HONORABLE DAVID BRYAN SENTELLE

Oral History Project
The Historical Society of the District of Columbia Circuit
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The Historical Society of the
District of Columbia Circuit

HONORABLE DAVID BRYAN SENTELLE

Interviews conducted by David C. Frederick, Esquire
July 7 and 8 and August 12 and 13, 2003
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NOTE

The following pages record interviews conducted on the dates indicated. The interviews were recorded digitally or on cassette tape, and the interviewee and the interviewer have been afforded an opportunity to review and edit the transcript.

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PREFACE

The goal of the Oral History Project of the Historical Society of the District of Columbia Circuit is to preserve the recollections of the judges of the Courts of the District of Columbia Circuit and lawyers, court staff, and others who played important roles in the history of the Circuit. The Project began in 1991. Oral history interviews are conducted by volunteer attorneys who are trained by the Society. Before donating the oral history to the Society, both the subject of the history and the interviewer have had an opportunity to review and edit the transcripts.


With the permission of the person being interviewed, oral histories are also available on the Internet through the Society's Web site, www.dcchs.org. Audio recordings of most interviews, as well as electronic versions of the transcripts, are in the custody of the Society.
Historical Society of the District of Columbia Circuit

Oral History Agreement of David B. Sentelle

1. In consideration of the recording and preservation of my oral history memoir by the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees and agents (hereinafter, "the Society"), I, David B. Sentelle, do hereby grant and convey to the Society and its successors and assigns all of my rights, title, and interest in the voice recordings (digital recordings, cassette tapes) and transcripts of my interviews as described in Schedule A hereto, including literary rights and copyrights. All copies of the voice recordings (digital recordings, cassette tapes) and transcripts are subject to the same restrictions herein provided.

2. I understand that the Society may duplicate, edit, or publish in any form or format, including publication on the Internet, and permit the use of said voice recordings (digital recordings, cassette tapes) and transcripts in any manner that the Society considers appropriate, and I waive any claims I may have or acquire to any royalties from such use.

3. I reserve for myself and to the executor of my estate only the non-exclusive right to use the voice recordings (digital recordings, cassette tapes) and transcripts and their content as a resource for any book, pamphlet, article or other writing of which I or my executor may be the author or co-author.

David B. Sentelle
April 5, 2018

SWORN TO AND SUBSCRIBED before me this day of

Notary Public
My Commission expires: 06/30/18

ACCEPTED this 5th day of April, 2018, by Stephen J. Pollak, President of the Historical Society of the District of Columbia Circuit.

Stephen J. Pollak
**Schedule A**

Voice recordings (digital recordings, cassette tapes) and transcripts resulting from seven interviews of David B. Sentelle conducted on the following dates:

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The transcripts of the seven interviews are contained on one DVD.
The Historical Society of the District of Columbia Circuit

Oral History Agreement of David C. Frederick

1. Having agreed to conduct an oral history interview with David B. Sentelle for the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees and agents (hereinafter “the Society”), I, David C. Frederick, do hereby grant and convey to the Society and its successors and assigns all of my rights, title, and interest in the voice recordings (digital recordings, cassette tapes) and transcripts of the interviews as described in Schedule A hereto, including literary rights and copyrights.

2. I understand that the Society may duplicate, edit, or publish in any form or format, including publication on the Internet, and permit the use of said voice recordings (digital recordings, cassette tapes) and transcripts in any manner that the Society considers appropriate, and I waive any claims I may have or acquire to any royalties from such use.

3. I agree that I will make no use of the oral history or the information contained therein until it is concluded and edited, or until I receive permission from the Society.

David C. Frederick  April 5, 2018

SWORN TO AND SUBSCRIBED before me this
day of ___________________, 2018.

Notary Public

My Commission expires: 06/30/18

ACCEPTED this 5th day of April, 2018, by Stephen J. Pollak, President of the Historical Society of the District of Columbia Circuit.

Stephen J. Pollak
Schedule A

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The transcripts of the seven interviews are contained on one DVD.
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 the Honorable David B. Sentelle, Judge of the United States Court of Appeals for the District of Columbia Circuit. The interviewer is David Frederick. The interview took place on July 7, 2003. This is the first interview.

MR. FREDERICK: This is David Frederick here to do the oral history of Judge David Sentelle. I’m with the Judge in Chambers. It is July 7, 2003, at about 10:20 in the morning. Good morning, Judge.

JUDGE SENTELLE: Good morning, David.

MR. FREDERICK: Thank you for doing your oral history for the D.C. Circuit Historical Society. Why don’t we begin by you telling us your full name and your date of birth?

JUDGE SENTELLE: David Bryan Sentelle, February 12, 1943.

MR. FREDERICK: Where were you born?

JUDGE SENTELLE: Canton, North Carolina.

MR. FREDERICK: Now I think I read that you were not born in hospital?

JUDGE SENTELLE: That’s correct. I run into people occasionally who tell me I couldn’t have been born in Canton because there is no hospital there. I tell them that I was neither sick nor in need of an operation and, therefore, it’s not necessary that you get to a hospital. It’s only necessary that you be near your mother at the time and she didn’t go to the hospital so I didn’t either.

MR. FREDERICK: Was it common for children of that era to be born at home?
JUDGE SENTELLE: It was transitional, really, in that part of the country. My brother, who is older than me, was actually born in a hospital. But during World War II, gas was hard to come by and they didn’t – it was easier for folks to let one doctor spend his increased allotment of gas than it was for a family to use that gas going to the hospital, so the doctors went where the mamas were and I was born in Canton and there is no hospital in Canton. I was born in Canton.

MR. FREDERICK: How much older is your brother than you?

JUDGE SENTELLE: Two-and-a-half years and there’s just the two of us. He was 63 on July 5th – last Saturday.

MR. FREDERICK: Now tell me about your parents.

JUDGE SENTELLE: My father was Horace Sentelle, Jr. He was known to most of his friends – to most everybody – as Dugan. Dugan was a character from a comic strip, *Maggie and Jiggs Bringing Up Father*. Dugan hung out in the pool hall all the time and apparently my father, in his younger days, had stayed in the pool hall all the time and picked up the nickname of Dugan. He rather liked it. He was sort of an eccentric who taught us to call him Dugan, so my brother and I always called him Dugan and said we were Dugan’s boys. He finished the eleventh grade, which was what was available to him in Clyde, North Carolina, at the time. Clyde is a little further west than Canton. Canton is west of Asheville. Clyde is west of Canton. He bumbled around for a while and finally wound up working at a rayon – later nylon – mill outside of Asheville where he was the foreman and a
pretty well respected supervisor for someone who didn’t get any farther in
school than he did. In fact, I think he and his brother had the two best jobs
in the mill of anyone who hadn’t gone to the twelfth grade at least.

My mother was Maude Ray. She didn’t have a middle name. She was
born in Yancey County, North Carolina. My father is from Haywood,
which was west of us, and Yancey is to the east. She grew up in Haywood
County. She finished high school in Canton, North Carolina, went to
business school in Greensboro for a year or so, was a legal secretary. She
was working for Sam Robinson who was a lawyer in Canton who married
my father’s sister. I think he was the only one of the brothers or brothers-
in-law or sisters that had a college degree and he was a lawyer with a
Wake Forest law degree.

Mother was working for Sam and the story goes – and I think it’s probably
not entirely accurate – but the story goes that my father’s younger brother
was getting married in his sister’s home. Most people had house
weddings instead of church weddings in the working class in those days.

It was at Christmastime and my father was standing under the mistletoe
and somebody said, “Dugan, you’d better get out from under there.

You’re going to get kissed.” He said, “Nobody would want to kiss me.”

Sam’s secretary went over and kissed him. That was my mother and that’s
where the whole thing started according to the legend. My mother says
they knew each other before that, but at least it became public that they
were well-acquainted with one another.
MR. FREDERICK: How did the Sentelle family come to settle in North Carolina?

JUDGE SENTELLE: We wondered about that, too, David. A theory had been – which proved to be wrong – that it was an Italian-Swiss family and that they had come in with some grape growers who had come in at New Bern in the early part of the pre-Colonial era. In fact we now have – by the tracings of my distant cousin, Sam Sentelle, who is Superintendent of schools of Putnam County, West Virginia – Sam traced it back to the early 18th Century Virginia Colony. The Sentelles were the Huguenots. The first couple. Sam also – Sam and Jane, which is my wife’s name – were Huguenots who were among the few Huguenots who came into the Virginia Colony. Most of the Huguenots came to Charleston. For some reason, my people were always mavericks, I guess. They came to Virginia, drifted west, and then came down the Appalachians over the course of three or four generations. Before the Civil War, the Sentelles were already in the Appalachian Mountains, having gone west in Virginia and then drifted South in the Appalachian Mountains. Did that answer your question?

MR. FREDERICK: Yes, it did. Do you know what your family’s sympathies were during the Civil War?

JUDGE SENTELLE: My great-great-grandfather, whose name was also Samuel Sentelle – that seems to turn up generation after generation – was a mountain Unionist. And he, like quite a few other mountaineers, left the South to fight for the North and he was a Union soldier. Family legend had always been that he was killed on the way back after the war. A local historian finally found
an accurate tracing. He was killed on the way back, but the war was not over. He was apparently AWOL at the time he was killed. He and another man by the name of Sentelle and a third companion were ambushed in what’s called the Pink Beds area of the Smokies on the way back. If you’ve ever read the novel *Cold Mountain* about the Confederate soldiers on their way back to Haywood County – cause he went AWOL near the end of the war and was murdered. It’s the same story except they were Union soldiers and were probably going to the Transylvania side of the county line rather than the Haywood County line, but it’s the same general area as that – very similar to the story told except that it’s Union soldiers instead of Confederates.

MR. FREDERICK: Were there many Union sympathizers from this particular part of North Carolina?

JUDGE SENTELLE: There were a lot of mountaineers who were Unionists. Now it was stronger in – Wataugua, Yancey, Avery, and Mitchell were the real hotbeds of Unionists. That’s a bit northeast of my part of the mountains. Madison County was called bloody Madison, but it was very evenly divided. They didn’t have to leave to fight one another there, there were so many on both sides. Now when you got over through Buncombe and Haywood/Transylvania, it was more Confederate, but there were pockets of Unionists there too and my great-great-grandfather was one of them.

MR. FREDERICK: How did that political involvement affect your family through the generations after the Civil War?
JUDGE SENTELLE: Well the term Mountain Republican has a real meaning in Western North Carolina, East Tennessee, Western Virginia, North Georgia. Even in the hill country of Mississippi and Alabama, you have Mountain Unionists who were the founders of the Republican Party in their respective states. My family were Mountain Unionists and my branch of the Sentelles remained loyal Republicans to this day. My brother is still living in Western North Carolina and since his retirement from Sears Roebuck, he’s a Republican precinct worker on the election sites down there.

MR. FREDERICK: Was your father active in politics?

JUDGE SENTELLE: He was very interested in politics and he would always, if he could, take election day off at the mill to go work at the polls for some candidate or other and he did some campaigning for people. He never ran for office. Now his father – my grandfather, Horace Sentelle, Sr., was very political. He was a printer and he operated one of those many weekly local newspapers that existed in those days, which were very partisan. He had the Republican paper in Haywood County, Canton Enterprise. He actually ran for office a few times, a hopeless cause as Haywood County was very Democrat, but he would fill the ticket. He was what was called a “Post Office Republican.” He was appointed postmaster by the Republicans, which was a political position in those days when the Republicans were in the White House. He was a delegate to the convention that nominated Alf Landon, one of the more kamikaze-like campaigns ever. They carried Maine and Vermont, I think, against F.D.R.
My father was not nearly as involved as his father was, but he was always a very vocal Republican, arguing with his many Democratic friends. We grew up very loyal. I was active very early. My father’s friend, Dan Judd, was a local merchant who was in the Lion’s Club and the Masonic Lodge with my father and was a local Republican activist. And there were others of their friends who were. When I was just a kid, I ran errands for them on a bicycle – carried bumper stickers door-to-door for them and things of that nature. I was too young to drive, let alone vote.

MR. FREDERICK: How did your father share his political views with you? Were there dinner conversations?

JUDGE SENTELLE: Yeah. My father worked shifts at the mill, but when he was on day shift the family had dinner together. He was a very vocal Republican and he and his friends, when they were drinking, they would get in big arguments and my brother and I would love to sit back and listen to them. And around things like the hog killings in the fall. We had Uncle Wayne, who was not really a kin to us at all, Wayne Melton. He was as thorough a Democrat as my father was a Republican. The two of them would take off from the mill in the fall and go to the farms for the hog killings. These were festivals, the hog killings were essential. My brother and I would be set up on the fence to watch. We’d get a hog bladder to blow up and bat around. There was lots of politicians, whisky drinking and the air was full of hot smoke and whisky smells. They were exciting times and we heard
some very vociferous, if not always fully intended, arguments over politics
all our youth.

MR. FREDERICK: Tell me about your childhood – what things you got interested in and what
influences were important to you.

JUDGE SENTELLE: We moved from Canton, where I was born, to Asheville when I was about
three. I had asthma as a baby. Canton was a paper mill town and Doctor
Joe Bob Westmoreland, who was the family doctor, told my parents that if
they moved out of that town, I might thrive. We got out of that valley
where the paper mill smoke hung. If we stayed in Canton, he didn’t think
I’d make it. They moved to Asheville and I rarely have had an asthma
attack since. If I go back to the paper mill, my throat will start filling up
even now, though not nearly as bad as it did when I was smaller.

We moved to Asheville in an older, working class neighborhood with lots
of other kids. We went to the elementary school that was within walking
distance, a very neat walk from the house. We played lots of tag in the
evening with the other kids in the neighborhood and all the other games
the kids played. Saturday had a pattern. Every kid in the neighborhood
got a quarter on Saturday and for a quarter we could walk to the Isis
Theater, which was about a mile and a half away in a section called West
Asheville, which was a very working class, west-of-the-river kind of
section we lived in. We walked about a mile and a half or a little more to
the Isis Theater. For a quarter, you got in for nine cents, you could see a
double feature, usually a western or a mystery followed by Abbott &
*Costello, Ma & Pa Kettle*, some comedy feature – two or three cartoons, a short comedy, *Three Stooges* or something in that order – and a serial episode – *The Zombies of the Stratosphere* or some such thirteen-episode serial. You could get a Coke and a popcorn or a candy bar and you’d have a penny left out of your quarter. We all thought our parents were incredibly generous to let us go out on Saturday to the movies. Of course, I was grown before I realized that the neighborhood got rid of every kid in there every Saturday for hours for a quarter a piece. That was the best spent money those parents probably spent all month, letting us all go to the movies every Saturday.

We stayed in that house in West Asheville until I was through the sixth grade. I went to Vance Elementary. That’s named for Zebulon Vance, who was the Civil War governor of North Carolina. I finished at Vance and by that time my father had bought two or three acres of land out in what’s called the Hominy Valley or Enka Section. Over the course of a couple of years, we had a house built on the property. His brother-in-law, his sister’s husband, was a master carpenter. What they did was, to really save on costs, he subbed it for my Daddy and they would work on it when they didn’t have another job, so they did it at greatly reduced costs. It took about a year-and-a-half or so to finish the house, but we went ahead and changed schools after the sixth grade not knowing when we’d get to move out there. I think it was halfway through the eighth before we moved and I was kicking and screaming, not wanting to go to a new
school. But we did and I met some really good kids out there and learned to trap muskrats. I trapped rabbits with box traps and we used steel traps to trap muskrats, which is a very unpolitically correct thing to do. I wouldn’t do it today if I had it to do over, I’m sure, but in those days we used steel traps along the creek to trap muskrats.

I had a new gang out there. It was called the Rutherford Hill section of Hominy Valley, which was the hill that we lived on. Polk Rutherford and his little brother, David, were of the Rutherford family that once owned the whole hill and their cousin Mike, whose real name was Neal – I have no idea why he was called Mike. John Rich was semi in the gang, but his mother had aspirations. She sent him over to Asheville to school, so he wasn’t really part of that. Jan Crawford, whose father’s property backed up to my Daddy’s, was probably one of my closest friends. He had a little sister, Judy, who rounded out the group, but she was about three years younger than Jan. Jan was a year and a half younger than me. Judy wanted to go everywhere the boys went and do everything that we did, whether it was trapping muskrats or rabbits or skinny dipping in the creek or whatever, Judy was right there with us. She died about a week ago and it’s really been a lot on my heart ever since then thinking about that gal. She had cancer for the last year or so. I’m going to go down and see Jan next week and spend a little time with him.

MR. FREDERICK: Have you been able to keep in touch with those friends?
JUDGE SENTELLE: Jan and I have and there are some other friends that have. My oldest friend is a fellow named Tom Furness, who is a very interesting person. Tom, by chance, went to Vance Elementary the same six years I did. He transferred to Sand Hill for the last two years, seventh and eighth grade, and went to Enka High School. So he and I went all the way through together. Nobody else went all the way through with us. They went all the way through with each other, but because we changed school systems, we had a whole bunch of new friends after the sixth grade. Tommy and I were friends from first grade on and Tommy comes through seeking grants and things every two to three years and we’ll have dinner together. Tommy was one of the principal inventors of virtual reality. He was in the Air Force think tank that created it. If you search his name on the Web, you’ll find it. Some call him the father of virtual reality. He and I are probably the only two people in our graduating class that ever had our picture in the paper without numbers under them.

Tommy and I have kept up and Jan Crawford, as I mentioned earlier. Jan was a year behind me all through high school and Carolina undergraduate, but he went through an undergraduate program that was a three-year combined program and was in my same class at law school. Jan and I were, I think, the second and third people from Enka High School ever to graduate from law school. We have kept up. Jan comes to see us every now and then. He’s been the president of a community college down there for a little while. He never practiced law. He taught in community
colleges and worked in county jobs and then took early retirement with a heart condition a couple years ago. He and his wife moved on to their grandfather’s old place, which is where we used to trap a lot of rabbits and swim in a lot of creeks and such. His little sister had lived there all the time. There were two houses on the farm. They built a new one and moved into it. Jan and I have kept up.

Jim Grant was in my class. When Jan was a year behind us, Jim was in class with me and Tommy. Jim retired years ago with a disability from the insurance business after trying several different businesses. Jim and I keep up and then we have an active high school reunion. About every five years, we regularly have a reunion and, though it was about 120 or so people in our class, we probably had about 40 or 50 at least show up for the 40th reunion. I think probably more than that, we probably had 40 percent of the class that showed up for the reunion and a book of responses that showed where a lot of the other people were. I was a little bit surprised to see how many of them were within 50 miles of where we grew up. I wasn’t shocked, but a little bit surprised. Even ones who had gone off in the Army or something had come back home afterward. A fairly small number of us went to college up in that place. Several – being immediate pre-Vietnam era, the drafting era – were in the service. I tried
to join the Reserves, myself, and flunked the physical. I “1-y’ed” my way through the Vietnam era.

We’ve kept up with a lot of folks and we still have family back in that area, which helps us keep in touch. My wife was in the class behind me. That’s E-N-K-A in case you’re wondering about that. It has nothing to do with the Inca Indians. It’s a Dutch acronym. So I guess the short answer is yes, we’ve kept up with a good many of them. By no means everybody, but several that we’ve kept in touch with.

MR. FREDERICK: Tell me about the schools and what your teachers were like, what the schools were like.

JUDGE SENTELLE: Well we say sometimes that they called it Enka High School because it was on a hill. That was the way in which it was high, but that’s not fair at all. Going back to the elementary school, Vance was sort of a typical working class mountain town elementary school, all-white – it was segregated in those days. There were black people who lived close enough who could have gone to school there if it wasn’t for segregation. But it was segregated. They had their school, we had ours.

The teachers were virtually all female, a fair percentage of them unmarried females. The old maid school teacher was the stereotype. I remember hearing that one of them had dated my father in her younger days, but be that as it may, probably close to half of them were unmarried, had never

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1-Y was a draft classification, short of 4-f, but not 1-a.
married. Most of them had gone to teachers’ colleges in the state. It was
still legal in those days to teach on a certificate without a college degree,
but it was not the norm. Most of them had gone to college. Two of my
aunts taught school on certificates without ever having gone to college.
They went and took some teacher training and taught at the high school.
The teachers there at Vance were probably all graduates of Western
Carolina Teacher’s College or Appalachian State Teacher’s College. They
were not calling themselves Western Carolina University and Appalachian
State University.
The principals were, in succession, Mr. Graham and Mr. Hayden. I may
have them backwards, but anyhow that was the two men who were
principals one after the other at the school. The principal was a man,
teachers were women. That was the way it was then. Spotty was the
quality of teaching. I had a first grade teacher who stands out in my mind,
Miss Colson. She had taught school for a long time. She was old and
white-headed in my mind when I was in first grade, but she was still living
in Asheville and contacted me and wrote me when I was a judge on the
federal bench down there, so she couldn’t have been near as old as I
thought she was, although she lived to be, I think, 100, I believe, when she
died. She was very stern, very respected, and if you got a good grade in
her class, you had learned to read and even begin cursive. She was ahead
of the curve in those days. She was a tough, old-timey school teacher.
My second grade teacher was Miss Allison. Helen Allison actually was the one who had dated my father in her youth. I can’t think of anything else remarkable about her. She was simply a second grade school teacher. Third grade was Miss Weaver. She was of the Weaver family for whom the town of Weaverville was known. Weaverville was the home of Richard Weaver, the University of Chicago philosophy scholar and conservative writer of the 1950's and 1940's. I think she was probably a cousin of his. That’s the town where O. Henry retired for his later years. Zeb Vance, for whom the school was named, was from Weaverville also. Miss Weaver was a funny person. I remember her as having the class laughing a lot.

Mrs. Jones was my fourth grade teacher and I remember her as a very portly and very pleasant woman, who again I think was a very good teacher. Then in fifth grade and sixth grade things maybe thinned out a little. Pauline Hall was my fifth grade teacher. She had a son in my class and I beat him up one time. I don’t think she ever forgot that, though she was an old acquaintance of my parents from Haywood County where Canton is. I don’t think she ever liked me very much. I didn’t think she was a great teacher, but maybe that’s because I didn’t like her.

My sixth grade teacher, Evelyn Stanton, was the only teacher in that school who was in any sense a modernist. She had just come out of college somewhere up north. She was married to a lawyer and she taught sex education before it was popular and there was some protest from some
of the parents about the explicitness of it. That’s the most controversial thing that happened with the teachers in my elementary school years, except that I got kicked out one time for shooting her with a water gun. They expelled me for a few days for that.

Then after the sixth grade, as I mentioned earlier, we moved. We hadn’t moved yet, but I transferred schools and went out to Sand Hill Elementary. Now Vance was one through six and if I’d stayed in Asheville, I would have gone to junior high school and a three-year high school following junior high school. But in the county system -- there were two separate systems -- there was one through eight and then a four-year high school, so I went to the seventh and eighth grade at Sand Hill Elementary. We didn’t change classes the same way that a junior high or high school does, moving from period to period, but we did have a rotation among three or four teachers in the seventh and eighth grades.

In the seventh grade, I was in Miss Brown’s homeroom and she also taught us English and she was a very down-home good old school teacher. Miss Mann taught us math. Miss Rector, who was kind of a jerky little woman, taught us science. The coach, Mr. Morris, taught P.E. He coached the seventh and eighth grade teams. Claude Marr, C.C. Marr, was the principal of the school. I came in not really knowing anybody. Tommy Furness transferred the same year I did, but Tommy had already lived in the community out there and he had a lot more friends and we were in different sections because they broke you alphabetically. So I
didn’t really know anybody in my class and I was really unhappy for seven or eight days, I’m sure, and then things began to pick up.

I had been a very good student for one through six. That had stood me, I think, in very good stead for those years. Seven and eight, I think I found that I was funny and I was more popular if I was funny than if I was smart, so academics trailed off a little and I became more and more of a wiseass through the course of seventh and eighth grades, in trouble more than I had been. One through six, I had been one of the good kids and seven through eight, I was not one of the good kids anymore. But my friend, John Rich, Leroy Searcy and I, Principal Marr in the eighth grade took each of us aside and warned us to quit hanging out with each other, that we were heading for trouble. I don’t know, maybe he was right. But in any event, in the eighth grade, Miss Jamison was our math teacher and my homeroom teacher. She was a bit like Miss Brown, just sort of an old-time school teacher or local school teacher. Not as good a teacher, I don’t think. She taught English, I said math. I had Miss Mann again for math and Miss Rector again for science and Mr. Morris again as couch for P.E. I was never an athlete, didn’t make either of the basketball or baseball teams which were the only teams they had. Except that the eighth grade year, Dale Galyean, who was our catcher on the baseball team was so good that nobody else wanted to be the backup catcher. So I got to be that because nobody else wanted it.
I did not particularly distinguish myself, but did well enough to get into the advanced track when we got to high school. High school was Enka High School, which I referred to earlier as a Dutch acronym. The mill where everybody’s daddy and many peoples’ momma worked was the American Enka Company, the subsidiary of a Dutch company, and ENKA stands for something like American Dutch Rayon Union, or something of that sort. It started in the Depression years and that was a great job for men like my Daddy to have found in those hard years and they stayed with it until they died or retired at the mill. Everybody in the high school, or virtually everybody, either one or more parents worked at the mill or they sold something to people who did work for the mill. It was the center of the community. It had a village where many of the employees lived, Enka Village, in mill-owned housing. We never did but many of my classmates lived in mill-owned housing, which was hierarchical. There were small houses close together where the hourly paid workers lived and there were slightly better homes where the foremen lived which were a little farther up the hill. At the top there were some really nice houses where some of the Dutchmen lived who were the executives. And the term “Dutchman” was slang for a boss. If somebody got promoted, they became a Dutchman when they got promoted high enough.

That takes us away from the school which was named for the community, which in turn was named for the mill. The company does not exist anymore, I don’t think. BASF owned the plant for a while and my brother
was telling me that there’s some other company that has a piece of it now, but it’s mostly shut down. When the Japanese took the textile industry several years ago, it shut down most of Enka.

MR. FREDERICK: Before we go into high school, I want to ask you about Brown v. Board of Education, which was handed down when you were ten years old. You mentioned that the schools were segregated in your youth. Do you remember how your community responded to the Supreme Court’s announcement of Brown?

JUDGE SENTELLE: One would not say they responded enthusiastically to it, David. It really was years before they actually integrated the schools. You know Brown was handed down, but they did not integrate the next day. There was all kinds of subsidiary litigation. My parents were upset and most of the other parents I knew were upset. It had always been separate and they fully believed it should be separate. My parents were not haters. There were many different kinds of racial attitudes. There is a stereotype of all people who were segregationists being race haters, but that’s not the case at all. My father and people like him considered the races to be different, but it was not a matter of hate. It was a matter that they thought they were different and that they were best sticking to their own kinds. My father had friends who were black people, but they were subservient black people. That’s sort of what he thought their capability was. The shoe shine man and the bag boy and maids and janitors at the mill and in the
schools were black people and that’s what my father and people like him had always grown up believing was the proper role.

Now they did not hate. In fact, both of my parents were involved in trying to integrate their church because they didn’t believe that the church was a place where race should matter. Everybody was God’s children and they were involved in inviting a black preacher to preach there and it didn’t take very well with a lot of people. They believed in segregation, my father in particular. My mother had her own theory of how the schools could be peacefully integrated. Once the Supreme Court made its decision in Brown, she was ready to accept it. She said what they ought to do – and you know she might have been right – was start with the first grade. Don’t try to integrate it all at once. Just let the little kids come together and take it on through one year at a time. As it turned out it probably took that long by trying to do it with all deliberate speed. Momma’s common sense might have worked better than the head-on collisions that went on instead. But you couldn’t see any change in the schools for years. North Carolina adopted the Pearsall plan, which was a method of trying to keep the schools the way they were. They litigated and fought politically for years. When we went to the county schools, it didn’t make any difference out there because at that end of the county, there were no black people. The farther out in the country and the hills you get, the whiter it gets. You mentioned a while ago you’d read my book. I have a passage in there on the history of the white hill country in the South. How they didn’t have
the black population they had in the lower country in the South – Eastern North Carolina and the Deep South – because slavery was never a prominent feature in the mountains. They had no plantations. They had neither need nor wealth to acquire slaves, so although there were a few people who had one or two slaves in the mountains, you didn’t have a large black population at the end of the Civil War and there was never a lot of employment to bring any influx of any sort of people in. Only in Asheville and a few other places where you had hotels and some industries that brought in an employable population did you have a significant number of blacks. To this day, I don’t think there’s more than one or two black families in the western end of Buncombe County, so I never went to school with black students until I went to college.

MR. FREDERICK: So even the Enka mill was all-white?

JUDGE SENTELLE: The Enka mill had black employees, but for the most part they lived in West Asheville. There were mill buses in those days that went around to the residential areas and gathered up the workers and brought them to the mill. There was a white bus and, as they said then, a colored bus and the white bus went to the white section of West Asheville and picked up mill workers. The black bus went to the black section of West Asheville and picked up the -- as they said -- colored in those days and brought them all to the mill. There were no black people living out there. There were a few Indians, but other than that it was a white section in the western area of town. Now there were black employees, mostly in laboring jobs. I
don’t recall any in supervision and very few in production, mostly janitors and menders, carpenters – unskilled carpenters that did repairs on the mill – but it was labor jobs and not production. But there were none living out there and aren’t very many even now.

There hasn’t been a large influx of population. Most of the people who still live in that section grew up there and they were white, so it is still largely white. My brother lives in the house we finished growing up in out there. We do get back. My wife’s mother lives in West Asheville and she lives in a section that’s probably, by now, over half black since she lived there and it was always on the edge of the segregated communities. They pretty much lived amongst each other on the edges, but not at Enka, the western end out there.

Another odd thing has happened, in that it’s become gentrified in the section where the old mill used to be. The people use those either as second homes or they’ve torn them down and begun to build a whole new subdivision. The Vanderbilt heirs have built a whole new subdivision with expensive homes out there. And, again, there aren’t very many wealthy black people around that section to buy those homes. That has created a new upper white class out there in the old working class section where we grew up.

MR. FREDERICK: High school must have been a transformative experience for you, just based on what you’ve said about being somewhat of a cut-up in your middle school years, the seventh and eighth grade years. Tell me about
high school and who the teachers were that were an important influence for you.

JUDGE SENTELLE: I’m still a cut-up! I was what they called a gifted underachiever. I made the highest SAT scores ever made by anybody from my high school, but I was not in the top four or five in my class. I think I astonished some people, perhaps, although the teachers always knew that I was achieving good grades with a minimum of effort. I was very involved in some good activities. I was on the debate team when I was a sophomore, which was the first sophomore ever to make the debate team. I was president of the forensic league, which was the speech club. I made the honor society. I – informally at first and then in my senior year formally – led the cheering section at all the athletic events. I was editor of the yearbook.

I was known as Brother Dave. There was a southern comedian of whom you’ve probably never heard, Brother Dave Gardner, who used to appear on the old *Tonight Show with Jack Parr* occasionally. Brother Dave had some standup routines that were recorded on old black flat records and his favorite expression was, “Rejoice, Dear Hearts, your Brother Dave is amongst you.” I used to do his routines, so I was called Brother Dave by everyone including the teachers at the high school. I actually had some teachers who would greet each other “Dear Heart” from the method I spread among the students out there. “Rejoice, Dear Hearts, Brother Dave is amongst you.” As I said, I did his standup routines.
I did Andy Griffith imitations at high school parties. You probably also don’t know the history of Andy Griffith. *What it Was, Was Football.*

Griffith was a student at Chapel Hill, a graduate student. He began to do a routine where a country bumpkin goes to a football game at Chapel Hill for civic clubs in the Chapel Hill area and then all over North Carolina and then Capitol Records had him record it. It was a massive hit. He went on *Ed Sullivan* and kind of flopped, but somebody saw him on *Ed Sullivan* who was casting *No Time for Sergeants*, on Broadway. They cast Griffith as Will Stockdale and, of course, the rest is history. I learned his *What it Was, Was Football* routine and a couple of others and I used to do those as well as Dave Gardner imitations.

That was when we had the Rutherford Hill group. We actually created a mythical government at Rutherford Hill. I was the Mayor of Rutherford Hill. Jan Crawford and Polk Rutherford were the City Council. We issued honorary citizenship cards, had them printed up at a local print shop. We gave them to the highway patrol and some of the teachers if they liked.

Among the teachers, the principal and I were as cross as two sticks. He was a man named Hugh Tomberlin. He was a much more dictatorial principal than anybody could be in these days. Even for that day, he was regarded as a very stern principal. I was regarded as a cutup and a maverick. I was in a lot of trouble. I’d built a lot of detention, but I also was a very good student and I also performed so well on standardized tests
that he knew for a long time that I had the potential to do a lot better things than most of the graduates of that high school had done academically. So we stayed pretty crosswise of each other and he paid tribute to me at a pep rally when the scores came back from the, first the PSATs where I was in the top three or four in the state and he announced that I was and the pep rally gave me a standing ovation, and the same thing the following year with the SATs. It didn’t keep me from getting in a whole lot of trouble, but it did help soften the blow at times, I think. He tried very hard to get me to go off to an Ivy League school. I did apply to and was accepted at Yale. I had no desire whatsoever even if we’d had the money, which we didn’t. I was a little scared. I had not really been much outside Western North Carolina. I had traveled some in the South to the homes of relatives and such, but the thought of going off to a Yankee school was a little daunting. And I had always wanted to go to Chapel Hill or Duke, one or the other. Financially, Chapel Hill became the place to go.

MR. FREDERICK: I want to go into college in a moment, but first I want to hear about debating in high school. I was a former debater and I want to hear what your experience was like there, what topics you debated, what the competition was like, what the process was like.

JUDGE SENTELLE: The first year we had a competition for the forensic team, the sponsor of the NFL conducted the competition and she just judged it dictatorially. The forensic team sponsor was Catherine Rutherford. She was the mother
of Polk Rutherford who was one of my disciples there on the Rutherford Hill group. She was a very well-educated woman. She had gone to Carolina. She was one of the few of the faculty who had gone to a big college rather than going to Western Carolina, Appalachian State, or East Tennessee. She conducted Congresses where we’d do legislative sessions and then she had us try out for the debate team. I made it as an alternate and ultimately one of the team members dropped off and I was the first alternate of a four-member team. One of them, Marilyn Plott, got involved in other things and had to drop it, so I became Judy Woodard’s partner. Judy was a junior. We were the negative. Later we had to argue both sides, but you came on as a negative or an affirmative. Charles Robin Britt and Arthur Taylor were the affirmative. Robin was a senior. He was Mr. Everything at the high school. He was president of the student body, captain of the football team, Morehead scholar at Carolina, which was a very prestigious scholarship. Later, he was a one term Congressman. Robin was the captain of the team and he and Arthur Taylor, who later was principal of the high school, were the other half. We were a very simpatico, a very compatible, a very collegial bunch and we all adored Ms. Rutherford. She was really erudite in a way we weren’t accustomed to in our teachers. She was so well-read and so good at calling up quotes and supplying us with something in practice. If we couldn’t think of a resource, she would at least suggest a line of research if not actually give us something we could use.
We traveled as far as Johnson City, Tennessee, in the debates. Then we went to Appalachian State for the regional finals. We made the regionals every year and never won in the three years I was there. We were always runner up or in the top two or three, but we never got to go to the state finals at Chapel Hill. That was always a good treat. We’d get to go out there and stay in a dormitory at Appalachian State, which was a place that high school boys liked to go in those days because it was very heavily female then and even high school boys could make out out there.

The first year it was resolved that the United States should adopt a modified education system based on the Soviet Union. I don’t remember precisely how it was worded, but it had to do with adopting a system. No, based on England’s system. The Soviet Union was one we used in discussion. It was based on the British system of education. One year was a right to work topic. I think that was my senior year and I don’t remember for the life of me what was the one that came in between.

The second year, my partner was Tom Orr. He was a junior – we were both juniors. I don’t remember what we argued that year. The third year was the right to work and Jan Crawford, my buddy from behind me there, was a junior and he and I were partners on the debate team. We traveled as far as Johnson City, Tennessee, Elizabeth City, North Carolina. All the local schools that had debate teams, which was about maybe a fourth of the schools. Then we made the finals again at Appalachian for the regional and again did not make it down to Carolina for the state finals.
MR. FREDERICK: Did they do individual events as well – extemporaneous speaking, original oratory, etc.?

JUDGE SENTELLE: Yes. We had National Forensic League speech tournaments. We had Congresses where you do legislative sessions, then we had tournaments where you do extemp and recitations. There were two kinds of extemp. They used two different names for them. One of them was the light subjects, where you could do a humorous speech. The other one you were given about two minutes to think and you had to speak for a couple minutes on a serious subject. We sponsored one of those at our school. Our club had almost lost its charter. You got points for participation in all these things, but we had to build the charter back up. It helped us to sponsor one of the meets, so we had a tournament at our school. They were all very useful things in preparation for the route that I intended to go and did go professionally.

MR. FREDERICK: When did you decide that you wanted to be a lawyer? Was it in high school?

JUDGE SENTELLE: I think it was before that. There were a lot of factors. I was not particularly fond of Sam Robinson, my uncle by marriage. My mother had worked for him. She did not work for him when I was a kid. She stayed home mostly. Sam just looked to me like he did more interesting things than the men in the family who were mill workers and carpenters. And he would come in talking about cases he had tried and deals he had put together and it sounded more interesting than what everybody else did.
I was born, as I said before, on February 12 and people kept giving me biographies of Lincoln because of it being his birthday, so I read a lot about Lincoln and what he did sounded like a thing I would like to do. So I wanted to be a lawyer by the time I was in the sixth or seventh grade. It was not some epiphany, just gradually developed. I drifted off for a little while in high school and thought about the ministry and realized I wasn’t good enough for that and went back to wanting to be a lawyer. I guess that answers your question.

MR. FREDERICK: How did you find the training you did in debate to help as a trial lawyer?

JUDGE SENTELLE: Oh, a lot of ways. The first is, I realize that I speak more slowly than people up here. That’s not necessarily the natural accent of the mountains. In fact, Andy Griffith’s cadence is just about normal for the mountains up there, where he says, “It was back last October, I believe it was,” Andy spoke a little faster and that’s the natural cadence in the mountains. Ms. Rutherford slowed us down, where the coaches and judges could understand what we were saying. You had to learn to speak on your feet because you had to rebut what the other side would say when you gave your rebuttal. And I liked the rebuttal function of it and I liked to speak on my feet. It also, of course, takes the butterflies out of your stomach. But I learned to speak on my feet. I learned to listen and respond. I saw that note-taking was not the way to go. Trial lawyers who take a lot of notes are not going to do a very good job because they’re not hearing everything that is said and they’re not thinking about what they’re going to
say back. You’ve got to learn to hear it, remember it, and respond, and you learn the ways to speak to which people are responsive. You learn what caught your audience, what caught the judges if there was no audience. You learn things about style and method and cadence and approach that I think stayed with me through a not-very-enthusiastic debating career at Carolina and then all the years of trial law.

MR. FREDERICK: How about writing? You’re a wonderful writer. Did you have good writing instructors when you were in high school?

JUDGE SENTELLE: You know, I think the first writing instructors that I remember were back in elementary school. Ms. Weaver, who was the funny person in the third grade began to try to teach us to write sentences that were not just, “See the cat run.” My sixth grade teacher, whose name has now escaped me, Ms. Stanton, the one that I shot with a water gun who I never really liked very much, she made us put together essays in a way that the other teachers in that elementary school were not yet. She was helpful, although I think part of it, David, honestly is a gift. I think some of it you have to have. You can only be trained so much and I remember in the sixth grade getting back a paper that said, “This is very good. I hope it’s your own work.” And we had some words about that. It may have been before I shot her with the water gun. Because she believed it was better than she expected a sixth grade student to write on cavemen. My parents were both very good with language. My father wrote wonderful letters. We read the King James Bible. All of those things, I
think, contributed to being able to write well. Then in college I had a very
good composition instructor whom I think influenced me from there on,
Charles Edge, who I also took a literature course under. He complimented
me as being a very good writer and then he taught me things that I could
do to make it better, so it was probably more from grammar school and
college than from direct instruction in high school. Although Ms.
Rutherford, whom I never had for a class, the debate coach, was very good
in the use of language and I think she helped a great deal. Also, just
reading helps you write and I was a voracious reader. A lot of junk, but a
lot of good stuff, too.

MR. FREDERICK: What books do you remember as being favorites from your high school
years?

JUDGE SENTELLE: Well I first read Buckley’s *Up From Liberalism* while I was in high
school. I first read Goldwater’s *Conscience of a Conservative*. I even got
him to autograph it while I was still in high school. Somewhere along the
way there, I read *To Kill a Mockingbird*, which still remains one of my
favorites.

Thomas Wolfe, I became first enamored with while in high school. Now
I’m not talking about Tom Wolfe, the pop writer, who is quite a good
writer – I don’t mean to say anything mean – but Thomas Wolfe was the
early twentieth-century novelist who grew up in Asheville who wrote
*Look Homeward, Angel, Of Time and the River, Web and the Rock*. He
sort of wrote, *You Can’t Go Home Again*, although I think his editor put a
lot of that together after Wolfe’s death. Those were—particularly *Look Homeward, Angel*—very influential books for me. *Look Homeward, Angel* was very autobiographical. They all were, but especially that one. My Uncle Jack, among others, could sit there and tell you who the characters were in real life and what their real names were. The Gant family in the book is the Wolfe family in real life. The Pentland family in the book is the Westall family in real life, Wolfe’s mother’s people. At any rate, he grew up in the mountains and read a lot and wasn’t very good at sports and I read his stuff and identified with a lot of it. Then again in college, I re-read a lot of it in Chapel Hill, which he calls Pulpit Hill in the book. He talks about going out and walking in the graveyard at night. I used to go out and walk in the same graveyard at night. So Wolfe’s books were very influential.

My grandmother began to teach me Shakespeare when I was in elementary school. We liked to go out—I in particular, but my brother, too—particularly I liked to go out and spend Sunday at my grandmother’s apartment after she moved back to Canton. She and my grandfather had lived with us in Asheville for a few years. He developed what was probably Alzheimer’s, although they didn’t have that diagnosis in those days. They moved into a little apartment in Canton. As I said, I used to like to go stay out there on weekends. I guess just to keep me busy, she had an old thin-paged, onion skin-page copy, leather-bound of *The Complete Works of Shakespeare* that I have now that she would have me
read from and learn passages from. And that, I think, was influential also. And we had the *King James Bible*.

**MR. FREDERICK:** Were you the first in your family to go to college?

**JUDGE SENTELLE:** Yes. I had a great-grandfather, J. Wiley Shook, my father’s mother’s father who was a lawyer, but he had read law at the time when you could read law under a practitioner. He had not gone to law school or college. Collateral relatives had gone to college. But I had a very interesting great-grandfather. Now I was the first to graduate, but he actually went to college as a mature man bit by bit. As I mentioned earlier, in the old days you could teach in public school with a high school education. And he learned to read after he was a grown man and passed the teaching exam and taught school. My great-grandfather, Dick Sentelle, Richard Alva Sentelle, known as Grandpa Dick or Granddaddy Dick to his grandchildren – he was dead before I was born – and Uncle Dick to the whole community. He was a school teacher and a preacher without a college education, but then he started going to summer institutes at Western Carolina and Wake Forest and actually acquired a good bit of a college education. By the time he died in his seventies, he was still taking summer courses but he never got a degree, although he was superintendent of schools of Haywood County. It was an incredible thing for a man who’d never finished college to have been secretary of the Baptist convention and secretary of schools. There is a little biography of him,
which is really a collection of his journals, mostly, which I have a couple of copies of, *Dick Sentelle of Haywood*. He was a remarkable man. Beyond him, nobody else had finished college. There were some collateral relatives who had, but nobody in my direct line on either side. My mother had two sisters who taught school and who finished college after they were middle-aged people, but they were after me finishing. In fact, after their own children finished college, they finished college. At the time I finished college, I was the first in my direct line. My first cousin, Mary, finished the same year I did at Carolina, so we were carrying the ball for our family at the same time.

MR. FREDERICK: How did your family react to your decision to go off to university?

JUDGE SENTELLE: My parents, particularly my father, had always wanted their sons to go off to college. My brother didn’t. He went in the Air Force right out of high school. He had not been a very good student, although he was very intelligent. He got a bad start in elementary school, I think. He never really caught on academically. He didn’t go on to school and my parents wished he had. He later finished at community college, but that’s a different story for him to tell. But they always wanted us to go to college and they were very encouraging, very supportive, and delighted that I went to Chapel Hill.

As I said before, a majority of my high school class did not go to college at all – at least not right out of high school. Some of them went later. Of those who did go to college, a substantial number of that minority went to
either Western Carolina or Appalachian State. A few to Mars Hill or Asheville Biltmore Junior College, which is now UNC-Asheville. Only a very few of us went off to large state universities or large universities. Tommy Furness, who I mentioned earlier, went to Duke on an Angier B. Duke scholarship. A couple of people went to N.C. State. Three of us went to Carolina and it was a point of pride that we had been admitted to and gone off to Carolina.

MR. FREDERICK: Did you know what you wanted to study as soon as you arrived?

JUDGE SENTELLE: I knew that I eventually wanted to go to law school, so I had in my mind that political science was probably the way you should prepare for law school. I read that somewhere. I’m not sure that it’s true. I wound up taking enough English courses to have a second major in English. And if I had to advise, I might tell people that English would be a good major for pre-law. If you were turned in the right direction, accounting might be. But I was in political science and I found it to be a very easy major. It gave me a lot of time to do the other things I wanted to do, so I stayed in political science. As I said, I took a lot of English. I found that to be very valuable for writing skills. Yes, I knew the direction I wanted to go, but I didn’t work nearly as hard as I should have in college. I partied too much and drank way too much.

MR. FREDERICK: What courses did you enjoy the most?

JUDGE SENTELLE: The advanced composition course that I mentioned earlier under Charles Edge was an excellent course in which we really dealt with rhetoric. He
also taught a literature course that I took on the early English novel. We started with Fielding and worked all the way up to Jane Austen and the Brontë sisters. And I learned a new way of reading literature there that I had been exposed to in other English classes, but had never really bought - the analysis of fiction – the themes and messages that were involved. Charles Edge made me believe it. I really believe that Jane Austen had the story of the Minotaur in her mind as a pattern for some of the inner workings of what happened to her characters. It was a really great course.

I took a political science seminar that I enjoyed. Jimmy Prothro was the professor. He and I probably didn’t agree on what day it was, but he made a very lively seminar. I was one of, I think, two conservatives in the seminar for about twenty-five people. Prothro was a very active, liberal Democrat. The rest of the class, as was common, were liberals or nothing. And nothing tended to be liberal in Chapel Hill. It was an interesting class with interesting exchanges. Those are a few classes that stand out.

I took physics my freshman year. I don’t remember anything about it. My wife doesn’t believe this. I don’t even remember going to it. I got a ‘C’, so I passed it, but I have no recollection of it whatsoever. I took calculus. There was a requirement for six hours of math, but if you placed over a course, you could take the one course and get credit for all of them. I placed over two math courses, took the third course, and got nine hours credit and said goodbye to the math department. Although I had made the highest math scores on the SAT, again, of anybody from my high school
ever at that time, I didn’t particularly like math then. I learned later that I liked it better than I thought I did. I do play games with math now. I don’t think I was ever as hard-working at it as I should have been or I might have enjoyed it more. My approach in high school had always been that I would do enough to get by and then figure out how to ace the exam, during the exam. It was more exciting that way. That’s not a good way to prepare for calculus, but I couldn’t figure it out. I had to do it by doing the work and doing it by rote. I had to get a ‘C’ to get credit for the other courses. I got my ‘C’ and I said goodbye to the math department.

MR. FREDERICK: What other activities did you get involved in at college?

JUDGE SENTELLE: Well, I was very active in the Young Republicans. I have a friend to this day who practices law in Raleigh whom I met during registration our freshman year, Chuck Neely, who ran for governor in North Carolina and lost the primary a few years ago. Chuck and I dropped out of the registration line together to join the Young Republicans at one of the side tables. I went through the ranks there and was very involved with Republican campaigning and Republican politics in North Carolina. I attended all the CR, YR, and State Republican conventions for years – all the time I was an undergraduate. My first year in law school, I was president of the Young Republicans. I didn’t mean to be, but the president dropped out and I had been vice president, so I was stuck with it. I was on the debate team my freshman, sophomore, and junior years and I just ran out of time my senior year and did not debate that year. Kellis
Parker, who was later a Harvard Law professor, was on the debate team with me there. Kellis died last year or the year before. He was, I think, the first black man to debate for Carolina.

My partner my freshman year was Charles Heatherly, who was a sophomore and I was a freshman. He had been a graduate of Enka, also, and had been in the NFL up there with me at the high school. My sophomore year, my partner was Barry Hyman. He was a Jewish boy from High Point. I think, when I stayed in his house, it was the first time I’d ever stayed in the home of anyone who wasn’t a Christian. We had Jewish acquaintances growing up, but they all lived in Asheville and not over in West Asheville or out in the country. My momma, I said a while ago that she mostly stayed home, but except during Christmas season, she worked in a department store and her boss was Harry Winter. But it was a little bit different for us to have a Jewish friend. I lived in Barry’s fraternity house one summer after that where we joked that I was the house goy. I was there to turn the lights on and off on Saturdays.

Charlie and I debated together again my junior year. He was a senior and I was a junior and then, as I said, I dropped off the team my senior year. By then I had gotten behind financially and I worked a substantial part of the time my junior and senior years. That takes a big chunk out of your time for extracurriculars when you’re working. I worked a 20 – 24-hour week. I worked even longer at Chapel Hill my junior and senior years. I had worked my freshman year, but had a very good job. I read to blind
students and I read courses I was taking, so it didn’t really take a chunk out of your time. I had dropped out my sophomore year when I had an operation and then I bummed around for a while and I got myself behind financially. When I went back, I had to work more.

MR. FREDERICK: How did you finance your college education?

JUDGE SENTELLE: I had worked in the restaurants around the tourist traps of western North Carolina from the time I was about fifteen. I had worked some construction in the summers when I was fourteen, fifteen, sixteen. I saved a lot of money and my parents helped me, but I did save the biggest part of it myself. They didn’t have a lot of money, although they were quite willing to help me. They did help me a lot my sophomore year when I was sick. I had a pilonidal cyst, which in itself is not bad except it got very infected and I didn’t want to drop out and have it removed and so I stayed running a low-grade fever most of my aborted sophomore year. They told me, “Quit your job and let us pay for this one.” Then finally they said, “Look, just drop out and come home,” which I did. Then I worked in a laundry office and worked summers at the restaurants again. You could easily find restaurant work, so I worked summers in restaurants. I worked for the laundry and got paid minimum wage. The second year, I was one of four guys who had a commission office in a high-rise dorm, so we made considerably more than minimum wage by rotating the time we spent on it. We had the job and all the football players and other scholarship athletes got free laundry service and free
linen service, so they would use all of our services. In fact, if money wasn’t coming in fast enough, we’d go change their linens for them so we could get a nickel a pack for the linens we passed out. Those were the principal ways in which I financed it. As I said, my parents also helped out.

In law school, I got married, which was kind of like a scholarship. My wife worked and we went into some debt, which was very low-interest debt. The last two years of law school, I had a very full ride. I had had a small scholarship the first year, but there was something called the Dameron Fellowship that’s awarded after your first year. I don’t know how to officially describe it, but it’s sort of, “Look, we missed you with a good scholarship the first time, but now you’ve proved you can handle it.” So it’s given to one student every year and I got it my last two years.

MR. FREDERICK: Were you involved in political campaigns at the presidential or state level during your college years?

JUDGE SENTELLE: Yes, I was very involved in the Goldwater campaign in ’64. The local Republican Party was not a very conservative Republican Party there and the students of the College Republicans really ran Goldwater headquarters. I had been a Goldwater Republican for some time. I met him my senior year in high school. I had already read his book before that, The Conscience of a Conservative, and I really believed that he was the way to go, that he had it right. He came to speak to a private prep school at their graduation, Asheville School for Boys, which was a pricey prep school.
Dan Judd, who was a hardware store operator and one of my Daddy’s Lion’s Club and lodge buddies, as I mentioned earlier, was county chairman. I went and asked Dan if he could get my book autographed for me and he said, “I’ve got some passes for the party, so come on, you can go.” So Dan and I and his son went out there and he let Danny, Jr., and me bring Barry Goldwater around from the airport and we had a long talk with him. I got him to autograph my copy of *The Conscience of a Conservative*, which is probably in the office here somewhere. And then, as I said, I worked in his campaigns in the conventions forward. I was very involved in the campaign. I almost flunked myself out, I spent so much time on it.

In ’64, I was involved with other campaigns. Now in those days, remember, there weren’t very many Republicans winning in North Carolina. It was still a very Democratic state, so I worked in losing campaigns for most other offices. While I was in law school, we elected Jim Gardner as the congressman for that district, the first Republican for that district. All the way through law school, I was Republican Party chairman of the precinct and I would resign shortly before each election and get myself appointed as Republican precinct judge, which you couldn’t hold a party office and be an official poll worker. You got paid, I think, twenty dollars a day for being the precinct judge. I picked up an extra twenty dollars every election day back then, but I’d become precinct chairman again as soon as the election was over.
I worked in Charlie Strong’s campaign for governor. He lost in the primary to Bob Gavin and then I worked in Bob’s campaign. Whatever was going on that was Republican, I was involved in it. And as I said, Goldwater was the heaviest for me. That’s where I first became an admirer of Ronald Reagan, during the Goldwater campaign when he made the “A Time for Choosing” speech. We knew he was vaguely Republican and conservative before that speech. When he made that speech, I think the whole conservative movement across the country said, “This is the future.” “This is the man.”

MR. FREDERICK: Did you develop a personal relationship with Senator Goldwater during the campaign?

JUDGE SENTELLE: Not really. There were many people between me and him. I was very flattered one day when he came through the second time during the pre-convention that he called me by name. I don’t know if somebody fed it to him or not, but he did call me “Dave” when he saw me. That got me a lot of admiring glances from the other college students. But, no, I didn’t have any kind of real close, personal relationship with Barry Goldwater. I admired him as a leader. I was a college student.

MR. FREDERICK: Tell me about your law school experience. What caused you to decide to stay in Chapel Hill after college?

JUDGE SENTELLE: Financial factors were a big factor. I actually seriously considered going to Duke or thought about Yale but, again, decided that the financial and displacement factors were enormous. Jane and I had just gotten married
and financials was a big factor. Although my college ranking was not outstanding, my LSATs were. I was in the top percentile in the LSATs and Duke offered me a scholarship, but Duke was so expensive that even with a scholarship, it still would have cost a significant amount more than Carolina. It was only a very small scholarship. Jane became pregnant very quickly and money was very important to us, only she was working and we knew there would be a hiatus. We lost that child, so our children don’t start until after I finished law school. In any event, financials were a big part of it.

I might have gone to Duke for a change of scenery had it not been for that, but there was also nagging me all the time the fact that graduates of UNC Law School and Wake Forest Law School were the ones who did things politically in North Carolina. You didn’t see very many Duke – more then than now, perhaps, although Liddy Dole is a Duke undergraduate. Most of the people who were moving and shaking politically were Carolina Law School graduates and that was a fact not lost on me. I remember in the gubernatorial election of ’64, the Democrats had three candidates running – Dan Moore, Beverly Lake, and Richardson Pryor. Pryor was Harvard Law, Lake was Yale Law, and Dan Moore won. He was Carolina Law and I think there was a connection.

MR. FREDERICK: Did you have aspirations to run for office?

JUDGE SENTELLE: Yes, I did in those days. I wound up not running for any high offices later.

My main aspiration in those days was to practice law. I wanted to practice
trial law, I wanted to be good at it, but it was always on my mind that a lot of trial lawyers go to Congress. I seriously thought about it. In 1984, Jim Martin was our congressman from Charlotte and Charlotte was a district run by Republicans since 1952. Jim decided to run for governor. I had been county party chairman. Jim called me, among others, to tell me he’d decided to run for governor. I hung the phone up and said, “Jane, Jim’s not running for Congress.” She said, “You’re not either.” That was almost the end of it. I had three school-age children who were approaching college age and practiced with a small firm. I just didn’t have the backing to have been able to take time out to run for Congress then. Jesse Helms’s people said they would see that my campaign was funded, but I had to think about funding three colleges and three weddings. We decided we couldn’t afford it. So I ran for county commissioner and lost. I was an elected state judge and won. So I ran for office twice, won one and lost one. That gets us way ahead of where we were, so jump back to whatever you wanted to ask me before.

MR. FREDERICK: Well, law school. What courses got you particularly excited in law school?

