a law firm. It was a dirt street in front of it because at that time, when I was a little fellow, the only paving we had in Forsyth was within one block of the courthouse. And our home was two blocks away, so we were on a dirt street. And when I was about, oh, five, six years old, they

paved that road to make the highway to Indian Springs and Jackson.

But along that street, interestingly enough, there's only one house, one building of any sort on that street that goes down beyond where our house was. All the rest of the buildings are -- there are two banks; there's a liquor store. There are many motels and every kind of fast-food thing you can think of. And it's just a different world. You would not recognize what I would see when I was growing up, and it stayed that way pretty much until probably during the '50s, things started changing. But I really enjoy thinking about the '30s more than other times, and early '40s. It was an area where, just down the street a short distance you could cross the railroad, make a turn and go by where now there is a Wal-Mart, and walk down there; and there was a place called the Blue Hole, and that's where I learned how to swim. And it was forbidden from children because their parents didn't want them going down there, getting in the water and perhaps drowning.

So what we would do, we'd go swimming and then we'd get up on the railroad track and sit there so that the sun would shine on our head enough to where we'd be dry. Your momma would put their hand on your head and know whether you'd been in Blue Hole. But that was an interesting time, of course. Almost all the little boys had pets of one sort. We had an array of pets, none really of great advantage to anybody for any purpose except us individually.

I will change a little bit on that about the pets. My sister had a boyfriend who gave her a greyhound, and the greyhound was fully ground. But it was shy, and we had a terrible time getting the dog to even let you touch him. And I came to find out that he had some arthritis or rheumatism, something; and he could sometimes run like the wind and other times just couldn't

move at all. And I think probably somebody was racing that dog and had beat him because he couldn't run. And that was his shyness, and that was the most talked about of the dogs. But my favorite was one named Duke, who was devoted to me and went everywhere I went. If I would go to a movie, he'd try to get into the movie. And I remember then I always used to tie him to the spigot close to the back yard and ask my momma to untie him after I'd been gone for a while. And sure enough, going on up there, some probably half hour later, that dog would find me in the movie. My mother said that she'd look out there and see the dog had been sniffing the trail and show up in the movie, and I'd have to take him back.

But, oh, let me tell you another thing about that greyhound. He was devoted to my father because my father had the patience to kind of work with him. And he would go fishing with us and things like that, but he did go to the movies with my father. And he would sit there under my father's feet, so to speak, and watch the movie I guess or just sleep. And my father was also a minister. He was Presbyterian minister, and I don't think he ever got paid, but we only had services twice a month back in those days. And so one day we were sitting there, and the dog came walking down the aisle. He went up there to the pulpit and sat down. And my mother kind of motioned to me to go get the dog out. So I went up there and grabbed his collar and walked him on out. I went and came back into church, and in a few minutes here came the dog again. So I went and got him again. And then the third time that he came in, I looked at him. I started to get up again, and my father said...like this. And so from that point on, he always sat there with my daddy while the sermon was being preached and the rest of the service took place. So that was probably the most talked about advent of that dog anyway.

SHORT: You wrote a book about growing up in Forsyth?

CLARKE: Yes.

SHORT: Tell us about your book.

CLARKE: Well, the book is intended to preserve what it was like to grow up in a small Georgia town in between the two world wars. I was born in the '20s, and of course I've been through a lot of different changes. And that community has made a lot of changes. This book begins with my beginnings and a little bit before that because there's some things about my parents. But it ends on the day of Pearl Harbor. And that was I think the big turning point of what our lifestyles had been, and perhaps that along with the time of the Civil War were the two times that made abrupt changes in the lifestyles of people in small towns at least. People went off to other places. They went to wherever the Army or Navy or whoever it was sent them. And they came back more cosmopolitan than they were before they left. And I tried to paint that picture as best I could, and end with Pearl Harbor. But the book has been well-accepted among the local folks and some folks beyond that. But I enjoyed doing it very much.

What I would do is I would sit down sometimes on Sunday afternoons or at night, particularly when I was with the court because at night I'd be up here usually by myself. And I'd write maybe a chapter or two at night, do it in long hand. And then I'd later dictate it on a dictating

machine; and then from that I would do some editing and find things to suggest.

SHORT: Tell us about your parents.

CLARKE: Well, my father was Virginia, and my mother was from North Georgia. They have an interesting situation. Well, first my father was born on the outskirts of Danville, Virginia; but his father died at an early time, and they then moved over to Martinsville, Virginia or near Martinsville with her parents. Their name was Graverly. And they eventually, as mother got a job teaching at – oh, what's the name of it? It will come back to me in a minute. It's in an orphanage in South Carolina.

