

Interview of James F. Davey

Session #2 – May 29, 2008

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 James F. Davey. The interviewer is Steven P. Hollman. This interview was conducted by telephone on May 29, 2008, commencing at 4:00 p.m.

Mr. Hollman: Greetings.

Mr. Davey: Hi, Steve, good to talk to you again.

Mr. Hollman: It's nice to speak to you. I have regards for you from the current clerk, Nancy Mayer-Whittington, with whom I met this morning.

Mr. Davey: Oh, is that the first time you met her?

Mr. Hollman: I think I had met her before, but the first time I actually sat down and had a conversation with her.

Mr. Davey: Oh, great! She's a wonderful lady.

Mr. Hollman: She is terrific, and she was extremely helpful. And I actual went away with what's marked a "History File" on *Watergate*, which is fascinating reading.

Mr. Davey: Oh, well you know, after I talked to you last time, you thought that Nancy might have some stuff, and I said I didn't think so, but I guess we did leave her some stuff.

Mr. Hollman: A lot of it is correspondence with National Archives about material that was sent over to the Archives, but it includes, for example, the Exhibit List from the trial which itself is fascinating reading.

Mr. Davey: Yeah — you can get — not bogged down, but it's some pretty interesting stuff went on those days. Well I'm glad you met her. Of all the things I achieved in 20 years as the Clerk of that Court, I consider my greatest achievement getting the

court to promote somebody from the Clerk staff rather than going outside like they had to do for me, and — I shouldn't say it was an achievement, but it was a goal that I had for a number of years. And for them to pick a female non-lawyer represented a complete change in the thinking that had been prevalent 'til I got there. You had to be a white male lawyer to be clerk of a district court. That's no longer true, and it's to the court's benefit. I don't know if anybody's done a history for her, but she has achieved wonders there. She started as a Grade 4 or 5 Deputy Jury Clerk.

Mr. Hollman: She said it was Grade 4, and she asked me to remind you that Greg Hughes was hired at the same time, and that she was hired as a Grade 4 but he came in as a Grade 5, and she had to take the typing test and he didn't.

Mr. Davey: [Laughter]

Mr. Hollman: So she wondered whether the fact that he played softball with you had anything to do with that.

Mr. Davey: I tell you what, if he didn't play softball he wouldn't be there. Funny story about Greg is that he and I played softball on a team, and he was looking for work, and I found him a temporary job. My recollection is he started as a temp in the data processing, and as soon as he got the job he quit the team. And I said, "Greg, what's going on?" And he said, "Well, I don't like to have to do too much. Before, I had to play softball. Now I have to work." [Laughter] He's a different sort, Greg Hughes.

Mr. Hollman Nancy, you know, I asked her about women in the Clerk's office, and she said, actually, the office itself was predominately women largely because a lot of the

work was clerical work, and so it required people who could type, and you would never ask a man if he could type.

Mr. Davey: That's right. Well you know, while we're thinking about it, the court was built in the early '50s — wasn't Truman president? I think that was the case. In any event, the men's room for the Clerk's office was much larger than the ladies' room, much larger. And some years later, we hired a gal, we then had progressed from just Deputy Clerks to different kinds of jobs, and she was an administrative assistant. And after she got feeling comfortable she says, "Why is the men's room larger than the ladies' room when you got many more female employees?"

So I said, "Well, how do you know that's true?" [Laughter]

And in any event, we ended up switching them, with a few minor modifications. I said yeah, it makes sense. Yes, those jobs historically went to females, and the days when they wore white gloves preceded my tenure, but at one point they did, to accept papers.

By the way, you had asked if there was anybody that you could contact, and I didn't have anybody other than Nancy. I don't know if she mentioned Bob Lowney. You might just jot his name down. He's the head of the Clerks Division in the Administrative Office of the U.S. Courts now. And he worked for us at one point. And the one time Nancy and I didn't agree on a personnel matter when we were filling the job of the head of the computer section, she wanted Bob Lowney, and I went with somebody in the Jury office that had more years of service. So Bob was disappointed, and he ended up going to work in another court, but then he ended up going up the ladder there and is now the head of the Clerks Division there. I remember that one of our innovations was to have a

management retreat away from the courthouse, and I had a beach house down in North Carolina and arranged to have my senior management staff go down, but we didn't have any males, so I brought Bob along to clean our act up a bit, and you might think of talking to Bob. He might have some perspectives on this.

Mr. Hollman: She also suggested Judge Tom Jackson.

Mr. Davey: Who?

Mr. Hollman: Judge Jackson, who I think spoke at your retirement party.

Mr. Davey: Oh yes he did. He was the judge that controlled our use, we had a fund that we got from charging admission to the bar and the use of the funds had to be for the benefit of the bench and the bar. And gradually, thanks to Judge Jackson, we got to do some good things with that money. You know, TVs for the jury lounge, and I think we ended up even using it to give awards to employees. I'm not sure of that, but yeah, he was a pleasure to work with and we made sure that we used the money, but never so it could, to the detriment of the court, you know, liquor and the like. Yeah, he'd be good.

Mr. Hollman: Well she said he was one the most approachable of the Federal District Court Judges.

Mr. Davey: He was, no question about it.

Mr. Hollman: And she also credited you with professionalizing the Clerk's office.

Mr. Davey: And rightly so. [Laughter] No, that's true. If you saw the study, I'm sure you did, what we were looking at when we were making the study back in the late '60s is a far cry from what you'd see there today. And it took a while to get there.

Mr. Hollman: I asked what the major changes were, and she said when she arrived, you were still using typewriters, so the computerization of the courthouse, and she said you

started with the mainframe system and also housed the computer system for the entire country.

Mr. Davey: Yes, yes, she remembers well. We had a small — that was one of my first steps, to set up a small data processing outfit, and they would keypunch data into cards about cases. This is once we went to the individual calendar system. And we had a private firm pick those keypunch cards up at night and run ‘em for us. Yes, in fact we were one of the first courts — this is now two or three or four years after we started, maybe even longer — to convert. We could spend a whole session on the implementing data processing in the court because it made some major changes. Today, for example, Nancy’s achieved, since I’ve been gone, electronic filing of documents. You know, they don’t need to file a piece of paper. Can you believe that?

