JUDGE REGGIE B. WALTON

Oral History Project
The Historical Society of the District of Columbia Circuit
JUDGE REGGIE B. WALTON

Interviews conducted by:
Harold L. Talisman
March 16, April 11, May 8, 2007
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NOTE

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

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

All rights reserved.
PREFACE

The goal of the Oral History Project of the Historical Society of the District of Columbia Circuit is to preserve the recollections of the judges who sat on the 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. Interviews are conducted by volunteers, trained by the Society, who are members of the Bar of the District of Columbia.


Such original audio tapes of the interviews as exist, as well as the original diskettes of the transcripts (in WordPerfect format) are in the custody of the Society.
INTERVIEWEE ORAL HISTORY AGREEMENT

The Historical Society of the District of Columbia Circuit

Oral History Agreement of Reggie B. Walton

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, Reggie B. Walton, do hereby grant and convey to the Society and its successors and assigns all of my rights, title, and interest in the tape recordings, transcripts and computer disk of my interviews as described in Schedule A hereto, including literary rights and copyrights. All copies of the tapes, transcripts and computer disk are subject to the same restrictions herein provided.

2. I also reserve for myself and to the executor of my estate the right to use the tapes, transcripts and computer disk 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.

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

SWORN TO AND SUBSCRIBED before me this ___ day of June, 2008.

/\ Victoria Priscoi
Notary Public

My Commission Expires 12-14-2009

**Schedule A**

Tape recordings and transcripts resulting from 3 interviews of Judge Reggie B. Walton on the following dates:

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INTERVIEWER ORAL HISTORY AGREEMENT

The Historical Society of the District of Columbia Circuit

Oral History Agreement of Harold L. Talisman

1. In consideration of the recording and preservation of the oral history memoir of Judge Reggie B. Walton by the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees and agents (hereinafter “the Society”), I, Harold L. Talisman, do hereby grant and convey to the Society and its successors and assigns all of my rights, title, and interest in the tape recordings, transcripts and computer disk of my interviews of Judge Reggie B. Walton as described in Schedule A hereto, including literary rights and copyrights. All copies of the tapes, transcripts and computer disk are subject to the same restrictions herein provided.

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Harold L. Talisman

Date

SWORN TO AND SUBSCRIBED before me this 30th day of June, 2008.

H. Rosalta Hill
Notary Public

My Commission expires

H. Rosalta Hill
Notary Public, District of Columbia

Commission Expires 3/14/2011


Stephen J. Pollak
**Schedule A**

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The transcripts of the three interviews are contained on one computer disk.
My name is Harold Talisman and this is tape number one of what will be a series of taped interviews to obtain the oral history of Federal District Judge Reggie B. Walton of the District of Columbia Circuit. This is part of an oral history project for the Historical Society of the District of Columbia Circuit and this interview is taking place on the afternoon of March 16, 2007, at Judge Walton’s office in the E. Barrett Prettyman United States Courthouse at 333 Constitution Avenue, N.W, Washington, D.C.

Harold Talisman: Let’s begin at the beginning, and start with your early childhood, when and where were you born, and what was your early childhood like, and your parents, siblings?

Judge Walton: I was born in a small town in western Pennsylvania, actually, North Charleroi, Pennsylvania. My parents lived in Donora, Pennsylvania, which is a few miles from North Charleroi, and I grew up in that small town, Donora, which is fairly famous. Stan Musial is from there. I grew up with Ken Griffey, Sr., and I played several sports with him. It had the great smog in 1949 when a number of people died as a result of that. And it was a great place to grow up. When I say it was a tough place to grow up, I do not mean it was a bad environment, but it was a tough little steel mill town and you had to be tough in order to survive.

When I was growing up, I was fortunate, I had excellent parents. Because of the circumstances, however, of them being African American, at that time when they were young people they did not have the opportunity to go to college. My mother was an honor student, but the
opportunity of college was just not available to her. My father was a very
good artist, but was never able to really take advantage of those skills. He
went into the military, in the Navy, during World War II, but because, by
and large, African Americans were not permitted to fight, he did serve on
a ship, but only in a support role. My parents, my mother actually, had
been married before my father married her and had one child and then my
father married my mother when he was probably, my brother, was
probably about two years old. And we never considered ourselves half-
brothers, we were brothers and then we had a sister after that. There were
the three of us.

My father, for nineteen years, after he left the military, worked in a
steel mill, US Steel. Unfortunately, there were not opportunities, at that
time, for African Americans to hold supervisory positions. And,
therefore, all he ever did when he was in the steel mill was, he worked as a
laborer, even though from all indications he was an outstanding worker.
My parents collectively probably never made more than $20-25,000. We
lived, throughout my entire life when I was with them, in a large tenement
house that my grandmother owned. We lived in the first floor apartment,
it was just a two-bedroom apartment, so three children all slept in the
same room. We were fortunate that we survived the existence there,
because a large number of people in that area died as a result of carbon
monoxide poisoning, because most of the houses had small gas stoves,
and we had one in the bathroom and one in the living room. They were
not vented, so if the flame went out, obviously that could be a disaster. And when it was extremely cold, and it got cold in that area, we would have to actually use the kitchen oven, and we would leave the door open and turn the heat on, in order to try and heat the house. It was a tough existence, but not as tough as some may think.

I had a loving home that I grew up in, never wanted for food, never wanted for love or attention, from my parents. But the reality was that they had a difficult time, you know, making ends meet from day-to-day. And they did something right, however, because all three of us went to college, all three of us have advanced degrees. My brother and sister are, well were, both teachers by profession, my sister still is a teacher, she was selected several years ago as “Teacher of the Year” in Ohio. My brother was a teacher in the Pittsburgh school system, he is now retired. And I went to law school. So we had good parents who did something right, despite the difficulties they experienced in their lives. I remember my mother always saying that she wanted to make sure that we had a greater opportunity than what they had.

I saw, and I think it was the reality of most young men in that community, both African American and white, although I think to a larger degree the African American population of young men, saw their way out of the town, and to be able to acquire some level of prosperity through athletics. And I, as a result of that, put greater emphasis on athletics than academics. And the result was that I was an average student. I think I
graduated with a C plus average out of high school, but I did enough to stay eligible to play football on Friday nights. And, despite the fact that I was small, I did relatively well, received a football scholarship to West Virginia State College, which is now West Virginia State University. And went there and lettered for three years, broke my ankle the last year, actually it was the spring practice of my third year, and it was shortly after the Baltimore Colts had sent a scout down to actually look at another ball player on our team and he saw me in practice and talked to me after practice and told me he wanted to watch me in my last year and, if I did well, they may consider bringing me to camp as a free agent. He said they would not probably be prepared to draft me, because of my size, but if I did well in my last year, they would consider bringing me to camp. A week after that I was running the ball and was tackled and broke every bone in my ankle and every ligament was torn, every muscle was ripped apart and I had several surgeries to put my ankle back together.

I had thought about law school before that, because a number of my fraternity brothers wanted to be lawyers. I was in the fraternity in which Dr. King was a member, and also Thurgood Marshall. So, after I broke my ankle, and it was clear that I was not going to be able to make a living playing football, I thought about what do I want to do with my life, and going into a courtroom and using my intellect to do battle was the alternative I took. And, fortunately, I was able to get into a program that existed at that time that was trying to increase the number of African-
American lawyers in the country called The Council on Legal Education Opportunity Program, which was funded by the federal government. And I came here to Washington. The institute that year was at Howard University Law School. I graduated from that program near the top of my class and, as a result of that, received an academic scholarship from American University Law School, where I went to law school and graduated.

Harold Talisman: I know that I read that you had some problems when you were in high school. Why don’t you tell us a little about those?

Judge Walton: Well, I mean, I think I was a good kid. I had good parents, I had a good upbringing, but I think a lot of young men in my situation, which you see now, gravitate towards negative behavior because they want to fit in and they want to be accepted. And, some of the guys from the community where I grew up, they were involved in, we were not involved in drugs, anything of that nature, stealing or anything of that nature, we would get involved in fights. It was a way, I think, of exhibiting, from a perverse perspective, one’s manhood and, as a result of trying to fit in and trying to be accepted and trying to be, I guess, looked up to by your peers, you did things that you knew were wrong. Because I knew some of the things I did were wrong. I knew it was wrong to sneak my father’s pistol out of the house, but I did it. I knew it was wrong to sneak his straight razor out of the house, but I did it. I do not think I would have ever used either one
of them, but it was, again, trying to exhibit this machoism as a young male.

And I got involved in several fights and, as a result of that, ended up in court on three occasions and, on one of those occasions, was remanded to the juvenile authorities. I did not actually receive any type of supervision, I did not need it because my parents were pretty, you know, fed up with some of the things I was doing and they were the ones who did the supervision.

But, I also had some experiences with law enforcement that were not very positive. I remember when I was in junior high school, I think I was in either eighth or ninth grade and I was on my way to a dance in the evening and, apparently, there was a delivery truck from a department store making a delivery in Donora. I guess a rear door had been left open and a young black male had gone in and taken something and that was reported to the police and I was walking down the street and I guess because there was a report of a young black male having stolen something, I was stopped and taken to the police station. Fortunately, the driver did not identify me, because I had not done anything. I ultimately found out who had done it, and he looked nothing like me, but because I was a young black male walking down the street, I ended up being stopped.

I also had an experience, I actually was a lawyer at that point, but it was in that same area where I grew up. I was working in the United
States Attorney’s Office. I had just bought a brand new black Corvette and went back home to show it to my parents and was out at a club one night and was on my way home. I had not done anything wrong, but a state police car pulled me over. And it was late at night, I was on a dark road. I pulled over and I wanted to get out of the car and they ran up with guns pointed at me and they wanted to know who I was, what I was doing with that car. Obviously, I believe, I was stopped because I was a black male who they probably thought should not have that type of vehicle. And when I showed them my Justice Department badge, they immediately ran and I did not get their squad car number or their badge numbers or anything, but it was another negative experience I had with law enforcement, I think, just because I happened to be a young black male.

So, yes, I had a couple scrapes with the law, they were not major, they could have been, I mean the last scuffle I was involved in, I had not intended what occurred to have happened, but one of the guys I was with had an ice pick and he stabbed one of the individuals who we were involved in a fight with multiple times in the back. The guy who had been stabbed, got into his car and fell over the steering wheel and clearly was injured, and myself and another guy rushed him to the hospital because his friends had left, had run off. That was a scary, obviously scary situation. The following day the police came to my house to question me and that afternoon I left with my cousin and went to New York and spent the summer working in a small town outside of New York City, right before I
went to college. So, those were some of the experiences I had as a young person, they are unfortunate experiences, but at the same time, I think they helped to mold me into who I am now.

One of the things that I received a lot of satisfaction from when I was on the Superior Court as a judge was serving in the juvenile court, and having been in the juvenile process myself and, as a result of that, I think having some appreciation of why young boys get into trouble, it gave me, I think, the ability to communicate with them in a way that a judge who did not have my background probably could not. And for those kids who I thought had a potential of making it, despite their circumstances, I would tell them about my background with the hope that it would be inspirational to them. And I am happy to know that there are at least three boys that I know who had been before me who ultimately went to college and got college degrees.

Harold Talisman: I think you indicated that when you completed your undergraduate work at West Virginia State University, that you entered a program or a prelaw program or introduction to law program at Howard, I guess it was a summer program. How did you learn about that and how did you get into that?

Judge Walton: I had acquired an interest about law school and I cannot actually remember how I learned about the CLEO program. I am sure I learned about it in some manner while at West Virginia State because I had applied for admission to the program while I was still at West Virginia
State and I was admitted while I was still in college for the CLEO summer institute because it started in June and ran through mid-July; it was a six-week program. And, it was taught just like a regular law school program, with law professors, and you were graded as if you were in law school. And, at that time, there was a commitment by certain law schools that if you graduated near the top of your class in that program, they would admit you despite what your prior academic history had been. I mean, I guess you could not have been a total failure in college, but assuming you showed some promise, the fact that you went through this program successfully and did well gave them some indication that you could endure the rigors of law school. And therefore they had a commitment to admit students who did well in that program and that was how I got into American University.

Harold Talisman: You had a scholarship to American University?

Judge Walton: Yes.

Harold Talisman: What was that experience like at American University?

Judge Walton: Law school was tough, the first year, at least, because it was very demanding. I had to develop my reading skills to a greater degree than what they were at that point. I studied extremely hard in order to make it through. I, and this is the honest to goodness truth, I used to study 14 to 15 hours every day, and to this day I only sleep two or three hours a night it seems like, but it took that much time in order to grasp the information and get through it. But I did relatively well my first year, my last two
years I did a lot better, but it was a tough existence even though I received a scholarship, money was tough.

My parents were not really in a position to help me financially. They would do what they could, but they did not have much to help. During the summers, I would go home and I think the first year, I know when I was in college I worked in the steel mill for two years. Actually, when I was in law school, my first summer, between my first and second year, I actually worked in the CLEO program as a tutor for the students who were in the program. Then, in my second year, I worked in the law library. Actually, starting with my second year of law school, I was able to get a job in the law library working the reference desk. And I worked a full forty-hour week. But the good thing about it was that, most of the time, I was able to study. The only time I was not was when there was a request for me to get a book or something of that nature. Plus, the advantage of having that position was that I received a key to the law library. And at that time the law library closed at twelve at night and was closed until seven in the morning, when I would open the law library, because I had to be back to open it. But it gave me the opportunity to spend evenings working in the law library and weekends when it was closed otherwise, which gave me an advantage as far as having time to have access to the books. But American University was tough, I mean it was not easy, but I did relatively well and finished, took the bar examination, passed it the first time and moved on from there.
Harold Talisman: Were there any professors there that had a particular impact on your career?

Judge Walton: I am trying to think of my evidence professor, but I cannot even think of his name now. I am drawing a blank, but I always enjoyed evidence and I thought he taught it very well. [Name subsequently provided: George Horning.] He had been a former practitioner, he had been a prosecutor at one point and I think a defense lawyer also, but I am drawing a blank as to what his name was. He was obviously an inspiration, but I cannot think of any, besides him, I cannot think of any other professors who I had a very close relationship with. But, I believe I received a very good education at American University. In fact, I serve on the dean’s advisory council now and have been very active with the law school.

