Oral History of STANLEY S. HARRIS
May 1, 2002

This is the third session in an oral history conducted under the auspices of the oral history project of the Historical Society of the District of Columbia Circuit. The interviewee is Stanley Harris, a lawyer in practice and in the judiciary, and the interviewer is William Ross. The date is May 1, 2002.

Mr. Ross: Stan, you had an energy -- primarily a natural gas -- law practice during the years that you were with Hogan. Could you give me sort of a brief overview of that practice?

Judge Harris: Well, that was just for I guess the last four years I was with the firm. For the first 13 years it was essentially radio and television work representing broadcast stations and networks and would-be station owners. And I think I mentioned this in our last session -- yes, I'm sure I did -- El Paso asked that the energy section of the firm be reconstituted, and I joined Frank Reifsnyder, as did Jerry Collins who later left the firm to go to Williams & Connolly, and we began doing that type of work.

Principally, and I think I also mentioned this last time, the work involved competing applications for authorization for the construction of major pipeline facilities, and day-to-day advice to El Paso, particularly, Union Oil of California, those were the two main clients of the firm in that area, and there were just three of us doing that kind of work. And I did that for about four years, but during that period, from time to time, the communications department of the firm would draft me to come back and help out with particular projects, so I was doing both.

Mr. Ross: And you had the burden of trying to keep current on both the communications and the natural gas field.

Judge Harris: It was very difficult because one cannot operate in fields like that without keeping up with developments and the law in those fields and to try to do it in two fields is far more burdensome than I had anticipated. As I think I also mentioned, I think I was the only lawyer in Washington who was simultaneously a member of the Federal Communications Bar Association and the Federal Power Bar Association.

Mr. Ross: Well I was also, as I mentioned, I represented Western Union for many years. I had all the responsibility for their regulatory work. They had a general counsel's office who was involved, and at the same time I represented a number of electric utilities and gas utilities, and I had to -- of course I had a lot of help -- at times it struck me as being too diluting and difficult.

Judge Harris: Yes. I never felt that I was able to have the degree of expertise that I wanted to maintain in both fields.

Mr. Ross: Just reading the current materials coming through would have -- it's very time consuming. Did you get into a lot of hearing work before the then FPC?

Judge Harris: Yes. One hearing that sticks out in my mind was a hearing in which Transwestern Pipeline Company and El Paso Natural Gas were competing for a major pipeline from Texas to California, and to the best of my recollection, that hearing took about nine to ten months. And that time was spent in the lower floor of the General Accounting Office Building with a windowless hearing room --

Mr. Ross: With inadequate air supply.

Judge Harris: (Laughter). Yes.

Mr. Ross: I've seen an older lawyer turn sort of blue down there and had to be

removed (laughter).

Judge Harris: (Laughter). You make me think later when I became the United States Attorney, it makes me think of the appearance of John Hinckley during his trial because they started out with Hinckley and bringing him into the courthouse by helicopter every day and that proved infeasible, so they created a mini-apartment for him down in the cell block of the United States Courthouse and as a result, Hinckley during the trial was about as pasty-faced as anybody could possibly be because he'd never got --

Mr. Ross: Never saw daylight.

Judge Harris: Never saw daylight. That's correct.

Mr. Ross: Well, those hearing rooms really were inadequately ventilated, and you were before a trial examiner at that point. Do you recall the names of any of them?

Judge Harris: I don't. I should remember someone that I spent that much time with, but I'm pulling a blank.

Mr. Ross: A man by the name of Swerdling was the Chief Trial Examiner. Did you run across him?

Judge Harris: The name of course is very familiar to me and I'm sure I did, but he didn't have that case, I don't believe.

Mr. Ross: Did you appeal -- I know you go to the commission from a trial examiner's decision. Did you go to the Court of Appeals on any of these matters?

Judge Harris: I don't have any clear recollection of doing so. I don't think so. I had quite a number of appeals that I handled in the communications area, but that was earlier and I don't recall any appeals in the energy field.

