THE HONORABLE JOHN A. TERRY

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

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United States Courts
District of Columbia Circuit

THE HONORABLE JOHN A. TERRY

Interview conducted by:
Silvija Strikis
July 12, 2011

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NOTE

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

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PREFACE

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

Indexed transcripts of the oral histories and related documents are available in the Judges' Library in the E. Barrett Prettyman United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C., the Manuscript Division of the Library of Congress, and the library of the Historical Society of the District of Columbia

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

Historical Society of the District of Columbia Circuit

Oral History Agreement of Judge John A. Terry

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

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

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

John A. Terry 7/22/15

John A. Terry [Date]

SWORN TO AND SUBSCRIBED before me this
22nd day of July, 2015

Gloria Bradshaw-Herbert
Notary Public

My Commission expires: GLORIA BRADSHAW-HERBERT
Notary Public of District of Columbia
My Commission Expires August 14, 2016

ACCEPTED this 23rd day of July, 2015, by Stephen J. Pollak, President of the Historical Society of the District of Columbia Circuit.

Stephen J. Pollak

Stephen J. Pollak

Schedule A

Voice recordings (digital recordings and cassette tapes) and transcripts resulting from one interview of Judge John A. Terry conducted on the following date:

Interview Date	Description of Media Containing Voice Recordings	Pages of Transcript
July 12, 2011	Tape 1, Sides A and B Tape 2, Sides A and B	1-76 pages

The transcript of the one interview is contained on one DVD.

The Historical Society of the District of Columbia Circuit

Oral History Agreement of Silvija Strikis

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

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

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

Silvija Strikis 3/25/15
[Date]

SWORN TO AND SUBSCRIBED before me this
25 day of March, 2015.

Diane M Cooke
Notary Public

My Commission expires: 10/31/2016

Diane M. Cooke
Notary Public, District of Columbia
My Commission Expires 10/31/2016

DIANE M. COOKE NOTARY PUBLIC DISTRICT OF COLUMBIA MY COMMISSION EXPIRES 10/31/2016

ACCEPTED this 16th day of April, 2015, by Stephen J. Pollak, President of the Historical Society of the District of Columbia Circuit.

Stephen J. Pollak
Stephen J. Pollak

Schedule A

Tapes recordings, digital recordings, transcripts, computer diskettes and CDs resulting from one interviews of John A. Terry conducted on the following date:

Interview No. and Date	Number of Tapes	Pages of Final Transcript
No. 1, July 12, 2011	2	1-55

The transcript of the interview is contained on 2 tapes.

Oral History of Judge John A. Terry
July 12, 2011

This interview is being conducted on behalf of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewee is the Honorable John A. Terry, Senior Judge, District of Columbia Court of Appeals, and the interviewer is Silvija Strikis. The interview took place on July 12, 2011.

Ms. Strikis: Judge Terry, why don't you talk about at first, where you grew up, what you did, what your parents were like.

Judge Terry: Well, I grew up in St. Louis, Missouri. I was born in upstate New York, but I moved to St. Louis at an early age; that's where my family had lived for three or four generations. I went to high school there. Went to college at Yale University, and then after Yale, I came down here to Washington because I'd always liked Washington; I'd been here as a tourist a couple of times and thought it was a very nice city and would like to live here for a while, and as things turned out, I never left.

Ms. Strikis: How did you find yourself going to Yale? What studies did you do to get there?

Judge Terry: Well, I applied and got a scholarship, and they wanted me and I wanted them, so everything worked out quite well.

Ms. Strikis: What high school did you attend in St. Louis?

Judge Terry: John Burroughs is the name of the school.

Ms. Strikis: And was that a private school or-

Judge Terry: Yes-

Ms. Strikis: Public school?

Judge Terry: Yes. Private school.

Ms. Strikis: What had your family done in St. Louis for several generations?

Judge Terry: Well, my grandfather was a major heating contractor in St. Louis. His heating company had heating plants in major hotels, and part of the city hall; that sort of thing. And my great grandfather- his father in law was also a…well the family refers to him as an inventor. He invented a lot of plumbing devices, including the fire hydrant – that picture up there on the wall is a picture of his fire hydrant from I don't know when, but long before I was born.

Ms. Strikis: And his name was Peter White?

Judge Terry: Yes.

Ms. Strikis: So he invented the original fire hydrant?

Judge Terry: The original fire hydrant. It's—actually, what he invented was the valve that makes it possible to have a fire hydrant without letting the water freeze during the wintertime. I don't know anything about the mechanics of it, but that's how he made his living and oh, I guess a fairly comfortable living.

Ms. Strikis: Did he invent any other …?

Judge Terry: Oh, lots of other things. He had a lot of patents. On all sorts of plumbing devices – valves, and such things as that. You know, I'm not conversant with the details, but I know that when he died, he supposedly had more patents than anybody else, but he was eventually surpassed by Thomas Edison. I'm not sure if this is true, but this is at least the family legend. He died long before I was born.

Ms. Strikis: That's an interesting background. How did you come to get the copy of his patent?

Judge Terry: Oh, a cousin of mine – actually a cousin of my mother's – had a copy of that. That's actually not a patent, but that's an advertising hand bill. It's just a Xerox copy actually. The original that I saw, that I got from another cousin was sort of yellowish—yellowed with age, that at least is on white paper.

Ms. Strikis: Interesting.

Judge Terry: But then, that was my mother's mother's father. And then his son-in-law was my grandfather who was in the heating business.

Ms. Strikis: Was your father also in the heating business?

Judge Terry: No he worked as a salesman, and for various companies over the years.

Ms. Strikis: How were your parents in New York when you were born?

Judge Terry: Well, my mother, after she graduated from college (she went to the University of Missouri), she came to Washington for a few years, and then she moved to New York, just because New York was the place to be. This was back in the [19]'20's and I think that's where they met, (where she met my father), and one thing led to another, and they got married and I came along in due course.

Ms. Strikis: Were you the first child?

Judge Terry: Yes, first and only.

Ms. Strikis: First and only child. Did you have many cousins?

Judge Terry: I have a number of cousins. Had and have many--several cousins. Three first cousins on my mother's side – one—one of them died several years ago; the other two are still living. And lots of second cousins and various degrees of cousinship: first cousins once-removed, second cousins once-removed, all that stuff.

Ms. Strikis: Are any of the other cousins judges, or involved in--

Judge Terry: No--

Ms. Strikis: --the judiciary…

Judge Terry: --two of them are lawyers; one first cousin is a lawyer in St. Louis, and another is the grandson—no the son of my second cousin is a lawyer in Atlanta.

Ms. Strikis: Interesting—

Judge Terry: --But I was the first lawyer in the family.

Ms. Strikis: Did you plan on being a lawyer when you were growing up?

Judge Terry: Not really. I didn't really know what I'd want to do when I was growing up. … After I came to Washington, I got a job, first in the Library of Congress, and then after a year or so, I got a job in the Senate, working for a Senate committee that was investigating labor racketeering. The chief counsel of that committee was Robert Kennedy, whose picture you see up there on the wall. And, it was about that point I thought, "Well, maybe I'd like to go to law school. At least I'll see what it's like." So I worked in the day, and went to Georgetown Law School at night.

Ms. Strikis: And what year was that that you started law school?

Judge Terry: 1957. And graduated in 1960.

Ms. Strikis: So you must have worked hard, going at night and finishing in three years.

Judge Terry: It was-- it took up all my time, let's put it that way. I didn't feel it was terribly burdensome, because I looked around me; I saw dozens of others doing the same thing, so I thought, well, this is – this is something that I can do. And I did.

Ms. Strikis: When you worked at the Library of Congress, what did you do there?

Judge Terry: Basically I lugged books around. The Library has a little branch office in each of the Senate and House office buildings, and that's where I was, and Senators' offices would order books for the Library and they'd come to us and we'd lug them up to the Senators' offices. And that's how I got to know some of the people in the committee that I eventually went to work for.

Ms. Strikis: What was your role in working for the committee?

Judge Terry: Very low-level and basically, whatever—whatever I was asked to do. I ended up—a large part of my time was spent answering the mail; we got a lot of mail, and part of my job was writing letters, say, "Dear so-and-so, thank you for your interest in the work of the committee," and so forth. This was a committee that investigated, among others, Jimmy Hoffa, who you may remember. And it lasted—the committee lasted for about three years. Three … maybe a little more than that. And that coincided with my time in law school.

Ms. Strikis: And so that's what you did during the daytime and went to law school--

Judge Terry: Yes

Ms. Strikis: --at night?

Judge Terry: And I also did other things. I served subpoenas and took witnesses to the airport, and that –whatever needed to be done I did.

Ms. Strikis: Were there any memorable witnesses that you ferried around?

Judge Terry: Mr. Hoffa. I didn't take *him* anywhere. No, he was -- you might call him a hostile witness. But we – the committee had many witnesses who just told of misdeeds by various labor unions. And some of them were more interesting than others, but no one stands out.

Ms. Strikis: And what was the tenor of the mail the committee received? Do you recall if it was very . . . positive or negative?

Judge Terry: A lot of it was what you might call fan mail, saying "Gee, we think you're doing a great job." Some of it was people writing in say-saying, "Well let me tell you about my experience with local so-and-so of the such-and-such union in Chicago, Detroit, Kansas City, what have you." And sometimes that would lead to an investigation; sometimes it wouldn't. But, you know, anything looked like that, I would give it to one of the investigators and or someone in the higher level, and they would make the decision as to what to do with it.

Ms. Strikis: How did you like working with Senator Kennedy?

Judge Terry: I loved it. And he was a wonderful man.

Ms. Strikis: So he was a good leader of the group?

Judge Terry: Yes. He was a good--excellent—he hired me and –as I say, and he was just a terrific person.

Ms. Strikis: And obviously very brave to be taking on the business he was doing.

Judge Terry: (laughs) Yes.

Ms. Strikis: Yes.

Judge Terry: But, no, I was a fan of his and still am.

Ms. Strikis: Do you have any stories from your law school days?

Judge Terry: Nothing really. Just…law school was law school. I, you know, I endured it as everyone does. I had some very good professors and some that were not quite so good.

Ms. Strikis: Is there any professor that you think had a real impact on you, or your learning?

Judge Terry: Not really -- …

Judge Terry: --I mean, some that I enjoyed a lot: my contracts professor, Walter Jaeger, who many people in Washington will know of and remember. I had him for contracts, and I think one other course. The rest were just sort of the standard law school faculty people.

Ms. Strikis: And so when you graduated from law school, did you stay with the committee?

Judge Terry: For a little—for a year or so, Yes. It was still—they were still, sort of, picking up loose ends of the select committee, which had expired. That was a sub-committee on investigations, which in fact is a permanent sub-committee; it's still there.

Ms. Strikis: Did you role-change at all when you graduated from law school?

Judge Terry: Well, to some degree. I didn't do any investigating, but you know, I did more research-type things.

Ms. Strikis: And then, what was your next job?

Judge Terry: Then I, well, eventually, I went into the U.S. Attorney's Office, and that was in fall of [19]'62. And that was a great job. I mean, as I said, being an assistant to a U.S. Attorney is a wonderful job for a young attorney.

Ms. Strikis: And how did you come to land at the U.S. Attorney's Office?

Judge Terry: Well, I just applied, and thought it would be very good and I got an interview with the then U.S. Attorney, whose name is David Acheson, the son of Dean Acheson, and we hit it off and he hired me. So I started there in September of [19]'62.

Ms. Strikis: How long were you there in the AUSA role?

Judge Terry: In two segments. I was there from [19]'62 to [19]'67 first and did the rotation through the office in trying cases in what was then called the Court of General Sessions. It's now part of the Superior Court. And then a couple years in Appellate; the Appellate Division under Frank Nebeker who was then the chief of the division and is now my colleague here on the Court just two doors down. And then I spent a couple years in the Felony Trial Unit, trying felonies of various kinds. And as I say, that's a great job for any attorney. You get wonderful experience, you learn to think on your feet, and I'd highly recommend it for any attorney who wants to be a litigator; you learn how to litigate.

Ms. Strikis: When you started in 1962, you mentioned a rotation. Can you describe what you went through?

Judge Terry: Well, as the standard rotation - this is still true today - people usually start in what is now the Superior Court Division of the office, trying misdemeanors and then you rotate through different—the rotation—not everybody hits every step of the rotation, but I went through Misdemeanor Trial Unit, and then the section called Special Proceedings, which handles habeas corpuses and post-conviction remedies. It's a small section, but the chief of the section was a really fine attorney named Oscar Altshuler, whom everyone I've ever worked with regarded with great admiration and respect. And then, after Special Proceedings, I went into Appellate for a couple years and argued appeals, mainly in the D.C. Circuit, beginning I'd say, late '63 – say November or so of '63 (that may not be the right month, but it was in that area). And then after a little over two years there, I went into the Felony Trial Unit, and spent a couple more years in felony trials, mainly in District Court.

Ms. Strikis: Federal District Court?

