ORAL HISTORY OF HARRIET SHAPIRO
Fifth Interview
June 14, 2012

This interview is being conducted on behalf of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewer is Judy Feigin, Esquire, and the interviewee is Harriet Shapiro, Esquire. The interview took place at Harriet's apartment in Rockville, Maryland, on Thursday, June 14, 2012. This is the fifth interview.

MS. FEIGIN: Good morning, Harriet.

MS. SHAPIRO: Good morning, Judy.

MS. FEIGIN: When we left, you were coming to the end of your time at the Atomic Energy Commission. Before we leave that, I want to ask you if there's anything you'd like to add about that era of your life.

MS. SHAPIRO: One of the things that I guess I didn't say before and may be of interest was that when I first went to work for them, I was dealing with classified stuff, and so rather than trying to figure out what I could and could not talk about with Howie, I just decided I wasn't going to talk about work at all. I would talk about the people, but nothing about what I was doing. And that's the way it's more or less been since.

MS. FEIGIN: Even at the SG's Office?

MS. SHAPIRO: I talked at home much more about my work at the SG's Office, particularly because for at least part of that time he was at the SG's Office too, but basically, my practice remained. Work is work, and home is home, and I didn't really mix the two much. There was plenty to talk about [laughter]. But the practice developed just because at the beginning I didn't want to have to try to figure out what was classified and what wasn't classified. It was so much easier to say okay, none of that.

MS. FEIGIN: So you spent ultimately how many years at AEC?

MS. SHAPIRO: I started when I graduated from law school in 1955, but then when the AEC moved out to Germantown, I went to the Department of Justice because it was closer and easier to get to. I was at the AEC either full time or part time from 1955 to 1972, with four or five years off when the children were small. In 1972, the whole family went to Europe for a summer vacation. When we came back, I started at the SG's Office in the fall or late summer of 1972.

MS. FEIGIN: Tell us how you came to apply to the SG's Office.

MS. SHAPIRO: It was at the instigation of the Assistants. Typically lawyers come to the SG's Office after having a clerkship, or being in a law firm for a few years, but not for very long. If they stay in private practice, the SG's Office rapidly gets priced out. So the Assistants typically had been out of law school only three or four years, and this was in 1972, when the women's movement was certainly well underway.

As so often in my life, I was in the right place at the right time. As I heard the story, the Assistants persuaded Solicitor General Erwin Griswold that it was time to hire a woman. I really was very fond of Erwin Griswold. He had been the Dean of Harvard Law School, and he was always called the Dean because that was how he saw himself. Although he was hardly a trendsetter, he had overseen Harvard's acceptance of women into the law school in the early 1950s.

Howie was then head of the Appellate Section of the Antitrust

Division. He was working very closely with the SG's Office because at that time the antitrust cases were appealed straight to the Supreme Court from the District Courts. Thus, there was a lot of interaction between the Antitrust Appellate Section, especially Howie, and the Solicitor General's Office. Harry Sachse, one of the Assistants to the Solicitor General, ran into Howie in the hall in 1971 and said, "Do you know any qualified women we could get to apply to the SG's Office?" Howie replied, "Well yes, as a matter of fact I do," and he came home and said, "Apply." My reaction was, I can't do it. I can't take on an engrossing full-time job with my responsibilities at home. Alfred was 12, and Charles 14. They were getting there, but I felt I still needed to be home at least part-time to take care of them. But Howie said, "We can do it. Of course, don't be silly. We can do it. You know you want to do it." And of course I knew I wanted to do it.

So I thought about it, and it sounds silly, but the only real stumbling block I saw was Alfred's dental appointments. He was getting his teeth straightened at the time. The dentist had no weekend hours, so I'd been driving him between school and the dentist for his appointments. That problem was solved when I figured out I could drop him off on my way to work for the dentist's first appointment, and we would get a taxi to pick him up from the dentist and take him to school. That arrangement had kind of a "poor little rich kid" feel to it, but it worked. The housekeeper/caregiver who by that time had been with us for many years,

agreed to work for us full time. As far as I could tell, the children weren't bothered by my decision to work full time. As a matter of fact, I think they were kind of proud of me. As I say, feminism was really kind of in.