Harold Talisman: After law school, what was your first job?

Judge Walton: I knew I wanted to be a trial lawyer and I knew I wanted to be a criminal trial lawyer. I actually felt I wanted to be a prosecutor, but I was willing to do either, so I applied to prosecutors’ offices and I applied to Public Defender offices. Most of the prosecutor offices wanted you to have at least a year or two of experience before they would hire you and the only job offer I received where I would be able to start immediately trying cases once I received my bar results was the Philadelphia Public Defender’s Office, so I moved to Philadelphia and took that position.

They permitted me, because my financial situation was not the greatest and I needed to start immediately and they agreed, even though I
had not passed the bar yet, they agreed to bring me on board. And I was able to do things like interview witnesses and things of that nature and they made it clear if I did not pass the bar, they could not keep me on, obviously, until I could take it again and received a passing score.

So, fortunately I did pass, and once I passed I ended up not doing what I expected to do because I wanted to actually go into court and try cases. Now I did get a chance to do that to some degree, but at that time I think I was making $7,200 per year and when I first went to the office, most of our appeals were farmed out to the private bar. We did not have the capacity to handle many of the appeals before the appellate courts and we received a grant from the Justice Department to increase the capacity of the appellate division to handle the appeals. And as a result of that grant, I had done some writing during my first six months or so in the office and the head of the appellate division came to me and asked me if I would like to come to the appellate division. I really did not want to, because I did not want to write appeals and argue before the appeals court, but there was a salary increase from $7,200 to $14,000, so I could not turn it down. So I took it and, actually, it was a good thing for me to have done because the head of the appellate division was a guy named John Packel, who was an excellent appellate lawyer, and I learned tremendously from him and he was very influential in enhancing my writing skills and research skills. So it was the best thing for me to have done. So I did that for a little over a year.
I was not really enamored with the Philadelphia judicial system at that point because there were some of the judges, I think it has improved tremendously as compared to what it was, the positions were elected positions. There were a number of people who I did not think were the best of judges. In fact, at that time, judges could sit on the Municipal Court, where people could receive up to a five-year sentence, because misdemeanors in Pennsylvania carried up to a five-year sentence, who did not have to be legally trained. You had non-legally trained judges and I had received some very negative treatment from some of them on several occasions and I aspired to come back to Washington. So, I applied to the United States Attorney’s Office and received an offer and came back.

Harold Talisman: What was that experience like in the United States Attorney’s Office?

Judge Walton: I actually think that my experience in the United States Attorney’s Office was the best job I ever had. Not that I did not enjoy my work as a defense lawyer, but I just had an opportunity to do a lot of different things when I was in the United States Attorney’s Office. I was in the office almost six years. During that time I went through the appellate division, the grand jury division, the misdemeanor trial division into the felony trial division. And shortly after I was in the felony trial division.

I had been fairly successful early on in my tenure in the felony trial section. Charles Ruff, Chuck Ruff, became the United States Attorney. And, at that time, there were very few-American supervisors in the office, and one of the things he had committed to was to try and identify people
who he thought would be good supervisors, who were of color, and to promote them. And an opening became available in the Career Criminal Unit, which was a unit that handled recidivist offenders, and he came to me and asked if I would take that position, and I did and did that for about one year heading that section.

Then an opening became available in the number three position in the United States Attorney’s Office and Chuck Ruff asked me to do that, and I did. I enjoyed that a lot and had no inclination that I would not be in that office for an extended period of time.

But, Victor Capute, I do not know if you knew him, he was in the United States Attorney’s Office, and at that time I was living in Virginia and he told me I should move into the city, because he thought I would be a good candidate for the Superior Court bench. So, I knew I wanted to...

Side B of Tape 1 Begins here.

Mr. Talisman: All right, you were in the United States Attorney’s Office at this point and you were put in charge of a group there, were you not, after a while?

Judge Walton: Yes, I was in charge of the Career Criminal Unit for about a year, and then I became the Executive Assistant United States Attorney, which was the number three position in the office and I, like I said, I had anticipated remaining in the office for an extended period of time. I had no inclination to do anything different.

But, there were three openings on the Superior Court bench and by then I had moved into the city, and I was encouraged by Vic Capute to
apply for one of the positions. And I thought it was a long shot because I was 31, just about to turn 32, I think, at that time and thought there would be no way that I would receive an appointment. Plus, at that time, I was a Democrat and President Reagan was in the White House. But, I decided that I would submit my name. I had received a fair amount of publicity, because I was trying some of the biggest criminal cases being tried at Superior Court and so I decided to put my name in the hat. And I was surprised when the commission, the Judicial Nominations Commission, sent my name to the White House. I think there were nine names that were sent for the three positions, and I still never thought I would receive an appointment. And, much to my surprise, I was just talking to him not long ago, Fred Fielding called me and said that the president had selected me for one of the three positions. And I was 32 at that point, which was very young.

Shortly after that, President Reagan was shot and the decision was being made as to who would try that case. And I was, at that point, one of the top litigators trying the street crimes being prosecuted in that office and I agreed that, or at least volunteered, to withdraw my name and try that case. But Chuck Ruff would not permit me to do that. He said, “No, you have got to go ahead and take your shot if you want to be a judge and you have got to do it.” So, he would not permit me to do that. So, I was ultimately confirmed and became a judge in July of, so long ago, I guess it
was 1981. So, most of my adult life has been spent on the bench as a judge.

**Harold Talisman:** During your career at the United States Attorney’s Office, you said you were in charge of the Career Criminal Unit. What did that mean – the Career Criminal Unit?

**Judge Walton:** The Career Criminal Unit prosecuted individuals who were recidivist offenders. We had criteria for who we prosecuted and they were all violent offenders.

**Harold Talisman:** They had made crime a career, is what the idea was, right?

**Judge Walton:** Right. And violent crime, not any crime, but violent crime. So we prosecuted murders, rapes, child sexual assaults, burglaries, cases of that nature. And what we, what I was able to do, in the short time I was there, was to get the office to agree that we as a unit should prosecute those cases from the time of arrest through conviction and sentencing. When I first took over, the only thing that unit did was, they would prosecute the case through indictment, and then it would be passed on to another unit to try the case. And I thought that that was not the most efficient or effective way of prosecuting those cases. So, I did receive authorization to have the unit prosecute those cases and now that is the norm of how those cases are handled. I thought you would get better prosecutions when you had somebody handling that case from the beginning to the end.
Harold Talisman: During your time in working at the United States Attorney’s Office, were there any lawyers that had a particular impact on your career or judges you appeared before?

Judge Walton: Well, Judge Moultrie; I tried a number of cases before him and he was very influential in helping me when I first came on the bench. And I think very influential in helping me get the appointment. Judge Leonard Braman was also very helpful in that regard. I tried a very lengthy trial, a complicated, lengthy trial before him and had gotten a conviction in that case of three individuals. And I know he was very helpful in that regard. Chuck Ruff was obviously very helpful. Bob Ogren, who was the number two person in the office, was very helpful. There was another supervisor who, unfortunately has passed, Jim Owens who was also extremely helpful to me. And then there were other lawyers like Hank Schuelke, who was a very good lawyer, and Bob Shuker, who ultimately became a judge on the Superior Court, but died of a heart attack fairly early. They were also sort of mentors for me when I was in the office.

Harold Talisman: How about defense attorneys?

Judge Walton: Ken Mundy, I had a lot of respect for Ken Mundy. John Shorter, I had a lot of respect for him. Francis Carter, who was in the Public Defender’s Office, ultimately became the Chief Public Defender. Those were some of the individuals that I had a lot of respect for, as far as their abilities were concerned.
Harold Talisman: Okay. Thereafter in the United States Attorney’s Office, you became Executive Assistant?

Judge Walton: I became the Executive Assistant United States Attorney, which was the number three position.

Harold Talisman: What did that job entail?

Judge Walton: It entailed, well a big part of it was training existing Assistant United States Attorneys. I was in charge of our training effort and also recruiting and hiring. Those were my two principle responsibilities. And I thought in both of those capacities I was able to make a significant contribution because I was able to help identify and bring into the office people who became extremely good prosecutors. And then I was able to implement a training program, because at that time there really was not a lot of training going on, that I thought really enhanced the quality of the prosecutions we were engaged in.

Harold Talisman: What happened after that position ended? Where did you go?

Judge Walton: I came to the bench. I went to the Superior Court bench.

Harold Talisman: And you were there quite a while, I think.

Judge Walton: I was on the bench — the first tenure for about eight-and-a-half years. I became the Deputy Presiding Judge of the Criminal Division, Bob Shuker was the Presiding Judge at that time, Chief Judge Moultrie had appointed me to that position. So, most of my time when I was on the Superior Court, was spent in the Criminal Division, although I also served in the Family and Civil Divisions. And I was very happy as a judge and
anticipated I would be there throughout my entire career and had no inclination of leaving.

But, Bob Bennett called me one day and said that he would like for me to meet with his brother Bill Bennett, who had just been nominated by the first President Bush to become the first, what they called the Drug Czar, the head of the Office of National Drug Control Policy. And I agreed, along with some others, to meet with Bill. He did not know a lot about the criminal aspect of drugs and we went out to Bob Bennett’s house and met with him and told him our ideas about things that needed to be done to address the problem. And, at the end of the meeting I told him, and I was sincere in this regard, I was not looking for a job at all. I told him, I said, “You know I do not mean to suggest to you that the drug problem only impacts the African-American community, but there is no doubt that it has a disproportionate impact on the black community. And I feel that if you are going to have a systemic impact on the situation, you have got to have somebody in your office who can go into that community and try and effectuate change in that environment.” And, so, about a week or so later, I got a call from him and he said, “I agree with you, that I need to have somebody at the top of my organization who is African American and I have decided that person should be you.” And I was very reluctant to do it, because I was enjoying my position as a judge.

My wife, I had just gotten married shortly before that and my daughter had just been born. My wife had been a physician’s assistant at
Howard University Hospital and she had decided that she was doing all of
the work that the doctors do and making a little bit of the money. So, she
decided she wanted to go back to medical school and she had gone to a
night program to brush up on her sciences and she had just been admitted
into Georgetown Medical School. And, so, we lost her salary, which was,
I do not know, $35,000, or whatever she was making at the time, and
picked up a $35,000 tuition cost at Georgetown Medical School. And I
was, in order to take this job, I was going to have to take a $9,000 salary
cut, which may not seem like a lot, but it was a lot of money. But I felt so
strongly about the issue of drugs and what they were doing to our
community, and I felt that, as I said, it was going to be important to have
somebody of color in that office to reach out into the African-American
community, that if I did not take it and if nobody ended up being selected
who was of color, I could not sit back and be critical. So, despite the
hardship, I agreed to leave.

And the only way that we were going to be able to make ends meet
with me taking that salary cut was to pull out my retirement, so that we
would able to use that to supplement the lost incomes.

And so I left and was in that office for about two years. In less
than two years I traveled over a half a million miles. My job was to take
the message of the White House throughout the country and to try and get
state and local governments and the private sector to buy in on the
president’s drug policy. So, I was on an airplane almost every day. Two,
three, four, five airplanes every day. I gave, probably 40 to 50 speeches per month, all throughout the country.

And, ultimately, when Bill Bennett left, I had been told – he had told me that he was going to recommend me to succeed him, which he did. But former Governor Martinez, of Florida, lost his election. He was good friends with John Sununu, who was President Bush’s chief of staff, and, from what I understand, Martinez was asked what he wanted to do, and he said he wanted to be the Drug Czar. So, because he was good friends with Sununu, he got the nod over me and when he came in, I think he was rather insecure and he tried to get rid of me.

And the White House then brought me over to the White House itself to be the senior advisor for crime. I basically had the responsibility of assisting the president in getting the Crime Control Bill, which was being considered at that time, adopted by Congress. And so, I did that for about nine months. And, actually had been told at that time, that if there was an opening on this court, that they would try and get me on this court. And that was back in 1991.

Harold Talisman: This court being the Federal District Court?

Judge Walton: The Federal District Court. There was an opening, Judge Boudin, who now is the chief judge in the First or Second Circuit, one of the two, First Circuit, I guess it is, up in Boston, left and there was an opening. But, the administration, at that point, had gotten caught up in the re-election effort, and I guess they thought they would take care of me after the fact, so I did
not get the nomination. And, Bush lost, and so obviously that meant there would not probably be another opportunity for anytime in the near future. But it worked out fine, because, I stayed on the Superior Court, I vested and as a result of that, when I ultimately was appointed over here I was able to retire from the Superior Court, whereas, if I had received an appointment in 1991, I would not have been able to do that, so I am able to get two checks, which helps.

Harold Talisman: And you were appointed to the Federal District Court by present George Bush?

Judge Walton: Correct.

Harold Talisman: And how long have you been on the Federal District Court now?

Judge Walton: About five-and-a-half years.

Harold Talisman: How would you compare sitting on the Federal District Court to the Superior Court? Do you think it is more difficult? Not as difficult? In terms of the kinds of cases you have? How would you evaluate that?

Judge Walton: I mean, there are some similarities, but there are a lot of dissimilarities between the two positions. In Superior Court, you are in court every day, almost all day. I think, and I do not mean to denigrate the Superior Court in any way by what I am going to say, I think the legal issues tend to be a lot more difficult over here, although you get difficult legal issues there, too. But I think the dosage of tough issues are more prevalent over here than in Superior Court. However, I think that the Superior Court is a more difficult job, as it relates to the type of cases that you deal with, the
emotionalism that comes into play. The ability to use skills other than legal skills in order to come up with appropriate resolutions of cases. I mean, handling cases involving child sexual assault, murder, rape – I mean those are draining emotionally and I think that from the standpoint of Superior Court, it is a lot more demanding from that perspective. As far as the intellectual challenge, I think it is a greater challenge over here than over there. But, again, not to denigrate in any way the significance of what happens in that court because I enjoyed very much my experience there. But, the legal issues here can be extremely difficult, especially now with some of the issues that we are dealing with in reference to national security, the Guantanamo Base cases. I have had cases involving some of the Islamic charities and the seizure of their property. Those have been very challenging cases. The Libby case. I think the complexity issues, as far as a regular diet is concerned, is a lot greater over here.

