ORAL HISTORY OF CHIEF JUDGE ROBINSON

This interview is being conducted on behalf of the Oral History Project of the Federal Judicial Center. The interviewer is Alice O'Donnell and the interviewee is Chief Judge Aubrey E. Robinson, Jr. The interview took place in Washington, D.C., during 1984 or 1985.

MS. O'DONNELL: A 1982 Center study of the caseload of the U.S. Court of Appeals for the District of Columbia Circuit described it as markedly different from the case mix in other circuits. Does the same hold true for the District Court for the District of Columbia?

JUDGE ROBINSON: Yes, the same holds true. Because we're located in the nation's capitol, which is the seat of the federal government, we get more than our proportionate share of civil cases, which involve complex and significant legal, economic, and social issues, many of which have national impact. The *AT&T* case is one example. Our multi-district cases involving Swine Flu, the Air Florida crash, the 007 Korean Airline case, all of these cases require a substantial exercise of judicial effort, more so than the ordinary civil jury case. And the complexity in our caseload is documented by the statistics kept by the Administrative Office and that we have the highest weighted caseload average of any district court in the District of Columbia, and it's not anticipated that this is going to change in any fashion.

MS. O'DONNELL: You said of any caseload in the District of Columbia.

JUDGE ROBINSON: In the nation.

MS. O'DONNELL: In the nation, yes.

What percentage of your caseload involves administrative agency issues? And I was thinking of the fact that they have so many on the circuit level.

JUDGE ROBINSON: Well, that question is really one that can only be answered by saying that the impact of the administrative agency cases in the Circuit Court is far different from our own court for the simple reason that many of the agency's cases they have are on direct appeal from the agencies and never come through our court so that we do not have any significantly greater portion of our cases that are administrative agency cases.

I was going to suggest that you eliminate that question.

MS. O'DONNELL: I tried to get the figures out of the Administrative Office reports, and they disagreed.

JUDGE ROBINSON: No, you cannot.

MS. O'DONNELL: Do the kinds of cases which come up on your docket present any special problems because of the divided jurisdiction in the District of Columbia?

JUDGE ROBINSON: Not insofar as the civil cases are concerned, but they do present a difficult and special situation insofar as the criminal cases are concerned because under the existing statutory arrangement in the District of Columbia, federal indictments can be joined – well, federal crimes can be joined with local D.C. crimes in a single indictment, and when that is done, they are tried in this Court, and when they are tried here, the problem we have with different evidentiary standards frequently that have to be applied, and

there's also the question of procedure that may arise that causes us to have to make a decision between what we'll do and how we are going to do it because of this mixture. By and large, under the direction of our Circuit Court of Appeals, we have adapted the Federal Procedures to the extent that we haven't been precluded from doing so by statute. Those procedures we utilize in handling the local offenses that are joined.

MS. O'DONNELL: Were you on the Court, Judge, before they changed the jurisdiction, transferred a lot of the jurisdiction?

JUDGE ROBINSON: Yes I was.

MS. O'DONNELL: Has it made a lot of difference in your personal workload?

JUDGE ROBINSON: Oh yes. It's made a difference in the workload of all the judges on the court because prior to the court reorganization in 1970, our jurisdiction encompassed all of the felony criminal jurisdiction that existed in the District of Columbia whether it arose out of the commission of local offenses or whether it arose out of the commission of federal offenses so that we were basically, through all intents and purposes, a criminal trial court for a number of years, and most of our judges spent the vast majority of their time trying criminal cases, and we tried those cases day in and day out because the incidence of crime was still very large, and we had exclusive felony jurisdiction arising both under the District of Columbia statute as well as all the criminal jurisdiction that many other districts in this country didn't have under the federal criminal statute.

MS. O'DONNELL: So it was bound to make a difference, but the reason I ask, Judge, is because at the Panel Conference and other meetings that I attended, discussion came up and questions naturally followed with what happens to a court when you change jurisdiction like that or you eliminate certain types of cases, does that mean that the lawyers, thinking that they will get an earlier trial, file more cases?

JUDGE ROBINSON: Well --

MS. O'DONNELL: I talked to Chief Judge Jones about that once. He didn't think it would make any difference.