Mr. Ross: Maybe this will stimulate something. I handled many appeals in both electric company and natural gas matters from FPC decisions. I usually had to argue the case before a court of appeals. Many here in the District of Columbia, the U.S. Court of Appeals and also around the country, the Fifth Circuit in particular. Always had a great deal of difficulty with the judges understanding what was going on -- they could have boned up on FPC law, you know. And the terminology is all foreign. You never studied it in those days in law school and they might have known much about (a) public utility law or (b) about the arcane aspects of the Natural Gas Act and the Federal Power Act. And you get up to argue a case before them, usually rather convoluted and obscure and complex and technical, and you confront three men, there are usually three men, who didn't have a clue, and some of those oral arguments were Alice in Wonderland, you know.

Judge Harris: Which is one reason that I always felt whenever I had to write a brief in a court of appeals in these specialized areas that I would write the brief as though I were writing for a high school student with just a primer so that they could understand.

Mr. Ross: Little footnotes that explain what this is. One time I had a federal judge -- I can't remember which circuit it was, I was bottom side for the commission in those days and he said, "Counsel, before you start your argument, will you please tell me what Mcf means?" I figured I was in trouble, right there. He wasn't joking. This was a gas case. Did you enjoy that practice?

Judge Harris: I did not enjoy the natural gas area as much as I had the communications area. I found it much more technical and more tedious than the communications practice.

Mr. Ross: I can appreciate that. I suffered it for many years. Do you remember any particular case or individual or episodes that can bring some of that time to life as they might come to you?

Judge Harris: No. El Paso also was represented by a lawyer from Brobeck, Phleger & Harrison in San Francisco named Tony Dungan, and I remember one case being argued in the Supreme Court which Tony Dungan was arguing and Bill Douglas was still on the Supreme Court, although his health was not good, and the question of transporting large quantities of gas to California was at issue, and at one point, Justice Douglas asked the question. He said, "Well now, I understand how the gas gets to California, but how does it get back?" And I thought that was one of the more difficult questions a lawyer could be faced with because it was indicative of the fact that Justice Douglas really should have retired at that point and did not understand that the gas was consumed in California. And I remember thinking I'm not sure of the best way to answer that question.

Mr. Ross: Did you appear before state agencies or state bodies on natural gas matters?

Judge Harris: No. It was all federal entities.

Mr. Ross: And it was a question of certification authorization under the Natural Gas Act, not as much questions of pricing I take it?

Judge Harris: That is correct. Although some pricing problems arose, but most of it was certificate work.

Mr. Ross: Yes. The pricing stuff is more tedious, I will tell you, than the certificate work.

Judge Harris: I did enough of that to share your conclusion completely.

Mr. Ross: Were you involved in any Congressional dealings and representations in this area?

Judge Harris: The only thing that I can recall is being charged with occasionally following or looking into pending proposed legislation and reporting back to the client on the status of it, but not ever doing anything like testifying at that point.

Mr. Ross: Did you get -- if I might say generally -- did you in your law practice, did you have occasion to get involved in what we used to call Congressional representation?

Judge Harris: No, not really. Hogan & Hartson's policy was basically to avoid what might be broadly termed as lobbying, and if a client wanted any done, the firm would encourage the client to get somebody else to do it.

Mr. Ross: Not all lawyers take that position, but it keeps you out of complexities and difficulty.

Judge Harris: Yes.

Mr. Ross: There was a great deal of talk going on during this period, particularly at the end of it, about deregulation of natural gas that earlier had been the controversies about whether or not the producers' prices were regulated and then they were starting in towards deregulation. Did you get involved in any of this? It would have been in the very late '60s and early '70s.

Judge Harris: Well, I left at the end of 1970, and that was sort of a gleam in the potential father's eye, but I have no recollection of being active in that.

Mr. Ross: Well, I think maybe we've gone over that unless you have some other

things that occur to you.