Harold Talisman: And what about the quality of the bar appearing before the two courts, what do you think? How do you evaluate that?

Judge Walton: As far as the criminal bar is concerned, I think it has changed over in Superior Court as it has changed here as far as the appointed counsel are concerned. When I was in Superior Court, there basically was no real criteria for who was eligible to receive appointments. As a result of that, sometimes lawyers who were not really up to speed got cases they should not have received. That has changed. The Superior Court now does a screening and they have criteria that you have to meet in order to be on the
panel to get appointments. And I think that has improved the quality of the representation that indigent defendants receive.

The same was true over here. When I first got over here, there really were not any criteria for who could receive cases. It was decided, however, that as the Superior Court has done, that we needed to look at the pool of people who were applying to receive cases and make a decision as to who the best were, and weed out those who we thought were not. And we went through that process. I was a part of that effort. And it was an arduous task, but at the same time, I think it was an important task because I do think now the people who we have on the list are proven individuals. And I think they do a pretty good job. So, I think that, with those changes in both courts, I would say that the quality of representation is as good over there in the criminal cases for indigent defendants as it is over here.

Obviously in some of the white-collar cases, where you have a lot of money involved, and where you have legal defense funds involved, you are going to get some of your better white-collar criminal lawyers over here than what you may see in, white-collar-type crimes, in Superior Court.

As far as the civil bar is concerned, again it depends. I mean, I think there are very good lawyers who I saw trying cases in Superior Court and there are very good lawyers over here. Many of the cases over here involve a lot of money. And, obviously, sometimes money does
result in better representation, so I think the amount of money involved
over here in a larger number of cases than what you may have in Superior
Court, you see really some of the really high-priced civil lawyers over
here, I think to a greater degree, than you do across the street. Although I
saw very good civil lawyers over there also.

Harold Talisman  Were there any judges on the federal court when you came over here that
were particularly helpful?

Judge Walton  Well, Chief Judge Hogan has always been very helpful. Judge Lamberth
has always been very helpful. Judge Bryant, even though he was up in
age. I remember I called him, somebody, there was an issue that had
come up and somebody said well I believe Judge Bryant wrote an opinion
years ago and I called him and it was just like yesterday, I guess to him,
that he had ruled on that, and so he was very helpful. But I think those
are, there have been a lot of people, Judge Kessler who had been over here
before me, Judge Sullivan who had been over here before me have also
been very helpful to me.

Harold Talisman  You have handled, certainly recently, some high-profile cases. What do
you think you have learned and what would you recommend to judges in
terms of handling high-profile cases in terms of trying to keep control of
the case and things of that nature?

Judge Walton  Well, the first thing, I think, it is important when you get one of those
cases, to not yourself make any type of public statements about it. I think
judges can get in a lot of trouble when they do that. The other thing I
think is important is to try and get, which I did early on and would have
done it earlier, but things happened that precipitated me, letting the
lawyers know that I was not going to tolerate them trying the case in the
media. And I threatened to issue a gag order if they did not adhere to that
admonition. Fortunately, they did and after I admonished them in
reference, because both sides had made some statements and I was not
going to tolerate that. So I think the first thing that you have to do is
harness counsel, and yourself, to make sure that statements are not being
made to the press that end up causing the case to be tried in the press
before it comes to trial. The other thing I think is to, and I think this
applies to any complex litigation, whether it be high profile or not, is to
early on set a schedule and to maintain that schedule. And, in the Libby
case, I mean I was inundated with motions. I think we issued 14 opinions.
And I think it is important, in a case of that nature, to set deadlines for
yourself. And even though you are going to work extremely hard to meet
those deadlines, to make sure that you are issuing rulings in a timely
manner. Otherwise, a case like that is going to bog down and you will
never get it to trial. I think you have to hold the government’s....[end Side
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My name is Harold Talisman and this is tape number two, recording the second interview to obtain the oral history of Federal District Judge Reggie B. Walton of the District of Columbia Circuit. This interview is taking place on the morning of April 11, 2007, at Judge Walton’s office in E. Barrett Prettyman United States Courthouse at 333 Constitution Avenue, N.W., Washington, D.C.

Harold Talisman: Judge Walton, at the end of the first interview, I asked you for your recommendations for judges in handling high-profile cases and you were sort of in midstream in answering that question when the tape ended. Could you sort of review what your thoughts are on that?

Judge Walton: Well, I think the first thing that is important is that the judge him- or herself not make any statements about the case. Because I think judges can find themselves in a lot of trouble when they do that.

I think, second, it is important to make sure you harness the lawyers and ensure that they are not making statements about the case because there is going to be a natural inclination, I think in today’s world, for lawyers to try and gain a tactical advantage with the anticipated jury pool by possibly making statements that are going to either be favorable to their position or adverse to the other side. So, I think it is important to get the parties before the court immediately and let them know that you will not tolerate the case being tried in the press and let them know that if they
do not adhere to that admonition, that you are prepared to issue a gag order.

I think it is also important to set a schedule as soon as possible to make sure that pleadings and papers are filed expeditiously with the court and to set an internal schedule for yourself and to hold to that schedule because in high-profile cases inevitably there are going to be a lot of motions filed. And, in order to expeditiously move the case, I think it is going to be important for the judge to make sure those motions are filed timely and that the court acts timely on the motions.

I think it is also important to try and harness the press to the best you can. And, obviously, that can be difficult because they are not beholden to the court and you are not really going to have much authority over them. However, I do think where there is an interest on the part of the press to cover a case, that they are conducive to working with the court and, therefore, I think it is important to try and get them before the court in some form or fashion in an informal setting where you can set some rules as to how the case will be covered. One of the things I did in the Libby case is I required that the print media and, separately the electronic media, designate one person to act as their spokesperson. And, along with the chief judge’s executive assistant, I set up a meeting with them and we set some ground rules about how the media would have access to the proceedings. And I think that ended up working very well.
As far as jurors are concerned, which I think is vitally important because if you are going to be in a high-profile case, especially a high-profile case that is going to take a lot of time, a lot of people, because of the high-profile nature of the case, are not going to want to serve. And some people, because of the length of the trial, cannot serve or will not want to serve, so you want to make sure that you, in advance, identify jurors who can serve and who are willing to serve and to make appropriate accommodations for them once they are selected to ensure that they are treated in a way that will make them engage themselves in the process and not feel burdened by the process. And, several things you can do, fortunately we have some extra space in the courthouse now, so we took one of the old chambers and turned it into a jury room so they were not cramped in a small room. We provided them with a refrigerator, with a microwave. Because of the cost of and the high-profile nature of the cases, I had to try and isolate them from the press as much as possible. So they were picked up by the marshals at a particular location, they were brought into the courthouse and up to the jury room, they ate lunch together, they ate breakfast together, they were taken at the end of the day to a central location so the press did not have the opportunity to have access to them. And their identities were kept anonymous until after the trial had been completed. So that avoided the potential impact of the press tainting potential jurors, which I think also is very important.
And I think it is also important to treat them in that manner, to show them your appreciation and to not make the experience too much of a burden. I think it is also important, as far as the trial process is concerned, to provide detailed preliminary instructions to them so that they have an appreciation of how the case is going to proceed. To periodically, throughout the trial, remind them of their obligations of not talking about the case, avoiding media contact about the case, avoiding contact with the parties, to ensure that they are not in some way tainted. I think it is also important, at least from my perspective, to keep them engaged, especially in a lengthy trial, to permit jurors to take notes, which a lot of judges do not do, but I do. And I think it is also important, because I think it does cause the jurors to feel a greater investment in the process, to permit them to ask questions. Obviously you have to monitor that process, but I think it works very well and I think it causes the jurors to feel that they are a more integral part of the process and, therefore, will listen more intently than otherwise they would.

I think it is also obviously very important, in complicated cases, to try and simplify the jury instructions to the best of your ability, if you can. Obviously they have to be legally and technically correct, but nonetheless, I think they can be written in plain, common-sense language that makes the instructions more understandable and I think improves the process. Also, I think it is important to provide, which I do, a written copy of the instructions for the jury so they can read them again. Also, some people,
since they understand better by listening, I also tape-record my instructions and provide them to the jury so that they can listen to them again during the course of their deliberations.

Harold Talisman: With respect to your point about trying cases in the media, what do you think of the British rules, which basically are very, very restrictive in terms of what the press can say about a pending criminal case. To the point where the press can be held in contempt if they say really much more than the fact that so-and-so has been indicted and that is about it. But, what do you think of that system?

Judge Walton: I guess there are pluses and minuses that come with that. Obviously, there is a tension between the court’s desire to ensure that the litigants receive a fair and just adjudication, as compared to the media’s desire to report the news to the public. And that friction often does, if not compromise, at least complicate the ability of the court to ensure that fair and just decision because, while I hope and, you know, assume that the press does their best to accurately report what takes place in a case, the unfortunate reality is that many times they do not accurately report information about a case. And the end result is that misinformation is reported in the media and that can have an impact on a litigant’s ability to get a fair adjudication, because, as much as you hope people can disregard what they hear and see in the media, you cannot always assure yourself that that is going to be the case. So there is that tension that exists, but I think we have a historical perspective in this country, as it relates to the First Amendment, that
would make that type of process very difficult in our country. And I think there is a value to an open and free press. So, while I think there are some benefits that conceivably could be derived from that process, I just do not think it would work in our society.

Harold Talisman: Backing up a little bit to your appointment to the Federal District Court, what were the factors that resulted in your appointment, both professional and political factors that led to that?

Judge Walton: Well, I would like to believe that I performed well as a Superior Court judge and, because of that, I was tapped for the position at least in part. Realistically, however, I think it is inevitable that my appointment was the result of having made the decision to leave the Superior Court in 1989 and take a position with the first Bush administration in the Drug Czar’s office as the Deputy Drug Czar under Bill Bennett. And I believe I performed well in that position. And then, after that, I went over and worked as the Senior White House Advisor for Crime and I believe I did a good job in trying to champion the president’s crime bill that was on the table at that time. And, because of that, when the current administration was elected, I did receive a call from the White House. They actually wanted me to take the position of United States Attorney, but at that point in my life I was sort of past that. That is a job I would have loved to have done at one point in my career, but at that point I just thought I could not make the financial sacrifice to do it. And I enjoyed being a judge. I had left the bench once and did not desire to do that again. So, I told them that I really
was honored and flattered that they would ask me to do it, and they asked, “Well, what would you like to do?” And I told them I would like to be on the Federal District Court. And, they made it happen.

Harold Talisman: I wanted to talk a little bit about the relationship of the judges on the court. Can you describe that, as to how one judge relates with another on the court? What goes back and forth between you in terms of helping each other, the collegiality of the court, and so on?

Judge Walton: I think we have a very collegial court. We do interact with each other. I have never had a situation where there was an issue I had about a case and needed some assistance where I felt I could not pick up the phone and call any of my colleagues and get them to spend the time and talk to me. However, I think historically in this court, there has been a perception that we are independent judicial officers who act and perform in a vacuum. And, therefore, the degree of integration and mixing that maybe you see, for example, on the Superior Court is not as great. And I just think there is a historical perspective to that. But, I think with the current makeup of the court that there isn’t any reticence on the part of any of the judges to spend time talking to another judge about a legal issue that that judge has. I think the lunchroom that we have now is very helpful because even a few of the circuit judges will come down and have lunch periodically. And I think it is good for the process to have the judges know each other, respect each other, like each other, even when it involves an appellate judge who may have to overrule you sometimes. I mean, you have to
accept that that is a part of the process, but I do not think we have to be
enemies just because they are the appellate judges and we are not. But I
think the fact that we have the opportunity to meet almost on a daily basis,
at least I go down to the lunchroom, and have an opportunity not only to
discuss legal issues with your colleagues, but also issues just related to life
and what is going on in the world, I think is important for the collegiality
that I think is important to a court of this nature.

Harold Talisman: What about the relationship with the court of appeals judges? What kind
of relationship do you have there and how do you intermix with them?

Judge Walton: I have always had a very cordial relationship with all the judges on the
court of appeals, but I think there are a lot of the judges on the court of
appeals who feel a little uneasy about mixing on a regular basis with
district judges because of the fact that they have to second-guess us and
sometimes make decisions that are adverse to what we decided. And, as a
result of that I think some of the judges take a position that they are not
going to intermix with district judges.

I think that is a mistake because, as I say, I think we are
professionals and, I mean, I appreciate that as a trial judge I have to make
decisions without the degree of deliberation that federal judges, I mean
that appellate judges, have the luxury to engage in. And plus they are
three as compared to one and I would like to think that three, you know,
smart people can sometimes make a decision that may be more correct
than one smart person.
So, I am not offended when I get reversed. There are people who I know, for example, on the District of Columbia Court of Appeals, who I am very good friends with and have had dinner with and they had to reverse me periodically. And I tell them, well, that does not mean you are right, you are just last. But that is the way the process works.

I think it is unfortunate because, I mean, one of the things that does not happen here that used to, but does happen on other circuits, is that district judges will periodically sit by designation on the court of appeals. And I think that is good and I think it is good because, and it can cause tension because when I was on the Superior Court, I did on one occasion sit, by designation, on the District of Columbia Court of Appeals and had to reverse one of my very good friends who was on the trial court and it created a little tension. But, we got over it and I think it is good for district judges to have the opportunity to go on the appellate court, to see the law from the perspective of that process, from the perspective of an appellate judge because I think it only enhances the trial judge’s ability to do his or her job.

I think that the same is true, which very seldom happens although occasionally, for appellate judges to come down and sit as district judges because I think sometimes they do not have an appreciation of what our job is and how difficult our job is and I think it would only enhance their ability to properly evaluate our decisions, if they had that experience. Because, unfortunately, there are a lot of appellate judges who have never
been trial lawyers, they have never been trial judges and therefore do not have that perspective, which I think can be very important.

Harold Talisman: What about the relationship with the United States Attorney’s Office and the private bar, the private attorneys, and so on?