JUDGE ROBINSON: I indicated that we were in that situation by virtue of the criminal jurisdiction that we had. Insofar as our civil jurisdiction was concerned, there was not a great impact because much of the civil jurisdiction that was separated out did not involve trials, but it certainly did involve a lot of work when we were considered with the probate law of the District of Columbia. We were a court at one time that was involved in, handled all the divorce, you had the divorce jurisdiction in the District of Columbia, and that was separated out. That was done even before the Court Reorganization Act in 1970. Now as far as choice of forum is concerned, lawyers will always – it cannot be assumed that lawyers will always file in the forum in which they expect to get the quicker trial. There are many other considerations that are involved. Are they comfortable and do they have experience with the bar of the particular court. Their perception of

how the case will be treated vis-à-vis the law in one court over or against another. So that I don't think that there was the latitude of choice of forum that suggested that the impact would greatly increase our civil caseload. If I understand your question correctly, or your concern.

MS. O'DONNELL: Is a District of Columbia lawyer going to file more cases in the District Court here, your court, if he thinks he'll get a faster trial than he would in the Superior Court?

JUDGE ROBINSON: He will if he practices in both courts. There are many lawyers who limit their practice, not exclusively, but almost so, to one court or the other, and there are significant, I feel that there are a significant number of lawyers who do not feel comfortable practicing in the federal court, that they choose to remain in the local court. But if there are time constraints, and if they are looking for verdicts which they think that the lower court will not give them, they will file here. Except that there is one initial hurdle that they have to be willing to overcome, and that is that they can file a lawsuit here for $10, and it costs $60 to file a lawsuit in Superior Court, and we have been trying for some time to get Congress to permit us to change the statute. The statute has to be changed by Congress is what I'm trying to say. We are limited to charging $10 for a civil complaint in this court. Superior Court can charge $60. So if, between the combination of several things – filing fees, a perception that they can get to trial more quickly, and the perception that because it is a federal court they may

achieve a greater verdict if it's a jury case. Lawyers who are comfortable with the federal system and who have had some experience practicing in this court, will file here.

Charles: I think we'll recast our order of questions a little bit because 4A will now be a perfect follow-up to this discussion of preference in this court for civil matters.

MS. O'DONNELL: We put one in today, Judge, which reads: Your current disposition time for civil cases is half as much as the national average for all district courts. How did your court achieve such a record of efficiency? We are looking for special things that you might do that would be of not only interest but be of help to other courts.

JUDGE ROBINSON: I don't think that the court is solely responsible for that. I think if you look at other statistics, you will show that our total average caseload per judge is significantly lower than a large number of other courts in the country. We do not carry a tremendous overall caseload so that our per-judge caseload enables our judges to spend more time with each of the cases for which they are responsible. And to the extent that a judge can spend time with a case, he can control discovery, and in controlling discovery, he has a much better idea of what cases will in fact go on to trial and what cases will be disposed of by settlement, and he also has the opportunity to deal with a large number of cases that are disposed of by motion, particularly motions for summary judgment. So the disposition

time in my judgment is related basically to two major factors: the overall caseload responsibility of a judge and the ability of any particular judge to control, exercise strong control, over his caseload, even if that caseload is a large one.

MS. O'DONNELL: The next one, and we drafted three this morning: Are your judges at peak efficiency right now do you feel?

JUDGE ROBINSON: Well how do you measure the efficiency of a judge? Is it statistics in terms of what they show as to number of dispositions, when dispositions can range all the way from the most miniscule kind of matter to one that may have involved as many as several months of trial? I don't know how you would measure efficiency, and if I could understand how we could measure judicial efficiency – it cannot be done objectively, except as you look at a total court structure. If, given our caseload, and given an incremental increase in that caseload every year, we were not reasonably keeping up with overall disposition, then you could say that as a unit, as a court, we were not operating efficiently. But that would not mean – even that would not mean that there might not be individual judges who are operating at peak efficiency. But if as you looked at the overall operation of a court you saw that in no area was it making any progress, then you could say that that court is operating inefficiently. I just don't know how I could get a handle on what you mean by the efficient operation of the court. Our judges are working conscientiously. Some of them are

overworking themselves because that judge is that kind of a person. We have judges who are workaholics and they just get immersed in what they're doing and they just go and go and they drive everybody around. But that doesn't make for efficiency necessarily. But I don't know how you would measure the efficiency of – when you're talking about the court, you're talking about the judicial work that's being done, is that correct?