JUDGE SENTELLE: An incredible number of them did. I loved law school. I don’t think I ever worked that hard mentally before for as sustained a period of time as I did in law school and I found where I was supposed to be. It was a combination of reasoning and rhetoric that I wanted to do. I had always thought I’d love it and I did.
J. Dickson Phillips was the dean of the law school and was later a Fourth Circuit judge. Dick taught a course that was improperly labeled, “Personal Property.” It was really a procedure course, but they used a personal property casebook for the procedural framework. I found it to be a very good introductory course to learning how things were done in the law. Phillips was rumored to have pets and I was rumored to be one of them and that was fine with me. I did very well in law school. I had the “book A” as it’s called in his class, among others.

Torts – which some people don’t find stimulating – I did find stimulating. I had Robert Byrd, not the senator but a different Robert Byrd, later succeeded Phillips as dean at the school. Byrd I had four times. I had been meaning to have him three, but I had him for both semesters of torts and then for trusts and later for remedies. He taught a very good torts class, a very Socratic, interactive kind of torts class where you’d really have to think about what you were doing. He was always one step ahead, a very, very bright man and a very fine professor.

I’m thinking now in terms of the first year of law school. Chancellor William Aycock taught the real estate class, which can be a very dull course. He was so entertaining and so bright that that was a good course the first semester. Then Freddy B. McCall taught the second semester. Freddy B. was one of the most erudite scholars in any field I ever knew. He knew North Carolina property law and baseball. You couldn’t ask him anything about either of those subjects that he didn’t know.
As law school went on, I had Dean Frank Strong for the constitutional law seminar. He was a retired dean of Ohio State University Law School and he taught a seminar on a different constitutional topic every semester. When I had him, we were dealing with the constitutional implications and restrictions on third-party electoral participation – ballot access for minority parties. Ohio had the strictest third-party laws in the country. Every state had some sort of third-party law. Most states had some sort of third-party laws that were restrictive on ballot access. He had each student take a state and write a brief attacking or defending those laws. He wouldn’t let me pick a state. Everybody else got to pick a state, but I had to take Ohio.

I had had him the semester before for *Federal Jurisdiction and Federal Courts*, which is a wonderful course. He had his own Socratic method. He would come in and do things like, “Sentelle, I know the bell hasn’t rung yet, but when it does, I’m going to call on you. Be thinking about what you’re going to say.” He wouldn’t tell you what he was going to ask you. Then he’d ask you, “Well, Sentelle, what do you want to say?” “About what, sir?” “Oh, well about the material in such-and-such a case.” He played with us and he really had a marvelous method where everything didn’t come together until the end. He was teaching strands of this and strands of that and he would weave them together as you got closer and closer to the end. I loved him and although the law review board is exempted from the seminar requirement, I took his seminar just to get him
again. And he loved me. His wife was my press agent. She would tell everybody, “This is the Sentelle boy who made the A’s under Frank twice, the high A twice.”

Those were among the classes that stand out in my mind. My first tax course, estate and gift tax, was one I really enjoyed. Income tax wasn’t any good. It was a different professor who was a very dry lecturer. That’s no way to teach tax. John Scott, who taught the textbook method, was the professor in my estate and gift tax class. He was very expert and taught a lectured class in a sense, but it was more anecdotal than it was a lecture. He was quite able to take those statutes one-by-one and tell you how they got there and what you’d do with them if you were ever on one side or the other of the tax controversy. I’m sure that I’m going into more detail than you really wanted me to, but those are the courses I remember immediately.

MR. FREDERICK: You joined the law review as a second-year law student?

JUDGE SENTELLE: Well, in those days you had to grade on. I realize by the time you came through law school, you had your write-ons and grade-ons, but if you’re in the top ten percent of the first-year class in law school, you then had to write two notes or one long comment that was published before you were officially a law review member. But you were only eligible if you were in the top ten percent. Then you had to write-in and your note had to be accepted. So, at the end of my first year, I was tenth in the class. I was in the top ten percent, but for some reason it was the top twenty people. That
was arbitrary – you had to be in the top twenty people, which was a little more than ten percent. It seemed to be the pattern that the last five, fifteen through twenty, didn’t write or didn’t get their notes published. It was about the top fifteen who managed to make it through the first year.

So I started writing the summer before my second year and made the law review. I got two notes published and then made the editorial board for the third year. The editorial board was seven people in those days. The editor-in-chief was C. Boyden Gray, who was later White House Counsel under the elder George Bush.

MR. FREDERICK: Was Gray also in your section in first-year?

JUDGE SENTELLE: He was and he wasn’t. They had cut it into six different sections and then mixed them different ways for different classes so that there were always either two or three sections blended. So Boyden and I were in torts together, but not in criminal law together. But that’s a better way to do it than to have the same section all the way through. It makes for better comparisons. Gray and I had two classes together and three classes not together.

MR. FREDERICK: What was he like as a law student?

JUDGE SENTELLE: He was brilliant. A lot of people thought he was aloof. I never thought so. I always liked Boyden. He just had a bearing about him that a lot of aristocrats have that makes them seem aloof. He really didn’t mean to be snobbish and I don’t think he was. He went around with his pants way up his shins because he grew so tall so late and he’d come to my little two-
room apartment for supper and was just a very laid-back guy when you got to know him. But he was hard to know. He studied all the time. We used to say he was number one in the class in three regards: he had the best grades, he was the tallest, and he had the most money. The Gray family, of course, is a legendary multimillionaire, multi-generation family.

MR. FREDERICK: How did he end up at UNC Law School, do you know?

JUDGE SENTELLE: He went to Harvard undergrad and was, I think, summa cum laude, but his father had been president of the greater university and I think he just had a loyalty that he wanted to come back home and he came back to the greater university. Although his family had endowed a lot of Wake Forest, along with the Reynolds family. But he had a loyalty to UNC through his father, Gordon Gray, who had been Secretary of Defense under Eisenhower and the president of the greater university, as is called the Chapel Hill campus of NC State. It was called the Women’s College of Greensboro in those days and then added other branches. I think that was that. He just had a loyalty there. He came back to UNC and that was a great shock to Scalia when he found out that Gray had gone to UNC. He undertook to introduce us one day and Gray informed him that we had been classmates. “You didn’t go to Harvard Law School?”

MR. FREDERICK: Was Gray active in Republican politics as well in law school?

JUDGE SENTELLE: No. I knew he was a conservative. I did not, at that time, consider him as conservative as I was. He had read all the right things and we could
discuss everything from Edmund Burke through Buckley and did discuss them during breaks, but he was never active in politics in those days at all.

MR. FREDERICK: What captured your interest for writing as a law student to do your notes?

JUDGE SENTELLE: I made a mistake the first one I wrote. Bill Aycock, whom I admired, the real estate professor, wanted somebody to write a note on a case involving landlord liability for tenant negligence. North Carolina apparently was the only state to ever adopt it and he thought it was a terrible idea and wanted it noted. I noted it and found out it was far too dry and I did not like working for Bill. We got along fine as long as I wasn’t working for him. He was much more making you work for him than writing your own note with him assisting. In any event, I made a mistake that time.

The second one, though, I wrote with Frank Strong as my faculty advisor in *Adderley v. Florida*, which was the case involving the upholding of the trespass convictions of the Florida civil rights demonstrators that had blocked the passageway to a jail. It was one of the very early decisions on the First Amendment implications of physical demonstration. There were precursors, but this was the one that got the point most squarely up to that time.

MR. FREDERICK: Was the UNC faculty at that time enamored of a particular view toward how the law should be taught or understood?

JUDGE SENTELLE: For the most part, it was a very Socratic teaching group. There were a few lecturers, but for the most part it was semi-lecture plus a lot of Socratic interchange. There was a classical devotion to the law as an entity among
most professors that was pretty much along the present view of the law. Not much crit, not much radical, not much legal positivism. We had one criminal law professor who had come from Yale. He was South African in origin, a wild-ass radical who tried to completely depart from any teaching of the black-letter law at all and taught a complete policy course in criminal law. He was there three years, was a complete flop, and I don’t think he ever succeeded anywhere. That was Michael Katz. He faded away. I saw him a couple of years later trying to argue a case for the ACLU or some other group. He wasn’t permitted to argue because he wasn’t a member of the bar. In any event, I don’t know what became of him.

There was not much of the crits or positivism movements appearing in that still-classical view of the law among most professors.

MR. FREDERICK: Liberal? Conservative?

JUDGE SENTELLE: The faculty was very liberal by general standards, not terribly liberal by the standards of law professors in general. The only real conservatives were Freddy B. McCall, who was the old property professor who I had for the second course in property, and Dean Frank Strong was a conservative who resurfaced for a brief moment during Bob Bork’s hearings. He wrote an op-ed piece for some publication supporting Bork’s nomination. By then he’d been retired for many years, but he was still a bright old guy. They were the only really conservative professors whom I remember, but the rest of the faculty tended to be fairly moderately liberal. It didn’t tend
to color their teaching to any great extent. There were exceptions, but for the most part it was a pretty center-left kind of faculty. Bill Aycock was a very prominent Democrat, the former chancellor of the university who was the other property law professor. Bill had been a Nuremberg prosecutor. He had been chancellor of the university. His greatest claim to fame had been that he fired the legendary coach, Frank McGuire, of the basketball program just a couple of years after he won the national basketball championship. He told me about it later and then he hired the young assistant coach, a fellow named Dean Smith, who became the winningest coach in college basketball history. Bill told me about it years later when I was teaching at Chapel Hill. Bill, by then, was long-since emeritus and he said that the investigation that he had run made it clear that there were players being paid and that Frank McGuire had to know – if he wasn’t directly involved, he at least had to know it. And so he volunteered this information to the NCAA and volunteered Carolina for probation. He cut it back to two scholarships a year and told McGuire he could resign or be fired. McGuire resigned and he called in Dean Smith, the young assistant. He told Dean what had just transpired and said, “I would like to hire you as coach.” Dean said, “Well, you just fired a legend, we’ll only have two scholarships a year? I’m not sure how long I’d have a job if I took the head coaching position.” Bill said, “I told him, Dean, as long as I’ve got a job, you’ve got a job,” and Smith said, “You
just fired Frank McGuire, that’s what I’m worried about!” But it became legend.

MR. FREDERICK: You were in law school in the sixties with the Vietnam War starting and civil rights marches. What kinds of political activities were prominent on the UNC campus? What did people care about when you were there?

JUDGE SENTELLE: The radicalism began when I was a freshman or before and built throughout the four years I was in undergraduate school. There was a lot of left-wing activism. A small but very vocal group of us on the right, the Goldwater youth, the Conservative Society and Young Americans for Freedom. We were small, we were vocal. The left gradually developed into the hippie-type movement that had a lot of demonstrations and they were very interested in the broad term of civil rights and in opposing the Vietnam War. I had a lot of friends over there. It was not a bitter kind of thing at all, but I knew a lot of people who were activists on the left while I was in undergraduate school and in law school. There were a lot of anti-Vietnam demonstrations. When I was an undergraduate, there were a lot of sit-ins. Before the Civil Rights Act of 1964, there were still segregated restaurants and other places of business in Chapel Hill and all over North Carolina. There were a lot of sit-ins and a lot of picketing of the segregated restaurants and bars and I have to confess that I was not nearly as sympathetic toward their cause as I should have been. I deeply regret my attitude, but I crossed their picket lines lots of times to drink at
segregated bars. I had some sympathy, and still do, for the small business owners who were caught in the middle of that thing. Whether they wanted to integrate or not, if they did integrate, they lost one set of clients, the customers they’d built all those years, and they had to start over. There were a lot of the rednecks in those bars who weren’t going to come back if they had another place to go. And yet the students were right and I was not involved in supporting them. As I say, I even crossed the picket line sometimes and drank in some of the cheap bars. Dean Smith, to his everlasting credit before he was head coach when he was still just an assistant, at a time when Adolf Rupp in Kentucky was saying, “Tell me which kids are black so I’ll know not to recruit them.” Smith was going out and sitting in with the black students in Chapel Hill. They would sit in and Coach Smith went with them before he was head coach. Coach Smith recruited the first black star in the ACC, Charlie Scott, who went All-American for him. Literally, I think Maryland had a black player before him, but he just sat on the bench and attracted no attention. Charlie Scott was right up there in front.

The big causes were race-related and Vietnam War-related. We did some counter-picketing of the Vietnam War pickets. The Young Republicans and the Young Americans for Freedom would counter-picket the antiwar pickets. Those were the big causes. There were other things, but those were the big ones.

MR. FREDERICK: What was your view of Lyndon Johnson?
JUDGE SENTELLE: I thought he was a brilliant politician and a very dangerous man. I always thought he was corrupt, but he was a lot further left than you would expect a Texan to be and a master politician. Brilliant man.

MR. FREDERICK: Other than Goldwater, who are your political heroes during the sixties?

JUDGE SENTELLE: Well, there was a TV commentator in Raleigh, North Carolina. He did the opinion commentary after the news every night for WRAL TV, channel five. He was a Democrat then, although he later changed to Republican: Jesse Helms. Jesse was somebody that I greatly admired then and over the years. Jim Gardner was a young Republican politician who did very well in the restaurant business. He was one of the founders of Hardees, which is still around, but it grew to be a big chain and then it shrunk. Jim was active in the Young Republicans and then ran for Congress from a district that caught Chapel Hill at its edge there. Jim was one of our very active leaders whom I greatly admired.

I always had a respect for Everett Dirksen, the old oratorical ornament of the Senate. He was a very canny Republican leader in the Senate. A Republican conservative of not quite the then-judged purity of Goldwater, but still a solid conservative.

Intellectually, Bill Buckley was someone we all admired. Later I came to, on this court, respect his brother a great deal more than I ever did Bill. I think Jim is one of the most intellectual people I ever met, but we didn’t know about Jim so much then until he ran for Senate and was elected. By then I was out of law school and we move into a different era there.
MR. FREDERICK: Is there anything more about law school that you recall that you’d like to say?

JUDGE SENTELLE: I could talk forever on that subject. I greatly enjoyed those years and the intellectual exchange, the camaraderie also. Working very hard at something that you love is something that I had not experienced to that degree before and it has been with me the rest of my life. I don’t really keep in contact with very many classmates because I’m up here and most of them are in other places. I see Boyden from time to time. I practiced with one of my classmates for a time, but he and I have lost touch. So really I’m not very much in touch with my classmates, but I had a lot of good friends and camaraderie at the time. And there are many courses that I thoroughly enjoyed. I enjoyed writing the exams. I surprised myself, but I had one bad grade in the criminal law course of the Yale-oriented professor that kept me from magna. If I had had an ‘A’ in that class, I would have been in the top two. I guess I was tied for third in the class. Boyden was first and then a fellow named Reid Johnson, who had trouble finding himself afterward – I think he’s finally a partner in a North Carolina firm – then Susan Ehringhaus and John Aldridge and I were tied at third. Susan was later vice chancellor of the university and now I think she retired from that and she’s with some think tank. John founded an Atlanta law firm, went with a big firm, and then, I think, spun off a smaller firm and has done really well.
MR. FREDERICK: Law school you finished in 1968. A lot of people were getting drafted. What was your experience?

JUDGE SENTELLE: I believe that if I had ever actually been drafted, I would have been wondering why because I tried to join the Navy and flunked the physical. I tried to join the Navy Reserves in high school, but the draft was a threat hanging over all of us so four of us went together to join the Navy Reserves and fix our obligation. We figured we’d go in, do our time, and get some scholarships. I flunked the physical and was told, “Don’t worry about the draft.” But I worried anyway because I kept thinking they’d relax the rules. I had asthma and I had very flat feet and weak ankles. Put together, they just said no. But what can I not do on a boat? Lots of things. Anyhow, I wasn’t really worried but a little concerned because the standards do change from doctor to doctor.

My wife was pregnant when I finished law school. We had both intended to go back to Asheville to spend the rest of our lives. I was going to practice trial law, maybe stand for Congress or the legislature at some point, maybe go on the bench. We were both going back to Asheville. We loved it up there, our families were up there – Jane’s mother’s family. Her father had no real family much and he was from the Midwest. She’d grown up there.

We went back twice to spend the rest of our lives. We spent a year and a half the first time and two years the second time. I kept being offered jobs in Charlotte when I was in law school and kept turning them down in
favor of going to Asheville. Went with an insurance defense firm up there. Very, very small by the standards which you would know, but second or third largest firm in Asheville in those days because both that market and that era, firms were much smaller. There were about eight lawyers in the firm. I really was not very happy in the firm. I worked very, very hard and they did not pay you very much for being an associate in those days and I did not get the feeling that advancement was going to be very fast in that law firm. They were working me very hard and I was not going to make very much money very soon. In fact, somebody else left the firm for that reason who was a few years ahead of me.

MR. FREDERICK: What caused you to join it in the first place?

JUDGE SENTELLE: Well the partners were very favorable and I didn’t know any associates personally to get a very frank view from. I thought and think a great deal of one of the partners, but I didn’t realize the extent to which it was dominated by one partner. It was four partners: Uzzell, DuMont, Russell, and Green. It was called Uzzell and DuMont. Bill Russell I had known from forever. His mother was my Latin teacher in high school. My father was one of those unlucky people who gets called for jury duty every time he’s eligible and I used to go with him and watch Bill try cases and Bill was a good lawyer. Bill tried lots of cases. Bill recruited me for the firm and I think he meant well and I would have eventually probably done all right there, but I began to have misgivings about whether anybody was going to be able to realize their full potential with DuMont dominating the
firm the way he did. I was working more hours than I wanted to work
with a wife and small child. It had gotten down to where there was only
me and one other associate and we were carrying the same load that four
of us had carried.

I went home one night and told Jane, “I’m going to look for somewhere
else to practice law.” The next day, Bruce Briggs, who was Chief
Assistant U.S. Attorney called me and asked me to come have lunch with
him and the U.S. Attorney. I knew Briggs and the U.S. Attorney both
very well from Republican politics.

MR. FREDERICK: Who was the U.S. Attorney at the time?

JUDGE SENTELLE: Keith Snyder. And in those days even the assistant U.S. attorneys were
political appointees in the hinterland districts. The big districts had a lot
of continuity career assistants, but there were very few slots in the
countryside. And we had a couple of years after the President changed,
everyone knew that. Keith Snyder and Bruce Briggs – Keith was the U.S.
Attorney and Bruce was the chief assistant – were in the Asheville office.
There was a Charlotte office in the district. And I came to lunch and Keith
said, “How would you like to take the Charlotte office at the U.S.
Attorney’s office?” I was a year and a half out of law school and I was
being offered to be placed in charge of essentially the largest U.S.
Attorney’s office in the state and I went home and said, “Jane, we’re
moving to Charlotte.” I told them, “I’ll have to talk to my wife.” We did
and that was the end of that story.
MR. FREDERICK: How do you think that came to be?

JUDGE SENTELLE: There was a fellow in Charlotte that wanted the job that had a lot of political connections. They did not want him. They did not trust him.

They knew that I had a) academic credentials that he couldn’t touch (although he was years ahead of me in practice), I had the law review and the honors and the fellowships, and b) I had started working in politics so young that I had more contacts than this fellow. And they thought that I could head him off politically. If anybody said, “Why didn’t you appoint Don?” They could say, “Because Dave wanted it and you know how Dave’s worked for Gardner and worked for Gavin and worked for the Goldwater people and we felt like we owed Dave.” So that’s the way that they picked me out to be the person to block the guy they didn’t want.

There wasn’t anybody else then and they knew me from the conventions. They knew that I may not have tried a lot of cases, but they knew how I handled myself on the floor of political conventions and they thought I could handle it. I had been the whip for the chair at the state conventions and I’d chaired a lot of conventions. They were satisfied I could do the work. They let me in and, frankly, I did the work, David.

MR. FREDERICK: So had you had a trial yet in your year and a half of work?

JUDGE SENTELLE: Yes, a few. I know how unbelievable that sounds. The first case I tried, I had a traffic offense that I went over and tried. The AAA provided, and still provides, a small legal fee for traffic offenses for their members and we represented AAA and they sent me over to try a traffic offense. The
next case I tried was a girl I had worked in a restaurant with who was
charged with hitting her boyfriend with a tape recorder and I went over
and defended her on an assault charge. I won both of those.

Then Frank Snepp was a very mean, overbearing, but very qualified judge
who was on the North Carolina Superior Court. Frank came to town and
discovered that Asheville did not have an appointed counsel list, that they
had to hunt people to try appointed cases. So he started calling the bottom
name on every one of the firms in town and appointing them whether they
wanted to or not. He said, “You are appointed to represent an indigent
criminal.” So the first jury case I tried was for an indigent defendant in a
hopeless case, which is not a bad way to start. Nobody could have won
that case. By the time he got to the second name from the bottom on each
of those firms, the bar had put together a list of people who wanted to take
appointed cases. Otherwise they just picked out people who hung around
the courthouse. So I had tried that one.

I second-chaired for the other associate who had been there for some years
and had not made partner, which was one of the things that disturbed me.
I second-chaired Eddie on an automobile accident civil case and then I
tried a couple of non-jury cases, but we won it on motions on the defense
and won the counter-claim before a jury. So we were okay after that and
we walked over there and recovered on a defense case. I tried several
non-jury cases.
I also did a lot of workers’ comp cases and had several administrative hearings there, so I had tried more cases than you might think. Actually, I skipped the first civil case I tried. We practiced in thirteen counties. The insurance companies used their Asheville counsel for the rural counties around Asheville and Willy Green took me down with him to one of the northeastern counties to move for a continuance while he went to one of the other counties to try a little property damage claim. Northeastern part of the western part of North Carolina, that is to say. Instead of moving for a continuance, I just tried the case. He came back in as I was winning the case. Thank you, Lord, for letting me win that one. He said, “What happened?” I said, “He wouldn’t give me the continuance. I had to try it.” “What’s happening?” “He’s deliberating, he’s thinking about it.” So we won and everything was all right. If I’d lost, I wouldn’t have worked for them anymore.

MR. FREDERICK: So in spite of all the hard work, there were some good experiences?

JUDGE SENTELLE: Oh, yes, I had some good experiences there. I just spent too much time on the road. What bothered me was not the hard work at the law, but that I had thirteen counties and they were always deadline-missing people, so I’d wind up – we didn’t have paralegals – I’d wind up having to run papers to Murphy to file. I’d spend the whole day in Murphy going out there to file a paper or hunt a witness and spend six hours of it driving and not devote time to learning the law in the way I wanted to learn to practice law. So it wasn’t working. I was spending too much time doing what
we’d have paralegals doing today, investigating and filing. Witness
interviews I learned a lot from, but, again, it would have been better if
we’d had investigators doing them, I suppose.

MR. FREDERICK: So about what date did you start in the U.S. Attorney’s office?

JUDGE SENTELLE: Very early in ’70. I’ve got the commission around here somewhere, but I
think February of ’70. I was between jobs for just a couple of weeks
because I had resigned effective the end of a month and then I had to wait
until my background investigation was completed. I think a week – there
was one week between jobs and I went over and hung out at the
courthouse and took a couple of appointed cases while I was hanging out
between jobs.

MR. FREDERICK: Now this involved moving your family as well.

JUDGE SENTELLE: We moved to Charlotte, yes.

MR. FREDERICK: How large was the U.S. Attorney’s office at that time in Charlotte?

JUDGE SENTELLE: Incredibly small. Two assistants. There was a vacancy and then they
hired Bob McClure as my second chair. So there were just two lawyers
and two secretaries in Charlotte. Two lawyers and four or five secretaries
in Asheville because, with the U.S. Attorney being there, they did the
administrative work in that office. It was incredibly small. Now there are
probably about thirty lawyers in that office in Charlotte and the Asheville
office probably has six or eight.

MR. FREDERICK: What was the docket like?
JUDGE SENTELLE: It was a varied federal docket. We didn’t have much drug offense in those days. We still had a little bit of whiskey, some drugs. We had draft dodgers – the selective service violation cases. Charlotte was a banking center, so we had some bank embezzlement cases. Bank robbery was the state sport in North Carolina then. We tried a lot of bank robberies. They were still prosecuting Dyer Act cases when I went in about the interstate stolen vehicles. That became pretty much something you referred to the state by the time I left, but we did some of it still then. Interstate theft and theft from interstate shipment. Charlotte was a trucking center and there was a lot of theft of interstate shipments. Some of it was very organized. Some of it was gangs that stole trucks or truckload lots. What I liked best was the con artists – mail fraud, wire fraud, bank fraud. So since I was assigning the cases, I assigned most of those to myself. White collar prosecution and defense were the two things I enjoyed best in the law, I think. I did a lot of mail fraud and bank fraud. We had a couple of really good investigators. Ed Shively was a postal inspector, except that he worked fraud exclusively. He was named and described as brilliant by a Wall Street Journal reporter in a book about international con artists called the Fountain Pen Conspirators. Ed was an ace and then we had Charlie Williams, who was a very fine FBI accountant who did a lot of the bank fraud investigations. There were others, but those two stand out as people I worked white collar crime with and were excellent. We put together, with nobody’s blessing but our own, what would be
called a task force today and I guess it would be, in some ways, frowned on. But my postal friend, Ed Shively, had all kind of contacts in the credit fraud industry so we had him and the top credit fraud people for Esso and Exxon now and First Bank, which is now Wachovia, and North Carolina National, which is Bank of America.

Then we had the Charlotte Fraud Squad. We worked task force style on credit card fraud and did things that were new. We were the first to use computer evidence in a credit card fraud trial in the country. They took me to Atlanta and walked me through the national data center of computers where they had credit centers. We were very daring, trying out all the new ideas in prosecuting credit card fraud. I got a reputation for prosecuting fraud and I got borrowed by the district of New Hampshire to try some mafia up there on an insurance fraud case. I lost it but, as my boss said, “if it hadn’t been tough, they wouldn’t have come all the way to North Carolina to borrow a guy to try it. They would have tried it themselves.” That’s sort of the big picture of the docket.

And we also had to do civil as well as criminal trials. You couldn’t specialize because there were only two or three of us. So I defended the post office on accident cases. I had some very interesting constitutional questions defending the Department of Housing and Urban Development, HUD, on allegations of discrimination. Whether a failure to scatter site location was discrimination in housing. It took us four years to get
through that one. And we had the routine kind of civil actions, as I said, the federal tort claims, contracts and such.

MR. FREDERICK: How often did you go to trial?

JUDGE SENTELLE: I was in trial an incredible amount of the time and somewhere around here I have the numbers. I gave you my clearance numbers, I guess, where I tried a couple hundred cases. I was in court an incredible amount of time.

MR. FREDERICK: That must have been very hard with small children.

JUDGE SENTELLE: It was and I guess it was unfair sometimes, although I tried very hard to spend the free time that I had with the family, or an awful lot of it anyhow, with Jane and the girls. And I was close to and remain close to my daughters. Last Thursday was a good day. I got to keep my granddaughter all day. She’s six months old. I brought her up here and showed her to everyone.
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 the Honorable David B. Sentelle, Judge of the United States Court of Appeals for the District of Columbia Circuit. The interviewer is David Frederick. The interview took place on July 8, 2003. This is the second interview.

MR. FREDERICK: Good morning, Judge Sentelle.

JUDGE SENTELLE: Good morning, David.

MR. FREDERICK: We are here on Tuesday, July 8 to continue your oral history. When we left off yesterday, you had been speaking about your appointment as an Assistant U.S. Attorney and I wanted to ask you more about that experience. Can you tell me what kinds of dealings you had with Main Justice and Washington while you were an Assistant U.S. Attorney?

JUDGE SENTELLE: We had perhaps surprisingly little dealing with Main Justice. There were certain kinds of cases – civil damages cases, tax cases, some of the civil rights cases – where we had to report. They had the final say. But on the criminal side, which was the biggest part of our work in the trial court, other than some general statements of policy, they didn’t have much to do with us. I mentioned a while ago that I was borrowed by the District of New Hampshire. They went through Justice to borrow me, but they asked for me specifically. I remember very early on we had a case where the Red Hornet Mayday Tribe members – they were a hippie group and a protest group – had the ACLU on their side. They sued Haldeman and
Ehrlichman, the Secret Service, and the Charlotte Police Department for excluding them from the coliseum when Richard Nixon was down there with Billy Graham. I was representing Haldeman and Ehrlichman and the Secret Service originally. Justice was very much in the scene and at the time something came out in the Watergate hearings about a memo from Haldeman or Ehrlichman to Haldeman, between the two of my clients. It said, “We can get some good publicity if we keep the hippies out of the coliseum in Charlotte. Charlotte Police Department’s tough, they’ll help us, but don’t tell Secret Service because they won’t go along.” So there were two of my clients implicating themselves and exculpating the third and I called Justice and went through about six levels before somebody would finally tell me what I wanted to hear, which was, “No, we can’t represent them. We’ve got a conflict. They’ll have to find outside counsel.”

It seems like in the civil rights cases, we were in not daily, but frequent, contact with Justice. Rarely, if ever, was I physically up here. I came up for an orientation session when I was first on. I met with some people in Fraud at Justice once when we were working credit card frauds, but we had fairly little contact with big Justice on the criminal side. Memo and telephone contact on the civil side. They would send somebody down – both criminal and civil – for a tax trial. Generally, they would try the case in the civil side and they would second-chair me on the criminal side. That’s typical of the contact.
The Antitrust Division had a fairly sizeable civil action, but I have to say that I didn’t and don’t agree with our position personally, but professionally I was in the position of having to take the position the government said to, that big Justice said to. They were opposing the acquisition of American Credit by Wachovia Bank. We won the preliminary injunction. I got them the TRO. They came down for the preliminary injunction phase. The fellow they sent – the head of the team who I don’t think tried a case in his life – couldn’t get some expert testimony in. The judge finally told him, “Look, if you’ll turn around and talk to the guy behind you during lunch, I think he can explain to you how to get that opinion and a lot of other evidence on.” From then on I sat next to him and told him what to do.

Swann v. Mecklenburg was the Charlotte busing case. HEW, as it was called then, was appearing as amicus. They again sent experts down and for whatever reason abandoned the ship before the final arguments so that I was about two months into my career and suddenly had to make a final argument in a case I had done nothing but watch. And Judge McMillan was a very proactive judge. Over the years, there was a lot of interaction, but it was not by any means a daily thing. The U.S. Attorney’s office is, in a lot of ways, a pretty independent shop.

MR. FREDERICK: How were decisions made within your district as to what prosecutive priorities to emphasize with such a small office? I would think you’d have to make some decisions about what cases to bring.
JUDGE SENTELLE: Oh, you always do. You were in the Solicitor General’s office, but in the field prosecutions, with some exceptions, the general rule is they can’t bring a prosecution without the approval of the U.S. Attorney’s office. And our district was so small that the assistants were permitted to make our own authorization decisions instead of having, like they would here, a tier of assistants who could make the decisions. We didn’t have room for tiers. We weren’t but three assistants, so each of us had to be able to make authorization decisions.

Keith was a great boss in that he gave me a very free rein and yet I always knew that he was there. I think maybe twice ever he overruled me on prosecuting decisions. Each time he thought I was overreaching or taking on a case that, while the person might be guilty, we were not likely to prove it beyond a reasonable doubt and it wasn’t good policy to go after a particular case without a really tight case. He gave us general guidelines and we always knew what his sense was, but he gave us very free rein and he was always the boss. And that’s the way we referred to him.

MR. FREDERICK: What was his background?

JUDGE SENTELLE: He had been a state district judge immediately before becoming a U.S. attorney. He’d been a practicing trial lawyer and generalist. He did a lot of trial work in Lenoir, North Carolina. He was a political lieutenant of Jim Broyhill, who was the long-time Congressman from that district. He was a Carolina law graduate about eleven years ahead of me. He moved
to Asheville to take the U.S. Attorney position. He was also from a
mountain Republican family like I was.

MR. FREDERICK: Tell me about your colleagues in the U.S. Attorney’s office.

JUDGE SENTELLE: There was a terrible period when Keith and I were the only ones in the
district. We actually had to borrow somebody for a little while then from
another district, but Bob McClure came in after me and was my associate
there in Charlotte. Bob had been a year ahead of me in law school and
about three or four years ahead of me before that. Bob was a few years
older. I said a while ago that Jan Crawford and I were the second and
third people to graduate from our high school to graduate from UNC Law
School. Bob was the first. He had graduated from Enka High School the
year I finished eighth grade and then he went to Mars Hill Junior College
for two years and then went into the Army. When he came out, he
finished college and worked for a bank and then went to law school on a
hurry-up program – one of those finish-in-two-years-programs. He
finished a year ahead of me.

Bob was obviously from the same community I was. His father worked at
the mill with my father. He lived in one of the village houses. He married
a girl from my high school, although they split up later. They were
married at the time he was working with me in the U.S. Attorney’s office.
He was a volatile sort of person and we had a lot of run-ins and a lot of
good times. We were good friends who put up with each other from time-
to-time, but we did a good job together most of the time. After Bob left,
he only stayed a couple of years. He saw himself in a hurry, I think, and he did die young. When Bob left, we hired a young man named Joe Beard who had clerked for one of the Middle District judges and had been an active Young Republican. I knew him and Keith knew him from Young Republicans.

MR. FREDERICK: About when was that?

JUDGE SENTELLE: That would have been about second or third year that I was there when Joe came in. Again, Joe stayed on a fairly short time. He really wanted to be politically active. He only stayed a year, then decided he wanted to get out and work in politics. And he was in politics all his life. He also died young – a curse on the office, I think. We had two secretaries, Jane Seacrest Floyd and Judy Barbie. Jane was my secretary later in the district judgeship and died of cancer at 49. Judy lost her husband when he was 49.

After Joe left, Mike Scofield came in who had been practicing law in Asheville. A Duke Law graduate, very bright guy and an excellent pianist by chance. He was a really, really good musician. I had known Mike. He went to Asheville High School for the last two years of high school. He’s from Iowa, but he finished at Asheville High when I was at Enka High. We had debated against each other in high school. He was a football star, also, of Asheville High. I had known him since we were teenagers. He succeeded me as the chief assistant in charge of the Charlotte office. I
later, when I was a state judge, persuaded him to become our first public
defender and he did a great job there.

Mike had the interesting habit of being a procrastinator and I would have
to really ride him to get his briefs and stuff in on time. Judy told me that
as soon as I left and he was in charge, he was the guy riding everybody
else to get it in on time. When he had the responsibility, he rose to the
occasion. He was a very good trial lawyer. He looked like Clark Kent in
the old Superman TV shows. He had an all-American face, plastic
glasses.

MR. FREDERICK: Did the U.S. Attorney himself try cases often?

JUDGE SENTELLE: He did. With that few attorneys, he has to. We had five seats of court.

Keith mostly tried cases in Asheville and Bryson City. He would
occasionally ask me to come up and try one with him, but he had an
assistant in the office with him. First Bruce Briggs, who left to run for
state judge. Bruce was succeeded by Jimmie Proctor, who had been a
practicing lawyer in the eastern part of the state and then an assistant U.S.
Attorney. He got transferred up to Asheville.

Keith tried cases in Asheville and Bryson City, occasionally borrowing me
to come up and try one for him up there. We sort of split the Statesville
and Rutherfordton seats. He would take some and divide it with me. He
would come and try cases with us in Charlotte when we had a heavy
docket and he would let me assign cases. A super guy to work for, but he
tried probably a third as many cases as I did. I tried more cases than the
other assistants. They probably tried a few more than him – some more than him and some less.

MR. FREDERICK: It sounds like the U.S. Attorney’s office there had people of very intense political interests. Am I capturing that right?

JUDGE SENTELLE: For the most part, I think that’s true. I’m just thinking why Proctor wanted out of the east was they had an embarrassing situation in that his father-in-law was a judge down there and he needed to transfer to avoid a recusal. See in those days, before the decision there was no civil service or any similar kind of protection for Assistant U.S. Attorneys. So outside the big districts, it was pretty much the case that within a couple of years after the presidents changed parties, so did the assistants. So nobody went in expecting to stay. They went in mostly with ambition. It was a good place to practice trying lawsuits if you wanted to be a trial lawyer and it was a good place to get some contacts for your political future if you wanted politics.

Somebody asked me up here one time from Washington when I was up here for an orientation, “Is it true that out in the field, they ask you your political affiliation before you’re hired as an assistant?” I said, “No way. If they have to ask, you don’t get the job. They have to know before they ask.” So, yes, the U.S. Attorney’s offices in the country districts were staffed up. And it was a smooth transition because the people going out would tell the guy coming in, “Look, I’ll stay as long as you need me and then I’ll get on with life and you can get on.” So they would hand in
resignations and then you would ask them to stay. It was a very formal kind of procedure that we went through.

At the time that I was there in Charlotte in the Middle District, Bill Osteen was a U.S. Attorney. Bill is a district judge now in the Middle District. Woody Tilley was his assistant and successor. Woody is his colleague in the Middle District now. Howard Coble was one of his assistants. Howard is a longtime member of the House of Representatives from Greensboro in the U.S. Congress. He’s the big chair of one of the judiciary subcommittees. Mac Howard was an assistant in the east. Malcolm Howard is a judge in the Eastern District of North Carolina. It was a very good ground for all of us to move along from.

MR. FREDERICK: Tell me about what you liked and disliked about being a trial lawyer.

JUDGE SENTELLE: Can we stay with the U.S. Attorney’s office just a little while? There are a couple of things about it that I think were important to me. One was the close contact with the federal agents. Again, in a small district – the FBI had maybe 30, 35 people in Charlotte, Secret Service had 4 or 5, ATF had a handful – you worked very closely with those people and you became part of their professional family. We went to their parties and their retirements. And the one case that sticks with me the most is when one of our agents was killed in the line of duty. We had a young first office agent. He and his wife and child moved into our apartment when we moved to a house. His wife was pregnant at the time that Greg was killed. A bank robber shot him in the head. She had one child and another one on
the way. We all closed ranks around them and persuaded them to stay in Charlotte. She met another agent, John McElhatten. He retired out of the Washington field office just a few years ago. I’ve stayed close friends with a lot of those agents from that time. You worked together, you played together, you had tragedies together. You were very much a family in a way that I don’t think people can experience in most offices now because there’s too many people there. The time that I spent with those brave people who would call me at midnight for authorization and apologize for waking me up had a profound effect, I think, on my life. I’d say to them, “I’ll go back to sleep. You’re still out there in the field doing this job.”

MR. FREDERICK: So FBI and ATF were the principal federal investigative agencies?

JUDGE SENTELLE: Well FBI was by far the most. There were the different Treasury agencies – Secret Service and ATF. They had a block of cases that they worked also. ATF, for reasons lost in history, didn’t have to get authorization which was a bad thing because they brought in some cases that we wouldn’t have authorized. We’d have to lose or dismiss sometimes. The Secret Service worked closely with the Postal Inspectors. Still does because they have a lot of cross-defendants – people who steal Treasury checks or use the mail to defraud. The Postal Inspectors were a very good outfit. The FBI was by far the biggest.

MR. FREDERICK: What were your relations like with the state and local law enforcement officials?
JUDGE SENTELLE: We had excellent relations. And I know you hear stories about federal and state being crosswise some places. Charlotte P.D. was a very good department. I mentioned yesterday their fraud squad worked very closely with us and the postal inspectors. They were a very professional police department. They liked to get our people’s help and we liked to get their help. They had more manpower than we did and we had better labs and more expertise than they did. We did a lot of work closely with the local prosecutors. The same people were committing the crimes, whether they’re stealing from an interstate shipment or an intrastate shipment. We could help each other out and everybody realized it.

One time there was a leak in an investigation of the sheriff’s department that we were running jointly with the state on allegations that the sheriff was embezzling federal funds that were supposed to go to the jail. It leaked that the investigation was going on. The investigation revealed no wrongdoing. The state DA and I held a joint press conference to open up what exactly had happened in the complaint about the leak that came out about the Charlotte P.D.

Another time, Joe Europa, who was the head of the vice, internal affairs, and one or two other things at the Charlotte police department, came to my office with some files. He said, “These are the files on the Summerford gambling ring. Every time we raid, they know before we go in. There must be a leak in my office. Here’s everything I’ve got. I don’t ever want to see it again. You call up Leon Andrews at the FBI.” He was the FBI
guy who worked gambling and criminal intelligence. He and Europa were both great criminal intelligence people. He said, “Tell Leon what I’ve told you and tell Leon not to call me. I’m not going to talk to him.” We took it over and worked it and eventually got nine indictments and then a tenth one of the cop when we got somebody to turn on the cop who’d been leaking to him in return for bribes. We cleaned up their messes and sometimes they cleaned up our messes. It was a very good relationship. A good social relationship.

Bill Austin, a sergeant who headed up the fraud squad, and Joanie were very good friends of Jane and me. We had an annual tradition that we went to a big holiday party that was hosted between Hanukkah and Christmas by one of the law firms in town. And that was the night that Jane and Joan said that Bill and I had to drive because all year long we’d been drinking and they drove and on that night, they drank and we had to drive. And we didn’t drink a thing because, as Bill said, “There are 99 cops out there who would not write a drunk driving ticket on a federal prosecutor or a detective sergeant. There is one cop that would rather write us than anybody else in the world and he’s the one who would get us.” So Bill and I didn’t drink anything that one night of the year, but looked after the girls. We were very good friends.

A fellow who served immediately under him, Bill Roland, was a Lodge brother of mine. We were also close. It was a very good relationship. We used them for manpower, they used us for expertise. When I see these TV
shows where they have the FBI cutting the local police, it doesn’t ring true
to me at all. It was not my experience.

MR. FREDERICK: How about relations among the federal and state law enforcement
agencies. You often hear stories of conflict about Feds stepping on the
state guys’ toes.

JUDGE SENTELLE: We didn’t have any of that problem. They liked to have our help. They
would call us – not my people, but the FBI and the Postal Inspector in
particular. They liked to bring those people to assist. Leon and Joe shared
intelligence all the time between the FBI and the local P.D. Each of them
had what the other one needed. They were, I think, very personally
responsible for having so little mafia/mob involvement. They were so
good, so expert, and shared their information and used it so well with
other agencies. Meyer Lansky tried to move into garbage down there.
Lansky didn’t get anywhere. Similar things other times.

One of the really good state narcotics undercover operatives was a black
man named Albert Stout. Albert did an undercover for our DEA people.
The defendants put a bomb in his car, blew him up, but didn’t kill him.
He lost an eye, a leg, and a hand. I took leave to go over and work with
the state DA and some of the ATF agents did the same thing to coordinate
until we got the men who blew him up. Then we prosecuted them
federally and they prosecuted them at the state level. One of them died in
the process of gunshot wounds, but the one that lived went away for the
rest of his life. Very close cooperation between the locals and the Feds on
that operation. Then I worked later with the state A.G.’s office to get Albert some federal compensation for the injuries that he’d suffered.

MR. FREDERICK: As a Republican in a Republican administration with a state government controlled by the Democrats, were there any issues that gave rise to special problems?

JUDGE SENTELLE: I really don’t recall anything with the state. There were local officials that at times we got crosswise of. I don’t know to what extent there was any political underlaying on anybody’s psychology on that. You can’t even speak for yourself fully. There were some local political officials with whom we had some problems. Nothing that got in the way of all of us of being able to do a good job. But the mayor, who later became a very good friend of mine, was a longtime Democrat and I think, at times, he was concerned that we were in his way on things like our HUD requirements. Sometimes our federal regulations would get in the way of what they would like to do. And he thought that we were the enforcement people at the ultimate level, so perhaps at times there was some resentment. Again, I think we all got over it.

MR. FREDERICK: Was there much corruption in the state government in North Carolina?

JUDGE SENTELLE: There was corruption within the Department of Transportation. When the Republicans took the governorship in 1972 and came in at 1973, in Holshouser’s inaugural speech he pointed over to the Department of Transportation and said, “We’re going to clean up state government starting right there.” But it didn’t happen then. Well, it did to a minor
extent. Many years later, when I was practicing law in the late 1970's and early 1980's when Lauch Faircloth – who was later a Republican Senator for North Carolina – was the Democratic Secretary of Transportation, he got a lot of undeserved credit for cleaning it up when I think what really happened was that when the Antitrust Division came down to prosecute people for rigging bids, they found a lot of other corruption that they really pushed for the cleanup. Now I’m not taking anything away from Lauch because he certainly cooperated, if just by staying out of the way and letting them do it. But he billed that to help build his political reputation. Yes, there was corruption, but it wasn’t as bad as it might have been feared. But particularly in transportation where there’s so much money changing hands for highway contracts, there were more people getting involved. I did mention the local P.D. having the problem with the vice squad office where it was on the take, but I’m sure there were others. We had a couple of files on local politicians that never got prosecuted where both Keith and I were utterly convinced there were a couple of local politicians on the take, but we never got quite enough. You don’t take that on unless you’re sure. Unless you know you can get an indictment and you know you’ve got a very good chance of getting a conviction. We weren’t that certain. We were convinced in our own minds by the greater weight of evidence, but beyond a reasonable doubt I couldn’t say we were. So those files were still open when we left and they were never prosecuted.
MR. FREDERICK: You were an AUSA, weren’t you, with FBI agents right at the end of J. Edgar Hoover being the director of the FBI. Do you have any reflections on his influences and reminiscences of how agents might have related to Hoover?

JUDGE SENTELLE: There was a saying in the days before Hoover died, “If you’ve seen one director, you’ve seen them all,” because he was the only director. He served a long, long time. I read of someone who said, “Great men make great mistakes,” and I think Hoover was of that mold. He was a great man who made some great mistakes. He took a little politically ridden bureau in the Department of Justice and made it a freestanding law enforcement agency – the finest in the world. At the same time, he kept secret files on politicians to squeeze them in ways that law enforcement could not legally or properly have done. He locked himself in the past in a lot of ways, so he made great mistakes but was a great man. The agents loved him and hated him for the same kind of reasons. They knew that: a) the old man stood behind you if you were right, and b) the old man’s definition of right was very narrow and if you embarrassed him in any fashion, even if it wasn’t your fault, you were going to be transferred to Butte, Montana, the next day even though your family was in the middle of finishing school or whatever. So there was a fear, there was a respect, the kind of feelings that a great man who made great mistakes would generate.

There was something I kept telling the agents that they pooh-poohed and that was, “There are going to be women FBI agents. We need them,
they’re capable of doing the job.” They said, “Well, they don’t meet the physical requirements.” I said, “That’s because they set the physical requirements to keep them out.” Charlie Williams, my accounting agent, had to get a doctor to cheat to get him to pass the physicals every year. And he doesn’t have to do anything that really demands the physical factors being met. Secret Service was beginning to hire women, and I said “You’re going to see it.” And they said, “Not as long as Hoover lives,” but Hoover died and they started getting female agents.

We had been on a raid for the gambling case I was talking about. Louyn Summerford ran a gambling house totally illegally in southwest Charlotte. Had an iron fence around it, looked like an estate of some kind, but inside of there he had a bookie operation going that was a huge business. It met all of the baseline criteria for federal prosecution under the racketeering acts. The local police couldn’t get him. We got wiretaps and managed to get the evidence to take him down. The way we finally took him was he would always go out and make a phone call from a payphone in the mornings to Vegas to get the line for that day’s baseball game. Baseball was the biggest sport for that. He wouldn’t call from his home phone because he thought there would be a chance of a tap and that was an interstate call. He didn’t realize we’d use the local calls we were also tapping as evidence. But in any event, because we knew precisely what he was doing, we put a tap on the Vegas phone he was calling to. It was a
legal gambling operation out there, but we got an illegal call on the wiretap. To take him down, it was made pretty, but it was an iron wall outside and he’d open that iron gate, drive out, and if we had had to go through the iron gate, we knew that he would destroy all the evidence. Flash powder or put it down a disposal while we were trying to get in. He had two big German Shepherds patrolling in there. I say “we”, like I was going to be the one doing it. I didn’t normally go along on the raids. At any rate, we waited a bit more and I went with them that day. When he went out to make his call, while the door was still open, we jumped out and said, “Okay, Louyn, hands up and if the dogs give any trouble, the dogs’ are going to get shot.” We had him escort us back. He hadn’t planned. But we got him while he was out and there was nobody in the house but his bimbo of the month, the girl that he was keeping there changed frequently. We went in the house and she was standing in the kitchen in this little baby doll thing feeding gambling records down the disposal just as hard as she could go, but we got most of the records that were intact. We had to secure the premises and in a few minutes she said, “I need to go to the bathroom.” Well we know damn well that she’s going to go in there and flush something else if she goes to the bathroom and we don’t have another female along. If we had had a female agent along, we’d have been fine. Somebody went with her anyway, but it would have been a lot better if we’d had a female that could have done it. We were always facing that
she’d raise a false claim of sexual advances or something. But we couldn’t let her go alone. A female agent would have been perfect.

We had two men on the stakeout at night. They’d attract a lot of attention in their car. A girl might have attracted a lot less attention. There was no reason in the world why women couldn’t do the accounting duty. I grant you that there were some pickups where you wanted the biggest man along you could have, but some of the guys couldn’t do that so I told them, “You’re going to have women agents.” And they did very soon.

The women agents were just as good as the men. I digressed pretty far on that.

MR. FREDERICK: Tell me about the judges on the bench when you were in the U.S. Attorney’s office and your interactions with them.

JUDGE SENTELLE: This is not going to be released for quite a while, so . . . . We had three in the Western District of North Carolina – two active judges and one senior judge. I’ll start with the senior judge. He was the first federal judge I ever appeared in front of. I have a picture of him out in the other office out there. Wilson Warlick, he was known as “Coot.” Coot was a name that his nanny had given him when he was a little boy and she said he crawled like a cooter, which is a tortoise. Coot was, I think, at least 80 or pushing 80 when I came in. He had been a judge of some sort or other for over half his life. He was a state superior court judge before he became a U.S. District Judge. A very colorful character. A Truman appointee.
The first time I appeared in front of him, during the year-and-a-half I was in Asheville, I was representing a moonshiner who was on probation. He had violated the probation by making more moonshine. I went down and talked to the probation officers who told me pretty much what the walk-through would be on it. That he had two-and-a-half years of active time that was hanging over his head while he was on probation. They said, “You’ll go in and represent him and then the judge will tell him, ‘the lawyer has done a good job,’ so good he’s going to cut his time. He’ll take six months off it and send him up for two years,” which ultimately is precisely what happened.

I went in and Coot lets me get started with my speech. And I’m, like I said, maybe a year out of law school. I’d been to court a few times, but never spoken in federal court except to say, “I will” or “I do” when I was sworn in as a member of the federal bar. Coot lets me get started and then he stops me and says, “Mr. Sentelle, what kin are you of Ennis Sentelle? He used to try lawsuits in front of me in the ’30’s when I was a Superior Court judge.” “Well, your Honor, Ennis Sentelle was my great-uncle.” “Ennis was a very fine man, a very unusual fellow. He was one of the few men to serve in the legislature in two counties. He had been a school teacher and the superintendent of schools down in Edgecombe County in the eastern part of the state. He went to the legislature from there, then went to law school and came back up to Haywood County and practiced law. And he went to the legislature in Haywood County. A very singular
man, your Uncle Ennis. Go ahead, Mr. Sentelle,” as if I’d interrupted him or something. I started back again. I got about two minutes into it and he stopped me again and said, “Straighten up there, young man. Your Uncle Ennis didn’t slouch like that when he was trying the law.” I never got my train of thought back after that, I don’t think. But then he gave Dockery two years, talking about what a great job I’d done, and sent him on off.

That began a relationship with Coot that lasted until he died, in or around 1977 at the age of 87. He held a lot of court in Charlotte. There was a lot more mixing in that country district than general, I guess, but that’s the one I knew the best, between the judiciary and the bar than you may find in a lot of urban locations. Particularly in the federal courts where there were only a few of us involved. I had a lot of meals with Coot. We stayed in the same motel when we were in Bryson City for the court out there.

We stayed on the Cherokee reservation. The Indians usually had a festival of some sort for all of us. We’d go fishing, we’d eat barbeque. When Coot came to Charlotte, he didn’t have much staff at all as a senior judge in those days. My secretary typed letters for him. I’m sure this is all not the most proper thing in the world, but it was done and everybody knew it, so there wasn’t anyone being fooled about anything. He also had good friends in the defense bar that he went out to eat with as well.

Coot was very much a prosecutor’s judge. We used to say, truthfully, if we had an armed bank robber in front of Coot Warlick, if he pled or went to trial, we would get just about fifteen years’ active time. Jim McMillan,
whom I’ll get to later, would get five to seven. Woodrow Jones gave an individualized sentence based on the facts of the defendant in front of him. But Coot was pretty predictable. If you had a draft dodger, he got two years. Now if he was a real conscientious objector like the Jehovah’s Witnesses, who could have qualified for C.O. status but wouldn’t apply because that violated their religion, Warlick would give them two years’ probation in alternative service. He’d suspend their prison time and they’d go work in a hospital. But they were going to do something for two years. If they missed two years of the military, they are going to go to prison for two years or they’re going to be in alternative service for two years. He was very predictable.

As time went on, he got more and more active on the record and became harder and harder to defend in the Fourth Circuit. I learned from court personnel in Richmond that Haynsworth used to refer to me as Judge Warlick’s defense attorney because I had to come up there so often and try to clear up Coot’s records. I would try to keep him straight – we all would – in court. There was no holding him in line. He was going to do what he was going to do. We actually didn’t get reversed too many times. We got a lot of cases where there were reversals based on active error and there were some based on his unwise statements in the record. In the very later years, after I was gone, Chief Judge Jones would not let him hold trial. He would let him take motions and pleas and sentences, but he cut him out of open trials in the last few years that he lived. But he was still active in his
late 80’s and still doing fine, except he just couldn’t keep his mouth out of the record.

Woodrow Jones was the chief judge. Woodrow was a former Democratic congressman from Rutherfordton, North Carolina. He had also been a very fine small market trial lawyer. He had been state chairman of the Democratic Party. He was one of the members who you may have heard recently at Strom’s death with recollections of the *Southern Manifesto*, state records signed by a lot of southern members of Congress. The *Post* incorrectly referred to Thurmond as having written it. He did not. I think Richard Russell, from Georgia, actually wrote it. Judge Jones told me that, as a matter of fact. He was one of the congressman who signed it. He was a Johnson appointee to the bench. He retired undefeated from Congress. North Carolina lost a seat in the redistricting of 1960, I guess it would have been. And they put two congressmen in the same district and he did not really like Washington anyway, and he told Basil Whitener, “You take it. I’ll come home and practice law.” After that, he became state chairman of the Democratic Party. He and Dan Moore – Dan was a state judge – divided up between them who was going to run for Governor. And he convinced Dan that he should run and he stayed with his law practice in Rutherfordton.

Woodrow was a very eloquent man. He looked like the judge in central casting. Silver white hair and square, ruddy Celtic face, long, expressive arms and hands. Watching him instruct a jury was like watching a really
good preacher or an orator of some kind in action. Woodrow would tell
the jury at the beginning of the trial, “You must be like the wife of a
Caesar, above and beyond suspicion,” in his stentorian voice. Sadly, he
lost his larynx to cancer and could not speak that way within his last
several years. He died within the last couple of years.
Woodrow was regarded as a pro-prosecution judge and I so regarded him
when I was defending. But he was closer to the middle than Coot could
steer. He tried very hard, I think, to follow the law. They were both very
good by their own lights. Woodrow was, generally speaking, a well-
regarded judge. He tried some significant cases and did a very significant
thing that was written up in a lot of nice articles. I don’t know where
you’d find it today, but there was an air crash at Asheville just before I
finished law school. One defendant was Piedmont Airlines, which was a
North Carolina corporation that is now part of US Air. But there were a
lot of non-diverse claims, so unlike most plane crashes, you had a lot of
litigation in state court. There was a very fine state superior court judge
who was assigned all of those cases, Harry Martin, who was later a state
Supreme Court justice. He and Woodrow held joint discovery and
procedural hearings. They had federal and state lawyers in one place to
keep everything consistent all of the time. They were very creative and
very effective and efficient. It was a good judiciary, I think.
I came to know Woodrow very, very well. In fact, I’ll get later to the
details of it, I guess, but he told me in advance when he was taking senior
status. He told me to make sure that I was in close contact with Jesse Helms and that I had myself in a good place if I could. So Woodrow thought a lot of me and I thought a lot of him.

Jim McMillan, I had a good personal relationship with, but lots of other judges think he should have been in some other line of work. Jim got life tenure and decided that he knew more about running schools and prisons and everything else that came in front of him than anybody else and he thought jurisdiction meant that somebody brought a case in his court. I defended a lot of federal agencies against him on injunctive actions telling them where to build new roads or buildings or how to spend their money. And lots of times we had to go to Richmond to get the Fourth Circuit to say that the district court did not have jurisdiction over this action. But he was reversed an awful lot.

