ORAL HISTORY OF
HONORABLE JOYCE HENS GREEN

Fifth Interview – March 3, 2001

(TAPE 7 A)

MS. PORTER: The following interview is being conducted on behalf of the Oral History Project of the District of Columbia Circuit. The interviewee is Judge Joyce Hens Green, the interviewer is Jennifer Porter. The interview is taking place in the judge's chambers on March 3, 2001.

In our last interview, over a year ago, Joyce, we were talking about some of your cases before Superior Court and you mentioned that you had other cases that live in your memory. What were the things that you remember most strongly?

JUDGE GREEN: For the first time in the District of Columbia, a case involving adoption procedures produced a full evidentiary record. The action had originally come before another judge. The adoptee, now in her twenties, and with a family of her own, had requested that the record be opened so that she could locate her birth parents and siblings, if any. The judge had denied the request; the case went to the D.C. Court of Appeals which remanded the case to be determined by another judge. As beneficiary of that remand, and in pursuing it, I decided to call for a full evidentiary hearing, appointing a guardian ad litem for the birth parents, directing that the adoptee present her reasons for why she wished the record to be opened and what she intended to do as a result of whatever relief she might receive. The major difficulty was the D.C. statute that mandated, in effect, that the records shall be opened if it is in the best

interest of the adoptee. This means, of course, that in the vast majority of the cases, if the adoptee showed just some reason why it should be opened, expressing it was in his/her "best interest," the records would have to be opened. But, recognizing promises made at time of adoption to other than the adoptee would be broken by the stroke of a pen, it was important to walk this carefully and fashion procedures, including legal protections for the unknown parents and psychiatric testimony. This was done. It was a tender case. The adoptee, one of twins, had been adopted with her twin at the age of three. Her sister refused to participate in these proceedings, expressing disinterest in her birth parents. The adopting parents fully supported the plaintiff, as did her husband and other relatives. On the eve of the decision, the Corporation Counsel located the birth mother, who came to Washington the next day, anxious to meet her daughter. They met in my chambers, where I left them to reconcile, and as the adoptee said wistfully to me at the end of the meeting, "You know, sometimes things don't turn out the way you hope they will, but I'm still glad I had a chance to meet my mother and I have also found out where my father is, that I have a grandfather in Washington, and that I have siblings, persons I never knew existed." She wrote me, subsequently, to tell me she had met all of these people and that her twin sister had joined in the process. She was forever grateful that we had undertaken these proceedings. This established the first case in the District of Columbia for opening the adoption records, and with safeguards to protect the birth parents as best as possible, despite the clear statute favoring the adoptee. I have no problem with adoptee's rights, but notification to and consideration of birth parents' rights should not be cavalierly dismissed. This case is still used in federal court. More than 40 years ago the federal court had jurisdiction over adoption cases, and so, while the adoptee would today not be a youngster (we're talking about records that

go back to and beyond World War II), nonetheless, sometimes these records must be opened. My case is the precedent for whether the record should be opened and interim procedures. I am proud of that case.

MS. PORTER: Joyce, I notice that you are actually holding in your hand a copy of the decision. Where do we find this case?

JUDGE GREEN: With great difficulty. Cases in the District of Columbia Superior Court were not, at that time (I do not know what happens today), reported in volumes such as Atlantic 2d, where the cases of the D.C. Court of Appeals are reported. If they were reported at all, they were printed in the *Washington Law Reporter*. This particular 1977 case, *In Re Adoption of Female Infant*, was reported at 107 Washington Law Reporter 337. It was in 1979 that it issued. Also several journals commented. At the very least, it was reported in the American Bar Association *Family Law Journal*, and also in *Antioch Journal*, Volume 1, in the fall of 1981, in a law review article.

MS. PORTER: What was the gist of the article? Do you recall that?

JUDGE GREEN: The article talked about the novelty of the proceeding, that it offered an alternative to recognize the sensitive concerns of all of the parties, the difficulty of applying the District of Columbia adoption statute, and breaking down the issue of how I granted access to petitioner into three questions. First, the court considered the interests of both sets of parties, not those of the petitioner alone. Secondly, the court looked at the question of releasing medical information to the petitioner, and thirdly, the court considered, in that particular case, the petitioner's allegations of "bewilderment concerning her identity." Then, as the article says, I went on to carefully weigh the interests of all the parties in deciding these issues and granting the

request, but not allowing immediate access to the petitioner. Rather, I required there be an investigation by the local public welfare agency, with a report of its findings to the court, and then, if unable to locate the natural parent, I had announced I would have given the basic medical information to the petitioner. If the birth parent was located, then there would be an inquiry made of that person as to whether she or he wanted the identity disclosed to the adoptee. If yes, the result was simple. If no, I had told the adoptee I would confront her with the "no" and she could then decide anew as to whether, despite her birth parents' decision, the adoptee was going to, nevertheless, pursue the parents. And I thought that was the best that could be done in light of a statute that says, in effect, open up these records if there is any reason to believe it would benefit the petitioner.

MS. PORTER: You mentioned also, when you started talking about this case, that it had come to you from the court of appeals. Was that the usual way that cases would have come to you? Did the court of appeals commonly remand cases to another judge?

JUDGE GREEN: There are times that any court of appeals, the one in the local court of appeals, the D.C. Court of Appeals, as well as the circuit court of appeals, for a specific reason, not always made evident to the court below, will direct that the remand go to a different judge. In the adoption case, the judge who initially considered and denied this matter was forceful and made unrestrained remarks, extemporaneously, probably in part leading to the court of appeals' determination it should go to another judge. And then, by the time the remand came along, he was no longer with the Superior Court, so it became a very simple matter.

MS. PORTER: Joyce, as a judge you have mentioned that you often became involved in administrative activities and you were involved in the construction of a new court

building? What's that about?

JUDGE GREEN: The construction of the court building was absolutely necessary because, as earlier mentioned, we were in seven different buildings, to which we walked to our assignments. A great deal of energy, imagination, and resource was lost by this. The court desperately needed a new building, and Congress granted a certain amount of money with which to build that building. The building was constructed as it went, so to speak. There was no complete architectural design before this building was begun, because each month inflation would bring a loss to the funds provided, so it was a rush to completion. In this process, five of us were designated by the Chief Judge to go to the West Coast and the Pacific Northwest and bring back ideas for the design of this courthouse, already in construction, and how we could implant innovations with the remaining monies. We judges saw courts in San Francisco, Los Angeles, Reno, Nevada, and in Oregon, among others. We returned with a multitude of wonderful ideas, most of which could not be accepted due to the inability to either put it into the design as the building was rising, or beyond our funds. But some of the ideas we brought back, for example, smaller courtrooms (rather than large for everyone), offering privacy for the juveniles or for the domestic protective cases which had to be under seal.

MS. PORTER: Joyce, you just explained that you started building this courthouse before the designs were final. This seems to be an unusual way of proceeding with a construction project. Tell us a little bit about how that happens.

JUDGE GREEN: It's not only unusual, it is exceedingly worrisome. On the other hand, in the District of Columbia the courts are subject to the whims and caprices of the United States Congress.

MS. PORTER: We're still talking here about Superior Court?

JUDGE GREEN: Yes. There was no advocate for the Superior Court in the legislature. The funds come from the United States Congress and we received a certain amount for doing whatever was necessary in the court system; there is no home rule. These factors combine, reflecting how little control the court has over its destiny. And Congress said this is the lump sum you are going to get. Don't come back, don't ask for more, don't have overruns. That was it. It was a choice of either building then or not building at all.

MS. PORTER: Were there cost overruns and did you get more money?

JUDGE GREEN: Yes, just a small amount more was allotted.

MS. PORTER: When was this just to help put us in context?

JUDGE GREEN: It took several years, but the completion of the courthouse was in 1978, and that's easy to remember because I spent just over a year there before I came to the federal court; and it also combined with other interesting activities.

MS. PORTER: What were those interesting activities?

JUDGE GREEN: I was asked on very short notice, the day before the interview, if I would allow my name to be included among four who were to be interviewed to be the Chief Judge of the Superior Court of the District of Columbia. I had never expressed an interest in being the Chief Judge. Frankly, I wasn't interested, but after I talked it over with my family it was determined that I should at least participate in the interview; that I owed this to women in the profession and to myself, but clearly I did not expect this appointment. This was the only court of its kind in the United States that had such vast jurisdiction over areas of diverse nature; it was a volume court with huge undertakings, the only local trial court in D.C. with 44 judges and over

1,000 employees. It would have been a remarkable responsibility, but I did not want the position, particularly since I had been under consideration for the federal court a couple of years earlier, and I knew I was again under consideration at the time that they, the selection commission, were considering the Chief Judge decision. Bottom line: I did go to that interview, I completed innumerable papers thereafter that I was asked to do – innovative ideas that I would implement. While at a conference in Chicago, I was summoned to the phone by a member of the commission, who asked if I would serve the full term of four years, which was subject to renewal, if I received the appointment, since the members wanted to appoint me but were afraid I might leave in the middle of my term (as had the preceding Chief Judge) if I were tapped for the federal court. I acknowledged that I would stay for the initial two years, but couldn't promise beyond that, because my ideas could be implemented during that period. Then I was asked repeatedly by Ted Newman, the Chief Judge of the D.C. Court of Appeals, and others, to do what was necessary to assure the chief judgeship. Six of the seven commission members had determined that I should be the Chief Judge, but they wanted a unanimous decision, if possible. There was only one lingering consideration – they wanted me to move into the District of Columbia. While the members didn't believe it was required that I move into the District of Columbia, all other public servants in the District of Columbia were required to live within the territorial boundaries of the District of Columbia. I immediately refused to do so. The move would have disrupted my children, their schools, their sports, and their friends in Virginia where we had lived for years. I continued to refuse on each of the three occasions that they persisted in this request, fully recognizing this would put the death knell on that appointment. Had it been a decision affecting just my husband and me, we would have been delighted to come back to the

District of Columbia. Of course, underlying all of this, I didn't really want the position, but I felt that I owed it to my community and to my family.

MS. PORTER: What was the procedure for selecting the Chief Judge? Do you recall?

JUDGE GREEN: A group of citizens headed by the chairman, Charles Duncan, who were lawyers, judges and citizens, comprised a member commission that selected judges for the District of Columbia for appointment and also selected the Chief Judge. They would make three recommendations for each judicial vacancy to the President of the United States, and under certain regulations one of those recommended would be appointed. For the Chief Judge, the commission would give the name of one individual to the President, and it became an automatic appointment.

MS. PORTER: So you were being interviewed by the members of this commission?

JUDGE GREEN: To the very point that on the day that the new courthouse opened I had a visit from the chairman of that commission who looked into my new chambers to see if it was in order, since the entire commission was going to arrive that afternoon to offer me the Chief Judgeship.

MS. PORTER: You mentioned that you had to submit papers to the commission talking about innovative ideas that you had. What were some of those ideas?

JUDGE GREEN: Let me say first that the other people who were being interviewed were Judge James Belson, Judge Tim Murphy, Judge Carl Moultrie, I (who became the Chief Judge), and me. Among the ideas that I had were to have independent calendars.

While this could not work for all of the tasks performed in the Superior Court, it could for felonies, for domestic relations cases, for juvenile cases, for tax cases, for probate cases, for civil cases, both complex and less complex. I also thought it was important to have a presiding judge and a deputy judge over each of the major disciplines of the court: civil, family, criminal, tax/probate, to lead that division, steer its direction, expedite the processing and act "hands on," reporting periodically to the Chief Judge.

MS. PORTER: When you say an independent calendar, what do you mean?

JUDGE GREEN: I mean that up until then, each judge received cases from a central clerk's office; when you were on civil assignment you would wait for the case to arrive. The judge who had announced he or she was free to take a case, would get that case, whatever it was. You had no chance to explore the matter or know anything about it before you literally went into the courtroom, convened a jury and started trying the case. It was not the most artful way to do it.