MS. O'DONNELL: Yes.

JUDGE ROBINSON: What did you have in mind when you suggested the question?

Charles: Two things. I guess when we said "peak efficiency," we meant is there any way you can get the disposition down from eight months to seven months? Eight is a pretty good figure to begin with.

JUDGE ROBINSON: It is necessary, yes, for many reasons to translate our work into statistics. But no court system worth having and maintaining, in my judgment, can be operated on the basis of statistics no matter how finely they're refined. Our job is to see that people who are in difficulty with the criminal law or who have problems, one or the other, business or personal, can have their problems resolved so that the bottom line resembles as closely as we perceive it, justice. If to achieve that means that we have to spend eight months, and if in spending those eight months we have refined it so that the net result is justice, then we've done our job. This is not to say that there may not be situations in which we can do it much more quickly, but

the aim is not how fast, not how many of them run through the system, not how many you can take on. The aim is to see that the people we deal with feel that they have been fairly dealt with. And also you have to remember that in doing this work, we are not machines. We who do the work are not machines, and there are peaks and valleys in our days and in our weeks and in our years. We cannot drive ourselves day in and day out for an extended period of time, otherwise it would be wise to give us short terms.

MS. O'DONNELL: Are there some judges who just naturally work faster or smarter?

JUDGE ROBINSON: Yes. All of us have different work habits and work styles, and what will work for me will not work for X. Some judges like to do all of their own drafts, they like to write things out. Other judges are comfortable with dictating. Other judges are comfortable with doing little writing, spending more time in discussions with their law clerks, spending more time in trial of cases. What works for some does not necessary work for others. There's just no one pattern. You do what you can fit.

Charles: Even looking at reversal statistics wouldn't give you the answer then, would it, because that wouldn't tell you whether the litigants feel they have been fairly treated.

JUDGE ROBINSON: No. That doesn't have anything to do with it because so many of the reversals are on legal matters. So the average litigant, unless he's extremely sophisticated. Are you talking about a reversal here or a

reversal in the Supreme Court? Because we have that happen from time to time.

Charles: I was suggesting this morning as we thrashed this out that one measure of efficiency is number of cases decided if the reversal rate is no greater than the norm, and it isn't but from what you're saying, I think you're indicating that that's not all there is to it because as you say, there is this perception of how the litigants feel they were treated that equates into a decision can be as right as rain but if you got there too fast, nobody feels that enough time was put into it.

JUDGE ROBINSON: Well they may or may not. I'm just trying to indicate that you lose the very flavor and essence of a judicial system if your focus is always going to be on efficient operation equating it to a strictly business situation. And what you say about reversal rate, that wouldn't be any indication.

MS. O'DONNELL: There are fifteen authorized judgeships, and I've counted five senior judges. Do you feel you have enough judge power?

JUDGE ROBINSON: We do, at our present rate of filings, both civil and criminal, and that's primarily because, as I indicated, all of our judges work and they work diligently, and with the support that we get from our senior judges, we are able to control our caseload. It's a good situation, and we see no necessity, we are unable under the present format to even begin to suggest that we need additional judges because the judgeship needs are based on weighted caseload filings. It's a statistical analysis and no consideration is

given to little other than statistics. No. We do not feel that we are under any pressure. Now in addition to our judges, one other factor that is of considerable note is the fact that we are supported by three magistrates. Those magistrates, especially in the criminal area, are very helpful keeping the criminal caseload, the preliminary matters that are involved in that, and in the civil caseload are being utilized by most of our judges to assist us in the discovery process, and acting as special masters when we find that we need them, and taking care of the trial of cases where the parties consent to trial before the magistrate. We are not under any great pressure in terms of our overall workload to lead to requests for judges.

MS. O'DONNELL: We'll go on if we may to the District of Columbia. I tried to find out how many square miles and I got varying numbers from about fifteen square to sixty-seven. I called the District of Columbia Committee in the Senate, and they didn't even know, but they said try 67 or 65, which would include the Potomac.

JUDGE ROBINSON: [Laughter]. You see, what happened is it used to be a 10-mile square. A perfect square.

MS. O'DONNELL: That's in the very early --

JUDGE ROBINSON: That's right, so therefore you had 100 square miles, but what happened is everything that was formerly the State of Virginia went back to Virginia, and when that was done, that left us with – that's why the shape of the District is the way it is. The river cuts it off. Now you'd have to have

somebody measure out the curves in the river and find out how many square miles Virginia took back.