Judge Terry: Yes, but that was before there was a Superior Court, so all felonies were tried there - local crimes like murders and robberies as well as federal crimes, which were fewer than the local ones.

Ms. Strikis: So the D.C. Court of General Session was the District of Columbia local court at the time?

Judge Terry: Yes.

Ms. Strikis: But only handled misdemeanors and relatively minor crimes?

Judge Terry: Right … The Court Reorganization Act of 1970 set up what is now our current D.C. court system, but that was a big, big change in the court system for D.C. It gave D.C. what was the—for the first time, the equivalent of a state court system, and that's where we are now. Obviously, as you know, it works quite well.

Ms. Strikis: The appellate cases that you argued when you first came to the Appellate Section; do you recall anything about those?

Judge Terry: Well, no; well, I probably had, I wrote many briefs and I probably had approximately 50 oral arguments in the D.C. Circuit. Some were more substantial than others, but I learned how to argue an Appellate case, of course, that's why you're here, and they were just – they were pretty standard criminal cases, most of them; I had a few civil cases, but most of them were criminal. And some of them ended up as significant opinions, some were just routine little--little - I won't say insubstantial cases, but cases that didn't make any new laws or said that we find no error or affirmed, basically.

Ms. Strikis: Right. Were any of your appellate cases that you recall granted cert and taken to the Supreme Court?

Judge Terry: I'm trying--I can only think of one, and that was some time later when I was chief of the division. That was a case called *Doe v. McMillan*, which was a suit against the then-Chairman of the House District of Columbia Committee. They had published a report about the D.C. school system, and in the course of it they—in the appendix of the report, they reprinted the test papers of a number of students, showing how poorly educated they were and how, basically, inadequate the D.C. school system was. And so Doe, John Doe,—et al., they were some of those kids whose papers were published, and they sued the Chairman of the committee, the couple of staff members on the committee, the up-top staff members of the committee, plus the head of the government printing office, and two or three officials of the printing office for damages and – I forget whether it was damages or —just damages or maybe intention, but they filed suit. This was sometime in the early '70s; I don't recall the exact time—that date. But, the then-chief of the civil division handled the case in the trial court; argued it-summary judgment-which he won, representing the congressman and the other government officials, and then I did it on appeal, and I prevailed on appeal, and then they took it to Supreme Court; Supreme Court reversed five-to-four in part. They claimed the main issue was whether the constitutional privilege—the legislative privilege,

which says that members of congress cannot be held accountable "in any other place" for what they do in their official capacity. Whether that granted immunity required dismissal of the suit, and the Supreme Court held that the congressman and the committee and the committee staff were protected by the privilege. The privilege did not apply to the government printing office people, so the case was affirmed as to the congressman and reversed as to the printing office people. And it went back to District Court, and I guess it was settled or something at that point, because they had wanted to get some relief from the congressman and his staff, and they didn't. It was an interesting case; there's nothing quite like it I don't think.

Ms. Strikis: Yes, the issue sounds very interesting.

Judge Terry: That's the only case I ever had that actually went to the Supreme Court and got an opinion.

Ms. Strikis: Right.

Judge Terry: Not the only case I ever had, as an attorney. One case I had here, which I wrote the opinion on in this court went to Supreme Court and got a reverse, but that was much later and that was involving double jeopardy.

Ms. Strikis: Did you go to the Supreme Court argument of the *Doe v. McMillan*?

Judge Terry: I went to hear it…Interesting, interesting case.

Ms. Strikis: That does sound like interesting issues. Did you handle any particularly interesting felony trials?

Judge Terry: Well, one that I always remember is a rape case that I had with five defendants, which was my longest trial; it lasted about three weeks. Two of the five were convicted and their convictions were upheld.

Ms. Strikis: So three week trial. And was it pretty much you handling the trial and all the logistics?

Judge Terry: Yes, it was me; it was five defense attorneys. It was before Judge Bryant, who was then, I think, relatively new on the court. I don't know if you knew Judge Bryant, but he was a district judge for many years and I came to admire him and respect him enormously; I think he was just a terrific judge and a wonderful human being; he just died a few years ago. William Bryant. And I had to cope with five very – I won't say unruly – but very persistent defense attorneys, and the judge kept a good lid on them, and he kept the lid on me, so all told, it was a very interesting trial, and I enjoyed that. I had a couple of other cases, one that I remember, involved a guy who forged some checks from American University

and managed to cash them at a local bank until one of the tellers got suspicious and said, "Hey this doesn't look right," and they caught him. I can't remember his name…it was Thomas, I think, the *United States v. Elliot Thomas* -- and he was arrested. It was great fun working up that case to go to trial. I worked with an FBI agent that was extremely good; a really good agent and deserved much commendation in putting the case together. And then it involved Swiss banks and other things of that…

Ms. Strikis: So this was a sophisticated defendant it sounds like!

Judge Terry: It was a pretty sophisticated defendant, and very clever, and he almost managed to get a million dollars out of American University's (I think it was American) bank account before he was caught, but he was caught and he was indicted, and I think a day or two before the case was set for trial he pleaded guilty to two counts, and that was the end of the case. I was looking forward to trying that one.

Ms. Strikis: That does sound interesting.

Judge Terry: I had two Swiss bankers on the airplane, in the air, coming over here at the time he pleaded guilty. So they just came over and enjoyed a few days as tourists and went back.

Ms. Strikis: So did you meet them at the airport and tell them, "Hey…"?

Judge Terry: Not at the airport, but they came to my office; the FBI agent brought them in, and we had a nice little chat, and I said, "Well, sorry to make you travel all this way, but Mr. Thomas just pleaded guilty while you were on the way from Zurich."

Ms. Strikis: Had you had to go to Zurich to meet with them to do pre-trial?

Judge Terry: No, the FBI did all that.

Ms. Strikis: Yes, the FBI took care of that.

Judge Terry: But they had – I guess - I don't know if they have an office there, but they certainly had agents over there and they cooperated with the Swiss police.

Ms. Strikis: Did this gentleman have access to American University checks or did he make fake ones?

Judge Terry: Not exactly. The checks were counterfeit, but they looked like real checks. They were a very good counterfeiting job, but it's you know as they said, American University; it appeared to be signed by all the right people, but they were in fact not even real checks.

Ms. Strikis: That sounds like a fun case.

Judge Terry: Otherwise, I just had the usual assortment of robberies and murders, and whatnot.

Ms. Strikis: Did you find that most of them settled before trial?

Judge Terry: No, no, not at all. We had a lot of trials. Some of course ended in pleas, but many of the more serious crimes usually would go to trial; that's still probably true, I think. But a lot of cases do end in pleas, but the more difficult ones, the ones that are perhaps more evenly balanced in the evidence or in the law will go to trial even today in Superior Court, and sometimes the government wins and sometimes the defense wins.

Ms. Strikis: Did they have any sort of sentencing guidelines that judges had to adhere to?

Judge Terry: Not then. Not then. That came later.

Ms. Strikis: So the sentencing was more at the discretion of the judge?

Judge Terry: Yes. Pretty much. In fact a few cases that I remember on appeal - not necessarily that I personally handled, but cases that the office handled as an office – involved challenges to the sentences that –too harsh, or whatever, and it was inconsistent with what Judge "X" down the hall would have given for the same kind of conviction. And that sort of thing happened all over the country, and that's what eventually ended up with the Federal Sentencing Guidelines. Which are, as you know, the sentencing guidelines themselves have been subject to some litigation over the years, but they've been upheld.

Ms. Strikis: Right. And they also have criticisms of the guidelines?

Judge Terry: Yes. Oh yes. But there is now a federal sentencing commission which didn't exist then. This was back in the '60s and '70s.

Ms. Strikis: And from felony trial section you went back to appellate?

Judge Terry: Well, I left felony trials after a couple years and went to work for something called the National Commission on Reform of Federal Criminal Laws. This was set up in the late '60s. Congress passed somehow, I don't know how they got the idea, but somehow it became a matter of concern that the Federal Criminal Code, Title 18 of the U.S. Code, needed to be revised. And so Congress set up this commission made up of various scholars and other leaders from around the country - about 8 or 10 people – headed by, as I recall, former Governor Brown of California, the father of the present Governor Brown of California.

Ms. Strikis: I was going to say, it's probably not the same one.

Judge Terry: No. His father. Pat Brown. And the staff director was a professor from, I believe the University of Pennsylvania, who was involved in working in the drafting, I guess, of the development of the model penal code. And I think the idea was at the time that they could persuade Congress to enact something like the model penal code for the federal system. That didn't happen; eventually there was a piece of legislation that did make many changes in the Title 18, but they didn't redo the whole thing, they just updated various provisions of it and tidied up the language, as Congress does from time to time. But anyway, I stayed there for, I guess almost a year, and then I went into private practice for a year with a friend of mine. He had a nice little office, a little two-lawyer office, and took whatever came in the door, including some appointed criminal cases. And then in '69 – spring of '69 – Thomas Flannery became the new U.S. Attorney here in D.C., and just about that same time, Frank Nebeker, who had been my superior in the Appellate Division – my chief - was appointed to this court. And Tom Flannery, later Judge Flannery, called me up and said, "Would you like to come back to the office? Frank Nebeker's going into court, and we'd like you to be Chief of Appellate." So I said yes! And I went back there and became Chief of the Appellate Division, in, I think it was June of '69, and stayed there until I came on this court in September of '82.

Ms. Strikis: So you have followed in your former Appellate boss's footsteps.

Judge Terry: Yes. And two of my successors have done the same thing. You may want to talk to any or all of them if you haven't already, or someone on your Oral History project.

Ms. Strikis: And who are those?

Judge Terry: Judge Nebeker of course. And Judge Michael Farrell, who is a senior judge on this court, just down that way. And Judge John Fisher. He, in fact, was Chief longer than I was. I was there 13 years; he was about 15. Fifteen or sixteen. And I'm sure they both have lots of interesting anecdotes, although, especially as to Judge Fisher, I think after court reorganizations in the 1970s, the U.S. Attorney's Office had fewer arguments in the U.S. Court of Appeals; most of their arguments were on this side of the street; in this court because all the criminal cases were coming here instead of over there. But I know that they both had a lot of exposure and a lot of experience in the D.C. Circuit and I'm sure either or both of them would be good people to talk to.

Ms. Strikis: What did you do during your year on the commission for enacting the model penal code?

Judge Terry: Basically it was sort of legal research, lots of writing scholarly-type memorandums.

Ms. Strikis: Was there any particular issue you were assigned?

Judge Terry: Well, I remember I had to spend a month or so writing up the Law of Treason, which was new to me, and I haven't had occasion to go back and look at it since, but the director and the assistant director had certain things they wanted looked into, and we had a small staff of I think four or five lawyers, and they would assign various projects to us. One of my colleagues on that commission was Thomas Hogan, who is now a U.S. District Judge.

Ms. Strikis: So he was a colleague who was a commission member?

Judge Terry: No, he was a lawyer. . . . A staff attorney, like me.

Ms. Strikis: Do you remember any of the commission members?

Judge Terry: Let's see. Governor Brown is the only one I can recall, but there were some political persons, like him. A few academics: Professor this-or-that from one or more law schools.

Ms. Strikis: And how did the workings of the committee transpire? Did you work directly with committee members?

Judge Terry: No, mainly the staff director and his – I forget what his – I think that's what he was called –Staff Director – and his assistant, whose name was Green. I can't remember what his first name was.

Ms. Strikis: And they would provide assignments to the lawyers?

Judge Terry: Yes. And they would assign things to us and we would do whatever they … we'd finish one project and start another.

Ms. Strikis: Was the work . . .

Judge Terry: As I said, the work was kind of dull, that's why I left.

Ms. Strikis: So you left before the commission was final?

Judge Terry: Yes, I left before. I was there for less than a year.

Ms. Strikis: Who did you open up your law office with?

Judge Terry: An old friend named John Bennison. He had graduated from law school a few years earlier and we just thought, well, it'd be nice to start a law firm.

Ms. Strikis: And where was your office?

Judge Terry: In the Washington Building at 15th and New York.

Ms. Strikis: Did you have any employees or was it pretty much you?

Judge Terry: We were it. We were the secretary, the receptionist, the file clerk, and everything else.

Ms. Strikis: Do you have any cases from that time that you recall being particularly interesting?

Judge Terry: Not really. That was … as I say, we just took whatever came along, and most of them were pretty ordinary cases. They were interesting at the time, but not terribly memorable. We made enough to pay the rent, but we didn't get rich.

Ms. Strikis: And then, what did Mr. Bennison do when you –?

Judge Terry: Well, he eventually became counsel to something – I forget the exact name, but it's something like the American Society of Travel Agents. He worked with General Counsel for their business association. And he was there for a number of years; I know he's retired now.

Ms. Strikis: Were there any hard feelings when you told him that you were breaking up the partnership?

Judge Terry: No. Not at all.

Ms. Strikis: It sounds like you were offered a very good position.

