

ORAL HISTORY OF DWIGHT D. MURRAY
Fifth Interview
April 18, 2018

This is the fifth interview of the Oral History of Dwight D. Murray as part of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewer is Gene Granof. The interview took place at Mr. Murray's office in Washington, D.C., on Wednesday, April 18, 2018.

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Mr. Granof: I think the last time we talked, you really were at the law firm and you indicated that over a course of some, what, 37 years, am I right about that, you had tried more than a hundred, at least a hundred cases.

Mr. Murray: Right.

Mr. Granof: Although you indicated that your memory about the details of all of them are not as good as it used to be, what are the cases that stand out in your mind, both the ones that you thought this really turned out well for me, I did a good job, and then, maybe the other side of the coin is, the cases that maybe you were disappointed about. Start with the good ones, the ones you said it turned out really well.

Mr. Murray: That's an interesting question. I try not to think about those cases often, quite frankly, but occasionally they will come up in my mind, but my early introduction, my first trial, when I joined the law firm and within 30 days of starting the job, I was in the courtroom trying a case, a small case, and I worked

hard on it, I did. It was a Uniform Commercial Code case, a sales case, or a case that dealt with Article 2 of the Uniform Commercial Code, and I did a memorandum of law on the UCC because I thought the trial judge would not be up to date with the law of UCC. On the first day of trial, I presented my memorandum. The judge looked at it, put it aside, didn't even read it. That was disappointing, and then I could tell the judge had already made up his mind about this case once he heard the initial introduction of the facts because everything went downhill after that. I thought my performance was good because I was always very good at criticizing myself and my performance because that's the only way you can improve. Did you do this right? What happened when this occurred? How could you avoid it, a slow-down? I'm always giving myself an autopsy after every trial, after every day of every trial. And for the life of me I could not explain why I lost the case. I was very disappointed because I put in so much work on my first trial for a client of the firm. I gave myself the usual post-trial autopsy and could not pinpoint where I lost the judge. Then I had to realize that sometimes those things happen and there is very little one can do about it. You pick yourself up, dust yourself off, go back to the office and start to get ready for your next case. I didn't let it interfere with me. But that taught me a lesson that you have to be focused on improving yourself, you can't let minor things slow you down or discourage you. You have to keep pushing forward. The interesting thing about my first few years in the firm . . .

Mr. Granof: Let me just interrupt you and ask you about that first case. In reviewing in your mind your performance, did you feel you did . . .

Mr. Murray: I thought I did a very good job. I ran across a witness who was very good, and the judge didn't let me get control of the witness. He was a salesman, this guy that I cross-examined was a salesman, and he was very good, very good on his feet, very sharp, and the judge would not let me, would not allow me to get control of him. He let the witness expand his testimony beyond the scope of the question, and that was disappointing because a lot depends on, my chances of winning depended on my ability to control the witness and not let him explain for the benefit of his client what this sale was all about. So that was disappointing more so because the judge did not take the preparation I put into the case seriously. It's one thing losing a case, it's another thing not getting a chance to present the law and the facts the way the court is supposed to allow you to present. So that was disappointing.

Mr. Granof: That raises a whole question of experience in controlling a witness. I would assume, although I don't know for sure, that the more trial experience you have the more you have developed means for controlling a witness. How do you do it?

Mr. Murray: Well, that's true, and I had some trial experience before I even started because in the Georgetown clinical program I had five trials before I graduated. That was more trials than anybody else in the clinical program. When everybody else was going on spring break and Christmas break, I was in the courthouse picking up cases, and these cases eventually led up to trial. I never went on a spring break. I had some experience through the clinical program, and I bought a set of *Goldstein on Trial Techniques*. It was a three-volume set. I paid for these books out of my own pocket. I read about cross-examination, read about how to control the

witness, the leading questions, besides what I learned in the clinical program itself. I knew how to control a witness with leading questions, but this particular court would not allow me to get an answer to my question without the witness going beyond the scope of the question. And that's key in controlling the witness. You ask a leading question that calls for a yes or no. If the witness says, "Well," and begins a long monologue before he answers the question, you lose control of the witness.

Mr. Granof: Can you say something like "Excuse me, Mr. X, do you remember the question that I asked you?"

Mr. Murray: Oh, yes, you can say . . . but the judge says, "Let him finish, let him finish." Now later on you learn to say "Well, your Honor, first, I'm not trying to prevent the witness from testifying, I'm trying to get an answer to my question." The question could be yes, the question could be no, I mean the answer could be yes, the answer could be no, the answer could be I don't know, and I explain that I'm not trying to deny him that, but for the sake of the record, to protect the sanctity of the record, for the Court of Appeals, let's get an answer to the question first before he explains. And you get into that and the judge will see what you're doing. And then you learn how to set up judges, you learn this as time goes on.

Mr. Granof: How do you do that?

Mr. Murray: Well, you make the record, and the judge will know you'll be sending a signal that what the judge is doing is preventing you from properly exercising your rights to proper cross-examination.

Mr. Granof: And judges don't like to be reversed on appeal.

Mr. Murray: Well, if you don't like to be reversed on appeal, and the chances of them getting reversed on appeal are slim because the judges have complete control of how the testimony of the witnesses is being presented to the jury, but it doesn't look right for a judge to interfere with the lawyer's cross-examination, especially when the lawyer is following the rules. It just doesn't look right. You learn how to just make that record because making a record is very important. When I teach trial techniques, or when I used to teach trial techniques, I would always tell students, I said, if it's not on the record, it doesn't exist. If you see that the judge is not giving you the opportunity, you put that on the record, because if you think it and don't put it on the record, it doesn't exist, it never happened. So that's why you have to be always conscious of making that record. And I learned that at a very early stage, very early stage.

