Nancy Mayer-Whittington Oral History
Interview Session IX
April 12, 2012

Ms. Woodbury: Good morning, today is April 12, 2012 and this is the continued interview of Nancy Mayer-Whittington. Today, we're going to talk about some of the big cases that were heard in the United States District Court for the District of Columbia during the time that you worked there, including the time when you worked in the Jury Office. Nancy, what is your first recollection of being involved in a big case where there was a lot of public attention?

Ms. Mayer-Whittington: The first big case that I was involved in was when I was still in the Jury Office. I was the Supervisor in the Jury Office. It was the case involving John Hinckley, who was being tried on the attempted assassination of President Reagan, as well as the shooting of his press officer and a local D.C. police officer, who was participating in his security detail that day. We had to get a jury pool for the case. The case generated a lot of attention primarily because it involved the President. There were concerns that we would have a difficult time finding impartial jurors because the shooting had been recorded by members of the press who were covering the President's speech at a local hotel and shown over and over again on the evening news shows. There wasn't any doubt as to whether or not Hinckley was the shooter. The jury would have to decide if Hinckley was insane at the time of the shooting. The case was randomly assigned to Judge Barrington Parker, who was very much a no nonsense judge and who, although very considerate of jurors' needs, was not very sympathetic to jurors who either made a request to be excused or just felt it was inconvenient. Initially, we were told when we trying to put together a jury pool

that we would probably need about 500 jurors to be available for selection and a huge amount of resources would have to be concentrated in a short period of time in order to qualify that many jurors. And with big cases, especially criminal cases, there tend to be delays at the last minute for a variety of reasons, most of which are very legitimate.

Ms. Woodbury: Nancy, when you talk about last minute delays, do you mean delays in the trial going forward?

Ms. Mayer-Whittington: Yes. One of the challenges when you're trying to put together a jury pool for a big case is figuring out when to summon the jurors and how long their duration of service will be. When you summon the jurors, you have to give them at least six to eight weeks' notice before they will be required to report. Then you have to allow 2 to 3 weeks to process the requests for excuse. Also you have to allow the systems' person who manages the qualified jury wheel a week to ten days to produce the jury summons. Ultimately this means that you need to know the number of jurors you plan to summon about three months in advance of the start of the trial. Then, as you get closer to the trial there are a variety of events that can delay the start of the trial from disputes over evidence to be admitted to conflicts in the scheduling of status hearings. We've even had changes in attorneys at the last minute because of an inability to work with the defendant. That tends to happen in cases being defended by our public defenders or CJA (Criminal Justice Act) attorneys because there are issues that arise that are different from when you have paid counsel. So, there are a variety of things that can delay the start of the trial so you have this

moving target of when the trial might actually begin. And then there are last minute plea negotiations that cause a delay in the start of the trial. So those are just some of the problems that can delay criminal trials.

Ms. Woodbury: Nancy, when you pick a jury for the trial of a criminal case, do you tell them: "We believe this trial will start June 1. Are you available June 1?" as opposed to asking them if they can show up the next day for the start of the trial.

Ms. Mayer-Whittington: Well, we would summon them in probably April or late March for a June 1 trial date start. Actually it would be a June 1 jury selection date. And when you have a trial that will last more than a few weeks and you need a larger than normal panel, we have a special summons and questionnaire that we mail to prospective jurors because we need to pre-screen them due to the long-term nature of the trial. Typically, our cases are going to begin and end in a two week time frame so that is why the typical term of service for jury duty is two weeks. But when we have a case that is going to last much longer than two weeks, we have what we call a hardship questionnaire that would be mailed to prospective jurors basically informing them that this trial is expected to last a month or this trial is expected to last six weeks. We would ask potential jurors if they have any compelling reason that they cannot serve. We would give them categories that they could check. Travel plans, child care or elderly care problems and medical issues were generally the three things that we would ask about.

Ms. Woodbury: So Nancy, for the Hinckley trial, it was anticipated that you would need

a big pool?

Ms. Mayer-Whittington: Yes. It was also anticipated that the trial would last more than two weeks.

Ms. Woodbury: Yes.