MS. FEIGIN: Did you see yourself as a feminist?

MS. SHAPIRO: No. Howie was always supportive, but there was never any doubt in my mind (and probably not in his) that my primary responsibility was to my family, particularly to the children. So I applied. I don't know that I knew Danny Friedman, the Principal Deputy Solicitor General, particularly, but I guess we had met. I had certainly heard a lot about him from Howie, and I felt comfortable with him – perhaps too comfortable. In my employment interview with Danny, he said, "I guess Howie has told you what the work of the office is and what the office does," and I replied, "Yes, you ruin other people's briefs" [Laughter]. Danny was a good soul. He didn't mind that.

Then I went to be interviewed by Dean Griswold. The Dean said whatever he thought, and sometimes it was a little odd. The only thing I remember from that interview was his question, "Why didn't you go to Harvard?" When I replied that Harvard wasn't taking women then, he corrected me. They started taking women in 1953. I explained that I didn't want to be in one of the first coeducational classes at The Law School (the Dean usually referred to Harvard as The Law School – initial caps implied). In fact, of course, it had never occurred to me to apply to Harvard. I wanted to go to Columbia in New York. It was true that I

didn't want to be a groundbreaker then.

It was very different going to the SG's Office, partly because I had a lot more self-confidence by then, and partly because I felt that it was a welcoming place, that the other Assistants were ready to accept a woman attorney. They were indeed welcoming, in contrast to what I'd heard from a classmate who did go right from college to Harvard Law School. She had a very rough time; many other students in that law school felt very strongly that women didn't belong there. In the document I gave you about the women at Columbia, there's a piece from Ruth Bader Ginsburg who went to Harvard first and then did her third year at Columbia. She says that she didn't feel comfortable at Harvard, and that was several years later. I think she graduated in about 1959. She said Columbia was more accepting. At Columbia, there were a lot of people who wanted to know why I was in law school, but it wasn't really an unfriendly place, and I gather Harvard really was. Anyway, I was hired in spite of the fact that I didn't go to The Law School [laughter].

Alan Rosenthal, the widower of my college friend Helen Miller Rosenthal, served many years in the Appellate Civil Division Section of the Justice Department. About the time that I left the AEC to go to the SG's Office, Alan left the Civil Division to go to the AEC. He likes to tell the story of congratulating Danny Friedman on breaking the gender barrier by hiring me. Danny's response was, "What gender barrier? No qualified woman had ever applied before" [laughter]. That really tells you

something about what the perception was. There were certainly plenty of qualified women close at hand in the Justice Department. Why the heck hadn't the SG's Office been seen as having a place for them? Why hadn't a qualified woman applied before? I really came in on the cusp; women were just beginning to be generally accepted as equal to men in abilities.

MS. FEIGIN: Did you mingle with other women in different parts of the Justice Department? Was there sort of a cadre of women?

MS. SHAPIRO: No, not really. The other thing that Alan says, and he's right, is that the SG's Office tended to be arrogant and clannish. The perception of many Assistants was that we were the cream of the crop and nobody else really could touch us. We associated with each other. Mostly that was, I think, because the Assistants in the SG's Office came out of clerkships or from being in private practice for just a few years. They had been at the top of their law school classes, then they often had had clerkships. They had always been at the top of the heap, so they were used to thinking of themselves as special. Also, they were young, and the way I always thought of it was that they never had had any corners knocked off of them. They had always been the best. This was the way it always had been and always would be. They were the top of the heap. And, of course, they *were* bright. It was a pleasure to work with such a talented group.

MS. FEIGIN: Do you think that's something – leaping ahead a little bit – is that something that persisted during the entire time you were there, that perception and that attitude?

MS. SHAPIRO: Yes, probably. There obviously were many people who didn't feel that way, but the general feeling was that we are the elite. I'm sure that they did ruin other people's briefs. The brief comes in, and we make it good. I obviously never quite bought into that, but that was the general perception. The Appellate staffs of the Divisions were first rate at that point and maybe they still are. I don't mean to say they aren't, but by gum, those people were good. There were an awful lot of really good lawyers in the Appellate Sections of the Civil Division, the Criminal Division, Civil Rights, and what I always think of as the Lands Division, even though it has long since been renamed the Division of Lands and Natural Resources. Especially before my time, many legal jobs were closed to Jews, and that may have been true for women too. There were Jewish law firms, but the Wall Street firms were pretty much closed, so many top-notch Jewish and female lawyers went to the Justice Department, where they could get interesting jobs.