Mr. Granof: Yes. One more digression, something that you said raises a question in my mind. Do you think from your experience that courts of appeals, when they're reviewing a case, approach a bit differently, maybe even subconsciously, if they have more confidence in the lower court judge? So, for example, a Judge Gesell, who had a terrific reputation . . .

Mr. Murray: Yes. . . .

Mr. Granof: You might fare better because the appellate court might think that Judge Gesell, he knows what he's doing, we know he knows what he's doing. You think that's true?

Mr. Murray: I don't doubt it for a second because Judge Gesell, I had three trials in front of him. I won all three trials. Judge Gesell knew how to manage a case, and he knew how to control the courtroom. I don't know if I said this earlier . . .

Mr. Granof: You did mention that your interchange at the very first . . . with Judge Gesell, and he said, "Mr. Murray if you don't have a factual basis for a defense, don't do it my courtroom or in any other courtroom."

Mr. Murray: Precisely. And he was absolutely right, and I learned from that, and I have practiced that ever since. I have always liked tough judges, always. I got along better with tough judges than I did with the easy judges, quite frankly, because tough judges played by the rules, and if you knew the rules, you were OK.

Mr. Granof: They would let you try your case.

Mr. Murray: They would let you try your case, and nothing pleases a judge better than a real good trial judge, nothing pleases a really good trial judge better than to have two lawyers who know what they're doing, who have practiced professional courtesy between themselves and present their case in a professional manner. The judges sit back, and the judge is entertained.

Mr. Granof: So, after that first case, then you were going to go on and talk about succeeding cases.

Mr. Murray: Yes, because I was the new guy, I got all the bad cases, so in my business, I was required to identify the percentage chance of winning to the client. You had a scale, zero to a hundred. I don't think I had a case in the first three or four years that I was at the firm that I had a better than 5% chance of winning. So, all my cases were losers, but I tried them anyway, because I learned from each trial. And

the reason why I tried them is because the settlement demand was always more than what I recommended the client should pay. And back in those days when I represented insurance companies, they didn't mind trying cases, but what they were concerned about were the risks, and if I limited the risks, they were willing to take the chance. The great part of it was that most of the time I was right, so if I would lose a case, more often than not, it would be a defense victory; so in other words, the jury or the court would award less than what the demand was and maybe around what I was willing to offer.

Mr. Granof: So that was a victory.

Mr. Murray: It was a victory. It was a defense victory. But those kinds of victories do not show up in the win/loss column.

Mr. Granof: And the insurance company was pleased because you came in within a range they were willing to pay in the first place.

Mr. Murray: That's right, but a lot of people don't understand that. I remember speaking in front of a group of law students at Georgetown. One of the questions, "What's your win-loss record?" Well, you can't judge your lawyer's performance by the win-loss record. You could try a case and the jury returns a verdict against you, but you won because you saved your client a lot of money. I have a good example for that. I forget when in my career I tried this case, but this is one of the cases I always give as an example to law students and to other people.

I represented a trucking company that put a truck on the road with bad brakes. There was no doubt about it. Maintenance records clearly showed the truck had bad brakes, and they knew the truck had bad brakes. The truck was

involved in an accident. It struck a school bus, full of handicapped children. You can't get any worse facts than that. There was only one injury in this accident. The injured person was a 10- or 11-year old girl. She was a white girl, very, very pretty. She had the most beautiful smile you'd ever want to see, but she was a spastic quadriplegic and severely mentally retarded with cerebral palsy. And her parents were the nicest people you'd ever want to meet. I took the parents' depositions in their home, and it was a set-up, because they wanted me to see this young girl. I'm a Marine, I'm mission oriented. My goal was to get the facts that would help me, but you couldn't avoid being affected by the appearance of this young girl and her parents. Nice home somewhere around American University, very nice, well-to-do people, but I really liked that little girl. And we could not agree on a settlement because the whole basis of the claim is not that she was severely injured in the accident, it was just that she regressed in her development as a result of the shock of the experience in the accident. So, in other words, before, her parents were able to escort her to the bathroom, with difficulty, but now they had to revert to picking her up, bringing her to the bathroom. That was one of the things they complained about. And they were concerned that as they got older, they would no longer be able to do that. We couldn't agree on a settlement. The plaintiffs' attorney wanted a lot of money, and I didn't want to give it to him because I thought the aggravation of her condition did not warrant a million-dollar settlement. So, because I don't intimidate and I'm not afraid to lose, because it's like Kipling winning, losing, they're both imposters, you treat them both the same way. So, we went to trial. It was a hard-fought trial, and my

client was sitting in the courtroom during the entire trial because of the potential exposure that was involved.

Mr. Granof: So, I guess the whole issue was damages.

Mr. Murray: The whole issue was damages. But I never give up on liability either. I never give up on liability. I got another story after this one.

Mr. Granof: But that must have been tough. I mean because if you challenge liability and the evidence is overwhelming that the brakes were bad, how does that affect, it it's a jury case . . .

Mr. Murray: Well, you make your argument as strongly and as convincingly as you can. Just because someone runs a stop doesn't necessarily mean they are at fault if the other side, the other person saw they were running the stop sign, and they didn't take precaution to avoid the accident, too. So, if you throw enough facts in the hopper you may not win the case, but you may decrease the amount of the verdict. What you wanted was a champion in that jury room who's was going to argue the points of the case I made on behalf of my client. "Yes, but the testimony is this, I focus on how poorly the young girl was medically and physically before the accident." So that's what you . . . I didn't want to roll over on liability, so I fought liability, but I fought it in a credible way, not in a ridiculous way. Yes, my guy had bad brakes; but the truck was able to stop, he didn't pulverize the bus. This was a heavy truck, this was a light handicap bus, there wasn't considerable damage, no one was bloodied as a result of this accident, so he was able to slow down, the brakes were working somewhat. This was almost in the middle of the day, so he was able to stop and go at some point in time when he started his job at

7:00 o'clock in the morning. That was my argument. So, at the end of the trial, at the closing argument, my client came to me and said see if you can settle the case before the jury comes back. I went to my opposing counsel and I said to opposing counsel, "You don't know what the jury's going to do, let's make an effort to see if we can settle it, to control the outcome." And he said, "I'll take over a million dollars." My client was willing to offer \$750,000.

