

Nancy Mayer-Whittington Oral History
Interview Session VI
September 27, 2011

Ms. Woodbury:

Nancy, I would like to start the interview today by asking you to talk about the point at which you actually took over from Jim Davey as Clerk of the Court, and maybe just as background, could you tell us if you remember talking to Jim about his decision to retire and then of course what led to your eventual appointment as Clerk of the Court.

Ms. Mayer-Whittington:

I was selected by the judges in June 1990. I was sworn in on February 1, 1991 so that was when I actually took over from Jim. Jim had talked to me at one point, as he had talked to Marge, about his plans to retire when he turned 55. That was a well known fact at the courthouse. He wanted to do some other things with his life and he had been in the workforce since he had gotten out of law school. Jim made it pretty clear that's when he wanted to go -- when he turned 55 in September of 1990. Jim had also decided that he wanted to pick up health care coverage to use when he retired. (He had been enrolled in his wife's health care plan up until this point but wanted to make the change when he retired.) In order to have coverage for retirement from the government's plan, Jim needed to enroll 5 years prior to retirement. Ultimately it turned out he hadn't signed up for health insurance timely enough so that he had to stay until February of the next year. Anyway everybody knew that was the general time frame when he was going to go. A couple of times in the years prior to Jim's retirement, he had talked generally to Marge and I and anybody else that he thought might be interested, that it would be important for candidates for the position of Clerk of the Court to have a graduate degree as well as an undergraduate degree when applying for the

call an Executive Session. Back in the 80's and prior to this, an Executive Session was a meeting of all the judges on the District Court. (Today's Executive Session involves all the judicial officers on the court so that means that magistrate judges and the bankruptcy judge are also included.) The purpose of the monthly meetings was to share information with the judges and have discussions about issues that are generally considered to be administrative in nature. It's not intended to be a time to discuss different cases or legal matters. It's mostly a time to talk about putting together a committee to plan the next Judicial Conference or putting together a committee to deal with aspects of court administration that they thought might need to be addressed. It was a time for the Chief Judge to brief all the other judges on judicial conference policy changes that may be on the way, the GSA's management of the building and various issues such as these. Before Judge Robinson was Chief Judge, the only people who attended the Executive Sessions were the judges and the Administrative Assistant to the Chief Judge who took the minutes of the sessions. During Judge Robinson's tenure as Chief Judge, he invited Jim Davey as Clerk of Court to the sessions since they were primarily administrative in nature and Jim was very knowledgeable about administrative matters. These sessions gave the judges an opportunity to candidly discuss administrative matters. It also gave them the opportunity to develop collegiality and better lines of communication.

Ms. Woodbury:

When Jim gave notice of his retirement, the judges had planned to take up consideration of the applicants for that position at their June 1990 Executive Session?

Ms. Mayer-Whittington:

Yes. I think that Jim had talked to the Chief Judge, who was Aubrey Robinson at the time, and said that he thought the position was a very significant position and if they were going to end up hiring somebody from the outside they would want somebody with a lot of really good experience. Such a candidate would want to give six-month's notice to their employer of their decision to take another position. If it was an in-house candidate, it would give the person an opportunity to spend time working one on one with Jim for at least six months. So Judge Robinson approached the Executive Session in probably January or February of that year and discussed that with them and they all agreed it was their goal to make a selection at the June Executive Session. Thus, the recruitment process began and I submitted my application. I got letters of recommendation from two other long time Clerks of Court, one from a senior member of the Administrative Office and one from a senior member of the Federal Judicial Center. The court put together an interview panel and they conducted the interviews in May. The interview panel was Chief Judge Aubrey Robinson, Judge George Revercomb, and Judge John Penn. Judge Penn was in line to be the next Chief Judge so it was logical that he should be on the panel. Judge Revercomb was one of our newer judges so he gave the panel the perspective of the less senior judges. The time after the position had been posted and before the interviews had taken place was a bit stressful for me. I felt like every decision I made as Chief Deputy and every action I took was being examined under a microscope by the judges to determine if I would be a good Clerk of Court. I remember one incident in particular that highlighted my stress level and the

impact it was having on my ability to think rationally. About a week before my interview, Judge Penn, who I knew pretty well since he had been with the court almost as long as I had, called me up to his chambers. He told me that his son had come home with a stray dog and that they already had a dog and did I have any interest in a dog because he knew I was fond of dogs. I told Judge Penn that I would think about it and let him know. I left his chambers and as I walked back to my office I was wondering if this was some kind of a test. Would my decision about taking the dog impact my chance of being selected as Clerk of Court? I went home that night and I told my husband that I thought we needed to adopt the dog because it might be important to my career. My husband said: "You have got to be kidding. They will not hold it against you if you don't take his stray dog." I wasn't entirely convinced, but I did let Judge Penn know that we couldn't add another dog to our household at this time. So, we didn't get the dog and I still got the job. Two years later, Judge Penn became Chief Judge and I got the opportunity to work with him on a regular basis. He was a wonderful Chief Judge and I shared that story with him at one point and he had such a good laugh about of it. He said: "It never occurred to me that asking you about a stray dog would put that kind of pressure on you. So sorry." But he also had a great sense of humor. For the next few months after I told him the story, every time he would call me he would begin by asking me if I was in the market for a stray cat, bird, hamster and every other kind of animal and that my answer would probably impact my ability to remain as Clerk. He was so great to work with - he was such a wonderful, wonderful man. About the interview, I'm not sure if I've already

talked about the interview...