Judge Walton: I mean, I try and go to events where I have the opportunity to, you know, mix and have interchange with the United States Attorney’s Office, the Public Defender’s Office, and the private bar, I think it is important for that to occur. But, again, there is a level of separation, a wall that sort of exists, between the various entities which are somewhat understandable. I mean, if not just from the standpoint of the realistic barriers that exist between judges and the bar. From a perception perspective, I think it is important that, while we can obviously periodically intermix with members of the bar, I think it is dangerous for the public to have the perception that there is too much of a relationship between a judge and a lawyer, because even though I am confident that regardless of how friendly I may be with someone, that is not going to impact on how I decide a case. The perception of the other litigant who knows about that relationship and feels that they did not get a fair shake, even though it may have been the right decision, may have the view that they did not get a favorable decision because of the friendship and the relationship between the judge and the particular lawyer. So, while, you know, I think it is important for there to be a level of interchange between members of the bench and bar, I do think there has to be some level of separation also.
Harold Talisman: What about with the relationship with your court staff people, that sort of thing?

Judge Walton: I think that it is important and I do try and, you know, have a positive relationship with my court reporter, my courtroom clerk. Not so much with the people in the clerk’s office, cause I do not see them very often. But I have a Christmas party every year, and I have a place with my wife down on the Chesapeake and I will have a cookout during the summer and I will invite court staff down there. Because I think it is important to show our appreciation to court staff and to show that, you know, while we are judges and they are staff, that nonetheless we all have a job to do together. And to the extent that we can have a positive relationship with each other outside of the courtroom, I think that only enhances that.

Harold Talisman: Now, you have law clerks assisting you, I guess?

Judge Walton: I have, right now, I have three law clerks.

Harold Talisman: Three law clerks.

Judge Walton: Right.

Harold Talisman: And how do you select those law clerks? And, how do you deal with them? What is the relationship there?

Judge Walton: Well, I mean this is a tough job for not only the judge, but for the law clerks who serve the judge on this court. Because of the nature of the cases that come to this court, being the nation’s capital, the diversity of cases that we get because, this being the federal seat of government, are sometimes daunting. I mean, you may handle an antitrust case one day, a
patent case the next day, a patent infringement case the next day, an employment case, a criminal case, an environmental case, I mean the list goes on and on and on. And a lot of these areas are very complex areas and a judge needs good counsel from law clerks, especially when you are involved in cases involving a lot of money and a large number of lawyers who have nothing but an expertise in that particular area. Obviously this is what they have done for their life’s work and this may be the first time a judge and a law clerk have encountered this particular area of the law. So the learning curve is very, very, very sharp and you have to have really good clerks in order to help you make the right decisions.

The process of selection, I mean, I ultimately have decided that several years of experience practicing is important before a clerk comes and works with me. I think it is very difficult for a clerk coming right out of law school with no practical experience to do a clerkship in this court. That is not to say that some judges do not use that process and feel it is successful, but I think my clerks serve me better if they have several years of experience.

The good thing is that most of the law firms are very happy to have their young associates come work with me for several years, because it only enhances their skill level. They are never going to do the, or have the demands, that they are going to have at their firm at that point in their life as compared to what they are going to have as a clerk working for me. So, I will not hire right out of law school, unless I have had somebody who
interned for me, who did a very good job as an intern, but I am still not going to bring them on board immediately out of law school. They are still going to have to go to a law firm or a United States Attorney’s Office or wherever they are going to go and get several years of experience. And then come with me and then they go back to their firm or do whatever they are going to do.

So it is a very tedious process because you want to make sure you have people who write well, who research well, who are extremely dedicated, hard-working, and have a good common sense of right and wrong. And once they are on board, primarily their work, I mean they may come into court if they have a case that is of particular interest to watch the proceedings, that their work is primarily to address the various motions that come in. And they will draft draft opinions or draft orders and they will submit those to me for my review.

We also have a number of interns, generally we have five to eight interns, who are either first- or second-year law students, who work in chambers. They will work, be assigned to one of the particular clerks and they will be given assignments, then the clerk has the responsibility of reviewing their work before ultimately the draft opinion is submitted to me.

Harold Talisman: Can you give me a sort of overall broad overview of the kind of cases you have handled since you have come on to the Federal District Court?
Judge Walton: One of my big cases I had initially was an antitrust case where Libbey Glassware was seeking to try and merge with another company because they were of the view that it was very difficult for them to compete in the world economy, because in other countries the labor costs were significantly less than what they are here. And, therefore, these other countries who were competing with them were able to produce their product at a lower price and they felt that they were losing their competitive edge. And so they wanted to merge, consolidate their operations, because they thought that would cut down on their production costs.

The Federal Trade Commission was of the view that the merger would be anticompetitive and, therefore, filed an injunction to block this attempt to merge. And I remember my law clerk, we had our first hearing in the case, came in and he was all wild-eyed and, you know, sort of in a sense of intimidation. And I asked him what was wrong and he said there are just so many lawyers in the courtroom and this is their expertise. And there were four parties, five parties I think, and I thought maybe there would be four or five lawyers per side. I walked into the courtroom and the entire courtroom was totally full with no empty seats. In fact, it was standing room only. And, obviously, that was a little intimidating, not knowing anything about antitrust law.
I have had some interesting patent cases. I have an interesting patent case right now that has already had substantial litigation in Germany.

A large number of our cases are employment discrimination cases, I would say a third, at least a third, of our calendar fit in that category. Another third of our cases are review of agency decisions, which can range from cases where there is an attempt to stop the building of a road in someplace in the West, which is a case I had, for environmental reasons.

I had a case where the State of New Jersey decided to authorize a bear hunt because the bear population had grown to the point where they were posing a threat to humans. And there had not been a bear hunt in some time in New Jersey. And the bears, I guess are pretty smart, because in New York they have bear hunts, in Pennsylvania they have bear hunts and there is a location where these three states connect. Apparently, the bears knew not to come in, knew not to go to Pennsylvania or New York, so they were gathering in New Jersey at a number that was starting to pose a danger and they had broken into several houses, injured several people. So, after about thirty years of not permitting bear hunting, the State of New Jersey permitted bear hunting to go forward and a request for an injunction was filed by an animal rights group to stop the bear hunt. And I concluded, because a part of it was going to take place on federal park land, and I decided that there was no basis to deny the hunt. And as a result of that, I received hundreds of pieces of hate mail, alleging that I
had permitted the murders of the bears to take place, and so that was an interesting case.

I have the *Steven Hatfield* case right now, which is the case that is a spinoff from the anthrax murders that took place and he has never been charged, but he was named as a person of interest. And he now has filed a Privacy Act suit alleging that his career has been destroyed by having been named as a person of interest. Obviously, I had the Scooter Libby case, which was probably the most high-profile case I have handled. I have had a number of cases involving [End side 1]

Harold Talisman: Why don’t you continue with the kind of cases you have had?

Judge Walton: I have handled a number of cases involving the Native American community and, again, because this is the federal seat of government and the Bureau of Indian Affairs is located here and the Indian Health Service is located here, even though you would think those cases would be handled out in the west where most Indians reside now, those cases, nonetheless, find their way into the District of Columbia.

I have got a case right now where a small tribe in California is seeking recognition as a Native American community. I had a very troubling case involving the Seminole Nation, who were displaced from Florida and moved to Oklahoma, and they had filed a suit against the federal government alleging that their land had been illegally taken in Florida. And Congress, through legislation, created a huge trust fund involving billions of dollars that was designed to compensate the Indians.
who had lost their land. And a number of, not a significant number, but a fairly large minority of the Seminole Nation were former slaves who had fled into Florida from the South and some were made citizens of the Seminole Nation, some were slaves. They were moved also because they had become part of the Seminole Nation, and some had even married Indians. And they wanted to share in this trust fund also and the majority of the Seminole Nation said they were not landowners and, therefore, had no right to any share of the trust fund. And there had been an ongoing struggle between the two groups for a number of years and there had been significant litigation actually out in Oklahoma before the federal court there. And then what brought the case here was that the Seminole Nation decided they would change their constitution and the result of that change would excommunicate all of the black members of the Seminole Nation. And the black members brought suit alleging that they could not change the constitution in that manner. And I ultimately concluded that, based upon the treaty between the United States and the Seminole Nation, that in order for the constitution to be changed, which had been approved by Interior, that there had to be a buy-in for that change by the Department of Interior, which Interior had opposed because they thought the change was discriminatory. And obviously that was a very interesting case.

I have had other Indian cases involving oil and gas rights in which the Indians believed that their rights have been undermined by various
parties. And those, I mean, that is a flavor of the types of cases I have handled.

I had, before the Congress enacted legislation to change or to divest this court of jurisdiction, I had about 200 of the Guantanamo Bay detainees, which were very interesting cases. But, because of the change in jurisdiction which now vests in the circuit court, I no longer have those cases. But it was interesting, you know, working with those cases.

I have had a number of cases involving national security matters, questions of national security, of executive privilege. It has been an interesting time, post-9/11, because the government, the executive branch is engaged in ongoing efforts to try and ensure that we do not have another 9/11 and some of the things it has done have created some friction between the civil rights, the human rights community as compared to what the executive branch is trying to do. So I have had a number of those cases.

I had one case where an Islamic charity was accused of funneling money to terrorist groups under the guise of charitable contributions and that was a tough case because this organization claimed that was not the case. And one of the difficulties is, not difficulties but I guess one of the anomalies of these type of cases is the fact that many times the government will take the position that in order to advocate their position, they have to submit information to the court ex parte, because to reveal that information to the other side would potentially undermine the
executive branch’s efforts to protect the country and ensure that we do not have another 9/11. So, national security has to be balanced against the rights of the other parties to have access to that information, and I think it is always somewhat disconcerting for judges to know that you are making decisions based upon information that one party cannot have knowledge of. And I have had a number of cases where that has been the case.

I think the 9/11 event has changed the landscape in that regard. But those are some of the types of cases that I have handled. It is a fascinating job, it is a challenging job, but it is also a daunting job, which, at times, I think anybody who is honest will admit is sometimes overwhelming.

Harold Talisman: How are the cases assigned to the judges?
Judge Walton: It is a totally random process. To some degree it has always been random, but there had been a process some years ago where the chief judge could make a decision that particular cases, maybe because of the nature of the case and the nature of the judge’s background, should be assigned to a particular judge. And, during the Clinton years there were some allegations that cases were being inappropriately funneled, involving Clinton administration personnel, to certain judges who had been appointed by Clinton. I mean, I do not think that that would make a difference as to how the judge decided the case but, again, perception is important. So, as a result of some allegations that were made of inappropriate assignments, the process is now totally random. So there is
some kind of a process whereby every fifteenth type of case goes to the judge whose number comes up at that particular time. So, the process is totally random and some do not believe that is the case. I mean, there are some who will take the position that the process is not random, but I can assure everybody that it is totally random and that nobody manipulates the process. And, if you get a case, it is just fortuitous that that happened.

Harold Talisman: So, there is no effort to sort of assign a case to a judge because he has had other cases like that in the past and therefore has some expertise in it?

Judge Walton: No.

Harold Talisman: When a case is assigned to you, how do you start preparing for it? What is your sort of initial stages you go through?

Judge Walton: Well, I rely on my clerks a lot. And, I hire good people and I expect that they are going to work hard and they are going to familiarize themselves initially with the case. And then we will set a hearing in every case, shortly after the case comes into the system. And, prior to that initial hearing, my clerks will prepare a memorandum for me outlining what the case is about, what the various issues are. And I will review that, then I will come back, ask them questions about it, in preparation for the hearing.

One of the things I do, which I think is very important to make sure the cases do move along, is to always have a next date. I think it is a mistake for judges not to have something calendared for some event to take place, so that cases do not fall through the cracks. Case management
has become very important because of not only the number of cases, but the complexity of the cases. So, judges have to have in place a system to ensure the case is expeditiously moved through the process.

One of the other things I have done is I have put together general orders, which are fairly extensive, outlining to the parties what my procedures will be. And as soon as the case comes into the system, we will send that out. After every hearing that we have, we will send out a scheduling order letting the parties know what is expected of them and what the timelines are.

Harold Talisman: Do you require the lawyers on each side to submit pretrial briefs to sort of give you their idea of what the issues are in the case and so it might get you sort of a picture of what each side is contending?

Judge Walton: Well, the parties are required, pursuant to both the national and local rules, to meet and confer before a pretrial hearing is going to be held. They then have to submit a joint statement to the court setting forth what the case is about, what the causes of action are, what the potential defenses are, who the witnesses are, what the witnesses will say, so, yes, they are required to. And what the issues are and at that pretrial conference, if I am not able to resolve issues that are going to arise during the trial, then I will require the parties to submit motions in limine prior to trial, so that we can resolve those and not have delays during the course of the trial itself.

Harold Talisman: Have you had incidents of sort of a personal conflict between your philosophy and the rule of law over your judging?
Judge Walton: Yes, I have. I have very strong views about what drugs are doing to our society and feel that we have to aggressively try and address the problem because of the problems that drugs create for us. But, one of the areas that has been very troubling to me is the disparity between crack-cocaine and powder-cocaine sentencing. I understand why there is a perception that maybe crack cocaine in certain circumstances should be treated with a harsher sentence than powder, but a 100-to-1 distinction, it seems to me, is excessive. And the end result is that, just because of demographics and socioeconomic reasons, powder cocaine in this city is primarily going to be possessed and used by individuals of a higher socioeconomic class. Whereas crack cocaine, because of the lower price level, is going to obviously be distributed and consumed by a lower socioeconomic class, and racial class, in this city. And, as a result of that, you see a large number of young black men going to prison for significant periods of time who are charged with crack cocaine offenses. And, I am not saying that they should not be punished, but when you see the vast disparity between what this young black male is getting for having been involved in crack cocaine distribution as compared to what maybe a white male, who is a college student, is getting for being involved in the distribution of powder cocaine, I find to be very troubling.

Harold Talisman: What have been, in your view, the more difficult and more memorable cases that you have had on the bench?
Judge Walton: Well, the antitrust case I mentioned, just because of the complexity of the legal issues. I have this patent case, I mentioned, again an extremely complex legal issue. The Libby case, which had extremely complex legal issues of first impression, because of the, at least, initial indications of the desire to introduce classified information. And then, in that case, the amount of lawyer power that was brought to bear just made it very demanding.