Ms. Mayer-Whittington: And because of the large pool that we needed, we would summon a separate group of potential jurors to work with rather than use the regular jury pool to draw from. That doubles or triples the workload of the office during that time frame because you're dealing with this large jury pool and the regular jury pool at the same time. The pool of jurors for large cases often involves more scrutiny and it can be a little more sensitive. It is more high profile and you are trying to make sure that nothing goes wrong especially with processing these jurors' request for excuse. The Jury Office has certain authority to excuse jurors during the regular service, but in the case of a high profile trial, we would send all the excuses to the judge to whom the case was assigned. That judge would review the excuse requests and make the determination as to whether a juror should be excused. And then, the judge would make the excuses available for the attorneys to review so that they would not have any challenges at the last minute as to why certain jurors were excused. That seemed to work pretty well. We had procedures that we would follow so that we had enough jurors for the start of jury selection. Then sometimes on the eve of the trial, we would get a call from the judge's chambers saying "We don't need the jurors to come in tomorrow after all. We need them to be on hold for a day or two because they're discussing a plea." So we would record a message to be put on the

automated call-in system for the jurors letting them know not to report the following day and to call the message system that next day after 5:00 pm for further instructions. In the case of the Hinckley trial, the jury selection started right on schedule and the trial went forward as planned. It was an awful lot of paper work and constant communications with the judge. That was the nature of that case. And then, over the years, there were other large cases. I mostly got involved in criminal cases when I was in the Jury Office because most criminal cases were tried by a jury not a judge. Jury panels for criminal cases are larger than for civil cases so it took extra effort to get the jurors in and get them oriented; get them through the selection process and then make sure they reported each day as directed so the trial would go smoothly. And then, when I was Chief Deputy, we had some of the larger civil trials that were not jury trials, like the AT&T case and the Microsoft antitrust case. There were no juries involved in any of those cases, but there were certainly large numbers of the public and press that were interested in the hearings that were being held so that our focus was not on jurors but more on the press and spectators and attorneys being accommodated.

Ms. Woodbury: How was the press accommodated? Did that change over the time that you worked at the court in cases where members of the press wanted to be able to sit in and wanted to be able to talk to attorneys or whoever concerning the case?

Ms. Mayer-Whittington: Yes, it did change over the years. From the very beginning, for cases like the Hinckley case, they issued press passes to members of the press and

you had to present press credentials in order to be admitted. You had to do this in advance and there was a limit to the number of the members of the press that we could accommodate in the courtroom. Usually we would have two rows set aside for press and that would include a sketch artist because cameras are not allowed in the courtroom. We would ask the press to select one representative who we would meet with on a regular basis before and during the trial. This would usually be someone from AP or *The Washington Post* or one of the networks who would be a liaison between the court and the press so that the court would not be inundated with requests or getting sixteen different questions about the same issue. Everything would be funneled through the liaison who would meet with the Administrative Assistant to the Chief Judge, who handled a lot of the publicity for most of our trials. We would work very closely with that AA and I would be present in meetings as well so that we all were on the same page.

Ms. Woodbury: This was in your role as Chief Deputy?

Ms. Mayer-Whittington: Yes, as the Chief Deputy. Again, because our courtrooms would only seat about 100 people and we needed to accommodate the families of the defendants, the staff for both the defense counsel and the U.S. Attorney's Office, the press and members of the public who were interested in watching the trial, we had to put limits on the press and the spectators. Our judges felt very strongly that if members of the public wanted to attend the trial that they had a right to do so and they shouldn't be denied that right because we had too many requests for press passes. But it was interesting to see over the years the

changes in the press once we became more electronic, more technologically savvy and the change in our role in distributing information once it was available electronically. As it became easier to transmit timely reports overseas from the courthouse, we got more and more requests for press passes from press correspondents from overseas. They also visited the courthouse to get information and they were not acquainted with our local rules. Because they had no local ties and no real need to develop working relationships with our staff, some of them took to trying to get information about the trial any way they could. They started paying people to go into the Clerk's Office to ask questions, hoping that some Clerk's Office employee would inadvertently disclose something…

Ms. Woodbury: Spill the beans?

Ms. Mayer-Whittington: Yes. The first time this happened, it was a totally new experience for us because we always had a good relationship with the press because they needed us and we wanted to help them do their job. Before our cases were filed electronically, every time a case was filed in the courthouse we would make a copy of the complaint and we would put it in a press box so that every day the members of the press who wanted to read about the case could do so by going through the press box. Well, these people that were hired by the foreign press members started taking the copies with them and not leaving them there to be used by everyone. The non-local press members had a commitment to the story, but not to the community.

Ms. Woodbury: They didn't have any long-term ties?

Ms. Mayer-Whittington: Right. So, we had to start changing our strategy of how we worked with members of the press who didn't follow the same rules. And, we had to train our employees on how to deal in a more professional less folksy manner with the press and the public in general. We got someone to come in and talk to our employees about information and sharing of information and what's public and what isn't and how you could accommodate the press and be public service oriented, but not do something that would adversely impact the administration of justice. The training worked out quite well. A second change involved the way we distributed high profile opinions and rulings to the press and public. Our procedures went from managing the crowd that wanted to get copies of the opinions to managing the distribution of the information itself because we now had a website that we could use to electronically post opinions as soon as they were filed. When we published the decision in the Microsoft case, we ended up asking the Administrative Office to host a site and the Department of Justice to host a site because we knew that we would get too many hits on our courthouse site and it would crash.