Ms. Woodbury:

No.

Ms. Mayer-Whittington:

Well, I spent a lot of time preparing for the interview. I read everything I could about matters that were before the Judicial Conference. I read all I could find on innovative practices at other metropolitan District Courts. I knew a lot about court administration. I went back over all of my notes from my classes at GW about personnel management, the benefits of team building and the advantages of team-based management. We were piloting this type of structure in our Operation Section so the topic might be a relevant question at my interview. I thought I had a pretty good feel for the pulse of the office and what was going on. I really thought I had a good idea about the future-- we were getting more involved in electronic filing and electronic remote access and video presentation equipment. These were programs that I thought were really exciting and could streamline different practices and procedures at the court.

Then I went for my interview and Judge Revercomb opened it up and said: "**Nancy** Mayer-Whittington, Nancy **Mayer**-Whittington, and Nancy Mayer-**Whittington**. (Changing the emphasis on my name each time he said it.) Do you use that on your driver's license?" And I said, "Yes." Judge Revercomb continued, "And on your bank accounts"? Again, I said "Yes. It's on my bank account." He paused then asked "Is it even on your credit cards?" Before I could answer, Chief Judge Robinson said, "For God's sake George, I think we've established that that is her name. Now do you have anything substantive to ask or should we go on?" Judge Revercomb just could not understand the hyphenated

name.

Ms. Woodbury:

That was new to him.

Ms. Mayer-Whittington:

Well my name wasn't new to him as I had that name since my marriage three years earlier. I think the concept of a hyphenated name was puzzling to him and he wanted to know why I chose to hyphenate. He didn't know how to ask me, so he just kept saying my name. I guess he was hoping I would explain it to him. That was the beginning of a rather disappointing interview. I was really disappointed because of the nature of most of the questions. Judge Penn was primarily interested in the morale of the courtroom deputies and how I thought things might change under my leadership. Did I think some of these problems were really deep-seated? We did have problems with what we called the Courtroom Division which was where all the courtroom deputies were located. A lot of them took their influence and power from the judges they worked for and held that up as their kind of armor so that they believed they were untouchable. As a result, there were issues in our Courtroom Division. I tried to address these issues at the interview without divulging confidential information. I acknowledged that we did have some long-standing challenges that would benefit from some open discussions, and that we needed to be more open about sharing information. I said that I believed the more information we share the better we could communicate and solve problems. I was really into sharing information. For too long we had a management culture that operated on the theory that employees only needed to know job specific information. Other types of information such as long-term objectives for the judiciary as a whole and

procedures that were being discussed and developed for future use were not thought to be things that employees would be interested in learning. As a result, when judges shared this type of information with their courtroom deputy the courtroom deputy would then share bits and pieces of that information with other courtroom deputies, but put their own spin on the information. This, of course, led to a lot of misinformation. I felt that the more accurate information we made available to our staff – as long as it wasn't confidential – the better informed our staff would be. Then we wouldn't be dealing with so many rumors and questions about what was really going on in the organization. I had discussed this in depth with Jim and convinced him that we needed to do a better job of changing the management culture. I told Judge Penn that we would continue to share information as we had been doing for the last six months. We had set up a system for sharing all memos from the AO that were not of a confidential nature. We made copies of these memos and put them in an area that was accessible to all employees so that they could retrieve the memos and read them and thus have the same information that the management staff was receiving. The staff had reacted positively to having access to these memos. This was just one way we were working to improve the flow of information. We had also worked to improve the monthly Clerk's Office meetings by inviting employees to submit questions for open discussion at the meetings. So I talked a little about that and Judge Robinson talked a little bit more about the global areas of the court administration, but I think my interview lasted 15 minutes. I'm not sure if Judge Revercomb asked me anything other than about my name.

Ms. Woodbury: He was still mulling the hyphenated name.

Ms. Mayer-Whittington: At the end of the interview, he asked, "Does your husband hyphenate his name"? Judge Robinson just rolled his eyes at him and then concluded the interview by saying, "Well Nancy we know you pretty well and we shouldn't be wasting anymore of your time. Why don't you just go back and do that great job you're doing." I left the room thinking, "What happened?"

