

Oral History of Honorable Arthur L. Burnett, Sr.

This interview is being conducted on behalf of the Oral History Project of The Historical Society of the District of Columbia Circuit. The interviewer is William Marmon and the interviewee is Honorable Arthur L. Burnett, Sr. The interview took place at the home of William Marmon on Thursday, October 24, 2019. This is the third interview.

MR. MARMON: Good morning, Judge.

JUDGE BURNETT: Good morning.

MR. MARMON: Today we're going to talk about two periods in your life. One, the period where you were active in the United States Civil Service Commission, and since we already covered in the last session your six years as a federal magistrate, then we're going to go directly to your period as a judge in the D.C. Superior Court. So let's start with the United States Civil Service Commission. Can you give us the background of how you got into that and what you did and the dates thereof?

JUDGE BURNETT: Very well. In the fall of 1975, I was called by a gentleman named Fred Abramson, who was the President of the District of Columbia Unified Bar, and in the course of the conversation, he introduced me to a gentleman named Carl Goodman, who was the General Counsel of the United States Civil Service Commission, and said they were looking for a person who was of color for the position of Assistant General Counsel in charge of Legal Advisory Section of the General Counsel's Office to issue advisory opinions on what the civil service system would require, but also be consistent with equal employment opportunities requirements. For perhaps five to ten minutes we talked generally and I mentioned a few

names. At that point they asked me would I be interested in the position in view of my academic achievement and professional experience as a judicial officer functioning as a magistrate. I hesitantly paused and reflected and said I was happy doing the legal work of a magistrate in the federal court and that I thoroughly enjoyed the nature of the work and the challenges and it could lead to me being appointed as a federal district court judge. I note that at that time Congress had not amended the legislation dealing with magistrates to add the title "judge." That change in title did not occur until the late 1980s. They said well you are young enough to become a federal judge as, you are in your early 40s. I responded that I had just turned 40 earlier that year and paused and said let me think about it.

Well at the same time, my wife and I had five children. My wife had been complaining that I was so busy as a magistrate bringing work home to work on at nights and weekends that she ought to just take the children and go back home to Oakland, California and then she would have more help from her relatives than she was getting from me. This attitude and the issue of spending more time with my five children weighed heavily on me, and I said let me think about it. Further, the job as Assistant General Counsel would pay considerably more than what I was getting as a magistrate. As I now recall it would result in a pay approximately between \$22,000 to \$23,000 more than what I was receiving as a magistrate. My four older children were entering their early

teens, and in three or four years later they would be entering college one after the other with all the expenses that would involve. I said I would give the matter serious thought and this led to a further meeting with the three Commissioners in person with my wife present in their conference room to assure her that I would have more time to spend with the children and that politically I would not have to get involved but could give legal opinions like a judge would objectively and as required by the United States Constitution and the laws. Then all three Commissioners – the Chairman Alan Scotty Campbell, Vice-Chair Jule Sugarman and Commissioner Ersa Poston - assented to those conditions and stressed that I would have a staff of attorneys working for me which would give me more time to be with and involved with our children and that they would honor the condition that I could act like a federal district court judge harmonizing the civil service law with affirmative action and not be required to yield to political considerations in the legal opinions I approved or wrote or had staff attorneys write for my approval. I emphasized that I would only approve or write legal advisory memoranda or letters that I thought five Justices on the United States Supreme Court would approve. Commissioner Ersa Poston responded “That’s ideal, Mr. Burnett. That’s what we want. Under the President we do not intend to compromise the Merit System and we want someone who will act like a federal district court judge.” Vice-Chairman Jule Sugarman made similar comments, and then Chairman Scotty Campbell said, “Well if my two

colleagues here accept those guidelines, we are prepared to offer you the position.” I then accepted the position and left the magistrate’s system. Thus, after agonizing over the decision, I decided to take the offer and to become the United States Civil Service Commission Assistant General Counsel in charge of the Legal Advisory Division of the Office and I did have more time to become an assistant scout master in which our two boys were involved and to referee football games in which they played, and to participate in activities of our two older daughters at their schools and the activities in which they were engaged as teenagers. Our youngest daughter was then only 3 years old at the time.

MR. MARMON: Tell a little bit about what you did in the job.

JUDGE BURNETT: In the job, when issues came up about harmonizing equal employment opportunities, affirmative action, with civil service merit requirements, I wrote legal opinions which were then sent by the Commission to a government agency or department saying our legal advisor advises that no you can’t do this or yes you can do this and so forth. With reference to blending the two, some would say conflicted, I would say actually I can’t see being a reverse segregationist in the sense of favoring a less-qualified black over a white person who is equally or more qualified. And indeed, a very interesting thing happened while I was in that position.

I was asked by Eleanor Holmes Norton to an interview with her to become the General Counsel of the Equal Employment Opportunity Commission. She went over those issues with me, and I made the same

comments in substance I had made to the three Commissioners of the United States Civil Service Commission. I told her that I could not compromise the civil service merit standards and act like a White segregationist in favoring White candidate over a better qualified Colored individual. Thus, I unequivocally stated as an African-American I could not give preference to an African-American over a better qualified White applicant. I emphasized that I would have to be “color blind.” I was not selected to be recommended to the President to be appointed the General Counsel and continued as Assistant General Counsel of the United States Civil Service Commission. I had taken the position that I could not shoehorn affirmative action and give it greater preference than the civil service system required.