MS. PORTER: You mean you didn't have that case from the moment it was filed through to its completion, you just got it in a slice, every now and again.

JUDGE GREEN: Right, and while there is no question the judges work harder and have more work to do, and put in longer hours, you certainly know every detail about your case. It's yours from beginning to end. You are responsible for it – for good or for ill; you are most familiar with it. If people ask for a continuance for the twentieth time, they are not going to receive that continuance, because if you're asked on a central calendar you don't know that the same request has been made through multiple judges twenty times. Among the ideas I had, I thought there should be strong outreach to the community. I wanted more participatory activity,

not only by the judges so that they felt a close association to the individual cases, but also participatory activity by the support staff, by the Clerk's Office, by the probation officers, to help each other and the court administration. As example, if a translator was needed, if you had someone who came into your building and spoke only Spanish, didn't even know which way to turn, didn't know how to get to the courtroom, didn't know how to even say I need an interpreter, we could get someone quickly who had knowledge of that language, and use that person briefly. Later, as the first presiding judge of the family division, I would ask for a list of court personnel who any kind of special training (nurse's aide, or mechanic, or secretarial), or somebody skilled in the American sign language, to aid a deaf person, or someone who had particular skills with blind persons and would know how to cope with the handicapped, in days prior to making courthouses available to the disabled. I put all these ideas, and more, into a document that we were all asked to write in court over a Memorial Day weekend. We delivered these papers to a commission member, and I was not unhappy, in fact I was relieved, when I did not get the judgeship. But it has ever distressed me that my ideas were put into place immediately by the judge who received the appointment as Chief Judge. Someone told him about my ideas before he turned in his submission and before the appointment was made. I had never shared them with anyone other than the commission, first orally at the interview, and then in writing. Of course, no credit was given to the originator of the ideas.

MS. PORTER: The day the new court building opened sounds like a sort of chaotic day – what do you remember about that day now?

JUDGE GREEN: I remember particularly the huge number of judges dressed in their robes ascending the escalator, reminding me of flapping penguins. That's the thought that

comes back. But in reference to my personal situation, that was the day, as I mentioned a moment ago, that the commission's chair made sure I was ready to receive the commission and it's intended offer of the position. The commission arrived saying that they weren't quite ready to make the offer, because they had to ask me one last time to move into the District of Columbia. It was patently obvious that if my answer was no (as it repeatedly had been), I was not going to get this position. Unhesitatingly I said no – this could not be brokered. For the sake of a career and even for the sake of a community, I could not rip my children away from those things so important to them at that stage of their lives. I have no regrets about this. Had I received this position I would have felt honor bound to keep my word that I serve at least two years in the position. As it turned out, President Carter appointed me to the federal judiciary in 1979. He was not reelected and I would not have been appointed a federal judge by the far more conservative Reagan administration when my two-year promise expired.

MS. PORTER: You mentioned that about the time of the courthouse opening and being under consideration for the chief judgeship, you were also up for reappointment. Can you explain what that procedure was and what is involved in being reappointed?

JUDGE GREEN: Yes, when initially appointed in March of 1968, it was for the then existing ten-year term to which all general sessions judges, as we were called in those days, were appointed. When the Superior Court of the District of Columbia, the successor court, was organized, among other changes, the judges were appointed to 15-year terms. So, for the incumbents, we would serve out a ten-year term (mine expired in March 1978), and then would be subject to the commission, which would decide whether or not we were appropriate for reappointment. The final appointment came from the President of the United States. There were

various designations then: exceptionally well qualified, well qualified, qualified and unqualified. If unqualified, the President of the United States could not reappoint that person. If qualified, the person was in limbo and it was up to the President to decide whether or not to appoint you. If you were very well qualified or exceptionally well qualified, the reappointment was automatic. I was designated as exceptionally well qualified in February 1978, and reappointed in March 1978, for a 15-year term. As it turned out, I served one of those 15 years and then was commissioned as a federal judge.

MS. PORTER: The designation of your qualifications, was that on a recommendation to the President, and from whom did the recommendation come?

JUDGE GREEN: It was again by the same commission that would appoint the Chief Judge of the court or appoint other judges of the court. In the case of reappointment, the President is bound by statute, as earlier detailed.

MS. PORTER: It has taken us some years to get to the end of your time on Superior Court. Now that we are getting close to getting you on to the federal bench, as we meander through this oral history, are there any other aspects of your career on Superior Court that you would like to talk about? Now Joyce I've given you a very broad brush question. Just to give you a helping hand, how about your membership in the Executive Women in Government?

JUDGE GREEN: I joined the Executive Women in Government around 1975. It had been founded in July 1974, was composed of women executives in the three branches of government: executive, legislative and judicial. Its mission is to promote, support and mentor women for senior leadership positions in the federal government. Those eligible to join are members of the senior executive service, senior level positions, GS-15 and above, presidential

appointees, including those serving on boards and commissions.

MS. PORTER: Well, in '74 did you have enough members to meet in a telephone booth or was it larger?

JUDGE GREEN: We had a fairly sizeable group of members. The founders were Republican, as were most members until after the 1976 election, which brought a Democratic administration with Democratic senior appointees. The earliest member had served in the Nixon administration; Barbara Franklin Hackman, who became Secretary of Commerce in a later administration. Our first chair was Major General Jean Holm, then the highest ranking woman in the military; Ethel Bent Walsh, Chairman of EEOC; Catherine Bedell, a former Congresswoman, was next, and, in 1977, I became EWG's fourth chair. Later, women from the Treasury Department, the Consumer Protection Agency, the Nuclear Regulatory Commission, and other agencies, Congress and the judiciary became active.

MS. PORTER: What sort of activities did this organization get involved in?

JUDGE GREEN: We had monthly meetings with guest speakers discussing the work of their agencies, or the legislature, or the judiciary, and issues of the day: ERA, civil rights legislation, campaign finance. (Note: the discussions continue 20 years later!) The contributions of outstanding women would be highlighted. There was an annual conference for senior level professionals, when a publication of our work was distributed. EWG aided "sisterhood" in making known vacancies in the professional fields, in Washington, D.C., and elsewhere, nationally and internationally.

(TAPE 7 B)

MS. PORTER: This is a continuation of the interview being conducted on

behalf of the Oral History Project of the District of Columbia Circuit. The interview is taking place at Judge Green's chambers at the district court on March 3, 2001.

JUDGE GREEN: It may be of interest to note that the founding members included Elizabeth Hanford Dole; Carla Hills, who held responsible positions in several administrations; and a very fine lawyer, Constance Newman, who served the public sector (OPM) for many years in various capacities. This was an outstanding organization, a great honor to be invited to join, and a particular honor to be the first judicial member elected chair. In addition to the Executive Women in Government, there were a number of other honors that gave me great heart and happiness. I look back with awe that in 1976 I was the first recipient of the Women's Legal Defense Fund award for "outstanding contribution to equal rights." In 1975 I received the Distinguished Alumnae award from George Washington University.

MS. PORTER: One, of course, that's near and dear to my heart, is the Women's Bar. You became the Woman Lawyer of the Year.

JUDGE GREEN: Jenny, just as you were later, I became the Woman Lawyer of the Year in 1979, a distinguished honor. Subsequently I have been given the privilege to introduce awardees designated for a particular year as Woman Lawyer of the Year, among them Justice Ruth Bader Ginsburg and Pat Gurne, my dear friend and former law clerk.

MS. PORTER: Now you were appointed to the federal bench in 1979. How did that happen?

JUDGE GREEN: Jimmy Carter, the President of the United States, appointed me, and I was confirmed by the U.S. Senate on May 11, 1979. The oath of office was taken on June 27 of that year. My dearest friend and colleague, Judge June L. Green, presided over that

investiture. How was I appointed? Jimmy Carter constituted the one and only Merit Commission for federal judicial recommendations. It was his idea that members of the community in which the federal judge was to serve should have some voice in the qualifications and the appointment of those individuals. He left the selections to the U.S. District Court, as was custom, to the prerogative of the United States Senators of that particular state. But, for the circuit court he had a Merit Commission comprised of judges, lawyers and responsible lay people, to make these decisions, follow through interviews, and then to send three names to the White House from which he had pledged himself to select one. For the District of Columbia only, he included the district court, since, obviously, D.C. had no Senator in Congress. The President pledged each Merit Commission that his appointments would come from its recommendations. I was asked to submit my name for consideration as a federal judge on two occasions. The first time, my name was among three sent to the White House for appointment, but I was not selected; the second time I was.

MS. PORTER: Who asked? We know Jimmy Carter asked, but who actually did the legwork, who was talking to you about this?

JUDGE GREEN: For the D.C. district and circuit court, the commission chairman Joseph Tydings, the former U.S. Senator from Maryland, and son of a former Senator from Maryland, U.S. Senator Millard Tydings (D., MD), asked if I would submit my name for consideration, stating I was being given serious consideration by the commission members who, based on their own knowledge and the strong recommendations from the community, lawyers and judges, wanted me to send in materials, a completed questionnaire, in that regard. I did so, was then chosen from numerous others for an interview, and, following that interview, continued

my work as a Superior Court judge. I received word from the chair on the Friday before I left to teach a one-week advocacy training class at Harvard, for the fourth successive year. Joe Tydings asked me to leave notification of where I would be every minute of the time that I was in Cambridge, Massachusetts, but not to tell anyone what was happening, that I had already been cleared by the White House and cleared by the Justice Department, and it was simply a matter of timing the announcement. A few weeks prior I had received a phone call from Senator John Warner, then junior U.S. Senator, Republican, from my State of Virginia, in which he asked to see me, reminded me that he had known me when he was a young assistant United States attorney, and that we had talked often when we both worked on cases in the library. He wanted to endorse me, even though I was a Democrat, to be on the federal court, that he believed it was the time for women. He had discussed me with several of the federal judges of the circuit, who "heartily" endorsed me. He wanted to be front and center. On one of several encouraging phone calls, he put his then wife, the actress Elizabeth Taylor, on the telephone. She was most gracious.

MS. PORTER: So you've shaken hands with Elizabeth Taylor.

JUDGE GREEN: Not literally, just by telephone. In any event, after the phone call from Senator Tydings, I went to Harvard. Indeed, just as I was to walk to the first session of classes, I received a call asking me to contact X at the Justice Department. I was told I was about to be nominated for the federal court and to come back to Washington as soon as possible. I explained when I would complete my tour of duty at Harvard. Astonishingly, I was then asked, this must be unusual (I thought so then and still do), to select which of the two federal courts I wished to serve, the one in the District of Columbia or the one in the Eastern District of Virginia,

where I would be the first female federal judge in the entire State of Virginia. Up until that second I never realized I had a choice. I always assumed I was being considered for the District of Columbia vacancy. In the next second I said the District of Columbia was where I wanted to be a judge. I was not only hugely honored for the nomination, but also for the opportunity to choose among two great courts.

MS. PORTER: After the President nominated you, what was the next step?

JUDGE GREEN: There is an intensive investigation by the Federal Bureau of Investigation and other entities. On May 11, 1979, I was confirmed by the U.S. Senate. The investiture ceremony occurred on June 27, 1979. On the day that I was to be invested, perhaps an hour earlier, court personnel deposited 135 cases in chambers so that I would be ready to work promptly. In those days, the cases were selected by the judges, usually forwarding their worst "dogs" to the rookie judge. The number of cases received was to equal the average number carried by the other 14 judges. Some of their selections were ten years old, with 20 to 30 motions pending; and one had a trial scheduled for the next day. During this same one hour before my investiture, there was a call to chambers from a lawyer, demanding to know, from the new clerk, what I had done with his case. He was advised I had not even been invested yet.

MS. PORTER: You should always be so lucky.

JUDGE GREEN: (laughter)

MS. PORTER: At the time you were appointed to the U.S. District Court, how many judges were there on it? How many women?

JUDGE GREEN: It's a court that has 15 active judges at full strength, and several judges in senior status; we were then at full strength. I was the third woman judge in the

history of this court, now more than 200 years in being. The second was June Green (who has recently died), and the first was Burnita Shelton Matthews, the first woman federal district judge in America, appointed by Harry Truman in 1950.