Judge Terry: We're still friends, yes. And in fact, we had a third – I won't say a third partner – but we had a third attorney, who at the time was in Vietnam. And he came back from Vietnam shortly after I left, so he and John took over the law practice from that point on for a while.

Ms. Strikis: What was his name if you recall?

Judge Terry: Jack Garring.

Ms. Strikis: So he was serving in Vietnam?

Judge Terry: Yes. He was in the army; I think it was the army.

Ms. Strikis: Did you undertake any military service?

Judge Terry: No, I'm not the military type. So, no.

Ms. Strikis: So this was going on in, like, '68, '69?

Judge Terry: Yes. I left the U.S. Attorney's Office in the fall of '67 to go work for the Commission, and I stayed with them until, I'd say roughly July or August of '68. And that's when I went into practice with John Bennison. We were in practice then for about a year.

Ms. Strikis: How did you learn about the job at the Commission?

Judge Terry: I can't recall. Someone told me about it, I can't remember who it was, but I knew that they were just starting up and looking for lawyers. And I thought, well that sounds sort of interesting. Turns out it wasn't interesting at all.

Ms. Strikis: But it sounded interesting to you at the time, and different from the trial work you were doing?

Judge Terry: Yes, it was a little less active, let's say. Required more thought and less running around the courthouse, trying to find witnesses.

Ms. Strikis: Trying to find witness – did they disappear often?

Judge Terry: No. Not often, but enough to cause us headaches from time to time.

Ms. Strikis: Consternation. And what was the mood like in Washington? I wasn't here then, but all the civil rights issues…

Judge Terry: Well, '68 was a very lively year politically, of course, you know Lyndon Johnson was president, the Vietnam War was going on, and there was a lot of anti-war sentiment. And both Eugene McCarthy and Robert Kennedy were running for president, and then Kennedy got assassinated. It was a time of political ferment, let's say. And in the fall of '68, Nixon got elected, and things quieted down after that, as you may be aware. It was an active year.

Ms. Strikis: Were you involved in any political activities?

Judge Terry: Not directly, no. As I was working for the government, I couldn't. I was precluded from anything like that. Although, I had thought about going to work in the Kennedy campaign, actually, and gosh, when he died, I couldn't do that. As I say, I couldn't do anything like that as a government employee, and then when I was in private practice, I didn't really have either the time or the money to do much.

Ms. Strikis: So the private practice pretty much…making enough to pay the bills? A little bit left over?

Judge Terry: Yes, that's basically it. I enjoyed that, and I'm glad I did it. I wouldn't do it - I wouldn't want to do it very long, but it was an adventure and I had fun doing it.

Ms. Strikis: Do you think there's anything that's helped you later in your career that you learned from that experience?

Judge Terry: Well, to the extent that both of us took appointed cases in the Court of General Sessions, tried a few cases there, in front of some judges who are even still around. And I got to see things from the defense side, and that was a new perspective on criminal cases, and I think that helped when I later became Chief of the Appellate Division, and even when I came up here. But, so, you know, there are two sides to every case. And that's something that judges in particular have to remember.

Ms. Strikis: When you came to the Appellate section, do you remember what your first argument was?

Judge Terry: Oh gosh, you mean way back? My very first case, I think it involved – it was a murder. There were a lot of little issues in it. I don't think it amounted to very much legally, but it was – I think the name of it was *Jackson v. United States*. The Court of Appeals issued a three-sentence opinion saying, "We find no error. Affirmed." It would have been the end of '63, I think – maybe December or so – of '63.

Ms. Strikis: When you came as Chief of Appellate in 1968 –

Judge Terry: - '69

Ms. Strikis: Oh, '69 – that's right, because '68-'69 you were in private practice. And then in 1969 – how many people were in the office then?

Judge Terry: Oh, in the whole office, gee, I don't know, but it's much bigger now than it used to be. I had about, I'd say a little over 15 assistants in Appellate, and now it's well over 30, maybe more than double what it was. The office grew tremendously when the Court Reorganization Act was enacted in 1970, and '71. '71's when it took effect because all the – it set up a new court with new judges and a lot more cases then were being tried, and it just needed a lot more manpower. And that was - while I was there, I think the section grew from like 15 to oh, 20-something. And of course it's grown a lot since I left.

Ms. Strikis: Did you have anything to do with the Court Reorganization Act of 1970?

Judge Terry: No, not really, no. That was written by people at the Justice Department, basically. Several of them were people who were alumni of the U.S. Attorney's Office, notably Earl Silbert, who later became U.S. Attorney himself. He and a couple of other people from the office had a significant role in sort of devising how the courts would be set up. Not exclusively; granted a lot of people had a hand in this, but I think they crafted a very good court statute. It's in Title 11, to this day, you'll find inside 11 of the D.C. Code, just the whole structure of our court system, and it has remained in effect really pretty much ever since. A few little amendments here and there over the years, but what they set up in 1970 has functioned very well, both as the trial court, and the appellate court. There were as you may know, several – not only the court of general sessions, but there was a separate juvenile court, there was a D.C. tax court with one judge; juvenile court I think had 3 judges, and they were all sort of – and municipal court, which became the court of general sessions. I don't know how many judges – maybe 15 or 20 – they were all rolled into this one new court which we now call the Superior Court, and the statute provided for the appointment of several new judges in groups, beginning within the first 6 months or so after it was enacted there were like, I think maybe 10 or 12 new judges appointed to take office as of whatever the date was – February 1st, I think. And then a couple years later, when the court's jurisdiction was enlarged again, there were more judges appointed to handle those cases. So it ended up being the Superior Court in 2 or 3 stages had its jurisdiction enlarged to handle – all criminal, all felony cases, all criminal cases of a local nature, violations of the D.C. Code, and then also civil jurisdiction was enlarged in a similar way. As I said, that all happened in '71.

Ms. Strikis: So shortly after you came to the office here?

Judge Terry: Yes, as Chief.

Ms. Strikis: As Chief of Appellate. The universe expanded of the courts and judges.

Judge Terry: The universe expanded quite a bit, yes. But still, in my early years as Chief especially, most of our appellate cases were still in the D.C. Circuit, because they had arisen out of cases that originally had been tried in the U.S. District Court. Gradually the focus shifted from over there to over here. But there were still plenty of cases in the Circuit to keep us busy.

Ms. Strikis: With the attorneys on your staff, were there some who specialized in arguing in the D.C. court system, and others federal?

Judge Terry: No. No one ever really suggested that. There were obviously, as you might imagine, in any group of 15 to 28 lawyers, some are better than others. I usually had a few stars, and I would say that, the more - I wouldn't say save, but I would assign them the more difficult cases, because I knew they could do a good job. There were many of those. Some of them you may know, they're still in practice.

Ms. Strikis: Do you have any stars who you recollect?

Judge Terry: Oh, gosh, I don't know. I'd hate to name them –

Ms. Strikis: You would hate to single out people?

Judge Terry: Because I'd leave somebody out – just there were a lot of them.

Ms. Strikis: Were there a lot of good people coming through that office?

Judge Terry: Yes. And there still are. We see them here, arguing cases. Even today. Some are better than others. There are a few that I've always like to see at an oral argument. There are one or two that I think, "Oh geez, not him again." But there aren't many of those.

Ms. Strikis: Was there also some agency counsel who would argue then? Or how did that division occur?

Judge Terry: Not really. Civil cases that came from government agencies, the agency counsel would always have sort of a secondary role. They would be there to advise our attorneys, but our attorneys would do the actual litigating. The agency counsel would just fill in the background details. Once in a while, there would be someone that would – for whatever reason – argue a case, but usually they didn't. And I think that's still generally true, that the actual courtroom work is handled by the U.S. Attorney's Office, now it's done almost entirely by the Civil Division. In the office now, unlike when I was there, civil appeals involving the government used to come through my Appellate Division, and our appellate assistants would argue civil appeals as well as criminal, whenever one came along. Nowadays they have an Appellate Section within the Civil Division over there, and they have people who tend to specialize in arguing civil appeals, leaving the Appellate Division to handle nothing but criminal cases. I'm not sure that's a good idea or a bad idea; it's just different.

Ms. Strikis: That would be different.

Judge Terry: I must say, I learned a lot – the few civil appeals I had – I learned a lot about whatever the issue was and probably forgot it of course.

Ms. Strikis: Do you remember any particular interesting cases that came through while you were the head of Appellate?

Judge Terry: Oh, I don't know, there was, as I mentioned, *Doe v. McMillan*, a few minutes ago. There was a case involving a – I guess you would call it – radical from Chicago – *United States v. Jeff Fort*. F-O-R-T. He was a leader of some group in Chicago

called – they weren't the Black Panthers, but they were something akin to the Black Panthers. He was a self-proclaimed revolutionary, and he was called up before Congress to testify about something and didn't cooperate with the committee and was convicted of contempt of Congress, and I handled that argument. That was fun; that was an interesting case.

Ms. Strikis: Was his conviction upheld?

Judge Terry: Yes, as I recall. I'd have to go back and double check, but I'm pretty sure it was. I argued some cases as Chief, not too many, but usually I'd leave those – the oral arguments – to the people who were there to do that. Because being Chief required a lot of just administrative stuff. But I did keep my hand in and argue one every now and then.

Ms. Strikis: Did you choose the cases that you felt were most difficult for yourself to argue?

Judge Terry: Not difficult, but just that they involved some issues of substance. Some of them were just – I won't say ordinary cases, but just cases that had required perhaps more attention to detail or something – something that required a little extra work.

Ms. Strikis: And you'd keep those for yourself?

Judge Terry: Yes, not many, but a handful.

Ms. Strikis: Were there any cases that you took that were sort of a political bent, you know maybe this *Fort* one wasn't so contentious but that where you took them so that if anything occurred with the case, it could be blamed on you and it would sort of protect your people?

Judge Terry: Well, the only one I can think of is the one that - the *Doe* case that I mentioned earlier. I handled it because I knew that it was obviously important – it involved a member of Congress -and I figured that if anybody were – if it went the wrong way – whatever the wrong way might be – that I would be responsible for it so I took it to make sure it was handled as best it could be. At least I hoped it would be, and as I said, I won it in the Court of Appeals. Supreme Court reversed 5 to 4, but that was partially reversed 5 to 4.

Ms. Strikis: So I was just thinking, I wonder if they ever got anything from the GPO printing employees?

Judge Terry: I doubt it very much. That isn't what they went after.

Ms. Strikis: Right, right, probably not the point of the case.

Judge Terry: They were after the chairman of the committee, and the Supreme Court said that he was immune. I think he was right. I think they were right. The Constitution is pretty clear about that.

Ms. Strikis: What administrative-type functions did you have as Chief of the Appellate Division?

Judge Terry: Well, the foremost one was to assign the briefs to attorneys as they came in. The briefs would pour in a pretty steady stream – 12 months a year, every day almost. And yes, they came in and I'd look it over and I'd say, "Well this would be good for so and so; I'll assign this to attorney X," and the next one I'd assign to attorney Y and the next one, "Well this doesn't look too difficult, I'll give it to this rookie whom I haven't seen yet." And that was part of the job.

Ms. Strikis: How did you keep track of who had which assignments?

Judge Terry: Oh, I had a little book that I kept them all in and that was – I still do that I think. And we had a very able – what we called our docket clerk – who kept track of who had which case, and she was an extremely capable woman. She left after I'd been there a few years. Went to work in the Justice Department; I think she may be still there.

Ms. Strikis: And what was her name?

Judge Terry: Mary Hammond – just a wonderful person, really.

Ms. Strikis: She kept everything running efficiently and on time?

Judge Terry: Kept everything running very smoothly.

Ms. Strikis: Did you have certain assistants who became specialized in areas, such as tax or certain agencies?

Judge Terry: No, we didn't do tax cases. There were some, as I say that I knew that they were good enough that I could give them the more difficult cases. You know, the big murders or the ones that made some headlines or even the ones, that even though if they didn't make headlines, I knew they were complicated and they could – if they came out the wrong way – they could cause some trouble down the line or future litigation.

Ms. Strikis: Did you have to worry about sort of the budget of the office too and how did –

Judge Terry: Not really, no. I mean, obviously that was - the budget of the office determined how many assistants we got and that was basically as much as I could – as I was involved in it. I could always say, "Gee, I need more assistants" but the U.S.

Attorney, whoever he or she may have been, could say, "Yes, I know you need more, but civil needs more and grand jury needs more and the felony section needs more," and that sort of thing.

Ms. Strikis: So the U.S. Attorney sort of allocated for whole offices?

Judge Terry: Right, that's all done higher – at a higher level. They have administrative people who handle the thinking about budget and financial stuff.

Ms. Strikis: Which U.S. attorneys did you work for as chief appellate?

Judge Terry: As chief? Well, first was Judge Flannery. He was there for, I guess, the first two or three years. Then Harold Titus, who was U.S. Attorney, for…let's see, I'm not sure how many years he was there – maybe two, two and a half. Then Earl Silbert. Earl is still practicing – or if he isn't, he's recently retired. He's with DLA Piper. And after Earl came Charles Ruff.