MS. O'DONNELL: What I was aiming at in this question, Judge, was that you have a unique situation here. All of your jurisdiction is in this one geographical area, all your judges are in one courthouse. You see each other more. Does that make your work as a chief judge easier? Does it help any?

JUDGE ROBINSON: Yes. I think it makes it easier. In the sense that because we are all located physically in one building provides the opportunity for much more personal communication and contact which helps in administering our court because along with that comes a great deal of collegiality which one needs to have new ideas presented and discussed, in terms of how to function as a whole. There is never a problem involved with travel. I would say yes. Although I have not had the experience, obviously, in a different kind of venue.

MS. O'DONNELL: Can you sometimes meet a judge in the corridor, for example, and say, "What do you think about this or that?"

JUDGE ROBINSON: Oh yes.

MS. O'DONNELL: Or even an administrative problem like some judge needing more books in his library or something that you have to pass on as chief judge.

JUDGE ROBINSON: We have a lot of informal contact. One tremendous advantage we have about both being located in one building is that we have this opportunity to have frequent and informal lunch sessions together where we can

discuss informally lots of things. It's much easier to have regular meetings in court, much easier to have committee meetings, and much easier to involve the lawyers in the community who are active in litigating in the court because the community is circumscribed. And one of the things that you're constantly involved with is having our reaction to some of the things that we're doing, getting input from practicing lawyers in ways that we can improve how we do things. So having them in a relatively small geographic area is also very helpful.

MS. O'DONNELL: If you can, if I may ask, the new crime bill of 1984 which creates the Sentencing Commission, and my next two questions are going to be what do you think about the Sentencing Commission in particular, and how do you feel about abolishing parole?

JUDGE ROBINSON: Well, Congress has spoken, and with the furor that has gone on for a number of years about sentencing disparity, it was an expectation that Congress went and finally enacted legislation, worked, codified, a mandatory sentencing commission, despite efforts that many district courts had made toward sentencing conferences, despite the efforts of the Federal Judicial Center in cooperation with circuit conferences around the country that have sentencing institutes. It was an idea whose time had arrived, and we who are on the bench, when Congress makes the law, it behooves us not to waste our time and energy arguing about legislation that Congress has passed. We best serve when we go ahead and

understand the legislation, the background of the legislation, and attempt to make it as effective as possible. Congress has spoken, there will be sentencing guidelines established, they will be mandated, and we have the same obligation as does any other citizen affected by legislation, and that is to operate within the bounds of that legislation until it be appealed or declared to be unconstitutional, neither of which I expect to happen vis-à-vis this new comprehensive Crime Control Act, at least insofar as the Sentencing Commission. It's a very difficult job that the Commission will have to perform. There's great input by a large number of people of what should and should not be, and we'll see. I can remember the furor when the Bail Reform Act was passed, the changes we had to adapt to. And now that they have decided that that Act needed to be amended, we'll make other changes. Back to where we were prior to the Act in many ways, except this time insofar as preventive detentions are concerned, we're going to open the book, be out in the open on the full record. And as far as the Parole Commission is concerned, there again, that's a policy decision that has been made. The parole will be around, the Parole Commission will have to operate, as I understand it, for a while because there are many people who are still incarcerated who will be subject to the statutes as they existed prior to the abolition of – it will be phased out, is that not correct?

MS. O'DONNELL: I thought it was seven, but I was corrected yesterday and they said five.

JUDGE ROBINSON: Well whatever it is, it'll have to function. Obviously functioning in the context of an entire new arrangement, it might have a different, its operation may be different. I don't know. Its judgments may be affected by what it sees is on the books with respect to defense, over whom they will have no responsibility. I don't know because Congress has spoken in no uncertain terms about the desirability of considering punishment, about the desirability of having certainty with respect to people being incarcerated, and about the desirability of removing from the community people who are dangerous to themselves and others.

MS. O'DONNELL: I'm going to skip a couple here because I'd rather spend the time --

JUDGE ROBINSON: We have plenty of time, don't we?

MS. O'DONNELL: You have to be in your seat at 3:45 for Judge McGowan.

JUDGE ROBINSON: We can come back after the ceremony. You take as much time as you need.

