



THE HONORABLE HAROLD H. GREENE

U.S. District Court for the District of Columbia

Oral History Project
The Historical Society of the District of Columbia Circuit

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District of Columbia Circuit**

**United States Courts
District of Columbia Circuit**



The Honorable Harold H. Greene

U.S. District Court for the District of Columbia

**Interviews conducted by:
David Epstein, Esquire**

April 29, June 25, and June 30, 1992

NOTE

The following pages record interviews conducted on the dates indicated. The interviews were electronically recorded, and the transcription was subsequently reviewed and edited by the interviewee.

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PREFACE

The goal of the Oral History Project of the Historical Society of the District of Columbia Circuit is to preserve the recollections of the judges who sat on the U.S. Courts of the District of Columbia Circuit, and judges' spouses, lawyers and court staff who played important roles in the history of the Circuit. The Project began in 1991. Most interviews were conducted by volunteers who are members of the Bar of the District of Columbia.

Copies of the transcripts of these interviews, a copy of the transcript on 3.5" diskette (in WordPerfect format), and additional documents as available – some of which may have been prepared in conjunction with the oral history – are housed in the Judges' Library in the United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C. Inquiries may be made of the Circuit Librarian as to whether the transcript and diskette are available at other locations.

Such original audio tapes of the interviews as exist as well as the original 3.5" diskettes of the transcripts are in the custody of the Circuit Executive of the U. S. Courts for the District of Columbia Circuit.

Historical Society of the District of Columbia Circuit

Agreement

1. In consideration of the recording and preservation of my oral history memoir by the Historical Society of the District of Columbia Circuit, Washington, D.C., its employees and agents (hereinafter "the Society") I, Abel H. Green do hereby grant and convey to the Society, its successors and assigns, the ownership of the tape recordings and transcripts of interviews of me as described in Schedule A hereto, except as otherwise provided herein. I also grant and convey to the Society all right, title, and interest I might have in such tapes, transcripts and their content, including literary rights and copyrights. All copies of the tapes and transcripts are subject to the same restrictions.

2. I have not previously conveyed, assigned, encumbered or impaired my rights and interest in the tapes, transcripts and their content referred to above, except as may appear in prior works of mine.

3. It is agreed that access to the aforementioned tape recordings and transcripts shall be preserved and made available in accordance with the direction and control of the Society and subject to terms to be set by the Society. I authorize the Society, subject to the above and to any exceptions contained herein, to duplicate, edit, publish, or permit the use of said tape recordings and transcripts in any manner that the Society considers appropriate, and I waive my claim to any royalties from such use.

4. I reserve the right to use the tapes and transcripts and their content as a resource for any book, pamphlet, article or other writing of which I am an author or co-author.

Date: Dec. 20, 1993

Abel H. Green

Date: Feb. 25, 1994

Daniel M. Tucker 11/8/95
President
Historical Society of the
District of Columbia Circuit

Feltie Stone Matthews

my commission expires 10-31-1998

Schedule A

Tape recording(s) and transcript resulting from three
interviews conducted by David Epstein
on the following dates: April 29, 1992; June 25, 1992; and June 30,
1992.

HISTORICAL SOCIETY OF THE DISTRICT OF COLUMBIA CIRCUIT

AGREEMENT

1. In consideration of the recording and preservation of oral history memoirs of Judge Harold H. Greene by the Historical Society of the District of Columbia Circuit, Washington, D.C., its employees and agents (hereinafter "the Society"), I, David Epstein, do hereby grant and convey to the Society, its successors and assigns, the ownership of the tape recordings and transcripts of interviews made by me as described in Schedule A hereto, except as otherwise provided herein. I also grant and convey to the Society all right, title, and interest I might have in such tapes, transcripts and their content, including literary rights and copyrights. All copies of the tapes and transcripts are subject to the same restrictions.

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Date: March 16, 1994

David Epstein

David Epstein

Date: November 9, 1995

Daniel M. Gibson

President

Historical Society of the
District of Columbia Circuit

District of Columbia:

Signed and sworn to before me on March 16, 1994, by David Epstein.

Janet E. Fefe

Janet E. Fefe
Notary Public, District of Columbia
My Commission Expires Sept. 30, 1997

The Honorable Harold H. Greene

Biographical Summary
as of December 22, 1993

Full Name Harold H. Greene

Address _____

Telephone: Office _____ Home _____

Date and Place of Birth 2/6/23 Frankfurt, Germany

Parents:

Father Irving Greene

Born Warsaw, Poland

Mother Edith Greene

Born Bad Schonfliess, Germany

Primary and Secondary Education Elementary and High School, Stettin, Germany

Higher Education G.W. University, G.W. University Law School

Positions Held Chief Judge, D.C. Superior Court, 1966-1978

Military Service U.S. Army, 1944-1947

Other Government Service U.S. Department of Justice, 1953-1965

Civic and Community Activities _____

Honors and Awards Honorary Doctor of Laws, George Washington University, Bridgeport University; Runner-up, Time Man of the Year; numerous Bar Assn. awards; etc.

Spouse Evelyn Greene

Children Michael D. Greene (McLean, VA), Stephanie Greene (Los Angeles, CA)

Publications Many Supreme Court and Court of Appeals Briefs. Articles on court organization, sentencing, civil rights, civil liberties, etc.

DAVID EPSTEIN

Interviewer of Judge Harold Greene

Biographical Summary
as of March 16, 1994

Full Name David Epstein

Address _____

Telephone: Office: _____ Home _____

Date and Place of Birth June 19, 1935, San Antonio, Texas

Parents:

Father Jerome Epstein Born 1904

Mother Sara Furman Epstein Born 1909

Primary and Secondary Education San Antonio, Texas. Thomas
Jefferson H.S., 1953

Higher Education Harvard University (A.B., 1957; J.D., 1960)

Positions Held _____

Military Service Officer, U.S. Coast Guard (Reserve), 1960-61

Other Government Service Assistant United States Atatorney for
the District of Columbia (1962-66)

Civic and Community Activities District of Columbia Bar,
various.

Honors and Awards Interviewer, Oral History Project, The
Historical Society of the District of Columbia Circuit.

Spouse Ellen Robinson Epstein

Children Jeremy, Asher, Barack, Dina, Kira

Publications Forrest and Epstein, "The New Plan for
Furnishing Defense Counsel in the District of Columbia," 37 D.C.
Bar Journal, Nos. 4-7, p. 63 (April-July 1970); "The American
Courthouse: Planning and Design for the Judicial Process," 62
Geo. L.J. 377 (1973); "Is Legal Ethics a Worthy Concern of
Serious Minds?" 1 District Lawyer, Fall 1976, p.54; "Education in
Professional Responsibility," CLEPR Proceedings (1976); "Judicial
Incentives: An Immodest Proposal," 3 Litigation No. 1, Fall 1976,
p. 3; "An American In Peking: Adapting to Anti-Legal Rituals," 3
District Lawyer, No. 6, June-July, 1979, p. 10. "A Bicentennial
Celebration for Each of Us," The Washington Lawyer, May/June,
1987.

April 29, 1992 -- The interview at the United States Courthouse in the District of Columbia, Judge Harold Greene. The interviewer is David Epstein, a member of the District of Columbia Bar.

- Q. Would you please state your name, when you were born and where?
- A. Harold Greene. I was born February 6, 1923, in Frankfurt, Germany.
- Q. What are your earliest recollections of your life in Frankfurt?
- A. I didn't live in Frankfurt that long, but I lived in Germany until 1938. I don't have any early recollections other than being a child.
- Q. How many members were there in your family? How many siblings do you have?
- A. No siblings.
- Q. What were your parents' occupations?
- A. My father had a jewelry store. He was a watchmaker and owned a jewelry store.
- Q. In what city was that?
- A. In Stettin, Germany.

- Q. Is that the Stettin that was made famous by Winston Churchill in his Iron Curtain speech?
- A. That's the same one.
- Q. So that was on the Baltic?
- A. Yes.
- Q. How did the family get from Frankfurt to Stettin?
- A. I really don't know because we were -- I think they were in Frankfurt for a few weeks, or a few months.
- Q. Just to have you born?
- A. Just to have me born. I've never been in Frankfurt, except for being born there. I've never been back there.
- Q. Did you have an extended family also?
- A. My father had a number of brothers and sisters, but none of them in Germany. My mother had some, had two brothers and one sister and they had some children, some of them. I knew them.
- Q. What was your father's name?
- A. My father's name was Ignatz.
- Q. Your mother?
- A. Edith.
- Q. Where was your father from before Germany?
- A. My father was born in Poland.

Q. In what town?

A. Warsaw.

Q. And his extended family still lived in Poland?

A. No. They were all gone. There were eleven all together, brothers and sisters. And they all left Poland. None of them in Germany, but some in Belgium, some in France, two of them in America.

Q. This would have been in the 1920's and early 30's?

A. Yes.

Q. Did you have any contact with them?

A. Not really. I went to Brussels once when my grandmother died. Other than that, my father had more contact with them than I did.

Q. What about your mother's family?

A. My mother's family, I saw them quite often. They were around. Not all of them left. The two brothers left Germany in time to escape the Holocaust.

Q. Did you go to school in Germany?

A. Yes.

Q. What was your first exposure to formal education?

A. Well, the elementary school, just like any other elementary school.

Q. Do you remember the name of it?

A. Not really.

Q. What about the curriculum?

A. God, I haven't thought about that in 50 years. I don't think there was anything remarkable about it.

Q. German education is known for its discipline and rigor.

A. I'm sure it was more structured and more rigorous than here. The idea of group discussions and so on, I don't think exists. It has been a long time and I haven't thought about it, but I'm quite sure the idea of group discussions and contradicting the teacher and so on didn't exist.

Q. Through what level of schooling did you go before you left in 1938?

A. I left in 1938 but I came back. It was a rather complicated thing.

Q. What level of schooling were you at in 1938?

A. I had almost finished high school. After being in regular high school, the situation with the Nazis and anti-Semitism, and so on, became more and more disagreeable, and there was a Jewish private high school established.

Q. In Stettin?

A. In Stettin.

Q. You and your family were Jewish?

A. Yes.

Q. When did you become aware that there were Germans who had very negative views about Jews?

A. As soon as the Nazis came to power in 1933.

Q. What was your first awareness of that?

A. Really hard to say. Generally it was all over. Propaganda was in evidence immediately.

Q. Did you see demonstrations of brown shirts?

A. Yes. Even before they took power one could see that.

Q. Did you personally experience the impact of anti-Semitism among your classmates?

A. In school, yes.

Q. Do you recall any incidents?

A. The Jewish kids, including myself, were generally shunned or pushed around. Not that I was injured, or anything, but I suppose it would be like maybe as one imagines a black would have experienced in Mississippi before things changed.

Q. Did you see incidents of violence?

A. Not personally. You mean people being beaten up?

Q. Right.

A. No. I don't think I saw that. There were demonstrations and breaking of glass in stores, and so on. I did see that. But not people being beaten.

Q. What was the size of Stettin?

A. Stettin was about 300,000. In today's terms not a large city, but in those

days it was a sizable city.

Q. What was the area of Germany called where Stettin was located?

A. It's part of Prussia and was not the most advanced and enlightened part of Germany. Unlike the western part, the Rhineland. This was sort of the old junker-type Prussia that was mostly agricultural except for Stettin.

Q. The education that you were exposed to in these different political currents that were going on, what effect did it have on your own view of yourself, both as a Jew and as a German?

A. I think it's probably fair to say that shortly after the Nazis came to power the Jews, including myself, looked on themselves more as Jews than as Germans. The Germans were the Nazis, basically. Obviously they weren't all, but that was sort of the division.

Q. Was your family one with Jewish religious practices?

A. To some extent. Not Orthodox. But I was Bar Mitzvahed and we did go to High Holy Day services certainly. Not much more than that. Although I did go to religious school to prepare for the Bar Mitzvah.

Q. In those years did you have a career ambition?

A. I don't think so. No.

Q. Did your family have a career ambition for you?

A. Not that I know of. In those days, certainly after a while, it became more and more of a question of how are we going to get out of there and how

are we going to get to a more calmer and more routine type of environment.

Q. Do you recall when that process of discussion began and how your family went about dealing with it?

A. It went on all quite soon after Hitler came to power. Although my father, unlike some other people, did not immediately decide to leave. He thought, well, this is just a passing phase and they will disappear. So it wasn't like some people said who turned out to be right, you better get out of here. He thought, well, they'll come back to their senses. But we didn't do anything much about it.

Q. On the other hand, there were some people who stayed on beyond the time of escape?

A. Yes.

Q. Did you know people who still felt that they should stay on?

A. Number one, people felt they should stay on. Number two, as time went on, it became increasingly difficult to go any place. America had the quota system, and the European countries were not particularly interested in taking in any Jewish refugees. South America, to some extent, was

open but not that much either. So partly it was people who couldn't leave, and partly it was people who didn't really think they wanted to leave.

Although as time went on closer to the war, more and more people wanted to leave and couldn't. The composition of the groups changed.

Q. Was there some triggering event that finally pushed your family into going, in terms of either the necessity of leaving or the opportunity for getting some place.

A. Yes. The Germans, the Nazis took the position that people who had Polish citizenship, which we had because my father was born there, although I didn't know a word of Polish and I had never been there, they deported everybody to Poland, including us. But then we came back, theoretically for a relatively brief period, to clean up the economic affairs. While we were there, it was obviously a question of being sent back or having to go back to Poland, which we didn't relish particularly. We had no roots there. No family there or anything. Or, going someplace else. We made the decision, fortunately possible, to go to Belgium where my father had a brother. So we left.

Q. When was the deportation and how did it take place from Germany to Poland?

A. It was late in 1938. We were just picked up by the Gestapo and sent over there.

Q. At that time were there many people just put on trains?

A. Yes.

Q. What was the treatment that you were accorded?

A. There was no treatment. In those days it wasn't like the trains later on where they went to concentration camps. Just a regular train. Started in Stettin and ended up in Poland.

Q. Were you allowed to take anything with you?

A. My father took some jewelry from the store that he had at home. He took it simply to have something to live on. Other than that, we obviously didn't take any furniture or anything because we did no packing or anything, just left from one day to the next.

Q. How long did you stay and where in Poland were you taken?

A. It's called Bydgoszcz. It's a town about the same size as Stettin in western Poland which at one time had belonged to Germany. We were there for a few months.

Q. Who did you stay with?

- A. Didn't stay with anybody. We stayed just on our own. Although we did stay for a while with some Jewish family there. But, basically, we stayed on our own.
- Q. In a hotel or rooming house?
- A. No, in a room.
- Q. Just rented a space there?
- A. Yes. Most of the time we stayed with this family we got to know.
- Q. Your father decided that all of you would go back to Stettin?
- A. They allowed people to go back supposedly to take care of their economic affairs. Actually they only wanted the head of the family. They wanted my father to go back, but he managed to get us all permission to go back.
- Q. Was there a sense of physical insecurity in going back at that time?
- A. No. In terms of Germany?
- Q. Yes.
- A. No. The Germans didn't do anything except what was decided from on high. No one could tell. With the benefit of hindsight, one should have been insecure, but we thought that since they let us go back in, they obviously weren't going to do anything.
- Q. Were you exposed to anti-Semitic taunts once you got into Germany?