Mr. Hollman: Yes, she said no need for the white gloves any more, because no one even comes to the Clerk’s office anymore.

Mr. Davey: Yes, yes. It’s just amazing. But if you think about it, the courts are just processing information, and the goal was to get as much information to as many people as possible with as little effort as possible, rather than relying strictly on paper. Yes, it was a natural place to have data processing, and it just, we had a hard time just getting rid of the typewriters, getting rid of the manual typewriters. The first step was to get electric typewriters, and I was told that that was going to be a big mistake because what are we going to do when the power goes out? That’s why we’re saving some of these manual typewriters. We never did have a power outage.

Mr. Hollman: She described docket sheets that were kept in tubs by year. And she said very often we would come to inspect a docket sheet for a case and find that it had gone missing and assumed that was because one of the judges' law clerks had come down to borrow it at night.

Mr. Davey: Well, the tubs were a great innovation, because prior to the tubs, here's what happened: an attorney would file a document, say an answer to a complaint. A counter clerk sitting at the counter would take that document and write on a piece of paper "Answer filed in case number such and such," and she'd just sit at the counter all day and take these documents in and then the sheets that she prepared summarizing the information on the document that she had handled would be given to another deputy who would then go over to the shelf where all the docket sheets were in post binders. And I always said that even though we always had female docket clerks, you didn't want to mess with them because after lifting those docket books all day, they were strong. But they would have to take the docket book apart, find the right sheet, type the entry, put the sheet back in, close up the binder, put it back on the shelf. And I came in with the idea of taking them out of the binders, putting them in tubs and dividing the work up by last digits. That way you could equalize the workload over time. You know, if Mary had digits one and two, and Sue had digits three and four, over time those cases would even out in workload. Of course, when you'd have a big one, we had to get into a different system when we had class action cases.

In any event, Bob Stearns, who was the Clerk — I was appointed — I got to back up a bit. I worked on the study, and then after the study finished in '69, we were all looking for work. And low and behold, the District Court called me

up and asked if I would be interested in an interviewing for the job of Chief Deputy, and I was very surprised because I had been very critical of the court. I don't know if you read the, you probably read some of those reports. And it would mean I would be going to work for the Clerk who I had indicated, really, even though he was a professional in the old sense of the word — high integrity, hard worker and all — he was not a manager. And consequently, the court's business wasn't getting managed well. I would be reporting to him.

So they worked out a special arrangement so I could report directly to the Chief Judge in case I had problems with the Clerk. And I didn't have to use that route too often, but in any event, he warned me, the old Clerk warned me that the worst thing that could happen is if you lose a docket sheet. That's the only record we have of the case. And you put them in these tubs, and, you know, they're going to get lost. But for the sake of efficiency we put them in the tubs, and I also pointed out, I don't have the statute at hand, that it wouldn't mean the end of the world if we lost one of those sheets because there's a provision for recreating it, you know, with the attorneys' help, it's in the statutes. So we went on, and you could move those tubs around, roll them around if Mary didn't show up, push them over to Sue's desk.

But I'll never forget the lady that was head of dockets. The old-timers were really conflicted because they had loyalty to Bob Stearns, for the most part, the old timer. And this new kid — I was only in my mid-thirties coming in — trying to get them to make all these major changes, caused some problems. And when I divided the work up by digits and put the dockets in tubs, Miriam Jenkins — Miriam Jenkins was her name — when she retired she raised horses, and she

named a horse after me — the whole horse not just the rear of the horse.

[Laughter] She invited me up to West Virginia, you know Charleston, for Jim Davey's maiden race. Fact I've got it up here. The son of a gun won! [Laughter] That was something. Then another thing, the last time I told you I was at Pearl Harbor December 7th, Jim Davey won a race on December 7th. Unbelievable! But we've digressed.

In any event, Miriam had some doubts about this tub business. And there was one male deputy out of the five docket clerks, four females and one male. And she'd come into me, and she says, "you know Reuben" — his name was Reuben, I forget his last name — "he's not getting a fair share of the work. I don't know what about — there's something about his cases; he just gets easy cases all the time."

Well it turned out that Reuben was more efficient, and he didn't talk as much as the females. But I couldn't convince Miriam of this. But I had an opportunity when one of the females retired or got another job or whatever. I thought, I'll tell you what I'm going to do. I'll just switch Reuben to her digits and wait for Miriam. And sure enough, a few months go by. Miriam comes in and says, "Jim you're not going to believe this. You know, Reuben's getting the easy cases again." [Laughter] Whatever.

Mr. Hollman: Now was Reuben involved in the pinochle games that I heard about down in the basement?

Mr. Davey: Oh, Reuben was not, no Reuben wasn't, but the file clerks surely were. That's where we kept old cases. And man, when somebody came in looking for an old

case, that was prime time for the file people: "I'll go get it." [Laughter] Oh, yeah, that's the old days.

Mr. Hollman: I heard that you engendered some dissatisfaction when you terminated the pinochle game.

Mr. Davey: I engendered dissatisfaction with a number of things, Steve, and I'll give you one example. The people in the Clerk's office worked from 8:00 to 4:30 with an hour for lunch, and they got paid for eight hours. And I said, "That's not right. That you're working seven and one-half hours." They said you just can't eat lunch in half an hour. So I was, we were, I should say we because I didn't do anything on my own. I mean, I would get the ideas and, you know, you need people to implement them. We were one of the first to implement a flextime system. And under this system that I proposed, was that you could come in within certain hours, you didn't have to be there from 8:00 to 4:30. You could come in at 7:30 one day; you could come in at quarter of eight the next, whatever, but during peak staffing periods, it was up to the supervisor to be sure that there were "X" amount of bodies when you had the most work. And then as long as that core period was covered by the minimum needed, then you had a lot of flexibility. But when you went to lunch you signed out, the clock stopped, you were on your own. And when you finished lunch, you came back and you signed in. And I personally followed the same thing: sign in, sign out.