He was very pro-defendant on the criminal cases. And the practice in those days, at least in the early part of my time, was that the suppression hearing was heard as part of the trial rather than in advance so that if we lost the suppression, we lost the case. We could not appeal it. That was the practice. The rules did not provide, as they do now, for the automatic severance and no one in our district started doing it that way until we did about two years after I got there. But Jim threw out a lot of our cases that shouldn’t have been thrown out. He meant well, he was a very good man, but I wish he had been a preacher instead of a judge.
We got along well personally. In fact, I don’t know why he let me say some things I said to him over the years. He was the judge in *Swann v. Charlotte-Mecklenburg*. I went to lunch with him and his clerk after it was over. His clerk was a good friend and later a law partner of mine. And I was saying that I thought the Supreme Court was wrong and I didn’t think he had jurisdiction to do that remedy in the school busing case. He said, “Well, what could I have done? They obviously were violating the principles around *Brown v. Board of Education*. You saw the evidence, you put on some of it that they were gerrymandering school districts to maintain segregation. What could I have done?” I said, “You could have ordered them to write their own plan that would have ended the segregation.” He said, “What would happen if they violated my order?” I said, “You’d put them in jail.” He said, “You’d have me put school board members in jail?” I said, “Yes, sir. I think you’ve got jurisdiction to do that.” I don’t know why he let a 29-year-old Assistant U.S. Attorney say that to him. That was typical of the conversations we had.

We had a high regard for each other and respect but, as I say, I wish he’d been in some other line of work. The Clerk of Court went down and counted forty motions in a row that I lost in front of him. George Daley was the ACLU in Charlotte at the time and we argued a couple of *en bancs* against each other. George and I used to say that the only difference in having Warlick and McMillan was whatever McMillan did, I was going to take to the Fourth Circuit. Whatever Warlick did, he was
going to take to the Fourth Circuit. We knew that each of them was very
prone to err on the side that they wanted to win. Jones steered to the
middle, of course.

MR. FREDERICK: How about their law clerks? As an AUSA, did you get to know the
judges’ law clerks?

JUDGE SENTELLE: I knew McMillan’s clerks very well. They were right in the building with
us, so I knew them very well. The other judges I knew less well because
Warlick’s chambers was up in Newton and a lot of the time he didn’t have
a law clerk as a senior judge. He worked off the research that the lawyers
did and his own once-great memory that wasn’t as great anymore.
Jones’ chambers were in Rutherfordton and Asheville and his law clerks
were not down there with us. So I got to know some of them, but not all.
Zoro Guice, who was later a state judge, was a good friend of mine.
Caroline Burnett and another woman whose name is escaping my old
memory – I’ve got Coot’s memory now – became good friends. Caroline
married a lawyer in the eastern part of the state and practices down there
now. He was one of the first judges that I ever knew who had female
clerks. It was not the common thing in the early seventies, but Woodrow
hired women out of the box. The woman whose name is escaping me told
me that very early on some lawyer in a conference asked if she could take
some notes. Woodrow slammed his hand on the table and said, “My law
clers are not here to take your notes.” And that was the end of that. But
there was a prevalent sexism of attitude that somehow Woodrow escaped.
I knew some of his clerks, but, again, I did not know them as well as McMillan’s.

Fred Hicks, who was my classmate, was Jim’s clerk when I got down there. Fred clerked with him for two years. We were later law partners. Sandy Levinson, who teaches at UT, was one of his clerks. We used to play poker together. He had some very good people. He had a Harvard bias, but he hired a lot of Carolina clerks, too. Jim was a Harvard man.

MR. FREDERICK: What are your memories of the defense bar when you were a prosecutor?

JUDGE SENTELLE: We got mostly the better defense attorneys in federal court. A lot of the less skilled defense attorneys just didn’t come down there. Whereas they had to do it in volume, you had to do it one case at a time in federal court. We had some good friends and good opposite numbers out of the defense bar around western North Carolina. James E. Walker, known as “Bill,” is one who stands out in my mind as one of the best criminal defense attorneys I ever saw. He understood that you really aren’t supposed to be flashy. You’re not supposed to be taking the jury’s attention away from the case. You’re supposed to let them follow you where you want to take them. And he was very good. He also did civil defense work.

One of his associates and Bob McClure kept getting into a row over a case one time. I took it away from Bob and Bill took it away from the associate. We went to court and had a very heated argument. We went to the anteroom off the court and Bob said, “See, you and Bill are getting into it now.” I said, “No, we’re not. Bill and I are going to go have lunch
together. That’s what you two have got to understand.” They learned a lot from that, I think.

There were a lot of others who we traveled with some. We’d travel some and we’d go out of town and head to Richmond. There were several lawyers who were good friends. Now we had our sleazy side, too. We had some defense attorneys that I wouldn’t have wanted my daughter to marry or my son, in the case of one of the female lawyers who really reminded me of a gun moll. She was one of the weakest lawyers in the defense bar there, but she was colorful and spoke nasty and a lot of the local criminal element would hire her, not appreciating the fact that whatever evidence we didn’t get out, she would. She would always get an armful of evidence against her side out. But, for the most part, we had a good relationship with the defense bar and I knew them the rest of my career in Charlotte. We’d get together when I went back on the other side.

We had out-of-town lawyers at times, of course. One of the first cases I had down there involved four Mafia street soldiers who were running an interstate car theft ring who were caught there in Charlotte and there were New York lawyers who came down to represent two of them. I tried some cases with and against lawyers from New York and other places in some of the fraud cases, in particular. I found the ones who traveled that far generally were good lawyers.

We had one case. ATF didn’t make as good a case in general as the other agencies, but there was an ATF agent out of South Carolina, Leonard
Cicero Strength, known as Bud Strength. He was one of the best investigators I ever knew. He put together a multi-state investigation of a gun running ring that today would probably be fairly small potatoes. It was the biggest interstate gun running ring that had ever been prosecuted at that time. They were buying the guns in an illegal fashion in South Carolina and bringing them to Charlotte where they would load them on textile trucks that were running to New York. They would take them to New York where they were selling them through a network of South Bronx Puerto Ricans up there. Bud put an undercover in the store that was selling the guns in South Carolina. New York P.D. put a Puerto Rican NYPD cop undercover with the criminal organization in the Bronx. He had bank records on every money transfer that was involved by any of the people involved, either making deposits or withdrawals, and could match them up to show the track of the guns. He would show the purchases. He would show the bills of lading for the legitimate cargo that the truckers carry in from Spartanburg Charlotte and then the other trucks’ time of arrival and bill of lading in New York. And then, before we had the undercover, we had the records where some of the guns had turned up on receipt, showing criminal activity in New York. In that case, the New York defendants were represented by New York counsel. We actually got to be good friends with them. There were a couple of them that came down to represent two of the New York defendants and question the existence of a conspiracy in Charlotte. The agents asked for us to have
venue. The U.S. Attorneys were fighting for venue to try that case and Bud Strength backed me up to have the venue in Charlotte.

We got to be good friends with the New York lawyers. We traveled with them to Richmond. The convictions for three of the defendants were reversed and I had to try it again, but not the New York defendants. They pleaded guilty the second time. They did reverse everybody who had not pleaded the first time because Coot made some unfortunate remarks on the record. The second time, Woodrow Wilson Jones took the case and we got a clean record at the same time. The lawyers who came down that far for that many dollars were quite good lawyers and New Yorkers. We enjoyed trying the case against them – the first go round.

MR. FREDERICK: Now you mentioned arguing in the Fourth Circuit. Tell me what that was like as an AUSA.

JUDGE SENTELLE: The first time it was scary. I was not much over a year-and-a-half out of law school. I had not tried the case. We tried to argue our own cases, but Keith assigned this one to me. Whoever had prosecuted it had left. I had been to court very, very little. I had tried a few cases that I mentioned before. I had never seen an appellate court act on the federal side. I had seen an appellate court in state, but I had never argued in one. I went in front of the judges I didn’t know, one was a visiting judge from another circuit. We had a record that was bad. There was an error in the record in the jury instruction and they ate me alive. And I went back to old Keith and said, “You need to try this case over again.” The opinion came out as
harmless error. We got our affirmation. They ate me alive and then they
did that wonderful thing that the Fourth Circuit does. They came out and
shook hands with counsel afterwards. They said that you had done a good
job and that they were glad to have you in the circuit. It made you feel
better as a new lawyer who had just gotten eaten up to have that happen. I
didn’t know it was unique to the Fourth for years.

As time went by, I became very comfortable in the Fourth Circuit. I
enjoyed the change from trial law. I loved trying cases. It was nice to
have a break where we were doing law instead of the mixture of law and
facts that you do in a trial action. It was a nice break. I liked Richmond.
If I were traveling with a good friend on the other side, we’d go out and
eat dinner together the night before. Drank at the airport until we flew
back. George Daley and I had a number of cases against each other and
George would recommend wines to me at dinner. He was a wine
connoisseur. We had quite a good time.

The circuit itself, as I said, I became very comfortable with. I enjoyed the
arguments in the Fourth Circuit. I argued in front of Justice Clark there
once. After he retired from the Supreme Court, he sat by designation on
every circuit. And he came down and shook hands and made an honest
man out of a friend of mine in Asheville. Paul Teel was a deputy marshal.
He had read law and passed the bar and practiced in the same firm I was
in. He was later a U.S. magistrate there. I swore him back in as an
emergency U.S. magistrate judge. Anyhow, Paul had always said when he

was a deputy in D.C. that he babysat for Ramsey Clark and his sister for Justice Clark. Well I had taken that with a grain of salt. Clark came down with the judges to shake my hand and he said, “Now you’re from the Western District of North Carolina. You must know my old friend, Paul Teel. I said, “Yes, sir. I practiced law with him.” He said, “Paul used to babysit with Ramsey and his sister.” I went back and told Paul that he’d made an honest man out of him after all those years.

MR. FREDERICK: You mentioned yesterday that you had argued several cases in the *en banc* court in the Fourth Circuit. Tell me about those experiences.

JUDGE SENTELLE: Well, without trying to go back into the cases, I think both of them involved selective service law of one sort or another. It’s a pretty hard experience to have that many judges. I never argued before the U.S. Supreme Court. I argued before the State Supreme Court of North Carolina three times. But the Fourth Circuit were very active judges who knew the record and I told George it was like being the only worm in the hen yard. They really peck away at you while you’re up there. That was much harder than arguing to a three-judge panel. I had a high comfort level with three judges. With the array of ten of them up there, I was not nearly so comfortable. They peck away at you. You don’t know where it’s coming from next. You sort of get a feel for the flow of a three-judge panel, but there’s not the same flow with a whole bench full of them up there.
I had a couple of panel experiences with the Fourth Circuit that stand out in my mind, although one of them came later when I was a private practitioner. One of the best and one of the worst moments I ever had in court. One of the best was when I was an assistant U.S. attorney and the two appointed counsel on the other side had just gotten beat up awfully. (And, by the way, you also asked me about the bar. Some of the appointed counsel were not that good. One of these was that way.) They really had nothing, but they had taken the obligatory appeal on the appointed case. When they finished and it was my turn to get up – and the way the Fourth Circuit courtroom is laid out, you had to get up from behind the table and walk a little bit – Braxton Craven was sitting on the right of the presiding judge; Harrison Winter was presiding. While I was walking up, Craven leaned over to Winter and said in a stage whisper that you could hear to the back of the courtroom, “Tell him we don’t need to hear him.” Winter grinned a little and, as I laid my papers down said, “Uh, you will be brief, won’t you, Mr. Sentelle?” I looked at the bench and said, “May it please the Court, I was about to say that if your Honors have no questions, the United States will rest on our brief.” They had no questions and I folded my papers and felt eight feet tall walking back to the table. That was one of the best moments.

One of the worst involved Harrison Winter also. When I was a defense attorney years later, I did very little appellate work. But this was one I couldn’t talk the client into letting my partner handle it. Then I went to
argue on a sentencing appeal, which are not like the guidelines-based. In those days, a sentencing appeal was a loser. This one was. When I got there and was making my first argument, Harrison Winter paused me and said, “Mr. Sentelle, as long as you have been coming up here, do you expect us to pay any attention to an argument like that?” I said, “Well, Your Honor, perhaps I’d better move on to my second argument,” thinking, as I did, so you know, that was one of my strong arguments. That was one of the worst moments I ever had in court.

MR. FREDERICK: But the Fourth Circuit is generally regarded as a civil court to the bar. Was it that way?

JUDGE SENTELLE: Yes, I think they were generally a very genteel bar. But that didn’t mean that they never ate you up. And, as I said, the first time I argued they ate me alive. I saw them eat some defense attorneys alive when I was up other times. And the \textit{en banc} court was a very hot bench to argue in front of. They were a very genteel court then. Perhaps more so than they were later. You had some gentle people who could eat you alive without hurting you. John Butzner and Albert Bryant and Clement Haynsworth, who could be tough, but you never got any sense of meanness in his toughness. Haynsworth stuttered. I don’t think people realized that, that he had a pronounced stutter.

One time I was arguing a case that involved a confession that we improperly obtained and my agent, Joe Kenny, a very close friend of mine had given the man his rights. The man said, “I want a lawyer.” Well Joe
proceeded to process him, which you can do. He was getting his grants and his background information. While doing so, the man said, “What happens to me if I confess or if I don’t confess?” Instead of Joe saying, “If you want a lawyer, you’ll have to ask your lawyer,” Joe said, “Well, if you don’t confess they’re probably going to come around to you anyway and you might be able to help yourself if you told us about it.” Well we introduced the confession over objection. They took us to Richmond and rightly reversed us on it, I think. Anyhow, Haynsworth was questioning me and I kept saying, “But, Your Honor, Mr. Kenny had advised him of his rights.” And Haynsworth says, “W-w-w-w-well, M-m-m-Mr. S-s-Sentelle, if Agent Kenny had shouted his rights in his ear while he beat him with a rubber house, could you get that in?” He’d get mad at himself and overcome his stutter. We tried it the second time without the confession. Scofield tried it that time and got the conviction anyway. Be that as it may, it was an interesting moment in the Fourth Circuit there.

Later, when Proctor went up to argue a case that I had tried, a visiting judge called him Mr. Sentelle. My name was on the brief, but I had left the office. Haynsworth was sitting in the middle when the visiting judge called Proctor “Mr. Sentelle.” Proctor said, “No, sir, your Honor. I’ve replaced Mr. Sentelle as Judge Warlick’s defense attorney.” He said Haynsworth laughed the rest of the argument and he couldn’t ask a question for laughing.

MR. FREDERICK: Are there any other reflections you have on service as an AUSA?
JUDGE SENTELLE: I could use up all your tape if we went on about that forever, David. But I would say that it was almost sinful to take money for having that much fun. Willie Mays said he was always afraid the Giants would find out how much he loved playing and quit paying him and I almost felt that way in the U.S. Attorney’s office. I can’t imagine a better experience professionally than to be an assistant U.S. Attorney. Particularly in a small office, but even in the big offices it’s a great place to practice law.

MR. FREDERICK: But it’s 1974 and time to move on. Tell me where your career took you next.

JUDGE SENTELLE: Well, for a little while there I had been staying in the U.S. Attorney’s office at my great pleasure, but against some advice from some older people. Nick Nicholson who was a great old Democrat assistant in the old days told me he stayed too long. He said, “It’s tough to stay much past four years.” Though I could see Nick had a great career after it anyway, so I wasn’t sure he was right. In any event, I knew that a Republican was not likely to be reelected, so we knew we’d be looking for work in a few years.

About that time, a state district court judge resigned with some time to go on his term. There was a Republican governor, but under the law of the state on that bench only – on any other bench, the governor could appoint anyone he wished to replace a court of appeals or superior court judge or Supreme Court judge – but at the district court, the lower tier of the two-tier trial court, the governor was required by statute to appoint from names
sent to him by the bar of the district. Of course, the bars in most districts in the state were heavily Democrat. And the few vacancies that Holshouser had gotten to fill, he had to fill from names of Democrats. And they did a very political, but very understandable, thing. When there was a Democrat governor, they had always sent three names from the bar. Charlotte-Mecklenburg voted to send two names because they thought the fewer names they had, the less likely of a Republican making it in. A Republican might run third if the bar voted. They ran a secret ballot. You got a mailed ballot for every member of the bar to vote for the names to send to the governor. And we had an ordered ballot, so you could vote for second and third choices. Some of the Republican members of the bar came to me and said, “You’re the only Republican who can run in the top two who can afford to take the job. The other Republicans who could run that high can’t take the pay cut. They are very successful practitioners. There are some who could run first. But they’re making too much money to go be a state judge.” A district judge was a four-year office; this one was an unexpired term. You’re making a government salary. Frankly, it was a little bit of a cut for me to go from the U.S. Attorney’s office to the state district court, but they said, “You know you’re going to be leaving fairly soon anyway. You can run in the top two.” So I got persuaded by both the Republicans and a lot of the defense bar came to me and said, “Look, you know criminal law better than anybody that’s likely to get this job that can take the cut. How about coming down
and doing it for us.” I got flattered or whatever – it sounded like a good idea – so I did allow my name to be put up on the ballot. There were, I think, nineteen names on the ballot and I ran first by a substantial margin. And somebody in the counting committee of the bar said, “Well, knowing what the politics are in Raleigh, we expect to see you with your robe on the next time you come to this building.”

Holshouser and I were not friends at that time – the governor. We had been on opposite sides of the party split in North Carolina. Like most of the Republican Party, there was a so-called moderate wing and a so-called conservative wing, the Holshouser wing and the Helms’s wing and I was identified with the other wing. Even though he didn’t like me very much – although we did become pretty friendly later – I knew Jim had to appoint me. He couldn’t give up a chance to appoint a Republican. If I’d been second, it might have been possible that he would have appointed Fred. Fred Hicks was McMillan’s former law clerk and was later my partner. He was the guy who ran second. Fred was practicing for Julius Chambers’ firm. Fred was a very good lawyer. He was later a judge. He won the next time there was a vacancy. In any event, I became a state judge and left the U.S. Attorney’s office for the time that I spent on the state bench.

MR. FREDERICK: What was it like to go from being a trial lawyer to a trial judge?

JUDGE SENTELLE: It was an interesting transition. I think maybe in a way it was easier than it would have been to go from the prosecution table directly to the defense table. As a federal prosecutor, I’d been accustomed to weighing and
making decisions at the prosecutorial stage, so I had some practice in what I was doing. What I was not accustomed to was the volume that you get on the lower tier of a state trial bench. If you ever watch the TV show, “Night Court,” the only difference between them and us is we did it in the daytime. We had one court, 61, that was one of our courtrooms. That was where we had the vice cases and the bond hearings and overnights. We used to say that we didn’t know why anybody would pay good money to go to the circus when they could come sit in 61 for nothing.

Traffic court, misdemeanor court, you got stoned to death with pebbles. It was one thing after another coming at you just as fast as they could come. We had civil jurisdiction that was of a very odd and interesting sort. For cases under $10,000, we had both non-jury and jury jurisdiction. But it’s one of the very few waivable jurisdictional statutes I ever saw. And if both sides waived it, we could take cases above our limitation. And it did happen in Charlotte because if, for whatever reason, both sides wanted the case tried, our docket was more current than the superior court docket. So if you had a business transaction that was being held up and both sides legitimately wanted a trial, we got a lot of the business trials. Way in excess of our jurisdiction because they wanted a trial. We were quicker than the superior court.

The hardest part of our docket was the domestic cases. It was juvenile and domestic under our jurisdiction. I think the hardest thing I ever had to do as a judge was handle child custody cases. I used to have what I call my
child custody headache. In fact, in a contested child custody case, I would take a headache that would stay with me until I finished that case. It was somewhat responsive to BC Powder, but it wouldn’t go away. It would hover with me. It’s awesome, the sense that you are making that kind of difference in the life of a child. You’re making it on the information that is brought to you in the courtroom. We wanted experts, we quizzed the children, we did everything we could possibly do, but you still didn’t feel like you had enough information to rule on.

It was a lot different than being a prosecutor. Even though we didn’t have felony sentencing jurisdiction, we could put people away up to two years on general misdemeanors in North Carolina. For four-and-a-half years, I’d walked in courtrooms and asked judges to put somebody away for twenty or forty or life. But the first time you have to speak the words that actually put somebody in jail, it’s pretty cold for you. The first one I sent off was for six months and when I said the words, “be confined to the custody of the State of North Carolina Department of Corrections for a period of six months,” I really knew that the guy would be leaving between two deputies, that he was going off. You felt a lot of weight falling on you the first time you had to speak.

Now let me say it gets easier as it goes along. Child custody cases may not have gotten easier, but sentencing people gets easier and you begin to accept the fact that I didn’t put him in this position and I didn’t put me in this position and I’ve got to do what the situation requires. I don’t think I
ever enjoyed sending people to prison, although sometimes I got a lot of satisfaction in sending a particular drunk driver off who was there for the fourth time or something. But it was hard.

MR. FREDERICK: Substantively, it must have been quite a change to go from dealing with sophisticated, interstate criminals, doing cases with the FBI, traveling around and arguing in the Fourth Circuit court of appeals to dealing with the kinds of everyday disputes that all of us encounter.

JUDGE SENTELLE: Yes, it was quite a change. One of my colleagues here, a former professor, asked me that question. What was the satisfaction of holding that job where you deal with rarely sophisticated legal questions and a plethora of daily questions? And I said, “Well, it was a hard job that you did your best at, and at the end of the day you affected a lot of human lives and you had the satisfaction of having done your best to affect them in the right way in a hard job.” And he said he still didn’t understand why I would have taken the job. Yes, it was quite a change and it was difficult and it was satisfying in that way. It didn’t have the intellectual stimulation or the intellectual satisfaction of the federal job, but it was a case in which you affected a lot of human lives and that is its own reward. There were a lot of detriments to it, as well. I said before, I would like to have done everything I did in my career longer if I could have timed it out, except being an associate at somebody else’s firm. I would have been satisfied with being a state judge longer if things had been different, but I would not have wanted to be one the fifteen years I have been on this bench.
would not have stayed on that one for fifteen. Four, maybe even six, but –
four I would have stayed, maybe six, maybe eight, but not any longer than
that. It wears you out after a while.

One day in courtroom 61, I had a rash of bond hearings to hear one after
another, I was waiting on the next load of prisoners to be brought over
from jail. I called the assistant D.A. to the bench – no, he asked to come
to the bench – and he said, “Judge, how much of what we have done today
has anything to do with anything that you studied in law school.” And
neither of us could think of a single thing we’d done that day that had
anything to do with what we’d studied in law school.

MR. FREDERICK: I want to return to the child custody cases because, from your reaction, I
know they affected you very much and I want to know if you can
articulate some of the kinds of considerations that you weighed that gave
you the BC Powder headaches and obviously caused you to wrestle very
hard with those cases, probably harder than any of the other cases that you
had as a state judge.

JUDGE SENTELLE: I believed and believe that the way a child is brought up and the traumas
of childhood and the guidance of childhood is going to affect that person
the rest of their lives. I believe that children feel things a lot more deeply
than we may sometimes realize. And I believed that the breakup of a
home was already an enormous trauma for the child and that the person
who had custody of that child from then on had an awesome affect. At the
same time, I also believed that the child needed a place that was their
primary place. The idea of this back-and-forth once a week, every week, between parents is not one that I thought benefits the child. I thought the stability of a primary parent – the presence of the other parent in a visiting and a part-time role is important, but there had to be the stability of a primary parent. And I believed that I had to try to find that parent who would be the most beneficial influence in forming that child’s life, and the most comfort to that child, and put the proper restrictions on the relationship between the two parents to keep them from traumatizing that child in every way that I could. I had more control over the formation of the human being than I wanted to have.

I tried to look at the relationship between the child and the parent. It was my hope in each case that if the child were of the years to make it possible, to be able to talk to the child – by the consent of the parties – privately without anybody else present. If I couldn’t do that, I wanted to talk to the child in chambers with just the attorneys present. Rarely, if ever, did I want the parents present while I talked to that child. If only to find out all I could about the relationship between the child and the parent. I wanted, at the same time, to find out everything I could find out about the morals and stability of the parents and the parents’ likelihood of forming a stable home for the child to grow up in. Very often, the parent had some other significant other by that time. And what was their relationship going to be? Were they going to be stable? Was the new husband or wife going to be a problem to the child or the child to that
person in a way that would negatively affect the child? Was the parent
abusing substances in a way that would cause a traumatic home life for the
child to grow up in? Did the parent have an extended family who could be
a support network for the child and for the parent trying to raise the child
without a spouse? Those were among the things that I tried to find out and
weigh and act upon in putting the child in a primary place.

MR. FREDERICK: Did you ever have any experiences after you left the state bench with any
of the children whose custody you had determined?

JUDGE SENTELLE: There are a couple that really stood out in my mind. One of them was, I
don’t know if you remember Don Hood or not? He was a pitcher for the
Orioles. He played for several teams. Don had a daughter in Charlotte
that he and his first wife had when they were just kids and had dumped on
his grandmother’s porch. I mean, not literally on her porch. They took
her and gave her to his grandmother, but they left town and then they split
up. Don went around playing baseball and marrying other women. The
mother drifted off into drugs and la-la-land. The grandmother, without
benefit of a custody order, was raising that child for the next seven or
eight years. And then the mother remarried a German immigrant and
decided she wanted the child back. She came to court and demanded her
child. Don, to his everlasting credit, hired a very good lawyer for his
grandmother and came down and supported her.

After many days of hearings and talking with everybody involved that I
could, hearing from all the witnesses, talking to the child, reading
psychological reports, I found that the grandmother was doing a very good job of raising that child. Incredibly good. Don was involved in her life. Not as much as he should have been, but he did bring her up sometimes for a week or two at a time to Baltimore. He sent money directly and financially supported the grandmother and the child. I became convinced, also, that this was not a stable relationship between the mother and the new husband. I did not think that they would be there for that child when she needed them. I awarded custody to the grandmother. I awarded visitation to both parents – more to Don than to the mother because he’d been involved before. And I said you can come back and ask for more visitation if you’ve established that you are keeping what you’ve got. I suggested to the attorney for the grandmother that she might keep a log for how much exercise of the visitation was actually had. In fact, the marriage to the German broke up in a violent fashion within a few months thereafter and I think the mother pretty much disappeared from the child’s life in the end. So my prediction on that side had been correct.

Shortly after that, we changed churches. And in the new church, Virginia Turner, the grandmother, and Ray Hood, the child, were members of the church where we moved to. And my daughter and Ray became friends and she grew up in an incredibly stable home for a woman who was a great-grandmother to be bringing her up in. This child did a fine job and I saw her grow up to be a reasonably adorable child. I won’t try to say she was perfect or even what I would have wanted, but she was a reasonably
normal adult before Ms. Turner died at an advanced age. I felt rather good about that one.

There was another one where the last custody case I heard, I had always said that I would see the case someday when I couldn’t give the child to either parent or either family. Of course, there were several cases where it was not literally a parent, but to either side of the case. This particular case was not even supposed to be my case. Somebody else’s docket got overloaded. I had finished my docket and it got reassigned as one of the last things I did. And, as the case developed, the mother was a recovering junkie. I wasn’t convinced that she was recovering very well. In fact, I had her sent for a drug test. She was not positive, but the person who administered the test at the drug center confirmed my belief that this was still an addictive personality. The father was a mean drunk and I don’t mean he got drunk and got mean, but he was a mean S.O.B. who was also a drunk. And after hearing several days of evidence, I just decided I wasn’t going to give this child to either one of them. I brought the attorneys back into chambers and said, “I’m going to call welfare on this child unless the uncle and aunt who testified (the mother’s uncle and aunt) will take custody. But I’m not going to give either one of these parents custody of that child. If there’s not a consent to the uncle and aunt, I’m going to give her to welfare.” Both attorneys were good lawyers and went back and beat their clients into submitting. I grant you that’s not the sort of thing judges commonly do in federal courts, but in state domestic court
it happens often. We beat submission out of them and I don’t apologize, particularly in the custody cases. I think somebody had to do it.

A couple of years later I was in a shopping mall in Charlotte and somebody called “Judge.” And, of course, even after you’ve left the bench, everybody calls you “Judge.” I looked around and the uncle and aunt were there with the child and they filled me in that she was thriving. She was about five. Her mother had gotten her act together, had stayed clean, was keeping her visitations regularly, was involved in the child’s life, and they were preparing to go back to the court with a proposition that she would move in with them and the child for a time and see if they could get the child back to her mother. That one was very satisfying.

Another time, I had had a case that hadn’t stood out particularly in my mind. I remembered it, but it wasn’t one of the ones I remembered best. It was about a family from a very comfortable upper-middle class southeast Charlotte section. Allegations included that the father drank too much, which I think he did. But I had had the two little boys back in chambers and talked with them and ultimately made an award to the mother with very careful visitation with the father, but plenty enough for them to be happy with. Years later, I was lecturing at Campbell Law School, a little Baptist school in Eastern North Carolina. The woman teaching family law came up and said she had been the attorney for the mother in that case and she said that she had been so impressed. They couldn’t get a stipulation for me to talk to the boys alone, but said that the attorneys would stand
silent while I talked to the boys in chambers. She said the way that I had taken those boys back there and had never asked them to say anything bad about their father, but had just asked them to describe what happened when they were visiting with their father and did he seem like he had energy to go out or was he sleeping a lot? She said, “You got the information you wanted, but they came out so proud that they hadn’t said anything bad about their Daddy.” And that was another one that I took a lot of ex post facto satisfaction out of. Those stand out in my mind, David.

MR. FREDERICK: What life experiences helped to prepare you to take on that role?

JUDGE SENTELLE: You know, that was part of the scary part. I didn’t feel like I was well-prepared to take on that role. I came from a very stable family with a stable extended family. I had some friends who were from broken homes, but it was not something that I had a lot of experience with. I grew up in the church. I grew up praying. I grew up with the belief that you took your most difficult problems to the Lord. I ran across the Book of Ecclesiastes when I was teaching adult Sunday school, which I think is the compendium of more wisdom than anything else ever. And it grows out of, I think, Solomon’s contract with the Lord when he became King. When the Lord said, “What shall I give you?” and he asked not for riches, not for death of his enemies, not for power, but asked rather for wisdom that he might rule over the people of Israel, he didn’t ask the Lord for answers, he asked him for the wisdom to find the answers. I would read
Ecclesiastes whenever I had one of those tough child custody cases and just try to absorb as much wisdom as I could. Nonetheless, I never felt equal to the task. I suppose the better practice would have been if somebody had had that bench who was older than me and had had some domestic practice, but I was the one who had the job and I had to do it. Woodrow Jones said to me one time later, “You were way too young when you went on the bench.” I was the youngest judge in North Carolina for a day. A younger judge was appointed the next day in a different district, a small-town district. But he said, “You were way too young when you took that job. You were older than most people are at 31.” I don’t know that I was prepared for it, but I did the best I could with what I had.

MR. FREDERICK: What were the relations like among the state judges in your district? Did they interact and help each other on these kinds of difficult cases?

JUDGE SENTELLE: There is just a certain amount you can do in a non-collegial court. When a judge sits alone, you can bounce things off of a colleague, but it’s not like being on a collegial court where judges are acting in concert. When I came on the district court, the outgoing chief had been a subject of great controversy. He had resigned. I had taken his seat not as chief, but as a judge and Clifton Johnson had become the chief judge. Clifton was, I think, the first black chief judge of any North Carolina district, certainly the first one of Mecklenburg. He was the first black judge in Mecklenburg. There were eight or nine of us on the state district bench,
ranging from my age at 31 – Jim Lanning, who was sworn in about the same time I was and practiced with Julius in chambers along with my later partner, Fred Hicks. Jim was about four years older than me, but only a couple years senior to me at the bar. Clifton was in his mid-thirties, had been a state prosecutor, was a graduate of North Carolina Central. We ranged from there on up to a retired FBI agent and an old-time criminal lawyer who were in their late sixties. It looked a lot older then than it does now to me.

So we had a wide range of ages and backgrounds in a court that had been pretty stormy. The outgoing chief had not done a very good job at all of keeping things smoothly running. There was a lot of resentment about docket assignments and such. Clifton came in, laid out the outline of how he was going to assign dockets. Under the state guidelines, he was allowed to take the preferences of judges who wanted to be specialists, so the old FBI agent and the old criminal lawyer both wanted just the criminal dockets and that’s all he gave them. The rest of us rotated through the whole dockets, but he and I and Manning held an overload of jury court because the others didn’t want to do jury court. We did, we liked it. Larry Black wanted the juvenile docket. So Larry didn’t rotate through the regular courts either, although he would spell us if we needed him. We took his conflicts and he took ours.

We had three of us – Cliff and Jim and I, and later Fred when he came on the bench, but particularly Jim and Cliff and I were prone to have lunch
together, play chess as there was time, and talk about what was bothering us right then. There was nobody else we could talk to and it meant a lot to each of us, I think, to be able to unload the problems of the case on somebody else who knew exactly what you were talking about. Jim had been a judge about as long as I had and Cliff had been there a few years before we came in. We valued each other’s perspective and each other’s wisdom. I don’t hear from Jim anymore. We sort of lost touch with each other, but Cliff and I have kept up over the years fairly well. He went from there to the superior court and from there to the court of appeals. He is now retired and looking after an invalid wife in Charlotte. We had a very good relationship among the three of us.

The old FBI agent – I say old, but it was differently defined for me then than it is now – P.B. was a good friend. We didn’t really interact that much professionally. When I had traffic dockets sometimes, he would come down and say, “Can you get through early?” I’d say, “Well, I’m nearly done.” He’d say, “Well let’s go run the dogs.” He had some very fine bird dogs. We’d go down to Union County and if it was in season, we’d shoot some quail; if it was out season, we’d run the dogs and practice. So we were very good friends but didn’t have the kind of professional relationship with each other that Cliff and Jim and later Fred and I had.

MR. FREDERICK: Were you able to interact much with members of the bar or was there a feeling that you needed to stay separate?
JUDGE SENTELLE: You were able to interact. You had to be somewhat careful, but you were able to interact. More maybe than happens here. I had a more relaxed attitude. You had to be careful. You couldn’t be seen as being in the pocket of a particular law firm, but as long as you were reasonably evenhanded about it, you could have friends at the bar and have interactions.

MR. FREDERICK: What other activities were you involved in during this period in your life?

JUDGE SENTELLE: I was moderately active. I taught Sunday school, first at St. John’s Baptist and later at Providence Baptist, so I was active in the church. I served on the board of deacons and I taught Sunday school. I was a little bit active in the Masonic Lodge and the Scottish Rite. We were elected state judges, so we were not only permitted, but in some sense impelled towards some involvement with the political side. We were a bit limited. We could attend political functions, but we could not endorse candidates except for judicial office. We could attend political functions, but we couldn’t speak at a function for non-judicial candidates. So I was still involved with Republican politics, but in a truncated, although active, fashion. But you had to be. If you were going to be on a partisan ballot, you had to be a member of a party. You didn’t run as an independent. It was a straight-up partisan election. We would, at times, publicly endorse each other across party lines. And even after I left the bench, I endorsed Lanning for reelection and Bill Scarborough and other Democrats for judgeships. I
was hunting a little, I was fishing, but not much. That was fading. It was mostly the church and a little bit of the lodge and some politics.

Rebecca was a baby at the time I went on the state bench and she was about three by the time I left. Reagan was about three years older and Sharon two-and-a-half years older than that, so the kids were important to me. We moved to a new house around that time while I was on the state bench and I had a lot of things to do involved with that.

MR. FREDERICK: You could have sought reelection as a state judge.

JUDGE SENTELLE: I was elected at the end of the unexpired term, but I resigned mid-term and went back to private practice. For a collection of reasons, many of them with pictures of dead presidents on them. State judges were not paid very well. We didn’t get a pay raise that we had a real hope of getting. My girls were not getting any younger and I could see college and weddings stretching out there in front of me and Jane really liked being a stay-at-home mom. I decided to go back to private practice and make some money. Fred Hicks, who was a colleague by then, decided the same thing. He and I and another lawyer about our same age who spun off from one of the local law firms put together a little three-man partnership and went to practice law and make some money for a change.

MR. FREDERICK: Who were your first clients?

JUDGE SENTELLE: Well, Jamie Bryant, who was our partner, brought some business with him and if we had litigation business, I began to book some of that for him. I got, to my mild surprise, an awful lot of referrals right off of criminal
clients from lawyers who either were not criminal lawyers but their client had gotten into criminal trouble, or they were criminal lawyers who had a conflict or an excess. So I had a lot of criminal cases come in very soon. Because of my reputation as a domestic judge and Fred had the same reputation, so we brought a lot of domestic work. He brought some criminal in, too. So criminal and domestic clients were mainly what we had coming in our door. Jamie had a piece of a bank operation and some realtors, so we had a variety and continued to have a variety right on. But I got a lot of referrals over the years for federal work from lawyers who just didn’t go to federal court even if they were criminal lawyers. I got a lot of criminal referrals. The firms generally did not have in-house criminalists, except for Bill Walker’s firm. So if they had a corporate client who was in antitrust or fraud or other federal criminal trouble, I got the corporate or corporate executive clients from a lot of the larger firms in Charlotte referred to me.

MR. FREDERICK: How did your firm make decisions?

JUDGE SENTELLE: In a stormy fashion that ultimately resulted in us splitting up. Fred and I took an associate and went and formed a slightly larger partnership with three fellows who had a three-man partnership upstairs from us. We never really adapted to the three of us working together.

MR. FREDERICK: Were there disputes over clients or number of hours worked or how to split the pie?
JUDGE SENTELLE: Well, there was one dispute over a split as to how much of what somebody brought in with them was firm money and how much was his. Mostly, it was personnel items. There was some question as to whether or not somebody should have taken some work, as to whether or not there was conflict. We felt that perhaps the conflict question should have been run past us before the partner resolved it himself. We resolved it differently.

MR. FREDERICK: How long did that first firm stay together?

JUDGE SENTELLE: Just a couple of years and then Fred and I fairly seamlessly moved in with Tucker, Moon, and Hodge. We put our names in with them and became Tucker, Hicks, Sentelle, Moon and Hodge. We fairly seamlessly moved in. We were a small firm with five partners initially and then a couple of associates and then a sixth partner. We never got very big. We were about twelve when I left.

MR. FREDERICK: What was the nature of your practice at that time?

JUDGE SENTELLE: We were a full-service firm. Although we were not very big, Tucker did tax and corporate work. Moon had an interesting cross-specialty. He did real estate work and he did bankruptcy work thinking that he could work both ends of the economic cycle. However, he became so well-regarded in bankruptcy that he became and remains a bankruptcy lawyer in a much-larger firm now where he does corporate bankruptcies. He does some very good work. Hodge was a trial lawyer. As a litigator, Hodge was better at appellate work than trial work.
I continued to do a lot of criminal work with a greater emphasis on white collar crime and federal than I had had before, although I tried a lot of drunk driving cases. I won 25 in a row. We should probably define “victory” and that was anything short of guilty of drunk driving that would keep your client’s license. I won 25 in a row before the passage of the MADD Mothers Act and I won about 50 percent after that. So I think it was a good Act. It got some drunk drivers convicted who weren’t before. I continued to do some domestic work, although I tried hard to push it over to Fred, who became and remains a domestic specialist. But, by the last year I was in practice, I still handled three domestic cases in that last two-year period I was there, although I was trying to get out of it. But there was a developer who developed Carowinds, the big theme park down there. His daughter was in the throes of a bad marriage and he insisted that I was the person who could get her through that. He didn’t want my partner, he wanted me. Same way with a corporate executive in one of the textile companies. His regular corporate attorney was in Raleigh, but he was headquartered near Charlotte. He called me and said they wanted me to handle getting him out of this, that he had a gold-digging wife who was trying to take him for everything. She got a little. She didn’t get much, but they wanted me, they didn’t want someone else. The final one, I mentioned Jane Seacrest Floyd who had been my secretary at the U.S. Attorney’s Office. Jane became our paralegal. I hired her away from the government at the law firm. We paid her like an
associate because she was so valuable to us. She came in one day and said, “There’s a woman out here who has been sent by such-and-such lawyer. She thinks she is pregnant. Her husband has thrown her out. You’re going to take this case.” I said, “Where’s Fred?” She said, “He’s out of town and that’s why you’re going to take this case. You can give it to him when he comes back.” Well, by the time he got back, she and I had bonded and she didn’t want anyone else. I went through those three cases as my last three domestic cases.

I also did civil trial work. I don’t want to give the impression that I did just criminal work because I didn’t. Like Brendan Sullivan says, “You can’t always get the criminal case you want. You may have to take the case that comes along.” I defended medical malpractice cases. I defended at least one medical malpractice case at the trial stage. My partners, at times, would have cases, John Hodge in particular – he didn’t feel like he could try by himself. He needed me to come try it with him. We had some civil plaintiffs’ cases that I tried for John. John would take them back over on appeal. I did very little appellate work. I was more valuable to the firm talking to clients and talking to juries. John was more valuable talking to judges in Richmond or Raleigh.

MR. FREDERICK: What were your likes and dislikes about private practice?

JUDGE SENTELLE: I never liked the business side of practicing. I didn’t like billing, I didn’t like collections, I didn’t like the meetings on how you divide things up. I never really liked the business, but I loved trying cases. I liked clients – I
liked dealing with clients. Whether I personally liked them or not, I liked the dealings that you had with clients, the personal interaction. But I especially liked trying cases. And it had a different kind of thrill than prosecuting in that you were working with a lot less asset base. You didn’t have the FBI on your side, so you were fighting an uphill battle. When you fight your battle and win it, it’s a hell of a feeling.

I had a bank fraud, wire fraud, mail fraud, stock fraud case for a guy who was the president of the Mercantile Bank and Trust Company of Kingston and St. Vincent in the Virgin Islands. On the papers that my client had been circulating, they had an asset base of something like $13.8 million. Not a huge bank. In fact, they had Raymond and a chair. I think that was the assets, my client and a chair. Before it came to us, four defendants who were the board of directors had pleaded guilty. One of them was Philip Kitzer, the guy who the FBI got out of prison to be their advisor on how to run a successful scam. Phil was called the “King of the Con Artists.” Phil was not the king of the con artists, my client was the king of the con artists. Because Phil went to prison while my guy walked. We had a co-defendant, a Chicago lawyer, and we tried the case together in front of Jim McMillan. The Chicago lawyer had called me and said, “Can’t we get a continuance?” I said, “The last thing you want is a continuance. Woodrow Jones has reassigned this case temporarily because he’s going to be having surgery. If it gets put over to the next term of court, Woodrow Jones is going to take it back.” He said, “I’m following you completely.
We’ll be down there to try the case.” Jim was a pro-defense judge and Woodrow was pro-prosecution. We tried the case for three weeks and walked on the jury verdict. My partners said they could hear me and my client just laughing because it was so funny that we had walked on that case where the government thought it was a slam dunk and brought these guys back from prison to testify against their confederates. And we managed to blame all of it on the guys who were testifying against us.

Raymond was just a dupe and I don’t think anyone believed it, but the jury wasn’t convinced beyond a reasonable doubt. That was an example of a time when they think they’ve got you by the short hair, but you get somewhere with them.

Now a lot of times you don’t want to go to trial. Pleading was an art in those days, much more than it is now with the guidelines on sentencing. It’s very hard to deal with pleading today. But in those days, you could still get help at sentencing sometimes. A lot of people in the clerk’s office told me later after I was a judge, “You know, we used to allow twice as much time for your plea at sentencing as for any other defense attorney because you always had so much you were going to show the judge about your client.” I used to put together sentencing notebooks with all kinds of personal history of my client – pictures, graduations, anything that would give a favorable impression of my client to the judge. Scofield, whom I mentioned earlier, had been with me in the U.S. Attorney’s office and was later a public defender and later went into private defense work. He said
he was sitting in a restaurant one time and he followed my pattern. And he was telling another lawyer, “I really don’t know whether it’s worthwhile to do all that work on sentencing notebooks or not.” In the next booth behind him, Judge Frank Snepp, a superior court judge, leaned over and said, “Mike, it’s worth it. Whether you’re there or Sentelle is there, we know who we’re sentencing. It’s not near as scary as sentencing somebody that you don’t know about. You keep doing it.” And it did benefit. It did help our clients. We got a lot of probations of people that expected to go to prison.

But “Maximum Bob” Potter was by that time on the federal bench. He was the fellow who gave Jim Bakker that 42-year sentence that was set aside by the Fourth Circuit and remanded to another judge. I had the only drug defendant, I believe, ever to walk out of Bob’s court with probation and I had laid out a picture of this guy that he was really a very good guy who just got involved in a bad thing. Bob went with us. I don’t think there’s any way in the world you can do that without many hours of work. So even the sentences were interesting.

MR. FREDERICK: What do you think your particular strengths were as a trial lawyer?

JUDGE SENTELLE: Some of them were small things before that I notice now. I am very good at multitasking, so I was able to tell exactly what the witnesses were saying without taking a lot of notes and be preparing the next thing that I was going to do. I could pick up clues about what was going on at the other table better than most lawyers. I’d fill in co-counsel lots of times on

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what it was they were doing over there. I was good at talking to jurors.

Like you, I was a debater. I’d learned to be good on my feet. I’d learned
the art of persuasion. And there was something that you, having not been
a trial lawyer and not being the same kind of lawyer I was, would not have
done and that is, I was a fairly colorful jury orator. I worked very hard,
David, on not losing my mountain accent because it permitted me to say
things to juries that other lawyers would have had a hard time saying.

In the Raymond Storns case, I said to the jury something like, “Now ladies
and gentlemen of the jury, the U.S. Attorney has been telling you what a
great organization the FBI is. He’s been trying to show you what a great
organization the FBI is. Ladies and gentlemen, the FBI is a great
organization, but my ole Daddy used to tell me that the greatest guitar
player in the world breaks his pick every now and then and then and the FBI has
broken its pick on this case.” You couldn’t have said that to a jury. I
could say that to a jury. I could say to a jury, “The U.S. Attorney has
made our witness out to be a liar. Well maybe he is a liar, but my ole
Daddy used to tell me a blind hog finds an acorn every now and then.
And this blind hog has found an acorn on this and let me tell you why.”
And it would set things up in a way you couldn’t do if you were speaking
like you just got out of Harvard or something. So I was good at relating to
the ordinary round of jurors and I’d had a broad background and the state
bench had benefitted me when I was defending.
But I did the same thing, with not quite as broad a background, when I was an assistant U.S. Attorney. You’ve got to make the jury think that you are the United States. Not the government, not the tax collector, but you’re the cavalry riding over the hill. You’re the President. You’re the flag. So you’ve got to have a different element of dignity there. You can still use all of your background, all of the reading that you have done, all of your command of persuasive language to make your jury speeches important. Now the thing that you’ve got to do is, and this is something that Harry DuMont, the head of that law firm, told me when I was an associate. He said, “You’ve got to remember that what you’re doing in the courtroom is the top of the iceberg. The other nine-tenths is floating under the water and if you didn’t put it there, it’s not there and your top’s going to sink.” So you’ve got to do your preparation ahead of time, and I was willing to do that. I was willing to spend the hours preparing the case and outlining what you’re going to do. If you’re going to make a good jury speech, you’ve got to build the case that leads to that good jury speech. That means you’ve got to start with the first opening to the jury and the first witness in developing the themes that you want to put together. Now that falls apart at times, you can’t help it, but if you do your preparation, much of the time you can build toward the climax that you want at the end of that book.
MR. FREDERICK: It is August 12, 2003, and we are continuing with your oral history. When we last met, we were talking about your career in private practice after you had left the U.S. Attorney’s office and I would like you to tell me about your law partners – what they were like, what drew you to practice law with them, what their strengths and weaknesses were – those kinds of things.

JUDGE SENTELLE: Fred Hicks and I had been colleagues on the state bench. We both had decided it was time to make some money. We both had kids who had college in their futures. All three of mine were girls with weddings in their future, so I figured I’d better go do something a little more lucrative than being a state trial judge. We started a practice with one partner who had just pulled out of a larger firm. The three-man partnership didn’t work out very well, but there was another three-man partnership upstairs from us – Tucker, Moon, and Hodge. So Hicks and Sentelle merged into Tucker, Moon, and Hodge and became Tucker, Hicks, Sentelle, Moon and Hodge.

Tucker was a business- and tax-type lawyer. Hicks and I did general litigation, having been state Judges with domestic jurisdiction, we did
some domestics which he liked and I hated. I had been a federal prosecutor and I began to do a lot of defense work, particularly federal and white collar. But defense work in general as well as domestic.

Moon was bankruptcy and property. Though over the years, he had become quite well-renowned as a bankruptcy lawyer. He even got out of the property side of it. Hodge was a general litigator and we sort of all complemented each other’s skills. We were able to be a fairly full-service firm although we remained a small firm.

MR. FREDERICK: Did you pick up associates along the way?

JUDGE SENTELLE: We picked up a few. By the time I left, I think we were a twelve-lawyer operation. It did not hold together after I left. Within a couple of years thereafter, there were no two partners still in the same shop.

MR. FREDERICK: To what do you attribute that?

JUDGE SENTELLE: I guess, since this is not going to be playing until after I’m dead, I brought in more than anybody else and took out a smaller percentage of what I brought in. And I think maybe there were more squabbles about how to divide the pie after I left when there wasn’t as much pie to go around. That was at least part of it. There were also strong personalities in the firm that may have had problems with each other and maybe it would have busted up even if I hadn’t left. I was seriously thinking about leaving and I had been approached about starting a white collar section at a large firm. I might have left even without the judgeship. The firm might not have held together in any event.
MR. FREDERICK: How did most of your cases come to you?

JUDGE SENTELLE: An awful lot of the cases came by referral from other attorneys. This was before the large firms had their own white collar defense internally or their own criminal defense attorneys. Firms weren’t as large then as they are now. Very often they would send me their corporate executives when they got in trouble or their regular clients when they got in trouble of one kind or another, ranging from drunk driving after sporting events to antitrust violations. A big part of it came through referrals from other firms.

The non-criminal business, and I did a considerable amount of it, came in various directions. Again, other attorneys are your best sources – the people who don’t do the kind of things that you do. I remember I had an EPA case, a Clean Water Act case that came to me when one of the big firms’ lawyers called me. And this, remember was the 1970’s. He said, “You were with the U.S. Attorney’s office. Who in town does any litigation of the Clean Water Act?” I said, “I tried a couple cases down there.” He said, “Good, we’re looking for an expert and want to send you a corporate client.” I said, “I tried two cases.” He said, “That’s an expert by Charlotte standards.” That was sort of the way I got some things. I did some things that a lot of other people didn’t get to do. I was a little bit ahead of the curve on things like environmental litigation and white collar crime.
And I developed some contacts outside the area in white collar defense because there was a fairly small group of us around the country that did it, so I began to get referrals and send referrals to people in other parts of the country who did it. Bankers in Chicago and I was doing the bankers in Charlotte and such. It was more referrals from other firms than anything else. The political connections generated some things, but I don’t think you can stay in business doing the kind of work I did without respect of and referrals from other attorneys, not just when they don’t do it, but when they have conflicts or more defendants than they can handle, for example.

MR. FREDERICK: How would you describe the bar while you were practicing? Was it collegial?

JUDGE SENTELLE: In the beginning and pretty much so in the end, but the Charlotte Bar grew, like everywhere else, and Charlotte was such a growing location that I think the bar doubled the first ten years I was there. So the less people know each other, the more room there is for a lack of collegiality. If you know you are going to be seeing the same people over and over, it tends to give you incentives to be nice to each other, David, and we mostly were. We mostly could run on a handshake. Still today, even in Washington or in the big markets, I think the stereotype that comes to television is entirely wrong. The criminal bar is more civil, more collegial, than the civil bar or the transactional bar. People who try criminal cases go have dinner together. You take the appellate case to
Richmond and you stay in the same hotel and eat together. It’s fairly collegial in professionalism. It’s not as pure as it once was.

MR. FREDERICK: Why do you think the criminal bar is more civil than the civil bar?

JUDGE SENTELLE: I suppose, for one thing, there are more people who aren’t being paid by the hour. For another thing, there are more people who know they are going to be seeing the same repeat players over and over. And I do think the process on the civil side has become such a war of attrition with the discovery battles that get fought out that you don’t have as much on the criminal side. There is a criminal motion’s practice, but it’s nothing like the war of attrition that you see people fighting in the large civil cases. I think that may be part of it. If you’re aiming for a courtroom where you’re even going to be pleading and negotiating or trying a case like two professionals. So I guess the nature of the work is more classically lawyer-like.

MR. FREDERICK: Now while you were in practice, you were also very active in the local Republican Party affairs. Can you describe that work?

JUDGE SENTELLE: When I left the state bench, I had decided I was coming out of politics and somehow or another that lasted about a year and I was asked to be chairman of the candidate recruitment section of the Republican Party. It was very interesting and challenging. I did work with some very good people. Sue Myrick, who is now the long-term representative in Congress for Charlotte I recruited to run for City Council when I was the candidate recruitment chairman.

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The party was, like most of the Republican Parties around the state and I guess around the country, a bit riven into a Main Street and Wall Street type of factions where you had the financial Republicans and you had the socially conservative Republicans, who were not always on the same page. They began to have some fights over the chairmanship. I was invited by one of the downtown lawyers to please come have lunch at the country club and there were a half-dozen Republicans sitting there who said, “Look, both sides like you. You don’t have any enemies. We’re not going to let you leave. Would you agree to be chairman of the party?” So I became chairman of the Charlotte-Mecklenburg Republican Party, which was the biggest local party between Atlanta and Washington. I think nothing in between had as large a local Republican party as Charlotte-Mecklenburg.

Some parts of it I liked, some I disliked. I never liked money raising. That was not part of the politics that appealed to me. I don’t like to raise money. I continued with candidate recruitment. I enjoyed the campaign side, but it’s fairly time consuming and generates a lot of nagging at home - “You’re going out again???” It was very time consuming. I wound up running for county commission because, to get the ticket I wanted, I got caught in my own trap. Some of the people I wanted on the ticket would not run unless I did, so I ran without enthusiasm. I’ve pointed out that the people who won that race spent between $40,000 - $70,000 for the campaigns; I spent $7,000, I think. So that gives you an idea of my lack
of enthusiasm. In spite of that, I almost won and didn’t really want to because it meant conflicts on a whole lot of “nimby” business we had been doing. I was really glad I didn’t win, but we elected the two people I wanted on the commission.

MR. FREDERICK: So for Mecklenburg County, the county commission was the board that ran the county?

JUDGE SENTELLE: Yes. They would compare to a board of supervisors in a Virginia county.

MR. FREDERICK: You became the Mecklenburg County Chair in 1979? Is that right?

JUDGE SENTELLE: I believe that’s right.

MR. FREDERICK: How long did you serve in that role?

JUDGE SENTELLE: It was a two-year term. I didn’t serve it all out because, between the campaign and the fact that the small law firm was coming apart and we were putting the larger one together, I ran out of time and finally asked the co-chair to finish out my term, which she did. But I served for about a year and a half.

MR. FREDERICK: Now what role did you have as the county chair in broader statewide politics? Did you get involved in the 1980 congressional or senatorial campaigns?

JUDGE SENTELLE: I think that’s one of the years that I chaired the state convention. I chaired the state convention a couple of years. I was the chairman of the state committee and also the chairman of the convention. I was involved in all of Jim Martin’s campaigns for Congress back then and always was involved in Jesse Helms’s campaigns. There was not one of those in ‘80
as I recall. The next one was in ‘84. I did serve two years, although I was
serving half a year off of somebody else’s term and then someone else
worked a half-year off of mine.

I was involved in the greater campaigns. I did a lot of front work for Jesse
Helms the years he was running for Senate. I made a lot of Jesse speeches
for a lot of groups. I was in charge of coordination.

MR. FREDERICK: What does that mean, coordination?

JUDGE SENTELLE: Somebody has to make sure that somebody on the local scene is in touch
with somebody at the statewide campaign to make sure there’s a place for
the candidate to come to when the candidate is available to come to that
place and that there will be a crowd there. You don’t want the person
who’s supposed to run things locally to not be on the same page as the
person who’s running the state campaign. You’ve got to get the schedules
of everybody involved to come together at the right places at the right
times. Because I had worked both state and local, I did a lot of that. I
handled a lot of details like transportation and security. You have to be
sure that there is somebody to get the candidate from place A to place B,
from the speech to the dinner. Details.

MR. FREDERICK: Sounds like during the fall season, when the campaigns are the hardest,
that it must have been extremely difficult to balance your law practice and
family life with politics.

JUDGE SENTELLE: It was and I’m sure I stole time from the family at times that I shouldn’t
have.
MR. FREDERICK: Were you involved in the issues at all in terms of formulating positions on issues.

JUDGE SENTELLE: Yes, but not formally. That’s the kind of thing that goes on in a lot of discussion groups. I was never an issues chairman.

MR. FREDERICK: At the national level, you were an alternate to the Republican Convention in ‘84?

JUDGE SENTELLE: Yes. I had given up my delegate seat in ‘80 because I simply did not have time to be chairman of a candidate and a practitioner of law and a father and a husband and a Sunday School teacher. So I gave it up in ‘80. In ‘84, I decided it was time to go and I went.

MR. FREDERICK: Can you describe what the ‘84 Republican Convention was like?