A. No, but by that time the whole thing had really fallen apart as far as we were concerned because my father's store had been closed. It was just sort of a temporary type of thing. By that time it was 1939, and it was close to the war being started. At that time it wasn't a normal situation anymore.

Q. Stettin is now part of?

A. Stettin is now part of Poland. I haven't been back there either.

Q. Do you have any curiosity about going back?

A. Not really, no.

Q. The Kristalnacht?

A. That occurred while we were in Poland before we came back.

Q. That was in November of 1938?

A. 1938, yes.

Q. So you didn't experience that directly?

A. That's right.

Q. Were you aware of it?

A. Oh yes, sure. They had newspapers in Poland. I think they even had German newspapers because that city used to belong to Germany at one time and many of the people were German-speaking. If it was in a Polish newspaper in Polish, we would have been aware of that also.

Q. You were a teenager at the time. Did Kristalnacht have some special significance or was it part of a continuum?

A. Part of a continuum. It was more dramatic than other things. People had been exposed to persecution, and there had been deportations and concentrations camps, in the sense not like Auschwitz but more in the terms of people being kept there and not treated very well, but not the gas-chamber type.

Q. What was the Jewish population of Stettin?

A. I don't know. I'd guess less than ten percent.

Q. Did you know people whose families or members of families were sent to concentration camps at that time?

A. Yes.

Q. What distinguished the opportunity that your family had to get out of the country, or be forced out of the country, and those people who were sent to concentration camps?

A. This is all quite an arbitrary process. The first time we were sent out because it so happened that my father still had Polish citizenship. People who were not sent out were the German citizens. We had Polish citizenship, my mother and I, although we weren't born in Poland, but just because under the laws that prevail in Europe, at least that prevailed in

Germany, you had the citizenship of the place where you were born. It was very difficult, even if one wanted to, to acquire German citizenship. Whereas the people who were not sent obviously had no ties whatever to Poland. They were born in Germany.

Q. I'm sorry, you said that you had the citizenship of the place that you were born.

A. Well, no, that's not true. Where my father was born. You had the citizenship of your parents. Your father, not just your parents. My mother had never been in Poland either.

Q. So by marrying him she became Polish?

A. Yes.

Q. And in a curious way that helped you at that time?

A. In a sense, yes. Because who was sent to concentration camps and who wasn't was a matter of luck, if you want to call it that. Arbitrariness. I really don't know what rhyme or reason there was to any of that.

Q. What was the level of panic or anxiety that surrounded, say 1938, in the community, among your friends, your classmates?

A. By that time it was very bad partly because with us, because of the deportation, or whatever you want to call it, to Poland, partly because of the Kristalnacht for other people, it became apparent that Hitler was not

going to disappear and he wasn't going to ameliorate his policies so people became increasingly anxious to get the hell out of there.

Q. How did the Polish authorities react to your sudden arrival, of the Polish people.

A. The authorities weren't terribly friendly. The Polish people I really don't know. I didn't have that much contact with anybody, partly because I couldn't speak the language.

Q. Did you go to school there at all?

A. No.

Q. So for what period of time were you out of school then?

A. Four or five months. And, I forgot where my train of thought was.

Q. About your experience in Poland.

A. No, I think once we get back, everyone, even those who had the most benign view of what was going to happen, became convinced that the important thing was to get away from there.

Q. So, your family departs from Stettin then and goes to Belgium? When was that?

A. That was in 1939. In August, I would guess.

Q. Do you recall how you got there? By train?

A. Yes, by train. Regular, as a passenger.

Q. When you arrived in Belgium, what happened then?

A. We were there and my father had family there. His brother and there were a couple of sisters there, and their families. They were quite well set up. Quite well fixed. Then the war broke out within a month of our arrival there.

Q. What happened then?

A. Nothing much happened immediately to any of us because the war, if you will recall, the first few months, except for Poland being occupied quickly, in the west nothing much happened. France, England were technically in the war. Belgium was not. Nothing much happened.

Q. When did your family then leave Belgium? Under what circumstances?

A. In May of 1940 the Germans invaded Belgium and Holland. After invading Belgium and Holland, they went into France. We rather naively thought that the French Army was going to stop them and push them back. But as you know, the French Army collapsed rather quickly, as well as the British forces that were there. We left as the Germans were advancing in Belgium. We left, as many people did, left Belgium to get to France and, again on the assumption that this was all going to be over soon as the French Army showed its real might. And then, of course, it wasn't over in France. The war itself was over fairly soon. But the Germans occupied the northern part of France. The southern part of France, where we were

by that time, was run by the Vichy regime, Marshal Petain.

Q. You were traveling on a Polish passport this whole time?

A. Yes.

Q. The French authorities were letting people in by large numbers?

A. Yes. They were letting people in in large numbers. There wasn't really any control at that point. People were fleeing the Nazis by the hundreds of thousands and the border between Belgium and France, as best as I can recall, was nonexistent.

Q. You went by train, or car?

A. We went by car. My uncle had a car, and we went by car.

Q. Did your extended family move out of Belgium also?

A. Some of them did, and some of them didn't.

Q. They stayed behind?

A. Yes.

Q. Did they ever get out?

A. Some of them did, and some of them didn't.

Q. Those that didn't, were they --

A. They were killed.

Q. Sent to concentration, death camps?

A. The best we know.

Q. So you were in the south of France under the Vichy government, where in France were you?

A. Near the Mediterranean, near the Pyrenees, near Spain.

Q. What period of time did this encompass?

A. Two years.

Q. Were you getting an education at the time?

A. Not really a formal education. It so happened I knew some people in the place where we were who had books and who had academic knowledge, such as a teacher, but no formal schooling.

Q. How were you surviving in terms of your physical circumstances?

A. Poorly. Again, my father did have enough foresight to bring along jewelry from the store, and we sold it occasionally.

Q. Where did you live? Did you find a room?

A. Yes. We had a few rooms in a small town. We were there and actually we weren't allowed to leave there without special police permission. The French, by that time, were increasingly cooperative with the Germans, with the Nazis. One of the things was that we couldn't leave where we were. In the meantime, we were waiting for a place again to leave the country, and it was difficult to get that arranged.

Q. What were you experiencing in France, either from the officials or from the population, in terms of anti-Semitism?

A. Nothing from the population. And, nothing really from anybody else except we couldn't go any place. The people were not unfriendly.

Q. There were large numbers of immigrants that had --

A. There weren't large numbers where we were. There were just a handful of families because the place wasn't that big and so we knew them and they knew us, but there weren't any large numbers of Jews who had come from the north. There were in other places, Marseilles and other large cities, but we didn't have much contact with them because it was difficult to travel there.

Q. How had your family selected this particular site, or fallen into it?

A. My mother went there first. We got separated somehow and then once we were there, we stayed there.

Q. What was the next event, in terms of moving from where you were in France?

A. It sounds like a saga. The next event was that it appeared that the French were going to extradite all the Jews in France to the Germans. Everyone

heard about that on the radio, British BBC and other sources. We were hiding, I guess, is the appropriate word. We were staying with friends rather than in the place where we normally stayed during the critical time.

Q. There was a round-up?

A. There was a round-up, yes.

Q. Who were the friends?

A. Friends that we just knew. Friends of mine. Friends of my parents.

Q. Jews or non-Jews?

A. Non-Jews. The Jews couldn't give anybody any --

Q. These were French people that you had become friendly with during this period of time?

A. Correct.

Q. Was there a risk to them?

A. Yes, certainly.

Q. What was the risk?

A. Well, I don't know. It wasn't like the Criminal Code. It wasn't specified, but the risk certainly was that they could themselves be sent to camps or whatever.

Q. Did you ever hear them discuss, or did your family ever discuss what the risk --

A. Everyone knew. It wasn't like you would do here and say that the statute says thus and so. It was just generally, everyone knew there was a risk, and what exactly the Nazis, when they found out, would do was never that clearly known because it wasn't a lawful, law-abiding society that one was living in.

Q. What was the time that we are talking about now?

A. We're talking about 1942. 1941-1942.

Q. What did you know in terms of what was the risk to you if you were to be extradited back to Germany?

A. That's a good question. I don't think we ever knew any more than people elsewhere knew, that if you were sent back there was a risk of going to a place like Auschwitz and being exterminated. I don't think we knew that.

Q. There are some bits and pieces that were appearing in the press apparently, and so forth, about that?

A. We knew obviously that the risk existed that you would be sent to a concentration camp. But that people who were sent there would be exterminated, I don't think we knew.

Q. What was the reason given as to why the Germans wanted the Jews back from France?

A. I don't know.

Q. In the period of hiding, was this a hiding of the type of -- Anne Frank-type of hiding?

A. To some extent, yes.

Q. Can you describe the circumstances or conditions?

A. Partly, we stayed in a second floor of a house owned by a friend of mine.

His parents had a restaurant, and we stayed on the second floor.

Somewhat like Anne Frank's situation. We stayed there for several weeks.

Q. Were you the only family there?

A. Yes.

Q. You couldn't go out?

A. Couldn't go out.

Q. How old were you at the time?

A. Eighteen. Nineteen.

Q. Do you recall your emotions at the time in terms of fear, anxiety, foreboding?

A. All of them.

Q. Was there any basis for hope?

A. The theory always was that we weren't that far from Spain. We would go to Spain and Portugal and from there get to the outside world, like the United States, particularly.

Q. Did there come a time when you did leave hiding?

A. Yes. We did find somehow some people who were supposed to smuggle us across the Pyrenees into Spain. And, that happened.

Q. Were they paid for this?

A. Yes.

Q. Do you recall what the price was?

A. No.

Q. Did your father share information with you?

A. Yes. At the time, I may have known, but that doesn't seem that significant at the time.

Q. Did you know how much the value of what your father was carrying with him, in terms of moveables was?

A. I did know that, too, at the time but I certainly don't know it now. I haven't given that much thought to it in the last 50 years.

Q. What precautions did he take in terms of the jewelry and whatever he was carrying with him not being taken from him?

A. He carried it around as best he could, I guess. Around on his body and his clothing.

Q. How did you actually get smuggled across the Pyrenees from France into Spain?

A. We walked.

Q. What was the distance?

A. I don't know what the total distance would have been. We were found, apprehended, whatever you want to call it, shortly after crossing the border into Spain. There wasn't really any border because it was mountainous territory. There wasn't any border as such. Our smuggler friends left us in the middle of the night after they had gotten their money. We went on and, shortly, I can't really tell you at the moment how long after, but shortly after crossing the border, the Spanish police stopped us. I knew we were in Spain.

Q. How many hours did this walk across the Pyrenees take?

A. There are things I can't tell you because I haven't really thought about it that much in all these years. I'm sure it took 20 hours. I'd have to guess, but I'd say 20-25 hours.

Q. The people who were your "guides," were they French or Spanish?

A. They were French -- a couple of them. In the middle of the night they obviously figured there was some danger, and they got the money and they just disappeared.

Q. Were you the only family?

A. No, there were a few others. There were three or four families, as I recall.

Q. How arduous was the crossing?

A. It was not like scaling Mt. Lhasa in the Himalayas, but it was mountainous terrain, when you're not used to it, it wasn't that simple, particularly.

There were women there, some people were older, so it wasn't that simple.

Q. Were people carrying many possessions with them?

A. They were carrying some initially. After a while, when it became more mountainous, they threw them away.

Q. The greeting by the Spanish authorities, what was the nature of it?

A. They were just plain soldiers, or police. I forget what they were. It was not unusual for them to encounter this kind of thing because we were not the first ones or the only ones. Nor were the Jews the only people who crossed over. It was pretty well established, a number of flyers from American, British, other allied forces, flyers who had been shot down in France took the same route and were stopped the same way by the Spanish.

Q. How did you know that?

A. Because we encountered all of them in the camp that we were sent to.

Q. You were taken into custody?

A. Yes.

Q. Where you were not given any Miranda warnings?

A. No, that's a very interesting observation because the name of the place was Miranda de Ebro. Ebro is a river in Spain.

Q. That was pure chance on my part. So Miranda has resonances in your career other than your judicial career?

A. The connection never occurred to me until this minute.

Q. The camp you were sent to?

A. There were lots of people there and, as I say, some of the flyers who had been shot down and some other people who I guess must have been agents who had been sent into France. Anybody who the Spanish -- that came to Spain in violation of their law, but didn't want to go back, was sent to that camp.

Q. Were there hundreds or thousands of people there?

A. Thousands.

Q. What were the conditions like?

A. All right. They weren't the best.

Q. Enough food?

A. Yes.

Q. Accommodations? It was cold there?

A. Barracks.

Q. What time of the year was this?

- A. It was in the Spring.
- Q. The mountains were cold, I assume?
- A. The mountains were cold, but in the camp I don't remember it being particularly cold.
- Q. How long were you in the camp?
- A. A few months.
- Q. What was the biggest fear?
- A. The fear always was that the Spanish were going to send us back. The German Consul, from some place, used to come from time to time and demand that all the people there were to be sent back. The Spanish, to their great credit, the Franco regime, refused.
- Q. Was there any discussion as to why Franco took that kind of position?
- A. No. He just didn't. Just like he didn't allow the Germans to cross Spain to get to Gibraltar, which they wanted to do. He just refused to do it.
- Q. What was happening in terms of your family's preparing for a next move? Or, how did you get out of that camp?
- A. We got out by the time I got a visa to the United States. Initially, they wouldn't let me go because, to appease the Germans, they said those who were of military age or close to it they wouldn't allow to leave to go to an allied country. But after a while, the Franco regime decided to stop that as

well. I left and went to Portugal. Took a ship and came to the United States.

Q. Your parents were with you?

A. My parents were not with me at the time. My parents had been let go a little earlier.

Q. Because of this --

A. Because they were not of military age.

Q. Where had they gone?

A. They went to England. Relatively briefly, but from England they also went to the United States shortly after I did.

Q. How is it that they happened to get to England?

A. At the time I guess there was transport and permission and everything to England, and the United States wasn't arranged yet for some reason. So they went to England first.

Q. Did you expect to meet up with them again?

A. Yes, I did. And, we did.

Q. How did you plan on keeping in touch with each other?

A. We had family and we'd always write through family.

Q. In the United States?

A. In the United States.

Q. Is that who made your visa possible?

A. Yes.

Q. How did the visa catch up with you in Spain?

A. Well, you know this was not difficult. We were not in darkest Africa or Asia. There were post offices. There were radio, newspapers. We corresponded. Talked to people.

Q. So, the war didn't interrupt all the normal communications?

A. Not from Spain certainly. It probably interrupted it from Poland or from wherever the Nazis were in Russia, where the Nazis' armies had occupied, but not from where we were.

Q. You arrived in the United States in 1942 or '43?

A. Early 1943.

Q. You were 19 already?

A. 19 or 20.

Q. You hadn't had any formal education since you were...

A. I had an education. I had enough education, not college-level education, but certainly high school-level education.

Q. Where did you arrive in the United States?

A. Philadelphia.

Q. Is that where your family resided?

A. No, my family resided on Long Island. I went to live with them at first.

Q. What did you do once you settled yourself into the United States?

A. I had a job for a few months.

Q. Did you know any English?

A. Oh, yes.

Q. Where had you learned English?

A. Partly in school and partly by simply -- I forget now what initiatives I took, but I knew English.

Q. What job did you have?

A. I was a watchmaker, which I learned from my father in his store. That was a useful trade at the time.

Q. Your first job was in Long Island?

A. Yes.

Q. How long did you pursue that trade?

A. Not very long. Exactly six months after arriving I was drafted in the army.

Q. Where did you go?

A. Basic training.

Q. Where was that?

A. Aberdeen Proving Ground in Maryland. After that, specialized training in Camp Ritchie out near Camp David on army intelligence.

