ORAL HISTORY OF
RICHARD KIRKLAND BOWDEN
Fourth Interview
July 2, 2009

This interview is being conducted on behalf of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewee is Richard Kirkland Bowden, and the interviewer is Joshua Klein. The interview took place at the Courthouse on July 2, 2009. This is the fourth interview.

Mr. Bowden, you wanted to discuss some lawyers that you have seen in practice?

Mr. Klein:

Mr. Bowden: Yes. I have some names of some attorneys whom I had the privilege of observing try cases in this district, and I was very impressed with their abilities in trying cases. George E.C. Hayes comes to mind; Curtis Mitchell; Kenneth Mundy; Dovey J. Roundtree; Joel Blackwell; and if I did not mention earlier, William B. Bryant; William Gardner; and I think I mentioned Edward Bennett Williams before; Vincent Alto; Joseph Sitnick; Jean and John Dwyer – that's a husband and wife team; Jim Sharp; Jacob "Jake" Stein. All of those attorneys I mentioned, I don't have any specific cases that I remember them trying, except I can isolate Luke Moore because he tried the infamous attorney impersonator case. Luke Moore and Assistant U.S. Attorney by the name of Sullivan tried the infamous attorney impersonation case of Oliver Wendel Holmes Morgan and got a conviction.

Mr. Klein: I just want to ask – Mr. Blackwell, can you repeat his first name.

Mr. Bowden: Joel. He was in private practice and then subsequently went into the U.S. Attorneys Office . A very, very good trial lawyer.

Mr. Klein: What sticks in your mind about what made these remarkable lawyers remarkable?

Mr. Bowden: Many of them were defense attorneys, and as you know, in most instances, when the government brings a case, they pretty well have good evidence, or they think they have good evidence, to prove their case. So defense counsel starts behind the 8-ball, if you will, and in some of these cases I remember the facts and the circumstances that caused the case to go to trial, and I had my doubts of the defense counsel being able to effectively defend the case, and in many instances, to my amazement, they were able to raise that reasonable doubt to the jury. In some of the cases, they got a split decision. Some counts were not guilty, some counts they were found guilty. From a defense counsel's standpoint, that's a win. So I mention these attorneys because I saw them in trial and really take a little defense evidence and make it a winnable position for their client. And all these gentlemen, and ladies, that I mention, were dedicated to the bar, dedicated to the court, and dedicated to the American jurisprudence, and you could tell that by the way they prepared themselves for trial; you could tell by the way that they were persistent. I gave these names because these were not, to use the term, "Fifth Streeters." These attorneys, the names that I mentioned, to me were those who really are the cream of the crop in terms of trial lawyers that I had the opportunity to see.

Mr. Klein: When you use the term "Fifth Streeters," there were a lot of offices on Fifth Street, right?

Mr. Bowden: Yes, and some of these attorneys had offices on Fifth Street. The term "Fifth Streeters," I guess, is something that evolves – some attorneys who practice law in the Court of General Sessions, Municipal Court, and subsequently Superior Court, did not have a fixed address as an office. They met their clients in the Courthouse and developed what strategy they wanted to implement in the trial, in

the Courthouse, and some of them met on Fifth Street, right on the sidewalk, and sometimes it would be the first or second time they had seen their client since the initial arrest, so they were commonly referred to as "Fifth Streeters." They did not raise a lot of issues that could have been raised in trial; they were not as prepared as they should have been in defense of their clients. Many of them were manipulators, if you will. They were able to do a lot of plea bargains. Some cases were triable cases, should have been tried, but rather than take the time or energy to prepare to try the case, they would work a deal and do a plea. And I can say this because working in the Marshals Service in the cellblock, you would often hear the interview between defendant and counsel, and the defendant would explain to counsel what actually happened in a situation to cause his arrest. And then sometimes later in the courtroom when the case came for a motion, and some of the things that I remember defendant raising with counsel was never challenged in court and it just wasn't good lawyering, if you will.

Mr. Klein: That's interesting. I know you also want to give an example of, for instance, what you might see as inadequate preparation by a defense lawyer that comes out in court.

Mr. Bowden: Some of the instances that stick out in my mind: counsel comes downstairs in the morning and interviews the clients that they were assigned to represent for presentation.

Mr. Klein: "Downstairs" meaning?