JUDGE SENTELLE: It was a party. There was no major fight to be had. Ronald Reagan was being renominated. The party started when we left the ground in Charlotte. I believe for most people the party ended when the plane touched down coming back a week later. I didn’t leave Dallas at the end of the convention. I had not been in Texas for a number of years so I rented a car and stayed out there and spent a few days and went to a few places I had been when I was bumming around Texas twenty years earlier. It was a party, a celebration, a great time of excitement. We knew we were on a roll to re-elect the president in that state. We knew he was a great president. It had all the features of a great convention except a fight.
MR. FREDERICK: You came back from that convention back into private practice. Was that a bit of a comedown or a letdown? Did you think at all of going to Washington at that time?

JUDGE SENTELLE: Well I had at several times been asked to go to Washington in some role or other and I never really thought I wanted to. I enjoyed the practice of law. I enjoyed North Carolina. And I really thought that when I didn’t run for Congress in 1984, that was the last time that I was not going to Washington. The year Jim Martin didn’t run for re-election and chose to run for Congress I was approached, principally by Helms’s people and by others as well, about running in Charlotte-Mecklenburg for Jim Martin’s seat. Jim called me and said, “I’m not running for Congress.” I hung the phone up, turned to my wife, and said, “Jim’s not running for Congress.” She said, “You’re not either.” That was close to the end of it.

I was not in a big firm and didn’t have a lot of money to support a family with if I ran for Congress. I was sure we could raise the money for the campaign but, thinking about the future of the family, I just could not see running every two years for office. I ruled it out and, as I say I thought I had ruled out ever going to Washington. And then of course five years later I was up here on the bench.

MR. FREDERICK: I hear stories like yours about the campaign finances and the need to raise money and the consequences of that. Based on your experience, do you have reflections of how our system of campaign finances works and should work and would be better?
JUDGE SENTELLE: Oh, I think like so many other things in life, something is not a problem unless you think you have a solution. Otherwise, it’s a situation. Larry Silberman, a former diplomat and colleague says, “There are situations and there are problems. The difference is problems have solutions.” I think that’s a situation and I think we’re wasting time treating it as a problem because I don’t think there is a solution. I think it’s just something that has to work itself out year after year. No, I don’t have any solutions. Therefore, I don’t see it as a problem, I see it as a situation.

MR. FREDERICK: While you were engaged in the private practice of law, how were things working in terms of judicial selection in North Carolina? How did that process work?

JUDGE SENTELLE: Well, there’s a saying in the federal judiciary that there are two ways to become a federal district judge. You can either know a senator or know someone who knows a senator. And that’s pretty much the case. If there’s a senator in your state who is in the party of the President, typically the President’s people will ask the senator for three names and the senator submits them. In my particular case, Woodrow Jones was the chief district judge in our district. He was eligible for senior status. He was, by chance, an old friend of Jesse Helms. He was an old, former Democratic congressman. Jesse had worked for a senator up there the same time that Woodrow was in congress. Woodrow called me back to chambers one day after court and said, “You should get in touch with Jesse Helms. I’m seriously considering taking senior status. I’m not going to try to name
my successor, but I’d like to be able to tell Jesse the people who should be on his list for the President. And if I were you, I’d start trying to line up to see if you can be first on that list.

I called and I didn’t talk to Jesse directly. I talked to Tom Ellis and told him what Woodrow had said. Tom put me in touch with Jesse, Jesse called Woodrow, and then Woodrow announced his retirement was coming. Jesse, I’m told, sent three names to the President. Ronald Reagan was always greatly attached to Jesse Helms, for reasons that went back to the 1976 campaign. His people contacted Jesse and said, “Who was your first choice?” He said, “The first name on the list”, which was my name and he said he had no objection. That’s how I was selected for the district.

MR. FREDERICK: Do you know who else was on the list?

JUDGE SENTELLE: Yes. Mike Scofield and Robert Long. Long, I think, never really wanted the job very badly. He was and is very happy being the one of the two or three best lawyers in the Asheville area of North Carolina and a great political manipulator. I’m not sure he wanted to do anything else in life but precisely that. Scofield would have liked to have had it, but he also recognized that I lined up ahead of him. He called me after he’d had his interview with Jesse’s people and said, “I want to congratulate you on being the next judge because the only thing they were doing was being polite to me and talking about you.” So he was recognizing that I had paid more dues than he had.
MR. FREDERICK: So in 1985, you became a United States District Judge for the Western District? How did you go about setting up chambers and deciding where to do that?

JUDGE SENTELLE: Well, it was pretty much understood I was going back to Asheville where Woodrow had had his principal chambers. It’s been traditional in that district that one of the judges has principal chambers in Asheville and one in Charlotte, even if the judges live a little ways away from those locations. I was from Asheville and everyone understood that I was a home boy coming back home. That made me particularly attractive because I had strong ties to both ends of the district. Asheville is by far not the end of the district, but it’s the other population center in the district. So for the second time in our life we went back to Asheville to stay the rest of our lives. Made it two years that time and the first was a year and a half.

MR. FREDERICK: Tell me about your first case as a judge. Do you recall what that was like?

JUDGE SENTELLE: Yes, the first trial I had was a magistrate trial. Our magistrate had a conflict of interest. His cousin had been ticketed for speeding and reckless driving on the Blue Ridge Parkway, which is a federal offense. So I tried a magistrate case and found him not guilty as a matter of fact. He was a local Asheville lawyer who was the cousin of the magistrate. So that was actually the first trial I had as a U.S. District Judge.

The first jury trial was a civil case. A woman had fallen at a dude ranch and broken her hip. She was suing. I was not at all sure I should have let
the case go to the jury. If they had held for the plaintiff, I might well have set it aside, but they sided with defense so that solved my problem.

My first criminal trial was a Defense contract fraud case. It was a corporation in the Asheville area that made escape doors for submarines and parachutes and protection parts for airplanes. They were charged with over-contract padding. The president of the corporation had already pleaded guilty in front of my predecessor and I had a couple of senior executives come up to trial. It was a great trial, about a week-and-a-half long or a little more. Bill Osteen and Woody Tilley, who are both now district judges in the Middle District of North Carolina were two of the defense attorneys. Herbert Hyde from Asheville, an excellent old-time lawyer, was the other defense attorney.

As is typical nowadays, the government charged way too many counts. They had about 120 counts, but they could have gotten along fine with about a dozen or so. But the word processors generate counts. The jury was magnificent. The foreman was a little woman about 5 feet tall who was the manager of a branch bank. They had these boxes and boxes of exhibits. She would come up with a yellow pad and ask for exhibits 100 - 140 or something and I could see they were matching up with the counts that they were marching their way through that lengthy indictment block-by-block. The counts came in blocks of a dozen or so. They asked if they could order pizza and stay in session. They did and were out from about ten in the morning until close to midnight, but they came in with verdicts.
of guilty on some counts and not guilty on others and they were rational. They were counts where I could see where the evidence was stronger on the guilty counts than the not guilty counts. It was the kind of thing that restores your faith in the jury system.

MR. FREDERICK: How did it feel to be on the other side of the bench for the first time after having done so many trials as a lawyer?

JUDGE SENTELLE: Of course, I had been a state judge earlier, so it was not as much of a shock to my system as it might have been otherwise. I was never really uncomfortable as a judge. The first time as a state judge that I had to put somebody in jail, that was a shock. Even as long as I’d been a prosecutor and put people away for a long time, when I put a guy away for six months – when you say the words and you know that that guy is actually leaving between two officers, that they’re going to lock a door behind him because of what you’ve said, it’s very hard the first time. It is the case that it gets a lot easier. I would not say it ever becomes a pleasure to put somebody in jail, although a few times it’s a pleasure, but most of the time it’s not. It does become easier as time goes by.

MR. FREDERICK: Was there any kind of formal judicial training that you did before you took the bench?

JUDGE SENTELLE: They do that from the administrative office. They have a small group session that comes either shortly before or shortly after you go on the federal bench. I had been confirmed but was still awaiting confirmation. That was when Bob Byrd was holding up the whole calendar and
everybody assumed we were all going to be confirmed and then he held up the vote. So there were two or three of us not yet confirmed. We met down in Raleigh for a small group session and there were judges from all over who just happened to be in Raleigh. I was the only one of the judges there who drove to the session because everybody else came from Mississippi, two from Arizona, one from New York, one from Texas. So everyone else flew in and I had the only car. Fortunately I had a big car so we could go places together.

We had a five- or six-day session that was operated by Judge Hoffman, whose real first name is escaping me. He was known as “Beef.” He was a big, beefy judge from the eastern district of Virginia. Walter Hoffman. He had been around a long time and was a very well-regarded senior judge. He ran the show and he had two or three other judges who came in and out for parts of it. Then he had one or two people from the FJC who also assisted with the training for the week. We went to a federal prison. I understand they always hold these sessions near a federal prison. You go out to the prison for one day. We had sessions on EEOC cases, on criminal cases, on sentencing (that was before the guidelines), all the things that a district judge does. Hoffman had been around long enough to have it organized properly to cover every aspect of it adequately.

Several months later there was a big group meeting in D.C. that had probably seven or eight of these small groups consolidated into one large session. It had more lectures and less of a workshop-type atmosphere.
They went over court administration, case management, as well as the substantive matters.

MR. FREDERICK: Was that helpful?

JUDGE SENTELLE: Very useful. I think for some people more so than for me because I had federal trial experience and a lot of people didn’t have the same type of experience I did. Some of them had never done criminal work and some of them had never been judges of any sort. So I had less gaps in my education and experience than many of my colleagues did, but it was helpful for all of us.

MR. FREDERICK: Describe the judicial district that you supervised as a judge.

JUDGE SENTELLE: The Western District of North Carolina encompasses the western third of that state. North Carolina is both a longer and more populous state than people realize. From Manteo to Murphy, as they say down there, the eastern coast to the western tip is over 500 miles. We had the western third of it, which from Charlotte to the Murphy tip is over 200 miles. Charlotte anchors the eastern corner of this almost triangular-shaped district. Charlotte, of course, is a financial center – more so now than then – but even then was a banking center. It then was a large trucking center – less so now than then. People don’t realize that Charlotte is the second-largest financial center in the United States. It wasn’t yet then, but it was already a banking center. Now it’s over a million people; then it was a few hundred thousand. It’s very urban, but you don’t have to get that far out of town to be in the rural areas again.
Small towns dotted the rest of the eastern part of the district and the middle part of the district. You had five seats of the court: Charlotte, Statesville, Rutherfordton, Asheville, and Bryson City. Statesville is a furniture and textile town. One of the two largest furniture shows in North Carolina is the Statesville-Hickory show. The middle district has High Point, which is the other furniture show.

Rutherfordton was just a little mountain town that became a seat of the court. Rutherfordton was an old moonshine center, so I guess in the days when it became a federal seat of court, there was a lot of practice in whiskey cases. And it became – along with Wilkes County in the middle district – something of a drug distribution center. The old moonshine distribution networks converted over to marijuana and then later moved to pharmaceuticals.

Asheville is the population center for the mountains of western North Carolina. It has the large hospitals – relatively large – and law practices that exist between Charlotte and Knoxville or Chattanooga. The county of Buncombe containing Asheville is about 150,000, so it’s not a huge population center, but it’s a lot bigger than the counties around it. So it was the largest seat of court outside Charlotte.

Bryson City existed as a seat of court because of the Indian reservation. That generated enough business for about six terms a year, one-to-two weeks of court time, so about close to twelve weeks of court time a year. The other counties around, outside of the Indian business, you had federal
lands and the Blue Ridge Parkway that generated some litigation. There was a sparse population beyond that, but in more recent days if you noticed the capture and arrest of Eric Rudolph, that was in Murphy, North Carolina, which is the westernmost tip of the state. My brother commented on the nice haircut that Rudolph had and said he didn’t think he could get that hiding out in the woods and I told him I didn’t think he could get a haircut that good in Murphy. Be that as it may, it’s a pretty rural and sparse population once you get outside of the Indian population to the west.

A lot of tourist locations. In the summertime there are a lot more people around some of those counties than there are in the fall.

MR. FREDERICK: In your time as a district judge, did you have a regular schedule for sitting in different centers of court?

JUDGE SENTELLE: Yes. I was responsible for the Asheville and Bryson City seats. I would occasionally, for some reason, hold court in one of the other seats. There were sessions every two months. Criminal session was in Asheville and a mixed session in Bryson City. The rest of the time, we had civil work in Asheville. We scheduled it around the criminal terms.

MR. FREDERICK: Would you also hear cases from Charlotte or the eastern part of the district?

JUDGE SENTELLE: Very rarely. It was generally that the dockets in Asheville and Bryson City were mine. The Charlotte and Rutherfordton dockets were Bob
Potter and Jim MacMillan’s. Judge Jones was still sitting as a senior judge, but he had Rutherfordton. He had all of it virtually. Just before I came in, they had made the decision that one judge should have all of the asbestos litigation. They decided that judge should be the newest one. I had the asbestos litigation, which was mostly in Charlotte, so I’d go down to Charlotte to try that occasionally and when one of the judges had a conflict of interest, I would take a case down there. The same way one of them – usually a senior judge – would take mine if I had a conflict of interest.

MR. FREDERICK: Did you have a magistrate judge that was assigned to you?

JUDGE SENTELLE: Yes. Toliver Davis was our magistrate judge for the Asheville and Bryson City divisions. He was a very hard working magistrate judge. We didn’t use the magistrates then for the civil work like some of the judges do now. Toliver had all of those federal misdemeanors that occurred on the Blue Ridge Parkway, the national parks, and the Indian reservation. So he had a lot to do besides the regular intake work that magistrates are best known for. And they were called magistrates then. The title, “magistrate judge” didn’t come in until a little bit later. Toliver was a long-time judicial officer and a very, very good one. He was very dependable.

MR. FREDERICK: Who else was on your staff?

JUDGE SENTELLE: I had two law clerks and a secretary. My secretary, Jane Seacrest Floyd, had been my secretary in the U.S. Attorney’s office. She was the most outstanding public servant I think I knew. I got a commendation once for
administration and I told the boss to the U.S. Attorney that all I did was stay out of the way and let Jane run things and he said, “I realize that, but that’s all you had to do.” I left the U.S. Attorney’s office to go to the state bench. When I came out three years later to go into private practice, I hired her away from the government. She was our paralegal – mine and Fred’s – for the law firm. She told me when we were in the U.S. Attorney’s office, she said, “You’re going to be a federal judge someday and I want to be the judge’s secretary when you’re a federal judge.” The day that Helms called me to tell me I had the nomination, I asked her if she still wanted it. She had married in the meantime and her husband was a trucker. She said, “Yes, Steve can run out of Asheville as easy as he runs out of Charlotte.” So she came in as my secretary in the U.S. District Judge’s chambers. She served with me the first year that I was there, developed a very fast-acting liver cancer, and died. And it was exactly like losing your best friend and your right arm and a piece of your life all at the same time when she died. The same as a close family member. The woman who replaced her, Lisa Mathis, was a courtroom deputy clerk. She came with me and was a very good secretary, but it was nothing like having Jane. She was also a very close, close friend.

I had two law clerks. My plan had been to hire one clerk each year and keep them for two years, but since I was only there two years it didn’t work out to have much effect. The first clerk was Beth McConnell who clerked for me part of the year and then the next full year. Then Melanie
Morris came in who clerked with me a year there and then a year with me up here.

MR. FREDERICK: How did you find them, or how did they find you and how did you select them?

JUDGE SENTELLE: Even coming out of season, you get a lot of mail from a lot of applicants. I didn’t go hunting, I just took the applicant letters that came in the mail. I took the ones that looked best and interviewed them and hired them.

MR. FREDERICK: In the mid-eighties, was it common to have female clerk applicants?

JUDGE SENTELLE: Much less so than now. Woodrow had been considered by people backwards in a lot of ways, but he was sort of the pioneer in hiring female law clerks. He had female clerks for two or three terms. He was a very decorous old gentleman and the gentleman who was the courtroom deputy clerk for both Woodrow and me said Woodrow used to always have him stay up at the motel as long as Woodrow was meeting with his law clerks because he didn’t want to be alone with a female clerk at night.

I was not as careful as Woodrow was. I was alone with my female clerks at night sometimes, but I never got accused of any hanky-panky, so I guess it was not necessary to have staff around me. Woodrow always had them. It was not as common as it is now, but I was not the first to use them.

MR. FREDERICK: How did you use your law clerks?

JUDGE SENTELLE: It’s a little different job at the district level than it is here. I’ve told law clerks that if they’re going to do both, it really makes more sense to come
to the circuit first and then go to the district because this is like an extension of law school or law review. The district court is sort of like the beginning of practice. Although they do a lot of research and preparation and motions practice, they also do a lot of work in contacting attorneys and making sure that we can get everybody there for motions hearings and coming and going to pick up things we need from the clerk’s office and making sure that we have the right files. Then they assist in opinion writing. Here it’s a big part of their job; there it’s a small part of their job. They sit in the courtroom while you’re in trial. You have one of your clerks in there to anticipate that you’re going to need 521 U.S. because that’s the case they’re arguing about and go and get it and bring it and run it to you. We didn’t have computerized legal research back in those days. We certainly didn’t have it in the courtrooms. So they made sure that I had the right books on the bench when I needed them. Then we met at night and discussed what we needed to have in the next day. Sometimes we hammered out all night how to rule on motions we’d been hearing that day.

Each of the ones I mentioned traveled to Richmond with me for a term when I sat at the Fourth Circuit Court of Appeals. Each of them traveled with me to Bryson City various times. In Richmond, much like here, when I sat by designation. They drafted the first drafts of some of the opinions.
MR. FREDERICK: What were some of the most important cases that you decided as a district judge?

JUDGE SENTELLE: I guess the most interesting is the one I wrote the book about, where they had the hippie gathering that was about to break into open warfare between the hippies and the law enforcement authorities for the State of North Carolina. That was one that took a lot of careful handling, even though I probably didn’t have jurisdiction. I came up with a consent judgment on it.

On the criminal side, the defense contract fraud case was my first criminal case as a district judge. It was a very important case. There was a lot riding on it. That’s a couple that stand out in my mind.

MR. FREDERICK: I want to talk about the Rainbow People in a moment.

JUDGE SENTELLE: I don’t want to talk too much about it. That’s kind of been talked to death over the years.

MR. FREDERICK: Tell me about this contracting case. What were the issues there?

JUDGE SENTELLE: Well it was really an intent argument as to whether they had intentionally padded the cost. It was a cost-plus contract and to what extent had they intentionally padded, fraudulently, the cost of the construction?

MR. FREDERICK: This was a local defense contractor?

JUDGE SENTELLE: Yes. It was not exactly a small business set-aside, but neither was it a huge corporation. It was a smallish corporation. I think it was originally a subsidiary of an English corporation that had spun off. The president of it was a British man, but the people who were defendants in my case were
American citizens. They were executives. As I said, they made submarine escape hatches and escape mechanisms for jet aircraft. There was no allegation that they were doing anything inferior in their products, just padding the hours. So there was a lot of evidence of things like somebody running a bicycle shop for the company and charging off those hours to this. They were not really evil people, David, but they were looking after their corporate interests and their employee interests. They probably got caught because they got too greedy. But it was an intent thing. What did the executive know and when did he know it? The government did a good job with establishing it. They knew a whole lot and they knew it early on.

MR. FREDERICK: So the executives were sentenced to prison?

JUDGE SENTELLE: Yes. I sentenced the senior executive of the two before me to two years. The other man I sentenced to six months, I believe. And I know I made the comment on the record that he appeared to me to mostly have been looking after his troops. He was trying to keep people from being laid off, was the main thing he said to me. I had anticipated the senior man being paroled fairly soon, but as it turned out they were using new parole guidelines and he stayed longer than I thought he would have to stay. I had given each of them active sentences on some counts and then suspended sentences or probation on other counts. They each had a turn on probation following the active term. I remitted the fine and early-terminated the probation on the senior executive because he did have to
build more prison time than I meant for him to build. So when he came in moving for modification, I gave it to him.

MR. FREDERICK: This was the period before the sentencing guidelines. Describe how you went about making the sentencing decisions in the pre-guidelines period.

JUDGE SENTELLE: We had a piece of paper in front of us from the probation office that gave us a full report on the lives and backgrounds of these defendants. We also had within it the average sentences for this offense that had been imposed in our district and nationally. We had what the law was on parole, but we did not know precisely what guidelines there were for parole – or I didn’t, at least. And you tried to impose a sentence that would punish for the act done, deter this person and others from doing it again, and yet not be disproportionately harsh in relation to the degree of culpability involved. If that sounds general, it was a pretty general way of looking at it that we had in those days. It was hard. It was a very difficult part of our task.

MR. FREDERICK: Would you describe yourself as on one side or the other? Did you tend to go stricter than the averages or less strict?

JUDGE SENTELLE: Probably I went stricter than the averages, David. I don’t think dramatically so. But I was on the high side. As a state judge, I had been regarded as a pretty heavy hitter in misdemeanor and traffic court. I think the punishments were there for a reason and we had to use them. At the same time, for example on that defense contract fraud, I believe that in white collar crime the fact of imprisonment is more important than the length. If you punish the corporate executives severely when you’re
sentencing him, sending him for five years may be redundant. If he’s there for a year-and-a-half, that may be quite harsh for somebody who has lived all his life as a fairly law-abiding citizen.

MR. FREDERICK: Now, although as a district judge you never applied the sentencing guidelines, as a court of appeals judge you’ve had many occasions to review how they have been applied. What do you think about the sentencing guidelines?

JUDGE SENTELLE: I did, in fact, go back and sit by designation and applied the guidelines a few times. As a regular district judge, though, I never did. I left the month they became effective, but I did go back by designation. I think that we would have been better off with true guidelines instead of what amount to rules. These are more like rules than guidelines. They are too rigid. They don’t leave enough room for the exercise of the informed discretion of the judge who actually knows what’s going on. Now I agree with something Tony Kennedy’s being misconstrued on, that the worst thing is not the guidelines, it’s the mandatory minimums. You see the papers now saying that Tony was critical of the guidelines, which he was, but he was more critical of the minimums. And I think they are the worst. They were often draconian treatment for defendants who are not all that bad of people sometimes. Some drug courier out of New York who may be making his first run winds up with twenty years of prison time, builds that twenty, and then winds up with no job skills other than what he learned in jail and may commit more crime. He would have been
a lot better off and the system would have been a lot better off if he’d been given a couple of years followed by probation. I think mandatory minima have a) wreaked havoc and b) don’t belong in the same universe with the guidelines. And the guidelines themselves are way too rigid. They should have been put out advisory instead of something that is almost compelled to be followed. Now you have that new amendment that says they have to justify departing downward. We’re supposed to review it de novo. I don’t know how you sentence de novo. I guess we’ll find out.

MR. FREDERICK: Well the number of appeals of sentencing guideline matters has been enormous, far more than in the pre-guideline era. How do you think the system will evolve to accommodate the need for greater discretion, if at all?

JUDGE SENTELLE: I don’t know. I don’t see the political force that’s going to cause great change, David. Congress is the political actor there and it acts often for political reasons. I don’t know what the court will do. A Supreme Court justice coming up to take this on as Tony has may affect some congressmen, but I can’t see it happening soon.

MR. FREDERICK: Now I don’t want to talk too much about the Rainbow People case unless you do because you’ve written this wonderful book about it, but what struck me in reading the book was the way you banged heads together when they needed to be banged in order to get a result that people could live with. And I wonder if you could just describe that process. Because you mentioned a minute ago that you didn’t think you had jurisdiction
over the case and yet the case ended up being litigated and being resolved by a consent decree. How did you make that happen?

JUDGE SENTELLE: I suppose, David, I learned and developed that skill as a state judge with domestic jurisdiction. The most contentious litigation in the world is probably domestic litigation. And yet, the need to have livable settlements is the greatest there of any kind of litigation. So the main thing that domestic judges do, at least in my day when I had that part of the docket, was that you tried to get the two lawyers in one room with their clients outside finding out what is important to each side and seeing if you can achieve it without doing damage to what’s important to the other side. Because very often it goes way beyond what’s before the court in the domestic cases. The stuff that you put in those consent judgments very often you couldn’t legally order. And it’s details you never think of because details are important to people in ways that the system doesn’t recognize, so I think I tried to take the same skills I used in domestic cases and just find out what’s important and see if we could achieve it without doing great damage to what’s important to the other side. In a consent decree, maybe we could do something good that you couldn’t conceivably do all by yourself. Did that answer your question?

MR. FREDERICK: Yes. I mean, did you have an occasion to use those kinds of skills in other civil matters that you heard as a district judge.

JUDGE SENTELLE: Yes, you do. Now you have to be careful not to over involve in case you’re going to have to try the case. What’s done now, and what would
be very hard to do at my old district, is very often it’s sent to a magistrate judge to do a hearing. The magistrate judge does the head knocking and that leaves the judge that has the case in the district court much more pristine if he has to try the case. But in a rural district, or semi-rural like we were, we just didn’t have the personnel for anybody else to do it, so the judge was more involved in the settlement negotiations than might be viewed as appropriate up here. But it was okay down there because that’s the way we did it. That was the way everybody was used to doing it, so, yeah, we were involved a lot. Particularly in the state court, but to some extent in the federal also.

I remember telling some lawyers in a federal court one time in chambers—good lawyers—who were hung up $5,000 apart. “We’re not wasting the resources of the federal court over a $5,000 case. Somebody come back in there tomorrow and tell me the case is settled.” They came back in and I signed a consent decree. Sometimes that’s what you have to do and what’s most efficiently done.

And I remember a personal injury case one time where, in the middle of the trial, I knew the lawyers had been talking about amounts and getting closer and closer. I didn’t know precisely what. Before I told the jury to come back the next day in the middle of the Christmas season one time, I said, “Gentlemen, I’m not asking you numbers, but if it’s going to be worthwhile to take a recess, I’ll let you call your company.” The attorneys said, “Yes it is, your honor.” And we sent the jurors out to take a nice,
long lunch and when they got back we told them it had settled. If you’re alert, you can sometimes efficiently improve the process.

MR. FREDERICK: Now in the Rainbow People case, you made a decision at the very beginning to drop everything and head for the hills to scope out the situation and that was a decision that you made at the very beginning of this process. What instincts led you to make it? Because that decision, as I read your book, was a critical one in how the whole rest of it unfolded.

JUDGE SENTELLE: The lawyers suggested it and it seemed to me that the only way I could get accurate evidence of what was going on down there was to do it spontaneously. Go out there before anyone had a chance to state anything and not try to get the bits and pieces that you bring to the courtroom, but just go see what was really happening out there. The state made it sound ominous, the ACLU lawyer made it sound ethereal. I was fairly sure it was somewhere in between, but I was fairly sure that the only way I was going to know was to have what amounted to a one-person jury review. I think I was right about that. Whether I was right or wrong, about anything else I think I was right about that. I found out what was really happening only by going out there to see it on the ground.

I don’t generally believe in jury review. That was the exception. The times that I did it in regular cases with real juries, it almost got out of hand. The jury gets out there and they want to talk about what they’re seeing. Of course, that’s not what you want them to do at all. You want
them to see and then come back and think about it. They, being human, have a hard time doing that.

MR. FREDERICK: Well at an event like that Rainbow People gathering, I can imagine it was very difficult to restrain oneself.

JUDGE SENTELLE: Well we didn’t have a jury, so we didn’t have that problem.

MR. FREDERICK: But even your own observations.

JUDGE SENTELLE: Yes, it was difficult all right. I took a jury out one time to see an easement by an adverse user in a state case where it involved the horse trails. There was an argument over whether it was evident that the horse trail went across the land in question and had created an “open and notorious” use. Really, it was very hard to keep the jury from deciding the case right out there at the scene, so we sent them back to the courtroom after this inspection.

I figured I was a trained professional, David, and I did the best I could to maintain a developing sense of what was going on rather than determining it all at once. And then we took a day for evidence in court.

MR. FREDERICK: At what point did you decide you wanted to write a book about that episode?

JUDGE SENTELLE: I wrote what became that book very shortly after the events had taken place, simply because it was so unique that I decided I would preserve it. I didn’t have any idea what I was going to do with that manuscript. I sort of decided later that people would find it among my artifacts when I died and I just laid it back in the drawer. Then I mentioned it to a law clerk,
Monty Kosma, who said he would like to see it. He was an editor of *The Green Bag*, which was offbeat law articles. And he came in very amused with it and said he’d like to run some excerpts from it in *The Green Bag*. I let him. Then *The Green Bag* publisher puts out about one book a year. He and Ross Davies came to me and said, “How about putting it out as a book?” I checked with our ethics representative, Ray Randolph. He said I could even take profit for it. I had misgivings about that, so any share of profit of mine goes to the Supreme Court Historical Society. But, on Randolph’s okay, I went ahead and let them put it out.

But I did not think when I started out writing it that it was going to be as long as it turned out to be. I intended to write something of essay length and it turned into book length. The details kept coming to mind and I kept adding them and then it got longer and longer.

MR. FREDERICK: It’s a wonderful description of a wonderful case. I can’t imagine there being any more fun and interesting cases as a district judge that you could have that had that degree of color and intellectual interest in the issues. Because the issues are quite difficult to decide.

JUDGE SENTELLE: Nothing else matched that.

MR. FREDERICK: Did that case come up at all when you were being considered for the D.C. Circuit?

JUDGE SENTELLE: No. It might have, had it not been for the fact that I’d already had my hearings before that case came up. So my nomination was pending during the time we were holding the *Rainbow* case. It very well might have come...
up had I been nominated after the *Rainbow* case was over. But, as it was, you have to list ten important cases from your career on the form they want from Justice and the ABA and the Senate. I’m sure I would have listed that one if my nomination had come later. But, as it was, I think I listed four of the cases I had in the Fourth Circuit and six cases from the District Court. It was ten cases as a lawyer, so it’s very hard to figure out which ten to list. I’m sure this one would have made it as a judge if it had come up a little later and I would imagine that I would have been questioned about. But as it turned out, the timeline was such that it didn’t really play any role.

**MR. FREDERICK:** So you had had your hearing and you were simply waiting for the Senate to act?

**JUDGE SENTELLE:** I was waiting for confirmation at the time. The committee voted, I believe before the case. I was held up twice for that nomination – once on committee confirmation and then once on floor confirmation. The long hold was on the floor part.

**MR. FREDERICK:** Well let’s back up a bit and tell me how a North Carolina district judge became considered for the D.C. Circuit.

**JUDGE SENTELLE:** I’ve always wondered about that, David. I hadn’t been on the district the whole year when I got called by the Deputy Assistant Attorney General and the Assistant Attorney General one day, whom I slightly knew, who asked me if I’d be interested in the D.C. Circuit. I said, “Steve, I’ve never thought about it.” He said, “Well, Skelly Wright is taking senior status
and we would like to consider you for that seat if you’d be interested.”

And I told him I’d never thought about it before. He said, “Come talk to us. Don’t tell anybody why you’re coming, but come up and talk to us.”

I came up and talked all day to various people in the Department of Justice and the Reagan Administration. Toward the end of the day, I asked Brad Reynolds what you just asked me. “That D.C. Circuit, I’ve looked over the people Ronald Reagan has nominated. I see a lot of professors. I see a lot of outstanding Ivy League graduates. How does a country district judge from the Western District of North Carolina make this list?”

I honestly thought at that point that I was just being complimented. That Jesse Helms had done nice things for them and they were going to tell Jesse, “We talked to your guy for this one.” But I had been dissuaded of that notion earlier in the day when I ran into Jesse and he didn’t know why I was up there. So I knew there was something else going on, that they were apparently serious.

What Brad told me was that they had been criticized for not having trial experience in their nominees for the D.C. Circuit and that they had gone over the list of district judges appointed by Reagan and the late Ford or Nixon appointees to find people who they could consider for the Circuit. I don’t know whether that’s true or not. I’ve always doubted it because there didn’t seem to be that many of us who were under consideration. I think maybe Ken Cribb or some of the others I knew from the Goldwater
campaign had brought my name to their attention. Be that as it may, they
did have one or two other trial judges that they had on the list.

In those days, the nominees for the D.C. Circuit came from all over the
country. The Washington Bar objected to that every time and the
administration paid no attention to it. It went back to F.D.R., at least.

They nominated people well before then, back to Teddy Roosevelt. They
ominated people for D.C. judgeships who were from around the country.
Toward the end of Bush I and all of Clinton, they did nominate D.C.
people for the seats here. Bush II, that’s been so far we’ve gotten John
Roberts, a D.C. lawyer, and the nomination of Miguel Estrada, a D.C.
lawyer, but then with the other two nominees they’ve gone back to other
parts of the country. So the short answer is I don’t really know how they
picked me out of a country district to nominate me in D.C. And, by the
way, I didn’t get the Skelly Wright seat, I got the next one, I had Scalia’s
seat. Ken Cribb denies being the one who initiated it. He was counsel to
the attorney general then, and he was an old friend, and I suspect Ken had
something to do with it. Does that answer that question?

MR. FREDERICK: Well, no. Because there must be an answer and I had always assumed that

Senator Helms had had a role, but you don’t think so?

JUDGE SENTELLE: No, when I came up that day, as I said, Brad had told me not to tell

anybody why I was up there and I didn’t know why. They were trying to
keep a lid on everything. Well I ran into Helms and two of his staff at
Justice. So I went in to see Brad and said, “Well you told me not to tell
anyone why I was up here. Senator Helms is going to want to know what I’m doing up here. And I’m not in the habit of lying to him.” And he said, “Okay, you can tell Helms what you’re doing here.” So I went to meet a mutual friend of mine and Helms for lunch. We got a beer and just sat there for a while. He said, “Jesse called. He wants to talk to you.” I called back to Jesse’s office. They said that he was on the floor, but Tommy Ashcraft, one of his aides, would take the call. Tommy came on and said, “Helms wants to know why you were in Justice.” I told him. He said Helms said to tell you that he’s committed to someone else for that seat, but that his person is not going to get it and when his man falls off the list, then you’ll be his man. So Jesse did come in behind me later, but it was way into the process.

By chance, there were two North Carolina people on the list before. Broyhill was by then the other senator from North Carolina and his first choice was the other North Carolinian. When she fell off the list, I was Broyhill’s match, but Broyhill had no particular influence. Only a senator for a short time to finish out a dead man’s term.

MR. FREDERICK: Did Boyden Gray have any role at that point in judicial selection?

JUDGE SENTELLE: No, I don’t think so. Boyden was at the Vice President’s office at that time and I doubt if Boyden was concerned with it at all. Boyden was probably the reason that I was later on the short list for the Supreme Court, but I doubt if Boyden had anything to do with that.

MR. FREDERICK: So you were nominated not for the Skelly Wright seat, but, within months,
JUDGE SENTELLE: Right. In the course of that same conversation with Brad where I asked him how I got on the list, he said, “By the way, there’s going to be two vacancies. We’re not at liberty to tell you why there’s another vacancy, but you’ll know very shortly.” I think it was literally the next day the Burger announced that he was retiring. Then they announced they were nominating Rehnquist for the Chief Justiceship and Scalia for Rehnquist’s seat. So that explained the other vacancy that was coming. I think it was literally the next day. If it wasn’t, it was within a very few days.

MR. FREDERICK: So you’re nominated for the Scalia seat. Tell me about your confirmation hearing from your perspective. The public record is what it is.

JUDGE SENTELLE: I was told that they did not anticipate any trouble and there really was no murder board or mock hearing like they do now with nominees. They met with us for a few minutes and told us don’t worry about the hearing. Senators would ask you a few formal questions.

That’s not exactly the way it happened. It was on April 1, so I guess I should have known they were fooling me on that. Leahy was presiding, Strom Thurmond was the senior minority representative present – the Democrats had taken the majority between the time of the nomination and the time we got to the hearing. That caused the hearing to be a little slower than it otherwise would be coming into the House.

Leahy asked quite a few questions. He confronted me on the question of I didn’t have administrative law experience. I told him I had the law
experience, and I could adapt. We bandied back and forth for a while.

Then he asked me about being a Freemason, which I am. He believed that the Masonic lodge is all-white, which it isn’t. We’ve had that conversation. Then he started in on it being all-male, which it is. So we disputed. He said, “If you’re confirmed, will you resign from the lodge?” I told him I would not. He asked me about the part of the ABA canons that said that judges should not belong to organizations that invidiously discriminate. I said, “Well, I think the key there is the word ‘invidious’.

There is nothing invidious about an all-male fraternal order.” So we spent a long time confronting each other.

Strom Thurmond took over and he was about as red as the couch you’re sitting on. And he said, “Judge Sentelle, I’ve been a Mason since 1925.” I said, “Yes, sir.” He said, “Have you ever heard of anybody being accused of being discriminatory just for being a mason.” I said, “Not before today, Senator.” He said, “I’m proud to be a mason.” I said, “I am, too, Senator.” So Strom had jumped to my defense there and took as long as he could.

We left and received word a few days later that Senator Simon was going to inquire of the ABA if a fraternal order was evidence of invidious discrimination. That went on for a few weeks without a response from the ABA. The administration then contacted the ABA’s committee and said, “Why haven’t you responded to Senator Simon’s inquiry?” And they said they had received no such inquiry. Simon then said, “Oh, we forgot to
mail it.” Then the ABA came back and said, “We have twice rated Judge Sentelle as well-qualified for his nominations, so we do not care to comment further.” Simon let it go to the floor, where Senator Kennedy eventually held the nomination. I was held for quite a long time.

MR. FREDERICK: Now at that time, who controlled the Senate?

JUDGE SENTELLE: The Democrats. In the election of ‘86, the majority swung back from Republican to Democrat, so Doug Ginsburg, who was nominated just a few days before me, got confirmed before the election, but I was running behind him. I had not had a hearing yet, so I had to start all over and mine took a lot longer.

MR. FREDERICK: Okay, so you proceed to the floor, the committee vote has occurred, and you’re now on the floor of the Senate. And then what happens?

JUDGE SENTELLE: Simon and Leahy had holds on me based on my Masonic affiliation. They came under a lot of fire from folks back home and I’m told from Bob Byrd that the Knights of Columbus and passed a resolution about how good fraternal orders are. They saw that shot being fired across their bow and Simon began to realize how many Masons and Knights of Columbus there are that vote as did Leahy.

But almost simultaneously, Kennedy put a hold on me, ostensibly because Helms along with Bob Dole and, I think, twenty other senators, had a hold on Melissa Wells, who was nominated to be the ambassador to Mozambique. I don’t think Kennedy really saw a connection. It was just an excuse to put a hold on me. They were trying to clog up the judicial
pipeline as much as possible, much like the Democrats are doing now and much like the Republicans did during a lot of the Clinton administration.

So Kennedy put a hold on me and I remained held for some time.

K.K. Hall, who was on the Fourth Circuit at the time – he’s deceased now – was probably the closest friend of Bob Byrd. He said, “Byrd will not let you fail. Byrd perceives this as being related to the Masonic attack and Byrd’s too good a Mason to let you fail. He’ll get you there.” So eventually, Byrd called cloture on Melissa Well’s nomination and got the votes to bring cloture. He took her nomination immediately to the floor, had a roll call, and confirmed her by something like 70 - 20, with 10 absent or something like that. So he called my nomination on the heels of it. And nobody invoked cloture and he called roll call. Helms’s people contacted me and said, “If you come over, you can watch your nomination be voted on.” I got there in time to see most of the roll call. It had begun, but I saw about two-thirds of the roll call in the gallery of the Senate. And it went down 87 - 0 with 13 absent. Kennedy voted for me. I think Leahy was absent.

MR. FREDERICK: So after all of that, fairly anticlimactic.

JUDGE SENTELLE: Yes. It’s a rare nomination that there’s a unanimous roll call. Usually unanimous votes don’t go to roll call, but Byrd took no chances. He called it to the floor right then rather than trying to keep unanimous consent.

MR. FREDERICK: And this was your only interaction, or dealings, with Senator Byrd or had you had dealings with him before?
JUDGE SENTELLE: They were the only dealings I ever had with him. Of course, he and Jesse were colleagues over the years. I don’t think they were ever friends, but they were working colleagues.

MR. FREDERICK: Tell me about your involvement in the Masons because of the role that it had in your confirmation. There’s obviously historical interest in what you did as a Mason and what drew you to the organization.

JUDGE SENTELLE: Well, for a lot of us it was sort of a tribal thing. My father was a Mason, my grandfather was a Mason, my Uncle Jack was a 33rd-degree Mason, as I am, which is the highest honor normally conferred upon Masons. Several of my uncles were Masons, actually. Jack and Uncle Harry had both been masters of their lodge. Jack had been every office in Scottish Rite masonry. So I was involved in some of the Masonic charities – the Shrine Hospital, Shrine of Scottish Rite Centers. I remained a contributor, although I can’t do fundraising anymore for the Shrine Hospital or the Shrine of Scottish Rite Centers. I don’t attend lodge very often, but I still do some speaking for Masonic organizations. I told Leahy once that he actually had been responsible for me getting a lot of nice trips because after I refused to resign from the lodge, I got invited to speak to the Grand Lodge of Iowa and Vermont and Rhode Island and Georgia and Missouri – various Masonic organizations around the country. So I don’t go very regularly to meetings, but I keep my dues up in the Shrine and Scottish Rite and the regular Masonic lodge.

MR. FREDERICK: When did you become a member?
JUDGE SENTELLE: The second year I was in Charlotte. I had not rushed into joining the Masons and then my father died before I became a Mason and I regretted not having gone. My brother had joined the lodge as soon as he was eligible at 21, so our father had assisted in his initiation. I got a petition from the master at my father’s funeral and then I realized I was going to be moving to Charlotte, so I never filed that petition. I waited until I’d been in Charlotte a year first. You’ve got to be a year-long resident in the jurisdiction of the lodge that you’re petitioning. So I waited in Charlotte a year, which made it about 1970.

MR. FREDERICK: How did you become a 33rd-degree Mason and what does that mean to someone?

JUDGE SENTELLE: All Masons are third-degree Masons. You have to go through three degrees of memorization and ritual work to become fully a Mason. Beyond that, there are two subsidiary or affiliate orders, the Scottish Rite and the York Rite, that a Mason can join if he wishes to. And it’s just further ritual, further memory, and supposedly, at least, more ethical lessons than the fraternity. The Scottish Rite goes through degrees from fourth through thirty-second. Then there is an honor that is conferred in the 33rd-degree, which is given only to either very active Scottish Rite Masons or to men who are 32nd-degree Masons who have distinguished themselves in public life and rendered great service to the lodge. After I refused to resign, I was named a Knight Commander of the Court of Honor, which meant I was eligible to become a 33rd-degree Mason and
Fred Kleinknecht, who is the Grand Commander of the Scottish Rite
appointed me as a 33rd-degree mason. By chance, Helms and I were made
33rd-degrees on the same day. We were part of the same class of 33rd-
degree Masons, along with Senator Grassley.

MR. FREDERICK: What has being a Mason meant to you in your professional life?

JUDGE SENTELLE: It gives you an entree with a lot of very nice men around the country. You
meet people who you know have something in common with you. You
know they’ve been approved by a fairly careful group of men as being
ethically and morally fit to be part of the order. Therefore, you know that
you’ve got something in common with somebody. I also have appreciated
being part of the charitable work that’s done by the suborders of the
Shrine of Scottish Rite. The Shrine Hospital for Crippled and Burnt
Children is one of the most outstanding charities in the country. When I
was practicing law, I used to buy a block of tickets to the football game
every year and take clients to the Shrine football game to raise money for
the Crippled Children’s Hospitals in Greensboro, South Carolina. I give a
little of my own, but of course I can’t do fundraising anymore as a judge.
I did work in the Scottish Rite ritual. It is not sermonizing, but it is a
moral lesson kind of ritual and I did perform a couple of roles in the ritual
while I was a practicing lawyer. I haven’t done that since either.

MR. FREDERICK: Can you describe what that entails?

JUDGE SENTELLE: One of the particular ones I worked on has a judge’s role, actually, where
someone is being tried for advancement and the ritual candidate’s moral
achievement is described and what the scales are upon which men are morally weighed. And the other role, honestly, I played a devil. I played the anti-hero in another one of the rituals.

MR. FREDERICK: These are like plays?

JUDGE SENTELLE: Yes, they’re plays. It’s acting, some of it’s pretty good acting. I understand some of the California lodges, back when you had John Wayne and Arthur Godfrey and people, like Red Skelton, were awfully good. Some of these are amateur thespians, like myself. You put a lot into your part. It’s written scripts. You’re not ad libbing. You’re playing a set role to a set script. We had one fellow in the Scottish Rite ritual down there, Ralph Smith who was a TV personality locally, who was a wonderful ritualist. He was a great actor in the dramatic roles we had. It was a lot of fun, as well as reminding yourself of the moral teachings that the lodge is supposed to be occultating.

MR. FREDERICK: So you were in the Charlotte lodge? When you then moved to Asheville to be district judge, was there a lodge in Asheville that you participated in?

JUDGE SENTELLE: I never moved my membership. I sat in my brother’s lodge some while I was up there, the West Asheville lodge and then the Biltmore lodge. The Asheville and Charlotte lodges in the Scottish Rite are sub-parts of the same lodge, so I did attend that. I was glad I got to attend that while my Uncle Jack was still around because he was a very honored member there in the Scottish Rite. Before I moved back to Asheville – Jack died before
I came back – I did go visit the Asheville lodges there to see Jack lead the ritual.

Many people in the lodges down there assume I’m Jack’s son. In fact, Jack never married and had no children. Sentelle is an odd enough name that the two of us being 33rd-degree Masons, they’d assume I was his son.

MR. FREDERICK: Have you participated here in the Washington area in Mason activities?

JUDGE SENTELLE: Yes. I’ve spoken at the Grand Lodge for D.C. I’ve also, not long ago, brought the program. There’s no way of describing precisely what I do. I told you more than I ought to tell you. But there’s a program that the late Judge Charles Richey put together for Masonic lodges that involves the enactment of a trial. I played the role that Richey used to play. It’s sort of a light program for lodges. It’s entertaining. By the way, the Samuel Pompers and Benjamin Franklin Lodge were the ones that I did it for here. Had the interesting experience of being – there were probably a couple of hundred Masons present maybe ten percent were black and I would say ninety percent of the white bunch there was Jewish, so I was a real minority in that set.

MR. FREDERICK: This is here in the Washington Lodge?

JUDGE SENTELLE: That’s in D.C., yes.

MR. FREDERICK: In looking back, I can’t think of any other nominee who has had the kind of stink over being a Mason since your nomination. Do you think that you have put that aside as a reason to hold someone up for judicial nomination?
JUDGE SENTELLE: I think that took the stink out of it, yes. Ron Lew was nominated in California right after that. I understand that while I was being held, Leahy’s staff asked him if there were any non-white Masons in his lodge. He said, “Yes, me.” And that sort of made him shut up on that. In any event, I don’t think there’s been any problem with it since then. Interestingly, I’ve been told by a number of nominees after that that for the rest of the Reagan and Bush administrations, they began to hold training sessions for their nominees for circuit court where they had moot sessions and they used my hearings as training tapes for those. They played my hearing to cover how to deal with a surprise because no one expected that. They apparently thought I handled it well.

MR. FREDERICK: Had you had any meet-and-greets with any senators on the judiciary committee before the hearing?

JUDGE SENTELLE: Not really. I was asked to touch base with both North Carolina senators. Helms, of course, came over and presented me. By then Broyhill had lost and Terry Sanford, the Democrat, was the other senator. Terry did not come physically, but he sent a letter of support over. It was a very nice letter that said, “The only thing I can think of wrong with Judge Sentelle is he’s a Republican. But he’s a Western North Carolina Republican. If you’re going to be a Republican, that’s the best kind to be.” But I was not asked to call on Senators the way that seems to be much more common now than it was then. I knew Strom, but I can’t say I knew him well. I did go by and say hello to Strom, but that was more social than political.
MR. FREDERICK: You became invested in late 1987. Did you immediately jump into hearing cases?

JUDGE SENTELLE: I think it was about six weeks before I sat on a regular sitting. There were evidently some adjustments to the calendar to give people a chance to get out of some things and let me get them. But then, because Bob Bork dropped off with his, I pretty much just got Bob’s documents. In the meantime, there were two *en banc* cases that I sat on before I had to make an appearance. I hadn’t been here but a couple of weeks before I first sat on an *en banc* case.
MR. FREDERICK: Good morning, Judge Sentelle. It’s August 13 and we are here for the fourth part of your oral history.

JUDGE SENTELLE: Good morning, David.

MR. FREDERICK: When we last left off, you had just been invested as a circuit judge here on the D.C. Circuit. Now I wonder if you could describe the process by which you became integrated into the work of the Court of Appeals.

JUDGE SENTELLE: It comes very close, David, to being thrown in and swimming. They are kind enough, generally here, to give you some time before you begin to hear cases. I didn’t get as much as had been expected because Bob Bork first quit hearing cases to go be processed for the Supreme Court and then, with the exception of an en banc case, quit altogether without hearing any more cases and so I got pretty much Bob’s docket without having a lot of time to contemplate it. I did have a few weeks in which to hire three law clerks – or hire two and bring one with me – and get a secretary and get started on things. But I didn’t have a lot of time to contemplate moving in. I simply was stuck into a slot and started hearing cases.
MR. FREDERICK: So the cases that Judge Bork had were simply just transferred to you? You got a big stack of cases for an argument calendar?

JUDGE SENTELLE: Pretty much I got Bob’s docket. It was not literally the case, I guess, because I think there was a term that was set up, maybe two even, where they had set up anticipating a new judge. They sort of shifted things around to let me take those, but then from there on it was pretty much taking what Bob had left.

MR. FREDERICK: How were cases assigned when you first joined the court?

JUDGE SENTELLE: I’m told, and I’ve never participated in the process, the way the clerk’s office handles it is as a double randomness. They set up the pairing of judges randomly within certain parameters, that is it was a goal that you would sit with each other judge at least four days and no more than twelve days. And then when they had the days set as to what judge would sit on what days, then the cases were assigned to those days randomly, except that if any case appeared on a judge’s recusal list, it did not go on the day when that judge was sitting.

MR. FREDERICK: So both the pairings of judges was random and how the cases were assigned to panels was random?

JUDGE SENTELLE: Again, I didn’t participate in it, but I’m told that was pretty much done manually at that time by people in the clerk’s office. Now, after the leadership of Harry Edwards during his term as Chief Judge, everything is done by computer. The same goals are still the goals, but the computer does it rather than being done manually.
MR. FREDERICK: You had sat on panels in the Fourth Circuit as a district judge. How did the process differ between the D.C. Circuit and the Fourth Circuit?

JUDGE SENTELLE: The process is less different than the content of cases. There is a difference in process in that – and I guess this would come under the heading of process – there the term is set up five days Monday through Friday and the panels change every day. Here, we have four-day terms that are generally set to run Thursday, Friday, Monday, Tuesday, and the panel originally does not change during that four-day term. I say ‘originally’ because we swap with each other over the course of the year. I’ll call Judge Randolph and say, “I’ll swap you my first May day for your fifteenth so I can go to a meeting.” So it gets mixed up by that method, but it originally starts out that you expect to sit with the same panel for four days in a row.

The Fourth Circuit generally has five days, five cases a day. We have four days with four cases, two days with three cases, although sometimes more than that. That sounds like they’re getting a lot more work than we are, but that’s what I mean by the difference in the content of the cases. Where the Fourth Circuit mix is generally a fairly high mix of criminal cases, a few habeas appeals, some diversity cases, our mix tends to be very heavily to the administrative law cases that have the very thick records that take a lot more clerk and judge preparation time than does the average criminal case or diversity case.
MR. FREDERICK: Is the amount of time allotted to oral argument different in the D.C. Circuit from your experience in the Fourth Circuit?

JUDGE SENTELLE: On paper, we may allot less, but we don’t go by our allotments. Judge Spottswood Robinson used to say, “The lights only control the bar, God controls this bench.” And we may allot 30 minutes to a case, 15 to each side, and have each lawyer on his feet 30, 35, 40 minutes answering questions. The Fourth Circuit may allot a little bit more for each case on average, but they adhere more closely to the time that they’ve allotted. I’m not saying ours is better or theirs is better, it’s just different.

MR. FREDERICK: Do you recall who the first panel was that you served with?

JUDGE SENTELLE: On this court, I sat with Pat Wald and a visiting judge, I think, the first day. I’ve forgotten the name of the visiting judge. It was Ruben or Rosen and Chief Judge Wald and I.

MR. FREDERICK: Is there anything memorable about that first sitting that you recall?

JUDGE SENTELLE: Not particularly. Actually, I had sat on an en banc, I think, before that panel sitting. The en banc was memorable, I guess, in that it was something new.

MR. FREDERICK: How did the process of en banc decision making work in that first case that you sat on?

JUDGE SENTELLE: Well it had been heard once and decided by a divided panel, so everyone started out pretty much saying, “Well, look, I agree with the majority” or “I agree with the dissent” from the divided panel. As I recall, what had been the dissent before became the majority on the en banc.
MR. FREDERICK: Did a conference occur immediately after the argument?

JUDGE SENTELLE: Yes. That is the norm in this circuit, that we hear argument and then go to conference.

MR. FREDERICK: How does the deliberative process unfold in that conference? First let’s take the *en banc* that you sat on as your first case and then describe the panel process.

JUDGE SENTELLE: *En banc* begins with the newest judge voting and saying anything you want to say about the reason for your vote. I think I was very abbreviated the first times that I did it. I just said my vote and looked at the next person. Then it goes up the ladder by seniority. There are some judges, and I’m not going to go into personalities, who just can’t sit there and wait for their turn. They’ve got to jump in and argue with the judge who’s already voted and declared. The norm is that it would be voted by seniority from the newest on up.

MR. FREDERICK: So without any discussion - -

JUDGE SENTELLE: Yes, you would discuss if you chose to. When you cast your vote you could say something. That sometimes prompts a judge to discuss it with you, although I like it better when we just go through it and then have the discussion after we get through.

MR. FREDERICK: Has that process maintained the same form throughout?

JUDGE SENTELLE: Pretty much so, although I think in the *en bancs* it may be a little more orderly now than it was when I first came in. There’s less of the tendency of judges to jump place and start arguing than was once the case.
MR. FREDERICK: Have you found there to be differences in how the *en banc* work depending on the number of judges who happen to be eligible for *en banc* service?

JUDGE SENTELLE: It’s probably unsurprisingly a little more efficient when you have fewer judges. I don’t find that surprising.

MR. FREDERICK: For the panel process, with only three judges, how does that post-conference deliberative process work?

JUDGE SENTELLE: It’s much the same, although there is more discussion per vote on a three-judge conference than there would be in an *en banc*. There’s more digression because, I think, you feel like you’ve got more time so we digress a bit. It’s a little more chatty, but the process is essentially the same. The newest judge votes first and the ranking judge votes last.

MR. FREDERICK: Why is it done that way?

JUDGE SENTELLE: I suppose the idea is, or it originally was, so that there wouldn’t be the senior person influencing the junior, although I don’t know how much a connection that has to the outcomes.

MR. FREDERICK: Is it often a case that a judge will change his or her mind after hearing the discussion from other judges?

JUDGE SENTELLE: It does happen, David, and it often happens that we’re able to reach a compromise position of some sort. Very often, there’s more than two ways that a case can be decided. It may well be that we’re able to work out one of the ways other than reversing the case or affirming the district judge. There might be something in between, such as, “Let’s send this
back for further fact-finding on that first issue that would be dispositive if it were decided instead of the second one.” There may well be other ways than an absolute black and white decision. Very often, we are able to work our way to a decision that everybody can agree with. Other times, you may have two judges who strongly reach an affirmation. The third judge says, “Well, I was prepared to reverse, but I’ll wait and see your draft. And if it’s convincing, maybe I can go with you.” Very often you can.

There’s a phenomenon that happens every now and then that Bob Bork referred to once in his testimony, I think. And that is that you start to write a case sometimes and it won’t write the way you thought it was going to write. And you have to reconference – call your colleagues and say, “Look, this will never work. I’m going to send you a draft the other way around and see if you can go along with it. Otherwise I’ll be dissenting and one of you can write it.” But that happens maybe once a year that you’ll have one that just won’t work.

MR. FREDERICK: When you say reconference, you actually get the judges back together to discuss the case?

JUDGE SENTELLE: Conceivably, although fairly often it can just be done with phone calls or even a memo to say, “Look, if you’ll look at US Air v. NLRB, you’ll see that we can’t do it the way that we originally talked about doing it.” So you may not have to have another full-bodied conference. You might be
able to do it by a phone call or a memo. It doesn’t happen all that often, but it happens enough to make you believe in the system.

MR. FREDERICK: So the one conference after the argument will be the one and only opportunity, typically, that the judges will sit down as a group to discuss the case?

JUDGE SENTELLE: Usually that’s the only time all three sit down together to discuss the case. The judge who is writing will circulate the draft and then there will be comments coming back and forth after you circulate the draft. Sometimes the only comment is, “I concur. Good job.” Very often you might send three pages of comments back saying, “You need to change this, change that, omit that, I can’t go along with the other.” It takes a grinding process sometimes to get something that all three can agree on.