One of the areas that I find also very demanding involve pro se litigants, because we have a large number of pro se litigants in this court, which was a significant surprise to me. I just did not anticipate that would be the case. But I think because of the nature of the remedies that are sought over here, many times having underpinnings in the Constitution, a lot of cases find their way into this court. And you find a lot of pro se litigants trying to transgress the system without the professional expertise to do it and I find that those cases are very, very, very demanding because the appellate courts have said that you have to give special consideration to the fact that you have got a pro se litigant before you. And sometimes you have to read between the lines and make assessments as to what they are actually alleging when it is not patently clear that that is, in fact, the case. And, I think it is important that we treat those cases with the degree of deference that we should, because those individuals, even though they are trying to navigate the system without the assistance of counsel, will walk away from the process with a perspective about it that can shape
their views about the nature of our government, and I think that is very important.

I had one case, and this woman took the case to trial and it was not much of a case, but there was not sufficient grounds to throw it out on technical grounds. So, we went to trial before a jury and the jury made a decision that she had not proven her case. But, after the trial, and it made me feel good, she said, “Judge, you gave me a fair trial, that is all I wanted, that is all I was entitled to.” So, I hope she walked away from the process, even though she lost, feeling that she was treated fairly, and I think that is important.

Harold Talisman: Getting down to the administration of your people, and so on, what sort of procedures and policies do you have for administering your own chambers and the courtroom?

Judge Walton: I expect people to be on time. I think it is important that litigants and lawyers not feel that they are sitting around waiting for me and losing time from work or bills are being generated because I am not timely. So, I insist that my staff be on time.

I do the best I can with a sometimes overwhelming caseload to make sure that we try and resolve cases as quickly as possible. That we address motions as quickly as possible, which can be difficult because sometimes the motions are very complex. The records can be voluminous and all of that has to be reviewed, so sometimes it takes longer than one would like.
I tend to not micromanage my staff. Again, I try and make sure I hire good people. I put significant demands on them, I let them understand what those demands are, and I expect that they will perform. So long as they do that, I am not hovering over them. If they have other commitments they have to perform, if they have to maybe one day, if they have a child and have to work at home, that is fine. The bottom line is that they have to get the work done. But I try and make sure that my staff is working in an environment where they do not feel intimidated, but, at the same time, appreciate what the demands are.

Harold Talisman: You touched a little bit on this in your other answers about the, what is the judge’s role as the case manager?

Judge Walton: Well, and I think it is important to have a system in place. I think it is important for the parties to know early on in the process what your expectations are and that is why I have reduced to writing what my procedures are, and I get that to the parties very early in the process.

One of the things I tell them is their obligation to be civil to each other, because I think there has been a denigration in the civility that exists between lawyers in today’s world. I think that is unfortunate, but it is, I think, the unfortunate reality of the way some lawyers practice law.

But as far as managing the cases, again, I let the parties know early on what I expect of them. I will get the parties in before me as soon as I can and set a scheduling order that tells the parties what has to be done and by when. I do provide some level of flexibility because I know
lawyers are busy, so as long as their requests for extensions are reasonable, I will give those to them. The parties understand that when we have hearings, they are expected to understand their case and be prepared to make appropriate representations in the case.

I impose upon my staff and myself some fairly stringent timelines once things are filed. We have to make a report to Congress every six months indicating those cases that are more than three years old and those motions that are over six months old. And I try to ensure that those numbers are very low and my staff understands that I expect that they are going to shoot for us not having to report any cases. It is inevitable that sometimes you have to report cases, but we try and make sure that we do not have to report any cases. And, I think if we are doing that, then we are moving our cases along fairly expeditiously.

I do refer all of my cases, absent a situation where it is clear that settlement is not going to occur, I do require that the parties participate in either mediation, arbitration, or some form of alternative dispute resolution.

Harold Talisman: What about the value of judicial counsels and the, sort of, Circuit Judicial Conference and its committees? Have you participated in those?

Judge Walton: I serve on the Circuit Judicial Council, which reviews, I mean we do a number of different things. But one of the things we do is we review complaints that are made against judges. And, I also serve on the National Criminal Law Committee, which meets twice a year, and then we will
communicate with each other by e-mail or telephone throughout the year on issues that come up that will impact on the overall court system, but have a particular criminal law interest or perspective.

I have testified, now, twice before the sentencing commission regarding criminal law issues, based upon my position on the Criminal Law Committee. One related to the disparity between crack and cocaine-powder sentencing, and the other regarding some change in laws related to child sexual assault cases, and to what extent the sentencing guidelines should mirror the very tough mandatory minimum sentences that Congress enacted. So, I think it is important for judges to be involved in that type of activity because, ultimately, it has an impact on national policy or circuit policy and it is interesting to be involved in that.

I also, in addition to my judicial responsibilities, was asked by the White House about two-and-a-half years ago, to chair a commission called the National Prison Rape Elimination Commission, which is looking at the problem of prison rape, pursuant to congressional legislation. It was enacted in 2003 and that has been a real drain on my time. It is a nine-person commission. As chairman, there are meetings I have to hold, and ultimately we have the responsibility of producing a report of our findings and propose standards for the adoption by the attorney general and state and local governments to try and curb the incidents of prison rape.

Harold Talisman: What do you think are the qualities for a good judge and a lawyer or court administrator? What are the qualities they have to have?
Judge Walton: Well, my view is that you have to have a fundamental [end side B]
My name is Harold Talisman and this is tape number three recording the third interview of Federal District Judge Reggie B. Walton, of the District of Columbia Circuit. This interview is taking place on the morning of May 8, 2007, at Judge Walton’s office in the E. Barrett Prettyman United States Courthouse at 333 Constitution Avenue, N.W., Washington, D.C.

Harold Talisman: Judge Walton, at the end of the last interview, I had asked you to set forth what you consider to be the qualities of a good judge, lawyer, and court administrator and the tape ended and you were sort of in mid-sentence. What, in your view, are the qualities of a good judge?

Judge Walton: Well, I mean, I think a good judge has to have a certain level of experience. And I think that is especially true for this court because of the complexity of the issues that we deal with and the diversity of subject matters that we have to deal with. I think a good judge obviously has to have a certain level of intellectual capacity to deal with the complex issues we deal with. And I think a good judge, on this court especially, has to be someone who is willing to work long hours, because the amount of work and the complexity of the issues are such that you just have to put in a lot of time if you are going to stay abreast of your cases.

I think a good judge also has to have a good demeanor, a good judicial temperament. I think it is important for judges to treat people who come before them, both lawyers and litigants, with respect. I think that is crucial because when people leave the courthouse, whether they
win or lose, I think they should feel that they were treated in a humane, appropriate manner. I think judges, good judges, have to be aware of the fact that parties want decisions. And I think when judges sometimes sit on cases for too long, that old adage that, “justice delayed is justice denied” I think is true. So, while a good judge has to be thorough and has to try and address all of the issues with a certain degree of thoroughness that are brought before him or her, I think it is important for that to be done expeditiously, which is another reason why I think judges have to spend a lot of time working on their cases and work very hard. Because, in order to stay abreast of your cases, it just takes a tremendous amount of time. I think also it is important for judges, or good judges, to have a level of involvement with the community.

I think it is important for judges to be willing to interact with the community in an educational setting. I think it is important for judges to try and educate the citizenry about the importance of serving as jurors. Being willing to meet with young people who often come to the court and try and encourage them to not only potentially be a part of the system, but what their obligations are as citizens as far as the system is concerned. I think those are some of the core ingredients that I think make for a good judge.

Harold Talisman: Now, you spent a good amount of your career as a prosecutor. Were there any judges who you felt fit that example and you tried to emulate once you became a judge?
Judge Walton: Yes. I did not spend much time trying cases in this court, so most of my experience was in the Superior Court. I thought Judge Braman was an excellent judge. Judge Sylvia Bacon I thought was an excellent judge. My mentor, really, was Judge Moultrie, who I tried a number of cases before. I think those three are three individuals, although there were a number of others, who I think epitomize what a good judge should be.

Harold Talisman: Getting to the question of lawyers, what in your view are the qualities of a good lawyer?

Judge Walton: Well, I think a lawyer has to be someone who is committed to the mission of the law, which obviously means they are going to be committed to their respective clients’ interests. Again, I think a good lawyer has to have, obviously, a certain level of intellectual capacity to deal with complex issues, and has to be willing to work very hard and appreciate what their ethical obligations are, not only to their clients, but also to the profession. I think, unfortunately, there are a lot of lawyers in today’s world who put winning at a premium, it becomes the bottom line for everything. And, as a result of that, you see lawyers sometimes stepping over the line and going beyond where they should go because they are willing to try and win at all costs. So I think it is important to appreciate that while you have to fight hard for your clients, that there is a line that you just cannot step over. Because I think when you do that, you do it at not only a potential personal expense, but I think to a greater degree, to the expense, at the expense of what our profession is supposed to be about. So, I think
hard work, dedication, commitment to the profession and commitment to your ethical standards are key ingredients to what a good lawyer has to have in order to be effective.

Harold Talisman: And, what about court administration? What are the qualities of a good court administrator?

Judge Walton: Innovative, I think, with the new technology. I think a good court administrator, because of the number of cases that we deal with and because of the complexity of the cases, has to constantly seek to come up with innovative ways to try and process cases. I think also a good administrator has to try and devise a system that makes the ability to litigate cases as inexpensive as possible, because I think one of the problems with our system of justice in America is that if you have a lot of money you get one quality of justice, if you do not, you get another. And, to the extent that a good court administrator can streamline the process and do it in such a way that it conserves resources so that litigants who do not have a lot of funds, nonetheless have the ability to have access to the system, it is obviously very important. And good administrators also obviously have to have good people skills because they are going to be in the supervisory position of individuals who work under them and I think it is important for them to have good people skills because you have to keep the troops happy if they are going to perform at the level you expect.
Harold Talisman: On the federal level, judges are appointed rather than elected. What are your views concerning that? In many states judges are elected rather than appointed. What are you thoughts on that?

Judge Walton: I just happened to have been, last week, down in Louisiana speaking at a conference that the Louisiana Bar Association, in conjunction with a law school in Louisiana, held on the issue of judicial independence. And one of the issues that came up was the issue of whether there should be elected as compared to appointed judges. And the judges in Louisiana are elected judges and they, I think, took offense to my position that the election process was not the most appropriate way to have judges elevated to the bench.

My main problem with the election system, no system is going to be perfect, I mean, I think the ideal system is a merit selection system like they have in the District of Columbia court system where you have individuals from various components of the city who comprise that commission and truly try and make decisions about whose name should be sent to the president based upon professional merit. And I think that system ensures that you have a certain level of competence as far as the individuals who are ultimately selected to the bench.

With an elected system, there is no guarantee that is going to be the case because if someone has good charisma and the ability to raise money, they can get elected. And that does not mean that they are necessarily going to be qualified for the position. However, I do not say
that to denigrate elected judges because I know a lot of elected judges who are excellent. But, one of the problems with the electoral system is that you need money to win. And, in our society today, you even need more money than used to be the case in the past.

So you find, I have a friend, for example, who is running for the Pennsylvania Supreme Court and he is an excellent judge and I think he would be an excellent addition to the bench, but he did not get the support of the state Democratic party, even though he had the highest rating from the bar as far as his abilities were concerned. And the only way now he can potentially win is to travel throughout the state trying to go to the various counties to try and get the counties’ support for his candidacy, and that takes a lot of money. And who is going to give money to a judge to run for office? It is going to be lawyers, by and large. And I just think that there is something unsavory about lawyers giving money to a judge for election purposes, even though the judge will have to report who gave him the money, because, and with my friend, for example, I am totally confident that even though lawyers will give him money, that he is not going to show them a preference. But perception sometimes is reality and if the populous feel that judges are collecting money from lawyers, there is going to be a belief that judges are being bought.

And I think it becomes even more problematic when you have litigants who end up being represented by lawyers who did not make a contribution to the judge as compared to a lawyer who did make a
contribution to the judge. Even though the judge may make a fair and just decision, the unfortunate reality is that that litigant who loses, if they do lose, and their lawyer did not make a contribution or they are representing themselves pro se and did not make a contribution, they are probably going to feel, whether justly or not, that they did not receive a fair shake. So I think there are inherent problems with the electoral process and I would hope that at some point states will realize that and move to a merit selection process.

The other problem that you have with the electoral process, take Pennsylvania, which is my home state, for example. In the history of the state, even though you have a sizeable African-American population, there has only been one African American who has ever been selected to the Supreme Court because you have to win statewide. And even though there is a sizeable number of African Americans in Pennsylvania, they are nowhere near the majority. And, as a result of that, it becomes very difficult for an African American to get elected to the bench. And I think that is unfortunate because I know, for example, with my friend, the governor is supporting him, so if the governor was the appointing authority, and based upon the bar having rated him as the most qualified candidate, I think it is inevitable he would be appointed to the bench. He may not win, however, because of the obstacles he otherwise has to overcome. So, I just think that the merit selection process, which is not ideal, is preferable over the election process.
Harold Talisman: What about the question of appointment for life? What is your view on that?

Judge Walton: Well, I think appointment for life is crucial. The Founding Fathers obviously felt that was necessary in order to isolate judges from political influence. And I think there is good reason for that. The Superior Court and the District of Columbia Court of Appeals have fifteen-year terms. They are not life terms, but assuming you have conducted yourself appropriately during that fifteen-year term, it is inevitable that you are going to be reappointed. So, in a sense, they are life positions also. And, I think that if you do not have a life system, the period of appointment should be significant because I do not think judges should have to be concerned about whether they are going to be able to keep their positions when they have to make controversial decisions.

I teach out at the National Judicial College (state judges) in Reno, Nevada, and I try and ask very provocative questions during one of the courses I teach, which is entitled, “Role of the Judge.” I ask the judges in the class how they would rule regarding an issue that was a hot-button issue in the community at that time and, one of the judges, who is an elected judge, said, “Well how close is it to the election?” And I think that is unfortunate that justice may be dictated based upon when an election is going to be conducted. I mean, you would still hope that most elected judges do not let those types of influences impact them, but you know, judges are human beings, too. And, if you enjoy being a judge and
you want to stay on the bench and you find yourself in a situation where you have to make a decision that conceivably is going to enrage a certain portion of the community and therefore jeopardize your potential of remaining on the bench, I think, obviously, that becomes problematic.

