

Nancy Mayer-Whittington Oral History
Interview Session V
September 13, 2011

Ms. Woodbury:

Good morning. Today is Tuesday, September 13, 2011. This is the continued interview of Nancy Mayer-Whittington, formerly Clerk of the Court for the United States District Court of the District of Columbia. Nancy, when we finished our last interview we were talking about the changes that took place in court administration when you were the Supervisor of Administrative Services and the role that the judges on the court played in helping along some of those changes. Today, would I like to begin by asking you how long you stayed in the position of Supervisor of Administrative Services and what was the next position you held.

Ms. Mayer-Whittington:

Okay, I became the Supervisor of Administrative Services in 1982 and I held that position until 1985. So, it was three years in that position. At the same time what was going in the court was that --- I think I might have mention this earlier --- that the Clerk, Jim Davey, was trying to figure out the right administrative structure for the Clerk's Office so that it would operate effectively and efficiently. For many years, the major part of the Clerk's Office had been our operations section, which included what we called at that time our docketing section, the civil and criminal sections and then our courtroom deputies. And then there were these fringe offices that Jim cobbled together as Administrative Services. They were much smaller in the number of employees involved in that section, but they had a lot of interaction with everybody else and were very instrumental in making the administrative side of the court run. And it was clear that the court had two major divisions: the administrative side of the court and the

operations side of the court; and Jim Davey was trying to figure out the best way to run the Clerk's Office smoothly. After he had three years of experience with having the administrative section of the court under one supervisor...

Ms. Woodbury:

That was you?

Ms. Mayer-Whittington:

That was me. Then he thought that rather than have a head of the docketing and the courtroom side of it and the head of the administrative services side of it, he would create two Executive Assistants to the Clerk and he would fold those two positions in an Executive Assistant, so that he would have a three part management structure. He was Clerk and he would have two Executive Assistants.

Prior to this, he did have a Chief Deputy. His name was Herb Howler, who had come up through the operations side of the business, but Herb was getting close to retirement age and so his decision at that point to retire prompted Jim to say... "Well maybe this would be the time, rather than to continue with the Chief Deputy, to have two Executive Assistants." It was sort of unheard of in the court administration world, and he had to go through some hoops with the Administrative Office to explain to them what he wanted to do and the way he could do it. He couldn't grade either of those positions at the level of a Chief Deputy because the Court didn't have the money to pay for two people at that level and at that salary. Jim had always been good at talking to the Administrative Office and asking if he could pilot things, and that's what he and I had done on several occasions with different new programs in either jury or records. We would just consider it a pilot and see whether it was okay before we

kind of made it official. And the Administrative Office bought into that by saying... "Okay as long as this is a pilot..." I think the Administrative Office was a little bit intrigued as to whether there were other ways to organize the Clerk's Office or not. So Jim made us both Executive Assistants to the Clerk. The other person was Marge Whitacre who had been at the court many years. She had come up through the ranks on the operations side. She had been a courtroom deputy, a courtroom supervisor and head of operations.

Ms. Woodbury: Nancy, when you talk about the operations side, what was included in that?

Ms. Mayer-Whittington: At that time, operations included our intake area where we took in all the pleadings. It included our docketing section where all the pleadings were put in the case dockets and it also included our courtroom deputies who were the assistants to the judges in the courtroom and handled all of the administrative functions within the courtroom.

Ms. Woodbury: Okay.

Ms. Mayer-Whittington: And it was our largest population because each judge had a courtroom deputy. At that time we had fifteen active judges and we would range anywhere from five to nine generally senior judges on top of that and then we had three magistrate judges. So we would have between 24 to sometimes 28 judicial officers at any given time. So you had people who worked for those judges in that capacity. Then you had 5 people who took care of docketing. Each had 2-digits cases ending in 0 or 1. They had those cases and they would docket everything to those cases. Then we also had criminal cases that were separate

from our civil cases.

Ms. Woodbury: Also on the operations side?

Ms. Mayer-Whittington: Also on the operations side. And then we had some multi-district litigation. We had some people who worked on those types of cases. They were all on the operations side. You're probably talking at that point about forty-five to sometimes sixty people.

Ms. Woodbury: Total in operations?

Ms. Mayer-Whittington: Yes. On the administrative side, there were probably around twenty people. So, there was a clear majority on the operations side with a small number on the administrative side. But the administrative side handled the budget and handled a lot of other major programs for the court and had equal weight ultimately in the influence it had on running the court.

Ms. Woodbury: At the time the pilot program was approved for this new structure for the organization, who was the head of the Administrative Office?

Ms. Mayer-Whittington: At that point it would have been Ralph Mecham who, I believe, came in 1985. So it would have been right around the same time. That may have contributed to its ability to be implemented or piloted because Mecham did come in with some ideas about not doing everything the way it had always been done for ages and ages and ages. Previously the head of the Administrative Office had stayed in place usually for ten or fifteen or twenty years. "If it's not broke don't fix it" was clearly the management style of the Administrative Office until they got new leadership.

Ms. Woodbury: Did the reorganization of the Clerk's Office correspond with your taking

on a new role?

Ms. Mayer-Whittington: Yes.

Ms. Woodbury: That was when you became Executive Assistant?