MR. FREDERICK: When you first came onto the D.C. Circuit, were there any judges that you found to be particularly helpful in understanding the process better or becoming more inculcated into the work of the court.

JUDGE SENTELLE: Before I even came, Ken Starr had called me and said he was going to send me some memos about things that were happening internally in the court that he thought I would benefit from knowing and I did find them beneficial. He left me a note on some things to be on the lookout for when I got up here. Ken was particularly helpful to me insofar as finding out what was going on and who was doing what. Silberman also, although he did not pre-contact me the way Ken did. Silberman was very available to me. Yes he did, he contacted me later.
They both contacted me later. Buckley had dropped me a note and was most helpful on physical things, such as making arrangements for my chambers and such. Those three stand out as being helpful. Everybody was nice, don’t misunderstand me, but those three in particular stand out as having been particularly ready to assist me in commencing a new adventure.

MR. FREDERICK: How did you find working with the administrative law cases? Was that a new experience for you?

JUDGE SENTELLE: When I was first contacted about the possibility of coming on this court, I knew this circuit did an awful lot of administrative law and that I had very little background in administrative law. I pulled the last two volumes of F.2d at that point, read all of the D.C. Circuit cases, and, frankly, came to the conclusion that, hell, it’s law and I’ve learned a lot of other kinds of law and I’ll learn this kind of law. So, yes, it’s different. And one thing is that the vernacular of each of the areas of administrative law – people think administrative law is one field, but it’s important that it’s not. It’s a myriad of fields: energy law, communications law, labor law. Within each of them, they each have their own vernacular and I heard people exchanging conversation in the FERC cases, the judges and the lawyers and the dialogues and questions about Section 7s, full needs contracts, and things that didn’t mean a thing to me. It really felt almost like I was holding court in a foreign country and I thought, “What have I done coming into this?”
Before long you begin to find yourself involved in the same exchange. You learn the language at least. To some extent, although we still at times have to say to the lawyers, “Look, if you refer to The Act, we spend our days dealing with a lot of different acts. You work on that one act all the time. Please tell us a citation to the act so that we can follow you because we’re not as familiar with it as you are.” But it was a bit daunting in that sense, in that my colleagues seemed to know so much more of the language than I did, although by now I find myself doing the same thing and I’m sure that John Roberts will, at times, have to ask, “What is a Section 7 contract in natural gas law?” or whatever is currently before us.

MR. FREDERICK: How did the opinion assignment process work when you first came onto the court?

JUDGE SENTELLE: Well, Spottswood Robinson told me, “Don’t try to drop your pencil and duck when they’re assigning the FERC cases because you’ll just meet your colleagues under the table.” The ranking judge on the panel on this court assigns a case if he’s in the majority. If that judge is in dissent, then the senior judge of the other two will make the assignment. I’m not sure that the following is literally true but, with some exceptions, I think you’ll find that FERC cases tend to wind up on the junior judge on the panel’s case list. An interesting constitutional issue tends to wind up on the senior judge’s case list. There is a certain self-interest involved and among the exceptions to that, Judge Williams, for example, likes energy, so if he were ranking, he might have a FERC case whereas it would be a junior
judge if Judge Silberman had been presiding who doesn’t care for energy law. But in general, the ranking judge makes the assignments and with many, many exceptions, the more routine ones go to the more junior judge; the more interesting to the more senior. But that’s only the mode. The curve is very broad on either end of it for various reasons. A new judge may get a very interesting case and a more senior judge may get a very dull one. I’m sure that didn’t answer your question, but it at least approached it.

MR. FREDERICK: Well, what I wondered was whether a judge could express a preference for having certain kinds of assignments and whether the process was sufficiently informal.

JUDGE SENTELLE: Yes, of course. As I said, you’re assigned the panel originally randomly, so you wouldn’t get any more of your kind of case to hear, but as far as the writing, even when I was new, we had an Indian law case. Then-Judge Ginsburg was presiding and I told her that I had a background in Indian Law and I probably stated that I’d like to have that case. Even though both judges were senior to me, I got the Indian law case. That’s why the mode is only a little bit higher than the tails. All things being equal, the newest judge might get the most routine case, but all things aren’t equal very much of the time.

You do express preferences. Judge Williams, as I said, likes energy cases. If I’m on a case that has Indian law, I like to have the Indian law case. We don’t get that many – only one every now and then. Same with tax. I’m
now senior enough that if we get a tax case and I’m on the panel, I can
take it. Where when I first came on, if Williams and I were on a panel in a
tax case, he’d wind up with it. We each have some affinity for tax law and
by now, if I’m sitting, I’ll take the tax case. We don’t get many, but I like
to have them when they do come along. There are many areas where a
particular judge has a particular preference that he or she expresses. We
try to accommodate each other.

MR. FREDERICK: Has your process for preparing for oral argument and the conference
changed during your time on the court and, if so, how?

JUDGE SENTELLE: It’s different from what I thought it would be. It’s different from the first
period, but since then it hasn’t changed a lot. What I originally thought I
would do is that I would assign the law clerk a case and say, “Go through
and draw me a bench memo that will be a road map to the file and won’t
keep me from going through the file, but will make it a lot faster for me to
have your outline first. You’re free, but not required to recommend how
you think an issue should be decided. When I get through with the review,
we’ll have a conference about the case.” I found I rarely had that
conference. I do have the law clerks do that bench memo, which means
that a case I might have to go through two or three times without it, I may
go through once. A case I might have to go through several times without
it, I may have to go through two or three times. I’m more efficient by
having the law clerks outline the brief first. But we don’t have that
conference. We’re much more likely to talk about an issue when I think
it’s time. And lots of times, the law clerk comes to me and says, “I went through that *U.S. v. Smith* file. You were right. There ain’t nothing there.” So there’s much less discussion with the law clerks and much more working with the written documents.

The other thing that’s changed is I’m simply faster in a lot of ways than I was to start with because of learning the language. FERC, in particular, but in all areas of administrative law there are jargons and vernaculars. You begin to think in those terms rather than having to stop and reconsider, “What does that sentence mean?” I find I’m faster.

MR. FREDERICK: Do you prepare questions in advance for oral argument?

JUDGE SENTELLE: That’s another thing that I guess did change. Originally I started out preparing a few questions in advance for oral argument. I don’t do that anymore. I may, and very often do, know of an area I want to question counsel about, but as far as writing out or dictating a question I’m going to ask, I just mark that I’m going to ask him about the evidentiary basis for his argument at issue one. I’m going to ask what he means by this reference to the earlier contract. So I make notes of what I want to question, but I don’t any longer write out questions. Some judges do and I think you can tell that sitting in the courtroom. Again, I’m not saying my way’s better or their way’s better, it simply works.

MR. FREDERICK: Have you prepared a written memorandum of notes about how you think the case ought to be decided before you go into conference?
JUDGE SENTELLE: Rarely. Very often I can take a page of my law clerk’s bench memo and mark it for the same purpose. More often I don’t unless it’s a complex case. I know what I want to do and I won’t bother with a memo. In a complex case, I can have two or three pages of outline on the various issues. Now we have a category of cases that are officially declared complex. They sometimes may take a day for argument. The order 500 series, we actually broke into three cases eventually and three full days of argument on the reorganization of the pipeline industry. In those cases, yes, I would have an outline of what I’m going to say in conference. In most cases I don’t.

MR. FREDERICK: How often does oral argument change your mind about how you think a case ought to be decided?

JUDGE SENTELLE: More often it crystallizes when I go in there thinking, “I probably want to send it back for further proceedings on this issue, but I’m going to explore it at oral argument.” And I find at oral argument that I’m right, I do need more to go on. But from time-to-time there is a literal change of mind, not necessarily because of what a lawyer says. Sometimes because of what one of my colleagues says. I think, again, if you sit in the courtroom you’ll find that we’re often using the lawyers as sounding boards to talk to each other. So I couldn’t give you a quantification of numbers, David, but there’s a substantial minority of cases in which my result is somehow different going out than it was coming in. Maybe not 180 degrees
different, but at least is in some way affected by the oral argument or conference process.

I remember sitting on the Fourth Circuit having a bankruptcy case where all three of us had gone in prepared to construe a statute in a particular fashion which was dispositive. A lawyer from Raleigh did a masterful job of telling us why that construction of the statute simply wouldn’t work. And we all three came out the other way. Similar thing happened here on a communications case that Judges Ginsburg and Williams and I were on where we all three were prepared to construe a statute a particular way. A very good lawyer, a D.C. lawyer, explained to us why it had to be construed a different way. And we all realized he was correct. It changed part of the outcome about 180 degrees like the bankruptcy case. That dramatic a change is not the norm, but some modification of view is.

MR. FREDERICK: Do you recall who that lawyer was?

JUDGE SENTELLE: In each instance? The one from Raleigh was a guy named Jasper Cummings. The lawyer here was from the Huber firm. Could have been Peter Huber himself or one of the others.

MR. FREDERICK: Michael Kellogg or Mark Evans?

JUDGE SENTELLE: It might have been Kellogg. It was either Kellogg or... I think it was Kellogg who actually did change our construction of the statute.

Another really dramatic instance was one time when Buckley and Edwards and I were on a banking case. We decided the case. We didn’t change at oral argument, this changed at the motion for rehearing. It was
dramatic. Even the winning side came in and asked us to change the rationale of our decision. The way we had construed that statute could have really fouled up the banking industry. Congress couldn’t possibly have intended what we thought they did. But we didn’t realize it until after we got the motion for rehearing. We did reissue the opinion and went the other way. I don’t know who the lawyer was on the banking case, but Kellogg was the firm and I believe Kellogg was the lawyer of the other case.

MR. FREDERICK: Are there judges in your time that you particularly enjoy sitting with as a panel?

JUDGE SENTELLE: Yes, for various reasons, various different panels. I understand that Harry Edwards and Larry Silberman and I were known as the panel from hell in a lot of the D.C. Appellate Bar because we were an aggressive panel and I think we’d have worn each other out if we’d sat together all the time. But the three of us liked sitting together and doing our aggressive thing together.

It seems to me that Williams and Rogers and I have very complementary styles. The three of us don’t wear each other out at all, but each of us have things that we do better than each other and that’s a very enjoyable panel to sit with.

MR. FREDERICK: Can I just stop you there and tell me what you think are those qualities that Judge Williams and Judge Rogers have that complement your style.
JUDGE SENTELLE: Rogers is very good at getting lawyers to explain things. She’s very patient with them. I have a tendency, I think, to be overaggressive and get impatient with lawyers. The Post referred to me once as a curmudgeon. I think that was their basis. I think Rogers is very good at teasing out of a lawyer the things that they don’t want to tell us. Williams has a very good contemplative method of viewing cases. Where Judge Rogers and I are very good at dealing with the details of the case, I think he’s very good at getting the big picture of the case put together. The three of us have had some very good sittings together. I’ve enjoyed all of my couplings, but that’s a couple that stand out in my mind.

Wald and I enjoyed the time before argument. Nobody else on this court except she and I and Clarence Thomas for the brief time that he was here can ever get anywhere on time. We were always early, so Pat and I spent a lot of time waiting on our colleagues before argument. And we had long discussions not just about the cases, but about grandchildren and children and the world in general. So Pat and I enjoyed the time before the argument together.

MR. FREDERICK: Were there any colleagues that you found difficult in oral argument because of the way they approached their task?

JUDGE SENTELLE: Wald’s questions were way too long and too many hypotheticals. She wore me out at oral argument, particularly en bancs. Williams and I exchanged the comment with one another in writing one day in notes up there that we could tell she trained by working for Congressional
committees. She’d have these five minute speeches that would end with, “Don’t you think so?” I didn’t find those questions helpful and I didn’t think they moved the case along very well.

MR. FREDERICK: Anybody else?

JUDGE SENTELLE: We all get irritated with each other at times, I guess, David, but nothing in particular about oral argument.

MR. FREDERICK: Now Chief Judge Wald was the chief judge when you came on the bench. What was she like as the leader of the court?

JUDGE SENTELLE: Pat is like two different people. In social conversations, she is a very social and relaxed person. As a chief judge, she was all business, very businesslike.

MR. FREDERICK: What role did the chief judge have when you came on the court?

JUDGE SENTELLE: I think the best way is to go to Harry Edwards and contrast it backward. When Harry became Chief, Harry’s agenda was making the court more efficient and seeing to the immediate needs of everybody on the court without interfering with each other. He had no other agenda, he was never pushy in the position. I think that was a change from the way things had been before. And I just as soon not go too far into why I think it was a change, but there had been times in the past when chief judges had been viewed as maybe having an agenda – trying to shape the composition of panels or committees to accomplish the goals of that chief. It doesn’t work well. Harry came in with no agendas and made the court run efficiently.
And Harry was so attuned to the technology of the late 20th century. He made us so much more efficient. The way the court functioned changed dramatically during his chiefship. Where we used to circulate a hard copy of every vote on every motion, we’ve now reached the point where we circulate no hard copy. We get it off the computer completely. All the voting is done by computer. Some judges want a hard copy of the vote delivered. I don’t unless it’s extremely long. Most of us don’t. We don’t circulate the votes by hard copy at all, it’s all done by computers. I see how my colleague voted. If she has a comment, I see that, but I see it on the computer. They don’t have all this paper passing around anymore. So Harry improved our efficiency. Harry had no agenda. Both of those things were a change from prior years.

I hope you’re treating all of this as confidential, David.

MR. FREDERICK: Oh, absolutely. Does the D.C. Circuit have motions panels that are sitting for particular periods of time to decide motions?

JUDGE SENTELLE: The motions I’m referring to on the computer tend to be those that are addressed to the whole court. Rehearing motions and other things that go to the en banc phase go to the whole court. The routine motions that come in all the time – I mean routine in the sense that they come in all the time. I don’t mean that the parties don’t think they’re necessarily important. Requests for stays, asking for appointment of counsel in the pro se cases, the motions that we get all the time. There is a panel that is assigned. We have the same process of randomness as argument panels that is
designated as the motions panel at any given time. We’ve been doing it in such a short number for so long, I’ve forgotten how many weeks it’s supposed to be but it’s approximately six or eight weeks that you sit on the motions panel. The necessary clerking of those motions is done by the staff attorneys. It generates “emergency” calls when you have somebody wanting to stay something that a district judge or a commission has ordered. So you’re supposed to be accessible when you’re on motions duty. I’m delivered a stack of motions that sometimes will be quite high that you prepare for the motions conference. That conference is held every twelve weeks. You have three conferences during the regular term. During the summer it’s broken up into smaller intervals. And everybody but the chief sits on and rotates on the motions panel. It’s time consuming only because there are so many. Most of the things the motions panel does are not individually time consuming. Most of them are not individually difficult. But each of them takes a small increment of time. You multiply it by enough motions and it adds up to be an additional burden. That’s been one of the major problems with being shorthanded. There are only seven of us doing the motions duty, where normally there would be eleven, but the chief doesn’t sit on those. But it feels like you never get off motions, but you’ve got to sit on them still.

MR. FREDERICK: Do you assign any of that work to law clerks?

JUDGE SENTELLE: Very, very little. Nearly always I just work with the staff attorneys on those. We had some matters that were classified at times when I’ve been
fortunate enough to have a clerk who had a clearance or an area of expertise. I’ve used clerks for those. Beyond that unless a clerk had some special expertise or there was a particularly burdensome matter, I have not bothered with them. Sometimes I’d like to just because it’s funny to get some of these pro se cases – they can be very amusing.

MR. FREDERICK: You mentioned tax cases as an area of particular interest and expertise. Over the time, are there other areas of law that you’ve found to be particularly interesting and enjoyable that you maybe hadn’t expected to be so.

JUDGE SENTELLE: I had some background in tax litigation. I was not a tax lawyer, but I enjoyed tax litigations and I had a background there. International law I had done almost none of before I came here and I found I liked the occasional international law case. National security law I expected to find interesting and I did. So those three areas – international law, tax law, and national security law – would be three areas that I like to work on.

MR. FREDERICK: You were assigned a panel in the North case, the case of Oliver North, only a couple of years after you had become a judge on this court. When that case was percolating, it was a big news item. Did you have a sense as you were watching the Congressional testimony or reading about it in the paper, perhaps, that this was a case that might end up being one of the first important cases that you would decide?

JUDGE SENTELLE: Yes, to some extent David. Of course, I didn’t know I would be on the panel until fairly shortly before oral arguments were heard. But I was
watching it with some interest, thinking we would have a piece of that someday. We did. We actually had bits and pieces before that. Not the same panel, precisely, but there were a couple of interlocutory appeals by North and Poindexter before the merits appeals. I sat up here all day on New Year’s Day – it was actually January 2\textsuperscript{nd} because New Year’s Day came on a Sunday and the big bowl games were on January 2\textsuperscript{nd} at that time. We reviewed classified information all day when Oliver North had an interlocutory appeal under the classified information procedure act, which says you can access classified information to see if you can use it. In each of those cases we had motions to dismiss that came up as an interlocutory appeal claiming immunity, so I really already had heard bits and pieces of the case about two or three times before I heard the merits case. Yes, I was watching it with some interest anticipating.

Now the trial you couldn’t miss. It was one of those times when this courthouse was surrounded by microwave trucks that are wasting the money of the media enterprises day after day. They’ll have two employees and a camera and a phone and a big truck sitting here all day long to get 45 seconds of film in the morning and another 45 in the evening. You couldn’t miss the trial. This courthouse was surrounded by news media for several weeks. We knew it was coming unless North was acquitted.
MR. FREDERICK: Describe the oral argument on the merits. It was a complicated case with a lot of different issues. You sat with Chief Judge Wald and Judge Silberman.

JUDGE SENTELLE: Yes, and it was about the thickest file I had had up to that time, not counting the classified material that took up most of one file drawer. There was a wheelbarrow full of classified material. The oral argument had many issues, some of which probably shouldn’t have been brought to us.

The oral argument was the best I had heard up to that time taken across the board. Barry Simon and Gerard Lynch who is a district judge now himself in the Eastern District of New York and a Columbia professor. He’d been an assistant U.S. Attorney. They were both professionals there. I knew him from the RICO scholarship. He and I had done some writing on RICO. He represented the independent counsel. Barry Simon from Williams and Connolly represented Oliver North. Brendan Sullivan had been the principal trial counsel. He sat at the table with Barry Simon. They have, on their big cases, I think they have a practice to do precisely that. Brendan is the lead counsel at trial and then they change seats and Barry becomes the lead counsel on appeal.

It was impossible to ask either Lynch or Simon a question that they did not seem to be prepared for. Everything we asked them about, they knew what their position was, they knew what the file reflected, they knew what the authority was. It was the way you wanted it to be when you came on
the court of appeals. Cases are not like that very often, but that was one
that I think first fulfilled the role of being what cases ought to be. It was
complex, it was interesting, and the counsel were highly competent and
thoroughly prepared.

MR. FREDERICK: There were amicus briefs that were also filed in that case, but they did not
participate in the argument?

JUDGE SENTELLE: They did not orally argue as I recall. We did look at amicus briefs and the
one that stands out in my mind as being very good was the ACLU brief on
behalf of North. They did their usual very good job.

MR. FREDERICK: Can you describe the post-argument conference.

JUDGE SENTELLE: Extended. We met for a very long time. There were two other cases to be
argued that day, as I recall, and I was not on the other cases. So I think
that Pat and Larry went and heard the other cases. I had been on all three,
but Judge Edwards wanted to swap out a day and he was recused on
North. I wouldn’t have swapped out of North anyway, so I wound up
keeping North and I think Judge Edwards had the other two. Anyhow, I
think they went and heard the other two cases and then we conferenced
afterwards as I recall. We conferenced for quite a long time. We broke
and ate and conferenced some more. We were able to agree unanimously
on some issues. On others, Larry and I were the majority. On I think just
one issue, Judge Wald and I were the majority and Judge Silberman
concurred on a different matter. I wound up writing the bulk of the
opinion because I was the only one in the majority on everything in it.

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The Kastigar section, which was the most interesting and most difficult, was the one that got the most attention, but all those other issues had to be dealt with in some fashion.

MR. FREDERICK: Why did it come out as a per curiam rather than under your name?

JUDGE SENTELLE: We decided in advance that we were going to treat it as a per curiam so that no one person would be taking all the heat or all the credit for what was going to take a great deal of effort on the part of all three of us. I wound up having to make much less revision in the bulk of the opinion than I thought I might have to. We thought in advance that this would be one of those that we’d go back and forth on a lot of times. So when we first sat down, I think Silberman or somebody proposed, “Let’s decide in advance per curiam and then we’ll decide the issues one-by-one and not worry about who’s doing what.” But, as I say, because of the way the majorities fell out, I wound up having the bulk of it. But there are parts of it that are written by Silberman and, I think, one part of it was written by Wald. So we felt in advance that it would be good to per curiam it.

MR. FREDERICK: Well it’s one of those negative pregnants that’s fairly obvious when a separate opinion is written by Judge Wald and a separate opinion is written by Judge Silberman and...

JUDGE SENTELLE: And guess who wrote most of the majority opinion?

MR. FREDERICK: That’s right. So as the principle author, you would take pieces that were done by the other judges and switch them with the mass of what you had done?
JUDGE SENTELLE: Yes. And things went back and forth several times. We tried to get it as unanimous as we could. And yet if you read the separate opinions, you will find there was a lot of heat generated on that. Not as much as would have been in the drafts of the opinion, even what finally went into the published opinion had heat.

MR. FREDERICK: Did that heat linger on the court?

JUDGE SENTELLE: For a while, David. I think you’ll find that Larry and Pat are very good friends. They have a long history and Judge Wald came and spoke at Larry’s retirement. So they made their peace some time ago. Larry also spoke at Pat’s retirement.

MR. FREDERICK: The North opinion, I think, is regarded as transformative in the way Congress does its investigations, particularly when there are pending criminal charges. Did you expect that consequence as you were working on it?

JUDGE SENTELLE: Yes, we did. Laurence Walsh had warned Congress. That sort of got overlooked by most of the media. He warned Congress that precisely this could happen if they went ahead and forced North to testify. And it was documented and we quoted in the opinion that he had said himself that he didn’t think he’d be able to do what he did here. So we thought that the next independent counsel or the Congressional counsel would say, “We’re running the risk here of killing the prosecution and here is the proof that Laurence Walsh was correct. What he feared in North is precisely what
happened.” So, yes, it was on our minds that we may have been informing future Congresses on how to do investigative work.

**MR. FREDERICK:** During the course of the discussions, was there a sense of the fact that the jury had found *North* guilty on these charges and that the Kastigar issue was something of a technicality with respect to the finding of guilt or innocence on several of the charges?

**JUDGE SENTELLE:** There actually, as I recall, were only three guilty verdicts. There’s an old half-flippant but really serious statement saying “a technicality is something that causes the other guy to win my case.” It’s not just a technicality, it’s Fifth Amendment protection and if it causes the release of somebody who otherwise would have been convicted, that’s what happens under exclusionary remedies. And the fact that this was high profile shouldn’t make a difference.

**MR. FREDERICK:** After *North* came *Poindexter*. What role did you have, if any, in the other cases that were coming along as part of that?

**JUDGE SENTELLE:** I happen to have been on the *Poindexter* merits panel. I did not write it. Judge Ginsburg wrote the majority and Abner Mikva dissented in part. There were references to the *North* case. It was not precisely on point, but there were references to it both in the oral argument and in the brief. I believe Andy – I cannot think of the man’s name who argued for the independent counsel, but he’s a former deputy counsel –

**MR. FREDERICK:** Frye?
JUDGE SENTELLE: Andy Frye argued that, if I recall. And I could see the attorney – Dick Janus argued for Poindexter. It was well done. It was not the dramatic case that the *North* case had been. There was a ground that I thought was overlooked by both lawyers and I hate to blank up, but I can’t remember precisely what it was. I questioned Frye on something and he said, “That’s not in the brief,” and I said, “No, but it’s sufficiently suggested that I don’t think I’m blindsiding to ask you this” and then somebody told me that they heard him on the elevator on the way down saying, “Judge Sentelle was right. I don’t know why they didn’t argue that for the other side.” Whatever it was, we decided the case without using it, I know.

Andy apparently had anticipated it, but Janus had overlooked whatever my point was on that. Every now and then you get elevator feedback later when some law clerk has heard comments in the hallway after a case is over.

MR. FREDERICK: Always wise for a counsel to keep quiet until well outside the courtroom.

JUDGE SENTELLE: Until well outside the building.

MR. FREDERICK: Now after the *North* case, I would have thought that would have been a kind of crucible in terms of your experience on the court. That after that you would have felt a much more integral part of the court. Is that fair to say?

JUDGE SENTELLE: Not entirely as a result of that case. That year was a crucible year. The same year I had referred a lot to the *order 500 series* complex case from FERC, which was the reorganization of the whole natural gas pipeline
industry. Judges Williams, Ginsburg, and I were drawn for that one. We realized right off you couldn’t do it in one case. We broke it into three and we treated it as three each complex cases. One law clerk spent most of his year working on *North* and the order 500 *Series*. Each of us wrote one of the three opinions that resulted from that case. We broke the issues into three, one day’s worth each. So that total immersion in administrative law and the high profile constitutional case of *North*, I guess I came out much more a part of this court than I had gone into that year. And it was generally early in my career, so it was a good time to get it over with.

MR. FREDERICK: Not long thereafter, the ‘92 presidential election occurs, so why don’t we break the tape here because we are going to run out of tape in just a couple of minutes.

MR. FREDERICK: So the ‘92 presidential election occurs. Not long thereafter, allegations of wrongdoing arise about then-governor Clinton’s transactions in Arkansas under the general title of Whitewater. And I believe it was ‘93 or ‘94 that the Chief Justice asked you to preside over the special division that handled the independent counsel appointments. Do you know how you came to be the Chief Justice’s pick for that?

JUDGE SENTELLE: Yes. Although the Chief Justice and I are good friends now, we did not know each other well at all at that time. George MacKinnon had been the presiding judge for I think three two-year terms prior to that. George was getting up there, was already quite old, was in poor health, and he told the Chief Justice he simply could not do it. The Chief asked George who he
would recommend for the job. He said that temperamentally either I or Ray Randolph would be good for it and then he said that my experience was so intensive in the relevant areas of the law that I was the logical choice. George told me all of this himself. As a matter of fact, Randolph and I were the only judges on the short list who had extensive experience in white collar crime, which is the area of law that you’re essentially working in as an independent counsel.

I was then, and remain now, the head of the only white collar crime American Inn of Court in the United States. I’m a charter member and the second president and continue to be. I’ve presented in the white collar crime committee of the ABA’s criminal law section. I’ve made much of my living in it. I had run investigations for city governments that were on a local scale similar to what independent counsels do for the national government. I had investigated police corruption for the City of Charlotte. As an assistant U.S. Attorney, I did a lot of investigative supervision. That position involves a lot of trial law. I was one of only two trial judges on the court, so I simply was the most logical judge to take the role. The statute requires that the Chief give priority to senior judges. The only senior judge we had was MacKinnon and MacKinnon was telling the Chief he couldn’t do it anymore. So with MacKinnon’s recommendation and my background, it was logical that I was the choice to be presiding judge. It has to come off of this court. It has to be a D.C. Circuit judge.
and nobody else fit the role really at all except for Randolph and he had much less experience than I did. And he’d never been a trial judge.

MR. FREDERICK: Did the Chief interview you before making that selection?

JUDGE SENTELLE: No. The Chief made a phone call.

MR. FREDERICK: Who else did you serve with at that time of your appointment?

JUDGE SENTELLE: Originally, Joe Sneed from the Ninth Circuit and John Butzner from the Fourth Circuit. John had been on the court previously on the special division for two or three terms. He was our institutional memory. McKinnon was a great deal of help to me. I had the benefit of his papers as well as his counsel and my colleagues knew they could call on McKinnon anytime they needed to. But my colleagues originally were Sneed and Butzner. Sneed served only one term because he had some bad health.

MR. FREDERICK: As presiding judge, you would serve for a two-year term as well or at the pleasure of the Chief Justice.

JUDGE SENTELLE: Two-year term subject to reappointment. I’ve been reappointed each time since.

MR. FREDERICK: Not long after you were appointed, an investigation began of President Clinton led by Robert Fiske. And this was during a period in which the independent counsel statute had lapsed. Fiske completed his investigation and the independent counsel statute was reenacted. And a question arose of what to do about this Whitewater matter. What do you recall about
how the Whitewater matter came to you as the presiding judge in that period? This would be the summer of ‘94, I recall.

JUDGE SENTELLE: I got the word that it was going to be sent to us while I was in Austin, Texas, visiting my daughter out there. I called Will Garwood on the Fifth Circuit whose chambers are in Austin and whom I’d never met before. I told him who I was and that I needed a government phone and access to a library and fax machine. I went over there and they forwarded to me the necessary papers to see what was being assigned to us. I called my colleagues and we conferred by phone on what to do next. That’s how it unfolded.

MR. FREDERICK: These papers came from whom?

JUDGE SENTELLE: The attorney general sends what she is assigning to the independent counsel.

MR. FREDERICK: So this was done by paper? Did you have a phone conversation with Janet Reno?

JUDGE SENTELLE: No, interestingly all the other attorneys general with whom we have dealt during my tenure have dealt with us very much personally and by phone. Reno dealt through subordinates and on paper. She never communicated directly with me at all. Although I tried at times to communicate with her, she was never engaged in the process at all. It was always subordinates. Sometimes as high as the deputy, but usually further down than that.

MR. FREDERICK: Do you recall who you dealt with?
JUDGE SENTELLE: No, I don’t. I believe it was somebody in the public integrity section. Whoever was the Deputy Assistant Attorney General in charge of that division.

MR. FREDERICK: What was the nature of that referral? Publicly it was said that she had asked for Robert Fiske to be appointed as the special counsel.

JUDGE SENTELLE: That was actually, as I recall, in a separate piece of paper there was the suggestion of appointing Fiske. We didn’t feel like we could do that, although it would have been legal. See people in general don’t seem to understand what the term ‘independent’ means in independent counsel. I was criticized once for saying precisely what it really means, and that is not independent from the whole system, it’s independent from the Department of Justice. Because Fiske had worked on this as a person appointed by the Department of Justice, we didn’t see how he could fill the need of having somebody independent of the administration. So because he had served in the administration, we didn’t think he could be the independent counsel. It was nothing against Fiske personally. We simply thought that there was a conflict between his having served in that administration as a special prosecutor or regulatory counsel, they call them, but how could he be independent? We never really considered it. She did send a note asking for it or suggesting that he be appointed, but we didn’t think it was consistent with what we saw as the meaning of the statute.
MR. FREDERICK: So from the very initiation of the referral, the special division had come to the conclusion that it was going to have to find somebody else. How did that process unfold?

JUDGE SENTELLE: The same way it had under McKinnon’s stewardship. He had left us with a talent book that he and Judge Butzner and their colleagues had compiled of people who had been suggested for independent counsels in the past who they thought had necessary resumes. We added names of our own of people whom we either knew or had been suggested to us who had governmental experience, investigative experience, high integrity, high visibility. We went through it and culled those who, for various reasons we thought would not be the right person – people who had worked for the administration, people who had conflicts of various sorts. We took them out and got it down to a fairly short list.

I then contacted each of the people on that list and I could not now tell you how many. We’ve been through too many appointments to remember each one. We narrowed it down to about four people finally. Sneed by that time was having health problems and couldn’t travel. So we conferred with Sneed by conference call. Butzner and I would be together in one place and we talked with Sneed by conference call. We came down to, I think, four names.

MR. FREDERICK: Who was on that short list?

JUDGE SENTELLE: You know I don’t know now who the others were besides Ken Starr. I think Earl Silbert may have been one of them, but I’m not sure. I know
Earl was on the short list for one of the cases and I think it may have been that one.

MR. FREDERICK: Was Starr in the talent book or was he one of the names you added?

JUDGE SENTELLE: We added him, principally because he had so recently been unanimously chosen by the Senate to do the investigation of one of their own members – Packwood, I guess it was. We thought, naively as it turned out, that this would be somebody we could appoint who would have the unanimous support of the political system. He tracked so closely the qualities of the original special counsel investigating Nixon, Archibald Cox. Starr was the near-picture of him. He was the Solicitor General in the immediate prior administration, he had been a man who had done a lot of public things with unanimous public acclaim, so we thought we have here Archibald Cox and nobody’s going to criticize this man as not being an ideal independent counsel choice. Before the sun set, you had Carville out making these scurrilous, name-calling accusations that are his measure. We realized that we had been naive. We thought we had the ideal person, but the fact is nobody would have been able to function with a Carville-type attack machine.

MR. FREDERICK: Well I think there had been also a brief that Starr had written in the Paula Jones litigation. Had you been made aware of that in the special division?

JUDGE SENTELLE: Yes, that’s part of what they used against him. I do not now know if I was aware. I’m not trying to evade the question, but it’s been nine years now or ten and I just don’t remember.
MR. FREDERICK: I have to ask about the famous lunch you had with Senators Faircloth and Helms. It was right about the time that the special division was deciding who should be appointed the independent counsel. Tell me about that lunch.

JUDGE SENTELLE: I eat from time to time with Helms and/or Faircloth. They were both old friends of mine. I’ve known Jesse since before 1972. I met him here when I was a student at Chapel Hill, between ‘61 and ‘65. I came to know him well from ‘72 forward. We were good friends and we lunched together from time to time. Faircloth I actually had represented on some matters in Charlotte when I was practicing law there. I met him when I was representing contractors when he was hiring contractors and he was Secretary of Transportation for North Carolina. So, again, he was an old friend.

Faircloth and I had planned this lunch. He got called to the floor to vote, he ran into Jesse, and asked him to join us. We had a good old time reminiscing. The Washington Post picked up on us having had the lunch shortly before the appointment and started this ridiculous notion that a conspiracy met in public in the Senate dining rooms to conspire against the poor, pitiful Clinton. I’ve been charged with a lot of things, but that’s the most absurd accusation and it remains so. The Post has been so dug in about it. In response to the letter they sent me, I wrote back a response and said something like, “it’s possible that somebody mentioned the
independent counsel. I don’t recall, but I know there was no extended
conversation about it and I would not have had one.”

I later was asked under oath when they were considering reauthorization
of the statute before the Senate Government Affairs Committee if there
had been any discussion and I said, “I can tell you there was no discussion
of it. It’s possible somebody mentioned it, but I don’t recall.” The Post
literally took half of one sentence and the other half of the other sentence
and printed it as if I was saying something inconsistent between the two
occasions. And if you ran the two sentences together, they were virtually
the same but just built backwards. I will say I said some nasty things
about the Post the same day of my testimony. Maybe that pissed them off.

In any event, believe me, David, if I were ever going to hold a conspiracy
to pick on poor, pitiful Clinton, it would not meet in the Senate dining
room. And I said that under oath, too. That got picked up as the quote of
the week on some Internet site that has quotes of the week. I said, “There
is no vast right-wing conspiracy and if there was one it wouldn’t meet in
the Senate dining room.”

But I believe that a fellow named Richard Brown was responsible for
getting that word to the Post. He was a North Carolina politician who
came to my mind recently in a different context, but he’s the only person I
can think of that would have known the three of us and would have had
reason to have gone to the media to try and scathe us. He’d been a
Democratic politician in North Carolina. The reason I thought of him
particularly this week was that when the Republican Chairman in Virginia resigned after pleading guilty to a misdemeanor over electronic eavesdropping on Democrats, Richard had done the same thing in North Carolina the other way around. He had resigned from his Democratic Party post after he pleaded guilty for a misdemeanor for eavesdropping on Republicans.

MR. FREDERICK: Did you see him that day?

JUDGE SENTELLE: Yes, we saw him and talked with him a little while. My thought is that he probably mentioned it to somebody at the Post, but I don’t know that he was the source. We saw many people. In fact, there were other people at the table at times. Chuck Grassley sat down with us for a while, Chris Dodd was with us for a while. It was not the sort of group you would conspire with. Kay Bailey Hutchinson walked over with Lauch and I before we met up with Jesse. And it’s not easy to say exactly who was with us at different times because we did lunch from time-to-time. I’m not certain who we talked to that day and who we talked to other days. There was no reason for it to stick in my mind until it became a matter of attacking me.

MR. FREDERICK: How did that affect your relationship with either Senator?

JUDGE SENTELLE: Well a few months later Jesse called and said, “Let’s you and me and Lauch have lunch at the same table.” And we called that the “in your face” lunch. Chris Dodd came back and congratulated us for getting back together again. He thought “in your face” for the media was a good thing.
They remain good friends today. I haven’t talked to Lauch in several months, but I had lunch with Jesse when I was back in North Carolina a few weeks ago for the first time in quite a long time. Jesse and I had planned to have lunch, as it turned out, on the day of September 11. I had not come in that morning, but I was going to bring my daughter and granddaughter in to have the baby’s picture made with the Senator. So I was not downtown during the September 11 tragedies. We rescheduled that lunch a number of times and each time something came up related to national security or foreign relations. We never got to lunch, so I called when I was going down to North Carolina recently and we had lunch. The years are telling, but he’s still a good friend. Lauch and I had dinner within the last year when he was in town for something. They remain good friends.

MR. FREDERICK: When Starr was in the course of his investigation, you used the word “naive”, I think, to say that you didn’t expect what would end up happening in terms of the reaction to happen. If you had it to do all over again, would you pick somebody other than Ken Starr?

JUDGE SENTELLE: If I would, it would be only because I’m sorry about what it did to Ken. It might have been better to have an older man who had fewer years to live with the attacks because I’m fairly satisfied that James Carville and the rest of his attack machine would have gone after whoever we appointed in the same vicious and underhanded way. I have no regrets as far as anything about Ken’s being suited for the job. I have some regret that he
had to go through what he went through. I have said, only half-jokingly, that I suspect Alice Starr has my picture up on a dartboard somewhere where she can throw darts at it every day. She denies it. She says we’re still friends, but we certainly made Ken have to go through hell unnecessarily.

MR. FREDERICK: Now you had a friendship with Ken Starr before the appointment? Were you able to maintain that after the appointment?

JUDGE SENTELLE: Yes, Ken and I are still friends. I reviewed his book, in fact, for American Spectator. His book on the Supreme Court. I did a very favorable book review. Ken and I see each other still from time-to-time. We belong to a prayer group that Ken rarely attends, but he does still come from time-to-time. It’s a judge’s prayer breakfast that is composed entirely of judges and former judges. Ken remains a member even though he’s not been a judge for some time.

MR. FREDERICK: Did you see him socially after he was the independent counsel?

JUDGE SENTELLE: I saw him occasionally at the prayer breakfast and then I would run into him lots of other places. Washington is not a big city. It’s a whole lot of small towns and he and I function in the same small town – the bar, the bench, the same establishments.

MR. FREDERICK: Has the experience with the appointment of Starr affected the consideration that you have given to appointments of other independent counsels?
JUDGE SENTELLE: I think inevitably. I’d have a hard time trying to be specific, David, but I think inevitably. We have asked each one since then, “Now you know what Starr went through. Are you prepared for the same kind of attack?” They all think they are and then it happens and they’re not.

MR. FREDERICK: What is your assessment of how workable the independent counsel system is?

JUDGE SENTELLE: Frankly, I never thought it was a good idea. I think everything Scalia said about it in his dissent on the *Morrison* case was right. If you go back and read that dissent, I think you’ll have an accurate prophecy that is dead on. I also think there are constitutional problems with an executive establishment that’s not within the executive branch of government. So I think it’s unconstitutional. But a higher authority said by seven to one with one not sitting that it was constitutional and I’m bound by the higher authority.

MR. FREDERICK: What system would be better for investigating allegations of wrongdoing against the president?

JUDGE SENTELLE: The ones that worked best ever were done without an independent counsel. Watergate itself, Archibald Cox with Jaworski succeeding him, that was not under the independent counsel statute. The Teapot Dome investigation was not under the statute. Congress is fully capable of bringing pressure on the executive to name a regulatory or administratively appointed special prosecutor to do the job in conjunction with Congressional investigations. It worked in Watergate, it worked in...
Teapot Dome. There have been other times it didn’t work, I’m sure. But it’s more likely to work than the independent counsel is.

MR. FREDERICK: I guess some would argue that it worked with Fiske before he completed his investigation.

JUDGE SENTELLE: All he completed, though, was the Foster suicide investigation and it might well have been that it would have worked fine if Fiske had been permitted to continue as a regulatory independent counsel. We just didn’t think, consistent with the statute, that he could continue. That’s nothing against him. I think Fiske had the reputation of being one of the finest U.S. Attorneys in the finest office in the country and I’m sure he did a good job on Foster. I read his report, I read Ken’s report, and, all the paranoids out there to the contrary notwithstanding, they both came to the same conclusion, I think correctly, that Foster sat down on that hill and killed himself.

MR. FREDERICK: Have there been other independent counsel investigations that have stood out in your mind as being particularly excellent or particularly problematic in the way they were executed?

JUDGE SENTELLE: Before I came in, there was one that Jake Stein did of Meese that I thought was awfully good. I read the report that he had prepared and reviewed it. I reviewed all the files that McKinnon had and I thought Jake’s was very efficient, very much to the point. His report was free of a lot of extraneous gossip as it were. Similarly, Ralph Lancaster did one for us on
one of the Clinton cabinet members that I thought was very clean, neat, efficient work.

There’s one that stayed under seal for a long time and finally leaked. It was one that Curt von Kann did of Eli Segal, the head of the AmeriCorps, where he came back very quickly and said, “This man should not be prosecuted for anything.” And we thought he did a very thorough job in a very short time. He gave us a very accurate report.

The reporting requirement is one of the reasons why the independent counsel statute is so problematic. Historically and traditionally, American and British prosecutors don’t do reports. If they don’t get indictments, they don’t get pieces of paper. It’s better that way. After a full investigation, you wind up too often having to publish truthful but derogatory non-criminal material about the investigation that should have stayed in the grand jury. I thought Lancaster, Stein, and von Kann all did a very good job of not cluttering up reporting more than they had to.

MR. FREDERICK: Any independent counsels that you think will not fare well in the view of history for how they performed their responsibility?

JUDGE SENTELLE: I think most of them history will pay a lot less attention to them than we think they are. The only ones that are going to be remembered are going to be Ken Starr and Cox-Jaworski, who was not under the statute at the time. The events that we think are important may be very, very important, but they are not going to go down as important in history.
MR. FREDERICK: Now once the appointment has been made, just as a matter of process, what role do you have in monitoring or having communications with the independent counsel during the course of that investigation?

JUDGE SENTELLE: Our busy times are at the beginning and the end, after it’s over with. In the middle, we have fairly little. We would occasionally have a request either from the attorney general or from the independent counsel himself for an expansion of jurisdiction. McKinnon’s court at one time had been asked for a clarification of jurisdiction, which they issued. The Supreme Court in dicta said that was an advisory opinion that shouldn’t have been done. You don’t know that, maybe, by reading Morrison, but that’s what they meant by a stray sentence in dicta in there. But we would from time-to-time get those motions for expansion of jurisdiction.

There would be other motions of a smaller nature occasionally, but most of our work came at the beginning and the end. The appointment of independent counsel was a time-consuming process. Then at the end when the report comes in, we reviewed the report before it was released and were responsible for seeing that everybody named in it had a chance to comment. The statute provides for comment by the people who are named in it, so we would use the court staff and my own staff would contact everybody whose name was in it and give them the chance to file comments. That way we would make sure that their comments reached the independent counsel and were either acted upon positively or were published along with the report. Occasionally somebody would have a
comment and the independent counsel would say, “Yes, that’s right, we’ll change that part of it.” Usually it’s something that’s said and is published in an appendix.

Then following that we have all of the attorney fee applications for the people who were investigated but not indicted. The vast majority of those were turned down, although some of them got allowed fees. In between, it’s just a few motions matters.

MR. FREDERICK: Now the process of having people comment on the reports must be very difficult. Sometimes these reports are quite long. Do those people come here to the courthouse and review them in camera?

JUDGE SENTELLE: They are given in camera access to the parts of the reports in which they are named and they have a right then to comment. They are provided with a copy usually, if necessary. Now if somebody is pervasively named, they are given access, along with their counsel, to the whole report. The Clintons had full access to the whole Starr report. Reagan and Oliver North both had full access. They needed it to respond.

MR. FREDERICK: Now as presiding judge of the special division, do you get any special dispensation on your other case work or is this just an extracurricular activity on top of everything else?

JUDGE SENTELLE: It’s on top of everything else. There is, in fact, a sentence in the statute that says “this duty is not to interfere with any other duties.” And we’ve pretty well lived with that. Therefore, because I do per curiam opinions on counsel fees and such, when we have our internal report every year of
how many opinions each judge has done over the past year, I’ve had more opinions than everybody else for the past several years, ever since I’ve been on the independent counsel division. That’s why it would be good if a senior judge had the duty, but it’s too late now to change it to somebody else for this winding up period that we have. I would like for it to be able to be given to Steve Williams, but the learning curve is not necessary now. It’s over if the Chief wants it to be. Every two years, he has that choice to make all over again.

MR. FREDERICK: I’d like to turn to some of the favorite cases that you have authored. If you could tell me what stand out. You have written hundreds of opinions now as a judge. Were there any in particular that stand out and why?

JUDGE SENTELLE: *Yellow Bus* was an *en banc* on RICO that I wrote. The Supreme Court later adopted nearly my language. They took out one adjective in describing what was necessary for the RICO portion. There’s another RICO case, the name of which is escaping me, where I wrote an extended outline of the elements of RICO and why that case didn’t meet it. Those were a couple I really enjoyed because I had done some writing on RICO and it gave me a chance to put that knowledge to work in an official Article III capacity and get something in the *Campbell Law Review* of the North Carolina Bar seminar. I also had written a paper on RICO for CATO called, *RICO: The Monster That Ate Jurisprudence*, a portion of which was reprinted in a criminal law casebook. So I was glad to get a chance to use my RICO knowledge.
I wrote up a case a couple of years ago, the *Cobell* case, which was an appeal from Judge Lamberth’s opinion of the Indian Trust case that I also thoroughly enjoyed where we got to deal with the Indian law canon construction. That, I believe, and I’ve now written three times for this court, trumps the deference under *Chevron* that the statutes passed for the benefit of Native American tribes are to be construed liberally with a view to the welfare of the tribe. That trumps the deference you normally would accord to an agency. That’s a couple. There are number of others, but that’s a couple that I enjoyed.

MR. FREDERICK: That principle is unique as to administrative agencies, isn’t it? I’m not aware of other areas where the *Chevron* principle gets trumped by some other --

JUDGE SENTELLE: The only other trumping, and I wrote one on a labor case not long ago that involved this, if the interpretation followed by the agency creates a constitutional problem that could be avoided by another interpretation, then that preference for avoidance of constitutional litigation can trump the deference normally accorded to the agency. The later case involved to what extent the employees of a religious institution were exempt from some labor law principles. The agency, the labor board, had, we thought, construed the statute in such a fashion as to unnecessarily raise constitutional problems. That’s one of the cases where we’ve held that the principle of constitutional avoidance will trump *Chevron*. That’s the only two areas I know of in which there’s something trumping the deference.
Chevron’s no longer necessarily the defining case, but we still call it that.

We’ve got Harris County and Mead.
MR. FREDERICK: Good morning, Judge Sentelle. It’s November 6, 2003 and we’re continuing with your oral history.

JUDGE SENTELLE: Good afternoon, David.

MR. FREDERICK: I wanted to take up where we left off last time, which was to talk about some of the opinions you have written that stand out in your mind. And I wanted to start, if we could, with the Save Our Cumberland Mountain opinion, which was one of the first that you wrote here on the D.C. Circuit. Do you recall how you got assigned the majority opinion in that case?

JUDGE SENTELLE: It was the first en banc that I was assigned. I think, probably, the assignment came in part because the alignment was not necessarily what people would have expected. The dissenters were judges viewed as conservative appointees and because I was a new conservative appointee to the court, I suppose that was in part putting some buffer around the opinion by having a new conservative appointee handle it. I’m psychoanalyzing her [Chief Judge Patricia Wald] a little bit, but there had been three separate
opinions on the panel opinion. Bork was no longer participating. He was one of the three and Pat had written each one separately so there was no natural heir to write the opinion where there usually is in an *en banc*. I suppose, much like the Supreme Court often, you’ll put the least-expected Justice to be the one who writes the majority opinion. I think Pat Wald may have been thinking along those terms.

MR. FREDERICK: Well it was an interesting case and I detected from reading your opinion that perhaps some of your private practice experience had shone through in the opinion. Am I reading too much?

JUDGE SENTELLE: I don’t think there’s any question. It concerned, as you’re aware, attorney fees and rates of remuneration for attorneys in a fee-shifting case. Some of my colleagues have never had any practical exposure to the questions involved in that at all. No denigration of them, but they had spent their careers in the academy and in government service and don’t know what it really is like to make a living from the fees that your clients pay you for your work. I had a lot of experience in that so, yes, I think that won over.

MR. FREDERICK: Had you been, in private practice, involved in a lot of cases where there were fee-shifting statutes?

JUDGE SENTELLE: Not a lot, but some. More often, as it happens, I had been on the side representing the client who was going to have to pay
somebody else. I did defense for the City of Charlotte. I was their secondary counsel for police brutality cases and those matters on which they were self-insured. In any event, where we were paying a judgment, we were also paying counsel fees on those. I had been in other circumstances, but that was one recurrent element in representing the City of Charlotte on those cases.

MR. FREDERICK: Were you surprised when Judges Starr, Silberman, and Buckley ended up on the opposite side in that case?

JUDGE SENTELLE: No more than mildly surprised. I was perhaps a little surprised when Ginsburg came with me on it, but I guess Ginsburg was more open to that perspective than I might have expected. Those judges who were viewed as more political judges did not get those other three. Silberman maybe a little because Silberman had been a private practitioner. Of course, Starr had to some extent been a private practitioner, but he had not made his living as one, so he wasn’t much of a surprise.

MR. FREDERICK: Judge Starr certainly has had more private practice experience now. It would be interesting to see how his views might have changed. An interesting evolution.

JUDGE SENTELLE: I would say one of the district judges who has spent his life as a government lawyer jumped on me about that opinion. He was a little bit edgy with me.
MR. FREDERICK: Who was it and what did he say?

JUDGE SENTELLE: It was my very good friend, Royce Lamberth, and he said he had been over talking with Ken Starr telling him how right he was on his dissent.

MR. FREDERICK: Does that happen very often?

JUDGE SENTELLE: No, Royce and I are very good friends and I’m much more likely to have that kind of conversation with a district judge I know well.

MR. FREDERICK: Tell me about the DKT Memorial Fund case. That was an obviously controversial case involving abortion-related restrictions.

JUDGE SENTELLE: It wound up amounting to a whole lot less than we might have thought at the time because the next administration that came in did not renew the Mexico City policy. As I recall it, the Reagan administration had declared in the Mexico City policy that the United States would not fund any foreign non-governmental organization in the performance of abortions or birth control. The action was brought challenging that this was unconstitutional. I wrote an opinion that it ultimately wasn’t when we went through the range of arguments that the plaintiffs had made to protect who had the power to challenge that kind of organization funding scheme.

MR. FREDERICK: Did that case, in your view, give rise to any sense of special principles of law that resonated with your judicial philosophy?

JUDGE SENTELLE: That the government is not obligated to subsidize on the same basis by which it might otherwise be restricted. Whatever the person’s
view of regulation of abortion, and there is certainly a strong
difference today, the government doesn’t have to subsidize every
single constitutionally protected activity. And that can be
viewpoint-related – that was the only thing I talked about was the
actual issues involved in protecting that government option. I didn’t
think the separate opinion of my colleagues did very much with that
aspect of the problem.

MR. FREDERICK: This is now-Justice Ginsburg? I noted that she kind of reflected her
very polite style of dissent and it caused me to wonder what kind of
reflections you had on having her as a colleague.

JUDGE SENTELLE: I think her style of dissent is the right style. I’m not sure that I can
claim that I have always been successful in adhering to it, but I think
she has the right idea that a dissenter should write an opinion that
should stand on its own merit, not an attack on the jurists’ position.
Not all justices or judges go that route. I tried to do like Ginsburg,
because she typically strikes the right tone. Ruth and I were very good
friends and I’m told – I never saw this study – but I’m told that one
year the New York Times did a study that showed, this was during her
confirmation to the Supreme Court, an index of cohesiveness as to
whom she voted with most often on divided decisions. And to the
astonishment of whoever was doing it, I was the one with whom she
was most often paired on divided decisions. And my samples were
smaller than some colleagues in those days. I served for only a few
years with her. But, in divided benches, she and I were a more likely pair than she and anyone else.

MR. FREDERICK: What do you account for that?

JUDGE SENTELLE: I think that both of us are a lot less ideological than a lot of people give us credit for in our action on the court. We both try to follow the law and limit our opinions. And if your opinion is narrow, it is much more likely to be on a principle of law than on a principle of philosophy or ideology. But on our attempts to limit our opinions, I would say this: I’m not saying she does the same thing on the Supreme Court and I don’t think the role is the same. I’m not being critical to say that I think she is more ideological there than she was here. Because they’re taking a different approach, they have different goals than we do. But when she was here I thought she did an excellent job of following the law. I tried to do the same thing. So that’s why we likely compared together. Sometimes the dissenter might be Pat Wald, sometimes it might be Larry Silberman.

MR. FREDERICK: Did you have many interactions with her outside cases?

JUDGE SENTELLE: Yes, we’ve joked a lot of times about me dating her when I first got up here. There was a time in my life when my wife had not moved up here yet. Marty was in the hospital and she had tickets for a one-woman show called, “The Search for Intelligent Life in the Universe,” that she and I attended together at the Kennedy Center.
Neither of us had anybody else to use the tickets. And I’ve eaten at the home of Ruth and Marty. Marty is a very good friend as well. He’s a delightful person and they are an interesting couple. He’s as gregarious and outgoing as she is reserved and diffident and they fill each other’s needs, apparently, very, very well. They are one of those couples who are obviously very much in love and very much need each other after forty some-odd years of married life. They’ve been to our home and we’ve been to theirs. I haven’t seen them in the last year or so when she was here for an event. Just before her confirmation hearings – this is not going to be released for some time – she called me before the hearing and said that she had heard that Jesse Helms was going to filibuster her nomination. And I’d spoken with Jesse. I told her I didn’t think he ever meant to filibuster her nomination, but I called and told her that I understood why he could not vote for her confirmation. And I’m not even sure I would have had I been there, but I thought it was in the best interest of the Court and the public that there be no filibuster of a Supreme Court nominee. He agreed with me. I don’t know that he ever was going to filibuster. I called her back and told her all of that. During the confirmation hearing, she was having a colloquy with one of the Dakota senators. Somebody asked her some questions about Indian law and, just as an aside, I sent her down my article on Cherokee Indian jurisdiction. I said if I’d known she was going to have that
subject come up, I’d have given it to her before. She mentioned it in
the next day’s hearings.

MR. FREDERICK: I’d like to just depart on the subject of filibusters because your court
– and we’re kind of getting ahead of the story in a sense – because
the topic has come up with the filibuster of Miguel Estrada’s
nomination. What are your views about that tactic by the Senate as
part of its advice and consent function?

JUDGE SENTELLE: I have the same reaction now on a lower scale than the lower court,
but similar to what I had when there was the rumor – I think false
rumor – that Helms was going to filibuster Ruth Ginsburg. I don’t
think that’s consistent with the constitutional concept of advice and
consent. Have the hearings, take your time. I’m not saying that
things should be rushed through. But I do think that the President’s
choice should be given an up or down vote and not be killed by
parliamentary maneuvers and delays. Mine was delayed. It finally
got approved. Miguel’s didn’t and I don’t think that’s the way
nominations should be disposed of. I don’t think it was what the
Framers had in mind when they said advice and consent. And I
think that it’s unfair of the Republicans to say that this is a brand
new development. The fact is that it has reached a new low, but
Allen Snyder, I think, would have been confirmed for this court as a
Clinton nominee if he’d gotten a vote and not been stalled in
committee. They didn’t literally filibuster him, but it was the same kind of thing.

MR. FREDERICK: You came onto the court, really, in the era of the Bork change in Senate relations with the Executive over judicial appointees. What are your reflections on where we have been in the last 15 years and where we might be going?

JUDGE SENTELLE: Well I’d take it a little further back than 15 years. I’d say probably over the last 17 or 18 years. Even before that there were instances when I think there was unfair and even underhanded treatment of nominees. I think it’s gotten worse and worse on an escalating scale. Instead of attempting to determine whether a president’s nominees are qualified to be judges, this has now become a battleground, “Let’s see what we can do to those damn Democrats.” And I can’t absolve the Republicans because they did it in the last administration. It’s become a place for vindictiveness and viciousness in certain things and the judiciary as a whole has suffered as a result.

MR. FREDERICK: Where do you think it ends?

