HONORABLE JOYCE HENS GREEN

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

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The Historical Society of the
District of Columbia Circuit

United States Courts
District of Columbia Circuit

HONORABLE JOYCE HENS GREEN

Interviews conducted by:
Jennifer M. Porter, Esquire
September 9, September 16, October 6, December 12, 1999
March 3, March 11, March 13, 2001

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NOTE

The following pages record interviews conducted on the dates indicated. The interviews were electronically recorded, and the transcription was subsequently reviewed and edited by the interviewee.

The contents hereof and all literary rights pertaining hereto are governed by, and are subject to, the Oral History Agreements included herewith.

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PREFACE

The goal of the Oral History Project of the Historical Society of the District of Columbia Circuit is to preserve the recollections of the judges who sat on the U.S. Courts of the District of Columbia Circuit, and judges' spouses, lawyers and court staff who played important roles in the history of the Circuit. The Project began in 1991. Most interviews were conducted by volunteers who are members of the Bar of the District of Columbia.

Copies of the transcripts of these and additional documents as available – some of which may have been prepared in conjunction with the oral history – are housed in the Judges' Library in the E. Barrett Prettyman United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C. Inquiries may be made of the Circuit Librarian as to whether the transcripts are available at other locations.

Such original audio tapes of the interviews as exist, as well as the original 3.5" diskettes of the transcripts (in WordPerfect format) are in the custody of the Circuit Executive of the U.S. Courts for the District of Columbia Circuit.

B

Historical Society of the District of Columbia Circuit

Interviewee Oral History Agreement

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

2. The foregoing transfer is subject to the exceptions specified in Schedule B hereto.

3. I also reserve the right to use the tapes, transcripts and diskette and their content as a resource for any book, pamphlet, article or other writing of which I am an author or co-author.

4. I authorize the Society, subject to the exceptions specified in Schedule B attached hereto, to duplicate, edit, publish, or permit the use of said tape recordings, transcripts and diskette in any manner that the Society considers appropriate, and I waive any claims I may have or acquire to any royalties from such use.

Joyce Hens Green 6/27/03
[Signature of Interviewee] Date

SWORN TO AND SUBSCRIBED before me this 27th day of June, 203.

William M. Yates
Notary Public

My Commission expires 10/1/02

ACCEPTED this 3rd day of December, 200, by Daniel M. Gribbon, President of the Historical Society of the District of Columbia Circuit.

Daniel M Gribbon
Daniel M. Gribbon

Schedule A

Tape recording(s) and transcript resulting from 7 (number)
Joyce Hens Green Jennifer Porter
interviews of _____ conducted by _____
(Interviewee) (Interviewer)
on the following dates?'

Date (Month. Day, Year)	Number of Tapes	Pages of Transcript
9/1/99	1&2A	1-35
9/16/99	2B, 3A&B	36 - 68
10/6/99	4A&B, 5A	69 - 105
12/2/99	5B, 6A&B	106 - 142
3/3/01	7A&B, 8A&B, 9A&B	143 - 208
3/11/01	10A&B, 11A&B, 12A&B	209 - 260
3/13/01	13A&B	261 - 308

The transcripts of the above-identified interviews are contained on one diskette.

1/ Identify specifically for each interview, (1) the date thereof, (2) the number of tapes being conveyed, and (3) the number of pages of the transcript of that interview.

Schedule B

Exceptions to Oral History Agreement

(Please initial only those provisions that you wish to apply, and only if you wish to limit the use of your interview.)

1. JHG The entire tape, transcript and diskette shall not be made available to anyone other than myself, ~~the interviewer, and the Society~~ without my express written permission until November 13, 2003, [identify date or event] whichever just occurs.

2. _____ The following page(s) of the transcript of the interview of me on _____ [date] _____, and the tape and diskette relating thereto, shall be closed to all users until _____ [identify date or event], except with my express written permission.

3. JHG It is agreed that the Society shall not authorize publication of the transcript or any part thereof during my lifetime without my express written permission, but that the Society may authorize scholars, researchers and others to make reasonable quotations therefrom without my written permission.

4. _____ It is agreed that the Society shall not authorize publication by others of the transcript or any part thereof, including brief quotations, during my lifetime without my express written permission.

5. _____ I retain all of my right, title, and interest in the tapes, transcripts and diskette and their content, including literary rights and copyrights, until _____ [identify date or event], at which time these rights shall vest in the Historical Society of the District of Columbia Circuit.

6. JHG In the event of my incapacity, I designate JAMES H. GREEN of 212 E. Lake Avenue, Baltimore, ~~name~~ md. 21212 (address) to make decisions related to the use of the interview of me. Upon the death or incapacity of this designee, I authorize the Society to make such decisions on my behalf.

7. _____ I impose the following conditions: [describe]

Standard Form

INTERVIEWER ORAL HISTORY AGREEMENT

Historical Society of the District of Columbia Circuit

Oral History Agreement of Jennifer M. Porter

1. Having agreed to conduct an oral history interview with Judge Joyce Hens Green for the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees and agents (hereinafter "the Society"), I, Jennifer M. Porter, do hereby grant and convey to the Society and its successors and assigns, all of my right, title, and interest in the tape recordings, transcripts and computer diskette of interviews, as described in Schedule **A** hereto, including literary rights and copyrights.

2. I authorize the Society to duplicate, edit, publish, including publication on the internet, or permit the use of said tape recordings, transcripts and diskette in any manner that the Society considers appropriate, and I waive any claims I may have or acquire to any royalties from such use.

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

Jan Porter

[Signature of Interviewer]

Date 11/16/04

SWORN *TO* AND SUBSCRIBED before me this
16 day of November ,2004.

Notary Public Rashaun Y. Clark

Rashaun Y. Clark
Notary Public District of Columbia
My Commission Expires 11/14/2007

My Commission expires

ACCEPTED this 8th day of December ,2004 by Stephen J. Pollak, President of the Historical Society of the District of Columbia Circuit.

Stephen J. Pollak

Stephen J. Pollak

Schedule A

Tape recording(s) and transcript resulting from 7 (number)
Joyce **Hens** Green **Jennifer** Porter
interviews of _____ conducted by _____
(Interviewee) (Interviewer)
on the following dates?'

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1/ Identify specifically for each interview, (1) the date thereof,. (2) the number of tapes being conveyed, and (3) the number of pages of the transcript of that interview.

ORAL HISTORY OF
HONORABLE JOYCE HENS GREEN

First Interview – September 1, 1999

This interview is being conducted on behalf of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewee is Judge Joyce Hens Green. The interviewer is Jennifer Porter. The interview is taking place in the judge's chambers at the United States Courthouse on September 1, 1999, beginning at 3:00 in the afternoon.

(TAPE 1)

MS. PORTER: Judge Green, we've been meaning to do this tape for a long time and now this is finally the day. I want to know for the record here about your childhood and your parents and your family background. Would you like to lead off with the history of your life?

JUDGE GREEN: I'll be delighted to do so, particularly since we're on the cusp of the millennium. It is way overdue that I have finally allowed this to occur. I should admit that my full name on my birth certificate is Ruth Joyce Martha Hens; now, of course, Green since my marriage. As soon as I had the opportunity, I joyously dropped Ruth and Martha, and I am now Joyce Hens Green.

You asked about my parents. My dad, James Stanley Hens, was born in Nowydwor, near Warsaw, Poland, in 1891. He had lived most of his life, since his early teens, in Switzerland, and indeed considered himself Swiss. He was educated there at college and medical school, the medical school being the University of Zurich in Switzerland, from which he graduated in 1917.

MS. PORTER: If I could just interpose here, how did your father come to be

living in Switzerland when he was born in Poland?

JUDGE GREEN: His parents, his father a Pole, who was an architect and civil engineer in Poland, and his mother, Frances, decided that of their three sons he was then the one that had the greatest hope for a career in a profession. They believed the education that he could receive in Switzerland was far superior to that being provided in Poland. As you will recall, Poland has seesawed back and forth, becoming part of Russia, then back to being Poland again. They wanted stability in this son's life, so that is exactly what happened. Do you want more about my father or shall I talk about my mother?

MS. PORTER: No, I'm still interested to know did he have other siblings who stayed behind in Poland?

JUDGE GREEN: He had two siblings who married, had their own business careers, and stayed in Poland. His brother, Michal, and his other brother, Brunik, both followed different careers. Brunik was a medical doctor and raised his family in Poland after spending a few years in London, England. Michal was a businessman. I just came across this information the other day in pursuit of the full truth of this episode we are doing now, and he was an entrepreneur in his day, dealing with advertising signs. You have to relate this back to the time that we are talking about. We are talking about the early 1920s, when they are marrying, going into business, and it was extraordinary to hear they even had signs that advertised anything in those days.

MS. PORTER: Now talk about your mother and her family.

JUDGE GREEN: Hedy Emma Bucher was born in Zurich, the second of four children. Her father, Johann Jacob Bucher, was 15 years old when he came from the farm to the

big city in Switzerland. He was totally self-made: a lawyer and banker, and ornithologist by hobby, and so recognized that people came from around the world to consult him about their birds. He also established a bank in Switzerland and participated in the rewriting of the Constitution of Switzerland. A fascinating person I've been told; I never knew him, he died long before I was born. He married my grandmother, Emma Rinderknecth. They had four children I just referenced, three sons and my mother. Do you want more detail about the sons?

MS. PORTER: Sure.

JUDGE GREEN: My mother's brothers were Karl Walter Bucher, Ernest Bucher, and Hans Bucher, and they were an educated family, a well-to-do family, who had great interests in the arts, opera, theater – a variety of things – and my mother indeed led a protected and sheltered life as the only daughter. She graduated from "finishing school," was essentially taught to be a homemaker, took courses of special interest, was an expert in anything that dealt with the home – sewing, embroidery, painting, arts. She played the accordion and, in all respects, was an absolutely beautiful person in her person and soul.

MS. PORTER: Let's go back to your father and studying medicine. Did he ever talk about why he became a doctor?

JUDGE GREEN: Oh, how he related to people. They were foremost in his life. He relished working with them, he enjoyed determining the similarities and the differences, what made them the way they are. This was at the time that Freud was first recognized worldwide. The science of psychiatry was novel. As my dad was completing medical school, certain professors encouraged him to consider working with the mind to become a neurologist/psychiatrist (neuropsychiatrist). And so he did.

MS. PORTER: So as you say, it seems like a rather bold choice of career, at least a new type of career.

JUDGE GREEN: My father was nothing if not bold. He was bold, he was courageous, he was adventurous. He was very advanced in his thinking and eager to approach new matters. He never regretted the choice. He loved being a psychiatrist. Other doctors referred to him as a natural; he had to be a psychiatrist. He was enormously helpful and successful with his patients who worshiped him and his extraordinary impact on their lives. People just had amazing rapport with him, telling him things that they had never told anyone. He, of course, encouraged this, but the fact was he would say it wasn't even that difficult to stimulate in many cases. He was so easy to talk to and relate to and, importantly, he wasn't judgmental. He and I had many discussions about what it was to be judgmental from a judge's viewpoint and a psychiatrist's viewpoint. He told our family that he tried to have his patients understand that he was not their judge, but was there to help them to live with that which they had to live with. He could change their attitude and acceptance of factors; often he could not change the factors.

MS. PORTER: So he graduated from medical school in 1917 and what happened then?

JUDGE GREEN: One of the things you had to do to graduate from medical school at that time (I don't know whether it still exists) is to write a thesis. His thesis (translated from the German by my stepson, who is a neurologist) was "Examination of the Imagination of School Children, Normal Adults, and Mentally Ill Through the Use of Shapeless Blots." That thesis was the predecessor of the famous Rorschach test. To put it delicately, my father's ink

blots were "adopted" by Rorschach, who expanded upon it. To be sure my dad's presentations were in black and white, Rorschach had some in color, but the concept that my dad had, that idea, the original idea, Rorschach took as his own and published in 1922, five years after my father's thesis was published, giving him the most minimal credit imaginable. When I asked dad why he had never done anything about this, he said, put yourself in the situation of a young psychiatrist in Switzerland versus an older, more experienced, highly renowned psychiatrist. People were not litigious in those days, unlike today. Dad never really considered doing anything, other than a mild protest. In any event, he did not believe, even to his final day, that the Rorschach test was of such substantial importance. An aid, yes, but other psychiatric tests and means he found far more useful and important.

MS. PORTER: Now he graduated from medical school and already had an interest in psychiatry. Was there any other formal education he had to have to hang out a shingle as a psychiatrist? What was the process?

JUDGE GREEN: After he graduated, in October 1917, he took a post as an assistant physician at the Medical University Clinic in Zurich. Thereafter, he practiced psychiatry and, during the violent influenza epidemic in 1918, where everyone was recruited – doctors, nurses, volunteers – to assist in this massive deadly influenza situation, through which, eventually, millions of people died worldwide. He went and attended patients daily, while continuing still with his psychiatric practice.

MS. PORTER: In this clinic?

JUDGE GREEN: In this clinic. My mother, much to the consternation of her family, insisted that she had to do something to aid the crisis. She wasn't a nurse, but

volunteered as a nurse's assistant, doing anything needed. That's how and where she met my dad.

MS. PORTER: Now obviously you're here and your father came to work here. When did all of that happen?

JUDGE GREEN: While my mother was not particularly enchanted with my father when they first met, this promptly changed when they met in Zurich a few years later. She then found in him a brilliant and ebullient spirit that enamored her completely. They adored each other from the time they started going out together. They married in Zurich in February 1922 and shortly after the marriage, about six months later, they applied for visas to come to the United States of America where my father could receive graduate training in psychiatry. He went to Columbia University. In those days (and the preferred site of education shifted back and forth) it was appropriate to get some American education to balance the European education.

MS. PORTER: Did he have some sort of scholarship or fellowship when he came, or did he just come to the United States?

JUDGE GREEN: I don't know, but he immediately matriculated at Columbia. And after several months, my parents decided that they were going to make their life in America. They had lived the early months in the Bronx with my Uncle Walter (Wally) and his wife, Tessy. Then my parents moved to Manhattan and started the path to naturalization, which occurred five years later.

MS. PORTER: And you said your mother's brother was here too? How did he come to the United States? You have other relatives who migrated as well. It wasn't just your mother and father?

JUDGE GREEN: In addition to my parents, my only relative that migrated to

the United States was that uncle.

MS. PORTER: Did you ever have any contact with the part of the family that stayed in Poland?

JUDGE GREEN: Yes. We would see them occasionally, but more at the time I was five years old and my brother was seven; we spent five months in Switzerland with my mother's family and her relatives. Then my paternal grandfather and grandmother, their sons and their sons' families paid many visits to Switzerland so we could see each other. On at least one occasion we went to Poland.

MS. PORTER: When was that? I didn't know you had been to Poland? You are a well-traveled person.

JUDGE GREEN: Well-traveled at age five. I was told that I had gone to Poland.

MS. PORTER: You don't even remember?

JUDGE GREEN: I have an independent memory of taking a train from Switzerland and, to a five-year-old it seemed a long way. That's really all I know about it. But I vividly remember meeting my paternal grandparents and their relatives, and recall their loving attention, my cousins (also very young) and wonderful cooking aromas.

MS. PORTER: Your father, when he came to the United States, went to Columbia University. What was he doing there and how long was he there? When did he start to set up his own psychiatry practice in the United States?

JUDGE GREEN: After the six months that he had intended to spend at Columbia were completed, he and mom then made the decision to stay in the United States. He

took the required examinations in order to become licensed in the State of New York and to establish a practice, and was phenomenally successful from the outset. I've been told that among other friends my parents acquired in their first few months here, they knew a great number of schoolteachers. Several became patients, demonstrating the stress of teaching, as well as other persons with other occupations. That's how practice began in the U.S.: patients satisfied with the results achieved and the comfort found in their physician make references and referrals. It developed so quickly that my dad soon had a very large office in New York, on Park Avenue, with all the amenities, and several secretaries. Our family moved a few months after I was born, in New York City, to Westchester County, Pelham Manor, where we continued the environment of a successful life. My brother and I had a governess. I recall we had a chauffeur and a car that had a window that would close and separate the chauffeur from the passengers to afford privacy. One of the delights as a child with my short legs was sliding down in my chair at the dining room table in order to press that button for the butler to come. I tell you all this for a reason, because we had this luxury for a while and then we had none.

MS. PORTER: Before we go on to having none of the above, I've allowed you to escape without telling me when you and your brother were born.

JUDGE GREEN: (laughter) I hope you can hear my laughter. My brother was born first, August 20, 1926, and I was born two years and three months later, on November 13, 1928. Within weeks of my birth, my parents became naturalized citizens.

MS. PORTER: Okay, and now you are living in Westchester County where you had the chauffeur and the butler and all those other things.

JUDGE GREEN: Right. And I mentioned that because part of what develops

you are circumstances along the way, often beyond your control. The Great Depression seized the country. A huge amount of stock had been purchased, almost all of it on margin. The market collapsed; my dad, eternally optimistic, thought this really can't continue and insisted we live the same lifestyle until, over time, all material things were lost. We had to sell the house. All the home personnel could no longer be paid, and we moved from Pelham to New York City. My father's large office was divided into two parts. One part became our residence, the other part continued as the office. But dad still had several secretaries and expensive furnishings and equipment. This dug a deeper and deeper hole of economic distress from which there had to be some dramatic change.

MS. PORTER: How long did you actually live in Westchester County?

JUDGE GREEN: Approximately six years. I was around six when we came to New York City, where I first started school.

MS. PORTER: So it's during the Depression, and your father had bought all this stock on a margin. Did his practice slow? I assume people needed psychiatrists just as badly, or more so, during the Depression.

JUDGE GREEN: They needed psychiatrists just as badly, of course, although many could not pay. Pay or not, none were turned away. The fact is, while the practice had patients there all the time (filled waiting rooms), the income was totally insufficient to maintain even a retrenched lifestyle. I should mention, though, that as a child I never realized there was a difference in our financial status until my adolescence, when I could review the years from a more mature view. We had so much stability in the family. We had so much love, so much protection, and our parents really hid troubles from us, wanting us to have a happy, normal

childhood. My brother and I have discussed this many times. We were completely unaware of the distress and hard times my mother and father had at that time. We certainly had enough to live on and eat, but all the extras we didn't really need them as children. We remember this period as a good life.

MS. PORTER: So you actually started school in New York City?

JUDGE GREEN: Yes. I never went to kindergarten and I never went to first grade. I took an examination and went directly to second grade.

MS. PORTER: This is an examination to go directly to second grade?

JUDGE GREEN: Exactly.

MS. PORTER: Was this a special exam for you or did everybody do the same?

JUDGE GREEN: No, this was a special exam to see if I could skip the first two grades because, self-taught, I had read since I was three years of age, and because I could write, not all self-taught. It was felt that I could go into a more advanced class and so it was. I'd like to mention a couple of things because we never really know what forms you as a person later on, but some things are so deep in my memory from that age that probably they did have something to do with the person I later became. My first adventure in school was for one day at a school that was the elementary school part of Hunter College. I recall the teacher asking if anyone could write. I was a shy child, but raised my hand, went to the front of the classroom, and with my left hand, printed a number of things on the blackboard. She mocked this in front of the entire class, laughed and berated me because I was left handed (in those days some thought it important to force people to change their native inclination, which my dad wouldn't allow), and the teacher

also complained that I did not write cursive (I didn't know what cursive was), I had printed the words. At the end of my day my father encountered me, spirit shaken, tearful. I relive those emotions every time I think about that day. Dad promptly removed me from the school, telling the principal that no child should be in a place where a teacher would do this to a child's confidence. I then went into public school, PS 6, where I was given the advanced placement examination by that principal, Ms. Emily Nosworthy; I was pronounced appropriate for the second grade. Since I had never had the opportunity to associate with other children in school, and had just had a searing experience at Hunter, I was lonely and shy and spent most of my first weeks sobbing away until they placed me in the third grade with my brother. While he wasn't happy to have this pesky young sister sitting next to him, I promptly found my social abilities there.

MS. PORTER: Does this mean that you skipped the second grade as well?

JUDGE GREEN: No, no, no. They wouldn't go that far. After seeing me quieted down for whatever it took, days or a couple of weeks, I was put back with my second grade class and then readily adjusted. But that whole situation was traumatic. The indignity that the first teacher foisted on me, the protections and love and security that my family gave by rescuing me immediately from that, the confidence I got by being put into a higher grade, the discouragement I felt because I wasn't socially ready for it. You learn many things from these striking experiences at age six.

MS. PORTER: How does Russ feel about it all today?

JUDGE GREEN: He puts up with a lot from me, even today. He is the most wonderful, loving, protective brother, and I have to ask why after what I put him through for

years. Anything he did, I tried to copy. "Me, too!" He is an electronics engineer and more about him later.

MS. PORTER: What else do you remember about PS 6?

JUDGE GREEN: I loved school. I enjoyed everything but math and gym. Those were my two least favorite subjects. Math I could tolerate and, after Russ, a genius with math and science, patiently explained how to do it, I applied myself and could do it well. Gym I found an absolute horror, and similarly so in high school and college. I have absolutely no athletic ability. When they coined the phrase "couch potato" they were thinking of me. To do archery and basketball, and to emerge in those blue serge, two-piece, billowing gym suits that had absolutely no grace, everyone alike, and observing others with skills I did not have, I wanted to be anywhere but in gym. Today I am the best spectator at sports, which I do enjoy watching, especially the beloved Redskins.

MS. PORTER I can vouch for that.

JUDGE GREEN: (laughter) I love to read. As a child I would go to the library daily and literally take out four books. I can't promise you that I read every delicious page, but I did read most of them and then I would return the books the next day. I rapidly swallowed all the books in the children's room, so my mother gave me her adult card and said, "Go for it." I am confident there were many, many books beyond my comprehension, actually I know so, because I took out reading material I now recognize as a bit much for a child as, for example, Joyce's "Ulysses!" I was devoted to reading and continue to be.

MS. PORTER: Are there people that you remember from that time?

JUDGE GREEN: I remember a number of the teachers, not by name, but by

personality, who were caring and tender and inspired in me the joy of learning. There was never any doubt that there would be many more years of schooling for me. It was a fabulous experience. It was a fabulous school. You know, in those days public schools were remarkable, and you received every bit as good an education as you could from the most endowed private school. Sadly, it's a different story today.

MS. PORTER: How many grades were there at PS 6?

JUDGE GREEN: Kindergarten and six grades. Sixth grade was the last grade; then you went to a junior high school.

MS. PORTER: You said you remembered some of your teachers – how about classmates? Do you remember any of the kids you used to play with or were in your class?

JUDGE GREEN: I do. There were not very many children in the classes, perhaps 20 in a class. Much smaller groups than today. Both boys and girls. I remember them very favorably. I had many friends and two special ones. One was a girl about my age named Marian Anderson, who was the only black in our class and a great pal. Everyone wanted to sit next to her.

MS. PORTER: Did she sing?

JUDGE GREEN: No, Marian didn't sing, and as far as I know she wasn't related to that Marian Anderson. I just remember her as being a wonderful person whom I cared for a good bit. And then another one, Daisy Lundblad, the daughter of the janitor in our apartment building, who became my best friend. Even today we share Christmas cards. She now lives in New Jersey, is a retired schoolteacher, wife, mother, grandmother. These were my best chums going through elementary school. I was a very good student; academics were easy for me.

MS. PORTER: And there was only one black in your class?

JUDGE GREEN: Just one.

MS. PORTER: How about in the school? Do you have any recall of that?

JUDGE GREEN: I don't. I didn't even know what "black" was. I recall going home and asking my parents why Marian's skin color was different from ours. My parents asked if it made any difference to me. I said of course not, and they said well, that's how it is, some people you like specially and some you do not. It's up to you to decide who will be your friends. It was a very simple response that a six-year-old could accept.

MS. PORTER: We touched on Russ very briefly. He had to put up with the mortification of having his younger sister sitting next to him in grade three. Tell me about Russ and his life at PS 6, with a remarkable sister like you.

JUDGE GREEN: (laughter) He was very studious, an excellent student, far more creative than I am. He always loved to design and invent all types of contraptions, and to read. Science was his forte, still is. He relished reptiles and animals of every size and shape. Our family was deluged with salamanders, guinea pigs, and ducks that people gave us for Easter, which, as you can imagine, wasn't easy in an apartment in New York City. There were kittens I would smuggle in from the beach where we spent every summer for many years. We also had dogs. We had a baby alligator, if you can believe it, that some "friend" in Florida gave us once, which lounged in our bathtub and had to be taken in and out several times a day so we could bathe.

MS. PORTER: I must admit, Joyce, you seem too fastidious to have ducks and alligators.

JUDGE GREEN: They were my brother's until they escaped, then there were moments of horror, but you asked me to explain him to you. He was all boy and just a really good guy.

MS. PORTER: Now there came a time when you left PS 6. What happened after that? Where was your next stop?

JUDGE GREEN: The next school was Joan of Arc, a junior high school. I have a fleeting memory of that experience. It was just very quick. It was for less than a year, easy, but not memorable in any way. We moved then from New York to Maryland.

MS. PORTER: Do you recall when that happened?

JUDGE GREEN: 1941. Earlier that year, as part of this continuing retrenching still resulting from the Depression, still with the need to pay back all of the huge indebtedness, at this point my dad finally acknowledged there had to be a change in lifestyle. He took a job, in addition to his private practice. He began private practice in Maryland and he was also a staff psychiatrist at Spring Grove State Hospital in Catonsville, Maryland. We lived on the premises next to the criminal division which, when I was appointed a judge, took some explanation to the F.B.I. Even more so, when I was appointed to the FISA Court! Those were wonderful years, growing years. The medical families socialized together very well and this was where I learned, if you can believe it, how to play a mean hand of poker at the age of 12, and have my first "date" with the son of another doctor there (Nedick's Orange Juice Bar for dinner and a movie).

MS. PORTER: Well it's not athletic, so I believe you could do that very well.

JUDGE GREEN: (laughter) I can still play poker. Maybe not as sharply as I could in those days; not enough opportunity to practice in later times. My family reestablished

our lives in Maryland, and then, because there was a far better high school just a few miles away, in Baltimore County, as was Catonsville, we moved to the Parkville area of Baltimore County, and I attended Towson High School, where I graduated. So my experiences in high school overall, both in Catonsville and particularly in Towson, were impressive.

MS. PORTER: Tell me some more about what you remember about life in high school back in those days.

JUDGE GREEN: Life in high school I found most enjoyable. I was in the school orchestra, played the violin, and to this day, every time I hear "Pomp and Circumstance" it takes me immediately back to those days that I squeaked with my violin for four years at each and every graduation ceremony and numerous concerts. But I really enjoyed doing that. I love music and this was an outlet in that regard.

MS. PORTER: Just help me get oriented as to what we're talking about. What years?

JUDGE GREEN: Let me think if I can get this straight. Roughly the end of 1943, something like that. I was in the middle of my second year when I started at Towson and I graduated in '45, so you'll have to do the mathematics on that one. And I was also, in my senior year, the editor-in-chief of the yearbook. It is certainly not the glossy kind of yearbook that you see young people producing today, but we were very proud of our result. This adolescent period saw me particularly shy: 13, 14, 15, and 16 were difficult growing years. I had many friends, but due to the shyness, I didn't have the full kind of social life I wanted in high school. I was always prepared when I'd be called upon to stand up and recite in class, but, nonetheless, I would blush and gulp and find it difficult to express myself in front of everyone. Finally, in my senior year in

high school, as I was looking forward to college, the time came when I decided that for the rest of my life I was going to carry me with me (including shyness) unless I made the change. And so I forced myself to meet people, I forced myself to laugh uproariously at jokes that I didn't think were funny, even feeling the stretch marks on my face when I came home at the end of a day. But, remarkably, after a few weeks of this, I discovered that the jokes were really funny, I enjoyed the people who welcomed me into the circle and I absolutely glowed in that regard. While I still have minor shyness on occasion, by and large that has been conquered; I'm very proud I met this challenge myself. As a psychiatrist's daughter, I did not go to my dad and say help me here. I knew I was the one to conquer the problem.

MS. PORTER: Why do you think you were shy?

JUDGE GREEN: I have no idea. I had always received a lot of praise from family and friends. I had succeeded in some things at a very early age. I had many young friends, so I have no idea why.

MS. PORTER: Certainly it seems an unusual characteristic for a judge, but –

JUDGE GREEN: It's unusual that I've chosen the path that I have in many respects: my private practice of law, the need to be a litigator, the other matters that have brought me relentlessly into public life. As indicated, I still have aspects of that shyness that well up on occasion, but perhaps it was the challenge of having to conquer this that put me on the path that I took. I've often wondered about it.

MS. PORTER: Well then, tell me what subjects you studied in high school.

JUDGE GREEN: The normal subjects that everybody studies: English, social studies, history/geography, language, mathematics, science, arts, hygiene. Males and females

were also taught cooking.

MS. PORTER: That sounds progressive.

JUDGE GREEN: Wood and workshop was for the boys only, I have to say. Those were the customary classes. There was typing, but reserved for those students who were going to live a life in the commercial world typing and clerking and doing that kind of activity. While I knew I would have a different working life, I took typing as an elective, hoping that someday it might come in handy, and indeed it did, because I had a number of jobs later on that required typing.

MS. PORTER: Which subjects did you particularly like? Or did you like them all?

JUDGE GREEN: I liked most of them. I liked history; I liked the political sciences; I liked the languages; I liked anything with English, poetry; I liked biology, chemistry slightly less, physics not at all, gym, absolutely not, but we've discussed that before. I loved French. I was particularly proficient in that language at the time and went directly to the second year of French, because my mother, who had lived in Paris for a year, taught me one summer how to write and speak French. I was quite fluent for a time, but regrettably, haven't maintained that comfort level.

MS. PORTER: When you talk about physics and chemistry, in classes did you have electives or did everybody take everything?

JUDGE GREEN: Everybody took everything to the best of my memory, except for typing. There were a few other courses, not recalled now.

MS. PORTER: So you had girls as well as boys doing these heavy science

subjects.

JUDGE GREEN: Yes. Lots of laboratories. Excellent public schools, really wondrous schools. Now, when I think of the demise of the public school systems, particularly in large cities like Washington and Baltimore (with which I am more familiar because my daughter-in-law is a high school teacher), it's just astonishing and sad.

MS. PORTER: At Towson were there any black students?

JUDGE GREEN: I do not think so. Fifty-five years later I do remember some persons of color from those days, but not at school, and only a few in the community. This was long before profound civil rights legislation and *Brown v. Board of Education*.

MS. PORTER: Now I'm going to switch around on you a little bit. We've talked about when you were in high school and basically that's during the years of World War II, but we haven't really talked about whether there were any discussions of that in school or what you remember about being alive at that particular time in U.S. history.

JUDGE GREEN: My entire high school years spanned the time when our country entered into the war, December 1941, and the ending of the war in Europe in May 1945, and with Japan in August 1945. Those were the years that our country went through an extraordinary time; patriotism was reflected in everything, in the newsreels you would see at the movies, in the rationing, in the attitude of the people to do what had to be done, with dignity, perseverance, uncomplaining, and with a determination to win this war and bring home safely our service members. You would have butter, fats, gasoline, meats, dairy products, eggs, all rationed. You would receive the little ration books (I came across one the other day) and would tear out a coupon every time one of those rationed items was purchased. Purchase of such items could not

be more frequent than the specific regulations allowed. People accepted this without question, as essential to the war effort. We would listen to Gabriel Heatter announce the news, and Edward R. Murrow broadcast from London the plight of the world, as the bombs rained down. The radio was our anchor in all of this (there was no television). Patriotism was strong: as example, when Kate Smith sang "God Bless America" on the radio, I would stand up to salute our country. My brother went into the service, so that had a dramatic effect on our family.

MS. PORTER: When did he go into the service?

JUDGE GREEN: He enlisted in the Navy when he was just a few weeks shy of his 18th birthday in order that he could get into the emerging field of electronics. He served there for over two years, and because of his extraordinary ability in engineering and the new electronics, he was at the forefront as our country confronted with sonar and radar guided missiles – those scientific matters we take for granted today. He couldn't discuss any details because his work was highly classified. At 19 years of age he was a naval instructor, teaching people often twice his age. The Navy kept Russ in the territorial United States because of his usefulness. Honorably discharged, he entered the University of Maryland.

But, back to our time of the war, this was the moment when young people, such as I, would write letters to the servicemen overseas, people we had never met; I can imagine how enthralled they must have been to have received a communication from a 13-year-old or 14-year-old. But they did write back, so hungry they were for news from home. And then my mother, so gentle and such a homemaker, who had never worked for pay, decided she could no longer sit at home when our country had a tremendous need of civilian services. She worked for about two years in a factory which made small parts for radios to be used on the battlefield for

servicepersons to communicate with each other. Classified work, that's all I know, except I have a strong memory of her coming home at the end of each day for weeks after she started working, with her palms bleeding from the precise and detailed work that she was doing. But, she was absolutely determined, just as she was in the flu epidemic in 1918, that she was going to do her part, and then, when she felt she had done sufficiently, she came home to be a total homemaker again, wife and mother. Gentle as she was, she had that incredibly tough fiber, and when something had to be done, she would see that it was. Never complained. I cannot recall my mother ever complaining about anything, even when she disagreed with situations or was devastated by her final illness years later. A truly remarkable woman. This selflessness left an enormous impression, telling me, through deeds, that when you encounter a challenge you do what you must to meet that moment in life.

MS. PORTER: Do you have any recollection now of how the ongoing war affected the boys that were in school then? They were thinking about careers, thinking about going into the service?

JUDGE GREEN: Unlike Vietnam, and Korea, to a lesser degree, it was considered an honor and privilege during World War II to go into the service. They would line up and, if rejected, would return again and again for further evaluation. Nobody considered deferring. Because my brother was so underweight, at first the Navy was not going to accept him. He said he would gain weight and persisted. He didn't get very many pounds on, but his tenacity saved the day and the Navy gained tremendously. It was unquestioned that if you were of age you would go to service unless there was something extraordinary that prevented you from doing so. And you knew that you might not survive. This was a very dangerous war, so far away from our

shores, but everyone rallied. I've never seen this country as unified as it was at that time and that, too, occurring during pivotal years, left an enormous impression.

MS. PORTER: Now it's 1945 and you've graduated from high school. Obviously for a young woman in that particular time and place, having a career, even going to college, is not something everybody did. What do you remember about when you started thinking about having a career?

JUDGE GREEN: I have always known that I was going to have a career. When I was very young I thought I was going to write the great American novel. I loved to write and would constantly be slipping notes under my parents' pillows, usually complaining about what my brother had done or writing little snippets of poetry sharing thoughts. But rapidly on, perhaps 11 or 12 years of age, I determined that I wanted to be a doctor, a psychiatrist like my dad, whom I adored, and then, after accomplishing that I wanted to follow with marriage and motherhood, like my mother, whom I also adored. In short, I really wanted for my life the best of what I saw in them. There was never any question in my mind that I'd go on to college, then go on to medical school, that I would have a family. I would do all these things. My parents heartily encouraged all.

MS. PORTER: How many women went to college then?