Mr. Bowden: Downstairs in the cellblock, in Superior Court – now Superior Court, then it was Municipal Court, Court of General Sessions. These are "Fifth Streeters" I'm talking about. And they get up before the judge, and the judge would ask some basic questions about the defendant to determine whether or not the defendant can

be released prior to trial, and oftentimes the court will ask the counsel, "Is the client married?" Counsel would have to turn to the client and ask, "Are you married?" The court would be asking basic questions, and counsel didn't have that basic information after having an interview with the client downstairs to be able to articulate it to the court. So that suggests to me that come trial time, if they got to trial, if they're not prepared with the basic stuff, they're not going to be prepared for anything to cause some intention to application of law. I've heard many of them say after the hearing, "I'm going to talk to the prosecutor and see if I can't work something out for you." Unfortunately that happened in a lot of situations.

Mr. Klein: I wanted to ask you a quick follow-up question on one of the names you mentioned as one of the very good lawyers you saw. You mentioned William Gardner. Is that any relation to Wendell Gardner who's a judge?

Mr. Bowden: No. That was another Gardner who also subsequently became a judge, William Gardner, who is deceased now. There were two Gardners in Superior Court. William Gardner was one. William Gardner was a partner in the law firm of George E.C. Hayes and William Bryant, and Annice Wagner, I believe, was in that law firm, who is now a Senior Judge in the D.C. Court of Appeals. Judge Margaret Haywood came from that law firm as well. That law firm produced excellent lawyers and subsequently outstanding judges.

Mr. Klein: Before moving on to courtroom decorum, I'm wondering when did you start seeing female attorneys in considerable numbers? Was that a change that was remarked on at the time? Did people notice, or was it very gradual?

Mr. Bowden: It was very gradual, very gradual. I remember Dovey Roundtree, Margaret Haywood, Jean Dwyer, June Green, Ruth Hankins who was primarily in civil

practice. Burnita Matthews, the first female judge in the U.S. District Court. And I saw later some judges who are now on the bench here. But in the early days, it was very gradual. Many of them practiced primarily civil law.

Mr. Klein: Let's talk about two lawyers, Julia Cooper and Joan Burke. Did you want to bring up those names?

Mr. Bowden: Right. Ms. Cooper was the first African-American female to be appointed as an Assistant U.S. Attorney in the U.S. Attorneys Office, even though she was assigned to the Department of Justice, and the first African-American female trial attorney in the U.S. Attorney's Office was Joan Burke. And then after Joan Burke, I believe it was Ruth Banks.

Mr. Klein: Was it a name you already mentioned?

Mr. Bowden: After Joan Burke, the next African-American female in the U.S. Attorneys Office was Ruth Banks.

Mr. Klein: Ms. Banks has now passed away.

Mr. Bowden: Right. I don't know where Joan Burke is now. Both were good trial lawyers.

Mr. Klein: Julia Cooper Mack, what did she do after she left the U.S. Attorneys Office?

Mr. Bowden: After she left the U.S. Attorneys Office, she went to the Court of Appeals for the District of Columbia. She is now retired from that Court.

Mr. Klein: Should we talk more about particular lawyers, or should we switch to courtroom decorum? I think you have something to say about that.

Mr. Bowden: When I speak of courtroom decorum, I am talking specifically about the United States District Court. When I first came to the U.S. District Court for the District of Columbia, there were certain things that you just did not do in the courtroom, and judges were very, very strict on adhering to those rules. At counsel table, all the chairs were straight. There were no chairs with casters on them so therefore

you didn't move around. Chairs were stationary, and counsel had to keep both feet on the floor. Both of their feet were on the floor and they did not recline in those straight-back chairs. You did not cross your legs while the court was in session. Any time you addressed the Court, you stood first and addressed the Court. You did not address the Court unless you were standing. You stood, got recognized by the Court, and then you addressed the Court.

Mr. Klein: They were recognized by saying, "Mr. Jones…", or by looking at you?

Mr. Bowden: It was verbal recognition, and you approached the podium and spoke from the podium, not from counsel table. Women attorneys never wore pants. Always a business suit. Inside the well, moving around inside the well, very, very limited. Either the Marshal would challenge you or the Court would challenge you. Even though you were a participant in the proceeding, once the judge came on the bench, and said remain seated until asked by the court to approach the podium or you got permission to leave the well was just not tolerated. Anyone inside the well had to be properly dressed. That is, a suit and tie and for women a suit but not pants and they had to have on hose (stockings). Personally, as the United States Marshal, I didn't own a sport jacket. All of my suits were dark colors, dark grey, black, blue or dark brown. Sport clothes, sport jackets and collar and tie was just not tolerated, even from a staff person. You sat up straight in the chair and there was no talking in the courtroom, either in the gallery or inside the well, unless you were addressing the Court. The client and attorney had privileges to talk but not when the Court was talking.