Ms. Strikis: He was White House Counsel not that long ago.

Judge Terry: He was, yes. He was very good. I liked him. And then Joe did, let's see, no Joe was not – and after Chuck Ruff was Sam Harris – Sammy Harris – who then became a U.S. District Judge. In fact, he had originally been a judge on this court. He left here to become U.S. Attorney, and I took his seat on this court.

Ms. Strikis: Interesting.

Judge Terry: So actually, there were one or two others that were there for a short time. Carl Rauh who I think followed Earl Silbert after Earl left. I think that was it.

Ms. Strikis: Did each of the U.S. Attorneys have their own style that they imposed on your office?

Judge Terry: Well, yes, they were just different personalities, and they were all very capable people – every single one of them. And you know, to this day there are people who speak in reverent tones about all of them, especially Judge Flannery who has sort of a – I would say, a group. There still is a, sort of an informal association of people who he hired who get together for lunch once or twice a year – lunch or dinner – and speak very highly of him.

Ms. Strikis: And is that usually in D.C.?

Judge Terry: Yes, lunch at the Palm or something like that.

Ms. Strikis: Does it have a name? The Flannery Five? [laughter]

Judge Terry: No, but somebody has a mailing list somewhere, and every so often I'll get an e-mail saying, 'We're going to have a luncheon on Tuesday, the 14th, would you like to come?'

Ms. Strikis: That's fun. And does the personality of the U.S. attorney affect the appellate office in any way that you recall?

Judge Terry: Not really. I know they all wanted the office to do a good job, and some I think took more interest than others in the work of the appellate section. Earl Silbert I know was particularly interested in making sure that the office was always well represented in the meeting of the courts of appeals. And I think Sam Harris too because it was after he had been an appellate court judge and knew what appellate courts wanted. But they were all very capable lawyers overall, and they knew that the office needed to do a good job in whatever court their attorneys were appearing in.

Ms. Strikis: Was there ever any time or case you recall that the appellate office decided to decline to pursue the appeal?

Judge Terry: Very rarely – I mean every now and then. And then I'd say I could almost count them on the fingers of one hand. We would get a case that we knew that the – it was pretty obvious that the trial judge had done something that he or she shouldn't have done, and we had to confess error, and when we did it was always the policy of the office that – and for all I know it still is – the U.S. attorney and the chief of the appellate, which was me and Harold Titus or whoever, would go and see the judge and say, "Judge, we have to do this and here's why." And by and large, they didn't like it but they understood why we did it and they weren't terribly hostile.

Judge Terry: I remember going once to see Judge Sirica about that, and he was a tough judge as you may have heard, and he was quite unhappy that we decided that some ruling he had made couldn't be upheld. That's why Harold Titus did most of the talking. I was just there as window dressing, but he was – I was the one that realized – had thought that we couldn't sustain this.

Ms. Strikis: Do you recall what the issue was?

Judge Terry: I have no idea – something that – Judge Sirica had a habit of saying more than he should on the record, and I think it was that – something of that sort.

Ms. Strikis: Was he booming at you when you –

Judge Terry: He was not the only judge who did that, by the way. No, he was not rude or anything like that.

Ms. Strikis: But clearly not his happiest moment?

Judge Terry: He was displeased. That's right, but no, most of the time we – if there's any – our approach was, if there's any argument we can reasonably make, we'll make it. And in these rare cases, there was no such argument. But there were very, very few. I think that's still true.

Ms. Strikis: That's probably a good sign of the U.S. attorneys who are prosecuting the cases in the trial court understanding the rules and playing fair.

Judge Terry: Yes, I think so. One of the – one thing that the office made a point of doing is that almost every attorney who went to the trial division went through appellate first so that you would know what was – what you should and shouldn't do. I'm not sure they do that so much anymore, but that still I think is the norm. Occasionally, there will be an exception. They'll hire someone and put him or her right into one of the trial sections, but I think that's much more the exception than the rule.

Ms. Strikis: And that's what you did – the first time you were through the cycle of the appellate section?

Judge Terry: Right, I spent a couple of years arguing appeals and briefing arguing appeals and got to learn how to write briefs and stand up and take my licks from the appellate judges and say, "Yes sir, thank you, your Honor."

Ms. Strikis: I guess also the preparation for trial – the attorneys would then also have to review the trial records so they sort of see how a trial was conducted?

Judge Terry: Yes, that's – well, obviously on an appeal, the appellate attorney – who's almost always different from the trial attorney – would read the transcript and see what had happened in the trial, and I can recall from time to time an appellate attorney – me or someone else – saying "Oh no, why did he do this?" And then sometimes the answer would be on the next page and sometimes it wouldn't. But no, one of the things that we always did – this was pretty much a standard rule – the appellate attorney would always have to go and discuss the case with the trial attorney before writing the brief. He would say, "This is the claim of error, and here's what we think we'd like to do with it," and they would discuss some strategy, and the trial attorney might say, "Well I did it for this and that reason," which might not be quite obvious, but it might be a legitimate reason.

Ms. Strikis: Right, and it might help in framing the appellate argument.

Judge Terry: Exactly, exactly. And that's one of the reasons why the trial assistant's name would always go on the appellate brief. It would have the U.S. attorney and then the chief appellate and maybe the deputy chief who actually reviewed the brief and then the trial attorney and then the appellate attorney, and they still do that.

Ms. Strikis: And the appellate attorney would be the one who argued it typically, though?

Judge Terry: Yes, yes. And you look at any case reported in U.S.D.C. or even A2nd or A3rd now, they list the attorneys. The attorney who argues is listed first, "Joe Blow with whom so-and-so United States Attorney, and so-and-so, Assistant United States Attorneys" are underneath.

Ms. Strikis: Was there a process of, when you were the chief of appellate, if the U.S. wanted to affirmatively appeal something, they had to get the Solicitor General's approval?

Judge Terry: Yes. That was true then, and I think it's still true now.

Ms. Strikis: It's still true, Yes.

Judge Terry: When the court reorganization came in – this is an exception to that rule I just said – once the D.C. court system was set up under the Court Reorganization Act, that was no longer a requirement for appeals within the D.C. system. That's a requirement only for U.S. courts because the Justice Department, Solicitor General, and others quite obviously wouldn't want to make bad law in one circuit that might affect some cases in some other circuit, so any time we wanted to appeal something that a district judge had done – assuming it was appealable, which in many cases it was not because you can't appeal from an acquittal – we would have to get permission from the Solicitor General, and that required writing a letter to the Solicitor and sometimes discussing it over the phone with someone in the Solicitor's office and then we'd get a "Yes" or "No." But ultimately, and I can remember a couple of times when I would be sitting in the U.S. Attorney's office, and the U.S. Attorney would be talking on the phone with the Solicitor General, and the Solicitor General would say "No," and these discussions went on at some length. But that is still a requirement on the federal side of the office. And I think it's a good idea; I see the reason for it. In the local system – in the D.C. system – the superior court to this court, I was in effect the Solicitor General, or at least I would recommend to the U.S. Attorney that we appeal a particular ruling, if we could. And then the U.S. Attorney would say yes or no, but usually they would – the U.S. Attorney would agree with me. There are certain types of appeals we could appeal. This was part of the Court Reorganization Act. The United States – the government – can appeal the granting of a motion to suppress pretrial motion or a motion to dismiss one or more counts of an indictment, and there are certain other things in the statute. The government can also appeal a post-conviction judgment, setting aside a conviction. In other words, a habeas corpus-type appeal – a type of case we had a local statute . . . that sets up a procedure, which, in effect, enables a convicted defendant to challenge a conviction on certain grounds – any constitutional due process grounds – and every now and then, a judge will grant such a motion, and the United States will

appeal it or not as they see fit. That also – so the federal side, that would have to go through the Solicitor General. But on the D.C. side, it would not; that would be the U.S. Attorney who would be the ultimate decision-maker.

Ms. Strikis: And when you were chief of appellate making the decision or recommendation about whether to appeal a decision that had gone badly for the government, how did those decisions that the government lost come to your attention?

Judge Terry: Oh, the trial assistant would call up and tell me, and say "Hey, Judge so-and-so ruled against me in this case and here are the facts and this is what we argued, and can we appeal?"

Ms. Strikis: Right, "If it's important to me, can we appeal?"

Judge Terry: Obviously, they want to appeal everything, but…

Ms. Strikis: Well, do you have any percentage in mind of how many times you said, "No"?

Judge Terry: Not really. There weren't that many – there were some, there were some. It was often – this is still true – we see them occasionally, not often, but we get them on our calendar here, usually suppression of evidence, occasionally a dismissal for whatever reason. If there's no double-jeopardy bar, then there's no hindrance to the government's appeal. And the statute sets out different types of cases in which – certain types of rulings that can be appealed, pretrial and otherwise.

Ms. Strikis: Do you remember any memorable cases along those lines where you had to push a government appeal?

Judge Terry: Not really, there weren't that many. Well, there was one. Actually, back in the seventies when there was one judge on the superior court. This is while I was chief of appellate. One judge who granted a lot of motions, I think to dismiss in – I think, as I recall, marijuana cases. I'm a little hazy on the details. This judge was Judge Norman, who is now deceased, who thought that we shouldn't be prosecuting marijuana cases or something, and he just dismissed everything.

Ms. Strikis: He was a little bit activist on that particular area?

Judge Terry: Oh, yes. He was, I suppose, a good judge, but he was not well liked by the prosecutor's office because he generally tended to rule most often for the defense. And anyway, he did this – I forget how it came about – but there was a group of, I don't know, maybe forty or fifty cases in which he made similar rulings and he dismissed them all, and so we took them all up in one big, enormous package and we won.

Ms. Strikis: Against fifty defense lawyers?

Judge Terry: Well, I, Yes –

Ms. Strikis: You're some sort of legend!

Judge Terry: I'm not sure quite – I forget how that happened, but I remember the case and, in fact, I remember the attorney who argued it was a guy named Ed Ross who was with this guy [Narchnow], and he did a very nice job. Ed was always a good attorney. And we won, and Judge Norman was a little more subdued for a while, but that didn't last either. But that's the only one that I think was really a biggie – that was the only one that we had such a large number of cases that involved just sort of, basically, how to run the office.

Ms. Strikis: How did the judges get assigned to cases back then? Was it the wheel system or…?

Judge Terry: I think, well, the chief, you mean…

Ms. Strikis: In the D.C. system where you started?

Judge Terry: In the D.C. Circuit?

Ms. Strikis: No, in the D.C. Superior Court.

Judge Terry: Oh, the Superior Court. The chief judge would assign them, basically. But I think they had some sort of an informal rotation where the judge would sit them felonies for a year and then go to civil and then go to whatever – family – and then they'd rotate among themselves. Because I know that, in talking to several judges – Superior Court judges – myself, I know that they either got bored or got frustrated because they had to spend too long in any given assignment. I remember a conversation I had with Judge Kessler when she had been one evening in the elevator on the way to the parking garage. She was saying how she'd just been in the family division for longer than she wished and how frustrating it was getting and how discouraging it was to see the same people coming back again with problems that the court couldn't help them resolve. And I think that's pretty much a problem.

Ms. Strikis: And so even once Superior Court became Superior Court, they still sort of had divided responsibilities?

Judge Terry: Yes, the Superior Court has several divisions, and the judges…

Ms. Strikis: Was that set up under the Act or did they –

Judge Terry: Yes, and they had a criminal division, civil division, family division, and so forth. The chief judge even now assigns – I'm sure the chief will consult with the judges – "Hey, how would you like to be in civil two for a while?" and some will say, "Nah" and some will say, "OK." Some, obviously, do better in some assignments than others, but I think the chief judge handles these things pretty well. And they rotate – he rotates it – I think, I'm not sure how long the assignments are, but they're generally for several months, maybe even a year or more, in a particular division of the court. But then they all rotate around so that a judge on the superior court for the most part – most judges will spend some time here and some time there in the course of their term of office.

Ms. Strikis: When you were chief of the appellate division, was that when the Hinckley matter was or Hinckley trial, was going on?

Judge Terry: Yes, it was right at the end of my time. That was '81, and I came on the court in '82. So that happened in – I guess it was March of '81, and yes, Judge Harris was the U.S. Attorney at the time. And that, of course, was an extremely important case, as you can well imagine.

Ms. Strikis: Right.

Judge Terry: And Judge Harris assigned, among others, Roger Adelman, who you know, to be the chief honcho of the case, and he sort of guided it through the process. And there were three or four other attorneys working with him, including Mike Farrell, who is now a judge on this court. He was my deputy at the time in appellate.

Ms. Strikis: And so you assigned an appellate deputy to work with the trial team?

Judge Terry: Well, I didn't. The U.S. Attorney did.

Ms. Strikis: Just to make sure that everything worked for this trial?