JUDGE GREEN: Not many. It certainly wasn't customary, but I had very forward-looking parents who, from the earliest of my life, discussed as a matter of course that my brother and I were going to have fine educations. For me, they hoped it would be a career in medicine, but, if not medicine, then another profession. Again, unlike these days, there were no entrance examinations, no SAT. I had excellent grades and many extracurricular activities. I

graduated third in my class at Towson High School of several hundred graduates, so I would have had no problem getting in any college. But I never applied to any but my local college, the University of Maryland. I was 16 years of age and I think I recognized that I was a bit young to be traveling, but I didn't focus on that. I knew I was immature and there was simply never a longing to go somewhere else.

MS. PORTER: Was it common then for kids to go away to college or was it more common for kids to go to college closer to home?

JUDGE GREEN: It was the latter. My first two years I did live on the campus of college and then during my second two years I was what was called a "day dodger," meaning that you commuted. But, let me digress. During the summer between high school and college I had my first 40 hour a week job. Up until then I had done some babysitting for the high school faculty and neighbors. I had operated a switchboard, and in those days you would plug into the switchboard. Of course, I unplugged people more frequently than I plugged them in. I had my first full-time job the summer before I went to college just after my high school graduation. The company, Butler Brothers, in Baltimore, was a merchandising house, something similar to Sears Roebuck and Montgomery Ward, and the work that we did was piecework. One hundred women, the proverbial 100 women sitting in a room, each at her typewriter (here's where typing came in handy) and hitting a steel blade, which was the tab on the typewriter, so it would deeply crease the hands; and there was a small meter in back of the typewriter that noted the starting and ending point daily to reflect productivity. There was but one man. His full duties were to walk around the room ceaselessly, loading each person with paperwork when it began to look as if the employee was going to run out of work. I had a supervisor who was an absolute tyrant, who,

when I recklessly told her one month after I started, and two months before I was to complete, that I was going to be leaving at the end of the summer, refused to talk to me until my last day of work. I learned for the first time there was such a thing as a coffee break, both morning and afternoon for 10 or 15 minutes. I was sent out to stand in line to get the cigarettes (another item that was rationed) for the women who smoked, and after a while I thought I should do this for myself. So, I bought my first pack of cigarettes, red tipped Marlboros, went home and asked my mother if she would teach me how to smoke. Since she never had smoked, the teaching (and learning) became tortured, but she preferred that I tell her about it than sneak it. And then I, too, smoked, but, in all seriousness, I did not inhale for the first few months. I know it's a joke today, but anyhow, I benefitted life-long lessons which I share about that summer job. That summer I earned a total of $219.08, from which $22.10 was withheld for federal income taxes. I learned that the 99 other women were going to have to support themselves and their families for the rest of their lives. I was going to escape to college at the end of the summer and so my life was, even then, recognized as tremendously better. I learned that these wonderful women were remarkable and they took good care of me because I was the youngest there; they could not have been more caring. They saved their hard-earned money to buy this girl a pink angora sweater as a going-away gift, which shed on everything but was worn and treasured for years. I learned that you have to leave people with dignity and hope, something I have tried to teach my children and all my law clerks and something I've tried to put into effect as I pass through life. There was a day when I, not challenged by this boring work, decided there had to be a more stimulating way to do it; I was going to be the fastest in the room just one time. I worked breathlessly and as fast as I could. I got down to the last piece of paper on my desk as I glimpsed the man with his load of papers. I

typed faster and faster, but I didn't make it. I was still on the last two lines on that last piece of paper when he piled perhaps a hundred pieces of paper on top of it. At that point I didn't care if I did anymore or not. It took away all hope. And these are the things that you learn and carry with you in life. I have thought of that innumerable times. A great lesson. People need encouragement, need to be left with dignity, need to have hope, however tiny.

MS. PORTER: And so, you got your pink angora sweater and you went off to college. What did you decide to study at college?

JUDGE GREEN: Pre-med. Pre-med was a three-year course that combined all of the general courses one takes in a university and, in addition, has many numerous specialized courses, including laboratories, zoology, hematology, invertebrate anatomy, vertebrate anatomy, inorganic chemistry, organic chemistry, languages, scientific German, physics, calculus, intended to lead the way to go to medical school some day. So that was three years of your four in college, and in your fourth year electives were available and other matters to make college a bit more pleasurable. My family was elated that I was going into medicine. My brother had decided to be an engineer as I noted earlier. But after my first semester, even during my first semester in college, there I was at 16 looking at least at 12 more years of education to become the psychiatrist I wanted to be; it seemed forever, it was forever. And working on cats and on inanimate objects in laboratories did not thrill me. I announced to my family that I did not want to become a doctor since I could not work with humans for years to come. We struck a bargain – a compromise, the way our family often resolved impending disasters. If I would finish the three years pre-med and all essential courses, should I still want to give up a career in medicine, then my parents would support and encourage whatever I chose and I would not be hassled further about my decision.

Alternatively, if I decided to become a doctor, I would have all requisite courses to apply to med school. This was a win win and I agreed, but never wavered, never applied to medical school and took double the normal amount of credits in my senior year to graduate with a major in psychology, a minor in English, in addition to the three years pre-med.

(TAPE 2 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 September 1, 1999, in the judge's chambers. This is a continuation of the interview on tape one. Joyce, you were talking about going off to college and studying pre-med and the deal that you made with your parents. One thing that interests me, and hopefully it will interest other people – not many women were doing this. Talk about the other women who were in college with you. Were there others?

JUDGE GREEN: Oh, yes. There were a number of women who had come from high school with me and, of course, from other high schools around the country. Certainly women were not in abundance in the school, except for the first half year. The war having ended in August 1945, the small college population of 3,500 gained 5,000 people six months later, swelling its resources so much that Quonset huts and makeshift housing accommodations were needed. Some of the matriculating veterans had families, not only wives, but also children; they were much more mature than we who came directly from high school. During the succeeding years they came by the thousands, so that the 3,500 population college, to the best of my memory, was something like 15,000 by the time I graduated. An enormous change in the dynamics of the school: the faculty of the school, the instruction you received, the seriousness with which the

veterans tackled the education, the usual disdain for fraternities and sororities, and the pranks that accompanied this society. It was an extraordinary time to go to college, from 1945 to 1949, when I received my B.A. But, to answer your question more specifically, there were a number of women who went to college. Most went in the teaching profession, some went into the home economics area, only a few intended to continue to graduate professional schools. Of my particular class that graduated from Towson High, I was the only female who sought to be a doctor.

MS. PORTER: You were so much younger than the average.

JUDGE GREEN: Yes.

MS. PORTER: And now you've got this older population coming in and you are young even for college – how did that affect the way you fitted in at school and the way you felt about college? You were 16.

JUDGE GREEN: Interestingly, it was, how shall I put it? Very invigorating. I enjoyed it, I thoroughly enjoyed it. It was nice being the young one and yet being able to accomplish many of the same things others did. I have to say, yes, when you were dealing with veterans who are six years older than you or ten years older than you. You are asked for a date to go to a dance. In those days you had the big dance bands, like Harry James. These dances were occasions you eagerly looked forward to all year. You wear formal ball gowns and it was expected that your date would bring a corsage. These were the big social events in college. Then some unwary individual, whose invitation I had accepted to the dance and who had not realized my youth, would ask, "How old are you?" When I said 16, we would stop right in the middle of the dance and have a little discussion. I found this very amusing. Actually, my dates bravely

accommodated themselves to the situation. At the same time, because I was a pre-med student, I had laboratories to go to at inopportune moments, so I would say, for example, at a dance, "Excuse me, I have to go to the laboratory and turn over my slide." It is not enchanting to come back to the dance reeking of formaldehyde, as I can remember doing, particularly when you've put on your best perfume to go with your ball gown. But I took those things in stride. Wonderful suitors also took them in stride. I was maturing rapidly. The vast majority of my friends were kind, accepting and really sensitive to the fact that I was younger. I was treated very well indeed. It certainly could have been otherwise. I thought then how lucky I was; I know now how blessed I was looking back on those tumultuous times.

MS. PORTER: How did the professors deal with women in their classes? Pre-med is a fairly untraditional program. There wouldn't have been many young women there, particularly not as young as you.

JUDGE GREEN: I was usually the only woman in the class of any age and just accepted that I would be the only one. I do not have a memory of being "picked on" in college, or discriminated against as we would say in modern times.

MS. PORTER: Picked on is what I had in mind.

JUDGE GREEN: Picked on. All right. I don't remember being picked on, but in college we also had much larger classes. In many of our courses we had classes of 300, some were much smaller, about 30. The laboratories were smaller, yet I still remember chemistry was a class of 300 in an amphitheater. Everybody was treated like everybody else, as best as I can recall, but what I do have a striking memory of is the scholarship and the effort put forth by the returning veterans, utilizing the G.I. Bill of Rights, compelled to be the best they could be as fast

as they could be, to learn and then to go out and earn. They had lost these years and they were reclaiming them in the finest way they could. It inspired you to do better, too, it really did. I think it made a big deal of difference in my approach and in my gaining maturity and learning about the ways of the real world.

MS. PORTER: You mentioned before that you lived on campus for two years.

JUDGE GREEN: I did. It was called Anne Arundel Hall and C Hall. Two different residence establishments for women; they had others for men; I commuted my last two years.

MS. PORTER: And what do you remember about the first two years there? Like the communal life in a college.

JUDGE GREEN: Lots of fun. I became more of a social butterfly than perhaps I should have been at that time, but it was my growth period. All the things that I had missed in a social sense in high school, as far as dating and going to dances, rapidly advanced when I got to college. I had a great time yet kept up my grades, continued involvement in extracurricular activities, such as writing for the school newspaper, the *Diamondback*, and engaged in many other matters, despite the extraordinary length of my class/lab hours as contrasted with the average college student. With those laboratories and the multiple science courses, I was always going to class while others were lounging under the trees or calling someone for bridge. It's my excuse for not being able to play bridge today – that I never had the time to learn. Of course, decades have passed, excuses run thin.

MS. PORTER: Yes, but you're good at poker.

JUDGE GREEN: That's true.

MS. PORTER: Tell me something about – you lived two years on campus and then there were two years off campus. Where did you live?

JUDGE GREEN: At home. And commuted from home daily and (laughter) in a wreck of an old Hupmobile. People don't even know it, so I'll spell it for you, h-u-p-m-o-b-i-l-e.

MS. PORTER: Is this a real car or is this your nickname for it?

JUDGE GREEN: A real car. It clanged and chortled along. My brother drove it, and there was the pesky sister again that he had to drive to class, as he drove himself to class, because, after my brother finished his tour in the Navy, he came to the University of Maryland, ending up two years behind me, even though he's two years older, because he had to replace the years lost while in the Navy. We took different courses, but he was very helpful at dramatic moments, such as the night before a huge examination in organic chemistry when I called for help. He has always helped me along the way.

MS. PORTER: What do you recall of the extracurricular activities that you were involved with in college? What sort of things were they?

JUDGE GREEN: In addition to working on the newspaper, I was in a sociology club that dealt also with political affairs, I belonged to some language clubs, keeping up my French, and also, because I was required to study scientific German. I joined the German Club. I continued to play my violin, but soon thereafter gave it up recognizing that I was not a virtuoso, nor would I ever be. I have no regrets about that. I also was enamored of fun times and became the sweetheart of a fraternity. I was a chum of the head of the fraternity, that might have had something to do with me being eventually named the sweetheart of the fraternity and – well, you've asked things that shaped me along the way and that's why I'm going to put this oral history

in embargo for a while (laughter), perhaps a long while.

MS. PORTER: What did you have to do – I'm almost hesitant to ask, but what sort of things were entailed in being the sweetheart of a fraternity?

JUDGE GREEN: I attended their functions and dances. I helped them when they had a float, for example, that went around the entire football field on the occasion of a football game and in those days Maryland's football team was ranked the number one college team in the United States. Bear Bryant, the coach, left Maryland football to go to Alabama. It really was an extraordinary time. I sat on the float as they tooled me around the field, at intermission, wearing a huge thing around my neck in the shape of the emblem of the fraternity that was signed by all the fraternity brothers on the back. What did I have to do? I had to be a pleasant person, that's all.

MS. PORTER: Well, that sounds easy for you, Joyce.

JUDGE GREEN: People had a great deal of enthusiasm at this time and encouragement and hope for the future. Those miserable war years were behind us and the future was ahead and people were excited about it. There was a vibrancy out there.

MS. PORTER: Well, I think it has to be said about you, Joyce, that when people talk about you they describe you as a liberal judge. Were you involved in political activity at that time? Were you interested in politics? If you were thinking back on your early life, where do you see the origins of this liberal streak?

JUDGE GREEN: It clearly comes from my parents, who daily demonstrated by word and action and unbiased attitude. It is one of the reasons that I've mentioned how rich we were once and how poor we became. It is important to know that I viewed both sides of life, but always had security and comfort. I truly believe in the inherent goodness of people (while

accepting that there is a downside, but optimistic about most), that everyone should be treated equally and fairly to reach his or her capacity to determine self worth, based on inherent abilities and soul, no matter the race, size, gender, origin, nationality, politics, education, and economic status. My brother and I were treated equally, a male and a female in the family – there was never a question about it. I have to give credit to my parents for that – it started there. Did I do anything outwardly in politics? No. In college you all participate in the small political matters that are ongoing and I did no less than any others, but was no crusader. The only thing I can remember that had to do with politics, and it did not have to do with liberalism in any way, was an assignment I had in one of my psychology courses. At that time there was the 1948 Truman/ Dewey impending presidential election. Dewey was expected to handily win the election. One assignment was to go out and poll neighborhoods, soliciting that which we deemed was the wealthy neighborhood, a middle-class neighborhood, and a poor neighborhood. We were to knock on doors and ask a series of questions we had created to determine how and why the people were going to vote in a certain manner. I had good friends who insisted on protecting me who waited outside the strange homes I would enter. If I didn't come back in 15 minutes they were to come in and rescue me. How naive we all were. I shudder as I relate the foolhardiness. I picked a plumber in Georgetown, I found a poor person, a bit into drink, and I landed at the home of Daisy Harriman (Averell's relative), then our Ambassador to Norway, who lived at this home. She insisted I have tea with her. I had to go out and tell my friends I would not be back in 15 minutes. Ambassador Harriman and I talked about life in general, and the world in general. That's not political. It was just an assignment, but I found it exciting and interesting and I liked doing it. Everyone talked to me. The plumber told me about his life and why he did what he did,

and when he did it and how he did it. Very enjoyable. And how he was going to vote. I don't remember how any of them were going to vote specifically at this time, but I dutifully took it down; I wrote a paper on this and found it an enjoyable task. I never wanted to go into politics, but always thought it would be interesting to work behind the scenes, to support and stimulate a candidate, or write speeches for a candidate, and I savored that thought for some time. Between my second and third year in college I also became briefly engaged.

MS. PORTER: To be married, as opposed to something else?

JUDGE GREEN: To be married. I was 18. He was 19. We were both too young and immature and had no independent means of support. I broke the engagement at 19. I hadn't really planned ahead and, anyhow, life went on and I graduated from college in 1949 and got a B.A. degree. I could have gotten also a B.S. degree, we just didn't do the doubles in those days, but I had so many science courses that would have been easy. I was a good student, I had a good record, and I had absolutely no idea of what I was going to do in the long future ahead. I truly had been so busy in college that I hadn't given the thought that I should have to the next step, but I had never considered being a lawyer.

MS. PORTER: You say you got a B.A. What were your majors and minors? You mention a lot of science courses.

JUDGE GREEN: As noted earlier, I majored in psychology, expecting at that time that I probably would need at minimum a Masters Degree, and more likely a Ph.D. in psychology to be a psychotherapist. That was fleetingly in my mind. I minored in English, I had a great many courses in English as I liked to write and I continue to write. In fact, I kept diaries for years and years, but all of them have gone by the wayside, probably during moves to residences

and schools. I'm somewhat rueful that I don't have them now because it certainly would help jog the memory of more intimate details, but perhaps, more likely probably, I wouldn't have shared them with you. (laughter)

MS. PORTER: Thank you for that vote of confidence, Joyce. Well, so now you've graduated, it's 1949, what happens next?

JUDGE GREEN: What happens next is that I applied for one job only, and looking back, it would have been interesting. That was to be the manager of employee relations, that is hiring and firing employees of all the Marriott endeavors in the Washington metropolitan area, for each of its restaurants, hotels, and motels. I'm 20 years old; I look 16. I have freckles. My hair is sometimes braided on the top of my head and sometimes otherwise. The people I would have had to work with were the cooks, the waiters, the busboys, the hotel clerks, the chambermaids, the porters, the elevator and doormen personnel. While the interviewer, and the ultimate decider, really liked me, persistently calling me back for three separate interviews over several weeks, I was finally told I was too young and there was a concern that I would be unable to handle these people, so much older and worldly than I. So, now, I didn't have a job, I'd just been rejected, and I didn't know what I was going to do with the rest of my life. But, fortuitously or otherwise, my former fiancee reappeared in my life briefly. He was a law student at Georgetown and encouraged me to go to law school; there also was a woman lawyer, a great friend of the family, very influential. She was a tax lawyer at the Department of Justice who opined that I'd make a fine lawyer. With encouragement like that, and as the granddaughter of a lawyer, I decided to apply to law school less than two weeks before law school began. This could not be accomplished these days, but remember, we did not have to take tests. I applied to one law

school alone, just like I had applied to one college only, and that was to the University of Maryland Law School. All their professional schools are in Baltimore. They wrote back and said their class was filled, but to send them my transcript. I did and by return mail I was told I was now in their class of '52, and I should come immediately. I cannot sufficiently stress how unprepared I was for this evolving event, but exhilarated about the idea of preparing for a profession. The more I reflected on it, the more I became excited about the public service I'd be able to do some day and how much I was going to learn. I went to Baltimore and looked for an apartment, determining that I would live by myself for the first time in my life and, after three days, changing my mind. I found an apartment, a second floor walk-up, and had a remarkable time at law school.

ORAL HISTORY OF
HONORABLE JOYCE HENS GREEN

Second Interview – September 16, 1999

MS. PORTER: We are resuming the interview with Judge Joyce Hens Green. We started on September 1. It's now September 16, 1999.

JUDGE GREEN: I must say, Jenny, you have picked some day to conduct this interview, because this is the second worst hurricane we have ever encountered in the history of keeping records, Hurricane Floyd, which is battering our area as I speak. And, of course, three years ago we had the blizzard of the century upon us and I'm sure we did something amazing that day also. But at least we are diligent and finally, finally moving on our mission here.

MS. PORTER: That's true. We are trying to overcome our failures today, I guess. When we concluded on September 1st, you had just started at law school in Baltimore and you decided that you weren't going to live alone in your second floor walk-up. How did you find yourself a roommate?

JUDGE GREEN: By posting notices in each of the professional schools of the University of Maryland, all of which were located in Baltimore, and I received a response from a third year student, then Dorris Pencheff, now Dorris Harris, a third year medical student interested in sharing my modest $54 a month furnished efficiency. And so we shared forces, which included dividing the rent right down the middle. She remains one of my best friends today and we share our children's experiences now as well as travel together often.

MS. PORTER: Was this apartment within walking distance of the law school,

or did you have to have transportation as well?

JUDGE GREEN: It wasn't within walking distance. I was fortunate to have a fellow law student who wanted to come by and pick me up every day to take me to school. I accepted with enthusiasm and Dorris took public transportation.

MS. PORTER: Well, you started law school with the first year subjects, the same way as we do today?

JUDGE GREEN: The same basic subjects that we do today, but all were together in the same room – it was a sizeable auditorium – for each of our classes the first year. There were no electives, so it was an intense, regimented time. I loved the law immediately and realized it was what I had been searching for a long time; I was being fulfilled very rapidly.

MS. PORTER: How many people in your class?

JUDGE GREEN: It's difficult to remember, I struggle to do so. I think there were about 120 in our class, that's my memory at this time, and of the 120 there were three women, including me.

MS. PORTER: Were you divided up into sections? Not the women, I mean the class.

JUDGE GREEN: No, not divided into sections. We were divided alphabetically, so whoever's name would alphabetically adjoin my maiden name, Hens, was someone that I would join forces with in discussing the law.

MS. PORTER: This wasn't 120 people in one class – when you went to contracts were there 120 people in the class?

JUDGE GREEN: Yes.

MS. PORTER: That sounds intimate, doesn't it?

JUDGE GREEN: (laughter)

MS. PORTER: So you took to law school like a duck to water. What other sort of things happened in the first year?

JUDGE GREEN: Well, within two weeks of starting law school I came down with a serious, but unknown, central nervous system ailment at the time. I was suddenly partially paralyzed, after having, most unusually, felt odd and tired for days. I left for home immediately, was hospitalized, and shortly thereafter diagnosed with atypical polio. In those days the only real solution was the iron lung. The Salk vaccine was not yet in use. I was filled with all sorts of medications, including penicillin, and treated to several spinal taps. I was paralyzed from the waist down and fed intravenously. I was not placed in an iron lung, but the possibility loomed. I was 20 years old, my family was terrified, I was equally so. I was most concerned that having been such a short period of time in law school and having heard of the rigors of professional school, that to be out for the three weeks that I was, they might not take me back. But to the contrary, my professors were wonderful and had saved their notes for me and the students had saved their notes for me as well. Everybody helped enormously, and, miracle of miracles, I had absolutely no vestige of that illness after I returned to school. I was one of those very, very fortunate people who survived polio without any lasting problems.

MS. PORTER: And how long were you out?

JUDGE GREEN: I was in G.W. University Hospital for two weeks, told not to go back to school for the third week,and then the doctor would see me; but because of the concern I just mentioned, I stealthily returned to Baltimore and law school immediately after discharge,

later going to my neurologist for my appointment, whereupon I confessed and he banished me from his office, but forgave after a few moments, expressing his amazement at the rapidity of my bounce back to health.

MS. PORTER: You said you were paralyzed from the waist down. Did you have therapy for that or did it come back?

JUDGE GREEN: It came back to normal. They tried all sorts of things. Because my dad was a well respected, beloved doctor, and because I was such an oddity, people came from NIH and elsewhere to examine me, to use whatever experimental matters that they had. They were focused on stopping the process, and bit by bit everything came back and I didn't have to continue any particular physical therapy. I was given a little bit of therapy, but none after I left the hospital.

MS. PORTER: Was this a time when there was an epidemic of polio?

JUDGE GREEN: Yes, there was an epidemic of polio. I wasn't aware of it at the time. The doctors told me of the danger I was in. I just knew something very serious had happened and was confident the doctors would find out whatever it was, but whatever it was it was acutely serious and needed immediate attention.

MS. PORTER: So you went back and finished up the first year. Now I, in my knowledge of you, Joyce, you graduated from G.W. Can you explain this transformation to us?

JUDGE GREEN: Maryland Law School did not have a summer school session at that time. I've always been in a hurry and thought it would be a plus if I could save half a year by going to a school that had a summer school session. We lived in the area of Washington, D.C., so it was appropriate to go to G.W. Also, G.W. had a couple of courses that I was interested in

taking that Maryland, at least at that point, was not providing to a law student who had just had one year. So I applied to G.W. G.W. took me as a special student because they, and I, expected me to return to Maryland. The dean of the G.W. Law School, Dean Oswald Colclough, called me aside early on and suggested that I remain at G.W. Law School, that he was very pleased with my performance, and if I went through the following summer, as eventually I did, I could actually graduate from law school in two years, rather than in the normal three, or two and a half had I just used my acceleration of that 1950 summer. And so, by going through double summer sessions for two summers, I did graduate from law school in less than two years.

MS. PORTER: This is giving me the impression, Joyce, that you are fairly driven.

JUDGE GREEN: In a hurry, only in a hurry. That kind of driven.

MS. PORTER: When you were in law school, were there courses in particular that interested you?

JUDGE GREEN: I was interested in evidence, in criminal law, in antitrust, and in constitutional law. I enjoyed other subjects almost equally well. There was a rare subject, negotiable instruments, that was not my favorite subject, but interestingly enough, my professor, Professor Orentlicher, was a remarkably wonderful person whose doctor son, many years later, became one of my interns on the federal court.

MS. PORTER: What electives did you take?

JUDGE GREEN: You are putting me to memory task – what electives did I take? I took trusts, taxation, philosophy of the law, literature in the law, creditors rights, conflicts of law, and others.

(TAPE 2 B)

MS. PORTER: This is a continuation of the interview being conducted on behalf of the Oral History Project of the District of Columbia Circuit on September 16, 1999. Joyce, you were saying you finished law school in two years. That's pretty quick.

JUDGE GREEN: It is quick. And as I indicated, at the suggestion of the dean of the law school, I did go through the two double summer sessions. I completed law school in May 1951, with the necessary credits for graduation.

MS. PORTER: That's what, 18 months after starting?

JUDGE GREEN: Well, I started in September of '49, so if I do the calculations, about 20 months. At that point I had asked and received special permission to take the bar early, before graduation, in June 1951, because I had completed the necessary credits for graduation and because my mother was dying then of cancer. I hoped that I would have some good news for her about my profession before she passed away. G.W. has graduation ceremonies three times yearly, around or on important holidays: George Washington's Birthday, Memorial Day, and Veterans Day. I wanted to graduate at the November ceremony, since the bar results would be announced by August or September. But, although I was then awaiting the results of the bar, G.W. said no, not so quickly. I had gone so fast through law school, in 5 l/2 semesters, and G.W.'s regulations required six semesters, so I still had half a semester to go. All I had to do was to pay the tuition, take a course that I hadn't taken before, it made no difference if I attended the class or passed or failed the course, as long as the tuition was paid, so that is what I did. I took a course that my memory tells me was called something like alternative remedies. I passed, but it was forgettable. I just recalled another elective taken – a writing course. Today people are taught to

write in law school and have such special courses, but in my day that was not considered as important, or even an important element of the law school curriculum. It was assumed this was picked up afterwards, appropriate to whatever you were going to do in the profession.

MS. PORTER: It's hard to imagine that you would have had time to do any extracurricular activities, but I feel I should ask because I'm sure that you've got some tucked away there.

JUDGE GREEN: There were two main ones. I was the manager/secretary of the G.W. Law Review, for which I was paid $75 a month, in those days a very handsome sum of money, and I was responsible to see that the others who were on the law review, as I, performed each of the tasks that they were supposed to do and assured that whatever mailings had to go out were accomplished. So, it was a multifaceted job, wonderful because of my academic standing, not only had I been elected to be on the law review, I was the only one who got paid for my services there. The other matter that I did and spent a great deal of time doing was trying to find positions for people who were going to graduate from law school. We did not have a career development office then, nor any administration office that found positions for law students. This was volunteer work done by law students. So I was appointed to this committee and became the chair of it. It was a delight to contact law firms to ascertain interest in interviewing any of our students, posting those notices on the boards, advising the students of what was available or what could become available, matching one interest to the other.

MS. PORTER: Did this give you an insight into what you were interested in doing with the opportunities?

JUDGE GREEN: It gave me the opportunities. I didn't take advantage of the

opportunities, but there was one tantalizing job that I will always remember. I was not disinterested, but did not apply, although many actively pursued it. That was a job in Alaska for $5,000 a year. Bread in that state costs one dollar. You have to understand that in those days bread might have cost 15 to 25 cents here in the continental United States. One of the students did take that position.

MS. PORTER: Did G.W. at that time have clinics as part of its curriculum?

JUDGE GREEN: No, what a disappointment. It did not have any clinics. It was something that I thought then it should have had. Today it does have a number of substantial clinics that do really excellent work. I think it's a superb way for a young person to learn what public service is about, to try and start honing the ethics and academics of their education, and at the same time help people who need these services. What we did in my student time was to go to the courts, the local courts of Washington, and the federal court (then a combination local/federal court) and just sit and listen to whatever was going on, and when you had enough, to walk to another courtroom and listen to what was going on in that courtroom. The fact is, fellow students and I didn't know whether the matters illuminated were correctly done or decided, but it was helpful to get this sense of it, the atmosphere. Once again, the experience helped push me in a direction that I eventually became a litigator.

MS. PORTER: You mentioned when you started at Baltimore that there were three women in your class. How many women were there in your G.W. classes?

JUDGE GREEN: At the top, meaning at the highest number of women, there were six in the entire day and night school at G.W., during the very brief time I was there. Remember I was a day student there approximately a year, a little bit over a year, from one

summer to the end of the next summer, so during that racing through law school, those are the numbers that I was advised were present at the school. Several were women I met when I joined a professional sorority, Kappa Beta Phi.

MS. PORTER: Let me tax your memory. Do you remember who the three women were in Maryland?

JUDGE GREEN: The other two were May Green, who, a number of years after she married, became a public defender in Baltimore, and there was Elsbeth Levy, who became Elsbeth Levy Bothe in subsequent years, and she was a practitioner, also a public defender, member of the Maryland Constitutional Reform Committee, and then, subsequently, a renowned judge of Baltimore City, where she served for many years until her recent retirement.

MS. PORTER: And after your first year experience did you remain friends?

JUDGE GREEN: Oh, we have remained good friends. I have seen May Green only briefly through the years, but not nearly with the frequency that I have seen Judge Bothe. You will recall that the judge sat directly behind me with the alphabetization in the class: her surname began with "L" in those days and mine with "H," so we would constantly talk to each other.

MS. PORTER: How about G.W.? Did you share classes with any women or were the six spread out through other classes?

JUDGE GREEN: I did. The ones I remember most particularly were Catherine Kelly, who subsequently became a judge at the D.C. Court of Appeals, with a sterling reputation, Jeanne Dobres, who became one of the chiefs of Internal Revenue, Kitty Frank, who went into practice in the State of Maryland, and Frances Nunn, who practiced briefly, among others.

MS. PORTER: There were so few of you, did you have a sense of camaraderie or did you stick together?

JUDGE GREEN: We did stick together to a great extent. We shared class experiences, subsequently other experiences in taking the bar examination, which immediately followed the May graduation ceremony for the other students, and before I graduated. I took my bar examination before I graduated from law school, and subsequently was admitted to the bar one day before I formally graduated from law school.

MS. PORTER: Joyce, with so few women in law school you must all have stood out rather like sore thumbs.

JUDGE GREEN: Well I hope that we weren't sore thumbs, but we certainly stood out.

MS. PORTER: How did the professors deal with that? I know that when I was in law school some professors made a special point of calling on women more frequently or for particular issues. There were so few of you in the class, did you have any experiences like that?

JUDGE GREEN: I did. When women of my generation talk about their times in professional schools and in law schools different from the ones I attended, their recitation is so very similar to mine. There was a professor at Maryland who always called upon one of the women in class to recite page 100 of the criminal law book. Page 100 dealt with a particularly salacious situation involving a rapist, graphic detail about that person's activities and the defense that he raised; I knew before I went to the first class in law school that when page 100 was reached, one of the three of us would be chosen to stand and recite. And if she was able to get through that session without fainting, without blushing or stammering, without embarrassing

herself, that professor would never call upon her again. That's exactly what happened. Guess who was the chosen one my year? I managed to get through it without doing anything horrible and I was thereafter ignored by our learned professor for the rest of the course. In G.W. I had a professor who called upon me every day to stand and recite/analyze daily, he did not call on any male students daily. I had this professor for a variety of courses, including trusts and estates, among others. There was a time I was running for a class officer position (the entire slate lost) and he came up and said he assumed I wouldn't be prepared for the next several weeks because I would be engaged otherwise. When I told him, truthfully, I was prepared for the next several weeks, that was the only time he didn't call upon me daily. Just about three weeks ago, I received a letter from him. He has written to me periodically through the years about my professional career. He had just read a rather lengthy and complicated decision of mine that was profiled in the newspapers and he wrote me this long letter to tell me how he had always been so very proud of me from the earliest date. That is enormously heartwarming to me after all these years, but he certainly did not share those thoughts at the time.

MS. PORTER: Probably figures he trained you well, Joyce. How about your fellow students? I recall a conversation with one of your law clerks and she was recalling her experience in law school and various times her male colleagues gave their view that she was taking a seat that should have been occupied by a male.

JUDGE GREEN: Happily enough, my fellow students were as completely accepting of me as they were of their male counterparts. They reflected no difference or distinction, certainly no discrimination. I had a really great time in law school, in both of the law schools, and that contributed to my love of the law and the desire to learn more and more. I

relished my time in law school. I know that other people have had unfortunate experiences, but I was not among that group.

MS. PORTER: You've talked about your doing the bar exam and graduating quickly from law school. What happened next?

JUDGE GREEN: I hung out my shingle in early December, after being admitted to the bar. For the first couple of months afterwards, though, I was needed at home to help care for my mother, and after her death, to care for her last matters. So I started from home a very small private practice. Private it was, much of the time. My mother died in January. Shortly thereafter, I got an office; did all of my own secretarial work, did all of my messenger work, used an answering service, and didn't have a carpet for the first few months. Initially I shared this office and services with another lawyer. Later I was on my own. I was fortunate enough to be sufficiently successful (although still partially subsidized by my family) to afford a half carpet, and then a full carpet, and then a part-time secretary, and then a full-time secretary. A few years later I joined forces with one of the most esteemed and admired female practitioners in Washington at that time.

MS. PORTER: Who was?

JUDGE GREEN: June Green. She is my colleague now on the federal court; at that time she was the premier female litigator in both Maryland and in the District of Columbia, absolutely respected. She asked me to share office space with her. I did, and we became "sisters," and the very best of friends

MS. PORTER: What was the decision process in which you just decided to hang out your own shingle? This is a tough way to make a living.

JUDGE GREEN: It is a tough way to make a living and, again, you have to relate to the period of time in which this was happening. Had I my druthers, I would have been an assistant United States attorney. I knew that there was remarkable training. You were taught how to be a litigator and it was an area that fascinated me – the criminal law – and of course, the office also did extensive civil law for the government. I thought that this would be a wonderful career of public service and learning at the same time. That was not to be. There were no women invited to become assistant United States attorneys. My second choice was to be a law clerk, but I had no idea how one went about securing such a position. I had read in the newspaper about a former governor of the State of Minnesota, Luther Youngdahl, who had just been appointed to be a federal district judge in Washington. It struck me that he would need a law clerk, so I made an application. Of course, I did not know that he had never granted an interview to a woman, much less hired one. But, wonder of wonders, he granted me an interview and told me that he never had hired, nor would he ever hire, a woman lawyer. He candidly said he just wanted to see this unusual creature. When I became a federal judge, decades later, I inherited his chambers, in which I am today.

MS. PORTER: That seems to be satisfying revenge.

JUDGE GREEN: Oh, it's not revenge, it's fate. I think things generally work out for the best. Perhaps what happened here demonstrates that. A very short time after I hung out my shingle I was asked by a friend of mine, who had secured a summer position, if I would take that position for her since she was about to have a baby. I agreed I would take this three-week summer position, part-time, with a large law firm.

MS. PORTER: What sort of work were you doing with a large law firm?

JUDGE GREEN: Two of us would go over prior records, since this case had been twice to the Supreme Court of the United States. We were reading all of the transcripts, all of the prior pleadings and depositions, in order to make another try. It involved all of the railroads in America versus all of the trucking associations in America. We represented the then second largest trucking corporation, Riss Corporation, and the issue was which group (trucks or railroads) was the appropriate/safest to carry explosives.

MS. PORTER: Do you recall what the law firm was?

JUDGE GREEN: This was the predecessor of the present law firm that bears some of the same names of the partners. In my day it was called Berge, Fox, Arent and Layne. I worked directly with Alvis Layne and his associate, Charles Ephraim.

MS. PORTER: And its current day incarnation is Arent, Fox?