Ms. Woodbury: Crash.

Ms. Mayer-Whittington: Yes. In the Microsoft case, between the three web sites, I think that we got something like a million hits in the first thirty minutes after that opinion came out. Under our old system, when we had filed a really big opinion and we were ready to distribute it, we would post a notice on the doors of the courthouse saying what time the opinion would be ready for distribution. Members of the press and public and staff from various agencies and

Congressional offices would line up in the main hallway and wait for copies. We were supposed to charge them by the page for the copies but it would have slowed down the process so much and given people in the front of the line a decided advantage in getting the information to their news station or newspapers headquarters. We decided that in the interest of fairness and openness, we would give out the copies for free. This policy we adopted came up later in an audit and we told the auditors that we had to distribute the opinions without getting payment because it would take too long and we were trying to get the information out as quickly as we could. We would have literally a hundred people standing in line for distribution of those big opinions. Like the Gramm-Rudman decision involving the budget. People were lined up down the hall and out the building to get a copy of the opinion. The auditors concluded that it was better to be efficient in the distribution even if it meant forgoing the money we would have collected. Contrast this with the way we were able to give a million people a look at the Microsoft opinion in thirty minutes at no real cost to anyone. It was a major, very positive change.

In the Scooter Libby case, we were able to accommodate additional members of the press in a separate press room where we had audio and video feeds from the courtroom so that they could pretty much see what was going on in court and hear everything, but we didn't have to accommodate them space-wise

Ms. Woodbury: In the courtroom?

Ms. Mayer-Whittington: Yes.

Ms. Woodbury: Nancy, as a regular practice, do you have the ability to provide at least audio coverage outside the courtroom of trials or was that a special accommodation for the Libby trial and maybe some other big cases?

Ms. Mayer-Whittington: The Libby case was the first time where we provided a video plus audio feed. We had had overflow courtrooms where the audio had been piped in for other cases, but the Libby case was the first time we were able to also have video transmission. We had four stationary cameras in the courtroom. One was focused on the witness stand, one on the defense counsel and one on the U.S. attorneys, and one was strictly for evidence presentations. But they were still cameras that didn't pan the courtroom. They didn't do anything like that. But it was such a novel experience for us and it was so successful because the press loved the fact that we put in tables and chairs for them in this additional room so they could write on a flat surface or use their computer without having to hold everything on their laps all the time. We asked them to keep a dignified demeanor in the overflow room for the benefit of everybody else in there, but they were able to get up and go out during certain parts of testimony where they wouldn't have been allowed to do that during the proceeding while they were in the courtroom. So as a result, the press had all the access they wanted, the convenience of being able to come and go, they could drink their coffee…

Ms. Woodbury: And read the paper?

Ms. Mayer-Whittington: Yes. So they were so appreciative of that.

Ms. Woodbury: The best of all possible worlds?

Ms. Mayer-Whittington: Yes. And all I could think of was look how far we've come from one or

two pool reporters, who had to do everything for everybody. And now they could prepare their reports as the trial was proceeding having the advantage of audio and video feed in a less formal atmosphere and file the report as soon as the proceeding was over and not have to cobble a report together from handmade notes. They could not send a live feed from the courtroom or the Annex room because they weren't allowed to broadcast from the court room. And they had to leave and go outside the building if they wanted to go live on the air. But, it was a win-win situation for everyone involved. Gone were the days when at every break in the proceedings you would see all the members of the press scrambling - literally like what you'd see on TV. Everybody running out of the courtroom and going to the few pay telephones in the hallway because they did not have cell phones.

Ms. Woodbury: Right.

Ms. Mayer-Whittington: Trying to get the story and people just literally running out of the building and running to the closest pay phones located around John Marshal Park. Now they were able to quickly record the information and it was done in a way that didn't upset the proceedings.

Ms. Woodbury: Nancy, was the press able to communicate to their home offices via email or was that not something they could do from inside the court?

Ms. Mayer-Whittington: They could do that. Once we put wireless access in the courtrooms, they could use their computers to communicate. The only limitation was in broadcasting.

Ms. Woodbury: But still the home office was aware of what was going and could make

decisions about broadcasting the news?

Ms. Mayer-Whittington: Yes. As long as the broadcast did not originate in the courtroom, you know, with a live reporter. The person located at the courthouse could send information to whomever they were associated with and they, in turn, could go on the air and read what they had been sent.

Ms. Woodbury: And, given the success of that experiment in the Libby case, was it used in any other trials?

Ms. Mayer-Whittington: Yes, it was used in quite a few other high profile cases. It was set to be used in the Rogers Clemens case before the judge declared a mistrial. That was after my retirement. They had a big setback in that case. Bur we had outfitted that room specifically for the trials that attracted a lot of press coverage. Anytime we had situations where we would not be able to accommodate all the interested members of the press in the courtroom we could use the overflow press room.