Judge Terry: Exactly. Just sort of as an appellate consultant, because that's a large part of the chief's job, to sort of be a backstop for the trial attorneys. And I would frequently – occasionally – get calls from a trial assistant who would say, 'The judge is going to suppress all my evidence in ten minutes if I don't come up with a case that says X" and I had to come up with that case, and sometimes I did, and sometimes I didn't, but we would talk about it. And that's one of the functions of the appellate chief is to be – sort of to provide informal guidance to the trial attorneys whenever they need it, and not only the chief, but the chief now has several deputies.

Ms. Strikis: Was it unusual to assign a deputy to the trial team?

Judge Terry: Yes, that was the only case I can recall where that happened, and that was specifically because it was obviously a presidential matter.

Ms. Strikis: A presidential issue and also a very bizarre defendant.

Judge Terry: A bizarre defendant and a very unusual case, but there were 3 or 4 trial attorneys, plus Mike Farrell, who just worked in collaboration all the time. They didn't do that – that wasn't their full-time job – but anything pertaining to that case, they would all work together. And eventually, as you know, it went to trial before Judge Parker, and Mr. Hinckley ended up in St. Elizabeth's, where he still is more or less.

Ms. Strikis: More or less, when he's not on furlough.

Judge Terry: Yes.

Ms. Strikis: How did it come to be that you were appointed to this court?

Judge Terry: Well, to get on this court, first of all you have to apply. There is a nominating commission, which is set up by the Court Reorganization Act, and I let them know that I was interested, and I filled out all the papers, and they had a little hearing, and I was recommended. When there's a vacancy on this court or the superior court, the commission has to – within 60 days of the vacancy –or is it 60 or 90, I forget which –send a list of three names to the White House – to the president – and say, 'Here are three candidates.' The president has to pick one of the three. If there's more than one vacancy, the president can pick any name from any list currently pending to fill the vacancy. I mean, just today I learned that there are three superior court vacancies that the president has named people for. So anyway, I went before the commission, and – I can't remember, I think Judge, if I remember correctly, it was Judge Green – Harold Green was the chairman of the commission. There are seven people on the commission, sort of a Chinese menu type of group – two from this list, one from that list – that the mayor appoints two, the bar appoints two, the president appoints one, and so forth, chief of the district court I think picks one. And you know, I said, "I'd like to be on that court," and they asked me a number of questions, and I got on those lists of three, and I went up and had an interview at the White House with the President's counsel, who's Fred Fielding, who you may know of or know, and then they sent my name up to the Senate, and here I am.

Ms. Strikis: Did you have to go before the Senate and answer questions?

Judge Terry: Yes, there was a hearing, and this was 1982. My – the vacancy – Judge Harris was – let's see, it was Judge Harris's seat so I guess Judge Harris became the U.S. Attorney – I forget, what would have been 1981, late '81. Anyway, the vacancy was either at the end of '81 or the beginning of '82, and I sent my name up and

lost track of what I was going to say. Anyway, I submitted my name, and there were others being considered, of course, and my name was on the list of three. But then, after my name went up to the Senate, which was the beginning of May of '82, within two or three weeks after that I got a call from the Senate committee that handles these things. And I went up to see them, and I met with two staff members – one for the minority, one for the majority – and then they set a hearing, so we had a hearing and the hearing was basically one senator asking me a few questions. Well, there were two other judges – nominations – up at the same time for the Superior Court. Judge Steffen Graae and Judge George Mitchell were those nominees – and they both have since died. And so all three of us were up there, and Senator Mathias was the chairman of the committee and he asked me, you know, various questions about the law and life and everything else, and my mother was there and a couple of other friends and the committee approved my nomination and [not audible], but late one night when they were trying to go home for the 4th of July, and so at that point, I said goodbye to the U.S. Attorney's Office and came over here.

Ms. Strikis: So by July 4th, 1982, you were approved by the Senate already?

Judge Terry: I had just been approved. I think it was the very end of June. That was quick because nowadays the whole Senate process, for some reason, takes longer.

Ms. Strikis: It takes a long time, and as I understand now, they – not even in a personal way – block appointments as sort of a group or refuse to consider them or...

Judge Terry: That happens sometimes, yes. Some senator disapproves of the policy of some department so that senator will block all nominees for that department until he gets his way.

Ms. Strikis: Right, right. Which is unfortunate, I think.

Judge Terry: Which is not good. But anyway, it went much faster than we have now. As you can see on our court, Judge Reid retired in April, and an attorney from the public defenders service has been nominated by the president. Her name – I don't know when it went up, probably May sometime, May or June – and I don't know if she's had her hearing yet. I think she was supposed to have one, and it got postponed because the paperwork wasn't finished or something. Anyway, we're sort of waiting for her to come on because we do need the extra judicial power.

Ms. Strikis: Is it noticeable when the court is short a judge?

Judge Terry: Well, to some degree. It's noticeable mainly in the en banc matters because only the active judges will sit on the case en banc, plus any senior judges who may have been on the panel. We have nine – when we're at full strength, we have nine active judges, and currently 12 senior judges. So under the statute, a senior judge

can sit on the en banc court if that senior judge was on the panel that decided the case. That's the same as in the federal courts. Our statute was based on theirs, so whenever a petition for a rehearing en banc comes along, it gets ordered on only the active judges, which is nine. And then when we're down – and you have to have a majority of the active judges – of those judges – to grant a rehearing en banc. Now, as a matter of fact, we have two vacancies because Judge Reid's vacancy hasn't been filled yet. It's Corinne Beckwith who's the attorney from the public defender who's been nominated for it is still pending. Judge Kramer retired beginning of June I think, and her vacancy is still open. The White House is considering some candidates for that, so we're down to seven, which means that the en banc court would only be – we only need four judges to go en banc, and sometimes they split sides and four just like to scream. And there are a couple of en banc petitions floating around that can be an issue because if we were at full strength, it probably would not go en banc, but there are probably four judges who would like to see the case go en banc. And if it goes en banc, who sits on the en banc court, and that's a different question.

Ms. Strikis: Right, I understand. So the en banc court can be nine plus one – plus a senior judge?

Judge Terry: Nine plus one, or even plus two.

Ms. Strikis: Plus two, if two senior judges had something to do with it somewhere?

Judge Terry: If they were on the panel, yes.

Ms. Strikis: That's right. OK, because it could have been a panel that…

Judge Terry: Yes. Usually – almost always, in fact, if a case is reheard en banc, there has been a panel decision and the losing party usually is the petitioner for an en banc rehearing.

Ms. Strikis: How common is it for an en banc to be granted?

Judge Terry: Not that common. It's really rare, I think. I'd say 3 or 4 a year at the most, that may be even more than usual. We've had some en banc cases. I mentioned earlier I had one – there was one en banc – one pair of cases. They were two separate cases with a double jeopardy issue that we combined and reheard en banc.

Ms. Strikis: And that's the one that went to the Supreme Court?

Judge Terry: Which I wrote the opinion saying there was double jeopardy and upholding a dismissal. The government took that up to the Supreme Court and got it reversed, but it didn't bother me because they had to overrule the very case that I relied on by saying it was –

Ms. Strikis: The very Supreme Court case?

Judge Terry: The very Supreme Court case, indeed.

Ms. Strikis: Yes, that's kind of tough to play out of fear for the lawyer.

Judge Terry: In the interim, Justices Brennan and Marshall had left the court since the case that I relied on so…

Ms. Strikis: Perhaps that had something to do with the…

Judge Terry: I think it did. And so that was a case called U.S. v. Dixon. I forget when it was, but it was whenever…

Ms. Strikis: Is that the one that it's not double jeopardy for the states to prosecute after – or the federal government to prosecute after a state?

Judge Terry: No, that's an old – that's two or three old cases, going back to, I think it's *People v. Carter*. That's a long-established principle. No, this was a case – involved contempt – and I think they said if the… The Supreme Court case was *Grady v. Corbin*, and that was the one that I relied on, and the Supreme Court then had to overrule it in *U.S. v. Dixon* in order to reverse my opinion. So I said, "OK, so be it." I was right at the time, and if they want to change the law, that's their business. It didn't make a whole lot of difference anyway.

Ms. Strikis: How often do D.C. Court of Appeals cases end up in the Supreme Court?

Judge Terry: Very rarely, I think, probably. You know, I can only think of three or four that have been up there.

Ms. Strikis: While you've been a judge?

Judge Terry: Since I've been here. Let's see, a couple criminal…Yes. Three or four, maybe five, I don't know. But they're extremely rare because in general this is the last stop for any case. I think that's true generally.

Ms. Strikis: Right.

Judge Terry: You know if you have cases from the Supreme Court of Missouri or Idaho or whatever, you only have to have two of them.

Ms. Strikis: Right, there are not that many. Well, because they don't want to get into issues of state law so it has to be constitutional and…

Judge Terry: Plus, even if the state has ruled on constitutional ground, it may or may not be quite what the Supreme Court likes to think of it. They look for purer issues than we sometimes have to deal with. I think they're more concerned – the Supreme Court is more concerned with making sure there aren't any difficult conflicts among the Circuits. If one circuit rules one way and two circuits rule another way, they will usually grant cert to resolve that kind of a conflict. But if it's between, say, Texas and Michigan, who cares.

Ms. Strikis: Different states can do what they want.

Judge Terry: Yes.

Ms. Strikis: Where was the court when you first started? Was it here, at this location?

Judge Terry: This court?

Ms. Strikis: Yes.

Judge Terry: No. We were originally – it was in the Moultrie courthouse across the street. This building is a very old building, but it was just restored in the last few years. We moved into this building in, I believe, April of last year. And, prior to that, we were on the sixth floor and part of the fifth floor in the Moultrie courthouse. They're much more crowded than we are here.

Ms. Strikis: In the Moultrie courthouse? Yes, I've been in there. That's very crowded.

Judge Terry: Yes, and in fact, they've run out of room. They took over our space, which was one and a half floors, but you figure one out of three floors. That space is all committed, and now they need more room for whatever they want to do over there. Well, that's the chief judge's concern, that's not mine.

Ms. Strikis: Right. Do you want to take a break now or are you good to keep talking?

Judge Terry: I'm fine.

Ms. Strikis: OK. So what was it like, your first day on the bench and how did it feel? Were you nervous?

Judge Terry: A little nervous, Yes, obviously. I knew what I had argued, of course, and I'd seen enough oral arguments to know exactly, you know, what the court did and how they behaved. My first day was about a week after I was sworn in, and I just was on the regular panel of three cases – or regular calendar of three cases. And the way it works, we have what we call regular calendar or summary calendar. Regular calendar is usually three cases; summary is six. Summary cases are not argued unless someone requests argument. Regular cases usually are. But on the

regular calendar, there are three cases; each judge is assigned by lot to write the opinion in one of the three – so I was assigned case number 2 or whatever it was.

Ms. Strikis: And how does the lot process work?

Judge Terry: That's some mysterious computer. I have no clue.

Ms. Strikis: 1-2-3, 1-2-3?

Judge Terry: Yes, it's all handled by the clerk's office, and no one really has any issue with it because it works out very well. What it does is it allocates the workload among the judges about as evenly as it possibly could, and unless a particular judge has to recuse and give up the case, you just take what comes and you know that it will all even itself out over the course of a month or several months.

Ms. Strikis: But what does a judge do if you found yourself the sole judge for affirming an opinion or something and your two colleagues were going against you?

Judge Terry: Well, our internal rules cover that. If the assigned judge is in the minority, then the senior judge in the majority decides who writes the opinion, and it almost always turns out to be the junior judge in the majority who gets that assignment.

Ms. Strikis: I see.

Judge Terry: Because if I'm the senior judge in the majority, I'm not going to assign myself an extra case. I'll assign it to my colleague.

Ms. Strikis: Because you already have one.

Judge Terry: Because I already have one.

Ms. Strikis: Right.

Judge Terry: But that doesn't happen very often.

Ms. Strikis: Oh, good. No judge has decided that they could just be obstinate, pretend to dissent?

Judge Terry: I don't think we pretend.

Ms. Strikis: Yes.

Judge Terry: But to my pleasant surprise, I discovered when I got here – but I sort of knew it already – that there are very few dissents on this court. Usually, we make an effort to agree with one another. And time and time again, for instance, I will write an

opinion that says whatever, and I'll send it out to the other two judges on the panel, and one judge will say "Well, I agree with your opinion. I vote to affirm, but can you change the part on page six that says so-and-so?" and usually I'll do that. And so, one result is, we have relatively few dissents. Occasionally, especially when there's an en banc case, there may often be a dissent, because…

Ms. Strikis: From en banc, because there are so many judges?

Judge Terry: Yes, because there are so many judges. And I can remember one that I was on, we had like 4 or 5 separate opinions. We had a per curiam, which I wrote, and then there were, I think, two concurrences and one dissent, or two dissents and one concurrence, or whatever. But that's unusual.

Ms. Strikis: And then, the en banc cases are probably more important or broader issues, typically?

Judge Terry: Yes, that's one of the criteria is that – to get rehearing en banc, it has to be a case of unusual importance or some statutory language to that effect.

Ms. Strikis: So your first sitting was calendared three cases – now, did you have clerks with you?