Ms. Woodbury: You were over prepared?

Ms. Mayer-Whittington: Yes, I was over prepared. I was ready to talk about so many important issues facing the judiciary presently and in the future. I kept thinking I don't know if they see me as a serious candidate. I wondered whether they just saw me as the person that came up through the ranks and that they were going to look for somebody who had a more stellar background or more star appeal or something along those lines. It was really disconcerting. The judges met in an Executive Session about two weeks after my interview. I waited in my office to hear the decision. Jim was there and my friend LeeAnn who was the Administrative Assistant to the Chief Judge also waited with me. Normally both Jim and LeeAnn would attend Executive sessions but the judges decided on a closed session so they could all talk about what they were thinking and it would be

Ms. Woodbury: Confidential.

Ms. Mayer-Whittington: Yes, confidential. I think the meeting started, they usually started about 4:30. And at 5:15 Judge Robinson appeared at the end of the hallway... we could see him coming down the long hallway towards my office – where it used to be – and I felt like he was moving in slow motion. He must have been a good poker

player because there was no obvious sign about what he was going to say. Then he walked into the room and by then a couple other people who were friends and also worked at the Court had joined us. Chief Judge Robinson paused and he looked around and he said: "I want to shake the hand of the next Clerk of Court for the United States District Court for the District of Columbia."

Ms. Woodbury: Oh wow!

Ms. Mayer-Whittington: He smiled and said, "It was a very fair discussion of all the candidates, but it was clear who the favorite was and so you have the support of all the judges." That of course was very thrilling and exciting to hear. I was so relieved and so happy! Over the course of the next week I made an appointment and visited with each judge wanting to thank them for their support and also to say "I am interested in what you want to see happen and I'm interested in having ongoing communication." I wanted to let them know that I valued their input and that I was going to be more available to them as Clerk than I had been as Chief Deputy. I just wanted to get off on the right foot....

Ms. Woodbury: Yes.

Ms. Mayer-Whittington: But when I visited Judge Hogan I got a bit of a surprise. I always had a lot of interactions with Judge Hogan. He made it a point to stop by my office on a regular basis to find out what I was up to and to get better informed as to what projects the office was working on. He always liked to be in the know because he had some influence. All the judges respected him because he was privy to a lot of information and he was very discrete as to how he shared that information. He was not in any way a gossip. There were a couple of our judges who were.

That's all they were interested in, but Judge Hogan liked to be able to say to the judges at the lunch table when they were discussing something about the Clerk's Office and it was clear to him that they did not have accurate information: "Well I think this is happening because of "x" project in the Clerk's Office. They are working out the bugs in a new electronic system." He liked to correct any misinformation that was circulating among the judges. Anyway, when I went to visit Judge Hogan in his office to thank him for his support, he said congratulations and then he said: "What did you do to tick Royce off? He's the only one who raised some concerns about you." I was shocked! I told Judge Hogan that I didn't know why Judge Lamberth had any concerns. I said "I've got a really good relationship with him and I'm surprised." Judge Hogan said that Judge Lamberth was not too fond of Jim Davey for a variety of reasons but that a lot of the reasons were not Jim's fault. As background on this, when Judge Lamberth first came on the bench in 1985 the courts were going through a really tough budget freeze and we were told that we could not spend any money on a new judge for furniture and furnishings. We had to outfit the chambers with excess furniture and extra supplies. But Judge Lamberth had a friend on our Court of Appeals who came on the bench at the same time as he did and this appellate judge was able to get new furniture and furnishings despite the budget freeze. When we at the District Court level found out that the Court of Appeals was getting money for new judges, but that we were not getting the funding, we called the AO. The answer, after several phone calls and several memos, was that we hadn't used the correct justification on our original requisition. The budget

freeze had generated new guidelines that had not been widely shared at the District Court level. It took us about six months to figure all that out and in the meantime Judge Lamberth felt like he had not been treated fairly when he came to the Court. In addition, he had waited an extremely long time for his confirmation hearing after being nominated by the President. Senator Ted Kennedy, who was on the Judiciary Committee, had held up Judge Lamberth's hearing because he felt that the Committee shouldn't put "another white male on the bench." Senator Kennedy wanted the President's nominations to reflect more accurately the diversity of the country. Senator Kennedy had nothing against Judge Lamberth – he was just trying to make a point – but the result was that Judge Lamberth waited far longer for his hearing than he should have. And so he came to our Court feeling like he had already been treated unfairly.

So anyway, what Judge Hogan shared with me about Judge Lamberth was kind of interesting. I remember leaving Judge Hogan and going wow!

