Oral History of Honorable Richard Roberts

This interview is being conducted on behalf of the Oral History Project of The Historical Society of the District of Columbia Circuit. The interviewer is Michelle Jones Coles, and the interviewee is Honorable Richard Roberts. The interview took place on Friday, February 8, 2019. This is the eighth interview.

MS. COLES: We're going to pick back up with Judge Roberts's transition to serving as Chief of the Criminal Section of the Civil Rights Division.

JUDGE ROBERTS: Hi Michelle. Good to be back with you.

MS. COLES: So, what types of statutes was the Criminal Section focused on at the time that you were Chief?

JUDGE ROBERTS: Well the Criminal Section had gotten at least two additional statutes that it was responsible for investigating and prosecuting. Before I got back there in 1995, the Congress had passed the Freedom of Access to Clinic Entrances Act. That was in response to a rash of violent activities that were occurring across the country in reproductive health clinics. The pro-life movement had among its members people who were rather violent. There were, of course, non-violent ones and principled people, but there were some who really took their beliefs to violent ends, and there were many reproductive health clinics reporting on a rash of violent activities. And these were activities which involved harassing patients who tried to get access to reproductive health measures in those clinics where picketers were outside, some people taunting them, the people who were trying to get access to the clinics. Some people were reporting that if they just did something simple like try to call a clinic to make an appointment, somehow folks would find out about that and would intimidate them or

harass them. Often, some clinics were facing the problem of violent activities, such as burnings, torchings of the clinics and the clinic facilities and physical harassment or violence directed toward patients who had been trying to go into the clinics or coming out of the clinics. It had gotten to such a fever pitch that Congress realized it was important to pay attention to that and to address it.

So I think it was around 1994 that Congress passed the FACE Act, the Freedom of Access to Clinic Entrances Act. The responsibility for investigating, or at least reviewing investigations of incidents reported under that act, fell to the Criminal Section of the Civil Rights Division. So that was a rather new area for prosecutors in the Criminal Section of the Civil Rights Division to tackle. When the Civil Rights Division in 1957 was created, obviously this issue was not in the fore, and the FACE Act had not been enacted. So it was a rather new jurisdiction for the Section after 1994.

We then had a number of lawyers who were focusing upon reports of acts that would have violated that Act, and we had to work very closely with state, local, and federal law enforcement agencies in trying, first of all, to investigate them. Sometimes the perpetrators of acts of violence would conceal themselves, so there was always the problem of identifying who the perpetrators might have been. Sometimes the intimidation worked quite well, so sometimes the purported victims of some of these events were loath to come forward and report them. As it turns out, there

were enough people who would come forward, do as best they could to identify potential perpetrators. There was enough physical evidence so that there was forensic examination that could be conducted to try to identify perpetrators.

Obviously the bad news is that there were a number of health clinics that were put out of business. There were a number of providers who were intimidated about continuing with the health services that they were providing, and there were a number of victims who were intimidated enough to not get the kind of healthcare to which they were entitled. But the Section nevertheless did review reports submitted by federal, state, and local law enforcement agencies to try to move forward as best they could with investigating and prosecuting violations of the Freedom of Access to Clinic Entrances Act. So that was pretty much a newer initiative compared to what was on the investigative plate back when I first was in the Section ages ago.

MS. COLES: Were there newer initiatives during your time there as Chief?

JUDGE ROBERTS: Yes. Around that time, there was also a rash of church burnings, particularly burnings of black churches, particularly in the South. That also had risen to a fever pitch in some areas, and it caused parishioners a great deal of anxiety. The one place you could expect to find a bit of peace and sanctuary is in a house of worship, and there were many parishioners down South who could not feel safe going on their Sundays or whatever days they worshipped on to their house of worship for respite,

for peace, for rejuvenation because there was a resurgence of essentially hate crimes committed against black churches.

In the Church Arson Prevention Act, Congress did do the right thing to try to create new tools and investigative tools for the federal government to try to track down the perpetrators of church burnings, particularly black church burnings, that occurred quite a bit in the South that had spiked. So what I did was in consultation with the Attorney General create a Church Arson Task Force. We assigned several attorneys from the Criminal Section to work exclusively on these church arsons. Since it was a new area of investigation and prosecution for the Section, we tried to do what we could to build up a body of expertise among prosecutors working in conjunction with FBI agents, ATF agents, and other state and local law enforcement agents around the country to do what we could to build up a swift reaction team whenever a church burned so that we could identify quickly potential victims of it. We would be able to gather physical evidence to allow forensic analysis and to be able to make sure the communities that were affected by these church arsons knew quite quickly that the federal government was not taking this lightly, that the federal government, and particularly the Civil Rights Division, was on their side in trying to stem this increase in church arsons, particularly against black churches.

Karla Dobinski was the lawyer assigned as the Church Arson Task Force director, and she did much of the coordination among the

prosecutors and the law enforcement agents in making sure that we had a swift and effective presence whenever these church arsons occurred. I believe at some point the Attorney General was pleased enough with the actions that Karla Dobinski and her lawyers had taken in the role of coordinating investigations, establishing relationships with law enforcement, that they were featured and were given Attorney General's awards for the work that they had done.

I hope that the work they did contributed to an eventual reduction in the number of church arsons years down the road that we saw at black churches. Not that it disappeared, but I think the fact that when a church arson occurred, when it appeared to be a hate crime, that the federal government made a quick and swift presence on the scene sent a message not only to communities that we were going to be there, but also to potential perpetrators that you can't just do this and think you will get away with it easily and that these are acceptable actions to take.

MS. COLES: How long did you serve as Chief of the Criminal Section?

JUDGE ROBERTS: I was the Chief for about three years. I got there in 1995, and I served through the middle of 1998.

MS. COLES: What brought your time as Chief to an end?