Well lo and behold, once they were lunching on their own time, most of them did it in half an hour. But I submitted that proposal for the flextime to different divisions, the Courtroom Division, the Dockets Division, the Jury Division and the Data Processing Division, and told them if you want to, vote on

it. And everybody voted it down because it was a proposal coming from management, except data processing. And data processing took it up and loved it. I mean, you know, if you had a doctor's appointment, you didn't have to take sick leave, you know, just as long as you made your 80 hours in a two-week period. We were very flexible, although as years went on, Nancy got me even more flexible. Nine-day work week, working at home, we were one of the first to experiment with that. Family leave — if the kids were sick, you could take sick leave.

In any event, after a few months of the data processing, the grumbling started, these people are being selected for special treatment. I said, "Wait a minute; we had a vote." [Laughter] So eventually the whole office went to it, and I think Nancy still has some of that. But well, we digressed, I thought we were going to talk about the study.

Mr. Hollman: I have one more question before we get there, and that is, was there any sort of dress code at the Clerk's office when you arrived?

Mr. Davey: Yes, Bob Stearns got very upset with me. He wore a jacket and a tie every day, and I wore a jacket and tie every day. But I took my jacket off when I was at my desk. And he came in one day and let me know that that wasn't right. I had to wear my jacket all the time. And I said, "Bob I appreciate it when I'm out mingling with the troops, but I work best with my jacket off." And the way we compromised, I closed my door. Yes, guys had to have ties, and then we, if I remember, the files division complaining because of the heat and whatever, that they didn't want to wear ties. And I was pretty strict on that.

And they said, well over at the Court of General Sections, they don't have to wear ties.

And somehow, I think Judge Hart was the Chief Judge, and one of them went around my back to Judge Hart. And Judge Hart said, "Well, Neil," or whatever the guy's name was, "if you don't want to wear a tie, you can go to work in the Court of General Sessions." And that was the end of that.

That was in the early '70s, and then I recall we just had to have a good dress shirt and pants. And I forget the code for women, but yes, there was a dress code, and it came under fire from time to time.

Mr. Hollman: Nancy told me that you very politely and yet very firmly made it known to Bob Stearns that you would not be wearing your jacket at your desk.

Mr. Davey: She told you that?

Mr. Hollman: Yes, she did.

Mr. Davey: She remembered that, then. He was a gentleman. But he was just symptomatic — his attitude towards his work was totally professional, you know, you serve the judges. Whatever the judges want, they get. And I remember asking him during the study, how many civil cases do you get in a year, Bob? And what kind are they, and how many do you terminate? I was coming in from the outside, just trying to figure out what their workload was. He says, "What difference does it make how many cases we have or what kind they are? We're here five days a week, eight hours a day, and there's more work than we can handle. That's all you need to know." And he was very sincere about that. And that explains how I got into the court system with that study of the, you know, in the late '60s, the backlogs that all of the courts were experiencing. It was not so much a function

of workload. It was a function of how you dealt with that workload, either as a judge and/or as a non-judicial person. And you just needed systems in place and people with proper training. And you saw what happened. The courts thought they needed more judges and more supporting personnel. And it turned out they didn't need more of either, and they ended up getting rid of their backlogs once they changed their systems.

Mr. Hollman: Let's talk about the recommendations that arose from the Court Management Study and D.C. court reform as a result of that study.⁵ First, tell me again how you were selected to participate in the Court Management Study.

Mr. Davey: Okay. You know, there was this effort to reform the D.C. court system, which had a significant case backlog — [End of TAPE 1, Side A; begin TAPE 1, Side B] — and they weren't making much progress, so they concluded that they needed an outside management look at the D.C. court system. That includes the U.S. Court of Appeals, U.S. District Court, Court of General Sessions, the local Court of Appeals, the Family Court and so on.

⁵ The Committee on the Administration of Justice of the Judicial Council of the District of Columbia Circuit, created by the Judicial Council on March 15, 1966, and consisting of lawyers in active practice in the District of Columbia, undertook in 1968 to assemble a staff consisting of eight men and women to make a thorough, impartial and objective study of the management of the five courts of the District of Columbia and related agencies, with a view to developing recommendations for the improvement of the administration of justice. The Committee was chaired by Newell W. Ellison and included Stephen Ailes, Edmund D. Campbell, Frederick H. Evans, Thomas A. Flannery, Alexander B. Hawes, Barrington D. Parker, John H. Pickering, James Francis Reilly, Daniel A. Rezneck, Samuel Spencer and John J. Wilson. The May 1970 Report of the Committee on Administration of Justice was published as part of the "Court Management Study," a Report of the Senate Committee on the District of Columbia, 91st Cong., 2d Sess., Part 1, May 1970. The project staff that undertook the Court Management Study included James F. Davey, whose responsibilities focused on the U. S. District Court civil case flow and administrative management and the U.S. Attorney's office. A summary of the staff report is included at pp. 41-54 of Part 2 of the Senate Committee Report. The portion of the detailed reports covering the United States District Court is included at pp. 1-103 of Part 2 of the Senate Committee Report.

So they got money from — I think Ford Foundation was the biggest one. But ironically Russell Sage Foundation put up \$30,000, and my mother had gone to Russell Sage. And they set up a committee of lawyers, Committee on the Administration of Justice — Newell Ellison from Covington & Burling happened to chair it during our period, and it was through that committee that they worked to get a management group. And the management group would be reporting to this group of high-priced attorneys — Newell Ellison, John Pickering — a lot of the lawyers on the committee ended up being federal court judges — Judge Gesell, Judge Flannery, Judge Pratt — all of them — Judge June Green, I think — came out of that committee.