Ms. Woodbury: I was going to ask how you decided when that room would be used.

Ms. Mayer-Whittington: Before any big case, there's always a meeting with the Judge and their staff and the Clerk's Office. The use of the overflow press room is usually covered in the pre-trial order and also items such as what type of press requests will be accommodated. What's the best way to address their needs? We don't charge the press a fee to use the room because we feel it is in the best interest of "the administration of justice" for us to accommodate as many members of the press as are interested in covering the hearing or trial. So once the room was in place, then it was only a matter of deciding who would use the room if there

were multiple cases being tried at the same time.

Ms. Woodbury: That's the only time there's a problem?

Ms. Mayer-Whittington: That would be the only time that there would be a problem. And we've always been so fortunate in having a very collegial bench. Our judges regularly eat lunch together and that is when they talk about their schedules and upcoming trials. These conversations help to alert all the judges to the timing of high profile cases and with some advance notice there is often an ability to move a trial back or forward to accommodate another judge's schedule.

Ms. Woodbury: They could coordinate just informally?

Ms. Mayer-Whittington: Yes. Exactly. And, getting back to your question about the changes over the years, the major change in the big cases was going from a paper driven system that didn't accommodate the public and press, to being able to distribute information electronically and to accommodate more people so that everybody who wants to be a part of the gallery has that opportunity.

Ms. Woodbury: Nancy, at the end of trials where video was used for the news media is the court the one that has custody of the video? That doesn't get out for general distribution; right?

Ms. Mayer-Whittington: No it doesn't because we don't record it. It's just a feed. There isn't a recording. And at any time the judge has the ability to hit the kill switch.

Ms. Woodbury: So if he decides that something is inappropriate or whatever he can cut it?

Ms. Mayer-Whittington: Yes. On occasion it has happened. In the Roger Clemens perjury case -- that was Judge Walton's case, he told the prosecutors: "I think you put

something in evidence that we agreed was not admissible."

Ms. Woodbury: I remember that.

Ms. Mayer-Whittington: So the judge could use the kill switch on the equipment he has at the bench to make sure that something that's not supposed to go into the record doesn't. That the jury doesn't see something it is not supposed to see.

Ms. Woodbury: It gives the judge a little more power to enforce his orders?

Ms. Mayer-Whittington: Yes, and that was a big issue when we were talking to judges about the new technology in the courtroom. They were worried about information getting out inadvertently. Some judges didn't have as much of an interest in the public having the right to see or to know as they did in protecting the rights of the people being tried. Something that always impressed me about our judges was the thoughtfulness of their discussions on topics such as this. You would have a percentage of judges who thought everything should be made public, to the extent that it's allowed, and then you would have another group of judges who thought or would say: "I think we need to have some guidelines and some potential ways that we can limit a document from inadvertently being made public when a decision has been made to keep it out of the public arena." The discussions that ensued were always very enlightening and productive. Another area that caused some concern was the fact that electronic databases made it easier to quickly research information. That only became a concern when it involved the capability of jurors who had been selected for a particular case to research that case in our electronic files. Some judges were concerned that jurors were going to go to the Clerk's Office and use the public terminals to

look up information about the case in which they were serving as jurors. This could lead to the jurors finding out information about the case that was not admitted into the trial. One of the judges raised this issue at a meeting. Fortunately, the first judge to respond started the discussion by saying, "Well before this new electronic capability, what was our policy under our paper file system? What was the intent of what we did? Because the practices and procedures shouldn't change just because we have new technology." The discussion that followed was very balanced and productive. They concluded by basically agreeing that the information the jurors could retrieve more quickly under the electronic system had always been available to them even when we had paper files. All the juror had to do was walk into the clerk's office and ask to check out a file. The fact that is more readily available in the electronic system didn't mean that it's different from the access that was previously available. Thus the judges concluded that the new technology didn't need to have different rules. They decided that each judge should continue to caution the jurors, as they did before the new technology, that they can't independently search for information that they did not receive as a part of the trial. If someone tried to do this, it would be a violation of their oath as a juror. The responsibility had to be on the juror not to do that. The same was true for a case that had a lot of notoriety and the press was covering every day of the trial and the trial judge would instruct the jurors not to read about the case in the newspaper.

Ms. Woodbury: Right. It's just easier now for jurors to research things, for example,

about witnesses by Googling them. Something they could never do before. I'm sure to some jurors it doesn't seem like there's anything wrong with that; they're just trying to get additional information and need to be reminded that that's not the way system works.