JUDGE ROBERTS: Well, at some point in my career as a federal prosecutor for perhaps the sixteen, seventeen years I did it, I found myself looking at judges on the bench, thinking about well what do they actually have to do, realizing that what they have to do is to make decisions and judgments based upon what

is the law and what is a fair outcome. And I realized that a good federal prosecutor has to really do something quite similar. A good prosecutor, as I tried to be, and as I urged the prosecutors who worked under me to be, is not out to just simply get notches on his or her belt, not out to just rack up convictions left and right, not out to just say oh, I never had any acquittals. A good prosecutor, to do her or his job, has to make some decisions at intake. Is this something that spells out a crime. If it does, is this the right reaction to it, namely to file charges. Is it fair to go forward with a case like this given whatever other mitigating circumstances there might be. If so, is it fair to charge the crime that would bring the most high penalties possible, or is this the kind of crime that would warrant something less. And those kinds of judgments that a good prosecutor makes are often the kinds of considerations that a good judge has to make when considering a whole range of things when decision making comes about in both a civil and a criminal context.

So I found myself at some point sort of looking up at the bench and thinking, perhaps arrogantly, you know, I think I can do that. So being in the District of Columbia again, and knowing that there had been a vacancy on the District of Columbia District Court, I took an interest in thinking about, well maybe I could do that and maybe I should apply.

When Judge Charles Richey passed away and his vacancy opened up, there was a process where the Democratic President, at that time, Bill Clinton, accorded senatorial courtesy to our delegate to the Congress,

Eleanor Holmes Norton, which is what Jimmy Carter had done during his time as well. D.C. has no representation in the United States Senate. United States citizens who live in the fifty states have representation in the United States Senate, and filling the vacancies in the district courts generally followed this line. If the senator or senators from that state, usually in the same party as the party occupying the White House, had recommendations about who should fill a vacancy in the district court, the senators would send that recommendation to the White House, and the White House would ordinarily follow the recommendation at the district court level to nominate that person or those people to the district court vacancies. We had no senators from Washington, D.C., so President Clinton, as had President Carter, accorded that senatorial courtesy to Representative Eleanor Holmes Norton. She did what many other senators do bi-partisanly, and that is put together a commission who would screen potential candidates for the judgeship vacancies at the district court level. That courtesy is also extended traditionally for vacancies in the United States Marshal position, and the United States Attorney position. But in any event, the President appoints the United States district judges for a district.

So Delegate Norton put together a commission. It has been led by Pauline Schneider, a very-well respected and experienced lawyer here in the District of Columbia who has been the chair of Delegate Norton's commission probably from the beginning. She has been responsible for

many, many members of the district court who sit on the district court bench now having been screened by her commission. Her commission would review the backgrounds of the people who were being considered for judgeships. They would generally invite those applicants whose candidacy seemed to be strong to meet with the commission. I think the commission may have had eighteen people on it. Delegate Norton would appoint them. They were often lawyers who were well-respected by the bench and the bar, a wide range of backgrounds, multi-racial members, both men and women.

So you get word that the commission is going to interview you. You prepare as best you can for the commission getting ready to interview you. You go into a room. You probably have a maximum of thirty minutes because they will be interviewing in one, maybe two sessions, a whole host of candidates and they can't spend hours per candidate. So you have to do the best you can to answer the questions the best you can before this commission of eighteen people who are largely very experienced, you know, grey hairs at the bar.

MS. COLES: Are all eighteen firing questions at you, or is there one questioner?

JUDGE ROBERTS: All eighteen are allowed to ask questions. Generally, the chair of the commission will start off, and then the chair will yield to other members of the commission who may have questions. Now, not all eighteen did ask questions. They may have worked out in advance who gets to ask questions, or they may have agreed in advance well we've got to limit this

to thirty, so I'm going to let only a certain number ask questions. But it's a rather daunting experience.

MS. COLES: Do you know how many other candidates were under consideration at the time?

JUDGE ROBERTS: I think at the time before I was ultimately appointed there was a newspaper article that suggested that twenty people were under consideration. I don't think the commission grilled all twenty in person, but they may have. I just don't know. The time that I went there, my understanding was that the commission would be grilling maybe half that number. Ultimately, though, the commission would narrow down the list of potential candidates to several that they would recommend that Congresswoman Norton personally interviewed. So I got word that I was one of the certain number of people whose names would be sent to Congresswoman Norton with the recommendation that she consider these folks as potential candidates for her to send up to the President.

At that time, I think the President would accept from Congresswoman Norton three names that she would recommend be considered by the White House. It might have been different under President Obama. President Obama might have asked that the commission or that Congresswoman Norton send only one name, or I might have it backwards. It may be that Congresswoman Norton earlier on would take three names from the commission and send only one up to the White House and the White House would go with that one if they

agreed with it. It may be that Congresswoman Norton eventually, under the Obama Administration, was asked to send three names up, and the Obama administration would pick one. But I went through under the Clinton administration, not the Obama administration, so I can't be positive about that.

In any event, my name went up either singularly or with two others to the Clinton White House, and my name did come out of the Clinton White House as the nominee to fill the late Judge Charles Richey's seat.

MS. COLES: Once you were nominated, what was your confirmation hearing experience like?

JUDGE ROBERTS: Once you're nominated, you are assigned to vetters at the Department of Justice Office of Legal Counsel or Office of Legislative Affairs. One of those offices has people who are responsible for giving guidance to nominees. The White House counsel's office sometimes will provide guidance as well. Once you go through the process of filling out paperwork that includes probably an SF-86, the security clearance application, you eventually are given a date when the Senate will hold a hearing on your nomination. So I got that date to go before the Senate Judiciary Committee. I believe that after the nomination had been sent down earlier that year, I had my Senate confirmation hearing I think May or June of 1998.

The hearing itself involved five nominees sitting at the nominees' table. Some of the committee members came to the hearing. Although the

committee might have ten or fifteen or twenty members, I think usually there are fewer members who actually show up to conduct questions. Chairman Hatch, obviously, showed up and ran the hearing. I think Senator Ashcroft showed up. Senator Kennedy, I think, showed up, and some others on the democratic side showed up.