Judge Terry: Yes well, I had – my office was…

Ms. Strikis: We were talking about your first law clerks and how you found them.

Judge Terry: When I first came on the court in '82, I brought with me both a secretary and two law clerks from the U.S. Attorney's Office. The law clerks were both, at the time, worked for me – worked in our office as student law clerks. One of them worked there full time and went to school part time. The other had a – worked there in the summertime. Then I got to know him, and they both turned out very well. And they were both excellent clerks, and they're still around. I keep in touch with both of them. Over the years, I've had a great many clerks. And I've kept track of almost all of them.

Ms. Strikis: And so, they had graduated law school, and they were sort of assisting in the U.S. Attorney's Office?

Judge Terry: One of them had; one of them had not. Well, one of them – the one who was working there as a paid employee – he was basically the appellate division law clerk.

Ms. Strikis: OK.

Judge Terry: And he was then a second-year student in Catholic University School of Law. And when I brought him with me, he was then a third-year student at Catholic U. law school. But I knew he was very bright, and he stayed with me, in fact, for almost two years.

Ms. Strikis: Was he going to school at night then?

Judge Terry: Yes.

Ms. Strikis: And he worked for you during the day?

Judge Terry: Worked for me in the day.

Ms. Strikis: And do you recall the names of your first two law clerks?

Judge Terry: Oh yes, they're right up there on the wall. Roberto Iraola was the one I'm talking about. He was the one who'd come with me from the U.S. Attorney's Office as an employee. The other was Richard Levan who had just graduated from law school when I asked him to be my clerk. He was working for us in the summertime as a summer intern, and as I say, both of them are doing well. Roberto is at the Justice Department. Richard is in private practice in Philadelphia.

Ms. Strikis: That's great. Was it extra stressful, do you think, on your first clerks, given that the whole office was getting organized?

Judge Terry: Not really. I mean, as I said, the clerks have their own little intelligence network, and they share – all the law clerks are – I won't say they work together, but they all have contact with one another. And they bounce ideas off one another. That's still true. I mean, we have clerks here now; they're always discussing the cases among themselves.

Ms. Strikis: Do you recall what your first opinion assignment was from that sitting?

Judge Terry: As I recall, I think it was a disciplinary case; an attorney had been recommended for suspension, and we suspended the attorney for a month or two for various misdeeds. But, yes, when I first came on the court, I was recused from a lot of criminal cases because they'd been pending while I was in the U.S. Attorney's Office so I had more than my share of civil and other non-criminal cases at first. And that always happens when someone comes in from the U.S. Attorney's Office, but that sort of worked itself out after a year or so.

Ms. Strikis: When you got your first criminal case on your hearing calendar, were you excited?

Judge Terry: I was very happy because this is something I know about.

Ms. Strikis: So you learned a lot in your first year on the bench?

Judge Terry: Right, I learned quite a bit about utility rates and family law and other stuff that was unfamiliar.

Ms. Strikis: How often did you sit when you started and has it changed over time?

Judge Terry: I was active – the active judges sit usually three or four times a month, sometimes five.

Ms. Strikis: That's a lot, especially if you're getting an opinion from each one.

Judge Terry: That's, you know, well, getting one opinion from each sitting – sometimes two if it's a summary calendar case. Because the summary calendars are six cases; theoretically at least they're simpler cases. But you get two of them instead of just one. And as I said before, summary calendar cases are not argued unless someone requests argument; it could be either party or it could be a judge who sees an issue and says, "Gee, you know, I'd like to hear from the attorney about this issue." So we'll send out an order saying, "The parties are requested to appear in the courtroom on such and such a day at 2:00 p.m. and we'll hear from you." And it works out.

Ms. Strikis: And is the policy of the court that if any judge on the panel asks for argument that it'll be granted?

Judge Terry: Yes, in fact, I mentioned our internal operating procedures – that's in the internal procedures.

Ms. Strikis: How did the internal procedures – that's a process that the court started?

Judge Terry: It's a written set of internal rules; they're published. And you can get copies from the clerk's office, and I think they're published from time to time in the *Daily Washington Law Reporter;* I'm not sure, but they're readily available. They're on our website too.

Ms. Strikis: And how – do those get updated? And if so, how?

Judge Terry: Yes, from time to time. Well, we have a rules committee that is responsible for making sure that rules are current and that they're at least more or less consistent with actual practice.

Ms. Strikis: OK.

Judge Terry: And the same with the internal procedures. The internal procedures are –I don't think they're technically binding on the court as the rules are, but…

Ms. Strikis: Right, it's just sort of how you endeavor to operate.

Judge Terry: --the internal procedures are just sort of, 'this is how we do it' kind of thing.

Ms. Strikis: Right. That's good.

Judge Terry: And the rules committee keeps current on those.

Ms. Strikis: And what was the process when you started about, sort of, bench memos, or how did clerks assist you?

Judge Terry: Well, different judges do different things, but most of us – and I think this is, well it's true for me – we know in advance – the judges all know which cases will be assigned to them and which cases are assigned to the other judges on the panel. So I would have a law clerk – one of my two law clerks – write me a memo on each case that was my assigned case, and that has continued to this day. It's a big help.

Ms. Strikis: And do you have any rules for that…how many pages it should be or shouldn't be?

Judge Terry: As many as necessary, no more than necessary. No rules.

Ms. Strikis: Has the size of the memos varied by clerk?

Judge Terry: It's varied a little by clerk; usually it varies more by the nature of the case. Some of them are quite long; some are just three or four pages.

Ms. Strikis: How do you prepare for argument in the other cases that you're not to be assigned?

Judge Terry: I read the briefs, and sometimes if the briefs aren't very good, I'll do a little checking the books myself. We get a – nowadays – our rules were revised a few years ago to be more consistent with the federal rules – but we get, usually, an appendix – a joint appendix. Sometimes we get the whole – if there's been a trial, the trial transcript goes to the assigned judge, whoever that may be, so that the other two judges don't get the actual transcript, although they're freely borrowed back and forth among the judges. But usually the briefs, unless a brief is really awful, you get a good sense of what the case is all about – enough to be able to follow the oral argument and ask relevant questions from time to time. So I always try to keep one step ahead of the lawyers.

Ms. Strikis: And how do the judges meet after the argument or confer about the case?

Judge Terry: Well, right behind the courtroom, there is a little conference room, and we all sit around the table and just go down the day's cases and say, "Well, the first case is yours. How do you – what do you think?" And we discuss each case to the extent necessary. Sometimes the conference is five minutes; sometimes it's half an hour or more.

Ms. Strikis: And so that takes place right after the argument?

Judge Terry: Yes. Almost always.

Ms. Strikis: Would you – how much of a role does oral argument play, do you think?

Judge Terry: It can be very helpful. I'm not sure it actually changes the result or determines the result in a given case, but it certainly is helpful to the judges in focusing on the issues to decide which issues are important, which are not important. So I'll read a brief which talks all about issue number one, but it's really issue number two that's the really crucial one here.

Judge Terry: And most of the time, we'll catch that, and some judge will ask a question at oral argument, assuming there is one – "Well, what about this other issue? What do you have to say about that?" And we'll give the lawyers some leeway to talk about it.

Ms. Strikis: Do you find – I mean, it sounds like in that case, either there are lawyers writing a brief and trying to avoid the issue or maybe have sort of missed the issue themselves.

Judge Terry: I wouldn't say missed it but the lawyers sometimes writing the brief will think that issue A is more important, and "This is really what I'm going to hang my hat on," but really issue B is…

Ms. Strikis: …is helpful too?

Judge Terry: …is what the case really turns on.

Ms. Strikis: Right.

Judge Terry: Now, that doesn't happen often, but it happens. And, you know, our judges are pretty perceptive about that and they can pick up on it and ask questions, and sometimes we'll even ask for a supplemental brief after an argument if necessary.

Ms. Strikis: And that's through published orders that come out after or…

Judge Terry: Just an order. It's not published, but it's an order from the clerk.

Ms. Strikis: Right, but an order from the clerk?

Judge Terry: Or sometimes we'll say, even during argument, well, maybe we'll ask, "Could you follow a supplemental brief on this? Would you like 2 weeks, 3 weeks? We'll issue an order confirming this, but why don't you put together something?" and if it's something that comes up in oral argument that hasn't been briefed as fully as we'd like it to be. That's rare, but it happens. We're fairly loose about that.

Ms. Strikis: Right. And do you have any tips for advocates on what makes an effective oral argument? Since you have many decades of seeing, doing, organizing, teaching.

Judge Terry: I have seen many, many – probably hundreds, if not thousands – of oral arguments. I know that when I was in the U.S. Attorney's Office, I figure my name probably went on about 3,000 briefs.

Ms. Strikis: Wow.

Judge Terry: Because it went on every brief the office filed for 13 years.

Ms. Strikis: Right. So if we search your name in Westlaw, it shows up many times?

Judge Terry: It will show up. I don't know, I always tell them, whenever I go in sort of a workshop or something like that, I tell the attorneys how to argue a case. Know your record, know your facts because some judge is going to ask you, "Well, where in the record does it say that?" And you should be able, as an attorney, without stopping to catch your breath, say "Well, it's right here on page 84 of the transcript. The witness said so and so" and the judge will like that, and it answers the question; the judge will be satisfied until the next question comes up. Obviously, you need to know your law, but don't argue legal precedents in your oral argument. That's what your brief is for. You can say, "Well, this is like the Miranda case" or the whatever case, some obscure case that no one's ever heard of for that matter. But you can draw an analogy with a case that you think is important, but as I say, that's what the brief is for – to be more extensive in discussing a relevant case. You say, "Well, this is like the such-and-such case and we think that that should be followed and here's why." Be direct. Give a nice, clear, short answer to the judge's question. Because I've always said, and I've always felt that a good oral argument – and I've seen many that are good, many that are bad, and some that are just so-so – a good oral argument is really a conversation between the lawyer and the judges, and when it's over, each party should come out feeling good – feeling, "Well, I've made my point." And the decision may not come out the way you want it to, but that's how it works sometimes.

Ms. Strikis: Do you remember who you were on the panel with at the first hearing?

Judge Terry: The first one? Oh gosh, I have no idea. Because the panels change every day.

Ms. Strikis: OK.

Judge Terry: And in fact, when we have a morning session and an afternoon session, the panels change over the lunch hour. So you have a different panel in the morning than in the afternoon.

Ms. Strikis: Are there some times for any particular reason that it changes almost within the morning schedule?

Judge Terry: Once in a while, when a judge has to recuse in one particular case for whatever reason. And, you know, he may know the lawyer, he may know a witness, or the plaintiff is his second cousin or something, and the clerk's office wouldn't know that. I remember I was on a case several years ago where the issue on appeal involved attorney's fees, and the attorney who was seeking the fees, as it turned out, was an old friend of mine from law school. But the clerk's office didn't know that so they put me on it. But I said, "I gotta recuse. My old friend Ron was on this case." And so it went to Judge King and he wrote the opinion.

Ms. Strikis: And, how many sittings are there every month on the court as a whole?

Judge Terry: Oh gosh, it varies from month to month. Summertime not so much, but most of the year, I'd say – usually two or three a week – I'd say maybe, in a given month, maybe eight, nine, maybe seven.

Ms. Strikis: But those could be morning and afternoon?

Judge Terry: Yes. And actually, I'm thinking that it might even be more than that if we have – the regular and the summary calendars are issued separately so we might have like six regular and four summary or something like that. And depending on how many judges are available – some of our judges, especially the senior judges, aren't here all the time. We have two judges, for instance, who spend the wintertime in the warm climate. One judge has a condo in the Virgin Islands, another has a little house down in Florida, and they both leave after Christmas; we don't see them until April.

Ms. Strikis: And so they aren't assigned to cases during that period of time?

Judge Terry: Right. The way the assignments work, every month the clerk's office sends around – or the deputy clerk – sends around a little form saying, "Please indicate the dates you're available for cases for calendars next month," and I send it back saying, "I'm available every day except the 6th, the 14th, the 23rd" and so on. And so that goes into the computer or whatever, and they schedule – and this is true for

all the judges, regular and senior – and the clerk knows when we're available, not only for oral arguments but for motions and for other things. We do a lot of motions work, as you may know. Motions for – some are just routine motions like motions to exceed the page limit on briefs, some are substantial – merits-type motions ...

Ms. Strikis: Do you take any extended vacation now that you're senior during the year or are you pretty much around?

Judge Terry: I'm around most of the time. You know, some do, some don't. But I don't – I'm usually not here a full day. I sleep later than I used to, I'd say – let's put it that way. That's the advantage of being a senior judge – it's a part-time job.

Ms. Strikis: What was your schedule like when you first started on the bench?

Judge Terry: Well, just a full –

Ms. Strikis: Full-time?

Judge Terry: Full-time, yes.

Ms. Strikis: Did it go into, sort of, the evening hours? I know different courts vary.

Judge Terry: Not long into the evening hours, but I would say 6, 6:30. And sometimes come in on a Sunday afternoon.