Ms. Mayer-Whittington: Right. And we had slip ups from time to time where a juror would mention to another juror that they had done some research about one aspect of the trial. And then that second juror would say something to either the Deputy Marshal or the court security officer who was working with the jury and they in turn would tell the judge. At some point it became a part of most judges' standard instructions to the jurors not to use the internet or any other resource to do research. Some judges handled it differently by regularly reminding jurors throughout the course of the trial that they were not allowed to get information from outside of the courtroom. The judges would tell them that anything they needed to know about the case would be presented to them in the courtroom. I remember one time a juror researched what the weather conditions were on a particular date two years earlier and found out the day was overcast with scattered showers. A witness in the case had told the court that it was a sunny day. Fortunately, the juror who had done the research asked to speak to the judge about his findings and he did not discuss it with other jurors. The judge had to remind the juror that he wasn't an investigator, he was a juror. After conferring with counsel in the case, the juror was dismissed and replaced with an alternate juror and a mistrial was avoided. The judge let his colleagues know about the incident and as a result the judges uniformly changed the way

that they instructed jurors. It became a part of their general instructions and they did not take it for granted that jurors wouldn't do certain things.

Ms. Woodbury: Nancy, on big cases, were there any changes over the time you served on the court in the way the parties' lawyers used the courtroom facilities? Did they ever want to setup war rooms in the courthouse?

Ms. Mayer-Whittington: We had some cases where the U.S. Attorney's office needed to store documents and we did that for them, and we also had some very long-term cases where the lawyers wanted to setup a place in the courthouse where they could go during breaks and we would do that for both defense and the plaintiffs' attorneys and give them separate rooms. That was one of the benefits when we got the Annex of having the extra space to accommodate the attorneys.

Ms. Woodbury: So that they didn't have to go back to their offices during breaks?

Ms. Mayer-Whittington: Yes. Sometimes in cases where information was highly classified and could only be seen by counsel who had obtained security clearances from the Department of Justice, we had to make special arrangements. In those cases, we would setup rooms where the attorneys could come and review documents that the judge had determined they could see, but they were not allowed to make copies of the documents or remove them from the classified room. When the Annex was built, we included office space on the first floor for the Federal Public Defender's staff and space for the U.S. Attorney's office as well. This cut down on the requests from those two offices for additional space when they were involved in long term trials. It helped us in the long run to move cases along more quickly and that was the benefit of having additional space to

accommodate these kinds of situations.

Ms. Woodbury: Accommodate special needs when they arose?

Ms. Mayer-Whittington: Yes

Ms. Woodbury: Jim Davey, your predecessor as Clerk of the Court, said during his oral history that he often made a point of going to watch closing arguments on some of the big cases that took place during his tenure. Did you personally ever watch or observe any parts of these proceedings in cases you found interesting?

Ms. Mayer-Whittington: Not as much, I think, as Jim did. I went occasionally to watch closings arguments, especially if there was a really, really good attorney like Edward Bennett Williams delivering the closing argument. That was always a bonus to see somebody who was a persuasive speaker and could really appeal to a jury about the case. With my jury background, I went more often to hear the jury's verdict in a high profile case. Some of that was just to make sure everything went smoothly because in many big cases after a guilty verdict the defense counsel asks the judge to poll the jury. Since judges don't advise the jurors in advance that they might be polled, they are sometimes …

Ms. Woodbury: Surprises them?

Ms. Mayer-Whittington: Right.

Ms. Woodbury: In those cases where the jurors were polled and they hadn't been ready for that did a juror occasionally say… "I don't understand what's going on"?

Ms. Mayer-Whittington: Yes. And that's why some of our judges give the jurors a brief explanation of what it means to poll a jury. I remember talking to a judge once and he said "If you can just get the first juror to answer correctly, the rest will

fall into place." But invariably, the first juror has no one to follow so when the judge asks the first juror to state their verdict the response sometimes was: "Me? Huh… what am I supposed to say?" Then the defense says. "Judge, you can't instruct them as to what they are supposed to say."

Ms. Woodbury: Right.

Ms. Mayer-Whittington: The judge would say…. "I can to the extent that I am explaining that we're asking each juror if they returned a verdict of guilty or not guilty. The court has the right to make sure that each person on the jury understands the question." Then the juror would say… "Oh yes, I voted guilty." Some of the judges who anticipated that the jurors might not understand what it meant to be polled would be more specific in their instructions to the jurors after the defense asked to poll the jurors. Those judges would say to the jurors: "The defense has the right to poll you. I am going to ask each of you to tell me if you believe the defendant is guilty or not guilty."

Ms. Woodbury: At what point in the proceeding did judges try to give a jury a heads up that they might be polled?

Ms. Mayer-Whittington: Really not until after the verdict was read. Sometimes the defense didn't waste time in having the jury polled. I think some of them did it just hoping that a juror would say something that would create a ground for challenging the verdict.

Ms. Woodbury: Something would go wrong?