Judge Harris: No, sir.

Mr. Ross: In 1971 you were asked to become a judge of the Superior Court of the District of Columbia.

Judge Harris: Actually it was 1970 that I was asked.

Mr. Ross: 1970. And could you tell me first of all, how you think that interest in you was stimulated. What were the political and other aspects of it, insofar as you knew them? This is a subject of great interest to the project, that's why I would like to dwell on it a little bit: appointment of judges. And what was the scenario that led to your -- of course you had been in practice for many years and were a very well known, highly regarded lawyer in a prominent firm and so, of course, you could be considered for a judicial vacancy at any time, but I gather you didn't seek this out.

Judge Harris: No, sir.

Mr. Ross: So it just sort of came out of the blue, as it were, and give me a picture of what happened.

Judge Harris: Well, the District of Columbia prior to 1971 had been a very unique jurisdiction in a number of respects. The United States District Court for the District of Columbia was the trial court of general jurisdiction in the District of Columbia, as opposed to the purely federal jurisdiction that obtained in every other federal district. And the parallel Article I court system consisted of the District of Columbia Court of Appeals as it then existed, which was small, and the Court of General Sessions, which had jurisdiction only over misdemeanors in the criminal area and civil cases which involved less than $10,000. From the Court of General

Sessions one would appeal to the District of Columbia Court of Appeals and from the District of Columbia Court of Appeals there was an appeal to the United States Court of Appeals for the District of Columbia Circuit. The United States Court of Appeals at that time was considered to have been rather liberal in the criminal area and the system didn't make a whole lot of sense analytically when you compared it with what went on in federal districts in the states. And so in 1970, Congress passed a rather massive court reorganization bill which created for the first time the Superior Court of the District of Columbia and for the first time made the District of Columbia Court of Appeals the Article I equivalent of a state Supreme Court, and as the statute put it, the District of Columbia Court of Appeals then became the highest court in the jurisdiction so that anything from Superior Court would go to the D.C. Court of Appeals and then to the Supreme Court, and the United States Court of Appeals was no longer in the posture in which it had been, and the United States District Court, which basically had had felony jurisdiction over such things as rapes and burglaries and armed robberies and murders, the only district court in the country that had that, that jurisdiction gradually was transferred to the newly created Superior Court. And with that sort of a massive court reorganization there was a need for a total of 18 new judges for both the trial court and for the enlarged District of Columbia Court of Appeals. And the administration, the Nixon administration, and how it functioned in the judicial selection area I do not know as far as any details are concerned, but then institutionally the administration made a decision that they wanted to show their good faith and good intentions by recruiting people of experience and ability to show that this is going to be a good court system. And they recruited a number of very, very qualified people. Bill Stewart from the Galiher & Stewart law firm, Paul McArdle from Covington & Burling. They were both very experienced trial lawyers.

Quite a number of very able people; Sylvia Bacon, and they wanted a mix and one of the things that they decided on is that they wanted a then young partner from one of the major firms in the city to be a part of that mix, and I became a bit of a target for that, largely I think because the -- gee, it's hard to recall titles in the Department of Justice accurately. Looking back, it's hard enough to recall in the current time phase -- but George Revercomb, whom I had known at law school at Virginia where we served on the law review together, although I'm hazy on George's exact years at Virginia and how they overlap with mine because I believe he was called back in the service during the Korean War which kicked up right about the time that I was first in law school. But George was then, I think, the Associate Deputy Attorney General and knew me rather well. I think it was George Revercomb who particularly zeroed the department's interest in on me. So I was approached and I think I said no about a hundred times. I was prospering at Hogan & Hartson and happy at Hogan & Hartson. Although I confess I was slightly less happy than I had been because I found the natural gas area in e not as stimulating as I had the communications practice, so I erable than I might have been had I been in the communications sect while I was well compensated, it's my recollection that my top ed at over a 60 percent rate.

Mr. Ross: I remember those days.