So I think my insistence on being a purist caused me not to be recommended for Presidential appointment as General Counsel of the Equal Opportunity Commission at the time. I continued as Legal Advisor in the Civil Service Commission, and then along about late 1976 or early 1977, President Jimmy Carter asked Scotty Campbell who in the Civil Service Commission was the most scholarly, qualified person to reform the civil service system. I was designated by Scotty Campbell to be the Legal Advisor to the President in overseeing and developing proposed legislation to improve the civil service system, to flesh somewhat patterned on the model of the Office of Management and Budget and to flesh out its powers and obligations, thus developing the prohibited

personnel practices, and drafting the other provisions to be in the law as to its duties and obligations. I was further assigned the task to deal with separation of employee rights in a new entity to be called the Merit Systems Protection Board (MSPB) and I drafted the provisions in the bill to establish that separate entity. And its duties and obligations. Finally, I drafted the provisions as to the duties and obligations of the Office of Special Counsel to prohibit political activity by federal government employees. Finally, the proposed legislation contemplated the creation of a Labor-Management Agency for the federal personnel system, the proposed provisions being drafted by experts in the Civil Service Commission dealing with labor unions and labor-management issues, and I oversaw their proposals which went into the bill which resulted in the Civil Service Reform Act of 1978.

Then the Merit System Protection Board separated the management side from determining the rights of employees and so forth. I wrote the provisions on Merit Systems Protection Board. And then, along with an expert in labor management, co-wrote the provision dealing with and setting up and defining the powers of the labor relations. Fourth was carving out the role of the Office of Special Counsel to deal with prohibiting political activity by government employees. I took the lead, along with the expert in the labor field and the Hatch Act field of drafting what became the Civil Service Reform Act of 1978.

MR. MARMON: Were you involved in the legislative process?

JUDGE BURNETT: Yes. As a matter of fact, during that time I was officially the Civil Service Commission liaison to the White House Counsel's Office and physically present in the White House and on the Hill in dealing with House of Representatives Post Office and Civil Service Committee and dealing with Senate Governmental Affairs Committee. I was the lead person that the President had to shepherd that legislation through Congress. Frequently, I was there with the Committee staff of the House and the Senate Committees until 11:00 p.m. or 12:00 midnight or 1:00 a.m. in the morning on proposed amendments, drafting bill language, and reviewing drafts of House and Senate Committees' Reports on the proposed legislation.

Indeed, in one instance, and this is probably, I won't say the most tested time I ever had before a Congressional Committee. I testified for the Administration on the entire bill before the Senate Governmental Affairs Committee as the lead government witness. When I finished testifying for the Administration on the entire bill, the Chair said, "Mr. Burnett, we don't want you to leave. We want you to sit at the end of the witness table over there, and as each witness testifies and raises questions about what this legislation will provide as to any provision in it, we want you present to answer them." So I sat before that Committee from approximately 10:00 a.m. in the morning until 6:00 p.m. that evening responding to the criticisms and questions prompted from all the witnesses who testified that day and answers questions from members of the

Governmental Affairs Committee prompted by the witnesses' testimony. Before the House Post Office and the Civil Service Committee I did the same thing but it was not quite as grueling as the proceedings before the Senate Committee. In connection with the proposed legislation, on the day I testified before the Senate Committee, I had been requested by then Representative Gladys Spellman of the 8th Congressional District in Maryland, to appear and testify in Maryland where she was holding a hearing and she said she wanted me to be at this hearing she was holding that night. To hear from her constituents and answer any questions any of them might have about provisions of the proposed legislation. I went to that hearing, which went from about 8:30 p.m. to almost 12:00 p.m. that night. That was the most grilling day I have had in my life.

The outcome of that was I got to be very, I won't say attached, but very close as a liaison to Abraham A. Ribicoff, of Connecticut the then Chair of the Senate Committee, and Representative Morris K. Udall of Utah. It was as if I was almost a member of their respective Committees' Staff. When they drafted the House and Senate reports, they had me to review them to make sure they were accurate.

MR. MARMON: What were the major innovations or changes that the Act provided for?

JUDGE BURNETT: In connection with prohibitive personnel practices, we had provisions dealing with the so-called whistleblower problems and protections and how to protection whistleblowers against retaliation who act in fact with genuine sincerity as to alleged corruption or politicizing merit decisions

in the civil service system and to make sure that the merit system operated like a scientific model based on pure merit and not because of relationships, politics or bias or prejudice of any sort. So my biggest challenge was to draw up prohibitive personnel practices that would provide adequate protection and guarantee that the merit system would not be corrupted.

MR. MARMON: How long did you stay in that job?

JUDGE BURNETT: I stayed in that job until January 1980. Indeed, during the course of that time period in 1978 or early 1979, that when I was also in a time period when I came under consideration for appointment to the U.S. Court of Military Appeals, now called United States Court of Armed Services Appeals, was interviewed by Deanne Siemer, General Counsel of the United States Department of Defense for appointment to the United States Court of Military Appeals, later renamed the United States Court of Appeals for the Armed Forces. Also during that same time period, I was a final candidate for the U.S. Court of Appeals for the Federal Circuit and interviewed by the Judicial Nomination Commission for appointment in to that Court in 1978-1979. Both of those potential appointments occurred during the same time period, and while I was among the finalists being considered, I was not selected for either of these two appointments.

