ORAL HISTORY OF
HONORABLE JOYCE HENS GREEN

Seventh Interview – March 13, 2001

MS. PORTER: This 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 at the judge's chambers on Tuesday, March 13, 2001, and it is 11:00 a.m. We've wandered at great length over your activities on the bench. Now I think we're at a point when we can talk about some of the multitude of things that you have done associated with being a judge, but off the bench activities. What activity would you like to talk about first?

JUDGE GREEN: It's difficult to parcel them. Every judge of the court is assigned by the Chief Judge at one time or another to serve on committees, to chair committees, to streamline the operations of the court. I have chaired several committees and a member on more. I have been the calendar control chair. Let me explain what calendar control is. There are numerous questions that arise as to whether a judge should maintain a particular case (that has been randomly assigned to that judge) if the judge elects to recuse. The judge states the reason for recusal, as example, has one share of stock of a party to a case, which is an automatic recusal, or has a familial relationship or too close relationship with the lawyer or litigant. There are times that the lawyers, when they come to the Clerk's Office to file a new case, state that the case is related to another case a particular judge has. Sometimes it's judge shopping and sometimes the lawyer verily believes that while the issues may have only some relationship to another, although

the parties are different, this is nonetheless a case that could be deemed related under our rules. If the judge to whom the case goes, by random or by related status, disagrees, that impasse has to be resolved by the calendar control judge. Other like matters arise; and it is amazing how frequently requests come in for the chair of that committee to resolve issues so that the cases can be fairly assigned in the court system.

MS. PORTER: So there is no allowance made in the assignment of the case for the complexity of a case or how long it would take?

JUDGE GREEN: Absolutely not.

MS. PORTER: You could end up with three *Microsoft* cases and another judge might end up with three one-day trials.

JUDGE GREEN: You could. True. It is believed that in the statistical world, and the law of averages, somehow all this evens out if you live long enough and share in the work of the court long enough. But, there are times when assignments have to be adjusted, simply because it cannot be absorbed on one judge's calendar.

MS. PORTER: Is that done by the calendar control judge or is there some other method for doing that?

JUDGE GREEN: Essentially it's done by the calendar control judge with her/his committee. In the past, we had a rule that the Chief Judge of the court, and I mention this because application of this rule has received much attention (and criticism) recently, because of the need for the efficiency of the court and the need for justice in the court, would be able to specially assign a case to a given judge. That rule is no longer existent. It was a rule prevalent in many of the courts of this nation until a few years ago when the Judicial Conference of the

United States (the ruling body of the federal judiciary) determined that use of that rule perhaps was no longer appropriate. The Conference suggested that the courts change their rules to eliminate it, even though the Chief Judge retained overall powers, and duty, to promote efficiency. The court as a whole voted to eliminate that rule several months after the recommendation of the Judicial Conference. The normal process of the Rules Committee takes time. By the normal process, the Rules Committee examines the issues, writes a recommendation to the executive session of all the judges, the judges voting it up or down. In this instance, the judges did vote to remove that rule. It is important that the public realize that these cases, in the main, are fairly and routinely and randomly assigned. While the reasons for recusal must be given by the district judge, unlike Supreme Court Justices who do not give the recusal reason, those reasons are maintained internally and not disseminated to the successor judge or to the world at large, including the litigants who filed the case. The reason is self-evident, but still let me explain. This is so it does not corrupt the thinking of the successor judge. As example, should a recusal say: I know these parties well and one is a very dear and close friend of mine, or I know these lawyers well, one is a very dear friend of mine, or I know these lawyers well, and X lawyer is a fraud without credibility as to anything he ever does, that certainly could influence the other judge. Other roles in administration of the court – I have been the Criminal Justice Act chair. On my watch, our committee determined to interview each lawyer. The ones who had experience and ability could do good representation were elected to the panel from which assignments were made by the court for representation of indigent persons in criminal cases. Our Federal Public Defender's Office, an excellent office, clearly does not have sufficient staff to meet the needs of the ever increasing criminal calendar. Most of our

criminal defendants are without funds and need the services of the Criminal Justice Act panel lawyers. The more complex a case is and the more defendants in that case, the more Criminal Justice Act attorneys we need. In the past, these attorneys were drawn from the lists provided by the local court, the Superior Court of the District of Columbia, because many of the attorneys practice interchangeably in federal and local courts. We are, literally, across the street from each other, so there is not a vast distance between us, except as to the type of cases we do; and many of them have a similar genesis. As a consequence, a large part of the role of the Criminal Justice Act was to screen the lawyers to assure they had such degree of legal expertise that the court could responsibly assign the lawyer to a criminal case. The court also located and screened lawyers who had proficiency, as example, in language, since more and more criminal defendants speak Spanish only; therefore, we needed many attorneys we could recommend who are not only legally skilled, but also Spanish fluent, to represent these defendants, who have trust in someone who can speak their language, rather than always dealing with an interpreter, side by side with the lawyer. When I chaired this committee, among its duties (enormously time consuming) was examination and decision on the vouchers given by the defendant's counsel to ascertain if they were fair and appropriate fees. It was an assignment given to the judge before whom that lawyer had appeared, but if a controversy arose, the CJA chair would resolve that conflict.

MS. PORTER: You said in those days. Has the procedure changed somewhat now?

JUDGE GREEN: The procedure has changed. The office of the Federal Public Defender handles all the vouchers, examining them, then advising the judges whether they appear to be fair and appropriate, and whether or not they add up mathematically correct. While

each judge still looks at them individually, to make that same determination, we do rely at least on the calculations, and certainly consider the reason given by the Federal Public Defender for agreeing or disagreeing with the lawyer's request. So that assists us and greatly streamlines the operation. We can more readily resolve those matters and the lawyers get paid for their professional services more quickly. Things have changed through the years, usually for the better.

MS. PORTER: Your membership on these committees, is this a voluntary thing or does every judge get to serve on at least some committees?

JUDGE GREEN: Every judge, at the request and designation of the Chief Judge of the district court, serves on one or more committees. More recently we have committees with judges who are particularly versed in technology; those judges not versed in technology are delighted to have those who are serve as chairs. Settling cases is of particular interest to me. It is well known that I enjoy doing this; immodestly, I state, I do have a special aptitude for this and take an activist role. Through the years most of my colleagues, at one time or another, have come with cases and asked that I try to resolve them. I have attempted to do so, of course I have not kept records of this, but the numbers are substantial and the success rate estimated at 90-95 percent. I really enjoy doing the activity and achieving a good result. I may, in another life, come back and do more for my colleagues in the future, should they continue to want my help.

MS. PORTER: Is there a formal structure within the court for you to pursue this interest in mediation or settling a case?

JUDGE GREEN: There is no formal structure. Another judge asks if I'd help in the process and he advises the litigants and lawyers that I will be doing so. I have also recently

been appointed by our Chief Judge to a committee of one to resolve disputes that might arise through our Alternative Dispute Resolution Office and cases actively engaged in mediation. On occasion, an impasse occurs between the mediator and the litigants (or lawyers) to such degree that the case is in limbo or the parties are ready to give up the settlement attempt. A judge is needed to make a ruling that will dissolve the impasse and bring the case, if possible, to resolution.

MS. PORTER: Is this a mute function, or is it you're just new to the function?

JUDGE GREEN: I am new to the function. It is a function that former Chief Judge Robinson was the first to undertake. When he died I was asked to succeed that chairmanship. I have recited just a few of the matters that have occurred through my years here in the role of administration. Speaking of the role of administration, I might mention that we have an Administrative Office of the United States Courts, which performs important administrative functions for the entire federal judiciary. On a number of occasions I have been asked to assist with select projects. One has been to work to increase the salaries of the judges, showing reasons why the present structure is inappropriate. I'm safe to say 99 percent, if not 100 percent, of federal judges would agree there must be improvement. Our compensation is tied to the whim of Congress. We receive the same compensation as Members of Congress, but not the additions the Members get for office staff, supplies and other allowances. Judges will never receive more compensation than Members, Congress has made clear, and Congress totally controls those purse strings. It wishes to use us as a shelter for its own increase, but remains conflicted about giving a cost of living to its Members. This is understandable. They have to be re-elected in the House every two years and in the Senate every six years, so they are concerned

about constituents who may well disagree that they have given themselves a raise or a cost of living allowance. So the Members try to improve their situation in ways we cannot. There is pending a proposition to give Members a per diem for the hardship they have in maintaining two homes. As federal judges, we cannot give ourselves a per diem. So if Congress eventually gives itself a per diem (as much as $25,000 to $35,000 a year, as suggested), they will get that additional income and we will not. The income federal judges (25 to30 years experience in the legal profession) receive is the same, or less, than many of our departing law clerks get as third year associates in a sizeable law firm. As example: one recent law clerk received not only in excess of my income, but also a $20,000 bonus (for being my law clerk for two years) and $10,000 for transportation expenses. The judges never expected to be compensated to the extraordinary degree private practices provide today, but we did have reasonable expectation when we became federal judges to earn enough on which to comfortably raise our families, maintain our homes and comport our lives. Judges are leaving the judiciary in greater numbers than before, in order to earn a responsible livelihood for their families, in light of their education, experience, and worth. Morale has declined enormously. The judiciary will fail more and more to recruit excellent lawyers unless they are multi-millionaires. I was requested to canvass the country, to speak on this crisis, to give media interviews, so that the public would understand the problem, to work with the American Bar Association, the Federal Bar Association, the Federal Judges Association, all which work for the same goal: to see that the judges will remain, with the independence that they must have to do their work well and to have fair income. I cannot lobby Congress, it is not my style, it is not my personality. I'm enormously uncomfortable with the idea, but what I do is call judges around the country (and I know so many now), and ask them, in

turn, to lobby their United States Senator or Congressperson, to acquaint them with the facts and materials that we have prepared, for a fuller appreciation of what is happening to this country's federal judiciary.

