

November 7, 1996

REMARKS FOR UNVEILING OF PORTRAIT OF JUDGE GREENE

Mr. Chief Judge -- may it please the Court:

Judges, family, colleagues and friends of Harold
Greene.

This is the 31st year of my professional relationship with Harold Greene. He's also my friend. And this is an occasion to share with you some observations about him and his public service.

Judge Greene is personable, self-mocking and easy to like. He enjoys human contact and has a gifted mind and a quick wit. He writes well and quickly. Harold is committed to public service; and cares about the law and fairness. And he has the courage to seek out and master challenges.

Is he perfect? Almost. He has only one limitation that I know of: lack of complete modesty.

Recently, one of Harold's law clerks was complaining about judges thinking they are almost deities. Quick as a wink, Harold shot back, "What do you mean, almost."

Service in the Civil Rights Division

When I entered the Department of Justice in 1961 as an Assistant to the Solicitor General, Harold had been there for four years. He joined the Civil Rights Division upon its creation by Congress in 1957, and became the first Chief of the

Appellate Section. Harold held that post until the Voting Rights Act was assured of passage in 1965.

With notable exceptions led by Frank M. Johnson and Skelly Wright, most of the district judges before whom the Civil Rights Division was litigating uniformly ruled in favor of the defendants. So Harold and his small band of five or six lawyers took an unending stream of appeals to the Fifth Circuit where Chief Judge Tuttle and Judges Rives, Wisdom and John R. Brown drew on Harold's briefs to reverse and begin the correction of long-standing wrongs.

Of course, signal civil rights cases went to the Supreme Court where Harold's name and hand were on every brief. The case names are a "hall of civil rights fame," to mention just a few: Baker v. Carr, presenting the question whether the Fourteenth Amendment protects against gross malapportionment; Gray v. Sanders, whether county unit plans that diluted the votes of residents of populous counties are constitutional; Louisiana v. United States, whether the State's "constitutional interpretation test" for qualification as a voter violated the Fifteenth Amendment; Shuttlesworth v. City of Birmingham, whether state convictions of blacks for sitting in at lunch counters constituted a denial of equal protection of the laws; and Griffin v. School Board of Prince Edward County, Virginia, whether the closing of public schools facing desegregation

worked a constitutionally impermissible discrimination against blacks.

And when case-by-case litigation proved the inadequacy of existing federal laws, Harold put his experience, intelligence and creativity into drafting of the Civil Rights Act of 1964 and the Voting Rights Act of 1965. Victory, it is said, has 100 fathers, defeat is an orphan. Well, Harold is a true father of these great laws of the Second Reconstruction.

Appointment to the Bench

In 1965, President Johnson nominated Harold for the Court of General Sessions, the District of Columbia's trial bench. Even The Evening Star praised the selection and Senator Philip A. Hart noted the qualities that would make Harold an outstanding judge:

"All of us who had daily discussions in developing [the Voting Rights Act] were impressed with the quickness of mind of Harold Greene, his magnificent temperament, his ability to adjust to and understand competing points of view, and to contribute materially toward the resolution of conflicts
* * * ."

Harold served on that bench for 13 years, 12 of them as Chief Judge.

He was a "triple threat" player, strong as a judge, as an administrator, and as a leader. He worked unstintingly to elevate the caliber of the court and guided it through growth from 16 to 44 judges and a total reorganization under the 1970

D.C. Court Reform Act which expanded its jurisdiction in the image of a full state court system and renamed it as the Superior Court. And in his spare time, Harold worked to conceive and secure \$40 million for construction of the new courthouse.

I recall in 1967-68 seeing Chief Judge Greene in action, affirming his commitment to fairness and respect for individual rights. Harold, Mayor Walter Washington and I, as the Attorney General's representative, were making plans for handling mass arrest situations. Harold was adamant that there would be no mass arraignments or truncated procedures. He held fast to this position during the disturbances following the assassination of Dr. Martin Luther King, keeping the court open around the clock for five days, drawing on the bar for volunteer lawyers for those accused, and arraigning in the regular way each person charged with a violation of law.

Service as a Judge of the U.S. District Court

In March 1978, President Carter nominated Judge Greene for this District Court. Again the Senate, the bar and the press applauded the choice. Representative was the Washington Post which called it "an excellent selection," and added:

"[It is] sad only in that it will mean a loss to the local court that he guided so ably to an unprecedented level of respectability.
* * * During his tenure, Judge Greene has earned a reputation both as a legal scholar and a skillful director of the transformation of the old disorganized Court of General Sessions into a large powerful Superior Court

of state-court rank -- today one of the best urban court systems in the nation."