Ms. Mayer-Whittington: Yes. Even though I had been reporting directly to the Clerk and been responsible for the different offices as Supervisor of Administrative Services, I was clearly much more of an advocate for the various offices and not necessarily for the organization as a whole. I saw my job as going to the Clerk and saying... "When you're dividing up resources, I need this here and..." and it was me kind of competing with operations for money and resources and equipment and that sort of thing. When we put the new structure in place, Jim Davey made it clear that all three of us had oversight for the organization and that it wasn't just looking after what you were responsible for on a day to day basis, but being responsible for the whole organization. For me that was a new way of looking at things. I had thought that I always was doing what was in the best interest of the organization as I was moving up the structure by working on committees and in volunteering to learn and do extra things. But ultimately when it came down to it, given the way we were situated, I really didn't know much about what operations was doing, and as a result had no idea what their priorities and needs were because we only met as a supervisory structure, sporadically, maybe once a month and there wasn't much overlap between the offices about what they were doing. After this new management structure was introduced, it became incumbent upon me and Marge Whitacre to start meeting more often and share information. My recollection is that Marge had some problems with that. Her

whole career had been on the operations side, and it didn't come naturally for her to work as a team in the best interest in the Clerk's Office as a whole and not in the best interest of the operations side of the court.

Ms. Woodbury:

Were the two of you left to sort of work this out between yourselves, or did Jim Davey get involved in how the new management structure -- how people would collaborate?

Ms. Mayer-Whittington:

I think that Jim was good about kind of sharing his vision of the organization and putting some expectations out there of how he would like to see this new management structure evolve, but he wasn't a micro-manager. So every time I met with him he didn't say "So, have you done this and this...?" He would listen to what I was working on and what I was doing and make comments, but he didn't see it as his role to actually set up the day to day communications between Marge and me. Also, Jim was at a point in his career -- he had become Clerk in 1970, maybe '71 or '72, and this was 1986, and he was very well known nationally as an innovator and very articulate and very knowledgeable about court administration and court management so that he was in demand to go to other courts and work with them. From his perspective, he was ready to turn some of the day to day stuff of the court over to Marge and me so that he could focus more on the bigger picture of administration, which he thought would ultimately benefit our court, by working on policy level changes. As a result, Marge and I were left to our own devices, and we had really different management styles and we had had really different management experiences. Marge was much more of a by-the-book person, and in many ways rightfully so, in that her work in

operations demonstrated to her that if the training wasn't adequate and the rules were not followed somebody could be let out of jail inadvertently or a trial wouldn't go forward because we hadn't issued an arrest warrant or search warrant. She saw that as critical to the nature of her job and being something where there was no gray area. It was very much if you have historically done things a certain way and it's been successful then we're going to continue to do it this way. I don't think that the type of work that she did necessarily lent itself to a lot of creativity or innovation because she felt that she was guided by statutes and local rules and things of that nature. I on the other hand had not come up through operations. I clearly came up through Administration and I was seeing all the ways things could change and I could make changes. The judges wouldn't know about it because they didn't get involved in Administration. So I wasn't under the same kind of constraints as Marge, I think, believed she was under. So, it really ended up creating a hugely different management style. I also had fewer people to manage, so I could really get to know everybody who was under my supervision and I could know a little about their families and I could talk to them about what their ambitions were. Marge came up under the old school where you didn't get involved in people's private lives. And then she just had numbers against her because there were so many people in operations. Ultimately, what happened was that I created some programs that helped my employees get more training, helped them with individual development plans. I also had an "employee of the month" program, and once a week I would do coffee and donuts to start off the work week and kind of keep everybody talking to each other and communicating.

Ms. Woodbury:

Coffee and donuts? Everybody would be together?

Ms. Mayer-Whittington:

Yes, and just stop by and have some. Then after a while the judges found out and they would stop by too and it then started drawing comparisons between our two sections from employees who would say like... "How come they get to do this and how come we don't...?" I had gone to talk to Marge about collaborating on doing some things together, but it wasn't her style so she really didn't have a lot of interest in that. And so problems were starting to crop up with communications. One of the things that started happening was that people from her office would come and talk to me about their concerns. I would say.... "Have you talked to your supervisor about this....," because I didn't want to step in, but after awhile they would say "... yes, I've been to my supervisor and I've been to Marge too and she said she would do this and she didn't and it's not going to change and I'm thinking about leaving as a result." So I went to talk to Marge about these things and she felt like I was clearly overstepping my authority, that I had no right to have any discussions with anyone on her side of things.

Ultimately, we actually sat down and talked to Jim about these concerns. So he did a couple of things as far as talking to both of us and seeing what he could do to resolve it. He ultimately concluded that it might be a good idea to bring in somebody from the outside to have some focus groups in both our sections on how people were viewing their jobs, how they were viewing their roles in the organization and that sort of thing. I remember one of the judges talking to me a little bit about it and he was kind of like... "Just tell them to do their jobs -- why are you going to ask them how they view their roles?" I said: "If

they have some interest and some ability to have input, they end up implementing the new program more easily because they feel involved." The judge said: "Oh they don't need that sort of stuff..."