One of the questions raised before the Judicial Nomination Commission for the Federal Circuit Court of Appeals was whether I had left the magistrate position because I had done something wrong or

somehow messed up as a judicial officer. There was a lingering cloud and some persons thought my family situation and pay compensation justifications were merely a cover for having somehow messed up. Usually when a person gets to be a judge, he or she dies in the office retires as a judge, but a judge does not leave to take another job. I later learned from Chief Judge Aubrey Robinson upon being re-appointed a Magistrate the second time in 1980 and also from others that Members of the Judicial Commission for the Federal Circuit Court appointment had called district court judges of the District of Columbia and had asked if there was anything unfavorable about as to why I had left the magistrate position in 1975. They later told me that the Commission was a little concerned that I had given up the magistrate position and went to be legal counsel in the United States Civil Service Commission and if any judge had found any problems with my performance as a judicial officer. We told them definitely not, that I was totally in compliance, and it wasn't until January of 1980 that I was reappointed as a magistrate again, the second time, I think the suspicion that I had done something wrong or displeased some federal judge and had been kicked out that the shadow or the question totally disappeared.

MR. MARMON: Any other events you want to talk about for the period in the Civil Service Commission?

JUDGE BURNETT: In 1979 - 1980, that was a Presidential Campaign between President Jimmy Carter being re-elected and Ronald Reagan I was being vetted to

be appointed Director of the Office of Government Ethics. Or alternatively, the Director of the Office of Special Counsel by the White House. An investigation for my nomination to one of these positions and was in process for me for that appointment. However, it then appeared that President Jimmy Carter would lose to Ronald Reagan. Even though each of those offices carried four year terms, I concluded that an occupant of that position was still removable by the President. I concluded that if I took either appointment by then President Jimmy Carter, if Ronald Reagan got elected, he could demand my resignation and I would be out in private practice, and at that point, in 1980, my oldest daughter was just entering college and my older son would be starting college in 1980. I concluded that I did not want to be thrown into private practice with two of my children starting college. It was then that former Chief Judge Aubrey Robinson called me and asked if I would be interested in coming back as a magistrate again. I noted that Congress had raised the salary to 90% of the level for district court judges and I enjoyed judicial work so much, that I applied to return to my old position as the person who had taken my place, had been appointed to the Superior Court of the District of Columbia and that position was vacant again. That 90% salary was equivalent to what I was earning as Assistant General Counsel then in the Office of Personnel Management. I said definitely, at least I would have more stability and security in my life and for my family. I then notified the White House of my decision and pulled out of being vetted for either of the two

presidential appointments by President Jimmy Carter and opted to go back to being a magistrate, and was sworn in the second time in January of 1980.

That was my plight in December 1979 and early January 1980. I turned down two potential Presidential appointments.

MR. MARMON: Maybe we should talk about your second magistrate years. I'm not sure we covered that last time. We just covered the first magistrate period. Let's move on to that and then move into your Superior Court appointment.

JUDGE BURNETT: Before we do that, while I was in the legal advisory status, Congress considered legislation to expand the jurisdiction of the United States Magistrates. I was the Chair of the Federal Bar Association's committee on the magistrates system, and I appeared and testified before the Senate Judiciary Committee with Ted Kennedy as Chair and Strom Thurmond as Minority Leader at the time. Griffin Bell, then Attorney General and formerly a 5th Circuit Court of Appeals Judge, had testified about giving magistrates authority to try civil cases with consent of the parties. But the Justice Department's position was to provide for a *de novo* trial before a U.S. district court judge in the district court if the parties did not like the result of what happened before the magistrate in a civil case trial.

I appeared representing the Federal Bar Association being a former United States magistrate at that point and testified that United States Magistrates are selected and appointed by the federal district judges who

select them like they select their law clerks – the best who apply. Therefore, a majority of the active sitting district court judges will select the best intellectual person they can find. Second, magistrates who are selected will want to encourage the lawyers of the Bar to consent so civil trials before them and therefore magistrates are not going to be as arrogant or dictatorial or acerbic as some district judges may be, and thus magistrates will bend over backward to be civil and reasonable to encourage lawyers to use them more, and will take a more neutral middle road in dealing with the lawyers, and the lawyers might be more comfortable in trying cases before United States magistrates than some federal district judges. Finally, magistrates who are selected for the position figure they might want to become district court judges, so they're going to set out when they have these consent cases to give the litigants and the lawyers the best trial they can give them. Senator Strom Thurmond said, "Mr. Burnett, that's a brilliant idea." And indeed they rejected Attorney General Bell's position and actually accepted my position of giving consent jurisdiction to United States magistrates but with appeals directly to the United States. Courts of Appeals so you would not have the double expense of litigants having to fund two separate trials in the district court if they didn't like the outcome of what happened before the magistrate.

Thus I was the spark plug, you might say, of overriding the Justice Department's position and getting Congress to provide basically that with

consent, the magistrate sits as a substitute district court judge with direct appeal to the applicable U.S. Court of Appeals.