Well, what they did, then, is they advertised, and they got a director for the study. Dave Saari, he was a court administrator out in Portland, Maine — not Portland, Oregon. And then it was his job to, in turn, hire staff. And so there was an ad in the paper one day in the *Washington Post*, or a story about it. And I thought that, well, you know, with my ten years of internal auditing experience with Agriculture where I was working, plus the fact that I had gotten a law degree at night, that would be a good use of both, you know, my work experience and my education. So I applied to be one of the staff members, and Dave interviewed me, and I got hired along with several other people. They're listed in that book. But the key people were Harvey Solomon and Maureen McPeak, myself and Dave, and then we had some others that did little bits and pieces, but at the risk of forgetting somebody, it was the four of us.

And eventually it turned out — so then this was this inter-disciplinary group that was going to study this court system. None of us had ever worked

together. We came from different disciplines. It was interesting getting this ball rolling, to say the least. You can appreciate that. Different personalities and whatever. I felt — I was one of the most comfortable because there was, you know, I had just spent ten years going into organizations, looking at how they were operating and trying to come up with better ways of doing things. So I had a pretty easy transition. Harvey and Maureen had no real problems either. She had been a court analyst before, and Harvey — I know he was Kennedy School of Government, a bright guy. So we all hit it off, and most of the staff got along well.

And the only real problems that developed ultimately was Dave Saari, the director, just couldn't put all of the pieces together when we came to write the final report, and he also had come in and — he had prior court experience, and he tried to impose what he did in Oregon into D.C. And some of it worked, and some of it didn't. But he didn't take the time to analyze what was really going on in the court in an objective way. And I'm being a little bit critical of him. I'll say this, he was excellent at selecting people. He had good people. And I will also say this, and I wrote down, Harvey, one of the best things that came out of the study was Harvey Solomon and Maureen McPeak got married. Harvey and Maureen really did most of the work on a final report, and Dave just wasn't up to the task. But I've got Harvey's and Maureen's phone number, Steve, if you wanted to follow through and get their perspective on the study.

Mr. Hollman: Sure.

Mr. Davey: They live out in Colorado. They both went on to outstanding careers in court administration, Maureen as an individual consultant and Harvey headed up the

Institute for Court Management. So in any event, we did the study, and as you can see from the two reports, even before the study, the Committee for the Administration of Justice had already concluded the two major, well, two of the major things that were — maybe they hit on all of them. One was that the courts had master calendar systems where the Bar controlled the calendar rather than the court, and the other thing was that they had leased the — I guess both courts — I stayed with the District Court — but both courts, there was a need for a court executive that would look over the non-judicial operations of the courts and bring in professional management, develop training programs, bring in data processing, and consolidate some functions. In the District Court they had the office of Pretrial Examiner, they had the Assignment Commissioner's office, they had the Clerk's office — all of them playing some role at some time in the processing of cases but none of them talking to one another for the most part. It was just paper swirling around, and the Bar determined it. It was up to the attorneys to decide when they were ready to go to trial, rather than the court. And as you might imagine, attorneys don't always want to go down and get that thing done — let's put it off until next week. It was just chaotic. I mean it was just huge files where you had case continued, case continued, motion heard, motion denied, set up pretrial, reschedule. You know, it was unbelievable. But it wasn't atypical. That was the way most courts operated, but some federal courts — I forget which ones, one or two — had started — I want to thank Judge Murrah, who was head of the Federal Judicial Center that was created in '68 for bringing the idea of the individual calendar. And then there was a judge out of Chicago. I'm sorry. If I had documents to refresh my recollection, you know, I could be more specific,

but I do know that at the time we were making our study, other federal courts, a couple of them, had gone to the individual calendar, and it seemed to be exactly what the District Court needed.

And there had not been any district court executives established in the federal system, but some of the big state courts had gone that way. So the Committee on Administration of Justice had preconceived ideas that these things would help, and they were right. And then our study flushed out the details and then found a number of other things. Oh, there are so many things. The lawyers would manipulate who they got before. I'll just give you an example. Judge Bryant, God rest his soul, he was one of the best human beings I ever had the pleasure to know. But he was a lenient sentencer. And when he rotated into — you know, he didn't have cases assigned to him. They just had different compartments. You'd be the sentencing judge for two or three months or you'd be the long motions judge for two or three months in civil and a short motions judge and then the trial judge. And then you'd rotate the assignments. But the cases wouldn't rotate. So the criminal defense attorneys would love it when Judge Bryant was the sentencing judge because they had a better chance of getting an easier sentence. And then he wouldn't be the only judge that they'd try to get.

I didn't start the criminal calendar. It was Dave Saari who did that. You'd go in there on sentencing day and there would be three or four deputy clerks processing files. I mean it was just chaos in the courtroom. Well, this — and they would — Friday was sentencing day. And I mean the place would just be flooded with prisoners, and it was chaotic. And I remember the marshals

saying, we need more buses, we don't have enough buses to bring all of these guys and gals down here, mostly guys. And I said, well, I wonder if the court would just, you know, not hold all of the sentences on one day. Maybe if you had some on Tuesday and some on Thursday you wouldn't need more buses.

Eventually, with the individual calendar, that's what happened. But it was just totally inefficient, and I — my side of the study was the civil calendar of the District Court and the administration of the District Court. And I remember they had an office of Pretrial Examiner that pretried all of the cases. And I found that this was the backlog. And I also found that Judge McGuire who, when I got there, was a senior judge, but he had set up the office of Pretrial Examiner with help of Congress. He testified before Congress to get authority to have this thing back in the late '50s. And then I proved that after they put that thing in, even though cases declined, the workload declined, their backlogs increased after putting the Pretrial Examiner's office in. So Judge McGuire and I did not get off on the right foot. In fact, I remember I had a couple of tough moments with him. He was only a senior judge but he still — he was a specialist in patent law, and he really didn't like me for suggesting that they abolish this program that he gotten authorized. But he was a good Irishman. But one of our problems was that we didn't have enough court reporters for the senior judges, and they couldn't always get them on the bench when they wanted to go on the bench. So he had this patent case one day, and he had a roomful of attorneys in his chambers. And he called me up, and these attorneys had come in from New York, and he says something like this: Gentlemen, this is our Clerk, Mr. Davey, and he's the one

responsible for us not being able to be out in the courtroom right now because he's unable to get us a court reporter.