MS. O'DONNELL: The main thing here, and I was trying to get some of the Robinson philosophy and your outlook. Much has been said recently about the federal courts getting into too many social issues, abortion, religion, issues that possibly shouldn't even be in the court. Do you think that they really should at a minimum be out of the federal system?

JUDGE ROBINSON: Absolutely not. It's quite true there are and have been an outstanding state systems, and there are state judicial systems that can deal very effectively with these issues. If these issues did not remain in the federal system,

since the issues you pose obviously are the ones that concern the whole country, they're not local in any territorial sense, I don't know where else they would be resolved, if they are to be resolved at all, in the context of the court system. Now, obviously they can't be dealt with exclusively in the Executive Branch because of the limitations of the Executive's authority, even though there are established agencies. Legislatively, any attempt to legislate does not obviate the necessity of a court system because there is no legislation ever passed by Congress that is not challenged someplace in a court system, so I think that in that sense, I don't know where else any of these issues should arise. But more fundamentally, these issues don't arise in the abstract. They all arise in the context of individual statutory and constitutional rights, and it is the responsibility of the federal court to be the basic protector of the individual's constitutional rights of the citizens in this country. There is no question in my mind that this litigation is where it belongs, and that's in the federal system.

MS. O'DONNELL: Sometimes friction develops between trial and appellate court judges, and I'm thinking also in the state as well as the federal level, but it's based on reversals, intellectual, philosophical disagreements, disparities, and salaries, the fact that they don't have a voice on matters on council levels. Do you have any suggestions for ameliorating some of these situations?

JUDGE ROBINSON: The physical suggestion is continued contact with, discourse with, common – attempting to solve common problems with judges of different courts. To the extent that we work with circuit judges and they with us, we understand more about what is their responsibility, and they understand more about what is our responsibility. The state court systems, the federal system, many of these judges if they don't know each other have opportunities to get to know each other, and there isn't any reason for there to be walls or barriers that if they are there, there's no reason to maintain them. If they're not there, there's no reason to build them. In the first place, the most damaging thing it does is to the image that the average person has of a judge no matter what court the judge sits on. It is a fact of life in this country that the average citizen has great respect for a judge no matter what court the judge sits on. And the average citizen in this country doesn't know the difference between a state court judge and a federal judge or trial judge and appellate judge, but they do know that there are differences, but a judge is a judge is a judge. So to that extent, to the extent that we are unable to work one with the other, we are just denigrating our whole stature across the board, which is in my judgment not good.

MS. O'DONNELL: If you could make one change in the way the federal judiciary operates today, procedural or statutorily, what would it be? Would you like to see some sabbatical?

JUDGE ROBINSON: I would. If I had one opportunity to do one thing, I would establish sabbatical leave for every federal judge.

MS. O'DONNELL: Do you want to fix a time limit?

JUDGE ROBINSON: My own feeling is that one should be eligible for a sabbatical after ten years on the bench.

MS. O'DONNELL: How much time, Judge?

JUDGE ROBINSON: I would think no less than six months, ideally twelve.

MS. O'DONNELL: I found in Australia, I think they have it every six years and they get six months. That's a lot.

JUDGE ROBINSON: But I think that those of many of us, or at least I personally feel that one needs to have the opportunity after being immersed in judging, year-in and year-out, one needs to have the opportunity to step back and think, get some perspective, have the opportunity to explore some areas of the law in depth that he or she may not have had the opportunity to explore, to think about what's coming down the line. To determine whether one wants to spend the rest of his or her life on the bench given the choices that one has. From time to time I think every human being needs to reevaluate.

MS. O'DONNELL: I would like to expand on your ideas as to why. Do you think communication, just to travel and meet other judges in other countries, would that help?

JUDGE ROBINSON: I would put no restrictions on it at all. I don't think there should be any requirement that you do anything because I have enough confidence in the

integrity of the people who would avail themselves of the opportunity that they would do the kinds of things. And if it was travel they felt they needed, they would travel. Study, write, teach, they would do it. Those are the kinds of people, by and large, who have been appointed to the bench. There's a sense of dedication that one has if one stays. There is a sense of purpose. There would need to be no restrictions at all, none at all. Just the opportunity.