Harold Talisman: What, in your view, have been the changes in the demands on judges over the period of time that you have been a judge?

Judge Walton: I think the major demand is the new technology that we have. And also, just that the world is becoming a more complex world. And some of the issues that we are being asked to decide, for example, in the area of intellectual property, extremely complex patent cases. I think as the world becomes more complicated, obviously the law becomes more complicated. And as a result of that, the demands on judges become more difficult. I think those are probably the most significant changes that have increased the demands on judges.

Harold Talisman: Do you think that there should be more specialized courts that sort of become concentrated in one area so that they have more expertise in that one area?

Judge Walton: Well, there are conflicting views on that. I do not know. I mean, I think I would be opposed to that. We do have some specialized courts like the tax court and the court of claims, but I think having a general court with judges who deal with different types of issues also has an advantage. I think if you have somebody who does nothing but one area of the law, I think they can become so mechanical that they lose the touch that I think
judges need to bring to bear in appropriately and judiciously deciding
cases. So, while I can see how in some areas specialized courts can be
helpful, I do not think it would be good, for example, if you had a court
where you had judges who did nothing but employment discrimination
cases and you had judges who did nothing but criminal cases and you had
judges who did nothing but certain types of other civil cases, I do not
think that would be an appropriate way to resolve cases. But, in certain
discrete areas, I can see how there may be a benefit.

Harold Talisman: Judges are, I guess, permitted to bring in their own experts to help them
with cases. Have you ever done that in technical cases?

Judge Walton: I have not. I have a case now where I know if the case proceeds beyond
the stage that we are now, it involves a very complex patent case
involving computers. I know in that case that I will have to have that type
of expertise to educate me about the case. But, up to this point, no, I have
not used that service.

Harold Talisman: What about the workload? Has that increased over the years for you or is
it about the same?

Judge Walton: Our workload on this court is very unique because of this being the site of
the federal government. And, while our numbers may not appear to be as
significant as other districts, the nature of our cases makes the demands, I
think, a lot different than what you have in other districts. In other districts
you have a lot of diversity cases. We do not have a lot of that. So, you
have a lot of accident cases and things of that nature, which I am not in
any way denigrating the significance of those cases, but they do not bring to bear the level of complexity and difficulty that we have. So, while our caseloads are not huge, because I have about 160 civil cases and probably about 20 to 25 criminal cases. But in the criminal arena, for example, many of the cases now that we handle, which was not the case in the past, are international drug conspiracy cases. With the terrorism problem that we have had, many of our criminal cases fall within that category and there are some laws on the books that are very complex. If you have a case involving classified information, obviously there are difficult issues that come into play there. In some of our cases, both criminal and civil, there are issues that come up that implicate the First Amendment because litigants are trying to acquire information from the press. And the press obviously does not want to reveal that information, so that you end up with a constitutional battle over whether they have to produce it or not and whether, if they are required to, you are transgressing the First Amendment. So, while our caseloads in numbers are not as significant as what you see in other districts, the complexity, and not only the complexity, but I mean it is not unusual to get a case with an administrative record that is just voluminous and to try and get through that administrative record is a monumental task. So, yes, I mean our caseloads are significant and they place a lot of demands on every judge on this court because of that.
Harold Talisman: Has there been a change in the quality of lawyers over the years in your view? Has the quality changed for the better, for the worse?

Judge Walton: I think they are, you know when I started out 30 years ago practicing law, I saw very good lawyers then and I see very good lawyers now. I think one of the other problems that we have with our system of justice in America, in addition to the amount of money somebody has having an impact on what quality of justice one gets, is the fact that while we have a lot of lawyers, and we have a lot of good lawyers, we do not have enough good lawyers. There are a lot of bad lawyers and a lot of lawyers who cut corners. And as a result of that, they do not really do the quality of work for their clients that they should have. So I think that, obviously, the number of lawyers has increased significantly, and I think, just as in the past, there are a lot of very good lawyers, but I think there are also a lot of very bad lawyers.

Harold Talisman: You have, I noticed, had quite a few situations where you have taught, gone out on teaching assignments, I assume for short-term periods. What, in your view, is the value of that, doing that?

Judge Walton: Well, I think teaching obviously is giving something back and trying to ensure that lawyers who are in the profession, who you are providing instruction to, judges who you are providing instruction to, and law students who eventually will become a part of the profession, that hopefully the instruction that you are providing will ensure that a certain level of competence is maintained within the profession. So, I think that
is extremely important, to give back and to try and make sure that in giving back, that you are helping lawyers and judges perform at a level that is expected of members of our profession.

I think it is also important, from a personal perspective, in that it keeps you sharp. Because as you have to prepare and as you make your presentations and as you get feedback during the course of the instruction that you are providing, I think it helps keep you sharp on current trends in the law. And maybe things that occur that you are not aware of, that you are apprised of, that you can bone up on, to ensure that you are doing the best quality work that you can do as a judge.

Harold Talisman: I know that one of the places where you went to is Russia.

Judge Walton: Right.

Harold Talisman: You had a teaching experience there. Were you able to learn anything from that experience, as far as Russian law is concerned, in terms of what would be of value to us?

Judge Walton: Well, what I learned, I think, it gave me a better appreciation of the importance of the rule of law and judicial independence, which had not been hallmarks of the Russian system while the Soviet Union was in existence because the judges, the judiciary, were basically puppets of the executive branch. And they basically did what the executive branch wanted, especially in high-profile cases that the Kremlin had an interest in. And, as a result of that, there was a very low esteem that the citizenry had for the judiciary. And when I went over there, there was an effort to
try and address that problem and to try and have the courts become a viable, independent part of the Russian political system. And I was extremely impressed with the individual judges and their desire to try and improve their status in Russia’s society. So, I think those were the lessons that I learned and, hopefully I was able to impart something to them that helped them, after I left, move towards establishing the type of judiciary that would have the respect of the citizenry and the support of the Russian people.

Harold Talisman: Was there anything they were doing in terms of the ordinary cases, without getting into the high-profile cases, with respect to ordinary cases that they were doing which would be helpful to us in terms of any ideas they had that you were able to pick up?

Judge Walton: I cannot say that that was the case. I went to Siberia; maybe if I had been in Moscow or St. Petersburg, or one of the larger cities, maybe that would have been the case. But, I mean, there was just a lot that the system lacked and, as a result, for example, the defendant in a criminal case sits in the courtroom in a cage. I mean, how can you have a presumption of innocence under those circumstances. The amount of money that was being allotted to the judicial system was minuscule; the judges were paid very little. Because there had been such a low esteem that the judiciary had in Russia, a large percentage of the Russian judges were female. That is not to say that females should not be judges and are not good judges, but because of the status, at least at that point, of females in Russia as
compared to males, you had a lot of females going into the profession because it was not respected to the extent that, hopefully, it has grown to now. So, I cannot really say that there was a lot. The one thing that did not particularly relate to me, that I saw that I was envious of, was the tremendous desire on the part of the Russian people to be a part of the political process. Including a part of the judicial process. Because Russia was considering moving…[END SIDE A]

[BEGIN SIDE B]

Judge Walton: As I was saying, the thing that I was most impressed about was the tremendous desire on the part of the Russian people to be a part of their political process, including a part of the judicial system. Because Russia was, at that time, considering creating a jury system and they had not had a jury system before that, at least not in the recent past. And, I had a chance to interact with some people in Russian society and they are just clamoring to be a part of the process. And I think it is somewhat depressing when you see in our society our citizens taking for granted our political process. That we have got, you know, very few people who come out and vote. We have a tremendous problem getting jurors to respond to the summonses that we send. I suspect that in Russia, because people had been excluded from the process, who now had an opportunity to be involved in the process, have a lot more involvement than what we have. And I saw, several years ago, where in Moscow they had had the first jury trial and it was good to know that, I guess, some of the efforts
that I had engaged in had ultimately paid off and that they had moved towards a jury system.

Harold Talisman: Going to visiting judgeships, have you ever gone to other circuits and sat as a judge?

Judge Walton: No, I have not. Judges generally do not do that, unless there is some special circumstances, until such time as you take senior status.

Harold Talisman: What is your approach to writing opinions? Where do you begin? Do you have a sort of set method that you use for writing an opinion?

Judge Walton: I do. Contrary to some judges, who will read the pleadings and, in effect, dictate to their law clerks the direction they want to go, I do not do that. I try and hire good people, who are good thinkers, who can independently, at least initially, assess the case along with the interns who work for us. And come up with a draft of how they think the case should be resolved. Once that is done, then they will submit it to me and then I will review the pleadings, I will review the draft and, if I agree with them, obviously I do the edits that I think are appropriate to convert the opinion into my writing style. And if I do not, then I will sit down and I will talk to my clerks and see why they came up with the view that they did. Sometimes they will convince me orally that what they put on paper is the right way to go, but sometimes they do not. And, if they do not, then at that point I will tell them how I think the case should be resolved and send them back to the drawing board. But I think it only enhances my ability to appropriately decide cases if I am giving a certain level of leeway to my clerks, who are
hopefully bright people who work hard and who have a pretty good understanding of the law, as compared to my dictating to them and only, therefore, bringing to bear my intellectual capacity in the assessment of how a case should be resolved.

Harold Talisman: What is your attitude towards sentencing at this point? You have got a lot of experience on this, in both the Superior Court and here. Has it changed over the years and what are your views on it?

Judge Walton: Well, I am known as a tough sentencer. I grew up in a home where there was right and there was wrong, and when you were wrong, you were punished. And I am sure that has an impact on my philosophy about sentencing. That is not to say that I do not believe in compassion. I do realize that people can make mistakes. I do realize that people can be redeemed. And, therefore, while I think every sentence should have a component of punishment to it, that does not necessarily mean that it has to be incarceration, especially for nonviolent offenders who may have just committed one transgression. So, I think it is important that a message be sent not only to the individual, but to society at large, that crime does not pay and if you engage in crime, there is going to be punishment. I do think that judges have to individually look at each case and have to try and make their best call as to whether or not this person poses a potential threat to society. And, if not, the extent to which a sentence that has a punishment component should entail prison, as compared to some other type of alternative.
Have I changed? I would hope I have. For example, when I worked in the White House drug office, I did advocate that there be a disparity between crack-cocaine and powder-cocaine sentencing because of the impact crack was having on the community. I still think there is a justification for some level of disparity, but nowhere near the disparity that we have now, which is 100-to-1. If you are convicted of a crime involving crack you get a sentence one hundred times greater than powder, even though both are cocaine. And I think as a result of that, because crack cocaine has had its most profound impact in minority communities, primarily African-American communities, you see hoards of young African-American men going to prison for substantial periods of time. And because of that, and because of my view that really certainty of punishment in this context, at least for first or maybe second offenders, is more important than severity of punishment, my attitude about the severity of punishment in the context of crack cocaine has been moderated. And I think judges should be willing to moderate their views about any aspect of what they do, including sentencing, when they see that what they had previously believed in may have not been the right way to go.

Harold Talisman: You were a prosecutor for many years and I think one year in the public defender experience. Has that experience as a prosecutor influenced you in any way, in terms of your attitude towards criminals in cases, and so on?
Judge Walton: Well, I would like to feel that both my, actually it was almost two years as a public defender, and my five-and-a-half, almost six years as a prosecutor, I think hopefully both of those have had an influence. I do appreciate the importance of a defendant having adequate and vigorous representation because people are sometimes wrongfully accused. And even if they have not been wrongfully accused, they still are entitled to good representation. And I also appreciate the importance of prosecutors and the role that they play in the system. Obviously victims, whether it be society at large or individuals, are also entitled to justice and I think a prosecutor has an obligation to not only be fair when it comes to prosecuting cases, but also vigorous in the prosecution of cases, because when people do crime, as they say, if they are proven guilty, then I think there should be punishment meted out in reference to that. So, hopefully, having done both prosecution and defense has given me a level of balance about the importance of both roles.

Harold Talisman: What about juries and their role and effectiveness? What is your confidence? What is your view of that over your years of seeing juries?

Judge Walton: You know, the jury system is a marvelous process. There have been several cases where I thought the jury made the wrong decision, but not many. Most often I agree with the jury and even in those situations where I have not agreed with the jury, absent a few situations, I could nonetheless rationalize and understand why the jurors reached the decision that they did.
I think it is a marvelous process where you can take 12 diverse people who have never met each other, put them in a collective situation and, in most situations, the vast majority of situations, they come up with the right result. I think it bodes well for the American public that people are able, under those circumstances, to come together and make appropriate decisions.

I think it does become obviously more difficult because we have had cases, for example, where trials have lasted eight, nine months. It is tough to get jurors who can be here for that period of time and have the capacity to recall all of the information that would have been given to them over that period of time and come up with a fair and just and correct result.

As society has become more complex, as I said before, obviously the law becomes more complex. And when that type of information is imparted to a jury, obviously that is going to complicate the ability of the jury to reach the right decision because of the complexity of the case. But I think our system has served us well.

My major concern about the system is that we have so few people, in the overall context, who respond when we send out notices so that the burden ends up falling on a relatively small number of people. And there are a lot of people, especially in certain parts of our city, whether it be here or someplace else, who do not really participate in the process and I think that is unfortunate.
Harold Talisman: What about in highly technical cases, with the antitrust cases where you get very complicated facts, and so on? Do you think juries are better than having, say, professional people appointed as jurors to decide the facts in the case?

Judge Walton: That is a difficult question because in some ways I would suspect that someone with highly technical knowledge of a particular area of the law might be able to, as a result of that technical knowledge, render a more exact decision in a case than maybe otherwise a jury can. But, the downside of that is that our law is, at least the rule of law is dependent upon the citizenry buying in on the decisions that are made by the court. And I think it is important that there be a significant involvement by the community in that process in order for the process to have credibility. If you had all decisions being made by people like myself, who are appointed by the president, I think over time you would tend to lose the support of the citizenry. But I think when the citizens themselves are making these decisions of significance to the community, then I think there is more of a buy in on society at large. And I think if the rule of law is to prevail, which I think is essential in a democratic society, I think that even with the potential down side of jurors having to decide these very complex issues, I think it balances out in ways in favor of the jury addressing those issues because of the need of the community to buy in on what the court does.
Harold Talisman: My father-in-law was a judge in Germany until Hitler came to power and he told me that in their cases they had six jurors and the judge sat with the jurors deciding the case. What do you think of that approach?