MS. FEIGIN: And elsewhere in the government as well.

MS. SHAPIRO: Oh yes, I'm sure. But if you wanted to do interesting legal work, again, me being snotty, you went to the Justice Department where the lawyers ran the show.

Elinor Stillman later came to the SG's Office from the NLRB – the National Labor Relations Board – and she was very good, but she went back to the NLRB because she really liked working in an area where she knew the background of the cases. She was at heart a specialist. When

she worked on a case, she liked knowing where it fit into the big picture. In the SG's Office, we got a brief or an appeal recommendation, and you learned enough about the relevant area of the law to deal with the particular case or recommendation, but you weren't familiar with the whole area of the law.

For example, I once argued a case dealing with the timing of the government's taking by eminent domain for purposes of valuation. What I ever knew about eminent domain related only to this issue. With each case, you paint a miniature. You know a great deal of detail about the small subject of your painting, but very little outside the frame. And that bothered Elinor. She could do it. She did it very well, but she went back to the NLRB where she felt comfortable that she was really up-to-date on the whole area. I used to think that such specialization would be pretty boring. There were people who worked at the Social Security Administration who knew a great deal about Social Security. All right, that's an interesting area of the law, but don't you get tired of it? Well, Elinor didn't. I once asked my friend Helen Buckley, who was a tax lawyer, whether she found it boring to do only tax work, and she said, "Tax gets involved in everything." And I guess maybe that's true with a lot of these specialties. The work of the SG's Office was an absolutely perfect fit for a Jack-of-all-trades like me, except for the oral arguments. I really did not like the oral arguments.

MS. FEIGIN: What was it you didn't like about oral argument?

MS. SHAPIRO: It was a real ego rush to stand up there and say, "I'm Harriet Shapiro representing the United States," but the responsibility also was scary. You spent a lot of time preparing in the two weeks or so after you were assigned the argument. Usually you argued a case that you had briefed so you knew, or had known, a good deal about the case. But for those two weeks, there was a little cloud over your head all the time as you were thinking about what questions the Court might ask, how you could present arguments that would be persuasive, not too technical, but technical enough so that you hit the points that you had to hit. My dirty little secret is that I read my arguments, which you are *really* not supposed to do! Of course by the time I got up to argue, I knew the argument so well that it was mostly memorized, and you're not supposed to do that either. If you were lucky, the Justices started asking questions so the memorized part didn't last more than a very few minutes, and then you were just skating along. It was terrifying, it really was.

MS. FEIGIN: You had moot courts to prepare you?

MS. SHAPIRO: Yes.

MS. FEIGIN: Multiple? How did that work?

MS. SHAPIRO: Probably at least two. You had the moot courts. You were prepared, you jolly well knew your subject and you knew the points you had to make. It was just standing up there. The first one, *Renegotiation Board v. Bannercloth Clothing*, was a disaster. I won the case but lost the issue [laughter].

MS. FEIGIN: Not ideal [laughter].

MS. SHAPIRO: Not ideal. No.

MS. FEIGIN: Let's get the picture of you in Court. To this day, as you know, the men in the SG's Office appear in Court in morning coats, and of course that's not an attire that would be appropriate for a woman, so were there any thoughts with respect to that?

MS. SHAPIRO: Actually, I understand that some of the women now wear pantsuits modeled on the men's morning suits, but that's only recent.

MS. FEIGIN: You're showing me a picture in the retirement brief that the SG's Office prepared for you. Can you describe your dress?

MS. SHAPIRO: It was a jacket dress, and it had a pleated skirt. It was a brown and black plaid, very subdued. Jewel Lafontant was the first woman from the SG's Office to argue in the Supreme Court. She came in with Solicitor General Robert Bork. When I went to the SG's Office, as Howie said, I had never talked to a judge. So to get my feet wet, I had three arguments in the courts of appeals.