JUDGE SENTELLE: I don’t know. I had thought at one point that perhaps a fairly evenly balanced Senate might have some leadership on each side that could simply sit down and say, “Let’s forget who shot first and see if we can’t just quit shooting.” But that hasn’t happened in the last two administrations, so I don’t know where we go from here. I also had
thought at one point that when Clinton nominated Snyder to be one of the court’s judges that maybe that would be what would be the trigger. The cross-wounding made things worse instead of better. It now includes such a long list of nominees that you can simply point at and say that they’re being filibustered. That had never been the case. As I said, I was delayed and others were delayed. At that point in time Allen Snyder was, before John Roberts was, Lillian BeVier, Terry Boyle were never given a hearing. Now they have an open tactic of “Well, we’re just going to stop these people by filibuster.” I don’t know what they had to do to themselves. I don’t know where it began. Maybe you need to talk to the political branches and get them to fix it.

MR. FREDERICK: Well, it’s a fascinating question, particularly here in Washington where we see this as daily spectacle and, you know, as an observer to this process it’s very depressing to see people of quality – Miguel Estrada was a colleague of mine in the Solicitor General’s Office and I wrote a letter supporting his confirmation – it’s a depressing process to see that as the slide continues down, there’s no obvious leadership that can break through the impasse. And I just don’t know where it comes from. I wonder if you have reflections on how a leader can step forward to come up with a solution that will stop it.

JUDGE SENTELLE: Not really. Sometimes there’s something one person can’t do and I think two people could do this, but you’ve got to have the right two
at the same time. Maybe because I know him well, I think Orrin Hatch might be one of the two to do it, but I think he hasn’t found a counterpart. Pat Leahy isn’t that counterpart. A different sort of ranking Democrat might be able to work with Hatch to solve it.

MR. FREDERICK: Well that’s an interesting diversion. Let me go back to some of your opinions.

JUDGE SENTELLE: I hope I remember the ones you ask me.

MR. FREDERICK: Well I’m sure that you do. Your memory is quite remarkable for these things. You alluded briefly to the *Yellow Bus Lines* case and I wonder if you could talk a bit about that opinion and how your personal opinions, perhaps, in prosecuting RICO cases figured into the decision there.

JUDGE SENTELLE: It came up as a panel opinion that I was not on at first. The three-judge panel ruled that participation in a strike against the bus company was conduct of its affairs for the purpose of RICO. There was a petition for *en banc*. I called for a vote and did not get the vote granted. I wrote the dissent from the denial of *en banc* saying that you’re not conducting the affairs of the enterprise in the strike against the company. Only Ken Starr joined my dissent at the time. It went to the Supreme Court based on another case, it came back down on a remand order. I believe the Court had a similar issue in some RICO case and sent this one back without looking at it for reconsideration. It really had nothing to do with our case.
The panel came and readopted their original opinion. At that point I wrote a concurrence in the denial of *en banc* saying I still think the case is wrong, but we don’t have the votes. Boom, Ken joined, and then one by one enough colleagues joined until one day I realized I’ve got a majority, including one of the panel judges. So I then called for a vote to *en banc*. The *en banc* court assigned the case to me and I got my language in, which the Supreme Court later on – the name of the case is one of the old Big Eight accounting firms, a RICO case involving one of the Big Eight accounting firms – they adopted most of my language. They left out one adjective, but they did say that the person who is conducting the affairs of an entity you have to have is one with control within that entity. I had said “significant control.” They took out my “significant.” They got my nouns; I’ll give up the adjectives to get my nouns.

**MR. FREDERICK:** Why did you feel so strongly about that case?

**JUDGE SENTELLE:** I think RICO is a very dangerous statute. I wrote a monograph that was published called *RICO: The Monster That Ate Jurisprudence*. It’s been reprinted in whole and in part by a number of places since then. A loose-textured criminal statute – *Yellow Bus* was a civil RICO case, but the same statute was followed in that context. Citizens have a right to know precisely what conduct is being criminalized. And while you can’t act with laser-like precision, you can at least give something other than a massive amorphous set of
general principles and say, “Go out there and don’t violate these.” I think that’s what RICO does. It’s not a statute drafted with precision. A Roman emperor said one should be able to run and look at the law and understand it, you can’t do that with RICO. I debated Phil Heymann on that subject at the Harvard Law School once and Phil, I think, thinks the attorney general should get a free pass to make illegal whatever he or she thinks should be illegal. Originally they tried to schedule a debate between me and Alan Dershowitz. But Dershowitz said, no, he agreed with me on that. He wound up on the same side as me. Steve Breyer was in the audience that night and he pretty much came up and said afterward that he thought I was right. I’ve had hopes ever since that Scalia’s view would prevail and that someday the Supreme Court would restrict RICO, but I don’t think it’s going to happen. It’s been too long now.

MR. FREDERICK: It’s been on the books for so many years and it’s had so many decisions. It seems unlikely that it would be struck for constitutional reasons, although there certainly have been some meritorious challenges to aspects of it. Had you defended any clients in civil RICO cases?

JUDGE SENTELLE: Yes, I had. I never had a civil RICO that actually went to trial. I had some criminal RICOs that I don’t know if I ever tried any of those. But I had some plea negotiations for disposition on some
criminal issues. I represented a labor union in Charlotte on a civil RICO and we actually got it dismissed. McMillan, I think, was the district judge in Charlotte where that case was filed. And I’m not hiding the name of the union. I can’t remember what union it was. It was a RICO case that I thought was ill-brought at the time. Still do.

I had some criminal RICOs. A couple in Pennsylvania and I think I had one in North Carolina as well. We never went to trial on any of them. We either worked out something in the pre-indictment or begged a plea in the other cases. I’ll tell this story if I haven’t already. If I have, stop me because I don’t remember what I’ve told you. I went up to Philadelphia on behalf of a client from Mooresville, North Carolina, who was charged with RICO violations. We went up to make a presentation to the U.S. Attorney’s Office and I was wearing an old, beat-up hat and my oldest suit.

I went and sat down with the Assistant U.S. Attorney. I said, “They had got this fellow here from Mooresville and charged him with something about racketeering and we don’t understand it because we don’t have any racketeers in Mooresville, North Carolina.” He let me go on for a couple of minutes and then he said, “It’s a RICO case similar to the one you had in New York last year. You got immunity there. You’re not getting immunity here.” I had to back
out and began some more serious negotiation at that point. It worked in Brooklyn. It worked once, but it didn’t work twice.

MR. FREDERICK: *Danielsen* was another civil RICO case that the opinion even tried to cut back on RICO, I think.

JUDGE SENTELLE: I probably overwrote that one. I look back at that and say we really didn’t need near everything I put in there. But it was defective in so many ways. I probably had a pent-up essay on RICO that I wanted to get out, so I did write on all aspects of why that one didn’t meet the elements of RICO. I probably should have been satisfied with having written the law review article.

MR. FREDERICK: Has that opinion had legs in the sense of spawning more law than the D.C. Circuit?

JUDGE SENTELLE: It’s a little hard to say that it has. In a way it may have. We don’t get as many civil RICOs as we once did. It may be that it’s responsible for us not getting as many. It’s been cited in other civil RICO cases in this and other circuits. The rush to civil RICO backed off. It became less and I hope it’s in part because I pressed it in *Yellow Bus* and *Danielsen*. Stopped them before they ever even got here.

MR. FREDERICK: Now not long after *Danielsen* I think, if I have that chronology right, you handed down one of the *North* decisions that addressed the release of the Independent Counsel’s report and the use of the grand jury material that, upon rereading, strikes me as a very significant opinion because of
the whole question of power to release the report and what constitutes a matter of public concern in that context is one that is very critical under the independent counsel statute. Did you perceive at the time that opinion to be as important as it may seem in retrospect?

JUDGE SENTELLE: Yes. We thought it was a) a very difficult case, a very difficult set of questions, and b) very important. We tried to not do anymore precedents than we had to do. We still made a number of precedents. The independent counsel statute harkens to the rule of unintended consequences. It wrought much evil and we had to deal with an awful lot of questions that wouldn’t have come up without the independent counsel statute.

MR. FREDERICK: Can you describe some of the deliberations that went into that case?

JUDGE SENTELLE: You know, it’s one of the few situations in which I did a telephone deliberation. We were not in the same town and we usually worked by conference calls and memos and faxes, so we called back and forth a lot. Do you have that opinion in front of you there?

MR. FREDERICK: I do.

JUDGE SENTELLE: I have a couple in my mind that are sort of running together. I want to see which one that is.

MR. FREDERICK: This is with Judge Butzner and Judge Sneed.

JUDGE SENTELLE: That’s the one I was thinking of. And we really got to the point on that one. I don’t want to pull the curtain back too far in fairness to my colleagues, but we had only worked this out in
general parameters and my colleagues said, “Why don’t you write something and get it to us and then we’ll try to respond with something concrete instead of chasing this round and round in abstract circles.” And I put it off until I had a weekend when I could come up here on a Sunday and it came together that afternoon. Nobody asked for any substantial changes in the opinion at all. Again, this is something that’s not going to be released for quite a while.

A friend later told me that he had prayed for me on that particular afternoon. He just had the sense that I was in the need of prayer. He had called his prayer chain and asked for them to pray for my judgments that day. And around that time was when it all came together. I was standing up and dictating into my dictation unit, pulling books off the shelf. It was before I had a command of Westlaw and I was working in hard copy and I was working so fast that I couldn’t sit down. I just had to dictate and it all came together. And, as I say, my colleagues asked for no changes.

MR. FREDERICK: I know Judge Sneed very much liked to have the opportunity to read something and I suspect that, I don’t know Judge Butzner, but I would imagine that having the explanation written out was particularly helpful to him.

JUDGE SENTELLE: Yes, I think that Sneed may have been who proposed that I just go ahead and write something and let them respond to it because our
discussions were just getting circular. They were just chasing it around in the abstract. It probably wasn’t going to go anywhere. I could just write it, send it to them, and if they didn’t like it, they didn’t have to join. They were a pleasure to work with. They were both real gentlemen, they both were real professionals. Sneed was only with us on the panel for two years. Butzner was with me, I think, about three terms.

MR. FREDERICK: Tell me about your relationship with Judge Butzner.

JUDGE SENTELLE: Well, I’ve had multiple relationships with Judge Butzner. First time I saw Judge Butzner, I was looking up at him. I argued in front of him a number of times on the Fourth Circuit. He was not a hyperactive questioner, but he was a hot judge. He always knew the file and his questions were incisive and confrontational. He was very a gentle man, but as a professional he could cut in the courtroom. And then later I sat with him on the Fourth Circuit by designation.

He did a very sweet thing when I was a district judge. I had decided some asbestos litigation. There were many similar cases pending across the circuit. In a case before the circuit one of the other districts of North Carolina had come out the opposite way on a question I’d ruled on. Butzner called me and said, “We’re looking for your opinion where you made the decision on how to apply the statute of limitations to asbestos because we can’t find it anywhere.”
I said, “I didn’t publish.” He said, “Let me make sure you understand. We have a case up here that goes the other way and we’re looking for a published version.” I said, “Yes, sir, I’ll send it to West.” So then they cited it and relied on my interpretation of the North Carolina statute, which went the other way than the other judge who had decided it. Butzner was not going to pull the curtain back too far, but he wanted me to get credit for having come up with the right interpretation.

And, as I said, I sat with him on the Fourth Circuit and enjoyed him there, but then we had our relationship working on the independent counsel court. He had an institutional memory. He had served with McKinnon before I took over the panel. He was invaluable to me for his memory. And as a colleague there was not a nicer person to work with than John Butzner. I don’t know how he’s doing now. He hasn’t held any court in a while. His arthritis is quite painful, I understand. I don’t know what he’s doing now, but he’s not holding court.

MR. FREDERICK: Just a few years ago, you wrote in the Cobell case – the Indian Trust Fund case, which has subsequently also generated quite a lot of publicity. Would you describe that case and your role in the court’s decision?

JUDGE SENTELLE: The principal of law involved in that case that you don’t think of unless you’re as much of an administrative law nerd as we’ve
become on this court and that is how you interpret the statutes for Indians in light of *Chevron*. I don’t think that you ever get to the *Chevron* question of whether the agency gets *Chevron* deference or not, or, if so, which agency gets it. Because laws for the benefit of the Indian tribes are to be construed generously in favor of the tribes. It goes back to the trust relationship. It’s not just a canon and interpretation in my view. It actually has substantive underpinnings. And so we start with the principle that if the law is for the benefit of the tribe, then it should be generously construed and the ambiguity needed for *Chevron* won’t be presented.

MR. FREDERICK: Now that principle works in cases involving the trust relationship, but there are a plethora of statutes involving Indian tribes or regulation of gaming …

JUDGE SENTELLE: And the threshold question would be, “Is this for the benefit of the tribe?” And if it is then I think *Chevron* won’t apply. I had written two other opinions that contained footnotes to that effect, but less important content. And so I cited my own prior opinions. *Albuquerque Indian Rights Movement* and *Muscogee Creek Nation*. Both had been cases that stated that proposition, both of which I had authored.

MR. FREDERICK: Now the government in that case argued unsuccessfully that it was bound more or less just by the duties that were set forth in the 1994 statute. And your opinion for the court sort of swept that away given the longstanding trust relationship. But I was struck with the view –
although the court didn’t express an opinion on the merits – as a
former government lawyer, I was left thinking how the government
could possibly fulfill the obligations set forth in the court’s opinion
given the destruction of records by the Treasury Department.

JUDGE SENTELLE: Yes, it’s the further history of that trust relationship to now and in
the future it’s as difficult as we thought it would be. We did not
think we were sending back something that was going to be very
easy, David. And the difficulty is, as you are indicating, that may
be impossible. The government had a mess to deal with. But at the
same time, the problem has to be dealt with by the court. And it
may be impossible for the judge to deal with it either. Witness the
fact that he’s already held them in contempt and our court has
already reversed him. I guess the only thing we can do is watch and
see what happens next.

MR. FREDERICK: Well it is an interesting question because the court of appeals does
have a certain role in solving and addressing this problem and
maybe it ends up being a legislative solution.

JUDGE SENTELLE: That may well be the case. The political branches may have to do
something to step in. And that’s not easy.

MR. FREDERICK: No. You’ve got maybe tens of thousands of Indians whose trust
records have just disappeared and reconstructing the relationship for
which they’re entitled to regular payments by the government
becomes very difficult.

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JUDGE SENTELLE: I was on an airplane coming back from somewhere in the U.S. I forget where. Sitting next to me was an Indian silversmith who, as happens on planes and trains, eventually started talking. And he talked about professional wrestling, silversmithing, and then he got to the Indian Trust case. And I stopped him at some point and said that because of my professional position – he didn’t know what I was – I can’t discuss this. I said, “I know what you’re talking about, but I can’t discuss this.” He was a very ordinary silversmith, wrestling fan, Indian and he knew about the Indian Trust cases. They just took tens of thousands of Indians from across this country and messed up their accounts.

MR. FREDERICK: It’s difficult, but do you have any predictions of how the problem might resolve itself?

JUDGE SENTELLE: Politically. I think it’s going to have to be done legislatively eventually. I just don’t see how the judiciary can deal with this. But in the meantime, we have to keep trying. And it may be that they can grind it down. He can keep refining his orders and pull the rest of his hair out. It needs to be ground down eventually, but I don’t know how.

MR. FREDERICK: I wonder if you could describe your work habits as a judge.

JUDGE SENTELLE: I’m sloppy. I spend a lot of days reading briefs. I have law clerks who do bench memos and they will file one at a time. Reading a synopsis first helps me get through quicker in a more organized
fashion. I spend a lot of days just reading. This has been one of those days. Other days I write, depending on where we are in the court term, I guess. I can’t say that I necessarily – I don’t start at the same time every day. It depends on what the traffic patterns are and what meetings I have that day, how late I’ve gone out last night. I do have a habit of working late when I get behind or working on weekends. I’ll be up here this weekend. Does that answer the question you asked?

MR. FREDERICK: Well, yes. Do you find that your term has a certain rhythm to it?

JUDGE SENTELLE: Yes, the early part of the term you don’t have time to write. You’re so busy reading and getting ready for the arguments, it’s very hard to get any decisions finished. With the independent counsel cases now, I haven’t gotten cases from our own term out yet. But you’re too busy preparing for the next case and then when you start getting some breaks around December, you start catching up on writing.

MR. FREDERICK: Can you describe your process for writing opinions?

JUDGE SENTELLE: Ideally, I like to say that I give an outline to the clerk and tell them to do the first draft from my outline. That’s really overstating what it entails. I tell him what we’ve done and how to do the first draft. Then I’ll come back and edit the draft myself and send it back to the law clerk for comment. The majority, I have the clerk do the first draft. I either re-write their draft, or if it looks like about what I want, I make revisions and then it goes back to the clerk. And about
the second or third time through, we get it right. Some opinions I dictate myself, for various reasons – a decreasing number as I have learned better how to delegate intellectually, take fewer exchanges. When I first came up here, I dictated a lot and I tried to make a very general outline and then dictate from the outline. I rarely do that anymore with the cases. If it was going well, I’d be standing up and dictating. Otherwise, I’d be sitting at the table with a stack of books. As I say, I’ve learned more and more how to efficiently delegate to clerks, so I don’t do that near as much anymore. I probably get clerks to do the first draft on most of the cases.

MR. FREDERICK: What is your process for delegating, as you put it, intellectually?

JUDGE SENTELLE: It really starts before we’ve even decided the case. When I’m looking at the case ahead of time, I’ll come up with who I think should prevail, and then after the conference with my colleagues, I tell them what we really want. They give me a first draft that adopts the approach we’ve taken here. I tell them what arguments, what precedents to follow, how it will bring us to the conclusion. We might need to broach a second issue. And I give them a general discussion about what should be entailed in the judgment. We will have notes of the judicial conference that I can furnish which shows very briefly what the judges think about that case.

It normally comes back and, as I said, sometimes I rewrite it myself, but other times I may review it and say something like, “We really
need to discuss this point in more depth and we need to bring into it
the Supreme Court’s line of cases that dealt with this.” You tell
them what you want them to do instead of trying to dictate that.
And I now get it back in writing and I make her do it until it’s the
way I want it. But I dictated more my first years.

MR. FREDERICK: What percentage of the cases are decided without an oral argument?

JUDGE SENTELLE: The last time we met, I knew the answer to that question, but know
I’ve forgotten. That’s an old figure that Harry Edwards had
compiled.

MR. FREDERICK: Aside from the normal operating procedures that the court has,
every institution has an unofficial rules of the game or rules of the
road. Can you describe what some of the D.C. Circuit’s are,
whether they be like the Supreme Court Justices always shaking
hands before going into a public session or before a conference?

JUDGE SENTELLE: We don’t do that.

MR. FREDERICK: That kind of unofficial practice that is followed but not written
down?

JUDGE SENTELLE: Well there are a number of areas in which one judge can grant a
stay. We won’t do that except in an emergency. We will have at
least a majority of the three-judge panel grant the stay. We confer
on motions with the staff attorneys and that’s a big part of the job of
the staff attorneys. They get to sit on these panel discussions and
research the judge’s orders on stays. I don’t know. It’s the kind of
thing that you do all the time you don’t think of. It’s hard to notice what you always do and I think that’s what you’re asking me for, but I can’t come up with anything.

**MR. FREDERICK:** Well perhaps now having planted the seed, you might reflect on that question and then raise it at some other, better time. Now you’re one of the most senior, active judges on the court and a number of freshman, so to speak, have recently joined the court. John Roberts was confirmed just a few months ago. Is there a kind of period where a new member of the court has a honeymoon period or a kind of freshman acceptance period and how does that work and how long does that last?

**JUDGE SENTELLE:** I think that back when the court was more divided, there was some attempt to co-op new judges. I don’t think that happens anymore. We’re much more collegial. Some judges come on and they’re reluctant to break the horizon when they first come on. They’re not likely to call for *en banc* votes. They’re not likely to dissent. That goes on usually for about one session and then they gradually begin to be more assertive as characterizes the judges of this court. That’s not true of John and it wasn’t true of me. I understand that when I had been here about a month that somebody asked Bork, “How is the new guy doing?” and Bork said, “He called for an *en banc* vote the first day he was in the office. He’s no shrinking violet.” He was very pleased with that. John – this is public – one of his first public
acts was to file a dissent from the denial of *en banc*. He and I were the only votes for *en banc*. John is no shrinking violet. I don’t know that we need a honeymoon period anymore like we did before when the court was more divided. People come close to getting right into the court’s work rather than easing in.

MR. FREDERICK: And presumably it depends on the personality of the judge.

JUDGE SENTELLE: Indeed.

MR. FREDERICK: As a circuit judge, can you tell me what your perception is of the court of appeals writ large as an institution? It’s now been around for 112 years. The courts of appeals were created by the Evarts Act in 1891 and, as a body that decides cases to weed out cases that don’t need to go to the Supreme Court, how, in an historical perspective, do you think the court of appeals has worked as an institution?

JUDGE SENTELLE: Institutionally, it was absolutely necessary. With the size of the country now and the size of the federal jurisdiction, it would simply be impossible for the Supreme Court not to have an intermediary court to handle all these cases. We are a lot less important jurisprudentially than we like to think we are. As Ray Randolph says, the shelf life of our decision is really not all that long because if it’s a really important question, it goes to the Supreme Court and they decide it and our case isn’t cited anymore. If it’s not important, no one has occasion to cite it anymore. Our older cases are of
dwindling importance as time passes, but as far as the working
courts in the meantime, we have to give the district courts a body of
law to work with. The Supreme Court doesn’t have time to do that.
So we provide that body of law that is the working law. I think that
most of our judicial institutions are like that.

MR. FREDERICK: What is your perception of the Supreme Court?

JUDGE SENTELLE: I think it has gone beyond its constitutional limits. There are too
many decisions, and whatever you think of the policy content,

*Lawrence* is one that goes way beyond the normal judicial role. The
role of the Supreme Court is no longer applying the law. They’re
applying their views of what ought to be the law and I think that
invades the legislative prerogative and I can understand why the
legislative body is very often not very happy. I think judicial
activism is a violation of the separation of powers and there is far
too much of that nowadays. It always has been, but it has
accelerated as the years have gone by. The Supreme Court’s ability
to be final has gone to its collective head, perhaps inevitably, but too
often now we find opinions that decide, for example, when is capital
punishment to be applied not on the basis of constitutional principles
but on the basis of ”will.” A lot of the states and a lot of foreign
countries don’t do that, so we’ll call that unconstitutional. So I think
the Supreme Court has become too ideological, too legislative.

MR. FREDERICK: For both the conservatives and the liberals?
JUDGE SENTELLE: The conservatives have had very little chance to. I guess it’s inherent in the way the conservatives have approached cases with a fair amount of self-restraint. The current conservatives – Thomas, Scalia, Rehnquist. They’re generally trying to hold the line on a constitutional basis rather than legislative judicial decision-making. But they’re going to try to be fair on the case as it comes to them. If you look back at the pre-New Deal court, I think there were certain excesses, what were considered conservative judges then were activists in their own way, holding that the Due Process Clause would allow them to decide whatever they wanted to.

MR. FREDERICK: Do you perceive it to be just simply part of the cycle of how the Court works as an institution?

JUDGE SENTELLE: No, I don’t think it’s a cycle at all. I think it has spiraled out of control. It hasn’t come back to where it was in a historical context. I don’t know that it’s irredeemable, but I do think it’s been more spiraling than circular. It’s gone farther out each round.

MR. FREDERICK: Can you describe your relationship with the circuit executive and the judicial council and other administrative elements of the D.C. Circuit?

JUDGE SENTELLE: The circuit executive, as the name implies, is simply an administrative officer who generally has done a good job of staying out of the way of the business of the court’s activities. The clerk is a professional. Our present clerk is an excellent clerk, although
historically this court has had a hard time finding good clerks. The present clerk Harry appointed from within, Mark Langer, who was the chief of staff counsel. He works very closely with the chief judge in meeting the needs of the court. His role is broader than that of the chief executive. Not just scheduling, but also, do we need revisions in the rules of court or the way we’re doing things. He is good at tying our statistical evidence to possible changes in the way we do things. He is also good at finding out how other circuits do things and seeing if they have better ideas.

MR. FREDERICK: So can I interrupt you for just a second? Do all of the judges meet with the clerk and the circuit executive once a month?

JUDGE SENTELLE: No, that’s an exaggeration because we don’t meet during June, July, and August and we’ll skip another month if there’s not much to do. We have a judge’s conference once a month and the executive and clerk meet with us at those conferences. I’m trying to think if anybody else attends. There has to be another – the deputy clerk. We can go into executive session and throw them out and we often do. We get to the point where we ask them to leave. They leave us with our statistical and physical and clerical needs. And with these days of shrinking budgets, that’s very important to our process. We need that information to decide where we can make cuts.

MR. FREDERICK: You mentioned in one of our earlier sessions the important role Chief Judge Edwards had played in bringing technology to the court. What
are the other important changes that have occurred while you’ve been a judge?

**JUDGE SENTELLE:** Intangibly, the way in which Harry Edwards brought us together as a collegial body whereas previously there had been a lot of prickly feelings and a lot of even publicly perceived division within the court. Harry came in with no agenda except to run the court as well as he could possibly run it and be the first among equals. Intangibly, well, the court has come together as a collegial body under the leadership of Harry, and Doug Ginsburg is trying very hard just to replicate what Harry did.

We’ve got the building going on down there, but I think that’s an obvious change we made to accommodate the new annex coming in. Before I came in at the beginning of the time I was here there used to be visiting judges at the time. It’s pretty nearly a consensus now that we don’t want to use outside judges like we have in the past. We’ll do it all ourselves even if we get busy unless we have some sort of major conflict where we had to use outside judges.

**MR. FREDERICK:** Why is that the consensus view?

**JUDGE SENTELLE:** Other courts just don’t have the daily familiarity with administrative law that we do. And since much of our docket is that law, it’s very difficult to assign that and be more confident of the opinion. So we wind up not gaining anything when we bring people in.

Randomness is an important principle so we don’t get accused of
assigning cases to a panel other than randomly. If we could assign deliberately in criminal cases or something, maybe we could use visiting judges. But because most of our cases are administrative cases, it’s more effective or efficient, so we do what we have to do. Personnel change has been – in a way I guess you’d say fifteen years is a long time. In another way they’ve gone quickly. Suddenly I noticed I was up near the top of the list. “What are we doing up there?” I came in and I was at the bottom of the list, most junior. Then little-by-little, I suddenly realized one day that Doug and Harry and I are the senior panel in the court now.

MR. FREDERICK: So you are next in line to be chief judge?

JUDGE SENTELLE: In the ordinary course of time, I’ll never be chief judge unless Doug steps down early. You serve as chief for seven years. You can’t become chief after your 65th birthday. You can hold it until 70, but you can’t become chief. Doug’s seven years will pass my 65th birthday, so I will not ever be chief unless he steps down.

MR. FREDERICK: Is that by statute?

JUDGE SENTELLE: It’s codified by statute and it was a very deliberate and, I think, beneficial statute. Around the country, I don’t remember the precise terms of the old statute, but you used to be able to hold it until age 70 no matter when you took it. We had some chiefs who were not very good chiefs, but nonetheless were chiefs for fourteen years or something like that. The Congress put in that statute under the huge
criticism of having struck with laser-like precision on certain judges to keep them from ever becoming chief. I doubt that they knew that much. But it has effectively worked in some parts of the country to keep people from being chief. The criteria are set up that to be chief you have to be a senior judge in active service, have been a judge at least two years, and have not reached age 65 and have not been chief. Now there is a default order in which those qualifications fall off if nobody meets all of the qualifications. I do not recall the default order, but I think the first is the two-year requirement. The last one to go, I believe, is age 65. I think you have to go at age 65 unless nobody meets any of those qualifications.

MR. FREDERICK: Now one of Chief Judge Edwards’ last cases as Chief Judge was the first Microsoft case. Am I allowed to ask you about that?

JUDGE SENTELLE: I probably would rather not discuss that, David. It’s still too live. And we heard it again this term.

MR. FREDERICK: Right. Apart from the technological and collegial changes, how would you describe Chief Judge Edwards’ working manner with the court?

JUDGE SENTELLE: He was a better administrator than anybody I had seen as a chief judge before. I’d served on three courts with five chiefs. Harry is very efficient. He understands the role of an administrator is not the role of a boss, but he knows how to set a goal, tell you the goal, achieve it quickly, and not waste a whole lot of anybody’s time. He
understood what the role of chief judge is. He was efficient and collegial.

MR. FREDERICK: How does his style contrast with Chief Judge Ginsburg’s?

JUDGE SENTELLE: Doug is trying to copy Harry, I think. I think he’s doing his best to replicate Harry Edwards as chief. Harry stepped down a little bit early, so Doug began his service before the beginning of the fall term. But Doug said that he wanted to emulate Harry to continue to be chief. He’s trying very hard to do the same thing as chief. Harry had some original ideas for things that are sort of innovative and yet very good. I don’t know if I mentioned or not the judge’s lunches Harry began where we invited interesting outside persons to come have lunch with us. Not a speech, just a casual interaction. We started with Colin Powell and we’ve had FBI directors, CIA directors, the Library of Congress. We had a guy who is a master chef, Paul Tagliabue, Dan Snyder, Abe Pollin. Doug has continued that tradition and he has, a time or two, arranged joint lunches with the district judges. He added that idea.

He and Tommy Hogan came up with a different kind of judicial conference, a judges-only conference where we had Joseph Ellis and Gordon Wood stay with us for two or three days and we did some reading of the Framer’s writings and had three days of seminars. So Doug is trying to take the same kind of ideas Harry had and keep expanding.
MR. FREDERICK: Those are things that are very much outside the public view. How do you think they affect the court as an institution?

JUDGE SENTELLE: I think they help the court think together and work together. It’s much harder to write a spiteful dissent if you like the guy that wrote the majority and if you know you’re going to have interaction. Sort of the British concept that we’ve tried to replicate in the American Inns of Court that professionally you may have to cross swords with each other, but you always do it only professionally, only civilly, then you’ll have less acrimony. I think that’s the view that Harry and Doug have tried to advance. I think he’s done a very good job of it.

MR. FREDERICK: And around the late ‘70s and early ‘80s, the D.C. Circuit had the reputation of being a very difficult and contentious court. Your view is that that is ...

JUDGE SENTELLE: I think it’s behind us. Knock on wood with both hands as they say. I think Harry Edwards deserves a lot of personal credit. So do the rest of us. He couldn’t have done it without the cooperation of his colleagues, but it wouldn’t have happened without Harry.

MR. FREDERICK: You came on the court at a time when that was probably at its height. What do you think were the principal causes for that antagonism?

JUDGE SENTELLE: Well, without calling too many names, there were people in senior positions who were trying to operate on agendas rather than operate
as a court. And it became personalized. Ruth Ginsburg, in her
dissents acted as a judge should have done. Others – like former
chief judge – personalized it unfairly. We did have some distrust
because you did perceive people as operating with agendas instead
of simply trying to take the case and decide the case by the law. So
once you think somebody’s standing behind the door, you start
looking behind the door as you’re coming through. So the presence
of agendas made people look for agendas.

MR. FREDERICK: I know this is a sensitive subject, but can you provide any
illustrations of that?

JUDGE SENTELLE: You know, I’d rather not, David. I would say, without providing
exact illustrations, that there were times when I hesitated to go out
in the hall for fear of who I might run into. That doesn’t happen any
more.

MR. FREDERICK: Do you perceive now there to be any factions on the D.C. Circuit or
kind of blocs?

JUDGE SENTELLE: No, I don’t. I know that you get these academics who write about
being able to who falls in line behind the President that appointed
them. But I don’t think that actually bespeaks the existence of a
faction. There is a range of viewpoints from which you operate the
law and those people who would be considered by Carter or Clinton
are somewhere different on average along that scale than those
who would be appointed by Reagan or Bush. So that it isn’t
surprising that if you had a large enough sample of cases, you
would find some tendency of cohesion between the appointees of a
particular president. Not because the president appointed them,
but because of the pools from which they were chosen.
However, as I said, Ruth Ginsburg and I, often are coming
together from different party appointments. And you’ll find
opinions … I remember a criminal opinion that I wrote where
Harry was my other majority judge and Garland was the dissent.
We were reversing and Garland would have upheld the
convictions. I think on criminal justice issues, for example,
Edwards and I are probably together as often as any two judges
on the court. On labor matters, you’ll find Silberman and
Edwards together an awful lot of the time.

MR. FREDERICK: What do you account for that? That is an interesting observation to
me.

JUDGE SENTELLE: The labor laws?

MR. FREDERICK: Yes.

JUDGE SENTELLE: They were both labor gurus and they take a very specialized approach
to how they look at labor laws where the rest of us are more likely
to think that the general principles of law should govern, they’re
more likely to think that the specific principles of labor law should
govern. And I’m not saying they’re right or we’re wrong or we’re
right and they’re wrong, I just think it’s a little different approach.
But it causes them to come out sometimes differently than the majority in the pool. But again, if you take a broad enough scale and a large enough sample, you will be able to say that you can make some differentiation by who appointed the different judges. But I don’t think it breaks along party lines on a regular basis.

MR. FREDERICK: My observation has been, and anyone who can look at the statistics can gauge this, is that the D.C. Circuit is not reversed that often by the Supreme Court. But I wonder if you could describe the feeling of having worked so hard on a case, being fairly certain that you got it right, and then having it reversed by the Justices.

JUDGE SENTELLE: Usually those cases that go to the Supreme Court, you know that they’re a case that’s difficult. So you’re neither shocked nor greatly offended, I think. The first time the Supreme Court reversed me was, I think, in a FERC case. It involved the question of whether the regulations of the Securities and Exchange Commission or the regulations of the FERC had primacy in the questions of accounting for inter-corporate transfer in wholly owned coal supplying subsidiaries of electric companies.

MR. FREDERICK: Not a subject one would normally get passionate about.

JUDGE SENTELLE: Right. After they reversed me – Scalia wrote the opinion reversing me. Larry had been my co-judge in the majority on the court here. I saw Nino at a breakfast the next week and he said, “Don’t jump on me, Larry already did.” I said, “I’m not going to jump on you. I
understand why you thought we were wrong. What I don’t
understand is why you gave a damn. We had to take that case. You
people voluntarily granted cert on that.”

MR. FREDERICK: What did he say?

JUDGE SENTELLE: He laughed and he said the Solicitor General petitioned for it. That
always gives it a leg up. But I don’t honestly know why the
Solicitor General petitioned for it. And I think the Supreme Court
a) was right and we were wrong; b) I’m eternally grateful Harry
Blackmun who wrote in concurring opinion, said, “Okay, we’re
right and they’re wrong, but this was not the way it was argued in
the Court of Appeals, so we really shouldn’t be deciding it at all
because they didn’t argue it this way down there”; and, c) I still
don’t know why it mattered.

The other times that I’ve been on the wrong side of Supreme Court
votes – sometimes when they reverse me and sometimes when they
don’t take the position that I dissent – I’ve always gotten votes for
my position and that reiterates my belief that there were two ways to
look at things. We don’t check our record for greater precision than
that. It’s the only case I can give you the citation to, it’s no longer
good law. 1 F.3d 1. Where Steve Williams and I would have held
that “taking” fish and wildlife regulation doesn’t include changing the
environment. I was utterly convinced we were right and three Justices
thought so, but six Justices didn’t.
More recently, when I dissented from *Eldred*, the intellectual property case, the one where I would have found constitutional limits on the copyright power. I still think I was right, and Justices Breyer and Stevens got that one right.

**MR. FREDERICK:** Looking the other way, in the other direction, are there district judges who make decisions that you may give heightened scrutiny to?

**JUDGE SENTELLE:** I’m afraid that’s true. There are and have been district judges who simply seem to be seeking to impose their will. To solve a problem in society rather than follow the law. We all know who they’ve been and we may look more closely at them. I’m not saying we should, but I am saying it does work out that way when we know that a particular judge has lots of times in the past tried to do justice without following the law.

**MR. FREDERICK:** What district judges do you respect the most or have you respected the most during your time?

**JUDGE SENTELLE:** The danger in that is who do I leave out? Tom Hogan is an obvious choice. He’s a judicious thinker, a very sound judge in every respect. Royce Lamberth is a very close friend and he and I see many things the same way. One who hasn’t been there that long is, a very excellent judge. He’s very lawyer-like. I won’t go any farther than that because I don’t want to risk offending anyone. I think three is enough.
MR. FREDERICK: In supervising - I see you use the word “supervising” the district courts in kind of a loose fashion - but in providing guidance, are there things you think that are particularly important for the court of appeals to do in its opinions?

JUDGE SENTELLE: There is one thing I think we should not do. That is be unnecessarily critical. Cut down the adverbs. “Grievously erroneous” is not going to do any more legal good than “erroneous.” Do not take on issues that are not necessary to make your case. Yes, that isn’t what other judges think necessarily, but don’t go beyond what’s necessary. Also, I think it would be better if we do what we can to write in terms of the issue rather than the court as erring. That’s one of the things I’d change if I could. A district judge has granted a summary judgment it shouldn’t have and then a district judge has to hear about it. Granting summary judgment would not leave the matter open and then you can just write it as if the district judge had never been there. Then we’re not as insulting to the district judge. More and more, I try to do that. I think the way I approach some of these cases is to the effect that it is bound up with respect. I think about that fact when I’m writing a decision reversing a district judge.

MR. FREDERICK: Is that a topic that you discuss with your colleagues who have not had that similar service?
JUDGE SENTELLE: Yes, many times I have sent a note back on a draft opinion saying, “Couldn’t you take this out? It’s not necessary and I think the district judge could find it offensive.” And usually they do.

MR. FREDERICK: Are there opportunities outside the formal opinion process where the court of appeals might offer informal advice in matters to district judges here?

JUDGE SENTELLE: There may be, David, but I don’t think it’s very much taken advantage of. Now the Chiefs discuss things and I think Doug may ask Tom, “Could you talk to two judges about so-and-so,” with that kind of advice. I think it encourages collegiality.

MR. FREDERICK: Is it something you think should happen more?

JUDGE SENTELLE: I think there ought to be more interaction among the courts. Not maybe formally, but I just think there is better judging with more interaction among judges. I customarily lunch with district judges, but most of my colleagues don’t. I don’t think they see interaction as being important.

MR. FREDERICK: Perhaps this measure by Chief Judge Ginsburg will improve the relations. As a result, do you think there has been less collegiality between the district court and the court of appeals?

JUDGE SENTELLE: I don’t want to make it sound as if there is hostility, but I think there could have been more collegiality among judges. I get the sense that there used to be a long time ago. When I first started eating lunch with the district judges, including MacKinnon, he and I regularly ate

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at the district court with the judges. Jack Pratt were still here and we used to go there together. And the thing that they recalled is that there used to be a lot more interaction. I’m not saying that there’s any hostility, but it’s not the same feeling of collegiality as before. I feel like a lot of our judges come to their engagements and don’t know each other at all.

MR. FREDERICK: To what do you attribute your views and attitudes on that subject?

JUDGE SENTELLE: I’ve got a broader background than most of my colleagues. I was a district judge, I was a political animal. I’ve just always been involved with a variety of people. And the things that go on in district court are fun and interesting to me. I like to hear about it. I guess that’s about it.

MR. FREDERICK: So trading war stories would be part of that process? But there surely has to be a little bit of unease if the story gets too close to something that ...

JUDGE SENTELLE: Yes, sometimes I have to say, “I’d rather not talk about that right now.” Sometimes I have to do that in my conversations. They understand that. Merrick Garland has lunch with them, too. Beyond he and I, there isn’t very much interaction between the circuit judges and district judges. Doug and Tom now get together, but I think they did not know each other all that well until they became chief judges. They found a rapport that they didn’t know they would.

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MR. FREDERICK: And do you have a regular schedule of lunches?

JUDGE SENTELLE: No, there’s a room upstairs which you actually have to pay a subscription just to use and if you’re not doing anything else you can order your lunch sent up there and eat there. Just about all district judges have them. We had a few circuit judges who went up there. But off of our court, no one really did that because you do have to pay for it and there’s a way of identifying who’s doing it. I know John Roberts has been a regular member up there, as is Merrick Garland. He doesn’t have a problem with that. He has a very good friend who is a regular up there.

MR. FREDERICK: Well I know from having served with Merrick Garland at the Department of Justice, and I was at his going away and Jamie Gorelick made the comment that appointing him to the court of appeals was a waste of a great problem-solving talent because Merrick had an ability to get people of different personalities and different viewpoints together and to help solve problems, so I’m not surprised to hear you describe him as one of the people who reaches out to the district court.

JUDGE SENTELLE: I think he was someone who would be very effective. He will be a great Chief Judge one day.

MR. FREDERICK: Do you regard yourself in your role as a problem solver?

JUDGE SENTELLE: No. But in the inner-workings of the court, there is a certain limited problem-solving role and I think our primary role is a judge’s role.
Trial judges inherently, as the lower court to see the issues most directly, they are engaged in problem solving. We focus on the administration of the court and have little interaction between judges.

MR. FREDERICK: I want to talk about or ask you about some of the agencies that regularly appear before you through administrative law cases. What agencies have you been the most impressed by in the quality of their administrative decision-making process?

JUDGE SENTELE: I suppose on some level the FCC are quite good. They have a very strong mandate and yet they manage to issue rules fairly firmly. Although we have to reverse them a lot, but they have a lot of ability. Their litigation staff is first-rate. I have said many times I wish they would consult with a litigation attorney in rule-making because that would inform their process for rulemaking. But they have a very broad mandate and handle it fairly well.

FERC I’m much less impressed with, but on the other hand their job is awfully difficult. They get into some very difficult and technical issues. With the Labor Board, I think there is a fundamental flaw in their approach and I don’t know that they’ll ever change. They don’t do rule-making. They do everything by case-by-case decision-making. Therefore it’s much easier for them to take allegations and deal with them in a more ad hoc way than through the more formal process of rulemaking. The Ten Commandments
laid out there with what thou shalt not do, I think, would be a lot
easier for the legal entity to know what not to do. I think it would be
a lot easier for the Board to make coherent rather than arbitrary and
capricious decisions. The Labor Board is fundamentally flawed in
their approach, but I see no sign that they’re going to change. The
Court has expressly said they can. What the Supreme Court did not
say is that they should. And they’ve chosen to stay with their old
approach.

MR. FREDERICK: Is that an historical development?

JUDGE SENTELLE: I don’t know how it got started, but I know the Supreme Court has
approved it. They probably like the district court kind of approach.
It lends itself to a lot of flexibility.

MR. FREDERICK: What other agencies would give rise to a greater level of scrutiny?

JUDGE SENTELLE: We have to reverse the Social Security Commission a lot and I would
say I have a great sympathy for them because I think they not only
have a very broad mandate, but it expands every time Congress gets
into session and they can’t keep up. They have to do all the
agreements based on fairly vague principles. Definitions of what
providers are, etc. Congress changes their mandate and expands it
every time they’re in session, so the Social Security Commission
just can’t keep up. They have a very difficult job at times with a lot
of pressure.
The EPA has never been that strong. Over and over, we’ve had to say, “Well you had to have this done by such-and-such date and it’s not done. Get it done.” I don’t know what type of information they have to work with. I know I’m sounding critical of all these agencies, but remember we see the cases in which they’re under attack. I guess there’s a lot of routine cases out there that we don’t know about where they’re doing a much better job. The more problems there are, the more we see.

I didn’t know a lot about matrimony when I was a state judge handling family law cases. I thought all marriages were coming to court because the only ones I saw were the ones that were coming to court.

MR. FREDERICK: That’s one of the unacknowledged principles of *Chevron* deferences that some agencies get more deference than others seem to and I think that’s a part of the reflection of some of the dynamics that you’re talking about.

JUDGE SENTELLE: I had a law clerk who proposed that she should come up with a FERC deference that said, “I have neither the time nor the inclination to figure out what you’re talking about and I will therefore defer to the higher court.”

MR. FREDERICK: Save for the fact that they have huge commercial consequences and whether or not judicial review and judges that were willing to take the time to parse that...
JUDGE SENTELLE: I read an article after we had dealt with a FERC case that was authored by an administrative law judge. I asked him what he thought about where we had gone with a limitation in guideline regulations relating to energy accounting. He said, “Thank heaven for the D.C. Circuit imposing proper accounting procedures on FERC or otherwise nobody would know how to handle these issues.” So I thought maybe we’re doing the right thing if somebody out there realizes what you just said about the commercial consequences. It makes for the litigation involving high stakes. Sometimes there are attempts at success, but if you know over the life of the agreement you’re going to make $4 billion worth of difference, then you’ve got a 2 percent chance of winning.

MR. FREDERICK: Well it also creates a very interesting litigation challenge because there are times when you don’t want the court necessarily to perceive that a decision on some small accounting measure will be worth a gazillion dollars because that may cause the court to think about the problem in a different way. Or, conversely, if the court understands the nature of the problem... it’s a very interesting dynamic when you’re litigating that case.

JUDGE SENTELLE: I didn’t mention the banking agencies. I think on the whole they do a good job because we don’t see them very much. I remember an early case involving the Fed. We decided the proper interpretation of the statute was not one wanted by any of the parties. We issued
our opinion and we got petitions for rehearing even from the winning side which explained to us the implications of the statute that we had not even thought about, which I think shows why we should have asked for supplemental briefs. Instead, we granted the petition for rehearing and reversed our own decision. And that may be a parallel to what you’re saying, but it’s something we don’t often have to confront directly. They brought it to our attention and we realized that we could not possibly continue to keep that language, so we realized what we had to do.

MR. FREDERICK: How often do petitions for rehearing get granted in that way?

JUDGE SENTELLE: Very rarely. But sometimes we have to admit when we got it wrong and go fix it.

MR. FREDERICK: I’d like to turn to some of the judges with whom you’ve had a particularly close relationship. I have read that you had been close to Judge Spottswood Robinson. His chambers were next door to yours when you first came on to the court. Do I have that correct?

JUDGE SENTELLE: Well that’s not literally true. After he took retirement, he used my secretary when he was up there. Spots was part of something we called “The Southern Wing.” He and I used to have lunch together a lot when he was here. We used to just go out and have lunch and tell old Southern stories. No one knew more about how the law worked in practice. He was a piece of history and we just really delighted in getting to hear old stories about Brown v. Board of
Education. He was a real lawyer’s lawyer. Everybody in D.C. knows what he did. People know him as a scholar’s lawyer, but he was also very practical. He wrote the briefs for Thurgood Marshall’s arguments, he did the first argument in *Brown*, but he also tried murder cases. He tried landlord-tenant cases back when there weren’t many black lawyers. He tried cases all over the state of Virginia. We would get him started and listen to him and ask questions for hours. He was a fascinating old gentleman.

And the personality type – I’ve known three men from Richmond and they were all like that. They all were such classic, genteel people. He and John Butzner had that same gentle, in the real sense of gentle, way about them. There was nothing wimpy about these men, but they were so gentle. They were kind and there was no meanness about them. Foxworth was a real gentleman, too. We didn’t always agree on the law, but we never disagreed on anything personal.

MR. FREDERICK: Who reached out to whom when you came on the court? He had been on the court for a long time.

JUDGE SENTELLE: He offered some fresh advice when I got here and I guess he’d say he did. He welcomed me and offered some rather funny advice. I enjoyed him.

MR. FREDERICK: Are there any other judges like that with whom you’ve had a personal relationship?
JUDGE SENTELLE: Varying sorts over the years, David. When I first came up, Doug Ginsburg invited me to stay with him and his wife until I found a place. I lived with them for a couple of weeks. It was a pleasant and interesting couple of weeks. It was a different lifestyle than any I’d ever been accustomed to. We finished dinner and retired to the drawing room and had some brandy. And yet there was sort of a relaxed way about them in other ways. They had about a four-year-old daughter, she rarely had clothes on in the house. They were laid back in some ways and very old-fashioned in others.

I’ve enjoyed Doug over the years. Doug is one of the smartest people I’ve known. He can talk about a range of subjects very intelligently. Harry is very witty. Karen and I used to be very good friends, but now she just stays gone so much that I rarely see Karen these days. We have known each other for years. She wanted more space in South Carolina to interact with her family.

MR. FREDERICK: So she will commute in a sense to hear hearings? Are her law clerks here or in South Carolina?

JUDGE SENTELLE: She comes up for hearings, but then goes back down to South Carolina. Garland and I have had some good times together, some good conversations. Some of those I know less well, but I think that they are all good people. Paul Friedman and I – Paul was the other person on the judiciary here besides Karen that I had known for years.
MR. FREDERICK: How did you get to know Judge Henderson?

JUDGE SENTELLE: Henderson was a year behind me in law school. I had known her as a friendly acquaintance.

MR. FREDERICK: Tell me about some of the lawyers who have appeared before the D.C. Circuit. We talked a little bit last time about a few of the oral advocates, but I wonder if there are particular attorneys who have stood out as being special?

JUDGE SENTELLE: I may have named some of them. I made one mistake in that it’s such a big court. There are so many people standing there that I soon realized that it might take being here a while before you see a lot of them.

Mack Armstrong from the FCC. Mac rarely argues a case himself. He normally is one of the names above the three names under his on the brief, but when he argues it’s impressive. I noticed him in the NextWave case and I saw that everybody was in the courtroom. Ted Olson argued too.

MR. FREDERICK: I think Richard Taranto also argued in that case. I don’t know if he is as well-known in the D.C. Circuit.

JUDGE SENTELLE: No, we don’t see him here that often. Rarely did the agency counsel get to argue up in the Supreme Court because the Solicitor General always takes those arguments. We see the best agency lawyers here.
MR. FREDERICK: Yes, Paul Clement, the Principle Deputy Solicitor General argued for the government in that case and Don Verrilli argued as NextWave’s counsel. I know Don Verrilli and Paul Clement argued. I can’t remember. There was, I think, a third advocate.

JUDGE SENTELLE: I know Mack got to argue the Metro Broadcasting case in court because the Solicitor General’s Office just felt it was wrong and let the FCC take it. The Supreme Court reversed. And then years later when the government disavowed that position. Now Mac thought we were right. He was a consummate professional and he did a great job with defending this court after remand would have been the minority on the panel at the time. Anyhow, back in those years my job was to defend that position. I did it successfully. I don’t see him real often. Barry Simon from Williams and Connolly is very, very good, and so is Andy Frey from Mayer Brown. There’s a guy who is not well-known. He has a well-known name, but he’s not well-known. Tommy Corcoran. He’s kind of an eccentric, I guess. The name is familiar, but his father was the famous fixer in F.D.R.’s cabinet. Tommy does a lot of pro bono criminal work and does a really great job of it and then what he does for a specialty practice is the Foreign Sovereign Immunity Act for foreign governments. But whatever you see him come in on, he comes in prepared, he answers the questions directly, he makes cogent, well-organized, rational arguments, and I don’t think he’s
ever pushed himself. He’s not an aggressive businessman, but he’s an excellent appellate advocate. When I see him on the brief, I’m always hoping he’s going to be doing the oral argument. Those are some of the most fun ones to be on.

MR. FREDERICK: Are there any from Justice that have stood out for you?

JUDGE SENTELLE: There’s Don Fisher from the U.S. Attorney’s Office. Doug Letter is one of the greatest oral advocates that I’ve ever seen. He’s a very skilled advocate. You know Doug.

MR. FREDERICK: Very well.

JUDGE SENTELLE: There are others, but I can’t think of the names right off. If I had to say who’s the best I’ve seen, it would be Doug Letter. He’s handled some very difficult cases extremely well for the government.

MR. FREDERICK: I’d like to spend a few minutes talking about your law clerks if you would like. Can you tell me about some of your outstanding law clerks? What they’ve done since they left you, what caused you to regard them as outstanding law clerks.

JUDGE SENTELLE: I hate to start differentiating because I’ve had so many very fine young people come through here and very, very few disappointments. I can’t say none, but I would say very few disappointments. There have been a high number go into academia after they leave here. I always stress to them, “Don’t ever let money get in the way of having a satisfying career and a satisfying life.”
You can make a living and do what’s going to be satisfying before you make a mint rather than go make as much as you can and I think maybe they listen. Maybe they’ve gone on to teach.

Joanie Larsen is an example, she went on to teach. She is someone I would have recommended for any job in the law. She could have tried cases, she could have done appellate work. She had a delightful personality and an incisive legal mind.

I don’t do what some circuit judges do, I think. Like Luttig. I’ve known him for 20 years from the Fourth Circuit. I think some deliberately hire clerks they think will go to the Supreme Court. I don’t try to hire people that way. I also try to hire in breadth. I hire from a lot more law schools than a lot of my colleagues do. I think I get a greater variety in my clerks that way. I think I benefit from it.

MR. FREDERICK: This is a good stopping point.
MR. FREDERICK: It is January 16, 2004. As we were getting set up here, we were talking a little bit about the historic Microsoft case and the second appeal of that case and you were commenting on how the oral argument was a very different kind of experience.

JUDGE SENTELLE: Well, it’s much shorter, much less broad-ranging. The first time around there was a world of economic issues, antitrust issues. This time it’s down to the complaints of a disgruntled few, particularly the state of Massachusetts or West Virginia following the settlement and the competitors bringing an intervener appeal from settlement. So it’s a much easier review. We did it in one long sitting this time whereas it was two days last time. Of course, the case itself is in the bosom of the court and I can’t tell you how it came out.

MR. FREDERICK: The first time around, the court adopted some very innovative procedures with respect to the briefing and oral argument. Can you comment on what led to those procedures?

JUDGE SENTELLE: Well, we have a technology today that makes it possible to access research and evidence from your laptop computer and we thought if there were any parties that could furnish us with the CD versions of the
brief, it should be the United States Antitrust Division and the Microsoft Corporation, so we made them file on CD hyperlinked to the authorities cited and the evidence cited. We could sit on the bench and go back and forth between record and authorities while we were in oral argument.

MR. FREDERICK: Did the court have any idea how expensive and burdensome that was for the parties?

JUDGE SENTELLE: Well, on the one hand we knew it was expensive and burdensome. On the other hand, we also knew that a) the U.S. Government and Microsoft have substantially bottomless pockets and b) they have the resources to do it a lot cheaper than most parties would be able to. Since we do believe that the future is in that direction and since there are other courts using that technology, we had no guilt feelings about increasing the efficiency of the process at the expense of the litigants.

MR. FREDERICK: How did you personally use that hyperlink capability? Did you find yourself going back and forth between the record evidence and the brief?

JUDGE SENTELLE: Much more between the authorities cited in the brief. I won’t name a lawyer who quoted something completely out of context that didn’t sound right to me and I jumped to the Supreme Court decision he was quoting and read back to him the context it came in. I would have been suspicious without the hyperlink and I probably could have got there
through Westlaw, but it was a lot quicker to be able to link than it would have been to have to get to Westlaw and then query.

MR. FREDERICK: With a case that voluminous and judges having laptops on their desks, it was a terrifying experience for the advocates to be so exposed at oral argument.

JUDGE SENTELLE: ’m sure.

MR. FREDERICK: Can you describe any of the process after the argument because it was a *per curiam* decision, unanimous?

JUDGE SENTELLE: Yes, I have to be very careful about not pulling the curtain further back than the court would wish. But I would say that it was a true *per curiam*. Everyone on that panel – there were seven of us as you will recall – everyone on that panel wrote a portion of that opinion. Every portion circulated and underwent scrutiny and suggested changes by the other six until we finally – after much revision and much conference and much e-mailing and memo-ing back and forth – reached an opinion that we thought every one of us could in good conscience sign onto.

MR. FREDERICK: At what point did the court settle on that process for writing the opinion?

JUDGE SENTELLE: I think Chief Judge Edwards had it in mind from the time the case came in, David. He proposed that we *en banc ab initio* to begin with because there were so many recusals that if we didn’t, we’d get in a position where it would be impossible for the court to have an *en banc* review. If you had three panel judges, you couldn’t get a majority once you
added the recusals and the three. No one could say it depended on the luck of the draw if we started with every judge who was not recused. And from that beginning, we knew that we had to have a substantial majority of the seven so that, again, we would have an unassailably legitimate decision on a case whose economic significance just can’t be overstated. As you know, what happened in that case determined several points on the stock market for years to come and the future of whole segments of the IT industry. We would have needed to have – I don’t mean to be too over-reaching in comparison, but like Earl Warren thought he had to have unanimity, if possible, on *Brown v. Board of Education*. We had nothing of that scope, of course, but we had a pygmy version of that in that we thought we had to have something that would be unassailable in its legitimacy. And, of course, the Supreme Court did not grant certiorari on ours.

**MR. FREDERICK:** Well the decision to go *en banc* was announced kind of contemporaneously with the Government’s effort to have the Supreme Court review the case. What dynamics played into the court’s timing of its decision to go *en banc* at that point?

