

**Oral History of Magistrate Judge John M. Facciola
First Interview
December 22, 2009**

This interview is being conducted on behalf of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewee is the Honorable John M. Facciola, Magistrate Judge of the United States District Court for the District of Columbia, and the interviewer is Kali N. Bracey. The interview took place on December 22, 2009. This is the first interview.

MS. BRACEY: Good afternoon, Judge Facciola.

JUDGE FACCIOLA: Good afternoon.

MS. BRACEY: Could you provide your name and date of birth?

JUDGE FACCIOLA: I'm John Michael Facciola. I was born in Brooklyn, New York, on April 28, 1945. The day the partisans killed Mussolini. My family is of Italian origin. Both of my grandfathers were born in Italy. One of my grandmothers was as well, but passed away long before I was born. My maternal grandmother was born in America and was a member of a family that had 15 children. And they hail from Little Italy, Sullivan Street, down in Greenwich Village. I've had the honor of giving the Naturalization Welcome to the new citizens and I've frequently spoken about those origins and the impact and influence they had upon me. So I grew up in the very warm lap of a large, Italian-American family. Dear friends of ours who always would visit with us on Sunday and say, "Are you having company or is it just the 40 of you?" But we were a gigantic family. My mother and my father were

married, I guess, in the late '30s, and had five children, but there was a long period of time between us. Roseanne, God rest her soul, my sister, is 4 years older than I am, and that it didn't appear that my mom and dad would have any more children besides them, and all of a sudden came Nina, Michael, my brother, and Regina.. Unfortunately, my mother died, a year after Regina was born. My mother was a victim of breast cancer, which in those days was a death sentence for most women. So, I think the last thing she did was watch me and my sister Roseanne graduate, respectively, from high school and college.

MS. BRACEY: From high school and college?

JUDGE FACCIOLA: Yeah, Roseanne from college, me from high school. I went to the local parochial school. I got a tremendous break of good fortune. There was a Jesuit high school in Manhattan called Regis and it was founded in, I guess, in 1908 by a family that insisted upon remaining anonymous, and it was a Jesuit school for poor Catholic kids. In those days there weren't anything else besides poor Catholic kids. But you took an exam and if you passed the exam you went to Regis and never paid tuition. So I got a magnificent education and paid, I think, \$10 a year, which was the cost of my locker and the key on the locker.

MS. BRACEY: And what age did you start there?

JUDGE FACCIOLA: I was 13 years old.

MS. BRACEY: Okay.

JUDGE FACCIOLA: And it was an interesting time. I still remember people my age, remember that one of the most significant events in American education was the launching by the Russians of Sputnik. To that point, the U.S. had been utterly dominant after the Second World War, technologically, industrially in remarkable ways. One night we came home to learn that the Russians had done what to us was almost incomprehensible, had beat us into space. Within days the American educational curriculum changed. More emphasis on science and math. If you grew up in those days you would hear always the phrase, “How are we going to beat the Russians?” It’s a line in *Bye Bye Birdie*, if you remember. And I still remember, while I took this exam, this large building, I had never seen a Jesuit priest until that day. There was one whom I later would learn was Father Brown, the assistant principal. He had a large number of keys that he carried, and I really thought they were going to put me in jail. Well, I got admitted to Regis and showed up there, and there was a meeting with Father Brown or one of the other priests as you were admitted, with my dad, and my father looked at the curriculum which was Latin, Greek, French, English literature, history, and some science. And he said to the priest, he said, “Father, this is interesting that you have this curriculum in light of all the emphasis now on science and math.” The priest, with what I would learn would be a wonderful Jesuitical arrogance, said, “We’ve been doing it that way for 400 years, and it

has worked out pretty well.” So I had an absolutely remarkable high school education, which I don’t think I could have had anywhere else. We began Latin initially, Latin, French. Greek was added in our second year. So by the time we left we had passable understanding of three languages. There was advanced English literature, advanced history, science and mathematics. It was extremely demanding place but an absolutely remarkable experience. And there were statistics about it that still are almost hard to believe that for an unbroken tradition of over 50 years, every single graduate of the school won a scholarship to college. And my class alone of 117 – quite a few, by the way, who dropped by the wayside, who just didn’t make it to graduation in that small class – there are, believe it or not, three federal judges.

MS. BRACEY: Wow, who were the other two?

JUDGE FACCIOLA: Judge John Koeltl was my classmate. He is the U.S. District Judge for the Southern District of New York. The other was Robert Somma, who until his resignation was a U.S. Bankruptcy Judge in Boston, Massachusetts.

MS. BRACEY: What kind of student were you?

JUDGE FACCIOLA: I should have been a better one than I was. I had my, I thought I was a bit of an athlete. I was involved in swimming, which was very demanding, and I should have done better than I did. So, I was about

midrange. In a school like that being midrange is hardly an embarrassment, but I was; I didn't devote myself to my studies as much as I should. But I was involved and active in a lot of things. Politics at school, stuff like that. But I should have worked a little harder than I did.

MS. BRACEY: And, what kind of things did you do with politics?

JUDGE FACCIOLA: Just class presidency and stuff. It was a very exciting time, not that I was very much involved. But you have to remember, it was a remarkable thing when a Catholic ran for the presidency. As late as the late 1950s there were actually articles, and I read them, one by a wonderful senator from Illinois, Paul Douglas, asking, "Can a Catholic be elected President?" It was a serious question. Some of the prominent Protestant theologian ministers in America were of the view that that was not possible like, Norman Vincent Peale. So that was very exciting, and I remember my sister ice skated for Kennedy in Rockefeller Center.

MS. BRACEY: What sister was that?

JUDGE FACCIOLA: That's Roseanne. But I was more in school politics than national politics. And as I say, I should have been a better student than I was.

MS. BRACEY: What were your favorite subjects?

JUDGE FACCIOLA: I loved Greek. I loved Greek. English and history were my favorites. And I was always very poor in mathematics. It was also easy, languages were very easy to me maybe because I grew up in a bilingual home. But as recently as five minutes ago when I got out of court, I could understand most of the French that we were using to interpret to a woman who came to us from Quebec. That part of me, those interests have remained to this very day.

MS. BRACEY: What was your home life like?

JUDGE FACCIOLA: Well, it was very rich and wonderful. Like a lot of Italian families, we all lived in the same house. My grandmother, my grandfather, and my uncle lived downstairs, we lived upstairs. And the cousins lived on the floor between us. I grew up in Brooklyn, New York. It was a large Italian family. Dinner was held at the same time every night. Sunday dinner was 1:00 p.m., that's when grandma poured the macaroni. That describes where the macaroni has boiled and is poured into the colander and that is a moment in every Italian on earth can tell you when grandma pours the macaroni. I got a big kick out of it several years later, many years later, a few years ago I was at the beach. And one kid said to his mom, "Mom can I stay here and play?" And she said, "Yes, but be sure to be home when grandma pours the macaroni." So it's an Italian clock you can set your watch by the time grandma pours the macaroni. And it was a house of remarkable warmth and a

remarkable encouragement of kids. And my parents were obsessed with our education and let nothing stand in the way of our getting it.

MS. BRACEY: What did they do —

JUDGE FACCIOLA: So, there was a house full of books, it was a house full of writing. My father was an accountant, my mom never worked. My mom, in those days, in the patriarchal culture, never finished high school. But she loved to read and she's the one who got me my first library card which I always considered the seminal moment in my life. But then I'm afraid it all came crashing around over our heads, because I graduated from Regis on June 10, my mother died on August 1. And the world just collapsed around us, and that led to a lot of changes in our lives.

MS. BRACEY: What sorts of changes?