Each of the five nominees had some Member of Congress, usually the home-state Senator, show up to sponsor the nomination and to recommend that the Senate committee vote in favor of sending that nominee to the floor of the Senate to be voted on favorably for confirmation.

As you know, the District of Columbia has no senators, so Congresswoman Norton was kind enough to be the sponsor to come and sponsor my nomination. So after the senators and Congresswoman Norton finished presenting us to the committee, the committee members had their chance to ask questions of the nominees. I think we had the best structure of having five at the table that we could have because there were three nominees for District Court vacancies, but there were two nominees for U.S. Court of Appeals vacancies. Now, not a surprise that the senators were much more interested in the Court of Appeals nominees than they were in the District Court nominees, so that during the questioning, it typically followed this way. There were two nominees for the U.S. Court of Appeals for the Second Circuit, Judge Pooler and Judge Sack. So the questions would generally start out from a senator asking the Court of

Appeals nominees, well let me bring up x issue. What do you think about that. And then Sack and Pooler would have to answer at some length. And then almost as an afterthought, the senators would point to the three of us District Judge nominees, which included Victoria Roberts from the Eastern District of Michigan, Ronnie White, who was a Justice of the Supreme Court of Missouri, and me. They turned to us and said Ms. Roberts, what do you think about that. And I think we were smart enough to know that when the answers came out of Pooler and Sack that sounded right, we'd say yes, I agree with that. So the three of us would say yes, I agree. And the senators didn't have to pay any more attention to us. They went right back to Pooler and Sack. So that went pretty smoothly for us, for Victoria Roberts and for me.

One funny part of the hearing was Victoria Roberts and I sat side by side, and Ronnie White was to the side of Victoria Roberts. Victoria Roberts was a black woman, sitting beside a black man, Richard Roberts, and one of the senators looked up and said, ah, Roberts. Are you all related? Notwithstanding that she was in Michigan and I was in Washington, D.C., and we are not related.

So it went pretty well for Victoria Roberts and for me. It didn't quite go as well for Ronnie White. Ronnie White, a Justice of the Missouri Supreme Court, was introduced by the junior senator from Missouri, Kit Bond, and Kit Bond urged the committee to favorably report out Ronnie White's candidacy to the senate floor. Apparently, Senator

Bond did not know that the senior senator from Missouri, Senator Ashcroft, who was a member of the committee, had chosen to cross examine Justice White based upon an opinion he had written dissenting from a decision that upheld a conviction of a defendant who had been convicted of I think a drug offense. Justice White dissented from an affirmance of a lower court ruling holding that the defendant's Fourth Amendment rights had not been violated based upon a search and seizure of some quantity of drugs that was used as evidence in the drug prosecution. Senator Ashcroft, as best I recall, led off his questioning of Justice White, a member of the Supreme Court of his state, with a question like well Justice White, can you justify the dissent that you wrote in that case such that if you had convinced the other justices to go along with you, forty pounds of some narcotics would have been loosed in the streets of Missouri, and we would have faced a surge of drugs on our streets. The questioning continued along those lines, and Senator Ashcroft eventually either voted against Justice White or did not return the blue slip for Justice White, and Justice White did not get confirmed by the Senate, in part because I suppose of Senator Ashcroft's decision to not support Justice White, which seemed to be unknown to Senator Bond at the time. Senator Bond showed up to favorably support Justice White. It may have been not coincidental that Senator Ashcroft at the time was in a very tight race for reelection.

MS. COLES: Did Justice White stay on the Supreme Court in Missouri?

JUDGE ROBERTS: Justice White did remain on the Supreme Court of Missouri. My understanding is that he had a very productive tenure on the Supreme Court of Missouri for the next twelve to fourteen years or so. Interestingly, Justice White's tenure on the Supreme Court of Missouri ended, but it did not end unhappily for him. If you fast forward I think maybe sixteen years or so, he was again nominated to the United States District Court for the Eastern District of Missouri. This was under President Obama's administration. I did not attend the hearing, but in that Senate, the Judiciary Committee voted his nomination out favorably, and the full Senate confirmed him to his current sitting position as a United States District Judge for the Eastern District of Missouri.

MS. COLES: That's a great ending. So after you had this hearing, then you were voted out, and the full Senate voted, and confirmed you as a judge?

JUDGE ROBERTS: As I recall, the Judiciary Committee did vote me out favorably to the Senate floor. I understand that the Senate took a voice vote on my nomination, and perhaps some others, and that the voice vote was favorable to my confirmation. I was then confirmed by the Senate, and I received my commission to sit as a United States District Judge.

MS. COLES: And then what happened? You showed up to the court on the first day, robe in hand? What happened next?

JUDGE ROBERTS: Well, I did show up on the day that I was prepared to take my oath of office so that I could get started right away. I simply went into Chief Judge Norma Holloway Johnson's courtroom in prior arrangement with

her and with my family, and she administered the oath of office to me, and it was on that day that I began my official duties. My investiture ceremony, however, came later. I was sworn in in July, I think it was July 31st of 1998, but I then had enough time to arrange a formal investiture ceremony where I took the oath of office in a ceremonial fashion in the presence of the public and others.

MS. COLES: So let's talk about some of the early matters that you handled. What types of cases did you get first on your docket?

JUDGE ROBERTS: Early on, I had the excitement of handling some First Amendment cases. Coming from the Civil Rights Division and having a chance to opine on issues of First Amendment freedoms was rather stimulating, I must say. Back in 1999, the District of Columbia was hosting some elections, and they placed on the ballot, the D.C. ballot, an initiative where people of the District could vote on whether they wanted to legalize marijuana. So two weeks before the actual elections occurred, Georgia Republican Congressman Robert Barr tacked on an amendment to the D.C. Appropriations bill that prohibited the District of Columbia government from introducing any marijuana legalization initiative. Well, that late in the game, the ballots had already been printed, and the initiative introducing the marijuana legalization language was already on the ballot, as were all the other candidacies that people were voting on, and the voting took place. So people who went to the polls actually voted on the marijuana legalization initiative that Bob Barr's amendment was designed

to preclude people from voting on. What the District government did in response to the prohibition that the Congress passed, in trying not to violate that law, they impounded the results. They released the results of all the other ballot measures, of the elections and other ballot initiatives, but they did not release the results of the citizens' vote on legalizing marijuana. They impounded it. So they kept the tally secret, and then a lawsuit was filed by D.C. voters, and frankly, I think the D.C. government sided with the plaintiffs. They were alleging that keeping the results of the marijuana initiative was a First Amendment violation. I didn't think I'd be in the spotlight that early, but I was. The case got randomly assigned to me.