**JUDGE SENTELLE:** I don’t know that we were particularly influenced by anything outside of what I already said, David. We wanted to do it as early as possible and we did. We virtually could not have announced it any earlier than we did. On the other hand, we did not want to delay. We did not want anybody to be able to think that anything had triggered it. It was a
decision that had not been made in this court since, I’m told, during the Watergate era when there was a case during the Nixon scandal in which the court decided to en banc ab initio. This is the first time we have done it since then, except when we’re dealing into those odd statutes that require us to.

MR. FREDERICK: The parties proposed an oral argument schedule that the court ultimately rejected. The court actually expanded the time for oral argument.

JUDGE SENTELLE: Highly unusual for us. I don’t recall ever doing that before.

MR. FREDERICK: Did you think, in retrospect, that the amount of oral argument time was adequate to address the issues?

JUDGE SENTELLE: Yes, I think it was about right. I’m glad we had not given any less, but I don’t think we needed a lot more.

MR. FREDERICK: It was a very tightly controlled oral argument, unlike some oral arguments where the red light comes on and the court asks more questions. Had that been prearranged or did that just happen at the time of the argument?

JUDGE SENTELLE: I don’t know that prearranged may not be too strong of a word, but it was pretty well understood that Judge Edwards was going to run a tighter ship than we do on three-judge panels usually. That’s not unique. Judge Randolph and Tatel and I had a complex case in the FERC area, for example, where we had an all-day schedule of arguments with a one-hour lunch break. We discussed it ahead of time
and I said that if nobody objected, I intended to cut a lawyer off, as Bill Rehnquist says, in the middle of the word, “if” when the red light went off so that we could stay on schedule. When you have a long schedule like that, it’s more important to not let it get out of hand. When we have the usual three-judge courts with three or four cases in a day, it tends to be what Spottswood Robinson said, that “those lights only control the bar; God controls this bench.” I don’t think there’s any harm in the way the judges do ordinarily continue to interact if we’re getting somewhere interacting. So, unlike some courts, we do extend time very often. But Microsoft was not the case for that. Particularly since we were all seven sitting.

MR. FREDERICK: How did the conference proceed in that case? How long did it take the court to work through the issues among the seven judges?

JUDGE SENTELLE: Hours for the first time through. We did sit down all of us together at least one time after that. We mostly communicated by memos and e-mails after that. But the first conference was several hours. We all had our outlines of what we thought on each issue and we started with the most junior and, theoretically, were going to go in an orderly fashion from the most junior up through the chief and it didn’t necessarily stay that way because we kept jumping in on each other’s conversations. Which is all right. We worked out an initial disposition of every issue except a couple of the most complex economic ones at that session. The parts of the opinion were assigned and then everyone understood
that everything that we had done was tentative. When the opinion circulated, every subject was still on the table. And we all circulated our parts as we got them finished and then we all revised them according to the notes and there were times when it did not look like we could stay unanimous on an issue or two. Even after we got past the point of thinking there might be a dissent, we got to a point where we might not have been unanimous on a rationale. But we finally got something everybody could, in good conscience, sign onto. That may be the crowning achievement of the already admirable administration of Harry Edwards as chief judge.

MR. FREDERICK: I think most observers would perceive it that way. Particularly given what had happened at the trial with Judge Jackson’s subsequent comments and the different perspectives of the judges on the D.C. Circuit towards antitrust issues and economic competition issues. Can you describe what the points of greatest contention were among the judges?

JUDGE SENTELLE: I don’t think that would be proper, David. I think I’ve really said as much as I can say about that. I remember one interesting thing before it. More than one news media outlet referred to Doug and Steve and I, that our views were well-known on antitrust law because of our extensive writings. Now that’s true of Doug and Steve. I never published the first word on antitrust. I did some antitrust litigation, but the only things I ever wrote in antitrust law were motions papers. I
never published a word of it, but somehow or other, some of the news media had the idea that I had written on it like Doug and Steve. Of course, Doug is a guru of antitrust law and Steve is a legal economist of great note.

MR. FREDERICK: Leaving aside the comments that Judge Jackson made, how did you assess the district court’s handling of this complex matter in a couple of respects: the speed of getting it to trial, the handling of the findings of fact in the written form that they were done, the use of written direct testimony with just the trial for cross-examination. As a district judge, I wonder how you’d perceive that?

JUDGE SENTELLE: I think he worked hard and attempted and, to some extent, achieved a good level of efficiency by the way he handled it, David, and I’m sorry that the controversy arose and that he said what he did after it was over. But, as far as his efficiency and professionalism in handling that case, I could have seen that case in the wrong court having dragged on for additional years with probably a few mandamus petitions along the way. And, also, I think the use of that written testimony probably isn’t done enough. That is a very good way to handle expert testimony and most of this amounted to expert testimony. Have your expert file the statement, a pre-trial deposition if necessary, and then all the court is going to be is, at most, cross-examination. Judges can read. I’ve seen people in trial courts and you probably have seen records where some attorney would ask a witness to read something into the record in a non-
jury trial, which is absurd. Hand me the document. Don’t read it into the record. I’ll read it during the recess. Tom didn’t permit any of that to go on. He kept things efficient and moving. He had a very hard job. District judges have a harder job than circuit judges have. They start from scratch and deal with real people in real time. We start with a record, we know what the issues are in advance. There’s no spontaneous surprise – virtually none at all. And we don’t have to operate in real time. There’s not a whole courtroom full of people waiting for a result.

MR. FREDERICK: Just at a general level, because you were a district judge and Chief Judge Ginsburg had headed the Antitrust Division, I would have thought that the en banc court brought a range of perspectives to the case. Without talking about the decision making, how, if at all, did the discussions of the case affect your thinking about the law or antitrust or economic competition?

JUDGE SENTELLE: Having the depth and breadth of Judge Ginsburg, in particular, and also Judge Williams’s knowledge of legal economics and antitrust, I think, benefitted all the rest of us. Not that they always agreed on everything, but they brought a keen understanding without the necessity of study time to the issues that the rest of us greatly benefitted from. My time in the district court, I think – and Ray Randolph’s time as a trial lawyer – helped with the perspective of understanding what happened below. I think having the range of judges on the panel was extremely helpful.
MR. FREDERICK: Did you have any surprises about how the Antitrust Division handled the case as it proceeded up to the D.C. Circuit?

JUDGE SENTELLE: I’m trying to remember now what the interaction was with that attempt to take the thing to the Supreme Court right off. Who initiated that, do you recall?

MR. FREDERICK: Well, it was during Joel Klein’s time as Assistant Attorney General.

JUDGE SENTELLE: And I don’t know what was going on there. That was a little strange. As far as the handling of the case itself, I think it was one that almost any administration would have brought and continued. The relief prayed by different administrations is going to be different, but it was something that had to be done. Much like the trust-busting cases of the early twentieth century, there was just a point at which if we’re going to have antitrust laws, they ought to be enforced.

MR. FREDERICK: In your time on the D.C. Circuit, have there been any other cases that have come close to Microsoft in terms of the level of attention the court has paid to it and how the court has worked the issues in the case?

JUDGE SENTELLE: Well, it’s the only case, as I mentioned earlier, that was en banc ab initio except for there’s an odd quirk in the election finance law statute where we have to take that en banc ab initio. So in that sense, David, it got the most attention of the full court of any case since I’ve been here. We’ve en banc’ed other cases, but they were down to narrow issues with the sides pretty well staked out when they came to the en banc court. This is something where we all started from a record and
reached a conclusion by a grinding down process. Now, unfortunately there were several recusals. So, of course, obviously Judge Henderson was not engaged or Judge Garland. Judge Silberman was still a judge when it started, but he was recused so he was not involved. Although he told us later that since we simulcast the argument that he had listened to the argument and was very proud that he had such an intelligent and professional bunch of colleagues. He said he felt really good listening to the argument.

MR. FREDERICK: I heard several people make the comment that the court had been very hard on the lawyers because the questioning was quite active. My own personal reaction was that it was a typical kind of appellate argument and the comments that I received were from laypersons who didn’t ordinarily attend oral arguments. But I wonder if the court got any popular feedback about its conduct at the argument.

JUDGE SENTELLE: No, not really. Other than Larry Silberman’s comment, other people that said anything just said it was interesting. I had a son-in-law who came all the way from Texas to hear the arguments. He sat in the courtroom and heard the arguments. He was an interesting fellow himself. Although he was in his thirties, he was still in college and was studying business and economics. He found it very interesting. But as far as the public at large, people don’t tell us things like that much. Most of the feedback you get as a judge is in written media and they
had very little to say about us. They had some things to say, but nothing of any importance to say about how we did it.

MR. FREDERICK: I recall one comment being made about the number of concessions that the Government made at oral argument.

JUDGE SENTELLE: Of course, that’s something we try to do. Every concession narrows the issue. And if we can get the parties to narrow the ground, then we’d like to do that. You’ve seen, I’m sure, a lot rougher treatment of lawyers than we did there. *En banc* courts are rough inherently. The couple of times that I argued to the Fourth Circuit *en banc*, the same lawyer and I were on opposite sides both times and we said we felt like the only worm in a hen yard. They were pecking at you from all sides. But you take a three-judge panel with, say, Judge Edwards and Judge Silberman, and me on a bad day and we can beat up somebody a lot worse than anybody got beat up in that case. Nobody left crying or passed out or anything.

MR. FREDERICK: All seasoned lawyers who argued in that case.

JUDGE SENTELLE: Yes, there weren’t any amateurs in that case. I’m not going to go any further than what I’m about to say, but not everybody in that case did as well as we’d hoped they would in oral argument. I got referred to as a curmudgeon by the *Post* for jumping on a lawyer for his reading of his oral argument, which is against our rules, and that kind of thing is disappointing. When you have lawyers who you know are making as
much per hour as all of the judges on the bench put together and then
they stand up there and read an argument in violation of the rules.

MR. FREDERICK: I’d like to turn to more general questions. I’ll just ask, from your
perspective, what are the qualities of a good judge?

JUDGE SENTELLE: Of course, I’ve been three different kinds of a judge, David, and I think
they vary some in each place. A trial judge has to have the often
inconsistent characteristics of a) patience, but b) firmness in
maintaining a schedule and a pace of litigation. You still have to be
patient with people, but you have to move them along. A trial judge
has to be able to act in real time, to be able to reach decisions quickly.
Fairness is an overriding characteristic of the whole judiciary that you
have to attempt to be fair and be capable of being as fair as humans can
be.

In the appellate court, patience is much less necessary. You have to be
able to sit and read and think for long periods of time to be on an
appellate court successfully. You have to be able to interact in a
different way than trial judges do because trial judges, as Judge Sam
Ervin said, “You can be a judge all by yourself. On an appellate court,
you have to convince two other reprobates,” so you have a different
kind of collegiality involved in an appellate court. Intelligence is
important, but you don’t have to be a genius. Being a genius helps, like
Doug or Steve, and maybe Harry, but the rest of us aren’t geniuses.
Does that answer your question?
MR. FREDERICK: Sure. What do you think are the qualities of a good lawyer?

JUDGE SENTELLE: On a very specific note, being able to answer the question that you’re asked instead of some other question. And, again, Silberman points out at times that the skills of a trial lawyer and an appellate lawyer can be very different. He thinks you can’t be a good trial and an appellate lawyer. I think some lawyers can, but not too many. Both have to know the value of preparation. You cannot be a good lawyer and wing it. You have to be diligent, you have to be thoughtful, you have to be prepared.

Trial lawyers have to be able to react. You’ve got to be able to object when the question’s asked and decide why on the way to your feet. You’ve got to be able to roll with the punch. When the witness gives an answer that you weren’t expecting, you have to be able to do something other than stand there with your mouth open. Larry Silberman says that trial lawyers are more like surgeons and appellate lawyers are more like diagnosticians. A trial lawyer has got to cut then and not let the bleeding get too far; the appellate lawyer’s got time to look things over and think about them. Rarely should an appellate lawyer be surprised by a question that a court asks. If you see an appellate lawyer surprised, most of the time he hasn’t done his preparation.

MR. FREDERICK: How about an administrator? What are the qualities of a good administrator?
JUDGE SENTELLE: I don’t know, I’ve never been one. You’ve got to be able to work with people. Again, you have to be able to maintain a schedule. You have to not be easily distracted. The people around the Supreme Court – I don’t mean as much the justices as their staff – talk about how when Warren Burger was Chief Justice, they used to have these meetings every month. By Tuesday or Wednesday, they’d get through with the business that needed to be handled. Bill Rehnquist came in and they leave for lunch after they’ve finished the same amount of business and it’s a lot more efficiently handled than it was in two-and-a-half days with his predecessor. So you have to be able to devote attention to details without letting them eat you alive.

MR. FREDERICK: How about at the court staff level, like at the clerk’s office or the circuit executive. What are the qualities that make them successful?

JUDGE SENTELLE: We have the best clerk here we’ve ever had by far. Part of that is you have to know what you can handle and what you have to delegate and know how to not let the delegable duties distract you from the non-delegable part. We had one in the past one time who – that clerk served as ex officio as my clerk for the Special Division for Independent Counsel, also. We had one in the past who did me a great job, but his own office was in disarray because the work for me was interesting to him and he got his big office in a mess. Mark came in, appointed one of his deputies to deal with the independent counsel matters, and he did not let it distract him from his running of the office. You have to
understand what you can delegate, know who you can delegate to, and keep an eye on them but not keep your finger in their way all the time. As I say, I’m not experienced as an administrator. I’m not the right person to tell you a whole lot about that, but that’s the generality of how I see it.

MR. FREDERICK: How have the demands on the D.C. Circuit changed since you were appointed?

JUDGE SENTELLE: The style of the caseload has gone back and forth. The balance between administrative law and traditional federal litigation, particularly criminal, moved in the litigation direction for a while, then it shifted back to where now we’re back to where the ad law is a bigger percentage of the load. It’s always been the biggest thing, but how big it is has shifted back and forth.

MR. FREDERICK: What do you think accounts for that shift?

JUDGE SENTELLE: Part of it is who is U.S. Attorney. What attitude does the U.S. Attorney and the Department of Justice have about which cases should be brought to the federal side? Jay Stevens brought cases over here that U.S. Attorneys before and after have taken to Superior Court. And that affected the percentage of the load.

MR. FREDERICK: What explanation would you give for his doing that?

JUDGE SENTELLE: I think he really thought that he could do something about the drug problem. And he thought he could do more about it by having the federal sentences. I have to say I seriously questioned whether twenty
years deters any more drug dealers than ten years does. So we got cases over here then and we’re getting some now that I think could easily be handled on the other side of the street and more efficiently. Their boat’s bigger. Both boats get swamped sometimes, but their boat’s a lot bigger than ours and they operate more efficiently on the criminal trial level than our district court does. Therefore, the appeals that come up are probably in better shape.

MR. FREDERICK: Sitting here in 2004, what is the chief problem facing the D.C. Circuit, if any?

JUDGE SENTELLE: You know, I really can’t think of a major problem we have right now. We could use one or two more judges, but we’ll manage without them. As you’re aware, we have twelve allocated judgeships and we have nine people in them. We don’t need twelve, but we do need ten and we could use eleven.

MR. FREDERICK: I want to shift to the trial process a little bit and to get you to talk from several different perspectives about the jury system and what your opinion is of how the jury system functions in our system. And you can do it from the perspective of the prosecutor, a trial judge, and an appellate judge.

JUDGE SENTELLE: I’m going to drop back to North Carolina where my greatest experience was with jury trials. The longer I was involved, the more I became convinced that juries almost entirely got the right result based on the case in front of them. The times I disagreed with them, almost without
exception, when years had passed and I looked back I thought, “Well, based on what went in front of that jury, they did what they should have done.” I lost very few jury cases as a prosecutor. I lost a few. If you don’t lose some now and then, you’re settling too cheap. You’re not authorizing tough enough cases. But the ones I did lose, almost without exception, I understood – sometimes then and certainly later – why they did what they did.

As a trial judge, both state and federal, I had much the same reaction that based on what came in front of them, the juries usually did the right thing. They made wrong decisions, but when they did it was usually explainable by the fact that they didn’t have all the evidence. Looking at it from a media perspective, the jury that turned O.J. Simpson loose has been under great criticism. But if you look at the way that case was tried and the way they got that evidence in bits and pieces and what they didn’t see that the general public did, I think it’s fully understandable why that jury couldn’t find him guilty beyond a reasonable doubt.

D.C. juries I’m not so sure about, David. I took designation and sat as a trial judge on a couple of cases here in D.C. In one of them, the jury acquitted. In one of them, the jury hung. I’m utterly satisfied that any other jury I ever had a case in front of would have found both men guilty and done so in a fairly short time. D.C. seems to be aberrational and I don’t think my cases were aberrational within D.C. The jury
system seems not to work as well here. I wish it were possible – I
know it’s not – but I wish it were possible to make D.C. part of the
eastern district of Virginia so that you could broaden the jury pool.
Both places might benefit.

MR. FREDERICK: It’s striking that in D.C. you’ll have many more professional people
going to serve on jury duty more frequently and I think that’s just
simply a function of the way the pool works.

JUDGE SENTELLE: You have a very small jury pool so that people wind up serving every
couple of years because the caseload is extraordinarily heavy in relation
to the size of the pool. There’s an awful lot of litigation here, but
there’s a relatively small draftable population here. A lot of people
who live in D.C. are not legally D.C. citizens and are not in the jury
pool. People who are still citizens of the state that they were living in
when they came to work for the Congressman and still vote there for
him, by way of example. Military people whose residence is legally
somewhere else. People that can’t be drafted for the jury pool. And
there’s, unfortunately, a higher percentage than normal of felons here.
So, all in all, you get a very small jury pool in relation to the caseload.

MR. FREDERICK: I want to ask about instructing jurors because I have seen a number of
cases where the instructions to the jury go on page after page of
transcript and we have a presumption in our system that the jury
follows the instructions, but do you think that that presumption is
played out in the real world?
JUDGE SENTELLE: I’ll answer that on a couple of levels. First, I think that juries in general do their best to act in accordance with what they understand the law to be based on the evidence in front of them. Now does that mean that they really understand and follow the details of those lengthy instructions? No, I don’t think they do.

There’s a judge named Lacy Thornburg who is now a federal district judge in my old chambers. He was a superior court judge when I was practicing law. When I went on the lower state court bench, he advised me that a judge rarely gets in trouble by saying too little. And his theory – and I think he’s absolutely right – was you outline what the elements are that you have to instruct the jury on. You instruct them on that outline and then you put your pencil down. You try to minimize the instruction as much as you can.

Now that’s easier said than done. There are some things, like conspiracy law where the appellate law upon which the judge has to operate is so stringent that he’s afraid not to give that full, long, conspiracy instruction, by way of example. And I don’t think the juries begin to understand what they’ve just been told. But I think they try and I think that what the lawyer has to do is convince the jury that they want to hold in your favor. But you can’t stop there. You have to convince them that the law is such that it permits them to hold in your favor. So I think the lawyers have a role in trying to educate the jury on their side of the law because they know the judge’s instructions
hopefully are going to be down the middle. You’re going to hand him proffered instructions, but you hope they’re going to be down the middle and you want them to be as fair as possible. But you know the jury’s going to hear more than they’re going to comprehend, so you try to give them the part of the law that helps your case.

**MR. FREDERICK:** Now, as an appellate judge with that type of experience, have you had the occasion where the discussions among other appellate judges about how a jury should have been instructed strike you as not reflecting the kind of practical experience you’re talking about?

**JUDGE SENTELLE:** A) yes, but b) not very often. Because of the nature of our caseload, we have fewer appeals that question jury instructions than you would find in any other circuit, except, obviously, the Federal Circuit. But as far as the run of cases, we don’t have as many appeals after jury verdicts as most circuits have. And most of those do not attack the jury instructions, which I think is a tribute to the careful job our district judges do in giving the instructions. When I do have conversations and I look back at the old Bazelon opinions and some of those are just out of the real world completely as to what they think judges ought to tell juries.

**MR. FREDERICK:** I want to shift a little bit to the nature of contacts that judges and courts have. Legislatures and bureaucracies work on a system of informal contacts. Their formal decisions are set forth in legislative acts and, in the case of bureaucracies, agency orders. A lot of stuff happens behind
the scenes from informal contacts. It’s obviously much less so for the judiciary. How important, in any fashion – whether it’s through administration or understanding particular areas of law – are informal contacts among judges.

JUDGE SENTELLE: Judges with each other?

MR. FREDERICK: Yes.

JUDGE SENTELLE: The greatest importance is in the maintenance of collegiality because most of our work is done on a fairly formal basis. Rare is the case that two judges discuss a case. Usually the discussion goes on among all three who are involved in the case unless you’ve already established that there is a dissenter and then the two have contact. But anything we have to say about the case after the initial conference is usually memorialized – it’s sent in a memo or otherwise in writing – or it’s a designed conversation, not one where we just casually, informally start talking about it the way congressmen have to about legislation. Nearly always, if we’re talking about a case, one of us has called the other to talk about the case. That informal contact, I think, is very valuable for the purpose of maintaining collegiality. And I think one of the other great things Harry Edwards did was to start having occasional lunches to which all of the judges are invited.

MR. FREDERICK: How about things like judicial conferences, bar meetings, etc.

JUDGE SENTELLE: I think, there, the interaction between the bench and the bar is more important than the interaction among the judges. I think it’s a bad thing
for the judges to become too isolated from the bar. We don’t get enough feedback, at best, and the more feedback we have and the more contact we have, I think the better judges and lawyers are able to understand each other. And things like panels at judicial conferences give insights into the thinking of the judges and the lawyers who serve on them, from which we can learn from each other. Also, the British concept that there is one profession and the judges are simply part of the same profession is something I think we tend to forget sometimes in this country. And I think our judicial conferences help restore, I think, the valuable element of “one profession.”

MR. FREDERICK: You’re active in the Inns of Court. Can you describe what that has done for the bench and bar?

JUDGE SENTELLE: It’s been a continuing channel of civil communication between the bench and the bar attempting to recreate what the British have done. And I’m not saying we’re totally successful, but I think it has had – as Warren Burger thought it would – a good deal of success in recreating the kind of channels of communication that improve everybody’s performance. I’m not sure. You’re in an Inn, I think, and you know that the enacted programs we have for lawyers and judges role play and then the bulk of the Inn comments and interacts on the subjects. It helps all of us maintain a) collegiality, b) civility, c) respect, and d) understanding that we don’t get anywhere else. We had another good meeting last night of our Inn.
MR. FREDERICK: What trends do you see in terms of civility? Fifteen years ago as I was coming out of law school, I well recall huge debates about the lack of civility in the bar. I haven’t detected as much concern about civility in recent years. Do you think that’s because the profession is becoming more civil or because we’re not talking about it as much?

JUDGE SENTELLE: I think there has been some improvement. I’m vain enough to think that the Inns have had something to do with that, not just for the members but for the tone that they’ve helped set among the leaders of the bar in a lot of places. Also, I’m afraid that we’ve gotten tired of the subject matter. But I do think that there has been an improvement. I think that when I came out of law school around 34 years ago that things were more civil than they became by the time you came out of law school. I went to a small bar originally, but I think it was pretty generally that lawyers took each others’ word on things. “Drop me a note when you have time that memorializes our agreement here,” but nobody had any doubt that when you had reached an agreement, you’d reached an agreement. And you papered it, but you understood that you got that continuance or you settled that question – whatever it was that you were talking about – and you did it without accusing each other. And most of the time in the courtroom, you didn’t have the types of personal accusations that became common later.

And then there’s something else that has arisen that I really hate but that’s getting no better. You didn’t have lawyers talking about their
cases on the courthouse steps with the reporters. That was strictly
outside the pale when I started practicing law. You tried your case in
the courtroom. When it got over, you might have had one press
conference by the prosecutor or the defense attorney, but you didn’t
have this daily carping and playing for the galleries that you have now.
Things got worse. I do think they’ve begun to get somewhat better.
You still have some Rambo litigators out there who want to burn all the
bridges and take no prisoners.

MR. FREDERICK: I want to turn to the American Bar Association and ask you what your
experience has been with it.

JUDGE SENTELLE: I dropped out some years ago because the ABA began to take political
positions. And I hasten to say that the fact that I disagreed with some
of them may have hastened my dropping out, but whether I agreed or
disagreed, I simply don’t think judges belong in an organization that
takes political positions. The most foolish one was when they had the
anti-right-to-life, I would say, or the pro-abortion stance that the ABA
took that had nothing to do with the practice of law and they should
have known to begin with that that resolution was going to run off a lot
of their members, which it did. I’ve talked to one of the delegates who
voted for it who admits that that was the dumbest thing they had ever
done. But the whole idea of them taking positions on political
questions to me is inconsistent with judicial membership. One of the
great things about the Inns of Court is that there’s nobody within it
that’s empowered to issue resolutions. So it can’t pass a bad one since it can’t pass any. We do vote from the floor to commend the outgoing president or something of the Inns, but I was not comfortable in a more political organization.

I went back and did some speaking for them. I also was on some panels and seminars even after I was no longer a member. I don’t think I would do that today because the last time I went to an ABA convention was on a panel on employment rights or something.

Upstairs in the same building they had brought Webb Hubbell in to berate the prosecutor who had sent him to prison in a very political way and I decided I don’t belong there anymore. I have no role with the ABA now.

MR. FREDERICK: You became a judge at a very young age. Do you have views about at what point in a lawyer’s career becoming a judge is the right step?

JUDGE SENTELLE: I probably became a state judge too young. I went on the state bench at 31. I was the youngest judge in the state that day. I think there was a younger one the next day or soon thereafter. I think I would have benefitted from some more wisdom before I went on. I stayed three years and then went back to practice for financial and professional reasons.

I went on the federal district bench at 42 and came up here at 44. I would say, David, that if I could have laid out my career I would have done all of the things I have done, but I would have done most of them
longer. I would have come on the federal district bench somewhere around early fifties and come on the circuit late fifties. For lots of reasons, I think you benefit from more experience before you come on to a bench. And your temperament – I was still feeling like a trial lawyer the first several years. I had more vigor than I wanted to expend in the courtroom when I first came out of the practice. I would have liked to have tried cases several more years. I see the people I used to try cases with who are burned out today. I’m glad I didn’t stay to age 60 trying cases, but I would have liked to have done it another 10 years perhaps.

MR. FREDERICK: How did you expend that energy?

JUDGE SENTELLE: Well, when I was on the trial bench – we were living in Asheville then – we had horses and some land and I had a lot of things to do with my kids and physically, so I used up a lot of it that way. Since then I’ve done some lecturing for the Bar Foundation lectures, I’ve done a lot for the Inns of Court, taught some, found other outlets.

MR. FREDERICK: What do you think is the hardest part of your job right now?

JUDGE SENTELLE: It’s still hard to get a grip on some of these massive administrative records. It is, as Bob Bork said, more time consuming than it is intellectually difficult. They start out looking huge and massive, but when you get through with them and finally get them boiled down you realize that the legal question is neither difficult nor interesting. But you have to get through learning a whole new area of electric power
transmission or something before you finally get to that point. Now for a while that’s interesting but then, when you get down to where what you’re learning is the esoteric, it ceases to be interesting and becomes tedious. I suppose it would always be an acceptable answer to say that deciding cases is hard, but most of the time it’s not. Most of our cases – I’d say three-fourths of our cases, at least – once you have understood the file, the decision itself is easy. If you look at how many of our cases are unanimous, I think that gives some testimony. That doesn’t mean they’re easy, but it does mean that they’re not that hard. Even some of the ones that are unanimous are difficult, but deciding the cases is usually not the hardest part anymore.

MR. FREDERICK: As we were getting set up, we were talking a little bit about how senior status judges have fewer burdens on them. Are you looking forward to that aspect of your career?

JUDGE SENTELLE: Yes, I think so. You don’t give up much and financially you gain a little. Because your salary becomes retirement income, they no longer take Social Security out of it. Silberman also is taking advantage of another aspect of law. Our outside earnings are capped as active judges; they’re not as senior judges. So he now teaches two courses instead of one and gets a higher outside income. So financially there are incentives.

As far as what you do on the court, senior judges generally do not take motions duty and do not go on the complex wheel. Motions is not
usually hard decisions – you get all the *pro se* litigants and such – but it’s like hearing confession in a convent. You’re just getting peppered away with little things all the time when you’re on motions duty. You’re supposed to carry your cell phone with you. We don’t really have emergencies, but lawyers think there are emergencies. We get called at odd places and times.

I’ll tell you a story since this is not going to be published for several years. I warned my dermatologist one day that I would have to take a call if it rang and she said, “Go ahead if you have to.” So I had to stand naked in her office and talk on the telephone while she waited for me to get through handling a motions matter one time. They’re a nuisance and the senior judges don’t take it.

The complex cases, while sometimes interesting, are always burdensome. You have to fit an extra day of sitting into your schedule to handle those and load up a clerk with extra files and you yourself have extra files. So coming off complex is not a bad thing either.

**MR. FREDERICK:** Do you see yourself staying on the court for a while in semi-retirement as a senior judge or leaving the bench altogether?

**JUDGE SENTELLE:** David, as long as God gives me strength, I’ll keep doing this. Now how much of it, I’ll let up as I get older. But as long as I’m still able, I don’t expect to ever quit holding court. I don’t see any reason to.

There are few things in the way of hobbies. I don’t have any overwhelming hobbies and there are very few things that interest me as
much as the work does. We’ll travel more. We’ll have, presumably, more grandchildren to do things with. But, no, I don’t see any reason to quit as long as I’m able. Now there’s a danger in any job like this in staying too long when you can. You look at some of the senior judges and justices in history who have remained longer than they should have. There are some sad stories from this court and the Supreme Court and the U.S. Senate. Jesse Helms told me one time that he had empowered Dot to tell him when to quit. He said, “You should empower Jane to tell you when to quit.” He said, “Dot told me, ‘Don’t run for re-election,’ so I didn’t run for re-election.” Nobody apparently was empowered to tell Strom Thurmond, for example, not to run for re-election and it was pretty pitiful in the last few years. Carl Hayden was another that stayed over there too long and you know judges of this court who stayed too long. Of course, Douglas on the Supreme Court, Stephen Fields back in history, and several others who should have left long before they did. So I hope my family will tell me when to quit. But until I get to the point of needing to, I’d like to keep doing it.

MR. FREDERICK: I’d like to turn to your family and friends and just ask you who were your closest friends?

JUDGE SENTELLE: You know, that’s a harder question than you may think it is because changing lives over the years, you lose touch with people. I’ve still got a couple of very good friends going all the way back to high school, but we’re not in touch all that much. We talk several times a year and we
e-mail some. One guy is a disability retired insurance man in
Yadkinville, North Carolina. One is a disability retired community
college teacher and then administrator who lives in the mountains of
North Carolina. He was one of my very dear friends in high school.
And there’s a fellow I went all the way through school with – only one
because he and I both changed school systems after the sixth grade.
Both of our parents moved from the town out to the country the same
year, so we went all the way through together where none of our other
classmates did we know the whole time. We’re only in touch around
Christmastime and occasionally he comes to town and we have dinner
when he’s in town. He was one of the principal inventors of virtual
reality and we keep up.
Now, among the family, oddly enough, my brother’s wife is one of my
best friends. She and I have always been able to bounce things off of
each other that we couldn’t off our own spouse. We could easily talk to
each other. My wife’s sister’s husband – he and I are about as different
in background as you can get. He’s twelve years younger than me, I
guess. He’s a New York Jew and I’m a hillbilly Baptist, but there’s
nobody I’d rather sit on the back porch of the beach house with, smoke
a cigar and drink a beer and solve the world’s problems with than
Henry.
Some of my clerks have become very good friends, especially the
earlier ones where the age gap is less sizeable and meaningful. I think
of Mike O’Neill, a George Mason professor and FTC commissioner. Neil Gorsuch of your firm is a very good friend. Don Stumbaugh, the executive director of the Inn of Court would have to rank pretty high. Clarence Thomas. Royce Lamberth on the District Court. Clarence and Royce and I have solved a lot of the world’s problems over the last ten years or so together. We were very fortunate. Your kids are still young, as I recall. When you get teenagers, you’ll find that if you’re real lucky there is some other adult they’ll listen to because they’re not going to listen to their parents in the teen years. We were very lucky to have Clarence and Jenny Thomas to be the adults that our youngest daughter still listened to when her parents didn’t know anything. I’m sure I’m slighting people I should be mentioning, but that’s among the people who are and have been good friends. I’ll also go back and put Dick Leon in there. Judge Leon of the District Court who was a good friend before he became a judge and still is.

MR. FREDERICK: How did becoming a judge affect your ability to cultivate friendships?

JUDGE SENTELLE: I hate to keep sounding like a pitch man, but one of the things about the Inns is that it has helped make it possible to cultivate friendships as a judge. There aren’t that many ways to do it, particularly as an appellate judge and particularly changing towns. Coming into a town where you don’t have a lot of friends around and most of the ones I do have left. Jesse Helms and Lanch Faircloth aren’t here anymore. I made some friends, including Dick Leon and Don Stumbaugh, through the Inn that
I might not have otherwise. But it is a bit isolating. You don’t have the same robust contact with the bar that you had when you were trying cases.

MR. FREDERICK: Do you try to carve out particular times of a week or month to get out and interact with friends?

JUDGE SENTELLE: I play poker one night a month with Bill Rehnquist and Scalia, and Royce Lamberth. Irving Kristol used to play with us but he’s not been well. Walter Berns from American Enterprise Institute is the secretary of the game. He’s the guy that makes sure we have somewhere to play every month. Tom Whitehead is a communications consultant. He’s a longtime part of the game. Marty Feinstein, who was the director of the Kennedy Center and the Opera Company for many years. It’s a diverse group with a concentration of jurists, but lots of others. Bob Bennett, the Clintons’ lawyer, he’s part of the group. It’s a diverse group. Despite the fact that it has a concentration of judges, it still has a lot of variety to it and nobody talks much about cases that night. We talk about everything else in the world – sports and music and everything – but the law. It’s a very welcome relief for all of us, I think. From Royce on the trial court to the two justices, we all enjoy that.

MR. FREDERICK: Now how did you come to be a part of that group?

JUDGE SENTELLE: They have an ordered list by seniority and it has seven who are the regular players and they try to keep two or three substitutes. Bill Rehnquist called me one day and said they had had two or three deaths
or dropouts and did I play poker? Yes, I did, and he asked me to join
the group. It came at a time when I was under attacks from CBS and
the Washington Post and Hillary Clinton over the involvement of Ken
Starr and my friendship with Jesse and Lauch. And Bill didn’t say a
thing about the attacks. He just called and said, “Dave, do you play
poker?” And I said, “Yes, I do.” And he told me that they needed
somebody in the game and would I be interested in coming in. So I got
on the sub-list originally, but as people died and dropped out one way
or the other, I moved up the ladder.

MR. FREDERICK: We’ve been talking about your poker game. Who is the best player?

JUDGE SENTELLE: Bill Rehnquist is awfully good. Walter Berns is a very good poker
player. I’m good. Royce and Marty both had not played in a long time
before they got in the game and it was evident. They’re still not
probably quite as good as the average in the game. I guess either Bill
or Walter – one or the other – would be the best player. Although, as I
said, I’m good myself. Just watching how the money flows, the three
of us would win more often than we lose, but it’s not dramatically
different.

MR. FREDERICK: I don’t envision Justice Scalia having a poker face naturally.

JUDGE SENTELLE: Yes, he’s the most impulsive. He knows what he’s doing; he just can’t
make himself do it. He’s too impulsive. Rehnquist does. You never
know whether he’s got what he’s betting or not.
MR. FREDERICK: Yes, he does that in court, too. Apart from your monthly poker game, do you have other regular social interactions?

JUDGE SENTELLE: I have a very busy week usually. The third Tuesday of the month we have our prayer breakfast, which is judges from the Supreme Court to administrative law judges and magistrates. We meet across the street now in the Superior Court dining room. We used to meet in the Capitol building. Oliver Gasch started it with Martin Bostetter, the bankruptcy judge for the Eastern District of Virginia. Oliver was a district judge here. In the early ‘70s, Doug Coe, whose group puts together the National Prayer Breakfast, started these prayer breakfasts and they got Oliver and Marty interested.

They enlisted Bill Rehnquist to have a Supreme Court Justice involved. Now Bill no longer comes. He dropped out when his wife was sick and he said he’s not interested in coming back because he doesn’t want to go to anything that early in Washington. But we do have on the list Clarence, Justice Kennedy, Sandra O’Connor, and Scalia. They don’t come every month, but they’re there from time to time.

Oliver chaired it, organized it, made sure there was a speaker for twenty-some years, and then came in here one day and said he was fixing to close his chambers and he couldn’t manage it anymore, would I take it over. So we’ve run it out of these chambers ever since then and I preside unless I’m out of town and then Tom Hogan fills in for me. We make sure there’s a speaker on some religious subject every
month. It’s a good get-together and a good group. I should have
mentioned Hogan among the very good friends a while ago.
That’s the third Tuesday. The third Wednesday in every month we play
poker. And the third Thursday of every month, my Inn of Court meets.
So I am very thankful for months like this one that start on a
Wednesday so that they don’t fall right in a row, but most months that’s
just a very busy week.
I usually go to church on Sunday mornings, although I didn’t this past
Sunday. That’s the scheduled activities.

MR. FREDERICK: What church do you worship at?

JUDGE SENTELLE: I go to Fairfax Methodist now. I grew up Baptist and I think, in some
theological sense, I’m still a Baptist. But I’ve been going to the
Methodist church for some years up here.

MR. FREDERICK: How active are you in church life up here?

JUDGE SENTELLE: I attend regularly. I substitute teach Sunday School. I will not take a
class as a commitment. Most of the years of my professional life, I’ve
had a class I was committed to. That ties you down more than I’m
willing to promise now when my kids are scattered and much family is
back in North Carolina and such. So I teach on a substitute basis. I
have been on the board of the church, but I asked that I not be because
frankly I think the meetings are usually a waste of time and I was not
making many of them anyway. So I’ve asked not to be on the board.

MR. FREDERICK: Tell me about your home life and your family life.
JUDGE SENTELLE: Well, we’ve been married since 1965. We have three daughters. The oldest daughter, Sharon, is 35. She has our first grandchild, Kelly, who is three-and-a-half. Sharon worked for Nortel as a tech for a few years and then left when she was laid off, along with most of Nortel’s employees. She decided she’d be a stay-at-home mom for a while. She’s just starting a little business in her home doing tech kind of jobs for people – transferring home movies to CD disk and the sort of tasks that a lot of people my age want done but don’t want to undertake themselves.

Second daughter, Reagan, will be 32 in a couple of weeks.

MR. FREDERICK: Was she named after the President?

JUDGE SENTELLE: Well, there’s a split of authority on that question. She was born on the President’s birthday and I say she was and Jane says she wasn’t. I did give him a picture of her one time with her birth date on the back of it and her name because she was born on February 6, which is Ronald Reagan’s birthday. Boyden said we could have named her Ruth because that was Babe Ruth’s birthday as well as Boyden Gray’s birthday. She is in Texas and is a professor of engineering. She teaches structural steel bridge construction. Her husband, although several years older than her, had not finished college when they got married. He has gone back and finished his degree with honors summa cum laude. He finished in December and he’s started on an M.B.A. They live in Houston now. They were in Austin for several years while
she was getting the Ph.D. They don’t have any children and don’t seem to be making any progress along that line.

Rebecca, the youngest daughter, will be 30 on February 3. I tell her, “Thirty is nothing. I’ve done that twice.” She has a year-old baby. Mikyla just turned a year old last week. They live near us. Rebecca works for a government contractor at the CIA and her husband also works for a government contractor somewhere else, but his company does state and local contracting. They live out in Centreville, about fifteen minutes from us. My wife keeps Mikyla while her parents work and she delights in that.

MR. FREDERICK: Your grandchildren are very important to you.

JUDGE SENTELLE: Oh, yes.

MR. FREDERICK: What is it about them that you like the most?

JUDGE SENTELLE: You can enjoy the delightful aspects of childhood without being responsible for the upbringing of the child. I guess the downside of Jane keeping the child is that she’s responsible for more of the upbringing than you normally are with your grandchildren. But you’re doing it from a different perspective than the parents. There has rarely been a psychiatrist who tells you that the grandparent screwed you up. Usually it’s your mother or your father. So you can enjoy the child without having the responsibility. You get to give them back when things are hard. And they are delightful.

MR. FREDERICK: How was it to be the only man in a house full of women?
JUDGE SENTELLE: You get used to it. I’ve said lots of time that I think people have it mixed up who say boys are for Daddy and little girls are for Mama. I think it may be the other way around. I think Daddies can thoroughly enjoy little girls and if you look even at adult children, the boys always look after Mama and the girls always look after Daddy. I think at times it’s difficult. There’s always somebody who is out of joint when you’ve got all of them at home. But you get used to it.

MR. FREDERICK: Tell me about your wife and what she’s meant to your life and to your career.

JUDGE SENTELLE: I knew Jane from all of our lives, really. I don’t know exactly when we first met. She was a year behind me in school. Again, she started in the town schools and transferred to the country schools a couple of years after I transferred out. We did not date in high school. She tells me that I tried to pick her up one time but she turned me down. I told her I don’t remember that. There were so many that turned me down that one doesn’t stand out. Both of our fathers worked for the same textile mill.

We were from similar blue collar, working class, maybe high school educated kind of backgrounds. We were interested in very different things in education. She was a math major; I was in political science. She is not an outgoing, public kind of person and it really makes it a little difficult for me to talk about the relationship, David. I’m not going to try to go into any depth on it. She’s much more of a private
person than I am and I’ll mostly leave it there. I won’t bring my wife into it.

MR. FREDERICK: That’s fair enough. Are there ways that maybe in a quieter and subtler way, she’s made you think about the law in a different way?

JUDGE SENTELLE: I think the biggest change about getting married was that I went from being a very irresponsible undergraduate with a gentlemanly ‘C’ – which in those days was a respectable middle grade academic average – to a serious law student nearly at the top of my class. I think a lot of it had to do with getting married. I think she settled me down in a very meaningful sense. As far as the law, it’s not something that she deals with a lot. I guess in some sense everything in your life affects how you view things, but as an appellate judge I try to view the law as the law and not let too many other factors influence it. I’m sure that I understood, in a factual setting when I was a trial judge – particularly when I was a state judge with domestic jurisdiction – domestic cases a lot better than I would have otherwise been able to because I think I saw both sides of it better.

MR. FREDERICK: You were also a young father at the time you were performing that role. How did that affect the way you looked at cases?

JUDGE SENTELLE: The hardest thing that I ever had to do as a judge was handle custody cases. Now, I never presided over a capital trial. I’m sure that’s devastating as well. But as far as the difficulty emotionally and personally of handling cases, child custody cases were the hardest and I
think being a father made them harder, not easier. When you come in there and you know that you’re going to pronounce a judgment that means that that parent is not going to have that child in the way that parent wishes to have that child, it’s a very hard thing to do.

MR. FREDERICK: Did you talk to your wife about those kinds of cases when you were handling them?

JUDGE SENTELLE: Only to this extent, David. I would call her sometimes from domestic court and say, “Do you still love me?” She’d say, “Yes,” and I’d say, “I granted fifty divorces this morning and I’ve been here in a fighting custody case all afternoon.” I had to touch base sometimes in the middle of those. It’s a different world. Now as far as the particular facts of a case, I didn’t think it was proper. The only people I ever talked about ongoing facts in a case with were colleagues. After they were over, I unloaded on Jane sometimes. And sometimes I had a lot to unload. But as far as the decision-making process, I had a couple of colleagues that the three of us felt we could help each other when we had difficult decisions to make. Actually there were four of us, but one of them went on to a higher court.

MR. FREDERICK: I would think there would be some jobs – and being a judge would be one, or an intelligence operative or someone with access to national security information – that would create real walls between spouses.

JUDGE SENTELLE: They do, yes, they do.

MR. FREDERICK: And that it takes special means of accommodation to deal with that.
JUDGE SENTELLE: Right, and it’s only in a trial court where you’re acting alone. There’s only a certain extent to which you can even involve colleagues. They can maintain your confidentiality, but to a point you can’t go beyond. You have to go home and your wife says, “What are you trying?” And you say, a custody case, a domestic case, a murder case, or whatever you’re trying. But you can’t talk about it in the same way that you’d like to be able to so you do erect walls. Intelligence people have the same problem – not just national intelligence, but criminal intelligence also. The police officers who deal with criminal intelligence have the same kinds of problems. They, by the way, I know have a very high divorce rate and I’m sure that’s a reason.

MR. FREDERICK: Who would you say in your personal life has had the biggest impact on you?

JUDGE SENTELLE: That’s another one of those questions that you sort of have to piece out at different times. My parents, I think, each of them – I started to say particularly my mother, but my father in a lot of ways, too, had a lot of impact on my life. Mother was one of those people who could quote a scripture for everything and I think I learned a lot from that. My father I gained more genetically from him than I did from her. My personality for good and bad was more shaped by my father. I don’t know if I would have had the same excesses. Outside the family and in the later years there are people from whom I have deliberately tried to learn and then there are others who have had
shaping influences. Jesse Helms did in some ways in that he affected my career by getting me to do things that I otherwise might not have done. Some of them he talked me into and some of them he helped me get what I wanted. Wilson Warlick was an old senior federal judge when I came in as an assistant U.S. Attorney. Judge Woodrow Wilson Jones was the Chief Judge of that district. I later took his place on that court. I learned a lot about trial judging and people from the two of them.

Again, there are lots of others. My wife. My children right now. They influence your life, too, in ways that you don’t even realize yet. Dean Dickson Phillips in law school was one I learned an awful lot from. He was later on the Fourth Circuit. He’s retired now, still living.

MR. FREDERICK: What do you consider to be the greatest achievement of your life?

JUDGE SENTELLE: It ain’t over yet. I don’t know that there’s any one single thing. Raising three daughters without any of them ever getting on drugs, going to jail, getting pregnant out of wedlock and having them all still speak to us after all these years, to Jane and me, I think, maybe the best achievement of all.

MR. FREDERICK: Are there any other things you’d like to talk about at this point? We’re coming to the end of our session together.

JUDGE SENTELLE: David, I feel like I’ve had two very full, very good lives. One in North Carolina and one in Washington, but there aren’t many things generically that I would ever have wanted to do that I haven’t done.
I’ve practiced a profession on virtually every level. I was an insurance defense attorney. I was a prosecutor. I was a criminal defense attorney. I was a plaintiffs’ lawyer. I was a state trial judge. I was a federal trial judge. I’m a court of appeals judge. I’ve written for publication – both fiction and non-fiction, both popular press and academic. I’ve taught at four universities. I’ve had a long marriage and three good kids. I’ve known a president and met a few others. I can’t think of much that I’ve missed that I would have wanted along the way. I’ve run for office and won and lost. That’s all there is in running for office.

MR. FREDERICK:    Well thank you very much, Judge, it’s been a pleasure.

JUDGE SENTELLE:  Thank you.
Mr. Frederick: Well Judge Sentelle, it’s been a few years since we last spoke in your oral history. When we left off you were just about to become the Chief Judge of the Circuit. Can you describe for me what that was like to become Chief Judge of the D.C. Circuit.

Judge Sentelle: Well it was a part of a very complex five year cycle, David. As Chief Judge of the circuit not only did I suddenly have the ultimate responsibility for a staff approaching a hundred and half the responsibility for a building of significant size, but I also automatically became part of the Judicial Conference of the United States that 26 judges who serve on as sort of a board of directors. The Chief Justice then took that occasion to appoint me as a member and ultimately as chair of the Executive Committee of the Judicial Conference so that I was involved in not only with the running of my circuit but of the entire judiciary. And very time consuming although interesting and demanding and in rewarding ways.

Mr. Frederick: What were some of the big issues that you confronted in that capacity?
JUDGE SENTELLE: The big thing during that term and now, and Judge Traxler has succeeded me in Executive committee and Judge Garland has succeeded me here. The big thing was the financial crisis nationally, the budget cutbacks, the sequestration. How to try to save money in the operation of the courts.

MR. FREDERICK: Now for historical purposes, can you give us some like specific, how, how significant were these cuts? And what by percentage terms, how did it affect the federal judicial system?

JUDGE SENTELLE: In this building, we had seen this court, we had seen what was coming. And we had been allowing our staff to decrease for some time. We still had to lay off three or four people that we had to lay off to meet the sequestration goals, which is a very hard thing to do. At least two of them we were able to assist placing somewhere else. That was not an easy task. Now nationally, there were lots of things that we have tried to do, some of which we succeeded in. There are a number courthouses around the country that are not needed. Generally they’re the unstaffed ones. There’s no judge resident in some of the courthouses around the country. They need to be closed; there were about 90 of them. I got the list of 90 as the chair of the executive committee and started on the process of trying to get them closed. We got about six of them closed. A few years of effort there. I know Bill Traxler is still trying as my successor to...

MR. FREDERICK: It sounds like the military base closing…
MR. FREDERICK: …problem

JUDGE SENTELLE: Yes, I think we need to close, base closing, or court closing, or courthouse closing commission to try to get rid of these things.

MR. FREDERICK: Were there a lot of political, small p, political dynamics in that process?

JUDGE SENTELLE: Yeah.

MR. FREDERICK: How, how did you feel as an Article III judge interfacing in some of those issues with Congress, or did you have to do that?

JUDGE SENTELLE: I had to do some, the executive director of the Administrative Office of the courts runs a lot of interference for you on that, so when I was asked if I would be interested in consideration for that position after I got out, the executive director, I sent word to the Chief Justice that, look, the last thing I wanted to, the thing I miss least about politics is interfacing with Congress and budget matters. And I said, I’ve just gotten through with some of that, I don’t want a whole lot more of it.

It’s not something I like to do at all, David. Granted there was a time in life when I was in love with politics and I had to do it but when I went on the bench one of the great things about going on the bench is that you get out of politics. And so, it was a difficult five years in that regard but it was very rewarding and interesting. Merrick, asked me, Judge Garland asked me when he became Chief, he said “Am I making a mistake?” I said Merrick if I could do this for one more year, I would...
do it for one more year. If I could do it for two more years, I would do it for one more year.

MR. FREDERICK: [Laughter] Well, it sounds like your term ended more or less at about the right time.

JUDGE SENTELLE: About the right time, yeah. As it happened, I had some non-life threatening surgery suddenly came upon me around that same time; it turned out to be a very fortuitous time, too.

MR. FREDERICK: Can you describe the process of the transition between Chief Judge Ginsburg and you taking on the role of Chief Judge of the Circuit?

JUDGE SENTELLE: It was perhaps more sudden than you might really expect it to be. Doug and I knew we were going to do it but we hadn’t gotten around to doing a lot of interfacing on it. Until the time came for Doug to step down and me to take it, so really the biggest help to me is our Circuit Executive, Betsy Paret, who is familiar with the new Chief coming in. And she was ready to go over with me all the personnel matters and what I could delegate and what I couldn’t so she and I spent a few days going through the personnel and determining what I was going to keep control of and what I would delegate to her. Similarly, at the Administrative Office of the Courts, they give you a day of conference over there on what your duties, responsibilities, and authorities are as Chief and your authority is a lot like the cliché goes – it’s a lot like herding cats. You’re responsible for all these things but you can’t do anything about a lot of them.
MR. FREDERICK: What did you regard other than the budgetary issues, which I know were quite significant, what did you regard as the biggest challenge you faced as Chief Judge?

JUDGE SENTELLE: Maintaining internal, an internal placid condition among the judges of the court. I will not go into detail but although we’ve been very good for years at being a generally collegial court and projecting an image of a generally collegial court there are problems that you have to deal with to try to keep collegiality and as I say I won’t go into them but it would be washing our dirty laundry in public. But that was something that I had to deal with every day, and there were personnel matters. There were people complaining about Betsy because I was the Chief and I’m the person they would complain to. Betsy’s a great Circuit Executive and I needed to have her back but at the same time I still had to be available to other people. She is a very good Circuit Executive. I told her and the Clerk of the Court both when I came in as Chief that I wanted to extract the promise that neither one of them would leave or retire during my tenure because she and Mark are both so good but that still there were people who wanted to come to me about things that I could then say, look I’ve delegated that to Betsy but I had to have her back. And she would come to me at times with things where she wanted to make sure that – we had somebody who had violated a safety procedure in the handling of incoming mail. As you might imagine we do have an anthrax room, as it were, for incoming mail and there had
been a violation of safety procedures and she thought the person should be terminated. She wanted to make sure that I was on board; I was.

MR. FREDERICK: That the anthrax procedures occurred right around the time of September Eleventh, 2001, if I recall correctly, have there been any security issues that you felt needed special attention during your time as Chief Judge?

JUDGE SENTELLE: There were security questions, David, pretty well monthly. There would be something that we would need to, we have an excellent Marshal here and he had taken over and come up with what he thought needed to be dealt with on the security side. Then we, that is, Chief Judge Lamberth and I and our staffs would work with him to try to get the budget to do the things that he needed. He also had a very good eye for things we could save money on and shift without hurting security but yeah there were little things about every month that we needed to deal with, with respect to security. As simple as what’s happening with the shortage of CSOs I mean we might have three vacancies for contractual security officers, it takes an incredible process to get a person on board even though you’re contracting with an outside contractor they still have to go through the Marshal Service for background checks and so forth. Which always takes longer than they ought to so we were always on the back of what was being done about the CSO shortages. Whether we could get the money to put a security
glass, device, on one more elevator and things of that nature would come up repeatedly.

MR. FREDERICK: Now can I ask you in a general way about relations among the judges, how did you experience them differently in your role as Chief Judge than as simply a circuit judge?

JUDGE SENTELLE: David, it’s really a sense of responsibility when it gets to the boiling point and you’re not Chief, you’re hoping the Chief will do something about it. When you are Chief you have to figure out what to do about it. It is an intense sense of responsibility.

MR. FREDERICK: Now in that regard, you served under a number of Chief Judges, were there qualities in past Chief Judges that you wanted to try to emulate in your time as Chief Judge?

JUDGE SENTELLE: Yeah, Harry Edwards had been a watershed change in the process of trying to maintain collegiality on this court. Little hard to quantify but the main thing is being there and being, making the persons aware that you’re trying to maintain peace will you please help me with this. Instead of trying to take sides and push somebody’s agenda and have an agenda of your own, Harry was always there and trying to keep things collegial. Doug, I think, fell into Harry’s tradition and that was my goal as well, was to do what Harry had done to try to avoid the taking of sides unless absolutely necessary. And to keep people on an even keel and working for the same goal in the end.

MR. FREDERICK: Temperamentally was that easy or hard for you?
JUDGE SENTELLE: I think when I was younger it would have been harder. I think as you get older maybe you begin to realize more the value of peace as opposed to the value of getting exactly what you think is the best result. Getting a result sometimes is much better than barely getting the right result and leaving a lot of carcasses along the way.

MR. FREDERICK: Can you describe, you’ve described a little bit some of the functions but on a daily basis how much time would you spend performing Chief Judge functions and what would those be?

JUDGE SENTELLE: Sometimes it is a little hard to sort out what was Chief Judge and what was executive committee, but I spent, it was like having another job. I spent probably half my time on administrative matters, on one or the other of those positions.

MR. FREDERICK: Did you feel that affecting…

JUDGE SENTELLE: And I actually spent my total time, more total time, than I had in the past, and half of it, half of my total was spent on that.

MR. FREDERICK: Did you find that affecting your work deciding cases and writing opinions?

JUDGE SENTELLE: It put me further behind a good amount. I finished up later in the summer on catching up my opinions but that’s about all.

MR. FREDERICK: Probably shortened your vacation time…

JUDGE SENTELLE: Shortened the vacation time some, it meant I worked on weekends a lot more than I had. I had worked at home in the evenings much more, much more than I had in the past. It was hard to get disengaged from
the job. Tom Hogan, who was Chief District Judge at the same time he chaired the Executive Committee, told me as I was finishing out on Friday before I’d be coming back on Monday said: “you’ll come in Monday, you’ll open your inbox, and there won’t be 13 things you have to deal with before lunch and you’ll realize I’m not Chief or Chair anymore,” and he was exactly right, he really was. Quite a release to get rid of the morning list of budget emergencies and judges, and all who want to do something about getting more security for their building and things you had to put up with for the executive, and had to deal with for the Executive Committee. So it was good to get those put down.

MR. FREDERICK: Can you describe the relations between the Chief Judge of the District Court, was it Judge Lamberth the entire time you were Chief Judge?

JUDGE SENTELLE: Yes.

MR. FREDERICK: And I know you’ve described earlier in our times your friendship with him, what issues did you have to work on together with him that were challenging for the two of you?

JUDGE SENTELLE: Budget allocation and there were times when we could not agree, I mean, no matter how good a friend somebody is there are different interests that are going to be served and I was trying both in my role as Chief here and more so in the role as Chair of the Executive Committee to try to get more consolidation of functions. Put all the IP under one committee, one organization rather than having one for each court, that
sort of thing. Royce was not nearly as committed to consolidating
function as I was. We, we would cross paths on that at times. We would
not pursue the same goal all the time. I wanted to improve efficiency
and cost. He wanted to be sure to maintain the independence of the
District Court and both goals were positive goals but they were not
always consistent. And he and I have had, and this has been displayed
publicly before, so I’m not really telling tales out of school, he and I
have had a disagreement for a long, long time about press relations. I
don’t believe in having any and he, I think, talks too much to the public
about a lot of subjects.