Judge Walton: I think the separation between the role of the judge and the role of the jury is important because if the jurors knew that one of them was a judge, I think the judge would have too much influence. And I think the judge would tend to sway juries to decide a case consistent with the judge’s thinking, by and large, and I do not think that would be good.

Harold Talisman: What do you see as the problems facing court today, the administration of justice and, you know, the practice of law? What are the problems that you see being the current problems facing the court?

Judge Walton: Well, I think it harkens back to my concern about justice being equal and that all citizens be in a situation where they have access to the same quality of justice, and I think, unfortunately, as good as our system is, we do not have that. And, to a large degree, that is dictated by how much money you have and I think that is unfortunate. And I think we have to try and make sure that the quality of justice that is meted out by the courts is equalized and that economic status and economic resources do not adversely impact on that. So I think that is a major challenge.

I think the other challenge, as I said before, is that we need good, ethical lawyers who comprise the system and who bring to the system the virtues that I think members of our profession should have. And I often do not see that. I see lawyers who, as I say, will seek to do anything that
they can to try and win because winning becomes the bottom line. And I do not think, in the long term, that serves our society well. So, I think those are the two principal worries.

I think there also is the concern I have about the process, the system itself being adequately funded. Court systems do not fare well many times with legislators in getting the resources that they need, even though we have more and more responsibility thrust upon us. And I think, and I know right now, there is a big debate going on about judicial salaries and I think that is problematic when you have judges who are appointed to the positions that we are appointed to and a year or two out of law school, after clerks leave a judge, they are making more money than the judge. And that is not to say that I think judges should expect to become rich as judges, but if you are going to attract good people to the bench, I think there is a certain level of pay that they have to know they are going to get. And I think, as a result of the low pay that we have now, there are a lot of people who are deterred from seeking judicial positions. And we, in fact, have lost some good people who have been judges, who because of children who are about the age where they are going to go to college and the amount that college costs now, judges, unless they have a spouse like I do who is a doctor making a lot of money, are not able to remain in the position.

I think that is unfortunate. I think we are going to end up with the lack of diversity that I think is important, especially to a court like this. I
think it is important to have people from the private industry, from private
practice who are willing to become a part of our profession. I think it is
going to become more and more difficult to attract people under those
circumstances, if you are not going to provide at least a certain level of
pay.

Harold Talisman: What is your concept of the judge’s role in society and what is, do you
think, society’s perception of that role?

Judge Walton: By and large, fortunately, I think judges have a fairly good image in our
society. And I think it is important that that be the case because we are
making sometimes life-and-death decisions in people’s lives. And I think
it is important that judges conduct themselves in a way that brings not
only respect to themselves, but, more importantly, respect to the role that
they have in our society. I think people look to judges to decide cases in a
fair and just way and because of the importance of the judiciary, because
if we did not have it, I mean people are going to get their pound of flesh in
someway. And if they were not able to come to the civil setting of a
courtroom and get justice, then they are going to get it in someway that
would lead us towards anarchy. So I think it is important that judges
conduct themselves in a way that engenders respect by the citizenry, so
that people have faith in our system. Because without the rule of law, we
will not have the type of democratic society that was envisioned by our
forefathers, which has served us very well in this country.
Harold Talisman: What about the influence of the court’s decisions on public policy, what do you see?

Judge Walton: Well, I think it is important. I mean, I think if you just look back at the role that the court played as it related to equalizing the rights of African Americans in our society; I think the courts were in the forefront and took the initiative when the other two branches of government really did not, and set us on a course that had to occur in order for us to gain the status that we have in the world community. Because there is no way we could have that status if we still were operating under the Jim Crow laws that used to be in place and the discrimination that existed in our society. So I think courts should not have to be in the position where they set a trend of what policy should be, but I think the reality is that when inequity exists in our system and it is left to judges to have to decide those issues, I think judges have to be willing to step in and do that. Although I do believe in judicial restraint, and I do believe that judges should not make law, the reality is that many times things that we do have a profound impact on social policy.

Harold Talisman: What has been your evolution of your political philosophy over the years? How has it evolved?

Judge Walton: Well, again, I think the area in which I grew up, which is fairly conservative, and the family in which I grew up, which had basically conservative values, had an impact on how I think. Even though my parents were Democrats, they were very conservative people. And I think
they imparted those views to me. I do believe the government has a role
to play in providing equality to all of its citizens, but I also think that there
is a limited role the government has. I do not think that has really
changed. Politically, I mean, I sort of am out of the mainstream of politics
now, as a result of what I do, so I do not really get involved in politics.
Obviously I have views about politics, but I try and not let those views
impact on how I decide cases.

Harold Talisman: I think we might have hit on this earlier, noting your teaching experience.
And I notice I think we have already covered that. I do not think we need
to go through that. One of things that I noticed is that you have had, you
have been the chairman of the, what, National…

Judge Walton: Prison Rape Elimination Commission.

Harold Talisman: Discuss that whole bit and tell us what that is like.

Judge Walton: That is still an ongoing process. It was supposed to only be a two-year
assignment, but for reasons that I do not need to discuss, the tenure has
gone beyond the two-year period. It has been very important and has been
enlightening. I have traveled throughout the country conducting hearings.
Last week, when I was in Louisiana, I visited the Angola State Prison in
Louisiana, which used to be the most violent prison in America. They
have made dramatic changes and it is a very different environment now.
But I have had the chance to go in many correctional facilities as a result
of this. We have held hearings, we have heard from people who have
been victimized by prison rape while they were incarcerated and it is an
important effort. I hope what we recommend to the president, the attorney general and the Congress will ultimately have an impact, because the reality is that most people that we lock up will come back into society and if, while they were incarcerated, they were brutalized in the way that we are examining in the Commission, I think it only makes them more of a threat to society and makes it more likely that they are not going to be able to re-enter society with an attitude that is going to keep them out of trouble. So, it is a very important effort and I hope we can make a difference.

Harold Talisman: Well, I am getting near the end here and I wanted to ask you about your family. I know you have told me that your wife is a doctor, you have a daughter who is…[End Tape 3]

Harold Talisman: Judge Walton, we are getting near the end of this interview and this is now tape number four and I hope maybe we will conclude with this. I would like to discuss your family. I know you have told me your wife is a doctor. How long has she been a doctor?

Judge Walton: My wife has been a doctor now, she would have probably graduated in 1991 or 1992.

Harold Talisman: Does she specialize in anything?

Judge Walton: She is a dermatologist.

Harold Talisman: A dermatologist. And when and how did you meet her?

Judge Walton: I met my wife when she was on jury service in the Superior Court. Not on my jury, but she happened to be at the courthouse on jury service and she
was sitting with a friend of hers, who happened to have previously been my mechanic. I used to drive a Corvette. He worked at a Chevrolet dealership and he had worked on my car and, in fact, was still working on my car part-time. He had left the dealership and became a police officer and he was down here on a case. And he and my wife had gone to high school together and they were sitting there talking and I stopped to say hello to him and she was the one who took an interest. She gave him her phone number and at that point I was actually dating someone else and when that broke up I gave her a call. And we dated for a little less than two years and then we were married.

Harold Talisman: And your daughter is how old?

Judge Walton: She is sixteen.

Harold Talisman: Sixteen. So, she will shortly be going to college.

Judge Walton: Yes, she has two more years of high school, she is in the tenth grade now, so she has two more years. Next year we will have to start making the rounds and looking at colleges.

Harold Talisman: Does she have any particular interest that you can see at this point?

Judge Walton: Probably the arts. I think she wants to be a fashion designer. Hopefully, she will do something that will give her a more concrete grounding. But that is what she says she wants to do.

Harold Talisman: Your mother and father raised three children. All three graduated from college, took up professions. You told me your brother and sister are teachers. To what do you attribute this? I mean, your mother and father
were not college graduates and they had a tough, you know, time raising
their kids, I am sure, in Donora. To what do you attribute the fact that all
three kids ended up going to college and having successful careers?

Judge Walton: Well, we were blessed. We were very fortunate to have the parents that
we had because there were a lot of young people who grew up in my
community who had just as much on the ball as we had, and I do not
doubt could have done all of the things that we have been able to do. The
lacking ingredient that they had were my mother and father. My parents
centered their entire life around their children and they made many
sacrifices under difficult circumstances economically to make sure that we
had opportunities to do things that otherwise would not have been
available if we did not have the type of parents that we had. I am sure
they went without a lot to give us what we have been able to acquire.

They always let it be known that they expected us to get a higher
education, so, I mean, that was one of the first ingredients. They always
let it be known that we had the capacity to do whatever we wanted to do,
if we set our mind on it. They also instilled in us a very strong work ethic,
even when the steel mills went out of business and there was no work
available for my father to do, he did not just sit at home. He had to work
on the dump truck for the city in order to get, they did not have the
welfare payments that they have now, but we used to get what was called
surplus food. And, in order to get the surplus food, he had to work on the
truck. He also had a plot of land that somebody let him use out in the
country, outside of Donora, that he farmed. So, he raised crops and they were frozen and we ate them during the winter. I mean, he was just a hard-working person.

My mother, even though she was a housewife, eventually she did get a job. But at the time we were young, the only job available for a black woman in our town was doing housecleaning, because she could not even get a job at the five-and-ten-cent store because they would not hire blacks. And even though those deprivations existed in her life, my mother was an honor student in high school and regretted that she had never been able to go to college. My father provided one aspect of what we needed as children, my mother provided, I think, that incentive for us to go to college because it was something that she always preached to us. And we were just blessed to have the parents that we had because there is no question that without them, none of us would have been able to do the things that we have done.

Harold Talisman: Now, you briefly mentioned to me initially that you lived in an apartment house owned by your grandmother, I believe it was. What kind of an influence did she have on your early life?

Judge Walton: Well, my grandmother was an interesting person. She and my grandfather had initially operated what I understand was the biggest speakeasy in western Pennsylvania, at that location. It was a large tenement that had a huge room or hall above us, which used to be a dance hall. There was another large room which was a pool room and they had a huge kitchen
where they would cook food. And then they had on the third floor actually a number of rooms, so it was like a hotel. And the liquor was made in the basement.

When they eventually got out of that, my grandmother became extremely religious. She joined a holiness church with a minister from South Carolina and that hall, that used to be the dance hall, became a church. And so everyday, because they had church everyday, we went to church. Either because we were actually in the church itself or we were right below it and you could not escape it because the members were extremely vocal. But, my grandmother, she was a very tough cookie; she had to be. And I think a lot of the toughness she had was something she imparted to us. She would preach to us, you know, right and wrong and she provided good role modeling, as my parents did.

I think my grandparents on my father’s side, however, I think had a greater influence. They, again, were just extremely solid individuals; one had a third-grade education, one had a fourth-grade education. But they were self-taught, they both read well. Their children all had at least high school educations and one, two actually, graduated from college, which at that time was also unique. So my father, obviously, he did not go to college but what was instilled in him by his parents are the same things that he instilled in us. And I spent a lot of time with my grandparents on my father’s side, as did my brother and sister, and they played a
significant role, even to a greater extent than what my mother’s mother did.

Harold Talisman: You told me that your dad had some artistic ability. Did he ever get a chance to use that?

Judge Walton: Not really, except for things that he would do for the church. He would do drawings and things of that nature, but, no, he really did not have that opportunity. He went off to war after college, he joined the Navy, high school I mean, he joined the Navy. And, he used to talk about how, you know, he joined the Navy because he really wanted to fight for this country, but he was not permitted to. He had to do support-type things for the Navy, but he was not permitted to actually engage in fighting activity because he was black.

But, you know, my parents were amazing people, despite the deprivations that they experienced because of being African American, they never, ever harbored and never imparted to us any sense of anger or hostility. My mother and father had very good friends who were white. And they never did anything that made us harbor such anger, and I think that was a key that helped us, because I have seen a lot of blacks who have such anger and sense of hatred because of what may have happened to them or happened to their forebears, that that anger and that hatred impedes their ability to achieve the success that otherwise they could. And I think my mother and father understood that. That despite what they had experienced and despite how, maybe, personally resentful they may
have been about that, they did not want to do anything that would cause
their children to harbor those types of feelings that would, I think they
understood, impede our ability to otherwise be successful in life. So, like
I said, I just had great parents and I miss them tremendously.

I had the opportunity, once I started to make a decent salary, to
take them on vacation with me for a number of years in the Caribbean.
Before that I think they had been to Canada once or twice on bus trips, but
they had never been on an airplane and otherwise had never been outside
of the country. And, so, for about eight to ten years, every Thanksgiving,
I would, along with my family, take them to a Caribbean island and I think
it was something that they really enjoyed. And it was something I was
able to give back to them based upon what they had done for me.

Harold Talisman: Well, thank you very much for this interview and it has been very
enlightening.
Oral History of Reggie B. Walton

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Judge Reggie B. Walton

Judge Reggie B. Walton assumed his position as a United States District Judge for the District of Columbia on October 23, 2001, after being nominated to the position by President George W. Bush and confirmed by the United States Senate. Judge Walton was also appointed by President Bush in June of 2004 to serve as the Chairperson of the National Prison Rape Reduction Commission, a two-year commission created by the United States Congress that is tasked with the mission of identifying methods to curb the incidents of prison rape. Former Chief Justice Rehnquist appointed Judge Walton to the federal judiciary's Criminal Law Committee, effective October 1, 2005. Judge Walton previously served as an Associate Judge of the Superior Court of the District of Columbia from 1981 to 1991 and 1991 to 2001, having been appointed to that position by Presidents Ronald Reagan in 1981 and George H. W. Bush in 1991. While serving on the Superior Court, Judge Walton was the court’s Presiding Judge of the Family Division, Presiding Judge of the Domestic Violence Unit and Deputy Presiding Judge of the Criminal Division. Between 1989 and 1991, Judge Walton served as President George H. W. Bush's Associate Director of the Office of National Drug Control Policy in the Executive Office of the President and as President Bush's Senior White House Advisor for Crime.