JUDGE FACCIOLA: Well, one, my sister Roseanne had, was about to continue her education by getting her PhD or Masters at University in Indiana, DePaul, after graduating from Miramar. My grandmother, my mother's mother, now became the mother of the five of us, and remember how young the kids were? Gina was one, Mike was five, Nina was nine. So that changed very, very radically. So, the world was, whatever the world was before August 1, 1962, became an entirely different place on August 2.

MS. BRACEY: And so after your mother died you were raised primarily by your older sister?

JUDGE FACCIOLA: Well, I was then ready to go to college. So, she died on August 1 and I must have left for college on September 8.

MS. BRACEY: What was your favorite book as a child?

JUDGE FACCIOLA: There were a couple. There was one called, *Yankee Bat Boy*. About a guy who was a bat boy for the Yankees, a young boy. And many years went by and I often talked about the book and my sister, Nina, tracked it down and actually gave it to me as a present a few years ago. And I loved that. As a child, my favorite books were, I devoured the Brooklyn Public Library and I went there. I loved books about the, there was a series called *Midshipman Lee of the Naval Academy* that I devoured. Midshipman Lee had all these wonderful adventures. Another one I remember, called *A Young Skin Diver*, is about a guy who had been a surfer, and became a skin diver. So even then I was as crazy-nuts about the ocean as I've ever been. The ocean was a big part of our lives. We spent our summers with our grandparents out at the end of the island and that's where I first fell in love with the water, that's where I liked to fish and surf with my dad.

MS. BRACEY: And at the end of the island, was Long Island?

JUDGE FACCIOLA: Long Island. It was called Noyack, the village that surrounds the town of Sag Harbor.

MS. BRACEY: And you started going there when you were, how old?

JUDGE FACCIOLA: Eight or nine years old. My grandfather ultimately built a home out there when I was 13.

MS. BRACEY: And do you still have the home?

JUDGE FACCIOLA: I don't, my brother, well my sister's dead, and over the years, we've sold out. My brother now owns the home.

MS. BRACEY: Do you remember any friends, from —

JUDGE FACCIOLA: Oh gosh, yes. I had a wonderful group of friends. New York is an interesting place; there's really no such thing as a local high school. While there are one or two people who knew, New York has always had these specialized high schools. So, I went to Regis and guys went to Brooklyn Tech or Brooklyn Prep or Stuyvesant or Bronx High School of Science. So this group of guys I hung out with were very much like that, who went to these types of schools, and they were very close, we were very close. We were baseball-playing guys. In those days baseball was the big thing. We played every variation of the game of baseball you can imagine. Softball, stickball, everything else. And played basketball a lot and football.

MS. BRACEY: Do you keep in touch with any of those people?

JUDGE FACCIOLA: God no, no. One of those guys was in my wedding. That was 40 years ago. I think that may have been the last time I have seen anyone, unfortunately.

MS. BRACEY: So how did you decide where you were going to go to college?

JUDGE FACCIOLA: I knew I wanted to continue the kind of education I had and I was choosing among schools like Notre Dame and Holy Cross. And I chose Holy Cross because of its academic excellence, because I wanted to go to school in the East and because of its excellent reputation. And it seemed to be the kind of thing I was interested in.

MS. BRACEY: And had you made a decision on a college before your mother passed away?

JUDGE FACCIOLA: Yeah, I was already admitted to Holy Cross, yeah.

MS. BRACEY: Was that your first choice, Holy Cross?

JUDGE FACCIOLA: Yeah, I think so. It really came down to something like Holy Cross, Fordham, and Notre Dame, and I chose Holy Cross.

MS. BRACEY: What did you study there?

JUDGE FACCIOLA: I continued the classical education for two more years. So I continued my study of Latin and Greek. And the first two years, in those days, Holy Cross was in the point of transition from mandatory curriculum to a more elective curriculum and choice in major was postponed until after the sophomore year. So, it was Latin, Greek, French, History, and Theology and Philosophy. So, it was a school that was heavy on what was then called Liberal Arts and there were mandatory courses in Theology and Philosophy. You had to have so many credits in those

courses before you could graduate. You also had to have two years of Latin to get an A.B. And I did that. But I got involved in, intellectually, in history fairly quickly and my initial thought might have been to be a professor, particularly in medieval history, which is one of my favorite subjects. I spent my junior year in Rome, and that was quite an experience. But there I took a course in political science and constitutional law and that began to make a lot of sense to me. And I said, "This really is interesting." In other words, the way I thought about this was, the dividing line between the academic and the judicial perhaps is the academic is entirely academic in the true sense of the word, it is the study of something for the study of itself. What I liked about law was that it seemed to have a practical significance of the lives of people, as well as having a superb intellectual content that was very, very challenging. Then in my junior year, I began to take a few more courses in the social sciences, particularly in economics. And I began to see how the social sciences studied the impact of forces, would have on a society. So by that time, it was quite clear to me, that that's what I wanted to do. Holy Cross, they wore you out in terms of writing. Paper after paper after paper. I was submitting a learned paper almost every week in course after course. So, that really was a big part of what I wanted to do. And then I remember when the moment came to apply to law schools, on the left side of my desk, I had applications for graduate programs in history. On the right side of

my desk, I had an application to law school and thinking about the two I finally decided to go with the law school ones. The seminal thing in my experience was, I was working at the New York Public Library on some research and I was going through the card catalog, which in those days you did manually, and I came across a thesis written by somebody on the use of the relative pronoun in St. Augustine, *The City of God*. And I thought, I don't think I can do that for the rest of my life, you know. So there was always a part of me that swung more towards the impact that the academic life has on the way we live.

MS. BRACEY: Did you know any lawyers?

JUDGE FACCIOLA: Yeah, maybe one or two, but no. Most of the people in my neighborhood were blue-collar stuff. My dad was white-collar, but he was the exception. But you have to understand that it was my father's burning ambition that I be a lawyer. My father was orphaned at 13. And then was a runner on Wall Street, worked his way through high school, and college, and you know, made a life for himself. And throughout his life guys who perhaps were not as intellectually equal, nevertheless, rose above him because they had Harvard after their names and he was not about to let that happen to his children. So, he was a – felt very strongly that I should study law.

MS. BRACEY: And when did you first —

JUDGE FACCIOLA: And to an immigrant kid, making the jump from blue- to white-collar and from white-collar to professional, are very significant jumps.

MS. BRACEY: And what do you mean by, they are very significant jumps?

JUDGE FACCIOLA: They are a change in status, a change in class, and a new way. They really are. It's a way of saying we made it. You know, we started 15 of us in a cold-water flat on Sullivan Street with the bathroom outside, if you can believe that, in the hallway, and now there's a JD after my name. And that was, that was the heart and soul of what my father was trying to achieve. For me.

MS. BRACEY: It's interesting you consider yourself an immigrant kid even though your parents were born here.

JUDGE FACCIOLA: Yeah, I do. Sure. There are a lot of people out there that didn't let me forget it.

MS. BRACEY: It's a good point. I guess two questions: first, what's your first memory of knowing that you were somehow different, or at least people thought you were different?

JUDGE FACCIOLA: The reaction of my family was very interesting because my nickname was "Genuzzo," Little Johnny, which is in Italian. And their reaction that Annie's grandson was now a lawyer, was amazing. It was as amazing that one of my cousins was now a doctor. And one of my cousins was now a priest, or something like that. And it was among

that group of people truly remarkable. It still is. I'll go back there, went back to my sister's funeral. My Aunt Connie, who is 91, was interested, not only that I was, was proud that not only was I a Magistrate Judge, but emphasized that I was the first Italian-American Magistrate Judge.

MS. BRACEY: Oh, was that the truth?

JUDGE FACCIOLA: I guess so.

MS. BRACEY: In 1989?

JUDGE FACCIOLA: Right, _____ in 1997

MS. BRACEY: 1997?

JUDGE FACCIOLA: First Italian-American Magistrate Judge. Here in the District of Columbia.