MS. PORTER: You say you were asked to do this? Where did the request come from?

JUDGE GREEN: The request came from the Director of the Administrative Office, who works daily with the Chief Justice. The Director of the Administrative Office also asked me recently if I would work on the judges' special insurance problem. Judges are entitled to purchase (we pay fully for this special life insurance, there is no contribution by the United States to this cost of this particular insurance). If judges wish, they can purchase up to five multiples of salary without the necessity of a physical examination and without consideration of age, during rare open periods (which occur only every few years). Many judges take advantage of this, creating the only estate, in most instances, for their beneficiaries. When we entered the federal judiciary, we knew premiums literally doubled every five years, between 40 and 60 years of age, costing thousands of dollars annually, if the judge selected the maximum multiples. But we had paid more in our younger years than had we taken comparable private insurance, counting on the promise to each that this doubling would cease at age 60. After that there would be no further increases, we would continue to pay whatever the cost was age 60, $12,000 to $13,000 a year. So, all of a sudden the rules changed and the Office of Personnel Management declared that it was going to double rates (to $25,000 to $26,000 annually). Dozens of judges announced they had to leave the judiciary immediately to try to get a job to pay this huge amount annually, to provide for their heirs. Morale plummeted among the others. I was one of three judges

assigned to this problem. At the end, the problem resolved: status quo for four years, and if any increase later resulted, then the Administrative Office would pay the difference from the judicial appropriation so that promises would be kept.

(TAPE 12 B)

JUDGE GREEN: More recently, in April 2001, the circuit celebrates its Bicentennial and the 200 vibrant years of the U.S. District Court and the U.S. Court of Appeals of the District of Columbia. Splendid discussions ensued from the panels relating our history and looking to the future. Justice Scalia was a keynote speaker; so was Chief Justice Rehnquist. Justice Ginsburg presented a scholarly consideration of the more illustrious cases since the beginning of these courts. Justices Scalia and Ginsburg had served as colleagues on the circuit. I was given the honor of moderating the only panel on the uniqueness and contribution of the district court. Professors Resnick (Yale) and Ogletree (Harvard) were joined by Judge Bryant, and Judith Richards Hope, Darryl Jackson and Brendan Sullivan, the latter three litigators of national renown. This is the kind of symposium we engage in and are asked to do on behalf of the court and community. I have done many like programs and usually enjoy the scope of the assignment and the panelists. I have presided over the circuit's annual Judicial Conference, participated in panels there and elsewhere, sat on more law school moot courts than I can recall, and have fully participated in the life of our court as we have reached out to the legal profession and to the schools and to the community in general. My law school, George Washington University National Law Center, established the Harold H. Greene and Joyce Hens Green National Security Law Moot Court. For a time I judged several national competitions. One of my favorite things is to preside over the monthly naturalization ceremonies held with great

fanfare in the courthouse, with military presentation of the colors, the pledge of allegiance; I had the privilege, on numerous occasions, to administer the oath to hundreds of persons and then to greet them as fellow citizens of the United States.

MS. PORTER: I've heard you talk about another program that you did, the Freedom Forum?

JUDGE GREEN: I'd like to get to that one in a moment, if I may, I just want to sort of complete what we did strictly through this court and then I'll come to that with pleasure. You asked what committees I've been on. I've been on the Grievance Committee, which examines if a lawyer, charged with derelictions, should be disbarred, suspended from practice, or allowed to continue. This is an important function, so when we admit a lawyer to practice in this court, we are, in effect, assuring the public that this lawyer is in good standing. For the very first Bring Your Daughters to Work Day, now done annually, I was asked to speak to the girls and young women who came with their mothers to observe the work they performed and to share the rich life court work generates. Of course, all judges also talk frequently to children who arrive in large groups to watch the court in operation. The understanding of court operations and our system of justice is impacted by the age of those children and what they can absorb at that time, but we try to talk or demonstrate to their level of understanding so they can appreciate what a juror does when called for duty, what a judge does who sits in a robe up on a higher level and why judges sit on a higher level. The questions we get from these children are extraordinary and thought provocative. I remember a child who asked, "Is the judge just as important as the juror or is the juror more important than the judge?" It makes you pause. It really does.

MS. PORTER: What's the answer to that question?

JUDGE GREEN: The answer I gave was that the jurors are judges of the facts, the judge is the judge of the law, and so we both have equally important roles to perform and need each other to perform those roles. An immediate and rather simplistic answer, and certainly, in most ways, accurate. There are times that judges like to think we are a bit more important, but, it was a wonderfully good question from a child or adult. Makes you think.

MS. PORTER: Do I get to take you to the Freedom Forum yet?

JUDGE GREEN: Yes, you do. The Chief Justice appointed me to the Judicial Branch Committee of the Judicial Conference of the United States, and as I earlier related, the Judicial Conference is the policy making body of the federal judiciary headed by the Chief Justice. It is an honor to be appointed to one of these committees. Not all of the federal judges, district or circuit, are ever appointed to so serve.

MS. PORTER: What was the purpose of the committee that you were appointed to?

JUDGE GREEN: The purpose of the committee is its relationship with other judges, the needs of judges, and how fulfillment of those needs truly benefits the public: our independence, compensation, travel regulations, insurance. As example, long term insurance policies for the federal judiciary. We perform a myriad of other tasks in looking for all matters that will improve the status, not only of the judiciary, but also of the support staff that assists us in the Clerk's Office, in the Probation Office, in the Marshal's Office. This committee has the most direct relationship with Congress concerning the above matters and proposed legislation. The other 14 members each had a positive relationship with a U.S. Senator (former administrative or legislative assistant). I was the only member without such contact – no Senator

or voting Member of the House in D.C. While I have served on this committee now for over six years (exceeding by far the usual term), one of the questions that arose is how we can improve our public relations. A few years ago, an idea burst forth while I was sitting at a committee meeting, then chaired by Judge Barefoot Sanders, from Texas, that it was vital we find a way in which we can talk to the members of the media without losing dignity and without case specific discussion, so that the journalists would understand better our problems and we understand better theirs. It is obvious that among their needs is the immediacy of getting a decision, dissecting it accurately, and translating it clearly and concisely for the public, particularly in these days of the Internet, where contents are blazed in seconds. Competition, of course, is rampant among the media; who gets there first, and, similarly with the Internet. A big issue. We who labor over our opinions, whether two pages or one hundred plus pages, don't always make things absolutely clear, particularly for lay people. I was trying to think of a way in which we could let the media know how we do our work, how we function, why we do what we do, and to see how we could improve, for our respective disciplines to get along better and be better understood and appreciated, and in turn to do what we could responsibly for the media without yielding independence in any way and maintaining dignity. My call for improved "P.R." led immediately to creating a subcommittee, and I was made the chair and allowed to appoint the members of my committee. How to execute this idea? I decided to utilize the Freedom Forum, a non-partisan organization that does not accept funds from outsiders, and deals through the grants it has received from substantial foundations, like the Gannett Foundation. This organization created the Newseum presently in Arlington, Virginia, soon to be located in Washington, D.C. It puts on symposia throughout the country on matters of great interest to the reporters dealing with all

facets of life. I called the CEO, Charles Overby, to see him about the implementation of improved relations; he was delighted. I did visit him, we did talk about it, and he was truly excited about the opportunity to produce a joint program with the federal judges. I considered it my responsibility to try to bring the federal judiciary into the 21st century and beyond. A cooperative program of this kind had never been done in the 200 years of our history; indeed, such thinking had been frowned upon. Using the report of the Long Range Planning Committee of the Judicial Conference of years ago, which encouraged betterment of our relations with the media, with the public, with the schools, with the Congress, with the executive branch, and urged us to stimulate ways to have outreach, I went to Ralph Mecham, Director of the Administrative Office. The word from on high was "it's a go." The Executive Committee, presided over by the Chief Justice, agreed that the Judicial Conference would not only endorse the joint program, but would contribute to its expenses, in part. I determined that the first session, hopefully of many to come, should be a national symposium. I selected 30 federal judges from around the country of different gender, different experience on the court, service for varying lengths of time, different political backgrounds (as best as I could tell), different philosophies, as had been expressed in their opinions and the like, men, women, tall, short, different races, different everything I could possibly think of, and certainly different geographical areas of the country, because different geographical areas have different interests and different needs, rural and urban. The reporters wanted to have two judges for one journalist, and recruited 15 reporters to this national meeting that we had in October 1999.