Judge Hogan and Judge Lamberth were very good friends at the time and still are. Judge Hogan offered to intervene on my behalf. He said to me: "If it will help I'll talk to him. I'll let him know that you are your own person." Judge Hogan said that Judge Lamberth told the other judges that he was worried that as Clerk I was going "to be a clone of Jim Davey and nothing was going to change and everything was going to be awful". I guess Judge Lamberth felt like he needed to say his piece. When Judge Lamberth was finished, all the judges looked around and said "Let's vote." And they voted for me.

Ms. Woodbury:

Did you know who else had applied for the job?

Ms. Mayer-Whittington:

Yes.

Ms. Woodbury:

Did anybody from outside of the court apply?

Ms. Mayer-Whittington:

Yes. Off the top of my head I don't remember the names. I believe that the person who was at the local court, Superior Court, not the Clerk of the Court at the time, but somebody in his office had applied and I believe a couple other people, some people from the Administrative Office applied for sure. A couple attorneys from the Administrative Office, but no other clerks from any other court applied. The judges I think had thought that someone in a small court might be interested in coming to D.C.. And quite frankly I think that Jim, who was well known-- he traveled a lot to all the courts because he was a really strong in court administration; he went to help new courts out-- I think he kept telling them that they shouldn't apply. I think the word kind of went around that there was a strong in-house candidate so I think people who may have been interested in applying, just didn't apply.

I went to see Judge Lamberth to thank him for his support after Judge Hogan had told me about Judge Lamberth's concerns. I thought well I'm going to proceed like I don't know what happened. And when I went in he shook my hand and he said: "You should be very proud of yourself it was unanimous." He and I never talked about that afterwards. We talked about a lot of other things but not about my selection. But it wasn't hard to tell that he had his doubts about me. My first year as Clerk-- I was selected in June, but I didn't actually get sworn in until February and Jim traveled a lot in his last six months so I felt as if I was already doing the job -- was rather interesting. During the course of that first

year, from June until at least the following June, maybe a little bit longer Judge Lamberth made it a habit to send me some really awful memos. They would start like this: "Well, the Clerk's Office has screwed up again" or "Does anyone in your office have a brain?" I would pick up the phone and call him and while I was waiting for his secretary to put him on the line I would take a deep breath and when he answered I would say, "Hi Judge, I got your memo."

Ms. Woodbury:

"Good idea, Your Honor."

Ms. Mayer-Whittington:

Yes. I would say "Tell me exactly what happened." I would listen and try not to get defensive. If one of my staff had indeed done something off the wall, I would agree with him that we had made a mistake and we would correct it. In some cases, Judge Lamberth did not have accurate information and so I would give him the facts as I knew them and he would calm down and say he was glad I cleared things up. He always ended the conversation by saying he appreciated that I got back to him so quickly. But the memos blasting our office continued. Then, I guess it was in December and I had officially been Clerk for about 11 months, I got yet another memo from Judge Lamberth. It was the end of the day and I hesitated to open it. I was packing up to go home for the day and I was not up for another "blasting memo". But then I decided it was better to end my day with the memo rather than start the next day on such a negative note. Imagine my surprise when I read something to the tune of: "My Courtroom Deputy did not like the whole idea of a team-based management system when your predecessor introduced the idea – she thought it was a terrible idea – and so did I. Today she came to me and told me she wants to apply to be one of the team

leaders. So, if you got her to come around, you must be able to make this whole thing work. Congratulations and have a great Christmas" or something like that. From that time forward he was my best friend and strongest supporter. I don't know if he remembers how we started out, but after that December memo, Judge Lamberth would, on a regular basis, stop by my office to see me and to ask how things were going. And, he would always say: "What can I do to help you?" More often than not, he would ask, "Is there anybody you want me to beat up on because I'm good at that." He was the last Chief Judge I worked for before I retired and we had a great relationship.

As I mentioned before, when I started in the position as Clerk I went around and talked with all the judges, and for the most part they would say "Things are going very well". Some judges mentioned their concern that the criminal docket was always behind and they didn't know why that was happening. I told them we had a really complicated docketing system and it was difficult to keep it current and that was part of the problem. They had little issues, but they didn't have major issues. But all of them appreciated the opportunity to tell me what was on their minds. So many of their concerns were cleared up just by giving the judges more information. It was amazing to me how simple it was to listen to the judges and appreciate their perspectives. Jim Davey, I think, had gotten frustrated with the fact that he had to explain his actions to them when he made a decision. Jim thought that the judges should just know that he had an administrative and management background and they should just let him do his job and not ask questions. I think Jim, sometimes, let his ego get in

was not grandfatherly – that would come much later. But he was smart and stayed on top of things so he helped run interference. He was a strong personality and strong leader and had no problem reminding a judge who was out of control that there was only one Chief Judge. It was really nice to have that first year with him as Chief Judge and to have had the benefit of watching him run the Court when I was Chief Deputy. I got to learn from him and that was really helpful to me in the beginning.