ORAL HISTORY OF
RICHARD KIRKLAND BOWDEN
Sixth Interview
May 6, 2010

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 on May 6, 2010. This is the sixth interview.

Mr. Klein: Carrying on from where the other interviews have gone, today this is going to be talking about particular judges that Mr. Bowden has known and also particular stories from the Courthouse that come to mind and certain personalities and trials that he saw, and so forth. So, I think you were going to start with a story that happened with, was it Chief Judge McGuire?

Mr. Bowden: Yes. Chief Judge McGuire. As I may have said earlier, in the District Court in those days, each judge had a deputy marshal assigned to their chambers. The Courthouse was open. We didn't have the security barriers you have now. The general public would walk into the judge's chambers unimpeded. So a deputy marshal was assigned to the judge's chambers, sort of a gatekeeper.

Herbert Spiller was assigned to Judge McGuire. He also served as a court crier. So when the judge, this particular morning – the U.S. Marshal has never had uniforms. There was a dress code, I think it said appropriate collar and tie, and most of us took appropriate collar and tie meaning dark suit, white shirt, and long tie to match. On this particular spring day, Herbert Spiller came to work with a pair of canary yellow trousers, a Scottish plaid sports shirt, a white shirt, and a Scottish plaid bow tie that matched the jacket. When the judge went into the courtroom, as the court crier, Spillers opened the court, and after the judge had

been seated and the audience sat down, Judge McGuire looked over at Spillers and said, "Who is that clown standing there, and why does he have that clown outfit on?" At that time, he says, "Recess the court." Spillers recessed the court, and I'm told that Chief Judge McGuire went into his chambers and called Luke Moore who was the Marshal at that time, and complained about the dress that Spellers was wearing. The Marshal told him that there was a dress code but not uniforms. The chief judge directed the court, the Clerk's Office I suspect, to supply each deputy with two black suits. There was a haberdasher at 9th and E, the name escapes me now, but we all were to go directly to be fitted. So the entire term of Judge McGuire, each deputy when they went into court wore either that black suit or a similar black suit. That was the closest thing to a uniform that we've had.

Mr. Klein: That's a fascinating story. After that, it returned to just each deputy could wear his own appropriate suit?

Mr. Bowden: Right. But the message was no more outfits like that. As a matter of fact, my entire career, up until I retired, I didn't own a pair of casual slacks or a sport jacket, because I knew I was coming to court and I took the term "appropriate clothing" seriously.

I'd like to talk about another judge that – well let me say this. All of the persons that I had contact with at the trial level were outstanding judges, outstanding people, made a tremendous contribution to the order of the judiciary here. I've only selected one or two that I thought that something of interest of historicalness that the reader or the listener may enjoy. If a guy in a conversation with other folk, a lot of things would probably come up and we could have a good banter about it, but these ones that I'm going to talk about really stand out at this date in

my mind. I want to talk about Judge Holtzoff, Alexander Holtzoff, who was in my view very well-read and well-thought of in terms of his judicial intellect, and he wanted to make certain that those standards were carried out in his courtroom. I recall a robbery case. Now you must understand that common-law cases were tried here until, I believe, 1974, 1975, in this court. A robbery case was being tried before Judge Holtzoff, and the defense attorney was a young fellow who was a graduate of Howard University Law School, and during the course of the trial, the jury had been selected and was seated in the box. During the course of the trial, Judge Holtzoff recessed the trial then brought the defense attorney up to the bench and told him that he, Judge Holtzoff, was personally familiar with a lot of professors at the Howard University School of Law and he knew that they prepared their students better than this young man had demonstrated at this trial. Judge Holtzoff said he was going to continue this case for two weeks to give defense counsel an opportunity to prepare his defense, a proper defense, for his client, and to return to court to be in better shape to defend his client than what he was doing at that time. After the court was recessed for the day, I went downstairs to the U.S. Marshals Office, who at that time was Luke C. Moore, and related to him what I had witnessed in the courtroom and told him that I would volunteer to work with the Howard University Law School and help them to prepare law students for trial practice. Some time afterwards, I was invited to come up to Howard University Law School, and there were four adjunct professors who formed the staff of the Trial Advocacy course. That class met on Tuesday nights and Saturdays, and I volunteered to work with them as an expert witness. The adjunct professors were Luke C. Moore, Judge William Bryant, George Windsor, and Julian Dugas. I worked with that quartet maybe 15 or 20

years at Howard University School of Law. It grew out of that experience that I witnessed before Judge Holtzoff.