Mr. Granof: That's pretty close.

Mr. Murray: That's pretty close. He wouldn't budge. My client wouldn't budge. The jury came back with \$90,000.

Mr. Granof: Really.

Mr. Murray: \$90,000. Yes, because the jury instructions only made us liable for the aggravation of the damage, and the aggravation was really small. That was the focus of my argument. This poor young girl was in a bad state when she was born, and she was in a bad state for most of her life even before the accident. The accident changed her ever so slightly which may improve over a period of time.

Mr. Granof: Yes, that makes sense. The damage you caused. You weren't responsible for her prior condition.

Mr. Murray: But the key to that victory was I put a lot of people on the jury that had handicapped people in their lives, so they knew, they could identify with the parent, but not necessarily feel sorry for them. I thought the most brilliant move the attorney on the other side made was he wheeled the young girl in, showed her to the jury, then wheeled her out. Let me tell you, she was a very pretty, innocent bright face, beautiful smile individual, young girl, and I felt sorry for the parents

after that. I thought they made a bad decision. I went over and expressed my best wishes for them after the verdict and hoped that things work out for them, and then 30 years later, I looked in a newspaper in the Metro section and I see this young girl, who is now a young woman, drowned in a swimming pool in the back yard. The same little girl. So that was sad, but . . .

Mr. Granof: But how did you know to make the decision to pick handicapped people on the jury? I would have . . .

Mr. Murray: I wanted to avoid sympathy. That's all. And if you have a handicapped person in your life, you know what their lives are like, you know what your life is like because of their handicap. And you wouldn't necessarily feel sorry for them, because you go through the experience too. I was trying to avoid that element, that unknown element of sympathy, which could shoot the verdict up and get it out of control. That was my goal.

Mr. Granof: Your intuition was that putting handicapped people on the jury would make them less sympathetic, or at least more understanding of your case. That's not intuition which is obvious. It certainly wouldn't be obvious to me, so obviously, you have very good, a very good intuition and sense of what putting handicapped people on the jury would produce with respect to your case.

Mr. Murray: I wanted to tone down the sympathy and I thought that would ultimately help. I knew I was going to lose the case; the question was how much. I mean I can't tell you how many times I went into a case, "How much can I keep the verdict down?" I've been very fortunate in being able to do that throughout my career.

Mr. Granof: So, someone saying to you "win-loss" -- that was really a terrific win.

Mr. Murray: Yes. On the record, if they were keeping win-loss columns, that would be a loss because there was a verdict against your client. But let me tell you, my client was doing back flips. My client saved over \$700,000, and possibly more if the jury had come back with over a million, so my client was ecstatic. I could do no wrong after that. My client was always in my corner.

Mr. Granof: Before you get to that, next case you were going to tell me about, have you had, I don't know if you've tried criminal cases as well.

Mr. Murray: No, I've never tried a criminal case. I got disillusioned with criminal cases when I did a paper in law school on plea bargaining. I did research for this paper in my first or second year, I forget which year it was. And I interviewed judges, I interviewed attorneys, defense attorneys, prosecutors. I interviewed convicts, I interviewed ex-cons, and I still remember this quote from an ex-con that I interviewed. He said "I think plea bargaining is great. Where else can you do a crime that calls for 25 years' mandatory sentence, plea it down to 10, get out in five?"

Mr. Granof: Yep, that makes sense.

Mr. Murray: That makes sense. And the judges all say "Well, if there wasn't plea bargaining, the system would collapse." Defense attorneys were in favor of plea bargaining for their reasons. Prosecutors say "Yes, we can eliminate a lot of backlog with plea bargaining." So, I said I like to get in the system where you can fight. If a person gets indicted, by the time they get indicted, the government has such a strong case against them, otherwise they wouldn't indict. Your efforts are then focused on getting a good plea deal. Plea negotiator. And I wanted to be in the

courtroom, I didn't want to be stuck in somebody's office negotiating a plea for my client. That was my thought process back in my first, second year of law school. I wanted to focus more on civil law. And then I saw a lot of criminal trials when I was a law clerk, and I knew that some of what they called the Fifth Streeters back then, they would come in and cross-examine a witness, and do an excellent job, with very little preparation, just because of the experience level, and on the one hand, I thought that was great, and on the other hand, I always liked preparing. You can't do that in civil. You can't walk into a courtroom and start cross-examining a witness in a civil case because civil law is so expansive. Criminal law, there's a how to do it book. Every judge has it. And I don't know the name of it, but it's a criminal law bench book. Prosecutors have their bench book; defense attorneys have their bench book. It cites all the law that you need to know from arrest all the way to criminal appeal. I didn't like that. I like to be exposed to different challenges. Products liability has a different set of laws, contract law is a different set, tort law has a different set, you name it, UCC has a different set. I just like those challenges. I just like getting into new areas and new challenges. Medical malpractice. You try a medical malpractice case. It's different from a serious automobile accident case where a death is involved. There are completely different ways of approaching it, completely different subject matters. I kind of like that variety. And criminal law didn't give me that expanse of variety. Top criminal lawyers can sit down and talk about a criminal case and tell you what the chances are just based on experience. In a civil case, depending on the subject matter, you have to know the facts, you have to study

the law, before you can come out with an opinion, because the law is always subject to change. It's not as constant as what the criminal system is. I mean that was just my feeling. I may be completely wrong, but I'm just telling you my thought process in the early years of my development.