Judge Harris: And so while I would have t ay cut, income cut, to become a judge, which is pretty significant worse with the passage of time as I look back on it now, with the tax rate that high, making a lot of money, you don't end up with much, so there was that factor which contributed to giving consideration to the

possibility to going into the public sector. And as I indicated, I kept saying no and then one evening I got a telephone call from Dick Kleindeinst who was the Deputy Attorney General and later became the Attorney General. John Mitchell at that time was the Attorney General. And he said we are sending the list of new judges to the White House tomorrow and we really would like to have your name on it. And I found it very difficult to say no faced with that sort of a request. I thought the objective was good, to have as good a bunch of folks as you could get, and I ended up saying all right, figuring that okay, I'll take a shot at it, and if I don't like it I can come back to Hogan & Hartson, which of course I never did.

Mr. Ross: Right. Tell me about your first days in that job. You had a new court and a new kind of law practice. Had you been before the older court?

Judge Harris: I had taken appointed criminal cases principally in the U.S. Court of Appeals. But I had been essentially a federal regulatory agency lawyer and while I had had significant experience before hearing examiners which would be sort of equivalent to -- could be in ways equivalent to a non-jury trial -- I had not really had any court experience that was meaningful. I had helped out the trial department in several cases from time to time, both to broaden my experience and to keep fully occupied. I had done a few other things occasionally, antitrust work, trust and estate work now and then, helping out the trial department which, I think, had the largest trial practice in town, larger than Covington & Burling's, even though Covington was a larger firm. So I had some exposure, but I certainly was not a trial lawyer and to go from being a federal regulatory lawyer to a judge on a trial court of general jurisdiction necessitated a rather steep learning curve at the beginning.

I was greatly helped by a couple of factors. One, the judges such as Tim Murphy, who

had been on that court previously when it was the Court of General Sessions, the judges who had been there were enormously accommodating and tried to help orient this mass of new judges coming into the system. Also, I don't have the kind of ego that prevented me in any way from when I was handling some matter and turning to the courtroom deputy clerk and saying, "What do I do now?" And I got great help from the court's staff personnel. Among the newcomers on the court, as I mentioned, were very experienced trial lawyers such as Bill Stewart and Paul McArdle, who were enormously helpful to me. Tim Murphy did something that I have not seen anybody else do before or since; Tim would call me and say if you're free, I've got this court proceeding going on at such-and-such a time, and I would sit up on the bench with him. He would get a second chair and I would just sit on the bench and observe how he conducted it and that was good. I went on the Superior Court. I finished the year 1970 with Hogan & Hartson and then on January 3, 1971, I was sworn in on the Superior Court. In about July of 1971, I was able to go out to what was then called the National College of the State Judiciary out in Reno, which at that time was a four-week training course basically for state trial judges, but the District of Columbia judges had access to it as well. And that was an enormously instructive four weeks, and gradually I learned. But very early on Superior Court I got caught with the arraignment duty, as it is called on a Saturday. Actually, I think arraignment is probably the wrong term but presentment would be technically more accurate because it would involve the initial presentation or presence in court of those who had been arrested the night before. And with crime being what it was at that point in the city there would be 60 to 70 defendants who would have to be processed from the cell block through the court with a determination being made as to whether they would be released on bond or personal recognizance or held for further proceedings, which

involved pretty sophisticated decision making for people who have to make those choices because you've got to consider the safety of the community and you've also got to consider the rights of the defendant and it's a tough choice, and this came so soon with virtually no criminal practice, I was very concerned about how I would process 70 criminal defendants making decisions that were so vital to them, albeit ones that were not of long-term consequence. And when I took the bench, I knew that beside me would be a representative of the Pretrial Services Agency. And I thought this will not be so bad because this person is obviously experienced and that person would provide me with all the information on the defendants so that I would know what sort of a record somebody had, if he was a repeat offender. And so with the first defendant that I had, I turned to the Pretrial Services representative after he had given me the normal information and I said, "What do you recommend?" And the response was, "I'm sorry, Your Honor, we are not allowed to make any recommendations." Well, rather quickly it occurred to me that if I rephrase the question, perhaps I could get the assistance that I felt I so badly needed. So with the next one, I turned to him and I said, "If you were the judge, what would you do with this particular defendant?" And fortunately the Pretrial Services representative concluded that he could tell me what he would do without violating the prohibition against his making a recommendation. And so that permitted us to function in tandem at that very early point in my judicial career.