MS. COLES: Was it a speech? Was it saying the voters have spoken and you're not allowing us to hear their speech? Was that the premise?

JUDGE ROBERTS: That was the premise, and my ruling was that keeping the tallies secret impinged on core political speech, the rights of the citizens, and I ordered the District of Columbia to be able to release the results, which is what they wanted to do, of the initiative, and the rest was sort of history. The D.C. voters did vote to approve the initiative to legalize marijuana in the District of Columbia, under D.C. law. So, interestingly, you may see things repeated themselves later on, but there are people in D.C. now who believe, well because of that and because of later initiatives that occurred, we should be able to smoke joints in public with impunity. The problem with that is that federal law still makes illegal possession of marijuana, so

there has not been enforcement either by federal or local law enforcement officials of federal law that still makes possessing marijuana unlawful. But D.C. has now proceeded to the point where possession of marijuana in D.C. is no longer illegal under D.C. law.

So that was one of my early sort of civil rights-type First Amendment issues, but that wasn't the only one. Early on, I also had a case involving a fellow named Robert Lederman who fancied himself I guess a leafleteer or picketer, one who felt free to protest what he viewed to be unlawful actions. There was a regulation that had been adopted by the Capitol Police. By Capitol Police, I mean Capitol, meaning the police who have jurisdiction on the grounds of the United States Capitol and the surrounding area. They had enacted a regulation that prohibited expressive conduct that conveys a message supporting or opposing a view and has the intent, effect, or propensity to attract a crowd of onlookers. And I'm quoting from the regulation itself. And so that was effective within 250 feet of the Capitol steps. Lederman came, I think from New York, armed with leaflets protesting one issue or another, and the Capitol Police issued a citation to him for leafletting within that 250-foot buffer zone. Lederman filed an action protesting against that regulation and saying it was unconstitutional on First Amendment grounds. So that was another opportunity I had to opine on it. I wasn't predisposed one way or the other, but after adequate pleading, I issued an opinion invalidating the regulation on First Amendment grounds.

So it was really a quite interesting start to my eighteen-year career to be able to take on some First Amendment cases that soon.

MS. COLES: Were either of these cases appealed?

JUDGE ROBERTS: I'm trying to remember now. I suspect that the Capitol Police, through the U.S. Attorney's Office or the Department of Justice, appealed that ruling but without success. It may be that the ballot initiative might have been appealed, but it might have become mooted, in part because once I issued my order, D.C. was free to release the results, and that's all anybody wanted to have, and that is to have the results released. I don't suspect that the Congress stopped, or certain members of the Congress stopped any efforts to prevent D.C. from doing whatever it wanted, particularly with respect to narcotics issues, and it may be what prompted yet another initiative more recently to be on the ballot to allow D.C. voters to express opinions about marijuana legalization. And it's probably that one that we think more often of than the earlier one in 1999 when we think about how D.C. is now another jurisdiction where possession of marijuana is lawful. So those are two interesting start-up matters.

MS. COLES: What other types of cases did you have?

JUDGE ROBERTS: Well, I had a bit of a run with litigation over campaign finance issues and campaign finance reform legislation. There was a case early on that was brought by the government against a man named Franklin Haney. That was a criminal prosecution against a friend of Vice President Al Gore's from Tennessee. Franklin Haney was charged in about 49 counts with

illegally channeling about $120,000 worth of campaign contributions by going around and recruiting straw donors and then reimbursing them. So allegedly he got them to have their names attached to donations they would give in the amount of $1,000, and then he'd reimburse these straw donors.

MS. COLES: These were contributions to Vice President Gore's Presidential campaign, or what were these contributions to?

JUDGE ROBERTS: These were actually contributions to multiple federal campaigns. Some contributions were to the Clinton/Gore campaign. Some contributions were to two other federal campaigns that were being held in Tennessee, which is where Haney was operating. The claim was his goal was to get around the limit, the $1,000 limit, that existed at that time on individual campaign donations. Interestingly, the jury, this case was tried to a jury, criminal case, and the jury interestingly acquitted Franklin Haney on all 49 counts. I didn't get a chance to probe what their thinking was. It was my habit then and later on to ask, to go back into the jury room to thank all the jurors for their service, to ask them if there were any experiences they had that we should know about that would be things I could improve on jury service to help them with, and so on, but I would never probe them, to ask them why did you do what you did. So I don't know what their thinking was, but I can tell you one thing that I walked away from that trial with, and it was my first opportunity to see up front, in person, live in court, Ted Wells. Ted Wells, a partner at Paul Weiss in New York, was a

legendary lawyer, is a legendary lawyer, and the opportunity to have him in my courtroom trying a case was an exciting experience for a brand new judge on the bench. And I would not be surprised if Ted Wells made all the difference in the world in that jury verdict coming back as an acquittal in favor of his client.

MS. COLES: What do you think was so effective about his advocacy?

JUDGE ROBERTS: The list is too long, and I would never be able to do it any justice the way you going and watching this guy operate does. He was thoroughly prepared. He had a rapport with the jury that was irreplaceable. He used themes that were plain, commonsense themes, that I think the jury was able to relate to quite well. His style of cross examination was not biting and acid. It was respectful, but in-depth, and it was I think focused on critical weaknesses in the government case that would resonate with the jury and that that they would remember. It was not scattershot. It was not let me just take my shot at undermining this witness for the government any way I can, any time I can. I think he thought through his strategy very carefully, and he stuck with that strategy, and did it as a gentleman, but did it as an aggressive and fierce advocate for his client. Again, I cannot possibly give it justice. You have to watch this man in action to be able to answer your question.