And so my father stayed there with his grandparents for some of the time and went to military school I think in Farmville, Virginia. And then later came on down to Clinton, South Carolina and went to school at Presbyterian College. Thornwell Orphanage is the name of the orphanage, it came back to me. And she was there, and they were really organized by the same people.

They are both a college and the orphanage.

And my father was one of the smartest people I've ever known. He didn't have any great abilities to make money or anything like that, but he has tremendous intellect. And he was the valedictorian of his class when he graduated. And then he went on up to Richmond, Virginia, and he graduated from Union Seminary, Presbyterian seminary there. And then while he was there, my mother had some cousins who lived in Richmond. And she went – this was probably in 1909 I guess. And she came up there to visit some relatives. And on that day they had a

graduation of the seminary. My father was one of the ones who was being graduated. And she didn't know, and he didn't know. Neither of them knew anything about that.

I'd say a few weeks or months later he came to Georgia as a minister, and they met there. And then in 1911 they married. And the story is told that and they chuckled about it a lot – that they'd been seeing one another, as they used to call it. And he handed her one note saying...oh, golly, I wish I...it's a poem by Robert Browning, "Come live the rest of..." I forget, but about come be my partner or something. And she looked at it and smiled, according to the story. And she wrote down on it, "I accept your proposal." And that was the beginning of a long, long situation between them. Then after a short time, they moved to Baltimore, where he had a scholarship to do some work at Johns Hopkins and got a Master's Degree there.

And then he came back down to Atlanta, where he taught school. And one of his students was Bobby Jones, and that was the one that he always remembered best. Then after a few years, he had some newspaper experience while he was in college and he was able to -- well, in 1917, the owner of the *Monroe Advertiser* was a member of the National Guard and was called into active duty. So he had to get rid of the newspaper. And my father was fortunate enough to get it, or unfortunate enough to get it as the case may be. But then that was in 1917, and they lived there the rest of their lives.

SHORT: So you went to school there in Forsyth?

CLARKE: Yes.

SHORT: Grade school and high school?

CLARKE: From the beginning to the end. My grammar school time was not a happy time for me. I can tell you a couple of little stories about it. For one thing, I just didn't like the idea of going to school. I kind of liked the idea of being over at the Blue Hole, somewhere like that, you know. So my mother would carry me over there; it was just a couple, three blocks from where we lived. And she would leave, and I would beat her home. They had a tough time with making me stay there. And what kicked it off was I had been there for several days, and I didn't know that there was a such thing as a restroom there. And I knew it was pretty painful staying there all day long without the use of facilities.

And so finally I just mentioned that to a young fellow who was one of my classmates. He said they've got restrooms down here, and he pointed them out to me. He said you go right down to that door over there. And I went down there, and he had sent me to the girls' room. They were all laughing and making fun of me. And I ran away, and that really upset me.

So when I came out, this little fellow was smaller than me. I started hitting him as hard as I could, and he started to cry and went into the school. And I was sort of proud of myself by then, liked school better than I thought. And then one of my neighbors, a young lady across the street, came over there and said, "Harold" said "I saw Walter going down crying, going through the hall with Ms. Pryor." She was the principal. And she said "I heard Ms. Pryor say she was going to put you on the electric spanking machine." I had never heard of such a thing but it didn't sound

like something I'd want to do or have the experience, so I left again. And it was hard for me to get back to school.

It turned out I had a wonderful first grade teacher who's still living, and we are great friends even to this day. In fact, we live close together. But when I took off that time, she came running over to our house looking for me. And I had gone home and went upstairs to a little room that we called the sleeping porch, and there was a big old – excuse me for my word retrieval problems, but a big trunk up there. And I had gotten in that trunk and closed it to hide. And I don't know what I expected to do somewhere along the line. But I could hear them walking around looking for me, and I thought all sorts of terrible things were going to happen.

So I got out of that and had to go to summer school to make up the first grade. I probably set a record to do that. And as time went on, I had another problem in grade school. I think I had dyslexia; they didn't know what it was at the time. But I had a terrible time learning how to read, and my handwriting was terrible and still is. But at some point along about the time I got into the fifth grade, I began to be able to read, but still slowly. And there may be some benefit in that because you're able to really make it stick when you read it slowly. You just don't get as much done perhaps. I think now about my problems with word retrieval and other things like that, I think that may be a relapse of dyslexia. And I have a terrible time trying to spell things anymore, but that just comes with old age they tell me.

SHORT: So after high school you go to the University of Georgia.

CLARKE: Yes. Well, let me talk a little bit about the high school thing because that was a wonderful time for me. I enjoyed it thoroughly. By that time, I began to see the other side of things. The younger girls that were there, they were awfully pretty by that time; and they still are. I did well in high school. I tried to participate in everything that they had. I played football; I played basketball. I was editor of the newspaper, the high school newspaper, and I was president of the class. And my top thing I guess that I did was got elected state president of the Georgia Beta Club during that time. And so those were good years for me, and I enjoyed them. It's something we still enjoy getting together about with some of those old people that are still around. It was a very small school. I think we only had about 40 students in our graduating class, if that many.