MS. BRACEY: So what are your sort of best memories of college?

JUDGE FACCIOLA: It was a tough, tough time. It was a lot of hard work. When I got to college, I realized my mother's death had a transforming effect on me. And I really said, you got to stop screwing up, I mean you know, this is over, come on you're not a kid anymore, wakeup. And I really, really put my nose to the grindstone and I worked very hard. So, my memory mostly is working hard. You know, being challenged intellectually to the very depths of my being and I hope trying to meet those challenges. It was not easy. I don't have a lot of memories of

beer bashes and chasing girls or anything like that; it was tough work. Because I knew if I was going to achieve what I wanted to achieve, my grades were going to be very, very important. And one of those people who has always tested poorly on standardized exams, like the college boards and all of those, so I knew very early on that if they had such standardized exams to get into law school, I might be in a very deep hole if I couldn't point to my grades and say, look I didn't do very well in LSAT but here's four years of work.

MS. BRACEY: And you knew that in college?

JUDGE FACCIOLA: Oh yeah, I was well aware of it. Well aware. Very concerned about it.

MS. BRACEY: Do you remember any pivotal professors, or mentors you had in college?

JUDGE FACCIOLA: Oh, there were many. It was Father William Carroll who taught me Latin. He was a gifted man and a delightful character. He entered jingle contests. He was a real protean intellectual. But he loved jingle contests. And he won one for Breyer's Ice Cream. That was my favorite. He also won the one for the Maidenform Bra, but he would never tell us what the jingle was. And he said something really remarkable. We were studying in Latin, satires, juvenile I guess, and he said that we lived in a time in which satire was impossible because you couldn't make up what we were seeing. You know, a buffoon like

Mussolini taking over a country then being hanged by his feet with his mistress nearby. So he was a very important influence on me.

And Dr. Kealey was an historian who emphasized the importance of slow, steady academic progress. How a true scholar corrects one small thing at a time. Werner Loewy, who taught me Greek and whose family escaped from the Holocaust. And just was a gifted man and studying the *Apology*, Socrates's *Apology*, excuse me, Plato's *Apology* under his command. From a man who survived the greatest tyranny the earth has ever seen. And those were very significant influences on me.

MS. BRACEY: And, did you ever serve in the military?

JUDGE FACCIOLA: Yes, I did.

MS. BRACEY: And when was that?

JUDGE FACCIOLA: Well, when I graduated from – you have to remember, the period from 1962 to 1966 sees a growth with the death of President Kennedy and the arrival of Lyndon Johnson – we begin to see a steady slope upward in the U.S. presence in Vietnam. At my graduation from Holy Cross there was a substantial number of guys who took off their caps and gowns and who had their uniforms underneath because they were commissioned as officers in the Navy and the Air Force that day. Several of those guys went off to Vietnam. Two of them died within a year. Others were taken prisoners. So all, so wherever you looked in

American society, guys my age were putting on uniforms and going. I secured a deferment to go to law school but then since I was in Brooklyn – Brooklyn had a very large allotment, that is they had to produce a large number of people because Brooklyn is, as you probably know, if Brooklyn were independent it would probably be the 4th largest city in America. So, they were kind of waiting for me. So, I think I got drafted a week or so after I got out of school.

MS. BRACEY: Out of law school?

JUDGE FACCIOLA: Out of law school. And that presented me with a great conflict with what to do. My father was not at all pleased to see me get into a uniform. He had significant doubts about the legitimacy of our work in Vietnam and cynicism about, you know, about how the country is corrupted by military power. So, after a lot of thinking about it, I made the decision to enter the National Guard, which was a six-months' active duty followed by six years of inactive duty. So, that's what I did. And that was my service.

MS. BRACEY: And so where did you go for your active duty?

JUDGE FACCIOLA: Initially I went to Fort Gordon, Georgia, and then did my advanced infantry training at Fort Jackson, South Carolina.

MS. BRACEY: Did you ever have to go to Vietnam?

JUDGE FACCIOLA: No. No I did not.

MS. BRACEY: And did you have any other service after your six months?

JUDGE FACCIOLA: I had five years of service. I was, we came down here, and I was assigned to a JAG corps. But I mean, for that generation, those decisions were terribly, terribly complicated and difficult. I said that I lost two of my classmates. It is interesting, if you go down to the Wall, the Vietnam Wall, you will see their names where there are, that part of the Wall where it's at its largest and that was the attack on Hue, which was a northern Vietnam battalion that overran a Marine outpost and we took terrible tragedies. And like so many other members of my generation, the Vietnam War was a seminal event in our lives for seven years.

MS. BRACEY: And so did you see the National Guard Services a way of compromise?

JUDGE FACCIOLA: Yeah. And I regret it to this day.

MS. BRACEY: Why?

JUDGE FACCIOLA: If I had to live my life over again, I would have become an officer in the JAG and served my country.

MS. BRACEY: And gone to Vietnam, if possible?

JUDGE FACCIOLA: Yes. Something was desperately wrong with the situation. Where white guys like me went into the National Guard and Reserves and black and Hispanic kids went to Vietnam and died. That system

persisted for the longest period of time until it was abolished by the draft lottery which was the year after I went into the service. There were so many things wrong with that. There was discriminations on the basis of race, discriminations on the basis of wealth and class. If the Second World War was a commitment of an entire society to fight a war, the Vietnam War was the commitment of segments of society to fight a war that nobody else wanted to fight. It was not a good time, at all.

MS. BRACEY: Did you have any, you mentioned that you swam.

JUDGE FACCIOLA: Yeah.

MS. BRACEY: Did you have any other, and you played baseball?

JUDGE FACCIOLA: I played basketball, you know, every kid in New York is in a school yard playing basketball. Dribbling at Our Lady of Something. And yeah, that was it.

MS. BRACEY: Did you ever have any jobs when you were in middle school?

JUDGE FACCIOLA: Oh, the usual stuff. I was a guard in a museum, the Jewish Museum on 95th Street. And worked at a bottling factory and, you know, the usual sort of stuff, nothing that was to write home about. Just trying to make a few bucks over the summer. I was a camp counselor too. At a camp out at the end of Long Island, which was a lot of fun.

MS. BRACEY: And when was that?

JUDGE FACCIOLA: Senior in high school, freshman in college.

MS. BRACEY: And did you have any jobs when you were in college?

JUDGE FACCIOLA: No, I didn't work in college.

MS. BRACEY: And how was your health in your 20s up until, through your 20s?

JUDGE FACCIOLA: Despite my efforts to destroy it, very good. I began to smoke once I stopped swimming. Drank more beer than I should. So, I was thinking just today that the best thing that ever happened to me when I got out of law school was I got married. And my wife and I were committed to doing something about it, stop running around like we had. But boy, it was, my health was about the last thing on my mind. You know, when your 22 you think you're eternal.

MS. BRACEY: Right, right. And you kind of are.

JUDGE FACCIOLA: You are.

MS. BRACEY: How were you as a law student?

JUDGE FACCIOLA: I was a good student. I loved it. I loved it. It was very interesting. I went down to Georgetown sort of tentatively saying, Well, you know, my father really wants this, but what if it's not for me and what am I going to do? And the first two weeks were clumsy and I couldn't understand what was going on. And then all of a sudden it hit me, damn this makes sense. This really makes sense. And I can hold my own in this area. I finally think I found my intellectual home. And

from that point on it was just no holding me back. I loved it. I adored the place.

MS. BRACEY: And how did you do, what was your standing in class?

JUDGE FACCIOLA: I was 27th in my class after freshman year which got me on the Law Review. So I served on the Georgetown Law Journal for two years, yeah.

MS. BRACEY: And did you have any financial assistance in law school?