Mr. Ross: Clever.

Judge Harris: I also on that particular day, and this is indicative of the kind of attitude that those of us who were thrust into that newly-created Superior Court and what we ran into. George Neilson, who had been on the Court of General Sessions for a long time and was a

very experienced judge, was at the courthouse; although he was in a nearly-retired status, he was in the courthouse on that Saturday. And he called me in chambers and he said, "Stan, I'm down here, is there anything I can do to help you?" And I said, "That's very kind of you, but I'll muddle through." Well, the presentment judge not only had to do 60 to 70 adults that had been arrested the night before, but also had to then go over to the juvenile aspect of it and process the juveniles that had been arrested the night before. And Judge Neilson volunteered to take the juveniles for which I was very grateful because that involves another set of standards as to how they should be processed in a pretrial status. But Neilson was a -- that was indicative of the kind of attitude that those of us who were new to the court were encountering. At every turn, everybody was so helpful to us. Of course, when you add 15 judges to a court, you don't have space for them. So we were in an office building. The court was spread all over. Those of us who were new were in an office building and make-shift courtrooms were created down on the lower floor of -- even one or two on the upper floors -- of that building. So it was a difficult period. It was difficult for the marshals, too, because they would have to bring defendants in handcuffs for about four or five blocks from the cell block of the Superior Court over to this office building in which many of us were functioning.

And I remember, for example, later after having tried a particular defendant, I can't remember what for, and then in due course after a presentencing report had been prepared, sentencing him, and after sentencing the defendant to a period of incarceration, a far cry from what we had in the United States Courthouse where the defendant goes out the back door into the cell block, the defendant came out the same door I did and we shared the elevator riding back into the ground and me to the floor on which my chambers were located. (Laughter)

Mr. Ross: I hope he wasn't six feet five.

Judge Harris: No, there was no difficulty, but I thought what an odd situation to be in. The marshals by the way in those days when the prisoners were transported by the marshals on foot from building to building, they were pretty hard-nosed with those defendants and said, look, you make any move towards a judge or any move towards trying to get away, you're going to be shot. That had been reported to me on enough occasions for me to believe it was true, and I think they took that sort of a stern step to avoid any difficulties, and there never were any difficulties.

Mr. Ross: So the first work that you did on the court concentrated in the criminal law area?

Judge Harris: Yes, although they were rotating assignments on the newly created Superior Court. The Chief Judge was Harold Greene. Harold was very able. The court had a wonderful clerk, a man named Joe Burton, who was extremely helpful. Harold Greene, with whom I later served on the district court who became a very close friend and a judge whom I respected greatly, had one either an idiosyncracy or a failing; however, he would not post what the assignments of the Superior Court judges were going to be until the Friday before you were supposed to start into a new area on a Monday. That meant, for example, that let's say I went through a period of civil trials or criminal trials, I remember one Friday afternoon getting the next assignments and learning that beginning Monday morning I was going to be the judge in the Landlord and Tenant Branch. Well, I didn't know anything about landlord and tenant law. I learned on Friday afternoon that I would be handling a landlord and tenant case on Monday morning. The last thing that any judge wants to do is embarrass himself and to be fair to the

litigants and to the lawyers who appear before you and not knowing anything about landlord and tenant law and knowing that I was going to start in on that bench on Monday morning, I checked to see who had the landlord and tenant assignment for the most recent period, and it turned out that it was George Revercomb, who by that time had been put on the court himself. So I called George on Friday evening and made arrangements to come out and spend the better part of Saturday afternoon at his home to get an education on a crash basis as to what to do with landlord and tenant. I was perfectly willing, and did that Monday morning, to go on the bench and say, look, gentlemen, when the first case came before me, I am not experienced in this area of the law. It's in nobody's interests for either one of you to try to mislead me into a wrong result, so let's play this straight up and don't try to spin me and we'll get along a lot better.