About that time, Judge Hart, he was my third chief — my first was Curran, my second was Sirica, my third was Judge Hart. Judge Hart called — I loved that man dearly. I would see him four or five times a day for a total of four or five minutes. Whenever something came across his desk, he dealt with it. And I'd get a call, get up here. But I loved working for him because he was so doggoned decisive, you know?

In any event, I'm in Judge McGuire's chambers with all of these attorneys, and the call comes through, Judge Hart wants to see me. I said, "You're supposed to be on the bench. You had a criminal trial; I brought some jurors in for you." Remind me to tell you about jurors, Steve.

I said well — he said, "I got a guilty plea."

And I said, "Well, then you don't need your reporter." And he said, "Of course not."

And I said, "Can I let Judge McGuire have him?"

"Of course."

So I hung up the phone, and I said, "Gentlemen, we'll be ready to go in about five minutes." But eventually — I'll never forget, Judge McGuire, a few years down the road, we had gotten through some tough times, he said, "You know, Jim, we started down opposite sides of the road, but we ended up walking down the road together." And that meant a lot to me.

But in any event, the study showed massive delays and lack of management, and recommended that the court adopt an individual calendar

system for civil and criminal cases and get a court executive. The court at that time was split, and one of the things that I learned early in the process, and this I learned from Judge Gesell — he was on the personnel committee that interviewed me. And Judge Aubrey Robinson chaired it, and Judge Gesell was on it, and Judge Jones, another one of my favorites, was on it. And they interviewed me and some other candidates.

Bob Stearns — let's see, I came in October of '69, and Bob Stearns retired the following year. And so I think I was appointed in either November or December of 1970. But during the interview, Judge Gesell said, "Mr. Davey, if you are appointed Clerk, you are inheriting a racist organization, and we're going to want you to do something about it, and we don't want quality to suffer." And I began to understand the difference between a judge and a clerk. And the funny thing about the racist organization — the judges were authorized when I got there —

Mr. Hollman: To have bailiffs?

Mr. Davey: They had bailiffs, right.

Mr. Hollman: And they desperately needed the bailiffs, I'm guessing?

Mr. Davey: What was that, Steve?

Mr. Hollman: They desperately needed those bailiffs?

Mr. Davey: Yes. I mean we had —

Mr. Hollman: Until they found out that they could have law clerks, additional law clerks instead, and then they didn't need the bailiffs quite so much I understand?

Mr. Davey: There you go. But being very thoughtful people and not wanting to turn the bailiffs out onto the street, they called the Clerk's office up and said, "Mr. Stearns, find a job for my bailiff."

So most of the lower-level employees in the Clerk's office were in the file slots, and they were former bailiffs. And I'll never forget one time — I got two stories about this. The first story is that Judge Jones, wonderful judge and one that would really — he had a reputation, you know, for being the best prepared judge of all — and he'd go through these thick files, and man, we had a lot of misfilings. No doubt about it. He called me up one day and he showed me this file, and he says, "Jim, you've got to do something about this. You know, we just can't go on this way."

And I said, "Yeah, if I could find somebody other than former bailiffs like yours — " [Laughter]

And he looked at me, and he says, "Oh, you got me." [Laughter]

Another story about Judge Jones, it was in his era — let's see, he came after Hart. Let's see. It was Chief Judge Curran, Chief Judge Sirica, Chief Judge Hart, Chief Judge Jones, Chief Judge Bryant, Chief Judge Smith, who would have liked to have me fired, and then Chief Judge Robinson. So this was in the late '70s when we finally got some computer printouts of cases. And I made sure that the data was correct, and I had his cases listed by case number order. I had them by date filed. Any way you wanted to look at them. And I brought these computer printouts up to him, and I was showing him, and he says, "Jim, let me tell you something." He says, "I practiced law for X number of years and I've been a judge for X number of years and I've never read a computer printout and I

ain't gonna start now." So much for showing my chief. He said, "That's good stuff for Clerk's office, though."

I'll never forget — well, to back up a bit. So, the thrust of the study, the two main thrusts, are go into an individual calendar, court take control, get it away from the bar, and also get some modern management in there. But the judges have to make the decision. The Chief Judge has no more power than any other judge when it comes to voting on something, so when they voted for the individual calendar in '69 the vote was 8-7, which meant there were a lot of the judges hoping this thing would fail. It's like anything else, Steve. You just don't go in and waive a wand and everybody says, oh my God, why didn't I see this? This is so clear; this is what we have to do.

Mr. Hollman: Well, did case assignments change with court reform and the manner in which cases were assigned to particular judges?

Mr. Davey: That was part of the court reform, yes.

Mr. Hollman: And so what was the old system, and how did it change?

Mr. Davey: Where was the old system?

Mr. Hollman: Yes, how were cases assigned before the reform?

Mr. Davey: They weren't assigned. For example, in the civil, a civil case would be filed, and no judge would be assigned until a motion was filed, and then they'd go to the — if it was a long motion, you know, long in the sense that it would take more than 45 minutes to hear it, it went on the long motions calendar, and whatever judge was sitting on long motions that month would hear that. Okay? And then we go back in the file room where the bailiffs would misfile and/or play pinochle — I mean, that's an exaggeration, but I mean it's not too far. So then there'd be a

short motion, and then the judge on the short motion calendar would hear it. And then there'd be a certificate of readiness would be filed, and they'd call the ready calendar. But there could be eight or nine different judges on one case, and finally when it was set for — they'd have either a jury trial or a non-jury trial. And if it was set for a jury trial and Judges Jones and Hart and Bryant were in there, one of those three would get the non-jury trial, and if it was a jury trial, whoever was sitting — they'd rotate their assignments, the judges, every three to six months. So a judge was never associated with a case, you know, until it was terminated. But on the individual calendar system, as soon as that case was filed, well, for example, that's Judge Gesell's, and it's his baby, and we'd notify him, Hey, Judge Gesell, you've got a case and this is it. And then he would take control of it, and he was the best. Did I answer your question about the master system?