Ms. Mayer-Whittington: Right. I have heard of cases in other courts where a juror has said something to the effect that they had told the foreperson that they thought the

defendant was guilty but in their "heart of hearts" they didn't really believe it. Fortunately, I didn't have any of those experiences.

Ms. Woodbury: Any other recollections about big cases during your tenure on the court and their impact court proceedings?

Ms. Mayer-Whittington: No, not right now, but I think I might take some time to review some things and maybe I might have something to add later on.

Ms. Woodbury: Nancy, I know that you assisted the Federal Judicial Center with some of their programs for the district courts and you got to observe at least some of the other U.S. District Courts during the time you served as Clerk of the Court for the District Court for the District of Columbia. Were there any differences that you observed between the way that the U.S. District Court here was run and the way district courts in other jurisdictions were run?

Ms. Mayer-Whittington: Yes. And it largely came down to the fact that we were much more similar to large courts and we were much more similar to metropolitan courts. The Clerks who only had two active judges on their court and who ate lunch with their judges on a regular basis and their kids went to school with the judges' kids had a totally different experience managing their courts. We all had the same statutes to observe, we had the same guidelines from the Administrative Office, but it was very different to talk to a clerk from a court who once every two or three years had a major case than it was to talk to a clerk from a court who dealt with these cases on a regular basis and had guidelines in place for handling high profile cases.

Ms. Woodbury: Were the courts that D.C. was most similar to, for example, the courts in

New York?

Ms. Mayer-Whittington: Well, it would mostly be the Southern and Eastern Districts of New York because Northern and Western New York were smaller. Besides those two courts, we were also comparable to Illinois Northern which is Chicago, Texas Northern which is Dallas and California Central which is Los Angeles. But in reality LA was in a world of its own. They had fifty judicial officers.

Ms. Woodbury: They had what?

Ms. Mayer-Whittington: Fifty judicial officers with their magistrates and active and senior judges and a huge three hundred member Clerk's Office much larger than our court and Clerk's Office. They were in their own little world. We were more akin to San Francisco which is the District Court for the Northern District of California. We actually formed a group of metropolitan courts back in the 1980s so that we could share practices and information among courts that had more similarities and we had some meetings to bring the metropolitan courts together to facilitate that information sharing.

Ms. Woodbury: Who were the representatives of the various courts? Were these the Clerks of the Court or. . .?

Ms. Mayer-Whittington: Yes. The Clerks of the Court or, in their absence, the Chief Deputy Clerks. And sometimes if we were going to talk about a particular area, we might bring our jury administrator or the financial administrator to the meeting. For a few years, the metropolitan courts met once a year but eventually it was once every 18 months. But as the budget got tighter, we were just able to add a half day to the general meeting that was held yearly for all Clerks of Court. I

always got more helpful information and had more meaningful discussions at the meeting of the metro clerks. For example, once at a general meeting of all the Clerks of Court, I sat next to the person who was the Clerk for the Northern Marianna Islands. He owned a big working plantation on one of the islands. He worked on the plantation for half a day every day and worked in Clerk's Office the other half of the day. His uncle was one of the judges.

Ms. Woodbury: A very different experience?

Ms. Mayer-Whittington: And so sitting in a small group discussion with people from those jurisdictions was very colorful. . . .

Ms. Woodbury: But didn't bear on your experience?

Ms. Mayer-Whittington: Right. So, when we would meet as a big group with all the Clerks of Court, we would try to divide up by size of court so that the discussions would be more relevant to the issues we were facing. But dividing up like that did not sit well with some of the smaller courts. They would be upset because they thought all of the resources were going to the larger courts. The clerks from courts with two or fewer judges formed a group called the Dinky Dozen to promote the needs of the smaller courts. Clerks from smaller courts were much more hands on and in many respects, they knew more about the statutes and guidelines than I did because that was their job. My job was to hire and train my management staff to be my representative on the front line. Clerks from smaller courts might have ten or fewer employees in the whole Clerk's Office. Some days they were filling in at the intake area and reviewing pleadings and opening new cases and in general doing things with which I had no experience

because I had staff to do that. Those were the major differences. The geographical differences and the size of the courts.

Ms. Woodbury: What were some of the issues that the Clerks from large metropolitan areas dealt with during the time you were involved?