Judge Burnita Matthews, first female judge appointed to the United States District Court in the United States of America, a very gracious lady, very motherly, very well-prepared in the business of the court. But what stood out to me every time I think of her is her very, very warm smile that she always carried. Very even-tempered in court, never appeared to be riled by anything. Just a pleasure to be in her company.

Spotswood Robinson, the first African-American to be appointed to this Court in 1966, was very articulate. You never had to worry about what he said or what he meant. He didn't mix words or use any ambiguities. I remember one Friday evening, recessing for the weekend, and as the courts always admonish the jury about discussing the case and when they are to return and the conditions when they're being released. On this Friday, Judge Robinson said that he's going to recess the court for the day. "The court will not be in session tomorrow," which was Saturday, "and obviously we will not be in session Sunday. But Monday morning, Monday morning, nine o'clock, the court will be in session. Have a good day and a good weekend."

Moving on to Judge Richey, Charles Richey. Judge Richey was an innovator, meaning that he did not like the oath of office that historically had been presented to witnesses to testify and for criminal jurors and civil jurors, because he felt that the conventional language that was being used may be offensive to people of Muslim faith or people of Jewish faith. Even though he was a very devoted and devout person of his own religious upbringing, he was very sensitive to that of others. So he devised an oath of office that to him covers the meaning of the

purpose of the traditional office oath without offending a person. He started out by saying, "Raise your right hand, you are in a court of law ***." What stands out to me is the term "you're in a court of law." Certain phrases stick out.

Mr. Klein: He said that when the witness took the stand?

Mr. Bowden: Right. Certain phrases stay with you for a long time. And he had a very, very low voice [imitating the judge], "You're in a court of law." But this was written out, and I kept this, his former clerk – although he was a strict Methodist at home, he replaced the traditional "so help me God" oath with a version that avoided religious references. I'm not going to offend any movement, I don't think it's proper to ask a Roman Catholic to take an oath on a Gideon Bible. I don't think it's fair to ask the Jews to do the same thing, and atheists have rights in this world.

Mr. Klein: So he would switch all of the oaths to remove religious references and so forth? Do you want to read one of the oaths?

Mr. Bowden: Let's see what you think – although I can't change it [laughter]. "Do you solemnly swear, affirm under pain and penalty of perjury, that the testimony that you shall give before this court will be the truth, the whole truth, and nothing but the truth, and that you will truthfully answer all questions provided to you. If so, state yes." To the jury, "Do you, and each of you, solemnly affirm under pain and penalty of perjury before this honorable court, that you will try, and truly try, any true deliverance made between the United States and the defendant, a true verdict rendered according to the evidence and the law? If so, state yes."

Mr. Klein: Interesting.

Mr. Bowden: I think he was the first judge to start sending out questionnaires, voir dire questions, in a complicated case.

Mr. Klein: These were to potential jurors? These would be printed out for them?

Mr. Bowden: Right, and sent to their home. Or, I think he brought them in. I'll look into whether he mailed them or gave them. Because a lot of folk complained about that. Clerks complained about it, lawyers complained, everybody complained about the time and effort to put the questionnaires together. They do it now as a matter of course in complicated cases or cases that have a high profile, or notoriety. It's just a matter of course now. The person fills them out, then weed them out. You know what I'm talking about.

Mr. Klein: Right. But he would save this for high-profile cases where they'd be bringing in a large number of potential jurors because many would be disqualified for one reason or another?

Mr. Bowden: Right. They used to bring them in and voir dire them in person. It would take a long time. He was an impatient guy. He wanted things to move fast. I'm not sure if I want to put that on the record, that he was an impatient guy.

Mr. Klein: Let me just ask. Some judges probably – the same case, one judge might be able to try it in one week and another judge might take two weeks, depending on how much you speed along the lawyers and how long you make the jury sit each day and the rest. So he wanted to move the business of the court faster?

Mr. Bowden: That's right. I'm not criticizing anybody else, but he shortened the process, he shortened a lot of stuff, but didn't offend anybody's rights. And this innovativeness of this process was to shorten the voir dire process.