MS. O'DONNELL: My understanding is that there is one state that does that, that's the State of Oregon, but the drawback is that their pay stops, and they can go off I think it's a year, they can go seek other endeavors or they can just rest.

JUDGE ROBINSON: One can't rest very well if he doesn't have any money to rest.

MS. O'DONNELL: That is exactly it. So they teach, most of them.

JUDGE ROBINSON: Yes, but that's a forcing in a way. It's limiting. It's better than none, better than no opportunity for change.

MS. O'DONNELL: It's not the total answer, you're saying.

JUDGE ROBINSON: I don't think that that's desirable. What I'm talking about, of course, is the epitome and realistically I know very well the possibility of anybody ever suggest they're going to pay you to do what you want to do for a year is just about minimum, but there may be some who can afford. There may be some who are wealthy enough before they come on the bench who can afford to do what they want to do and not have to teach. But we're in a position that even if we can afford to do it, we can't do it. So I would like

the opportunity, and then it would be a choice each judge would have to make. But then it does seem to me that it's a little unfair that the opportunity doesn't exist across the board, mainly because some chose to be born wealthy and some chose to born poor.

MS. O'DONNELL: I like your word "chose." I had no choice. Judge, do you find that your administrative work as chief judge of a big metropolitan area court is very very demanding and almost too demanding?

JUDGE ROBINSON: No, I don't find this too demanding for me personally. It is demanding. I happen to enjoy it.

MS. O'DONNELL: That's what I was going to ask you.

JUDGE ROBINSON: I enjoy it, and I enjoy it because, one, there are things that I am interested in, that I've gotten interested in out of my experience working with the Center and my contact with other judges and committees, involved in some of the Judicial Conference committees, some ABA work that I've done, there are just areas of concern that I have developed that I think I'd like to see what I can do about improving the way we operate. Secondly, the other reason I say that it's not overburdening is that I have very fine cooperation with the other judges. I do not have to participate actively in the draw of new cases. I can limit myself when I do. I have charge of the grand jury, and I can do all that. I have been the backstop for the bankruptcy judge because we only have one bankruptcy judge in this jurisdiction. I picked up the slack there. I've taken special cases that I

thought would relieve other judges in the court. I've picked up miscellaneous things to complement the time that I spend doing administrative matters, which is, in my judgment, maybe 75% of the time some days, on the average I get 75%.

MS. O'DONNELL: Do you delegate some? Can you?

JUDGE ROBINSON: Oh yes. I'm supported by excellent staff. But if I begin to delegate to other judges, then I've just drawn other judges from these responsibilities in from their casework. And then the fact of the matter is there are many of us who are not interested in administration. There are others of us who are interested. There are some of us as judges aren't worth a nickel when it comes to administering anything.

MS. O'DONNELL: They don't like it.

JUDGE ROBINSON: Don't like it and can't do it. And there are others who administrate extremely well. This court was administered by Judge George Hart.

MS. O'DONNELL: He loved it.

JUDGE ROBINSON: He loved it. He was an excellent administrator. Excellent administrator. Things happen when courts have good administrators, and they need good administrators. But under the system, they may have or may not because one gets to be chief judge by seniority. You might get lucky every now and then. You have a nice, very fine person, good judge, but he couldn't let a cow out of the barn.

MS. O'DONNELL: Have you made changes here, Judge, that you're pleased with, that have been effective?

JUDGE ROBINSON: Some of the things that we are still in the process of changing, one has to do with the grand jury. We have reduced the number of our grand juries from fourteen down to six. We have greatly improved the utilization, the grand jurors' time. We have a much better grand jury organization relationship with the prosecutor and utilization of grand juries. That's one area that I think we have made some significant progress. Nothing else comes to mind, there are so many other things going on. This has been done because we have been able to involve staff in the whole process.

MS. O'DONNELL: Do you have, and I'm sure you do have, good administrative support in the personnel here.

JUDGE ROBINSON: Yes. That's an essential. We are very fortunate. The Clerk of our Court is very well trained, very experienced, works well with us, and he's considered one of the best clerks in this country. When you can rely on that kind of person who himself has developed a staff upon which he can rely on, is extremely helpful. And the same is true with our probation officers. We have a very fine probation office, and we are proud of it, and it makes a great deal of difference.

MS. O'DONNELL: Do you have two law clerks, Judge?

JUDGE ROBINSON: Each of us now can hire two, yes.