Ms. Mayer-Whittington: In the area of staffing it was the amount turnover that occurred naturally because of people leaving for other positions. We had a more global population because they were in the metropolitan areas and there were more opportunities for jobs. So we were constantly in the position of recruiting and training new people. Where the smaller courts had a much more stable population and they were more likely to have problems with employees staying for thirty years. When most of your employees have been with the court for more than 25 years, you would hear the Clerks from smaller courts voicing the problem … "What do we do now because most of our staff is at the top of the salary scale and are topped out?" Those were some of the issues in the human resource area. Metropolitan courts generally had a higher criminal caseload than the smaller or geographically dispersed districts due to the nature of cities and the size and diversity of the population. Gangs and organized crime tend to be more prevalent in the metropolitans areas. Going back to different issues between the staffs of larger and smaller courts, the fact that we didn't have daily contact with most of our employees meant we had to rely on managers and supervisors. In smaller courts, you could communicate almost daily with all of your staff – speak directly to them and see first-hand their reaction to new ideas and also observe how they were performing their jobs. Clerks from larger courts had to

work with more judges and navigate more personalities than some of the smaller courts. When you only have two judges to work with, you can pick up the phone or visit them and resolve issues fairly quickly. When you have fifteen active judges, there is no way you can keep in touch with every judge, every day, on every issue. Communication was always a challenge.

Ms. Woodbury: For big courts?

Ms. Mayer-Whittington: For big courts. Another issue that impacts most big courts is the need for divisional offices. Our court is not spread out geographically – we are all located in one courthouse building. For courts with large geographic jurisdictions, there were additional problems in communicating directly with staff that you didn't even see because they were a hundred miles away from you.

Ms. Woodbury: Were relations with the press one of the big issues that courts in metropolitan areas had to deal with more often than the courts in the smaller districts?

Ms. Mayer-Whittington: Yes, and we were very fortunate to have the Federal Judicial Center assist us. When we would identify an issue that was having a big impact on how we managed the courts such as relationships with members of the press, the FJC would convene a group of Clerks to map out the problem and brainstorm solutions and share effective practices already in use in some of the courts. The FJC would then put together guidelines based on the input from the Clerks. That was really very helpful. A lot of things we were seeing were the result of changes in the nature of the press, technology and the lack of stability

with the local press because newspapers were failing.

Ms. Woodbury: Let me go back and ask you about your relationship with the D.C. Superior Court. Nancy, what contacts did you have with the local court, the D.C. Superior Court, while you were working at the U.S. District Court?

Ms. Mayer-Whittington: For many years our two courts shared the same pool of jurors. This arrangement was in existence when I first started working at the court in 1977 and continued into the mid 1990's when both courts developed their own jury management systems. As an aside, we clearly still share the same jury population because both courts can only summons jurors from the District of Columbia. But for many years, our court had a Jury Commission and the Commissioners authorized the mailing of juror questionnaires to prospective jurors and then reviewed the completed questionnaires to determine if a potential juror was qualified to serve. Because of this shared jury pool, this necessitated ongoing communication between both courts. Our Court qualified the jurors, but the Superior Court had the data processing capabilities in their court, so they sent out the questionnaires based on instructions from our Jury Commission to develop what is called a "Qualified Wheel of Jurors." Our Jury Office determined the number of jurors we would need for our regular bi-monthly draw and the number we would need for large panels for high profile cases. We would have a standing order for the number of jury summons we would need Superior Court to mail for our bi-weekly panel of jurors and then we would send additional orders to Superior Court when we needed summonses sent out for large panels. We worked with them to make sure that they sent the

jury summonses out on a timely basis and we met regularly to make adjustments to the standing order if we needed to add more summonses in order to have more jurors available for jury selections. So we had that in common for many years. From the time I first started until… it wasn't until the late 90s that we went our separate ways with each court managing their own jury systems. But for many years we did that and also after we went to separate jury management systems, we would still contact each other about different issues because…

Ms. Woodbury: On jury selection?

Ms. Mayer-Whittington: Well, one of the issues was

Ms. Woodbury: Jury pool?

Ms. Mayer-Whittington: Yes. When each court began managing their own jury system, it didn't change the fact that both courts were still drawing from the same population of citizens in the District of Columbia. This put us at risk of both courts summoning the same individual at the same time. Who had preference? Which court had preference? We were always able to work those issues out through the lines of communication that had been established over the years. But it was still confusing for a juror to be getting two summonses at the same time. The other thing that the Superior Court performed, and still does perform, is they handle all the overnight arrests on the weekends and holidays for our courts as well as the Superior Court.

Ms. Woodbury: I didn't know that.

Ms. Mayer-Whittington: If you're arrested over the weekend on a federal charge -- or on a

holiday -- it is handled in the Superior Court. Our volume of overnight arrests on the weekend and federal holidays is pretty low. The Superior Court has, for as long as I've been there, and currently, handled that because they have a large volume of overnight arrests that requires them to have a magistrate on duty all the time. So they will do the initial arraignment or presentment of the federal cases for us and then we pick those cases up when we come back on Monday or the day after the holiday. This arrangement has symbolized the very collegial relationship that exists between the two courts. Also there are cases that are transferred back and forth between the courts. This can occur when a case is remanded or removed from one court to another generally due to diversity jurisdiction or some reason such as that. We have long standing procedures between the courts for getting case files back and forth in a timely manner. This involves on going communication between both courts. Also, our courts are unique in that we share one U.S. Attorney for both courts. There are separate staffs of Assistant U.S. Attorneys, one for each court, but just one U.S. Attorney. As far as our judges were concerned, the Chief Judges for both courts communicated regularly and had a collegial relationship. Chief Judge Robinson made it a priority to work with Superior Court. We worked on community initiatives, for example, we had this Jury Service Appreciation Week that both courts sponsored for many years working with counsel from the local bar associations and a non-profit organization called the Council for Court Excellence. Some of the collegiality at that time grew out of the relationship between Chief Judge Robinson and Chief Judge Hamilton, who was Chief