Mr. Ross: How did it work out? You had a lot of business in that court I take it.

Judge Harris: Yes, a lot of business. And I assume it's probably still going on but the District of Columbia then had, and I'm sure still does, so many protections for tenants that any tenant who was months and months behind in his rent and the landlord would want to have him evicted, the standard practice was simply to allege housing code violations as a defense, and then you'd end up with a big dispute over whether there were in fact housing code violations that could justify a withholding of rent. So a lot of just purely deadbeat renters would take advantage of that system and tie up the court with a dispute over whether the landlord was or was not doing right by him.

Mr. Ross: Yes. I had some rental properties in the District unwisely at one time where I had some bad tenants and was unable to evict them for quite a period. I couldn't understand why it was so bad and I had a friend who had been practicing down there for years.

He kept telling me about these things and I didn't believe him.

Judge Harris: And I might note that apropos of the landlord and tenant experience which was quite interesting, some years later I dissented to the imposition of rent control in the District of Columbia. I did not prevail when the District of Columbia Court of Appeals upheld rent control by a two-to-one vote. I felt that it was unconstitutional.

Mr. Ross: This was legislation that was passed at that time by the D.C. Council?

Judge Harris: Well, so many things were happening during that period. The massive Court Reorganization Bill was passed by Congress in 1970. At that point, among other things, the President of the United States had a free choice as to who went on the Article I courts, the District of Columbia Court of Appeals and the Superior Court. Then in 1974, the so-called Home Rule Act, and I can't remember what its technical title was, was passed. And that created the City Council and gave it significantly broader responsibilities. It also had a very meaningful impact on the Article I court system in two respects. The first, for years it had been recognized that the Washington metropolitan area is one big ball of wax and so the residency requirement for judges to go on the District of Columbia courts, that is the non-Article III court, one had to be a resident of the District of Columbia, or Alexandria, or Arlington County, or Montgomery County, or Prince George's County -- anything contiguous to the District of Columbia. It was recognized that we have a large bar and that just going home across the Potomac River or across Western Avenue didn't mean that you didn't have any -- if you practiced law in the District of Columbia, it didn't mean that you didn't have any connection with the District of Columbia. That was changed in the Home Rule Act. Henceforth to go on the courts, one had to be a resident of the District of Columbia. That had a significant effect on contracting the talent pool

for available judges. It also created a Judicial Nomination Commission which was created with the objective of selecting three names to send to the President and the President would have to select one of those three names for the judgeship vacancy at issue. I have always thought that that's of dubious constitutionality, that the President of the United States has the obligation to appoint a particular judge, that is fill a particular judgeship, I think legally he should be entitled to pick whoever he wishes and that should not be delegated to an outside body which not only risked but became rather politicized as it began its functioning. And in my view, the best way to get good judges is to be able to go to them and say, for example, "Bill, I'd like you to take this judgeship. Will you do it?" The idea of having to submit your name to a nominating commission and with the majority of applicants or candidates knowing that they would be rejected and thereby lose some face with their clients or their law firms is inevitably going to cut down on your talent pool also.

Mr. Ross: It would seem so. Was that issue settled then, the issue of the constitutionality of the rent control laws? Was that the way it was left?

Judge Harris: Yes.

Mr. Ross: Had there been any further challenges or --?