MS. FEIGIN: Cases you briefed, or that other people briefed?

MS. SHAPIRO: Cases Civil Appellate lawyers briefed. One was in Pennsylvania, one was out on the West Coast, and one was here in D.C. While I was doing that, Jewel came to the Office, and she had an argument pretty much right away.

MS. FEIGIN: She was a political appointee?

MS. SHAPIRO: She was a political appointee, and she was very stylish. She wore an elegant suit. It had a straight skirt made out of the same striped material as the men's pants and a black jacket cut like the men's in front, with a little peplum in the back. She wore a white blouse that had a jabot at the neck (like Justice Ginsburg's court costume). Her costume was obviously supposed to look like the men's argument suits. It was suggested to me that maybe I would like to do that, and I decided no, I did not want to do that. One of the advantages I had was that I didn't have to get dressed up in a fancy costume.

I first met Elinor Stillman, the woman from the NLRB, when I was arguing an NLRB case, and she sat at counsel table for my argument. I don't remember this, but Elinor's story is that when she had her first argument after joining the SG's Office, she asked me what she should wear, and I said to her, "Do you remember what I wore when you were up there with me?" She said, "No, as a matter of fact I don't," and I said "That's exactly what you're aiming for. You don't want anybody to notice what it is you have on. They're listening to you, and what you should wear is something that will be totally non-memorable."

My other costume story – I have a lot of costume stories – was about another woman in the Office early on who was pregnant when she argued so to find her costume, she told the sales lady that what she needed was something that she could would wear to her elderly maiden aunt's funeral in the afternoon [laughter]. She was shown what she needed.

When I left, which was in 2001, there were a fair number of women in the office, five or six, something like that, and there are now more, I think. Apparently some of them decided that they felt like second-class citizens because they didn't have a special court costume, which was exactly the opposite of the way I felt. Jewel Lafontant won, kind of, though I believe the women still have a choice.

At least in my day, the way the men usually handled the costume issue was by using one of the two or three suits in the Office. Everybody – tall, short, fat or thin – could choose among these three suits, and people went up with safety pins and other do-it-yourself adjustments to make the pants fit [laughter]. One of my favorite lawyers was very short, and he said if anybody would offer him enough money, he would go up there without his pants on [laughter]. Fortunately, nobody ever took him up on that. I'm sure that the marshal would have thrown him out [laughter].

The borrowed suit option is not available to the women. If you're wearing a knock-off of the men's suits, you have to get it specially made, and that's a fair amount of money. Anyway, those are my costume stories.

MS. FEIGIN: So you started in 1972, and maybe a year or two later you had your first argument?

MS. SHAPIRO: 1973. It was *Renegotiation Board v. Bannercloth*, which I argued October 17, 1973. It's a painful memory. I felt (and still feel) I did badly in the argument. Maybe that's partly why I hated oral arguments. I never thought I was good at it and I was on public display. *Bannercloth* was

recorded as a win in the Office's recordkeeping, since the decision of the Court of Appeals was reversed on our petition, but on a much narrower ground than we sought.

MS. FEIGIN: Do you think as a practical matter the oral arguments make a difference in a significant number of cases?

MS. SHAPIRO: Well, you certainly can lose a case in oral argument. I'm not convinced that you can actually win one on the oral argument. I certainly firmly believe that the brief is the most important part of the government's case, and if you have a good brief, you're pretty much home free. Sure, the oral argument is the chance the Court has to see what the limits of your argument are, and to clarify anything that's troubling them, but it's mostly the brief that wins or loses the case, I think.

MS. FEIGIN: Do you have a sense, appearing before this array of Justices, some of them were more impressive than others in preparation and ability?

MS. SHAPIRO: Well, certainly some of them you couldn't tell whether they were prepared or not because they very rarely asked questions. I assume they were all prepared. With a few exceptions, they were very able. Whizzer White tended to be a little mean.

MS. FEIGIN: How so?

MS. SHAPIRO: He liked to put you on the spot. His questions tended to be sort of snarky. Justice Marshall was a real problem. He didn't ask you a question because he wanted to know the answer. He asked you a question because he wanted to make a point himself, and no matter what, you couldn't answer

him briefly and get on with your argument. He wanted to make a speech, and by gum, he made a speech and used up your time. Harry Blackmun was a gentleman.