JUDGE FACCIOLA: Yeah, the, my dad worked for a company called Heublein. They since have been absorbed by someone else and the founder of the company, its president, a man named John Martin, had a foundation that aided the students of the people that worked for him. And I was lucky enough to get a scholarship to both college and law school. Which didn't cover my entire tuition but it was very helpful. I had student loans in law school as well.

MS. BRACEY: What sort of memories do you have from law school?

JUDGE FACCIOLA: All of them of an immense amount of work but of meeting some of the brightest, sharpest people I have ever met. And going to law school at a time of great political and social turmoil was a remarkable event. Areas of the law that had not been touched by previous generations, were touched by us. For example, the draft generated a whole new body of law – looked at draft boards and how they functioned from an

administrative law perspective. There was the discovery of the urban poor, like Mike Tigar who was then the Editor in Chief of the Law Review at Boalt and they produced this stunning 1800-page journal looking at various aspects of law from the viewpoint of the urban poor. From consumer protection, landlord-tenant, welfare rights, all of these aspects of it. So it was a time of extraordinary intellectual turmoil. Many things were going on in the law school at the same time. Law school is like college is: we're now making the transition from mandatory curriculum, which had been dictated to a large part by state bars from the American Bar Association to a much more elective sort of way of looking at things. So, there was now a way to pursue particular intellectual interests that you had in a way that probably was not available. It was a time of transition in the curriculum itself, and a lot more self-study and self-motivation. But the mandatory courses were superb as well. And as I say, I just found it extraordinarily challenging. When you put on top of that the Law Journal responsibilities and the fact that I had to make some money, I brought a whole new meaning to the word, tired. And, but somehow I got through it all and each of those were significant.

MS. BRACEY: And what were you doing to make money in law school?

JUDGE FACCIOLA: I worked at a law firm, at a law firm here in town.

MS. BRACEY: During the school year?

JUDGE FACCIOLA: Yeah. And during the summers as well.

MS. BRACEY: And what did you do for them?

JUDGE FACCIOLA: Various law clerk materials, you know, go here, go there. Do research on this, and research on that. Interesting, some of the things I began to research proved to be lifelong interests. Interesting story: A case came down, I think out of Georgia. As hard as it is to believe, there was a time in American history when American Airlines fired stewardesses upon learning they were pregnant. And uh, that happened, there was a judge in Georgia, who couldn't possibly, couldn't even fathom what was wrong with that. Well, he was about to learn with cases like *Frontiero* and *Reed vs. Reed*. But those were the beginnings of that revolution in human expectations. And that was something I worked on. And I worked on the beginnings of the relationship between students in a college, and the college, in terms of the administrator. So, it's the kinds of things that proved interesting throughout my life.

MS. BRACEY: And you mentioned how exciting it was to have a Catholic president.

JUDGE FACCIOLA: Yeah.

MS. BRACEY: What was the impact of Kennedy's assassination on your life?

JUDGE FACCIOLA: Absolutely devastating. I mean, in its first blush, Johnson did many of the things Kennedy was not able to do. I mean, there is no better book about Johnson that I have ever seen than the Caro set of biographies.

But the one, *Master of the Senate*, the chapter that focuses on how Johnson kept together this rickety coalition to pass the first civil rights act of Reconstruction, is stunning. He was masterful. And he, as I say, he did things that Kennedy could not have accomplished. But with each passing day our involvement in Vietnam grew greater. And his destruction is one of the great stories in American history. It's almost Greek in its dimension. It's just astonishing. Caro's working on the fourth volume of the biography and I can't wait because it's going to focus on the Johnson years and the involvement of Vietnam. You have to remember, law schools at the time were in great turmoil and one of the amazing things about going to law school in Washington, is you were dead front center in the March on Washington, and all of that was going on. The Poor People's March on Washington, the riots after the death of Martin Luther King, all of that, I mean it was astonishing. When we got together, my class thirty-five years later, that looked back on this, we say, My God, what generation of law students saw more than we did? And it was right here.

MS. BRACEY: Was the law school, the Georgetown Law School, where it is now?

JUDGE FACCIOLA: No. It was at 506 E Street. Where the SEC used to be, the SEC, now the McDonald's, that big building on E Street. That's important, because if you think about it, I'll never forget this. On the morning, the afternoon after the death of , I was in Professor Cohn's class on

Federal Courts in Federal Systems, and we kept hearing sirens go down the block. One after another. And in that day, that rickety old building still had windows that opened. And we opened them and looked out and could see flames coming from stores and shops on the F Street corridor. That was the beginning of the riots. The city was engulfed in flames, the Law School closed and we were all told to go home. That night several of my classmates, however, were gathered and brought back downtown to help in processing the hundreds of people who were being arrested. That took place. This city, I mean, there were National Guardsmen with M16s a few blocks from the White House. The place was in flames. It was one of the most remarkable nights in American history. I'll never forget it.

MS. BRACEY: And where were you living?

JUDGE FACCIOLA: I was living in the S.W. The Capital Park South apartments.

MS. BRACEY: How did, well what was your favorite Law School class?

JUDGE FACCIOLA: I liked that group of classes that dealt with questions of jurisdiction, federal power, federal courts, federal systems. In other words, I was most interested in the intersection of the courts with other governmental entities in the enforcement of the law. I also had an abiding interest in criminal law as well, because that was the most fervent, if you will, example of that interfacing. I enjoyed that. I also liked the point where the law and the social sciences and sciences

intersected. For example, dealing with the mentally ill, which became a lifelong interest. Looking back over my law school career it's amazing how few courses I didn't enjoy. But it was that group of federal courts, and you know, and at this point that was in great period of transition. Remember we got the Warren Court which is nothing less or more than a revolution into criminal law. We have the extension of federal authority by Johnson, continued by Nixon, who ironically presides over the largest growth of the federal government in American history. Changing and shifting definitions of federal judicial power being asserted, particularly in the South, in the enforcement of the *Brown* decree. So, if you were intrigued, as I was, how the federal courts are managed, how they enforce the power of the U.S., you couldn't pick a better era to study that issue.

MS. BRACEY: How did law school sort of shape your sort of philosophy on the law?

JUDGE FACCIOLA: I became, I would imagine that those judges who had the greatest influence on me in terms of their opinions, were judges who saw the limitation of judicial power, vis-a-vis the other branches of the government. So, I was particularly fond of Holmes, and Brandeis, and Frankfurter, Harlan, and people who saw limitations that way. Because I thought that was a very exciting and an interesting limitation on judicial power. So my philosophy was shaped by the fact that, to this day, this country should be governed by the people's elective representatives. And the assertion of judicial power should be held,

should be limited as the Constitution requires. That philosophy has been with me a long, long time. Which is interesting because I consider myself an extremely liberal Democrat who is a great believer in the assertion of federal power. But I would prefer, I feel it must come from the elective branches as opposed to the nonelective branch.

MS. BRACEY: So you are not someone who believes in the overreaching, I guess?

JUDGE FACCIOLA: That's right. In other words, in many respects I applauded everything the Warren Court accomplished. But I also question whether that assertion, that extraordinary assertion of judicial power, was the best thing for our traditions and the way we governed ourselves. A question I still have in my own mind.

MS. BRACEY: So, it's not the result, it's the how it was done?

JUDGE FACCIOLA: That's true. Yeah. And also, being the incredible obligation imposed on judges to explain why they are doing, why they are doing. You know Brandeis said it, "We do our own work." We judges have to justify why we're doing something. Merely saying "Fiat" will not do. I want it done that way. That's not gonna work. So, that, in other words, judges who cut corners, never gain my respect. Judges who slug threw the tough ones and explained what they were doing in a justified manner, they are the ones who are my heroes.

MS. BRACEY: Did you have a roommate in law school?

JUDGE FACCIOLA: Yes. And I had several of them. But the one guy I was closest to, we are still close.