In addition during that time, they were also broadening the pretrial functions in dealing with pretrial motions, and indeed, we developed a system and a rule of the court which was adopted throughout the Congress that the district court would have a rule that magistrates would submit a report and recommendation, but when ten days expired and neither side have objected to the magistrate's report and recommendation, it automatically became the ruling of the district court without a judge even bothering to read it. They adopted that practice, and I was the guy running with the football in getting that accomplished.

MR. MARMON: Moving on into your period as magistrate for the second time, let's talk about that period now.

JUDGE BURNETT: During that period, the role of magistrate judges in civil cases, especially as a result of Congress giving magistrate consent power to try cases, they also gave magistrates the power to preside as settlement judges to settle cases and to more or less enter orders dealing with discovery issues and deposition disputes, interrogatories, confidentiality, attorney client privileges matters, application for attorney fees, where applicable,, et cetera. I had many legal issues come before me where I wrote opinions much like a district court judge that were published in the Federal Rules Decision. During that period, I wrote 43 such opinions published in the Federal Rules Decision Reporter as pretrial rulings of the U.S. District

Court of the District of Columbia. (See Appendix for list of such cases)

Indeed, one case I dealt with the complicated issue of attorney-client privilege and the issue of whether or not the attorney-client privilege was say abrogated when the attorney was complicit in the obstruction of discovery or destruction of documents. As a result of my ruling in that particular case, CBS Broadcasting Company, a sexual harassment case was settled, and the decision was then later cited by the 7th Circuit Court of Appeals as to how federal courts should rule in federal courts in the entire nation. The attorney-client privilege does not protect a lawyer who becomes an aider and abettor in a crime, a co-conspirator, or participant in a fraud, or obstructs justice in a criminal case.

MR. MARMON: Can you go into more detail about what was concluded there?

JUDGE BURNETT: I concluded that the attorney-client privilege did not apply when there was sufficient or valid evidence that the lawyer was engaged in covering up or protecting a broadcasting company from allegations of sexual harassment by a woman, and if the lawyer had in fact advised a client to destroy and not to produce certain things, then the attorney-client privilege had no application, and that would be an exception to the attorney-client privilege. This principle might well also apply in obstruction of justice cases or accessory after the fact.

MR. MARMON: Interesting. Any other notable cases that you had?

JUDGE BURNETT: As a result of my pretrial rulings and handling of pretrial discovery issues, many lawyers began to consent to trials before me actually sitting as a

district court judge, and in 1985, I actually tried, presided in a role of a United States District Court judge, over thirteen civil cases and ultimately tried as if I were a district court judge with direct appeals to the court of appeals applicable. None of those cases were reversed.

MR. MARMON: Do you remember any of those cases, the particulars of any of them?

JUDGE BURNETT: Not specifically right now, but I recall that when I was nominated by President Ronald Reagan to be appointed to the Superior Court of the District of Columbia, which handles both state type general jurisdiction crimes and civil cases as well as some federal cases, I had to compile that information and submit it to the Senate Governmental Affairs Committee that oversees the confirmation of judges to the D.C. Superior Court. That's why I remember the number thirteen separate cases with a specific number in mind. I provided that list of 13 cases to the Committee during my confirmation hearing process.

MR. MARMON: Let's move on to your appointment by President Ronald Reagan to the D.C. Superior Court. How did that come about?

JUDGE BURNETT: Actually, in 1987, I applied both for the U.S. District Court and the Superior Court, and Ed Meese was Attorney General. Royce Lamberth was also being considered for District Court. Royce Lamberth told me that Ed Meese told him that his competitor for appointment to the federal district court was Judge Burnett, but we have enough black judges on the district court now, and indeed Royce said he got the appointment because Meese, as a political matter, didn't want any more black judges on the

U.S. District Court, and I ended up on the Superior Court. The two of us were being considered for federal court and I ended up on the Superior Court, Royce Lamberth got the federal appointment. We both went through confirmation procedures at the same time.

MR. MARMON: What happened during the confirmation proceedings?

JUDGE BURNETT: Basically at the hearing they reviewed my life history much like we are talking here now. What is your history, Judge Burnett, what have you done, and have there ever been any ethical complaints filed against you. I said I don't know of any. I have never been told of any. Pretty much basically I recall that there was a Senator Sasser from Tennessee and Senator Roth from Delaware on the committee that presided over my confirmation hearing, and they were more laudatory about my background than I would have been in person. They said they remembered me from my work with Congressional Committees because I was the one who led the work on Civil Service Reform in the Carter Administration. They explicitly spoke of my excellent work with the Committees dealing with Civil Service Reform. Indeed their statements were far longer than my official statement in my confirmation hearing. Their statements in the transcript sounded more like my eulogy and I had died and gone to Heaven. They asked me certain perfunctory question like have any Bar discipline complaints ever been filed against you, have you ever had any tax problems, are you aware of any of your children being involved in any drug problems or illegal conduct or so forth. The ultimate question was

whether I aware of any fact about me which would embarrass the President of the United States. I think my testimony before the Committee was only three or four pages.in length.

MR. MARMON: What was the vote for confirmation?

JUDGE BURNETT: Unanimous for confirmation. According to what I was told, by consent. It was not controversial at all.

MR. MARMON: Was it voted on in the full Senate?

JUDGE BURNETT: Yes. Full Senate.

MR. MARMON: That was also by unanimity?