One of the things we did that I always thought was a little dubious (I don't know whether they're still doing it), but every once in a while we would invite a Justice to lunch. We certainly were not supposed to talk about our cases, but I just thought having lunch with them at all was a little dubious.

MS. FEIGIN: They would come to your office?

MS. SHAPIRO: We ate at the Court.

MS. FEIGIN: One Justice at a time?

MS. SHAPIRO: One Justice at a time, with the whole SG's Office.

MS. FEIGIN: And so over the course of a year you would have lunch with all nine?

MS. SHAPIRO: No. It wasn't at all regular. We probably did three or four in a year, something like that. Anyway, Blackmun asked us once when we had lunch with him, "Doesn't it bother you when the Justices interrupt you?" "But that's what we're there for, sir" [laughter]. He was a very kind, gentle soul, and courteous. He didn't like interrupting people. Burger talked and talked and talked. At the lunches you certainly got a very strong impression of the Justices' personalities. They were very different from each other. On the Bench, some were much more likely to ask questions. Some rarely opened their mouths. I think some refused to have lunch with us, but I'm not sure about that.

MS. FEIGIN: Over the course of time, do you have a sense of some of the newer Justices who came on?

MS. SHAPIRO: Yes [laughter].

MS. FEIGIN: That you can share with us.

MS. SHAPIRO: Perhaps not.

MS. FEIGIN: How did you feel as the first woman in the SG's Office when the first woman was appointed to the Court?

MS. SHAPIRO: It was about time [laughter].

MS. FEIGIN: Did she ever reach out to you or you to her?

MS. SHAPIRO: No. The only one who really did kind of reach out to me which I found slightly surprising was Justice Ginsburg, and I think that was partly because she was also a Columbia graduate. Justice Ginsburg made her Supreme Court reputation by representing a lot of successful plaintiffs in Social Security cases. The Social Security Act, as you undoubtedly know, started out just insuring wage earners against lost wages, and then Congress decided wives and widows of wage earners needed income protection too. The Act was expanded group by group by group as the Congress felt that this group and that one really needed to be protected. By the time I got there in 1972, the Act had expanded group by group for many years. By then, the Social Security Act basically covered the landscape, but there were these little gaps left. For example, the illegitimate children of a deceased wage earner got benefits only if the wage earner had recognized them and supported them for a certain period

before his death.

I don't know whether this was one of Justice Ginsburg's cases, but the Court was presented with a case in which an illegitimate child had been recognized, but the wage earner died before he could support him for the requisite time. The successful claim was that, since there was no such support requirement for legitimate children, that requirement denied equal protection to the illegitimate child. There was a whole bunch of such cases. Perhaps the most important one challenged the requirement that the husband of a covered wage earner had to prove she supported him, while there was no such requirement for the wife of a covered wage earner. That distinction made sense when the Act was enacted. It was logical to assume then that wives were supported by their husbands, but that husbands who were not covered by Social Security were, unless they showed otherwise, working for the government or otherwise self-supporting. That was less true by the 1970s, so the Court held that it was a denial of equal protection for men to have to prove they are supported by their wives, while wives don't have to prove their support by their husbands. We lost those cases across the board because of the way the Act had been enacted. There were these little gaps that didn't make any real sense. Justice Ginsburg found a lot of these holes and won a lot of cases.

MS. FEIGIN: How did she wind up reaching out to you?

MS. SHAPIRO: I guess that's an exaggeration. She knew who I was and she always greeted me pleasantly when we were in a group. There wasn't anything special, but she knew me and she would greet me. I never thought that I had any particular bond. I did feel a special bond with the women in the Office, although I felt a little ashamed of it. I felt a little more maternal toward them than to the men in the Office. I was significantly older than the other Assistants in the Office, even when I first came, because I had been out of law school a lot longer. I got out of law school in 1955, and I didn't come to the office until 1972, and so the other Assistants were younger than I was. But I didn't feel particularly maternal to them until later; we were just colleagues. But to the women, from the beginning, sort of.