MS. BRACEY: Who was that?

JUDGE FACCIOLA: His name is Richard P. Walsh, Jr. And he went to Holy Cross the year before me. My roommate left school, leaving me kind of stuck with an apartment, got rid of that apartment, then I moved in with Dick. And Dick and I became inseparable. Dick was in my wedding party, and is the godfather of both of my sons.

MS. BRACEY: Where is Dick now?

JUDGE FACCIOLA: He's in Albany.

MS. BRACEY: What does he do there?

JUDGE FACCIOLA: He is an extraordinarily good trial lawyer. I used to tease him about dating women who were half his age, I think he is now working on 1/3. He's a very good-looking guy. But my wife, every time she calls him, "Who are you dating, when are you going to get married?"

MS. BRACEY: Has he ever been married?

JUDGE FACCIOLA: No.

MS. BRACEY: Well, that's good.

JUDGE FACCIOLA: Well,

MS. BRACEY: Or maybe not.

JUDGE FACCIOLA: He's been a wonderful godfather to my sons. He's a man of such a remarkable generosity. Few people believed this, but I wouldn't have believed it myself, that when his godsons, my sons, got married, he gave both of them, literally blank checks. He said you fill it in. How about that?

MS. BRACEY: So, it's almost unheard of, I think it is unheard of. How did you meet your wife?

JUDGE FACCIOLA: I hung around with great guys, Jeff, Walsh, Tom Nadeau and some other guys, and they in turn hung out with these women who lived up in Glover Park and one of them was named Angela Pinto and they were of the view, Italians could only date Italians, that there was a law to that effect. And while Angela was lovely, I was really much more attracted to her good-looking blonde roommate, and we met quickly at a party and then a friend of mine, Don Monihan, had these horrific Bloody Mary parties on Sunday mornings and would make these big buckets of Bloody Marys. These were in the days when the Redskins had a football team and it was always a thrill to go to a Bloody Mary party and watch the game even if you were going to watch the game at a bar. And I remember Gloria, we met again, she dropped a ladle all the way down to the bottom of this big pitcher of Bloody Marys and being the gentleman that I am I rolled up my sleeve and retrieved the

ladle and I don't know, from there it was magic. She was then teaching in Rockville. She was from upstate New York, from Poughkeepsie, New York. And we met, began to date, and got married shortly after I graduated.

MS. BRACEY: From law school?

MS. BRACEY: And how many children do you have?

JUDGE FACCIOLA: I have two sons.

MS. BRACEY: And how old are they now?

JUDGE FACCIOLA: John is 36, Danny is 35.

MS. BRACEY: So, after law school, at some point you end up back in New York?

JUDGE FACCIOLA: Yeah, I always had dreamed to go back to New York. New York was home. Brooklyn was home. To this day, if people say, "Where are you from?" I say Brooklyn. I haven't been there in 40 years, but I say Brooklyn. So, it was home, and I wanted to go home. And always dreamed about going back to Brooklyn and I wound up with Gloria living in a home, in an apartment that was 10 blocks from where I was born.

MS. BRACEY: And was the rest of your family up, too?

JUDGE FACCIOLA: Well, what had happened in the meanwhile, my father got remarried. My mother was then dead for 10 years. In fact, my father and I got

married, and I got married in the same year. So, my dad was there, he still had young children living with him. By then, I think Roseanne and Nina were married and had gone. So, yes my dad was still there.

MS. BRACEY: He still had young children with his new wife, or your brothers?

JUDGE FACCIOLA: Yeah, with him, my brother and sister. She was their stepmom.

MS. BRACEY: And what was your first job out of law school?

JUDGE FACCIOLA: I was an Assistant District Attorney in the city of New York.

MS. BRACEY: And how did you decide on that job?

JUDGE FACCIOLA: I dreamed of it all my life. I always wanted to be a prosecutor. In Hogan's office. Hogan's office had this astonishing reputation for its integrity, its honesty and the extraordinary experience it provided people. And I wanted to be a part of that.

MS. BRACEY: And when did you first know that?

JUDGE FACCIOLA: Oh, freshman year of law school. There was this guy I idolized named Jerry McGuire who had been with that office, and I followed his career. It was the kind of career I wanted.

MS. BRACEY: And who was Jerry McGuire?

JUDGE FACCIOLA: Jerry McGuire had been an Assistant District Attorney who would ultimately go to the Department of Justice, and before he passed away.

MS. BRACEY: And how did you meet him?

JUDGE FACCIOLA: Jerry McGuire's brother was killed in the Second World War. His wife was my mother's best friend.

MS. BRACEY: His wife was your mother's best friend? I see, okay. So you have always wanted to go to this office?

JUDGE FACCIOLA: Yes.

MS. BRACEY: So, what happens on your first day of work?

JUDGE FACCIOLA: Well, let me back up a bit. At that time, I thought I might be interested in a clerkship. And I was interviewing. If you knew the geography in New York, the Southern District of New York courthouse is here, the DA's office is here, and I had been offered a job by Mr. Hogan. And I said I wanted to complete these interviews with judges, because I thought it was a matter of courtesy. I went to see a certain judge and he shall remain nameless. But he interviewed me and asked me a little bit about my law school career. And then he said, "Can you drive a car?" I said, "Yes, sir, I can drive a car." He said, "Do you ever mix drinks?" I said, "Yeah, I made a few bucks as a bartender once." He said, "Well, the reason I ask is, you can, on Fridays I expect you to go up to wherever I've got to pick up my wife so she can go shopping at Bloomingdale's and then we have a little reception in the house. I expect you to come and be the bartender." So I said, "Thank you very much judge." He said, "Well, I'll let you know." And I was walking

past the DA's office, and I said, "Let's see, all of this hard work, and all of these years, and I've got to spend my time driving his wife around?" I walked in to the DA's office and I said, "Mr. Hogan you've got an assistant." Never looked back.

MS. BRACEY: That's a great story. So, what was your first day of work like?

JUDGE FACCIOLA: It was terrifying. What had happened was, I took the bar, but after I took the bar I had to go in the service. My colleagues who took the bar and passed were all admitted. I missed that admission because I was in the service, I couldn't get there. So I had to come to New York, get admitted at the bar before I could be a DA because I had to go to court. Well all of that happened, okay, so I get back to court when all of my contemporaries are all scattered and I got back to this little office and it said go to Part 1C. So, I went down to 1C which is part of the court and it was this strange place. Part 1C is kind of like the sewer of the New York City system. It has prostitutes, gamblers, and in those days they actually prosecuted bookies and people who took bets and for people that always, you know, guys selling ice cream on the wrong side of Central Park and, for reasons that always eluded me, people didn't get adequate heat. And in New York the court is run by a "bridge man," and I turned to him, I had assumed I would go there to watch someone else handle the part. And I said, "Excuse me, I'm the new DA. Can you please tell me who is the assistant assigned here?" And he said, "Some guy named Facoola." And I said, "Oh my

God.” So, I think I had been admitted about 1:00 and it was now 1:30 and I was in court trying cases. And, they were numbers-running cases. I think I lost the first five. And then, fortunately, blessedly, court ended and we went through some other things. And I went upstairs and I was ready to resign. I figured I would go in and give my resignation. Went to see Frank Rogers, my boss, and I said, “You know, Mr. Rogers, I want to resign.” He said, “Why?” I said, “I lost my first five cases. You know I just got admitted at 1:30, by 3:00 I lost the first five cases. This career is off to a hell of a start.” So, he said, “Who were you before?” And, I said, “Judge X.” He said, “Judge X, he acquits everybody.” I said, “Now you tell me.” So I had my baptism by fire. They were great believers in on-the-job training.

MS. BRACEY: And so, but you were there for —

JUDGE FACCIOLA: Four years.