Before his appointment to the Superior Court bench in 1981, Judge Walton served as the Executive Assistant United States Attorney in the Office of the United States Attorney in Washington, D.C., from June, 1980 to July, 1981, and he was an Assistant United States Attorney in that Office from March, 1976 to June, 1980. From June, 1979 to June, 1980, Judge Walton was also the Chief of the Career Criminal Unit in the United States Attorney’s Office. Before joining the United States Attorney’s Office, Judge Walton was a staff attorney in the Defender Association of Philadelphia from August, 1973 to February, 1976.

Judge Walton was born in Donora, Pennsylvania on February 8, 1949. He received his Bachelor of Arts degree from West Virginia State College in
1971 and received his Juris Doctorate degree from The American University, Washington College of Law, in 1974.

Judge Walton has been the recipient of numerous honors and awards, including his inclusion in the 2001 edition of The Marquis Who's Who in America, the 2000 edition of The Marquis Who's Who in the World, the 2000 North Star Award, presented by The American University, Washington College of Law; the 1999 Distinguished Alumni Award presented by The American University, Washington College of Law; the 1997 Honorable Robert A. Shuker Memorial Award, presented by the Assistant United States Attorneys' Association; the 1993 William H. Hastie Award, presented by the Judicial Council of the National Bar Association; the 1990 County Spotlight Award, presented by the National Association of Counties; the 1990 James R. Waddy Meritorious Service Award, presented by the West Virginia State College National Alumni Association; the Secretary's Award, presented by the Department of Veterans Affairs in 1990; the 1989 H. Carl Moultrie Award, presented by the District of Columbia Branch of the National Association for the Advancement of Colored People; the Bar Association of the District of Columbia's Young Lawyers Section 1989 Award for Distinguished Service to the Community and the Nation; the 1969 Dean's Award for Distinguished Service to The American University, Washington College of Law; and the United States Department of Justice's Directors Award for Superior Performance as an Assistant United States Attorney in 1980. In addition, April 9, 1991, was declared as Judge Reggie B. Walton Day in the State of Louisiana by the Governor for his contribution to the War on Drugs. Judge Walton was also commissioned as a Kentucky Colonel by Governor Wallace G. Wilkinson in 1990 and 1991, which is the highest civilian honor awarded by the state of Kentucky. Numerous mayors in cities throughout the country have bestowed similar honors on Judge Walton.

Judge Walton was one of 14 judges profiled in a 1994 book entitled "Black Judges On Justice: Perspectives From The Bench." The book is the first effort to assess the judicial perspectives of prominent African-American judges in the United States.

Judge Walton traveled to Irkutsk, Russia in May 1996 to provide instruction to Russian judges on criminal law subjects in a program funded by the United States Department of Justice and the American Bar Association's Central and East
European Law Initiative Reform Project. Judge Walton is also an instructor in the Harvard University Law School's Advocacy Workshop and a faculty member at the National Judicial College in Reno, Nevada. Judge Walton has been active in working with the youth of the Washington, D.C. area and throughout the nation. He has served as a Big Brother and frequently speaks at schools throughout the Washington Metropolitan area concerning drugs, crime and personal responsibility.

Judge Walton and his wife are the parents of one daughter.
Bio for Harold L. Talisman

Harold Talisman was born on May 11, 1928 in Akron, Ohio. He received BSBA and JD degrees from The Ohio State University in 1950 and 1953, respectively. He was a member of the Board of Editors of the Ohio State Law Review.

Mr. Talisman served as an officer in the United States Navy from 1954-1956.

Mr. Talisman has practiced law in Washington, D.C. since 1956. He is a founder of the law firm of Wright & Talisman, P.C. His practice concentrated on matters before the Federal Energy Regulatory Commission, and its predecessor, the Federal Power Commission. He has represented clients before those agencies, several United States Courts of Appeals and the Supreme Court of the United States.

Mr. Talisman is a member of the District of Columbia Bar, the Bar of the Supreme Court of the United States and several U.S. Courts of Appeals.

Mr. Talisman retired in 1997 and serves as Of Counsel to Wright & Talisman, P.C. He has served as President and as a member of the Board of Directors of St. Mary’s Court Housing Development Corporation, a subsidized housing facility for low income elderly and disabled persons.
Testimony of Judge Reggie B. Walton Presented to the United States Sentencing Commission on November 14, 2006, on Sentencing Disparity for Crack and Powder Cocaine Offenses

Thank you for affording me the opportunity to appear before you today on behalf of the Judicial Conference of the United States' Criminal Law Committee. At its September 19, 2006 session, the Judicial Conference expressed its determination "to oppose the existing sentencing differences between crack and powder cocaine and agreed to support the reduction of that difference." Earlier, the Criminal Law Committee had recommended to the Judicial Conference that these positions be taken. What I indicate below are my personal views on the matter.

I personally became involved in the debate about whether there was justification for different sentences in crack and powder cocaine distribution related cases when I served as the White House's Associate Director of the Office of National Drug Control Policy in the late 1980s. At that time, I advocated for different sentences because of the greater potential for addiction from the use of crack and the level of violence associated with the crack trade which existed at

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2 While both powder cocaine and crack cocaine are potentially addictive, administering the drug in a manner that maximizes the effect (e.g., injecting or smoking) increases the risk of addiction. It is this difference in typical methods of administration, not differences in the inherent properties of the two forms of the drugs, that makes crack cocaine (continued...)
that time. However, I never thought that the disparity should be as severe as it ultimately has become.

Whether there remains justification for some level of disparity is obviously a policy decision that will have to be made by the legislative and executive branches of government. Nonetheless, it is unconscionable to maintain the current sentencing structure for several reasons.

First, although I firmly believe that people who distribute illegal drugs should be punished for their conduct, the punishment we impose must be fair. And just as important, the punishment imposed must be perceived as fair. While I cannot categorically say that some degree of difference in punishment for crack and powder cocaine offenses is not warranted, no reasonable justifications exist for the 100-to-1 disparity. The fact that crack cocaine has greater addictive potential

\[\text{2(continued)}\]

more potentially addictive to typical users. Smoking crack cocaine produces quicker onset of, shorter-lasting, and more intense effects than snorting powder cocaine. These factors in turn result in a greater likelihood that the user will administer the drug more frequently to sustain these shorter "highs" and develop an addiction.\(^3\) U.S. SENTENCING COMM’N, SPECIAL REPORT TO THE CONGRESS: COCAINE AND FEDERAL SENTENCING POLICY 19 (May 2002), available at http://www.ussc.gov/h_congress/02crack/2002crackrot.htm.

\(^3\)See footnote 6, infra.

than powder cocaine cannot be seriously challenged." However, while violence associated with the crack trade has not totally abated, it is clearly not at the level it was in the 1980s and early 1990s. Nevertheless, policy makers can undoubtedly justify some level of disparity for crack and powder cocaine sentencing. That said, I believe the following hypothetical illustrates why the current sentencing structure is not fair, nor does it have the appearance of fairness.

On the one hand, a middle class white male college student is arrested for possessing one kilogram of powder cocaine he intended to distribute to some of his fellow students. On the other hand, a black male high school dropout in the same city is arrested on the same day in an economically depressed neighborhood for possessing with intent to distribute one kilogram of crack cocaine after being stopped for committing a traffic violation. Both young men have no prior criminal

5 See footnote 1, supra

"An important basis for the establishment of the 100-to-1 drug quantity ratio was the belief that crack cocaine trafficking was highly associated with violence generally. More recent data indicate that significantly less trafficking-related violence or systemic violence, as measured by weapon use and bodily injury documented in presentence reports, is associated with crack cocaine trafficking offenses than previously assumed. In 2000, weapons were not involved to any degree by my participant in the offense in almost two-thirds (64.8%) of crack cocaine offenses. Furthermore, three-quarters of federal crack cocaine offenders (74.5%) had no personal weapon involvement. Further, when weapons were present, they rarely were actively used. In 2000, only 2.3 percent of crack cocaine offenders used a weapon. Bodily injury of my type occurred in 7.9 percent of crack cocaine offenses in 2000." U.S. SENTENCING COMM'N, supra note 2, at 100.
records, but their potential sentences are widely disparate.

In the case of the powder cocaine distributor, he faces a mandatory minimum statutory sentence of 5 years and a maximum sentence of 40 years. His guideline sentence range, with adjustments, is 37 to 46, but at least the 60 month mandatory minimum statutory sentence would have to be imposed. As for the crack cocaine distributor, he faces 2 mandatory minimum sentence of 10 years and 2 maximum sentence of life. And the crack cocaine distributor's guideline sentence is 108 to 135 months, but at least the 120 month mandatory minimum statutory sentence would have to be imposed. For the powder cocaine distributor to face the same prison exposure as the crack cocaine distributor, he would have to possess with intent to distribute at least 50 kilograms of powder cocaine, and could possess as much as 150 kilograms of powder cocaine and still be subject to the same prison exposure as the first time crack offender who possessed with intent to distribute the one kilogram of crack cocaine.

It is difficult to imagine how policy-makers seeking to reach a fair balance

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7 A detailed breakdown of the statutory and guideline sentence for both hypothetical defendants was prepared by the Court's probation office and is attached as an addendum. What is set forth below is a summary of those sentences.

8 21 U.S.C. §§ 841(a)(1) and (b)(1)(B)(ii)(II) (unlawful intent to distribute 500 grams or more of cocaine).

9 21 U.S.C. §§ 841(a)(1) and (b)(1)(A)(iii) (unlawful intent to distribute 500 grams or more of cocaine base).
between just punishment for the conduct committed by these two hypothetical defendants could conclude that the disparate sentence called for by current federal law is rationally merited. And further complicating the current unfairness in the sentencing of crack and powder cocaine traffickers is the discretion federal prosecutors have to decline prosecution, thereby leaving the two hypothetical defendants to the variables of state laws if prosecutions are pursued in state courts.

But even if policy-makers can somehow rationalize the different potential sentences these two hypothetical individuals face, in my experience many members of the general public do not. Some people fail to believe that different treatment is fair because, in their view, "cocaine is cocaine." This position overlooks the greater addictive potential of crack cocaine use, but nonetheless, I know some people who have this view. Others, however, although understanding the greater addictive potential of crack, nevertheless disagree with the imposition of different punishment. Underlying the views of many who fall into either of these camps is the belief that the policy of treating crack and powder cocaine offenders differently is unfair to those at the lower end of the socioeconomic ladder and to people of color because people in these categories are disproportionately prosecuted for crack related trafficking offenses. And my anecdotal observations cause me to conclude that these perceptions are not totally unfounded.
I do not mean to suggest that the policy became law with the conscious objective of targeting the poor and people of color. I know those were not my objectives when I worked for the White House and advocated for different treatment of the two substances, and I would not attribute such improper motives to others who took the same position. However, regardless of why the policy became law, the current state of affairs should cause the policy to be re-examined. With the tremendous increase in the number of inmates in federal prisons, and many, if not most, of this population being poor people of color (namely young black and Latino males) charged or convicted for committing crack cocaine distribution related offenses, concern should exist.


12 54 percent of all federal prisoners are currently incarcerated for drug-related offenses. Federal Bureau of Prisons Inmate Breakdown (September 23, 2006), available at http://www.bop.gov/news/quick.jsp. In addition, 34.2 percent of all federal offenders in 2005 were sentenced for drug offenses, nearly half of which concerned either powder or crack (continued..)
My experience also tells me that the attitudes of some in the general population about the unfairness of our drug laws has had a coercive impact on the respect many of our citizens have about the general fairness our nation's criminal justice system. I know from discussions I have had with people, comments made to me by potential jurors during the jury selection process, and comments made to me by jurors at the completion of trials, that some people desire not to serve on juries when crack cocaine is involved because of the negative attitudes they have about the crack and powder cocaine sentencing disparity or have refused to convict crack offenders, despite the quality of the government's evidence, because of their 

12(...continued)
cocaine. U.S. Sentencing Comm’n, 2005 ANNUAL REPORT SOURCEBOOK, Figure A (Distribution of Offenders in Each Primary Offense Category, Fiscal Year 2005), available at http://www.ussc.gov/ANNUAL/2005/Fig-a.pdf. Furthermore, “[t]he overwhelming majority of crack cocaine offenders consistently have been black 91.4 percent in 1992 and 84.7 percent in 2000.” U.S. SENTENCING COMM’N, supra note 1, it 62.

attitudes about the current sentencing structure.\textsuperscript{14}

In conclusion, the collateral consequences resulting from the policy decision to differentiate between sentences imposed on offenders convicted of crack cocaine related distribution offenses, as opposed to the sentences imposed on offenders convicted of powder cocaine distribution related offenses, warrants a re-evaluation of the policy. The failure to do so has left many to believe that there is an indifference to the real and perceived unfairness of the policy because of the population is disproportionately impacted by it. As a nation that prides itself on treating all who appear before our courts of law with fairness and equality, the time has come to address a vexing problem for those of us who are entrusted to administer the system and those who suffer the consequences of the policy.

\textsuperscript{14}See William Spade, Jr., Beyond the 100:1 Ratio: Towards a Rational Cocaine Sentencing Policy, 38 AZIZ. L.REV. 1233, 1279-84 (1996) (describing resistance to the sentencing disparity on the part of judges, juries, and prosecutors, and stating that “[a]necdotal evidence from districts with predominantly African-American juries indicates that some of them acquit African-American crack defendants whether or not they believe them to be guilty if they conclude that the law is unfair”); see also Andrew J. Fuchs, The Effect of Apprendi v. New Jersey on the Federal Sentencing Guidelines: Blurring the Distinction Between Sentencing Factors and Element of A Crime, 69 FORDHAM L. REV. 1399, 1437 (2001) (stating that “[a] jury could become conscious of this disparity if it was privy to sentencing information in a case involving defendants charged with possessing both powder and crack cocaine. After being informed of the penalties associated with the crime, jurors may hesitate to reach a verdict that would relegate the defendants to such disparate periods of incarceration”); Gerald F. Uelmen, Perspective on Justice: Why Some Juries Judge the System, LOS ANGELES TIMES, Jan. 24, 1996, at 9 (noting that “growing numbers of jurors deeply distrust the system that they are given the power to control,” in large part because of racial disparities in drug sentencing).