Now I mention that I had a run with some campaign finance issues and reform legislation. I talked to you about that criminal case that raised some campaign issues. One of the more memorable runs I had, though,

early on had to do with campaign finance reform legislation. As a bit of a background, in 1990, the Supreme Court heard a case called *Austin versus Michigan Chamber of Commerce*. They held in that case, among other things, that political speech may be banned based on the speaker's corporate identity. So twelve years later, in 2002, John McCain, the late-Arizona Republican Senator, and Russ Feingold, who was then a Wisconsin Democratic Senator, co-sponsored the Bipartisan Campaign Reform Act, and it was indeed bipartisan. The acronym for it was BCRA. That Act got signed into law, and as the Supreme Court later explained, and I'm quoting their language, the BCRA was enacted to purge national politics of what was conceived to be the pernicious influence of big money campaign contributions. That's how they referred to the BCRA. What the Act did was prohibit corporations and unions from spending their general treasury funds near election time on electioneering communication that referred to a clearly identified candidate for a federal office or for speech that expressly advocated the election or defeat of a candidate. Now, if corporations or unions wanted to do that, they'd have to spend that money from a PAC or create a PAC, a Political Action Committee, to do that. That speech is different from speech that addresses purely issues rather than a specific federal candidate.

But anyway, one year after the BCRA was enacted, there was a case called *McConnell versus the Federal Election Commission*.

MS. COLES: Did that involve Senator McConnell or was that an unrelated McConnell?

JUDGE ROBERTS: You know, that's a good question because there are so many McConnells in my head right now. There's a governor in Virginia named McConnell. There's a senator now named McConnell. This McConnell may well have been the senator who is now the majority leader, but I frankly don't recall. I just recall the name of the case. But in any event, the Supreme Court in 2003 upheld the holding of that earlier case I told you about, *Austin versus The Michigan Chamber of Commerce*, the holding that political speech may be banned based on the speaker's corporate identity. So the *McConnell* ruling also generally rejected a facial attack on the constitutionality of the Bipartisan Campaign Reform Act. But the next year, in 2004, Wisconsin Right to Life comes along, right when Senator Feingold is running for election. Now Wisconsin Right to Life was an ideological advocacy corporation. They financed advertisements that urged listeners to call Senator Feingold and to tell him not to filibuster judicial nominees that were named by President Bush. So Wisconsin Right to Life sued the Federal Election Commission, and they were asking for an injunction and a declaratory judgment that BCRA presented an unconstitutional ban as applied to their advertisements. Now that challenge to the BCRA statute had to be adjudicated by a three-judge court, so readily assigned to that case were Circuit Judge Sentelle and then District Judge Leon and me. After arguments and briefing, my two colleagues on the three-judge court granted summary judgment to Wisconsin Right to Life, and my colleagues used a plain facial analysis of

the ads' texts and found them to be genuine issue ads. My colleagues put aside the context in which the ads were created. At that time, there were no filibusters pending. Wisconsin Right to Life had long made defeating Feingold a priority of theirs. The advertisement referred listeners to a website that urged readers to defeat Feingold, and the parties disagreed on whether Wisconsin Right to Life had intentionally underfunded its political action committee, which could have properly financed the ads rather than having Wisconsin Right to Life fund the ads with their general treasury. The question then was whether they did that in order to create a test case over essentially sham ads, rather than to create speech on a genuine issue. So since the context to me mattered and material facts were in dispute, I dissented from the decision of my two colleagues, and I decided that summary judgment was not appropriate. Now as it turned out, the Supreme Court affirmed my colleagues in 2007, although they left *McConnell* untouched.

So that was one of my initial forays into some adjudication of the idea that campaign finance laws warranted reform and that the way Congress had done it in a bipartisan fashion was appropriate. But that wasn't the end of those issues and those efforts because in January of 2008, which was just five years after *McConnell*, this group called Citizens United comes along. You might have heard about Citizens United and some of the furor that has come up after the case the Supreme Court decided. Citizens United was a non-profit corporation, and it

released a documentary that criticized Hillary Clinton when she was running in the primaries for the Democratic presidential nomination. So Citizens United sued the Federal Election Commission, and they asked for declaratory judgment and an injunction, and they argued that the BCRA was unconstitutional as applied to the documentary. So, again, a three-judge court had to be assembled, and the randomly-assigned judges included Circuit Judge Randolph and then District Judge Lamberth and then lo and behold me. Now, we all agreed that we were bound by the *McConnell* precedent that had been decided just five years earlier, so we unanimously denied relief to the plaintiff and granted summary judgment to the FEC, the Federal Election Commission. Citizens United appealed to the Supreme Court, and they issued their ruling two years later. Now what the Court did was just flat out overrule their *McConnell* opinion that they had issued just shortly before and vacated it as precedent. The Supreme Court decided that there's no basis for allowing the government to limit corporate independent expenditures. The Court said a number of things that have become quite controversial. It said that political speech coming from a corporation is equally indispensable to decision making in a democracy. The Court said that distinguishing wealthy individuals from corporations based on corporate special advantages like limited liability is not enough to allow laws prohibiting their speech. The Supreme Court also said that independent expenditures made by corporations do not give rise to corruption. And it said the appearance of influence or access will

not cause the electorate to lose faith in democracy. Many observers found fault with those declarations, but that debate continues, and all eyes are on the Court with respect to what, if anything, the Court will do with regard to *Citizens United*, the ruling issued, and the continuing flow of money and soft money into federal campaigns.