Then I did go on to the University of Georgia. Back then we only had 11 grades in school. That was true with all the small-town schools I guess. And so when I got there, I was still...let's see. I was 16 years old still when I got to Georgia. And I was there for -- well, they had an accelerated program back in those days because of the war; that was in 1944. And so I got through with going to some schools and having that accelerated class. I had finished two years of school by the time I went in the Army, while I was still 17 years old -- no; I was 18 years old. And just as I went in, the war ended. But they didn't turn me loose. And that was one of the more fortunate things that ever happened to me because after going to basic training at Fort Knox, we went to California to go overseas, first from Camp Stoneman in California and then Camp -- I forget the name of it now, in Seattle. We then went on to Tokyo. Well, we first went to a place that they just -- basically for two or three days until they sent us somewhere.

Sent me to Tokyo, along with a bunch of other people. And they went into a place where they were going to interview you and pick something for you to do. Basically we were assigned to the general headquarters. And he asked me what I had done; I told him I had worked around my father's newspaper from the time I could walk, and then I had edited the newspaper in high school and worked a little at the Red and Black at Georgia. And then after a while, he said, "Well, I think I can place you with something that would be good." This was some lieutenant or something, I don't know. And he said "What about going to work at the Stars and Stripes?" And I said "I couldn't have even imagined something I'd rather do than that." He said, "Well, you'll just be a proofreader."

Well, when I got there it was a fascinating thing, really, really fascinating, that we had some really old-time experience and highly competent newspaper folks. The news editor of the St. Louis Post Dispatch, one -- oh, I won't go through all those. But they were people who had worked in big papers all around. But that was early on after the war ended. Well, pretty soon they were gone. And before I knew it, I was up there in the newsroom. And then I got to be news editor, and then I got to be city editor, and finally I got to be managing editor. I was 19 years old by that time. Then there was this daily paper that went out to -- I think we had about, oh, it was close to a half million circulation. It covered all of Japan, all of China that we were involved with. We were still there of course at that time, and Korea and the Philippines. And what they would do is they would send out the daily every day, and they'd send one newspaper for every four GIs who were out there. And that was the system. And I've still got a number of those, oh, several months of the old Stars and Stripes at home.

SHORT: So then you came back to the University?

CLARKE: I came back to the University and went to summer school and went into law school in, let me see. It was in September of 1947. And then during the summer times, I ran a recreational program for youngsters in Forsyth and then came back to law school every year until I graduated. And I graduated in 1950.

SHORT: When did you decide you wanted to be a lawyer?

CLARKE: I have no idea when because it's sort of engrained in me. My grandfather was a lawyer, and most of the folks in his family were lawyers. His name was Hugh Lumpkin, and the Lumpkin family had been filled with lawyers. In fact, there are four members of the Supreme Court who were members of that family. The very first chief justice was Joseph Henry Lumpkin. Then I forget, there are two others whose names I forget now. But then the most recent ones was myself and Charlie Weltner. Charlie was, let's see. His grandmother was a Lumpkin I believe was the way it was. But at any rate, the lawyer thing was just sort of engrained into the family during all those years.

So I got there, and I think I was appointed in, let's see. It was in December of 1979. I went on the court at that time.

SHORT: Right. When did you first get interested in politics?

CLARKE: Well, I guess if you've got a family full of lawyers, you've got a family full of politicians, too. And my father was not a good politician, but he did serve as mayor at one time in Forsyth. At that time, this was in the '20s, the politics there was controlled by the Ku Klux Klan. They actually had a little house where they had their meetings, and it was well known who they were, even though they wore their regalia when they went out. But a group of men got together at a hardware store one day and said, "Look, we've got to stop having the mayor and everybody be members of the Ku Klux Klan." And so he looked around; nobody wanted to run. And finally looked over at my daddy and said, "Well, Jack" said "you're going to have to be it." And he ran and won. And that was the end of the Ku Klux Klan, and I guess that was in 1929 or I don't know. I don't think particularly in Georgia that that worked, but in any instance he ended up being the superintendent of the schools for the county for a short time toward the end of his lifetime. And so we'd all been around politics for some period of time, and my mother had been one of the people in the committee to elect -- oh goodness, the fellow who ran...

SHORT: I bet I can guess.

CLARKE: Who?

SHORT: Jimmy Carmichael.

CLARKE: No, no. This was way before that. This was back, this was a presidency. He was on the state committee for -- he was the Catholic who ran for --

SHORT: Al Smith.