MS. BRACEY: For four years? And what kind of cases did you try, after —

JUDGE FACCIOLA: Basic street crime. I was assigned for a brief period of time to the Rackets Bureau. But I worked particularly on, on what was then Medicaid fraud, on a dentist who was ripping off the city. As well as doing some fundamental stuff. Then I was assigned to a general part, where I tried street crimes, burglaries, robberies, so forth. Then I was specially assigned to the Special Narcotics Branch where I worked on

the joint U.S. and State Task Force, prosecuting large-scale narcotics distributors.

MS. BRACEY: What kind of narcotics are there in the early '70s?

JUDGE FACCIOLA: Heroin was the big thing. There's a Claude Brown book, *Manchild of the Promised Land*, has an interesting study of life in Harlem. And he talks about how the plague comes when heroin hits and it impacts every aspect of everyone's lives. In those days it was heroin. We didn't see that much cocaine. Cocaine would change places with heroin as the years went by.

MS. BRACEY: What was your life like as an ADA?

JUDGE FACCIOLA: Very busy. But a lot of fun. We were blessed that there were, I think, 19 of us had started on the same day. Fresh out of school and close friends like brothers and sisters and we became very close, and are close to this day. I still go to the Giants/Redskins football game every year, with Kevin McKay, who is now a judge in New York. We met, Assistant District Attorneys, we recently got together at dinner honoring him and it was like no time had passed at all. We were like brothers, still are.

MS. BRACEY: So you were there yesterday?

JUDGE FACCIOLA: Uh, no. That was last, I go to New York to the games.

MS. BRACEY: You go to New York?

JUDGE FACCIOLA: Yeah, the game, and I think it was in September. But we were very close, we were inseparable. That was a, you know, we were young, either some of the guys were still single, some had just got married. We had wonderful parties. It really was a remarkable time.

MS. BRACEY: And when did you get married?

JUDGE FACCIOLA: I got married in the summer, June 27, 1970.

MS. BRACEY: So you graduated from law school in '69?

JUDGE FACCIOLA: Yes. Then I went into the service, got out of the service, and we got married in June.

MS. BRACEY: And you started, but you started at the ADA in —

JUDGE FACCIOLA: In '69, but I no sooner started than I went into the service and had to come back.

MS. BRACEY: I see. So did your crazy harrowing day happen in '69?

JUDGE FACCIOLA: Yeah. I had come back out of the service, so it was late '69, yeah.

MS. BRACEY: So, how did being an ADA sort of shape your career?

JUDGE FACCIOLA: Well, first of all, it was the integrity of Mr. Hogan which was legendary. So the notion that the prosecutors are quasijudicial officials; you are not there to win cases, you're there to do justice. The standards to which I was held both intellectually and morally, the honesty, learning how to deal with the people, particularly people who

were different from me. Police officers, and victims, and defendants seeing what an urban criminal justice system really worked like. I mean, it was just the most astonishing experience. I thought I was a fairly sophisticated kid from Brooklyn who knew which way was up. I knew nothing, nothing, until I got there. And I learned how the world really worked. Al McGuire, the wonderful coach in Marquette who became a very good radio and television broadcaster, was a New Yorker. And he always said to his students, Look, go to college, get your degree, then become a bartender and a cab driver, do each of those for a year, then you're educated. He should have added, and then be an Assistant District Attorney when you get out of New York. And it was just, it was an astonishing experience. You walk into this place, and there would be 48 prostitutes that had to be arraigned, and then a murderer who was a few feet away and people yelling at each other. Judge bugging you, hundreds of cases that had to be taken care of. The volume was staggering. So you learn, you learn on the fly. You try to get some sense in your head, what's worth my time, what isn't, go, go, go, go.

MS. BRACEY: And did you enjoy it?

JUDGE FACCIOLA: Immensely. Yeah.

MS. BRACEY: And, how do you think that experience has impacted your being a judge?

JUDGE FACCIOLA: It had a profound impact on my desire to return to public service after private practice, because it was the ideal. I thought it was the ideal to which I held myself, you know, disinterested public servant. And it has had that impact on me throughout my life. And again, when I became a judge, disinterested public service motivated by integrity and honor, and honor and honesty. Those, that's what that office was all about. That has had a profound influence on me.

MS. BRACEY: Were you involved in any local bar associations?

JUDGE FACCIOLA: No. It was hard to find time to do those things. And there wasn't much involvement in that, no.

MS. BRACEY: And anything about sort of local politics?

JUDGE FACCIOLA: No, we weren't permitted. No, Hogan was ferocious about that. We were not permitted to be members of political clubs or working campaigns, doing anything like that. He considered that absolutely inconsistent with our jobs.

MS. BRACEY: And why did you leave?

JUDGE FACCIOLA: It was really personal reasons. A lot of things were going on then. It was quite clear to me that my wife was not particularly delighted about living in the city. The relationship between my father and my stepmother continued to degenerate. And we Sicilians are physically incapable of minding our own business, so we kept getting sucked into

that and I began to think my own marriage was threatened and decided we better get out of here. It was the toughest decision I ever had to make. But I just felt to preserve what we had, and now that I knew we would be having children soon, I felt we just had to make our own move. And I think New Yorkers are great at deluding themselves that, well, it's only Washington. It's amazing how long those 4 hours on the Jersey Turnpike are. You don't go back there frequently. Because the kids came along. And all of a sudden you've got soccer and band and God knows what else. So that was a tough decision for us.

MS. BRACEY: When were your kids born?

JUDGE FACCIOLA: John was born in '74. Danny in '75.

MS. BRACEY: And how did you choose Washington?

JUDGE FACCIOLA: Well, we had been here, we met here. We had a lot of friends here. And they encouraged us to come back down. And we thought again, deluding ourselves into believing that we were not that far away. We liked the town and it seemed to provide some opportunities for me. The firm for which I had been a law clerk now invited me back as an associate. And that seemed to me to be a real good opportunity.

MS. BRACEY: And what firm was that?

JUDGE FACCIOLA: It was Wilkinson, Cragun & Barker. It no longer exists. It dissolved when I went back into public service, 1982.

MS. BRACEY: Just to go back for a second. Did you have any sort of major cases or significant cases as an ADA?

JUDGE FACCIOLA: No. I don't think so. I didn't have one single thing I worked on. I jumped around, did a lot of different things.

MS. BRACEY: So you came down to work at the firm, and what kind of work did you do?

JUDGE FACCIOLA: That was the strangest thing. Wilkinson, Cragun & Barker began its existence representing Indian tribes in claims against the U.S. The Indians had been lobbying since at least the turn of the 20th Century to get the government to waive its sovereign immunity so they could sue. It finally bore fruit in 1944, the creation of the Indian Claims Commission which was set up to hear these claims. These were historic claims. So the claims of this group of Indians, they would be displaced from their lands in the 19th Century, and Wilkinson who founded the firm was Ernest Wilkinson, and he was in New York at Hughes, Hubbard & Reed, Charles Evans Hughes. And the story is that Native Americans came to see Mr. Hughes because he was so prominent. And Wilkinson was a westerner. He was from Utah. He was really the only guy in the place that could understand what they were talking about, because he understood treaties and reservations and federal power over Indian tribes. And he took that business with him to Washington. And in his life secured the largest judgment then

ever written against the U.S., in the *Ute* case which was staggering, the fees they brought in, so that was the origins of the firm. Then as the years went by it picked up other businesses. The Indians have timber resources and one of the lawyers there became very familiar with the industry. They began to represent natural resources companies, who were, for example, timber companies, who had had their land condemned, for example, to create The Great Dismal Swamp. There had always been a healthy Federal Communications Commission practice, because several of the members of the firm were Mormons. The Mormons have a gigantic, independent broadcasting system, that's grown from crystal radios to radio, to television to cable, to satellites. That yielded business. We also had a trade representative practice with the American Society of Travel Agents. And then another group of the lawyers developed what was then quite a remarkable and arcane field of telecommunications. That was a point in American history when all the data providers, in order to transmit their data over the phone lines, had to hook in to what was then the Ma Bell System. And the regulation of that became, gave birth to a lot of litigation of an administrative nature. And it's astonishing. I still remember sitting at a partners' meeting in a room like this reviewing each of the reports the lawyers had done, and one lawyer raising his hand had said, "What the hell is a modem?" That's how long ago it was, and that's how new this technology was. And that was another aspect of the practice.