Judge Harris: No, not since I believe certiorari was sought and granted. I'm hazy on some of these things, but there was a very notable landlord lawyer named Herman Miller who was very short and very rotund and extremely well known. He was a very unusual character. He would cite non-existent cases and was -- well, he was very diligent in representing a host of landlords in the District of Columbia and because of his expertise was rather successful. I believe that the case did go to the Supreme Court, but unfortunately it was argued by Herman

Miller who was not the best person to present the issue to the Court, and I don't recall exactly how that worked out except rent control has remained and has had an adverse effect on the availability of housing in the District of Columbia ever since.

Mr. Ross: So you settled into the various aspects of the work of the court?

Judge Harris: Yes. Always a variety.

Mr. Ross: Did you do work in the family law division?

Judge Harris: Yes.

Mr. Ross: Tell me about that. That's a rather special experience.

Judge Harris: Yes it is. I take my hat off to judges around the country who work in the neglect and delinquency areas. These problems are so, so difficult to deal with. Juvenile delinquency is difficult to deal with when kids are charged with crimes, but then you have dysfunctional families and trying to figure out how to deal with some of these family problems is emotionally trying as well as legally challenging. I remember in some of these neglect areas and when I had a case of that type and I would go on the bench about the first thing I would say would be something to the effect that I do not think I'm going to be able to solve all of your problems. I will do my very best not to make them worse. And working in those areas makes you want when you get home at night to give your kids a big hug.

Mr. Ross: What other aspects of the court's work were particularly striking to you, either things that you enjoyed or like you said difficult for you? Just give a sense of what it is like to have been a judge during that period.

Judge Harris: Well, there was one rather remarkable aspect to it and that was during the height of the Vietnam War protest period and all sorts of protesters descended upon

Washington and they were numerically quite large and they ran the gamut from really hard left wingers to a lot of well-intentioned folks who simply disagreed with the policy but thought they wanted to get into the protest mode also. While I was there on that court, the Superior Court, the protests reached the point at which there were massive arrests, and the court, for a period of weeks, how many I can't recall, functioned literally around the clock to be able to process them all, and a lot of the people were being detained in RFK Stadium because there was no place else to put that many people.

I did get a call one day, one of the other assignments you can get on the Superior Court is Judge in Chambers, a job in which you issue arrest warrants, search warrants, just generally available so that there is always a judge who can handle miscellaneous matters promptly. I got a call from Chief Judge Greene asking if I would take one of these protest cases for trial purposes and I agreed, and I learned later that the case had 850 defendants. I am not at all sure that I'm not the only judge in the country who has had a criminal case with 850 co-defendants, which was a bit of a nightmare to deal with.

And Judge in Chambers can be interesting. I am still haunted by one visit I had in that capacity. A woman and her lawyer came to see me. And she and he -- the woman and her lawyer -- told a rather alarming story keyed to her fear of her husband, her fear that he might do her considerable harm. And they asked that I issue an arrest warrant. I did issue an arrest warrant, but I did something which I think was really pretty unusual. I was so concerned by the facts that were presented to me that on the face of the arrest warrant I wrote out that the undersigned, being me of course, views this case as extremely serious. And when this man is apprehended, very serious consideration should be given to not releasing him. Well, of course, I

could not as Judge in Chambers bind the judge before whom this man would be brought when he was arrested. But somehow, and it still haunts me, neither the judge before whom he was brought nor the United States Attorney's Office spotted my language on that arrest warrant, and the man was arrested and released and within a matter of hours murdered the woman that I had tried so hard to be helpful to. The system in effect failed her.

Mr. Ross: Do you follow in the newspapers or otherwise the progress of that court and court system on a current basis, more or less reading the articles in the *Post*?

Judge Harris: Yes. And of course I have a lot of friends on the court. I have a former law clerk on the court.

Mr. Ross: And do you think there has been progress in that court system since the reorganization in setting it up?

Judge Harris: It is very difficult for me to answer that because the court now has 65 judges, most of whom are not known to me. There are former Assistant U.S. Attorneys whom I know well that are on it, a terrific bunch. My former law clerk is terrific. There are a lot of other judges on that court that I know and think very highly of, but I think the present system with what I consider to be the unfortunate superimposition of the nominating commission on top of the President's authority to appoint people to that court has resulted in a mix of some very able judges and some that are less able than I think the court deserves.