But fortunately, our Chief Judge, Judge Aubrey Robinson, who was an amazing teacher, I know I said this before, but there was no warm and fuzzy bone in his body and we ended up having a conversation with him. When he called me up he would say... "What's going on? What's all this stuff, why do we have to have focus groups? We don't have to be best friends. We all have to get the job done." I would say: "You know you can do it two different ways; you can do it the hard way or you can try to include people. You know I'm reading in the classes that I'm taking at GW that the workforce is changing and people are more interested in having some input in what they do. They do have some ideas that may work and they are the ones who are doing the work." I always had to be very well prepared when I talked to him. I remember him sitting there saying: "Wow. Well, I guess I can't stop you."

Ms. Woodbury: At this time Nancy, had you gone back to GW after taking time off?

Ms. Mayer-Whittington: Yes.

Ms. Woodbury: To finish your graduate degree?

Ms. Mayer-Whittington: Yes. When I became Executive Assistant, Jim said this is really the way I had envisioned the role and this is what I hope will happen. I thought, I need more education because I have some ideas and I have some thoughts about what can happen, but I need a little more structure underneath that. I need something that I can draw from. Not just some of the reading I'm doing. One of the things I

loved about graduate school was the interactions with other students. I loved when I had classes where the people in the class had had some work experience.

Ms. Woodbury:

It must have been valuable to hear about other people's experience.

Ms. Mayer-Whittington:

Yes. I didn't go to graduate school right after college because I didn't know what I wanted to be and I didn't think that was going to help me at that point. I think I needed some work experience and you know listening and sitting in the classes and having people say: "Well I've been supervisor for 10 years" and hear from another person who had been in that capacity for twenty years. We still had people in the class who were right out of college and they had some book experience, but they really didn't have any hands on experience. That was very eye opening for me to hear from people who recognized that they didn't know everything and would learn from their employees and continually develop themselves and approach things with an open mind. You didn't have the old school of information and power and hoarding it to get the highest jobs and that sort of thing. I was finding more and more support for what I felt was my natural instinct which was to delegate and to share responsibility and not be a top down manager. I think some of that goes back to being in a family of 10 sisters. I couldn't tell them to do anything. When we wanted to do something, we all had to work together and we had to figure out the best way of doing it. Everybody had ideas. Everybody had to feel like they had something of value to contribute. That was a really good experience for me to translate into my workplace.

We had this situation where we were getting an outside consultant to come in and they're going to talk to all of the employees in the different groups

and they're going to report back to Jim as to what they end up finding. Those sessions went on for probably two months because it was hard to get employees together and it was hard in an organization that wasn't use to having people asked their opinions of things to actually be forthright about things. They had to do some warm up sessions and the employees had to recognize that there wasn't going to be attribution of the things they raised.

Ms. Woodbury: To create some trust, to be open?

Ms. Mayer-Whittington: Yes. I always appreciated that and thought that Jim did that very well. That he wasn't looking for a quick fix. He was looking to establish some lines of communication that would be valuable to him as Clerk of the Court to get feedback about how the organization was running. Now, at that time, Jim was not the most enlightened person either and I say that because both he and I were very ignorant because I just thought everything would work out; you know. He was still a little bit of a top down administrator, but he could see things changing. He could see from going out to other courts that they worked in different ways in different places and that there was room for "what if." So it wasn't like I could just go to him and say: "Hey, shouldn't we try this?" He would be like "Here she comes again..." And I would say, "Oh I'm sorry, I just had this idea." You know that sort of thing. But I didn't want to come across like I was this brilliant person. You know, I just had ideas. Some of them were stupid, ultimately.

Ms. Woodbury: But you were willing to bounce them off of him?

Ms. Mayer-Whittington: Yes, and I think I learned early on, as a result of that experience, not to have an ego. What was the point of that? Working with judges, men had egos

more so sometimes than the female judges. There was a part of Jim that didn't want to find out that there was too much wrong with the organization because it was his organization too.

Ms. Woodbury:

He might think it would reflect badly on his leadership?

Ms. Mayer-Whittington:

Yes. So after you know, two or three months working with these consultants, the outcome of it was they had some recommendations. I can still remember flip charts back in that time because we didn't have any technology to do anything else and they had people kind of drawing the way they saw the organization. It was people from operations drawing how they saw Operations and Administrative Services. And people from Administrative Services drawing how they saw Operations and Administrative Services. It wasn't just how you saw your own section; it was how you saw the Clerk's Office operating. One of the pictures I still remember was a group that had drawn a picture of Marge with a black cloud over her head and someone had drawn a picture of me as little Miss Sunshine. And I tell you, it didn't necessarily mean as much that I was positive all the time as that I was like "Oh!"... So it was humbling to get that feedback. There was a huge problem with trust in operations. They were a tough crew at that time. They had courtroom deputies who had been there a long time and kind of knew their way around the system and if you had to take any personnel action against them you would get on their bad side. They really had some problems with Marge. But a lot of the issues revolved around confidentiality and favorites and those kinds of things. The consultants said to Jim Davey that the structure he put in place wasn't working, not necessarily because the structure was bad, but

because the two people in place were not able to make it work. Marge had a lot of issues. People were very forthcoming about their concerns that she couldn't really lead the organization. So Jim really thought about that for awhile and concluded that he would re-create the Chief Deputy position.

Ms. Woodbury: The Chief Deputy position that had been in place previously?