Mr. Klein: And it's been adopted you think by the majority of judges?

Mr. Bowden: Yes.

Mr. Klein: Who else do we have?

Mr. Bowden: John Lewis Smith. I hope whoever transcribes this will make sense of that. Judge John Lewis Smith had a criminal case that the judge was trying, with a .45 pistol in evidence and the police officer was on the stand testifying. The U.S. Attorney asked to approach the bench and gave the gun to the police officer, and before he could present a question to the police officer, Judge Smith asked, "Is that gun clear?" I'm on the other side of the courtroom, the jury is in the box, the officer brings the gun back, looked down the barrel and pulled the trigger and said, "It's clear." When the hammer went forward and hit that metal, that was the loudest sound I've ever heard in my life. Judge Smith almost fell off the bench. He says, "Marshal, recess the court." I recessed the court, took the gun from the officer, and went back into the jury room where the judge was literally shaking and asked me, "Why did that man do that?" I couldn't answer. And from that day on, the Marshals Office requires that all guns brought into the courthouse would be brought to the Marshals Office and it would be cleared and a restraining device put in to make them inoperable. So when you see the plastic handcuffs in the chamber or weapon that is in this courtroom, that's the history behind it. You can start asking questions.

Mr. Klein: I was just going to ask because I know the Marshals Office do clear them all, but before the officers were responsible for doing it themselves?

Mr. Bowden: And the reason for it is we tried to stay as far away from the evidence in a case as possible because we didn't want to get into the chain of custody process, so guns and drugs and money, we tried to make certain that they stay within the parameters of the persons who are responsible for them. Because of safety and security, we decided to step in and do that. And we admonish the prosecutor and defense counsel that they ought to agree that the gun is functional. The Police

Department will have to come with a certificate to show that it's functional. Whatever we had to do, we were not taking the restraining device off the weapon to show that it's operating.

Mr. Klein: Would they do that before to show that it was operating?

Mr. Bowden: When a gun came into the building, the officers were instructed to bring it straight to the Marshals Office. And if there was a challenge by defense counsel, then the marshal would, out of the presence of the jury, take the restraining device off, show that it was, and put it right back on. But I don't recall, or I haven't heard of, any defense counsel question whether it was operable or not because by that time, the process was once it's seized, the Police Department would take it straight to their file person and would test it so they would have a certificate to show that at the time of seizure, immediately after seizure, it worked.

Moving on to Judge Norma Holloway Johnson, the first female African-American appointed to this court. A former schoolteacher here in the District of Columbia, and in her heart, she remained, even though she was on the bench, a schoolteacher. She kept that schoolteacher aura about her. In the District of Columbia school system, they used to teach civics and government classes, and we invited the Superintendent of Schools at the time to bring students down who were taking government and civics so they could see the judiciary in action, and we did that twice a day with high school students. At some point, we started bringing down elementary students, and in order for the elementary students to appreciate the judiciary system. I went to Judge Johnson, because I knew she was interested, and told her what I wanted to do, and she wanted to know what kind of plan I had. I told her, "Well, let's take a fairytale that all the kids know, Goldilocks and the Big Bad Wolf, and I'll just have a demonstration in the

courtroom and let them do role-playing." She said, "No, you can't do that, that's not organized; we have to be structured." "Well if you want to use that format, Goldilocks and the Three Bears or Big Bad Wolf, let's develop something and give more realism." So with that, she and her staff developed a trial built around that theme. It had opening statements, questions of the claimant, which would be the Big Bad Wolf, the Three Pigs, Goldilocks, the Three Bears, and made a trial out of it, and we still use that format today.

Mr. Klein: I was going to say, I know judges participate in that every year.

Mr. Bowden: Also, Judge Tatel of the Circuit and more recently Judge Kotelly. It gives the students an appreciation for what the court proceedings are all about.

Judge Thomas Jackson had the *Microsoft* case, the part of it that I sat in. It was a long trial, very technical. If you were not a person who was very learned in the Internet or the language, it was not as exciting. I learned a lot about the computer business by listening. I had the opportunity to meet, to develop a relationship with one of the attorneys in the case, David Boies, and during the course of our conversation, he admitted to me that he was getting $800 an hour, and he said, "No attorney is worth $800 an hour." This case went on about two months, so you do the math.