MS. FEIGIN: Why would you feel a little ashamed about that?

MS. SHAPIRO: We were all lawyers together. Any special sympathy with the women felt a little like sexism. But I was the one who started the custom of having ladies lunches because I thought the newer female lawyers should know the ones who had preceded them. Even after the Office started hiring other women, a year or so after I came, there were generally only two or three of us there at the same time. People in the Office generally stay for two or three years and then they move on. They don't usually stick around and make a career out of it. It wasn't until I realized that the Assistants in the Office were younger than my youngest child that I

stopped feeling "we are all just colleagues together," and from then on, I did feel kind of maternal to all of the other Assistants [laughter].

MS. FEIGIN: This leads to a separate question. You started, as we said, in the era when women's consciousness was coming to the fore. Were you involved in any of that? In women's conscious-raising groups, in any of the marches or any of the things that were going on for women's liberation then?

MS. SHAPIRO: No. I did once suggest a "sewing and consciousness-raising group" to a younger friend of mine, but it turned out to be more about sewing. My oldest son, who was born in 1958, made me a birthday card when he was about 12. I don't know if I still have it but I cherished it for a long time. It said, "My mother doesn't burn bras, she does law" [laughter]. He understood.

When the FBI left the Justice Department, they left a gym downstairs, and I used to go down to the gym fairly regularly. There was a woman there who wore a t-shirt that said on the front "To succeed a woman has to be twice as good as a man," and on the back it said, "Fortunately that's not hard" [laughter]. I liked that attitude, which was not uncommon in that group at that time.

MS. FEIGIN: People will find it hard to believe that the FBI was housed entirely, including its lab, at the Justice Department at one point. It leads me to wonder if you ever came into contact with J. Edgar Hoover.

MS. SHAPIRO: No, I never did.

For my first few months in the Office, I worked on appeal

recommendations, and after that, I started revising briefs and briefs in opposition to *in forma pauperis* criminal cert petitions. When I first went there, the Office responded to all *in forma pauperis* petitions (IFPs) involving the federal government. The vast majority were filed in criminal cases by federal prisoners. The Criminal Division drafted them and we revised them. It was a lot of work because there were lots of them, and most of them just had no merit at all, but you had to make sure you made a serious reply. So I did a lot of IFPs.

MS. FEIGIN: What was your contribution in that regard?

MS. SHAPIRO: Revising.

MS. FEIGIN: You said that changed.

MS. SHAPIRO: Oh yes. Over Larry Wallace's objection on principle. He was the second deputy for a long time, then he was a first deputy for a while. He was there before I was there. He was one of the people who made a career out of the Office. Anyway, over Larry's objection, it was decided that we would not respond to all of the IFPs, that this was just a waste of time, but only to those that might trouble the Court. So I got the job, with Sid Glazer from the Criminal Division, of reviewing all of the criminal IFPs in which the federal government was the respondent and deciding which ones we would respond to and which ones we wouldn't. Of course, if the Court wanted a response in a case in which we had waived response, they would ask for it. They rarely did. It wasn't really that hard to figure out which ones merited a response and which ones didn't. Our work cut

down very substantially on the amount of work that had to be done by the Assistants and by the Criminal Division. It meant that Sid and I spent a good deal of time reviewing the darn things, but it certainly was a net gain for the Office.

MS. FEIGIN: So generations are in perpetuity grateful to you, I'm sure.

MS. SHAPIRO: [Laughter].

MS. FEIGIN: You said you didn't want a specialty. Did you do criminal and civil?

MS. SHAPIRO: Oh yes. Everybody did everything except for tax. There was one Assistant who did tax, and when he went off on vacation or was sick or something, we all had to do the tax work, and we hated it [laughter]. But other than that, everybody did everything. While Howie was in the Antitrust Division, I didn't review matters from that Division. There was also the understanding that you could always say "I'd rather not do that case." If there was a case that really offended you, you didn't have to work on it.

MS. FEIGIN: Did that ever happen to you?