Ms. Strikis: To just read the case?

Judge Terry: Read some briefs, or whatever. It would vary. But just, whatever time was needed, I would find the time. And that's true for all the judges.

Ms. Strikis: And did you do anything in addition to sitting on the bench at that time? Like educational things or adjunct professoring?

Judge Terry: Not much. I know some of our judges do that – a few of them do. I just didn't feel I had the time for it. Occasionally I would take part in a moot court at some law school, maybe two or three a year, mostly local schools. I went out to Catholic U., Georgetown. I went to GW once, and I think American a couple of times. I'm trying to remember…I must have gone out of town somewhere, but I can't recall where at the moment. Oh, I remember I did go up to Philadelphia one time.

Ms. Strikis: For a moot court?

Judge Terry: For a moot court. At Temple Law School. But there are plenty of those, and they're always looking for people to sit as judges.

Ms. Strikis: Right. Particularly judges to sit as judges – that's particularly sought after.

Judge Terry: But they're fun, and I like them. I enjoy that, but I found two or three law clerks through that process.

Ms. Strikis: Interesting. So you saw them argue at the moot court process?

Judge Terry: I saw them argue.

Ms. Strikis: Then did you contact them or one of the professors?

Judge Terry: Sometimes, Yes. In one case, there was a law clerk who was a graduate of the University of Maryland Law School in Baltimore, and after I had hired him, I learned that he was doing a moot court – he was on moot court, which was being held here, so I went and just watched that. And saw he was pretty damn good.

Ms. Strikis: That's good.

Judge Terry: And he was one of the best clerks I've had in the last ten years or so.

Ms. Strikis: That's great.

Judge Terry: He's a justice now.

Ms. Strikis: That's great. And what was his name?

Judge Terry: Phil McWilliams.

Ms. Strikis: It's good that he impressed you with his moot court after you had hired him.

Judge Terry: Well, I figured he had a good record, and I figured he was bright, perceptive and…

Ms. Strikis: Was that one of the moot court competitions?

Judge Terry: I wasn't actually part of it; I just went to watch. But I was quite impressed. But I have been to several over the years – several moot court competitions. Not so much in recent years, but especially when I was in my first 15 years or so on the court. I would usually do maybe two or three a year.

Ms. Strikis: How many – what was your process for hiring clerks after you got here with the first ones that you happened to hire?

Judge Terry: The applications come in great quantities…

Ms. Strikis: Without even looking for them?

Judge Terry: Right. The U.S. Postal Service brings them to me – my attention – and I read them. I look over the applications and say, "Well, this person looks pretty good."

Ms. Strikis: And so, was your process to look through each of them separately?

Judge Terry: Yes, I would always…

Ms. Strikis: Yourself –?

Judge Terry: Yes.

Ms. Strikis: Not some committee?

Judge Terry: I know that there are some judges who do it differently, but I think most of the judges do it the way I do it, which is just to pick out the ones that look good, and then invite maybe 8 or 10 to come in for interviews, and then those are the finalists, and then I'd choose two with a backup or two. And a few times, I've had to take the backup because one of the hires had already gotten a job somewhere else. But you know, that's pretty normal. Now, as a senior judge, we have a hiring committee which I'm part of, which would do the same thing.

Ms. Strikis: Because you share the clerks now?

Judge Terry: We share the clerks. We have six clerks for 12 judges.

Ms. Strikis: Wow, OK.

Judge Terry: So each of us, in theory, has half a clerk. But all the clerks work for all the judges one at a time.

Ms. Strikis: And, how many sittings do you usually have now?

Judge Terry: As a senior, once or twice a month.

Ms. Strikis: Once or twice a month. So you still have one or two opinions a month?

Judge Terry: Yes. They're not always published opinions; some of them are these little unpublished memorandum opinions which just say, "We don't see anything wrong with this case. Affirmed."

Ms. Strikis: So maybe one actual long opinion a month?

Judge Terry: Yes, it varies.

Ms. Strikis: But I mean, with 12 of those, the clerks must be pretty busy.

Judge Terry: The clerks are busy. Yes, that's why we have so many.

Ms. Strikis: So many. Or not so many, when you used to have two apiece.

Judge Terry: Well, someone, years ago, did a statistical study and concluded that a senior judge on our court was the equivalent of a third of a regular judge, so on that basis, I'm pretty sure we are a third as busy.

Ms. Strikis: Got it. But then, that works out well for the clerks though, right? Because they get to work with everybody?

Judge Terry: Yes. They get to know us, and we get to know them, and I know that so-and-so is a particularly good law clerk and will be one that we have who's going to the D.A.'s office in New York, for instance.

Ms. Strikis: Oh, neat.

Judge Terry: I wish we could have kept him here, but he's really very good. We've got two coming in next year that look extremely promising.

Ms. Strikis: Is it a one-year position?

Judge Terry: The clerkships generally on our court are generally one year.

Ms. Strikis: That's great. And is there – so you said there's a hiring committee process now. That's you, and other judges?

Judge Terry: And three other judges, yes.

Ms. Strikis: So basically a third of the judges?

Judge Terry: Yes. And we divide the applications among ourselves, and when we spot one that looks good, I'll say, "Oh, let's interview this one." So I give it to one of our administrative assistants, and she calls up and says, "Can you come in and see our hiring committee on next Tuesday at 3:00?"

Ms. Strikis: The hiring committee – that would be more daunting too, I think.

Judge Terry: Well, yes. We're fairly easy.

Ms. Strikis: Interview by committee. That's great. Once you got the opinion, do you write it or do you have the clerks help you write it?

Judge Terry: Usually, I think – this varies from judge to judge – but most of us, we'll have the clerk do a draft. But I'll take the draft and rework it – sometimes a lot, sometimes a little. But it goes through a pretty thorough editing, or filtering, process before it gets out to the public.

Ms. Strikis: And would that be the same clerk that you worked with who did the memo for you?

Judge Terry: Yes. The clerks are assigned to us on a particular – by date or by case. So if a case is argued on a given date, clerk X will be working with me and that clerk will do – I'll ask that clerk to do the draft opinion.

Ms. Strikis: And once you have a draft that you're happy with, do you circulate it to your colleagues on the panel?

Judge Terry: They have to approve it before it goes any further.

Ms. Strikis: And then, as you said, the court's very collegial in accepting comments from other…

Judge Terry: Oh yes, there's a lot of e-mail traffic about the cases both within the panel and... If an opinion is to be published, we have what we call our five-day rule as part of our internal operating procedures. We send it out to circulate among all the judges – regular and senior – for five business days before it's published to the world. And this is an opinion that goes in Atlantic 2nd or 3rd, and it's subject to any judge taking pot shots if that judge is so inclined. And often – fairly often – someone will say, "Gee, I like this opinion. But what you say here on page 18, shouldn't it be so and so?" or they'll question the use of some term or maybe suggest rewording a sentence or something. And in fact, I just was looking at one this morning Judge Oberly sent around yesterday, and another judge this morning said, "Well, I like your opinion, but do you really mean to say this on page so-and-so?" and she said, "Well, I don't know, you may be right; I'll fix it." And we do a lot of that.

Ms. Strikis: So that's a – and those e-mails are transparent and sort of go to the whole group so the group can see whose –

Judge Terry: Yes. Copies to all judges.

Ms. Strikis: And is there an archive of those e-mails after the opinion goes out or they usually just sort roll off your computer?

Judge Terry: They usually disappear. Some judges may keep them in their own files, but they're not –

Ms. Strikis: …part of the history of the case? The opinion becomes the opinion?

Judge Terry: Yes, the opinion is the opinion. Which is – whatever happens before that is really –

Ms. Strikis: Just the inner workings of the court?

Judge Terry: Inner workings of the court, and not of any great interest to the rest of the world we hope.

Ms. Strikis: Right. Well, it could be in particular cases.

Judge Terry: It might be, but there are cases occasionally that provoke a lot of discussion. Most of them go by without any comment at all.

Ms. Strikis: To the opinions? Do you read the opinions as they come in or are circulated?

Judge Terry: Yes. Some of them are quite long and detailed. I was reading one this morning on post-judgment interest, which is a pretty dreary subject, but they made some good points and cited a couple of cases that I had written myself.

Ms. Strikis: On the exciting topic of post-judgment interests.

Judge Terry: I said, "Did I say that? I guess I did."

Ms. Strikis: There you go. How many decisions have you authored? Do you have a rough estimate?

Judge Terry: I keep a list. I have over 800 – about 850 published opinions so far.

Ms. Strikis: Wow.

Judge Terry: This is over 26 years – maybe more than that – almost 29 years. And that's published. Unpublished is at least that many and probably more. Because the unpublished ones are relatively short.

Ms. Strikis: You know, the D.C. Circuit, they have sort of a, I guess, a staff counsel or the counsel of the court that disposes – with the oversight of the judges – but I think they dispose of some of the easier decisions.

Judge Terry: Well, we have a staff attorney – we have a, I forget what their technical title is, but we have a staff attorney, Rosetta Mason. And she has three or four assistants

at least, and they handle most of the motions that come in. We get a lot of motions. So much so that in a given month, there are two motions panels. And we get motions that come in almost every day. And they review the motion and write up a little memo – sometimes two pages, sometimes much longer – and say, "Here's what the motion says. We recommend that you do so and so. The motion should be denied or granted for the following reasons." And occasionally, we'll have them write an opinion if we want to say something publicly. Usually the motions are disposed of by an order saying "Yes," "No" or "Maybe." But there are more than – I guess we have – as I said, we have I think it's four; there's chief staff counsel and I think four deputies. And they are always busy. Because there's a lot of motions. And they also do some other things for us. Occasionally, we'll have, especially some of the bar discipline cases – suspensions, disbarments, whatever, or even just a slap on the wrist – we will sometimes ask the staff counsel to draft an opinion – usually a fairly short one – disposing of the case and saying what we propose to do and here's why. They can run anywhere from three pages to twenty.

Ms. Strikis: It's probably not great that I don't know this, but I'm glad I don't personally know this, but for attorney disciplinary proceedings, there's a hearing process, right, but that's through the D.C. bar?

Judge Terry: Through the bar. Well, the bar – we have what's called a board of professional responsibility, and there's also an officer appointed by the court – there's bar counsel, every state has one – and a case comes into the disciplinary system when someone files a complaint with bar counsel. And there's bar counsel, and then bar counsel has several assistants.

Ms. Strikis: Right.

Judge Terry: And it goes through a hearing process or investigation – I think they have a small staff of investigators – and if they find that attorney so-and-so has done something improper, they will file a report with bar counsel and maybe have a hearing. There are, I think, 11 or 12 hearing committees made up of, I think, two lawyers and one non-lawyer. One of my ex-clerks, in fact, has been on a hearing committee for several years and he finds it very interesting, and time consuming at times. Anyway, they hold hearings and recommend discipline, or not, to the board, and the board in effect holds another hearing. Or the board can if whichever side, I guess, loses – if anyone is dissatisfied with the hearing committee's recommendation, they can request a hearing before the board. And the board holds hearings frequently. They issue opinions, and that's what comes to us.

Ms. Strikis: And that can be appealed to the D.C. court system?

Judge Terry: And because they don't – the board can impose certain lesser disciplines up to a certain level, but anything involving suspension or disbarment – well, suspension

or disbarment or public censure. That comes to us. And that goes through our staff counsel, usually. Well, it depends – some of them do. If they're uncontested, our staff attorneys usually deal with them. If they're contested, it can just turn into a full case with briefs and oral argument. And we have many of those. Look on our calendar for any given month and you'll find *In re* so-and-so, and you'll find that some attorneys do some weird things.

Ms. Strikis: Very strange things happen.

Judge Terry: It distresses me sometimes to see that, why would this attorney throw away a career by doing something so stupid. But it happens.

Ms. Strikis: Out of the cases you've heard – the non-bar disciplinary cases – have there been any that you've found particularly interesting?

Judge Terry: Oh, gosh. I mean, they're all interesting in their own way. I don't have a particular case that stands out, but you know, there are certain ones that I enjoy more because I feel more comfortable, mainly on the criminal side. But I've had a number of medical malpractice cases. I've had half a dozen or more very complicated zoning cases, which I never thought I would like, but I've found that I do. The zoning stuff can be quite fascinating sometimes. And you know, other stuff, different types of cases. It depends at times not only on the facts, but on the ability of the attorneys sometimes to frame the issues properly or adequately.

Ms. Strikis: In cases such as with zoning, do the attorneys come to court with demonstratives ever, or things like that to show you…

Judge Terry: Sometimes. Occasionally I've seen them – they come in with a little model of the building they propose to build.

Ms. Strikis: A model of the city, or whatever.

Judge Terry: Yes. "We want to build this, and you see it's only half as high as the other one." But that's a little rare. That's fairly rare.

Ms. Strikis: Do you find that effective at all when it…

Judge Terry: Sometimes.

Ms. Strikis: Not necessarily?