Mr. Hollman: Yes. So didn't the judges feel like they were getting more control over their dockets when you went to an individual case calendar?

Mr. Davey: Oh, yes. But the concept — the mindset was it's not the court's duty to move cases along. We're here to serve the Bar. All right? And when the Bar is ready, we're here. But that had to change to, okay, it's the Bar's business until the case is filed. And when the case is filed, it becomes the court's business. And once it's the court's business, the judge is going to tell you how long you have to file your motions, how long for discovery, when we're going to set a pretrial date and so on.

So they did the criminal calendar in '69, and that went fairly easy. I'd have to refresh my recollection again but I think the U.S. Attorney assigns a

couple of attorneys to each judge. But in the civil side — one of my first jobs was to develop a plan for converting because after they did the criminal calendar, the judges said, okay — I think it was an 8-7 vote again — let's do civil, and we're going to do that in May of 1970. We had about 4,000 pending civil cases, and we got 15 active judges that we were going to randomly assign these to, and we don't have a real good information system. We did have something that we got from the Administrative Office of the U.S. Courts. What I tried to do was phase it in, but they said we're all going on May 15th, 1970, and I gave all of the judges, on May 1 or whenever it was, all of the judges these computer printouts of what I thought were their pending cases. And they all wanted all of their files all at the same time. It was chaos!

Actually, it wasn't that bad but it was bad. The courtroom deputies, I had reorganized so that we had consolidated the Assignment Commissioner's office — it used to be a separate office — and we made people calendar clerks that would help the courtroom deputies, and we'd have a courtroom deputy and a calendar clerk for each judge. Actually, we'd have one calendar clerk for two judges. And between the two of them, the courtroom deputy and the calendar clerk, they'd try to find the files. That got things going. So that was very trying days for the courtroom deputies who didn't really want the individual assignment system. It put more responsibility on them, but I also got them some pay raises for — that they now were going to manage, help their judge manage their calendar.

So Judge Gesell was the only one that kept his bailiff and only had one law clerk. And throughout his tenure he had the most current calendar of any of

the judges using one law clerk rather than two and using his very basic principles of calendar control, you know, get the attorneys in quick, try to resolve, identify what the real issues are, see what can be settled, what can't be, and then the complicated ones, you set different times. Every time you set a hearing, you keep it. You don't continue it. And you set a firm trial date early, and you hold it. And ninety percent of the — no matter what you do with civil cases, ninety percent of them settle before trial. I don't know if that's still true, but the idea was setting a firm trial date and sticking to it.

[End TAPE 1; Begin TAPE 2, Side A]

Mr. Hollman: This is tape 2 from session number 2 on May 29th shortly after 5:00. Go right ahead.

Mr. Davey: So different judges worked at different cases and I think Judge Penn as I recall was — the lawyers finally went to the Court of Appeals to take cases away from him or whatever. I don't know how that ever came out, but lawyers were reluctant to do something with the judge even though, you know, that judge was denying them justice by denying them speedy trial. So that was one of the flaws in the individual calendar system, but overall, it worked much better for litigants and the Bar and it's fully adopted, it eventually was adopted by all the Federal Courts.

Mr. Hollman: Talk if you will about the transfer of jurisdictions from the Federal District Court to the Court of General Sessions.

Mr. Davey: Oh there was, let's see, the big thing was that the U.S. District Court on the civil side would have matters normally heard in a state court if the amount involved was alleged to be \$10,000 or more, and attorneys who wanted to come to the

District Court just alleged \$10,000, whether it was true or not, and part of the shifting of the jurisdiction was to get rid of all the cases that would be local in nature on the civil side; and on the criminal side, shift the state felonies that the District Court was handling to the Court of General Sessions so it would be like a pure state-federal system in any other state. But up until that court reorganization, there wasn't enough trust in the local court to let them have felony jurisdiction or big civil cases.

And part of the reorganization was to create more judges in the Court of General Sessions, I believe, and pay them more so that they could attract higher quality people. And that was phased, that jurisdiction issue was phased in over a period of years, and we also had mental health jurisdiction that we shifted over to the Court of General Sessions and register of wills. But the big thing, and I would have to go back and see what the timeline was for shifting the jurisdiction, but I think by the mid '70s we were no longer a mixed jurisdiction. We were purely a federal court except for anything that was pending at the time. Does that answer your question?

Mr. Hollman: Yes. I noticed in the report that the proposal was for a more limited transfer of jurisdiction. Was there any controversy over that point?

Mr. Davey: I know that what prevailed was the point of getting rid of all what would be purely state matter, getting rid of it, and we did get rid of all that. We didn't keep anything that was strictly local. I don't recall the issue. Maybe they didn't want to give them too much at one time.

Mr. Hollman: I think that's the sense I got from reading the report, and I wondered whether Home Rule issues played into that debate?

Mr. Davey: Harvey, give Harvey a call.

Mr. Hollman: What about the proposal for a judicial nominating commission and the statement that politics frequently was playing too great a part in the selection of judges?

Mr. Davey: I didn't get involved in that much, Steve, and that wasn't my angle of the study. And I don't have a specific recollection of that.

Mr. Hollman: Okay, well let me ask this then because this sort of segues into what I had to spend a good deal of the next session talking about, which is *Watergate*, and that's politics at the courthouse.

Mr. Davey: Politics in the courthouse. What I learned very early is that there isn't one center of power in the courthouse. It's every judge is a center of power, and then you have their secretaries who are also centers of power. Doris Brown for Judge Gesell was a good example of that. So you'd best be aware that in a court of fifteen judges there's about thirty different people — fifteen judges and fifteen secretaries — that all think they're number one. And I don't necessarily mean that in a negative way; it's just the reality. You know, if I'm a secretary to a federal judge who is appointed for life, I start to take on some of that, and these judges can get very independent.

I'll give you one example. Chief Judge Bazelon, who was the Chief Judge of the Court of Appeals, very highly respected, calls me one day and he says: "Mr. Davey, we have a case up here in the Court of Appeals that is already to go, but we can't hear it because we don't have the trial transcript, and we need that. It's one of Judge Gasch's cases."