JUDGE BURNETT: The way I read the record it was unanimous.

MR. MARMON: Let's talk about life in the D.C. Superior Court.

JUDGE BURNETT: When I got sworn into the Superior Court, Fred Ugast was the Chief Judge of the Court. I was sworn in one day, and the next day he said, "Judge Burnett, you are an experienced judicial official. We don't need to go through training. Here's your calendar, go sit on the bench. So I didn't even have to go through a training period. I was just transferring from one kind of cases to another type of cases. So my second day on the job, I had a full calendar and started handling cases just like an experienced judge on the Superior Court of the District of Columbia.

MR. MARMON: What kinds of cases did you have?

JUDGE BURNETT: I started out with a misdemeanor calendar dealing with simple assaults and shoplifting, destruction of property, unlawful entry and petty larceny. Then moved on to handling felony criminal cases involving assaults with a

dangerous weapon, burglary and robberies. The assignments at that point were for one year at a time so usually from January through December. I came on in November, so most of the year had passed, and in January I was assigned a Felony II case which is everything that involved such as offenses carrying 5, 10 and 15 years sentences,, and then finally I moved on to handling first-degree murder and, rape cases which carried the potential of 30 years to life sentences. To use a baseball analogy the Chief Judge started a new judge off handling minor criminal cases and then moved the judge up to more serious cases and ultimately to the big league handling first degree murder cases.

MR. MARMON: Was the court on Fifth Street?

JUDGE BURNETT: I started off in the Court of General Sessions Building at Sixth and E Streets, N.W. The Civil Court cases were handled down in a Court Building at Fifth and E Streets across from where the new Center Judicial Building is now. For the first year or two, my chambers and courtrooms were on Fifth and E Streets, Northwest.

MR. MARMON: Did you enjoy that work?

JUDGE BURNETT: Yes. It was fine. I just jumped in and did what had to be done.

MR. MARMON: How long did that period go on for?

JUDGE BURNETT: Actually, the Chief Judge changed calendars every year. There came a point that I was assigned to a civil calendar. I think I took over the calendar from Judge Ricardo Urbina that had over 750-cases on it, and I was getting about 70-80 new cases every month, so that meant I had to

dispose of about 80 cases just to keep the calendar manageable. During that period I worked day and nights handling and reviewing my assigned civil cases spending 14-16 hours a day. I recall that when I left the calendar two years later, I had reduced the calendar to approximately 550 cases. I at least kept current, got rid of the older cases first within two or three years and was able to reduce the calendar by approximately 200 cases. I was on the civil calendar for a couple years and then I went back on criminal cases calendar dealing with murder and rape cases and major drug cases.

During that time period I received the case involving Carl Rowan, a noted columnist and news media person, and a former ambassador, with reference to youth breaking into his house and swimming in a pool at his residence, and it resulted in charges against him for unlawful possession and having a gun. In that case the defense claimed that the Police Department had approved him having the gun in his house for his protection. I developed a new doctrine and created a jury instruction that instructed the jury that if the Police Department had approved him having the weapon, then the Government Prosecutor should be estopped from convicting him for unlawful possession of the weapon or carrying the weapon in and about his own residence. The jury hung and the Government did not proceed to try him again and the charges were dismissed. Thus, I developed the criminal defense doctrine of estoppel by government action - a new doctrine called estoppel by government action,

with referenced to the fact that the police department had in fact approved Carl Rowan having a gun in his house, and then the government turned around and after the pool incident prosecuted him for illegal possession and display of weapon. I analogized that behavior by government agents to a situation like a law enforcement officer telling an individual he or she can park at such a location in an emergency situation and when he returns finds that he has received a parking ticket for illegal parking when he had the approval of an officer to do so. I wrote an opinion on that issue with reference to that defense. I developed that doctrine with reference to estoppel with reference to criminal prosecution and that being a valid criminal defense when a person acts at the direction of law enforcement and then they turn around and prosecute that person for illegal conduct.

The other big case I had was the one involving John Hinckley, in connection with shooting President Ronald Reagan. That was during my second appointment as United States Magistrate in the United States District Court for the District of Columbia

MR. MARMON: Let's talk about that.

JUDGE BURNETT: In the district court as a magistrate, I was the arraigning judicial officer who handled the preliminary proceedings involved as a magistrate the second time when John Hinckley was arrested and brought before the court. I recall that I conducted the initial appearance around midnight with the Director of the FBI sitting in the front row of my courtroom and with the courthouse being under tight security, and I entered the order

referring him to a federal mental health center for a determination of his mental status and whether he could claim insanity as a criminal defense in the prosecution of the case. Subsequently upon referral from Judge Barrington Parker I handled other pretrial proceedings in the Hinckley case as well.

I also handled many cases involving demonstrators against the Vietnam War. I actually had the experience of women sometimes being arrested with young babies and opening their blouse clothing with their breasts fully exposed and nursing their babies sitting on the courtroom floor waiting to for their initial appearances and bail or pretrial release, but refusing to give their true identities, and thus I was left with no alternative but to commit them without bail as “Jane Doe’s” until we could get the history of the individual and/or identify parents or other relatives and arrange for third party custody releases arraigned or being advised of their rights as a magistrate judge the second time around in the federal court system. I also handled cases as a magistrate involving persons protesting against the United States Supreme Court in connection with its rulings on abortion, and even one case in which Chief Justice Rehnquist was listed as a witness. The case was resolved without the need for his appearance.