MS. SHAPIRO: No, I don't think so. Not really. As a matter of fact, I did kind of have a specialty, which I didn't much like. These were appeal recommendations in cases where the lower court had decided that a conscientious objection was based on a sincerely held religious belief. I didn't much mind the ones involving the Berry Plan. That was a plan under which the government would pay for a person to go to medical school, get his medical degree, on the understanding that when he became a doctor, he

would practice in an area that needed doctors for a certain length of time. Sometimes, I think they were required to serve in the military. A number of people took the money and then decided they were conscientious objectors and couldn't possibly live up to their obligation. Those cases didn't bother me much, but there were a lot of conscientious objector cases involving draftees, and those really bothered me. I didn't like them, partly because I thought the reason I got them was in part a feeling that "she's not subject to the draft so this won't affect her." But I had two young male kids who were certainly not draft age at that point, but it did affect me. Also, I really had a philosophical problem. The cases that we got were cases where the claim wasn't based on the creed of any organized religion. In many cases, the issue was whether the opposition to fighting was a "religious" one. Also, you had draft boards, and then the courts, deciding whether the religious belief was sincere. I didn't like that. I didn't like that one little bit. I didn't have any better solution.

MS. FEIGIN: So you did the cases.

MS. SHAPIRO: Oh yes, I did the cases.

MS. FEIGIN: We should say for historical purposes, the Vietnam War was still going on at this point, so it was not a theoretical issue.

MS. SHAPIRO: No, it was not a theoretical issue at all. Sometimes the defendant had joined the National Guard, or perhaps had gotten help with their college tuition, probably figuring they were never going to be called up, and then they were, and it came time to pay the piper, and they suddenly

discovered, or maybe not suddenly discovered, a conscientious objection to fighting. But there was always this suspicion: are you sincere or do you just not want to go and get killed. I had trouble with those cases.

MS. FEIGIN: Were there cases that you particularly loved?

MS. SHAPIRO: The other cases that troubled me – I'm not answering your question [laughter].

MS. FEIGIN: That's okay. We'll get back to it.

MS. SHAPIRO: The other cases that troubled me were some civil rights ones. At that time, insane asylums were emptying out because you could cure people or at least suppress symptoms by pharmaceutical means. Thus, there were quite a lot of cases challenging continuing institutionalization. I found particularly troubling cases involving children. The question was the constitutional rights of parents versus the rights of the state to institutionalize children. Again, it was one of these situations where I didn't see any possible solution that would be comfortable, but it did really strike me that this was not an area where the law had any special knowledge about what should be done. It just didn't seem to me to be a good fit with the law. I did a lot of those cases, but I never was particularly comfortable with them.

I liked criminal cases – except for the drug cases which took up an inordinate amount of the caseload – and cases from the Lands Division. They didn't involve issues I found troubling, and usually presented interesting puzzles to solve. I really liked appeal recommendations, partly

because the Assistant's function there was semi-judicial. They were one of the main elements of the job – there was brief writing, there was arguing cases, and then there were appeal recommendations. When the government lost a case in the lower courts, in the district courts or in the courts of appeals, it didn't get taken to the next higher court – district court to the appeals court, from the court of appeals to en banc, from en banc or from the court of appeals to the Supreme Court – without the express authorization of the Solicitor General. Still doesn't as far as I know. And everybody, the U.S. Attorney, the Justice Department division, if any, or the agency, if any, that had been involved in the case in the lower court, wrote a recommendation for the Solicitor General about whether or not the case should be taken to the next higher level. If everybody that was involved said "no," the case went directly to the Solicitor General, and he reviewed it as a "Unanimous No."

MS. FEIGIN: So no one in the Office had to write a memo in that case?

MS. SHAPIRO: In Unanimous No's, we didn't write memos. I guess if the Solicitor General was concerned about any such case, he would have asked for a memo, but I never heard of that happening. A Unanimous No just went to the SG and he signed off on it. However, if any of the group that had been involved in the case wanted to take it up, then that appeal recommendation, plus the briefs, if any below, plus everybody else – the Division if there was a Division that was involved or the agency – whoever it was that had been involved in the case, all wrote

recommendations. The file went to an Assistant, and the Assistant would review the case and talk about it to any people he deemed necessary, in particular, any person who disagreed with an action the Assistant contemplated recommending. The Assistant then wrote a recommendation to the Solicitor General. The entire file then went to the appropriate Deputy Solicitor General, of which when I started there were three, each covering one or more Divisions. When I left there were five. The Deputy would write, typically, just on the bottom of the Assistant's appeal memo, saying he agreed with the Assistant or putting his comments on. Ninety percent of the time he agreed with the Assistant. If he didn't agree with the Assistant, the Assistant would usually go talk to him and they'd reach a conclusion. Then the whole file went to the Solicitor General.