MS. PORTER: Who were some of your other colleagues on the district court bench and also the court of appeals?

JUDGE GREEN: Well, I probably will leave out some names, and will be chagrined on the district court: Gerhard Gesell, Oliver Gasch, Aubrey Robinson, Bill Bryant, John Smith, June Green, George Hart, John Sirica, Ed Curran, Howard Corcoran, John Pratt, Tom Flannery, Barrington Parker, Chuck Richey, Lou Oberdorfer, Harold Greene, John Garrett Penn (appointed six weeks prior to me). Subsequently, Norma Holloway Johnson, also from the Superior Court came (appointed 11 months after me), Tom Jackson, Tom Hogan, Stan Harris, Mike Boudin, here about a year, then left to be a judge of the First Circuit, Royce Lamberth, Stan Sporkin, Gladys Kessler, Rick Urbina, Emmett Sullivan, Jim Robertson, Colleen Kollar-Kotelly, Henry Kennedy, Richard Roberts and Ellen Huvelle. I must also mention our more recent Magistrate Judges: Deborah Robinson, Alan Kay, and John Facciola. On the circuit court at this time were Judges Spottswood Robinson, Skelley Wright, Ed Tamm, Malcolm Wilkey, Robert Bork, Nino Scalia, Jim Buckley, Pat Wald, who came just a few months after I did, as did Ab Mikva, Harry Edwards and Ruth Ginsburg, then Larry Silberman, Steve Williams, Douglas Ginsburg, Dave Sentelle, Clarence Thomas, Karen Henderson, Ray Randolph, Judy Rogers, David Tatel, and Merrick Garland.

MS. PORTER: As the new judge on the block, with all of these new colleagues, Joyce, how did it differ from Superior Court?

JUDGE GREEN: The wonderful thing about the federal court is also a wonderful thing about the Superior Court, the collegiality you have with your colleagues. There has always been a tender spot in my heart for Superior Court, its personnel and judges (44 judges when I left, 59 now), both during the time I served there for 11 years and, subsequently, any time I return for lunch or a special event, I still know some people there. In the district court, during my 22 years, we have been truly collegial, 15 active judges and, until deaths, retirements, this past year, often eight or nine senior judges. Most of us meet at luncheon every day of the week, calendars permitting. The lunchroom is special. The judges order their food from the courthouse cafeteria. We pay for our food, of course, receiving a monthly bill which also pays for the services of the lunchtime server who delivers our order as we chat to one another in a private room. In this hour away from the rest of our duties, real R&R takes place, a light spot in the midst of the very serious work we do daily in federal court. We cover the gamut, talk about lawyers, talk about other judges, talk about cases, talk about the rise or demise of our beloved Redskins, talk about golf, basketball, baseball and appropriate statistics, talk politics (something we can't do on the outside), tell jokes, and discuss/tease/praise one another. It remains fascinating to consider the differences: our appointments are from different presidents, we are of different political persuasion, different gender, different religion, different ages, different sizes, different shapes, different races, liberal, moderate, conservative, yet we are so collegial. In the main, we really like each other, telling, candidly, what we think, but we are ever upbeat, consistent in our respect and affection. We are there to support when someone has a problem. It's like a family. I consider this court my family away from my personal family. Most judges comment that among the highlights of their individual lives are the lunches in the dining room

with the judges, where camaraderie reigns. An oasis in the rest of the day when furiously engaged with the work at hand.

MS. PORTER: Is that also do you think because the topics of conversation with the outside world, you can't really talk about jobs, so you talk about it to each other?

JUDGE GREEN: Exactly right. We are bound by our ethics and by natural inclination to not discuss our cases with anyone outside our judicial family in private conversation. I had a rule when I was a Superior Court judge, and now, as a district court judge, that I never discuss in the presence of, or with, a court of appeals judge, a pending case of mine or a concluded case (even if affirmed). I've always done that.

MS. PORTER: Are the court of appeals judges using this lunchroom too?

JUDGE GREEN: I'm glad you mentioned that. Yes, the court of appeals judges are as welcome to join, as we, and pay a monthly fee, just like a club, whether you go or not. Some circuit judges are also regulars. Most district court judges have joined and come, but not all of them. It's a matter of inclination. That's why I believe we district judges have to be particularly vigilant not to discuss anything that might potentially come before our appellate judges.

MS. PORTER: Have you noticed any changes in the quality of the collegiality of the lunchroom over your 22 years?

JUDGE GREEN: No changes in the quality. While we have fewer people from the court of appeals now in the lunchroom than when I first came on board, there are more women and more diverse viewpoints. Very healthy. June Green and I were the only women for a very long time.

MS. PORTER: And Burnita Shelton Matthews?

JUDGE GREEN: When I arrived at district court, Judge Matthews was at that time in her 90s. While she came to the courthouse, she never came to the lunchroom. So June Green, here for 11 years before I arrived, was the only female active judge. She had told her Chief Judge, then George Hart, that she really didn't think she should go to the dining room because she knew the judges didn't want her there, and he countered, "You are right, but it is your prerogative to go, so go," so she did so. It was easy for me because she had paved the way.

MS. PORTER: You mentioned that on the day you were about to be sworn in somebody dumped a hundred cases on you. How did you get to have a hundred cases? Who did they come from, where did they come from, and what did you do with them?

JUDGE GREEN: Actually, I received 135 "gems" initially, by the then rule of court, subsequently improved vastly. But at that time (and this still exists), whatever number of cases were in existence (total for the court) the month before appointment (since I took office in June, the cases that were outstanding in May) would be divided by the active 14 judges of the court, and whatever that number turned out to be, if the average caseload was 135, then I would get 135 cases. The 14 other judges would be asked to give up a certain number of cases, to leave a total of 135 cases for each, and they could select the cases they wanted to get rid of in those days. One case I received took three file cabinets, had been lingering for about eight years, was a notorious case, a Scientology case, with much work remaining to be done. Nobody wanted that case, and so – Later the rules changed, and, indeed, when I was calendar control judge, it was one of the matters that I was determined to tend to during my time of appointment, to make life easier for the newer judges that came on. Today, the new judges do not receive any case older

than 18 months and there can be no motions pending. It is far easier for a judge to get a handle on the matter and to start working, and a case is almost virgin when received in this manner.

MS. PORTER: What did you do with your 135 cases?

JUDGE GREEN: I held a status hearing in each of those cases during my first two weeks, about 15 a day. I would, of course, prepare also for the next day's group. Notices were telephoned and sent to the lawyers involved. They were told to be prepared to advise which of the motions pending were still viable, because over the course of years some obviously no longer had merit or momentum. The status would promptly reflect whether a case was near settlement or had settled, but nobody remembered to tell the court. So much time had transpired since some of these cases had been received, and now this new judge was going to examine each. The lawyers who had forgotten some cases still existed had to review the issues. The law clerks and I ran through all of the cases together, so that I could go on the bench and give a focused 10 to 15 minutes to each. We would quickly examine what had to be done, how much more discovery (if incomplete), what was really necessary to complete the matter fairly and make fast decisions. As to those that had lingering motions I said I'd do the best I could; I would get to them as promptly as possible. But there were cases I had to try almost immediately. The case that was set for trial the next day I postponed for a few weeks – that one had 20 motions pending – and told the lawyers I would scrub them, and if summary judgment was denied, we would then have a trial for which I had already set a date in the event it were needed. That libel case did indeed go to trial, and one of the participants in that case is still one of my good lawyers, who constantly reminds me that this was her first trial too.

MS. PORTER: So this was 135 cases, and in two weeks you held a status.

Does that mean that you called people in or you were doing this over the phone for the sake of efficiency?

JUDGE GREEN: We did both. As I suggested, we called them in by phone and set the time they had to come in, and then followed through by letter. In those days, we didn't even have faxes.

MS. PORTER: You were typing them, too, probably.

JUDGE GREEN: Well I wasn't typing them, my secretary was. My law clerks assisted me. I didn't make the phone calls myself.

MS. PORTER: Well the organization involved in this, Joyce, does raise a question: How did you get your office up and running? Did you just bring your office people from Superior Court?

JUDGE GREEN: In Superior Court each judge had one law clerk and one secretary. The term of my law clerk, Helen Bollwerk, was up at the end of the summer. She came to the federal court to complete her term. I was entitled to have two law clerks over here in district court. Lou Golinker served until September when he left for a pre-arranged position. My first full-time federal clerks were Paul Bollwerk, husband of Helen, and Joan Smiley.

MS. PORTER: It sounds like you certainly hit the ground running with your 135 cases. How did the district court organize its calendar? How did that differ from your experience in Superior Court?

JUDGE GREEN: I have already mentioned that in Superior Court our cases were funneled through the clerk's office to the next judge available in whatever area you had been assigned, civil, criminal, etc. Among my more novel ideas in 1978, when under

consideration to be Chief Judge, was to have most of our functions on an independent calendar. It would be more efficient. It would be better for the lawyers, better for the litigants, better for the judges, better for the community, better for the court system. In the federal court, everything is on an independent calendar and I cannot applaud that enough. This is a wonderful way – you are totally responsible for your cases and totally independent in your actions, and whatever you do with them from beginning to end is your responsibility. If you perform well, you take the credit, if you do poorly, you take the discredit. The fact is it is great to know this is your sole responsibility; it promotes efficiency, you have commanding knowledge of your particular case, the principals who are involved, litigants or lawyers, the issues that are crystallized (eventually). The independent calendar is for both criminal and civil assignments. I should mention that apparently the public often does not realize this, since I'm always asked, do you do both criminal and civil? Yes, to all of the above.

MS. PORTER: Is there some informal way of comparing statistics on you and your colleagues just to make sure that you all know how quickly people are processing cases and how you stand?

JUDGE GREEN: It's better than informal, it's formal. First of all, in the assignment of cases in chambers to law clerks, each judge does it his/her way; but many of us follow the same procedure, that is, assign cases to the two clerks, trying to give them equal weight and type of cases, so that during their clerkships (in my case, I hire for two years) they have a variety and challenge, a good training period. And so, arbitrarily, a case that ended in an even number would be assigned to clerk A, if an odd number, to clerk B. My clerks were never referred to as junior or senior, even though in staggered terms, one having already served one

year, the other just beginning, because each received cases of equal complexity from day one and would be off and running. I heartily endorse the two-year clerkship. You might make a mistake once in a great while (happily I didn't), but it can happen. The blessing of the two-year period is a well-trained lawyer, one who is not looking for the next career post from the day he or she starts. The experienced clerk can also be a real support buddy to the incoming clerk. It works very well, at least in this chambers. So that is the background. In the early years before we received computers (and you have to realize that I've been around that long), our secretary would have handwritten drafts from each law clerk and from me, try to discern the handwriting, and type the draft opinion or opinion; then changes would be made, perhaps ten lines on page 8 of an 80-page document. You can readily imagine what happened as far as the typing was concerned; there was always huge work for the administrative secretary. Then the advent of the computer. Eventually, each of us received one. Some also learned to operate them. For years, the chambers joke was: "The judge has said once again ‘me too,’ to the technician putting in updates or new equipment; she still thinks someday she might be inspired to learn how to use the computer." (I did learn a bit along the way, but no expert am I.) The day the fax arrived I got the first one for the judges because of the security court I then served; I'll address that later.

MS. PORTER: You've talked about the procedures within your chambers for assigning cases and the procedures for keeping the cases moving. Was this procedure within the courthouse itself to keep the judges up to the mark, to keep their cases moving?

JUDGE GREEN: The cases came to us from the Clerk's Office, where the lawyers file them. The lawyer would designate on a form what kind of case it was, lets say a patent case.

(TAPE 8 A)

MS. PORTER: This is a continuation of the interview being conducted on behalf of the Oral History Project of the District of Columbia Circuit on March 3, 2001.