And I said, "Well let me see what I can do."

Judge Gasch was the judge of all the judges that thought his job was to be on the bench. Other judges would handle many of their matters off the bench, you know, settle and the like, but Judge Gasch said, “I’m a trial judge and that’s what I’m gonna do is I’m going to try cases.”

Unfortunately, that created a heavy workload for his court reporters, and prior to my coming there, court reporters were assigned to individual judges rather than put into a pool and rotated to keep their workloads relatively easy, not easy, but equal and alike. So Dwayne Dushane was Judge Gasch’s court reporter, and he couldn’t get out of court to do his transcripts. And many of these reporters didn’t have a typist. They would not only take, the reporter would not only take the — record the official proceeding in court, they’d transcribe it, because their notes were not readable by anybody else. And Dwayne was one of those guys, and so I — he had a tremendous backlog — so I went up to Judge Gasch, and Judge Gasch and I got along okay but there wasn’t any real warmth there, or kidding or whatever. It was just kind of businesslike with Judge Gasch. But I never had any real problems with him.

So I said, “Judge Gasch, Judge Bazelon told me about this case that they gotta hear but they can’t hear because they can’t get the trial transcript. And I tell you, I know Dwayne is — you know, you’re in the middle of a trial, but I have a competent court reporter that I can put in your courtroom and let Dwayne out so he can type this transcript up.

And Judge Gasch looks at me, and he says “Mr. Davey, you go tell Judge Bazelon that I have a lifetime appointment, and he can go to hell.” I tell you, it was just as clear as that.

And I thought a minute, and I said, “Judge Gasch, since you have a lifetime appointment, and Judge Bazelon has a lifetime appointment, and I don’t, would you mind communicating with Judge Bazelon?” He kind of laughed at that. And you know, I don’t really remember how we resolved it. I think we finally — I don’t think Gasch ever accepted another reporter, but I think Dwayne eventually got the transcript out. But that is just one example of how independent these people were.

Another good example was when on the *Watergate* case — at some point we need to talk about jury utilization, too. We did an awful lot in there. Nancy was a big part of that. Saved millions of dollars throughout the judiciary with the help of Judge Hart on the civil side and Judge Robinson on the criminal side. Just wasting jury money. But I asked Judge Sirica in the pretrial phases of *Watergate*, “Is there any other day than Monday that we can start this case, because all the judges like to try to start the jury cases on Monday and it just, it’s a load on Monday without *Watergate*. And then with *Watergate*, it’s really, it’s not impossible, but boy, it really would be nice if we set that for some other day.”

He says, “I always go to trial on Monday.”

So we set out, he asked the attorneys, this is in the pretrial stages, whether they would object to a juror questionnaire going out in advance to screen out potential jurors and get background on jurors, and he got the agreement of all the lawyers except John Wilson, that cagey old guy. He was representing Haldeman. And he says, “I reserve the right to object later.” And so that we went forward, and we went through all the screening process, and then two weeks before the

trial is scheduled to start, John Wilson objects to the array of jurors, call it pretrial publicity or whatever.

So he thinks he's got himself two or three more months, so Judge Sirica looks at me, and he says, "Mr. Davey, how long will it take you to get a new jury?"

I said, "Well, if we don't send a questionnaire out, I can have them here in two weeks.

And Wilson looks at me, and he said, "What do you mean you can have them here in two weeks? You can't do that."

And I said, "Yeah; that's one of the first things we automated." And before, the Clerk had to sign every, the law said you had to sign every summons that went out, and I said well, that's just not, we can't do that. And so we got it out. But I thought, there's my chance to get the case started on other than Monday.

And I made another pitch to Judge Sirica. I say, "Okay, now, can we start this on Tuesday or Wednesday?"

"But Mr. Davey, I told you, we always go on Monday."

So they did the paper that it was gonna be scheduled on Monday, and I got a call from Judge Gesell, and he said, "Davey, don't forget. You work for 15 judges, not just one. And I've got a case scheduled for that day, and I want my jurors." Judge Gesell got his jurors, and Judge Gasch got his jurors, and Judge Sirica got his jurors, and we went —

Mr. Hollman: And Judge Bazelon got his transcript, so everyone ended happy.

Mr. Davey: Yes but we're talking about the centers of power, and there were times when — you know, I served at the pleasure of the court, and so my objective was to keep at least eight of them happy at all times, and if I had more than eight unhappy, that I'd try to keep them out of the same room. And I did come close to getting fired over — I'll tell you this final story for today, okay? Judge Pratt made an inappropriate comment at the conclusion of some criminal case that his reporter, one of my best, duly recorded because it was part of the record. That's his job.

Judge Pratt calls the reporter in and asked him to change the transcript. The reporter doesn't do it. Can't do it.

Judge Pratt calls me up and says he wants me to fire the reporter. Now I don't know any of this background, and I said, "Judge Pratt, he's one of our better reporters, and I haven't had any complaints."

He said he's spending too much time out of court. The reporters can make more money taking depositions than they could taking trial testimony, so by this time, we had evolved that — had a situation where we had no time standards for the reporters. But they had to, if they were not going to be in court, they had to provide a competent substitute. And that's what Dwayne had been doing. And so there was no problem, and so there wasn't any real basis for firing him, and I told Judge Pratt that.

And I said, "Judge, I can't fire him on that basis."

So then it turns out that Judge Smith, who really didn't care too much for me because he and Harold Greene are former Chief Judges of the local court and they come over and they're just judges, and I didn't get Judge Smith's courtroom deputy a parking spot because we had a system based on user service and grade

and he didn't qualify. And Judge Smith thought that since he was a former Chief Judge of the local court, he was entitled to some — his courtroom deputy was entitled to some special whatever, and I said, "I'm sorry, Judge, but that's not the system we have."

And he said, "You know, Davey, if you were over in the local court, you'd be fired."

So I said, "Well, I'm sorry. I don't mean any disrespect."