MS. PORTER: And who was the audience?

JUDGE GREEN: There was no audience, other than several non-participatory

judges and journalists, and some administrative staff. It was a closed meeting for this first one, to see how it materialized. The participants were the leaders and officers of the Freedom Forum, such as John Seigenthaler (who had been very active in the Department of Justice at the time that Robert Kennedy was the Attorney General, he had been a freedom rider in the civil rights days, and was revered by the journalists). He acted as the roving moderator for one of our programs in which he shot questions, certainly unrehearsed, to members of the panel, all judges and reporters of the national media, from magazines, newspapers, television, Internet. Virtually, every judge I asked agreed to participate in this. They were exhilarated by the idea. We talked candidly about our existing relationship (woeful) and the need to get along. Helping each other was, after all, constructive and an illuminating outreach to the public. Freedom Forum remains fully committed to doing this. They want to do four programs annually, in regional areas. That's a bit much for the judges, so we've been doing two a year regionally. We've done one in Chicago and another in Tennessee, we cover different circuits, sometimes two or more in combination. The next program is scheduled for the fall in Michigan, involving district and circuit judges of the Sixth Circuit.

MS. PORTER: But the format is still the same?

JUDGE GREEN: The format now is beginning to expand. We are very satisfied with what is being accomplished and the judges are enamored of it. Some have advised me they now utilize many of the suggestions that came out through this fora. You can tell I remain highly enthusiastic. I do consider this part of my legacy. I am very proud of it, I'm proud of the way it has been accepted and honored and now implemented, and I know, as now do so many judges who have participated, that it has benefitted us in our work, benefitted the media,

established a continuing dialogue and, above all, better serves the public by enhancing understanding of our system of justice. As example, I suggested that when we write our opinions (even though it is more work and time consuming), for those opinions which we believe will have particular newsworthiness (and it's not hard to discern which will and which won't) that we write a syllabus at the beginning of each – a short paragraph, or two or three, but as short as can be, to highlight what the opinion says. Of course it can't provide the nuances, it can't provide everything, but we have as precedent the Supreme Court of the United States that does this for its opinions. If it's good enough for the Supreme Court and eminently workable, it's good enough for us. Several judges are now doing this. The media can immediately read the syllabus without digesting a hundred pages and promptly get this on line; it will accurately quote what we have put down. So the media is also happy. This can work and does. Additionally, we supply the journalists with the names and phone numbers of every judge's chambers, of the personnel in the judge's chambers, the secretary in particular, or judicial assistant, who might be responding to the telephone inquiry. We provided similar information, such as how to reach the Clerk of the Court and the major assistants in the Clerk's Office, so that the media can know immediately when a case has been filed and to whom assigned. So simple, so easy to do for every court in this country. This should be done, it's public information, we are just putting information together in one place, distributing it to the media and public, updating periodically. This is readily accomplished in every area of this country, should those judges choose to do so. That's up to them. Some courts have undertaken educational training for the reporters at their request. What is the difference between a state court and how it operates and a federal court? Amazingly, some reporters who cover the federal court have told us candidly that they don't know the difference.

Well then, who better to tell them the answer. We can tell them that when we rule on a case that involves search and seizure, as example, what is search and seizure, why we get into some of these thickets and problems, what we are looking for, what is the ruling made, and what the ruling means to the overall case and its progress to plea or trial. What are the different kinds of cases we deal with, what types, categories, areas. Much of this is so easy for us to discuss, but judges are loathe to get into tête-a-têtes with reporters, and they shouldn't have these tête-a-têtes. The important thing is to maintain independence, to maintain dignity and not divulge secrets or sealed information.

MS. PORTER: Now that these programs are being held regionally, you mentioned that the audience is broadening for this?

JUDGE GREEN: I've always looked at this as the beginning of our public relations expansion. The audiences are broadening. We now ask selected members of the community (school heads, bankers, chambers of commerce, mayors) to come in and be part of the audience. Not to participate in the dialogue and the questions and the answers, but to be the audience to share with us, upon request, their ideas how we can improve relationships and help the public, and how we can expand the program. I leave this to the individual regional groups as to how they do it, but the suggestion is that we include representative members of the community, so that you have perhaps 10 to 20 different areas represented by the appropriate persons. We also hope that some day we can expand this public relations engagement with the media to members of the legislature in the various states in which our federal courts operate. It's certainly interesting for judges and journalists to deal with members of the state legislature because a state legislator must recognize the role the federal court plays, and that sometimes

there is an overlap with state courts and that case is then removed to the federal court. Particularly in the District of Columbia we deal chronically, constantly, sometimes complainingly, with Members of the United States Congress. We are in a unique position to work with the legislators who should, indeed, witness the results of their legislation on our cases and what happens to the litigants, and the sentencing guidelines, and the very matters we traverse daily in substantive work, as well to note the need to fill vacancies. Also, the judges' compensation concerns and other interests. It's very important that we understand, not just in a abstract way, what Members of Congress go through, the requirements they have as far as their constituents are concerned, their needs, their concerns, their focus, their public relations, and that they understand ours. It is important they visit our courthouse. I suggested that we have, perhaps every two months, a breakfast with select Members of Congress who are in leadership roles, who will better understand the courts if they come and just break bread with us.

MS. PORTER: And is that happening?

JUDGE GREEN: It hasn't happened yet. It's a matter that's slow in acceptance by the judiciary here; some would be very amenable to it, others are a little bit hesitant. Throughout the nation in certain areas this is done, successfully and traditionally. I have been told by one of the federal appellate judges from the Utah area that in Utah they've been doing this for years and that the two United States Senators and the Congressmen from Utah come regularly to breakfast meetings with all federal judges throughout the state. I know it's a small state, it's easier to gather people together, but this is done readily and with enthusiasm and each learns something from the other. I feel strongly that if this is done so well in Utah, it is certainly worthy to try here. I believe that if a United States Congressperson sees our courthouse, built in the days

of President Harry Truman, and dedicated by Harry Truman (we're talking well over 50 years ago), he/she will understand that while we are marbled in the interior, we are crumbling (both exterior and interior), we are cramped for space, there aren't enough courtrooms for each judge. We do "buddy" utilization of courtrooms, it is very hard logistically to arrange the matter. You can imagine that if two judges have cases that start at nine o'clock in the morning and need to get the attorneys at that time (who often are engaged in trial work elsewhere later that day), to ask one judge to wait to begin at one o'clock in the afternoon is just defying reality. Time and energy is wasted by all. But, to make Congressmen see this, to make them understand what we are doing, will highlight the matters that gravely need attention. After we have first become friends as a result of these breakfasts, understanding comes more readily. This doesn't mean that we are going to succeed in gaining all of the goals we have, but at least we succeed in knowing the other and the problems that person has, and it is at minimum an adventure in education and illumination.

MS. PORTER: The reluctance some of your colleagues feel comes from what, is it, traditional concern that judges and the legislature should be seen to be separate or is it the judges' reluctance to change?

JUDGE GREEN: I think both things are correct, and it's hard for me to isolate because it's never fully expressed, it's just, well, we're not going to get to it now. It is the Chief Judge who must facilitate movement. That hasn't happened, but it hopefully will someday. An aside, as far as the Judicial Branch Committee is concerned. You will recall that I mentioned Barefoot Sanders as the chair who appointed the subcommittee that I subsequently, and still do, lead. The next chair was David Hansen of the Eighth Circuit who led us admirably in our

pursuits. I must confess to a special matter in my life that Barefoot Sanders played, because he was in the Counsel's Office of President Lyndon Johnson, and had recognized status at the time that I was summoned to the White House to be told that I was going to become a local judge. Noting my excitement about the appointment to the local judiciary, he asked if I would like to view the Oval Office and the Rose Garden, and took me on a personal tour. Years later I encountered Judge Barefoot Sanders again, when he was a newly minted federal district judge in Texas and I was one (almost newly minted) in the District of Columbia. We were both attending a two-week program the Federal Judicial Center put on for newly indoctrinated judges. The speakers were judges who had years of service in the federal judiciary, who would lecture us on matters that could happen in the judiciary, such as how you control an unruly courtroom or one that is demonstrating or one that has been taken over by litigants and held people hostage? What do you do in this kind of a case? Many persons who become federal judges have never been judges before and it is important that they be prepared for crises that will, someday, occur. The Federal Judicial Center is unheralded, but a remarkable part of the federal judiciary, it is the training and research center for federal judges. So Barefoot Sanders and I met again there, and later he was my first chair when I was appointed to the Judicial Branch Committee.