MR. MARMON: Going back to the Superior Court days, are any other cases you want to talk about?

JUDGE BURNETT: There was one other case, and as a matter of fact I developed an expertise in dealing with neglect and abuse cases, welfare and foster care cases. We had one case in which a lawyer on behalf of a young lady had filed what you would call a motion for termination of parental rights. She had been a runaway from home and considered “incorrigible”. She was placed in a group home by another judge of our court. My recollection is that it was in a group home facility in Georgia. She testified by electronic means over open microphone from the group home that she ran away from home not because she was engaged in prostitution but because her mother could not have a baby and wanted to give her \$500.00 to get pregnant by her mother’s live-in boyfriend and she kept running away because she did not want the mother’s boyfriend to impregnate her and that she wanted to in her words divorce her mother, change her name, and start life over again. When she testified on open microphone from Georgia into the courtroom, the courtroom audience was spellbound. Further, her grades had so improved while in the group home that she was preparing to attend college. I granted the motion. At the point when she was in the group home, she had participated in furthering her high school education where she was an A and B student and would be going to college, stating that she wanted to become a social worker to prevent other girls going through what had happened to her. So that was one of the most interesting cases I handled in the Superior Court sitting on termination of parental rights cases.

The other aspect of that assignment was that I also became the adoption judge. As the adoption judge in these cases, I had numerous petition to review to decide whether to grant or deny petitions for adoption by the caretakers. These cases tugged at my heart strings and I frequently stayed up until 2:00 a.m. in the morning review adoption case files. I recall there was one occasion that In one month, I granted a total of 83 adoptions to give these children loving homes and the quality of care they deserved. This was probably the highest number of adoptions in one month by any judge of the Superior Court of the District of Columbia. This may well be the highest number of adoptions granted in a month's time in the history of the Superior Court in the District of Columbia. I have not heard of any other judge of the Superior Court granting more adoptions in one month's time.

MR. MARMON: Why was the Superior Court monitoring the adoption process?

JUDGE BURNETT: The Superior Court was created as a general jurisdiction court with comprehensive jurisdiction over all types of cases rather than having separate specialized courts as in some states. Thus Congress consolidated in the Superior Court jurisdiction all types of matters handled by state courts throughout the United States and also authorized the Superior Court to handle some cases based on federal grounds such as the prosecutions by the United States Attorney in the Superior Court and allowing civil cases involving unlawful discrimination and other types of cases to be brought in the Superior Court because of the status of the District of Columbia.

Thus, the Superior Court has far broader jurisdiction than Circuit Courts in the States as general jurisdiction courts. Superior Court is a comprehensive court that covers all those matters as a consolidated court rather than a separate adoption court like you used to have back in the olden days in some of the states. So the Superior Court has functioned basically as a dual court, as a state court of general jurisdiction over all state-type matters, as well as being a quasi-federal court much like territorial court in the Virgin Islands and Puerto Rico. So Superior Court judges handled cases both that were state-type cases and federal-type cases.

MR. MARMON: Adoption cases were contested adoptions or why were they before the court?

JUDGE BURNETT: Absolutely. Many times the parents would not want their rights terminated and their child or children adopted. There was also the question of suitability of the people who wanted to adopt a child contested by social workers of the government agency overseeing the child on welfare. They would make reports, including reports on lifestyle, history, drug uses, and so forth, of the potential adoptee parents.

As a result of my work in the Superior Court and dealing with the foster care cases and neglect abuse, termination of parental rights and adoption cases, I came to the attention of Marian Wright Edelman, and when I got to a point where I was eligible to retire, Marian Wright Edelman said, "Judge Burnett, why don't you retire, take senior judge

status where you can select where you want to sit or don't want to sit and become my judicial advisor with reference to legislation and policies to improve the system for youth and deficient homes in America." So in 1998, between eleven and twelve years into my fifteen-year term, I decided to retire, or semi-retire, you might say, and take senior judge status in October 1998. Whenever I was not actually engaged in activities for the Children's Defense Fund and testifying before Congress, I was available almost full time from 1998 until 2004 handling civil cases involving the youth system of the Superior Court dealing with juvenile delinquency, dealing with neglect and abuse, dealing with termination of parental rights and adoption simultaneously while being an advisor to the Children's Defense Fund with Marian Wright Edelman, and to some extent, on legislation involving children I had dealings with Hillary Clinton and other members of the United States Congress.

As a matter of fact, Marian Wright Edelman urged me to work with Hillary Clinton's office staff as a volunteer when she was a United States Senator. I did not pursue that option as I concluded that I would be working in the Senator's office full time and not available to work for the Children's Defense Fund or to handle cases as a Senior Judge of the Superior Court. I also ended up being a frequent speaker at conferences and programs around the country and even to establish and run programs at the Alex Haley Farm in Tennessee put on by the Children's Defense Fund on how to improve the childcare system in America.

MR. MARMON: What were some of your views on that?