JUDGE GREEN: Once the lawyer had completed the designation, the clerk would go over to a pack of attached papers which would have my name on it (every judge would have an equal number of papers in a similar pack bearing the name of that particular judge). The next judge in order to be assigned a case of this particular type would receive that case that had just come in. So, for years Clerk's Office personnel manually did this random selection. Through the years, this random selection has advanced to an electronic mode. The judges have absolutely no contact with it and do not know a case is going to be assigned until it actually has been assigned.

MS. PORTER: So you could have a case that might last, trial would last half a day, or a day, and sort of equally randomly you might have a much more complex case that lasts for years. Was there some mechanism for balancing for this?

JUDGE GREEN: No. No mechanism at all. An internal mechanism in the judge's chambers, perhaps, but no mechanism. Whatever statistical "credit" that you might get for that case – if you had a case that lasted eight years and had 42 parties in it versus a case that might walk in as a consent judgment and walk out in a few minutes, with two parties, both counted equally as one case on the statistics. I have diminished faith in statistics because they can be skewed in so many different ways, and are interpreted and implemented differently in different jurisdictions. The only variation from random cases is if I received a case that the lawyer said was a related case to one that I had, either the same parties, the same issues, that type

of thing, then I would be also assigned the related case. Also, with pro se litigants, I would be assigned all cases of that pro se individual until that litigant ever stopped litigating. Accordingly, I might receive eight cases from the same pro se litigant in the same week, of course, none at issue yet, but then I might be assigned a bonus, as indicated a moment ago, of an SEC consent, settled in the agency, and the court is only for the formalization and approval of those papers which takes just minutes of your time to go through.

MS. PORTER: Joyce, if you thought about it, what percentage of your cases would derive say from agency proceedings versus litigants, private citizens?

JUDGE GREEN: I've never done any statistics on this and cannot give a precise response. The Clerk's Office would have them, also our Administrative Office, the governing body for the entire federal judiciary, which maintains like statistics. But a large percentage of the cases we have are in one way or the other derivative of agency action, where the government is either the moving party or the defendant. A number of cases are concerned with government regulations, freedom of information. Cases that concern farming, or drugs, or equal opportunity, often come through government agencies. This U.S. District Court in the District of Columbia receives most government cases. So I would guess my government caseload would constitute a generous excess of 50 percent of the whole. I look at each case I am assigned. Example: Does it concern a Medicare provision? This, frankly, is not my most exciting exercise: to discern the intent of Congress when word one was positioned next to word two, and two sentences later one of those words was eliminated. I had to decide whether this juxtaposition would still qualify under Medicare as a hospital institution, entitled to receive monies/grants. Not my favorite case, but those also have to be completed. But there are many cases where the issues, even if more

complex, are more interesting because I am dealing with live people.

MS. PORTER: You mentioned also that you had criminal cases. In the District of Columbia, what sort of criminal cases, and on what basis would they come to your court as opposed to the local court.

JUDGE GREEN: If you had to do it in two or three words you could say drugs, guns, violence, but we also have many other criminal cases in the federal court. We deal with alleged transgressions of Congressmen. One of my cases did indeed involve a sitting Congressman, I'll mention it subsequently. I had an indictment involving alleged violations of the Arms Export Act. There have been failures of banks and sometimes allegations that a "crooked" bank committed massive worldwide fraud. There have been SEC cases asserting fraud in companies' securities applications and in their prospectuses sent the unwary shareholder. If murder is charged in the federal indictment, normally a state charge/Superior Court case, it is because it is in addition to other charges in the case that are federal. For example, the death penalty case that I had in 2000, the first death penalty case headed for trial in 40 years, until just days before when he pled, could not have been tried in Superior Court because the citizens of Washington, D.C., voted overwhelmingly years ago not to have a death penalty; but in federal court there is a death penalty statute for certain criminal violations. My defendant, through a 48 count indictment, was accused of conspiracy to commit racketeering activities (RICO), with his group of co-conspirators, including multiple robberies, four murders and one attempted murder. So sometimes cases are brought in federal court that would usually be processed in state court, but is in federal court due to the federal nexus.

MS. PORTER: And the decision on this is made by the U.S. Attorney's

Office?

JUDGE GREEN: In a death penalty case, a recommendation is made by the United States Attorney to the Attorney General of the United States. The Attorney General makes the decision whether or not a case, which qualifies as a death penalty case, should be so treated. There are several stages to pass after conviction, and a separate hearing to determine if the defendant should die. Then, of course, years of litigation beyond the district court to the circuit court, and petition for certiorari to the Supreme Court. The alternative in most death penalty cases is to plead guilty, and in the case I just noted the defendant pled and received life imprisonment, which in the federal system means no release ever.

MS. PORTER: We've talked generically about the sort of cases that you've had. Let's take some time to touch upon some individual cases that stick in your mind as more memorable than others. Where would you like to start in your 22 years?

JUDGE GREEN: That is very difficult. I'm going to start with two cases that happened toward the end of my very first year on this bench. My first year, as you know, began June 27, 1979, when I was invested, and later that year, in December or November, I received a case *Narenii v. Civiletti*; Civiletti was the U.S. Attorney General. I looked up some of these cites, so I'll provide them. This is 481 F. Supp. 1132 (1979), and I will say at the outset I was soundly reversed, but to me it remains a case that, were it to be decided today, I truly believe I would be soundly affirmed, at least by the Supreme Court which has more recently decided a very similar case, affirming that district court decision. President Carter, who appointed me, issued an executive order that all Iranian, nonimmigrant, post secondary students, immediately report to the nearest Immigration and Naturalization Service office to be identified and examined

as to their student visa status. This was within days of our citizens being taken hostage in Iran, when our embassy was invaded. There was a turmoil in the United States over this situation. Following a hearing, fully briefed, I determined in a written opinion that this Presidential directive was unconstitutional. Appreciating the likelihood of reversal in the emotional climate of the occurrence, nonetheless, I firmly believe that this action was akin to what was done with the Japanese internment in concentration camps at the time of World War II when Japan and the United States declared war. Then we shamefully treated our citizens of Japanese origin. Had the U.S. rounded up all students of whatever nationality, no problem, but to single out a particular nationality because of horrendous activity in a distant country was appalling. The plaintiffs' main challenge to this promulgation by President Carter, and my primary reason for finding this unconstitutional, was violation of the Fifth Amendment in singling out only Iranian students, discrimination on the basis of national origin, which is a suspect class and required strict judicial scrutiny and a compelling government objective in order to pass constitutional muster. As I indicated, I was quickly reversed by the three most conservative judges then sitting on our circuit court. Nonetheless, something good comes out of everything. But, first I want to tell you that I was the subject of assassination and there were a number of threats.

MS. PORTER: You weren't actually assassinated.

JUDGE GREEN: No, I was the subject of threats of assassination. Certainly, I understood the despair of people who didn't comprehend my ruling and telephoned chambers to declare what they thought of me. My favorite came from a gentleman who told me he was elderly. He wrote in script on small white lined paper, "I don't know where they get these dum judges, D u m, d u m, d u m." Others wrote articles/editorials praising my order. The

Washington Post reporter Tim Robinson, subsequently editor of the *National Law Journal*, came to chambers as soon as he received a copy of the opinion. When I told him I would not discuss my ruling, he said, "No, I just want to shake your hand; it's the most courageous thing I've ever seen done in a district court." Supreme Court Justice Ruth Bader Ginsburg was then a professor at Columbia University. My introduction to Ruth Ginsburg, though I had heard of her for years was when she sent me a copy of the document signed by her and more than 20 other professors, which they forwarded to President Carter, telling him I was right and he was wrong; they expressed outrage at the unconstitutional actions he had wrought on the Iranian students. I wrote her my gratitude for the support during the tumult, and I hoped we would have a chance to meet someday. We did, and are good friends, indeed. The same week the *Narenii* case was assigned, I also was assigned the criminal case of the McDonnell Douglas Corporation. The United States had brought a criminal indictment against the corporation, McDonnell Douglas, against Douglas Corporation, against James McDonnell, individually, president of the corporation and the son of the founder, and other individuals charging illegal export of arms, bribery, and violation of Foreign Government Corrupt Practices Act. Five foreign nations were implicated: Korea, the Philippines, Zaire, Venezuela and Pakistan. The general assertion was that the Presidents or Vice Presidents of those countries had accepted bribes in return for purchasing airplanes from McDonnell Douglas. This was, of course, "under the counter," affecting the political and economic status in the U.S., as well as the five countries. This was an extremely involved case, replete with direct and implied improprieties of high government officials, with political overtones. Clark Clifford represented McDonnell Douglas and other well known lawyers also appeared in this challenging case that took virtually all of the time of one of my two law clerks

for the better part of the year through discovery, and innumerable, tough motions, so many that I can't recall, but a minimum of 50. A fascinating, complex matter. I learned later it was the last case to be brought under this particular Arms Export Act. At the end, the corporation pled guilty, received the maximum fine of several million dollars, and each individual pled guilty to modest offenses.

MS. PORTER: Now Joyce, very early in your term on the U.S. District Court you were also involved in the *Letelier* case. Can you explain what that was about and what the issues were?

JUDGE GREEN: Yes, Orlando Letelier, he was ambassador to America from the Republic of Chile and I had the civil case of his surviving wife and children against the Republic of Chile, seeking damages because Ambassador Letelier has been assassinated. He was a leader of the dissident forces. Augusto Pinochet was the President of Chile.

MS. PORTER: So Letelier was appointed by Allende?

JUDGE GREEN: Exactly. And the lawsuit asserted that the Republic of Chile, through its President, had directed the assassination. The criminal trial of the accused had been held before Judge Barrington Parker; I inherited the civil litigation.

MS. PORTER: Letelier was what? He was in a car that was blown up at Sheridan Circle in Washington, D.C.

JUDGE GREEN: Yes, with one of his assistants; her husband was seated in the back, and survived to testify before me several months later. I held that neither the Foreign Sovereign Immunities Act nor the Act of State Doctrine would protect a foreign government from civil liability if it had ordered an assassination that took place in the United States. I

granted a default judgment against the Republic of Chile. It was the first judgment, I am told, in America's history, to so hold. Subsequently there was a hearing where the survivors and the personal representatives of Ambassador Letelier and his passenger brought an action to recover monies for those bombing deaths that had occurred as they drove to work together in the District of Columbia. The bomb had been placed by an American, married to a Chilean, who came in a Chilean airplane from Chile with the ingredients for the bomb, which were assembled in the United States. And from testimony derived in the criminal case and other credible sources, I could make a firm finding of who and what had traversed this vicious act. Accordingly, it was concluded that the plaintiffs produced satisfactory evidence. I gave by default in the amount of $2,500,000, and counsel fees and costs, for the defendant's acts of assault and battery, negligent transportation and detonation of explosives, conspiracy to deprive the victims of their constitutional rights, tortuous actions in violation of international law on an international and protected person. There were two decisions. The second is cited at 502 F. Supp. 259, November 1980. After judgment was entered, the plaintiffs executed on the judgment in federal court in New York, no Chilean airline landed in the Washington area, and my memorandum opinion made clear that those explosives destined and used for the assassinations arrived on the Chilean airline.

MS. PORTER: So the airline was one of the defendants?

JUDGE GREEN: No, but the airline was an instrument and asset of the Chilean government. It was lodged in New York, and its seizure by the plaintiff satisfied the judgment. To get back its plane, Chile settled the case in the neighborhood of two million to two million five, close to the judgment that I had rendered. Michael Tigar, moving counsel in that case, did

splendid work.

MS. PORTER: In subsequent years have you followed the various international proceedings against Pinochet? Do you have some satisfaction that you were absolutely correct on the facts?

JUDGE GREEN: As you can imagine, with heightened interest I have followed that and looked at the subsequent matters, and have read articles discussing the *Letelier* case and now the world is convinced that the orders to assassinate Letelier came from the very highest, President Pinochet and his Chief General Conteras. Many of the other offenders were convicted, and have been jailed in America, including Michael Townley, who transported, assembled, and placed that bomb, then informed on his "colleagues." They came to the U.S. for evil purpose, when we had different diplomatic relations with Chile. Several, including General Contares, remain to someday be brought to trial and justice.