Judge of the Superior Court at the time, and a good friend of Chief Judge Robinson. The collegiality continued under Chief Judge Penn because Judge Ugast, who was then Chief Judge of the Superior Court, and Judge Penn had been co-workers - they shared an office actually at the Tax Division at the Justice Department. Because of that relationship and their social as well as work relationship, we participated sometimes in other programs with the Superior Court. On a monthly basis, we would go over to Superior Court and have lunch with Chief Judge Ugast and his Clerk of the Court and I would go with Chief Judge Penn and we would discuss issues and changes and the dynamics of the courts. I would always come away from these visits to Superior Court thinking, "Thank God, I don't work at the Superior Court!" The atmosphere at their court was so different. It always reminded of the TV show *Night Court*.

Ms. Woodbury: What were the differences that you were most attuned to? When you say it was "night court," was it just that it was so hectic because of the number of things going on?

Ms. Mayer-Whittington: Yes, the volume of people that came to their court every day was overwhelming. When you walked down the halls, there would be people sitting on the floors in the hallways and right outside of the courtrooms. There was a loud speaker system that would call out the case numbers and locations of hearings and page attorneys to come to the various courtrooms. To be fair, it was not as chaotic as it appeared because they had systems in place and it was actually very organized. But the contrast was in coming back to our court and

walking down the very stately halls. There was a demeanor of calmness with people keeping their voices down and no one rushing from place to place. That was one difference. Another difference between our courts was the way we each obtained our budgets. Our budget was based on a formula and members of the Judicial Conference would appear before Congress to request funding. There were not a lot of variables from year to year. Superior Court, because they were the local court, had to go before the City Council to get their money and lots of times weren't given the resources that they needed for the large volume of cases they had in that court. I always felt sorry for Duane Delaney, who was the Clerk of the Court for the D.C. Superior Court at the time. They had to go and present all their requests to the City Council such as aging computer systems that needed to be replaced and they would have to start from scratch each time since the makeup of the Council changed so frequently. They also didn't have any sister courts who routinely shared resources with them. Because we were in the federal system, we could take advantage of all the innovations being developed at other federal courts and the new technologies. When Superior Court tried to develop an electronic case filing system, in order to fund the project they ended up working with a vendor who had a commercial interest in making the information available to other people. We really never had to work with somebody who had interests other than the administration of justice so…

Ms. Woodbury: So that created the potential for conflicts of interest for them?

Ms. Mayer-Whittington: Yes. And, ultimately, politics and political interference was much more

a part of Superior Court's world than it ever was a part of my world. Duane and I would often compare our situations at our monthly meetings and he would lament not only the politics but the challenges of working with so many judicial officers. I remember Duane saying, "I have a vision for where I want the court to be, but unless I can get all the judges" -- and he had fifty-seven judges – "moving mostly in the same direction it won't happen."

Ms. Woodbury: At that same time how many judges were there on the U.S. District Court in D.C., by contrast?

Ms. Mayer-Whittington: Fifteen active judges, three magistrate judges. So we always had eighteen judicial positions and then there were senior judges. Judges would take senior status but still remain active, so we could have anywhere from… I think we had a high of nine senior judges at one time and low of maybe three senior judges

Ms. Woodbury: And the Superior Court in the same time frame had fifty-seven judges?

Ms. Mayer-Whittington: Yes. Their courts included family courts with child custody cases, the Register of Wills, the Marriage Bureau to name a few. These were areas of law that were germane to local courts, not federal courts.

Ms. Woodbury: Did they have a much higher proportion of criminal cases?

Ms. Mayer-Whittington: Yes. Because they had all the local jurisdictions. They had all the handgun violations, assaults, street crimes, drug violations. We did more of the Uniform Narcotics Act cases. Superior had more of the cases for possession of drugs as opposed to our drug cases which more often involved dealers selling and distributing drugs. These cases were more long-term and maybe more

complex than the possession of drugs cases but they certainly had the complexities of child custody cases. But in the criminal area, they had more of the street crimes and the robberies, stolen vehicles and that sort of thing.

Ms. Woodbury: The kinds of cases that usually state courts would have, the D.C. local courts were handling here?

Ms. Mayer-Whittington: Yes.