Q. Relying on your knowledge of German?

A. Yes.

Q. Was that then the way you were used in the army?

A. That's correct.

Q. What period of time were you in the army?

A. From 1943 on to 1947, something like that.

Q. You stayed beyond the end of the war?

A. Yes. I stayed on for a little while as a civilian employee of the army doing the same thing that I had been doing, which was mostly prisoner-of-war interrogation and things of that nature.

Q. Here in the United States?

A. No. Over --

Q. You were sent back to Europe?

A. Yes.

Q. When did you get back to Europe?

A. Shortly after training. I'd have to think about when that was exactly. I think it was in August or thereabouts of 1944.

Q. In approximately 1944 you returned to Europe? It took you a number of years to get out of Europe, and now you're back again in a very different role?

A. Yes. Sent back.

Q. Where were you stationed in Europe?

A. Well, we were stationed in France for a little while, then with the Third Army on the Rhine.

Q. Whose army was that?

A. Patton's army. I thought everybody would know that. Then, toward Czechoslovakia, where the American army first occupied a portion of it. I was there with the rest of my team. We were a relatively small intelligence team.

Q. What was your responsibility?

A. While the war was on, I was interrogating prisoners to find out where their tanks were, where their cannons were and so on.

Q. Were the German soldiers willing to talk?

A. Yes, by that time they were. I gather that a year or two earlier, when they were still winning the war, they were very arrogant and unwilling to give any information. When I was involved in the prisoner interrogation there was very little resistance.

Q. Did they know you were Jewish?

A. I don't think it came up in conversation.

Q. You were in Czechoslovakia with the army?

A. Briefly, yes.

Q. And you were there when the army withdrew?

A. No. I wasn't there when the withdrawal took place. By that time, I was in Biarritz, France, which was a very nice place. By that time, the war was over and the army, for those who were still waiting to be sent back or come back or demobilize, the government set up two universities -- one near Oxford and one near Biarritz.

Q. They set up two universities?

A. Yes. American universities with American college professors.

Q. For what purpose?

- A. To give the GI's an opportunity not to waste their time completely. I was there for a few months, taking courses. Those courses were well recognized by George Washington University when I --
- Q. What were you studying?
- A. Literature, political science. A number of courses.
- Q. What were you doing after the war was over in terms of your army job?
- A. They had camps, I'd guess you'd call them, where those who were arrested by the army as being high up in some way in the Nazi hierarchy, Gestapo or whatever, and I was there with a number of others, again, trying to get information from those people.
- Q. What information were you seeking?
- A. The ones who it turned out were involved in war crimes, they were sent to Nuremberg. The ones who didn't have any particular part in anything illegal were released as a result of the interrogation.
- Q. Were there guidelines that you had in terms of recognizing someone who was a potential war criminal and someone who was not?
- A. To tell you the truth, I can't remember exactly what we had. We must have had something, whether it was oral or written. But, exactly what it was I can't remember. If somebody was a guard in the concentration

camp, or leader in the concentration camp, we sent them on to some other place. We were more or less a sifting-type of center.

Q. Were you working with documentation also?

A. Yes, I guess so.

Q. There came a time when you left the army, but continued on --

A. After discharge, a number of us stayed an extra year. By that time, we knew what we were doing and it was kind of interesting, some of it. So I stayed as a civilian employee of the army for a year. Same job.

Q. Did a picture emerge to you during these interrogations in terms of the Nazi efforts during the war?

A. Not from that particularly. More from reading the American newspapers and listening to American radio, which of course was there. I got a little information from inside from just talking to those people. But I don't think as a result of that I got to know something on the broad picture that others didn't.

Q. What about the depth of the commitment of the Germans that you were interrogating?

A. They were the same as the soldiers that I was talking about before. Most of those that I was interrogating, although some of them were pretty high up in the Nazi hierarchy, most of them either expressed, whether it's true

or not, that they really were disgusted with what happened and they never had any part in it. There were a few that I can recall who, at that point, claimed that they were wonderfully impressed with the Nazi regime.

Q. Your term came to an end in 1947?

A. Right.

Q. You left Europe?

A. Yes.

Q. Had you traveled through Europe while you were in the army, other than in France, Czechoslovakia?

A. To some extent.

Q. Seen the devastation of war?

A. Devastation of war was there, and particularly in Germany. No matter where you were, it was all rubble. Many of the houses. If you are talking about occupied countries in eastern Europe, I never did get to go there. Of course, by that time, the Russians were there, and one couldn't really go there.

Q. Were there any discussions at the time about the fact that the Russians had moved into Czechoslovakia? I guess at that point they hadn't, but they were poised to?

A. No more so than here. By that time you have to understand that what we were discussing there was no different than what people were discussing in Washington or Denver at that time. We had the same source of information. Whatever the media said, we had the same access.

Q. You came back in 1947? Do you recall when that was, what time of year?

A. Yes. Late in 1947.

Q. Had you decided what your next activity was going to be?

A. Not precisely, although I guess I decided -- I don't know whether I had decided before or after -- to continue, if you want to call it that, college. I went to George Washington University.

Q. Starting in, what? 1948?

A. Early 1948.

Q. What course of study did you pursue there?

A. They were mostly liberal arts courses.

Q. Were you working also?

A. Yes, I was working. Partly my education was paid for by the G.I. Bill of Rights. But, I was working as an interpreter at the Office of Alien Property, which was part of the Department of Justice.

Q. What was the purpose of the Office of Alien Property?

A. Their purpose was, under the Trading with the Enemy Act, which had existed for a long time, ever since World War I, the American government seized all foreign, all enemy foreign property in this country. Which I certainly had never known before, but that's what they did. The Office of Alien Property was to sort out whether this was really enemy property, many of them claimed to be Swiss or Dutch property, and there was ultimately a lot of litigation on it.

Q. It was like the I.G. Farben case?

A. That's right. I worked on those cases including I.G. Farben. I wasn't a lawyer. I was just a translator.

Q. Dealing with witnesses or reading documents?

A. Mostly documents. A little bit of witnesses.

Q. You worked on the I.G. Farben case?

A. A little bit.

Q. What was that case about?

A. I think the I.G. Farben case, as I recall, they claimed they were Swiss. Whatever it was in this country of theirs was Swiss. Ultimately it was settled. I think, if I recall, reading the newspapers, I was gone by then. Attorney General Kennedy was criticized for settling it for some amount.

But, anyway, that's the kind of thing I was doing and going to school at night.

Q. The work that you were doing on the documentation was to try to determine the nationality of the enemy, or the ownership, or what their assets were?

A. I was just a hired hand. Whatever was given to me to translate or interpret, that's what I did. Sometimes I may have known how it fitted in and sometimes I didn't.

Q. You completed your college education then in, when?

A. I didn't fully complete a college education, because in those days a returning veteran could go to law school without having to complete four full years of college. I went straight from two years of college into the law school.

Q. You had two years at George Washington?

A. Right.

Q. You picked up some credits in Europe, courtesy of the U.S. Army?

A. That's right. It was enough to be admitted to the law school.

Q. When did you decide that you wanted to pursue a legal career?

A. You were going to ask that, and I really don't entirely know. Lots of things just sort of happened. We had a friend who was a lawyer, and I

talked to him. A neighbor. I also talked to others, and I just decided it sounded like it was a good idea.

Q. Would it be fair to say then it wasn't part of a childhood career dream?

A. No.

Q. Did you consider any other career paths?

A. No, not really. Well, let me put it this way, I didn't consider scientific careers too much because I really hadn't had that much background. I don't consider myself that outstanding in scientific issues. In those days, we had friends who had backgrounds similar to mine and they went into things like Foreign Service and CIA, perhaps. But that kind of work, I decided a long time ago that I wasn't going to go into that. I decided that I was not going to trade on particularly, or relate to the rest of my life with what happened in Europe and live with that professionally and otherwise. I decided from the very beginning I wasn't going to do that. Law was the alternative that came along.

Q. I'm not good at psychological questions, but was this in a sense to cut the ties with Europe?

A. To some extent to cut the ties with Europe, and to some extent I made the decision that if I was going to live in this country and be a citizen of this country I was not going to be like some of the hyphenated Americans who

were always talking about what I had over there and the wonderful houses or education I had in France or Germany, or whatever, and live for that for the rest of my life. I decided right from the very beginning I was not going to do that. I was going to pursue whatever I was going to pursue the same as any person living here.

- Q. What was the most dramatic aspects of America when you first arrived here during these years where you were Americanizing yourself?
- A. That is also hard to sit down and write down just like that. Obviously the fact that there is a far freer society. A far more contentious society in the sense that you can say or do whatever you want than in any place in Europe. Obviously, Germany was not like that, but even much more so than in France, or Belgium, or Spain. People here really are free to do what they want. In France, for example, with all its liberties, you have to carry an identity card with you all of the time. You have to register with the police whenever you go to another city and stay in a hotel, and things of that nature which didn't exist here and don't exist here. That isn't just a matter of talk, it does impact on your regular existence. You can open up whatever business you want, assuming you have the money and brains. So, in that respect, it really is all true.

Q. When did you feel that you were on the path towards your Americanization?

A. It went really rather quickly because being in the army is a good teacher in that respect. Everybody in the army is the same, and after a while you don't think about these things that much. I guess to some extent while I was in the military intelligence some of the duties were connected with Europe and what went on there, but we were part of the army. We were not just on our own there, we were part of the army with everybody else who was in the army. You quickly become part of it.

Q. It's 1949 when you start law school?

A. 1949.

Q. You're at George Washington University Law School?

A. Yes.

Q. Were there any professors there that you have some distinct recollection of or some that were associated with this Court?

A. None that I associate with in any way with this Court.

Q. By this Court I mean District Court, U.S Court of Appeals?

A. Any of the courts. The people who were professors then are almost all gone. There is one, whom I recall vividly from constitutional law, and that was Professor Collier. I also remember Professor Davison from

Administrative Law and a couple of others. But most of them are gone. Of course, I was a night student. I didn't see them outside of the classroom as much as somebody would who is hanging around the University all day long and visits them, and gets advice from them, and so on.

Q. You took four years then too?

A. No, I didn't take four years. I took three years. Although night school is four years, I took three years by going straight through, winter and summer, every night. After two years of college and three years of law school, I finished law school in the three years that it would normally take a day student and, I was on the law review. I was notes editor on the law review, which also took a little extra work.

Q. Did you find that you had a particular enthusiasm for the law once you got into it?

A. Yes, I did. I liked it, and I enjoyed it, and I think I was pretty good from the beginning. I was number one in the night school class and number three, I guess, out of the combined day and night school classes. I must have had some interest in it.

Q. You certainly had some achievement in it, but did you enjoy it? Did you find it an intellectual challenge?

- A. Yes, I enjoyed it. I enjoy the back and forth and coming to a logical conclusion or consensus, and the policies behind it to the extent that in law school you get to talk about them.
- Q. You had had a comparatively tumultuous life compared to, at least, some of the other students there. I guess the others who were veterans who --
- A. Most of the people, I guess, were veterans.
- Q. So everybody had had a life experience that they brought to the law school?
- A. I can't really recall the exact percentages, but I think there were more veterans than non-veterans in the law school at that time.
- Q. Did your life experience inform your legal education in any conscious way?
- A. No, I don't think so. As I said, I always decided I was not going to -- When you take a class in contracts what happened to you in Spain is not going to be terribly relevant.
- Q. You were working at the Department of Justice as a translator of the foreign properties, you were going to law school, there came the time when you graduated law school.
- A. I was hired as a law clerk to a judge on the Court of Appeals here.
- Q. Who was that?

- A. Bennett Champ Clark, who had been a Senator from Missouri and was appointed by President Truman to the U.S. Court of Appeals.
- Q. Who were the judges on the Court at the time?
- A. That you would recognize?
- Q. We're not talking for me. We're talking for the historical record -- that were memorable.
- A. Judges Bazelon, Edgerton, Proctor, Fahy, Miller, George Washington were there. Prettyman was there. Harold Stephens was the Chief Judge.
- Q. To what extent were you able to get involved in the decision-making process as far as Judge Clark?
- A. I was involved quite a bit. Judge Clark wasn't that well. He died the year after I was with him. He wasn't that well, and frequently let me handle a lot of things -- the writing particularly. The decision-making was never mine because the judges would sit together and make a decision. But as to the writing of the opinions, he left me a pretty free hand because he wasn't that well and went home.
- Q. Did you have exposure to the other judges also that you mentioned?
- A. Yes. I had exposure to the other judges because, when Judge Clark wasn't there, and some point came up, or some discussion about an opinion, or

what to be done, they sometimes talked to me in his absence, and I relayed it to him.

Q. Are there any anecdotes that you can recall about that particular period in terms of the judges?

A. Even then the Court of Appeals was bitterly split between the conservatives and the liberals.

Q. Who represented the split, the different points of view, and how did it manifest itself?

A. Just like it does now. Certain types of cases, which in those days were, I guess, security-type cases -- this was close to the McCarthy era.

Q. You're talking about national security, rather than Security and Exchange Commission?

A. National security. There were the conservatives on one side and liberals on the other. Just like, to some extent, I'm told it is true on the U.S. Court of Appeals now. My judge was a conservative.

Q. Several of the judges you mentioned were known for their liberalism. Judge Bazelon.

A. Yes. There were discussions. I wasn't privy to the discussions. I wasn't sitting in on the discussions. But I got enough of the flavor of it afterwards.

Q. How does that express itself? How does having a particular political philosophy express itself in appellate judging as you observed at that time?

A. You come in with a certain point of view. One of the things that was big in those days was government employees, for example, being fired or not hired because they were considered to be unreliable. And the liberals tended to take the position that this was outrageous and shouldn't play any part in it, and the conservatives took the position that the government should be allowed to do that -- to retain the effectiveness of the government and without the people who could be undermining it. You bring that to bear, and I don't know how it gets you to a decision in a particular case except that point of view obviously colors the decision of any particular judge.

Q. On the issue of unreliability, the liberal judges weren't arguing that unreliable people could be [sic] [in the government.] Weren't they arguing more that there had to be some measure of proof?

A. There had to be a measure of proof and, of course, the attitude being that just because somebody is liberal and is for, I forget now what the issues were the equivalent of the abortion question today. They said that's not good enough. You have to show that this person is somehow related to Soviet Union espionage -- on the continuum depending on --

Q. One of the issues that was extremely contentious then was this issue of how to deal with loyalty?

A. That was one of the issues that was important.

Q. What were some of the other issues that you recall?

A. In criminal law, as I recall, in those days the U.S. Court of Appeals was the highest court in the District for criminal matters, too. There again, you have conservatives more favorable to the prosecution, if you want to call it that, and liberals more favorable to the defendant. I don't mean, it doesn't mean that applied across the board every case, but if it was a close case. Search and seizure, Miranda. I guess Miranda wasn't around then, but you know, that kind of --

Q. Did you find that your own views had already formed before you came to work in this environment or that you were influenced by the discussions in one direction or the other?