Now that *Citizens United* opinion was written by Justice Kennedy, and it was joined by Justices Thomas and Chief Justice Roberts and Justice Scalia and Justice Alito. The four dissenters, of course, were the so-called liberal block, Justice Stevens, Justice Ginsburg, Justice Breyer, and Justice Sotomayor. Part of the reason eyes are on the Supreme Court obviously are that Justice Kennedy is no longer up there, Justice Scalia is no longer up there, and Justice Stevens is no longer up there. Probably not my place to try to offer any predictions about what their replacements might do or not do, but it is one of the opinions that has formed the basis for a lot of the campaigning for federal office that we hear about now.

One of the things that the *Citizens United* ruling did do, though, was that it upheld the Bipartisan Campaign Reform Act disclosure and disclaimer rule requirements and said that they are valid as applied to those ads about Hillary Clinton and to the documentary about Hillary Clinton itself. Now everybody agreed to that one except Justice Thomas.

MS. COLES: That's interesting. Were there some interesting criminal matters you handled while you were on the bench?

JUDGE ROBERTS: Well yes, actually, there were. I guess one of the more significant ones was a case entitled *United States versus Antwuan Ball*. It involved an eighteen-co-defendant indictment that charged a drug distribution conspiracy, but it also charged a host of other offenses, including racketeering, gun and gang violence offenses, and dozens of others. In the end, there were six remaining defendants who went to trial together. That included the alleged leader of the gang, Antwuan Ball. Most of the other defendants had disposed of their cases separately. But one interesting thing that happened early on was that the statutes under which the defendants were being prosecuted included some that carried the death penalty. To make sure that the process was fair to the defendants who might face the death penalty, I asked the government when they were going to make a decision and an announcement about whether they were going to seek the death penalty. I gave them a fairly, what to me was a liberal, period of time to be able to make that decision. I gave them five months to decide on whether they would seek the death penalty. That five months was not just being liberal to the government, but it also gave the defendants' lawyers an opportunity to perhaps negotiate with the government, gather evidence, and perhaps persuade the government that bringing the death penalty or seeking the death penalty was not appropriate, but I thought the five-month period was fair to the government and fair to defense counsel. That five-month deadline passed without any decision being announced by the government, so I issued an

order since the government violated my order, that they forfeited the right to seek the death penalty. The prosecutors were none too happy with that, and they appealed that decision, but to no avail. So that case went forward without the death penalty hanging over the heads of the defendants.

Now that trial lasted about ten-and-one-half months. It was perhaps one of the longest in that courthouse. Interestingly, the jury acquitted most of the defendants of most of the charges, and they convicted each defendant of either one or very few of the charges. The foreman gave an interview to the press later, and he said that many of the jurors viewed the case as essentially overcharged and under-proven. At sentencing time for the main defendant, I departed downward from the sentencing guidelines for his conviction on one count of crack distribution. I had announced openly on the record at many of those drug sentencings my view that the crack and cocaine sentencing guideline disparities were unjustifiable and unfair and that, again, was a reason for part of my departure downward under the guidelines in sentencing Antwuan Ball, the main defendant. But the sentence I imposed on him was still quite long, based upon the concerted conduct that I found had been proven by a preponderance of the evidence and evidence of his own unrebutted violent viciousness, and that sentence apparently caused a stir among commentators.

MS. COLES: Do you recall how long a sentence it was?

JUDGE ROBERTS: I think it was a sentence of probably eighteen years, sixteen to eighteen years, something like that. The commentators said well this was one conviction on one count of drug distribution that was a five-year mandatory minimum. Though the statutory max was forty years, the sentencing guidelines were different. But the sentencing guidelines would have imposed a pretty harsh sentence, more than I actually imposed, given the evaluations I had to make under the sentencing guidelines. And I still granted a downward departure from the guidelines that I found were governing. But the headlines still said Judge imposes eighteen-year sentence for one 600 gram sale of crack. Said in the abstract like that, that did raise some eyebrows, as perhaps it should. But I wasn't sentencing in the abstract. I was sentencing based upon all the factors I mentioned and based upon some of the unrebutted evidence that I mentioned about his clear use of violence and the viciousness with which he conducted his activities.

MS. COLES: Did you work on any interesting criminal cases that were not drug related?

JUDGE ROBERTS: I did. The notable ones I'm thinking of were white collar crime cases, and they were mainly public corruption and fraud cases. I actually had several defendants with spinoffs from the Jack Abramoff scandal. There was a congressional aide to several members of Congress from Missouri. His name was Trevor Blackann. He ended up pleading guilty to not reporting on his tax returns thousands of dollars worth of illegal gifts from a lobbyist whose names was James Hirni. Hirni ended up working for Jack

Abramoff later on. Hirni ended up pleading guilty to defrauding taxpayers of the congressional aide's honest services and an aide to a Mississippi Senator, Ann Copland, pled guilty to conspiring with Jack Abramoff to commit honest services fraud.

Another defendant, Fraser Verrusio, was convicted by a jury of conspiracy and illegally accepting gratuities and of false statements. So those were closer to public corruption. But I have to say that the fraud cases were some of the most jaw dropping cases to me.

There was a defendant named Howard Schmuckler who was convicted by a jury in my courtroom of bank fraud and possessing counterfeit securities after running a scheme of depositing sixteen counterfeit checks that totaled about $2.5 million.

I had some other fraud cases. There was a fellow named Garfield Taylor who didn't go to trial. He pled guilty instead to running a Ponzi scheme, and he ended up bilking clients of about $25 million in investments they had made with him. Now defrauding banks and wealthy investors is one thing, but stealing from regular everyday people, frankly, is another.

There was a case I had involving a former lawyer in the District of Columbia who had at one point had been a hearing examiner whose name was Reginald Rogers. He went to trial. He got convicted by a jury of thirteen counts of mail fraud for swindling elderly people out of about $385,000 of their own hard-earned money.

Another case I had involved a defendant named Caleb Gray Burriss, and he went to trial in front of a jury in my courtroom, and the jury convicted him of mail fraud, theft from a labor organization, obstruction of justice, criminal contempt, and some miscellaneous union recordkeeping offenses. He was at the time the head of a union that represented private security officers, and he was convicted of essentially stealing money from that union's pension plan account. I imposed upon him a term of 76 months in prison, and I also ordered him to pay $252,000 in restitution for all the money that he had stolen from those union members' funds.