Mr. Granof: Of course, when you started out, I don't know if white collar crime was as big a deal as it is today.

Mr. Murray: No, it wasn't, because the big criminals were the drug dealers in D.C. These guys were making a lot of money. Of course, I am not forgetting the Abscam defendants or the Watergate defendants which were big cases and very newsworthy, but the majority of the big criminal cases were drug related. Those cases were being prosecuted by the U.S. Attorney's Office in D.C., and those prosecutors and Public Defender Attorneys back then became the big shot white collar lawyers of the future. Every single one of them that I got to know became big-time white-collar lawyers, in big law firms, years later. So, it's kind of interesting. I used to kid the Assistant U.S. Attorneys, I would tell them, you guys have it made. Some FBI agent walks into your office, puts a big file on your desk, ties a big ribbon around it, and says "this guy did it" of the two billion people in the world, this is the one that committed the crime.

Mr. Granof: Well, how did you happen to have contact with these assistant U.S. attorneys who were on the criminal side?

Mr. Murray: Well, I got to know some of them through Judge Murphy, the judge I clerked for, and I got to know many of them in the American Inns of Court that I was a member of for about 25, 27 years, something like that, because many of them

belonged to that organization. A lot of the attorneys at Williams & Connolly were members of this Inns of Court. I was in the William Bryant Inn of Court. We met once a month and we talked about civil trial issues as well as criminal trial issues. One of the great things we did that will always stand out in my mind, we gave each month presentations of historic cases. We presented the cross-examination of this witness in the Triangle Shirtwaist Factory case back in the 1900's where these hundred young girls, I forget the trial lawyer, we did the cross-examination but . . .

Mr. Granof: He was a famous trial lawyer.

Mr. Murray: A famous trial lawyer. He should have lost that case, but he won it on cross-examination because he kept asking the witness, the young girl who survived the fire, to repeat her testimony. Each time she repeated it verbatim without missing a word, and then on the third time, he said "well, didn't you mean to say this?" And she said "Yes," where she left out a word, and the whole jury knew that it was rehearsed. It was memorized and that caused him to win the case. But my assignment was the Scottsboro trial. And I was a moderator for that trial. That was a tremendous trial because the lawyer who, I forget his name right now, who represented the Scottsboro boys, was a criminal lawyer from New York.

Mr. Granof: Sam Leibowitz, wasn't it?

Mr. Murray: Leibowitz.

Mr. Granof: He became a judge.

Mr. Murray: Became a judge and I already know about that. Leibowitz, what was interesting about that case was the jockeying before because, and this is a good part of

history, the NAACP did not want to represent or finance the legal defense of the Scottsboro boys. The Socialist Workers party did, which was a communist based outfit, so they were looking for a lawyer who wouldn't mind going down South and represent these black young men who were accused of allegedly raping these two white girls. Leibowitz had a record, if I remember correctly, of 70 acquittals in capital cases, and one hung jury. I mean you cannot get any better than that. And I don't know if you know, rather than getting into the facts of the Scottsboro case, the trial that convicted these young men was a travesty. An absolute travesty.

Mr. Granof: Yes. I know something about it because a colleague of mine had a son who was a documentary filmmaker and did a prize winning film on the Scottsboro boys, and I saw the film, and afterwards there was a whole discussion including do you really want to bring a Jewish lawyer from New York down before a Southern jury in -- where did they try it -- Alabama?

Mr. Murray: Yes. Scottsboro, Alabama. But that's the heroic nature of the legal profession. Where you had guys doing that kind of stuff, for centuries. What was it, John Adams defended one of the escapees from a slave ship? They made a movie about it. Lawyers have been doing those kinds of courageous acts for centuries, where a lawyer stepped forward to defend an individual's rights in hostile territory. That's what got me interested in the legal profession. Anyway, we did a terrific presentation, and I'm sorry I threw away the transcript because it was really commendable. But Leibowitz did such a fantastic job against such overwhelming odds. Another thing it taught me about society back then in the 1920's and 30's.

Many prominent black people, including Paul Robeson, I don't know if you know Paul Robeson . . .

Mr. Granof: I did. I actually heard him sing.

Mr. Murray: OK, there you go.

Mr. Granof: I was much younger.

Mr. Murray: Paul Robeson was criticized for having some allegiance to the Communist Party, but if you look back then, during that time period, when there were no civil rights, even though Paul Robeson was an accomplished athlete, accomplished singer, accomplished lawyer, all those things, high intellect, you know he was still treated as a black person.

Mr. Granof: And he was treated a lot better when he went to Russia, Communist Russia, the Soviet Union.

Mr. Murray: And there is the point. The Communist Party opened their arms to a person and a race that was rejected by their own country. I could see the attraction why some people went in that direction. I don't believe they realized what they were getting themselves into, but I could see the attraction. If someone is going to accept you with open arms, no questions asked, and treat you like a human being, there's a certain appeal to that, and that explains why some of the African American intellectuals back in that period of time were attracted to that system. It's unfortunate that their decision to do that placed a mark on their character, but that's just the facts. I can understand why they were attracted to that. It's one thing to be rejected by, you know, the country, and then here's a group over here that will accept you with open arms.

Mr. Granof: Yes.

Mr. Murray: And you must be careful. I remember in college I had this white friend. He said, “Dwight, come to this meeting with me.” I said, “Well, who’s going to be there?” “A bunch of college professors.” I said, “Why would I want to meet with a bunch of college professors?” I went to the meeting. It was in some professor’s home close to the campus. I was the only black person in this house, and I listened to the conversation and the antennas went up. I said, “This is a sell.” You know they start off with criticizing the country, and I said, “This is not for me.” But you know you don’t want to make an announcement “I’m outta here.” That would attract too much attention. I just didn’t go back. Now he tried to get me to come back. I said “No, I don’t think it’s for me.” I ran into this guy two or three years later, and I said, “How’s that group going?” And he said, “Dwight, you were smart to get out; now I can’t.” And that was the last time I saw him. I don’t know what happened to him, I’m not saying something bad happened to him, but he did not look happy. He looked like he was trapped.