Ms. Mayer-Whittington: Yes. And I think Jim had wanted a new organization because he was not on the same page with his Chief Deputy. Jim inherited his Chief Deputy. He had been in the organization a long time and my recollection is that he was the nephew of one of our judges. They were never quite on the same page, but it didn't seem to impact things much because the organization was still kind of fragmented with a lot of little offices, and the big offices and administration was done a lot by our Administration Office. The judges were happy with their courtroom deputies and that sort of thing. It wasn't as glaring that maybe the people in place weren't best for the organization because the organization was moving along and it was not having huge problems. But as the court system was decentralized, and as we were getting a more diverse population, it was clear that Marge's idea of how to run things was not the same as how Jim thought they should be run. It had kind of been like benign neglect. Jim hadn't really scratched beneath the surface because our docketing seem to be current and none of the judges were complaining, and that was our standard for whether you were doing a good job or not.

Ms. Woodbury: On the operations side?

Ms. Mayer-Whittington: On the operations side. One of the things that was starting to become an

issue, and this is one of things that I got educated about, was how much personnel turnover costs an organization. You bring in somebody new and train them and then you tell them... "Okay, you're probably not going to move out of this position for ten years because that's the waiting time around here for advancement". And people started leaving and which was unheard of in the courts because historically everybody stayed. You came and you stayed because it was a good job. Well now you have younger kids who we were hiring, people with college degrees, and they weren't satisfied with just sitting still for that long. They were willing to put in their time, but they weren't willing to do it the way everybody was doing it just because that's the way it had always done it. And at that time, too, we were going from the old retirement system to the Federal Employees Retirement System (FERS) which made people more portable. You no longer had to stay with an organization for thirty years in order to get your retirement benefits; that system didn't exist anymore. Under the new system, what you needed to do was put part of your salary into an interest bearing savings plan and this new system matched up to five percent (5%) and people saw that "Well now I can go any place in the government and I can take my retirement plan with me."

Ms. Woodbury:

Nancy, do you remember approximately when that change happened where the federal government went from the old Civil Service Retirement System to the new Federal Employees Retirement System?

Ms. Mayer-Whittington:

Yes, I think that that happened in the late 80s. I know for sure we were getting educated about it then. You had the opportunity if you were in the Civil

Service Retirement System plan, which all of us were, to convert to the new system if you wanted it. The benefit being that you would get higher matching input into your savings plan.

Ms. Woodbury: Matching dollars from the government?

Ms. Mayer-Whittington: From the government. Yes, the government was putting in 1% for everybody. Matching 1%. The Federal Employees Retirement System would match up to 5% of what you were putting in, so there was an incentive clearly to put more money in the plan. If you were really a good saver, the new plan might be beneficial to you, but the downside was that you would not get the annuity that you had been entitled to under the Civil Service Retirement System. You would get a much smaller annuity because you technically are going to get a larger bump from the savings plan. But we were going through a lot of education about the new plan and the impact it was going to have on our workforce. Again, making the workforce more mobile. So that if organizations had historically relied on the fact that once someone came into the government, they were just going to stay because of the lucrative retirement system, that wasn't going to be the case anymore. And therefore if you based your management style on that assumption, you would likely to end up with some problems. And we were seeing a little bit of this manifested even before the full conversion to FERS with some people not staying in our operation side. So ultimately the consultants recommended to Jim that he make some changes, and then Jim sat down with Marge and I independently and kind of went over the results of their interviews. Marge did not think that the results were accurate; that they didn't accurately

reflect her work and that people were just out to get her. Things like that, which was unfortunate. Shortly after that Jim concluded that he was going back to having a Chief Deputy, and he opened up the position to competition. Both Marge and I applied for the position and when I was selected, that was clearly a difficult outcome for Marge to accept. Then she -- I think I talked a little bit about this earlier -- filed a discrimination complaint under our EEOC policy for age discrimination and ultimately that was reviewed by our Chief Judge at the time, Judge Robinson, and he concluded that there was no discrimination against her based on age. Her complaint was then denied. Then she decided to get outside counsel and she filed a case against Jim using, what they call a "Bivens" claim. I would have to really frankly go back into my records for the details... but it was basically still an age discrimination claim. And she sued; not only Jim, but she sued our EEO coordinator. She sued them personally and privately as well as professionally. That was sort of unheard of at that time because Jim, as Clerk of the Court, was supposed to be allowed immunity for administrative decisions. And the same with our EEO coordinator. So clearly that got a lot of people involved.

Ms. Woodbury:

Was that suit filed in the federal court here in D.C.?

Ms. Mayer-Whittington:

Yes. Filed in our Clerk's Office. And what happened was that the suit was filed in our docketing section and of course quickly reproduced by everybody who wanted to read a copy of it. But Marge didn't serve either Jim or LeeAnn Hall [Flynn], who was our EEO coordinator, immediately so they didn't have a chance to respond very timely. Marge wanted the full amount of time

before serving them. So you had her allegations sitting out there with no response to them, which was clearly not a good outcome. It's interesting how sometimes in an organization people just root for the underdog even if they just spent the last three months talking about how they weren't getting along with the underdog. That person at that time was the supervisor, but once they became the underdog they.... it was different.

Ms. Woodbury: And in this case Marge was perceived as the underdog?

Ms. Mayer-Whittington: When she did not get the position as Chief Deputy. Yes. It was really...

Ms. Woodbury: Hard?