Although he wasn't the only one that came before me charged with having stolen from hard-working union members. There was a former Metropolitan Police Department detective named J.C. Stamps who chose not to go to trial. He pled guilty instead, but he was charged and convicted with embezzling $190,000 from the employee benefits account of labor organizations that he founded in order to represent private security guards. So these were regular working-class hard-working guys thinking they're having their interests protected and advanced by this fellow who opened up and started a union for them, and the guy ended up embezzling almost $200,000 of the funds that were in the benefit accounts that those union members had paid into.

MS. COLES: That's terrible. Did you work on any interesting in civil matters?

JUDGE ROBERTS: I did. One of the early matters that I inherited on my docket was an action filed by black then-current and former Secret Service agents. They had filed an action alleging a wide pattern of racial discrimination in employment. They had alleged that black Secret Service agents throughout the country faced discrimination with respect to decisions about hiring and assignments and promotions and disciplining. They eventually moved to have the plaintiffs certified as a class so this would be a class action that they could bring, and I did rule that they presented sufficient evidence so that I could certify this as a class action of current and former black Secret Service agents suing for racial discrimination in employment. That case lasted for a very, very, very long time. It was very hard at every step of the way. It was hard-fought with respect to discovery disputes and a wide range of other things. The case ultimately got to the point after I certified the class that the new Secretary that oversaw Secret Service agents was the Secretary of Homeland Security as opposed to the Treasury Secretary, the cabinet agency that originally supervised the Secret Service. So the Secretary of Department of Homeland Security eventually became Jeh Johnson. Jeh Johnson eventually succeeded in reaching a settlement that paid out a fair amount to those class members who had fought so long and so hard for justice and had waited so long for that to happen.

MS. COLES: When was that complaint initially filed?

JUDGE ROBERTS: Oh, it was filed, I'd have to go back and look at the caption number, but it was filed really right around the time, either right before or right after I took the bench. So it had been pending for well over a dozen years before Johnson became the new DHS Secretary and was able to maneuver the negotiations to a point where the case ultimately settled for payment and injunctive relief.

We also, I guess on the civil side you could say, faced back in the mid-2000s, after the 9/11 events occurred, quite a high number of people who had been detained and housed in the Guantanamo naval base in Cuba, a number of filings by some of those detainees who had been able to get lawyers, but even some of those who were filing pro se, they were filing for writs of habeas corpus. I and many of my other colleagues on the bench at that time were assigned to some of those petitions that had been filed by the Guantanamo detainees. There was one case in particular where there was an allegation that the CIA and other agents had used particular harsh methods of interrogation against some of those detainees. I had issued in one of those cases a protective order. I think it was around 2005, that required the CIA to preserve videotapes of some of the interrogations that had been reportedly conducted in a very harsh fashion using harsh techniques, and the detainees had characterized as torture. Now at some point after I had issued that order, the Director of the CIA acknowledged that the CIA had destroyed hundreds of hours of those videotapes, and so I had ordered the CIA down the road after hearing

about this to document and explain how it came about, what they did with those tapes, and why they did it with those tapes. This had followed a period when we were moving fairly gingerly as a court, and throughout the country, with how properly to balance the rights of those detainees against the executive's rights and interests, rather, in preserving national security and protecting national security. Coming on the heels as it did of the 9/11 attacks, there were some very valid concerns on both sides about what proper balance to strike, what represented executive overreach, what methods of interrogation were appropriate, whether the authorization for use of military force that Congress had passed to allow the executive to engage in some of these behaviors allowed these kinds of interrogation tactics. And that's a debate that I guess continued on. But I guess it was viewed as a one of a kind order to direct the CIA to explain what they did and why they did it after I had issued a protective order requiring them to preserve the tapes and they ended up admitting that they destroyed those tapes.

MS. COLES: Did you consider holding anyone in contempt of court for violating your order?

JUDGE ROBERTS: You always consider that, and you always have as a carrot and a stick holding somebody in contempt. I don't think I ended up holding anyone with that because I think eventually they realized that they were not going to get away with a cake walk in doing whatever they wanted. And increasingly in courts around the country where the issue about whether

there was executive overreach was receiving increasing judicial scrutiny, and it was less of a cake walk given to executive branch agencies. I think they were taking much more seriously that the Judiciary would not just give them a pass. I'm not sure I remember quite what explanation, if any, there was about the tapes' destruction in that case, but I do think the Executive Branch realized that Congress and the Judiciary, two co-equal branches of government, were destined to play potentially greater roles than they wanted us to or imagined that we would.

So that was one of the more interesting, challenging cases on, I guess you'd call the civil side that I had, although it involved detainees. But I also had what was a purely civil case, but it involved criminal defendants who were on death row. There were some death row inmates who challenged the federal protocol for executing inmates who had been sentenced to death. It was a three-drug protocol that had been used in injecting drugs into defendants in order to execute them. At some point, that protocol was challenged. One of the drugs that the federal government and some state governments had been using to carry out executions was actually being withheld from the market because that drug manufacturer did not want to be associated anymore with drug executions or executions using that kind of a drug where it was alleged that it was cruel and unusual punishment to execute people in that fashion. So it turns out that I never saw the end of that litigation, in part because the federal government stayed its executions using this drug protocol, and that

was the only federal protocol used to execute federal prisoners at that time, and so they had stayed the executions pending revision of that protocol. The plaintiffs before me were just federal plaintiffs. They were not state plaintiffs. But it was one of the more challenging civil cases that got assigned to me.