If the recommendation was against taking the case further, and if any entity who wanted to appeal wanted a conference with the Solicitor General, the entity was entitled to one, to which everybody came who had written memos, and we talked it out and the Solicitor General made his decision. The appeal recommendations were fun to do because, as I say, they involved a sort of judicial function. It was also kind of fun to talk to the people who had written recommendations you intended to disagree with. Especially where you were planning not to recommend a *cert* petition, the aim was to get them not to ask for a conference with the Solicitor General, to save the Solicitor General's time. I was pretty good

at that. Mostly, I liked the written parts of the job. I write much better than I talk. I am not really a good oral advocate, just because I don't talk as well. So the appeal recommendation process was basically written, and it was neat. You would get this little package in your in-box, and it would often be a completely unknown area, one that you never had had anything to do with. You had the decision, perhaps briefs in the lower court, and summaries of the thoughts of those involved, so that you had a starting point, and then you'd talk to them or you'd go and do research. Each recommendation was rather like a short story.

That was also why I liked the *in forma pauperis* petitions: they were also short stories. They were mostly pretty grim short stories. Sometimes they were just plain funny. Briefs were a much longer effort, but in almost every brief, there came a lovely point. You would read the draft, and it would be either okay or pretty awful. Usually – here I am being snotty again – the draft writer would have taken almost all the time there was. If the draft was in good shape, that was fine. But if it was just a recap of what the court below had said and they had taken up all except a couple of weeks or a week of the time available, you had to kind of push it into shape, and you had no time at all, but when you were revising the brief, there would come a moment where you would see, Oh, *this* is the way it needs to be done.

MS. FEIGIN: The "aha" moment.

MS. SHAPIRO: The "aha" moment. There was almost always a lovely "aha" moment, and then it was just a matter of getting it down. I really did like that. But there was an awful lot more drudgery and a lot more pressure in the brief writing than there was in the appeal recommendations. In the appeal recommendations, you didn't have to worry so much about the way it was phrased. They were written for the Solicitor General, and you just told him what you thought. It had to be clear, of course, but that wasn't a particular problem. That was fun.

MS. FEIGIN: Let's close out with one, I think amusing, anecdote. Could you tell us about your motion for admission to the Supreme Court?

MS. SHAPIRO: Well again, I didn't realize it at the time, but looking back on it, I was kind of on the cusp. In order to be admitted to argue before the Court, a lawyer's motion for admission has to be filed by a member of the Supreme Court Bar. Howie was admitted to that Bar before I was because he had argued a case before the Court before I was in the Office. So he signed my motion for admission, and it's a fill-in-the-blanks thing. It says, "I," and then his name, "a member of the Bar of the Supreme Court of the United States, hereby move the admission of," and then he filled in my name, "to the Bar of the Supreme Court." And the printed thing says, "I am satisfied he possesses the necessary qualifications." And so Howie in front of the "he," Howie put a little "s" [laughter].

There's another story that kind of goes with that one, again related to this cusp business. When we finished revising a brief, it got sent to the

printer, and when it came back in page proof, the Assistant who had revised the brief made any corrections on the page proof. Then when the brief came back in the form that it was filed, the Assistant read over the brief and made sure there were no typos in the final version. There was a stamp that the docket clerk put right up on the top of the cover of the brief that said, "Okay to file," and the stamp had a place for you to sign your name. For me, signing that stamp was a slightly emotional moment. Anyway, the blank on the stamp for the signature was preceded by "Mister." It never bothered me. I just signed it, but about halfway through the time when I was there, one of the other women in the Office got very annoyed and demanded a new stamp. So they made a new stamp that just said, "M" [laughter]. That was kind of a change in atmosphere.

MS. FEIGIN: That's a good note to end on. Thank you very much for another fascinating session.