JUDGE GREEN: Exactly.

MS. PORTER: How long were you working on this case?

JUDGE GREEN: Well, the three-week, half-day job became 20 hours a day, literally, every day for four months, at which time I was asked if I would become their first woman associate – an enormous compliment. I said no because I had that law practice. I laugh now because the practice was so small then, and I wonder what would have happened had I become an associate there. But, through the years, a good friendship was retained with some members; I absolutely relish that brief time. Lots of fun things happened, enormous growth occurred, and Earl Kintner, senior partner of the firm, antitrust expert and the former chairman of the Federal Trade Commission, at the time I was invested in the federal district court, was the first in the ceremonial courtroom more than one hour before the ceremony took place, so that he could

exercise his pride in that youngster of long ago now becoming a federal judge.

MS. PORTER: What happened with that case?

JUDGE GREEN: What happened with the Riss case? I don't know. (laughter) Isn't that terrible. I don't know. (laughter) It took years and years for these cases to fully develop, and at that point I was off doing other things, but probably should have followed through.

MS. PORTER: So after four months you're now back to dusting off your shingle again.

JUDGE GREEN: Right, and doing my domestic relations practice as well as personal injury litigation, civil practice, estate work, probate work, those areas in which I concentrated the most. I took court appointments; the system learned of my availability, and once you were found to take a court appointment you are asked constantly to take like cases. As example, I was appointed to represent a defendant who had stolen 12 cars in a short period of time, including a deceased judge's, and then claimed that he had been brutalized by the police. We developed that case, actually, with the F.B.I. working on it also. We weren't able to prove he had been brutalized. While we believed this man, the actions could not be proved, despite physical signs supporting the allegations of being hit with a large telephone book. The judge's sentence was compassionate and understanding, that this defendant, with low I.Q. and illiteracy, had spent most of his adult years in prison and actually wanted to go back to prison again. He had security there, he only longed to be taught a trade and to read and write. He kept in touch with me through many years, as he floated in and out of prisons.

MS. PORTER: You basically were taking anything that came across your doorstep.

JUDGE GREEN: Exactly. Another example of a "good" court appointment would be a person committed to St. Elizabeth's Hospital (a hospital for mentally ill persons and for criminal defendants who had, by reason of insanity, been placed there). Such a defendant was entitled to a hearing each six months, to ask for freedom. A bit disconcerting that as you argued for his release, the defendant would shout at the judge that he heard sounds coming from the air conditioning vents and the judge should stop the noise. The judge did not release him and the decision was not appealed.

MS. PORTER: One of the issues I suppose is of interest to every lawyer is how you go about finding clients. They just don't walk across your doorstep. Some do, I suppose, but how did you go about developing your client base?

JUDGE GREEN: I think my friends, and my parents' friends, really helped me. Three were of special assistance. A physician friend of the family asked me to represent him and his family in a variety of cases, including purchases of commercial real estate, wills, estates of his relatives. When his patients asked him to recommend a lawyer, he would tell them about his lawyer. The new clients came for a will or an adoption or an estate proceeding or a personal injury suit or contract matter. If satisfied with my professional services, they often recommended me to others, and that's exactly what happened – by word of mouth – the clients and cases came on a regular basis. Then there was a vice president at Riggs Bank, who was also the manager of the local branch of that bank, where I had placed my personal and business accounts. This banker, who merely saw me deposit monies, asked one day if I would be interested in handling actions the bank was unable to develop, such as drawing wills, estate probating and representing bank clients in court. Of course I was interested, and he referred a large number of clients. Lt. Colonel Lily

Gridley, a lawyer, then the highest ranking woman in the Marine Corps and in charge of the Corps' legal assistance office for Marines and their dependants, telephoned one day to advise she had heard of me and wanted to refer Marine clients on a regular basis for those civilian matters her office could not handle. Those three persons were most instrumental in the development of my practice, and the referrals continued for years thereafter. The banker made me his personal attorney. There were a variety of complex problems that he, his wife, and his young daughter had through the years. When this good man died suddenly in an automobile accident, his wife leaned very heavily on me while we completed the estate proceedings, and subsequently. While I did not take her as a client, as a friend I taught her to write a check (imagine a banker's wife who didn't know how to write a check) and pay the bills and helped her to find part-time work. She wanted to be the nanny for our baby, but I thought otherwise. The Lt. Colonel and her husband, a retired Rear Admiral, also became lifelong friends.

MS. PORTER: I don't imagine there were many women in private practice at the time.

JUDGE GREEN: Only a few women were regular litigators in the court, trying cases before judges and/or juries. While others practiced law and argued an issue occasionally, most specialized in real estate or probate. One female lawyer worked for a book publishing firm as a journalist. One married and did not practice law afterwards. Another went to Internal Revenue. Several became government lawyers at Justice, Labor or the FCC.

MS. PORTER: Tell me about the early cases.

JUDGE GREEN: The first case was an elderly African-American woman who was a housekeeper. She visited her son in northeast Washington regularly. In order to reach his

apartment she had to walk up an outside stairway. The stairway had a very rickety railing and one day it broke off and she was hurt. She sustained a fracture, pain and suffering, was hospitalized, lost a modest amount of income. We sued the owner of the building and the maintenance people. This case taught me several lessons. We were successful, eventually, in receiving a small amount of money for her. This was a co-counsel case, before a jury.

MS. PORTER: A co-counsel case?

JUDGE GREEN: Yes, Jeanne Dobres, one of the people in my classes at G.W. Law School, in the early stages of her career, before she went to Internal Revenue Service, where she spent her professional career in a leading position in the Chief Counsel's Office, needed some litigation experience and joined me in this case. I did most of the litigation part, but she prepared pleadings and prompted me to do the necessary things at the appropriate times.

MS. PORTER: Were there other occasions where you joined with colleagues on doing cases or were you mostly doing these solo?

JUDGE GREEN: Mostly solo. Can I go back for just one brief moment to say that this early case in my career also taught me a profound lesson. It was recognized that when a complaint was filed, it included a sum of money prayed for. I had no one to ask, no one to inform, and we didn't have any courses teaching us how to fill out complaints and prepare for this. So I put down $45,000 – that I thought was fair and reasonable compensation for this individual who had been hurt. In 1952 this was sizeable.

(TAPE 3 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, and it is taking place in the judge's chambers on September 16, 1999. This is the continuation of the interview on tape two.

Judge Green, you were talking about some aspect of the case in which you had Jeanne Dobres as your co-counsel and you were talking, I think, about settlement.

JUDGE GREEN: The senior partner of the firm defending the action asked if I would come to his office to discuss settlement. I have never forgotten the lesson learned and have shared it with others. What would the plaintiff accept to settle the case? I had absolutely no experience and was clearly naive because I told him that on her behalf I would take the amount requested in the complaint, $45,000. He shook his head in exasperation saying, "Young lady, you give me absolutely no choice, we have nowhere to go but to trial." And so we went to trial because I was not sophisticated enough to know that you go back and forth on these matters, and you never ask for the stated ultimate when trying to settle a case.

MS. PORTER: What happened at trial?

JUDGE GREEN: We did win, but we certainly didn't win $45,000; it was more like $7,500 or so, but this, too, seemed huge to us at the time. My client was happy.

MS. PORTER: This was one of your first cases?

JUDGE GREEN: This was my first case in federal court, but federal court in those days was a combination of both local and federal. I should explain that quickly. A federal court in the District of Columbia then, long before the 1970s Reform Act, was the court for virtually all matters except local, municipal cases under $3,000 in value, misdemeanors, and traffic. Almost everything else was in the federal court, the only court in America that handled both local and federal criminal and civil matters; all criminal cases of consequence were in the

federal court. Any personal injury in which the request was for over $3,000 damages was in the federal court. The federal court handled probate matters and all local taxation cases. In short, virtually everything was in the federal court. That's where the court appointments came from, and that's where I spent 98 percent of my time.

MS. PORTER: Did you practice in other States as well?

JUDGE GREEN: Subsequently. Five years later I was admitted to the bar in the State of Virginia and then practiced in that state, as well as in D.C. Those were my two places of practice.

MS. PORTER: So you never practiced in Maryland?

JUDGE GREEN: No. I did think of something that I neglected to mention during the course of time that I worked with Berge, Fox, Arent & Layne, though many years ago. May I mention it now?

MS. PORTER: Please do.

JUDGE GREEN: I understand that the purpose of the oral histories is to develop an understanding of the judges as human beings and to see how and why we each function today. What was it in our past that made us the people we are now? And so, this again was another lesson along the way. I said earlier that in that firm the days were long, sometimes 20-hour days. It was on one of those occasions, two o'clock in the morning, when I was working –

MS. PORTER: This is when you were doing your four-month stint with the law firm?

JUDGE GREEN: Exactly. I worked with a partner, Alvis Layne, an incredibly wonderful man, gentle and brilliant, and also with his young associate, a recent graduate of the

University of Chicago. All of a sudden, at this wee hour of the morning, the associate had a brilliant idea: completely revamp the theory on which we had been proceeding for weeks. He asked me if I knew how to type. I sensed this as a moment of moments and told him, untruthfully, that I did not know how to type, even though I was happy to make a cup of coffee for all of us right then and there. I recognized that had I acknowledged my secretarial skills, I would be a typist for the remainder of my days with this firm, something I did not want to do. Years later I confessed what I had done; he had suspected it and his partner thought this dialogue was hilarious. The very next day Al and Chuck brought an evening secretary who stayed with us for the duration. We were a wonderful team, working remarkably well together. I look upon that very short stint as momentum in my career.

MS. PORTER: You've raised the issue of being a lawyer in an almost exclusively male environment.

JUDGE GREEN: Exclusively, except for the secretaries. No female lawyers.

MS. PORTER: How was it in court? You hung out your shingle –

JUDGE GREEN: There were five women who practiced actively in the courts, and by actively that meant that they were there with great regularity. When I graduated and commenced my practice, women lawyers constituted but three percent of the profession.

MS. PORTER: Are there particular experiences that you remember with judges or juries or opposing counsel?

JUDGE GREEN: Many, but let me recount only one. My colleagues treated me really very favorably, although, understandably, were a bit tentative about my lack of experience. I thought I had an advantage as a woman. If I had a good argument, people would listen if only

because I was an oddity (and, to juries, certainly I was that), but listening was the important thing. That's three quarters of the battle; the rest of the battle is to get acceptance of your argument. An experience that I recall (and I don't know whether it would have happened to two male lawyers, but I doubt it) was a situation where my male opponent was much more experienced than I. We were lawyers in a personal injury case. The judge put us in a room in chambers, took a key, locked the door, and said, "You are going to settle this case." I recall turning to counsel and asking, "Is this customary?" He said, "Absolutely no." We did settle the case after hours of detention. What we settled for or the details of the case, I do not recall. I certainly recall that judge. He is no longer on the bench.

MS. PORTER: Do you use this yourself as a settlement tactic?

JUDGE GREEN: I do not. Again, the tale I just related was another good lesson. Be gracious to people, do not press too hard, be logical and fair. If they don't want to settle, fine; if they do, then help them to do so. You are there to make it possible. A judge can aid a situation and encourage reality recognition, can place people in an attitude disposed to resolve, but never, ever, to lock people in a room, saying, "No bread, no water, don't come out until this case is settled."

MS. PORTER: While you were hanging out your shingle and learning to practice law, were you also involved in other community and professional activities?

JUDGE GREEN: Yes. Without giving specific dates, I can note that I was a trustee of the American Cancer Society, the D.C. division, for about eight years. Also, I was very active in the Bar Association of the District of Columbia, which was then the general bar association. It was powerful. It was only, I believe, in the latter 1940s that the bar

association accepted women as members. The Federal Bar Association existed for government attorneys and the Women's Bar Association, for women attorneys. The D.C. Bar Association was a voluntary association; you paid dues and you participated to whatever extent you wanted. After appointment as a member of the Public Information Committee, and designated six months later as vice chair, the following year I was selected as chair, and served as such for eight more. While not the first woman who chaired a bar association committee, I was one of the first (very few women were active members). The committee was responsible for the weekly radio program, "District Roundtable." Any subject or participant could be used since the program was public time in the public interest, without commercials or sponsors.

MS. PORTER: This was for eight years that this radio program went on?

JUDGE GREEN: Well, the program went on for longer, it's still on today, I believe, but I was the chair for eight years and responsible to see that each of the 52 weeks a year we produced a radio program for one half hour. The committee was sizeable. Interestingly, my husband to be (although I certainly didn't know we would marry some day) was a member of my committee. I would assign a week to the members. Ironically, something always happened. We tape recorded on Fridays and often on Thursday I would hear from the committee member that he was tied up in trial and could not put on a program. I would rush in and either do it live or quickly tape it, or even create a subject and/or participants in a hurry.

MS. PORTER: What sort of programs, what sort of topics, did you cover?

JUDGE GREEN: Well, since we had carte blanche as to any kind of subject we would want to do, it was anything that interested the individual who was going to act as moderator, one of the committee, and what topic we thought would interest the public, and then

put it together in a balanced fashion for expression of diverse viewpoints. As example, I was very much interested in seeing that the District of Columbia had a public defender. We did not at that time. Recognizing the skills of the assistants in the United States Attorney's Office, I thought it only fair that the defense be equally skilled. After considerable research, I learned that only three large cities had public defenders at that time: New York, Los Angeles and Chicago, and after receiving information, I moderated two programs with proponents and opponents of the public defender system. Another occasion: When the baseball team ("Senators") left the District of Columbia, there was a grand program with two panelists. One was Morrie Seigel, a famous sportswriter on the local paper---disheveled, unshaven, rumpled, an absolute caricature out of Damon Runyon, and his mate on that program, was Shirley Povich, the legendary sportswriter who died in the 1990s, who arrived in spats to the taping of the program at eight o'clock in the morning. Incredible! They had different ideas, and it was one of our most celebrated programs. We produced programs on civil defense, that is, methods to defend the citizens in the event of invasion and war. There were programs about war powers, not yet legislatively proposed, search and seizure, civil contracts, landlord/tenant matters, anything that was of moment. The FTC was very interested in making sure that there was a fair presentation of advertising concerning children's toys and articles like cribs and strollers. We now have the Consumer Protection Agency, but the FTC took that responsibility in its day, and this was worthy of a program.

MS. PORTER: Who were some of the other co-workers? Who helped you with some of these programs?

JUDGE GREEN: We had perhaps 50 or 60 people who constituted the committee. Certainly enough members that if each wanted to take a program one week, we would

have been able to cover all members in a year. Our lawyer members came from private practice, academia, or government: Sam Green, and there was Bob Dimont, Bill Cairn, Ed Gaskins, Neil Kabatchnick, Gilbert Hahn, Jr. (who subsequently chaired the City Council in the District of Columbia), Gilbert Giordano, Dorothea Baker (who was a very fine woman attorney), Frank Crowley, Ed Skeens, Edwin Neil, Agnes Neil (who later married Edward Bennett Williams), Ray Posten, Jr., Jimmy Vacarro, Charlotte Murphy (who was very active in ABA matters), Marty McNamara, Jake Levine, Harry Wood (who eventually became a Court of Claims judge), among a few; there were many more.

MS. PORTER: Were you involved in any other activities for the bar association or was this enough?

JUDGE GREEN: Chaired the Lawyer Referral Committee for several years – this was a matching committee. If a potential client called the bar association to request the name of a lawyer, and if, after inquiry, it was discerned that the lawyer should have proficiency in a particular area of law (e.g., probate or criminal), the committee would draw several names from the roster of attorneys skilled in those fields to match them with the applicant. The applicant paid a minimal sum of money for this introduction; it was up to the lawyer and the client to see if they could work out a financial arrangement for the agreed services. Were there any questions, subsequently, about that financial arrangement, the committee would resolve the problem. Essentially, the committee referred lawyers for a reasonable sum. That was the goal: to provide the client, whether rich or poor, the professional services of a reliable and skilled lawyer for reasonable compensation.

MS. PORTER: Do you remember major issues of the day that the bar

association confronted?

JUDGE GREEN: Probably the major issue of the day was whether it would open its ranks to minorities. There were no minority members at that time, other than women. The bar association had never endorsed or sponsored any minority person for membership.

MS. PORTER: It was specifically written in its bylaws?

JUDGE GREEN: For the Bar Association of the District of Columbia, it required a change in the bylaws, and Charlie Ryan (who eventually became president of the American Bar Association) spearheaded the effort to change. I was among the many who joined the process.

MS. PORTER: What's the time frame?

JUDGE GREEN: I'm not sure. It was in the early '60s probably. The very early '60s or the latter '50s.

MS. PORTER: Can you talk somewhat about how the change came about in the bylaws?

JUDGE GREEN: There was a great deal of advocacy. I can remember the day that the reform bylaws had been shaped; it was a proposal that was put squarely before the association to stand up and vote. You had to be there at the meeting – it wasn't a written ballot kind of thing – you had to stand up and show how you felt. And I remember a group of people, myself included, standing up to signify that we were in favor of admitting black persons into the association as full participating members. You not only had to stand up, you had to walk, for whatever reason, around the room. I don't recall why that was done, but I know it was done in a room that we used for the monthly meeting at the Mayflower Hotel. The vote was affirmative, but it had taken years to get to that point. It was discussed, it was shelved, it was tabled, it was

brought up again, subsequently, in another year, another generation of people, and finally passed.

MS. PORTER: You mentioned that you were active in the Women's Bar Association as well. How did that come about and in what sort of things were you and the Women's Bar involved?

JUDGE GREEN: I thought it important that I identify with those women who had either been practitioners or members of the profession for some time, as well as the new ones, and so as soon as I had an opportunity to do so, I joined the Women's Bar Association of the District of Columbia. In those days the Women's Bar numbered perhaps 300 and it was not nearly as active an organization as was the D.C. Bar Association, which is why I joined the other one also – so I could belong to both. The Women's Bar was asked by Congress to testify in certain matters believed to be of importance to women and to the public, such as juvenile justice and domestic relations, criminal law and taxation. There was a D.C. city government in those days that operated with three commissioners appointed by the President. The Women's Bar president would appear not just before the United States Congress, but also before the boards and the advisory groups of the District of Columbia Government, to promote the interests of women and children, and also the interests of men, depending on the subject. That association became more and more engaged in community affairs. I am particularly proud of a matter that began during the time that I was the combination vice president and acting president of the association, and completed at the time that I was president of the Women's Bar. To assist the problem of crime, particularly because one of our senior members had been mugged on the streets of Washington, we were alerted, as an organization, to do something to prevent recurrence of such action as best we could. We notified the police department that there was a very active unit of police dogs in

Scotland Yard, London, England, and suggested we could assist our police to begin a police dog unit or canine corps. We were told that if we could raise money for this purpose, the police would seriously consider doing it. So we did, they did, and we have been given credit for being instrumental in seeing that the first police dog unit/canine corps of the Metropolitan Police Department was established. Indeed, the Women's Bar communicated with the individuals forming this small unit in the District of Columbia and then with the one individual who was sent to Scotland Yard to learn how to train dogs and to go for graduate training in St. Louis, I think it was. He would come back and report to us. So this began with a very small unit, but was absolutely inspired by and founded by and subsidized by, initially, the Women's Bar Association of the District of Columbia.

MS. PORTER: Where did the Women's Bar get the money?

JUDGE GREEN: We raised the money. We went to the members of the Bar Association of the District of Columbia because those were the men with the money, and we also raised money among our members. We asked them in turn to see if money could be raised from commercial establishments, because a canine corps would help them, too. We raised the money, sizeable thousands of dollars. It is part of our proud history and an absolute immersion in community affairs, which I always felt was part of the activity that we do, even though we were a professional organization and our prime object was to promote professional skills and obligations and goals and interests of our members.

MS. PORTER: Just to place things into perspective, when you came into the Women's Bar, were you active on a committee, were you a committee chair?

JUDGE GREEN: I chaired more committees than I can remember, just like I did

in the D.C. Bar, you know nomination committees, committees to create ideas, committees to arrange for meetings, committees to have a small conference or a seminar, to which we'd invite other people, committees for speeches, you name it, it seems somehow I found myself involved in it. I don't know how I did all this. I had an enormous amount of energy. I still do, but not quite as enormous as I did when I was in my twenties, and it was just that the more that I got in my cup, the more I enjoyed doing. While all this was going on, I was also the dean, which meant I was the chair, the leader of the alumni entity, Eta Alumnae of Kappa Beta Pi Legal Sorority International, the professional sorority I had belonged to in law school.

MS. PORTER: And you never cease to amaze me. Before we go and talk about a sorority –

JUDGE GREEN: That's all I want to say about the sorority.

MS. PORTER: As a former Women's Bar president myself, I'm interested in bits and pieces of Women's Bar history. When were you the president?

JUDGE GREEN: I was voted president for two successive terms: 1960 to 1961, 1961 to 1962.

MS. PORTER: Now, are there particular people that you worked with there that you remember? Still have as friends?

JUDGE GREEN: To some extent, the same people I knew from law school. Catherine Kelly, who was very active in the bar association; June Green, this is where I met her, through the Women's Bar; Jeanne Dobres; Kay Staley--all of us were very active. I'm going to later lament on not being able to think of all the names. Mary Garner, an outstanding lawyer at the Department of Agriculture; Clarice Felder Hens, my sister-in-law who worked as counsel with

the Judge Advocate General's Office (Navy); Edwina Avery, also in government service, as most of our women were. The government was, and is, a natural for women. Women were accepted, although in that era they did not get promoted to leadership positions as promptly as men. But, there was a steady income coming in and substantial responsibilities; and it was special public service.

MS. PORTER: Do you recall what some of the major issues were that you worked with?

JUDGE GREEN: We were primarily interested in legislation, which I've already discussed. A minority of us, unlike the bar association, felt very strongly that we should have minority members. The Women's Bar did not. Unlike the bar association, our bylaws were absolutely silent; there was no reason why we couldn't have a minority member, but, in reality, the minority members were not applying because it was believed, and probably correct, that a minority person could not get the requisite two sponsors (members of the association) to sign her application. So it wasn't a matter of rejecting applications, the few minority women did not apply. (TAPE 3 B)

MS. PORTER: This is a continuation of the interview being conducted on behalf of the Oral History Project of the District of Columbia Circuit, on September 16, 1999.

JUDGE GREEN: This, of course, is a time in the early 1960s, just before the 1964 Civil Rights Act; there were very few African-Americans practicing law in the District of Columbia and, of those few, there were still fewer women minority members practicing law. The most prominent was Dovey Roundtree; she and I were good friends. I discussed this matter with her and she said simply that she had never been able to get the sponsorship, so had not formally

applied. I advised I would sponsor her, I would find another to sponsor her, and I did so. I told my board of directors we now had a new member. The board, comprised of the leaders of the association, and, in particular, the person who then chaired President Kennedy's Commission on Women, vehemently protested this decision. I found this absolutely shocking, but she certainly wasn't alone in her opposition. This application, I insisted, would remain. The board of directors then voted to present this application to the entire membership for its vote. A unique situation.

MS. PORTER: When you say unique, what do you mean? Because there was a split on the board and you had the casting vote or required some action because it was unique in some other way.

JUDGE GREEN: It was unique because it was a minority applicant. That is why the board insisted it go to the membership at large. As far as my memory goes, we had never presented an application to the entire membership for up or down vote. The meeting was scheduled for the next day. At 9:00 p.m. that evening I received a phone call at home from a *Washington Post* reporter who had heard of this acrimonious board of directors meeting. She knew we were going to vote on taking in the first minority member of the association the next day. She was going to write about it; this was newsworthy. While I had never before asked any member of the press to stay their hand from writing, I told this reporter that I would put it to her this way: If she did write, I knew enough about our membership to recognize that this applicant would lose the necessary votes at the forthcoming meeting. If she did not write anything, we had a chance that we would succeed in getting Dovey Roundtree to be a member of our Women's Bar Association, breaking the barrier for persons of color. This remarkable reporter did not write anything until after the vote, which was successful, and Dovey Roundtree became a full member

of the Women's Bar Association. Despite the loss of many of our members, who left in protest, that began an inclusive membership of the Women's Bar Association. The next day the reporter wrote something about this moment in history.

MS. PORTER: During this time when the Women's Bar was opening up its membership to minorities, the rest of the community was in the beginning of turmoil, and Washington, D.C. I guess was, what, a segregated city? What was it like practicing when you were segregated? How did you meet minority lawyers? How did it happen? What was it like?

JUDGE GREEN: We did meet minority lawyers, but minority lawyers were generally uncomfortable, so they said, and understandably, to be active in associations like the D.C. bar associations, which had to be dragged screaming into opening its membership to all. The African-Americans had their own bar association, the Washington Bar Association, and that is where members who practiced actively in the courts largely chose to be active. Among outstanding African-Americans were: Bill Bryant, prosecutor, defense counsel, now judge; Joseph Waddy, local, and later, federal judge; William S. Thompson, absolutely charming, puckish, sometimes stretching the bounds a bit. We knew him as Turk or Bill Thompson. Turk subsequently became a judge of the Superior Court, a wonderful man, fascinating litigator, with a lot of courage, which he demonstrated with his cases and the skill he applied to those cases. He had a substantial law firm that dealt not only with criminal law but also with defense of personal injury cases. There was another person, Margaret Haywood, a practicing attorney at the time we met, who later became one of the most skilled and beloved judges of the Superior Court. Now in senior status, she returns to the court several times yearly, even though she lives in California. A wonderful human being. And, indeed, when she and I were in practice she would ask me to file

litigation for her in the State of Virginia, because she knew I practiced there and she felt that because of the segregation that Virginia so stridently avowed through its United States Senator, the senior Harry Byrd, she thought it was unwise for her as a minority to file that litigation herself. So I did for her in Manassas, Virginia, I remember. When I went there it had segregated restrooms for whites only, it had segregated drinking fountains for whites only. This was the courthouse to which I asked to be admitted, in order that I could file her papers, and the Commonwealth Attorney agreed to perform that service. Again, emblematic of the time that we were in, the Commonwealth Attorney reluctantly got into his suit jacket, he kept chewing on his cigar and whatever else he was chewing on, and when we walked into the courtroom, one of my strong memories is when he binged whatever he had in his mouth into the spittoon that was sitting in the courtroom and moved my admission before the judge of that court. I had to have that performance accomplished so I could file pleadings there. There was also Wesley Williams, eventually president of the school board in the District of Columbia, who was a fine litigator, and ever so impish, also African-American. In D.C., leaders of the school system were appointed and supervised by the U.S. Court of Appeals. Judge Skelley Wright, in particular, performed that function. He had come to that court during the civil rights days from Louisiana, having to leave when crosses were burned on his lawn. I say this to demonstrate that we lived then in an atmosphere so different from today's. Then so settled in attitude and so emotional, so biased. We're not there yet, progress has been made, but there is a way to go to equality. So this was the city of Washington as I knew it, as I practiced law here, and as I learned through clients of mine and others how really segregated this city was, and how the races were so divided in their abilities to move in the world of the '50s, '60s, and '70s.

ORAL HISTORY OF

HONORABLE JOYCE HENS GREEN

Third Interview – October 6, 1999

(TAPE 4 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 at the judge's home on October 6, 1999. Joyce, in our previous interviews we jumped around a little bit. What I'd like to do is try and give us a little chronology, so can you talk about after you graduated from law school, talk about where you practiced and who you practiced with.

JUDGE GREEN: As earlier said, I graduated from law school in November 1951 and very shortly thereafter, within weeks, I hung out a shingle, initially from my home. I was needed there for the first few months, my mother was dying of cancer, and did die a few weeks after I graduated from law school; it was necessary that I combine home activities and take care of my father and brother, as well as begin a small law practice.

MS. PORTER: Where was home at that time?

JUDGE GREEN: Home was in northwest Washington on Calvert Street. It was a large townhouse with many rooms and sufficient space in which I could designate office area in order to confer with clients. That arrangement worked for some time until I commenced sharing offices with another woman attorney, met through the Women's Bar Association, a bit older than I. Our arrangement was sharing office space only, but it quickly became exceptionally awkward

because her office was very small and it was necessary to work out timing so that she would not be there when my clients came in and I was there. This didn't always occur in sync; however, we managed to go along with this arrangement until finally she left and I maintained it alone for perhaps two years thereafter. Then, at her invitation, I joined offices with June Green in 1960. (Note: Judge June L. Green, after an extraordinary 33 years on the federal court, took inactive status on January 1, 2001, and died February 2, 2001.)

MS. PORTER: And did you have a secretary, a library – how did you manage those sort of things?

JUDGE GREEN: In the beginning, I was everything to the office. I did my own typing, my own legwork; I was the messenger; I answered the phone, except when the answering service performed that function for me in my absence. There was no one else. But after the first year, and during the second year, I was able to afford a part-time secretary. As I put it, I was able to afford half a carpet, then things improved substantially, and thereafter I was able to afford a secretary and other support services. When I joined forces with June Green, she had two offices, one for each of us, a common waiting room, and a secretary. We shared the cost and operation of the office and the secretary right down the middle and that worked remarkably well.

MS. PORTER: How about legal research?

JUDGE GREEN: Each of us bought as many books and supplies as we could afford. It's amazing to think back to the day when there was no computer, there was no LexisNexis, no Internet; we did not have research assistants, you did the research yourself, and that meant going down to the bar association library, available to members only, and spending a great deal of time there (located on the third floor of the U.S. Courthouse), and doing whatever

research was necessary. There were typewriters in the back of the library's large room, accessible for people who had need for them, which I used over and again. There was also, interestingly, an assistant in the library by the name of Warren Juggins, who is, incidentally, still with the courthouse after all of these years, and he assisted me greatly in making photocopies so that I could take those documents home with me, those slip opinions and those cases, and then plot out whatever it was that I had to do to become versed in a matter sufficiently to properly advise my client.

MS. PORTER: Now we talked, this was before we got on tape, we talked about many humorous aspects of practicing law. Joyce, what sort of clothes did you wear to go to court in those days?

JUDGE GREEN: I might have known that a woman would ask me a question like that. In those days we were demure, that's the word that comes readily to mind. Wore business suits and simple blouses only, never the turtleneck sweater or the chic little collar or gloriously vibrant blouse or the tailored pants suit you will see today. High heeled shoes, hose, small white gloves, and very often a little hat. You seem stunned. (laughter)

MS. PORTER: It's the hat and the white gloves that did it for me. I wanted to have you on tape owning up to that.

JUDGE GREEN: You have to remember. This is 1950. It is a time in our history when we are just recovering from the war. In 1960 you had Jackie Kennedy with her little pillbox she was famous for, and her white gloves with a ballgown as she went to dinner. This was the period when we didn't know about DNA or Medicare, or the Heimlich Maneuver, or test tube babies, or recognition of extraordinary illnesses, like AIDS.

MS. PORTER: Well, it seems to me that there weren't many women in the work force, where you didn't really have a model to choose, so maybe the hat and gloves was what everyone else was wearing, so you'd just blend into the workplace.

JUDGE GREEN: Must have been quite a sight the first time I went and visited the cellblock for a court appointment. The Marshals were astonished and chortled and yelled to my defendant, "Here comes your lady lawyer!"

MS. PORTER: Well, let's leave the riveting topic of attire and go back; I'd like to get a sense of what your practice was like. We talked last time about your first jury trial.

JUDGE GREEN: The United States District Court for the District of Columbia and the U.S. Circuit Court of Appeals for the District of Columbia were really the only courts of record in those days. The local courts were the municipal court, which had severely limited jurisdiction, and the municipal court of appeals. The primary local jurisdiction vested in our federal court, the only federal court in the United States that had this dual activity. The kinds of cases that would wind up in the municipal court would be the drunk driving and traffic problems, local landlord/tenant, evictions, small claims court, misdemeanors, civil cases affording limited compensation, but most controversies were determined in federal court: domestic relations, divorces, adoptions, custody, support, probate and estate, all done in the federal court, and any cases, over whatever was the jurisdictional limit of the municipal court at that time, perhaps in the $2,000 to $3,000 range. Anything more demanding than that would come over to our federal court to be tried. And then, of course, you had the customary things that happen in federal court, as today: diversity actions, felonies. In short, the greater bulk of anyone's practice back in the '50s and the '60s, and until the early '70s, would be in federal court. Astonishing to people when they

think of the jurisdiction as it is now. So this is the court where I really cut my eyeteeth, where I did the vast majority of my practice, where I spent easily 95 percent of my time in litigation of cases.

MS. PORTER: So your first case – we talked about your first jury case. Can you remember what was absolutely your first case?

JUDGE GREEN: Yes, it was a domestic assault case. My client was a woman who had heard about me from a friend of hers. She came to my office detailing how her husband had assaulted her and that they had been summoned to appear at the U.S. Attorney's Office. In those days we called it "over the counter"; the U.S. Attorney would be on one side of the counter, and he (then it almost always was a he) would discuss the matter informally with the victim and defendant, often lawyerless.

MS. PORTER: Over the counter?

JUDGE GREEN: Over the counter. Literally a counter separated the two.

MS. PORTER: Sounds like a private experience.

JUDGE GREEN: Everybody stood and it wasn't very private.

MS. PORTER: Were there other people in the room? Was there a long counter?

JUDGE GREEN: Long.

MS. PORTER: With several people having conversations all the way along this counter?

JUDGE GREEN: Exactly. And there was a bit of counseling that took part in this process to decide whether or not there would be a prosecution. People were entitled to bring

attorneys if they wished, most appeared without counsel. So this is where I was the first time. My victim client asked if I would assist her; she was afraid of her husband; she didn't know what was going to happen at the U.S. Attorney's Office. The fact is, I didn't know what was going to happen at the U.S. Attorney's Office since this was my very first case. But, we went there, the matter did get resolved, they decided to stay in separate abodes for a few weeks and then they started dating again in the hope their lives could be happily resolved. It did work out – a very modest case and I remember an alarmingly modest fee ($25.00) that I set for my activity there. But after that, there would be other kinds of cases that would propel me into court. As example, there was a gentleman whose home was being razed on New Jersey Avenue, NW, because he had contracted to repair and remodel the home, and, in particular, to have 12 steps with treads in the house. It had been required by the D.C. licensing officials, otherwise the house would be razed. My client was a man who worked very long hours at the United States Post Office, he had gotten my name from another client, telephoned me; I was the third or fourth lawyer he had had. Signals go off, even for the novice I was at that time, that when one has had three or four lawyers, it may not be wise to be the fifth. In any event, he talked about his problems and I agreed to see him. When he told me that his third lawyer had actually committed fraud I worried a bit more, but continued with the case. It turned out that he was correct about his third lawyer, who had taken his money; the contractor had taken his money; and nobody had done any work for him; and now he was about to lose the property in which he and his mother lived. He was a very decent person, but not very savvy, and so my greatest work for him was going down to the court frequently, perhaps every two weeks, to advise of the progress we were making.

MS. PORTER: On repairing the stairs?

JUDGE GREEN: That's right. That is, 12 treads were put on those 12 stairs and other repairs were effectuated to stop D.C. from the final eviction and razing of this home. This man was truly a special client, one of the best I ever had. Totally devoted, he did everything I asked him to do. We did get his matter solved – never got his money back because they never found the people who had taken his money – but we got the house rebuilt to the point that it satisfied the licensing personnel. In fact, this man was so earnest and likeable that the licensing personnel began to testify on his behalf, urging delay until he could afford all the repairs. I was proud of this result. It wasn't difficult for the judge to give us another stay and we could leave the court. A great experience. He paid my fee and I asked for one last promise: If you ever, ever think about entering into any contract again, please call me or call another lawyer, but call someone. Don't rely on your own judgment.