Mr. Granof: And you never knew why he was trapped in it?

Mr. Murray: No, and he wouldn’t say, he wouldn’t say, but you could tell. You read people’s emotions. He was not happy. When I asked him about that group, his whole facial expression changed, so I made the right move. But I could understand why some people were attracted to that. Here I was, in New Orleans, in the 60’s, in a white person’s house, in the suburbs, surrounded by white people who were treating me nice. You know I say, “Well this isn’t bad.” But if you brush aside

that and listen to what they were saying, you could see there was an ulterior motive, and I didn't like the motive, so I didn't go back.

Mr. Granof: I've heard of the American Inns of Court but I'm not familiar with them, so you could explain what kind of organization it is, who sponsors it and what they do? It's obviously a high-powered organization.

Mr. Murray: American Inns of Court was developed by Justice Warren Burger, Chief Justice Warren Burger. What attracted him is he looked at the English system, because it's based on the English system where the barristers are part of an Inn and a young barrister is sort of taught by an older barrister, sort of like, not a trade, or guild or anything like that.

Mr. Granof: But that's how you come up through the profession in England.

Mr. Murray: And you have levels. You have, if I remember correctly, sort of a beginner, a person with maybe one or two years in the practice of law. Then you have a barrister who has maybe five to 10 years in the practice, and you have a Master, who has more than 10-15 years of practice. I was in the Master category, and I was lucky since I was there in the beginning when it was formed. They had some of the top trial lawyers in the city in the Inn. They had another Inn called the Fahey Inn that practiced mostly criminal law, but this Inn, the William Bryant Inn, was named after Judge William Bryant who the new annex to the courthouse is named after. And Judge Bryant was there for the Scottsboro presentation. He was interested in that as well. What we did, we had one time we devoted to opening statements, another time we devoted to cross-examination, another time we devoted to examining expert witnesses, and it was an opportunity to teach

young lawyers techniques that are used by – I mean some of the people were really skilled at their craft, and like I said, there were some fantastic lawyers in this Inn.

Mr. Granof: Did you have to be invited to join?

Mr. Murray: Yes, you have to be invited to join. And especially if you're a master, and then they look for young people to come in, and it was such a great experience, I was there for 25 years, over 25 years, and then after I retired, I even went back for a couple of the real interesting meetings that they had. I said, "Keep me informed as to what your topic is going to be."

Mr. Granof: Are the meetings, these demonstrations, open to, maybe not the public, but to the legal profession generally?

Mr. Murray: No, not the legal profession, because it starts off with a dinner. We normally went up to the 6th Floor, the judges' dining room, and we had a catered dinner – that was part of your dues – and we would sit around, sit at a table talking to young lawyers and they would ask us questions about our career. We would ask them questions about what cases they were working on. I remember this young kid from Jones, Day – I must have had 40 cases, 50 cases, active cases at the time – and I asked this young attorney from Jones Day how many cases did he have; he said, "I have one." And I felt sorry for him, you know, because how could you get a lot of experience with one case? But that's the nature of a big firm. You'd get these exchanges like that, and these young lawyers have a chance to ask these old timers like me, and other old timers who were more experienced than I was at the time, about the practice of law, their career, how do they develop their career. I

would invite speakers to come in, and when it was time for my team -- I was a team leader -- and when it was time for my team to make presentations. One time I invited three speakers that impressed the heck out of the judge. The judge who was president of the Inn at the time asked me, "Murray, how did you get that much juice,?" So, I invited Jake Stein, I invited Plato Cacheris, and I invited Sherman Cohn. Sherman Cohn is one of the founders of the American Inns of Court, nationally known, a professor at Georgetown in Civil Procedure, and these guys sat around and answered questions. They talked about the Monica Lewinsky case. Plato represented Hanson, the FBI Agent who was caught spying on the Government. These were heavy hitters. And it was a great event. But I knew these guys. Don't ask me how. I met Jake a long time ago, and we sort of developed a friendship. And I met Plato, I forget exactly how, and I've known Sherman Cohn because he was my Civil Procedure professor at Georgetown. I also hired him as an expert witness in a case that I had. First time he ever testified in court. I could not believe that.

Mr. Granof: He was an expert in Civil Procedure testifying on civil procedure?

Mr. Murray: No, he was an expert in, let me see if I remember. He was also an expert in Legal Ethics, and I can't remember, I used him in a couple of cases. One was a Legal Ethics matter and one was about the request for admissions, and I can't remember which one was his first. But he did a great job. I was surprised, with all of his experience, he's never been called to testify. I told him "When I identify you as an expert, you're going to testify." He did a great job, and we became friends and have been ever since. We get together every once in a while.

Yes, the American Inns of Court was a tremendous teaching tool because I always try to keep my mind open to learn new things, and I don't care what the source is, it could be a first-year law student. I taught Trial Practice at Harvard Law in January – went over with a bunch of judges and lawyers from all over the country. Spent a week with the law students, and you'd be surprised, you'd always pick up something interesting when they would do a demonstration. You'd say, "Oh, you know I must put that in my repertoire." I'm always willing to learn something new. And no matter what the source. These students worked hard at it, and sometimes they would come up with an original approach.

Mr. Granof: And how did you get invited to teach at Harvard Law School?

Mr. Murray: I was invited by one of the organizers, Judge Hamilton, Chief Judge Hamilton, and a guy by the name of Patrick Murray who ran the program at Harvard. I did that for almost 10 years.