CLARKE: Yes, sir. Al Smith. And that was a very unpopular position to take in Georgia.

SHORT: Yes, sir.

CLARKE: And incidentally, too, they tried to tag my daddy with being a Catholic because Al Smith was Catholic, in spite of the fact that he was a Presbyterian minister. And they did all sorts of stuff, but it ended up, oh, okay. But we were talking about it coming up here. I remember going to see Roosevelt over at Barnesville when he was supposed to flip the switch to get the REA going in that area. He did not flip the switch because they didn't want him holding some heavy electricity, you know. But it was a fascinating time because that was the time that he said Senator George and I do not speak the same language. And then Senator George got up and said I accept the challenge because the President said he was supporting Lawrence Camp. And I think Gene Talmadge would have won had it not been for the President coming down to tell folks how to vote.

SHORT: Right.

CLARKE: But some people also said, well, what the President did not want was Gene Talmadge coming to the Senate, so that's his way of being sure that Senator George got back in. Now, who knows what is right.

SHORT: So you ran for the House of Representatives?

CLARKE: 1960, yes, I did. And I had an opponent. I was fortunate enough...maybe unfortunate enough to have won. And I stayed there ten years. It was an interesting time. It couldn't have been a more interesting time really because the first week or so we were there was the integration of the University of Georgia. And you remember all of that hoo-ah that was going on. And the fact that we then were within a week or so of my first term there, we did away with all of the segregation statutes and just said, okay, we're not going to close down the schools, and we didn't. And that was to the benefit of everybody I think.

SHORT: Back in those days we had what was known as a county unit system.

CLARKE: That's right. And that came in the second term I was there at the legislature.

SHORT: And it was abolished by the courts.

CLARKE: Yeah. Well, I think we did it under duress I guess you'd say, but it was done by the legislature knowing that it wasn't the way we were going to do otherwise.

SHORT: Incidentally, you came in 1960. Isn't that when Speaker Murphy and Zell Miller came to the legislature?

CLARKE: We all three came at the same time. They used to call us the class of 1961; actually we were sworn in in '61. And in fact, I saw Zell about three weeks ago up at Brasstown Valley, and we talked at some length about that. And of course, I first knew Zell then, but Tom and I were in law school together. He was one year ahead of me. He used to say all the time we were classmates, but we were pretty close to being classmates. But I had lots of experiences with him, lots of times we would disagree and lots of times we would agree. But I think he was a great speaker. He held things together about as well as anybody could possibly do. And sometimes I think folks blamed him for his style, when really his style was on purpose to accomplish what he did. And he did so much for Atlanta that folks don't even think about, things like the World Congress Center, and MARTA would not have been there had it not been for Tom Murphy.

SHORT: So what do you remember about your first term in the legislature?

CLARKE: Well, I remember first the integration thing. It was tough, and I think I'm right that

only three members of the House voted against doing away with the old system, which I think was a real fine thing to have happened to the Georgia legislature. Then shortly after that there was a real battle between the Speaker and the governor on who would really control the money situation. And it ended up that Vandiver won it, but then they did a compromise during the interim and came up with something that's in the workbook. But before that, the governor, he'd just bring the bill over there and say here's your money bill. And so everybody would say "aye." And that all changed in, let's see. That would have been, yeah, in '61. But it was a bitter fight. I remember they had all the leaders up there fussing in one way, the Speaker on one side and the governor on the other side. And the Speaker got up and said "I see all these folks up here in the galley and I see all these folks with the governor sitting over here," but he said "I'm the one who appoints the committees and I'm the one who allows you to speak, and so I just want you to remember that before you vote on this bill." And I voted with the governor, but, I think things were not easy for him in the House for a while. Then all that changed by the next governor taking place and a new Speaker came along.

SHORT: Right. You authored several major bills. One that comes to my mind is a bill that was known as Abolish Atlanta, but it really wasn't your intention to abolish Atlanta.

CLARKE: Well, it would not have abolished Atlanta at all. There was I think that Tyson jokingly wrote the headline that called it Abolish Atlanta. But really what it was, it was to say that when any county reached a population of 600,000 persons or more in any of the censuses in

the future, that there would be only one governing authority to handle all the governing matters of that whole county and that the name of the county would be the name of the largest city in that county, which specifically said that it would preserve Atlanta. But really at that time it would only have affected one county because Fulton at that time was the only one with 600,000. But probably by the following time, DeKalb County would have gone into it as well. But it came very close. The first time was fairly late in the term of, oh, I forget exactly what year it was. But we just introduced a bill. And it became clear that there had to be a constitutional amendment. So the next year we introduced the constitutional amendment and went forth from there. We lost, but close.

SHORT: After several court decisions, the state was required to reapportion its legislative bodies. If I remember correctly, you had the Clarke Plan.