MS. PORTER: After the *Letelier* case, Joyce, what is the next case that you remember?

JUDGE GREEN: Well, I remember many, many cases I'm not discussing. Most of the cases were important to the litigants, even if considered less important by others. The ones I note are those that for one reason or another impressed me mightily during the course of my district court days. Not necessarily my favorite cases, but the ones that made impact and reflected the way I handled cases, the way I viewed people, and in differing matters. In 1983 and for a substantial period, I handled a case known as the *Air Crash Disaster, Washington, D.C.*, that had occurred on January 13, 1982, in a blinding snowstorm. A passenger jet, built by the Boeing Company, operated by Air Florida, that had been housed in the hangar owned by

American Airlines and serviced by American Airlines, departed from the Washington National Airport. Shortly after it left the runway, and as it went across the Potomac River, it struck the 14th Street Bridge in Washington, which connects Arlington, Virginia and the District of Columbia. It damaged several occupied automobiles on the bridge, injuring or killing the occupants. It then fell into the icy waters of the Potomac River below, within the District of Columbia. Five people aboard the flight were pulled to safety. Six persons had survived and gone into the water, but one brave soul gave up his life, refusing the transportation safety ring lowered to him in favor of another victim. Over 70 people died on the flight. Most of the victims were residents of the District of Columbia, Maryland and Virginia. Others came from Florida, Massachusetts, Pennsylvania, Georgia and Texas. There were other defendants than the ones I already mentioned (Boeing, American Airlines, Air Florida) involved in this case initially, including the United States, because of the length of the runway, and a number of other factors, such as the construction of the engine, the fuel applied to defrost the icing on the plane, etc. This case was specially assigned to me as multi-district litigation, for all pretrial purposes. Although it was expected that the individual cases would be returned to the state of origin of the decedents or the injured, there was no direction at that time whether a judge could or could not take the cases beyond pretrial. In recent times it has been made clear. In 1982 and 1983, we were heading towards a liability trial and then individual damage trials. I also agreed to handle the crew cases, a separate action. Both pilots perished in the accident, some stewardesses perished, others were hurt. I dealt with wonderful lawyers who were all aviation experts. As one who had never tried an aviation case in private practice, and certainly never presided over an aviation case as a judge, I had much to learn. I spent the first weekend or two formulating, at my dining room

table, a scheduling order, a procedural order, which amazingly remained intact throughout completion of the entire case.

MS. PORTER: Was this the most complex case that had come before you?

JUDGE GREEN: No, not the most complex case.

MS. PORTER: Organizationally?

JUDGE GREEN: Organizationally, of its genre, it was more complex than most.

MS. PORTER: And you were making up these procedures as you went along or did you look to experience somewhere else?

JUDGE GREEN: I read every case that could be found on aviation disaster cases, and then considered what was appropriate for this case. I read, of course, the multi-district manual for complex cases. And putting all of this together, and many of my own ideas, I devised a procedure from the beginning to the very end, whether the end was settlement or trial, on how we would allocate attorneys fees and costs and assign responsibilities, and how the case would be measured throughout. I look back on it now and I wonder where all of this came from, but I have to say I was elated that a single procedural order of several pages was the working tool for the remainder of this case. The long and the short of it is, I appointed lawyers from a number of lawyers suggested to me to be lead counsel in the case. It is customary to appoint three as steering (lead) counsel for the litigation and a fourth to be liaison counsel, in charge of the administrative matters, receiving and maintaining documents, providing audit statements, arranging for receipt of monies, and disbursement for fees and costs. I did not know any of these lawyers before; their expertise was not the kind that had earlier come before me, so I didn't have

that sense of it, but could see how lawyers reacted to other lawyers in the case. We had lawyers representing each of these 70 plus victims, 76 I think there were, and then, also lawyers for the crew. After scrutiny of their qualifications, I appointed two lawyers who seemed to be well respected and trusted by the other lawyers; the third lawyer I took from another panel suggested to me because, while I suspected he was not an easy person to get along with, I discerned that the three would have their fights internally and then come unified in the progress of the case. That's exactly what happened. Each was a wonderful lawyer.

MS. PORTER: These were lawyers from all over the country as well?

JUDGE GREEN: From all over the country. So then we had our three lead counsel and liaison counsel, the lawyers for the consolidated cases. The cases would only be consolidated for pretrial and then, of course, would have to be individual damage cases if we got to that. The three defense counsel were equally remarkable. I saw all lawyers every two or three weeks. It was important to see them frequently: discovery was taking place, many questions and problems arose, resolved promptly as they arose. There were two sets of fees: fees that individual lawyers charged their clients and an overall fee that was taken from the individual lawyer's fees to be paid to the steering committee/liaison counsel. In that very first procedural order that I referred to, when I appointed the plaintiffs' steering committee, I announced that the steering committee and the liaison counsel, those four lawyers, would receive no greater than a certain percentage (I recall it was eight percent, it could have been five percent, I can't remember) from the other lawyers' fees in the case. This sum would constitute what they got over and above their own cases for their work on this case because they had the vast majority of the work. This was the target fee. It could not be greater, it could be less. The determination of this amount

early on prevented considerable argument and delay later. As it turned out, it became the maximum specified, good compensation richly deserved. The other lawyers could sit in, the other lawyers could give questions for the lead lawyers to ask in depositions, but lead counsel did all the depositions. We had depositions going three and four at a time, so that one lawyer could do this, one lawyer could do that, different depositions in different rooms at the same time, same day, day after day after day, in order to expedite so that this wouldn't become a ten-year case. We finished in short of two years.

MS. PORTER: Did many of the plaintiffs join together and have the same counsel?

JUDGE GREEN: In fact, some counsel on our steering committee had several cases, or perhaps ten cases, or only three or four, or but one. It varied, but there were individual lawyers representing all the other victims, and they had worked out their own contracts on a percentage basis. Whatever their contract was, I had to approve it later on to make sure it wasn't inappropriate. So, that's how I tried to work potential problems. To patch a drip before it became an ocean of problems. Looking back, I said that if cases settled they first had to go to the appropriate state court to establish probate proceedings and get the approval of that court for the proposed settlement. Only then would I decide whether or not to approve the settlement. There were multiple rulings on motions to eliminate a number of the defendants from the case. The remaining defendants were Boeing, Air Florida and American Airlines. American Airlines provided the defrosting/de-icing fuel. In the end this was deemed the pivotal problem – the plane hadn't been de-iced close enough to takeoff. As evident from the black box recordings, the pilots had been engaged in banter, not realizing the necessity of de-icing in this snowstorm almost

immediately before the plane finally was allowed by the control tower to take off. There were other things concerning Boeing's potential liability – whether its manual provided sufficient warning that the nose didn't rise as expected in inclement weather. Was it highlighted enough? Questions like that arose. Conflicts of law because of the laws of different states became a vital matter for which a substantial opinion was written, framing the issues and results.

(TAPE 8 B)

MS. PORTER: This is a continuation of the interview being conducted on behalf of the Oral History Project of the District of Columbia Circuit on March 3, 2001. Joyce, you were just in the middle of giving a citation.

JUDGE GREEN: The citation is 559 F. Supp. 333 (1983), the conflicts of law opinion, that received a good deal of acclaim throughout the nation. My law clerk and I worked very hard on this opinion. Six weeks had been set aside by all for the approaching liability trial. A few weeks before, I requested my lawyers to discuss resolution of the liability with the insurance carriers. I have a general philosophy that I never see litigants in a case when I am discussing settlement or a resolution. The carriers for all the defendants were with Lloyds of London, a syndicate of multiple and different groups. The lawyers were unable to accomplish resolution. They had been told that if they were not able to settle that matter, I would order the insurance representatives to Washington where we would discuss the matter. That's what happened. On a Friday afternoon, two representatives arrived from Lloyds of London, one representing Boeing forces, one Air Florida and American. After a short time, the insurance representatives asked if they could talk to me alone, without the presence of lawyers. The lawyers immediately agreed, so that became the rare time I talked to the insurance carrier in any

case. Two hours later we had a settlement, with the allocation of liability and percentage of damage amounts each defendant would bear when the damage claims resolved.

MS. PORTER: When you say you talked to these gentlemen, Joyce, that sounds very persuasive.

JUDGE GREEN: I encouraged them and tried to be persuasive about my view of the liability and what their decision should be, and what it would mean in the enormity of the resolution of these cases. But, I never insist or threaten. It must be their unequivocal decision. They agreed. We called the lawyers back and told them we had a settlement. Having reached a settlement, we now had six weeks open which had been reserved for the liability trial. So I immediately told the lawyers each case was going into mandatory settlement with me for those six weeks. If they settled, great. If not, there would be scheduled, later, a damage trial for each of the unresolved actions. For settlement, I would see the lawyers for each case, one case in the morning, one case in the afternoon. We'd try to resolve the case right then and there, I'd take a very activist role. I wanted papers from each side three days before the chambers meeting: the economic reports, anything personal they wanted to tell me about the individual, victim, pictures, so I would have a truly full understanding of each case as we commenced upon our settlement discussion. The lawyers had to share the papers/reports/pictures given me with defense counsel, so the defense would have the same opportunity to evaluate the case. All the cases, I am proud to say, save two, were settled on that morning or afternoon allotted for that case. One was settled three days later; the final, with its Texas lawyer, required transfer to Texas to try the case. Four years later, that plaintiff got, astonishingly – my defense counsel called me to crow over this – the precise amount of money I had recommended, going through trial and several layers of courts

of appeal in Texas. All that time and all that 12 percent, plus interest, could have been saved, and invested, but I had granted the lawyer's request.

MS. PORTER: You mentioned this case was assigned to you for pretrial purposes. Now if you ever went beyond that, how did that happen.

JUDGE GREEN: Everybody thought it would be a good idea if we could move this case along. Nobody disagreed. There was a wonderful editorial in the *Washington Post* extolling my work in this regard, and that was gratifying. But I could not have finished this case short of two years, as was done, without the extraordinary and special lawyers.

MS. PORTER: Are there particular individual lawyers who stand out in your mind as contributing to this result?

JUDGE GREEN: Absolutely. Donald Madole, unfortunately now deceased, Milton Sincoff of New York, and George Farrell completed the steering committee; George Tompkins was the lead lawyer for the defendant, and his assistant Desmond Barry, as well as Cynthia Larson, with absolutely remarkable understanding and ability to recognize a fair figure. They represented the insurance carriers. I don't mean to ignore the others who were so helpful, but those noted are the ones I dealt with the most.

MS. PORTER: With all the issues and the multitude of parties and you are able to achieve a settlement – what were your particular approaches to the task of bringing about a settlement that were most helpful to achieving the result that you did?

JUDGE GREEN: I have a firm belief that every litigant deserves the fullest opportunity to resolve the case. By trial or by settlement, but to feel that he or she has received justice, whether he gets what he wants or he doesn't, whether she wins or she loses, that she/he

has had a full and fair opportunity to present the case, be heard, be considered, and something determined. I don't think there is anything I enjoy more than being in trial. I really love being in trial. I am always enthusiastic as a trial approaches, even one that others might not get excited about. I harken to the thrill of ruling quickly, observing persons, viewing the litigants, witnesses, lawyers, jurors. I also have a great deal of enthusiasm about assisting the prompt settlement of cases. I am pleased to be an activist in the process. I do not browbeat, I don't cajole, I never insist, I never demand, I never mock, I never raise my voice. I may propose a solution. I always have both parties in at the same time. When I say parties, I mean the lawyers. I don't see the parties. They should be in the courthouse or accessible by telephone for discussion with their lawyers, but I don't see them during settlement. If I do say "hello" on the rarest of occasions, it is only after they have signed the settlement papers and want to come in and shake my hand. I don't even give them a seat. I just tell them they have wonderful lawyers and they leave.