MS. PORTER: I assume you mean call beforehand.

JUDGE GREEN: Yes. And, indeed, he called several months later while I was on vacation; when I checked in with my office, I was told it was an emergency, so I called my former client who confessed to signing a contract an hour or two earlier. He thought then he was in trouble. Standing in a phone booth on the beach, I immediately called the other party, explained why my client should not have signed the "contract," and claimed we were going to take action immediately. I suggested that the swiftest and best way to dispose of this was to tear up the contract and give his client half of the torn one and give the other half to my client. Much to my amazement my protestation and suggestion was accepted.

MS. PORTER: Do you remember what the contract was about?

JUDGE GREEN: Not at all. I then called back my client and said he would

never be my client again if he disregarded my advice in the future. He agreed he would never do that again. In short, these were small cases in the beginning, domestic cases, personal injury cases, cases contractual, such as I have just mentioned, but the fact is the satisfied clients referred one to others and, in turn, became devoted friends for the rest of my career.

MS. PORTER: Well, do you have any other cases that you remember from that time period that you would like to share?

JUDGE GREEN: During some of the time I practiced in the state of Virginia, having become a member of the Virginia bar in January 1956, and set up a home office there since we had moved our home from Washington, D.C. to Virginia, at approximately that period of time, 1955 or 1956. I had became eligible to become a member of the Virginia bar and I applied for permission to join that bar, which then required a commitment to devote over 50 percent of your practice in the state of Virginia. I could make that promise. I then had to go down to Richmond to be formally admitted to the Virginia bar. In between, I responded to a subsequent questionnaire asking how I expected to do 50 percent in the State of Virginia, since I practiced law in the District of Columbia. I explained that I could not do so the first few months after Virginia admission, because I had to earn a living, but I was a resident there, I fully intended to do practice 50 percent or more in Virginia, I had cases that I had been trying with other lawyers who were members of the Virginia bar, I had appeared in court on many occasions in Arlington County and Fairfax County, and I was ready to do this and continue towards the 50 percent requirement. Thereafter, I went with Virginia counsel, on a snowy day in January 1956, to the Virginia Supreme Court, in Richmond, for formal admission. I was required to bring a member of the bar with me to move my admission before the Supreme Court of Appeals of Virginia. After I was admitted,

the bailiff approached to tell me that the Chief Justice wanted to speak to me. Of course, I was terrified, I thought what could I have done wrong already? The Chief Justice asked if I would be willing to become his law clerk. At this point I had been practicing law for several years, five or six years, and I can only imagine it was the correspondence back and forth from the time that I applied to be admitted to the Virginia bar that had inspired this offer. Or possibly it was because I was a woman and there were only a few women lawyers. I turned down the offer as gracefully as I could.

MS. PORTER: Do you remember his name?

JUDGE GREEN: I have been referring to Chief Justice Edward W. Hudgins.

MS. PORTER: So what happened? Was he just sitting there on the bench and like a bolt out of the blue says would you come and work for me?

JUDGE GREEN: No, he wasn't on the bench. He asked me to come back to his chambers, but it was within minutes after I had been admitted, before I left that courtroom. The Clerk of the Supreme Court of Appeals of Virginia, Howard Turner, who had been a longtime clerk of that court, was present at that time.

MS. PORTER: Now Joyce, lets go back – you've been admitted in Virginia and what sort of cases did you have?

JUDGE GREEN: My practice, essentially, was a civil litigation practice. I did a good deal of domestic relations work, probate, estate work, personal injury work, and only on rare occasions did I do criminal work. Primarily those latter cases resulted from court appointments. As example of some of the cases that went to litigation, I recall representation of intervening petitioners, the grandparents, in a most acrimonious five-day divorce trial involving custody of

two minor grandchildren. Representation of a mother who sought support from her deserting husband, who years later became the famous country musician, Roy Clark, television personality of "Hee Haw." I mention his name only because this was a public case, publicly reported; his wife sought support on behalf of the minor child, incapacitated by infantile paralysis. The Clarks also had a two-year-old son when Roy left the family and her with all of their obligations. This was at the very beginning of his career and right after he had won the prize on the Arthur Godfrey show, very famous in those days. I represented a mother-in-law who was sued by her daughter-in-law under the Virginia's quaint "insulting words" statute.

MS. PORTER: Do you remember what the insulting words at issue were?

JUDGE GREEN: I really don't remember the precise words, but this was a daughter-in-law who despised her mother-in-law, and said so in no uncertain terms. I represented infants and mental patients and as guardian ad litem in habeas corpus proceedings. I represented a prisoner before the parole board and one of the cases that I remember most particularly was a former banker indicted for embezzlement in Arlington, Virginia. He was an officer, a principal of the then largest bank in the state of Virginia, Old Dominion Bank. I had met him on the occasion of my responsibility as a lawyer for a doctor client; he asked me for my professional card, laughing that maybe he might need me some day. A few years later, I did receive a phone call; he reminded me of how we met and exclaimed that he was now in D.C. jail, about to be extradited to Virginia. Could I help him? He had been arrested for embezzlement from that bank. I advised that I was certainly not a criminal law expert, suggested he might do better if he hired someone who was more experienced than I, but he insisted he wanted my services. I agreed to look into the case and then make that determination. His family retained me. The matter focused on

handwriting and the embezzlement of a Danish bank client who had purportedly written a letter asking that monies from his account be forwarded to him. The letter was in the bank files. Of course, the Dane never received the monies. The complaint asserted my client had taken the money. I attended the preliminary hearing and noting that there was no handwriting expert present, asked one question of each of the witnesses, "Are you a handwriting expert?" The answer, of course, was no. I moved for dismissal of the charges. No one was more astonished than I when the judge granted the motion, but, of course, that was not to be the end of the case, because the prosecutor can secure, as was done, a grand jury original. And, later, when I recognized the name of one of the government's witnesses as that of a handwriting expert, lights went off and I knew we also had to have a handwriting expert. I secured the services of such an expert who had been in the Charles Lindbergh baby kidnaping case. When he assured me this was, indeed, the handwriting of my client, I advised my client that he should consider options. When I had secured the handwriting document in order to utilize the services of our expert, I had a long discussion with Bill Hassan, then the Arlington, Virginia, Commonwealth Attorney, who advised that if the defendant pled he would make a reasonable recommendation for my client, but if he insisted on trial, he would "throw the book at him" after conviction. The prosecutor had discovered (as I had) that Old Dominion Bank had not checked the background of the defendant before hiring him as an officer, and he knew – I did not – that the defendant had committed the same type offense in Texas years earlier, receiving a governor's pardon. I should note that when I asked Bill Hassan for a copy of the original handwritten instrument, I had drawn up a detailed motion and a proposed order for that. He took it, laughed, tore it up in my presence and said, "You want the document, you have it, we shake hands on it." I actually slept with the instrument

– I wouldn't let it out of my sight. I brought it over personally to the expert; I stood by; I went in the other room; I waited until he came to his decision. I felt absolutely bound to give this letter intact to the one who had handed it to me so readily. The night before we went to trial, my client, who had been insisting on his innocence (although I certainly had great doubts about it), called me late that evening to admit his responsibility in the case and ask that I work out the best deal I could for him. The next day we went to court to enter the plea of guilty. I have the greatest respect for the hard-boiled Commonwealth Attorney. Instead of throwing the book at this client of mine, who thoroughly deserved it, he stayed his hand, did not oppose my brash motion for probation (having found two jobs for the defendant). The judge granted probation and then, lo and behold, a few years later this incredible client called me again. No surprises: Once again, he was in jail, in D.C., accused of embezzlement. He wanted me to represent him. It was easy to say no. I said no.

MS. PORTER: Joyce, in this day and age, work obsessed, the number of hours worked by lawyers, I can't figure out how you managed to get more than 24 hours in a day. Just for history's sake, what sort of hours were you working?

JUDGE GREEN: It's amazing the energy one has when in their twenties and thirties and a bit beyond. It really is extraordinary to look back on it. I don't know how many hours I would work per day. There is no question I put in probably 10-12 hours a day on the average, but to say that it began at a certain time and ended at a certain time would not be accurate. Things just had to be done. I worked through lunchtime, would spend that time working on a project, roll it into the evening, go to meetings, work on Saturdays. I would do whatever was necessary in order to accomplish the task, whatever time it took.

MS. PORTER: Your 10- or 12-hour day, is that work, work, or work plus extracurricular activities?

JUDGE GREEN: I would spend 10 to 12 hours daily on work and then more time beyond that for extra activities and very little time for sleep. But you don't need much sleep when you are young.

(TAPE 4 B)

MS. PORTER: This is a continuation of the interview being conducted on behalf of the Oral History Project of the District of Columbia Circuit on October 6, 1999. Joyce, we were talking about what sort of hours you worked. How much of your time would you say was spent on litigation?

JUDGE GREEN: You had to spend time on investigation and research before litigation; I was in court several times a week, very often in trial, other times presenting a motion; it seemed to me then, and looking back in retrospect, it still seems to me that I spent a huge amount of my time on litigation. There were, indeed, only five women who regularly appeared in the court arena. To be sure, there were other women lawyers, but they were in fields that didn't lend themselves to court. Most of it was on paper: real estate and even probate and estates didn't require many court appearances.

MS. PORTER: I think we've been over it before, but who were the others?

JUDGE GREEN: The five included me. There was June Green, Kay Staley, Dovey Roundtree and Jean Dwyer.

MS. PORTER: Jeanne Dobres?

JUDGE GREEN: No, Jeanne Dobres was not a litigator.

MS. PORTER: Through this time, Joyce, it seems to me that there are so few women. What did it feel like or did you think about it? You would walk into a room and you would stand out like a sore thumb. How did it feel to be one of such a select group?

JUDGE GREEN: Of course I thought about it, but I was already accustomed to it. Going through college and going through law school I was always one of a distinct minority. In college, as I have told you earlier, I was pre-med and the only woman in a number of my classes; in other classes there were very few of us. In law school I was one of three in my first law school and one of six in the law school to which I transferred.

MS. PORTER: The whole school, not just your class?

JUDGE GREEN: In the whole school. So it was no surprise to come out in the real world and find the same situation. I was accustomed to it by now and I just knew that I had to work harder and really do a good job, first for my clients and secondly because it was obvious that I was probably going to be the only woman that any of the jurors would ever see in action, and thirdly for self-respect. So it was a combination of matters that propelled me to work hard and learn a great deal. I had help from the few women then in the profession who were active in associations and activities that I too was active in, but, candidly, in the main it was the men who were my mentors and assisted me because those were the great majority of people I dealt with. They did help me, by and large.

MS. PORTER: Do you have any recollections at this point of how judges responded to having a women attorney standing in front of them?

JUDGE GREEN: It's difficult to say because, of course, I didn't know them as well as some of my colleagues did. I didn't play golf with them (and still don't) but many of my

male colleagues did so. That would be apparent when we went to chambers to discuss whether or not a case would settle because the judge would address the man by his first name and discuss the golf game they had played the day before; it was clear that there was a greater rapport, but that was understandable, or at least so I rationalized. Obviously they had done things together and had known each other, and I was new and young at the bar, and there were very few women. When the judges listened to an argument most seemed patient; what they were thinking is another matter. I won most cases. I remember one really very nice judge, his name was F. Dickinson Letts, a United States district judge; I had two motions to argue before him. He was a courtly, white-haired gentleman, and he bent forward and rocked a little bit and nodded his head affirmatively as I argued the issue. I thought oh, for sure, I have won this motion; then he denied it and I thought, oh well. I argued the next motion, again he bent forward, nodding his head affirmatively, and this time I thought I knew the result of this motion, but he granted it. So, it would be very difficult for me to say that I was treated differently than the men, save for the fact that there was more familiarity with the men. Most judges were courteous with all; some berated all. Indeed, Judge Alexander Holtzoff, brilliant, but a tyrant, screamed at the other lawyers but beamed at me. I have no idea why.

MS. PORTER: Well, how about the juries? Were you aware of having any special impact on juries? Did they listen more attentively?

JUDGE GREEN: I like to think that they were listening more attentively. If I did a good job as a lawyer and female (therefore someone to look at as a strange apparition), and if persuasive and good enough, perhaps the jurors would not only listen, but appreciate the rationale, reason and righteousness of my client's case.

MS. PORTER: And did women serve on juries then?

JUDGE GREEN: Yes, although unlike the situation today. There were far more men on the juries than women. You might know that we had, in the United States District Court for the District of Columbia, but one woman judge, Burnita Shelton Matthews, who was the first woman in the United States, in 1950, to have been appointed as a United States district judge, by President Harry Truman.

MS. PORTER: She was one of a kind then?

JUDGE GREEN: Indeed one of a kind.

MS. PORTER: Did she have any special feeling for women who were practicing before her? Did she give indications that she understood the difficulties you were laboring with?

JUDGE GREEN: She did have a special feeling. She was a southern gentle lady, as people have referred to her, right from Mississippi, delicate in her approach to matters, but firm, always polite, always a lady, dressing accordingly and presenting herself accordingly. She only hired women law clerks, unlike the men, none of whom hired women law clerks – none, and she always seemed to accept my presentation with interest and appreciation. She was professional. I never felt I was receiving a special favor because I was a woman, but I did feel that I was being received with pleasure because of that fact.

MS. PORTER: Did you get to know her personally? Outside the courtroom?

JUDGE GREEN: I did. Not very well. I knew her law clerks far better. Sylvia Bacon and Pat Frohman among those. Pat Frohman, for example, was her law clerk for six or seven years and Sylvia Bacon for at least two years, perhaps longer. I got to know Judge

Matthews much better after I became a judge in the same court so many years later, when she was close to her nineties.

MS. PORTER: Now you had given me a story before about the Commonwealth Attorney in Virginia, who had given you an original document to go off with, and it raised in my mind the question of trust and civility in the practice of law. Do you have any sense about how things have changed between now and then? What was it like in the '50s? Do you have a sense of it as a more gentle, polite, well-mannered time in the practice of law?

JUDGE GREEN: There was a stark difference between those days, Jenny, and today. Civility was an accepted matter. People were decent to each other. People treated each other with respect, with politeness, with civility; they didn't stab you in the back; they didn't go before a judge and say he or she has done this and judge, please invoke Rule 11. We didn't have Rule 11 in those days. It was a matter of course that no matter how hard you fought in court (and I want to say we did really fight hard for our clients), you always fought decently, ethically, responsibly. In all my years of practice, and I was 17 years in practice, only once am I aware of a time when a lawyer, to use the vernacular, attempted to "spin" me; that was resolved as soon as I heard about it, the very next day. It was a situation where we each represented a client in a domestic matter. I represented the wife, he the husband, and we worked out with the clients in a four-way conference (the principals and the two lawyers) the division of the real property they owned and division of their other assets. They had no children. It was agreed that there would be a separation agreement drafted by that opposing lawyer the next day (since I was not going to be available for a few days), and then the complaint would be filed and attached to it would be the separation agreement, resulting in an uncontested proceeding. This was done customarily. I had

not told the lawyer I was going into the hospital for a minor operation the next day. And so I was on my hospital bed when I received the news that this lawyer had filed the lawsuit and had demanded, inexplicably, the very property that had been agreed to go to my client, making this a contested matter. He never attached a separation agreement because, of course, he had not drafted the agreed disposition for signature. I called from my hospital room and said in no uncertain terms what I thought about his ethics and what I expected him to do immediately. He saw the wisdom of that, blamed it on his secretary (not something that enchanted me), and withdrew the pleadings from court that day. When I returned I drafted the agreement and it became an uncontested divorce. Only one turncoat lawyer. You could shake hands civilly, you could break bread with each other the next day (it's probably hard for the clients to understand this), and you could go out and fight again the following day if you had to. But recently – I wish that were the situation today. We never had to write those protective letters to each other. If I broke my word I would have been a pariah. Nobody, nobody would have worked with me. It just wasn't done.

MS. PORTER: Joyce, I guess we've zigzagged around about some of your extracurricular activities.

JUDGE GREEN: Well there were so many of them.

MS. PORTER: I know. We only touched on the Women's Bar Association and I think also the bar association, when you talked about your radio program. Were there other things that you did in the bar association? And let’s talk about other organizations that you were part of.

JUDGE GREEN: There were many organizations, it's hard to know where to begin. Why don't I talk briefly about the American Bar Association. I became a member in 1952

or 1953. At varying times I was the D.C. delegate in the mid-'50s to the junior bar conference of the ABA. For several years, about five, somewhere from the mid-'50s to 1959, I was associate editor of *The Young Lawyer*, a quarterly newspaper publication of the junior bar conference. I should say, parenthetically, that those entities of the bar association's "junior bar, junior bar division, junior bar conference, junior bar section," highlighted the lawyers under the age of 36. Somehow that was the divining moment in a lawyer's professional life. I also was a member in the family law section and the insurance/negligence section of the ABA. I was active in the ABA, attending their annual and semiannual meetings with regularity, particularly because the public information committee in which we had produced the 350 programs over those years –

MS. PORTER: This is the public information committee of the Bar Association of D.C.?

JUDGE GREEN: Exactly. Members of the D.C. Bar Association would go to these ABA meetings with others of the junior bar section to present their activities. Annually, one of these groups was singled out as the best junior bar section in the country. It made me very proud indeed to say that the District of Columbia's junior bar won the award primarily because of the activities of my public information committee.

MS. PORTER: Were you the chair?

JUDGE GREEN: Yes.

MS. PORTER: You mentioned that you were the editor of their quarterly newspaper. What was involved in being the editor? Did you have to write this or were you twisting arms?

JUDGE GREEN: I was associate editor. We edited contributions from others

discussing ABA activities, and collating that information that came in from various members and delegates of each state to the junior bar conference to assimilate the news we thought most beneficial professionally to the other younger members of the American Bar Association. It was a quarterly, relatively slick document for those days. Slick, I say in a good sense.

MS. PORTER: Joyce, in your 30-hour days, what other things were you doing?

JUDGE GREEN: I was a fellow of the American Academy of Matrimonial Lawyers from the day of its founding in 1966 until I went on the bench. I also was a founding member of the National Lawyers Club, and was one of two women on its original honorary advisory board. This was a wonderful club with meals and sleeping accommodations for the lawyers, always filled with lawyers, friends and clients. Business talk was evident. For me, a solo practitioner and a woman to boot, it was really important that I have a place (other than my office) to which I could take my clients (I'm not a country club kind of person), a place where I could graciously pay the bill, because male clients always wanted to pay the bill. It got awkward. All I had to do at the club was sign my name. We didn't have credit cards in those days. It was comforting to sit in a lounge, talk to a client or another lawyer, and have a meal together. I was honored to be asked to be on the founding and advisory committee. As I told you earlier, I practiced in both the District of Columbia and Virginia, shuttling back and forth with offices in both jurisdictions. In the District of Columbia as another extracurricular activity, I participated in the American Cancer Society, the D.C. division, became an officer for several years in the 1960s and throughout most of that decade, and eventually a trustee of the American Cancer Society, serving on its Executive Board. This was very important to me and I was active in it for personal

reasons (my mother was a cancer victim), as well as the desire to work with a worthy charitable organization. As far as Virginia was concerned, for about 18 months I was a member of the Soroptimist Club of Virginia. How did that happen? I was dragooned into membership by the Deputy Clerk of the Arlington County Court, a woman.

MS. PORTER: You mean you were frightened not to join?

JUDGE GREEN: Exactly. She was the most prominent woman in Arlington County politics and courts. It's important to understand the dynamics in Virginia at that time. When you think of a Clerk of the Court or a Deputy Clerk of the Court, your mind doesn't necessarily consider politics, but in Virginia it was the Clerk of the Arlington County Court that gave, at his home, the kickoff ceremony for the gubernatorial election. And, in this instance, the Deputy Clerk's husband was the Clerk of the Court. She, more than he, was a serious politician. Nothing was more important to her than to recruit young lawyers for work and politics. When she found a young woman professional to associate with an organization that she was active in, that enhanced her prominence. I was told I was going to be a Soroptimist and represent all women lawyers (each Soroptimist represented an occupation, a banker, realtor, something of that nature). I really had no choice. I wanted to have my pleadings promptly processed. So I joined. This club was dedicated to charitable causes and doing good. The difficulty was that whatever we were asked to do involved money. You had to sell tickets, you had to go to a raffle, you had to do an auction, you had to participate two or three times a week in getting people to buy things. I have never been able to lobby. As a girl scout I could never sell the cookies, so I bought them and ate them all myself.

MS. PORTER: Well that's okay. Eating is alright.

JUDGE GREEN: And I was the one who now had to raise money for laudable purposes: scholarships, charitable contributions, etc. It lasted 18 months because I was rapidly becoming impoverished, since I bought the tickets. I had no time for other, more important causes. I finally had to say my practice was booming and my other activities were many, and, therefore, I resigned to make a place for another woman lawyer. The deputy and I remained very good friends, nonetheless; she was the one who insisted on personally issuing my wedding license; she and her husband demanded to be invited. They were.

MS. PORTER: That's sometime later?

JUDGE GREEN: Yes, sometime later.

MS. PORTER: Have we finished with your extracurricular activities?

JUDGE GREEN: No, but I've said enough, other than to add that I chaired the younger lawyers of the National Association of Women Lawyers, around 1959 or 1960.

MS. PORTER: Can you explain what that organization was?

JUDGE GREEN: As its name suggests, women lawyers from all over America had the right to join this organization, which represented the cause of women in general and women lawyers specifically. It really did commendable work, as best it could with a relatively small membership; since I was indeed one of the younger lawyers, I inherited that mantel rather easily.

MS. PORTER: Now Joyce, you mentioned that right around 1960 you started to share offices with June Green. Was June at that time a good friend of yours or did you become good friends as a result of sharing an office?

JUDGE GREEN: At the time June Green asked me to join her in her suite of

offices in the Washington Building in D.C., she was the most prominent woman attorney both in Maryland and in the District of Columbia, and had been a recent president of the Women's Bar Association. I did not really know her that well. I had seen her in action in the WBA and in her activities with the D.C. Bar; I had watched her in court and admired her greatly, but I didn't really know her very well as a person. I accepted her offer with pleasure and we had, as I indicated before, two offices, a common waiting room and a secretary, and equally shared the expenses. I brought to this arrangement my copying machine, which in those days used the fluid, and energy; she brought her coffee pot, her good nature and her wisdom. We became the very best of friends, truly sisters (June treated me as her younger sister, but as an equal member of this association). We were not partners, we never did become partners, but we were together for six years, five before my marriage and one after my marriage. A wonderful, wonderful human being. She would sew me up in order to go to court. Literally whip out her thread and needle as my hem dragged a bit, apply a few stitches and send me out the door. I would send her out the door early enough so she would be on time for her husband, John, or wouldn't be held in contempt of court for being late. We would do things for each other in many respects, personal things, consult about cases, and how we would apply our respective talents. She mentored and taught me all along the way, but, on occasion, much to my joy, she would also ask for my advice. We ate lunch together almost daily. It was a very wonderful time in my life. A time of growth, a time of personal pleasure in this really great friendship, a time of increasing devotion to the law, respect for the other judges and lawyers that she knew, and I came to know. During this time she became a bar examiner in the District of Columbia (there had been but one other woman who received that prestigious position). I can still remember the sound of mounds of bar examinations landing at

our door days after the examination that she would now have to grade. These were inspiring times. I met many people through her and John. They were steady rocks in my life. It was a time I will cherish forever.

MS. PORTER: Who were some of the more memorable people that you remember from this time?

JUDGE GREEN: So many. Let me just cite a few. Much of my life revolved around the bar association and my activities therein, the people I met there, the monthly meetings, so when I cite people I met there, some were co-counsel and some were opponents in court. I'll mention John Pratt, who was at one time president of the bar association as was Oliver Gasch; both became colleagues of mine on the federal district court years later. They were there a long time before I was. There was Charlie Rhyne, not only the president of the District of Columbia Bar Association, who became the president of the American Bar Association and established the World Peace Through Law group; I joined the division that concerned judges and world peace.

MS. PORTER: You say it dealt with judges. What did it do to judges?

JUDGE GREEN: The membership included judges worldwide who compared their responsibilities in their cultures and politics; they tried to find ways in which judges, through the law, could help assist the cause of world peace. A little difficult to fashion into words, but the idea was laudable and World Peace Through Law was appreciated for many years as a stable organization. There was also Donald Duvall, who has recently died, a fine gentleman who worked in leadership posts at the State Department and was very active in the bar association. There were wonderful women, Nancy Thompson for one, a very dear friend who had been active in the bar before I came to the bar, as was Charlotte Murphy. Charlotte Murphy eventually

became a Court of Claims judge. Nancy Thompson was a very important figure in the Department of Justice for many years during the time of civil rights, and subsequently during the '50s and '60s and '70s, and later as a Deputy Assistant Attorney General and legislative liaison to Congress. There was, of course, Chief Judge Bolitha Laws of the United States District Court for the District of Columbia. An amazing gentleman who treated me – you asked me how the judges treated me, I should have mentioned him at the outset – with the greatest courtesy and appreciation. And, of course, wonderful Ed Campbell. Ed Campbell, a noble gentleman of the south, married to a remarkable woman, Elizabeth Campbell, who originated and developed WETA, the public broadcasting station.

(TAPE 5 A)

MS. PORTER: This is a continuation of the interview being conducted on behalf of the Oral History Project of the District of Columbia Circuit on October 6, 1999. Joyce, before we had to start a new tape here, you started to talk about Ed Campbell as one of the memorable people that you encountered during your activities. How did you meet Mr. Campbell?

JUDGE GREEN: I met Ed through my association with the bar association. He had been an officer at the time I was chairing the public information committee and, when president of the bar association he called and asked if I would accept the association's recommendation for nomination to the President of the United States for my appointment to one of the two newly authorized judgeships in the D.C. Juvenile Court. I was astonished. While I had followed that matter with interest since I had done some juvenile court work, among other domestic relations work, I had never wanted to be a judge. I asked for a few days to think about whether I would accept the designation by the District of Columbia Bar, which surprised Ed no

end; he persisted until I called to say I would. Then he told me what I had to do to secure this appointment. He was very savvy politically; I was absolutely a novice. I was told to begin with my precinct chair (I didn't even know who that was) and move my way up to the 10th county level, which included Arlington County, where I lived and practiced, and the surrounding area, and to get the endorsement of those leaders. Of course I did not know them. In turn, these sponsors would encourage others to sponsor me. There were multiple stages in the political process. Then I would have to contact my United States Senators. This was scary. All the shyness that I had suppressed returned. It was really difficult to do this and I wanted to say no, forget the whole thing, but I couldn't since good people had reached out with faith in me; I also felt I owed this to the women to follow. I went, reluctantly, from place to place. If Ed had only admitted that he had paved the way for me in every instance, because at the end of each conversation the person would say I was just as Ed had said I would be, etc., reflecting that he had intervened. But I didn't know that, and I couldn't count on that, so to each I went with trepidation. But, people were wonderful. Everyone wrote a glowing letter, even though I had just met them. Mary Marshall, then chair of the 10th county (later, a state senator), herself typed a letter, in her home, while I waited, telling the world how wonderful I was and how I deserved this judgeship. Senator Fenwick, our state senator, also sponsored me and he contacted William Battle. Bill Battle, of the established Virginia law firm, Battle, Neal, Harris, Minor and Williams, in Charlottesville, and son of a former Governor of Virginia, wrote a strong letter asking for my appointment, to the U.S. Attorney General. He was special, a person who was on the PT boat with John F. Kennedy during the war; John Kennedy was the President of the United States at this time, so this obviously was a most important endorsement. I secured the endorsement of

Harry Byrd, Sr., the senior Senator of Virginia. Three men and I were nominated for this position: Hubert Pair, then Assistant Corporation Counsel in charge of appeals (subsequently a judge of the D.C. Court of Appeals); Barrington D. Parker, who later became a colleague of mine on the district court; and Edmond T. Daly (later a judge of the Court of General Sessions, predecessor of the Superior Court of the District of Columbia), then an assistant United States attorney. What happened at the end is that ---

MS. PORTER: None of you got the job?

JUDGE GREEN: None of us got the job, that's exactly right. The positions went to Morris Miller and Marjorie Lawson. Marjorie Lawson had been one of the handful of people who consulted with President Kennedy in Hyannis, Massachusetts, prior to his nomination for the Presidency; it was well known that should she want the juvenile court position she had it. But, what she wanted was to be the Director of the Mint, and if she got that I would become the juvenile court judge. As it turned out, she did not become Director of the Mint, she became the juvenile court judge, I didn't. End of story. It taught a remarkable lesson, which was, never, ever would I allow myself to do again what I did to try to secure this appointment. I could not go with hat in hand to ask for personal endorsements. It just wasn't me; I can't do that sort of thing. I was enormously concerned about it and I detested the entire process. I felt very uncomfortable that people wrote such laudable things about me, however nice, when they didn't even know me. It just seemed so artificial. Incidentally, Jenny, as an Australian, you should know that Bill Battle was appointed by President Kennedy as Ambassador to Australia.

MS. PORTER: I don't remember him.

JUDGE GREEN: Well, you're too young. This was an interesting period in my

life – that was in 1962.

MS. PORTER: Okay. Well we were talking about people you had met during that time. Now, in our conversations off the record, one of the topics that you mentioned as arising during this period was your marriage, and now might be a good time to tell us about how you met your husband and how it all panned out.

JUDGE GREEN: Another illustration of the importance of the bar association and its activities. I met my husband, Sam Green, through bar association activities. Indeed, he was a member of my public information committee. We had similar interests. He was one of many special people, a person that I had opposed in several cases. We had also been co-counsel in trials. I admired him professionally, and enjoyed the little bit we would see of each other socially at the bar association activities. He was brilliant, worthy, ethical, funny and serious, great to work with and to be around, a gentleman. He worshiped the law and had the full respect and affection of the bar. It was, however, a matter of vast astonishment when he asked me out, saying he was going to court me. I accepted the date and eight weeks later we were engaged.

MS. PORTER: What year was that, Joyce?

JUDGE GREEN: This was 1965. Our first date was in March. We became engaged on May 7th, same year, then we waited four months, until September 25th, our wedding date, while we made arrangements for our personal and our professional lives, continuing to practice law and planning the wedding and life thereafter. There was much to do. Sam had been married before and I wanted to know better his three children. His son, Phil, was heading for medical school that September; his daughters, Leslie and Kathy, were 14 and 8. Sam was an amazing man, self-made. He volunteered into the Army as a private days after Pearl Harbor, was

a "90-day wonder," battlefield honored, commissioned as a captain, and returned to college/law school on the G.I. Bill of Rights, ever grateful for the education he never would have otherwise afforded. He was strong, he was sensitive, and a hugely decent person, modest about his remarkable accomplishments, totally unselfish and only determined to advance me. A man beyond description who was my universe, and a loving, dedicated father to our children, without whom I would not be giving this oral history today. He died 17 years ago, in 1983. I miss him every day of my life. We were blessed to have such an incredible marriage.

MS. PORTER: You married in September?

JUDGE GREEN: We married in September. We had a formal church ceremony (June Green was matron of honor) and honeymooned in the U.S. Virgin Islands at Caneel Bay, on St. John, then on to the New York World's Fair and also a few days in Williamsburg (typical of Sam to squeeze in all these places; his zest for life was fabulous). We established our home life in Washington.

MS. PORTER: And you were, at that time, still sharing offices with June Green?

JUDGE GREEN: I was.

MS. PORTER: What happened after that?

JUDGE GREEN: Sam had asked me if I would join in partnership with him at the time we married. I elected not to do so then, even though it meant double expenses for offices, double secretaries, double rents, double books, and a lot of wasted time because we spent so much time during the day talking to each other, being with each other, lunching with each other, driving in and driving out together, and so on. It was such a great marriage that I thought

maybe 24 hours a day might be a bit much and lead to disagreements about approaches in the law. I had read too many stories suggesting this total togetherness to be a mistake. As it turned out, in 1966, now really knowing Sam and how it would be, and how great it was to be together all the time, Sam and I established the partnership of Green and Green. I left the office to June Green. At this time I changed my name from Ruth Joyce Hens, my professional and social name, to Joyce Hens Green, having to get special permission from various courts in order to do this little act. As the Clerk of the Court of the State of Virginia drawled, "Why, gal, nobody has ever done that in our history, but I'll see that you get your way." We had established the firm of Green and Green and shortly thereafter, my husband would say I simply refused to work. I became pregnant and gave birth to our first child. When I was put on the bench the partnership ended.

MS. PORTER: I think you skipped over something now Joyce.

JUDGE GREEN: Did I skip something there? (laughter)

MS. PORTER: When was Jimmy born?

JUDGE GREEN: Jim was born on June 18, 1967, just short of two years after we were married. It was a difficult pregnancy, but only in the sense of keeping the pregnancy going, so I was required to retire from the practice of law as soon as I found out I was pregnant. I had had two miscarriages before his birth and one afterwards. From one day to the next I did two things, I stopped practicing law and I stopped smoking.

MS. PORTER: Which one was easiest?

JUDGE GREEN: I never thought of it that way. (laughter) Neither was difficult because the goal was so important. We could not have been happier. I was required to stay at home and do a great deal of resting to keep this a viable pregnancy. Jim arrived unexpectedly a

month early, on Father's Day, because that's the day I had proclaimed I really wanted to have him. Like so many matters which have worked so beautifully in my life, Jim was wonderful and healthy and sturdy. We were delighted to have this little son.

MS. PORTER: Now, Jim is just one of three children.

JUDGE GREEN: Yes, he is very much one of three children. When Jim was three years old, it seemed obvious I was not going to have another successful pregnancy. We applied for adoption and our two other children, who are brother and sister, came to us four months later. Our oldest son, then, was four and a half years of age, his sister, three.

MS. PORTER: This is Michael.

JUDGE GREEN: Yes, Michael Timothy. He's a year and five months older than Jim and June, because June is only five days older than Jim.

MS. PORTER: And is June named for the June Green?

JUDGE GREEN: Oh, you have it absolutely right but, of course, you knew that, didn't you.

MS. PORTER: So how did having three children change your life?

JUDGE GREEN: It was wild and wooly and clamorous and wonderful. I can't imagine life without them. Crisis upon crisis, challenging, loving, endless work, endless joy. Because of the closeness of age, it was indeed like having triplets, each going in a different direction, each a different personality, each with different interests, different talents, different friends. My husband and I spent an enormous amount of time on soccer and football fields, at chorus, at PTAs, watching our youngsters engage in their interests, play their sports, develop their beings, knowing their friends, involving ourselves in their lives and with those friends and those

friends' parents. This was the staple for years and years; an enormous enhancement to life. It was extremely busy, a full life, a challenging life, because during this period of time, Sam actively practiced law and wrote for law journals and continued bar activities. I had been on the bench only a few years when Mike and June became our son and daughter.

MS. PORTER: What year did that happen?

JUDGE GREEN: I became a Superior Court judge in March 1968, having been interviewed in December 1967.

MS. PORTER: So this was when Jim was about a year old?