Mr. Granof: Did you go up during the academic year?

Mr. Murray: Yes, it was January. Harvard would pay my expenses, they would put you up at a Sheraton on the campus, and then you would have breakfast on your own, you'd have lunch with the faculty, and then you would have dinner with the law students. But from lunch to dinnertime, you were teaching Trial Advocacy, you were conducting mock trials, mock cross-examination, mock direct examination, mock opening and closing arguments, and at the end, you would have a complete mock trial with a different set of facts. Harvard would invite other people in to be jurors, and the mock trial would be conducted either in a Massachusetts state courtroom or a federal courtroom in Boston.

Mr. Granof: I think that's wonderful. I wish they had that when I was in law school.

Mr. Murray: You know, I try to tell my kids this. That the school you go to is very important. Both of my daughters are very gifted, very bright, but they kind of shun Ivy League. My younger daughter could have gone to an Ivy League school, but she didn't like the idea. But I said this is the example of what a school with resources can do for its students. They would bring these judges, federal judges, these top notch trial lawyers, from all over the country, pay their expenses – they wouldn't pay them a salary or anything, just an expense paid trip – work them hard for a week, just so these students could be exposed to the talent, and ask questions and learn. I said that's a tremendous opportunity. Not even Georgetown could afford to do something like that, but a place like Harvard, Yale, Stanford, they could afford it, something like that on an annual basis. They had an endowment big enough where it was just a drop in the bucket. Nothing. But the opportunity, and that's what impressed me, because I certainly didn't have that opportunity at Georgetown and it was a highly ranked law school at the time, but their endowment didn't compare to Harvard's endowment. The ability to do this I thought was a great benefit to the students, it spoke well of the university, and it spoke well of the profession, because not only did I have to block out a week on my calendar to go there, but so did everybody else. The other sacrifice you make is just because you are away from the office doesn't mean you're away from the work. After dinner, I would go back to my hotel room to start working until 11:00, 12:00 o'clock at night. You know, catching up with my cases, answering my e-mails, doing all that stuff. I had everything on my computer, so I took my

office with me wherever I went. It wasn't easy, but it was rewarding. You were working in essence from 7:00 o'clock in the morning to midnight without a break. Whatever I did for Harvard and the faculty, the meetings with the faculty, mock trials, and socializing with the students, and then after that I went back to my hotel room. I did not go on one faculty dinner in 10 years because I was always back in my hotel room working, trying to keep up, trying to keep the dogs at bay.

Mr. Granof: Well, that's an interesting take on it, although I'm not sure that you're entirely right that where you go to school is determinative. I mean it gives you a leg up, there's no question about it.

Mr. Murray: No, if I left that impression, I didn't communicate it well. No matter where you go to school, you teach yourself. I mean it's the effort that you put in. The school gives you the opportunity. All I am talking about is an extra opportunity that Harvard was able to avail its students that a lot of schools could not, no matter where you went to school. I don't even know if Stanford did something like that for its students, but I thought that was terrific what Harvard did for their students. And there's no doubt, the Harvard students were impressive, they were bright, but I didn't find them any different than some of the other students I came into contact with from all over, not even ranked law schools. You get some people who were extra bright, and I would put them against anybody.

Mr. Granof: Absolutely.

Mr. Murray: And even when I started to do medical malpractice, I would find that doctors who graduated from medical schools that were not nationally ranked in the top 10 were sometimes better than the doctors who graduated from Ivy League medical

schools, simply because of their passion for the medicine and they kept up, and their talent..

Mr. Granof: I think that's absolutely true.

Mr. Murray: Absolutely right. It really depends. The only thing, I'm bringing up this trial advocacy program is that I thought it was a tremendous opportunity for these students to connect with different aspects of the legal profession, away from academia. They were talking to real live lawyers who try cases, judges who try cases, who were at the top of their game so to speak.

Mr. Granof: You are so right about that because when I went to law school in the 50's, you would think that the only thing lawyers ever did was read appellate cases and recite them.

Mr. Murray: That's right. Precisely.

Mr. Granof: The opportunity to talk with real live lawyers, people, I wish I had had that opportunity.

Mr. Murray: And I wish I had that as well. Even my clinical program didn't approach the kind of instruction these people got at Harvard.

Mr. Granof: At least you were able to participate in and to teach in a clinical program. They didn't even have that. So when I got in the Navy and was trying my first court martial, I didn't know what I was doing. I had never stood up and examined a witness.

Mr. Murray: They didn't have the script in front of you?

Mr. Granof: No. They didn't have a trial book, a bench book, they didn't have anything.

Mr. Murray: Holy smokes. They've advanced after that. I helped one Marine. My law firm helped a Marine that was in some trouble, and we represented him. This was my first introduction to the Uniform Code of Military Justice. It was a script. And they said, you must read this. I said, "What do you mean, you must read this into the record?" I said, "What about the ability to give an opening statement based on facts that you intend to present?" So I became disenchanted with that. It was only the general court martials that were more like what I was used to doing in a courtroom.

Mr. Granof: Yes. But you know even in a general court martial, the first time I participated in one, I had had no background in trial law. As a matter of fact, I wished I had had an experience I had much later in my career going to the National Institute of Trial Advocacy in Colorado for two weeks. I mean, what a difference that made, and that was just two weeks.

Mr. Murray: I did that too.

Mr. Granof: So, what you participated in and what you did, that's a real service to law students.

Mr. Murray: Well, yes, and remember I was just there for a week. This program went on a month, so every week they had a different team of judges and lawyers come in, at different stages. The first week they would devote to opening statements, the second week they would devote to direct examination, the third week they would devote to cross-examination and closing arguments, and then the final week would be the mock trial. This went on for a month, and I was only there for one

week. So this school brought these people in, these faculty members in from all over the country for four separate weeks to teach, expose these kids.