MS. PORTER: Why is that?

JUDGE GREEN: Whether I am wearing the robe or not, the presence of that robe hovers. And for litigants who are not accustomed to seeing a judge, and certainly when that judge is presiding on their case, their papers or making some determination, I think it puts too much weight on that lay person to accept what seems to be the judge's approach to this. When judges talk to lawyers about various things in the law, the lawyers will usually understand, but the litigants, not trained in the law, don't understand the legal, or even factual references in settlement discussions, and are too emotionally vested in the case to face reality. I never want someone to think that she or he was so pressured by the emotion or by this judge or whatever, that's he believes that's why he accepted the settlement. So I stand aloof from the litigants;

always have done that, even when frequently I am told that seeing that litigant is what will settle the case. My lawyers tell their clients anything I've said in chambers. I don't keep that a secret. I don't know how they express it to their clients, but I see both groups of lawyers and each tells me briefly, in the presence of the other, his position. They are well aware I have read every scrap of paper about the case, so I know that case, footnotes and all. It's essential, that they know the judge knows the case and is interested. Then I see the lawyers separately. I talk about various things I may have surmised. As example, I read the deposition and I might say to the lawyer, "I think you have a difficult client, who has sparred with the deposer. Am I wrong or am I just reading into it? As you know I haven't seen your client." "Oh my goodness, yes," the lawyer will say, "this is a very difficult client." I suggest various things which reflect how this person would look before a jury. How this person would respond to a question. Would a jury like this person? The lawyers are quite frank in chambers, when they're not in the presence of the other lawyer. So, in summary, I start opposing lawyers together. Each tells me what the client wants: "I am demanding X amount of money, the position and an apology."

MS. PORTER: So the client is out?

JUDGE GREEN: The client is either out in the hall or the courtroom, or in the library or at home or on telephone call. The lawyer can go back and forth to the client.

MS. PORTER: So you see just the lawyer for one party?

JUDGE GREEN: As said, I see both lawyers together and in front of each other and surprisingly you will hear a lawyer say to the other lawyer, "Well I didn't know that's what you were offering" or "My client has now trebled her demand from what was said the last time." I find out where we are today, not where we were yesterday or two years ago, and then I ask the

defense counsel to leave. I always work with the moving party first. I might say, "You asked for $350,000 and you and I know that is most likely too high," or "That's astronomical," or "Do you really think a jury would give you that? You know there are frailties in your case." I point out what I think those frailties are, then I discuss the litigants, asking, "What does your client really want?" I do not tell that figure to the other side, but it is important that I know so we are not wasting time and so I can promptly discern if there is a possibility or an impossibility in resolving this case. And the lawyer gives me – not always the last figure as he should – but a figure that is substantially lower than the one cited to the opposing counsel. And I tell that lawyer that I will call the other counsel in separately and say, "X has come down measurably or substantially or just a little bit," but I won't give the figure, I'm going to use general terms in that regard and find out where the opposing side is. When that lawyer raises the offer (usually), I bring in plaintiff's counsel separately and say, "Well they have come up measurably or substantially, or just a minimum bit." We get to a point where I can say, "Now you are close enough and should talk to each other. I'm not going to bring you down to dollar one, you're close enough. I'm going to have you both back in here, I'm going to tell you where we are. Let's be realistic about it, it's not going to go up or down from here. This is where we are. You're going to have to decide if you can live with this. I've done what I can." This works rapidly and successfully in most cases. The lawyers talk a bit, talk to their clients, and return to announce the settlement and sign the appropriate documents. It's done like that. Some cases are obviously much harder. Some take a few days, the lawyers must consult in person with their clients to see if they can work out all the bits, and so forth. What happens frequently is not simply dollars and cents. For many it's the principle. Or people want a job back. Or people want to be recognized for what they think is a

wrong that has been done to them. And there is a tradeoff. One of my favorite cases involved the TVA and a woman who worked for the TVA who was horrified when others still smoked, despite the fact that as a quasi-government agency, signs were posted all over that read, "No smoking in X, Y and Z corridors." The plaintiff had an allergy to smoke. She had been for years with this agency. She had no family, she had no children. TVA was her life. She was going to retire in two years and was angry that the agency permitted smoking, against the regulations and to her personal distress. She sued TVA. As I talked to the lawyers an idea came. I suggested that because the plaintiff was only two years away from her retirement and pension, and since she had this abiding love (until the smoking problem) for the agency and knew it better than anyone, couldn't she work at home (which, of course, would be smoke free), use her computer and write up a loving history of the TVA. Who knew it better and who loved it more? The agency did want a history. When plaintiff's time comes for pension, retire her, give her the pension, she has been smoke free, and her co-workers, who had been refusing to work with this angry woman, had been free of her presence. I remember my two opposing lawyers (women) looking at each other, starting to laugh and saying, "We'll see what we can sell to our clients." Back in a week, it was a "done thing." No money exchanged, all the relief requested was ignored. Just fully resolved in a way that benefitted all. Another one of similar vintage was the Indian claim against the Corps of Engineers. The Corps of Engineers wanted to build a dam and Indian funeral grounds were going to be impacted. Ergo, clash of fundamentals. And so, in the end, I asked what the Indians really wanted and what they really needed. What they needed was education for their children, a subject that didn't even begin to touch the parameters of the case. And so, the matter settled: the Corps of Engineers could build the dam for the benefit of all the other people, and would move

the burial grounds to another site; the U.S. would provide improved educational facilities to the Indians. Again, no litigation, satisfied litigants, the country benefitting. I love these settlements where imagination can flow.

MS. PORTER: Now in all of these cases where you've been actively seeking a settlement, in those cases that have gone on to trial, in those cases another judge handles it?

JUDGE GREEN: If it's a jury case I can handle it. If it's a bench trial I cannot, because I am the finder of fact and would hear so much in a settlement conference, that could potentially influence my thinking. So the bench cases that I dealt with in settlement were rare and only when the parties importuned my assistance. The Corps of Engineers would have been a bench trial because the government was involved; the opposing lawyers wanted me to resolve it and I told them I may hear too much, it may not be a good idea. I didn't want to recuse, so if you don't want me to try to settle the case, fine with me. I am frequently asked to try and settle some of my colleagues' cases, because it is well known that I enjoy the challenge and am, however immodest this sounds, successful most of the time.

MS. PORTER: What are some of the others that you have received from your colleagues on the court?

JUDGE GREEN: The one that comes quickly to mind was the Vietnam orphans case. A great number of cases, each one taking about a month to try, using many of the same experts.

MS. PORTER: Refresh my recollection about what the case involved and about when it was.

JUDGE GREEN: It started on the day Saigon fell to the enemy.

MS. PORTER: April 1975.

JUDGE GREEN: Thank you. I thought with your Australian foreign service background you would be able to supply that immediately. So, it was April 1975, and the United States had sent one of its huge transport planes on a humanitarian mission to rescue children from orphanages. Hundreds of children, strapped in the belly of the airplane with few adults, nurses and other workers to accompany them to homes in America where people had agreed to adopt them. Some children had been in the orphanages for a long time and were very ill from their ravages there and before they came to the orphanages. In the midst of turmoil and haste – this was wartime – and gunshots could be heard from the advancing enemy. The transport took off, ascended briefly and then came downward, hit a paddy, went up again slightly and came down and smashed. Many children were killed, a number were severely hurt, and the litigation claimed, subsequently, that each was also psychologically maimed. The children who survived were sent to families in America, most were adopted, and by the time these cases came to trial, years later, the children, of course, had grown – perhaps it was six years later or so – and were each in different stages of their lives and health, physically and emotionally. These cases were assigned as a group to Judge Louis Oberdorfer, who did a remarkable job with pretrial. These Vietnam orphan cases, multi-district, had three types of litigation requiring resolution. The judge appointed a guardian ad litem; the cases continued over time. There came a point when they were parceled out to the other judges for trial. A decision was made by the court as a whole that each judge would try one such case per year, and no more, since each took a month to try and because of overlapping lawyers and witnesses, only one could be tried at a time. And so, 12 judges would be trying 12 of these cases yearly. You can imagine this could go on for dozens of

years, but there was no alternative, or else no other work in the court could be accomplished. The court owed equal responsibility to all the other litigants. I was asked by Judge Oberdorfer and Chief Judge Aubrey Robinson to resolve this crisis. I really was loathe to accept this responsibility because these were Judge Oberdorfer's cases and he had done so much on them and tried very hard to get this matter settled. I agreed to do it, because the judge asked. He decided it would be better if I tried to settle them on my own, rather than he be present, but he would be available by telephone. He was going out of the city. And so, one evening I met the principal lawyers, and late that evening one group of cases was settled as to liability and the percentages each defendant would pay if a damage award was reached, and how the cases would later proceed, if necessary, to the individual damage trials. Judge Oberdorfer and I talked by phone; I'd ask, "What do you think about this move, it looks like it's going to work. It's now nine o'clock at night, I certainly hope it works," and he would agree and suggest something; associating collaboratively helps all. I happen to have worked well before with the lawyer for the United States (primary defendant in the case), who had been in my Air Florida case. We respected each other and were able to move with dispatch.

MS. PORTER: In that first night you actually settled the case?

JUDGE GREEN: We settled one of the three waves of cases. The liability factor was the primary issue, thereafter, the damages cases, which must be individually determined, since different types of damages impact different persons. During the next week or two the other two groups of litigants settled. Then all cases could be quickly determined on damages. I had two or three of those, two settled before trial and one of them settled in the midst of trial. It was obvious from those that the situation had dramatically changed since 1975. Those

initially injured were now doing splendidly in school and in their home life, but hadn't been well earlier. It was impossible to know whether emotional injuries could be attributed to years in the orphanage or whether attributable to that horrible accident when the door flew off the transport, plummeting the airplane into a downward spiral and crash. So many things were involved. Overall, only a handful of cases were tried, and I was very pleased that everybody had worked so harmoniously together. We all realized the importance. And these are the things you do to try and help the court as an institution. Judge Oberdorfer and I are really great pals. We understand and respect each other. In *United States v. George Hansen*, around 1983 or 1984, in a case of first impression, a sitting U.S. Congressman was charged under 18 U.S.C. § 1001, in a fraud indictment, with making false statements on financial disclosure reports required to be filed with the United States House of Representatives. Today he could not have been prosecuted for the same charge, I believe, since the Supreme Court, much later on, ruled that use of 18 U.S.C. § 1001 as a statute for these purposes was invalid. Nonetheless, Congressman Hansen was convicted by the jury, and sentenced to 15 months imprisonment; he was a second offender, having been convicted of a similar charge (filing false reports) under a different statute years earlier, before Chief Judge George Hart, and put on probation. Suffice to say that the jury heard evidence and testimony of twists and turns at trial from Assistant Attorney General Giuliani (now Mayor of New York) and from the Hunt brothers, Texas billionaires dealing with silver securities. The meeting of the defendant and the Secretary of the Army on a desolate road in Virginia on a Sunday, when there was a probative exchange of information, became critical to the charge.

(TAPE 9 A)

MS. PORTER: A continuation of the interview being conducted on behalf of the Oral History Project of the District of Columbia Circuit. The interviewee is Judge Joyce Hens Green, the interviewer is Jennifer Porter and the interview is taking place at the judge's chambers on March 3, 2001, and it is 3:00 in the afternoon.