MS. PORTER: That story reminds us that the judiciary is geographically widespread, but still quite small in numbers.

JUDGE GREEN: True.

(TAPE 13 A)

MS. PORTER: This 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 on March 13, 2001, it is now 10 past 12:00 and this is a continuation of the interview on tape 12. Over to you, Joyce.

JUDGE GREEN: One of the matters that you asked me to address, I would have done so without being requested, is one that generated a great deal of publicity in the District of Columbia. It is colloquially known as the Gender Bias Committee. Formally it was the Task Force on Gender, Race and Ethnic Bias. In 1990, then Chief Judge Patricia Wald, created a judicial Task Force to study and report to the Circuit Judicial Council on race, gender and ethnicity in the work life of this circuit and its courts. Four judges were appointed initially to the Task Force: Judges Ruth Bader Ginsburg, Clarence Thomas, Charles R. Richey, and this judge. Judge Thomas served as chair, we had one meeting over the ensuing 18 months, i.e., on Thanksgiving eve; Judge Thomas decided that there were no real issues that needed to be developed. His approach was if something comes up in the future we will decide what to do.

MS. PORTER: How did he come to be selected as the chair of the committee?

JUDGE GREEN: Chief Judge Wald selected the members of the committee and appointed him chair. I was appointed chair when Judge Thomas became Justice Thomas on the Supreme Court. I was asked to carry out the mandate that Judge Wald had established.

MS. PORTER: You took over in 1990?

JUDGE GREEN: I took over in 1991, appointed as chair by then Chief Judge Abner Mikva; the composition of the committee also changed. The then Chief Judge of the district court, John Garrett Penn, was appointed as a member of the committee by Chief Judge Mikva and Judges Ginsburg and Richey continued on the Task Force. Let me tell you the rest of

those who constituted the committee throughout the process. In 1993 Judge Ruth Bader Ginsburg was elevated to the Supreme Court and Judge Wald, as a judge of the court (no longer Chief Judge), and Circuit Judge Stephen Williams were appointed by Chief Judge Mikva to round out the group. Judge Williams resigned in 1994, Chief Judge Mikva appointed himself to the Task Force to replace Judge Williams and he joined the others: this judge, Judge Wald, Chief Judge Penn and Judge Richey. When Judge Mikva retired in 1994, becoming counsel to President Clinton, District Judge Friedman was appointed by Circuit Chief Judge Edwards. I remained as chair, Judge Wald, Chief Judge Penn, Judge Richey, and Judge Friedman and I completed the work of the Task Force. You can see that we kept losing judges to the Supreme Court (two of them), then lost another judge to the President. It was decided in early 1992 that we would establish two special committees to carry out substantive research for the Task Force. I asked certain individuals, mostly professors and some active members of the bar, to co-chair these special committees and then to recruit a number of other stellar persons to be members of those committees. Georgetown Law Center Professors Vicki C. Jackson and Susan Deller Ross, along with Susan Liss, a prominent member of the bar, were selected as the co-chairs of the Special Committee on Gender, and then, working in consultation with the co-chairs, we identified 25 members of that committee and two social science research advisors, Professors Rita Simon of the American University and Valerie Hans of the University of Delaware, to assist. That special committee met for the first time in September 1992 to develop a research agenda. In December 1992, Katia Garrett, a member of the bar, assumed the position of executive director of the Task Force. Her salary was paid by the Administrative Office of the U.S. Courts. She performed superbly and I continue to be indebted for her care and concern. In February 1993,

Professor Todd Petersen of George Washington National Law Center, Vanessa Ruiz, then Deputy Corporation Counsel (who, during her service with us, became Corporation Counsel, and then a judge of the D.C. Court of Appeals), and Vincent Cohen, Esquire, a practicing member of the bar, were co-chairs of the Special Committee on Race and Ethnicity. Nineteen committee members were selected for this special committee, and Dr. Bonita Young of Howard University served as the committee's social science research advisor. Later Vincent Cohen resigned, to be replaced by Joseph Sellers, an outstanding member of the bar, and James E. Coleman, equally outstanding, became the fourth co-chair a few months later. The Special Committee on Race and Ethnicity, while meeting later than the gender committee, did amazing catchup work to complete its report and recommendation at the same time as the Special Committee on Gender. Our Task Force produced the first federal court's report in the nation on race and ethnicity. We were the second federal court in the nation on gender, the first being in California. All of the committee members and the social science research advisors were volunteers. We numbered about 50. Assistance was provided by approximately 100 additional volunteer attorneys, students and others, and funding was obtained only for the position of the Task Force's executive director, Katia Garrett, who as the project neared conclusion, was succeeded by Virginia Sloan, who did highly commendable work in completing the project. It must be noted that this work would never have been completed successfully without the brilliance, courage, push and prod of Linda Ferren, then Circuit Executive, our administrative guru, who held the hand when the going got rough. So, essentially, we developed the research agendas throughout the process and the Task Force judges participated in the many meetings of the two committees as the scope of the work was discussed and established. The principal work relating to research, interviews, surveys,

drafting reports, and the eventual development of recommendations was inspired and stimulated by the respective co-chairs and completed largely by members of the special committees and their research advisors. The work of prior task forces was examined to decide upon areas of research. There were many reports, perhaps 25 in number, to draw from, addressing gender in the courts, because the state courts produced those reports and were far ahead of the federal courts in this examination of bias in the courts, what the perception of reality was, and whether the courts were actually biased, however inadvertently, in attitudes towards attorneys, litigants, witnesses, jurors, support staff. The research tools included surveys of attorneys and courthouse employees, interviews from the judges and court managers, informational interviews with people who worked in the federal justice system, as example, our Probation Office, our Clerk's Office, our court reporters, deputy clerks, attorney focus groups, employees, community members and probationers. In addition, we developed demographic information about such matters as court committee appointments, judicial conference invitees, Criminal Justice Act attorneys' panel and special master appointments, and payments and case assignments. In short, all the matters that permeate court operations. Statistical data was obtained from published sources. A few examples: The D.C. Circuit's annual reports, the reports of the Sentencing Commission, the Administrative Office, the jury office, district court, and, by request, from existing data bases, such as the U.S. Bureau of Prisons, the D.C. Pretrial Services. At the request of Chief Judge Mikva announced to the conference members days earlier, I presented an oral overview of the work of the Task Force's special committees to the judges of both courts and to the managers at the June 1993 annual conference of the D.C. Circuit. The research underway was outlined with future plans delineated. Several preliminary findings were also presented. Those judges who

had most strongly expressed their disdain and distance from the project did not say a word, although invited to do so. The Special Committee on Gender issued its preliminary report to the Task Force at the June 1994 Circuit Judicial Conference, the primary subject of that conference, attended by judges, lawyers, managers, academicians. At the same time the Special Committee on Race and Ethnicity presented its status report. Panelists who opposed the reports, panelists who saluted the reports, debated, with questions, comments and discussion from the audience. Not a single judge openly criticized the report, although by that time the news media was writing about the judges' dissension. Each committee submitted draft final reports with recommendations to the courts of the circuit by January 1995. Each judge, each unit head, received copies with an invitation to comment. Action was taken by the Judicial Council at its meeting on March 30, 1995. I'd like to recite the recommendations of the special committees presented to the Judicial Council and the result. While the recommendations of each special committee are noted, there is considerable overlap. Candidly, we eliminated important recommendations, acknowledging that there was no possibility that all desired ones would be accepted by majority vote of the members of the Judicial Council. Pragmatists, we moved the matters as best we could. Perhaps another day there would be hope for the other recommendations.

MS. PORTER: This is a backhanded way of saying that this Task Force's work had become controversial?

JUDGE GREEN: It had become incredibly, amazingly, horrendously, controversial. I'd like to address that after I tell you the recommendations made by each of the special committees and the result in the Circuit Judicial Council. The recommendations of the

Special Committee on Gender were addressed to the D.C. Circuit's Judicial Council (and some of these are so simplistic): the courts should take steps on their own and work with the bar to maintain and increase the fairness with which parties and witnesses are treated in court; the court should take steps on their own and work with the bar to increase the fairness with which attorneys are treated by judges and other attorneys, especially in out of court litigation settings. I digress and say one never realizes the acrimony that attorneys display towards each other, the venom that one hurls at the other when they come to court, even to talk to judges in chambers, to the point that when it happens I remind them that they are guests in chambers, I will not tolerate such acrimony, and if they cannot be civil to each other, how possibly can they fairly represent their litigants. They then cease and desist from that appalling behavior.