But Judge Bryant was the Chief Judge at the time, and while I'm there, Judge Smith calls. He said, "Hey Bill, I got a problem here. Can Davey and I come over?"

And, sure, so Davey and Judge Smith go over to Bryant's chambers and Smith lays it all out, his side, that he's the only judge whose courtroom deputy doesn't have a parking spot, and Davey's being insubordinate, whatever, and then he leaves without ever hearing from my side, and he assumes that Bill Bryant's gonna rule in his favor.

And I told Judge Bryant, and he said, "You know, what you're doing makes sense, but you need to tweak it a bit. But you're not gonna have to give Judge Smith's courtroom deputy one." And I've respected him so much for that. Not too many judges when they're in a pissing match between the clerk and the judge is gonna rule in the clerk's favor. But, so this is bothering Smith, and Pratt is a buddy of Smith, and I'd never had any problem with Pratt. Pratt was a wonderful judge, and we had a good relationship. This thing twisted everything. So, Chief Judge Bryant goes out west to a Judicial Conference Committee. Judge Smith is the Acting Chief. He calls a special meeting of the all the judges, sits me

down next to Judge Pratt, and his purpose is to get me to fire this reporter. And before Judge Bryant left, I had clued him in. I said, “Hey, I got an issue going here with Judge Pratt and I’m just telling you.” I wasn’t asking him to make any decision. I said this is where we are.

So Judge Smith laid it out and has me explain, Judge Pratt explain, and I said, “Hey, look, I’ve already talked with Judge Bryant about this, he’s on the coast, he’s informed.” And Aubrey saved me. What I didn’t know was that Judge Pratt had called the reporter in a second time, and the second time the reporter went in, he was wired. And I didn’t know this at this time, but Aubrey apparently — I don’t know whether they knew this. I guess they did and whatever. But Aubrey came to my rescue and said, Hey, this is going nowhere. Let’s wait for Judge Bryant. But then when I fully found out the full extent of the problem — and in the interim I had been able to get some senior judges to take Judge Pratt’s reporter, you know, so he would have work — but then, when I learned and they learned that the reporter had — Denny Bossert was the guy’s name — had wired himself when he went into Judge Pratt’s chambers, the senior judges said you can’t send him to my court anymore, and so none of the judges would take him.

So I called Denny in, and I said, “Hey, Denny, I don’t know what your legal rights are, but the fact of the matter is, even though you are an outstanding reporter, I can’t use you. No judge will take you, and I’m between a rock and a hard place. So I’m gonna give you two weeks to resign or I’m gonna have to fire you. Boy, those were two long weeks and the last day or the day before the last day, Denny comes in and offers his resignation. Boy did I breath a sigh of relief.

But that was probably the most uncomfortable I ever felt with my judges and just was an unfortunate event. And I give Judge Gesell credit. He called me up, he said, Jim, or Davey, or whatever he used to call me. He called me a lot. He was so ticked at me one day, he says, “You know, Davey, you’re lower than an appellate court judge. You gave my jury to a junior judge.” He was ticked! But he gave me advice. He said make sure you make detailed notes. This thing won’t go away. So I appreciated that. I was relieved the day that I retired, I could throw that file away.

I’ll tell you one more. I’ll be late for poker here but whatever. There was a time Judge Hart was Chief Judge, he calls me up — so this had to be before, I think he left in ’75, or stepped down in ’75 — “Hey, they’re talking in the courtroom about you, got all these homosexuals working for you. You gotta do something about it.”

And I’m thinking to myself, okay, one of the homosexuals I have working for me is Judge Hart’s courtroom deputy, and if I listen to him, Hart would have, whatever. So we weren’t that far along in our treatment of human beings humanely, but I knew enough to know that it didn’t matter to me whether they were homosexual or not as long as they were doing their job that’s all, that was my only business unless there was some allegation of inappropriate behavior on the job.

And so, I told Judge Hart that, I said, you know, Judge, just as I explained to you. He said, “I’ll get you some allegations.” I went down to my office. An hour later he had me back up and I could see, no that was a different situation, I’m getting that confused.

In any event, Joe and Jim were seen in a darkened courtroom, this was the specific allegation. And I had hired both Joe and Jim. So I said to Judge Hart, you know, if I investigated and found nothing, you know, they're going to say that's a whitewash. You need to find somebody else to conduct any investigation. And he understood that. And on my way out I said, you know, I know how things go around here. I sure hope they don't think I'm homosexual.

And he says, "Well, now that you mention it —"

And Steve, my heart dropped. I, this is '75; I had been working my tail off there for five, six years, and whatever. I said "What?!" I was dumbfounded.

He says, "Yeah, they've been talking about you going skiing with guys." I said, "Judge Hart, my wife and my two children and I went skiing a couple years ago out in Pennsylvania. We had a terrible experience. It was icy, and they had rope tows, and it was a lousy day, and they decided they never cared if they never skied again. But I kept it up. And I could either go skiing by myself, or I could find some girls, or I could go with some guys. And who does Judge Corcoran golf with on Saturdays?"

Mr. Hollman: Did he at least laugh?

Mr. Davey: Yes. I don't remember. But I got out of it, and they never did find anybody to investigate. Those were my two, probably had some others, but I loved Judge Hart. In fact, I'm looking at a picture of him here on my wall. It says: "To Jim Davey — Working with you as Chief Judge was a ball. We can both be proud of the accomplishments. Chief Judge Hart." That was — he's smoking his pipe with his arthritic hand. He was great!

Mr. Hollman: Well, he's certainly right about there being a lot to be proud of.

Mr. Hollman: This is May 29, 2008 at 5:27, and this ends tape # 3, and thank you very much again for so many enlightening and entertaining stories.

Mr. Davey: Well thank you, Steve, I appreciate you're doing it. It's kind of interesting to look back, and I kept some stuff, but I threw away most of my inflammatory stuff, memos that I got from various judges that were irritating. And just as well that I got rid of them. [Laughter]

[End of TAPE 2 for May 29th session]