JUDGE BURNETT: My views on that were that I recommended, and I recommended even to the city here, that there should be a middle ground between terminating parental rights and adoption called temporary guardianships which would provide for temporary guardians for children who are in homes where the parent has a drug problem and tell the parent we will give you two years to effectively deal with your drug problem if you want your child or children back with you and back under your care. If at the end of two years you are not improving or you are going downhill, then the child will be put up for adoption, but let us get the child out of your house into a stable setting where we don't have the problem like the girl in Georgia where the mother was trying to force the girl to have sex with her live-in boyfriend to get pregnant by him because she, the mother, could not get pregnant and now have a child. In many instances, unfortunately, many poor black women sometimes sell their bodies to get their drugs. Sometimes they even offer their teenage or pre-teen girl child or children for sex. They may say: "I'm on the rag now, you can have sex with my daughter instead." Mom may tell the daughter if you do not do it, we will lose our place to stay and have to live on the street. So we have run into those hard problems in dealing with people who live in property and people with drug addiction problems. Sometimes drugs lead people to do things that are almost unimaginable.

So I have dealt with those type of situations, and in many instances, I have worked out a situation under the State Transfer Act of providing for interchange among states for children to go to Georgia, Mississippi or Alabama to live with grandparents for a couple years while the mother or father try to get their lives straightened out, and if they do, the children can come back and still be biologically and legally their children if we had a guardianship arrangement as opposed to terminating rights of the natural parent and placing the child with initially with a stranger who may develop such an attachment with the child to legally adopt the child.

That was the toughest problem I have faced in my judicial career is how to break the back of cyclical poverty and degradation and to give these children the opportunity to develop their abilities and talents and become contributing to the communities in which they become adults, and at the same time reducing significantly crime and violence in the United States. Coming up with a middle ground approach of temporary guardianships may be a way to improve the quality of our communities and reduce crime, violence and mass incarceration in this nation. Such a system would create an incentive for biological parents for people to cope with their addictive dependency problem to turn their lives around. Finally, if the temporary guardianships would also provide for guardianship subsidies, like adoption subsidies, it may give senior citizens who have retired from 40 hour a week employment, supplemental income

to remain in our inner cities and help provide for their healthcare as senior citizens and keep their lives interesting and productive. It could slow down the gentrification of our major urban areas of this nation and improve public safety. It could revitalize the concept of it taking the whole village to raise a child to reach his or her potential as a human being.

MR. MARMON: How was it like working with Marian Wright Edelman?

JUDGE BURNETT: She is a most agreeable and inspiring woman, most compassionate, and indeed she would have been a better choice for the Supreme Court than Clarence Thomas [laughter]. I think she would have been a person on the United States Supreme Court who would be more like a Justice Frankfurter or one of the most scholarly justices we could have had.

Until 2004, that was the area in which I more or less specialized in - dealing with children issues in the court system. Being a speaker for the Children's Defense Fund and advising Marian Wright Edelman, Congress on legislation and bills pending in Congress and communicating with Senator Leahy, Senator Leahy, and Congressman Bobby Scott and others in the House of Representatives was most fulfilling to me. I sort of served as her liaison with members of Congress on children's issues.

MR. MARMON: When did you actually leave the Superior Court altogether?

JUDGE BURNETT: August 1, 2004. That came about in connection with my being involved with the National Bar Association to create a coalition of major Black organizations to deal with the social problems of poor Black Americans

and the criminal justice system and needed reforms in both the juvenile justice system and in the criminal justice system in dealing with adults. In the period of 2002, 2003, Clyde Bailey, a lawyer with Kodak Camera Company had surgery done by my doctor son and learned of me through my son, who's a doctor at Johns Hopkins specializing in prostate cancer, and he sought me and said he did not know why he had not learned of me before then. He then contacted me and asked me to meet with him and told of his plans once he became President of the National Bar Association. These discussions led to him asking me to be his judicial aide or judicial chief of staff as the incoming President of the National Bar Association. He stated: "What I want to do as my legacy to the National Bar is to bring together all the major Black organizations in this country in a unified matter, much like the United States or a United Nations, and based on your background and experience, I want you to be my principal adviser to do this." He advised that his wife was a Ph. D. Professor in Psychology at Howard University would also work with the two of us on this program. He concluded that he wanted me to be their advisor in setting up this Coalition.

The Coalition had its initial meeting in the House Rayburn Office building that was set up by the Congressional Black Caucus Foundation. I was the emcee at that particular event, and members of the Black Caucus Foundation encouraged us to proceed with the implementation of our plan to create this Coalition. I was designated to take the lead to achieve this

objective and on August 1, 2004 I took a sabbatical from the Court as a Senior Judge to recruit and organize this Coalition of Black Professional Organizations as the consensus at the April 1, 2004 meeting was unanimous to proceed with setting up this Coalition.