MS. PORTER: Can I just divert your attention one minute? In a jurisdiction like the District of Columbia, where it's really quite small, the bar is quite small, did you find people willing to talk about the behavior of your judges, for example. Was that a problem?

JUDGE GREEN: It wasn't a problem finding loquacious and candid lawyers. They would discuss, favorably or critically, the actions of judges, the actions of fellow attorneys, the actions of other participants in the justice system, but never for attribution – and that is understandable. Their very livelihoods depended on ability to not antagonize a judge. Had they been known to have lambasted a judge as a cretin, unfair, biased, sexist, stupid, how could they appear before such a judge and get an unbiased hearing? (laughter) We also recommended that the court work to increase the understanding by lawyers of opportunities for service to and in the courts and to increase the understanding among judges of the range of attorneys interested in and qualified to provide service to the court. It was thought that not enough appointments had been

given dispassionately to different members of the bar, and that assignments should be considered for not only experienced, but also less experienced members of the bar (if not leadership roles, at least roles on committees), so that they become involved in the work of the court and eventually become chairs, if merited. We asked that the court revise its equal employment opportunity plans for a discriminatory complaint process to provide expanded options for the resolution of EEO disputes at a relatively informal level, to address concerns about the need for independence and confidentiality in the complaint process. We asked that there be adoption of a formal written policy on sexual harassment in the courthouse, to say what it is, how to prevent it, and how recipients or supervisors should respond if it has occurred and is reported. We asked that the court explore ways to be more supportive of the family obligations of courthouse employees, jurors, parties, witnesses and attorneys, through part-time work and job sharing, as example, childcare services, or sensitivity in scheduling and the enhancement of family leave policies. We asked that the courthouse be physically safe and comfortable for all who use it, including the very persons I've just recited, and for judges also. We recommended that the court improve its routine information gathering, to make it easier periodically to assess the diverse participation in this court system, that the court encourage educational programs for the entire court, the judges, the employees, and that we fashion ways to assure equality and fairness to all in dealings with the participants in the court system. We suggested that the Judicial Council establish, for a limited time, an ad hoc advisory committee on implementation, to provide assistance to the courts in effectuating those recommendations of the committee so addressed. As far as the recommendations of the Special Committee on Race and Ethnicity, addressed to the Judicial Council and its courts, we asked that the courts work to increase outreach into the minority

communities of the District of Columbia by more widely distributing information about employment opportunities in all areas and levels of employment of the courthouse and work to increase access to promotional activities for all personnel by establishing and giving more systematic and timely notice of objective requirements for available positions, clearly articulating the process for application and selection. Similarly we recommended that the court, as we had recommended with gender group, revise the discrimination complaint process and equal opportunity employment plans, provide expanded options for the resolution of those disputes at the earliest opportunity and address concerns that the current process lacked the independence and confidentiality that was felt required for an effective complaint process. We suggested that the court encourage the head of each office to convene regular meetings or retreats in which the employees could ventilate and discuss the workplace tensions. We recommended that the understanding by lawyers be increased, again very similar to the gender committee, as to opportunities for service in the courts, to increase the awareness among judges of the range of the attorneys interested in and, importantly, qualified to provide service to the courts. We asked that the courts take steps on their own and work with the bar to increase the fairness with which lawyers are treated by judges and other attorneys. We recommended that the courts consider ways to increase the appointment of minority attorneys on the CJA panels of the district court and the court of appeals, and insure the accessibility of the courthouse and its processes to all those who come to the court. We asked that the court encourage providing attorneys to those civil litigants who are unable to pay for counsel by supporting the efforts of the civil pro bono panel to recruit additional volunteers, especially multi-lingual lawyers, in order to assure access to the court for non-English speaking litigants as well as, of course, English speaking litigants.

The courts should take steps on their own, we said, to work with the bar, to maintain and increase the fairness with which everyone would be treated in the court, and should establish grievance procedures for complaints by members of the public about what the public had told us they considered inappropriate treatment by the judicial branch personnel, including allegations of racial, ethnic or gender bias. The allegations of such bias were rare, it must be noted, but should never be perceived as happening. We asked that the court and its processes, by its signs, by its forms, by its services, make this courthouse accessible and understandable to the language minority of the communities served by the courts and improve routine information gathering to permit periodic assessment of that participation in the court system. We asked that the Federal Judicial Center (or whatever was deemed the appropriate body) study the results of litigation, such as employment discrimination cases that involve issues of race, ethnicity or gender affecting a significant number of racial and ethnic minorities, and that the court continue to encourage educational programs for all persons who deal within the court system, including attorneys and judges and court employees to insure fairness, and again, an ad hoc advisory committee on implementation to act as a resource for the committee and insure attention to the needs of the communities by initiating a dialogue between the members of the committees and the courts. As you can see, there was enormous overlap in conveying these recommendations, to insure fairness and to avoid any possibility or perception of bias in the courts, racial, ethnic or gender. The following statement was issued by Chief Judge Edwards on March 31, 1995, following the action by the Judicial Council on these committee recommendations. It is worthy to recite the final conclusion here, and then a brief discussion of implementation. As to those resolutions adopted by the Judicial Council for the District of Columbia Circuit, Judge Edwards said, and I'm

quoting, "On January 30, 1995, the Special Committee on Gender and the Special Committee on Race and Ethnicity, both comprised of volunteer attorneys, submitted draft final reports and recommendations to the D.C. Circuit Task Force on Gender, Race and Ethnic Bias. The reports and recommendations were the product of major efforts of over 50 practicing attorneys and academics. The Task Force project was initiated on January 14, 1990, and its purpose was to take a hard look at what, if any, effects race, ethnicity or gender had on courthouse operations. Pursuant to procedures adopted by the D.C. Circuit Judicial Council at its December 1994 meeting, the written volumes produced by the two committees were circulated to all judges and court managers in the D.C. Circuit to afford them an opportunity to submit comments on the recommendations prior to council action. Those comments along with comments received by the public were collected and submitted to the members of the council for their consideration prior to the council's meeting on March 30, 1995. Council action on the recommendations included adoption of four action items reflecting council policy, seven referral items covering matters referred by the council to the courts, their Chief Judges or unit managers, as follows: As to the action items, the Judicial Council recommended, and these were adopted, that the courts direct the Circuit Executive and unit managers to develop strategies to insure that information about job openings is available to all potential applicants. Two, the council recommended that the Chief Judge must direct the Circuit Executive and unit managers to work to increase access to promotional opportunities for all personnel by providing systematic and timely notice of job requirements and the application and selection process. Three, the court shall take appropriate action to insure that the courthouse is easily accessible to all who wish to use it, including jurors, parties, attorneys and witnesses, and the Chief Judge of the circuit shall appoint a committee to

draft a formal written policy on sexual harassment for court officials, employees, jurors, witnesses and attorneys. Referral items: The council referred to the Chief Judges the recommendation that existing EEO grievance procedures should be revised to provide for informal counseling, volunteer mediation and an independent decision maker subsidiary to the final authority of the Chief Judge. Consideration should also be given to extending grievance procedures to include non-discrimination employment complaints and inappropriate treatment of members of the public by court personnel. Two, the court should be asked to schedule or participate in meetings or retreats when feasible or desirable to alleviate workplace grievances and tensions. Three, consideration should be given by the courts to arranging, when feasible and desirable, educational programs aimed at increasing awareness of cultural diversity and its effect on relationships of court personnel and court users. Four, the court should widely distribute information about the qualifications required for, the availability of, the methods of expressing interest in court committee assignments and membership on Criminal Justice Act panels. Five, the district court should consider the recruitment of additional attorneys fluent in relevant languages for the district court's civil pro bono panel."

MS. PORTER: Those recommendations, Joyce, seem to be smaller in number than the list that came out of the Task Force itself.

JUDGE GREEN: Unquestionably they're small in number, but some of them do put together several of the individual items suggested, and as I indicated earlier there was overlap in the gender and the race and ethnicity committees. To be sure, we did not receive everything we asked for, but under the circumstances we labored as much as could be done. Those who presented the case to the council, as I did with former Chief Judge Wald (the other Task Force

judges were present), did feel at the end that we had accomplished more than we thought would happen. Since, there has been some implementation by the court following through not only on the referral and action items approved by the Judicial Council, but also on other suggestions emanating from the reports subsumed along the way for district court implementation. More importantly, those who most keenly perceived bias, now express greater satisfaction and a sense of being treated more equitably, and now are appointed to serve the court in more sizeable numbers and in broader participation by minorities (gender, race, ethnicity). Listening to my judges, observing them and knowing them so well, I have learned of the huge impact our study had which has produced such positive results. It raised consciousness like never before. So, if the Task Force did not accomplish the affirmative vote to all we recommended and would have wished to recommend, the result has gone beyond anything we could have hoped for by affirmative vote, and is so much more important.