A. I was influenced by it. Although, in those days there was only one law clerk per judge on the Court of Appeals. Now, there are three I think, maybe four. We got together often with the other law clerks, and it's fair to say that the law clerks were by and large on the liberal side, and I guess grew more influenced by each other than by what happened at the Court. Although quite a few of the same law clerks, after they left there,

depending on the jobs they had, changed their views too. In the U.S. Attorney's Office, where I went as did several others, where you prosecute people, maybe that's one of the faults that lawyers have, they can persuade themselves that what they do is right.

Q. Well, let's explore that thought for a moment. Is it a fault or --

A. Well, whatever. It's a fault, I guess, in a way. It's certainly not a fault in terms of professional achievement or professional attitude, but I suppose if, from the point of view of the average lay person, the idea that a lawyer can just change his whole philosophy of life depending on what job he has doesn't make him terribly trustworthy.

A. Did your exposure to the Court of Appeals early in your professional career give you some sense of the majesty of the law or some sense of the haphazard nature of how decisions are made?

Q. If I have to choose one or the other, I would say the majesty of the law. It's true enough that it did depend to some extent -- in some cases -- which three judges marched out to sit there, and to that extent it was somewhat haphazard. But, by and large, I'm a great believer in the system. And the system -- you had a District Court judge who made a decision, then you had three judges in the Court of Appeals, they didn't all march out and say, "By God, today I'm going to save another defendant," or you know

there was a certain amount of reasoned dialogue and so on, and I think the system -- I'm a great believer in the system, and I think it worked pretty well then and it works pretty well now.

Q. The point about the composition of the panel affecting or influencing the outcome of the decision of the Appellate Court. How does that play in terms of undermining this notion of the "law is the law"?

A. If it were a deciding factor in every case, I suppose it would. But, it wasn't a deciding factor in every case, obviously, but only in the closest, most controversial cases, the cases more at the cutting edge of current political situations, and so on. Whoever walked out there made a big difference. It was more dramatic in those days than it is today. Because today everybody knows who the panel is going to be, which shocked me when I first heard that. In those days it was absolute secret who it was going to be. You didn't know until, oh, my God, it's Bazelon, Edgerton and Fahy. What are we going to do now?

Q. Why did it shock you when they changed that procedure?

A. It seemed to be one of the cardinal tenets of the system of justice in this city that no one was supposed to know who the panel was going to be.

Q. The theory being?

- A. I guess the theory being that lawyers wouldn't shape their arguments depending on who was going to be there. As I say, it was changed and the world didn't come to an end.
- Q. Do you recall any of the most significant cases that you worked on as a law clerk? Or, at least what the issues were?
- A. There were some good cases and I have a list somewhere, but I can't remember them. We dissented in one big federal power case I know. There also was an immigration case that I think Judge Clark wrote the majority opinion in. There were about 25 or 30 cases in that year that I worked on, that I did a major part of the work on. If you give me some time, I'll think of some.
- Q. Did the identity of the District Court judge who had made the decision have an influence on the Appellate Court's evaluation of the case?
- A. I think not that much. I do recall that Judge Clark and other judges whom I talked to more often than I would have talked about the District Court judge and talked about the lawyers. Such and such a lawyer is in this case and he's reliable, or this or that, or whatever. At the time I was a law clerk I could never understand that. Because my naivete was that we're just going strictly by the legal principles. I now more often than I did then will say "oh, such and such a lawyer is in this case, well, we're going to

have a problem” or “he can't be trusted”, or whatever, which at the time, was far, far from my mind. The District Judge as well as the lawyers may have had an influence more than I appreciated, because I thought it had nothing to do with what we were there for.

- Q. Exploring for a moment the identity of the judge, do you think it was because Judge Clark had been a Senator and very much involved in the political process in dealing with people, taking their word or not taking their word? That that may have influenced the way he looked at judging, as more of a political, or having an aspect of a political process?
- A. Maybe so. Although, you know, now that you mention it, some District Court judges had a reputation just like people now have a reputation. Judge Holtzoff, for example, who had a reputation far beyond this city. Some people thought he was a genius. And he was in some ways a genius. He wrote treatises and books, and so on. Very smart at dictating opinions right from the bench. On the other hand, he did also let his, so it is said, let his views color the way he conducted the trial. So, I guess the appellate judges were conscious of that too.
- Q. In Judge Holtzoff's case, he was said to have a particular point of view with respect to the government's powers and rights, and so forth. Now would that have a positive effect on those appellate judges who were so

disposed and a negative effect on those appellate judges that were disposed in the other direction?

A. I think so. But, on the other hand, I think that one of the things that would have been negative perhaps, was that he occasionally would let his temper get the better of him and he'd do some things which probably shouldn't be done. I think both the conservatives and the liberals didn't think too much of that. He's just an example because everybody knew about him at the time, and he was a study in contradictions, in effect, in terms of his legal ability and in terms of wanting to get a certain result, so it was said, in his trials.

Q. You say the reputation of lawyers might also have an effect. Are you talking about the trial lawyers or the appellate lawyers?

A. Not the trial lawyers, I don't think. The appellate lawyers. I'm not sure that the identity of the appellate lawyer really decided the outcome, but I think the judges were conscious, as I guess I was not, who was going to be long-winded and whose word about the record you could trust, and so on. I think that's more or less what I'm talking about.

Q. To what extent, in your experience at that time, did it seem that decisions were made on an interest in reaching a result, and to what extent was it made on the neutral principles?

A. Most of the time, I think, neutral principles. It is vastly overstated to say every case is decided depending on the prejudices of the judge. Judge Harry Edwards has written a couple of law review articles in which he claims statistically that most of the decisions made recently in our U.S. Court of Appeals are unanimous or close to unanimous, -- that may not be the impression that the public or lawyers have. It is not true that every case is decided depending on the judges who sit there. It's a mixed bag. Some contract case is likely to be decided on neutral principles. An abortion case, I guess, is likely to be decided by garbage in, garbage out as they say in the computer field, if you would. As you may view the cases going in, that's how you come out.

Q. After you left the U.S. Court of Appeals to go to work in the U.S. Attorney's Office? When was that?

A. Yes. In 1953.

Q. Who was the U.S. Attorney at the time?

A. Leo Rover. Have you heard of him? You haven't heard of him.

Q. What do you recall of him?

A. Leo Rover was a great boss. I was very fond of him. He was not popular among the "liberal" group of the Bar.

Q. Because?

A. He was pretty firm on national security and, particularly, he had a leading role in the Lattimore case. If you remember the Lattimore case.

Q. What was the Lattimore case?

A. Lattimore was an Asian scholar. A scholar of Asian affairs who was Exhibit 1 of Senator Joe McCarthy, of being a Communist influence in the State Department, or in the U.S. government generally. I don't know if he even worked for the State Department. He was charged with something in the national security field. Judge Youngdahl, who had come here from Minnesota -- had been Governor of Minnesota -- had the case, and he had decided for Lattimore against the government in that case. Leo Rover filed an affidavit of bias and prejudice against him and I happened to be there just as a spectator when he argued that. Leo Rover was a small man in stature, but he had a booming voice. For about an hour he went on telling Judge Youngdahl what he thought of him. Youngdahl ultimately decided against the government, and I think it was upheld in the Court of Appeals, but basically it tarred Leo Rover as being a McCarthyite, and so on. I found him to be an outstanding boss who stood behind his assistants. If you had a problem you went in there. He didn't equivocate, he'd give you an answer. You went out, you knew what you were supposed to do. Very honorable in the way he dealt with people. I was very fond of him.

Q. How large was the U.S. Attorney's Office at the time?

A. About 45 Assistants.

Q. What kinds of cases were you involved in prosecuting?

A. I was partly in the Court of General Sessions. Most of my time in the U.S. Attorney's Office was in the Appeals Section. I had all kinds of cases, all on appeal.

Q. Did you find yourself taking appeals on cases that your predilection might have been in another direction?

A. Yes, I guess so. I did what a lawyer does. I became convinced that we were right.

Q. So it's either the highest calling or the lowest calling of the profession?

A. That's right.

Q. Is he the only U.S. Attorney who was in charge of the Office during the time that you were there between 1953 and 1957?

A. No, Oliver Gasch became United States Attorney toward the end of my tenure there.

Q. The same Oliver Gasch who later became a United States District Judge and one of your colleagues?

A. That is correct.

Q. Would you describe what, if any, changes occurred as a result of the change of the person holding the office of the United States Attorney?

A. Not so far as I was concerned. I don't know about the Office generally. I was then in the Appeals Section and we just handled the appeals as we had before trying to defend the Government's position, mostly in criminal cases in those days, as best we could.

Q. During the time you were at the United States Attorney's Office were you primarily in the Appellate Section?

A. Yes, although I did also spend some time in what was called the Court of General Sessions, which now would be equivalent of the Superior Court.

Q. Is that the intake court for handling what we call street crimes?

A. That is true. I was at the counter, so called, where people were brought in and it was a very interesting experience. One experience I could mention for this enterprise is when I was sent in for the first time into Judge Scalley's court, who was then -- you probably haven't heard of him, or maybe you have -- Judge Scalley was in charge of, I think it was called the U.S. Branch, where people were first arraigned, where postponements were requested, everything happened except trials. Oh, trials too, just not jury trials. I was sent in there the first time, and I said I didn't know anything about what goes on there. Well, I was told, we'll send an experienced Assistant along to help you, and they sent in John Warner, who subsequently became Secretary of the Navy and United States Senator. He was my mentor. He took me in there and there was chaos and confusion. Fifty people and fifty pieces of paper -- all sides, and by the time I even identified what was going on, about five minutes later, John Warner left me to fend for myself. I suppose I was no worse off than anybody else.

Q. This was your first exposure to it?

A. Yes.

Q. What was the type of case that you were left to try? Was it arraignments?

A. No. There were trials too, petty larceny, assaults, prostitution, everything that came along. As a matter of fact, many of the cases in those days that today would be regarded as felonies, robberies, burglaries, and so on, they were "broken down" into petty larceny, and unlawful entry, or whatever. So they were really burglaries and robberies. They were petty crimes in those days, and that's what we tried.

Q. Do you remember your reaction and emotion as you were called upon to be on your own for the first time in a courtroom?

A. Obviously, I was not terribly sure of myself. Some of the judges were kind of rough. Judge Beard, I recall, was well known for teaching young Assistant U.S. Attorneys how they should conduct themselves. I was at the receiving end of some of those lessons. So that was kind of interesting.

Q. Did anything in that experience affect your later dealing with young and inexperienced lawyers?

A. Well, yes and no. On the one hand, I decided I was not going to operate the same way as Judge Beard did. On the other hand, the longer I was on the bench and the longer it appeared that some of the Assistants didn't know what they were doing, I had more sympathy for his point of view than I did initially.

Q. What do you recall about Judge Scalley or any of the other judges in any detail, in terms of personality?

A. A number of judges who were distinct personalities. Judge Scalley was an Irishman, political background, I think, I can't remember exactly, and he moved things along. His main aim on that bench was to clean up the calendar. He did that. Judge Howard was there. He was, I guess, the first black judge in the District of Columbia, and he was very dignified. You couldn't survive there as a judge or as a prosecutor without moving things quickly and expeditiously. Judge Nielson was there, is still there as far as I can tell, who was mostly handling traffic offenses. As a matter of fact, Judge Nielson theoretically had retired by the time I got there because I took over his chambers. I was assigned his chambers. I'm talking about a little later period now, I'm sorry. I'm talking about the time when I became a judge there.

Q. During the time when you were in the Assistant U.S. Attorney's Office during 1953-1957, is it fair to say that some of your views about justice, the judicial system were being formed in this atmosphere?

A. Well, they were different. I remember there were several of us who were law clerks and then went into the U.S. Attorney's Office. On being law clerks we were as law clerks just out of law school do, we were thinking

everything pro defendant. When you become an Assistant U.S. Attorney, your perspective, particularly if you're young enough, quickly changes and you prosecute vigorously. So to that extent, my views were changed, they were altered from what they had been before. I don't think that that stayed with me. I think maybe I got somewhat more balance as a result of that.

Q. Did you question the "system" of justice?

A. I don't think so.

Q. In your view, was the judicial system working within acceptable limits?

A. I think so. I don't think I knew enough about criminal law or criminal procedure or about the theory of criminal prosecution to just say I don't think this system we have here is no good. I don't think it occurred to me. That doesn't mean that particularly in the Appellate Section where I wrote briefs and argued appeals, both to the Court of Appeals -- and I might say one of the few Assistant U.S. Attorneys ever to argue a case in the Supreme Court -- that I didn't bring some philosophical views to bear on what we wrote. But certainly not in the hurly burly of prosecution.

Q. You mentioned that some of the judges felt that it was their responsibility to move cases along? Was that done at a price?

A. I guess so, it was done at a price. It may have been done at a price also to the defendants, although more likely it was done as more of a price to the

prosecution. The feeling was in those days at least -- things are a little different now -- but in those days at least the feeling was, well if this case has been thrown out by Judge Scalley, we'll get the defendant next month.

Q. What sense did you have of a social purpose that the court was serving under those circumstances?

A. The court was serving the purpose of getting rid of the most obvious criminal activities and criminal activators that were running around there carrying on. They were not that serious in the sense as we have now with large quantities of drugs, and so on, and the whole city being under siege, so to speak. It was just a typical small crimes court where we operate as part of a system to get the small criminals off the streets if possible.

Q. You referred to the counter? What does that mean?

A. The counter in those days was a counter where anybody -- a police officer or a private citizen -- who wanted a criminal charge brought against somebody came and we, the Assistant U.S. Attorneys, we were standing behind the counter. We had much more authority than the Assistant U.S. Attorneys have today. We could say yes, we'll issue a warrant for the arrest of so and so, or we won't listen to their stories -- sometimes stories of both of them, or sometimes just a story of the one who wanted the prosecution. That was sort of the intake for the entire system.

Q. Did you have a sense of the power that you were wielding in terms of affecting the lives of individuals.

A. It seemed to us at the time that this was the way it was everywhere. That's the way it was. Again, I may sound naive. At the time it seemed like the usual thing. That's the way it operated.

Q. Were there any instances when you made a decision, for example, not to issue a warrant or implement a case where the consequences were unfortunate?

A. Not my own. But it happened all the time. In my own case I escaped the problem. The problem frequently was where usually wives wanted warrants taken out for their husbands, and there were perhaps as many as 20 a day. It quickly became apparent that, at least that was the feeling, one shouldn't immediately issue warrants for all those people because if you did issue a warrant they would be locked up and the woman might come in the next morning and say, "Who's going to provide for me and my children? Get him out." So frequently, they asked for warrants to be issued, and the particular Assistant would say come back in three weeks, two weeks, four weeks, or whatever, then if you still feel that way then we'll do something. Every once in a while some woman got killed by her husband. The threat was made real. Then for a while everybody was

arrested against whom a charge had been made. That fell into disuse again for a while and it started all over.

Q. During the period that you were in the U.S. Attorney's Office, how many cases did you actually try?

A. Not that many. Most of them were guilty pleas or dismissals.

Q. But this was the main area of your trial experience?

A. Correct.

Q. In the Appellate Section you were working on cases before which court?

A. The U.S. Court of Appeals, the D.C. Court of Appeals, as I said, I had one case before the Supreme Court.

Q. What was the experience that you had appearing now before the U.S. Court of Appeals as an Assistant U.S. Attorney rather than being a law clerk?