CLARKE: Yeah. At that time we didn't recognize that we could not also keep the Senate on just a, you know, let everybody have one so to speak. And I don't remember all the details of that now because it didn't get very far. But I think we were talking about a hundred members of the Senate and that they would be pretty much like they had been, that every county would have at least one senator...maybe not. Let me go back.

It would be 159 senators because every county would have a senator, but then the others would be apportioned by population. But then the courts later said that you've got to do both of them. And my idea was if they can do that in the United States congress, why can't they do that with

the senate in Georgia? Well, the thing is that for the states it was unconstitutional, but the constitution can't be unconstitutional, and the provisions in the congress is part of the constitution, of course.

SHORT: I'm sure you remember the election of '62.

CLARKE: Oh, yes.

SHORT: Sanders versus Griffin.

CLARKE: Well, I was very active in that one. In fact, I remember we came, I guess Carl would remember this. Of course, I practiced law with Carl for 12 years after that, many years after that up until I retired three years ago. But during that campaign, I got a call from Bob Reynolds.

You remember Bob?

And he was sort of handling this stuff in the office. And he was about my age. He was young, and he said they were going to have a TV thing that they wanted to get some people to come in and tell what was happening in their county and so forth. And he had about four or five people. And so I said, "yeah, I'd be glad to do that." And came up here, and it was going to be done live. And it was late in the afternoon or early in the evening, I forget which. It was Channel 2. And we got there, and Carl wasn't there. And he was up in Rome or somewhere, but on his way back down there. So he came running in at the last minute. He said, "Now, what's this all about?"

They said, "Well, you're just going to ask these fellows questions about what's happening in their area." And he said, "Well, we can do that."

And so Carl went around to each of us, and we said whatever we were going to say. And then he got through, and he said, "Well, I really enjoyed seeing all of my friends here, and I hope you keep working hard for us" and so forth, like he was going to finish it up. It had been a half hour. Then somebody held up a board there with chalk on it saying another half hour. And so Carl didn't know he was going to have to do that; we didn't either. But he never missed a beat. He moved right along and said "I haven't had this much fun...it's entertaining...let's start back over and talk about some other questions." And he handled it all just beautifully, without anybody knowing that it was all absolutely just left up to him to do what needed to be done. And it turned out of course that everybody did their share all right, and the governor won and we were very happy about that.

SHORT: Historians are saying that that election turned Georgia in a new direction. Do you think that's true?

CLARKE: I think that is true. I think a little bit of the groundwork had been done during the Ellis Arnall period, but it didn't last. It just fizzled out. But I think Carl really started so many things. Even after he got out is when they started looking around about Major League Baseball and getting a stadium. And Mills Lane and Carl got together, and somebody said they built a stadium on land they didn't own for a team they didn't have, something like that. But they built

it with money they didn't have...money they didn't have and a team they didn't have.

SHORT: He was very active in getting sports. He also was active in getting the Atlanta Hawks here.

CLARKE: Yes. He was one of owners at one time.

SHORT: Right. You were in the legislature in 1966 when you had the privilege of electing the governor.

CLARKE: Yes.

SHORT: Tell us about that. That must have been an exciting time.

CLARKE: It was, but I think most of us sort of felt that we ought to vote the way our districts voted. And that's what I did. Now, you remember, for instance, George Busbee was, at that time I think he was the chairman of the Democratic caucus. And so that morning before all this started, he got up and said, well, I want to resign as chairman of the caucus. And everybody said why. And he said, well, my district has voted for Callaway. And he said I feel obligated to vote for Callaway, and he did. Well, my district had overwhelmingly voted for Maddox, and so that's the way I voted. And I think that was the way most of them did things, and it was probably the

appropriate way to do it.

SHORT: Do you remember the Julian Bond case?

CLARKE: Yes, I do.

SHORT: You were there?

CLARKE: Yes, I was there at that time. And that had of course to do with the seating of Julian Bond, and some people say he was the first African-American to come to the House. That wasn't true. There was already several of them before he got there. It had to do with the business of burning of the flag -- not the flag, but the --

SHORT: Draft cards?

CLARKE: Draft cards, yes. And I don't know whether he ever burned his or not, but he said something like he would if it came up. And at that time, that was sort of like the situation we've got now. In fact, there are so many similarities between Vietnam and Iraq.

SHORT: Why did you decide to leave the legislature?

CLARKE: Got tired of it. My children were getting older, and I was needing to be doing some more law practice. So I think a combination of all three of those. The old friends that I had were sort of gone, and it just wasn't like it was.

SHORT: Did you practice law in Forsyth or did you remain in Atlanta?

CLARKE: Well, I practiced law in Forsyth until I went on to court. And I went on to court in '79, right at the end of '79.