MR. FREDERICK: How have you seen the relations between the Court of Appeals here
and the District Court change in the time, you’ve been a Judge over a
quarter of a century here?

JUDGE SENTELLE: I think for a number of reasons, I think they are better than they were,
much better than they were when I came here. In the old, the historic
court judges dining room, very often I was the, for years, I was the only
circuit judge who was a regular up there after MacKinnon died. It was
district judges. Now we have a nice dining room down in the annex that
my colleagues frequent and although it’s still going to be a
predominately district judge there’s a social intercourse that goes on
there that makes things much better. The more social contacts you have,
the more interaction, benefits our profession. It’s harder to write a nasty
opinion about somebody you just had a hamburger with. The personal
relationship between Royce and me made things, help things move here in the five years that I had but even without that it still has been a better relationship between the courts than it once was. I do think that the, this is going to be hard to identify, but the appointment of Robert Wilkins to the circuit is going to be a beneficial thing in that regard to have one, a former D.C. District judge on the D.C. Circuit has not happened in a long, long time. They liked having, the district judges liked having me there, as a former district judge and having a former D.C. District judge will be even better.

MR. FREDERICK: Now how, he’s been on the court for about 6 months or so, how has that started to manifest itself?

JUDGE SENTELLE: I was going to say that it’s going to be hard to quantify but I just get a sense that there is a, an element leading toward good will there.

MR. FREDERICK: While we’re on the subject of having lunch with judges, have you seen any change among the new judges in terms of having lunch regularly with their older colleagues?

JUDGE SENTELLE: I think intergenerational it works very well both district and circuit – there’s not any gap of, that has to be bridged so much as there is a sense of they’re coming into our experience base and maybe they can share that with us. I think it’s working very well.

MR. FREDERICK: Now the Judicial Conferences are a way for there to be interaction among the judges as well as members of the bar and you were very kind to invite me to several Judicial Conferences while you were Chief
Judge, can you describe what you liked and didn’t like about the Judicial Conferences that you superintended?

JUDGE SENTELLE: Let me say first that the reason we’ve had a gap and it has been the budgetary reason. We haven’t been able to afford the Judicial Conferences. My colleague, my successor, and Royce’s successor, I think, are about to get it back together to start having conferences again. Maybe we can see you again at some of those, David. Putting them together, the district, the chief district judge and chief circuit judge take the lead on putting the conferences together and they were interesting projects. We would try to come up with a theme, we would try to get people with expertise, we would use our people for panels and such. And it was a place to, as you suggested, socialize the bar with the bench in ways that are not easily done at a lot of American courts. The Brits are very good with their Inns of Court, having lunch with judges and judges having dinner with the court lawyers and such. We’ve not been so good in the American courts in a long time; those Judicial Conferences help to restore the bench-bar confidence. As far as what I personally a. liked and b. will miss, but will not necessarily mind missing, was being in charge, being involved in everything going on. It kept me very busy and maybe more tense than other people were at the conference but I liked it; I liked being involved, knowing everything that was going on and being in the middle of it.
MR. FREDERICK: Well, you showed great stamina and having a chair up there on the stage watching every program from up close. Do you recall any programs with kind of special – that you thought that was a really great program and was important to have?

JUDGE SENTELLE: I really hate to say it but I really can’t think of one at this time. I really should think of something to say in answer to that question.

MR. FREDERICK: Well it was kind of an off the cuff question. I had been helping, not that I am fishing for compliments but I had helped with the formation of the Watergate panel, which I thought …

JUDGE SENTELLE: That, that was a really good one. And, as you recall, I was personally involved in that also. I got Rufus Edmisten to come up from North Carolina for that one and it was very interesting to recreate Watergate in part for people that knew nothing about it. You know, the younger lawyers, they’d heard of it, I mean they had some sense that in ancient history, in my day that, that went on but they, I think they learned a lot by the presentation we had there.

MR. FREDERICK: Well, we are now 3 days away from the 40th anniversary of the resignation of President Nixon, so I suppose that there’s a, you know, a, it’s been coming up a lot in the news. There was even an article by George Will this morning about, about that. I think we’ve talked about that before, but are there any reflections, you know, just about that time period that you want to share?
JUDGE SENTELLE: Since this is more opening up than I do generally speaking, I would have to say that the present administration has become so imperial that it seems to me people may have forgotten some of the lessons of the Nixon administration. We talked before about imperial presidents, we have one now who openly said well if Congress won’t act, I will – which sounds a lot like ignoring the Constitution. I’m not saying that any crookedness is going on but there are some disturbing aspects of the present Administration that sort of remind me in a way of the Nixon years.

MR. FREDERICK: Well, and have you seen, we’ll get to Noel Canning in a little bit but have you seen other issues that are coming up through, that you’ve had to judge that kind of speak to that theme?

JUDGE SENTELLE: Well, of course, Noel Canning is the biggest example but we’ve had other things with respect to, I hate to pick on NLRB but with respect to – various agencies – where they seem to have been much more interested in accomplishing their mission, their goals than they are in following the laws and regulations, and precedents that should govern the way they get there. If they can’t get there without kicking them over or ignore them then they get there anyway. So we’ve had to reverse and rein in the agencies.

MR. FREDERICK: Is, I’ll ask these questions because I know we won’t have this public for many, many years so you can speak more freely and candidly, if you
wish. Other than the NLRB, are there agencies that have caused you particular concern?

JUDGE SENTELLE: EPA, I think, is very concerning and though they have a great goal and they’ve done some great, the agency has done some great things. But the present one does seem to be of the same imperial mindset that they’re going to do what they’re going to do and damn you if you won’t go our way we’ll run over you.

MR. FREDERICK: Any others that you want to…

JUDGE SENTELLE: The two that come to mind are the NLRB and the EPA but I’m not limiting it to that many names, it does seem to be sort of a general mindset in the executive agencies now.

MR. FREDERICK: Now, just as a matter of you’ve been in Washington for almost 30 years, do you think that some of that is just because of relations between Democrats and Republicans in Congress have become more tense or is it because, you know, where do you….

JUDGE SENTELLE: That is certainly true and it’s easy to blame that but I think that it would be wrong to say that causes the behavior on the part of the Executive. I think that there was a lack of experience on the part of the Executive, for one thing, but there does seem to be a lack of a commitment of a separation of powers that is reminiscent of Nixon and perhaps of FDR but certainly of Nixon. In the sense that the President acts as if the other branches of government are there to serve his accomplishment of his goals.
MR. FREDERICK: In that sense, I recall that the last Judicial Conference was the day the Affordable Care Act was decided by the Supreme Court…

JUDGE SENTELLE: Yeah.

MR. FREDERICK: The basic case, you were not on the panel in which Judge Silberman wrote for that, but do you have any reflections on the Affordable Care Act and how that whole process played out in the courts?

JUDGE SENTELLE: Silberman’s opinion of course got the results similar to the Supreme Court but it was not remotely similar in how it got there. And Kavanaugh as I recall dissented from Silberman’s opinion but his dissent was not remotely similar to the dissent of the Supreme Court. I would quite honestly say that I think the dissent got it right and I think the Chief Justice, whom I greatly admire, strained at gnats and swallowed camels to get to where he got.

MR. FREDERICK: I want to turn to the en banc process and while you were Chief Judge, I counted four cases that went en banc. I hope I didn’t miss any and if that comports with your recollection.

JUDGE SENTELLE: I have not counted but it was damned few.

MR. FREDERICK: Can you describe the process for having a case…

JUDGE SENTELLE: Set aside the category of statutory en banc for a moment and the normal process is: a panel decides the case and then the court either on petition of party or on its own motion, somebody on the court says I think we ought to take this en banc. They get rebriefing on the question of whether to en banc it. If a majority of judges in active service says it’s
going *en banc* then it goes *en banc*. If not, then it doesn’t. Now under the national rule, which is different than it used to be when we could have the set rule, it has to be a majority of judges in active service who are not recused. Used to be we had a local practice which I think was wrong that we counted recused judges almost like no’s because you had to get a majority of the total number. The national rule was finally adopted was to the effect of it has to be a majority of the judges who are not recused, which is much more sensible. But in any event, it had not happened very much during the last few years. There was and is a special category of cases under one of the election laws that any preceding that challenges the constitutionality of a portion of the election finance act is taken *en banc ab initio*, so that that falls outside the normal pattern. Now, as a senior judge, my role in relation to *en banc* is very limited. I can call for a vote on *en banc* if I was on the panel but I can’t vote on whether or not to *en banc* it. I can sit on an *en banc* only if I was on the panel. If I wasn’t on the panel I have no further role in the *en banc*.

**MR. FREDERICK:** But even that rule is somewhat different than in other circuits, isn’t it, that don’t allow senior judges even to participate on the *en banc* court even if they were on the panel?

**JUDGE SENTELLE:** No, I think that’s national now.

**MR. FREDERICK:** Has that been changed?
JUDGE SENTELLE: If you were on the panel you have the option of sitting on the *en banc* court, if it goes *en banc*. I think that it is now national.

MR. FREDERICK: The, several of the cases that went *en banc* while you were serving as the Chief, involved Judge Edwards who had been on the panel and…

JUDGE SENTELLE: One of them he chose not to sit on, at least one on the, I don’t remember the exact issue but it was, I think it was a criminal case involving, or I don’t remember what it was exactly and he chose not to sit.

MR. FREDERICK: So the first one, and I, I just am curious more about process because the opinions are a matter of record but the first one occurred in the transition between you, Chief Judge Garland and you, is the *Askew* case.

JUDGE SENTELLE: Chief Judge Ginsburg…

MR. FREDERICK: The *Terry* stop case, this is where the officers partially unzipped the jacket of the defendant and discovered a weapon, the question was whether that unzipping …

JUDGE SENTELLE: Constituted …

MR. FREDERICK: Constituted an improper *Terry* stop that would cause the suppression of the evidence and that was one where Judge Edwards wrote the opinion for the *en banc* court. I was curious because my, my observation was that your role as Chief Judge for the *en banc* decisions while you were, was really more procedural, you seemed to allow the process to play out among the judges without, you know, exerting the kind of authority
one might think of as a Chief Judge, and I wonder if you think I’ve mischaracterized that for…

JUDGE SENTELLE: It works best that way David, if you, you don’t try to keep too short a rein on it, it works best. These judges are very independent professionals and it’s, it’s best not to overreach in presiding with them.

MR. FREDERICK: Well, and in fact I guess you dissented in several.

JUDGE SENTELLE: I dissented in that one, didn’t I?

MR. FREDERICK: Yes, you were with Judge Kavanaugh.

JUDGE SENTELLE: Kavanaugh.

MR. FREDERICK: In dissenting in this one.

JUDGE SENTELLE: Henderson joined us…

MR. FREDERICK: And Randolph, as well.

JUDGE SENTELLE: And Randolph.

JUDGE SENTELLE: Now that would bring up the point, our practice and this is not codified but our practice is on the en banc the Chief assigns the majority opinion unless he should dissent. If the Chief is in dissent then the senior judge in the ranking judge in the majority assigns the opinion. Apparently in that case it was assigned to Harry. Theoretically I would have assigned the dissent but in fact I think that Brett dissented from the panel and yeah there was a reason why I gave it to somebody else on that one.

MR. FREDERICK: The, I was struck by how, I want to say little “d”-democratic the Court’s en banc opinion writing seemed to be when you were Chief Judge, and whether that was conscious and by design?
MR. FREDERICK: Are there, did you feel like in those cases that went en banc that it was worth it?

JUDGE SENTELLE: By and large probably no. I can’t, I wouldn’t single out a particular case and say no. Spottswood Robinson was Chief Judge of this court many years ago. Spotts told me early on, he said when he was practicing law, first practicing law, he thought what a great thing an en banc court was to clarify the law of the circuit. Then the first time he got one when he was Chief Judge, they had about three different opinions in the majority and it was less clear than it was going in.

MR. FREDERICK: I actually wanted to ask about that, because it seemed that every en banc case drew 4, 5 opinions.

JUDGE SENTELLE: Most of them…

MR. FREDERICK: And one of them, in the Burwell case you wrote separately to say, you know, stare decisis is why you are voting the way you are voting but you’re kind of wondering was this enterprise worth it to begin with.

JUDGE SENTELLE: Yeah, that’s certainly one in which I thought we had improvidently granted en banc and I confess that I voted to en banc it. But I think we should not have, I think we should just let the stare decisis stand.

MR. FREDERICK: Do you think those lessons, kind of linger on into the future, have you noticed, that was a couple of years ago, has that affected do you think voting on en banc cases?
JUDGE SENTELLE: I don’t know David, I think it’s something people have to learn for themselves.

MR. FREDERICK: How have you seen the en banc process change, if at all, in the 25 plus years you’ve been on the court?

JUDGE SENTELLE: When I got here we en banced a lot more cases, that was partly because there had been such a dramatic personnel change. It had some very liberal judges – Bazelon’s group had established a lot of circuit law that the incoming Judges Bork, Starr, Silberman, myself, thought were incorrect so when the questions came back up we called for en bancs. We changed a lot of law. I think it got much smoother once we got patterns established and traditions established anew. And as we began to realize that we were not accomplishing a lot by a lot of en bancs, we quit calling for them. We just didn’t have very many for years there.

MR. FREDERICK: How would you say the en bancs affected relations among the judges? I talked to judges in other circuits, who say the en bancs tend to create more friction than clarity.

JUDGE SENTELLE: I think that used to be correct, and I think it may be becoming true again. Maybe it’s the more en bancs you have the more trouble they cause because we are having some en bancs now I think people, not including me because I’m out of this thing now. I do see some tension among my colleagues that is traceable to the en bancs. I don’t think this all, friction problems they may cause is going back to a time before I was Chief before Harry was Chief. We once called for an en banc that
nobody ever knew about because the opinion, we pre-circulate our opinions to the full court, when it went around somebody called for an en banc vote without releasing the opinion. We got the votes to have the en banc and the panel then withdrew the opinion and put out a new one that didn’t have the controversial portion in it. But I think there were feelings out of that one that lasted, never did get over for some of the people. I do think the en bancing process causes as many problems as it solves as far as intra-court relations.

MR. FREDERICK: Now I was aware that the Second Circuit did that kind of pre-circulation but I don’t think I was aware that the D.C. Circuit…

JUDGE SENTELLE: We do it, the Fourth Circuit does it, the Eleventh Circuit does not, and that’s the only circuits that I can authoritatively speak about.

MR. FREDERICK: 30 years ago when I clerked in the Ninth Circuit, the Ninth Circuit did not pre-circulate opinions.

JUDGE SENTELLE: Well a few months ago when I sat in the Eleventh Circuit they do not pre-circulate. I sent my opinions down and the two colleagues signed off on it and then it was published. It never went to the rest of the court and by the way one of those is now undergoing an en banc.

MR. FREDERICK: Well, I wonder if that may be a reason why courts like the Second Circuit and the D.C. Circuit statistically have many fewer en banc rehearings.

JUDGE SENTELLE: We work things out, yeah, because it goes around on the pre-circulation. Either you can ready the dramatic solution, the nuclear
solution, you can actually say let’s call for an en banc or you can just contact the judge and say look I think you’re wrong on that, can you think about changing that. You see, it works out most of the time. It’s not a common thing that I would send a memo to a colleague or call a colleague and say look you’ve got an opinion circulating that I think you need to change but it does happen. Each of us does it from time to time and it, it helps. I think a circuit that doesn’t pre-circulate, like you said the Ninth did not and the Eleventh does not, they’re missing an opportunity there.

MR. FREDERICK: How, how long do you give, how long does that process play out?

JUDGE SENTELLE: A week.

MR. FREDERICK: So, you’ve got to jump on it pretty quickly if you want to…

JUDGE SENTELLE: Yeah and sometimes you don’t even get them read during that week but it, it blunts your ability to say anything, if you don’t get it read and don’t say anything.

MR. FREDERICK: Can we talk about the Noel Canning case?

JUDGE SENTELLE: Within proper limits.

MR. FREDERICK: Your opinion for the D.C. Circuit was affirmed; not on reasoning that was on all fours in particulars with the way you had approached the problem.

JUDGE SENTELLE: The separate concurrence was pretty much in the frame of pretty much what we had done here.
MR. FREDERICK: Did you feel, well how did you feel when the Supreme Court decided the case? I should ask in an open ended…

JUDGE SENTELLE: I was and remain convinced that we were absolutely correct in *Noel Canning*. I’m not that way about every opinion, but that one I would, we had done the history and the, us here and the Scalia concurrence, I think absolutely correct on the history. I was disappointed with Justice Kennedy in particular for going on an, a much I think incorrect analysis. They, what they said, what they based their result on was correct but dispensing with the broader result I think was wrong. So I had mixed feelings about it, certainly was glad that they did say that the President does not have the power to simply disregard the Constitution and make appointments when the Senate’s not in recess. I mean, you saw all these things in the paper about all Presidents that made recess appointments, yes, but they didn’t all make them when the Senate said we’re not in recess. He was the first one ever to do that. Nobody before ever tried to make an appointment, a recess appointment when the Senate had said it was in session. And they talked about whether it was just a pro forma session but that didn’t start during this Administration. Harry Reid invented that to stop Bush from making recess appointments and Bush was stopped. Because Bush followed the law and didn’t try to make recess appointments when the Senate said they were not in recess. So he was trying something new and it was an imperial reach, and he had his hand slapped.
MR. FREDERICK: What effect do you think *Noel Canning* will have on the Executive Branch?

JUDGE SENTELLE: Actually, fairly little because the Senate in the meantime did away with the filibuster of appointments so it makes much less difference than it would have made at any prior time.

MR. FREDERICK: So the, the tie-in is a direct one between ending the filibuster and having the…

JUDGE SENTELLE: I don’t know if there was a cause and effect on that or not. Whether Harry Reid had anything about *Noel Canning* in mind when he stopped the filibusters but they were trying to stop the minority’s ability to hold up appointments. And it has the effect of making the recess appointments decision much less important than it would otherwise have been. It hasn’t lost all importance but it is not nearly as much an effect. It also is a public announcement, look the President has to follow the Constitution and I think that we needed that.

MR. FREDERICK: How does *Noel Canning* rank for you among the opinions that you authored on the D.C. Circuit?

JUDGE SENTELLE: I will tell you what I said while it was still pending at the Supreme Court, as of right now, that is jurisprudentially the most important opinion I ever wrote. In a few months it will not be jurisprudentially important at all because the Supreme Court will put out something that will become the jurisprudential all-star on that so it was very important
while it lasted but a Supreme Court opinion will always be what goes in the casebooks now.

MR. FREDERICK: Sure, but, just speaking personally, would that rank among the most important…

JUDGE SENTELLE: Yeah, yes…

MR. FREDERICK: …of the opinions you’ve written

JUDGE SENTELLE: Yes…

MR. FREDERICK: …on the court

JUDGE SENTELLE: Yes.

MR. FREDERICK: And, so you must feel a lot of pride in the authorship and care that you put into that opinion. Can we talk about the, so let me just ask is there anything more about Noel Canning that you’d like to say for the historical record?

JUDGE SENTELLE: No, I guess I pretty well got it said, David.

MR. FREDERICK: Can we talk about the Guantanamo cases for a few minutes? Those cases, I think when we look back at this post 9/11 period, will be among the most important cases that the D.C. Circuit has decided and the kind of relationship between the D.C. Circuit and the Supreme Court is very much reflected in those cases. Can you give us an overview of how you felt about how that process of lawmaking has played out?

JUDGE SENTELLE: I didn’t think and still don’t but I don’t have the same sense of certainty I had on Noel Canning. I didn’t think that the right of habeas extended
to, beyond the territorial sovereignty of the United States. I thought that the *Eisentrager* case had established that decades ago in the 1950s and that there was nothing different at Guantanamo that would have made *habeas* extend there. The Supreme Court in a divided court disagreed with that and again although I think the dissent was correct, I don’t feel it with the same certainty that I would express on *Noel Canning*, there were certainly two sides to the issue. Congress tried very hard to return it to the status where there would not be *habeas* review of Guantanamo prisoners. The Supreme Court kept pushing it back the other way, so that we finally did wind up with the result in which we were hearing *habeas* petitions from prisoners being held in Guantanamo. It was in a sense a very new thing for the courts to be doing. The courts had not generally been involved in determining whether prisoners of war were being properly held. I know that there are precedential cases but that they were outliers in the past. This became a norm for the District Court and the D.C. Circuit and the District Court complains quite justifiably that we haven’t given them a whole lot of guidance on how to do it and we concur in saying we weren’t given any guidance either so we’ve had to make it up as we went along to a certain extent. But it has been beneficial to demonstrate that all parts of the U.S. government are under the law. That once we establish that there is a right of *habeas* extended to Guantanamo then we send cases back and say look you’ve not given it adequate justification for why you believe this intelligence
that was uncorroborated and you’re holding this guy who may just be a shepherd, come up with a better reason or turn him loose. So it has demonstrated I hope for the people and certainly for the bar that we are going to follow the law, every part of the government is going to have to follow the law. And as I said, I don’t think that *habeas* rights really extended there but the Supreme Court said differently and they’re the boss.

**MR. FREDERICK:** Well I was not involved in any of those cases, so I can ask the question from a completely uninformed perspective but my sense was that the Supreme Court had great confidence in the D.C. Circuit’s ability to superintend the process and so it left the details to the D.C. Circuit to develop.

**JUDGE SENTELLE:** That’s what we felt like.

**MR. FREDERICK:** Was there a lot of, well can you describe in general terms that process of figuring out those processes?

**JUDGE SENTELLE:** The District Court had it in the first instance and they had to figure out what was sufficient involvement with the forces identified in the authorization for the use of military force, what was sufficient connection to make these people detainable. They had to find out, figure out how the traditional definitions of combatants applied and what traditional definitions of unlawful combatants applied. And then we could take it on the record and look at it and figure out if we thought they had done it correctly or not. It involved an awful lot of classified
evidence so a lot of the stuff that we were looking at nobody but us will ever see. But it, at times, and Merrick wrote the opinion in the *Parhat* case, I was on the panel, but Merrick wrote that opinion, we said all we can tell is that they have a piece of classified information, we cannot tell that the corroborating evidence didn’t come from the same source, so for all we can tell, they didn’t have but one piece of hearsay and they’d been holding this Uighur, I think he was, anyway the name was *Parhat*, you’re going to have to go back and review this evidence to see whether you can hold this man or not. That was an example of how we, how the district court had worked through it and then how we decided they hadn’t adequately made the comparison determining if the evidence was sufficient. It became managed litigation; we began to know what we were doing.

**MR. FREDERICK:** How significant a part of the docket was that for the D.C. Circuit?

**JUDGE SENTELLE:** For the district judges, it varied from judge to judge because they lumped some of them together and let one judge work out all the procedures except one judge chose not to participate and then he kept his by himself. For us, it was awhile there it seemed like you had one of those habeas cases every time you sat down. It wasn’t as high as one out of four but damn it felt like it was about one case out of four, but I say it was not that high; it just seemed like it we saw so many of them it felt that way.
MR. FREDERICK: Now, with all the experience you’ve had reviewing administrative records, how different was it to review this highly classified information and make judgments about what was true and what was not true?

JUDGE SENTELLE: For reasons, some of which I can’t really discuss, I had had more background in classified information than a lot of judges had so perhaps it wasn’t as new for me as it was for some of the colleagues but it was different. You’re looking at something that cannot be tested by the normal means of cross-examination and the disinfectant of daylight. You have to look at it as it comes in and understand what the agency’s done with classified information gleaned by their confidential informants and, as we said, in Parhat in all we couldn’t tell if everything came from the same guy. There was not any corroboration if you just said two or three different agents get the same information from the same guy. It was different than when you can look at something that was tested by cross-examination or by that notice and comment process. You have to do the mental process of testing everything yourself.

MR. FREDERICK: Did you feel you’re summoning up old district judge skills that you had developed?

JUDGE SENTELLE: Oh yeah…

MR. FREDERICK: And did that make…
JUDGE SENTELLE: I’ve always said I missed the trial court so it was a good way back, I guess.

MR. FREDERICK: Why do you think the cases seem to be taking so long to get resolved?

JUDGE SENTELLE: The people managing aren’t in any hurry. They would just as soon take their own time, I bet. There’s not much bonus for speeding through them.

MR. FREDERICK: So this would be on the military prosecution side?

JUDGE SENTELLE: Yep, on military prosecution side.

MR. FREDERICK: It is easier to keep them detained and tied up in pretrial proceedings.

JUDGE SENTELLE: And as you know, they put together those review panels and such that have slowed things down and may have, and they may be doing a good job.

MR. FREDERICK: How do you think the process is working compared to what would happen with the U.S. Attorney’s office prosecuting one of these detainees in a federal court?

JUDGE SENTELLE: It is a procedurally different animal. There is sort of a link sausage way of going at it, I think, that’s going on down in Guantanamo now where they’re cranking them out. If a U.S. Attorney’s office had it, at least for a while, it would be much more individualized. They would be taking a much more tailored approach to a case. Anything they’ve got is going to be bigger, it’s going to have more ramifications to it now but the military is going to be handled down there but the U.S. Attorney’s
office is by inclination trying to do it more individualized, individualized process.

MR. FREDERICK: And by more individualized, that necessarily alters the procedures that would be followed. Are you an advocate of the military commission after seeing these cases bubbling up…?

JUDGE SENTELLE: I think it’s the most efficient way of dealing with those cases. U.S. Attorneys are not used to dealing with that particular kind of case and individualized is good from a viewpoint of that individual case but it’s not an efficient way of proceeding. I’m, you may not know David, that I’m on a, I’m not on, but I’m an advisor to a special commission to revise the Uniform Code of Military Justice. And I will say without too much fear of telling tales out of school but I have advised that they make the military process in several respects more like the civilian process. I do think that individualized handling is better at protecting the rights of those involved, not just the defendants but the victims as well. But now for purposes of handling these war crimes or unlawful combatant situations or just the detainee situations, the old process, it works pretty well.

MR. FREDERICK: Can you be more specific about the processes that you think ought to be adopted?

JUDGE SENTELLE: Right now in the military, you have that Article 37, or anyway Article something process where instead of, we have a grand jury in civilian life and they have an investigator who goes out and investigates as to
whether there’s enough to bring charges. That’s not, either as efficient
or as fair as if you had a permanent court sitting like a grand jury.

Simply take evidence, let the investigators be separate from the process
of decision making, so that you’d have judges functioning like a grand
jury to decide whether to bring the equivalent of an indictment. Also,
the present system in the military discourages joint trials, you have
separate trials for people who would be tried jointly in federal court. I
think that is an inefficient and ultimately unfair to the victim kind of a
process, to do it that way. There are others but that’s two that in
particular jump out in my mind as the whole charging process that they
presently have is inefficient and potentially unfair to the defendant and
the trial process in a number of ways including the failure to have the
joint trials is potentially unfair to the victims and less efficient.

MR. FREDERICK: I think in one of our prior sessions you commented on the high quality
of the advocacy in normal cases before the D.C. Circuit. How would
you rate the quality of the advocacy in these military detainee cases?

JUDGE SENTELLE: We’ve had some really first rate volunteer pro bono lawyers
representing a lot of the detainees so on the whole they’ve had good
advocacy for the detainees. On the government side, you generally have
people who’ve become expert in what they’re doing so they’ve been
well advocated on the whole, David.

MR. FREDERICK: I’d like to just shift to talk about your colleagues, I was honored to be
there for your portrait unveiling and to hear Judge Tatel speak about
you and I wonder if you could kind of explain what it was about Judge Tatel that caused you to ask him to speak at such a special event for you?

JUDGE SENTELLE: David, I think David Tatel and I had a very special relationship for a number of years that he’s been on the court. Each of us understands that the other is trying to apply the law as we see to the facts that are before us in the fairest way to everybody that we can and not try to advance any goals of our own and we’ve tried to help each other do it. David is an extremely nice, considerate, kind person which has drawn my affection but has made him a very good friend. I think we have, I’m not saying anything against anybody else but I think we have to a very large degree tried to be the collegial, the leaders of collegiality on the court. We’ve both tried to calm down and pour oil on the waters when there have been any problems arise. David has characteristics that I haven’t really seen in anybody else on the court that I’ve sat with, if we have something and it’s a very sensitive subject matter in a case that people might get offended, knowing that I’m approaching things from a different process, a different side than he, he will contact me about it and say will you go through this and see if anything about the wording that you think might offend some group and I’ve done it back but he was the one who initiated it. We just have found a very common ground on trying to do things in a professional but yet humane way that’s made us sort of drawn to each other over the course of the years.
and he’s one of the most remarkable people I’ve ever known. You forget he’s handicapped. There’s been times at lunch when somebody’d ask him if he’s seen something, David has to say uh no!

MR. FREDERICK: Well, well I’ve had the occasion once or twice to have that, make that same mistake and say Judge it’s nice to see you…

JUDGE SENTELLE: Well he uses language as if he’s sighted, so there’s nothing wrong with saying nice to see you.

MR. FREDERICK: Well, and he’ll say nice to see you too.

JUDGE SENTELLE: And he will say nice to see you, so I will be seeing you, he uses that language and I mean somebody will ask him literally if he’s seen something at times. A colleague, Larry Silberman actually, asked him, David did you see the shoes that that woman had on arguing in court. There was a long, long, long pause then somebody says “Larry, that was a Joe Biden moment.”

[Laughter]

MR. FREDERICK: How quickly did it take for this kind of relationship to build between the two of you?

JUDGE SENTELLE: David would say from the very start, I think, you know he referred in the, in his remarks that when he first came, he didn’t have much of a gap between the time he got here and the time he had to sit. I contacted him and said look I’ve got bench memos on those cases if you want to get your people to bring you up to speed on that. He really, really liked that and it just started us out on a very good footing which I didn’t think
was a remarkable thing to do but he thought it was a considerate thing to do. I think it started us out.

MR. FREDERICK: Have you had other colleagues with whom you’ve developed a similar close bond?

JUDGE SENTELLE: That one is kind of special but of course Karen Henderson and I have been friends for decades. I’ve known her since law school. Ken Starr, I miss, because Ken and I were very attuned from the very start. Ken had contacted me before I got up here and whether right or wrong he included me in some memos about what was going on in the court. There was some dissension in the court that he thought I should be prepared for when I got here and I appreciated Ken’s heads up on that and then we had a good relationship even though we served only a short time together. We had a good thing. Buckley also I miss, Buckley’s been retired for some years now but a couple of years ago he called me. No it hadn’t even been a matter of months ago, he called me to ask my opinion about something. I said Jim, I’m not Chief anymore, he said “I know you’re not Chief, I just want your opinion, I want David Judge Sentelle’s opinion on this.” Jim and I always had a good working and friendly relationship as well. I guess in the building now, the closest friend I’ve got is Royce from the other court. And Hogan, Hogan is a very good friend as well. Karen is gone so much of the time, she stays in South Carolina an awful lot.
MR. FREDERICK: Had, does that affect her ability to, well obviously interact but how do you think that, that this distance has played itself out?

JUDGE SENTELLE: It’s been a distancing factor. She just hasn’t been a factor in an awful lot of the court’s personnel process just by not being here. I guess that’s about what I can say about that.

MR. FREDERICK: Has, has a similar phenomenon occurred with Judge Griffith?

JUDGE SENTELLE: He actually spends more time here than she does though he’s gone farther when he’s gone, that doesn’t really matter how far it is. And when he’s here, he’s more involved. So it really has not been as much of a factor with Griffith, Griffith no.

MR. FREDERICK: He has such a kind and a warm spirit about him.

JUDGE SENTELLE: He does.

MR. FREDERICK: I would think that he would be the kind of judge you would be looking forward to him being in town because he’d be a good lunch companion.

JUDGE SENTELLE: Yeah.

MR. FREDERICK: How, how has the court changed with the influx of these new appointments by President Obama?

JUDGE SENTELLE: I think, David, it’s really too early to give you much of an answer on that. If we talk again in a couple of years, I can add more on that but right now it’s a bit early.

MR. FREDERICK: You came into the, this process in part because of the closeness with Senator Helms, how do you think the Senate confirmation process will change by virtue of the filibuster rule being done away with?
JUDGE SENTELLE: Now let me say this first about that, Jesse did not get involved until after I had already been chosen, maybe not chosen but I was already on the short list of the Reagan Administration before Helms even knew that I was involved in this. Well he got me the district judgeship, I mean that one Helms was very involved in. But he wasn’t very much on this one. Doing away with the filibuster is, short way you’re going to see it’s going to speed process up a whole lot. More importantly, it’s going to cause some people to be confirmed that would not have been confirmed before. There were a lot of people, and this is a bipartisan flaw that went on in the last few administrations, there were a lot of people not confirmed for this, this court in particular but around the country that should have been confirmed. But the filibuster process and it was a two way street, it happened with both administrations, both parties. Going back to Allen Snyder for this court, and about the first time John Roberts was nominated, Miguel Estrada…

MR. FREDERICK: Peter Keisler

JUDGE SENTELLE: Peter Keisler, that was the next one I was coming to, people who should have been confirmed for this court and never were. Today without the filibuster process, they’d be confirmed.

MR. FREDERICK: It’s remarkable when you think about those lawyers and I was, have been privileged to know all of them and Caitlin Halligan also, fits into that category too.

JUDGE SENTELLE: Now, I don’t know her but...
MR. FREDERICK: Terrific.

JUDGE SENTELLE: and she fits the same category.

MR. FREDERICK: Terrific lawyer. She’s…

JUDGE SENTELLE: Doug Ginsburg speaks very highly of her.

MR. FREDERICK: She, she actually has a very similar kind of way about her as Peter Keisler. And I consider both friends. It’s remarkable how different this court would be had those lawyers been confirmed.

JUDGE SENTELLE: Yeah.

MR. FREDERICK: And, you know, the change is a remarkable one.

JUDGE SENTELLE: Filibuster is like a lot of other things in life that got completely out of hand. And while I, as a Senate observer, historically I would have said it was on balance, a positive thing but it came to the point it was not anymore. It has become on balance a very negative thing and its death was ultimately inevitable. You abuse something, it’s going to die. They abused it and they abused it through administration after administration and finally for better or for worse, for right or for wrong reasons and some of each probably, they got rid of it and it’ll never come back.

MR. FREDERICK: Are there any kind of…

JUDGE SENTELLE: Just let me pause and say the filibuster per se still exists because it can still be done to Supreme Court Justices and pieces of legislation. It’s virtually gone.
MR. FREDERICK: Are there any internal processes that have the same kind of effect in the court, where if they become abused over time there will be a radical change in the way the court does its business?

JUDGE SENTELLE: I mentioned a while ago about asking for, calling for an *en banc* before a case issues. If we were to do that very often, we’d have to quit doing it. It only works if it’s only done once in a while. If we started doing it all the time it’d just be, become routinely to be rejected out of hand. So yeah, there are things like that, thus far it hasn’t happened. The sound of me knocking on wood there.

MR. FREDERICK: Right, let me ask about the system, just generally, having been a district judge, a circuit judge, having been a chief judge, on the executive committee, how well do you think our judicial system works?

JUDGE SENTELLE: The short answer would be I think about as well as can be expected under the circumstances, David. The chief is selected by a process that has nothing to do with your ability to do administration. The Chief becomes Chief by process that has nothing to do with their ability to do administration. And yet it seems on the whole to work pretty good. Now there have been Chiefs that were miserably suited to the job but on the whole, I think, it works pretty well.

MR. FREDERICK: Now, speaking just about the, you know, the legal system in your role as a judge, are there things that, changes that you’d like to see in how decisions get made in the legal system?
JUDGE SENTELLE: I would dramatically limit the discovery process. I think that has gotten way, way, way out of hand. I think it’s a reason why people are turning to mediation and arbitration, away from the courts, and why young lawyers not even wanting to try cases because, because cases never get to trial. They’re so bogged down with the overgrown discovery process. When I started practicing law, there were depositions and there were discovery motions but they were really in a process on the way to getting to trial. Now they’ve become an end in themselves, how much can we burden the other side so they’ll cave in for us? So that would be the place that I would start, would be to limit discovery dramatically. On the criminal side, it’s substantive and it’s something that a lot of people would disagree with, most people perhaps. I think that the suppression remedy was a mistake. It’s a wholly judge-made remedy. I’m not saying that I have any problem with the rights protected under the Fourth Amendment but I think the draconian remedy of essentially saying if the constable errs the killer goes free is, was a mistake. I think it has caused us to make some very convoluted and very difficult to defend decisions, to get evidence in to keep from applying the remedy that we would not have done if we would have protected the rights better in the long run without it. If we had used Bivens type remedies instead of exclusionary.

MR. FREDERICK: So that would be the kind of middle ground that you would…

JUDGE SENTELLE: Something like a Bivens remedy rather than an exclusionary remedy.
MR. FREDERICK: Those are interesting ideas. Are there any other thoughts that occur to you?

JUDGE SENTELLE: No, there would be lots of small things. I’ve never become totally able to accept a jury of less than twelve. If they get the six people jury, I think there’s too much chance of an aberrant selection. The bigger jury you’ve got, 12 is about the biggest you can be and be manageable but when you have only six, there’s an awfully good chance of getting an aberrant selection. The smaller the group is the more likely there is a departure from the norm. I think you’re more likely to get a generally acceptable result if you have the traditional larger jury. I don’t know how to, I do know some way, I don’t know how to bring in to being what I’m about to ask for, but I would like to see prosecutors quit getting themselves and the country in these Brady violation problems when they do not turn over evidence that is favorable to the defense. And then they turn up, I don’t know if you’re familiar with the trial Royce has going on now but there was some dramatic exculpatory evidence for the Blackwater defendants that was not turned over. So in the trial, they are now finding Royce had to stop the trial to instruct the jury and even have some witnesses recalled that the prosecution should have turned this evidence over and didn’t. You know the Senator Stevens story, when I was a prosecutor we used to literally open the file. If you didn’t have a security reason for not letting the defense lawyer see it, if we had it, they saw it. And that not only produced a
more just result but it got you more pleas, we got you pleas sometimes you wouldn’t have gotten otherwise. Once they saw you got it, then they went ahead with it. Now North Carolina, I’m told, and this is after I left, but I read an article that North Carolina now has a statute that essentially mandates an open file except for security protection. And I think it would be beneficial if we had that. Prosecutors should do it without being made to and if they won’t I think they should be made to carry out what the *Brady* rule is designed to do. They have, the defendant has a right to know what the evidence is even if it, even if they don’t want him to.

**MR. FREDERICK:** One of the effects of the budget situation was to affect greatly the defenders office, almost even more than the prosecuting offices. Has that situation gotten resolved in a satisfactory way at this point?

**JUDGE SENTELLE:** I’m not really that involved in it anymore. I really did try to take my hands off of things when I quit being Chief and the, chair of the executive committee. I know that in this district, A.J. came up with some creative ways of involving pro bono assistants and interns to get things done by different people since he couldn’t afford as many people as he needed.

**MR. FREDERICK:** This is A.J. Kramer the public defender.

**JUDGE SENTELLE:** A.J. Kramer the public defender.

**JUDGE SENTELLE:** The excellent public defender, I would say.
MR. FREDERICK: One of the things that I have been struck by is the fact that the judicial pay situation has seemed to continue to stagnate and do you have thoughts about …

JUDGE SENTELLE: Are you familiar with the recent litigation?

MR. FREDERICK: the, yes…

JUDGE SENTELLE: There was a settlement in which the, some back pay was given to us and the front pay was increased. It still remains smaller than would be expected for attorneys of the experience that we have but it’s not as out of line as it once was. So there have been significant improvements, and it will not get any better than that. What will happen now is we will get the same kind of pay raises as other federal employees get but it is a lot better than it was before that litigation was, which I did not think would work, I have to say. I told Silberman, who was one of the named plaintiffs – pessimists don’t get disappointed. If you’re a pessimist and you’re wrong you’re happy about it, you get pleasantly surprised. So I was a pessimist, I was pleasantly surprised. We got some back pay and we got some increase. Every one of us, and I have to say this, every one of us took this job knowing that we were not going to make the money that we made before. We, we made that decision and I did think that it had gotten too far out of line but I think it’s gotten better now. I feel better about it.

MR. FREDERICK: When you say you don’t see any change going forward, why, why do you say that?
JUDGE SENTELLE: Well I think we got what we’re going to get for a long time. Since we got approximately a hundred thousand apiece for back pay, more than that actually, that’s with taxes I guess. And we got an increase that put us in line with the increases that have been given to federal employees and Congress did not get those things for itself, they’re not going to give us anything for a long, long time, David. There again I’m being a pessimist perhaps but pessimists don’t get disappointed like I said.

MR. FREDERICK: Yeah, well the time, I mean it, making congressional pay a political hot potato and then tying judicial salaries to congressional salaries has always seemed to be a way to drive good people away from public service.

JUDGE SENTELLE: Yes, you’re right. Yeah.

MR. FREDERICK: I’d like to just shift to kind of the last topic that I want to explore with you today and just talk about the next phases of your life and your career and ask you if you want to reflect on your 25 plus years on the D.C. Circuit and now that you’re a senior judge, where do you see the next phase of your life?

JUDGE SENTELLE: I guess more than ever before, I may have to decide things one year at a time but we have to decide ahead of time what kind, what size case load we’re going to take for personnel allotment. So far, I’m taking a 100% caseload I had thought about reducing it for next session but because they’ve appointed more judges than we need our case load is going down, our 100% case load is going down so much that I see no reason
to cut below 100% case load. In fact I am visiting some other circuits, the Eleventh Circuit is at a crying need and I went and sat with them for a couple of days. I will sit with them again a couple of days in the spring. The Sixth Circuit has a case where all the judges recused and three of us are coming from other circuits to go out there to handle that case. The Tenth Circuit has some need, I’m going to Denver in September so I’m going to be sitting with some different colleagues for off and on, just a few cases here and there but it is an interesting change. And I would have to say they didn’t cheat me on the quality of work in the Eleventh Circuit, I got probably the two most controversial cases they had that term, I wrote the opinions on. I like, I miss the interaction with the staff but I do like not having to devote the time to administrative duties. Therefore, I’ve got more time to do things like visit other circuits and because of the overload, over personnel we had in judges, I’ve got the time to do it.

MR. FREDERICK: How would you distinguish the cases that you’ve encountered in those other circuits from those here in the D.C. Circuit?

JUDGE SENTELLE: Tenth Circuit I will hear six criminal cases and that’s all I will have when sitting out there in September. I do not remember a time when I ever had six criminal cases in a row in the D.C. Circuit. I had no administrative case there. I did have a little bit administrative law in the Eleventh Circuit, but nothing like the administrative law we get here. As it happens I did have a couple of very interesting cases down there
in the Eleventh Circuit that could have risen anywhere. One of them had to do with the, whether or not you need, police need a warrant to obtain cell tower location, telephone cell tower location information. I wrote the opinion saying that they did have to, I think that’s probably currently pending an *en banc* vote. In the Eleventh Circuit now. I had the *Chiquita Banana* case down there, the civil side of what Eric settled, the big criminal case here a few years ago when he was at Covington. Where the class of 4000 or so, Colombians were suing the Peruvian, one of the South American countries, were suing under the Alien Torts Claims Act, alien torts statute. I wrote for a 2 out of 3 judge court saying that this was extraterritorial application and that it doesn’t apply extraterritorially and the third judge dissented and said that she thought there was enough contact to take it out of the reign of the recent Supreme Court decision.

**MR. FREDERICK:** So the Eric, was Eric Holder, our current sitting …

**JUDGE SENTELLE:** Yeah.

**MR. FREDERICK:** Sitting Attorney General, just so the record is clear.

**JUDGE SENTELLE:** Yeah. Right. He represented Chiquita at that time. Of course now his department is doing other things on the other side on that but they worked out the criminal case while he was representing Chiquita.

**MR. FREDERICK:** Now several judges while you have served have left the court completely. Do you see yourself staying on the court in senior status or are there other things in life that you’d like to do?
JUDGE SENTELLE: David I don’t see any reason why I would leave. Bob Bork who did violate it, at one time had said well I accepted a life sentence and I plan to serve it out. Well, of course, he didn’t, he left. Well I accepted a life sentence, I think I’ll serve it out. I don’t see anything else that I want to do that would keep me, as long as I’m, as long as the Lord gives me strength to keep doing this I figure he wants me to keep doing it. I don’t know anything that I would want to do that would take me away from it. I certainly wouldn’t want to try to go back to the practice of law. I see lawyers do that, try to go back to that at my age put together a practice at 71 years old plus, I wouldn’t want to do that. I enjoyed practicing law when I was practicing it but it is a different time now. There is a story they tell in England about a judge who atypically over there applied to the Lord Chancellor when he retired from the bench to be relicensed to practice law and the Lord Chancellor is supposed to have said, “I should hate to see you do poorly as an old man what you did so well as a young one.” So I have no desire to go do poorly as an old man what I think I did pretty well as a young one. I could say that I’d like to have more time to write but I’m not sure I would do it if I did have more time. I don’t see anything that’s going to cause me to quit altogether now I may well decide to slow down little by little. I don’t see anything now that will take me, take me out of here.

MR. FREDERICK: Are there any personal hobbies that you see yourself exploring now with more time?

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JUDGE SENTELLE: I suppose really David that’s a reason why I’m not going to be leaving. My brother said somebody asked him, “When’s Dave going to retire?” and he said, “Retire and do what?” Because I really don’t have the kind of hobbies that, when Spottswood Robinson left, he went back to Richmond and reopened his woodworking hobby down there. I really, I hadn’t been fishing much in the last several years. I hadn’t hunted at all since I moved up here and now I’ve got a problem of tendons in my shoulder where I’ve been told not to cast and not to shoot so I couldn’t go back and do those if I wanted to. Gardening was something I really enjoyed in North Carolina but I’ve gotten out of the habit of it up here with the long commute and smaller land, I have neither the time nor the place to do the kind of gardening I used to do down there. Really had given that up when I came up here. There’s really nothing that, unless I were to decide to do more writing, which as I said I don’t know that I have the willpower to do it now anyway.

MR. FREDERICK: Well I see you and, as really devoted to the institution of the D.C. Circuit and I wonder if, if you see yourself that way and if so, are there things as a senior judge that you can do to promote this institution?

JUDGE SENTELLE: You know, the best thing I can do, I think, to promote the institution is whatever the Chief wants me to do. I told Merrick when I left as Chief, I said I’m available for anything you want me to do. I’m going to stay out of your way unless you ask me. And he from time to time will call me or we will talk about something that he may want advice or he may
just want to discuss something. So I’m available for that. I have given up a lot of the outside things I used to do just because I’m old partly. Like the presidency of the Edward Bennett Williams Inn that I had for twenty, thirty years. I gave that up. I still do the judges prayer breakfasts, I still chair that once a month. Part of it I don’t know who I would turn it over to. I picked on Jeb Boasberg at the Inns, I dragooned him into being the new chief, the new chair of the Inn. I don’t have a logical heir apparent for the prayer breakfast but I still do that. I don’t make the appearances for other groups that I did when I was Chief in part because I’m just tired of it. I told Annette I may never bring my black tie suit back, my secretary Annette, I may never bring my black tie suit back down again. I had to make so many appearances on behalf of the Court. So I think the best thing I can do is, do whatever the Chief needs me to.

MR. FREDERICK: You are always very kind in meeting people and asking them how their family is and your former clerk Neil Gorsuch and I were talking about that when I last saw him and I’d like to ask you a question about how you think you’re family has been affected by your service on the D.C. Circuit?

JUDGE SENTELLE: It changed the life of my youngest daughter dramatically. We moved her up here. When we came up here the oldest daughter was already in college. The second daughter was about, she was approaching her senior year in high school and we actually let her live with my brother
and his wife for a year so she could finish high school with her class. Rebecca, we made her move up here and she came kicking and screaming and never left. She still lives in the area now. It was a different, twice, they made their lives change. Once they moved from Charlotte to Asheville but not nearly as dramatic as Asheville to Washington. We had moved from Charlotte to Asheville when I went on the district court. Two years later we moved up here. They, actually 3 years later, though I was alone the first year and more or less commuted. It’s a different world up here, David, than Rebecca had been accustomed to and she did not think she liked it. But then as I say, now she never left. Raising her daughters here. I didn’t have as much time for the family while I was Chiefing and chairing as I should have had. Kids were grown but I didn’t have as much time with the grandchildren as I’d have like to have had and Jane, Jane was not demanding but she wasn’t getting much time during those years. I’m not sure if that answered the question you were asking or…

MR. FREDERICK: Well, you know it was, yes it has and I have come to the end of my questions. Are there any other things that you would like to address before we close?

JUDGE SENTELLE: Well David I would say something that should have said at the portrait ceremony that it has been a very different ride than the one I planned on. I went to law school expecting to be a sort of a semi country lawyer in Asheville, western North Carolina. I will digress and say that when I
went on the district court, Judge Sam Ervin, who was then on the Fourth Circuit, the Senator’s son introduced me and said, “I wanted to introduce a man who has a better claim on being just a country lawyer than either I or my daddy ever had.” You know his father used to always say I’m just a country lawyer. I admit to being a country lawyer in western North Carolina. We went back to Asheville out of law school to stay the rest of our lives. I kept being offered jobs in Charlotte until I was offered one I couldn’t turn down with the U.S. Attorney’s office and moved down there and stayed 17 years expecting that to be the rest of our lives. And then moved back to Asheville again to spend the rest of our lives when I went on the district bench. Two years later I was up here and it is a very different life up here. By way of example, I don’t mean this to be the end all, in Charlotte I played poker with a group of cops, sports riders, race car drivers. In D.C. I played with Chief Justice of the United States. Both of them were good poker groups, good people but that just shows how different things are there than here. I won’t say that people in North Carolina, Asheville in particular, are not interested in political or philosophical matters but they’re not anywhere near the top of their mind and they know they don’t have a great deal of influence. People with whom I’m in contact here have them at the top of their mind and think they have a lot of influence whether they do or not. Some of them may not but it’s a different emphasis in life there than here. Had I not come here, I would
have never been involved in the Independent Counsel matters that took up 14 years of my life. I would not have represented the Inns of Court in England, I would not have dined at the Supreme Court with some regularity for a while. Would not have served on the Executive Committee and gotten to know judges all over the country and would not have had the headaches of trying to manage a budget that was way less than the needs. But it’s been a very different life than the one I planned but it’s been a damned good one. I’ve been very blessed and thankful for it.

MR. FREDERICK: Well on that note, thank you Judge Sentelle, it’s been an honor and a privilege for me to be part of this process of recording your oral history.

JUDGE SENTELLE: Thank you David.
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HONORABLE DAVID BRYAN SENTELLE

BIOGRAPHICAL SKETCH

Judge Sentelle was appointed United States Circuit Judge in October 1987, served as Chief Judge from February 11, 2008 until February 11, 2013, and took senior status on February 12, 2013.

He is a 1968 graduate of the University of North Carolina Law School. Following law school, he practiced with the firm of Uzzell & DuMont until he became an Assistant U.S. Attorney in Charlotte, N.C. in 1970. From 1974 to 1977, he served as a North Carolina State District Judge but left the bench in 1977 to become a partner with the firm of Tucker, Hicks, Sentelle, Moon & Hodge.

In 1985, Judge Sentelle joined the U.S. District Court, Western District of North Carolina, in Asheville, where he served until his appointment to the D.C. Circuit. Judge Sentelle was the Presiding Judge of the Special Division for the Purpose of Appointing Independent Counsels (1992-2006). He also served as the Chair of the U.S. Judicial Conference's Executive Committee (2010-2013). Judge Sentelle served for over 20 years as President of the Edward Bennett Williams Inn of the American Inns of Court.
David C. Frederick
Partner, Kellogg Hansen Todd Figel & Frederick

David Frederick represents clients across a broad spectrum, principally in appellate courts. He has argued more than 100 appeals, including 50 in the Supreme Court, in every U.S. Court of Appeals, and in five state supreme courts. He has won or settled cases in the Supreme Court thirteen years in a row, including, most recently, *Tyson Foods v. Bouaphakeo*, *Tibble v. Edison Int’l*, *Jesinoski v. Countrywide Home Loans*, *Amgen Inc. v. Connecticut Retirement Plans and Trust Funds*, *Pacific Operators v. Valladolid*, *CSX v. McBride*, *Matrixx v. Siracusano*, *Jones v. Harris Associates*, *Merck v. Reynolds*, *Wyeth v. Levine*, and *Altria v. Good*. In the Supreme Court, he has represented individuals, investors, immigrants, classes of consumers, farmers, Native Americans, small corporations, trade associations, large companies, foreign governments, states (Alaska, Delaware, South Carolina, Tennessee, and Vermont), the United States, and the European Community.

A former law clerk to Justice Byron White and Judge Joseph Sneed, he graduated from the University of Texas School of Law (J.D., with honors); the University of Oxford (D.Phil.), where he was a Rhodes Scholar; and the University of Pittsburgh (B.A., *summa cum laude*), where he was a Truman Scholar. He served in the Department of Justice as Assistant to the Solicitor General (1996-2001) and as Counselor to the Inspector General (1995-1996).

**NOTEWORTHY REPRESENTATIONS**

Lead Counsel for National Credit Union Administration, as liquidating agent, in lawsuits against Bank of America, Barclays, Bear Sterns, Countrywide, Credit Suisse, Goldman Sachs, JP Morgan, Merrill Lynch, Morgan Stanley, Nomura, Royal Bank of Scotland, UBS, Wachovia and Washington Mutual.


CSX Transportation Inc. v. McBride, 131 S. Ct. 2630 (2011) – successfully represented rail worker in rejecting railroad’s assertion that proximate cause needs to be proved under FELA

Matrixx Initiatives, Inc. v. Siracusano, 131 S. Ct. 1309 (2011) – successfully represented investors in establishing that materiality in securities fraud case is not established solely by statistical significance of drug adverse event reports

Merck v. Reynolds, 130 S. Ct. 1784 (2010) – successfully represented investors in case defining when statute of limitations arises in securities cases

Jones v. Harris Associates, 130 S. Ct. 1418 (2010) – successfully represented mutual fund investors in case defining when fund advisor breaches fiduciary duty to investors


Wyeth v. Levine, 555 U.S. 555 (2009) – successfully represented woman whose arm was amputated in failure-to-warn case against preemption defense for prescription drugs

Altria v. Good, 555 U.S. 70 (2008) – successfully represented consumers against cigarette company asserting preemption defense to claims of fraudulent representations of “light” cigarettes


New Jersey v. Delaware, 552 U.S. 597 (2008) – successfully represented Delaware in boundary dispute with New Jersey over licensing of liquefied natural gas facility that was to encroach across Delaware’s boundary

Watson v. Philip Morris Cos., 551 U.S. 142 (2007) – successfully represented consumers in preventing tobacco company from deploying federal officer removal statute as basis for removing state-court action to federal court

Bates v. Dow AgroSciences LLC, 544 U.S. 431 (2005) – successfully represented peanut farmers whose crops had been killed by pesticides

Represented Mid-Atlantic Sports Network in matters pertaining to carriage and Washington Nationals television rights fees

Represented 35 states in common proceeding against tobacco companies arising out of Master Settlement Agreement

PUBLICATIONS

Books

Supreme Court and Appellate Advocacy (West, 2003, 2d ed. 2010)

Articles

Tips for Representing Consumers and Investors in the Supreme Court, 44 Litigation 2 (2018) (co-authored with Brendan J. Crimmins)

Supreme Court Advocacy in the Early Nineteenth Century, 30 Journal of Supreme Court History (2005)


Commentary on the Congressional Accountability Act of 1995: A Section-by-Section Analysis, in Lobbying the New Congress: Compliance with the Legal, Regulatory and Ethical Requirements (Susman and Timmer eds., 1995)
The Ninth Circuit and the Development of Natural Resources in the Early Twentieth Century, 6 Western Legal History 183 (1993)
Railroads, Robber Barons, and the Saving of Stanford University, 4 Western Legal History 225 (1991)

EDUCATION
University of Texas School of Law, Austin, J.D., with honors, 1989
• Articles Editor, Texas Law Review, 1988-1989
University of Oxford, D.Phil., 1987
• Rhodes Scholar
University of Pittsburgh, B.A., summa cum laude, 1983
• Phi Beta Kappa
• Truman Scholar

CLERKSHIP
Law Clerk, Justice Byron R. White, U.S. Supreme Court, 1991-1992

GOVERNMENT SERVICE
Assistant to the Solicitor General, U.S. Department of Justice, 1996-2001
• Coast Guard Medal for Distinguished Public Service, 2000
• Department of Justice Inspector General’s Award for Exceptional Service, 1997
• Attorney General’s Distinguished Service Award, 1998
Counselor to the Inspector General, U.S. Department of Justice, 1995-1996