MS. BRACEY: And did you work on all of those things —

JUDGE FACCIOLA: The strangest thing. And this is really weird. I came down thinking I had put the criminal law behind me and was going to turn to some other things but that was in July, I believe. And Easter, Easter Sunday, there had walked into the offices of Wilkinson, Cragun & Barker, Maurice Stans. Maurice Stans was the Secretary of Commerce in the Nixon administration. Up to more recent times, he is and has always been the greatest fundraiser in American history. Political fundraiser. Raised millions. And he raised much income for Richard Nixon. Stans in his capacity as chair of what was known as the Committee to Re-elect the President, he was the financial chairman, so he was responsible for getting all of the money. As you know, from the Watergate years, some of the money that was collected wound up in the pockets of the men who burglarized the Watergate Hotel. And from that came Watergate. And Deep Throat's amazing words, "follow the money." So, I walked in and it turned out that I was the only guy in the place who knew something about the criminal law. And suddenly I was working on Mr. Stans' case, which would consume the next four years of my life. Those cases were interesting. The first aspect, of course, was his testimony before the Senate Watergate Committee explaining how it was that money that came into the campaign wound up being used as money to hush the Watergate burglars so they wouldn't tell who hired them. It was the first aspect.

He was never indicted in Watergate. However, during the course of that, he got indicted in New York with John Mitchell, the Attorney General. There was a notorious financier named, Robert Vesco, kind of the Bernie Madoff of his time. And Vesco, the government had been after Vesco, and the theory of the government's prosecution of Stans and Mitchell was that significant changes were made in a complaint filed against Vesco by the SEC in consideration of the contribution that Vesco made which was quite large.

MS. BRACEY: To the Nixon campaign?

JUDGE FACCIOLA: To the Nixon campaign. That case was tried, I think, over 48 days in New York City. Bob Barker did most of the trial; I worked peripherally on it. But Stans and Mitchell were acquitted. Stans then, no sooner did that end, than the Watergate Special Prosecution Force began to look at Stans' involvement in the receipt of corporate contributions. And ultimately he plead guilty to two technical misdemeanors and that ended it. During all of that there were also civil cases that had been brought against him and I handled that. So that just consumed me for almost 5 years. In a way I never anticipated. Then that ended and I began to work in the more traditional areas of the firm's practice.

MS. BRACEY: And did you have any mentors or people you liked to work with there?

JUDGE FACCIOLA: Oh yeah. The guy I was closest to was named Angelo. And Ange was just a remarkable guy. And Ange was as good a professional marketer and business getter as there ever lived. And he was the guy who really developed these whole lines of practice. For example, the representation of the timber companies, and he was really a gifted man. And he was a very loving person. And I still remember on my birthday he had matching T-shirts made that said, "Italian Stallion." What I didn't know was that Ange was dying of leukemia. And he died that Easter Sunday. And with him, a lot of the heart and soul went out of that law firm. We also endured the death of someone I was very close to, Patricia Brown. Pat, she was, she came to town when there were few women lawyers in this town, it was just unbelievable. First of all, all women were assigned to trust and estates, because that's where the widows and kids were. We used to have firm breakfasts at a particular club in town and they insisted that the women enter through the service entrance. And as soon as Pat arrived, we stopped having breakfast there very quickly. And she was just a very dramatic person, a very close friend. I worked with her on a lot of Indian-related issues. And you won't believe this, she died of a brain tumor when she was hardly 40. And this law firm just kept suffering these extraordinary and devastating losses. And that, and other forces were pulling it apart. And the forces pulling it apart were greater than the forces keeping it together. So we agreed to dissolve,

and dissolve we did. It just disappeared. It splintered. Some people took, for example: the regulatory practice went somewhere. Some took the timber company away, went somewhere else. And some of us, like me, went back into public service.

MS. BRACEY: Did you decide, had you been deciding to go to public service before all those things started to happen?

JUDGE FACCIOLA: The last year there was just miserable. Because, as you know, nothing spreads through a law firm like rumors, the life blood of what's going on there. You're not going to resolve what's going to happen here. And I was hopelessly confused about the future. I just didn't know what was going to happen. I didn't know if I wanted to go with one of these splinter firms and do that. I really was in a very bleak period of time. And then I gave it some thought, and I remember this: I was driving home one night and I was listening to somebody on the show who said, "If you want to figure out what you want to do for the rest of your life do two things: ask yourself: if I had all the money in the world, what would I do? Two, write your obituary." And you can kind of figure out what you wanted to do and I thought about this and I said, well looking back over this, I was at happiest in my life when I was in public service. And I think that's where I want to go back. And that was a hell of a decision to have to make because we now had two kids. And my wife at that point had decided to not go to work at least while the children were young. So we were living on one

income. And obviously that income was going to dramatically decrease and that was a tough call. But we made it, and it obviously was the right call.

MS. BRACEY: And where were you living, did you live in the city?

JUDGE FACCIOLA: When we first came to town, we lived in the Hamlet on Seminary Road. And that's where our first son was born. And Gloria was pregnant with our second son and living on top of us were, I don't know who the hell they were, whether they were fandango dancers or whatever, but the noise was horrible. And I said I don't care what it costs, I'm not going to bring my second son into this house, we need a home. And we found a home. And by hook or by crook we got the money together to buy, and I still remember talking to my father – it was \$65,000 for this house. Interest mortgage rate I assumed was 7 & ½ percent. You know, my father said, "Gee that's a lot of money." But we moved into that house and I think Gloria gave birth 4 days later. So, that's where we were. But I must say, that dissolution from that firm was a punch in the stomach. I really thought, it's over, you know, this was a nice little career and you better go do something else, son. And I thought, maybe, well maybe this law thing is not where I want to be or what can be and maybe I should go into business or something like that. And then, as I say, I thought about it, and said, well public service made the most sense for me. Maybe there's some hope. So I did something that was in those days very unusual. Given

all of my experience, remember I had been a partner in a law firm and now I just wanted to be another Assistant United States Attorney. And most people looked at me and thought I was crazy. Because you can imagine how dramatic the pay cut was and the rock was rolling down all to the bottom of the hill. The judicial logic has that you are an AUSA for 5 or 6 years, then you go out and make the big bucks. I was doing the reverse. And I was appreciably older than everybody else.

MS. BRACEY: Right, you had been out of law school at this point —

JUDGE FACCIOLA: Well, it was now —

MS. BRACEY: It was '82?

JUDGE FACCIOLA: It was '82. So I had been out of school since

MS. BRACEY: '69?

JUDGE FACCIOLA: '69, yeah. Thirteen years.

MS. BRACEY: So, who did you work for, at the Justice Department, I guess as the AUSA ?