MS. PORTER: So how did it become controversial and how did the controversy affect the findings of the Task Force?

JUDGE GREEN: It is difficult to know why this project was controversial. I can only state that some judges were so very angry, so very vocal, and vented their disassociation appallingly. Draft reports marked "confidential" (of course, not final yet) were reported in the newspapers as if final all too frequently. The judges of the Task Force and the committees' co-chairs perceived these happenings as "leaks." To illustrate: Judge A, a member of the Task Force, had opined that X, Y and Z should be included in the draft report. They were so included. Yet, the very next day Judge A circulated to all judges (including those not yet privy to the report, since it was merely a draft) his overall objection to the report and his special objection to

X, Y, and Z. A copy of his remarks appeared in the newspaper that day also. Bizarre! We could understand opposition, we could not comprehend the attitude at play. The majority of the circuit judges strongly opposed the project, totally refusing to be part of it in any way, asserting that to do otherwise would undercut their judicial independence and that our research, canvassing, analyses were flawed. It was the judges, they said, that should decide how they worked, where they worked, with whom they worked, who they appointed to special, sometimes lucrative, assignments, and this they could do, should do and would do without consideration of gender, race or ethnicity, because they knew that there was no bias in the courts and didn't need a study to tell them so, and if there was perception of bias by some, that was just perception, not scientific data. They considered the Task Force's work unworthy and directed their anger at its members, and this chair, in particular. Those disassociated circuit judges were forceful in expression, making it well known, through the media, to members of the bar and their powerful law firms, that they considered our work ludicrous and unacceptable. It must be remembered that those who served as co-chairs and as the volunteer lawyer members and the support staff in the main came from those powerful law firms; many were partners. They had much to lose if they fell into disfavor by the circuit judges. Nonetheless, each district judge on the U.S. District Court here was determined to not let this Task Force and its work be scuttled. I had gone to each saying, "Vote your conscience, of course. All I ask is if you can agree with any one or more of our recommendations, that would be wonderful. I do not ask for agreement for each recommendation. All I hope for is survival." Each came through, voting agreement as they believed, voting against a recommendation they could not accept. Not one district judge voted against all recommendations. Each time I dwell on this I relive my enormous pride to be their

colleague. This took courage. It was also known at that time that the other circuits were scrutinizing the clamor in D.C. and they pondered whether their circuit would undertake such a project. I received many calls from Chief Judges asking explanation, voicing concerns, and then, usually, deciding to go forth. Interestingly, in California, the first federal circuit to accomplish the gender report, the Chief Judge heartily encouraged the work, exhorting one and all (including his judges) to participate for the good of the courts in the circuit and for the public we all serve. Never once did the co-chairs, lawyers and Task Force judges (other than Judge A), our executive director or our Circuit Executive lessen the pursuit of justice and completion of our report. I must add this: I came from a Circuit Judicial Council meeting one day where, in mocking and scathing terms, it was conveyed to me that there was no way in which the disassociated judges (the majority of the circuit judges) would ever accept what was produced and that they would do all in their power to impede and dissolve this project. I cannot discuss exactly what occurred at this meeting since matters there are confidential and I take my oath seriously. Suffice to say that I have not forgotten a word or action there, losing respect forever for some. I convened a meeting of about 50 shortly thereafter. My lawyers and volunteers knew from the newspapers the scorn and distaste theretofore; they could see on my face that something serious had happened. I told them I knew they must have concern about their positions in the profession and their very livelihoods, that they were associates or partners in firms regularly appearing before the same judges who so openly detested our project. I told these lawyers that if any wanted to resign I would ask no questions nor try to have them remain, that I would fully understand and this would make no difference to my appreciation of their worth and the friendship developed. Take a few days to think this over, I urged. Not one, not one person accepted the invitation to

depart. All remained through the end, at substantial personal and professional sacrifice. We are blessed with a brilliant and courageous bar. I shall ever be grateful.

MS. PORTER: You mentioned that there was one judge who resigned. Was that associated with this travesty?

JUDGE GREEN: One judge, a disassociated one, no longer remained a committee member and, as earlier noted, was replaced by Chief Judge Mikva so that we could progress with this project. Those who remained were each of strong view, and there were occasions, of course, when we would heartily disagree, but always with intellect and with the intent to improve the result. Evaluating the entire canvas of our independent exploration, the results were, overall, highly favorable to this court, which could and should do better, but was not infested with bias and evil. We needed, in the main, to communicate better, to adjust and improve matters to accommodate more persons and more creative ideas, to dispel perceptions that appointment of persons and resolution of issues were not spread evenly, or fairly, among the most qualified in the community. The perception was quite strong that minorities were not always given, proportionately or fairly, prestigious appointments to committees, as trustees, or as special masters, or invitations to judicial conferences which would shine reputations and honor, business and income, to the participants. We pointed out that so often appointments were made because the judge knew the appointee and her reputation, not because of bias, and that it was important for the seeker of appointment to make known his availability, expertise and interest. It's always a two-way street; no judge wants to appoint an unknown to a valued position.

MS. PORTER: So how did they develop controversy about this?

JUDGE GREEN: The reports speak for themselves. The noted

recommendations were ones that came from the concerted determination that these were the primary ones really needed to advance the court and that even if we obtained a few only (we did far better than just a few), we knew certain things would be accomplished. One other matter before we move on, Jenny, if you please. I mention the report of the Special Committee on Gender, reported in the *Georgetown Law Journal* and the report of the Special Committee on Race and Ethnicity, reported in the *George Washington Law Review*. Ruth Bader Ginsburg, among the first four members of the Task Force, wrote the foreword to the gender report in the *Georgetown Law Journal* when a Supreme Court Justice. That foreword, as you might expect, was delivered with her usual candor and directness and searching analysis. However immodest this is for me to say, it expresses, far better than I, the tone and disservice of the swirling controversy. Quoting: "I served as a member of the Task Force from its creation under the leadership of then Chief Judge Patricia M. Wald, until my appointment to the Supreme Court. The prime mover of this undertaking throughout its long course was District Judge Joyce Hens Green. Without her intelligent leadership and caring attention the Task Force might have capitulated to critics of its mission." How gratified I was to read this. Justice Ginsburg commented about the awakening consciousness of people to the prevalence of sex-based discrimination, about the diligent and comprehensive endeavors superintended by this Task Force to reveal the large progress that we have made since the 1970s in our perception of discrimination and willingness to tackle its manifestations, and referring to our bound report of both special committees (now circulated around the country, to state courts, to state bar associations, to federal courts, to other bar associations), which she saw as "a vital contribution to pursuit of the highest aspiration of the federal judiciary to achieve equal justice under law."

She viewed these separate committee studies and reports as projects that enhanced public understanding that gender equality, racial equality, equality in ethnicity are important goals for a nation concerned with full utilization of the talent of all of its people. Self-examination enabled an institution to identify and devise means to eliminate the harmful effects of bias in any form. She observed that close attention to the existence of, importantly, unconscious prejudice can prompt and encourage those who work in the courts to listen to the voices of these people in the minority (including gender), and to accord those proposals the respect customarily accorded to ideas advanced by those in the majority. And finally, she stated that self-inspection heightens appreciation, that progress does not occur automatically, but requires a concerted effort to change habitual modes of thinking and acting.

MS. PORTER: Now this was one of the first committees, or task forces, in the federal courts. How have other courts, other jurisdictions reacted to this report and what have they done with it?

JUDGE GREEN: I am pleased to say that after this report was circulated, after the tumult subsided (which eventually it did), a number of the courts that had been in limbo, waiting to find out what resulted in the District of Columbia Circuit, began to undertake studies. Many have been accomplished, with appointments of circuit directors to help produce reports. Justice Sandra Day O' Connor addressed a Ninth Circuit Judicial Conference I attended while our project was underway. She lauded the work that circuit was doing in its gender bias study. In short, the Ninth Circuit received approval and we received disapproval for engaging upon the same matters as far as gender was concerned. We followed most of the same methodology as that of the Ninth Circuit. We had assistance of those who had actively and vigorously

participated in the Ninth Circuit's investigation and analyses, talked to the Ninth Circuit judges and our own judges to find out their views. And, at the end, we came to similar conclusions. But in D.C. we had to struggle our way through discord and clamor to reach the end result.

MS. PORTER: You had mentioned that in succeeding years the district court adopted many of the recommendations of the Task Force report. What's happened with the Task Force report, do you have any sense of that?