Ms. Mayer-Whittington: It was really hard on everybody. I wasn't named as a defendant, but I was clearly named as a person involved. And also there were some allegations in the complaint that there was a personal relationship between Jim and me that impacted his decision. And that his decision wasn't done on the merits, it was done for other reasons.

Ms. Woodbury: Was Marge still employed at the court at that time and that made it especially volatile?

Ms. Mayer-Whittington: Yes, and she was still the head of our Operations Division which was still our largest division.

Ms. Woodbury: Do you remember what the ultimate outcome was and how long it took?

Ms. Mayer-Whittington: Yes. The ultimate outcome was that the case was dismissed. All of our judges recused themselves.

Ms. Woodbury: I was going to ask whether there was a neutral judge.

Ms. Mayer-Whittington: All of them recused themselves. Judge David Sentelle had recently come

on the appellate court bench and since he was formerly a district judge and had been on the appellate court bench less than a year, he figured he had not forgotten too much about being a district judge so he got the case. He ultimately ruled that there was no basis for the claim and the case was dismissed.

One of the tough things was that instead of responding to the allegations, of which there were many in the complaint by Marge's attorney, Jim's attorney's office just came back with an immunity claim and didn't respond to any of those factual allegations.

Ms. Woodbury: So the allegations just sat there?

Ms. Mayer-Whittington: Yes, just sat there. Everybody was terribly interested in it... the drama. It took over a year to resolve because of the time frames for doing things in a court proceeding, and there were requests for information by Marge's side that they didn't have access to, so they had to have motion hearings and that sort of thing. So it dragged out for a good time.

Ms. Woodbury: During that time had the new structure or really the old structure that Jim had revived of having a Chief Deputy... had that been put in place?

Ms. Mayer-Whittington: Yes.

Ms. Woodbury: And you had assumed that role?

Ms. Mayer-Whittington: I assumed the role of Chief Deputy. Yes.

Ms. Woodbury: And Marge was reporting to you?

Ms. Mayer-Whittington: Actually no. He left her title as Executive Assistant and she reported to him.

Ms. Woodbury: Okay.

Ms. Mayer-Whittington: She still had the responsibility for Operations. And it wasn't until her lawsuit was decided that she came under my supervision.

Ms. Woodbury: And how long did that last? How long was there a situation where she was reporting to you?

Ms. Mayer-Whittington: Until she retired in... I became Chief Deputy in 1985 or 1986 and she didn't retire until 1994.

Ms. Woodbury: That's a long time.

Ms. Mayer-Whittington: And a completely odd set of circumstances. She retired at the same time as three other employees did because in 1994 the courts were given the authority to do buy-outs for the first time in order to move some of our senior people off the rolls and also to shrink the workforce a little bit. So she took advantage of the buyout to retire along with three other colleagues. And I was speaking at the retirement ceremony for all of them. That is something you do when you're the Clerk of the Court. And we had it offsite at the Phillips Restaurant on the waterfront. On that day I found out that my daughter had Trisomy 8. My doctor called to confirm the embryo test results. I just wanted to go home, but I couldn't because of the ceremony. I felt quite an obligation go to this retirement ceremony.

Ms. Woodbury: Because of the background?

Ms. Mayer-Whittington: Yes.

Ms. Woodbury: And also because of your position then?

Ms. Mayer-Whittington: Yes, because of the position. And, you know, the other employees were hard working and good employees and all of that stuff, but I felt also, another

compelling reason was not to.... I couldn't share the information about my daughter with anybody so I could not have explained why I wasn't going to come. It was just one of the ironies ultimately of my position. In my heart of hearts, when I sat down and thought about these other employees, all of them deserved a going out ceremony for their long-term service. Frankly you know, when Jim retired and I became Clerk, that's when I supervised Marge actually, because he continued in some capacity supervising her until he retired. Ultimately after the suit was dismissed he sat down with her and talked about some of the issues that had come up about her supervision and they both concluded she could stay on as his Executive Assistant being the person who knew everything about the rules and everything like that, but didn't necessarily supervise people anymore. So I inherited her when he retired in 1991 and she and I then worked together for the next three years and you know we made it work because we had to.

Ms. Woodbury: Because you had to?

Ms. Mayer-Whittington: And also because you are supposed to do.

Ms. Woodbury: Nancy, you mentioned your daughter Angela when you said you got the report of the embryo test results on the day of the retirement ceremony. I don't think to this point we covered when you got married and when you had children. Was that during the time you were Deputy Chief?

Ms. Mayer-Whittington: Yes. I got married in 1987, a year or so after I became Chief Deputy.

Ms. Woodbury: Sorry. Chief Deputy, not Deputy Chief?

Ms. Mayer-Whittington: That's okay, it's funny. The U.S. Marshals Office has a Deputy Chief, and the U.S. Attorney's office.

Ms. Woodbury: Is that position still there in the Clerk's Office? Chief Deputy?

Ms. Mayer-Whittington: Yes.

Ms. Woodbury: Is there only one Deputy? Chief Deputy?

Ms. Mayer-Whittington: No, there are two now. When I became Clerk, I'd decide to have two Chief Deputies because I recognized that every time I had a big issue, I would have to go familiarize myself more with the operational impact and it was a waste of time. The Executive Assistant position should have worked. It just turned out that the people in that position didn't work out, but the concept worked. Now there are at least fifteen courts that have two Chief Deputies.

