

2012.3.4

"I Remember" 4

Oscar Mitchell

OSCAR MITCHELL: [Recording begins mid-sentence, apparently responding to a question about the judicial system] . . . it's a system that can be improved on, and I think the qualifications of the jury is one way of doing it.

INTERVIEWER: Well, I think it's a tribute to the regard that parties and lawyers have for you and the other judges we've had in your court that they waive jury trial; and in many cases they prefer it, on the theory that the judge can understand the legal issues involved and the evidentiary issues involved, particularly if it's intricate, better than six people in the jury box.

MITCHELL: That is true if the judge can also understand human nature.

INTERVIEWER: But isn't it true that you also have tried many more cases without a jury, where a jury could have been had, than you've tried jury cases?

MITCHELL: I'd say that better than eighty percent of the cases I've tried was tried without a jury.

INTERVIEWER: All right, in those jury cases that you have, you've sat there and listened to the same evidence. Would you be willing to agree--the result would you say--what percentage of the time you think a jury would do about what you thought they might do or should have done?

MITCHELL: Grading it on a scale of one to ten, I'd say that the jury system would rate a nine.

INTERVIEWER: Most of the time they get it right?

MITCHELL: I'd say a jury system would rate approximately a point nine, rating it on a scale of one to ten. I have seen instances where I thought that the jury didn't fully understand the legal ramifications of the case and the evidence as applied to it; and, of course, in our judicial system, when the judge sees that, then he has methods by which it can be corrected. But going back to the statement I made a few minutes ago about preparing our

jurors for that, I think it would eliminate some of those cases where the judge would have to correct the jury verdict.

INTERVIEWER: Well, since the jury—the number of people called for jury service—is infinitesimal compared with the general population, doesn't it appear to you that if that training were instituted, it would have to start after they were selected as a juror—that is—

MITCHELL: Well, Jim, as you well know, our jury system used to be selected from the tax digest. In other words, you had to be a property owner to be on the jury—or in the jury—or to be able to have your name placed in the jury box. Now, why, then, it is as if they have extended it, of which I have no objections. They have extended it to the registration—the voters' list. They obtain juries now from the voters' list. Of course, they can't put all the voters in the box. The Jury Commission tries to do the best job they can, but it's impossible for six people sitting as a jury commission to analyze the capability of every juror that's in the box. That's humanly impossible. For that reason I think that once a person is selected as a juror, maybe some—at least, orientation to what the courthouse looks like and what goes on in the courthouse, I think they should have some training along that line.

INTERVIEWER: Would you encourage the Bar to really get into this and see what might be done?

MITCHELL: I think that it would be a good field for the Bar to look into.

INTERVIEWER: Now, I want to come down to one of the most interesting events in your career as a judge. Theodore K. White, in his book, *The Making of a President*, said that your actions in revoking the probation of Martin Luther King, Jr., and setting up an opportunity for John F. Kennedy to call Martin Luther King's wife, Coretta, may have been a decisive occurrence in that presidential contest, with the result that Kennedy became President of the United States. Anything that you would like to say about your recollection of the--not only of the event, the time, and his release from the penitentiary would be of interest to anybody who's interested in the history of that time.

MITCHELL: Yes, I've read articles about it, also been interviewed by CBS—

INTERVIEWER: Did you appear on *Sixty Minutes*, by the way? I missed that, if you did.

MITCHELL: Yes, I did. It was on Mike Wallace's profiles last Christmas night—it was Christmas night of 1981.

INTERVIEWER: We could get a clip of that from CBS, probably, couldn't we?

MITCHELL: Probably, yes. I have a tape recording of the entire—

INTERVIEWER: A copy of the tape?

MITCHELL: I have a tape recording—

INTERVIEWER: Of what you—

MITCHELL: Of what was said on CBS. Of course, I was being precautionous. I didn't want them to take me out of context on anything I said, so I told Mike when he came to my office and filmed me for that program—

INTERVIEWER: Did he do that next door here at the courthouse? Or was that after you left the bench?

MITCHELL: Actually it was did in the library of our law office—it was after I left the—He first wanted to do it in the courthouse, and Judge Smith said that courthouse—that the room would be available. But then when they got down there and saw the setup we had, then he decided not to go to the courtroom and do it in the office. So he did do it in the office, and—

INTERVIEWER: Well, just give us your own recollections. This is for the old folks here in DeKalb County, and, of course, I think it's a matter of great historical interest. And as I said, I don't have any questions to propound to you—just any comments or recollections about it, we would be interested in having.