A. I did know the judges, somewhat. They were the same judges. I don't think it made any difference.

Q. Would you describe the court at that time as being receptive or unreceptive to the prosecution's arguments?

A. Some were receptive and some were unreceptive. The court was somewhat split, just as it was always split. Depending on who the judges were, one could sometimes tell more or less how it would come out.

Q. What about before the District of Columbia?

A. The District of Columbia Court of Appeals was a pretty conservative court, with just three judges. One could assume, in criminal matters at least, that they would be on the government's side. That's a crude way of putting it, but generally would prefer the more conservative interpretation.

Q. Do you recall who the judges were at the time?

A. Andy Hood stands out, and Judge Myers.

Q. There weren't any personalities that are vivid in your mind?

A. No.

Q. You referred to a case that went before the United States Supreme Court, what was the issue and why was it unusual that an Assistant U.S. Attorney would be arguing the case?

A. They just generally did not have Assistant U.S. Attorneys argue cases in the Supreme Court, to such an extent that when I did argue the case, I was listed as Special Counsel or Special Attorney, Department of Justice, so as not to give an idea to the Assistant U.S. Attorneys around the country that they could argue in the Supreme Court.

Q. Normally it was the province of the Department of Justice?

A. The Department of Justice. The Solicitor General's Office. Not the U.S. Attorney's Office.

Q. Why then were you accorded this rare distinction?

A. Number one, I think it was a sure loser.

Q. You were sacrificial?

A. Number two, I guess they thought, for whatever reason, it would be nice to give me the opportunity to do that. It did turn out to be a sure loser.

Q. Do you recall the name of the case and what was it about?

A. Carroll v. United States There's another Carroll case, but this Carroll case had to do with the right of the government to appeal from the grant of a motion to suppress. We took the position that the government had that right. The Supreme Court in a 9-to-nothing decision said we didn't.

Q. Did you go in with a view that it was a case that wasn't winnable?

A. Everybody knew, I knew, that if it was a winnable case the Solicitor General would have argued it most likely, or people close to that seat of power. But it was still a great emotional high.

Q. Who was on the Court at the time that you recall that was involved in asking any questions of you?

A. Frankfurter was there. I remember him distinctly because he did ask some questions. Among other things, it was on a Thursday, I guess it was, the end of the week, and they were going away for two weeks or three weeks, and mine was the last case. I made part of my argument, and that's how I

remember Frankfurter. He said now your argument, Mr. Greene, is thus and so. I said, yes, that's right. I felt happy that somebody understood my argument. Then he said, "Well, if that's your argument there's no need for you to go on." Because they, at least wanted to get out of there. But I didn't know how the other eight felt, so I went on some more. But some of the enthusiasm went out of my argument after that. So that's how I remember Frankfurter being there.

Q. Did anyone else ask or engage in the questioning in any way?

A. There were other questions, but I can't remember exactly what specifically they said.

Q. Did that occur towards the end of your time in the U.S. Attorney's Office?

A. Yes.

Q. Having reached that pinnacle, there came a time when you decided to leave the U.S. Attorney's Office?

A. Yes.

Q. That was in 1957?

A. Yes.

Q. Where did you go?

A. I went to the Office of Legal Counsel in the Department of Justice. I had an offer to go there. I went there partly because it was much more money

than I was making and partly it was said that the Office of Legal Counsel was a very prestigious place where the small staff of about 12-15 lawyers would be advising the President and others of high position on important legal questions. As it turned out, it wasn't quite like that. What the Office did depended in part on the closeness of the relationship of the head of the office with the Attorney General and with the President. Our head of the office then, for what reasons I don't know anything about, was not that close with either the Attorney General or the President. The work was not any way near what I expected.

Q. Who was the Attorney General? Who was the head of the Office of Legal Counsel?

A. William Rogers was the Attorney General. W. Wilson White, who is no longer with us, was the head of the Office of the Legal Counsel.

Q. This was during the time of President Eisenhower? William Rogers later went on to become Secretary of State with President Nixon?

A. That is true.

Q. Mr. Wilson White, what had he been before?

A. He had been the United States Attorney in Philadelphia.

Q. What kind of issues did you in fact work on?

A. I think I had something to do -- I can't even remember exactly what they were, they were not that significant -- but I think it was the time of Little Rock, the Little Rock school integration crisis. I think we did have some work to do, all of us, on use of military force to enforce court orders and that kind of thing. I think I worked on that too, but not to any significant extent.

Q. The work here did not necessarily involve actual cases?

A. No, that's right. Strictly advisory. It was not a question of litigation at all.

Q. Mapping out a course of action justified by the law to achieve a particular objective?

A. It was whatever the head of the Office was asked to do or what he thought we should do. It was mostly, as I say, advisory, of the higher-ups as to what they could do or could not do on current legal issues.

Q. Were some of the people you were working with at that time individuals who went on to positions of prominence either in the government or judiciary?

A. Harold Reis was there. Harold Reis became Executive Assistant to the Attorney General later. What they mostly were, older, seasoned, highly-respected attorneys who could be depended upon to give sound judgments.

That was the theory. They were not people who were at the beginning of their careers.

Q. Your being there was something of an exception?

A. Maybe, yes.

Q. How long did you remain at this position?

A. Not terribly long. First of all, as I said, the work was not nearly as challenging or interesting as I had expected and number two, more importantly, Mr. White became first head of the Civil Rights Division. By that time the Civil Rights Act of 1957 was passed by the Congress, and it provided for a Civil Rights Division in the Department of Justice.

Mr. White, our boss, became head of that office. I took the opportunity to go with him. I became the first head of the Appeals and Research Section of the Civil Rights Division.

Q. In establishing the new office, what did you understand the mandate of the office to be?

A. The mandate of the office was to safeguard the civil rights of citizens.

The Attorney General was, if there was any mandate that he gave us directly, it was to go slow, we don't want to lose any cases, at least not in the beginning. While the mandate of the statute was broad, the mandate from the Attorney General, I thought, was kind of narrow.

Q. What kind of cases did you get involved in?

A. I got involved in some voting investigations. I did argue a case out in -- initially, right from the beginning -- a police brutality case out in Nevada. After a while, in 1960, when the Kennedys came in, the office became much more active. Not just our particular part of it, but civil rights generally. The Department of Justice became much more active in civil rights matters. The operating section, so to speak, the voting rights section became very active in investigating voting fraud and voting discrimination in the South, Mississippi, Alabama, and so on. The Appeals and Research Section, namely me, with some of my young troops, was to make sure that what they did was legally justified. We were trying to figure out basically what schemes we could -- scheme is not a good word -- but how we could proceed, what theories we could pursue to deal with voting discrimination.

Q. Could you describe how a change in government or a change in policy, or a change in personnel affects the working level of the Department of Justice?

A. Well, as I just did. Like Senator Mondale said when they asked him if he was going to raise taxes, and he said, "I just did. I just told you this would happen." More people were being hired and the general impression from the top was, let's do something. Let's enforce these statutes. Mostly

it was in the field of voting, but there was also some litigation on transportation, bus segregation. Blacks couldn't ride on buses at all, or they had to ride in the back, and things of that nature. It wasn't just indirect. The Attorney General came down and talked to us and told us what he expected to do.

Q. This is Robert Kennedy?

A. Yes.

Q. What cases do you recall? As part of your strategy to achieve the enforcement of the Civil Rights Acts, was there a discussion about forum shopping in terms of trying to get cases before particular district judges, which state, or which district court to bring it in?

A. No. I don't think there was much of that. I think the basic condition was that we were most likely going to lose in the District Courts except in Judge Johnson's court in Alabama. I can't list everybody else, but most of the district judges were hostile to the program. We were going to lose and that's why the Appeals Section had a significant role because, if we were going to win, we were going to win before the Fifth Circuit. So everything was geared to making sure the legal position that was taken before the district judges was going to be upheld before the Fifth Circuit.

Q. The Fifth Circuit had how many judges?

A. Nine judges.

Q. How many would you have regarded as sympathetic to enforcement of the Civil Rights Acts?

A. Generally, the feeling was that four were sympathetic and five were not. However, the Chief Judge, Judge Tuttle, it was claimed stacked the panels by always putting two of the pro-Civil Rights people in there, and one of the other judges made a point of that in a dissenting opinion, as I recall. But by and large, we managed to win in the Fifth Circuit.

Q. Was it just the vagaries of the appointment process over the preceding ten or fifteen years that resulted in an Appellate Court that had a particular point of view, or at least some of the judges had a particular point of view?

A. I think so. Of course, I wasn't close to what they were saying in their chambers, in their conference rooms. But that's the way it turned out.

Q. Were the dissents taking a position that was in your view totally unjustified by the law, or was there some argument that they could make within the law that was intellectually respectable for the position they were taking?

A. I think they were just wrong. Obviously I was a lawyer and I was an advocate, but they were wrong, and I think history has proven them to be wrong.

Q. How long did you remain in this? Now you were enforcing both the Civil Rights Act of 1964 and the Voting Rights Act of 1965?

A. No. That came near the end of my tenure. I was involved in drafting those Acts. We of the Appeals and Research Section were called upon to do this, together at times with the Solicitor General's Office and at times with the Office of Legal Counsel, but a lot of the actual work and figuring out how to phrase it, and so on, was done in the Appeals and Research Section of which I was the head.

Q. Before those Acts were enacted, what laws were you then enforcing in terms of --

A. Mostly the Voting Rights Act.

Q. A pre-1965 Voting Rights Act?

A. Yes. There were Voting Rights laws in 1957 and 1960. They gave us some jurisdiction. We had some criminal statutes. Criminal civil rights violations. Police brutality and that kind of thing.

Q. In your participation in drafting the Civil Rights Act of 1964, what issues do you recall were the most vivid?

A. One of the things that was important in taking a position on that -- the Department, the government, everybody was involved in, was whether to rest the whole business on the Fourteenth Amendment or on the Commerce

Clause of the Constitution. There were a lot of people who thought it should be the Fourteenth Amendment for symbolic purposes, and so on. My Section took the position, and the Department of Justice ultimately took the position, and the Administration, that we'd be better off with the Commerce Clause even if it wasn't that symbolic. That's the way it was drafted and that's the way it was upheld as being much more soundly based. As I recall now, there had been some sort of civil rights legislation in the Reconstruction Era under the Fourteenth Amendment which the Supreme Court threw out. So the idea of going into it with the added handicap of staring down a Supreme Court case directly against us, didn't appeal to us. Plus the fact the more or less political view we did need in order to get anything passed, we did need a two-thirds majority in the House and the Senate because of the filibuster which southern senators were going to mount. I guess not the House, but just the Senate. We did need the more liberal Republican senators. Their support was always shaky, and to have to tell them that we're going to do this or we're going to do it on something where there's a Supreme Court case directly contra, it was our feeling -- to the extent I got involved in it -- that that wasn't going to get us anywhere.

Q. Did you sketch, and that's a faulty question in a sense because of the enormity of the issues at stake, but could you sketch the distinction between resting the statute on the Fourteenth Amendment and resting it on the Commerce Clause?

A. In the Fourteenth Amendment you would simply say it's a violation of the Fourteenth Amendment for a hotel, or motel, or restaurant not to serve blacks, in those days Negroes I guess it was, on the same basis as whites. Whereas under the Commerce Clause it was all based on interstate commerce. Any hotel, or motel, or restaurant, or whatever facilities engaged in interstate commerce shall not do such and such. Then we had to define what interstate commerce was and how broad, and so on. It made it in a sense more complicated, but I think more subject to being upheld.

Q. Wasn't there an issue about Mrs. Murphy's Boarding House?

A. Yes.

Q. What was Mrs. Murphy's Boarding House?

A. Senator Dirksen, who was the leader of the Republicans, whose support was essential to us, wanted to make sure that none of this applied to small establishments, so he coined that "Mrs. Murphy's Boarding House." That

was eliminated from coverage. As it turned out, it didn't make any difference.

Q. Because?

A. Once the Act became effective it was really rather startling as to how compliance was universal. All the litigation for all the years had made very little impact on what actually went on in the South. When Congress passed the statute the legitimacy of it, I guess, persuaded people to comply with it. Within days, it was everybody all over the South, restaurants, hotels, motels, I forget what else was covered by it, just gave up their previous opposition.

Q. That's an interesting point. What does it say to the point of criticism of activist courts?

A. It says something to that. At least in that instance, Congressional action had much more legitimacy and was much more accepted readily by the citizenry than court decisions.

Q. Was there a sense that what was being formulated was of major significance in the life of the nation?

A. Yes, I think everybody realized that the Civil Rights Act of 1964 and the Voting Rights Act of 1965 were major pieces of legislation, that everybody was engaged in, that we were engaged in, that politics of the country was

engaged in, and that would make a major difference, and as it turned out, it has. We were sent up to the Hill to give assistance, so-called assistance, to various senators and drew up speeches for them. It was called providing assistance to those who asked for it. Senator Humphrey, Senator Hart of Michigan, and people like that. In addition to the drafting of the stuff, we were engaged in assisting and getting it passed.

Q. What do you recall in terms of the relative contributions of some of the prominent personalities of the times? Say Robert Kennedy; or you mentioned several senators, in terms of formulating what would be included either in the Civil Rights Act of 1964 or the Voting Rights Act of 1965?

A. I don't know whether the words and the specific clauses, and so on, were contributed by the Attorney General. Archibald Cox, who was then Solicitor General, did contribute significantly in all of that. But the Attorney General simply gave us the feeling that he wanted us to do something. He wanted to get something written that was going to pass and that was going to make a major difference. He was there all the time. He testified before the Senate Judiciary Committee for a week or 10 days at one clip. I was among, with about five or six others, every morning during that 10-day period -- we had breakfast in his office and went over

possible questions. He was engaged in the nuts and bolts of the thing. He tried to get from us our feeling what were likely questions and what could he say, should he say, so it wasn't just somebody saying let's pass this and went away. He was very much involved in it.

Q. Were there arguments to do even more to either of these Acts that were rejected?

A. It's possible that some of the civil rights people, Martin Luther King and some of the civil rights organizations wanted to do even more, although I can't remember now exactly what that was. I think that, and my memory is a little hazy, I think possibly the employment sections of the Act were put in as a result of pressure from civil rights groups and not from the initial draft of the Department of Justice.

Q. What did that provide?

A. It still provides what's now Title VII of the Civil Rights Act, that you can't discriminate in employment based on race. As it turned out, sex was included as a result of maneuver from conservatives who thought that that would sink the bill. It turned out that it didn't sink the bill.

Q. Wasn't that attributed to Congressman Howard Smith?

A. Congressman Howard Smith, chairman of the Rules Committee, I was there. I was in the gallery the day that he was making that proposal.

Everybody was snickering and laughing and saying that this will sink it.

As it turned out, it didn't.

Q. That provision has taken on a life of its own.

A. That's right.

Q. Did you envision that the inclusion of that provision would have the impact that it has had?

A. No, I didn't.

Q. So the gift of prophecy, at least in that instance, wasn't with you?

A. No, I don't think so.

Q. Did you have meetings with Dr. Martin Luther King, Jr.?

A. I didn't personally. I know the Attorney General had some meetings. I don't know if anybody else had any meetings with him.