Ms. Woodbury: Nancy, was your husband associated with the court?

Ms. Mayer-Whittington: Yes.

Ms. Woodbury: And did he meet you - did you meet him through work?

Ms. Mayer-Whittington: Yes, I hired him.

Ms. Woodbury: Oh. What was his background?

Ms. Mayer-Whittington: He had just finished high school and he was married and his father-in-law worked at the Administrative Office. So when we as an organization sent a request to the Administrative Office for a temporary summer position, we got the approval back with his resume. I frankly was determined not to hire him because it really made me mad that there would be kind of a hint of...

Ms. Woodbury: Nepotism?

Ms. Mayer-Whittington: Yes, but they said you could have this position and here's a perfect person for your position. Well, ultimately, when you are trying to hire temporary staff for your file room, sometimes you are lucky if they can put two words together in

the interview. One person, I remember saying to them... "Why do you want this job?" and he said: "Because I like to work with wood." I said "What?" And he said, "Aren't your files on shelves made of wood"? I was like, "Actually no they are mostly metal and then we have these electronic files." And I'm thinking "You're not even close to what we need here." So we advertised the position. It wasn't well paid, and it was temporary. We got five applicants and the guy who liked wood would have been my second choice. So we ended up hiring my husband. His name is Bryan. We ended up hiring Bryan.

Ms. Woodbury: What year was this Nancy?

Ms. Mayer-Whittington: I think it was... because I was in charge of the records section when I was the Administrative Services Supervisor, I think it was 1984.

Ms. Woodbury: Did he come back to work at the court after that summer?

Ms. Mayer-Whittington: He did such a good job that when a permanent position opened up in the file room before his term was over, he applied for it and we selected him. He had a really good way with people and our file room was populated with some really unusual characters and he managed to get them all to pull together. And he had some good ideas about how things should work and he came to work everyday. So he had a lot of things going for him in that capacity. In fact, as I got to know him, I set him up with one of my sisters because he is twelve years younger than I am. It wasn't until he left our courthouse and went to work for the U.S. Tax Court that we started dating. That was in 1986.

Ms. Woodbury: How much after that did you all get married?

Ms. Mayer-Whittington: 1987. He worked for the Tax Court for just a brief period of time because

the Court of Appeals -- which had worked with him when he was working in the District Court records, we were always sending records back and forth all of the time -- they ended up having an opening and they called him and up and said: "Would you come over here for more money?" and that sort of thing. So he did that... went to work for the Court of Appeals. So he was actually working for the Court of Appeals when we got married.

Ms. Woodbury: Did he remain with the Court of Appeals throughout the time you were Clerk of the Court?

Ms. Mayer-Whittington: No, he decided after we had been married a year or so -- I guess after I got my graduate degree -- he said he needed to go to college. So he worked for the Court of Appeals from probably the beginning of 1987 through almost the end of 1989. And what happened was that we had our first daughter, my daughter Molly, in August of 1989. We were married in December of 1987. So we had Molly in 1989 and when it came time for me to go back to work, after my three months maternity leave, he said: "Why don't I just stay home with her and go to school and I will take some classes at night and stay with her during the day and then we won't have to worry about putting her in daycare." Because we both kind of didn't want to do that. At the time I had a sister who was running a daycare, but she didn't take kids until they were two. Also, I had another sister who was expecting her second child in December 1989 and so she said to Bryan... "If you stay home you can watch my child too." So he got a daycare license.

Ms. Woodbury: Oh really?

Ms. Mayer-Whittington: Yes. And he ended up just watching the two of them, which he really

didn't need a day care license to do because they were considered family, but he decided he wanted to do that anyway. So he did and he stayed at home during the day and went to school at night until Molly was two. Then she went to my sister's, and then Bryan started working part-time because he wanted to be an accountant. He was taking classes in accounting to get his accounting degree at Montgomery College. Well, ultimately... I already introduced Angela... after Angela...

Ms. Woodbury: Was Angela your second child?

Ms. Mayer-Whittington: Yes. I had had a miscarriage before Molly and I had three more miscarriages after Molly and before Angela so that's the gap between Molly coming in 1989 and Angela coming in 1994.

Ms. Woodbury: Nancy, you mentioned that on the day of the retirement ceremony in 1994 for some of your staff you got a call from the doctor's office with the test results and they reported that there were a... how would you describe it?

Ms. Mayer-Whittington: Yes that I was at risk. I had had a screening test and the doctor told me that I was risk for the baby having Trisomy 18.

Ms. Woodbury: What is that? I don't know if people reading this will be familiar with that condition.

Ms. Mayer-Whittington: It is a chromosomal abnormality where there's a third copy of chromosome 18. You are only supposed to have two copies of every chromosome. That's what the test confirms; that the genetic makeup of the child is normal. So, in her case, it showed that she had a third copy of the number 18 chromosome. It is a large chromosome, so as a result it has a large impact on the

body and development. And when they told me that I was possibly at risk for this they told me that eighty percent of babies who have this die before birth and if the baby survives to a live birth they usually have to be institutionalized. And if they do survive to live birth that ninety-nine percent of them die within the first month of life so the odds of her surviving after birth for any time after that were pretty minimal. At that time they told me that the screening test that showed that I was at risk was fairly new and had some false positives so I should have a further test to rule out a false positive. So I went and had the amniocentesis. And then of course, instead of ruling it out, it confirmed it. Amniocentesis is a diagnostic test, as opposed to a screening test. Screening tests can be inaccurate. Diagnostic tests like amniocentesis are 99.9% accurate so at that point there wasn't much hope that they were wrong.