Mr. Klein: What would happen if someone was not living up to all this?

Mr. Bowden: Severely reprimanded by the Court in an embarrassing way.

Mr. Klein: If the judge saw someone slouching?

Mr. Bowden: In an embarrassing way. The defense, very strict, very regimented. As I reflect back, many of them had some military background, experience. Some of that carried over from their military experience. Very, very strict.

Mr. Klein: Would you ever have a private word with someone who you thought was about to get in trouble with something? The judge is about to come in and someone is slouching?

Mr. Bowden: That was one of your responsibilities, to maintain order. You were expected as a Marshal to maintain order and decorum in the courtroom. If you saw an attorney doing something or about to do something, or anyone, it was your responsibility to correct it. Because if you didn't the judge would tell you to do it, but you knew he expected you to do that anyway.

Mr. Klein: How are these standards, or practices, different now?

Mr. Bowden: I had a culture shock when I retired in 1987 and came back in the early 1990s to see the carefree attitude and dress in the courtroom, beginning with the Court itself. There was a very relaxed dialog between the Court and participants. I saw judges, even though they had their robes on, you could see that they had a sports jacket on under the robe. And they themselves leaned back and crossed their legs, so when I saw counsel crossing their legs, that was just something I was not accustomed to seeing in the courtroom. The lawyers were moving about, everyone going and doing something while the judge is on the bench, the judge is talking, they're litigating a case, folk just moving about. I was not prepared for it.

Mr. Klein: You can pinpoint the time when the change happened. You can recognize it because you left in 1987 and came back.

Mr. Bowden: I left in 1983 and went to headquarters 1983 and retired in 1987. In 1983 when I left, it was very, very strict. Some time between 1983 and 1991, 1992, there was a relaxed attitude.

Mr. Klein: What about the way that counsel and the Court would talk during proceedings? Was it more formal and polite in the old days?

Mr. Bowden: Yes. Counsel knew not to ever interrupt a judge while that judge was talking, even though they may have been in a heated or action-driven dialog, you just never heard of an attorney cutting a judge off. You stood straight and talked, none of that slouching over the podium or standing with hands in your pocket talking to court. Defendants, we would never let a defendant put their hands in their pocket and talk to the judge. You stood at attention when you talked.

Mr. Klein: Was there a time, did you notice, when some of the older judges were still expecting things to be done the old way, and some of the newer lawyers didn't know?

Mr. Bowden: Some of us who were familiar with the judge's attitude, how he felt, the deputy clerks would tell the attorneys don't do this, or don't do that, this is how the judge expects you to act or react. And some did and some didn't, and they got the wrath of the court.

Mr. Klein: Do you have, or do you want to give an opinion, on which way is better? Whether it's better all-in-all to have courts that are more formal and where the authority lines are clearer, or whether it's better where everyone seems to relate better and the business still gets done in a relaxed atmosphere?

Mr. Bowden: I have not given that any serious thought. I guess if I had to have my druthers, I think I'd – sometimes I've seen counsel, to me, very, very close to being disrespectful to the court in their attitude and the way they respond, and that may

be a lot of things, that the counsel – that because a lot of judges now who were trial lawyers and they were active trial lawyers and they understand combativeness and how counsel can get wrapped up in a case and kind of lose your discipline, I guess, I wouldn't want to criticize a lawyer for that because it's an adversarial situation. They're trying to do the best they can for their client. So I can't answer the question by saying which is better. I can say that overall we seem to have a good – my experience – a good cadre of attorneys and excellent trial judges, from my perspective. And the work is getting done. Justice is being served. So I don't know, I don't know which is best.

Mr. Klein: I have one other follow-up question that occurred to me. Did you ever see lawyers purposefully irritate the judge, some of these rules to get the jury's attention?

Mr. Bowden: Oh yeah. Several of the lawyers I mentioned earlier were good trial lawyers and were also good tacticians. One who stands out to me, he wanted a continuance and the court would not grant him a continuance because he had, in the court's mind, many, many continuances before and the court wanted to make sure the case got tried. He would fake a heart attack, deliberately, fall on the floor. Get transported to the hospital, and he was popular enough where he had a series of doctors who verified that he needed three days' rest and medical verification that he needed three days' rest. Now he had a tremendous calendar, he was very active, both in this court and the local court, but very effective, he was not ready to go to trial in the instant case, ask for a continuance, the judge wouldn't grant a continuance.