JUDGE GREEN: No, Jim was six months old when I received a call at home. I was then retired from my 17-year practice of law and a full-time wife and mother at home. The call was from Dan Freed, Director of the Office of Criminal Justice at the Department of Justice, who had been a colleague in the practice of law and also very active in the bar association. In later years, Dan became a law professor at Yale, referring law clerks to me. We had served on committees (once again you can see the huge impact the bar had in so many respects). Dan asked me to come to the Department of Justice to talk to the Deputy Attorney General about a long existing vacancy on the then Court of General Sessions of the District of Columbia, the predecessor of Superior Court. An astonishing phone call in which I laughingly asked, "Where have you been for my 17 years of practice," promptly turned him down, expressed my joy with life at home, my husband and our child, and the completeness of my life, but thanked him for thinking of me. And then I called my husband and told him what had just happened. He told me to immediately call Dan, whom he also knew, and say that I would at least come in for this meeting with Warren Christopher, the Deputy Attorney General in President Lyndon Johnson's

administration, and recently was the Secretary of State in President Clinton's administration.

MS. PORTER: And you went for the interview?

JUDGE GREEN: As a dutiful wife, albeit protesting all the way. I reluctantly called Dan, told him I was doing this only because Sam wanted me to, that I didn't really want the position, and certainly did not expect to get this very political appointment, but that I would come in the next day and see the Deputy Attorney General. It was very close to Christmastime. Mr. Christopher and I had a long conversation; he gave me well over 1 ½ hours of total concentration; advised me that 500 people (astonishing!) had applied for this position. I reminded him I had never applied, but he knew, and was very much aware of my career. I didn't know then, and to this day I don't know, how my name came to his attention. He asked me many questions. I told him very honestly that I did not want the position. I was there because my husband said I owed it to women to be there, and that while it was probable that I would not get it, I should still go for this appointment and that he, my husband, had said he did not want to hear from me 30 years later, "Just think what I could have been." Mr. Christopher was fabulous. He laughed about Sam's statements and the more I backtracked from this position, the more he moved forward, reminding me that his law schoolmate at Stanford had been Shirley Hufstedler, who was an idol of mine on the Ninth Circuit and a remarkable jurist. She was married and had a son, and if she could do it, I could do it. Those, literally, were his words. It was an absolutely astounding interview. Of course I had no experience to know that not all interviews for judgeships went this way, but I suspected that was the situation. At the end of this conversation he told me that he would recommend me to President Johnson, but that did not mean I would receive the position. He also told me not to have anyone write or call on my behalf, not to tell anyone about it, expect

my husband, since Lyndon Johnson, once he felt pressured to do something, did just the opposite. And so I left, not expecting anything, and shortly thereafter the FBI knocked on the door and wanted information. There were long discussions, but I knew other people were being considered, too. My name began appearing in various legal publications and newspapers, reporting that I was one prominently being discussed for this position. I never believed it would happen. However, on occasion I did put on my best pair of shoes and go to the office just in case something magic would occur, which did, on February 22, 1968, George Washington's real birth date. I had been with my husband and Jim, then about eight months old, in northeast Washington, attempting to sell the house of a mental health patient, my responsibility as the guardian. I went back to my husband's office, talked to him for a few minutes outside in the car, fed the baby and then drove to our apartment. As I was parking, Sam drove up next to me and told me to get to the White House. When he had returned to his office, he was told they had been looking for us all morning long and that I had to be at the White House immediately for important news.

MS. PORTER: And at that point, how did you feel about being offered this job?

JUDGE GREEN: My first thought was what am I going to do with the baby? There was a woman in our building who had occasionally babysat with him. I just gave her Jim and his bag of essentials and said I'd be back soon. When I telephoned the White House to say I'd be there shortly, after I changed clothes, I was told not to take even ten minutes to change. I was so naive that I believed them and I didn't change. Subsequently we took a picture to memorialize that I had a red sweater on and a skirt and the baby had just broken my pearl necklace that morning. On the way to the White House I was so nervous I could not find my lipstick (although

it was there) and insisted we stop to get one, even though Sam reminded me that the President had just had the Pueblo incident and I was keeping him waiting. Four of us were at the White House: Austin Fickling, then a general sessions judge who was being elevated to the Court of Appeals; Jim Belson and Bill Pryor. We were told that we were being nominated to be judges. Barefoot Sanders (now a district judge, N.D. Texas, in senior status), assistant counsel to the President, was the one who informed us all. He noted my incredible excitement, you asked how I reacted – excited! After the others left he detained me and asked if I wanted to see the Oval Office and the Rose Garden. I did. He showed them to me and I floated on a cloud. We were told not to say anything to anyone until the President formally made the nominations. Very hard to do. But the press called me the next day and told me my picture had just appeared on the front page of the newspaper, and that it had been announced. That's how I heard about it.

MS. PORTER: What happened after that? What was the procedure for being sworn in? How did it go? After you read it in the paper, what happened next?

JUDGE GREEN: Immediately, papers were prepared for the United States Senate. This went before the District of Columbia Committee of the United States Senate and I had to go through a formal process there before the committee, give them a financial statement, give them a total background and resume of all of my activities to date, appear for a pro forma hearing. Then, the committee's approval went to the Senate for action. Sam and I were in the process of buying a house in Arlington, Virginia, literally on the grounds of that house, and had just gone with the broker to sign the contract of sale. My husband telephoned his office and returned to announce I had just been confirmed by the United States Senate. That was on March 11.

MS. PORTER: From the moment Dan Freed called you to ask you if you were interested, to the moment you were appointed, how much time elapsed?

JUDGE GREEN: This was from December to March. Fast.

MS. PORTER: That's very quick.

JUDGE GREEN: Very quick. There had been a vacancy in the court for over two years, almost three years, and in an area that I was expert in, the domestic relations field. Of course, I was appointed to be a judge on the court, but initially to serve in the three judge domestic relations branch. I would be the third judge. The process went so fast, I did something I never should have done, and never would do again, but at that time, recognizing the great need in the bar for prompt filling of this judgeship, I gave myself only 11 days, and had my investiture ceremony on March 22, 1968.

MS. PORTER: You say you gave yourself 11 days.

JUDGE GREEN: Eleven days to try and find someone to take care of the baby, 11 days to try and put life in order, 11 days to do everything that you have to do to prepare yourself for another life. Eleven days to just borrow a robe, because there were none ready for me at that point and couldn't be, I went on so quickly. The Chief Judge at the court, Harold Greene, had told me there was a need for me to come on quickly. I have reminded him of that many times since, that I galloped on and never should have done it so quickly. I could not find the right babysitter for Jim in that short period of time and so the woman in our apartment building took care of him initially. Each day I went to work and for the first few weeks, I interviewed people by telephone in the early morning, and in person during my lunch hour, and then I'd go on the bench, do my work, go home, take care of Jim. It was such a busy, enveloping time. In April

we found the perfect person for both our youngster and for us, and Katherine Naw, later Ahmed, came to live with us. She stayed 17 years, with a brief interruption when she married, far longer than needed for childcare. She didn't do housekeeping (that was just really a term of art in her case), but she did do childcare exceptionally well. One hundred percent reliable, 4'10", 90 pounds, Burmese, a delightful, warm, loving human being. We stay in contact these days.

MS. PORTER: We need to have this all put in context. What was this court that you were appointed to? Where was it in the structure of the courts in D.C. and what was its jurisdiction?

JUDGE GREEN: It was the only local trial court in the District of Columbia. The D.C. Court of Appeals was the first court of review then (today it is the highest court of review); the next court of review was the United States Circuit Court for the District of Columbia, and again, this odd mix of the local and the federal intervened. In fact, it was the U.S. Appeals Court of the District of Columbia Circuit that appointed the D.C. School Board. Just a total involvement of the federal in the local affairs because of the unique status of D.C. That changed in 1970, '71, '72, '73, when the Court Reform Act, which had been in process for a long time, came into being. The D.C. Juvenile Court was absorbed by the newly named Superior Court of the District of Columbia, the jurisdiction was augmented, the tax court became part of this court, probate, domestic relations, landlord tenant, traffic, were all in the local court, the number of judges hugely increased, the responsibilities were much vaster; it became an entirely different court system, with all local matters and all under one roof. Later, there were seven roofs for this structure.

ORAL HISTORY OF
HONORABLE JOYCE HENS GREEN

Fourth Interview – December 2, 1999

(TAPE 5 B)

MS. PORTER: This is a continuation of the interview being conducted on behalf of the Oral History Project of the District of Columbia Circuit on December 2, 1999.

Joyce, you had just joined the Court of General Sessions. How many judges were there on that court at that time?

JUDGE GREEN: I can't remember the exact number, but close to 23 or 24. Three of us served on the domestic relations branch: Judges Joe Ryan and Dick Atkinson. Richard Atkinson was African-American, one of the few on the court at that time. Some other judges on the local court at that time were: Tim Murphy; Edward "Buddy" Beard; DeWitt Hyde, a former Congressman from the State of Maryland; Milton Korman; Milton Kronheim; Ed Daly, who had been one of those also suggested for the juvenile court who didn't get it; Harold Greene, the Chief Judge. The other woman, Mary Barlow, was not present at the courthouse. She had served well the then ten-year term. Reappointed for a second ten-year term, she did not serve any of that second term, and was four years into that second term when I came on the bench. She had an illness that was, how do I put it – ill defined. We really didn't know the extent of the illness, but it so incapacitated her that she could not go on the bench and perform her duties. She did hire a law clerk yearly, much to the irritation of mine, because her law clerk would come in around 11:00 a.m., read the newspaper, make his luncheon arrangement, make his

golf plans for the afternoon, push around a few papers and leave early – unlike the hours that my clerks had to work with me.

MS. PORTER: So you were effectively the only woman on the court at that time.

JUDGE GREEN: Effectively, yes. I was the only woman. Eventually Mary came back for a few weeks – a day or two – then absent again. She tried, unsuccessfully, to participate again as a judge on the bench. More years elapsed before she resigned. She was a really lovely person. She was clearly sick.

MS. PORTER: I think it's fair to describe your ascent to the bench as being catapulted onto the bench, and you did that, you weren't looking for the job, how did it feel? One day you're at home with the baby, next day you're on the bench. How do you go about wanting to be a judge?

JUDGE GREEN: Very difficult. Had no training courses, no one to hold my hand and mentor me through this, no one to tell me the next steps to take. I remember the first day going on the bench I carried a yellow pad and a pen in my hand, and the bailiff took them from me, exclaiming that judges don't go on benches holding anything. Today I still carry materials onto the bench, but I didn't know the protocol then. I knew enough about litigation to recognize those things I hoped I never would put into practice as a judge and things I hoped a good judge would do. Happily, I was put into the domestic relations area where I was very comfortable with my knowledge of the law. I had kept up with it during my time in retirement, but was not comfortable doing judges' actions of preparing a memorandum, an opinion, an order. No one had taught this in school, nor had I learned through experience. My law clerk and I

learned together and my colleagues really were great. Among them, Tim Murphy, a colleague across the hall, a wonderful, helpful, creative man, and a very good friend today. I'd ask questions, particularly about criminal law, which I was least conversant with, and the ways of judging.

MS. PORTER: How long were you in the domestic relations area? Did you do a rotation among the different areas?

JUDGE GREEN: In all other areas of the court the judges did rotation. Generally the domestic relations judges stayed, but after a few years of doing this, much as I loved the work (I felt particularly devoted to custody and adoption cases; nobody enjoys contested divorce cases, although I certainly did many). I needed a change. I'm pleased to say I advanced the law in a number of respects in cases affirmed by the court of appeals that stimulated modern trends into the domestic relations field, which was changing rapidly and radically from the former adultery in every case with investigators and named correspondents, the worst possible scenario, to more voluntary separations and attempts to effectuate peace among those who otherwise would war. But there came a time when I asked my Chief Judge, who had always treated me most impressively (making me one of his seven advisors participating in the governance of the court), if he would take me out of domestic relations for a time. I volunteered to take landlord tenant or small claims or anything that most judges didn't want. He promptly put me into felonies; I called to tell him that every other judge who had been in felonies had first had a year of misdemeanors, and since I had never had a misdemeanor in my life, perhaps I should start there. The chief exclaimed, "You can do it, can't you?" and hung up. And so I went to felonies and I was out of domestic relations for several years doing a variety of the

court's work: major felonies, civil motions and trials (the most interesting and more cerebral than any other assignments). I found all of the work of the court fascinating. My Chief Judge treated me, as I have said, very well indeed. I only spent a week in traffic court in all my 11 years in Superior Court, and two weeks in landlord tenant court, not a favorite. I was treated extremely well. After the initial growing period of this new court, most of the assignments lasted at least a year or more, subject to being repeated, if not immediately, shortly thereafter.

MS. PORTER: And the Chief Judge was still Harold Greene then?

JUDGE GREEN: Yes, Harold Greene was my Chief Judge for all but one of my 11.

MS. PORTER: You mentioned that he made you one of his seven counsel. What was that?

JUDGE GREEN: He took seven judges of the court and utilized them as sounding boards, as a counsel to advise him, to do things, to work with the other judges in various areas, and to generally help with the governance of the court. But he was the Chief Judge and a strong Chief Judge who really made this new Superior Court of the District of Columbia a model court in America. We were very proud to be judges and an abundance of new judges were coming on. At one point we got 17 new judges, which almost doubled the strength of the court. Then we got seven more about a year later.

MS. PORTER: And these were all people who had never been judges before?

JUDGE GREEN: Yes. The new judges generally were people well known in the community and respected in the profession. It became a court of fuller dimension than it had been before. We were very proud to be part of this court. We were proud to respond well to

crises. For example, this was the era of demonstrations, the flaming '60s and restless '70s, the youngsters demonstrating against the Vietnam War and other causes of the day. The acceleration of drug and alcohol abuse reflected in the court cases. I took my oath of office on March 22, and in the first week of April, Martin Luther King, Jr. was assassinated. Smoke poured through the windows of my chambers. Rioting and acts of violence were occurring throughout the city. The court was put on 24-hour duty. It was decided that, because I was so new, I shouldn't do the 2:00 a.m. stint, but instead, while others did those round the clock duties, I took care during the day of the entire court operations.

MS. PORTER: What was entailed in taking care of the court system?

JUDGE GREEN: The entire court had to function, arraignments in particular, anything time regulated by statute for criminal and juvenile courts had to be accomplished. For example, those arrested had to come before a judge within hours, preliminary hearings were required within ten days of arraignment. The civil matters were put on a back burner. Clearly I couldn't do them all. Other matters, unless they were an emergency, such as domestic restraining orders or a kidnap situation, had to wait for the larger crisis to subside. Of course, I had no experience. It was an interesting time for everyone, for the lawyers, for the defendants, and then for me. But, we all worked together, and it got done. The next time we had demonstrations I was put on the 2:00 a.m. to 6:00 a.m. shift, just like everyone else.

MS. PORTER: You probably learned a lot in your brief period of running the whole court.

JUDGE GREEN: I did. What extraordinary times! The Martin Luther King period was a truly revealing time reflecting the agony our country was suffering; it was

demonstrated fully in Washington, D.C. Fires were set everywhere. When we tried to leave the courthouse that day, that first day, my husband and I, our car was forcibly and vigorously rocked by angry people on the street. It was scary. An awesome time thinking about our nine-month-old baby at home, wondering if we were going to survive. I have never seen a city in flames. I'd never witnessed looting as it occurred before our eyes. It was a tragic moment in history. The next day an Army jeep was placed where the juvenile court had been, across the street from my chambers. The National Guard was summoned. There were military people all over downtown Washington (even as far as Cleveland Park, NW, where we lived) trying to protect persons and homes from the incredible anger, misery and mourning, and turmoil that beset people because of the King assassination. It was as if this had ignited a long submerged cataclysmic action, and then everything erupted to heedless destruction. But I knew you could not lose sanity in the midst of this insanity, and the judges had to stay steady, our court institution had to stay steady. The court was the law, and would survive and surmount the crisis. The people had to be processed quickly and appropriately. We did the best we could with what we had. And if we couldn't do it the right way, then we didn't do it. I look back on those years and think, if ever there is a time of law and order demonstrated, it was this time. The court system and its judges became the symbols of dignity and justice. We all could stand straight and tall and be proud of what we had accomplished. I was so proud to be a Superior Court judge; I was proud to be a citizen of this United States of America. I will never forget.

MS. PORTER: This was a pretty novel situation that you all encountered and you say the court rose to this occasion. After this experience did you put in place contingency plans should this happen in the future, or just go on memory about how to do it if it ever

happened again?

JUDGE GREEN: Well, in part you went on memory hoping it wouldn't happen again, but all of us were acutely aware of what we had to do at the time and where we could have done it better, had we certain procedures in effect; so procedures were established for future emergencies. People knew exactly their function and how they could reach others; in those days we didn't have cell phones, but you needed access to materials you could carry with you in small size, the men in their wallets and billfolds, the women in their purses, so that you would have essential information with you day and night should something like this happen again. And so, matters evolved. You learn from the past and you try to do better the next time, when there is, unfortunately, a next time.

MS. PORTER: This is pretty rigorous on the job training that you received. You mentioned when we were talking about training a little bit earlier that at a certain point in your career on the bench the training became better for judges. Can you tell me how that all happened?

JUDGE GREEN: I can. I give credit for this to Tim Murphy. Tim Murphy has always had creative ideas, and when we got so many new judges, all coming within a short span, it was clear that we should do something to try to help.

MS. PORTER: This was in the early 1970s?

JUDGE GREEN: It was 1973 when we acquired full local jurisdiction. Everything local had been removed from the federal court now; everything local was in the local court. The domestic relations division had gone over earlier, too. But everything else, the unlimited civil jurisdiction, felonies, when the court had never had felony jurisdiction before, the

tax court, the juvenile court, all of those matters had to be reckoned with, and so, when these new judges came on, so many at one time, Judge Murphy urged us to devise training for the new judges. He recruited me and asked my husband, his good friend, if he and I would participate in this; he recruited other judges, experts in other areas, to be his faculty. We would take the new judges in groups and teach them the fundamentals (procedures and law) of the respective areas under the court's jurisdiction, because the judges came from different disciplines. We had one, an oil and gas expert in his partnership in a prestigious firm, who asked me before his confirmation where the courthouse was located. I'm not going to mention names, but he clearly needed assistance in fundamentals of matters other than oil and gas. Now had we done anything with oil and gas we would all look to him for advice, but the court didn't handle that.

MS. PORTER: Were most of these new judges experienced litigators?

JUDGE GREEN: Yes, but in subjects that were not necessarily the work we did. They would do SEC work (federal court), they would do FCC or FTC work (federal court), government regulations (federal). If they did things like medical malpractice or legal malpractice, yes, that was our court. If it was a big contract that involved X, Y and Z, that undoubtedly would come to our court unless it was diversity and could be removed to the federal court. So, with the two courts working side by side, we achieved all the local functions. It was an extremely busy court, a volume court, and all of us had something to learn no matter how long we had been judges and no matter what activity we had done in our lives before we became judges. And so this training was invaluable. For example, the judges rode in a police car to various scenes and actions so they could see what happened on the streets of Washington when the police responded to a radio call, and located and arrested a suspect. Very helpful to have this

kind of training. Similar training continues today.

MS. PORTER: It is December 2, 1999, and we are resuming the interview with Judge Joyce Hens Green for the District of Columbia Circuit Oral History Project. The interviewer is Jennifer Porter and we are doing this at the judge's home. Joyce, you were talking about training programs that Tim Murphy was instrumental in establishing to help the new judges understand their duties and get a handle on what they were supposed to be doing in this new role. Apart from the training courses, were there other things that were done at that time to help the new judges?

JUDGE GREEN: The quick answer is yes. I earlier said that we had about 23 or 24 judges when I came on board. The actual figure is there were 20 and then I made the 21st . We got the increased number of judges, first 17 and then, about a year later, seven more, swelling the court to a total of 44; I should say, parenthetically, there have been some resignations in between or deaths, and those judgeships were filled as they occurred. I've always been fortunate to be in courts that have had extraordinary collegiality among the judges. The judges in Superior Court were a fascinating group of individuals, men and women; they came from all walks of life, they were ready to share their experience as the cases developed before them. We had a lunchroom which assisted measurably in getting us together as frequently as once a day if we wished to join at lunch to talk about our various issues. We encouraged judges to pick a mentor and come to chambers and chat about anything which seemed to be a problem; each of us gained much from that kind of dialogue and that input. As the years went by, this became especially important with the increasing number of judges and the very little space available in the court system. We were in seven different buildings (for all but the last of my 11 years there). The

chief decided it was necessary for us to walk to our assignments, literally carrying the robe over the arm, sometimes accompanied by a Marshal, sometimes not, no books, just ourselves. Most of us didn't take our law clerks with us so they could stay back in chambers and do the research. I would be completely separated from my staff, and I would go to the building that had the particular discipline that I was assigned to. As example, if I was in civil, I'd go to the Pension Building (now the National Museum Building); if I was in domestic relations, I would go to the building at 5th Street and Indiana Avenue; if I was in criminal, it would be to one of the two criminal buildings on 4th or 5th Streets, NW. Chief Judge Greene believed that this would allow the citizens to find us. I might say we had some difficulty finding each other and finding the citizens, but nonetheless this is what we did for year upon year upon year, through rain and snow and even personal danger. It became all the more vital that the judges have an opportunity to gather together or meet to talk about ongoing activities of the day; indeed, just to have a little R&R becomes mandatory when surrounded by stress and turmoil constantly, as is commonplace in any court system. We needed the levity of lunching together.

MS. PORTER: So scattered among so many District buildings, how did you go about getting to know each other and the lunch meetings? Was there any other mechanism?

JUDGE GREEN: Other than the monthly judges' meetings, which generally were devoted wholly to business, and the training courses, we would pick up the phone, call another judge and just say I need help or I'd like to talk about something. We made the opportunity to get together, despite the long hours on the bench. The collegiality was there. Many of us became social friends outside of the court because we wanted to. We took great pleasure in the companionship of our colleagues and their families.

MS. PORTER: We seem to have confused ourselves at various times through this interview by talking about things off the tape. My recollection is that in one of these moments you mentioned a buddy system that Judge Murphy had invented. What was that?

JUDGE GREEN: You remember correctly. There was a buddy system that sort of wavered over later years, although it could have readily been instituted by anyone who had that desire. Initially the idea was that a more experienced judge would be assigned to a less or non-experienced judge and then always be ready to answer the questions and assist as to the procedures and the mechanism. Obviously you didn't do the research for the other judge, but this was, when you just had a very basic question, where do I go, where do I sit, how do I stand, how do I address a group of people sitting out there in the courtroom, what is expected when I am ready to get up from the bench – do I announce it or does the bailiff announce it – things that you take for granted when you have been a judge for a long period of time, but if you have never done it, and if you have never seen the inside of a courtroom, as some of our brethren had not, it becomes all the more vital that they feel comfortable in performing these activities.

MS. PORTER: If we could just go back for a minute to a subject that we touched on earlier, and that was collegiality on the court, and the efforts that you and Judge Murphy made to try and bring together those in buildings spread out across blocks of the city. Talk about why you thought collegiality was such an important thing. I've always thought of judging as an isolated sort of activity, where you are ultimately responsible for a decision. In thinking about collegiality, do you actually talk to each other about your cases and compare notes, or how does that work and why is it important?

JUDGE GREEN: It’s absolutely essential. Collegiality clearly has to be with your

colleagues, rather than with the lawyers who appear before you. In Superior Court and its predecessor court, general sessions, I'll refer to both as Superior Court, in a court that goes from such a small size to such a huge size quickly, with the great breadth of jurisdiction, and the separation into seven buildings, it was vital that we find the cords that would bind and draw us together. One of those vehicles was the teaching that Judge Murphy devised and that a number of us participated in; another was a newsletter that several of us participated with, that was sent around to the Clerk's Office, to the other judges, to the law clerks, to the staffs, just sharing bits of information we thought might be of interest and importance, on occasion even gossip, and sometimes, believe it or not, judges' humor. This is the kind of thing we tried to do to enhance collegiality. We asked for participation because, as in any occupation, the more you participate the more you become part of the function.

MS. PORTER: Well it has always struck me, Joyce, that judges can't talk to you. There are friends in a way whom I'm able to talk to about work that I'm doing. You can't talk to me about your cases because that would be inappropriate. But is there a case where you feel free with all your judges to talk about your cases and to get the sort of feedback or encouragement or support that the rest of us like to get in our everyday lives?

JUDGE GREEN: That's exactly what I mean. You can say virtually anything with the collegiality that you share with your colleagues. You can talk, discuss and argue about politics outside the court, but a judge cannot attend political rallies or participate in any way in campaign finance, other than casting a vote. You can thoroughly and candidly talk about cases; you can share concerns about matters; you can talk about lawyers who in turn talk about judges; you can talk about other judges who in turn talk about you; yes, you can share that and it helps to

round out your dimension in life so that you're not always looking through your own prism, but you are getting feedback from others who have either gone through this same situation or are about to encounter it.

(TAPE 6 A)

MS. PORTER: This is a continuation of the interview that was started on December 2, 1999, on tape 5. The 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. This interview is taking place at the judge's residence on December 2, 1999.

JUDGE GREEN: Continuing what we just finished talking about, collegiality: eating lunch together was important where judges could group and break bread, and talk and do fellowship. Through the efforts that we made, and I think they were really very successful efforts, many of us did become lifelong friends, social friends as well as court colleagues, and I look back on that experience as one of the more treasured in my life. I spent 11 years on the Superior Court and with those friendships and relationships and the devotion of those judges I served with at that time, and with the staff, even today it remains a large part of my life. But back to when the judges would consult together. Very often they were seeking, and of course I include myself in this, seeking advice as to how the other would handle a particular situation, and in order to get to the bottom line you obviously have to give many specifics about the problem or the background of the case you were referring to, and whatever happened that was important in a courtroom. You might just be ventilating that, but not really seeking advice. Different dynamics go into this, and one of the more important contributions to the court and to the collegiality, I

believe, was an idea accomplished in Superior Court through the suggestion of Judge Greene, and later incorporated by the judges, on a purely voluntary basis. It was recommended that those judges who worked during the same period in the same area of criminal law, especially with the most serious crimes, denoted Felony I, get together periodically, share each other's presentence reports, and then examine: If you were in my situation as the sentencing judge, what kind of sentence do you believe should be imposed on this particular individual? I should say quickly that in those days we did not have sentencing guidelines, and so we were unencumbered to sentence as we believed appropriate. Only the statute could curtail our discretion. In short, the sentence could be uniquely tailored to the particular defendant and the crime committed.

MS. PORTER: And did all the judges in the criminal area participate in this or did some not want to?

JUDGE GREEN: Not all of them did participate in this, however, those that did saw a dramatic change. The judge known as the most lenient judge, or the judge known as the one that would give the harshest sentence changed radically over time, drawing more towards the center of whichever direction had been their original tendency. These judges could incorporate those changes in their sentences. I think that overall it benefitted all: the government, the defendant, and the victim. Judging can be isolating and it becomes all the more necessary to have the input of others. While, at bottom, it was our decision, and we would call it that way, the decision was formulated with the thoughts and interaction from other experts. A number of us carried that project for years and years.

MS. PORTER: Before I go on to ask you some more detailed questions about the organization of the court and how it actually ran, we have touched on training for the judges

and you have alluded to some more detailed training that you received at some point. What was that and when was it?

JUDGE GREEN: Are you talking perhaps about the judges' school in Nevada?

MS. PORTER: I think so, yes.

JUDGE GREEN: All right. We didn't have any school for the local Superior Court judges when they came on the bench, but there was, and is, a national college for state judges in Reno, Nevada, which you could attend, and actually were expected to attend, at some time after you started your judgeship. In my case, I had put it off for some years because of my three young children, but in 1972, with several of my colleagues in Superior Court, I traveled to Reno for the month required for attendance at the judges' school.

MS. PORTER: By that time you were almost experienced enough to be the faculty.

JUDGE GREEN: Not really. I'd only had about four years on the bench. And actually I think it is good to go when you have had some years of experience – not too many – so then you really understand what they are talking about, can relate your experience to them and they to you, which is part of the curriculum, and see how you can improve that which you had been doing for many years, absorbing the ideas of others. I took to this course my children and the nanny, so, although I had to work, we could still be together many hours daily; and my husband, who was in the private practice of law and couldn't abandon it for a month, joined us the last week and was allowed to attend the sessions as a spectator, and he found that absorbing. Afterwards we went on a two-week vacation in Nevada. It's tremendous to learn from others' experience. There were about 120-130 in our class; I was one of two females. We were all

together during the day, and in the evening, we were in groups of only 10 or 12, each of us coming from a different state, a different experience, so that we could bring something to the discussion. The school began at 8:00 a.m. and ran until 1:00 p.m., six days a week. If people thought we were playing out there in Nevada, they are wrong, wrong, wrong. We had an afternoon during which time we were expected to digest and analyze 600 pages of required reading daily; we would then parse those matters the next day in the sessions. That evening we would return at 6:00 p.m. and stay until 9:00 p.m., gathered together in that smaller group; we would not only discuss the lesson structure of that day and the anticipated ones of the subsequent day, we would analyze the latest cases from the Supreme Court and other courts, and we would talk about what each of us did in our court to implement procedures. It was enlightening to hear what was done elsewhere. This sharing was enormously helpful, stimulating ideas for the Superior Court. We learned how to deal with rebellious litigants, or witnesses, determined to destroy the efficacy of the system in a democratic institution. This was on the agenda because of a fairly recent experience that had happened at the Democratic convention in Chicago and how that judge, unable to cope with intended destruction, behaved poorly and became the scorn of the nation, the embarrassment of the judiciary. And while nothing can really prepare you for the actual happening of a situation, education about such matters can help if you encounter the unexpected.

MS. PORTER: What sort of strategy was there for dealing with a litigant who refused to cooperate?

JUDGE GREEN: Above all, to stay calm.

MS. PORTER: Not duct tape?

JUDGE GREEN: To stay calm, to not lose yourself in the passions of others, who are absolutely beyond control, to have courage, to decide when it is wise to call a recess and wise to continue on, decide whether it is wise to react as expected when you know that will create an unnecessary issue. To illustrate: When I saw a person sitting with a hat on in the courtroom, who was clearly determined to remain so attired, clearly anxious for confrontation with the system, my action was simple. I told the Marshal to not say, "Everyone rise," and I walked into my courtroom and said, "Everyone remain seated." No issue created, man walks in and out of courtroom. There are many, many ways you do it. Most of it comes from experience, some is reaction. But it is helpful to know that others have been in similar situations and have been able to ride it through and, hopefully, to do it well. The important thing is that we in a court system have to continue due process no matter how we personally feel about a situation and no matter how some may be determined to confront us. Our democratic institution, with its constitutional protections, has to surmount obstruction in a dignified, firm and understanding manner.

MS. PORTER: The program sounds as though it's a blend of practical plus academic. Is that a fair description of it?

JUDGE GREEN: That is a fair description. Also collegiality. Most judges came with spouses and each had an apartment in a particular building. I took a cottage because I arrived with the three children and the nanny, awaiting my husband. We stayed together in that cottage. I hired the lifeguard there to teach the children how to swim, while I studied my 600 pages; I could sit out by the pool and watch them and the lifeguard, and study my reading. We could do fun activities with each other, including picnics and horseback riding; this was a really

important time and helpful. I went out at the time that my Chief Judge did, as well as Joe Ryan, one of the domestic judges; both had been on the bench longer than I. Judge Hamilton also was in our group, so it was a good one. We were, as they would say in the vernacular, tight with each other, and had a great deal of fun as well as worked very hard. We brought these experiences back to Superior Court.

MS. PORTER: How was the court structure after it changed in Superior Court and you had large numbers of judges? How, for example, when a litigant came in, filed a complaint, now how was the judge's calendar organized?

JUDGE GREEN: The structure changed with so many judges and the so many added disciplines. The Chief Judge continued the assignment of the judges, initially for a month; later the assignments were for longer periods of time, usually for one year, and then we rotated to other assignments. The most serious criminal cases, involving murders, conspiracies, armed kidnaping, multiple defendants, most complex issues and longest trials would be assigned to one of the judges in Felony I. Eventually the judges would be moved to different assignments, because it becomes too much of one thing after a period of time.

MS. PORTER: So you have a number of judges assigned to criminal?

JUDGE GREEN: Right. And there are different areas in the criminal division. Felony I (the most serious), Felony II, the armed robberies, the burglaries, certainly serious matters but much more volume. Four hundred cases at a time on your docket, that you were to monitor and move. All demanding jury trials at the outset, many of them, of course, resulting in pleas, some of them resulting in bench trials rather than jury trials.

MS. PORTER: Did you have the Speedy Trial Act to deal with at that time?

JUDGE GREEN: No, the speedy trial particulars required by law at that time found it not unconstitutional if it took one year (or even more) to get a trial with a detained criminal defendant. After I left the court in 1979, that changed. You must accommodate. The federal court was different, with much stricter speedy trial matters.

MS. PORTER: So when a case came in, how was it given to a judge? Was there some sort of roster when the case comes in, and they see you've only got 399 cases, so they give you the next one?

JUDGE GREEN: Essentially, yes. The additions to a calendar were made as equally as possible. Yet, each judge works at a different tempo and some cases take longer to resolve than others. Some judges have more pleas. Whether they are more lenient in sentencing or not, it just happens that way. You are constantly working, constantly moving your calendar. There came a time that we went off what we call the central assignment system, which is, whenever the next judge is available, the trial is assigned to that judge, whatever kind of case it is. And, as earlier related, there would be a certain number of judges assigned to civil, a certain number to domestic relations, and juvenile matters. So that if I were in criminal, I wouldn't be doing any civil cases unless I elected to do additional matters.

MS. PORTER: And once you were assigned a criminal case, for example, did you keep that case the whole time?

JUDGE GREEN: Yes. You kept it the entire time that you were in that assignment category, perhaps for a year, so you probably would complete the case there. If you had not tried the case by the time that you were moved to another assignment, then it was left to the next judge to try the case. If you had remaining only the sentence of the case which you had

tried and the individual had been convicted, then you would carry the sentence with you to the new assignment.

MS. PORTER: So when you were in the civil area, did the system operate the same way?

JUDGE GREEN: Yes. The major civil cases, the ones that were more complex, the ones that would take longer to complete, the ones that had more parties, would be in Civil I, and a few judges would be assigned to that particular area. Civil II would be a hybrid of everything else, including all the motions, and the case would go to the next judge available to take those cases. It was a mix and the dynamics of that kept changing. As new things were tried, some things were scuttled later on as not having worked successfully under a one judge one case situation.

MS. PORTER: So was there a time like, for example, when you could go to court down there and have a different judge hearing different pieces of your litigation?

JUDGE GREEN: Usually. A very untidy way to handle litigation. Of all cases that should have the same judge, the domestic/juvenile area needed this most, yet that area was the last to have particular judges assigned to see the case all the way through. When I was in Superior Court, it was not unusual to have seven different judges hearing the same domestic relations case at different stages, ruling on different motions and, particularly with the juvenile cases that come within the family area, you would have different judges seeing the children at different times, and, if the youngsters had been sentenced, reviewing their cases that had been before a different judge. I found that appalling and, therefore, even when I went on any other assignment, criminal or civil, I carried roughly 400 children with me from the time that I had

initial interaction with those cases. Because children's cases are confidential and there must be a closed courtroom, I would do these at the end of the day and review each every three months, since I saw that child at least four times a year. I would have to keep detailed notes because it is true that after a while, things begin to blur, and you can't quite remember what was said three months earlier, particularly when you have a heavy volume of adult criminal cases ongoing at the time. But, I have never regretted doing that. It took lots of extra work for my staff and for me to put this together, but was absolutely worth it to give the youngsters continuity and the sense that they were cared for as unique persons, no matter the offense. Many of the children remember me, have found me in federal court, and visited through the years. They often talk about "my promotion" there to the federal judgeship and share photographs of their families. One carried my newspaper picture in his pocket the day he came to visit me and to watch as another judge sentenced his father in some criminal matter.