JUDGE FACCIOLA: I arrived and was assigned to the Appellate Division. And I worked there for Mike Farrell. I spent a good long time there. And then an opportunity arose in the Civil Division and Mike encouraged me to take advantage of it. At that point, Judge Royce Lamberth was the Chief of the Civil Division. And he graciously decided that I could join the Civil Division and proceeded to work me to death. The Civil

Division at that time was a terribly exciting place to be – it still is – but the quality and the scope of the litigation is just astonishing. When I first arrived the relationship between Mayor Barry and the federal government had degenerated. Judge Bryant, had placed specific limitations on the number of people who could be admitted to the DC Jail which was causing tremendous problems. Now, the statute, I still remember its name, DC Code 24-425, talks about an initial commitment to the Attorney General, and Barry said that meant all these prisoners were Ed Meese’s problem. So that led to a whole series of confrontations. For a period of time, the federal government took all the prisoners convicted at the Superior Court into federal prisons but then couldn’t do it anymore. And we knew that the tinderbox was being struck. We wondered when the time would come when Barry would actually refuse to accept the prisoners. In other words, the prisoners would get into the bus, would be taken by the Marshals Service to the jail, and he would say, “I can’t admit, you’re not going to be admitted, they’re Ed Meese’s problem.” So, I worked on every aspect of that, with Judge Lamberth and John Bates. And for that entire summer we prepared the papers seeking the TRO early in the spring. And I remember that summer I could not go home until I first called the Marshals Service to see if they had been admitted with the prisoners and ultimately it broke and we litigated the case before Judge Hogan.

MS. BRACEY: So every day he would take that, and then one day he said he wouldn't?

JUDGE FACCIOLA: We would, and ultimately, I forget exactly what the trigger point was, but the trigger point happened, and at that point we sought immediate relief before Judge Hogan. But as I was learning how to do that I was taking a lot of responsibility for all the Bureau of Prisons' litigation and I was also taking more responsibility for cases involving the confinement of the mentally ill at St. Elizabeth's. So I became kind of the point person on this institutional kind of litigation that sought to enforce judicial decrees against recalcitrant authorities that had people in their custody. And that's where I became involved with the representation of what was left of the federal government's involvement at St. Elizabeth's, jail problems, as well as doing some other ordinary stuff like torts and Title VII cases.

MS. BRACEY: And how long did you do that for?

JUDGE FACCIOLA: From '82, I guess that was from, I don't remember, let's see, I'm trying to remember when I went, I think I was in Appellate for almost three years from '82-'85, probably showed up at Civil from '85 and was there until I became Chief of Special Proceedings. So, at that point, things were developing to the point where I really loved to work in Civil, I loved working with Lamberth and Bates, it was a fantastic experience, it was wonderful stuff. Important litigation, a lot at stake,

on my own, with my own cases. But then there came the opportunity to become Chief of Special Proceedings and all of a sudden the pieces fit. Special Proceedings dealt with collateral attack on criminal convictions. I knew something about that. It dealt with confined people, it dealt with the mentally ill. And the position opened and I applied for it and I received it and then I became Chief of this arcane sort of place called Special Proceedings and I handled that in a lot of different ways. First of all, I supervised the work of other assistants who were assigned to defending collateral attacks on convictions. And I supervised the work of those assistants who on a weekly basis attended a call on the mental health calendar, that is those people who had been found not guilty by reason of insanity who wanted to get out. I also became intensely involved in determinations of competency because I had to train people on how that worked. Made the decision, well we were going to those cases where a defendant was found incompetent and we couldn't prosecute him. I also now became involved in, continued my litigation involvement in the jails, and also the litigation involving St. Elizabeth's, which was an effort. The Marshals Service decided they were simply paying too much money to house federal prisoners at St. Elizabeth's and they began an effort to take them out of that, which brought litigation before Judge Urbina and I decided to assign that to myself. In other words, as Chief of Special Proceedings I would try to keep my hand in as a litigating

lawyer, and would assign specific matters to myself to handle because I simply did not want to be an administrator as important as my administrative duties were. So all of those pieces began to fit together and I became Chief of Special Proceedings and, as I say, I assigned specific litigation to myself. And that proved to be an extraordinary blessing, because I was one of the few people, assistants, who could claim civil experience and criminal experience and that proved very important when I was considered for being a Magistrate Judge. Special Proceedings is this curious place, where you can just about do everything you want. I always used to crack that I did anything I wanted to because the U.S. Attorneys never had an idea what I was doing. I still tell that, I recall that.

MS. BRACEY: And what were sort of the highlights, I guess of that time?

JUDGE FACCIOLA: The highlights were a remarkable string of success. I mean, I think in all of those years, I think we lost one case, of the thousands we handled. And it was just a golden time. I had wonderful people working for me. Throughout my career, and it probably has something to do with the impact my mother's death had on me and my close friendship with women lawyers like Pat Brown. I was firmly convinced that I was not going to have people work for me who had to go in through the service entrance, or you know, did trust and estates because that's what women did. So, I always, for most of my period as a supervisor, I had a mostly female staff. And that was very

exciting for me, because I was able to work with women, and I was able to work with two women in particular and create what really was one of a few completely successful working, part-time arrangements for moms. And I was very, very proud of that, that what we accomplished there. And I just had wonderful people working for me doing good work that I was very proud of. And we had a wonderful reputation. As you know, the go-to people, the people who handled the complex stuff without moaning, and when I supervised people, I always would tell them I know where you're comfortable but you're going to go where you're not comfortable, because that's the only way you're going to learn. And they'd give me a hard time and then of course they'd do this rare, unusual thing and come back and tell me how much fun it was and how much they grew. So, I took great pride in that.

MS. BRACEY: And what was your view of the bench when you were in Special Proceedings?

JUDGE FACCIOLA: I thought that it was an extremely conscientious bench. These cases are very demanding because they involve long records, they involve things that happened many, many years ago, and they are very challenging and there's a natural inclination of the judge saying, My God, I did this once and you had an appeal, why are we going back? But once that was overcome, I can't remember a single instance where I thought that a judge had not conscientiously done what was

necessary to be done, under very demanding circumstances. Easily the most demanding aspect of this was what happened with two cases called *Bailey* and *Richardson*. *Bailey* and *Richardson* were gun cases. And until they were decided by the Supreme Court the courts had given a very broad definition to the words of the statute used to carry during a drug trafficking and they narrowed the scope of that. What happened was all of a sudden that placed a serious question on a whole number of convictions around here, that hadn't been answered in this court. And I decided that if I, after some preliminary discussions on how we're going to handle this and realized it would not work if this were done among assistants, that it would be one constant standard applied, I assigned all of the cases to myself. So all of the cases were personally assigned to me. On the other side, the Federal Public Defender, A.J. Kramer, assigned Federal Public Defender, Sontha Sonenberg and we became a working team almost confronting the same problems. And I remember one time the judges got so used to the two of us, that I actually would tease her as if I were George Burns and she were Gracie Allen, and when we'd finish I'd turn over and say, "Say good night Gracie." And the judges would laugh. There was another great moment before Judge Penn. Before we came in he had twenty lawyers all in black suits, and they had come there to seek enlargement of time of 7 days within which to do something and they all left the courtroom and Sontha and I were handling all by ourselves

almost 300 cases and I got up and I said to Judge Penn, I said , “Judge, Sontha and I stayed in the courtroom, we were concerned on that last case you didn’t have enough lawyers.” He laughed. And somehow we got over that. And we got through this tough, tough hump and I was put in a position where I had to make some policy judgments, you know, and we worked it out, don’t ask me how. We somehow got it all done. And I would say, that was, looking back on it, that was an extraordinary thing to be involved, and it just proved you know, that’s what public service provides that no one else does – its extraordinary ability to expand and do things without anyone looking over your shoulder, just doing the right thing as best as you can make it out to be done. It was very tough, I mean, you know. The Special Proceeding Section that was really my intellectual home. And my goodbye was really, literally a very tearful event for a lot of people, including me. It was my professional home for 15 years, and it was a very good home. Remember when I started there, I was uncertain whether I would continue to practice law. I left there as a judge. That’s not bad.

MS. BRACEY: No, it turns out it was a good choice.

JUDGE FACCIOLA: Yeah, it was. Sometimes I think things choose you. There’s sort of an inevitability about it.

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