Q. When you were there, you worked exclusively in the Civil Rights Division at the Department of Justice?

A. That's right.

Q. You were there in the Department of Justice for what period of time?

A. From 1957 to '65.

Q. When did Robert Kennedy leave the Department of Justice?

A. He left around 1963, 1964 after his brother was assassinated.

Q. That was to run for the United States Senate from New York?

A. That's correct.

Q. He was succeeded by Nicholas Katzenbach?

A. Nick Katzenbach.

Q. Did that change in the position of Attorney General have any impact on the work of your office?

A. No. The legislation had been passed. No, all the legislation had not been passed yet. I think the Voting Rights Act was passed when Katzenbach was Attorney General. But other than that, the basic thrust of everything had been set and Katzenbach was just as enthusiastic in enforcing civil rights as Robert Kennedy had been.

Q. Were there any other Attorney Generals under whom you served?

A. Ramsey Clark was Deputy Attorney General. I can't remember now, and I guess I should, whether he became Attorney General before I left or whether he was only Deputy Attorney General by the time I left.

Q. The head of the Civil Rights Division changed?

A. Burke Marshall had been head of the Civil Rights Division for quite some time and there was no change in that.

Q. During those years, some of the more prominent civil rights events occurred such as the integration of the University of Mississippi?

A. That's right.

Q. You were in the Department at the time?

A. I was in the Department at the time. I did what I always did, namely, got out memos to deal with every conceivable contingency. I was a little more energetic then. The Attorney General would call at 5 o'clock in the evening and say, "Tomorrow morning we're going to try to integrate the University of Mississippi, get us a memo on what we're likely to do, what we can do if the Governor sends the National Guard there, and I want to have it on my desk at 8 o'clock tomorrow morning." So we used to do that in those days. That's the kind of thing that I did, and my people did.

Q. When you are presented with a question like that, is there a body of information that you can go to right away or do you have to start?

A. You have to start. Some of it was there and some of it wasn't there. Some of it, usually we had to make it up. It was a good experience for making up things.

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- Q. You say that usually you had to make it up, referring to giving advice to the Attorney General on how to proceed on certain conflicts that came up in enforcement of civil rights, what do you mean by making it up?
- A. On some of these things, there just wasn't any specific precedent on it because the issue had never arisen. So one had to sort of reason from logic or from policy, or whatever, as to how the matter should be handled. I guess these are good lessons in being able to reason from policy even if there is no case directly in point.
- Q. What is a "for instance" of the kinds of issues you would have had to reason from policy?
- A. The kinds we were just talking about. Meredith wanted to be admitted to the University of Mississippi. Governor Barnett tried to stop him from proceeding. Governor Wallace, who wouldn't let black children into the University of Alabama even though the Fifth Circuit had held that they were entitled to it. They were passing laws practically every hour on the

hour to try to prevent what the federal courts have held was a fundamental right.

Q. You mean each of these states?

A. Each of these states did. I recall, that Louisiana, the legislature of Louisiana was practically in continuous session. They made it a crime for U.S. Marshals to be there. They made it a crime for government lawyers to bring, pursue lawsuits in the state. Things of that nature. You couldn't say let's look for United States v. Smith. There was no case. You had to make it up. That's what I mean by making it up.

Q. In Louisiana, Judge Skelly Wright was the District Court Judge in New Orleans at the time?

A. Judge Skelly Wright was one of the few who stood firm and enjoined the Louisiana legislature just as quickly as they passed these laws.

Q. He later became Judge for the United States Court of Appeals for the District of Columbia?

A. He certainly did.

Q. Did you appear before Judge Skelly Wright when he was a District Court Judge?

A. Yes, I did.

Q. Do you recall the circumstances?

- A. No. It was one more of those constant things that were going on every week, every month.
- Q. Do you have a warmer feeling about appearing before a judge who at least seems sympathetic to enforcing --
- A. Yes. Absolutely. Judge Skelly Wright and, I think, Judge Johnson were the two who stood out as being the ones who were going to support what we thought was the cause, not just of civil rights, but more important the cause of law and the Constitution.
- Q. Were you physically in Mississippi during the time of integration?
- A. No, I was not.
- Q. What about in Alabama during the time when Governor George Wallace had a confrontation with Deputy Attorney General Katzenbach, you weren't there at the time?
- A. I was always there at the end of a telephone line from the Attorney General as to what strategy to pursue.
- Q. How many people were involved in making the legal strategy as distinguished from the policy strategy?
- A. You mean like the kind of thing I was doing?
- Q. Yes.

A. My section had about 6 or 8 lawyers. We were practically the ones who were doing this all the time. Sometimes the Solicitor General was called in and sometimes somebody from the Office of Legal Counsel was called in, but the major part of the work was done by my little group.

Q. You were in charge of that group?

A. Yes.

Q. In 1965 you left the Department of Justice?

A. Yes, I left the Department of Justice. I was appointed to judge on the Court of General Sessions.

Q. Was this a position that you were seeking or were invited to consider, or how?

A. Both. I was concerned with the two civil rights acts having been passed. The days of challenging, interesting situations were about over. The enforcement is still going on, and I rather miscalculated. I thought there wouldn't be much going on there any more. There are more lawyers there now than ever.

Q. Something like the proposal to close down the Patent Office years ago?

A. That's right. I guess so. It was time to go on to something else. They were looking for somebody to go over there. There was no specific talk about my becoming Chief Judge. But there was a little bit of a rumor of

that. Anyway, I went over there in 1965, and in 1966 they did make me Chief Judge of the Court.

Q. Who's the "they" that we're talking about? Who are the decisionmakers that decide who would be a judge at the Superior Court at that time?

A. Mostly, I would say Ramsey Clark, who was then Attorney General, and surprisingly as it may seem, President Lyndon Johnson. Presidents before and since have taken very little interest in even appointments to much higher courts. President Johnson had his hand in everything, including the appointment of judges to the Court of General Sessions. I know for a fact that in one instance, when something was a little snag in the appointment process, Ramsey Clark picked up the phone and called the President and said, "What about this appointment of Harold Greene?" and he knew all about it. So, it's amazing that that should have happened, but it did.

Q. You say there was a rumor that you were going to become the Chief Judge, where did that rumor get started?

A. I don't know. There was never any promise. There was never any understanding. But the fact of the matter is that after about a year I became Chief Judge. I was a new appointment, and in those days the Chief Judgeship was a brand new appointment and confirmation by the Senate.

Q. Was the decision to go to the Superior Court, or the Court of General Sessions, in any way hinged on your expectation of being the Chief Judge?

A. Not really, no.

Q. But you thought you might like to be a judge?

A. I'd like to be a judge and seven years was long enough in where I was and, as I said, the laws had been passed and it didn't seem to me it was likely to have any new bills of any significance passed or any new theoretical or legal theories invented, so just to stay there and grind out one case after another didn't seem that promising to me.

Q. When you say that President Johnson was involved in your appointment, was there something in particular about either that you had had contact with him, or it was just the way he ran government?

A. No, I didn't have contact with him. That's the way he ran government. As I say, the one instance that I can speak from personal knowledge is that in my presence Ramsey Clark called him and talked to him about this particular appointment -- which you would think that President Johnson had other things to do than to worry about that -- but he did, he knew all about it.

Q. You have been in the Department of Justice under Presidents Eisenhower, Kennedy, and Johnson, did you have a sense of presidential involvement in either of the other two presidents? At that level of detail?

A. I don't think so, no.

Q. Were there other people that were considered for the position that you were appointed to that you know of?

A. No.

Q. You had had considerable dealings with Ramsey Clark?

A. Yes. Also on the Civil Rights Bills. After Robert Kennedy left, Katzenbach and Ramsey Clark were the two who made the policy for the Department on those bills. We were sitting together sometimes with Senator Dirksen and his assistants, or other people like that, and trying to hammer out some bill that everybody could accept and could vote for.

Q. Had you been active in politics at all?

A. No, I hadn't.

Q. Were you registered, because you lived in the District at the time?

A. No, I didn't live in the District. I lived in Maryland. I was registered for a purpose of voting in the primary, I registered Democratic, but nobody ever inquired about that. It didn't mean anything. I wasn't active in the party.

Q. You came over to the Court of General Sessions, not an unfamiliar place to you.

A. No, then a few years had gone by but it was not unfamiliar.

Q. What was the most striking adjustment that you had now that you were the decisionmaker at a trial court?

A. Being the decisionmaker was a striking adjustment. I remember the very first time I sat in Small Claims Court -- people talked and argued and there had been some evidence. Then they sat down and looked at me. It only occurred to me then that I was supposed to do something, namely decide between one and the other. That is a different ballgame. That's what you have got to do. That's what they pay you to do.

Q. Would you describe in those early days, at least, that you agonized over decisions or came to them very quickly?

A. No, I wouldn't. It may sound somewhat arrogant but I generally -- Sometimes I did agonize, like on sentencings and things like that. But by and large, I made decisions pretty quickly.

Q. To what extent did you find that the quality of the lawyering mattered in terms of pulling you in one direction or the other?

A. In those days I think the Assistant U.S. Attorneys were probably better than the private Bar, at least on the criminal side. That was one of the

things I did that more or less persuaded some people that I should be the Chief Judge there because I managed to get payment under the Criminal Justice Act, payment for the lawyers there on the assumption that it would improve the quality of the lawyers. Before then, if the defendant didn't have any money, by and large, he was pleaded guilty whether he was guilty or not. It was constant hassle of trying to get some money out of him and getting some money out of the family, and so on. I take some credit for getting the Criminal Justice Act and normal payment into that court. The Criminal Justice Act had applied for some months or maybe longer in the federal courts. I wrote an opinion -- that opinion -- writing stuff did come in handy -- I wrote an opinion that said that since the U.S. Attorney has the power to bring the prosecution either in the District Court or the Court of General Sessions, it would be denial of equal protection not to have the same quality of legal representation in the Court of General Sessions. Therefore, I signed a voucher under the Criminal Justice Act for somebody in the Court of General Sessions. That caused great consternation, and the Judicial Conference of the United States opposed it. They didn't want all these thousands of small General Sessions prosecutions cluttering up their budget. The Justice Department supported me. Anyway, it went to the Comptroller General, the General Accounting

Office, and they agreed with my reasoning. From then on lawyers have been paid in the Court of General Sessions. Ultimately, a year or two later it became a matter of legislation, but until then it was strictly on the basis of that opinion that I wrote at that time.

- Q. Before you became Chief Judge, were there certain features of the operation of the court system that you felt needed to be changed or that you would like to change?
- A. That was one of them. In general, the court personnel sort of regarded the court as the old police court, and it was not. No great effort was made, I thought, to improve it, upgrade it. When I started writing opinions on some cases, not just criminal cases but civil cases, people thought what the hell is he doing? Nobody had ever done that. That kind of thing just wasn't done there. One of the things that I thought we should do is we should try to act like a grown-up court. There were other judges appointed who had similar views. Judge Belson, Judge Stewart and people like that, whom you are probably familiar with.
- Q. How were you notified that you were going to be the Chief Judge or is this a position that you decided to seek?
- A. I didn't seek it. I didn't know there was even any thought being given to having me as Chief Judge at that time. I got a call one day from the

Deputy Attorney General's Office from Barefoot Sanders, who now happens to be a District Court Judge in Texas. He said -- this was in the evening I distinctly remember it -- he said, "How'd you like to be Chief Judge?" I said, "I guess so." "Well, tomorrow morning come to the Department and we'll take you to the White House, and you're going to be appointed Chief Judge."

Q. Had a vacancy been created at the time, or the position?

A. The Chief Judge was being appointed judge of the U.S. District Court.

Q. That's John Lewis Smith?

A. John Lewis Smith. But, I didn't know that. I had no idea.

Q. You went down to see President Johnson?

A. President Johnson wasn't there. He was busy with something else, and we never did get to see him. But we got to the White House and somebody talked to us.

Q. Was there any discussion about what you would be doing as Chief Judge?

A. No. Just in general, try to improve conditions, and so on, but nothing specific.

Q. After you became Chief Judge in 1966, in addition to the points that you mentioned about court personnel and the writing of opinions and a more

scholarly atmosphere, how did you go about dealing with the administrative problems of the Court?

- A. A lot of little things -- that people couldn't walk into the cellblock any time they wanted to; papers had to be according to particular standards, whatever paperwork was being done. I can't remember exactly. The "managers" who were in charge of, let's say small claims, or civil or criminal, or domestic relations, it was made clear that they were to treat the public in a certain way. There were lots and lots of things that went on.
- Q. You remained a sitting judge at the same time that you took on these administrative responsibilities? How much time did you allocate to each function?
- A. In the beginning, my administrative functions didn't take that much time, and I didn't allocate that much. I think I had a full calendar of litigation. Later on toward the end, it changed somewhat. Although I always continued to have significant case management.
- Q. Do you remember any major struggles as in the administrative part of your responsibilities?
- A. With the other judges?
- Q. With the other judges, with other parts of the government?

- A. Not with the other judges, no. They were pretty supportive. There were difficulties with the District of Columbia government through whom we had to get the money. We always had to fight with them as to whether they could cut our budget or couldn't cut our budget. I remember one fight I had with them to make it clear to them that we were an independent branch of government and not just an agency of the District of Columbia. When I first came, we used to get copies of notices to the effect that the Mayor or the Deputy Mayor wants to meet with all the agencies on such and such a date. I wouldn't go. I said I'm not representing an agency. We're an independent branch, and unless we get a separate invitation as an independent branch and -- oh, there was a hullabaloo about that! The Washington Post had a story about Judge Greene being too particular, not coming to a meeting. They did after a while consider to treat us as an independent branch. That kind of thing went on.
- Q. Even with the other judges there must have been -- any change would have, might have affected some of them in terms of their independence, any effort to standardize procedures would change somebody's influence.
- A. There might have been some but at least from my point of view there was very little fight or difficulty. They could see that I was trying to upgrade the court, and everybody was in favor of that. So they were supportive.

Q. What about cases that you tried during that time? Are there any cases that you recall for their complexity, or their prominence or impact?

A. It's very hard to remember that, too. I have a book here that has some of the old cases in it. One that I tried, that I handled very early in the game, had to do with landlord/tenant retaliatory evictions. It became a famous case that the U.S. Court of Appeals adopted that you couldn't evict somebody because they asked for enforcement of the Housing Code. Edwards v. Habib. I happen to know that became famous because every group of law clerks that comes in tells me that that's one of the cases that is being taught in the law schools. Not my decision particularly, but it ultimately went to the U.S. Court of Appeals where they agreed with me. So that's one that I can --

Q. Are there some cases that had notoriety at the time that you recall?

A. I'm sure there were cases that had notoriety, but I couldn't remember them.

Q. You were involved in the conversion of the Court of General Sessions to the Superior Court.

A. Yes.

Q. And what was the principal objectives of that change of title and change of jurisdiction?

A. The idea was that the Court of General Sessions was, we wanted the Court of General Sessions to be the court of general jurisdiction for the District of Columbia, including all the local matters that the United States District Court was handling. In the beginning that was greeted with great laughter. These clowns wanting to handle civil litigation over \$10,000 and handling criminal litigation involving felonies, there's no way that they can do that. By that time we had some pretty good judges -- Judge Belson, Judge Penn, Judge Stewart, Judge Joyce Green, and a number of others. After a while, and particularly because the District Court had only 15 judges and couldn't handle the enormously increasing criminal case load, there was some thought given that perhaps some of it should be transferred. I was negotiating all the time with everybody to transfer all the local litigation to the Superior Court. At that time President Nixon had a war on crime. Part of the war on crime was the upgrading of the Court of General Sessions. We were going to do more in terms of handling felonies as felonies rather than breaking them down to misdemeanors which the District Court, of necessity, had to do because it had limited personnel. In any event, it took a long time -- several years of discussion back and forth and political matters became involved in it. But anyway, in 1970 they passed the Court Reorganization Act, which over a period of three years,

or four years, transferred all of the local jurisdiction to the local court and kept the U.S. District Court strictly as a federal court.