Judge Terry: Not much. Because usually the zoning board, or whatever the agency might be that has decided this case before that, makes a good enough record and has explained itself pretty fully so that we know what we want to do, or we get a good sense of what we should do.

Ms. Strikis: How is the camaraderie on the court? Has it changed at all over the period of time you've been on the court? I know the D.C. Circuit has this history of being sort of contentious and then friendly, you know.

Judge Terry: Early – well, before I came here, there were some tensions among the judges, I think. I think a little before I got here, those tensions tended to subside. And I think by and large, ever since I've been here, it's been a pretty collegial court. Because we make an effort to be collegial. And I think that's very important and very useful to the working rapport. We can disagree and still be nice to each other. And that's basically my approach, and I think it's true for everybody else. Obviously with all the judges we have, we aren't going to agree in every case. And some judge will think that some aspect of the case is more important than another judge thinks, but we get along quite well. And we bend over backwards to do that at times, if we have to. But you know, there's not quite the bickering that I remember from the D.C. Circuit in the '60s, particularly.

Ms. Strikis: D.C. Circuit, Yes, sometimes.

Judge Terry: With Judge Bazelon and Judge Burger on opposite sides of many cases.

Ms. Strikis: And without that many dissents, you don't have that many times to publicly air comments.

Judge Terry: That's right. I think, if I looked at my list, I could count them up if I had to, but I don't think out of my 800 + opinions, I don't think I have more than, say, 20 dissents. Sometimes I'll write a short concurring opinion saying, 'I agree, but this is why.'

Ms. Strikis: If it's something just totally different.

Judge Terry: Right. And it's usually just some additional point that I think wasn't fully covered by the majority opinion.

Ms. Strikis: In those types of situations, would you try to get the judge to incorporate that comment into the opinion first?

Judge Terry: Yes, sometimes. And sometimes they will, and sometimes they won't. But that's OK. I'm always open to adding something. Every judge should do that. And nobody really complains.

Ms. Strikis: The process, I mean, now you refer to your list of 850 cases, which I imagine is on your computer. When you first started at the court, was it computerized?

Judge Terry: No way.

Ms. Strikis: A lot of carbon paper flying, or there were early word processors?

Judge Terry: Well, it was word processing; it was computerized to that extent. When I was in the U.S. Attorney's Office, we got – it was during the seventies, that's when word processors started.

Ms. Strikis: Those old Wang things?

Judge Terry: The Wang, and other things. And everything was on a tape, like the one in your tape recorder here, and we would save those tapes, you know, copies of all the briefs. Say, well, we had to file an original and X number of copies, the copies were usually – well, originally they were carbons, and then they became Xerox copies. But since, I don't know, since computers came in – everything is computerized now. I don't know, I couldn't function without my computer. And I don't think any judge could. I know that in the Circuit, I'm told, the judges have computers up on the bench. We don't, but there's no reason why we shouldn't. We're just not used to that, I think.

Ms. Strikis: What would you use a computer for up on the bench?

Judge Terry: I can't think of any reason, but I'm sure that if we had computers, I would find a way to use it.

Ms. Strikis: I've heard the D.C. Circuit Judges will sort of send questions to their clerks, and they'll kind of live stream or instant message.

Judge Terry: Right, you know. And I will – if I have something, I will just sort of look at the clerk and raise an eyebrow or something. And then the clerk will scribble me a note and give it to me after the argument.

Ms. Strikis: Would you agree that it's easier now with the computers or do you think it created more work, because now there's constant e-mail?

Judge Terry: Well, there's a lot more work to be done, but I think it's a lot easier to do things. It's certainly easier to write and edit and make corrections on an opinion. Which takes a matter of seconds what used to take a couple hours. You know, instead of rewriting two or three paragraphs, I can just remove this and fill it in with something else. And editing is really much easier now than it ever was before.

Ms. Strikis: Before e-mail or, sort of, Word files, if other judges circulated an opinion, would they circulate it in hard copy and then you had to make sort of hand edits to it if you wanted to do something?

Judge Terry: Or you – Well, they circulated actual tangible copies of opinions, and if I had a problem with an opinion, I would write a memo back to Judge X and say whatever I wanted to say. "You know, on page so-and-so" or "Part two of your opinion really should – doesn't say what I want it to say," or whatever. That would be done in a physical memo, which would then go back to that judge with copies to the other judges. Now we do it online, and it's much, much faster and much easier. And so an opinion goes around – actually it's relatively recent that we've been circulating our opinions come up with in the court all by e-mail or by computer, but we do that all the time now and we don't have hard copies anymore.

Ms. Strikis: And all the judges are versed in how to use the computer system?

Judge Terry: Oh yes. We have a very able computer staff, and they're very indulgent with us non-technical judges.

Ms. Strikis: Who assist if you need to get a file open or something?

Judge Terry: Yes. And we had one woman who was the head of our – who was in charge of all our computer systems. She just retired the end of last year and moved to Florida and I asked her if she would leave her address and phone number with us.

Ms. Strikis: So you can call her?

Judge Terry: She said to me with a smile on her face, 'With all respect, Your Honor, hell no.'

Ms. Strikis: Hell, no.

Judge Terry: And I can understand why. But, you know, if ever I had a problem with the computer, I would call her or something, and she not only knew how to fix it but she was very comforting and soothing. She would say, "There now, that's all right."

Ms. Strikis: Right, it was – "My opinion's missing, my opinion's missing!"

Judge Terry: "Well, it's missing? Well then, why don't you try this and that and the other?" and it would always reappear.

Ms. Strikis: Yes, that's great.

Judge Terry: And we have two people now in that office who are doing similar work. So fortunately, that doesn't happen too often.

Ms. Strikis: Did you notice any change in how the court operated after any of the sort of, bad events we've had, either Oklahoma City or 9/11? You know with security, did anything change?

Judge Terry: Not really. I mean, the security did pick up after 9/11 and even the Oklahoma City thing. And mainly, we get notices and alerts from the Marshal's Office because we are technically under their protection. And they say, you know, "Watch out for suspicious packages" and that sort of thing. But you know, we're in a part of the – well, even when we were over there, we were in part of the building that the public didn't come into very much.

Ms. Strikis: But then the conduct of oral argument has stayed about the same, because there's screening people before they come in, and…?

Judge Terry: Oh, yes. Nobody comes in the courthouse without going through – as you did…

Ms. Strikis: As I experienced.

Judge Terry: Going through the screening.

Ms. Strikis: Right, first they had to verify that I had an appointment with you, and then they had to verify that the reporter was OK.

Judge Terry: Right, and they do that with everybody. And you know, that's fine. But you know, once you get past that, then it's just normal. You know, as you say, it was more noticeable, especially after 9/11, but not intrusive. Which is good.

Ms. Strikis: What has been the most satisfying thing about being a judge, if you know?

Judge Terry: Oh gosh, so many things.

Ms. Strikis: Many things?

Judge Terry: I just like to be able to feel that I'm contributing to the body of the law somehow, and I know that some of my opinions are cited as good precedents. Because I see them cited not only in our own opinions but elsewhere as some of my law clerks have told me that they've read them in case books in law school, which makes me feel quite good; I didn't know that. And some of them surprise me – the opinions that would be picked up and regarded as significant. Just that. And just the sense that I'm doing some good for the public – for the citizenry – and you know, serving the District of Columbia and its people.

Ms. Strikis: Now, in each case – it's an appellate court, so you're taking into account the law and the history of the law developing – but how much do you consider in your, sort of, style the personal impact or position of the parties in the case?

Judge Terry: Well, I'm not sure I know how to answer that, but I just –

Ms. Strikis: It might have been an inartfully phrased …

Judge Terry: No, I know that everybody comes in here with a position – comes before us probably in a given case with a position on the merits of some case, and I just think each of us does the best we can to do what's right and consistent with the law as we can find it. And usually we do find it, and we say, "The cases say X, Y, and Z; therefore, you win or you lose." And sometimes it takes a lot longer than that to explain why. And, I mean, the important part of our job is to explain why, to say why the case is coming out this way or that way and maybe add another brick to the wall of the law.

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HONORABLE JUDGE JOHN A. TERRY
SENIOR JUDGE
DISTRICT OF COLUMBIA COURT OF APPEALS

Judge John A. Terry was appointed to the District of Columbia Court of Appeals in 1982 by President Ronald W. Reagan. He assumed Senior Judge status in February 2006.

Judge Terry was born in Utica, New York, and grew up in St. Louis, Missouri. He received his undergraduate degree from Yale University and his law degree from Georgetown University.

He was appointed as one of the original members of the Advisory Committee on Procedures of the United States Court of Appeals for the District of Columbia Circuit when that body was established in the mid-1970s. Also, Judge Terry was elected twice to the Board of Governors of the District of Columbia Bar and served as a member of that Board from 1977 to 1982.

Before his appointment to the bench, Judge Terry spent thirteen years as Chief of the Appellate Division of the United States Attorney's Office for the District of Columbia, where he was responsible for supervising all of the office's litigation in both the United States Court of Appeals for the District of Columbia Circuit and the District of Columbia Court of Appeals.

Silvija A. Strikis

Partner

EDUCATION

Georgetown University Law Center, J.D., *summa cum laude*, 1995

- Articles Editor, *The Georgetown Law Journal*, 1993-1994

University of Maryland, University College, B.S., *summa cum laude*, 1985

Certified Public Accountant (inactive)

CLERKSHIP

Law Clerk, Justice Sandra Day O'Connor, U.S. Supreme Court, 1997-1998

Bristow Fellow, Office of the Solicitor General of the United States, 1996-1997

Law Clerk, Judge Harry T. Edwards, U.S. Court of Appeals,

Silvija Strikis has been a member of Kellogg Huber Hansen since 2001. She enjoys a practice that includes a variety of matters ranging from False Claims Act cases, business disputes, professional malpractice cases, and intellectual property matters. Before and during law school, she practiced as a Certified Public Accountant for several years, and that experience provides her with a strong background to advise clients about, and to litigate, issues involving claims of accounting and auditing malpractice, as well as other financial issues, including computation and presentation of damages. She graduated from University of Maryland, University College, *summa cum laude*, with a degree in Information Systems Management in 1985 and earned her J.D. from Georgetown University Law Center, also *summa cum laude*, in 1995. In addition to serving as a Bristow Fellow (attorney) in the Office of the Solicitor General of the United States, she was a law clerk to the Honorable Harry T. Edwards, then Chief Judge of the United States Court of Appeals for the D.C. Circuit, as well as the Honorable Sandra Day O'Connor of the Supreme Court of the United States. While at the firm, she has represented a wide range of clients in all stages of litigation and appeal, including through discovery, motions practice, and oral arguments. She

District of Columbia Circuit, 1995-1996

also has considerable experience with representing clients in mediation and arbitration hearings, as well as in Multi District Litigation proceedings. She also has represented clients in resolving investigations and claims successfully, without requiring litigation.

NOTEWORTHY REPRESENTATIONS

United States ex rel. Westmoreland v. Amgen, No. 1:06-cv-10972 (D. Mass.) & 652 F.3d 103 (1st Cir. 2011)

Representation of relator in a case alleging that Amgen and other companies violated federal and state False Claims Acts by causing the submission of fraudulent claims to Medicare and Medicaid relating to "overfill" amounts in vials of Amgen's flagship anemia drug and other misconduct. This case was unsealed in the District of Massachusetts, heavily litigated up to the eve of trial, and settled shortly before trial, resulting in criminal fines and civil damages of more than $700 million. See http://www.taf.org/Amgen-Westmoreland-PR.pdf. The case also included successful appeal from dismissal of state FCA claims in the First Circuit.

United States ex rel. Wright v. Chevron USA, Inc., et al., No. 5:03-CV-264 (E.D. Tex.)

Representation of relator in a federal False Claims Act case involving failure to pay natural gas royalties to the United States. Case resulted in settlements totaling more than $275 million by major natural gas manufacturers, including ExxonMobil, ChevronTexaco, and BP. *See*, *e.g.*, http://www.justice.gov/opa/pr/2009/December/09-civ-1379.html.

Navistar International Corporation v. Deloitte & Touche LLP, No. 2011 L 004269 (Cir. Ct. Cook County, Illinois)

Representation of publicly traded company in successfully asserting claims against the company's former auditor.

PUBLICATIONS

Contributor: *Stalked: Breaking the Silence on the Crime of Stalking in America*, Pocket Books/Simon & Schuster (1995)

Elements Required for Qualifying as an Innocent Spouse Still Far from Clear, 81 Journal of Taxation 354 (1994)

Service Increases Use of 'Impeding IRS' Provision To Prosecute Tax Professionals, 80 Journal of Taxation 362 (1994)

Double Jeopardy, 22nd Annual Review of Criminal Procedure, 81 The Georgetown Law Journal 853 (1993)

Stopping Stalking, 81 The Georgetown Law Journal 2771 (1993)

Contributor: *Proving and Defending Damage Claims: A Fifty-State Guide*, Wolters Klower Law & Business Publishers (updated annually)