So on August 1, 2004, I took a sabbatical from the Superior Court to become full time the executive director of the National African-American Drug Policy Coalition, an association of organizations at that point, to explore with the various organizations their interest in joining a Coalition of organizations to deal with coming up with retention programs to keep our Black kids from getting involved in drugs, juvenile delinquency behaviors and criminal type conduct and eliminate biases and prejudices in our juvenile justice and criminal justice systems. So I went on sabbatical, then for what I contemplated would be just for one or two years and then returning to the Superior Court to resume acting as a Senior Judge hearing cases for the remainder of my life. When this brief period was up, I went back before the Commission on Disabilities and Tenure to ask for an extension of my sabbatical and it indicated that I was doing such a great job, that they would give me an indefinite extension. So I still was considered a senior judge on the court with the power to return to the court but continued indefinitely. On sabbatical. Year after year went by, and they kept extending me as a senior judge on sabbatical until 2013, nine years later. Then Judge Gladys Kessler of the United States District Court, who was the Chair of the Commission, called and said “Judge

Burnett, you've been gone so long, why don't you just go ahead and retire completely, and now you also are working closely with the Obama Administration, and though you have tried to avoid getting involved in political stuff or things you have to handle were you to return to hear cases. Why don't you just go ahead and retire completely?" So I retired completely as a judge of the Superior Court of the District of Columbia on February 15, 2013.

But in the meantime, going back to August of 2004, that was an organizing period of exploring with the National Medical Association, and National Association of Black Social Workers, the Association of Black Psychologists, the National Organization of Black Law Enforcement Executives and other Black Organizations whether they would join and become member organizations of the National Coalition, Inc.

It was our initial plan that when we got to a fifteen such organizations, we would proceed to incorporate and apply for 501(c)(3) status with the Internal Revenue Service. However when we reached July 2005 and we had a total of 15 member organizations indicating their desire to become members of the National Coalition, about July of 2005, we reached that number of fifteen, but we had about eight additional organizations indicating an interest and suggesting that we say hold up incorporating and formalizing the Coalition. So we held up in 2005, and finally, by January of 2006, we had 23 separate national Black organizations saying they wanted to create this coalition and incorporate

much like a United Nations with the National-African American Policy Coalition under your leadership being an organization dealing with Congress, dealing with implementing civil rights in criminal justice, juvenile justice and preventing our kids from contributing to mass incarceration of blacks in this country. So we proceeded and were incorporated in District of Columbia on January 12, 2006. Then through the services of voluntary counsel we applied for and received our Internal Revenue Service status as a non-profit corporate entity on August 30, 2006 retroactive to January 12, 2006. In the incorporation process I became the Vice President of Administration. Since August 1, 2004, I have been the National Executive Director of that organization.

On October 1, 2018 I relinquished the position of Vice President of Administration in view of my age and health issues and the Board of Directors decided to divide the functions with another retired judge taking the Officer Position as Vice President of Administration, but I continuing at the present time as the National Executive Director and the National Spokesperson for the Coalition.

The current situation is I'm still the national executive director and national spokesperson, but she's the vice president of administration, so when things come up having to do with authority of vice president or in her domain overseeing that, I say you can take care of that now. I remain as a member of the Board of Directors.

MR. MARMON: You mentioned that you got involved with the Obama Administration. Why don't you talk about that?

JUDGE BURNETT: In connection with the Obama Administration, the Congressional Black Caucus, I'm told by reliable sources, recommended me to Obama to be the Director of the Office of National Drug Control Policy. I was told that President Obama indicated that I had such wide experience, he did not want to pigeon hole me on drug policy and that he wanted to use me across the entire operation of the federal government. I want to use him across the entire operation of the United States government. Consequently, as a result of that, I have had calls from Valerie Jarrett on content of speeches he would make and have been invited to the White House to consult with staff on a number of matters on sentencing matters and criminal law issues.

In 2010 I was invited to the White House to be next to his chief of staff, his advisor, on whether to sign the bill that reduced the disparity between crack cocaine and powder cocaine or insist on a one-on-one parity, and I advised and sat next to the chief of staff during the advisory committee to advise whether he should even sign the bill which came the Fair Sentencing Act of 2010.

On other instances, I received calls we want you at the White House to be part of an advisory meeting on this issue or that issue. In 2014, I received a White House award from the Obama Administration as one of the top ten experts in the nation on substance abuse in the country.

I recall one instance I was in Hawaii and was speaking at a conference of National Medical Association. At 9:00 a.m. in the morning, I get a call from the White House and said the President wanted me to be with him at a program here in Washington at 3:00 p.m. that afternoon. I said I'm in Hawaii right now, and even if a private plane was here, you couldn't get me there by 3:00 p.m. Washington, D.C. time. When I did return, I went from Hawaii to Michigan where I was a keynote speaker at a Michigan state drug professional organization, and from there, I went to Florida for a meeting. So I had three trips lined up back to back without returning home. That was my relationship with the Obama Administration. And indeed, in some instances when they were making reports to Congress, they would run a draft of the report by me for me to flag any issues on which they should be focusing on specifically.

Ironically, as life would have it, serendipity, my oldest son, Arthur Burnett II, was a student at Princeton University when Michelle Robinson came to Princeton as a freshman. My older son was assigned as her big brother at Princeton. My second son, Darryl Lawford Burnett, was a professor at the University of Maryland in Public Health combating the drug crisis it had following the death of Lenny Bias. He took a sabbatical to go on leave to write his thesis for a Ph.D. degree, and in that capacity ended up working with a gentleman named Danny Davis, who was then an Alderman in Chicago before being elected to Congress. My son on sabbatical ended up being the Program Manager while on sabbatical for

the National Association of Community Health Centers and was an aide to Alderman Danny Davis, who was campaign manager for Barack Obama when he ran to become a state Senator. As a result Darryl too had contact with Barack Obama. So both of my sons have had contact with the Obama family.