Mr. Ross: As a matter of comparison, what was the approximate number of the judges on the court when you were appointed -- the new court?

Judge Harris: I wish I could reconstruct that with some accuracy. The court previously had a juvenile court. There was a Court of General Sessions and a juvenile court.

The Juvenile Court I think had three judges, and the Court of General Sessions had perhaps 15, something like that, and about 15 were added, so the court was nearly -- it was roughly doubled in size when it acquired the broadened jurisdiction that was created by the Court Reorganization Act.

Mr. Ross: Then it has doubled again.

Judge Harris: It has doubled again gradually through the years.

Mr. Ross: In my practice I've had some appearances before the new court. I was appointed twice as a commentee for mentally disturbed prisoners. I had that experience, which was quite interesting and I also had some criminal defense appointments, matters where for some reason or other a judge of the court thought he should make a special appointment. I was for quite a number of years -- I was on the felony list in the federal district court when it was the principal trial court for the District in criminal and other matters and so I had that experience. I found that the Superior Court in general, quite surprisingly by and large in taking it as a whole, did a somewhat better job than the district court system did on criminal matters, by which I'm not comparing the quality of the judges, but I'm comparing the whole system, all aspects of it. And I suspect that was because it was being done by people who were full time at it rather than federal judges who had their minds often on other things. Could you comment on that?

Judge Harris: I'm hazy on the timing. I mean I know when the felony jurisdiction came over from the district court to the Superior Court. That began in 1971 and phased in gradually. I forget the details of the phase-in system. At that point, my only meaningful experience was in the Article I court system, and I felt that they had first-rate deputy clerks, they were really good quality people running the day-to-day aspects of the court system

that let it function smoothly. I'm afraid there's been a little slippage there in recent years, too. Fred Beane at the time was the head clerk of the criminal aspect of it, Joe Burton the overall clerk, both of them extremely able. All of the components of the Superior Court on the clerk staff had deputy clerks heading them up who were really quality people.

Mr. Ross: You spent many years on the federal trial court, the district court and that was at the end of your career. Can you compare that experience with your service on the Court of General Sessions?

Judge Harris: Well, I would correct you modestly because General Sessions ceased to exist when the Court Reorganization Bill passed and Superior Court --

Mr. Ross: We'll say the Superior Court.

Judge Harris: The Superior Court came into existence. Superior Court was then and as I assume is now a very difficult court on which to work in part because like all courts it's overburdened, but in part because at least from the time when I was there, there was no individual calendaring such as there is in the district court. That is, a given case would not be assigned to a particular judge, and if you were assigned to criminal duty in those days on Superior Court, and if you were to start what you thought was going to be a criminal trial only to learn that the defendant had entered a guilty plea, you would be expected to take another case. So, there was always -- it was a little bit like being in the canyon and having the dam break up river and the flood was going to come. It was a difficult time and with the individual calendaring that the district court has had, and I don't know exactly when that was adopted, but it was certainly true from the time I went on it in 1983. The individual calendaring lets you control cases much better. The non-individual calendaring is tough on the judges because you have to

pick up things that are strange to you and suddenly, oops, there is a case, and you take a quick look at it and figure out what to do with it. And of course, at that point in time, the prosecutors had the same problem. They rarely could interview their witnesses in advance and they would have to try cases --

Mr. Ross: When they were first looking at the file. Yes, I've seen that. We're coming to the end of our cassettes and it's been an hour and fifteen minutes, an hour and twenty minutes. I think I'd like to pause now and come back to this. I think we can go into this comparison between the courts fruitfully particularly when we get to the period of your district court experience. So with your permission and consent I'm going to stop right now.

Judge Harris: Yes, sir, because we are just about at the point really where it would be a natural transition into when I was approached about going on the D.C. Court of Appeals.