JUDGE GREEN: With respect to intellectual property, I issued an opinion, kindly referred to by some as a leading opinion on trademark law, when I ruled that the defendant's magazine, then called Science Digest, gave such great prominence to the word "Science" in this latest edition of this publication was likely to cause confusion, thereby infringing plaintiff's valid trademark, Science. This was the *American Association for the Advancement of Science v. The Hearst Corporation*, a 1980 case, 498 F. Supp. 244. I should also mention one of my early cases in point of time. It is so difficult to isolate those cases that have special flavor, which I remember so well, for particular reasons. One certainly was *Luevano v. Campbell*, 1981, its cite is 93 F.R.D. 68. This resulted in a consent decree in a class employment discrimination action brought against the government which challenged the use of the so called PACE examination, the mandatory examination given for entry-level positions in the government. The plaintiffs represented a nationwide class of blacks and Hispanics who alleged this examination discriminated in violation of Civil Rights Acts. I inherited the action from another judge when I became a district court judge. There had been 18 months of litigation, but only a modicum of settlement negotiations. Soon after I received the case, the parties began with encouragement, serious settlement discussions, and they jointly moved for an order granting approval of this far- reaching consent decree. Notice of the settlement was provided the class members. It is important to remember the date, the consent decree was approved on January 15,

1981, because that was five days before Ronald Reagan was inaugurated President. Interestingly, while I was examining the matter for approval of that consent decree, on January 15, in open court, four men stood up in the courtroom. The transcript says, "Voices from the rear." As part of President Reagan's transition team, they asked me to not approve this decree. This, after these years of litigation and arms length negotiations, and now a settlement that no one had objected to. I took the four back to chambers with the case lawyers to ask who they were and what authority they thought they had to make this request. Incredibly, they responded that we had two governments (simply astonishing!), and I shouldn't approve this settlement because the Reagan Administration wanted to think about it. I did sign the decree then and there. Later, Attorney General Smith asked me to vacate my order. I declined, but stayed its implementation for ten days. That was the end of that. It was decided, wisely, not to pursue the matter further. Among the four was Alex Kozinski, now a Ninth Circuit judge, who inquires periodically whether I remember him from that time and forgive him. Oh, yes, I do; he was a Covington and Burling attorney then. Another of the foursome became the head of the Agency for International Development. Amazing that this group of intelligent lawyers tried to informally and illegitimately intervene in a formal court process because a new administration might disagree with a decree. Many developments occurred as a result of the abolishment of the PACE examination; but new, nondiscriminatory standards were devised and worked well during the years until new regulations succeeded the earlier ones. With respect to civil procedure in the courts, I issued a decision in 1987 which has been proclaimed as novel, allowing the press access to a deposition over the witness' objection. The Christic Institute, a Washington based public interest group, had alleged that 29 defendants participated in a RICO conspiracy to bomb a press

conference held in Nicaragua by contra leader Pastora. The witness, Glenn Robinette, who had been implicated in the Iran-contra inquiry, sought a protective order to bar the press from attending the deposition in Washington, D.C. He was the man who had built a security fence for Colonel Oliver North, a matter that received wide publicity in an international action. I ruled that the good cause standard under Rule 26 of Federal Rules of Civil Procedure, applied previously only to protective orders related to documentary evidence, applied equally to deposition testimony. *Avirgan v. Hull*, is reported in 118 F.R.D. 252 (1987), and has been discussed in a number of law journals with approval. Colonel North had provided guns to the Nicaraguan forces, on behalf of the Reagan Administration, which had surreptitiously defied Congress' clear directive to not do so. That matter nearly brought an impeachment hearing against President Reagan and did bring an indictment against North. He was convicted by jury; the circuit court overturned the conviction. In *Association of Administrative Law Judges v. Heckler*, 594 F. Supp. 1131, former U.S. Attorney General Elliott Richardson represented the plaintiff judges, who claimed improper pressure on them by the Secretary of Health and Education to deny Social Security disability benefit claims. The judges asked that I issue an order giving them the same rights and protections that Article III judges enjoy. Although I dismissed the suit (which was not appealed), I criticized the "untenable atmosphere of tension and unfairness that violated the spirit of the Administrative Procedure Act." There are so many cases. As I've said before, I'm trying to select only a few for our discussion here. Over the years, as all judges, I've been faced with important cases involving interpretation of the Freedom of Information Act (FOIA). In 1997, I ordered the Department of the Army to disclose documents related to its controversial AIDS research program. *Lurie v. Department of the Army*, 970 F. Supp. 19. In 1985, jumping around a

few years, in the case *Foundation on Economic Trends v. Weinberger*, 610 F. Supp. 829, in the field of environmental law, I enjoined the United States Army from building new research laboratories for chemical and biological warfare programs at Utah's Dugway Proving Grounds, which is about 90 miles southwest of Salt Lake City. I found the risks of building the $1.4 million aerosol test lab to be serious and far reaching, since the Army's environmental assessment at that time failed to comply with the National Environmental Protection Act. I required compliance with the law and greater assessment before the government could release deadly chemicals into the atmosphere.

MS. PORTER: Did they do so?

JUDGE GREEN: They did so.

MS. PORTER: Has the lab ever been built?

JUDGE GREEN: Don't know. You know, nobody gets back to tell you about development and conclusion of matters once the case is over; also, some activities are not widely reported in the newspapers, for obvious reasons. Increasing importance of antitrust law, as applied to intellectual property, became evident in *National Cable Television Association v. Broadcast Music*, 772 F. Supp. 614 (1991). I dismissed an antitrust suit brought by a number of cable television companies against Broadcast Music, Inc. (BMI), a company that collects royalty fees for composers, holding that BMI's blanket licenses under which cable operators pay a set fee covering all composers represented by BMI for a set period did not violate antitrust laws because other types of licenses were available. Separately, BMI was barred from using what is referred to as split licenses, to collect from both cable programers and local cable operators, in the holding that such licenses violated a 1966 consent decree from a previous antitrust case. As an aside, all

the lawyers were New York lawyers. Since I was born in New York City, I can acknowledge that lawyers from New York have a reputation in the District of Columbia for being forthright, ambitious, pushy, directing, and difficult to handle. Obstreperous might be the word. Yet, I found them delightful. When they would insist upon writing me pages and pages of letters outlining their legal arguments about this or that, I would just as consistently remind them that we have a local rule directing that no one in litigation can write a letter to the judge. Put it in a pleading if you must, but you don't write letters, particularly if they contain legal argument, citations, and the like. So the lawyers had to comply. Then one day I was reading a transcript of the preceding case involving a similar matter in New York and the judge there directed the lawyers to "Write me a letter, gentlemen." Laughing, I told my lawyers they were forgiven for past transgressions, but still, do not write me a letter. The hearing was to consume about one month. The lawyers were given a set time in which to try the case, a policy I have followed for years in many different cases, although not in criminal cases; in civil cases, when I know there will be a lengthy trial or a lengthy argument. I was the first in this jurisdiction, at least, to buy a chess clock and have it operated by my deputy clerk, with the admonition to the lawyers that, "I hope you use the allotted time advantageously. I don't care how you use it, but when you are in trial, remember that every time you stand up, the time counts against you." It is amazing when lawyers are given two hours, or ten hours, or one hour, or whatever it is, they are anxious to meet the time schedule, to focus on matters most essential, to call only those witnesses who are really necessary and illuminating. While they may gripe a lot about what the judge has done before they actually get to the courtroom, they almost invariably express pleasure later on that it has been done because the issues have crystalized and the case has focused on the essentials each

party wants the judge to recognize.

MS. PORTER: How do you decide how much time should be allotted for a particular matter?

JUDGE GREEN: I ask each side what is requested. Next, I ask how many witnesses will testify and, of those, how many are experts, recognizing that experts take longer than fact witnesses. Lastly, I use my own judgment and select the hours to be allotted for the case, telling the lawyers, far in advance of argument or trial, that the hours are equally divided between the parties. Once forewarned, they can and do live with this directive. In the BMI antitrust case, the lawyers spent the first part of the first day objecting and wrangling about various matters. I reminded them that two precious hours of their time had now elapsed and I had learned nothing. They asked for a ten minute recess and when they returned said they had made a decision not to have any objections. (laughter) So, there is a purpose and an advantage to doing it this way. I might note that a number of the other judges have now bought their own chess clocks, they are far more advanced technologically than mine, but mine does the trick. They, too, have found this process fruitful. Some judges even use the process in criminal cases, but I find that could become unfair to the parties. Judges encounter the challenge of a variety of cases: environmental law, employment law, criminal law, air crashes, government regulations, health care, antitrust, patent, constitutional impasses, separation of powers, etc. In *PHE v. United States Department of Justice*, 743 F. Supp. 15 (1990), the subject was pornography and curbing prosecutorial misconduct. I issued an injunction against the Department of Justice for conducting multiple prosecutions against one of the largest retail distributors of sexually oriented magazines and videotapes in the United States. In a far-reaching decision by Edwin Meese, the

then Attorney General of the United States, a particular area of the Department of Justice was devoted to the prosecution of pornographers. As was learned subsequently, the idea was to prosecute the alleged pornographers in several conservative regions of the United States, including, among others, Idaho, Utah, and Montana, at the same time, in order to put them out of business, of course, since who can defend, simultaneously in two or more jurisdictions. Prosecution in this manner not only limited, but prevented due process.

MS. PORTER: You mean for the same magazine they would be prosecuted in Idaho and elsewhere.

JUDGE GREEN: For the same transgression, exactly. Obviously the pornographic materials had gone through the mails or were borne interstate, and so forth. It was the procedure utilized and the intent of the government to choke off defense that was the subject of the case before me. (It had nothing to do with the merits of the prosecution to stifle pornography. Who wants pornography, particularly if children can be so impacted?) I allowed discovery in this case, over vigorous objection, which unearthed extraordinary and hidden measures taken to investigate, to explore, to wiretap pornographers. Only the record can truly reflect the shocking depth of matters that had transpired. I despise pornography, but must say that the appalling matters happening in our United States of America, at this time of our "civilized existence" were even more despicable. It was not difficult to issue the injunctions, initially a temporary injunction and then a combined preliminary permanent injunction. At the end, the Department of Justice threw in the towel, recognizing that this was not a winner in any way, politically, legally, ethically. A consent agreement was reached. The well-known pornographer ceased his operations in certain areas for the benefit of all, the U.S. ceased multiple

prosecutions against anyone, including pornographers. While there was no prohibition against the government prosecuting one case at a time, and then a month or two later, or whatever is necessary, prosecuting another case of the same pornographer in another jurisdiction, that was up to the Department of Justice, but to do prosecutions concurrently, with the same defendant and same material, would not happen again.

MS. PORTER: You mean this was concurrently?

JUDGE GREEN: Concurrently.

MS. PORTER: Wouldn't they achieve the same result, even if they did it one a month?

JUDGE GREEN: From the defense viewpoint, how can you defend concurrently? And of course, the government knew the answer to that. You couldn't. You couldn't be in two places at the same time. You couldn't have two sets of lawyers or the same lawyer in two places at the same time and defend before two different juries on the same matter. Impossible. While to most this wouldn't be a matter of great interest, to me it was fascinating and extremely well tried with excellent lawyers on each side.

MS. PORTER: Were they D.C. lawyers?

JUDGE GREEN: National reputations. Some from the District of Columbia. The lead counsel for the pornographer was Bruce Ennis, who has very recently died. A superb lawyer who argued multiple cases before the Supreme Court, many successful. He specialized in First Amendment matters. The United States also had a fine advocate, Thomas Martin, an excellent lawyer. As may well be imagined, through the course of my 33 years on the bench, I have had written, literally, hundreds, perhaps thousands, of opinions. Some short, many too

long, some obviously more noteworthy than others. Some more impressive than others, some only important for the clients and lawyers of that case. One of the most challenging and complex matters I have ever had was the criminal case, then another criminal case, five massive civil cases, and hundreds of other civil cases under my jurisdiction, all related to the collapse of the Bank of Credit and Commerce International (BCCI).

MS. PORTER: Why would you describe that as one of your most challenging cases?

JUDGE GREEN: Most of the law in those cases remained to be developed. It was novel and virgin territory, concerning fields of banking, fraud, commercial instruments, securities, money laundering, false testimony, disappearing monies and witnesses, arcane statutes, all on an international scale. The series of cases were fascinating. They commanded over eight years of my time. They are now completed. In fact, the last opinion I wrote for this case commenced, "At last." I summarized there what had happened through the eight years. I was forwarded a letter from The Right Honorable Lord Bingham of Cornhill, then and now the Lord Chief Justice of the United Kingdom, who received a copy of my opinion, at his request, since my trustees and I dealt extensively and internationally with many world leaders. Lord Bingham commented that the opinion was not only very interesting and very impressive, it is the first time he had seen a judgment which began, "At last."