Ms. Woodbury: Did you have those tests because they were standard at that time or had there been another person in your family who had Trisomy 18?

Ms. Mayer-Whittington: No, we had not had any history in our family chromosomal abnormalities nor had we had any history of any other kind of prenatal problem.

Ms. Woodbury: It was just part of the prenatal screening?

Ms. Mayer-Whittington: Yes. The screening was a new test, but it was being done routinely.

Ms. Woodbury: For everybody?

Ms. Mayer-Whittington: Yes, for everybody. It was routine. It was just part of the testing.

Ms. Woodbury: How far along was your pregnancy when you had that test done?

Ms. Mayer-Whittington: The screening test was done in about the fourteenth week of my pregnancy and the diagnostic test in the nineteenth week. It's done by the

nineteenth week because, if you do want to have an abortion, it has to be done by the twenty-first week or it can't be perform by the hospitals.

Ms. Woodbury: But you chose to carry your baby to term?

Ms. Mayer-Whittington: Yes. I chose to carry it to term.

Ms. Woodbury: And Angela was born alive?

Ms. Mayer-Whittington: Yes, born alive and she lived about ten minutes. She had one of the manifestations for Trisomy 18, she had a hernia that caused all of her stomach organs to be on top of her lungs and as a result her lungs couldn't develop. So she wasn't able to breathe on her own after she was born. The hernia in and of itself can be corrected surgically.

Ms. Woodbury: Surgically?

Ms. Mayer-Whittington: Not in the uterus. The baby would be born and then put on a respirator to breathe so that she could breathe the way she was breathing through me, and then they would wait until her condition was stabilized and that was her only problem. They could perform the surgery but Angela only had... there are supposed to be four chambers in your heart; she only had two. So her heart wouldn't have been able to function on its own either. The way they described it in lay terms was that her brain stem didn't send the correct messages to the body so if we performed any kind of surgery the anesthesia would cause her death, so she wasn't a candidate for surgery. At one point in the consultation, when they were telling us all of these things about her I said "Couldn't she be an organ donor"? But all of her organs had problems so she couldn't do that either. So she just had a host of issues. She was born alive on December 17th and she lived for about ten minutes

which is as long she had before she had no oxygen. She was four pounds and nine ounces. She was nineteen inches long. So she was small but she was beautiful. She was just not meant for this world.

Ms. Woodbury: Yes. As a result of your experience with Angela, you've been involved in helping other mothers, right?

Ms. Mayer-Whittington: Yes. I went to a support group after Angela for people who had had a miscarriage or stillbirth and I met woman who was the group leader... a peer support, it's not like a therapist or anything like that, it's just moms who've gone through other experiences and everybody in the group's experience was different. All of them had something that they didn't know about until the baby was born. One of the group leaders had had a similar experience in that in her third month she found out that her son had a kidney disease which essentially meant that his kidneys didn't function and he was not a candidate for a kidney transplant so he died a couple of hours after he was born. And so we both decided that it had been a fairly lonely experience during the pregnancy and that maybe if we offered support to people who decided to continue to term that that might be a way we could help out. So a year or so after Angela died, we formed this group called "Isaiah's Promise" and we named it after a quote in the Old Testament. We were hoping that we would be able to help people of the Jewish and Christian faiths and anybody else. The name is based on the quote in Isaiah that said... "See I will not forget you; I've carved you in the palm of my hands." So that's where the name "Isaiah's Promise" comes from.

Ms. Woodbury: And you've continue to work with them?

Ms. Mayer-Whittington: Yes. I do still to this day.

Ms. Woodbury: Was there a point at which people at court became aware that Angela had had this diagnosis or was it not until after Angela was born?

Ms. Mayer-Whittington: I think it was probably a month after the diagnostic test. At that point I would have been around six months pregnant and people wanted to have a shower and I had had a child already there, and we had had a shower. And clearly it was a different pregnancy. It was hard to come in everyday and not say something. I also was going to the doctor because I was at high risk. Of course, this was also the time when we were bringing on five new judges to the Court. So there was a lot of activity and a lot of visibility and I was a little bit distracted sometimes.

Ms. Woodbury: Right. So you thought you should tell somebody else?

Ms. Mayer-Whittington: Yes, and what I did initially was I told my two Chief Deputies. Something I know that caused me to finally talk to the office about it was that I was trying to get the two Chief Deputies' positions reclassified. The reclassification came through, and my normal posture in the organization was to say to the organization I am going to try to get these positions reclassified, these are the reasons we're doing it, this is where the money would come from and that sort of thing. And if it's successful then at one of our monthly meetings I would say: "By the way, the positions were reclassified." Because frankly the salary of a government employee is public information so, although we don't run around telling everybody exactly this sort of thing, we do have to say what positions are graded as, so they would know if they want to aspire to that position or not.

Well, as luck or not luck would have it, the paperwork for the reclassification came through a day or so after the diagnostic test and it got filed away. And to this day, I don't remember if I saw it or not and ultimately...