Mr. Granof: That's a wonderful program.

Mr. Murray: It is a wonderful program.

Mr. Granof: So, you taught that, you taught at the American Inns of Court, you had an opportunity to do these presentations, trials, NITA programs, and you did teach a NITA program.

Mr. Murray: Yes. For several years at Georgetown. I taught one week at the Defense College in Boulder, Colorado. That was an honor because you were hand-picked for that as well.

Mr. Granof: When you say the Defense, was that a NITA program?

Mr. Murray: No, it was an organization, I forget the name of it now, it was a defense college, that was part of the name, and it was organized around attorneys who defended corporations and these big products liability cases, massive tort cases, and whatnot, and what would happen is that the college would hand pick lawyers like myself to go down as a team, to Boulder, Colorado, then it was Boulder, Colorado, now it's Stanford Law School, and spend one week with students who pay \$2,000 to \$3,000 for a week to go through the same process that we went through at Harvard or NITA -- the same process, but a different set of fact patterns. Except that at the Defense College we'd get up in the morning, we'd go to this huge auditorium, and one member of the faculty would give a demonstration on that topic of the day, so if the topic of the day was opening statement, a member of the faculty would give an example of a good opening

statement. If the topic of the day was direct examination, they would give a good example of direct examination. Whatever the topic was, there was a demonstration first and then everybody would break into their groups and practice that for the rest of the day. A different aspect of a trial was covered every day. At the end of the week, each student would participate in a mock trial. So that's the way that one worked. That was pretty good, pretty well organized.

Mr. Granof: And why did they select you for it?

Mr. Murray: I don't have the slightest idea.

Mr. Granof: Had you handled these kinds of cases?

Mr. Murray: Yes. I think I was selected because I was one of the attorneys for 3M, and the lady who did the selection process was a big products liability lawyer that did a lot of cases with 3M, and she hand-picked the lawyers. Most of them did 3M work for this Defense College. A couple of them didn't, but a majority of them did.

Mr. Granof: You had done work for 3M?

Mr. Murray: Yes, I was one of their trial counsel. 3M is a fantastic company. I got a lot of experience with them.

Mr. Granof: You tried product liability cases for them?

Mr. Murray: I tried cases. The one case that sticks out in my mind is the case I lost. In Little Rock, Arkansas, Federal Court in Little Rock, Arkansas. It was a premises liability case. 3M had a rock crushing plant. At this plant the 3M workers would take huge rocks and crush them into small pebbles which they used to put on roofing shingles. They had their own train with a locomotive engine and train cars. They would move rocks and crush rocks from part of the plant to the other.

All of this was inside the 3M company's plant. The plant had its own locomotive, like I said, along with their own engineers, and whatnot. There was an accident where this truck driver who was delivering stuff at the plant got struck by the train. Now keep in mind the train only went about four or five miles an hour, but because it was carrying such a heavy load, it might take, I don't know, a half mile, a quarter of a mile, to stop. So this truck driver, for whatever reason, was parked on the tracks and did not hear the train whistle. The locomotive engineer blew the whistle and applied the brakes, but the engineer could not stop the train in time. The truck got struck, the driver was only slightly injured, there was only some damage to the truck, the truck was turned over, but nothing very serious.

3M hired me to go down there and check this out. They had a top-notch Little Rock law firm representing the truck driver who filed suit. I went down there and took control of the investigation, and then took control of the litigation. I had a little trouble with my photographer. I told him exactly what I wanted to present to the jury. He gave me something else that he thought would be better. And I fired him. And I brought my own photographer down there. What I wanted to do is show a split screen on a TV monitor, what the track looked like from the driver's point of view, the truck driver's point of view, and what the track looked like from the locomotive engineer's point of view, so that the jury could see that there was no obstruction, and had the driver been paying attention, he could have avoided the accident – first of all, by not parking on the tracks.

Mr. Granof: What was his argument – that it was perfectly normal to park on the railroad track?

Mr. Murray: His argument was that they didn't have any bells or whistles, they didn't have a gate that would go down and prevent traffic from proceeding towards the track when the train was approaching. So he thought it was all clear. He could not have believed it was all clear because all he had to do was open his eyes and look, and he would have seen a train was coming in his direction, slowly, you know, 3- 5 miles an hour.

Mr. Granof: Was he actually parked?

Mr. Murray: He was parked on the tracks. Yes. Parked on the tracks.

Mr. Granof: Well, why would anybody park there?

Mr. Murray: What he was doing was looking at his directional finder to see where his next stop was, so his attention was diverted to his GPS system in the truck, to show what direction he would have to take to get to his next stop, so he wasn't paying attention at all.

Mr. Granof: So he didn't realize he was on the tracks?

Mr. Murray: He didn't realize he was on the tracks. He tuned out his environment.

Mr. Granof: I see.

Mr. Murray: I thought it was a clear case of contributory negligence. We tried this case, and I'll tell you right now on the record, I thought I tried a perfect case, and I don't normally say that, but I prepared this case up the wazoo. I mean even the difficult witnesses who I thought would pose a problem, I had them prepared, and they did a fantastic job. Everybody, the testimony went in great, the evidence went in great, the arguments went in great. At the end of the case, I got word from the law clerk, "I think you won the case, Dwight. And the judge thinks you won the case,

too.” Now he wasn’t supposed to tell me that. But you know this was a jury case. The plaintiff’s lawyer came up to me and said “Throw some money at me, Dwight. Let me cut my losses.” I said “Well, let me talk to my clients.” We went back to the plant, we sat down, and everybody felt good about the case. And I said we can settle this thing, it must have been about \$600,000, \$700,000 demand. I said we could settle it for \$50,000. They said no. I advised them to think about it because one never knows what a jury’s going to do. Everybody felt good about this case. So, we told the plaintiffs’ lawyer “no” to his settlement demand of \$50,000 and went back to the courtroom to receive the jury verdict. The jury gave the plaintiff \$300,000. I was dumbfounded, absolutely dumbfounded.