MS. PORTER: Joyce, you mentioned that when you sat on the bench you had to grab your robe and walk to the building. When you are doing that and you are separated by quite some distance from your chambers, how do you deal with the little research questions that come up quickly, or did you have your clerks with you when you went on the bench? How did that work?

JUDGE GREEN: No, you didn't have your clerk with you. It didn't work well. I thought that we could not do nearly as well as we could had we been in an assigned courtroom, wherever located, if we had the ability to have some research tools with us – the law clerk, the books – the ability to take the time to digest matters. It didn't work that way. Maybe, in fairness, some adjustments had to be made due to the enormity of the change in our jurisdiction and the

space constriction, but it would get confusing. I would walk, as I indicated earlier, from my chambers to an assignment several blocks away. Sometimes, not infrequently, I would walk past the very defendant I had just sentenced, often riding in the same elevator with them and then walking out on the street with them as they were attended by one Marshal per defendant. It enhanced the interesting moments in life. I would arrive for my assignment at a building designated as a civil building, or a domestic building, or a criminal building, and would wait in a paint peeling, barren room for someone to send me a case. And a huge file, no exaggeration, often a foot or two high, or several files related to the same case, would be walked in by the deputy clerk who would happen to be sitting with me that particular day in that courtroom. The litigants and lawyers would be waiting for me and the jurors. I would be expected to stroll out and just start trying this case, never seen before. So, not knowing what it was about, my first question always was, is this tort, is this contract, what is it? Is it jury, is it bench, who are the lawyers? Once getting that answer (if available), I would take about 20 minutes to quickly flip through the file just to see the issues I was trying. Remember, we were dealing with volume and as soon as I finished this case, another awaited. So I would walk into the courtroom and say to my lawyers, before we actually did empanel a jury, just give me a brief synopsis of what this is about so I can intelligently preside over this particular case. That's how we tried them, or settled them. Talk about doing it on spur of the moment, that's the way it was, day in and day out, a bit nerve-racking. If you really needed assistance in research (I tried not to ask for it, most of it just had to come from my knowledge and, hopefully, I was correct), I'd take a brief recess, go to the waiting room, and, if there was a working telephone (not usually), call the law clerk and say two minutes, really in two minutes, I need this information. Let me add that we did not have

computers in those days, nor did we have LexisNexis. In another two minutes I would get a call back, I'd go back on the bench and do whatever I could with the response I got, sometimes accepting it and sometimes rejecting it. It was a very clumsy way to do justice. It slows the process, it is certainly not the best application of mind and ability, but it surely did keep me challenged, and some of the issues were absolutely engrossing. The miracle is that we were able to do as well as we did under such trying circumstances and in that atmosphere, which just shows that when you are called upon to do something and you have X number of resources you learn to live within that number. Surprisingly, justice did get served most of the time. The judges and staff worked ever so hard to make this happen.

MS. PORTER: You talked about telephoning your law clerk. How did you get a law clerk? Here you are, 1968, catapulted onto the bench. How did you go about finding a law clerk?

JUDGE GREEN: For my first law clerk, Stephany Joy, I called my law school, GW, and said I had just come on the bench and needed a law clerk (a judge had but one law clerk in Superior Court) and this person would probably stay on staff for perhaps a year and a half to two years, but that the applicant and I would discuss that. I was told that Stephany was a very experienced candidate, highly recommended by faculty; I knew them well and respected their views. Consequently, I only interviewed Stephany and no others. Today, she is a state judge in California. She was excellent and happened to be also taking Virginia bar review courses with my husband at that time, so that made it more of a family situation; we became good friends and have remained such since. After that I learned there were other ways most law clerk applicants arrive. There are many candidates for the same position. But here again, there was no one to tell

me this. I had to learn and after a while I would ask the other judges, "What do you do, how do you do it?" In those days in general sessions in Superior Court, it was customary to interview three, four, five months before the clerk came on board. In federal court today, the interviews take place 18 months prior to commencement of the clerkship. It was a different time with a different expectation for the law clerks. In the early years, my law clerk also served as my courtroom deputy clerk, and, therefore, was with me 100 percent of the time when I was on the bench. Then both of us had to do research after I left the bench for the day.

MS. PORTER: In those early days were clerkships as highly sought after as they are now? Was it as strongly competitive?

JUDGE GREEN: It was. It was considered a real stepping stone to a new chapter in law after the clerk completed his or her term. It was very competitive, a premier kind of position, and as soon as it became known that you were a judge on the court (it takes a while for this word to filter through), the applications arrived from persons all over the country.

MS. PORTER: Who are some of your law clerks?

JUDGE GREEN: My second clerk was Pat Gurne, subsequently a partner in the firm of Jackson & Campbell, now a partner in Coates, Davenport and Gurne, who remains among my closest friends; our friendship has continued from that early time (1967-71) to today. Indeed Pat adopted our family, visiting our home almost every night bearing her McDonalds' hamburger. She was followed by Sue Low, now a wife, mother of two, and practicing law in Iowa. The others included Ann Keary, now a Superior Court judge, Anne McKenzie, a Minnesota judge, Helen Bollwerk, Office of the Pardon Attorney, Nancy Lawson Schmidt, now a hearing examiner in California, Don Hamer, judge and new Episcopal priest. They were, each

and all, special and wonderful. The clerks had graduated from law schools across the nation, some with years experience in the real world, others not.

MS. PORTER: Did they have some sort of program to introduce the clerks to the court?

JUDGE GREEN: Not really, it was very individual. You decide where you are going to find your applicant, or the applicant finds you, and you interviewed whenever it was convenient for you and your schedule, it was a much less regimented way than we do today.

MS. PORTER: When you hired a clerk, what were you looking for?

JUDGE GREEN: I was looking for someone who, first of all, could, in effect, "live" with me for the period of time that clerk was there, because we were going to be doing most things together. Someone who was skilled at doing research. Someone who was skilled at people relations, because this individual, initially, also acted as my deputy clerk, was constantly in the courtroom and had to be able to get along with the myriad of people that come through the courtroom (the litigants, the jurors, the witnesses, the other court personnel and the other judges). In those days, there was relatively little writing done by most judges and, therefore, relatively few memos or research had to be done by the clerk. But, that increased with my desire to write some opinions. I would be on the bench 99 percent of the time in Superior Court, and the time to write the opinions could only be in the wee hours of the morning or after I finished bench time.

MS. PORTER: Does this mean that you were giving your decisions on the bench orally?

JUDGE GREEN: Absolutely. The volume was torrential and if I didn't give my decisions in the main from the bench, with multiple findings of facts and conclusions of law, I

simply could not return to the matter for a long time. So, if I took something under advisement, it could be months before I could produce the written opinion. It became almost impossible, so most of my opinions were from the bench and anyone interested would have to buy a transcript or be seated in the courtroom at the time I rendered this judgment. Some judges like to write more than others, I among them. I did do more writing and that, of course, created more work for my law clerk, who then did more research and, on occasion, some initial drafts.

MS. PORTER: Did what you were looking for in your clerks change?

(TAPE 6 B)

MS. PORTER: This is a continuation of the interview being conducted on behalf of the Oral History Project of the District of Columbia Circuit, on December 2, 1999. Before we were cut off by the other side of the tape, Joyce, I was asking you a question about whether your criteria for selecting clerks changed over time.

JUDGE GREEN: Essentially the same qualities were needed throughout the entire time that I have been a judge. But, as the years went by, first in Superior Court and then always in the federal court, I put great emphasis on the ability of the clerk to do writing. Drafting quick orders for me, preparing more lengthy memoranda, if need be, concerning the arguments I was about to hear. Let it be said that I read every piece of paper in a case and, therefore, was well aware of the written legal arguments, as was my clerk. The clerk and I then discussed the matter and decided whether I needed a memorandum when about to hear the oral argument, or whether I needed a rough opinion for something that most likely could be resolved in its entirety as soon as I held the hearing. But the law clerk's ability to write quickly and gracefully (if only to highlight certain problems or to advise me of the research) is really important now, as is a terrific sense of

humor. In small chambers you not only need to get along, but to have some lightness in a day of heavy serious concerns.

MS. PORTER: Going back to the days when you were giving your opinions orally, or the judgments, how did you go about preparing for that? Your trial finished, and you sat there and said well I've decided this is the way it's going to be, or did you take a recess and make a few points on your legal pad? How did you do it?

JUDGE GREEN: It's amazing how you learn to do something you have not done before, and learn very quickly how to do it. I've always taken copious notes as a case is ongoing, simply because it's my style (somehow I convince myself that facts/conclusions are more firmly in mind if I can see it in my scribbles and my writings, often hard even for me to decipher). Nonetheless, I would take notes and as the lawyers were making their arguments, I would highlight those points necessary to make oral findings of fact in the case. And so, no, I usually did not leave the bench. I just sat there and started rolling off findings of fact and conclusions of law. On rare occasions I might take five or ten minutes in an anteroom just trying to put things in a more logical, coherent order, or deciphering an illegible note. But, most of the time I did this without the benefit of research (except that research opposing lawyers provided prehearing and those that my clerk unearthed for our discussion). Then I'd state the findings, legal conclusions and the decision. If I did not render my decision then, it would become virtually impossible to go back and recap this; too many new judges fell into that trap. Although warned, they didn't realize initially that the volume created impossibilities. So they would wait to write up literally scores of cases. I had tried to do that, but recognized in the very first week that I could not write opinions, except rarely. Today is a different matter. In federal court, busy

as we are, there is not the staggering volume we had in Superior Court. The Superior Court judges performed remarkably well in light of that continuous volume. No matter how bright, no matter how diligent, it is inescapable that exhaustive hours will be spent to accomplish the work, leaving scant time for anything else.

MS. PORTER: Let's talk now about your cases, some of the ones that you remember from your time on the court.

JUDGE GREEN: If we are going to talk about episodes in the law, I think I should probably complete what I have started to say about the Vietnam War demonstrations. Somewhere around the years 1970-71, students revolted around the country and descended on Washington, to give expression to their views concerning acceleration in the Vietnam War. They blocked all of the bridges in Washington so people could neither come in nor leave. We judges had fortuitously received news of this a day or two earlier when we secured a copy of their war plans. We were asked to come in on a Sunday so we could all be lodged in a hotel and ready to go on duty. Military personnel stood outside of the hotel, bayonets at the ready, which, perhaps, called a bit of attention to the fact that somebody of importance was in the hotel, but the result was that we were able to walk to our assignments and perform them. The entire court went on 24-hour duty, just as was done during the Martin Luther King assassination situation in 1968, but this time, rather than being asked to take over the entire court and not the midnight duty, I was assigned to the 2:00 a.m. to 8:00 a.m. duty. Thousands of people, including these rebellious students, were arrested, as were innocent bystanders. They were just swept by the police into RFK Stadium, kept out in the open, and detained there to await their hearings in court. And when a court system is unexpectedly obligated with thousands of cases at one time and has to rise

to the occasion, it is an extraordinary matter. The judges came in shifts. I can only speak to my moment of time on duty, as four of us gathered together. We believed the arrests were not being performed or processed appropriately, in violation of the detainees' rights. It was obvious that the police officers were unable to make identification of the individuals they had arrested to the charge that they were being charged with. Law enforcement hadn't learned in those days, but did as a result of this, to take Polaroid pictures of those arrested and write a few remarks to remind themselves why they were doing what they were doing. But, in defense of the police, they were overwhelmed by the numbers of people that were blocking the streets of Washington, not allowing others to go to their responsible duties; yet, although noisy, they were essentially non-violent demonstrations, unlike the Martin Luther King assassination episode. So we had these people milling around the courthouse, lying on floors, eating snacks, unrelated adults who had been recruited by the parents of our student demonstrators to come and rescue their children and act as third party custodians, lawyers who obviously had never been in a court before, other lawyers who were recruited by the bar associations to represent these youngsters. In the midst of all of this, we four judges who had met together decided that if the processing of these papers were not completed within a couple of hours (and we had given fair notice to the Corporation Counsel), and if the police were unable to make positive identification to match the individual to the charge, we would immediately dismiss those cases. We circulated that decision to the other judges who were sitting on similar cases or were coming in to take their tours of duty, saying you do what you want, but this is what we are doing.

MS. PORTER: Joyce, did the other judges on the early shift follow your lead on this issue?

JUDGE GREEN: On the early and the later shifts, most did so. And, most of the cases were dismissed. For those few thousand not dismissed, for whatever reason, they were processed and assigned trial dates that would not interfere with the examinations most of these students were to be taking a few months later. Eventually, a large class action was filed constituting those who had been detained in RFK Stadium interminably. That was tried before a federal judge, William Bryant, who is one of my colleagues today. He had the case for a number of years and some did, eventually, recover modest damages for that extraordinary period in the history of Washington, D.C.

MS. PORTER: Now, hearing judges criticized for their rulings, was it at all controversial when you released all of these students, who after all had paralyzed the city?

JUDGE GREEN: Other than the fact that these student demonstrations had hijacked the city for days (peaceful, although vociferous, demonstrations), I don't remember much in the newspaper concerning the court's activity with these demonstrators, other than they appeared in court, something to that effect; nothing further about what the judges did. To the best of my memory, we were neither criticized nor championed. But we felt good about it, recognizing that while there were some problems, we provided due process, and despite the enormity of the volume, not the difficulty, squarely met the challenge doing what we believed was right.

MS. PORTER: Now that we've dispensed with the Vietnam demonstrations, what other cases did you have that stick out in your mind as memorable?

JUDGE GREEN: As you can appreciate, in 11 years on the Superior Court bench, serving in every facility of the court, I undoubtedly was involved with thousands of cases.

I've never had the time to count them, and probably couldn't find documentation today for most, but yes, of course, there are a number that do stand out. I'm just going to recite a few, otherwise we would be here for the next year, and I know none of us want that to happen. I can't give you exact dates when these cases occurred, but most, if not all of these cases, are in the 1970s, and they make particular points worthy to mention at this time. I'll start with the *Merriweather* case, brought by Monroe Friedman, a lawyer and activist. I did constitute this a class action – the first ever in the family division. It involved foster children, 28 in number, who were supposed to stay in this foster home for no more than two or three weeks, awaiting placement with families who would adopt them (those families had to be located and scrutinized to be appropriate for the purpose). As it turned out, most of these children stayed at the Merriweather home for two and three years, and the dismal neglect and appalling situation in that home were matters of enormous concern. We had several weeks of testimony. The children were allowed to roam at will, there were no real caretakers, usually the cook was called upon to watch the children. The children weren't known by anything but come here you, as if they were animals and did not have names. It was a most impersonal attitude, but more importantly, perhaps, there were no safety protections. No fire protection, no other safety protection, and no one to see to the activation and implementation of even the most basic safety features, such as removing shards of glass from bedroom windows or tending to festering cuts. According to the regulations, the children were supposed to be given three nutritious meals per day, with specific types of food spelled out. They were supposed to receive cookies and milk at night. These were small children, these were children needing substantial amounts of food and types of food (vegetables, fruit, milk), so that their bones could grow strong, so that they received sufficient calcium and potassium. The

authorities that ran this home did not provide these essentials, although they received payment for providing these mandatory matters. The children never had the balanced nutrition, the snacks or the nighttime milk. Charitable persons and companies would donate toys for the use of the children, and when examined we found there were closets filled with hundreds, hundreds of toys, still in cellophane wrappings, that had never been taken out for the use of the children, just stored. The 28 children had four toys to play with, all broken. The clothing was in disarray, mismatched, buttons missing, children 12 years of age (most of them were younger) were wearing the clothing of a five-year-old. Sexual proclivities were rampant. The District of Columbia and its welfare agency were clearly not providing supervision over this home. The agency had directed that certain things be done, but there was no follow through to see that those things were actually done. The children were endangered as a result of this. I made the decision that the court would close this home unless, within 30 days, Merriweather's operators put into implementation all protections that the child welfare and District of Columbia regulations required for safety, for sanitary reasons, for psychological reasons, to be strictly monitored by D.C. thereafter. Merriweather decided not to put them in effect. This was the first foster home closed in America, not to be reopened unless there was proof of appropriate protections in full use, to be supervised and implemented according to the regimen that I had set out. That was one of my sadder cases. Another case, the "lemon car" case, came when I was on civil assignment. Some of the facts are a little hazy, but essentially this was a car advertised as new, which had been purchased from a certain dealer and had been owned by the plaintiffs for about three years, during which time they had driven it only 8,000 miles, primarily because it could not hold an air conditioner. It had been bought with the assurance that it would have air

conditioning. The air conditioner on one occasion literally fell out of the car, stopping movement of that vehicle for a few months until repairs could be made. There was a reason for only 8,000 miles on this car. No matter what you did with this car, it not only could not generate air conditioning, it couldn't generate a lot of other things. It had one mishap after another. At the end of the hearing, I decreed that this car was so defective that the plaintiffs were entitled to a new car, with no mileage on it, save the usual ten or so miles that one begins with and that it have workable air conditioning. I am told this was the first such decision in the nation and there was substantial press given to the case. It became even more interesting because this was the time the Redskins were playing their first Super Bowl against Miami and the game was in Los Angeles. My husband and I were going there after I gave my decision in this case. I took a recess from my other cases, so I could leave with a good conscience. When we returned from the game, who was in the airport? The counsel for the plaintiffs in the lemon case, the counsel for the defendant, the plaintiffs themselves, and my husband and I. The only one not there was the dealer company. We elected not to discuss the case. The world is small and moves in surprising ways.

Another was a tax case. I am certainly no expert in the tax field and, in fact, never had a tax case nor a tax course before this case came into being. This case had to be treated with urgency: *Clarazel Green v. District of Columbia*, was brought by the immediate former chair of the D.C. City Council, Gilbert Hahn, who by virtue of his office, had been restricted from bringing any cases against the city for X period of time. The day after that period expired, he brought this action, leaving but five days in which to complete the case. Here, too, I maintained this as a class action, the first such in the tax division. I found that the district government was guilty of misinforming its citizens about property tax assessment procedures, piling misleading

"clarification" on top of misinformation, and that these actions of the city in its implementation of the collection of taxes on all single family residences were in violation of the Fifth Amendment guarantees of equal protection in the law and citizens protections specified in the D.C. Administrative Procedures Act. I declared the city's real estate tax assessments illegal and then took two weekends to write the opinion. It is the one and only time that my order was issued prior to issuance of the opinion. The hearing (trial) ran 15 to 18 hours a day, in the sweltering summer, without any air conditioning in the courthouse, with windows open, and surrounded by truckloads of files brought in by the District of Columbia that rung the courtroom. It was a serious case, with constitutional implications. The taxpayers proved discrimination in the assessment of taxes among different areas of single family homes, even though, of course, all like properties were supposed to be treated similarly. Although there was a 1926 law which demanded an assessment of 100 percent of market value as to apartments and commercial properties, which instead were assessed at 65 percent, single family homes were assessed at 55 percent; yet 78,000 single family homes were assessed at the 65 percent level and about 19,000 homes were assessed at the lower level. I required a rollback and that the city not take any action to collect real property taxes until all single family residences were at the required 55 percent of estimated market value. You could literally have a home on one side of the street assessed at 60 or 65 percent (even this varied) and a home on the other side of the street assessed at 55 percent, with no rational reason whatsoever for the disparity. The rollback I understood would cost the city about $3.8 million and reduce taxes on bills that were scheduled to be paid within the next several days, hence the urgency in pronouncing the decision. I also found several constitutional violations. How pleased I was when a short time after my decision appeared (it should be noted

that the decisions of Superior Court were not reported unless the *Washington Law Reporter* was inclined to do so), a circuit judge, Albert Bryan, Sr., then of the Fourth Circuit, and formerly a district court judge for the Eastern District of Virginia, asked for a copy of my decision saying that it would contribute to his writing of a tax decision. And then, in handwriting, he wrote me a second time – a letter that I have preserved – and advised that my decision had made a great contribution to tax law and that he did indeed base his opinion on the very matters that I had discussed. You can imagine the joy that praise brought to this Superior Court judge from this esteemed federal judge. I walked on clouds that day. Another memorable case is the *Gail Cobb* case. Gail Cobb was a young, 24-year-old rookie policewoman and the first policewoman on active duty killed in the line of duty in America. She was approached on the street by a lawyer who had witnessed something unusual. He had seen a man running frantically into the underground of a parking garage at 20th and L Streets, NW, in Washington, D.C., right next to the Columbia Bank Building, and he sensed something was wrong. Officer Cobb was then writing traffic tickets, but nodded her head in understanding and ran down into that parking lot. As the story was later related by parking lot cashiers who were underground in a glass encased area, the man had run into the bathroom, changed his clothes, and came out wearing strikingly different attire. The policewoman arrived at that time, made him straddle the wall, put his hands up on the wall, spread his legs wide while she proceeded to hold her radio in one hand attempting to summon help, and frisking him with the other hand. The man turned around, pulled a gun from his waistband and, at face-to-face range, shot her in the head. She died immediately. He then ran out of the parking lot, was promptly accosted by police. Sirens wailed all over the city; there had been an attempted bank robbery. The killer and the would be robbers belonged to an

organization that called itself The New Nation. The organization, comprised of at least the eight persons arrested, was to obtain money from armed robberies for the purpose of overthrowing the U.S. government. It was to have an assassination unit, a drug sale unit, an intelligence unit, and a unit that would kill all the white people in the area. This was the first effort of the group to put into effect its criminal conspiracy. As the proceedings commenced, it was obvious that we had to keep all eight individuals in different facilities, we had to be particularly vigilant because Gail Cobb was the daughter of a corrections officer at Lorton. He and his wife, the parents of Gail Cobb, and her four-year-old son, were in court for every single action that was taken: the most customary motion, the most serious motion, and, of course, the trial. They never missed a moment. It was a highly volatile situation. Law enforcement did not know if others were members of this conspiracy who could be silently ready to commit other crimes, but suspected there were many; the defendants had talked among themselves about hundreds and thousands of other people, mostly professionals, who were silent members of this group. At the time this case was considered the second most dangerous ever in the history of this city, the first being the Hanafi murders. One of the eight defendants in the *Cobb* case pled early on, and fully cooperated with the police. Day by day, during trial, one or two of the defendants pled guilty, and were eventually sentenced; two went through trial, were found guilty by the jury and were sentenced in September 1975. The court of appeals affirmed. It should be noted that the mastermind, a college graduate and the second most dangerous perpetrator, John Dortch, after release from prison, went to law school. For years he has sought admission to the bar of the District of Columbia, contending that he was only a minor participant, that he had turned himself in immediately, and that he pled guilty immediately. In fact, his role was major, and he didn't plead

guilty until several days into trial, which occurred many months after the actual commission of the crime. To the best of my knowledge he has not yet been admitted to the bar. I shall remember this sad and intriguing matter. Another case, in the domestic field, involved a divorced wife seeking alimony as well as other monetary assets. She was an older woman, a Ph.D., but because her husband had been a foreign service officer, she had not been permitted, as the spouse, to work in any of the countries to which he was assigned. That was the law at that time; those were the regulations under which she had to abide. Her husband at one time was stationed in Russia, she accompanied him, and indeed, the wife of the Ambassador to Russia testified about the responsibilities of wives of foreign service officers and how this plaintiff had contributed mightily to her husband's success in advancing in the foreign service. She therefore aided the augmentation of income that he earned. Other than being a typical alimony case with an international twist, the most compelling matter was that this woman, by reason of her inability to pursue a career while her husband performed his work, had been unable to get enough Social Security credits, which would have provided a small lifetime "annuity." I directed the real property be equally divided, not to be sold for three years, during which time the plaintiff's wife would continue to live in the property, maintain it, pay the full mortgage, and could rent a portion of her share, becoming landlady and thereby gain the needed social security credits. The court of appeals affirmed.

ORAL HISTORY OF
HONORABLE JOYCE HENS GREEN

Fifth Interview – March 3, 2001

(TAPE 7 A)

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

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

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

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

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

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

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

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

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

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

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

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

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

building? What's that about?

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

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

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

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

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

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

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

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

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

MS. PORTER: What were those interesting activities?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

appointees, including those serving on boards and commissions.

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

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

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

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

(TAPE 7 B)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MS. PORTER: You should always be so lucky.

JUDGE GREEN: (laughter)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MS. PORTER: And Burnita Shelton Matthews?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(TAPE 8 A)

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

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

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

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

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

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

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

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

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

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

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

Office?

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

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

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

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

MS. PORTER: You weren't actually assassinated.

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

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

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

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

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

MS. PORTER: So Letelier was appointed by Allende?

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

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

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

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

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

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

splendid work.

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

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

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

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

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

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

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

JUDGE GREEN: No, not the most complex case.

MS. PORTER: Organizationally?

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

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

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

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

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

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

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

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

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

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

(TAPE 8 B)

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

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

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

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

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

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

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

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

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

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

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

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

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

MS. PORTER: Why is that?

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

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

MS. PORTER: So the client is out?

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

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

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

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

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

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

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

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

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

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

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

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

MS. PORTER: April 1975.

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

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

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

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

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

(TAPE 9 A)

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

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

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

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

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

MS. PORTER: Did they do so?

JUDGE GREEN: They did so.

MS. PORTER: Has the lab ever been built?

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

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

party wants the judge to recognize.

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

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

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

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

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

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

MS. PORTER: You mean this was concurrently?

JUDGE GREEN: Concurrently.

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

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

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

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

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

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

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

MS. PORTER: Why did it take eight years?

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

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

MS. PORTER: Who were the individuals?

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

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

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

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

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

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

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

MS. PORTER: How did that happen?

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

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

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

(TAPE 9 B)

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

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

network of assets.

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

JUDGE GREEN: Laborious.

MS. PORTER: How have you done this?

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

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

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

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

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

ORAL HISTORY OF
HONORABLE JOYCE HENS GREEN

Sixth Interview – March 11, 2001

MS. PORTER: The following interview is being conducted on behalf of the Oral History Project of the District of Columbia Circuit. The interviewee is Judge Joyce Hens Green, the interviewer is Jennifer Porter. The interview is taking place at the judge's chambers on Sunday, March 11, 2001. It is now 11:20 a.m. Now Joyce, didn't you have some libel cases that were of interest to you and probably also to posterity?

JUDGE GREEN: Well, if I start with the first one, I'm not so sure posterity is holding its breath. This 1985 jury action involved the Liberty Lobby, Inc. and its chair, Willis Carto, and the *National Review* and its chair, William Buckley, Jr. A libel action of one conservative opinion magazine and its principal versus another conservative opinion magazine and its principal. The men had been great friends in past years and then had come to a division of their ways. Most interesting thing about the claims and counterclaims were the lawyers involved, and Mr. Buckley, who performed much like he did on his own television show. At one point, slouching in the witness chair, he turned to me to ask if he could leave because he had a very important speaking engagement and had to catch a plane. When I said "No," he kept insisting that he was losing a great deal of money. The jury overheard this and did not appear impressed by his attitude. A news weekly reported a little bit about this trial and that a judge in Washington had denied Buckley his way. Mr. Buckley was represented by Daniel Mahoney, former chair of the New York State Conservative Party, who a short time after this trial was

appointed to the Second Circuit. He is now deceased. Mr. Mahoney, at the onset of the trial, took Mr. Buckley through his educational and recreational experience, his background, his governesses, his siblings; the jury registered emotion when Mr. Buckley detailed that he had spent his entire earlier education in private schools in Switzerland and in private schools in other countries for higher education; that he had lived in luxurious places, traveling and skiing at posh resorts. I found this an odd bit of lawyering, for a District of Columbia jury, which is not known for its sophistication and certainly did not have the benefit of similar education and recreational opportunity. The evidence reflected libelous statements to and by each principal. They had, for example, called each other Nazis and Fascists and sneered at each other's manhood. It seemed clear the suit/countersuit was brought to ventilate the growing enmity between these two. The jury, at the end, did the right thing, awarding only minimal damages to *National Review*, for the libel.

MS. PORTER: Joyce, you mentioned to me that you had another libel case that you remember involving Pat Robertson.

JUDGE GREEN: Yes, around 1988, certainly in the year of a Presidential election. Pat Robertson filed a libel suit against Pete McCloskey, a Congressman from California, and Andrew Jacobs, Jr., a Congressman from Indiana. He claimed against both defendants, asserting he was libeled in a letter McCloskey had sent to Jacobs, in which McCloskey claimed that Robertson, who served in his unit during the Korean War, was given soft duty, was the alcohol procurer for the other members of the fighting forces, was deferred from combative duty because his father, United States Senator (Virginia), had exercised his powerful position to put his son in non-combatant service. Pat Robertson was seeking the

Presidency at this time; there was speculation as to why he had initiated this particular libel suit in concert with his run for the Presidency. Nonetheless he persisted in this lawsuit. Substantial discovery was taken, much of which was mightily uncomplimentary to Robertson and seemed to substantiate the allegations McCloskey had made. Truth is a defense. Summary judgment was granted in favor of Jacobs. The matter continued, pretrial against McCloskey, because of some controverted facts. I urged the parties (through their lawyers) to settle. The lawyers spent two full days in my jury room (they asked to work nearby so I could continue to aid their efforts), literally with rolled up shirt sleeves, running back and forth to ask questions about could this be done, could that be done. The case did not settle. Therefore, I called the lawyers to chambers (the time was September 1987) to agree upon a time acceptable to all for this anticipated lengthy trial. We reached an agreement to commence trial on March 8, 1988. Each lawyer indicated the date was "perfect." The next day I picked up the *Washington Post* to the screaming headlines, "Judge sets Super Tuesday as Commencement of Trial for Pat Robertson." Super Tuesday is vital in the life of a politician running for office. Mr. Robertson used that agreed upon date to whine that he now was being forced to make a choice to either withdraw from the Presidency or be forced to dismiss this case, all because the judge had set it "arbitrarily for that particular Super Tuesday." When the lawyers came in the next day, I pointed to that headline and asked what had happened, why hadn't they alerted me to the consequence of the date we each agreed to, and if they were seeking a different date now. They both acknowledged that they had agreed on the scheduled date, and they both insisted they did not want a different trial date. But, of course, that was done in chambers, and the world wasn't aware that that was the fact. I issued an order that, with the consent of the parties, the trial continued to be set for that original date. I truly did not

know it was Super Tuesday when it was set, and I clearly, as I often do, would have worked around the date had I been asked to do so. But I wasn't. Thereafter, the decision was misused politically. Mr. Robertson persisted in complaining about the date until he finally said he had to dismiss this case. Then ensued a round of orders, four or five issued in one day, as to whether he could dismiss it without paying the costs and without paying the very modest attorneys' fees requested. At the end he did acquiesce and pay and the case was dismissed.

MS. PORTER: In all the political controversies surrounding that case, and the public attention to it, was there any suggestion that you had acted for political reasons in setting the trial date?

JUDGE GREEN: Oh, absolutely. Article upon article referred to me as an appointee of Jimmy Carter, Democrat. The veiled accusation from Robertson (repeated by the media) was, of course, that I had purposely tried to prevent Mr. Robertson's presidential candidacy by the selection of Super Tuesday as the date on which to commence trial. Robertson knew he was wrong. He acted untruthfully and unfairly. There is little a judge can do to set the record right.

MS. PORTER: Let's switch from the Moral Majority to Larry Flynt and *Hustler*. They came before your court, as well. What was that about?

JUDGE GREEN: This was a case involving *Hustler*, the magazine of Larry Flynt, which sued a photographer who had taken pictures of Elizabeth Ray, a person well known in the District of Columbia circles to be available for social reasons. She was a special friend of a number of Congressmen. Ms. Ray had posed for this photographer in her younger days, in the nude, and when there was a great deal of publicity concerning her and a certain Congressman,

this enterprising photographer contracted to sell this nude picture to *Hustler*. Later, he tried to withdraw from the contract, but *Hustler* did not permit this. Elizabeth Ray joined the lawsuit to prevent publication of her picture. Larry Flynt testified from a wheelchair, having been shot in an assassination attempt. It was an interesting and well litigated case, all the more so because of the colorful people who were involved. Often the persons are more interesting than the issues of the suit.

MS. PORTER: Joyce, in 1998 you had an immigration case, *Lee v. Reno*, that you mentioned as one you wanted to talk about. Would you like to explain why this is a case that you attach particular importance to?

JUDGE GREEN: It is a complex and novel case close to my heart, cited at 15 F. Supp.2d 26 (July 1998). Hsue Lee, a detained deportable alien, petitioned for a writ of habeas corpus to challenge the denial of his motion to reopen his deportation proceedings to seek a waiver of deportation based on his recently approved marriage to a U.S. citizen. This case raised two very important questions of statutory and potentially, constitutional interpretation. Did Congress intend only to streamline judicial review of final orders of deportation, or did it intend instead to remove federal courts from the picture altogether? If the latter intent, the question arises as to whether the constitution imposes limits on Congress' ability to sideline the federal judiciary in this context. The second question of interpretation concerns whether Congress intended one of the 1996 sweeping congressional changes to the nation's immigration laws to apply retroactively so as to eradicate all pending applications for a waiver of deportation filed by aliens facing deportation for reasons of prior criminal convictions. Lee, who has lived in the U.S. with his parents and siblings since he was eight years old, as a permanent resident, spoke

only English, was married with a child, admitted he was "deportable" because he had fired a handgun at some road signs in rural Virginia in 1988, had a series of citations for DWI, and had a prior burglary conviction. He sought a hearing which had been denied on his application for a waiver of deportation. Since his last conviction in 1989, he secured employment, joined AA and received alcohol abuse therapy. I held that, with respect to the two 1996 amendments to the INA, Congress neither explicitly nor impliedly repealed the grant of jurisdiction in 28 U.S.C. § 2241, to issue writs of habeas corpus to persons in federal custody, such jurisdiction having been continuously exercised for over 200 years (i.e., since 1789) and having at all times been available in immigration cases. Alternatively, had Congress intended such a repeal, then I held that the constitution requires that some court, other than an administrative court created by Congress, be available to inquire on habeas into the legality of a potential deportee's detention. Further, I held that the scope of such habeas review extended, at least, to pure issues of law as in the petition, also holding that Congress did not intend to extinguish applications such as Lee's, retroactively or elsewise. I directed that the writ should issue. The government appealed, and a few weeks later withdrew its appeal. More than two years thereafter, in September 2000, the Second Circuit decided a similar case, *Calcano Martinez v. INS*, holding as I had. The Supreme Court granted cert. in January 2001, and heard argument April 24, 2001. We await the decision.

MS. PORTER: In 1999, Joyce, you were back in court with Pat Robertson, with the Christian Coalition, and that was a case that you found memorable as well?