SHORT: What were some of the most noteworthy cases you handled on the Georgia Supreme Court?

CLARKE: Well, I'm going to mention two that nobody ever pays any attention to anymore. One of them involved I think it was the grand sum of \$200 or something like that. There was a lawsuit in Twiggs County, I think it was Twiggs County. The clerk of court was authorized, she started hiring and needed some extra help during court week. And so they'd hire a couple of new people and extra people because that clerk would have to be up in the courtroom. And the Board of County Commissioners would not pay the \$200, but the constitution said that they're supposed to keep the thing going, and they could not keep it going without having that kind of money. People are not going to just volunteer.

So at any rate, I wrote the little opinion that said that this was a separation of powers, the judicial

power and the legislative power, and that was a judicial sense on the local level and it was also the county commissioners were the same as the governor when it comes to something like that. And so at any rate, that was one that I think we went through in a bigger reach in saying that there were certain things that the judicial branch had the right to do and that the governor's part of the government did not have the right to do it. And it was a separation of powers issue really. And then there was another one that, you know, we hear so much about the time it takes to get things done in the legislature, or the courts particularly. And back in that era, we were pretty slow; but we were not as slow as most were because the Supreme Court of Georgia has a two-term rule. You have three terms a year, and if the case comes to you in that term, then it's got to go out the next term later. So you've got to move that within a pretty quick time. But this was one that went long further than that. And it was just a comment in the law books. But this proves what can be done.

There was a case in Griffin, Georgia. Well, actually, it was in Butts County. But a woman was pregnant, and she was about to give birth to the child, but they said that -- it was what they called...it's on the tip of my tongue. But it was a thing that would have meant that she had to have a cesarean section, had to have it or she would die and that the child would die. And her husband, and I don't know whether she felt this strongly about it or not. The husband was insisting that she not have the cesarean section. And so the hospital in Griffin said, they were going to do it anyway because it's just something that needs to be done. So the case was between the hospital and the woman or her husband, as the case might have been. And all this happened just instantly because this was something that couldn't wait; it had to happen. And so

one morning they came to court, and the court said that they could have the cesarean. And then they came with an appeal all without any papers or anything because within the next day or so it was going to be over. And so we got a call from the clerk of the court in Jackson, I can't think of his name. But anyway, he called us and told us what had happened, and we said, well, you call the court reporter to transcribe whatever she can that took place, and then you bring all those folks up to the Supreme Court because we're going to deal with this thing.

And we did, and we worked on it. I heard what they had to say in the afternoon. We sat down then that night in the courtroom -- not the courtroom, but the place where they have the conferences. And we argued it out and then decided unanimously that they could do the cesarean. And it just shows what can be done, if you've got to do it. And I think that was right at the very beginning of my time on the court. And to the best of my recollection, there was nothing said much about that because it didn't come to us in the usual way. But I think Harold Hill wrote a piece, and it went into the law books, and he had praise for the system and that it did work when you had to do it.

Then along about that time there were an awful lot of changes. I mean, the court changed enormously from 1980 to, say, 1985. Part of it was there were a lot of changes on the court. When I got there, I was the next-youngest person there; Harold Hill was younger than me. But most of the others were not there. And I know when I left the court, it occurred to me that I was the only one who was a World War II veteran left, and there's never been another one; and there never will be another one.

But at any rate, we did a lot of things that were different. For instance, the way things used to

work, they still do as far as I know cases come to the judges just on a random basis. If I got one, the next one's going to the next judge, and so forth. It's not like the United States Supreme Court where there the chief justice assigns them. That's not true in the Georgia Supreme Court. And what would happen then is I got a case, and what I would do is I would write an opinion. I'd bring that opinion to the court. And if they voted for it, then we would try it. If they didn't, then they'd send it back to me to rewrite it the other way and then I could descent. Well, that didn't make any sense. And that was one of the main changes made.

They made another change. We actually did not actually argue the case among the members of the court until we had the opinion written. Well, that ought not to happen either. So what we did, we'd have a meeting of the court. We'd have to hear an argument or have to read in briefs and say, well, now what do you think about this case? And then that would give some guidance to the members of the court as to what ought to be done.

And then we went through all the business of getting computers and things of that nature, just a different animal from the way it was.

SHORT: If you will, Mr. Chief Justice, tell us a little bit of how the Supreme Court of Georgia operates.

CLARKE: Well, of course the court is in the judicial building, and I've always thought it ought to be truly a judicial building and not have the Attorney General in there because that's sort of a conflict of interest. But that's another question.

It's been there since, oh, the early '50s. When I was sworn in as a member of the Bar of the Supreme Court, the Supreme Court offices and the courtroom itself were in the Capitol. The room that's become known as the appropriations room, it was the old courtroom. And actually I was sworn in right there back in 1950. So in about '52 or three, this building, the present building, was built. The Court of Appeals is on the fourth floor. The Supreme Court is on the fifth floor, and courtrooms are on the sixth floor.