Q. You used a phrase, "these clowns?"

A. I'm quoting. That was the general view of those judges over there.

Q. Why was there such a perception?

A. In the beginning, as I said, when I first came there some of the judges had done some bizarre things. One of the judges sentencing somebody to be hanged until he was dead for a traffic violation. As a joke, I guess. This kind of thing was sort of the view of the more respectable Bar.

Q. The design and construction of what is now the new court building, the Carl Moultrie building, that began under your role as Chief Judge?

A. It began and finished. I got the money from the Congress, from the Appropriations Committees. \$40 million. I hired the architects and sort of went over the general scheme of things, and it was finished about four to six weeks before I left that court, before I came here.

Q. Were there objectives that you had in terms of the design of the physical court building?

A. We had a Building Committee, which did most of the work. But one of the things that we wanted obviously to do was to have separate parts for criminal and civil and particularly for family division matters. We wanted

better security, and as a result of that, one of the implementations of that was to have hallways between the major corridors where defendants, criminal defendants could be moved. Generally, to have a functional place and also that it was humane insofar as those who are dealing with the court were concerned. I think that as it turned out it was pretty successful. I can't really take any great credit for that. I think the architects did a very good job.

Q. One of your points at the time, as I recall, was you did not want to have the prison and the court together in one structure?

A. That's true.

Q. Do you recall the reason you had for that?

A. I think the reason must have been that I didn't want people to feel that when they go to the courthouse that they are practically in prison. That didn't seem like an appropriate thing to do. I don't know if that's what I said.

Q. I recall your saying, because I was involved with one of the companies who did planning on it, that you didn't want the courthouse to appear to be the portal to the prison.

A. That's right.

Q. In 1978 you left the Court of General Sessions on the eve of the opening of the new building, is that right?

A. Right after the opening. I was there for about six weeks.

Q. You went into the promised land?

A. I went into the promised land, yes.

Q. What were the circumstances of being appointed a United States District Court Judge?

A. In those days, in the Carter Administration, they had a Commission, Merit Commission, so called or something like that, and Senator Tydings was the head of it. I was interested in being appointed. Again, I had been there for 13 years and the transfer of jurisdiction had been done and the courthouse had been built, I wanted to go someplace else and this was the obvious place to go. I was one of the people that they favorably considered. The Carter Administration appointed me.

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Q. Judge Greene, when did you assume your role as a U.S. District Court Judge for the District of Columbia?

A. August, I think it was, in 1978.

Q. During the first months of becoming a federal judge, could you, or in the period thereafter, could you give us some sense of the comparison and contrast between being a federal judge and serving on the Superior Court?

A. Actually the contrast was really greater than it would normally have been because I was Chief Judge at the Superior Court and a substantial part of my time was occupied with administrative duties. So called administrative, quasi-political. Getting money for the court, getting the courthouse built, and that kind of thing. Obviously, I didn't have any such responsibilities in the United States District Court. In that respect it was quite a change. As far as litigation was concerned, one of the prerogatives of the Chief Judge of the Superior Court is to assign cases to judges, which is not true in the United States District Court. I had assigned to myself for several years already in Superior Court major felonies. Murders, rapes, armed

robberies, and so on. So in that respect it wasn't that great a change in that I had for years before then tried, and otherwise handled major cases, complex cases to the exclusion of practically everything else. Initially, when I first came there as Chief Judge I served in every branch, small claims, traffic, whatever. But toward the end, I assigned myself only the major cases. Number one, because I liked them better and number two, it was easier to handle administrative matters with just one case pending on the calendar rather than 50 small claims cases. So, as I say, as a result of that the change wasn't that tremendous.

Q. So being a judge is being a judge, whether it's in the Superior Court or in the Federal Court?

A. That's right.

Q. What about the interaction among the judges in the two courts quite apart from different personalities, is there a different interaction or do trial judges pretty much work on their own and have relatively little professional interaction with others?

A. It depends on the personalities, and it depends also on what's available. One of the things I've found is that there wasn't that much interaction in the Superior Court in the beginning and there was much more toward the end, largely because there was a dining room toward the end. People

could get together. There was a place where they could get together and they did get together. Not all of them, but many of them. If you don't have a place -- it isn't like an appellate court where you necessarily have to meet. A trial judge can do whatever he wants to, or she wants to without sitting down together. Everybody has, of course, his friends and colleagues that they have more confidence in, but anyway that's more or less the way it works.

Q. Presumably, there are matters of common interest among judges sitting in a particular court?

A. We had monthly meetings in Superior Court over which I presided and I set the agenda for. We have monthly meetings in the U.S. District Court. Other matters coming up. Rather fewer significant matters coming up in the United States District Court because policy on administrative, or joint, or administrative shorthand for other than litigation matters is set pretty much by the Judicial Conference of the United States and the Administrative Office of the U.S. Courts for all the Federal Courts throughout the country. Whereas in Superior Court we were alone, and we set our own agenda and made our own decisions.

Q. What about the social and political concerns of the society in general, do they work their way eventually into the courts, many of them do?

- A. I don't know. I don't think they do in district courts particularly. I mean I don't know what --
- Q. Employment discrimination? Sex discrimination?
- A. We hear the cases like any other cases. They're not the most popular cases among the judges. I think not because the judges are anti- or pro-discrimination but because it's difficult frequently to deal with them because they involve civil service or other regulations. Each particular department has its own regulations, and then there are questions whether somebody was or was not properly promoted -- matters not tremendously popular among the judges, but everybody handles them.
- Q. What about abortion cases, do they come to this court?
- A. I haven't seen or heard of any.
- Q. You're well known for having been involved for many years with the cases revolving around the AT&T, the American Telephone & Telegraph Company?
- A. I suppose that's true.
- Q. How did that case come to you and could you give a little bit of an overview as to its life history as you've been involved with it?
- A. It came to me in a very prosaic manner. When a new judge comes to the court, his caseload more or less corresponds to that of the other judges.

It's a little different now than it was then. Then the judges who retired, or who took partial retirement, or were ill could designate what cases they wanted to get rid of. Now it's more random choice. But in any event, when I came I got 140-150 cases which was more or less the average for the other judges. United States v. AT&T was one of them. The very first day. I really can't say that I had any great knowledge of what that was about and what that was going to become. Judge Waddy had had that case. Judge Waddy had had it for about three years. He was ill, and he got rid of some of his cases because of his illness. He kept some others. AT&T was one of those that he got rid of, and it came to me.

- Q. Could you describe a little bit of how the case unfolded and what it has meant in terms of your judicial life?
- A. The first thing was, it had been pending for three years. Not much had happened, and that's not any fault of Judge Waddy's because appeals were taken, it went to the Supreme Court, and back and forth. The fact of it is, nothing much had happened in terms of moving it forward. I decided the very first thing I would do is try to take inventory, so to speak, and then move the discovery process forward.
- Q. What was the gist of the case as it was framed when it came before you?

A. The gist of the case was that the Department of Justice claimed that American Telephone & Telegraph Company was acting anti-competitively in violation of the antitrust laws by cutting out anybody who could be or could become competition.

Q. How did you proceed then to move the case along?

A. I got everybody together, and I disposed of some pending motions that were complex and longstanding. Then, I guess the main contribution I made at that time, if it's a contribution, was to require the parties to submit, to file statements of Contentions and Proof which basically were volumes of whatever each party, the Department of Justice and the defendant, what their claims were and what evidence they had to support those claims. There were thousands of those that each had. I required two more statements at six month intervals. I told them that they had to narrow them, based on the first submission, the last one to be narrower and more slimmed down than the first two. That worked reasonably well. The third statement of contention and proof was less voluminous. Then I made them try to stipulate. I had a couple of special masters that we hired, professors of law from Yale and American University. They were overseeing the stipulation process. It became apparent from looking at the papers that some of the contentions that AT&T was making were really not

different than the contentions that the government was making, so I required them to stipulate to all of those. That was pretty rough on them because it took them a long time.

Q. Them being the parties?

A. The lawyers for the parties. But, in any event, it did reduce the volume of the evidence from what could have been a three- or five-year trial to a one-year trial. That was the main thrust of the effort before the trial started.

Q. Then did the trial in fact start?

A. The trial started.

Q. When was that?

A. That's a good question. I should remember. It was in the beginning of 1980.

Q. Did the trial go through to completion?

A. The trial went almost to completion. We were in trial for eleven months, and I knew, of course, from witness lists that had been submitted that there were only about three or four weeks of trial time left, when a settlement was reached between the parties.

Q. What role did you have in encouraging a settlement?

A. I had no role whatsoever. I didn't even know about it. I was away. It was the Christmas holiday when a settlement was reached. Some people

think that I had a role, because I did write an opinion half-way through the trial after the government had put on its case and AT&T moved, in effect, to dismiss all or most of the case. I wrote a lengthy opinion -- I forget how many pages, 90, 100 -- somewhere in that ballpark -- in which I rejected most of AT&T's contentions. It has been said that that was responsible, at least in part, for the settlement because they felt I gave them an in as to what I would do. But that wasn't my purpose. My purpose was to deal with the motions that had been filed.

Q. This was a trial before the court, no jury?

A. Yes, that's right.

Q. When the settlement came, you had to approve settlement?

A. Under the statute, the so-called Tunney Act, in major antitrust cases -- those brought by the Department of Justice -- they cannot be settled without the approval of the trial judge who must find that they are in the public interest. It gets to be kind of complicated in that the parties took the settlement first to a judge in New Jersey. I suppose I should go into it, even though it's complicated. There had been a previous lawsuit involving AT&T and Western Electric in 1949, and that was settled in 1956. The parties, while I was away on Christmas vacation in the

Caribbean, they took that settlement to Judge Biunno in New Jersey to have him approve it as being in the public interest.

Q. As part of the original consent decree?

A. When I got back I didn't take kindly to that, and I said that it was not going to be settled unless it was approved by the judge who had been carrying on contemporaneously the trial itself. And they agreed to that. Somehow it had gotten away from New Jersey and came back here. I had some six or eight months worth of proceedings in which I encouraged or allowed everyone with any interest whatever in the telecommunications industry, including many states and public utilities commissions, and competitors for AT&T, and everybody else, to make their views known on the public interest. Ultimately, after considering all of that and holding a hearing, I found the settlement to be in the public interest with some changes which I said I insisted on.

Q. What criteria exists for determining what's in the public interest?

A. No criteria.

Q. The judge in New Jersey, did he communicate with you that the case had been brought to him?

A. Yes he communicated with me although it was also in The New York Times and The Washington Post and other places.

- Q. He had a different view about his jurisdiction?
- A. He found it to be in the public interest in a half-hour hearing.
- Q. He also felt that he should be the one making the decisions?
- A. He did initially, but then he sort of backed off very quickly.
- Q. As a result of that decision that you approved, the AT&T Company was divided or split off?
- A. Split off into seven different parts, and there were various other provisions. The one that caused the most turmoil since then is that the successors to AT&T, the seven regional companies, were prohibited from going into the same kind of business that AT&T had used to discriminate.
- Q. These are what's called the "Baby Bells?" Bell Atlantic? Southwestern Bell?
- A. Yes, that's correct. Although they're probably among the largest corporations in the United States.
- Q. What is it that they felt that they should be allowed to do?
- A. Initially, that was in the decree itself as part of the split-up. Since then, as time has gone by, they have become more and more forward in claiming that they shouldn't be basically restricted in any way.
- Q. You've maintained jurisdiction over the consent decree and its aftermath for twelve years or so?

A. The decree itself, which the parties submitted to me, which I didn't write -- certainly not that part of it -- says that any interpretation or construction or enforcement of this decree shall be left to the District Court for the District of Columbia, which means me. That's in the decree, and so I'm carrying out the decree.

Q. So, in effect, this decree is with you for good behavior?

A. Forever. That's right.

Q. When you leave the bench, under the terms of the decree, does it remain with the Court then?

A. I don't know what would happen. One thing that may happen is that Congress has bills pending perennially, and one of these bills may pass one of these days which would leave the enforcement to somebody else, like the FCC or the Justice Department, or make it more automatic that no one has to approve it. Then, of course, the judiciary will be out of it.

Q. Have you seen criticisms about people blaming you for the break-up of the telephone company?

A. Yes. Oh yes. Oh, yes. Yes there are criticisms.

Q. How do you react to that?

A. Most of the time I don't react at all because you cannot possibly persuade people that what they have firmly in mind is not so. I am perfectly

content in my own view that the break-up was a good thing. It brought competition into a field where there hadn't been any competition, and that's the American way. Competition brings down price and brings up quality. It had exactly that effect. The rates, particularly long distance rates, are way down. Even the local rates, although initially they were up, have since decreased. So far as quality is concerned, many, many things that have come in since then that were not there when AT&T had a monopoly on it, I think can be ascribed to the fact that there is competition. So I'm perfectly content that in the long run this will be seen as a good thing.

Q. Your view both in 1980 as to what would happen and your view in 1992 as to what has happened has been within your imagining in 1980?

A. That's true, yes. I didn't think there would be that much fuss about the restrictions on the so-called "Baby Bells." I didn't foresee that. But in terms of the broader picture which, to my mind, is what the effect would be on consumers, I think it has been a good thing.

Q. Has the issue about the "Baby Bells," is that still before you right now?

A. Yes and no. Yes. Some of it is before the Court of Appeals. I can't really say that it is not before me because something is being filed on these

issues almost every week or every month. I can't really say whether it is before me or not.

Q. What are some of the other issues that have come up over the years, aside from the restrictions on the regional Bell companies?

A. There haven't been that many other issues. AT&T has pretty well complied with the decree. There weren't any other matters that the Court had jurisdiction over.

Q. Weren't there issues about pay phones at airports and local access to long distance lines?

A. That's all part of what the "Baby Bells" raised. That's part of their general view that they should be allowed to go into all these things. One has to construe the decree doesn't apply to pay phones. So, issues were generated by the regional companies.

Q. Some have suggested that your role in this is perhaps the most significant involvement of a United States District Court Judge in the economic life of the republic?

A. I don't know, I haven't made a survey of the economic life of the republic.

Q. Is there anything else, considering that we're talking about a case that's at least 12 or 13 years old before you? Are there any other observations about the case or the personalities that were involved?

A. The personalities surprisingly were surprisingly amiable. My relationship with the lawyers was rather amiable. From both sides. As a matter of fact, when the trial was half over, we had a picnic. The lawyers from both sides, and I was invited to come in and referee some of the events. Just about three or four months ago when the ten years after the decree was ended, we had a party at which again the lawyers for both sides -- many of them, at least 40 or 50 from each side -- were there and I was there. We get along fine. They get along fine, and I get along fine with them.