JUDGE GREEN: Yes, this involved the Federal Election Campaign Act. The Federal Election Commission (FEC) brought an enforcement action against Christian Coalition the nationwide ideological, religious corporation formed by Pat Robertson, for five stated

purposes: "(1) to represent Christians before local councils, state legislatures and the United States Congress; (2) to train Christians for effective political action; (3) to inform Christians of timely issues and legislation; (4) to speak out in the public arena and the media; and (5) to protest anti-Christian bigotry and defend the legal rights of Christians." The FEC alleged violation of federal campaign finance laws during congressional elections in 1990, 1992 and 1994, and the George Bush Presidential election in 1992. In August 1999, I issued an opinion that was about 116 pages. Too long, perhaps, but there was much to be said. The case presented two novel issues concerning restraints on corporate campaign related activities. Federal campaign finance law prohibits corporations and labor unions from using general treasury funds to make contributions, in cash or in kind, to a candidate for a federal office. Corporations and unions can make independent expenditures that are related to a federal election campaign, so long as those expenditures are not for communications that expressly advocate the election or defeat of a clearly identified candidate for federal office. One of first impression in this circuit, the issue had created, as I put it, a moderate division of opinion among other circuits. The question presented is whether express advocacy by corporations and labor organizations is limited to communications that use specified phrases, such as "vote for Smith" or "vote for Robinson," or whether a more substantive inquiry into the clearly intended effect of communication is permissible. The FEC advocated a substantive inquiry and alleged that the coalition had used general corporate funds to expressly advocate the election or defeat of certain candidates through a speech that was made by the coalition's then executive director Ralph Reed and by certain of the coalition's direct mail communications. The second novel issue related to how an in-kind campaign contribution is to be defined. According to the FEC, the coalition had spent

considerable general corporate funds in coordination with the election campaigns of certain Republican candidates and the National Republican Senatorial Committee (which the FEC referred to as coordinated expenditures), to produce and distribute millions of voter guides and congressional scorecards comparing candidates or incumbents' positions on certain issues. And although there was no doubt as to which candidates the coalition preferred (that could be read clearly through those materials), the FEC acknowledged that most of the voter guides did not expressly advocate the election or defeat of any particular candidate; but the FEC's theory was not that the election materials themselves violated the express advocacy limitation in independent corporate expenditures, but that the coalition's extensive consultations with the campaign staffs of certain candidates, regarding the distribution of its voter guide and other materials, turned otherwise permissible campaign materials into illegal in kind campaign contributions, giving new meaning to the saying that politics makes strange bedfellows, the coalition's position regarding coordinated expenditures was supported by amici, the American Federation of Labor and the Congress of Industrial Organizations, and the ACLU.

(TAPE 10 A)

MS. PORTER: This is a continuation of the interview being conducted on behalf of the Oral History Project of the District of Columbia Circuit. The interviewee is Judge Joyce Hens Green, the interviewer is Jennifer Porter. The interview is taking place at the judge's chambers on Sunday, March 11, 2001, and the time is 12:15 p.m.

JUDGE GREEN: *Buckley v. Valeo*, the Supreme Court's lengthy per curiam opinion, provided a partial First Amendment blueprint for restrictions on campaign finance while striking down or scaling back various Federal Election Commission provisions. In the Federal

Election Campaign Act, Congress had sought to restrict campaign contributions and expenditures equally, but the *Buckley* court read the First Amendment to require substantially different treatments of contributions and independent expenditures. Indeed, *Buckley* observed that virtually every means of communicating ideas in today's mass society requires the expenditure of money. It then reached its holding that restrictions on campaign contributions and expenditures are restrictions on political speech, and such restrictions are permissible only if they survive strict judicial scrutiny, concluding that the First Amendment permitted limits on campaign contributions, but not on independent expenditures by individuals. *Buckley's* analysis did not explicitly extend to the FECA provision limiting corporate and union expenditures that are at issue in the *Christian Coalition* case. In *Federal Election Commission v. Massachusetts Citizens for Life*, commonly referred to as *MCFL*, the court followed *Buckley's* two-step analysis, first declaring that express advocacy limitation also applies to the restriction on independent expenditures, but reaching a different result than *Buckley*, because the nexus between the government's anti-corruption interest in *Buckley* and the ban on corporate and union independent expenditures is much closer than was the case with individuals. Most courts that have considered the issue understand that *Buckley* and *MCFL* have separated permissible issue advocacy from impermissible express advocacy by a bright line, and those bright line rules of law (those that give the clearest possible advance notice or guidance to distinguish permissible from impermissible conduct) leave little room for the post hoc case by case considerations. But even those courts recognize that the context dependent nature of language introduces ambiguities that require case specific considerations. Having considered the relevant precedent, I understood the following attributes to be necessary to the application of the statute's prohibition on independent

expenditures containing express advocacy. The communication must, in effect, contain an explicit directive. That effect is determined first and foremost by the words used. More specifically, the express advocacy standard requires focus on the verbs. For example, in the cases when contemplating a phrase "don't let them do it," it shifted from the district court's focus on "it" to "don't let him." The distinction is tortured, but, in the *Coalition* case, I held that the verb, or its immediate equivalent (when considered in the context of the entire communication, including its temporal proximity to the election) must unmistakably exhort the reader/viewer/listener to take electoral action to support the election or defeat of a clearly identified candidate; the most obvious electoral action is to vote for or against the candidate. But, as the *Buckley* court recognized, when it included the verb "support" in its non-exclusive list, express advocacy also includes verbs that exhort one to campaign for or contribute to a clearly identified candidate. Therefore, the express advocacy standard covers only a narrow class of communications. While some have complained, understandably, that the express advocacy cannot be so limited as to easily be avoided by linguistic sleight of hand, I was compelled to conclude that that is precisely how the Supreme Court had narrowed the Act. *Buckley* had held that the FECA has too much bite; it recognized that the result of its narrowing construction rendered the FECA limitations on independent expenditures largely toothless. And so then I examined in the *Christian Coalition* case the three alleged acts of express advocacy that were at issue, looking strictly at the factual information that had been obtained through protracted discovery, making the legal analysis on that basis. As said earlier, in addition to alleging that the coalition engaged in prohibitive express advocacy, the FEC also alleged that the coalition violated the Act in relation to other communications, principally its voter guides. And while the

FEC had knowledge that those guides, which compared candidates' positions on express issues and were proliferated throughout churches in America, did not contain express advocacy, it asserted that the voter guides were not protected independent expenditures because the coalition shared information with various campaigns, including the 1992 reelection campaign of President Bush, to such an extent that the voter guides should be treated for the FECA purposes as literature distributed on behalf of the campaign. The FEC's view was that those expenditures on the voter guides were illegal, in kind, corporate contributions. *Buckley* and its treatment of coordinated expenditures as in-kind contributions, had left undiscussed the First Amendment concerns that arise with respect to expressive coordinated expenditures. An example would be for a television advertisement favorably profiling a candidate's stand on certain issues, which is paid for and written by the contributor, in which the advertisement does express the underlying basis for his support and does discuss candidates and issues, but for which the expenditure is done in coordination with, or with the authorization of, the candidate. I wrote in *Christian Coalition* that it can only be surmised that the *Buckley* majority purposely left that issue for another case, and in many respects, the *Christian Coalition* was that case. The two dissenting justices in *Buckley* drew the distinction on precisely the grounds I have referred to, stating that whether speech is considered an impermissible contribution or an allowable expenditure turns not on whether speech by someone other than the contributor is involved, but whether the speech is authorized or not. These were the facts that confronted us in *Christian Coalition*. The question presented was whether the First Amendment requires a limiting construction of the Act that would protect the coalition's expenditures in this case and, more specifically, whether the corporation's expenditures and voter guides, and get out the vote telephone calls, independent of

a campaign, or coordinated with a campaign (where the evidence shows that the corporation was privy to non-public information about a campaign's strategies and discussed the corporation's plans to make campaign-related expenditures in advance with the campaign) were matters that are implicated by this case under the First Amendment. As you can see, I have made this lengthy recitation because this very complicated case is exceedingly fact bound. It was a very difficult decision. I walked a tenuous line between *Buckley* and the subsequent cases and what was left unsaid. Our case ended with the decision essentially in favor of the Christian Coalition, although the FEC succeeded on a few fact bound issues. The coalition corporation had skirted just enough to come within permissible advocacy. As to matters concerning civil penalties, they were left for decision another day. This case was not appealed, the parties agreed to agree on what the statutory penalties were, they were paid and so we never reached chapter two in this case. We shall never know whether the divining forces would have agreed or disagreed with this court. At bottom, politics remain inextricably entwined with the actions of the Federal Election Commission, campaign reform arises chronically in the United States Congress, and reform action is persistently defeated. This case was troubling in many respects. A very difficult and thin line had to be walked between Supreme Court pronouncements, which obviously I must honor and give precedent to, and the fact that so much had been left unsaid; but had I made the decision in a certain way, it would somewhat alter the decision of both the *Buckley* case and succeeding cases.

MS. PORTER: You say repeatedly that you made this decision reluctantly.

JUDGE GREEN: I made the decision reluctantly because we stand bereft of law that would assist us in making these determinations. When *Buckley* didn't reach issues precisely,

it left so much unsaid that, as the dissent pointed out, the overall result was distressing. And so, the courts are going to be inundated for the foreseeable future, particularly in the District of Columbia where these cases are filed requiring decisions upon facts specific, and murky law, case after case, on pleadings filed four and five years after an election has taken place and long after the damage, if any, has been done.

MS. PORTER: How was this case perceived when you issued your opinion?

JUDGE GREEN: As you can imagine, I was the darling of some and the evil witch of others. Many editorials were published, a number stating that I had been too precise and tortured the reasoning; they would have preferred that I had thrown the rascals in jail. Of course, it wasn't a criminal case, but at bottom they felt that the Act was clear enough. Other editorials expressed an appreciation for my work and obvious comprehension of the difficulties all faced.

MS. PORTER: This was evidently a very difficult case for you, so let's make life a little bit easier for you now. We can go on and talk about your death penalty case.

JUDGE GREEN: You're a very interesting person, Ms. Porter, to think that a death penalty case is easier than a First Amendment case. This was the first death penalty case expected go to trial in the District of Columbia in about 50 years. It was well known that no defendant in the local court can be punished by death since the citizens of the District of Columbia voted overwhelmingly, years ago, against the death penalty. Were they to vote today, some experts opine, the vote would be opposite. Nonetheless, the only tribunal that could undertake a death penalty case was the D.C. Circuit's federal district court. In August 1999, I was assigned *United States v. Carl Cooper*, a single defendant charged by indictment with multiple counts of RICO (the pattern of racketeering activity by participation in the affairs of a

criminal enterprise), conspiracy, multiple counts of first degree murder while armed, ancillary counts of bank robbery, second degree burglary, felon possession of a firearm, and other firearm offenses, in the 48 counts.

MS. PORTER: This is the guy who walked into the Starbucks and shot up the store and some people. How does this become a RICO case?

JUDGE GREEN: He walked into the Georgetown Starbucks (Wisconsin Avenue). The store was closed. It was the end of the July 4th weekend. He expected substantial monies had been received by the store, multiplied by the activity over that three-day holiday. How did this become a RICO case? Cooper led a criminal enterprise (although with a small group of confederates) to perform a pattern of criminal racketeering activity. I appointed two excellent lawyers as defense counsel, each of whom was qualified for death penalty cases. We had to really track law new to the District of Columbia to decide who to appoint, what kind of a budget to establish, how to estimate the length of this case (because at that time it had not yet been determined whether the death penalty would be invoked; that was to be determined a few months later). At our initial meeting, all agreed to a prompt trial date of April 2000. This case was treated from day one as if it would indeed be declared a death penalty case, so that the work in investigations, in motions in discovery, experts' examinations, decisions on procedure and evidence would not have to be revisited.

MS. PORTER: How would it become a death penalty case? What is the procedure for that?

JUDGE GREEN: The reviewing committee of the U.S. Attorney's Office, which prosecuted this case, examined the totality of information provided both by the

prosecutors and by the defense counsel (to whatever degree the defense counsel wants to share information) and then, in consideration of both aggravating and mitigating factors, decides whether or not this should be a death penalty case. A recommendation is made then by the U.S. Attorney to the Attorney General of the United States. The U.S. Attorney at that time was Wilma Lewis, the Attorney General, Janet Reno. Janet Reno, in turn, convened a committee to ascertain the similar considerations as to whether this should become a death penalty case. She made that decision in early February 2000. Thereafter, the case was handled accordingly. Only the Attorney General can make that ultimate decision. In *Cooper* the recommendation by the U.S. Attorney was against the death penalty, but Janet Reno decided the jury should consider the death penalty. The lawyers asked an additional month to prepare; and they were given 22 days more. Trial was then scheduled for early May. From the onset of the indictment, all persons involved contributed massive efforts. My staff and I worked constantly on the huge number of motions. There were many hearings and status calls. The hearing on the motion to suppress his confession and other evidence (wire interception, physical evidence, photographic evidence) consumed four court days, resulting in a 68-page opinion in which I denied each of the four motions to suppress, concluding that his statements were "clearly voluntary, readily and eagerly initiated and provided free of coercion and duress." More jurors were summoned for this particular case than had ever been before in the District of Columbia. I requested summonses for 3,000 potential jurors, recognizing that by past statistical surveys about half never show (and we don't have the resources to go out and locate this half). In the *Cooper* case, this number would have left us approximately 1,500. Since the jury is not told initially that it is a death penalty case (we could merely tell them it was a case that would last three to four months, through the hot summer of

Washington), we accepted the fact that many jurors would never serve because of business and personal matters, as, for example, significant encumbrances on their ways of life, or a physical or emotional inability to sit for three or four months. We, of course, anticipated the impact of the death penalty issue. The jurors would be told of this the day they came to complete the questionnaire, specifically tailored to fit this case. Again, a huge number of jurors could not be qualified to fairly decide a death penalty case. Based on guesstimates, we might have a panel of 200 remaining jurors to work with.

MS. PORTER: Was your estimate correct?

JUDGE GREEN: We will never know. Our estimate was correct in the loss of jurors that didn't show, our estimate was roughly correct in the numbers that made acceptable excuses (each one of which I individually addressed as whether they had to be interviewed for the purpose of this jury selection), but at the end, when we awaited jurors for the questionnaire, we had perhaps 400 or 500 jurors left. Probably there would have been 175-225 jurors left after they were informed that it was a death penalty case. The jurors were to come in to fully hear about the *Cooper* case and for completion of the detailed questionnaire (which ascertained the juror's feelings about death penalty, murder, guns, confessions, high publicity). For fair trial and due process, we had to make sure the jurors were not influenced by these and other factors.

(TAPE 10 B)

JUDGE GREEN: Several days earlier the defendant had made it clear he wanted to plead guilty. The terms of the guilty plea, however, were not completed until three or four days before the jury questionnaire session, which we postponed until the day after the expected plea. Then, on the night before the day he was to plea guilty, a telephone call was

received in chambers, advising that there was a problem and that chambers would be notified the next morning as to whether the plea could go forth. At 8:00 a.m. the next day, pleadings arrived over the fax and were filed in the Clerk's Office (not under seal), requesting that the two defense counsel be permitted to withdraw from the case immediately, due to "irreconcilable differences," but asking me to appoint amicus to talk to the defendant. I took that as a signal (it wasn't so stated) that perhaps the problem could be resolved once the defendant had an opportunity to speak to independent counsel. I immediately ran through my mind the names of eminent counsel who, although always busy, might be readily available to the court. The amicus had to be highly respected, a household name that my defendant might recognize. At the top of my list I put one name (there were several others in the event this person was unavailable or didn't want to touch this case or had a conflict). I was also searching for a lawyer who did more white collar crime than street crime, because this would make it less likely that he would have had cases that would create conflict, due to our many witnesses with criminal records who were going to testify. I telephoned this lawyer, who was in his office. All I had to do was say, "This is Joyce Green and I need your services." Without even asking what these services would involve, he asked where I was and said he was on his way to the courthouse. I stopped him to say which case this was and what I needed from him; he immediately left his office and his very busy practice and (with his sole associate) came to the rescue. That was Plato Cacheris, a remarkable lawyer and special person. I am truly indebted for his service to the court and for his service to the defense and the prosecution representing the public's interest. He first talked to the lawyers, to familiarize himself with the problem, then talked to the defendant, who I had brought in immediately by the Marshals to the cellblock in the courthouse so that Mr. Cacheris could have quick access to him.

Shortly thereafter, Mr. Cacheris advised me that there was no problem, asked if he could he go to lunch and if I could have the court convene two or three hours later. He felt that the problem had been resolved. I did as suggested. I asked the government to wait in another room. In the courtroom I listened to ex parte details of the difficulty, heard from the defendant, under oath, heard from the defense counsel as to their present position on withdrawal, to establish what was to be done in the future of with the *Cooper* case. The defendant, as the court record will show, immediately indicated that he wanted his counsel to remain, that the night before he had expressed distress with the contours of the plea agreement, and briefly did not believe counsel were on his side. The moment they left, he told me in convincing terms that he realized his serious mistake; he wanted to call them, but was told a prisoner's opportunity to make telephone calls had expired for the evening, so he wasn't able to reach them. The lawyers agreed that they could responsibly remain as counsel now that this impasse had been resolved; Mr. Cacheris graciously had completed his responsibility to this case with the swiftness that a master lawyer can muster. I then brought the government counsel in and had a repetition, under oath, so there would be no doubt where this case would end. Mr. Cooper entreated me over and again to accept his plea to life in prison with absolutely no chance of ever seeing daylight again. The government understood now the reasons why all of this flurry occurred. I put off the plea until the following day so that the defendant could be examined by a clinical psychologist (who had remained present to testify at trial, and who had examined him before) to assure that this defendant knew what he was doing and was competent to proceed and wanted to proceed, as he had told us over and over again, with the same attorneys and with the plea agreement. The psychologist testified briefly, affirming Cooper was fully competent to proceed. The next day, in

a marathon session, I took the plea as to each count of the indictment. The taking of the plea began at ten o'clock in the morning and ended at about six o'clock at night; there was but a brief luncheon recess. The government had insisted he plead to each one of the 48 counts (dismissing one during the plea). As to each, I read the count, the defendant admitted his guilt, separately as to each element of that count, and the government said what it could have proved in each and every count. The defendant stated his agreement with the government's proffer and, in his own words, gave full details as to what he had done. I accepted the plea to each count, separately. That's why it took so long. But for a case of this difficulty, this gravity, it was essential to walk this very carefully, step by step, although as a judge I didn't think it was necessary to plead to 48 counts when he was going away for consecutive life terms on each of the three Starbucks murders, and also had received severe penalties for his other crimes, including a fourth unrelated murder, and another attempted murder, the nucleus of the federal RICO conspiracy. In the Starbucks matter, Cooper had planned with a cohort to commit robbery on the last day of the July 4th weekend of this particular year. He couldn't reach his confederate when he was ready to proceed. By this time the co-conspirator had decided to go straight, giving up crime, had really begun to turn his life around, but, had not shared that information with Mr. Cooper. And so, Mr. Cooper said since he couldn't find his cohort he "seized the moment of opportunity." As he explained, he left for the Starbucks coffee shop dressed in a black outfit, black mask, black sneakers. He entered with two guns blazing, forced the woman manager back towards the safe and directed her to open it; she refused and he shot her. He stood over her body and pummeled more shots into her. Then he turned to the two quivering men, her co-workers, who viewed this horrendous act, and shot both of them to death. I asked if he examined the bodies before he left

to see if any one of them were still alive. He said no, that wasn't part of his "agenda." He calmly returned to his work at an Internet firm, to his wife and a four-year-old son, going about his normal activities, but the demon within continued the commission of other crimes. Not only did he commit these three murders, years earlier he had decided that one of his conspirators needed a gun, so they rode through the streets of Washington, and when they saw a uniformed man through the window of a building, correctly surmised him to be a security guard and would likely have a gun, entered the building, whereupon Mr. Cooper shot this individual in the head and took his gun. There was another incident in a wooded and dark park when Cooper saw two persons in a car obviously making love. One happened to be a policeman, not in uniform at that time. The woman who was with the policeman was prepared to testify at the Cooper trial that she offered him $20 to not shoot them. He took the $20 and then he shot the policeman and left the scene. The policeman survived to be in court (dressed) at the time of the plea.

MS. PORTER: You said he had a job with an Internet firm? What sort of job did he have?

JUDGE GREEN: Mid-level employee at the Wang Corporation in Tyson's Corner, Virginia.

MS. PORTER: It seems an unusual background.

JUDGE GREEN: It was an unusual background. It was fortunate in many ways that this defendant was as intelligent and knowing and understanding as he was of all the ramifications of the investigations, the motions to suppress, the discovery, the impending trial, the plea, the sentence. He was absolutely aware of every stage of the proceedings. He enjoyed what he obviously considered a game between law enforcement and himself. He felt always that

he had the upper hand. Highly intelligent, personable, attractive, articulate, with a wife and son, a leader, never confused, a psychotic personality without a scintilla of remorse. What a time the psychiatrists will have during Cooper's life in prison, should Cooper elect to talk to them (and I suspect he will).

MS. PORTER: I know that you personally are opposed to capital punishment. How did you feel about having to handle the first case capital case in the federal court in the District of Columbia in so many years?

JUDGE GREEN: Since the federal district court has jurisdiction over the death penalty statute, I've asked myself repeatedly whether I would be able to handle such a case, since I have always been opposed to capital punishment. Inhumanity to victims does not require the ultimate inhumanity to the perpetrator (except, I believe, in a handful of instances, like the intentional Oklahoma bombing of the Federal Building causing 168 deaths). Statistically, we are told, the death penalty does not deter others from the commission of heinous crimes. How did I feel? It was a very difficult decision. When I received the case and knew that it was death penalty eligible, my prosecutor son asked if I could do this. I acknowledged that I had searched within and I could. In the first instance, it is the jury that makes the decision whether or not the defendant receives the death penalty, and then, and only then, the judge could, under the law, set aside that decision, lowering the penalty to life. I decided that I would be able to see the *Cooper* case all the way through, as my duty as a federal judge required. As it turned out, I never had to face the ultimate question, for which I am grateful. I do believe in the *Cooper* case that the decision reached by the prosecution and the defense was the most appropriate one also for the victims' families, each of whom had agreed to the life sentences.

MS. PORTER: You mentioned issues other than capital punishment on which your personal feelings may be different from the law that you're called upon to apply. Do you recall any specific instances in which your personal philosophy has been at variance with what you have had to do as a judge?

JUDGE GREEN: There are numerous occasions I could recite, but I'm going to let it rest with capital punishment.

MS. PORTER: You mentioned that one of the reasons that you were able to take the capital punishment case was, in the first instance, that the decision would be made by the jury. In your experience as a judge, how has the jury system worked? Do you think it is generally effective? Do juries generally come out with the right decisions?

JUDGE GREEN: For most of my years on the bench, and until the last perhaps five years, I found that the jury system worked superbly well, not perfectly, but certainly better than anything else that can be offered to the litigants in civil and in criminal cases. Most jurors carry out their responsibility impeccably, with earnestness, and with an intense desire to reach the right decision under the law, as the court had explained the law to them, and are not swayed by their personal inclinations. But in more recent years, the result often has been distressing. The jurors are asked, of course, the usual questions as to whether they can identify any of the parties, or the lawyers or witnesses, if they've heard anything about the case, whether they can accept the testimony of a law enforcement officer with the credibility that they would apply to any other witness, neither giving them greater credibility nor less credibility. You ask about their own experiences, as to whether they or any member of their family have ever been arrested or convicted for a crime, anywhere, anytime, or been a witness to a crime anywhere, anytime, or

been a victim of a crime. Some answers are taken at the bench, so the responses are more detailed, and, hopefully, more candid, and also so the jurors can further discuss, if necessary, potential/actual bias. There are occasions people tell you that they mistrust the police or that they or their relatives have been unjustly convicted of crimes; sometimes they say the conviction was just and the defendant is doing well now. Overall, the judge and lawyers try to know the jurors as best as they can to assure that when they approach the case they do it free from taint of publicity, free from taint of personal druthers and the like. It has become obvious in recent years that jurors approach cases differently. This is particularly so for defendants charged as felons with guns. When the jurors somehow for whatever reason, whether they accept this crime as a way of life and therefore don't believe in punishment, or whether they have been swayed by the miserable actions of some law enforcement people, such as frisking them roughly, kicking a leg out from where it is positioned at the wall, deliberately hurting an arrestee without justification, whatever it is, so many of our jurors, who call the police when needed, really distrust the police and their testimony. Although jurors have told us, under oath, they will treat the officer exactly like anyone else, the truth is, they don't; and many have known, even before the trial begins, that they would never accept law enforcement testimony. We know this from interviews with other jurors after a case has mistried and angry jurors tell us, the court, the lawyers and the defendant, that juror X entered the jury room saying, "I didn't believe a word that officer said," or "the officer must have planted the gun on the defendant" (even though there was absolutely no such testimony). Dedicated jurors are dismayed at the inability of other jurors to fulfill their duty and examine the evidence, and their determination, instead, to mistry the case, or force an acquittal. It is astonishing how jurors intentionally nullify a verdict. This became most noticeable after the

O.J. Simpson case. After the *Simpson* verdict, it was commented by many that the amazingly swift verdict, in a few hours only for a trial of many months, contradicted overwhelming evidence. It is equally distressing to hear professors of the law assert that minority persons have every right to nullify when they don't believe the defendant should have to face justice, conviction and punishment, even though the evidence has proven that the defendant committed the crime, indeed, even when the defendant admits commission of the crime.

MS. PORTER: As a society then, what solutions do we have for that problem? I mean, on a day to day basis, you're confronted with a jury. What sort of procedures do you use to counteract that phenomenon.

JUDGE GREEN: First of all, let me say, even before I get to my procedure, that as a result of frequent nullifications, over and over again in every courtroom, state courts, federal courts, in this courthouse before each judge, there are recommendations that legislation be enacted so we can proceed with non-unanimous juries in criminal cases. As example, 11 must vote in favor of guilt before that person can be found guilty beyond a reasonable doubt. Suggestions like that. Or to do as other countries do, live without a jury system. It has gotten to that point. There is such serious concern about the casual or skewed deliberations some jurors give to cases (most jurors are earnest, most are well intentioned and try hard to render a fair verdict on the evidence). It's something that may well change our system of justice unless nullification can be largely eradicated.

MS. PORTER: Why not have cameras in the courtroom?

JUDGE GREEN: The complaint all along has been that people act differently when cameras are thrust on them in a setting where they are aware of that presence. Witnesses, it

is feared, will either testify in a way that advances their own cause, or will testify for the camera, for the media, for the public. There are those concerned that the witnesses might be intimidated, may speak differently. There has always been this concern, and there is some justification that the witness may act differently, but today cameras can be positioned so they are really not obtrusive. For the first few moments and until you adjust, certainly you are more careful with your choice of words. It is a little less spontaneous. There may even be some acting. It does, briefly, alter the position of a person. Afterwards, you forget the camera is present and act normally, probably too normally. But, even those (as I) who favored cameras in the courtroom, almost all say no, not yet, until the climate has changed. There is a deep concern about the jurors. Our jurors want to know that they have security when they go home, that people will not target them as one seen on television the night before as part of the jury coming and going from X's trial. There are many concerns, and it may well be that the jurors also act to the cameras, to a lesser degree, when they sense the camera beam. This has happened in state courts where cameras are used. The jurors are initially entranced with the idea that a camera is being trained on them, and they smile, arch eyebrows, even put on makeup in front of the camera. They are not then listening attentively. Then I think many do forget the cameras, or at least are not constantly aware of it. But cameras do impact; they also could, someday, be used in such a manner to really illuminate court proceedings, and that could be very healthy. But I did stray a good deal from the question asked, what procedures do I take to try and prevent jury nullification and to work with that phenomenon that exists. There is so little a judge can do to prevent jury nullification other than continue to press ask the questions, to probe to the point where it's not just the answer the person gives, but it's the body language, the manner in which it's given, it's the

context to make you determine whether this is a juror appropriate to sit in judgment on this particular matter. In high-profile cases, in particular, because of their nature and the principals, and the need to weed out those who have been unduly influenced by their knowledge of this case, it's not uncommon to prepare a jury questionnaire in great detail. So much can be learned about a potential juror, about the types of activities that he/she engages in that may give a clue to the juror's disposition, and what the juror's attitude towards a particular charge might be, especially in a criminal case. The most illustrative example, of course, is the death penalty case earlier mentioned.

(TAPE 11 A)

MS. PORTER: Continuation of an interview being conducted on behalf of the Oral History Project of the District of Columbia Circuit. The interviewee is Judge Joyce Hens Green, the interviewer is Jennifer Porter. The interview is taking place in the judge's chambers on Sunday, March 11, 2001, and it is now 2:00 p.m.

JUDGE GREEN: The point I make is we must probe, we must examine, we must ask sensitive questions to ascertain whether personal philosophies or beliefs will, nonetheless, allow the jurors to make a fair and reasoned judgment in the case under the evidence and the law. The reason for asking if any judgment can be made is that jurors of certain religions (Jehovah's Witnesses, among others) believe that they cannot make a judgment because only God can make a judgment, and so, if selected as a juror, that person will never participate in a verdict. It is a serious, sensitive question. We accept the representation of the individual without further inquiry and that potential juror is dismissed from service.

MS. PORTER: You mentioned that there is some interest in, I guess in

Congress, in having juries that don't make unanimous decisions, or having juries with less than 12 people. Doesn't this raise interesting constitutional questions?

JUDGE GREEN: Of course. The matter must be examined thoroughly. I'm not certain Congress has anything yet pending, but certainly lawyers are advocating such legislation. There are law review articles about this, and it is in criminal cases, of course, where the greatest concern exists about one juror less than the 12 we have always had. In a civil case, by rule of court, for years now (we don't have alternate jurors anymore in a civil case) we can select up to 12 jurors for a civil case, but no less than six, unless the parties have so agreed. Five, with the parties' consent, can render the verdict. So we already have accepted inroads on jury selection.

MS. PORTER: There was something you said a few minutes ago, this is sort of suggestive of the topic you and I haven't really touched on, and that was jurors being concerned about their own safety. Is that a relatively new phenomenon as well in your experience?

JUDGE GREEN: I've known of this concern for years, perhaps a decade and a half. A note will be sent from the jurors who have already been admonished, when sent out to deliberate, to not tell us how you are voting, to not tell us how you are split, just tell us whether and when you are ready to give us a unanimous decision, yes or no. Then a note arrives saying a unanimous decision has been reached, and asking if the Marshals may accompany the jurors to their bus, to their homes, whatever the request is. To the court, that is a signal that the verdict is a conviction. I had one note that came in and said exactly that, and added, "We know that the defendant's friends are in the courtroom watching us." They were right. The defendant's friends were studying the jurors' faces intently, one by one. I put up a screen so that participants had full

view of all persons who sat in a certain area and most could see the jurors from their locations. I suspected the four, with locked arms and sitting closely side by side, were friends of the defendant. In fact, I talked to the lawyers during a recess and opined that, if those are friends of the defendant the jury seems very uncomfortable, I would suggest they are not doing the defendant any good being in here and glaring at the jury, but I'm not going to ask them to leave, since they are quiet. If the defendant invited them in here or they are watching him, we'll see what happens. But since the jurors appear concerned, I am ordering that a half screen be placed, unobtrusively, to block the jurors from the view of the four. Safety is always a concern. It takes courage to be a witness in a criminal case, it takes courage for the prosecution, and also for the defense. It certainly takes courage to be a juror in a case where horrible things have happened and the defendant is accused of doing these acts. As a juror, you must make the decision whether or not these matters did happen, and, if so, whether this defendant perpetrated the charged crime. Think how difficult it is for a juror to convict when that juror must return to the community where the action happened or where the defendant and his family live. Most jurors have read about "contracts" put on persons during the course of a trial and witnesses who have been assassinated before or after testimony. It takes heroism these days to do honorable service as a juror.

MS. PORTER: One of the other issues that I think we need to address here is the sentencing guidelines, which of course have affected criminal cases. How do you as a judge feel about the sentencing guidelines and how do they affect your work on a day to day basis?

JUDGE GREEN: It is astonishing to recognize that the sentencing guidelines have been with us only since 1987; it is less than 14 years since they went into effect. We deal

with them daily and in the case of each defendant who is convicted, whether through plea or through trial, that defendant is impacted by the guidelines. When the "guidelines" were promulgated, many judges were certain they were unconstitutional. Indeed, I felt so strongly about the unconstitutionality of these draconian guidelines, that when the Supreme Court was considering the very constitutionality of the guidelines, I began to give written judgments in two forms, both appearing on the same judgment page. One judgment was the sentence I would give if unencumbered, the second said, "Should the Supreme Court deem that the guidelines are constitutional, then under the guidelines your sentence will be – " It was generally a harsher sentence, but not always. The dual judgment avoided future transport of the defendants back and forth from the institution where they were incarcerated, also eliminating the safety concerns and the separation of the defendants from the continuity of prison life (education, health needs, work). This assisted the efficiency of the process and overall helped the defendant. Of course, the Supreme Court did declare the guidelines constitutional. While many judges continued to rebel inwardly at the injustice we believe the guidelines promoted, we have no choice but to follow them. Let me give some background on this. The original intent of the guidelines was to eliminate disparity in sentencing, a well intentioned goal, a noble goal, but you cannot dispense equal justice by playing the numbers game and by using a grid, which is what we have to do. Literally, use a grid to determine the fate of a defendant for the particular offense of which he or she was convicted. Most judges believe that judgment and discretion and common sense and individual application are essential when sentencing another human being, but now judges are required to say, “Mr. Jones, the guidelines show you are in criminal category IV, the offense level is 32; therefore, my discretion is 168-210 months. I sentence you to the lower end, 168

months (14 years)." Departures (exceptions) from the guidelines are uncommon. The guidelines exist because of relatively few cases where bad law was made and horrible sentences imposed, either much too lenient or much too severe. So, to make the process uniform and to avoid disparity, in came the sentencing guidelines at a time that the courts were confronted by a huge influx of drug cases which absorbed the full attention of the court. In fact, the interesting statistic I picked up the other day for our bicentennial, where I was addressing this problem with a panel I was moderating, is that 42 percent of the young African-American males in the District of Columbia, between the ages of 18 and 35, are under some form of criminal justice, be it, arrest, conviction, probation (we don't have parole anymore), or supervised release. It's almost impossible to consider that an accurate figure, but it is. And so, with the sentencing guidelines, let me give you some examples of the injustice we impose daily.

MS. PORTER: I was going to hop back for a minute, Joyce, to jury nullification. Doesn't that 42 percent figure make it very difficult to get a jury in the District of Columbia?

JUDGE GREEN: Of course, it is very difficult to get a jury. Not many available 18- to 35- year olds who are African-American, to so serve. It also makes it difficult to get a jury because many families live daily without a son, or husband, or cousin who is incarcerated or who is awaiting trial, or who died violently. If selected as a juror, no matter how one may try to focus on the facts and law relative to the defendant on trial, it is inevitable that memories exist of the incarcerated or deceased relative. How does this fact impact on the judgment of that juror? We shall never know.

MS. PORTER: Feel free to go back to the sentencing guidelines now, Joyce.