Mr. Klein: You were going to talk about a Department of Corrections case.

Mr. Bowden: Before Judge Lamberth. I believe it was a civil case where the allegation was that the Department of Corrections had physically abused some inmates, and it grew out of an instance where there had been some disturbance at the cellblock at Lorton. The mission was to retrieve the aggravators out of the cellblock and separate them and put them in another facility, in an institution. The captain in charge of that detail was on the stand testifying for the government. The question was put to him, "What happened?," and he went on to relate what happened. He said he had three choices. One was to talk the inmates out of the cellblock, so he tried to do that and was not successful. And he said the second choice was to use tear gas to get them out of the cellblock. He tried that. The third choice was to beat the hell out of them. He said that was his third choice, to beat the hell out of them. Judge Lamberth recessed the court just behind that statement. I guess you're saying what's the point, why am I relating this story. I'm relating this story because as a person in law enforcement, I was embarrassed that a captain would go on the stand and use that kind of language and to resort to that tactic just to get inmates out of a cellblock. There has to be another way than to beat the hell out of them, as he described. And that was what the allegations were.

Mr. Klein: Do you want to say more on that?

Mr. Bowden: No.

There was an Assistant U.S. Attorney in this jurisdiction, the last name was McLoughlin – Michael McLoughlin I believe was his name – but I was always impressed and fascinated with the way he tried cases. He was a very dapper dresser. He wore the English-cut collar shirts and very flashy cuff links, he was kind of short in stature, and this was before they had a PA system in the courts, in the U.S. District Court. So in order to be heard, counsel would always address

the witness from the furthest point in the well from the witness stand, and McLoughlin had a habit of adjusting his tie and putting his cuff links out to be seen, and I'm sure he did that deliberately to get the jury's attention, because the jury would always turn and watch him, and they would rarely hear the defendant as he took the stand to answer the questions. There were a lot of attorneys who used various tactics to get the jurors' attention on them and not on the witness testifying. We had one attorney who would ask the Court could he approach the witness, and that was something you always did. You never approached the witness without getting explicit permission from the Court, which today some courts do not require. In fact, some courts today will tell you that you need not get permission. But after this one prosecutor would ask permission to approach a witness, and it was a witness for the defense, and he would show the witness a document or a piece of evidence, and on his way back from the witness stand as he passed the jury box, he would whisper in a very low voice, "Listen to this lie." And he's walking along the rail next to the jury. He would go back to that area – we talked about the furthest point from the witness – and ask a question. Now whatever the answer coming from the witness would be, he, the counselor, had already poisoned one, two, or more members of the jury's mind by saying, "Listen to this lie." Now I know today counsel would be criticized for doing that kind of thing.

Mr. Klein: So that goes to show that even when there were all kinds of rules and "Yes sir, please, can I do this" kind of thing, people were still doing this kind of thing.

Mr. Bowden: Exactly.

Mr. Klein: So not total control over the courtroom even if people are saying, "Yes sir."

Mr. Bowden: He would say it in a very low voice no one else would hear except one or two members of the panel. They took that information with them into the jury room.

Mr. Klein: Are there any other subjects we should cover?

Mr. Bowden: Not right now.

Mr. Klein: It's been a real pleasure. Thank you for your time. If you have any thoughts based on your time, something like 45 years in the courthouse, if there's any sort of overarching thought about what you learned about human nature or how the justice system and courts can serve society and how people relate to it, what might you think? It's an unfair question, I didn't tell you I was going to ask that.

Mr. Bowden: I can only talk about this jurisdiction and what I have seen in this jurisdiction. This is an excellent jurisdiction, the best in the country in terms of fairness on both sides. I think it manifests itself because of the quality of the judiciary and the quality of members of the bar, both on the prosecutor side and defense side. Even though I talked about the inept attorneys, there were only a few, but there were enough of them to tarnish, if you will, but they didn't survive, and we are grateful that they did not survive, that the bar eliminated them. This jurisdiction, from what I have experienced here, and I do have some information in talking with colleagues in other jurisdictions, that this jurisdiction is a leader in American jurisprudence. If I were a defendant, I would think that in this jurisdiction I would get a fair trial before this court.

Mr. Klein: That is a great thing to say.

Thank you very much. I really appreciate your time.