JUDGE GREEN: After circulation of the reports, I asked to be relieved of work because there could be conflict, potentially. I had to devote more time to my cases and the FISA Court and I was a bit exhausted by the time the reports were completed. Gratified and forever indebted, though. So another task force was appointed by the district court, at my request, and it saw to implementation of the recommendations, including the sex harassment policy; streamlined EEO procedures, again for both courts, were put into being. Thereafter, we heard nothing further about implementation. I mentioned already my deep gratitude to those people who had worked on our special committees. The following is telling of what we endured. I looked upon our volunteers as lawyers who had courageously served the court. In the past lawyers who served the court in any activity, the Grievance Committee, for example, or the Civil Reform Act Committee (incidentally, huge groups of civil reform lawyers voluntarily gave their service to civil indigents, so there's another result of one of the recommendations that had been made). We always gave a reception at the court to honor those –

(TAPE 13 B)

MS. PORTER: This is the continuation of an interview with Judge Joyce Hens Green being conducted by Jennifer Porter on March 13, 2001, and the time is 1:10 p.m.

JUDGE GREEN: We gave receptions to laud people who had done volunteer service for the court, serving some refreshments, as a way to show them how delighted we were with their services; each would get a paper certificate saluting this performance and the judges would applaud. It was a great honor for the lawyers, they loved this, to come to the court and be praised by the court. Very understandable. I asked if there would be funds to pay for a modest reception for our 50 volunteers. It was suggested to me that I wait a while, indefinitely, to do this, the court of appeals was so angry in this regard. So I decided that I would take a few thousand dollars of my money and do this right. No one could stop me from giving a reception to honor these people whose services I had chaired. And so, I didn't say the court was doing it. I told the invitees that the leadership of this group was giving the reception in their honor (although I did imply that this was the court's reception). I used the dining room in this courthouse, but in all other ways this reception was mine. I hired the caterers from our own cafeteria, invited our people, and my judicial assistant and I searched for the best place to order plaques; I wanted the very best money could buy for the seven very best co-chairs of these groups to commend them for their efforts to equal justice under the law and volunteer service so richly performed. I paid for everything. The lawyers and academics and judges will never know this was not a court reception until they read this oral history, I know they are convinced the court did this for them. God bless them. I wanted them to feel that. Then, of course, I invited each judge who had helped us with this. I did not invite the disassociated judges. I did invite those judges like Chief Judge Edwards, who, while he remained fairly neutral in this matter, did assist us in bringing this to a fair and appropriate resolution. He gave a lovely impromptu talk at the reception.

MS. PORTER: Did you have a good turnout of judges at this reception?

JUDGE GREEN: I believe all of my district court judges attended. Some of the circuit judges appeared, in fact, one or two "scorners" appeared who hadn't been invited. Either they had changed their minds or maybe they just liked a good reception. I didn't ask. But it was important to me to laud those who unselfishly did incredible work.

MS. PORTER: I feel somewhat privileged to have been here today. Perhaps I should have been here yesterday when you told me that you had handed in your resignation as a judge. So, that's about 50 years that you have been a lawyer or a judge.

JUDGE GREEN: May I set the record straight? I have not handed in my resignation, I have elected to take inactive senior status. There are many wondrous things about the federal judiciary. In 1995 I availed myself of the opportunity to take senior status, one year after becoming eligible to do so. When a federal judge has at least 15 years active service, coupled with age of no less than 65 (thereby meeting the rule of 80), the judge vests with the lifetime pension and can consider choices for the future. The judge can retire and take another position or just play; the judge can take inactive senior status and thereafter return to this court (or any in America, where assigned) for any purpose – on the bench for motions, arguments, trials, or in chambers for settlements – if the court needs the judge. Mutuality is essential, but easy to achieve. The inactive judge can return for a day, a week, a month or longer, and, if needed, a staff will be supplied (since the judge has earlier yielded chambers, courtroom and staff). The judge's other option is to take senior status (active) in which case the judge has her own caseload from prior active service, and, if she wishes, also has cases assigned at random in whatever percentage desired, the only difference being that there is no requirement to accept each

category of cases, such as criminal cases. Also, a senior judge maintains chambers, courtroom and staff, and must handle cases with disposition of at least 25 percent that of an active judge if she wants only one law clerk; to have two law clerks, she must do at least 50 percent of the work of an active judge. From 1995 through June 30, 2001, I have been a senior judge in active service, fully participating in the work of the court. For five years I did over 75 percent of the work of active judges, some years 80 percent, as well as being active in federal judicial administration and other activities which count towards the calculation of the percentage of work. This last year, anticipating that I would change status soon, I have done less work, but still far more than required. As of July 1, 2001, I shall be in senior status (inactive). I have had many requests from lawyers and my colleagues to return to be a special master on a complex case, or to settle a huge matter long pending. At present, my answer is not now, perhaps later, perhaps not, I need to step back, take a deep breath, smell the roses, examine my 50 years in the law and decide exactly what I really want to do. I am so fortunate that my health is good and I remain energetic and happy. Certainly, I shall travel, learn the intricacies of photography (black and white), write one or more children's books, unravel the puzzles of the technical world, including the computer and Palm V, babysit the younger of the ten grandchildren, dream a bit, and do whatever I want and when. I shall continue to relish, and cherish, all of life.

MS. PORTER: I'm not a purist, Joyce. It means you'll be sitting on a beach and I'll be working. In any event, here we are now looking back at 50 years of practicing law as a lawyer and as a judge. From that prospective, the prospective of those years, what makes a good judge?

JUDGE GREEN: Everyone will say, and rightfully so, that a judge has to have

wisdom. It's better yet if a judge has great intellectual powers. It's wonderful if a judge is fair in temperament, in approach, in expression. A judge must have courage. There are so many situations trial judges, in particular, encounter, where a judge's very life is in peril from those of the public who vehemently disagree with us. Look at the record where judges have been murdered in the courtroom, in the home, or attempts at murder have been made. A judge has to have courage and express the way it is in her opinions, whether oral or written, not to just ride with the waves of the time, economically, politically, emotionally. You have to do what you verily believe as an independent thinker, appointed to exercise judicial independence, but also to follow, if appropriate and if possible, precedent. A judge has to exercise responsibilities in a way and manner that will bring justice. That is our duty. That is our responsibility. That is our privilege and that is our joy if we succeed. Of course we fail on occasion. As the others, I have come to the tasks I do with my own background, much of which has been demonstrated in this oral history, with positions on matters. I do believe most of the judges (but I'll speak for myself only) try very, very hard indeed to suppress unconscious thoughts, should they exist, or to suppress conscious thoughts of druthers to decide the case this way or that way. While this may come as a surprise, I do try to decide a case on precedent but, amazingly, there is scant precedent for so many matters. Something new is to be learned daily. I would have left the court years ago (to accept one of the offers to become partner, to do mediation/settlement, for $450 hourly) had I not believed that there remained much to learn, new paths to trod, old paths to revisit, creative thoughts to absorb and possibly implement, new adventures to experience. It is wholly my decision to leave now, while I have health and desire to plow virgin areas and encounter exciting challenges, hopefully to yet accomplish the golden (shall I say green?) pastures of the good and

useful life. Inactive status affords this opportunity.

MS. PORTER: Since you are leaving, now is a good time –

JUDGE GREEN: Not for three and a half months.

MS. PORTER: Well, we want to finish the tapes. You know how we are Joyce. What advice do you have for your colleagues here or for people generally looking at the court about things that could be done better, things you'd like to see changed?

JUDGE GREEN: Not so many things to change. Things to strengthen, to resolve courageously to do right, under the law, to advance the law where appropriate and essential, to not look back, constantly revisiting or second guessing, but to do your darndest and then move forward.

MS. PORTER: Unless the court of appeals makes you –

JUDGE GREEN: Yes, unless reversal or remand interferes with smooth living, it is important to not second guess, not carry this baggage, not impede development of the law. Reach decisions in novel matters with consideration and determination to reach the goal of justice. I very much want to express the blessings that have flowed from the incredible opportunities bestowed. Save for the first at 16, I have never searched for a job or position. People have come to me, offering opportunities, many extraordinary. I know I am one of the luckiest on earth and have been blessed beyond expectation, beyond belief. I have treasured my days as Superior Court judge, as United States district judge, as judge (and presiding (Chief) Judge) of the United States Foreign Intelligence Surveillance Court. To have served the public in this community, and nationally, to have been with such terrific colleagues, to know I have worked with the very best in the most special court in the world. You see my unabashed bias.