MITCHELL: Before we started taping this, you said something about Professor Clayton, who is now a lawyer, a black lawyer—

INTERVIEWER: Ninety-two years old, vigorous—

MITCHELL: --and he was at that time the head of the black schools in DeKalb County. And I believe he was—no, he might've been retired at that time. And he was Martin Luther King's lawyer. And he appeared before me and was sentenced and gave a probated sentence, and then he came back before me for violating the conditions of the probation. And I did revoke the probationary portion of the sentence, and that was just a few days before the election—1960, I believe it was, I believe it was 1960. I understand that the candidate for President, who was John F. Kennedy, at that time did call Mrs. King; and then later—maybe the same day or the next day—his brother, Robert F Kennedy, did make a call to me. And he was very nice to me, he was not belligerent, he appeared not to be offended at me in any way, he was primarily interested in his brother being elected, and asked me was the—under the laws of this state and the constitution of this state—could Dr. King be permitted to make bond. And I told him at the time that my research—that I had a hearing set for that morning—he called me at 8:00 in the morning—and I told him I had a hearing set, a bond hearing set, at 10:00 that morning. And from my understanding of the law, that would be entitled to make a bond; and at the hearing, why, he was granted bond. And—

INTERVIEWER: But it was in that interval that [John F.] Kennedy called Mrs. King, between the time, that is, when probation was revoked and when you made—authorized—bond.

MITCHELL: Yes, both calls were made during that interval. And he—

INTERVIEWER: Well, you had other dealings with Robert Kennedy before his death, didn't you?

MITCHELL: Yes, I had occasion to visit him in his office when he was head of the Department of Justice— [audio failure; inaudible] ten or eleven children, and when I asked him about his children, why, he started down the list and was giving me the names, ages, date of birth, and so forth. I was very impressed with him. I thought he was a very fine person.

INTERVIEWER: Well, we are very pleased with this opportunity to tape you, Judge, and we've asked several other people we've taped to think about the fact that this may be viewed beyond the life of all of us here in the room, but as you look at young people coming up in America today, any comments you would make addressed

to them about what you think is important to consider in living in the kind of world that they're living in that you would stress to them after all you've seen on the bench and through your church and community and politics and everything—is there any advice that you would give to young people?

MITCHELL: Yes--of course, people growing up in this area now—young people--has a decided disadvantage from what they did when I grew up. When I say "disadvantage," population-wise, this is a much more dense area. Young people don't have the opportunity to have the chores to do when possibly you and I grew up. We had things we had to do when we got out of school. We had to immediately go home and take up our chores at home. The problem is we now don't have those chores for children; they get out of school, and the economy is such that probably both parents are working, and they don't have the parental control that we had the opportunity of having. And taking all of those into consideration, I don't think our children today are growing up to be any worse than they were when I grew up. They have much more opportunity to get into things than we did; but taking the population-wise, of course, back in those days we had a different method for applying the criminal justice system. The juvenile courts were not too crowded then, because most of our problems were solved by our parents—they usually took the thing in hand and took care of the discipline of the children, rather than having to go to the juvenile courts or later on through our justice system. But the only thing that I see, if we could devise some method for activity; because as long as you can keep a child's mind active and oriented over into the better things, you're going to keep him out of the things in violation of the law, because a child's mind's got to be active, and if you don't furnish him something good to activate that mind on, then the bad might prevail. So I think the biggest thing that we owe to our children coming on now is to provide them with more activity so that they can have an opportunity to grow up in an area and under conditions that would be more favorable to them.

INTERVIEWER: That leads to one other question I'm going to ask you before we close this, and that is, there is a popular belief that we just lock up everybody and have it solve our problems. What are the alternatives to incarceration, as a practical matter?

MITCHELL: Well, Jim, before the law authorized it, I had what they call now "social contributions." Instead of locking one up, say, for two or three months in jail or something, why then, I devised a method by which

we could—I could sentence them and compel them to report to the jail over weekends. At that time that would be the only place we had that we could send them to show that they could be absolutely controlled. And then I would require them, if they were in school, require them to take their books with them, and require the jail to put them in a place where they could not be disrupted by other inmates in there. And they would have time to meditate and study. And I've took students that was F students and made A students out of them under that system. Now I understand that possibly a new avenue has been opened up to where they can have social work—go to the hospital or some other place and have some work done. But at that time, about the only sources that I had open to me was picking up trash on streets; picking up around the compound at the jail and the Public Works Department and assigning them to those areas; carwash areas in there, where they would go down and have to wash automobiles and wash the police cars and the other cars that the county were having to pay to have washed; and let them pay their debt to society in that manner, rather than permanent or longtime incarceration. And I found it to be very, very successful and [had] very few repeaters, because you still had the home life combined with what you would call punishment also.

INTERVIEWER: They could make a choice for whether they wanted to live locked up or live free.

MITCHELL: That's right. They had a choice. If you will give a person a choice, whether it's being locked up or be free, most of them will take the being free and will live up to the plans and specifications that you put upon that opportunity.

INTERVIEWER: I want to thank you. You've been very generous with your time, and I can tell we're going to want to come back to you to interview you some more. But it's been a good visit we've had, and I want to thank Howard Worley for donating his services in taping this for us, and thank you very much, Judge Mitchell.

MITCHELL: Jim, it's been a pleasure to be here, and I hope that this has contributed to something, and I want to thank you and Howard both for the opportunity of being here. If my services can be had in the future, well, I'm always willing to contribute whatever little I can. Thank you.

[End of recording]

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