MS. O'DONNELL: That was an improvement.

JUDGE ROBINSON: It was.

MS. O'DONNELL: Could you use three?

JUDGE ROBINSON: I think not. I couldn't use three. Two is presenting problems for many judges because there just isn't physical space. We are in a situation in this building where we are just about reaching our saturation point in terms of occupancy because we share the building with the circuit court. We do have to provide space for the United States Marshal. We do have to provide space for the United States Attorney. The United States Attorney will be using much less space when the Administrative Office moves to a different building. We have a bankruptcy court here. And the circuit court has been expanded. Its membership has been enlarged, increased by one. So we're beginning to burst at the seams. And there has to be a physical place for the law clerks. I don't think there's much – I have not heard much sentiment for an additional law clerk beyond the two for district judges. Now I have heard some discussions about circuit judges. That's an entirely different situation, and I don't have or choose to comment.

MS. O'DONNELL: Charles, do you have anything you'd like to add?

CHARLES: One other thing that we haven't touched on yet. I was going to go back to one thing because I think the answer may be fascinating. If not, we can always eliminate it when we get it. This court gets a huge volume of administrative cases that the sister federal district court --

JUDGE ROBINSON: No it does not. The circuit court gets it, we don't.

CHARLES: These are all cases then --

JUDGE ROBINSON: We do get some administrative review, but our administrative review has nothing to do with the tremendous load that they have.

CHARLES: What did we discuss at the beginning that you wanted to make sure to comment on? One was the chief's load and the other was sabbaticals. So we've covered that.

MS. O'DONNELL: One of the greatest criticisms I hear, and there are two or three, one is selection of judges, and one I wanted to ask you about was plea bargaining. In briefings we all three of us do in my division for judges coming from abroad, I find that's one of the biggest criticisms. But is it a necessary evil?

JUDGE ROBINSON: It is not an evil, and it's absolutely necessary. Plea bargaining is just not understood.

MS. O'DONNELL: One judge in Australia told me when I repeated what another judge had told me, he said, "Don't pay any attention to that. He does it, but he just doesn't call it that."

JUDGE ROBINSON: Judges don't have anything to do with plea bargaining except in one instance, and that is if they get involved actively under Rule 11 in approving not only the plea but the sentence. Other than that, what goes on between the prosecutor and defense lawyer I don't have anything to do with nor any control over. So it's not a judicial problem. Plea bargaining

is the problem of the executive branch of government. It arises primarily for two reasons. One, because prosecutors frequently will deliberately overcharge and over-indict, and two, even if they don't, if they run the grand jury, grind out indictment after indictment because there are a lot of people out there who should be indicted, somebody's got to try it, and until the public is willing to just have mammoth court buildings and thousands of judges, any lawyer worth his salt as a criminal defender knows that all he has to do is ask for a jury trial and it will be impossible to have all the defendants tried. You are entitled constitutionally to a jury trial. So what does the defense counsel do? He goes to the prosecutor and says look, you make some sense, you make me an offer that my client can't refuse, I'll talk with him about it. Or if the client says "there's nothing he can charge me with, I'm not pleading to anything because I want to go to trial because I didn't do this," that's one thing, but the average plea bargain arises in a situation in which you have an overcharged defendant or he knows the court will never get the trial. They can't do much plea bargaining here because we can try them. We're in a position now where we can try – as a matter of fact, the problem we have in this court the last couple of years is getting the defense lawyers to try as quickly as we want a trial. They don't want to go to trial. You don't know any defendants who want to go to trial, you talk about speedy trial. Speedy Trial Act was not dreamed up by any defendants, except for the

sensational lawyer who wants to make a play about my client's innocence and says I want a trial tomorrow. No. So plea bargaining, there is no way that everybody, even indicted or charged, there's no way that everybody indicted, even in the federal system, who is entitled to a trial can go to trial. If we did no civil work at all, there's no way we can try them. No way. And the plea bargain is nothing more than a guy saying, "I'll tell you that I robbed him, but I didn't assault him when I robbed him. I didn't hit him. Didn't touch him. Had a gun on him." So they charge him with armed robbery. He says "I robbed him but since I didn't shoot him, I'll plea to the robbery, but you put armed robbery on me when I can get another five years because I had the gun?, no, I won't go for that." You go to trial on that. Prosecutor decides, he's got to make a decision. Can I get to trial? What have I gained if I try? That's just an illustration that popped in my head. What have I gained? Now it'll be interesting to see when they come down with these sentencing guidelines what's going to happen. Very interesting. Just the problem of mandatory minimums. You can look hard on paper if you want to. Mandatory minimums are going to require larger bench strength than Congress will be willing and more prisons than the people will ever be willing to build. Look at this community. We've had nothing but from the Hill on down, we've got crime here, people who commit serious crime ought to go to jail. There is not a single piece of legislation pending to build enough jails, or to build a