The way it works is, there's a courtroom for the Supreme Court and a courtroom for the Court of Appeals there on the sixth floor. And the cases flow to the fifth floor for the Supreme Court.

They go to the clerk's office. And they're put on what we call a wheel. Then they go not alphabetically but just in the way they come to you through the court itself with one exception: death penalty cases. There's a separate wheel for death penalty cases. And I think there may be one or two other things that are done specifically different, and all of this may have been changed somewhat in the years, well, let's see, I left there in '94. So it's been nearly 15 years. So, things undoubtedly have changed in the years since I've been there.

But what then happens is that each judge would get the briefs that come from each, every judge gets those; they come from the lawyers. But only one judge gets the full transcript, even though any other judge, if that judge wants to look at the transcript, you go by and just say let me borrow that transcript or if it's voluminous you'd sit there in the other judge's office and do it. Probably the longest one that I remember was the children's murder cases. Those were just stacks so high of testimony and so on, and reading through all that was tough. And that was one of the tough cases that had some real tough, hard to draw opinions. On that case, we ended up with different

judges writing different sections of it. I don't know whether that's generally known or not, but it worked. And I think and hope that we did right, but that's true with every case of course.

Then after they get to the judge, each judge has two law clerks. And those lawyers, some of them are career people who stayed in that position forever; some of them are otherwise. I tried to kind of rotate that, have one career person. When I first got there, I had two very fine, fine clerks. But even though you intend to keep them forever, they go to higher places. One of them ended up being a law professor, and the other one ended up being the chair of the worker's comp board. And so naturally they're going to move sometimes. But the ideal thing would be to have one a career person and one who's a new lawyer.

The way I did mine, I'd try to read through the briefs and go through somewhat at the beginning of the transcript, which is much more voluminous than the briefs. And then I would come up with, write a little memo of what I thought the result ought to be in the case, and then maybe write up a few things about what I would like for the law clerk to look for. And then I would get back with the law clerk, and we'd end up with -- some of the stuff would be almost entirely written by the law clerk. If it's what he or she came up with, I don't ever remember doing one that I left word for word on what they wrote, but I do remember that a lot of what goes in it came from them. And after that, then you write up one of these things, an opinion, and you circulate it to all the members of the court.

And then the court meets almost weekly, and sometimes more. And we would sit there and we'd go around the circle. The chief would sit here, and the newest judge would sit right there and go on around like so. And they would have the opportunity then to tell what their position was on

this opinion, which you've already read, everybody has, you hope they have; I think they have.

And then you would have a discussion. Some of them would just be real quick because it would be obvious that that was correct, but many times everybody would say, "well, the result is good but I don't like this part." And so you make the change right then or you might send it back to the judge to redo some portion of it. And that's very typical of the circumstances. Sometimes it's quick; sometimes it takes maybe three or four visits to the bank building.

So then finally you would have the vote and you would be ready to send it to the business of getting it printed up and carried out. So that's generally what, in a nutshell... what happens. But of course, there's lots of agony and whatnot before you ever get even to bank. Well, let me go back and say this: One of the things I worried about when I went on the court was that I'd been living the life of an advocate for a long, long time. And somehow I was going into some situation where you're not an advocate but you're just trying to do what's right and do what's legal. And I thought that I'm not going to be able to argue like I used to.

The first time I went into one of these meetings en banc, as some folks would say, they were a whole bunch of fairly controversial cases there. And when all these judges started arguing about them, I said I'm right back in the briar patch. I found a place where you still can argue and disagree, and certainly a lot of that really happens.

SHORT: At one time you served on the Georgia death penalty assessment team. Has the ever-growing alternative of life without parole replaced the death penalty in Georgia?

CLARKE: I don't know. I felt some years ago that the death penalty was on the way out, but it seems in more recent times people have become, and I'm not talking about individuals. The people as a group seem to be more pro death penalty than they used to be. When I was practicing law, I think there were only two death penalties handed down in our circuit in all those years. And one of them became very, very controversial and finally there was no death penalty handed down. But now it's not all that unusual anymore. And so I don't know what the result is going to be, and it's going to be up to the people. Now, we had one judge who is dead now who never voted for a death penalty case. And I have really worried about it myself. But I figured that as long as it was the law, then I didn't have any choice but to -- if it met what the law has to say, then if I was going to be there then I had to go with what the law said. But I don't know whether the federal courts will do something with it. I don't know whether the states has done it themselves. And of course, there's been these things about going in and taking a re-look at some of them later on.

SHORT: Well, DNA...

CLARKE: Yeah, that's changed a lot.