Q. Were there any other issues that you can recall now that were particularly troublesome?

A. There were troublesome issues all throughout. There was a question of the Defense Department, which didn't believe in the break up, and there was constant question whether the Justice Department was really carrying out the interests of the Administration. That came up and the Commerce Department also felt that the lawsuit didn't take sufficient cognizance of their concerns. It was brought up to me that the President had had a meeting with various Cabinet members as to whether the case should proceed. The position I took throughout all of that is that the people who had made an appearance in the case were the lawyers from the Department of Justice -- from the Antitrust Division. Unless they told me that the

President, or the Attorney General, or somebody had told them otherwise, they were the only source from which I got the views of the United States government, and that's where it stood until the end.

Q. President Reagan?

A. Yes.

Q. One comment I've heard recently in a casual conversation was that the role of the Bell Laboratories as a pioneer in basic research changed as a result of the decree. Do you have any comments?

A. I don't know. I haven't really heard too much complaint about that. There was a feeling in the beginning that it might change because they wouldn't be as interested in global-type research. But I haven't heard anything about it, more recently, so I can't really say whether that has happened or not.

Q. Is this one of the top five cases that you've handled in terms of intricacy, impact, interest?

A. I think, yes.

Q. Could you suggest what the other four might be?

A. Well, let's see, what other four? Another antitrust case that I thought was significant in terms of complexity and legal issues was Laker Airways. Sir Freddie Laker, in England, claimed that there was conspiracy to drive him

out of business. He sued Pan American and British Overseas, a British airline, a Dutch airline, a German airline, half a dozen or dozen of the airlines of the world in an antitrust suit which was before me.

Q. Laker Airlines specialized in low cost fares across the Atlantic?

A. That's right.

Q. What happened to that case?

A. Well, what happened to that case is that one day while the case was pending before me, the Court of Queen's Bench in London issued an injunction against Laker from proceeding with the case in my court at the request of some of the other airlines. Laker came into my court, and I issued an injunction against the other airlines from going into the British courts. We had a donnybrook of injunctions and counterinjunctions. Ultimately, actually, Laker's lawyers couldn't show their face in my court, even though they had a case pending there, without being in contempt of somebody. To make a long story short, what ultimately happened is that the two injunctions went to the appellate courts. Ours went to our Court of Appeals and they upheld me.

Q. They upheld you on enjoining the airlines from --

A. Yes. The British injunction went to the House of Lords. The House of Lords agreed that the American court did have jurisdiction and the English

lower court didn't have any business interfering. So I feel I was completely vindicated. Ultimately, this case was settled after all that happened.

Q. In what respect was it settled?

A. They paid some money.

Q. But Laker went on out of business?

A. Well, that's -- That wasn't related to the case.

Q. What are some of the other cases that you recall?

A. Well, let's see, what else? I guess Poindexter would be one.

Q. What was that case?

A. Poindexter was National Security Advisor to the President -- President Reagan -- the supervisor or boss of Oliver North in all this Iran-Contra business. He was charged with having misled or having lied to Congress. That was tried by a jury. I can't say much about it because it's still pending in the Court of Appeals.

Q. Poindexter?

A. Yes. Poindexter was convicted and I sentenced him to six months.

Q. What was he convicted of?

A. I think it's Section 1001, making false statements. It was reversed in the Court of Appeals. There's petitions for rehearing pending from both sides and it's still there, so I can't really say much about it.

Q. Making false statements is not altogether an unusual type of prosecution to bring, were there some unusual issues in the Poindexter case because of the position that he held in the Executive Branch?

A. You might say that. The claim of the defense was that he was acting under instructions from President Reagan. After much back and forth, I decided President Reagan had to be a witness, which had not previously happened before, for a President to be a witness on matters pertaining to his own administration. I ordered that he be a witness. But to take care of national security concerns, and so on, we had the proceeding in Los Angeles in the Federal District Court there. The public wasn't admitted. He testified in my court with everything just the same as it is in the regular court, except the jury wasn't there, for almost two days. We played that video to the jury here during the Poindexter trial.

Q. Was President Reagan still the President at the time?

A. No. He was not the President.

Q. Would that have made a difference in terms of --

A. I don't know.

- Q. Was there an objection on behalf of President Reagan so that he not be required to testify?
- A. Oh, yes. President Reagan's own lawyers objected and the Department of Justice on behalf of the Executive Branch objected. But I concluded that he had relevant evidence to give because Poindexter claimed that he saw the President everyday and that Poindexter supposedly got his instructions from President Reagan. I, in effect, said that Poindexter couldn't get a fair trial without the testimony of President Reagan.
- Q. Was that opinion appealed?
- A. No.
- Q. Has it been cited as a precedent?
- A. I'm sure it will be. I don't know if anybody has since tried to get a President to testify.
- Q. Are there some other cases that --
- A. I guess one that I could mention. More recent cases that I guess are not gigantic cases but a number of cases in which I've held that the, without much success, held that the Sentencing Guidelines issued by the Sentencing Commission were unconstitutional, invalid. That has not been met with great success in the appellate court so far.
- Q. What are the Sentencing Guidelines?

A. The Sentencing Commission is a commission established by Congress which has the authority to set down precise guidelines as to what sentence should be imposed on defendants in the federal courts. Very detailed and very rigid, in my opinion, as I said in these opinions, made it really impossible for the judge to give due process to the individual. But so far they've stood up.

Q. One of the grounds in which you've declared them unconstitutional was it violated the defendants right to due process?

A. Correct.

Q. Are there any other cases or issues that you've dealt with that you can say anything about?

A. No. I've got plenty of cases but those are -- I do write a lot of stuff. We could go on and on.

Q. Do you worry your cases?

A. Not really that much.

Q. Do you have second thoughts about the decisions or outcome?

A. No. Once they're out, they're out. If the Court of Appeals doesn't agree with me, that's all right too.

Q. What about in sentencing individual defendants? I've heard judges say that's one of the more agonizing parts of being a judge.

- A. It used to be, but with these Sentencing Guidelines the judge has so little discretion that the only agonizing thing about it is that you have to sentence people to time in jail that they don't deserve.
- Q. Do you feel that you're giving the individual too much time or too little time based on if you were free to exercise your own discretion?
- A. There might be too little time in crimes of violence because they are -- I think the Sentencing Commission Guidelines are kind of low. I think that basically defendants get too much time in drug cases, which is mostly what we have. Ten years, twenty years, fifteen years, twenty-five years for relatively -- I'm not saying that these people don't deserve some sort of sentence, but a courier bringing 5 grams or 15 grams of cocaine from New York to Washington, in the old days we might have given them a sentence of one to three years, or eighteen months, or something like that. Instead, we have to give them 10 years. That means 10 years without parole, so it's really more like 30 years under the old system when there was still parole.
- Q. What is your impression in terms of the effectiveness of a sentence like that, either deterring that individual from becoming involved again in criminal activity or in deterring others from becoming involved in comparable activity.

A. So far as that individual is concerned, we haven't seen anybody come out yet. They're in penitentiaries for a long time. Deterring others? The number of drug cases that come in here has not diminished at all. So what exactly the effect is I really can't judge from a broader point of view but, in general, it seems to be not much of an effect.

Q. Do you have any broader point of view in terms of dealing with drug activity?

A. I'm not saying that I know how to curb, eliminate the drug problem in the United States. If I were, I wouldn't be here. I would be in the Cabinet or whatever. I don't know. But I do know that to have a rigid system whereby people are sentenced without regard to many factors that previously allowed for flexible consideration is not a good idea.

Q. What about the criticism that existed before the Guidelines that there were so many vagueries involved in which judge you were before and what his or her perspective was, that an individual on a given day before one judge might get a suspended sentence and before another judge might get 10 years.

A. There was some of that. I don't deny that. But I think that could have been fixed, not with a sledge hammer but with a surgical instrument. There were things to do, one could have done, such as allowing appellate

review of sentences, for example. Plus the fact that, there's just as much disparity now as there was before, only it's generated by the prosecutors by their ability to pick whatever charge they want knowing full well what the ultimate sentence will be.

Q. Judge Greene, I would like to ask you a few questions about some of the personalities with whom you've come in contact in the federal court who either served as your mentors, your friends, your colleagues. What characteristics they had to distinguish them in your mind as judges?

A. I haven't given any thought to that. A colleague who I consider myself close to is Judge Oberdorfer, who is a very sound and thoughtful person. Good lawyer. Not likely to go off half cocked. Also has a reasonably progressive point of view that I think I have.

Q. What does that mean, to have a progressive point of view? The reason I raise the question is that while you were out instructing the jury, I just read a submission in the Litigation magazine by Richard F. Neely, the Chief Justice of the Supreme Court of West Virginia, and he says, "I think the law is primarily a political art -- contrary to the law professors' protestations -- real law practice does not involve applying principles emerging epistemological science." Then he says, "The reason is that so much of the law involves selecting values and accommodating competing

rights rather than determining factor applying preconceived scientific principles. Indeed, just as Clauzewitz pointed out that war is simply diplomacy by other means, so often today law is simply politics by other means.”

A. That's all a vast overstatement. I don't agree with that. Obviously, there is some room for personal experience, personal understanding of these issues. It isn't a mechanical business of deciding cases. But on the other hand, to say that it's just a political kind of art and doesn't have any other foundation is just wrong. My opinion. At least I wouldn't operate that way.

Q. When you said “progressive,” what does that term then mean in terms of judging?

A. “Progressive” means to try to decide matters in accordance with today's conditions perhaps, rather than to blindly take a decision handed down in 1930 and blindly applying it to something that occurs today. I wouldn't consider that progressive.

Q. What is the opposite of progressive?

A. I don't know.

Q. Are there any other judges or personalities --

- A. I was close at one time to Judge Bazelon. Although I always felt that he was more result-oriented, or perhaps like this judge from West Virginia, than I would be. I like to think of myself as deciding matters based on the fairness in the particular case and not deciding it on the basis of a particular profession or particular interest group the party may represent. Now maybe I'm slandering Judge Bazelon by putting it that bluntly, I don't mean it that bluntly, but I liked him and I thought very highly of him because he was genuinely concerned about people. But I would not go the same way of being as determined to come out with a particular result regardless of the fairness in the particular case.

Oral History Project
Historical Society for the D.C. Circuit
Judge Harold Greene
Tape II, Side 2

Q. Do you see judges as tending to fall within one, or two, or three, or five different bins in terms of their approach?

A. I really can't tell because I don't sit in somebody else's courtroom. So I don't really know what they do except occasionally when something they write or something that the Court of Appeals writes about them comes over my desk. So I don't really know what they do. I know very little about what other judges do in the trials that they have or the motions that they have.

Q. Do they express a point of view when you're meeting informally with them that you either find more sympathetic or less sympathetic?

A. They're all different. I think that our bench in District Court is much more diverse. You can't just pigeonhole them. I think you can more easily do that in the appellate courts where apparently they do form certain attitudes, views, to various criminal laws or whatever. Our judges pretty much are unpredictable.

Q. Vis-a-vis the appellate court, do you have any feeling as to whether appellate court judges recognize what went on in the trial, and are they remote from what went on in the trial and have a more abstract approach?

A. Frequently they don't understand what went on in the trial and frequently have an abstract approach. Many of the judges in the appellate courts now and previously are people who've never had any trial experience. It's difficult for them to really appreciate what went on. I had this thing, something came up and the jury asked me a question, and I gave an answer, and it didn't take me very long to come up with an answer. Then somebody gets it six months from now and three judges and nine law clerks look over it and find there was something wrong with the answer. I know that's the system, but I think the system would work better and would be more realistic if people dealing with that had more understanding of the trial itself.

Q. Is it a good idea or a bad idea to impose additional hearing requirements in support of the effort to perfect due process? Let me put the question another way. Should an appellate court take into consideration the administrative burden on the trial court in terms of making a decision?

A. I wouldn't think so. If it's really necessary it's necessary. I don't object to that.

- Q. Do you think the caseload of the federal judges in the federal court is a manageable one?
- A. I think it's manageable. Unfortunately, with all these drug cases, it gets to be kind of monotonous, and with the additional problem of the sentencing that frequently has to be imposed, even though the judges consider them unfair, which doesn't help, but in terms of numbers, I think it's all right.
- Q. How do you deal with just the physical demand of sitting, being alert and witnesses and lawyers going on as they must?
- A. You mean as far as the judges are concerned?
- Q. Yes, as a judge.
- A. Sometimes better and sometimes worse, it all depends.
- Q. What are the frustrations of being a judge?
- A. One of the frustrations is to hear cases that are intrinsically not that interesting if they use repetitions of what happened the day before and the week before. It used to be the difficulties of sentencing. Now the problems of sentencing are there in a different way. I'm not one of those who thinks that lawyers are all dumb and they can't live up to my expectation. They're doing a good job by and large, so I'm not worried about that.
- Q. What do you expect from a lawyer who appears before you?

- A. I expect that they be candid and not mislead me and that they know what their case is about. Sometimes we have problems, questions are raised, why has this case been around so long? We have to publish statistics of cases of more than six months, or more than two years, and so on. Almost invariably the cases that have been around a long time are cases in which the party, the lawyers, did a lousy job and one can't tell what they want. When it comes to writing an opinion or making a decision, you look at it and look at it and you can't tell what they want, so the judge as well as the law clerks set it aside and say, "We'll get back to it later because it isn't comprehensible." Whereas if it's well done, there's no great problem.
- Q. How much weight would you give to the lawyering in terms of affecting the outcome in a civil case of moderate or great complexity?
- A. I think I'd give quite a bit of weight to it. Again it depends on how much one can get involved in it. If it's a very complicated case with a huge amount of discovery and great complications and the judge simply doesn't, without guidance from the lawyers, doesn't have the time or the inclination or the understanding to get through it and get to the specific points, then you have a problem. On the other hand, if the lawyers are good and say, "Now our position is best supported by thus and so and by so and so's deposition," or whatever -- if he can do that and the other side

doesn't have somebody like that, it makes a difference. You can't invent the wheel.

Q. What has modern technology done in terms of judging?

A. It hasn't done much to me.

Q. You don't do electronic data research?

A. My law clerks do. I guess I should do it. I always plan to do it, but I'm always busy.

Q. Does it give you more information?

A. It gives you more information, yes.

Q. How do you absorb? I'm sitting here at your table and you've got piles and piles of paper, I don't know if it's one case or five cases?

A. The main thing about judging is to be selective and to find what is the real crux of the matter. For a lawyer as well as a judge. What is this all about? No matter how complex and how many thousands of papers there are, there are one, or two, or three, or whatever number of crux issues and once you master those it's no great problem.

Q. The question I always ask my clients is, "Are there any questions I haven't asked that I should have asked?"

A. No, you've asked all the questions that exist.

Q. Okay. Thank you very much, Judge Greene.

A. Thank you.

Q. There is one question I didn't ask and that is some people describe the judicial system as the search for truth. Trial lawyers don't describe it as a search for truth -- I think they describe it as an effort to win on behalf of their respective clients. Is there a basic incompatibility in terms of those uses of the system, or do you have a third? Do you ascribe to either one, or do you have a third view as to what the purpose of the trial system is?

A. Different roles to play. Trial lawyers want to win. They aren't necessarily interested in truth except sort of incidentally. They're supposed to represent their clients. I think a judge is supposed to search for truth, although that's not entirely true either because truth is to some extent ameliorated by fairness and we keep out evidence, for example in criminal cases, that would presumably help the search for truth. We keep it out because it violates the Fourth Amendment and other rules of evidence apply in civil cases as well. So, it is a search for truth ameliorated.

Q. That's the final word.

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