Ms. Woodbury: So you mean you didn't really notice it or you weren't sure?

Ms. Mayer-Whittington: I don't remember

Ms. Woodbury: You don't remember seeing it?

Ms. Mayer-Whittington: No, I don't remember seeing it. It got filed away into the personnel jackets. I didn't tell them because I didn't recognize it and then somehow or another, it came through some other channel about this time and so I said "Oh my gosh." So at a Clerk's Office meeting someone raised their hand and said basically...." Gosh you're always very open about this, but I just heard from somebody that they were reclassified and nobody told them anything about this and I thought if that happened you were going to let us know." At that point I did know. I think a week earlier I found out about the reclassification and actually told the two people involved because I think they had already seen it in their paychecks. So I thought...

Ms. Woodbury: Thought you had to explain?

Ms. Mayer-Whittington: Yes, and I said I have to tell you something... I said I've a little bit distracted. So I told them. Everybody was great about it, but I remember thinking as I was talking, here you go again you should have said "You know, give me a minute and I'll get back to you on that and I'll send something out." But I didn't, I just kind of said... "This is what happened." And so, that's how everybody found out about it. And I had told my two Chief Deputies, but hadn't

really told anybody else yet because I had a hard time talking about it. But the office was great in one sense. They certainly appreciated the reason why it happened and they certainly stopped asking about showers and that sort of thing, but they were afraid to talk about it.

Ms. Woodbury: Yes, I'm sure that they were feeling awkward and not knowing what to say.

Ms. Mayer-Whittington: Yes, avoiding contact.

Ms. Woodbury: At that time did the court or the federal government have policies in place for new mothers; whether with babies who had special needs or not? Were they sort of enlightened or was there no support?

Ms. Mayer-Whittington: They had finally changed the sick leave policies so that you could use the sick leave you had earned to take care of a sick child.

Ms. Woodbury: How long would you get for maternity leave at the point?

Ms. Mayer-Whittington: You would only get how much time you had saved.

Ms. Woodbury: Oh really? There was not separate maternity leave?

Ms. Mayer-Whittington: No.

Ms. Woodbury: And then you could add your sick leave or sick leave was all you had?

Ms. Mayer-Whittington: You could add annual leave if you wanted to extend your maternity leave. Usually if somebody in our situation had a pregnancy, generally the doctors did not release you back to the workforce until six weeks after birth, at that time. I'm not sure that is still the standard because there are certainly post-partum issues that come about and clearly you're taking care of an infant that needs individualized care and that sort of thing. If an employee didn't have that amount

of time, we would forward them leave that they had to make up. As they started to earn those leave days.

Ms. Woodbury: They'd pay it back in the future?

Ms. Mayer-Whittington: Yes. For sick leave, you only earned four hours a pay period. And that's what you earned annually for the first six years, but then after six to ten years, I think you started earning six hours a pay period.

Ms. Woodbury: A pay period was what, a two-week period?

Ms. Mayer-Whittington: Yes. So I remember when we would hire people, and also at various times I would address the Clerk's Office, I would remind people about holding onto their sick leave and not calling in sick; especially if they might have a family because there is no maternity leave. You can be off on maternity leave, using your sick leave, but there's nothing that the government grants to you for that time.

Ms. Woodbury: No recognized maternity leave?

Ms. Mayer-Whittington: No. You could be on leave without pay.

Ms. Woodbury: At the time you retired, was that different? Was there a maternity leave?

Ms. Mayer-Whittington: No. And in fact, we had started using sick leave for the care of our children before it was actually authorized because I just thought it was the right thing to do and I knew that was what was in the works. It just hadn't been finalized by the federal government. And people needed to have that flexibility because we were hiring working moms and they were good employees, but they were losing all of their annual leave and not getting the break that they needed...

Ms. Woodbury: To handle ordinary illnesses?

Ms. Mayer-Whittington: As an side to this: when I went back this past June for one of our employees who was retiring, she was a Courtroom Deputy at the time she retired to Judge Hogan, but she'd been in various capacities in our organization. When she was speaking she said "Nancy, I don't know if you remember this, but when you hired me you talked about how important it was that you have balance in your life and that we were really looking for an organization to have all kinds of people work for us and so we encouraged people with families and moms - that we were hoping that they would find it fulfilling to work here and that we were family friendly to the extent we could be, but we can't do anything we can't do." And she said "I was excited because I'd just gone to another interview at a bank and they asked me if I had any children and I told them I had two-year old twins and they told me that they weren't going to hire me." And they didn't hire her. And she said "There I was in this interview where you were saying that you welcomed that," and she said "Then of course, a month after I started here my kids came down with chicken pox, one at a time ... I was out for almost three weeks and you still said that was okay, you know, and I paid it all back and now I'm retiring after thirty years."

Ms. Woodbury: That's interesting. So really the private sector, as least parts of the private sector, have been more family friendly on maternity leave, than the federal government?

Ms. Mayer-Whittington: Yes, that's true.

Ms. Woodbury: Nancy, we've been going now for a little over an hour and a half and maybe now is a good time to break. I know you have somebody coming to work on something. And we're scheduled to pick up two weeks from today.

Ms. Mayer-Whittington: Right.

Ms. Woodbury: I look forward to talking to you then.

Ms. Mayer-Whittington: Me too.