jail big enough to hold the people who are coming out of Superior Court and they now have 51 judges on that court as over against 44, and a vast majority of them are spending all their time on criminal cases. You can read in the paper right now. There is riot in the prison because of the overcrowding. You know the situation at Lorton. Uproar with the Fairfax County citizens because they are scared to death that there will be a riot. No talk yet of building a place to put those people. So it'll be very interesting to see what happens in the prison. The federal prison system is jammed full, as you know. Jammed full. And they talk about pre-trial detention. There is not a federal facility in which we can put people for pre-trial. We have to make arrangements with the local jail system to hold our federal pre-trial prisoners. The local jail system has to hold our federal pre-trial prisoners.

MS. O'DONNELL: They're boarding.

JUDGE ROBINSON: They're boarding. The same is true in Baltimore. And the locals say, you know, we get crowded too because now Mothers Against Drunk Driving want us to lock up everybody on these roadblocks. They're full on the weekends. They fill up quickly. People don't just understand. Lock them up, lock them up, lock them up. Keep them there, keep them there. I don't care, throw the key away.

MS. O'DONNELL: That's what I meant about the Robinson philosophy.

Historical Society of the District of Columbia Circuit

Agreement Respecting Oral History of Aubrey E. Robinson, Jr.

1. In or about 1984/1985, Alice O'Donnell interviewed my father, United States District Judge Aubrey E. Robinson, Jr. on behalf of the Oral History Project of the Federal Judicial Center. Bruce Ragsdale, Chief, Federal Judicial History Office of the Federal Judicial Center, has transmitted an audiotape of this interview to the Historical Society of the District of Columbia Circuit, and by letter dated April 12, 2000 (copy attached) advised that the FJC files make clear that Judge Robinson entered into the Oral History Project "with the understanding that the FJC would make the interviews available to interested researchers and publish excerpts in *The Third Branch* newsletter." Mr. Ragsdale further advised the Society by an email of October 19, 2012 (copy attached) that this oral history interview is in the public domain and that, as to the copyright in the oral history, "whatever Judge Robinson's daughter decides will apply to the Federal Judicial Center interview with Judge Robinson." Mr. Ragsdale's email continues, "If a judge or other interviewee does not wish to restrict access to an oral history, we always suggest that they sign a legal release agreement, assigning their copyright to the public domain or transferring their copyright to an institution that will make the interview public, and that this will be the best means of serving students of court history and promoting public understanding of the judiciary."

2. In light of the communications from Bruce Ragsdale of the Federal Judicial Center, and in the interest of serving the students of court history in promoting public understanding of the judiciary, I, Jacqueline Washington, Esquire, daughter of Judge Aubrey E. Robinson, Jr., do hereby grant and convey to the Historical Society of the District of Columbia Circuit and its successors and assigns all of my rights, title, and interest in the tape recording and transcript of the interview of my father, Aubrey E. Robinson, Jr., conducted in or about 1984/1985 by Alice O'Donnell under the auspices of the Oral History Project of the Federal Judicial Center and attached herewith.

3. I authorize the Historical Society of the District of Columbia Circuit to duplicate, edit, publish, including publication on the Internet, and permit use of the said tape recording and transcript in any manner the Society considers appropriate, and I waive any claims I may have or acquire to any royalties from such use.

Jacqueline C. Washington 1-10-13

Jacqueline Washington Date

SWORN TO AND SUBSCRIBED before me this

10 day of January 2013

DAN OLA GILMER JR.

Notary Public

My Commission expires: _____

DAN OLA GILMER JR.
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires May 31, 2016

ACCEPTED this 16th day of January, 2013, by Stephen J. Pollak, President of the Historical Society of the District of Columbia Circuit.

Stephen J. Pollak

Stephen J. Pollak