You have heard the observations of Harold by Judge Wald of the Court which sits in judgment on the correctness of his rulings, and by Judge Oberdorfer who has been his colleague on this Court for virtually Judge Greene's entire tenure. As I prepared for this afternoon, I puzzled as to what I might add.

First, as a practicing lawyer and former president of the D.C. Bar, I can attest that the members of the bar hold Harold in the highest regard as an outstanding judge among the members of this excellent Bench. He is a "repeater" in the American Lawyer's "Best of the D.C. Circuit" evaluations.

Second, I can comment on Harold's service 1978 to '86 on the Judicial Nomination Commission of the District of Columbia. The seven-person Commission is responsible for naming the Chief Judges of the D.C. Court of Appeals and Superior Court and for selecting and presenting to the President three candidates for each judicial vacancy. Harold was steadfast in seeking quality along with diversity. His evaluations carried special weight and were instrumental in maintaining a strong and representative bench.

Finally, I can say a few words about Judge Greene's biggest case, United States v. AT&T, which brought him national fame and, for a significant period after the settlement, intense personal pain. While resolution of the case led Time Magazine to name him a runner-up "Man of the Year," citizens from far

and near sent letters "To Judge Greene who destroyed our phone system."

Judge Greene got the massive case when he joined this Bench in 1978. The Complaint, charging AT&T, the nation's largest corporation, with monopolization of the telecommunications market had been filed in 1974, but lay dormant over the ensuing 3-1/2 years.

Harold determined to prove that the federal courts could handle big antitrust cases and, with what he viewed as excellent lawyering on both sides, brought the suit to trial just after New Year's in 1981.

After 11 months of trial, 350 witnesses, thousands of exhibits, thousands of stipulations of fact, and the Court's denial of an AT&T motion to dismiss filed at the end of the Government's case, the parties in January 1982 presented a proposed consent decree embodying the terms of an agreed settlement. The terms required AT&T to divest itself of the 22 operating companies providing local phone service, representing approximately 75% of the Bell System's assets valued at \$150 billion, while allowing AT&T to retain its long-distance operations, research labs and equipment manufacturing facilities. The operating companies were required to provide AT&T's long-distance competitors with equal access to their local lines and were restricted from entering certain business where they might

use their control of local service to gain improper advantage over competitors.

After seven months of Tunney Act proceedings to assess whether the terms of the proposed decree would serve the public interest, the Judge approved the settlement and divestiture went into effect on January 2, 1984. Harold confessed he arose that morning with trepidation and experienced intense relief when he lifted his telephone and heard the familiar dial tone.

But the public was unrelenting. Citizens everywhere reacted as if a national calamity had occurred. A stream of adverse comment and hate mail erupted. The common complaint was, "If it ain't broke, don't fix it." Emblematic was a cartoon in the Washington Post depicting a harried Harold Greene tangled in an octopus of telephone cords and dangling receivers. Harold couldn't go anywhere without being challenged for wrecking the world's best phone system. I saw this myself one night when Harold and Evelyn came to my house for dinner and faced a barrage of hostile questions from other guests.

In December of 1984, a Washington Post commentator fantasized as follows: "The President decides to name Judge Greene to the Supreme Court. The call, however, cannot be completed because of circuit overload."

As we know now, the dire predictions proved false. Five years later, Fortune Magazine reported:

"Today the great majority of the country's telephone customers, large and small, declare

themselves satisfied with the service they receive. * * * The industry has evolved into an entrepreneurial, freewheeling marketplace where customers and many shareholders are reaping rewards."

Computerworld reaffirmed that assessment in 1992, noting that AT&T stock had almost doubled, long-distance rates were down 35%, the pace of innovation had accelerated, and, while the cost of local service was modestly up, the cost of equipment to consumers was down.

Harold has summed it up: "Competition is the life blood of the American system. It brings down prices and speeds up innovation. That's been the effect here."

Conclusion

Harold Greene would have made a great Justice. In my view, one I know is widely shared, Harold Greene has been for 18 years and is now a great force for justice on this United States District Court for the District of Columbia.

Thank you.

Stephen J. Pollak