MS. PORTER: Why did it take eight years?

JUDGE GREEN: Initially, the case was assigned as a criminal indictment. BCCI and its satellite companies were defendants; there were also three individual defendants (I might note it took the longest time for the United States to finally admit that one of those

defendants had died; we carried him as a fugitive for years). Another of the defendants has paid, just a few days ago, $47 million to the Federal Reserve involving this case, but remains a fugitive; more will be forthcoming if he ever wants to return to the United States.

MS. PORTER: Who were the individuals?

JUDGE GREEN: There was Abedi (decedent), Ghaith Pharaon, and a man by the name of Naqvi. Mr. Naqvi flew to the United States in a military plane, after years in a Saudi Arabian prison for his corruption in destroying BCCI. He pled guilty before me. I sentenced him to a lengthy term of imprisonment; he is presently on supervised release and has provided extraordinary information concerning the location of assets in secret places and carried under false names that we never could have known about otherwise. He has fully cooperated, despite serious declining health while giving this information. He was number two in the pyramid of BCCI leaders and scoundrels, when Abedi was ailing, so he knew all. It was an extraordinary criminal case. The BCCI corporate defendants pled guilty. They were represented by the liquidators appointed from courts in the Cayman Islands, Luxembourg, the United Kingdom and other countries. Auditors and financial experts tried to uncover what had happened causing the collapse of BCCI and in attempts to trace the lost monies. Almost every country in this world had a BCCI bank. The fraud was massive, destroying the livelihoods of many, including the green grocers in England. Little grocery shops, mom and pop types, went out of existence. Monies put in the bank for their work and daily existence were raided and taken for personal purposes use by the crooks who ruled in Abu Dhabi and elsewhere. The sheiks of the royal families fully contributed to the demise of the bank. In America, the First American Corporation existed, the holding company of the largest bank in the area at that time, the First American

Bank, here and also in New York. The prosecutors believed that BCCI had illegally acquired a controlling interest in First American Bank through the efforts of Clark Clifford (former statesman and advisor to many U.S. Presidents), who was then chairman of the board, and Robert Altman, his law partner, who was then president of First American. This led, in turn, to satellite civil cases, as I refer to them, in separate actions against Messrs. Clifford and Altman. Members of their law firm partnership, established people in the community, were also sued, to be eventually dismissed from the cases. Other banks were impacted. National institutions were affected, American Express among others. The court appointed liquidators had control of BCCI and entered pleas of guilty. They agreed that the former management of BCCI had perpetrated the largest, the most complex bank fraud in history worldwide. One aspect of the plea agreement was that BCCI would forfeit all its assets in the United States to the United States Government and the United States Government, in turn, agreed to share those true victims. During the process, Attorney General Janet Reno directed that the U.S. share of recoveries would be given fully to the worldwide victims.

MS. PORTER: So there were lawsuits brought against BCCI around the world?

JUDGE GREEN: Absolutely. All came here eventually. I held hearings for all who wanted them, even though it was unclear whether hearings were required. Nonetheless, I felt it important to offer a hearing in every case, and put a time limit on them. I'd say, "I have your pleadings and can rule on the papers, but if you want a hearing I'll give 20 minutes to each side." Most elected not to travel to the United States for a 20-minute hearing, but many (even though requested to do so) did not advise me they had elected to not appear. We would only

learn of this on the day of hearings for groups of cases. I do not recall today the exact number of the hearings (an opinion was written for each claim, but they numbered well over 400, perhaps 600).

MS. PORTER: And were there other BCCI cases pending in other jurisdictions in the United States?

JUDGE GREEN: Yes. They all came to me eventually save for two: a bankruptcy proceeding in New York and a matter in Georgia, otherwise, all were my cases, at one time or another.

MS. PORTER: How did that happen?

JUDGE GREEN: It was decided that since mine was the prime case, it would be appropriate to have also the other case before this judge. And that did happen here, as it does in other causes. I appointed two trustees: one to liquidate First American's assets, the other to liquidate assets in California and elsewhere. Real personal properties had to be located and sold. That liquidation process went on until the end of June 2000, when I decided enough is enough and I could finally write my "At last." There were matters that we could have continued to pursue, particularly in Luxembourg, the United Kingdom and Cayman Islands, against BCCI, its auditors, Price Waterhouse, and others. But the wheels of justice turn much more slowly in other countries, and it would have taken another five or six years. We were expending money to get money. Although our receipts magnificently outweighed our expenses, there came a point when I felt that the court no longer should be involved. By agreement reached with the parties, I ruled that the United States would take over some of the actions and work them out with the liquidators and the others, and the liquidators, should they continue to want to file cases, would

work that out with the other country involved, including Luxembourg and the Cayman Islands. It was known that in the Cayman Islands, as example, it took two to three years before there would be a decision on initial motions. And then there would be a period of discovery, perhaps another four or five years. And then there might be a trial someday, perhaps ten or 12 years down the pike. I could not justify continued U.S. involvement and our court involvement any longer with two trustees on the payroll, their staff and offices in existence, all for the possibility of making any more recovery of some monies. Candidly, I did not envision any more sizeable recoveries. So I gave the directive to close up. The lawyers and my trustees made the necessary arrangements, despite some disagreement with this decision, with each U.S. agency implicated, the Internal Revenue Service, the Comptroller of the Treasury, with Mr. Robert Morgenthau in New York. He and I had to deal with many of these cases because First American also was in New York. There is yet an ongoing discovery process outside of the court's involvement. In any event, the total recovery amounted to 70 to 80 percent of the loss. Through my BCCI criminal case and forfeitures to the United States, there was recovery of well over one and one half billion dollars, and much more from individual related cases. I am exceedingly proud of this. We had anticipated success if we got back merely ten cents on the dollar. These were compelling cases with so many different aspects. It went through the money laundering section of the Department of Justice, the asset forfeiture division, where a body of asset forfeiture law has now been produced for the first time through these novel matters. My staff and I did work long and hard on the cases and I am truly appreciative that every case that has gone to our court of appeals, and virtually every one did so go, was fully affirmed. Only one small exception, a bench trial against Abdul Raouf Khalil, a sheik in Abu Dhabi, who was truly involved in getting illegal millions

from BCCI that he used for his own luxuries. This man, who bragged about his pursuits of fame and money, had over 200 Samsonite suitcases he liked to take to where the money changing took place in Abu Dhabi, accompanied by his staff of money changers, and, as he testified by deposition from Abu Dhabi, he couldn't recall how much he put in the suitcases. I am certain that failure of memory was true.

(TAPE 9 B)

MS. PORTER: This is a continuation of the interview being conducted on behalf of the Oral History Project of the District of Columbia Circuit, taking place at the judge's chambers on March 3, 2001.

JUDGE GREEN: With reference to Sheik Khalil, I determined that he owed (due to treble damages) in excess of a billion dollars, to be paid to the liquidators, who in turn would deliver this compensation to the victims. That would be a billion in addition to the one and a half billion collected as noted above. Our circuit court ruled that in all respects, save one, this case was affirmed. The appellate judges determined some facts had not been sufficiently developed and therefore struck about $62 million from my award. I disagree with the court of appeals on this, but the final budget still was over $900 million, just short of a billion dollars. Our liquidators continue a laborious process right now in execution of this judgment. I have held Sheik Khalil in contempt of court for refusing to comply with the order of the court and he is fined $2,000 daily until he pays the judgment. But back to the case in chief. The liquidation that I had referred to required enormous time and skilled work. In addition to monitoring the activities, the trustees reported to me at least quarterly. I adjudicated 400 plus claims of third parties, who asserted that the property the U.S. Government seized was not part of the BCCI

network of assets.

MS. PORTER: What was your procedure for resolving those hundreds of claims?

JUDGE GREEN: Laborious.

MS. PORTER: How have you done this?

JUDGE GREEN: I explained earlier that if they wanted a hearing, it was to be held within defined time limits. Thereafter, I'd write an opinion granting or denying relief.

MS. PORTER: So you had one law clerk assigned to BCCI?

JUDGE GREEN: Yes. I had four law clerks, each serving two-year clerkships, who worked on it during their tours of duty. Eight years. I named each in my final decision with deep appreciation for their ideas, wonderful thoughts, and invaluable assistance with the opinions. I was also assigned those five civil cases that related to the liquidation of BCCI. Four of the five resolved. It took time, but went fairly quickly. The fifth took the longest. It was mired in necessary discovery. More than $400 million in settlements had been achieved in that case alone, pretrial. Trial was scheduled for October 1998, estimated to last six months, against four remaining defendants, including Clark Clifford and Robert Altman. The parties had been trying to settle the matter for some time. I had appointed a former federal judge in Illinois to be their mediator, each party having to pay equally for this purpose. It didn't settle. Less than four weeks pretrial I received a joint letter from the counsel asking if I would assist settlement. The logjam was broken. The case settled in a few days. Clark Clifford passed away about a month later. We had known for years that he was ill. Ill to the point that when I also had his and Mr. Altman's criminal case, much earlier, I appointed an independent doctor who agreed with Mr.

Clifford's physician that Mr. Clifford was too ill to go through a criminal trial. He had a history of heart disease and other ailments that, with the stress of a criminal trial, the doctors expected he would die. As it turned out, he survived for years, but at the time of settlement I was aware that, although alert, he had had round the clock nurses for two years. He was then 90 or 91 years of age. I was concerned that with the stress of the lengthy and impending trial, he would die. Then what? To look at it from the judicial viewpoint, the trial would have to commence again, the heirs first deciding whether or not they would retain the same lawyers to represent them (I suspect an idea that had not been considered by the lawyers who then represented Mr. Clifford). Mr. Clifford desired to have this resolved before he did pass away. He was concerned mightily about Mr. Altman, who thought of him as a son. Mr. Altman was concerned about reestablishing his law practice. There were many other reasons, unnecessary to relate here. First American's viewpoint, of course, was to get this resolved, finally. Mac Mathias, former U.S. Senator from the State of Maryland, had been appointed chairman of the bank, bringing credibility to the shaken institution. A nun, Sister Bridget, president of Marymount College in New York, was also on the board, among others. I had to persuade the trustee (who I had made sole shareholder) that it was time now to come to a final resolution of this matter. And it was resolved. Eventually all were satisfied that resolution was fair. I do want to mention the great contribution that Robert Morgenthau, the New York District Attorney, made to the BCCI case. I verily believe that there never would have been these cases, these successful cases against BCCI, without the persistence of Robert Morgenthau, who saw a terrible injustice, a massive bank fraud, and investigated, against resistance. There were those in Congress, I won't name names, who opposed investigation, vigorously defending the BCCI against accelerating rumors of its "crookedness"

not long before its collapse worldwide. The *Congressional Record* published the statements of those who would protect BCCI interests. So, while the United States Government also investigated, it didn't do it with the same degree of stubbornness, determination and persistence that Morgenthau did. Throughout the years, he retained his interest in these cases, even when not in his jurisdiction. Although I was never told this, I know he strongly recommended the appointment of my trustee, Harry Albright, former advisor to New York Governor Nelson Rockefeller and former Superintendent of New York Banks. There was consent to his appointment from all parties. The trustee was an excellent, hard-working partner in a law firm who uncovered astonishing transgressions of the leaders of First American Bank. These transgressions are fully related in his final report (a public document) filed in the court. The then chairman of the board, a former U.S. Attorney General, and the president of the bank had created for themselves extraordinary multi-million dollar annual pensions from this bank in distress. Mr. Albright persuaded them, with my blessing, to renegotiate their contracts and promptly resign from the bank so that a more reputable chair could take over. It saddens and angers me to discuss this publicly for the first time. This is detailed in Harry Albright's lengthy report. He persisted in telling all, despite my suggestions to not name names.