My colleagues have each been different, and those very differences demonstrate the greatness of remarkable America and how those differences have impacted on the lives of all we serve. The judges,with whom I have served 33 years,have been appointed by different Presidents, and on the FISA Court by different Chief Justices; they are different in gender, race and ethnicity, different sizes and shapes, different ages, different in philosophies, politics, religion, sports, entertainment joys, different in experience and in wisdom. These very differences, these disparities, are the strength of our judiciary and may this ever be so. And yet, exemplifying the best, in what they do and how they do it, all have the same goal: justice. I have great rapport with my colleagues, despite these differences, perhaps because of these differences. Many of us see each other daily, in the dining room where we choose to eat together, our brief "R&R," in times of tumult and crisis cases (or lawyers or litigants) bring. We tease and twit, in good humor, we chew and digest each other and the court of appeals in particular. I have cherished, and will continue to do so always, the special fortune to have worked with the universe of these remarkable able and caring jurists, my law clerks, my extraordinary, devoted, loving judicial assistant/secretary of 19 years, Elsie Yates McClannan, the court's support staff, including, among too many to acknowledge here, my deputy clerk of 17 years, Joe Wood, and my court reporter, Gordon Slodysko, who was with me for about 12 years, until I took senior status and then, as custom dictated, was assigned to an active judge. Each of the above, is highly accomplished and successful in personal and professional life. I have had wonderful law clerks through my years of judicial service, each special to me. They are: Stephany Joy (1968-69), Patricia Gurne (1969-71), Susan Low (1971-73), Martha Bindeman (1973), Nancy Schinit (1973-75), Ann O'Regan Keary (1975-76), Anne McKinsey (1976-77), Don Hamer (1977-78), Helen Bollwerk (1978-79), Lou

Golinker (1979), Paul Bollwerk (1979-80), Joan Smiley (1979-80), Scott Michel (1980-81), Paula Dinerstein Conrad (1980-82), John Crittenden (1981-83), Susan Blondy Fine (1982-84), Kim Sievwright Mitchell (1983-85), John Reiman (1984-86), Joe Guerra (1985-87), Denise Antolini (1986-88), Joe Yenouskas (1987-89), Bob Libman (1988-90), Sprightley Ryan (198-91), Ellen Fels Berkman (1990-92), Frank Kulbaski (199- 93), Laura Clauson Ferree (1992-94), Mike Francese (1993-95), Lynn Rhinehart (1994-96), Martha Allen Godin (1995-97), Mark Yost (1996-98), Michael Carroll (1997-99), Theresa Fuentes (1998-2000), Catherine Clifton (1999-2001), John Clopper (2000- 2001). Five of my former law clerks are judges, several are professors of law, others are partners or associates in prestigious law firms, several are splendidly serving the U.S. government, some have done so in the past and are now nurturing their young children, one is also an Episcopal priest. We have been family, we have cared about each other; they have made me appear far better than I am. They have my everlasting gratitude and love.

MS. PORTER: What makes a good judge?

JUDGE GREEN: To sum the characteristics of the good judge: with a look to the past, with an understanding of today, with the promise of tomorrow, to do justice, with courage, grace, intelligence, wisdom, judgment, vision, integrity, dignity, humility, empathy, compassion, decency, promptness, fairness, sensitivity, firmness, and humor. Before the final chapter in this oral history, I have to salute you, Jenny Porter, for the excellent lawyer you are, and, more importantly, for being such a friend: caring, patient, dedicated, persevering, funny and so wise. Time and again we'd talk and talk and then say, "Let's put this on tape," and an hour later wonder "Did we tape this or did we just talk about this without taping?" It seems an eternity since we began. And you have gently infused some discipline to my rambling and insistence on

my, "Oh, well, I have many things to do today, let's do oral history another time." Thank you, thank you; I am happy you were the interviewer. I hope that the spirit of the real "Joyce Hens Green" as daughter, wife, mother, grandmother, sister, aunt, step-mother, step-grandmother, lawyer, judge, person, shines through this tome. I have waited to the end for these special reflections. It is important to now talk about my husband, Sam, our children – Jim, June and Mike – their spouses and significant other, my brother, Russ, his Clarice, and their children (Cindy and Steve), who are now, and always will be, the beginning and end of my existence. However wondrous the days of professional life, and they have been extraordinary, indeed, I have never lost sight of the purpose of my life, and the influence of those most important who constitute family. I am a judge today because of Sam, his persistence and encouragement all the way, the love and pride he showered on me as a person and on the worth of my work, his courage and integrity, his dignity and fairness and decency, his total unselfishness, his strength and sensitivity to all humanity, and, unfailing good humor. I would not, nor could not, do any of this without my husband's support. In 1980, after months of puzzling and seemingly non-threatening symptoms, they escalated to the point where Sam was hospitalized on an emergency basis. After exhaustive tests and within minutes of his release days later, he was advised he had terminal cardiomyopathy and had but three weeks to live, at maximum. There was no cure, no hope; he would die. We were stunned. Sam insisted on secrecy, and to live his life as normally as possible in the time left, to do whatever we could, though we were told there was nothing we could do. Only the immediate family was told: his three children from his first marriage, Phillip (father of two sons, and now a neurologist in Kalamazoo, Michigan), Leslie, living with her husband in Wisconsin, who died several years later, and Kathy, now married with two daughters in Potomac,

Maryland. We told his sole living sibling. Our three children, then 13 and 14, were advised only that he was quite ill, but we hoped for a speedy recovery. We embarked on second opinions. Those cardiologists confirmed the diagnosis and refused to make follow-up appointments. And so, we put on a happy face for the world. Sam worked fully and daily, we continued to be totally involved in our children's lives attending PTA's, attending every sporting event they played in, every chorus our June sang in. Our home continued as the meeting center for their friends. Every dinner (I really cannot recall any exception, although there must have been a few) we were joined by one or more of the children's chums who came for his/her second dinner. In short, with improved diet, some exercise, grit and determination, we marched on. And, miracle of miracles, he continued to improve, baffling his physicians. Six months later, the Johns Hopkins specialist pronounced that all symptoms had disappeared, demonstrated to us the x-rays of the grossly enlarged heart of six months earlier and the now clearly normal heart. There was no explanation for why Sam had been stricken with this terrible, incurable disease, and no explanation as to why he was now free of this disease. We were warned that it could reoccur. But, in every way and hopefully forever, he was normal and could participate in anything without restriction. We had three years, treasuring every day even more than before, watching our children grow strong and bright and giving and loving, proud of our efforts at work and at home. Those were incredible years. And then, coming home from a Redskins victory, he fell unconscious at the wheel of the car due to ventricular fibrillation. Those in cars behind observed the disaster and emergency help arrived to briefly resuscitate and then hasten with him, and me, to the hospital where he died. The cardiomyopathy had returned and the doctor advised that the post death-examination showed Sam had at most ten days to live. The children and I were devastated. They were each in high

school, 16, 16 and 17. They adored their father and had no idea of the diagnosis or that the illness had returned (we knew it was back, but since "we" had conquered this before, we were foolishly optimistic). I took two weeks from work, found a job for everyone on Sam's staff, kept his senior secretary for months to work with the clients, prepare for the close of the law practice, find attorneys for the clients, etc. Everything to be done for our children was done: friends and neighbors were remarkably sensitive to our crashing bewilderment and enormous loss. I came home one day to witness 20 or more youngsters, dear friends of our children, just sitting quietly, some holding hands, not a word, no music, just thinking and being there for June and Jim and Mike. Tears come to my eyes as I relate this. And so, I made them go to all activities, because their dad would have wanted this and high school experience comes but once. I went on as best as I could without life's support: the love of my life, my best friend. My friends, too, were incredible; they were there. My judicial assistant/secretary, Elsie Yates McClannan, was there always helping me through the awful years. She will be my friend forever. My brother, Russ, so caring, so wonderful, so giving, so ready to come to the rescue, steady as a rock. He and his brilliant Clarice, their bright and creative children, Cindy and Steve, lived quite near and provided, as always, stability and presence in the good times and at moments of crisis. Sam's children (I detest the word stepchildren) were there as needed and brought caring and love, particularly Phil, to the children and me in the darkest moments then and since in the better times. I will not be able to fully articulate what this closeness meant, this pulling together, at the very worst of times, and what it has meant all the times thereafter. I deeply love these people. Their love has overflowed. Their impact has been incalculable. And so, the children and I survived. June, mother of nine-year-old Mark, lives in Virginia and works for the Fairfax County

Public Schools. Mike graduated from George Mason University with a degree in the Administration of Justice; he and his wife, Mary, have three children. Jim and his wife, Beth, live in Baltimore with their two children. Jim, an assistant states attorney, is the sole liaison between his office and the federal system, and serves also as a Special Assistant U.S. Attorney. I am so proud of each. At length I have brought forth very, very personal feelings. I have shared them because if the purpose of this oral history is to discern who we are, how we came to be, what we think and why, and who shaped our philosophy, the essence of our being, and what makes us "tick," you have the answer in my case. I am a judge today, I am the person I am because of my family and the impact of each family member. I am blessed with the treasure of their existence, their ceaseless love and caring, and the nourishment of soul. Of all, I am most proud to have been daughter, wife, mother, grandmother, sister, aunt.

MS. PORTER: Thank you, Joyce. It's been fun. Now let's go and have lunch.