JUDGE GREEN: Let me give you a couple examples of the unfairness of the sentencing guidelines, and, in particular, the evil of coupling statutory mandatory minimums with the guidelines. Let's say there is a drug conspiracy. Common sense dictates that the leader of the conspiracy, if convicted, would receive the harshest sentence. Under the present system of mandatory minimums with the guidelines, the leader frequently receives a lighter sentence than his or her co-conspirators because the leader is usually capable of providing information to law enforcement that allows him or her to obtain a significant reduction in the sentence and a departure if the prosecutor so requests from the statutory mandatory minimum.

MS. PORTER: Are you talking about information about people further up the line or are they giving information about people lower down?

JUDGE GREEN: It can be both. The government does not give much credit to a defendant who gives information about the people lower on the scale. What, understandably, law enforcement wants are those higher and higher on the pyramid of crime. After all, it is common to convict the top, the leader, by testimony from his former cohorts who go undercover and/or inform, and the co-conspirators, in turn, for this cooperation in bringing the leader to trial or plea, will be rewarded by a lesser sentence recommended by the prosecution. This is clearly a useful tool of law enforcement. The knowledge of mandatory minimums and guidelines, and the skill in application, by the preparation of the indictment, predicts the future of the case. The charge by the prosecution sets the parameters for trial or for plea negotiations; it is a vital tool in the hands of the prosecutors. All of this has removed the discretion of the judges and has allowed the prosecutor to define the outcome. But minor persons in the same drug conspiracy know little, if anything, and won't be able to provide the substantial assistance required; and

therefore won't be eligible for a departure from the guidelines or mandatory minimum. So this person at the bottom of the group can be incarcerated for 10 or 20 years, depending on whether there has been a prior conviction and, more importantly, the quantity of the drugs involved in distribution or possessed with intent to distribute. This could be (and has been) a one time courier found in possession of a large quantity of drugs charged with possession with intent to distribute. This means a mandatory minimum of 10 years or 20 years. This could be a first offender who, at age 18, is going to spend the next 20 years in a federal institution. Judges confront this type of situation frequently. The guidelines say incarceration is for punishment and warehousing, not rehabilitation. I remain hugely concerned, not only about the injustice we are required to impose, but for the future of my children, grandchildren, and yours, who will someday encounter such a defendant upon his release, not rehabilitated, unemployed, poor, uneducated, angry, and ready to tackle society. A very dangerous situation we have fostered here. One of my colleagues, known as a law and order judge, a former U.S. Attorney, told the judges he was brought to tears by the uneven justice he had to administer. He described a scenario much like the one I've just outlined. He related how he had to turn away from the audience in the courtroom and face the wall so that no one would see the tears trickling down his face as he had to impose a very heavy sentence on the lowest member of the conspiracy, while he gave more lenient sentences to others at, or near, the top of this conspiracy. We do this everyday; we know it is unjust. It is so difficult for a judge to ladle out sentences you are absolutely certain are unfair, but you have no choice, you must follow the law. Very sad, very disturbing.

MS. PORTER: Is there any movement to reconsider the sentencing guidelines, politically at least?

JUDGE GREEN: Oh you hear about "reform" every once in a while, that they'll get rid of the mandatory minimums or lessen the terms, that they will do something about these guidelines, but there have been few changes downward, only upward, and more severe. The construction of penitentiaries continues. Most judges in senior status (who can select their categories of cases) go out of the criminal draw because of the sentencing problems because they can no longer stomach what they are compelled to do in sentencing. And there are judges who will try the criminal case and insist that another judge sentence if there is a conviction. I inherited the case of Charles Campbell from Judge Oberdorfer, who recused because he felt so strongly that way. Charles Campbell had a record, was a drug addict in his forties, who received a piece of crack (he had cooked crack from powdered cocaine) as reward for his cooking role in this drug distribution conspiracy. The leaders were sentenced, as they should have been, to long terms; Campbell had to receive 20 years to life. Judge Oberdorfer unsuccessfully tried to depart. I wrote an opinion deploring the sentence I had to impose. President Clinton reduced the term to time served (six years). Campbell was freed appropriately, but still serves the time of release I had also imposed.

MS. PORTER: We've talked about a number of cases where you have given decisions that were controversial or were a source of a lot of public debate, and I assume that many cases have been appealed, so perhaps it would be timely now to touch on the relationship between your court and the court of appeals. How does it feel when your cases go to the court of appeals and they disagree with you? Of course they may not disagree with you.

JUDGE GREEN: It's kind of you to say so. In my 33 years as a judge I cannot count the number of cases that I had, much less the number of cases I've had that have gone to

the court of appeals. I cannot state the number of cases in which I have been roundly affirmed, partially affirmed, fully reversed, partially reversed, remanded. This happens to every judge. Overall, I'm satisfied with my record. As an aside, I will tell you what happened the very first time I was reversed, when on the local court (and I was 99 percent plus affirmed by the D.C. Court of Appeals, in my 11 years on the Superior Court). The lawyer for the appellant was also a friend, and I promptly marched to my personal address cards and pulled out his card for destruction. After I thought about it for a day or two, I returned the card to my roster list, but that was my initial reaction to my first reversal. After that I hope I became more tempered. I have not agreed with a negative decision of the appellate court on a number of occasions, some of my colleagues react similarly, but more vociferously. It's an expectation that most cases will be appealed. Judges can't satisfy both sides unless the case settles, and then litigants and lawyers sometimes are only partially satisfied. The fact is we are in an adversarial system, one brings a case against another, be it corporate, be it individual; one wins, one loses. The one that loses usually takes the matter to the court of appeals; more often than not he is not vindicated and the judge is. It is inevitable that there will be tension between the reviewing appellate court and the district court. The district court is on the first line, sees the individuals and deals with the case in progress, including minutiae. Most of the time the appellate court renders scholarly interpretation of the law and either agrees or disagrees with the way the district judge interpreted the law. There are times that the court of appeals overreaches when it examines and determines the credibility of the witnesses never seen or heard. The trial judge's evaluation of the credibility of the witnesses he/she saw and heard (and examined in context of all other evidence) used to be wholly accepted. So it shocked me, about 15 years ago, when a circuit appellate judge called to

apologize for having reversed me in a case in which he had determined the credibility of the witnesses differently than I. When I gasped and asked how can an appellate judge evaluate the credibility of the witnesses not seen or heard, he said, "Well, there's something novel everyday, isn't there?" I am still aghast about this, but I have observed it happen time and again to other judges as I read the decisions and hear their remarks at the lunch table we share. Our court of appeals has a very different attitude. While several of the appellate judges are friends, I never, ever, discuss cases; I just won't discuss a case with them which they may review some day, or on a case which they have concluded. It makes our conversation a little sterile, but friendships can endure this way. I firmly believe that, but it is disconcerting to read an appellate opinion which says "X" was not in the record, or the district judge must have overlooked this sentence, when, in fact, the district judge did examine the record, did not overlook a sentence, and this is patently obvious when the district judge's opinion is read. It makes a district judge wonder if her opinion is read in the appellate court. There is no way we can defend ourselves by saying not so, not so, appellate judge. The circuit's opinion has issued, been sent out for publication, and distributed. It's over. All you can do is gnash your teeth and say, well, better day tomorrow. The district judges certainly talk about such things among themselves, as we know what I've described is not a rare occurrence. But I think in most instances appellate judges do try to "get the record straight." They may not have had the experiences we district court judges have had. If the appellate judge had never been a trial judge, this does create difficulty in fully understanding the climate in which we work, the climate in which the litigants come, the things we see (like body language and facial expression), it's more than just the words expressed. That assists in perceiving credibility, in discerning facts, in evaluation of cases, in testimony to the arguments,

in observing people approach the courtroom, in watching the ongoing asides or whispers to others. It is impossible to make a record of every nuance, body movement and the like (particularly when a jury is present). You would be stopping every minute to make the record, but you do the best you can, realizing that your record is the mirror through which the court of appeals has to view this. And so, tension will always exist. There are many times I'm grateful to be reviewed, the best example being a death penalty case. I do not argue against the existence of an appellate court. It is good that we have an impartial system of review. I just decry, sometimes, the manner in which the review is approached. I have sat on courts of appeal, by invitation, numerous times (both on the local D.C. Court of Appeals and the U.S. Court of Appeals for the D.C. Circuit). Later, in conscience, I chose not to sit again on the appellate court. Many times I have been asked what does happen in a trial court, how do you handle this, what did they mean when they said this? If an informed judge is not on the panel to give that information, then perhaps the appellate judge knows, or guesses, perhaps not.

MS. PORTER: You said in conscience that you don't sit on the court by designation any longer.

JUDGE GREEN: I knew you'd pick up on that. There are a couple of reasons. One is I was asked to sit on the cases of my fellow district judges and I found that difficult. If I could have affirmed them all at the time, not so difficult. But I found it very difficult to sit on cases of people I know so well, and am so very fond of, but I knew so much about them that really, it became to me a conflict. Were I to review agency cases or something neutral, no problem. That was one concern, and the other concern was with some panels' (certainly only some, not all) casualness, even mockery, with which they view the district judges' labors. We are

asked to write opinions, we are asked to provide findings of fact in our written opinions, we are asked to set it out so the court of appeals can truly review this. Astonishingly, some judges on some panels I joined made it strikingly clear, unhesitatingly, right in my presence, that they had never read the opinion of the district judge whose case they reviewed, or, if read, some laughed about style, the judge's family life, as well as the legal conclusion. All they had to know, they said, was whether the district judge granted or denied relief, and what that relief was. They just ran roughshod over the trial judge's opinion. It was clearly a matter a judge had worked on for days or weeks, for months sometimes, and had tried to make as clear as possible. When I would defend the opinion, one or more circuit judge would cough and claim they don't read those opinions. Even if I agreed with the panel's legal decision, I just could not accept that attitude and the personal criticism of my fellow judges.

MS. PORTER: Well did they offer philosophical reasons for not doing that? Was it part of their approach to reviewing?

JUDGE GREEN: It was, in effect, who cares, unimportant. It was hard to deal with. There were other cases, of course, most, where the panel judges were extraordinary, brilliant, who knew the case intimately, considered each case thoroughly, who earnestly strived to give the fairest understanding of the law to that particular case they were reviewing. And when they revised, they did not cast snide remarks. You had to respect and honor those judges. Also, when I was invited to sit and did, it was for four days at a stretch; that meant 16 cases on the panels that I sat on for years. I was asked to do this often and selected to write the opinions for several cases, sometimes only the unpublished opinions, and on occasion the full opinion. It takes an incredible amount of time because our district court caseload doesn't go away. We have

an independent calendar that I'll address later, if you want me to, and this means that nobody else is going to take over the cases when you're not there. So at the end of a long day on the court of appeals, I'd return to chambers, work on my district court cases, go back the next day to the court of appeals, and so on. And while I appreciated both activities, I am a trial judge in deed and in spirit, and ever shall be.

MS. PORTER: These were only D.C. Circuit cases? So there isn't any place – since you mentioned before you had a problem sitting on cases that some of your close colleagues on this court had ruled on – do you get around that problem if you sit by designation on some other circuit?

(TAPE 11 B)

JUDGE GREEN: To sit in another circuit on cases of their trial judges (particularly if I don't know them) wouldn't be too great a problem. Yes, I could request to serve elsewhere, or if asked by the appropriate committee to serve temporarily in a jurisdiction where vacancies exist and there is a need for judges, I could readily do so. I knew very well the people who chaired those committees. I would have been assigned wherever I may have chosen to be had this been my inclination.

MS. PORTER: We've talked about the court of appeals. In your time as a judge did you have cases go to the Supreme Court?

JUDGE GREEN: I did. I had a number of cases that went to the Supreme Court, but will mention only a few. In 1981, a decision implicated both banking law and administrative law. *A.G. Becker, Inc. v. The Board of Governors of the Federal Reserve System*, cited as 519 F. Supp. 602, was reversed by the circuit court at 693 F.2d 136, and the Supreme

Court reversed the circuit court (6-3) in 468 U.S. 137 (1984). The case was a challenge to the efforts of a state commercial bank to enter the business of selling third party commercial paper, requiring interpretation of the Banking Act of 1933 (Glass Steagall Act), legislation enacted to restore public confidence in the financial markets at the time of the nation's Great Depression. The Supreme Court agreed with my decision that commercial paper fell within the plain language of the Act and inclusion of commercial paper was fully consistent with the Act's purposes. Commercial paper was held to be a "security" under the Act. Times have changed; the result would be different today. In 1988 public interest groups filed suit against the U.S. Department of Justice seeking declaratory and injunctive relief in connection with the Department's longstanding use of the American Bar Association's federal judiciary committee for evaluations of the qualifications of nominees for federal judgeships. *Washington Legal Foundation v. U.S. Department of Justice*, 691 F. Supp. 483, affirmed, 491 U.S. 440 (1989), 8-0. The circuit court was bypassed and the case taken directly by the Supreme Court, unlike its action recently in the *Microsoft* case. The ABA's investigations, reports and votes on potential nominees are kept confidential, although its rating of a particular candidate is made public if he or she is in fact nominated. The public interest groups had sought, and been denied, the names of the potential nominees and the reports and minutes of the ABA's meetings. I ruled that the ABA committee was an "advisory committee" under the Federal Advisory Committee Act (FACA), which requires notice of the meetings, open meetings, and the availability of its reports and minutes to the public, but that "FACA cannot constitutionally be applied to the ABA committee because to do so would violate the express separation of nomination and consent powers set forth in Article 11 of the Constitution and because no overriding congressional interest in applying FACA to the

ABA committee has been demonstrated." Justice Brennan, on behalf of the Court, concluded that this was a close case, with competing arguments based on FACA's text and legislative history both plausible. Nonetheless, the Court held that that background "tend(ed) to show" that Congress did not intend FACA to apply to the Justice Department's confidential solicitation of ABA views and "sound sense counsels adherence to our rule of caution. Our unwillingness to resolve important constitutional questions unnecessarily thus solidifies our conviction that FACA is inapplicable." With that conclusion, I was affirmed. This certainly has much interest since President Bush has indicated his intention to not use the ABA in any respect in his selection of federal judicial nominees. As you can see, Jenny, I have gathered some of the opinions so that I can recite more accurately and quote exactly, when appropriate. This aids materially, as I recall the past 22 years of judging in the U.S. District Court. The case of *Hechinger v. Metropolitan Washington Airports Authority,* had a long relationship with the courts. In 1987 the Secretary of Transportation (Elizabeth Dole) entered into a long-term lease of the Washington National and Dulles International Airports to the Metropolitan Washington Airports Authority, an independent regional authority created 2 years earlier by compact between the State of Virginia and the District of Columbia. Prior to this time, the airports had been operated by the federal government. Congress conditioned the lease on the Authority's establishment of a Board of Review consisting of nine Members of Congress. Requirements included the board's consideration and approval of most of the work of the Authority. This, the Supreme Court held in 1991, reflected that the board was vested with power that violated the constitutional doctrine of separation of powers. Six months later Congress enacted amendments that effected major changes in the composition and powers of the board. In 1994 I held that the amended Act was

unconstitutional (again) in that the major changes continued to permit the board to exercise impermissible control over the Authority, 845 F. Supp. 902. Circuit Judge James Buckley (former U.S. Senator from New York) wrote the court of appeals opinion, 36 F.3d 97, affirming my ruling that the board continued to be an agent of Congress in a sufficient exercise of federal power to violate the separation of powers doctrine. In the rapidly evolving area of employment law, and in particular, employment discrimination law, I was gratified that Judge Harry Edwards, senior on the panel and also in the majority, recognized my enthusiasm about the case and suggested I author the opinion for the circuit court on which I was sitting by designation. Judge Williams wrote the dissent. *Hopkins v. Price Waterhouse*, 825 F.2d 458 (1987). Judge Gerhard Gesell, my colleague on the district court, had been the trial judge. (In large part, he was affirmed, but never could stop twitting me subsequently about the relatively minor issues where he had to be reversed.) This was the case of a female manager at one of the nation's "Big 8" accounting firms, who had generated more business for her company and billed more hours than any of the other 87 candidates for partnership, but was, nonetheless, denied partnership. Comments from the evaluating partners centered on her difficulties with staff and her overly aggressive, unduly harsh impatience with staff and her demanding manner. A number of these complaints were couched in terms of her sex. We held (2-1) that ample evidence supported finding that the partnership selection process was impermissibly infected by stereotypical attitudes towards female candidates; Ann Hopkins' showing that she was treated less favorably than male candidates because of her sex was sufficient to establish discriminatory motive, and the gender stereotyping played a significant role in blocking her admission to partnership. We ruled further that the partnership failed to demonstrate by clear and convincing evidence that

impermissible bias was not the determinative factor in denial of partnership. We concluded by holding that the denial of partnership and the failure to renominate her for partner amounted to constructive discharge, entitling her to compensation for the period between partnership denial and her eventual resignation. One of my proudest moments came when the Circuit Judge Ruth Bader Ginsburg (not on the panel, but who had received a copy of the draft opinion circulated among all non panel members, as is customary) telephoned me at home in excitement to enthusiastically comment that I had advanced the state of employment discrimination law "hugely." To hear this from such a respected world authority in this area of law, who was also a good friend, had me dancing on clouds. The clouds separated a bit, bringing me to earth, when the Supreme Court (J. Brennan), 6-3, reversed on the burden of proof required by the employer, ruling that since the lower courts required Price Waterhouse to make its proof by clear and convincing evidence, we had not determined whether Price Waterhouse had proved by the less stringent standard, preponderance of the evidence, that it would have placed Hopkins' candidacy on hold even if it had not permitted sex-linked evaluations to play a part in the decision making process. The case was remanded for that purpose under the preponderance standard. Other than which burden of proof was the correct one, my opinion advancing the law was fully approved and became the law of the land. Then Congress, lobbied by industry, changed the sex discrimination part of employment law, in large part (the legislative hearings reflect) due to the Price Waterhouse case.

MS. PORTER: You had other discrimination cases.

JUDGE GREEN: In 1997 I ruled that a temporary employment agency could be held jointly liable under Title VII if it knows or should have known of discriminatory action by

its client and failed to take corrective action. *Caldwell v. Service Master and Norell Temporary Services*, 966 F. Supp. 33, issued in 1997. It was not appealed and has been cited as the leading case in this area, EEOC Policy Guidance on Contingent Workers, December 1997. *Williams v. District of Columbia*, 916 F. Supp. 1 (1996) (I know I'm going back and forth on dates here) involved a female District of Columbia correctional guard who brought action against the District of Columbia alleging sexual harassment by her supervisor in violation of Title VII and deprivation of her Fifth Amendment rights. She asserted many things: assault, battery, negligent training, intentional infliction of emotional distress. I granted in part and denied in part the motion to dismiss for failure to state a claim. But the important part of the case, for advancement of the law, in the first such ruling in the District of Columbia, is that Title VII applies to cases involving sexual harassment by a supervisor of the same sex. There had been other decisions reaching (impliedly or in dicta) the same conclusion, that same sex sexual harassment was actionable under Title VII, as, for example, a 1995 case in the Seventh Circuit, but Williams was the first from our jurisdiction. Essentially I held that, as is obvious, Title VII broadly prohibits all forms of sex discrimination, this includes sexual harassment, and I found that Title VII made no distinction based on sexual orientation. The determinative question is not the orientation of the harasser, but whether the sexual harassment would have occurred but for the gender of the victim. So, I wrote that, absent compelling and contrary legislative history, federal courts were obligated to apply statutes as written. Title VII is written to protect victims of sexual harassment who are harassed because of their sex. There is no legislative history that suggests that victims of sexual harassment must be sexually harassed by the opposite sex before they may invoke the protections of Title VII. Had Congress intended to insulate sexual harassers from liability, as

long as those sexual harassers selected their victims carefully, not only should Congress have spoken more clearly, it should at least have said something. (laughter) Since this decision, the Supreme Court, opining on another case, has spoken in agreement. Once memory is opened a bit, it is swept open wider and wider as thoughts brim over, each evoking others. Of course, here were so many other cases important to the nation, to the litigants, to the judiciary and to me. But this oral history is already far too lengthy and must come, soon, to its close.

MS. PORTER: Apart from being a judge of the district court in the District of Columbia, you've also been appointed to the Foreign Intelligence Surveillance Court. Can you explain what that court is and how you came to be appointed to it?

JUDGE GREEN: The U.S. Foreign Intelligence Surveillance Court (FISA) reviews applications made by a federal officer, in writing and under oath (heavily scrutinized for classification as top secret, etc.), for electronic surveillance anywhere in the United States, specifically setting forth the mode of surveillance requested, the precise place and target of the surveillance and the anticipated duration. The application requires the approval of the Attorney General (often the federal officer and applicant and Justice Department lawyer must fly to wherever the Attorney General may be that day for the essential signature), and the Attorney General must certify that the application satisfies the statutory criteria and that this requested order is vital to national security and/or involves international terrorism. Like certifications must be attached from the directors of our various law enforcement agencies. With complete history of the matter before the court, including results of the most recent surveillance, the most recent facts known about the target, and an explanation of why the surveillance is being requested this time (or, if so, for the first time), the judge, if she or he finds probable cause for the issuance of

the order, enters an ex parte order approving, modifying or denying the application. If there is denial of the application, the case can be appealed to the three judges comprising the court of review, or the application can be withdrawn. A target is a foreign power or an individual agent of that foreign power. The orders are for one year, renewable as appropriate, if the target is a foreign power; for an individual agent of a foreign power, the order expires after 90 days, unless renewed. Each renewal is by application with the same safeguards and criteria already noted. Essentially, and the statute controls, electronic surveillance includes the acquisition by an electronic, mechanical or other surveillance device, of the contents of any wire or radio communication sent by or intended to be received by a known U.S. person in the U.S.; or to or from a person in the U.S. No information acquired in this manner shall be disclosed for law enforcement purposes unless for use in a criminal proceeding with advance authorization of the Attorney General. If any of the gathered information is to be used in a criminal trial, the aggrieved person must be notified of this by the government and can file a motion to suppress such evidence obtained or derived from such electronic surveillance. That district court reviews the matter, in camera and ex parte, and makes a determination. If the motion to suppress is denied, that becomes the subject of review before a circuit court of appeals. All circuits which have ruled, as have most, on the constitutionality of the procedures and the particular order at issue in these cases, have found the procedures constitutional and to be valid. The Supreme Court has never granted cert. There is so much curiosity about this "secret court" that I have partially described the operations of FISA. All I have related, and more, can be found at 50 U.S.C. § 1805, *et seq*. For those who are even more interested, there are quite a number of reported cases throughout the nation which relate an idea of the scope of the activities (these

have been well publicized criminal cases against spies, IRA, a state murder case (either the Sixth or Eighth Circuit had this fascinating matter). The media, also, in addition to the above cases, has often pronounced the involvement of FISA when it becomes known that a defendant has been so targeted.

MS. PORTER: So, for example, Aldridge Ames or Walker or Jonathan Pollack, these are names that have been in the press in recent years as people who spied for foreign powers.

JUDGE GREEN: Right. When I say right, I cannot confirm or deny, everything you suggest, save for one. Truly, there is little I can talk about concerning the court. I can tell you what the statute says. I can tell you that there are seven judges who comprise this national court, although we sit individually to review and hear applications. I can tell you that the appointment is a maximum of seven years; a judge is not eligible for redesignation, and there are shorter appointments when one replaces a judge who is unable to complete the term, and that there is but one judge from any given judicial district at a time. The appointments are made by the Chief Justice of the United States and the Federal Bureau of Investigation performs an intense investigation taking months, a far more invasive and probing investigation than other federal judicial appointments.

MS. PORTER: You mean the FBI is vetting judges to see whether they can be appointed to this court?

JUDGE GREEN: They examine every particular of your life back to birth, your siblings, your relatives, your parents, your friends, your husband, every association you ever had. I had so many I listed them by decade and had to confess then that probably 55 years ago boys

were not permitted to join the Girl Scouts. I was relieved to share that the Women's Bar did have (associate) male members. The investigation is extraordinarily detailed, I'll come to that in a moment.

MS. PORTER: And the Chief Justice makes these appointments on his own?

JUDGE GREEN: He makes these appointments. They're made from sitting district judges who have already been confirmed by the United States Senate. I received a call in 1988, from Chief Justice Rehnquist, asking if I would consider serving on this court. I was completely surprised. I had no idea there was a vacancy, I had no idea that I was under consideration for that vacancy. He asked if I knew about the court. I paused and when I said, "I'm a quick study," he laughed heartily. The Chief asked if there would be any hidden reason I couldn't serve. He said that when I was formally appointed it would become the most important matter I could ever do as a federal district judge, i.e., preserving the national security of our country and protecting us from international terrorism. And while I certainly couldn't disagree, I would like to think that I have done a few other important things along the way, and perhaps moved justice slightly forward with all these 33 years in the judiciary. Nonetheless, I was humbled with the opportunity and, of course, accepted. The next day, three agents of the Federal Bureau of Investigation gathered in chambers to examine my life minutely. I answered inquiry upon inquiry. They took my fingerprints, unsuccessfully. They returned the following day and took my fingerprints, again unsuccessfully. The third time, when they once again came to take my fingerprints, I delicately suggested that we let the United States Marshals in this courthouse, who are very conversant with taking fingerprints, do the job. We went downstairs, the Marshals performed and apparently I passed muster. Indeed, every part of my hand was utilized for this

purpose. I ghoulishly told my kids that if anything happened to me, and a sliver of my palm passed in the wind, they could say, "There goes mom!" The investigation, as I indicated, was so detailed. It was important the FBI learn of every foreign country I had ever gone to at any time in my life, and for how long. This proved challenging, since there was a period before I became a judge that my husband and I, every year, would travel with the D.C. Bar Association, for perhaps five days, to some foreign country, get a little bit of legal training, but mostly vacation. I called the bar association to ask exactly when was this trip to Canada? When was this trip to Austria? When was this trip to the Caribbean? In any event, in 1988 I was selected as a judge of this court. The then presiding judge (Chief Judge) was a former Congressman from a distant state who asked if I would serve as his delegate and do the activities of the presiding judge for him. I did that for two years, and when his term expired the Chief Justice appointed me as the presiding judge for the balance of my term. So, I served on the FISA Court from 1988 to 1995, at the same time not diminishing my full load in the district court. Each year, all FISA judges met with the Chief Justice, with the Attorney General of the United States, with the head of the National Security Agency, the Director of the CIA, the Director of the FBI, and other intelligence officials. We used the Supreme Court facilities for this purpose and the Chief Justice always joined us for the luncheon. There were other meetings in the interim to determine the course of action as law was evolving and as particular matters became of special interest in our work. I cannot discuss cases. The FISA judges have the highest security clearance, the same security the President has. It was sort of a downer and an upper to learn this, because I always thought I had the highest security as a district court judge and then found out I didn't. But then I got it. So, it was one of those things that one learns very quickly to adjust to. It was an enormous honor to serve. People

ask whether I received extra pay for this; the answer is no, just the honor of being able to be on duty for 24 hours a day, seven days a week, for seven years. Since I was Chief Judge and handled all emergencies for the U.S. (and there were so many!), I always advised where I was going, how I could be reached, whether I was on vacation or even when I left this jurisdiction for a day or two. If an emergency arose, which it always seemed to do, I would be available, or another judge in the immediate vicinity or close by could be available. If not, they would have to locate another FISA judge to do duty. When the Gulf War broke out, I was in North Carolina at Duck, on vacation with the family. When I heard about the happening, I knew that the court would be in some manner most likely implicated, and, therefore, I checked with Justice (from where all applications flowed) to see if my services were needed; the response was it was too hard to get to Duck, so instead the agents were going to go to Minnesota, to Judge Devitt, a FISA judge. But there were cases where it was so imperative that the most sensitive security be in effect that I handled exclusively. I assigned my judges for periods of time to come to Washington so that one judge was here twice a month, every month of the year, to handle assignment of cases that built up over the intervening period. Some cases have to be renewed periodically, depending on the nature of the case; others less frequently, and others were new or not renewed. One of the things I am most proud of was requiring the intelligence forces to be absolutely current with information provided. I had no objection (in fact I encouraged) to inclusion of the details of the past, before the present application was made, but it was important to know what had occurred since the last application was granted. While our decisions are made on probable cause, which is not an exacting standard, I wanted to be certain that the information was very much the kind of thing looked for when a judge is asked to authorize a search warrant.

All of the applicants who provided this information are sworn, always accompanied by a Justice Department lawyer who had helped prepare the application and the papers. In this way, questions could be asked both of the affiant as well as the lawyers. The intelligence service requesting the application, as example, the FBI, the Director, would have to sign and certify under oath that the order requested was necessary to national security and/or for protection from international terrorism. I have already discussed basic procedure. I started to say that there were cases in which it was mandatory that only as few people as possible handle the case, to lessen the opportunity for a leak. Such a case was that of Aldrich Ames. I mention this now only because Attorney General Janet Reno elaborated on this after that case went to conviction by plea. She discussed my role at an awards ceremony for the Department of Justice. Since I couldn't be present at that ceremony, a videotape was presented with a brochure outlining my role as Chief Judge of FISA and the particular case, which was widely circulated to thousands of Justice employees and others. General Reno insisted on presenting me, in chambers, the Attorney General's Edmund Randolph Award, the top award of the Department of Justice, for my service to the FISA Court. She told the world that I had monitored the Aldridge Ames case from beginning to end and that it was because of my efforts that he had now come to custody and to conviction, and that it has been a formidable and lengthy task. I guess she knew that when I was on vacation in Dewey Beach, Delaware, as a hurricane was momentarily expected, the agent and lawyer flew from Washington to Delaware, seeking assurance that I would be present when they arrived. My short answer was, the police have already been here with an evacuation warning and, if they returned and told us to leave for shelter, the agent would have to find me on the road somewhere. I illustrate that only to say that it was important for matters that needed an

emergency order, that I be available, and I was. I grew mightily impressed with these law enforcement agencies, and their agents, men and women. The best I've ever seen: intelligent, dedicated, hard working, geared to the goal. Often I would bake cookies and pies, and fix coffee and iced tea, if I had sufficient notice of their impending arrival at my home. They would help themselves to food. I would review the application, carefully, put them under oath and, if appropriate, issue the order. Not only did I receive agency honors from the CIA, NSA and FBI, but four of the agents, on behalf of all, personally presented a tribute of respect and affection. They wished to inscribe thanks, also, for your blueberry pie, but their chief wouldn't permit it. (TAPE 12 A)

MS. PORTER: A continuation of the interview being conducted on behalf of the Oral History Project of the District of Columbia Circuit. The interviewee is Judge Joyce Hens Green, the interviewer is Ms. Porter; the interview is taking place on Sunday, March 11, 2001, and the time is now 4:20.

JUDGE GREEN: As you said, Ms. Porter, for obvious reasons these matters cannot be open to public scrutiny. Indeed they have to be done in a manner where we are sure that there is no electronic surveillance being trained on us as we do our task, as sure as anyone can be of those matters. There is a special place, a special room in which this can be done, which, I've been told, is impervious to assault, electronic or otherwise. I also worked on these matters in locales necessary to accomplish the goal of our national security. It is obvious you cannot say to one you believe is conducting matters detrimental to this country, come listen to everything that I am going to say and how I found out about you and what I'm going to do to stop you from acting out your activities. It simply can't be done. Because I very much believe in open

disclosure, I had serious concern about the secrecy involved. On balance, of course, the court has to proceed in that manner. I am satisfied that everything is checked over and again as best as can be done to minimize "listening in," to protect civil rights. Without this confidence, I would not have remained on the FISA Court. As of this date, I am the only woman ever appointed to this court, and, of course, the only female Chief Judge. I am very proud to have been the first in that regard; as time goes on there will be more. The FISA Court was created in 1978 by Executive Order of President Jimmy Carter, in an effort to prevent the executive branch (as President Nixon had done) from electronic surveillance on someone considered a political or personal enemy. The FISA Court was created to be the judicial protector from unwarranted, illegal surveillance. It performs its work magnificently. People have asked whether it had been difficult to keep the nation's secrets. As point of fact, it has not been at all difficult. You tell yourself that you simply cannot talk about this to anyone, the details of what has been done through the years, why it has been done and in what fashion. I will say, for the seven years I was a FISA judge, I believe, without exception, that my judges and I gave correct action to our cases. I trust that history will so show. History will not show, because we cannot reveal, the catastrophes prevented, some too horrendous to dwell on in memory for more than seconds, by the intelligence agencies, by the agents and by the FISA Court.

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.

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University of Maryland, College of Arts and Sciences, B.A.

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Positions

United States District Judge, United States District Court for the District of Columbia (1979-present)

Chief Judge, United States Foreign Intelligence Surveillance Court (1988-95)

Associate Judge, Superior Court of the District of Columbia (1968-79); Presiding Judge, Family Division (1978-79)

Green & Green, Partner (1966-68)

Private Practice, D.C. and Virginia (1951-68)

Memberships and Activities

Judicial Conference of the United States, Committee on the Judicial Branch

Chair (1997-98), National Conference of Federal Trial Judges (American Bar Association)

Chair, Task Force of the District of Columbia Circuit on Gender, Race and Ethnic Bias

Executive Women in Government (chair, 1977)

Fellow, American Bar Foundation

Federal Judges Association (board of directors, 1985-89)
National Association of Women Judges

Board of Advisors, George Washington University Law School

The District of Columbia Bar

Bar Association of the District of Columbia

Women's Bar Association of the District of Columbia (president, 1960-62)

Federal Bar Association

Virginia Bar Association

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Arlington County, Virginia, Bar Association (honorary)

Women's Forum of Washington, D.C.

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Professional Honors Include, among others,

Intelligence Under Law Award, National Security Agency (1996)

United States Department of Justice Edmund J. Randolph Award (1995)

Agency Seal Medallion, Central Intelligence Agency (1995)

Agency Seal Medallion, National Security Agency (1995)

Federal Bureau of Investigation, National Security Award (1995)

The Chief Justice's Award (1995)

1994 Judicial Honoree of the Year, Bar Association of the District of Columbia.

Honorary Doctor of Laws, George Washington University (1994)

Co-honoree, National Security Law Moot Court Competition, George Washington University Law School (established 1992 and continuing annually)

Distinguished Alumna Award, George Washington University (1989)

Woman Lawyer of the Year, Women's Bar Association of the District of Columbia (1979)

Women's Legal Defense Fund Award for "Outstanding Contribution to Equal Rights" (1976)

George Washington University Alumni Achievement Award (1975)

Publications

Green, Long & Murawski, "Dissolution of Marriage" (McGraw-Hill) 1986, and supplements

Green & Long, "Marriage and Family Law" (McGraw-Hill) 1984, and subsequent supplements

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International

October 1995. Judicial speaker for the U.S. Information Agency program at Militia Academy in Minsk, Republic of Belarus. (Two-week teaching assignment re law enforcement and the U.S. criminal Justice system).

Personal

Judge Green is the widow of Samuel Green, Esq., and has three children: Michael, June and James

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Ms. Porter is a founding member of Gurne, Porter & Baulig, and PLLC\ where her practice focuses on representing and advising small and medium sized businesses and non-profit organizations. She advises and counsels educational and health care organizations in a wide variety of matters including compliance audits, contract reviews, and regulatory matters. Prior to joining the firm in 2000, she was a partner at Andrews & Kurth, a Texas based law firm.

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Ms. Porter graduated from the George Washington University Law School in 1983 and received her undergraduate degree from the University of Queensland in Brisbane, Australia. Prior to attending law school, Ms. Porter was an officer of the Australian Department of Foreign Affairs and served at Australian Embassies in Manila and Washington DC.