Mr. Granof: For what?

Mr. Murray: This was what I call the big / little complex, the David v. Goliath complex. This guy, the best move he ever made, he sat through the entire trial slumped over, like he was pitiful in his presentation, but perfect to show the contrast between the big corporation and this poor little truck driver.

Mr. Granof: Well, what kind of injuries had he suffered?

Mr. Murray: No major injuries at all. None.

Mr. Granof: Any broken bones?

Mr. Murray: No broken bones. Nothing.

Mr. Granof: So, I’m sure he had a doctor testify.

Mr. Murray: He had a doctor testify; he was OK. He had some minor cuts and bruises, but he was OK. No permanent injuries. \$300,000.

Mr. Granof: So, what did the judge do?

Mr. Murray: The judge said, “This is the jury’s decision,” and he upheld the verdict.

Mr. Murray: I took it up on appeal in the Eighth Circuit and lost the appeal. We lost \$300,000. That’s the one case I do remember almost verbatim.

Mr. Granof: I can imagine.

Mr. Murray: But you know, you also learn something. You take that as a teaching. You tell your clients when they feel confident, I tell them about this case. I say you never can tell. You put your faith in the hands of strangers, and you don’t know what the hidden agenda is. I was the only black person in that courtroom, the only one, except for a couple of witnesses from the plant. But the judge was white, the jury was totally white, the attorneys were white, the plaintiff was white. Except for the locomotive engineer and a couple other witnesses from 3M, I was the only black person in that entire trial, and it didn’t bother me, but to this day I question whether or not I should have challenged the jury for being all white, to this very day.

Mr. Granof: Was it a 12-person jury or a 6-person jury?

Mr. Murray: It was 12, but I thought, nah, these people can be fair. And I don’t know, but that’s the self-autopsy, self-criticism I do after every trial. I looked at the jury, I know I said, why should you challenge. Should you get some black person? I said, nah, I think I can convince these people. My evidence was so strong, I thought I could convince them. But you never know. You never know.

Mr. Granof: Interesting. Was the 3M plant in Little Rock?

Mr. Murray: Yes.

Mr. Granof: And the truck driver was from Little Rock?

Mr. Murray: The truck driver was from the Ozarks.

Mr. Granof: Why would he sue in federal court, that's interesting. You'd think he might get a better deal in state court.

Mr. Murray: I don't know why he sued in federal court. I mean, I didn't file the lawsuit, I didn't know what the thought process was. 3M was a Delaware corporation with its principal place of business in St. Paul, Minnesota, and they filed suit in federal court. The trial judge did a good job; he was the chief judge of the federal court down there. It's one of those things you question whether I should have challenged that jury. I thought about it and decided not to do it because I thought I could convince this jury that you put in the box.

Mr. Granof: You thought you had a strong case.

Mr. Murray: And I did have a strong case, and the evidence was so clear. I mean I got where the jury could see on a double screen the viewpoint from the locomotive engineer's point of view, unobstructed, and the viewpoint from the truck driver's point, unobstructed. And you know those things happen. Those things happen. You do this long enough and you realize there are ups and downs. During a trial I tell my clients to expect what I call the ebb and flow of a trial. I also tell people that the key is to do all the damage to the other side when they are presenting their case. Then complete the destruction of the opponents' case during the presentation of evidence in your case.

Mr. Granof: I think that must be the hardest kind of loss where you believe that your client is absolutely right on the facts and the law, and you believe you've done a terrific job. That is, you can't think of any other way you would have tried the case other

than, as you say, challenging an all-white jury, but in terms of presentation, it was as good as you were going to do.

Mr. Murray: It was the best I could do. I spent a lot of time down there, and I spent a lot of time with the witnesses. I worked on the weak witnesses. I made them stronger, made the presentation of the case very well, and it was a hard fought but a good trial. Both sides respected one another and both sides did a decent job, and it's the kind of case you like to try. No hanky-panky, no cheap shots, it was an above-board kind of trial. It was a tough loss, it's a loss that I'll take with me to my grave. You can't change the facts. It happened, and you just build from there and move on. You learn from that mistake. But the plant hired me again. The plant wanted me again when they had another big case.

Mr. Granof: Well, because they saw you did a good job.

Mr. Murray: Well, you know I started off, the judge and I got into a little bit on an evidentiary question and the judge called a recess, he checked my citation, and he said, "You're right, Mr. Murray," right in front of the jury, and my client was sitting at the table and said "Well, you're doing a good job." I said, "Now you guys see how I make a living."

Mr. Granof: You said you had another big case with them.

Mr. Murray: Yes, it was an environmental case. When you crush rocks into tiny little pebbles, you make a lot of dust. The plant had this huge set of vacuums inside the plant that sucked up all the dust from the air, but one time the dust bag broke. Let me tell you, when that happens, they have to shut the airport down, because the dust plume became so pervasive, and so wide and so thick, you couldn't see. Well, the

neighborhood filed suit, and the first suit did not go well. So 3M fired the lawyer and hired me to go down there. And for the second phase, the second wave of lawsuits, I got them out on a summary judgment motion. They thought I did a great job, and the plant thought I did a great job. I enjoyed those people down there, I enjoyed going down there because I liked the plant people and I liked working for 3M because you'd go around and talk to the plant people, and you find out they're second and third generations, and some of these people have been working for the plant for 35 years. When I find someone who's been working there for 15 years, I call them a rookie, because once they get in, the benefits are great, the conditions are great, the opportunities are great, and it's a nice place to work.

Mr. Granof: This may be a good place to stop. We've been going for about an hour and 18 minutes.