SHORT: Changed a lot, hasn't it?

CLARKE: Uh-huh, it has.

SHORT: You also chaired the joint commission on alternative dispute resolution; that's arbitration...

CLARKE: Arbitration and mediation, more mediation than arbitration.

SHORT: Yeah. How are the courts involved in that process?

CLARKE: Well, there's two ways. Most of these things come up by agreements with the parties. Now, when I came to Troutman Sanders, they were right off the bat putting me as chief of the ADR section -- not section. We called it -- well, anyway, the little group that did this work. And I did an awful lot of that for 12 years there. And most of them that I got were where the lawyers would get in touch with you and say, look, are you in a position to mediate this or arbitrate? And they would have agreed already in advance what alternatives there were to people they might have to do that. And it has worked well. You don't hear much about it. There was one that I did twice. It was the labor union and MARTA when they were redoing their contracts. And both times we were able to work it out before I had to decide it myself. Under that statute, it's not just pure mediation; you try to bring them together if you can. If you can't, then you've got to write the thing. I've just always told them "You don't want somebody as mean as me and as dumb as I am deciding this." I said "Y'all are in a better position to do it than I am." And that kind of approach worked with a lot of those cases.

SHORT: In cases where you render an opinion, does that – is that the final answer?

CLARKE: You mean in mediation or?

SHORT: Mediation, yeah.

CLARKE: No. Mediation would bring the people together, and sometimes it works and sometimes it doesn't. A lot of times, perhaps more than likely, they won't agree at that time. But the closer they get to trial, the more apt it is they will come back and say, "Yeah, we will." But mediation itself doesn't have any tools that could require folks to do anything. Arbitration can or cannot. It can be where it gets final, and that depends on what kind of agreement they've got.

SHORT: Let's talk for a minute about our friend Charles Weltner. You served with Charles. You were very close to Charles. In fact, you did one of the most wonderful things that I've even known, and that is you resigned as chief justice so Charles could serve as chief justice before his death, which had always been a life-long ambition of his.

CLARKE: Well, you know, the very first chief justice of Georgia was his great-great-great-grandfather, I think those are the number of greats involved. And I think that was part of his

feelings about it. But Charlie was one of a kind. My first appointment with him was when he was courting his first wife, and I was courting my only wife at the same institution. And our paths would cross as we'd come to and from the dormitory there at Wesleyan. And I just have always been very warm and friendly to Charlie, when he ran for congress and all of those things. In fact, that night that Carl Sanders came in to do his thing, Charlie was going to run for the congress at the same time. But he had more interest in more things than almost anybody I've ever seen. He was really, really, what do you call it? Oh, gosh, the word, I'm grabbing it and I can't say it. It's Renaissance man. He was truly a renaissance man. He wrote beautifully. He had all sorts of degrees; I don't know how many. And he had worlds of old ancient and language degrees in things like Sanskrit, Ethiopic, and just on and on. And yet we would argue about old, old prize fighters. And the same way with baseball and things of that nature, which are just so far removed from the other things of the purely literary. And just about every morning we'd go -- his office was right across the hallway from mine. And I'd go to his office or he'd come to mine, and we'd have some coffee together. But, as I said, he was a dear friend and a great, great person. He did some -- and he got himself in Profiles for...

SHORT: Courage.

CLARKE: Courage, yeah.

SHORT: That was a very courageous thing he did.

CLARKE: I don't think it was very wise, but wisdom and courage are different things.

SHORT: That's true. Well, we might tell folks what happened.

CLARKE: Yeah. He was running for reelection to the congress, and I believe Fletcher, what was his last name?

SHORT: Fletcher Thompson.

CLARKE: Fletcher Thompson. I started to say somebody else who was in the music business. At that time, the democratic people who were running on the democratic ticket had to sign an oath that they would support all the democrats. And he said that he could not do that because he could not in good faith sign that oath with Lester Maddox on the ballot. And so he just withdrew. And it took some guts to give up the congress seat...because I think he would have won handedly.

SHORT: Well, Judge or Mr. Justice?

CLARKE: Harold.

SHORT: Harold, we've enjoyed visiting with you, and we appreciate your talking with us. We wish you the best of luck. And I want to thank you on behalf of Young Harris College and the Richard Russell Library and the University of Georgia and myself for being our guest.

CLARKE: Well, I want to tell you I enjoyed it so much, and I appreciate people willing to talk to old folks talking about old times. My wife gets tired of hearing all that, so I'm glad to find somebody who will listen to me.

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**University of Georgia
Harold Clarke**

Page PAGE 29

**3525 Piedmont Road, N.E.
Eight Piedmont Center, Suite 310
Atlanta, Georgia 30305
800-872-6079
FAX 404-873-0415
www.wordzx.com**