I think the most, I won't say the most interesting, one of the most stirring cases on the civil side that got assigned to me and that actually went to trial, might have been one of my last trials before I retired involved a man named Donald Gates. Donald Gates was a black man who had been arrested and charged in Superior Court with rape and murder of a white woman who had been jogging near Rock Creek Park, perhaps near the waterfront there. He served 27 years in prison. I believe as a result of the Innocence Project and the lawyers who worked with the Innocence Project who got wind of information that Mr. Gates had been trying for 27 years to get folks to look at again, including improved DNA scientific testing, the Chief Judge of the Superior Court of the District of Columbia ultimately issued a Certificate of Innocence. That means there was a finding by that court that sufficient evidence, scientific evidence, forensic evidence, showed to the satisfaction of the Chief Judge and the requirements that the Chief Judge had to meet in order to issue a Certificate of Innocence that Donald Gates was innocent of that crime, that he had spent 27 years in prison for something he never did. After Gates was released, based upon the issuance of the Certificate of Innocence

issued by the D.C. Superior Court, his lawyers filed an action in the federal court alleging that the D.C. Police had violated his constitutional rights and essentially had framed him.

The city, through the D.C. Attorney General's Office, defended the case, and did not reach an agreement on a pretrial settlement. They went to trial, and we bifurcated the trial at the agreement of the parties so that the jury first heard evidence of potential liability of the city on deprivation of this former inmate's constitutional rights on the argument that they had framed this guy. They got some information, and they were convinced this was the guy they wanted to have convicted of this heinous offense. The jury came back with its liability verdict finding against the city. The parties took a break at that point, and before we went back to the jury on damages, the city settled for $16 million. It's a little difficult to come up with how do you put a price on a person's 27 years spent away from family, deprived of an ability to have a spouse, to have children, to rear children, to go to high school graduations, to celebrate wedding anniversaries, to be able to do what people do with 27 years of their life.

MS. COLES: Around how old was he at the time of this verdict?

JUDGE ROBERTS: He was, at the time of the verdict, I think in his mid- to late 50s. I'd have to go back and check.

MS. COLES: So he was in his early 20s?

JUDGE ROBERTS: I believe that's right, but he was at an age, as a young black man, where he was just beginning to encounter the chance to do things that people

normally get a chance to do that they can look back on 27 years later and have some joy about, to have good memories about, to be able to think about having their own children, their own grandchildren, to have enjoyed moments in life that some of us just take for granted. Well he was just stripped of all of that. That was a moving case, and I think the city realized that this was a case that just had to stop. They settled with him for $16 million.

MS. COLES: What other aspects of your job were most noticeable for you outside of cases that you oversaw?

JUDGE ROBERTS: One interesting thing happened while I was on the bench, while I was a judge, going back a little bit. Back in 1976, a fellow named Antonin Scalia had been the Assistant Attorney General in charge of the Office of Legal Counsel at the Department of Justice. So back at that time, there was a question about whether the FBI could reopen the investigation about the assassination of John F. Kennedy back in 1963, even though any statute of limitations for any prosecution that could possibly result from this reinvestigation thirteen years later would have barred a prosecution since the statute of limitations had passed. But his analysis at the time was that there was a justification for reopening the JFK assassination beyond the statute of limitations because there was authority to engage in an investigation if it were for the purpose of "detecting" whether a federal crime had been committed. Scalia's memo from the Office of Legal Counsel that he had drafted had also prompted the Justice Department in

1988 to reopen the assassination investigation into Martin Luther King that occurred way back in 1968. So this was twenty years later, when Coretta Scott King was able to successfully urge that the Department of Justice reopen its investigation into Dr. King's assassination.

MS. COLES: Did you say that was in 1988 or 1998?

JUDGE ROBERTS: 1968 was when the assassination occurred. I think the reopening of that investigation was either twenty or thirty years later. So it was either 1988 or 1998, but it was well past the statute of limitations. In any event, I became at some point aware of that memorandum that Assistant Attorney General Antonin Scalia had written justifying the reopening of the Kennedy assassination and had been used to reopen the Martin Luther King assassination investigation when a fellow named Alvin Sykes, who was something of a self-taught civil rights activist from Kansas City, called up. I encountered him earlier on in my career at the Justice Department when there had been a hate crime perpetrated in Kansas City against a black man who had been using a city park, and a white fellow, I believe named Raymond Bledsoe, encountered him, beat him up, called him by homophobic and racial slurs, and killed him. That went to a state prosecution that resulted I believe in an acquittal of that person. I might have that wrong, but at least at some point, Sykes came to the federal government back in my first incarnation. He requested a federal investigation of the murder of this black jazz artist that the local fellow had been charged with and acquitted of. He said why don't you investigate

this as a hate crime. So the federal government did investigate it. I think initially the case had been assigned to me before I left the Civil Rights Division, and got passed on to other people. Eventually that case was prosecuted as a hate crime, and I believe the white defendant did get convicted, Raymond Bledsoe I think was his name, of a hate-filled killing of this black musician who the white guy had encountered in the city park.

Fast forward to when I'm on the bench or in my chambers. I get a call from Alvin Sykes. He said he wanted to do something to reopen the investigation of the killing of Emmett Till that had occurred way, way back in I think 1955. I suggested to him while there may be some justification, even though the statute of limitations has well passed on federal investigation and prosecution, maybe that memo I told you about that Scalia had written - - Scalia by that time was a Justice on the Supreme Court - - to justify a reopening whether there could be any federal hate crime that was detected by a new investigation. So Alvin Sykes had always been diligent about following potential criminal civil rights violations in his neighborhood, and he went forward to Congress, to members of the Congress, and he pushed legislation successfully to have the Emmet Till investigation reopened by federal agencies.

MS. COLES: Is that the Cold Case Act?

JUDGE ROBERTS: That's a good question. It may be that the Cold Case Act is that name. I'd have to go back and look to see what the name of it is, but he successfully pushed for legislation that resulted in the Emmett Till investigation being

reopened at the federal level. Again, Alvin Sykes is an amazing guy, self-taught, sort of street activist. I met him way back in the early days, and he never gave up. Fast forward twenty-some odd years, he's still there. He still calls me up and says what do you think about this, what can I do. It's something of an irony that it was Scalia's memo that formed the basis for some of that happening.

One of the other sort of fun things that happened toward the end of my tenure was I was assigned to preside over the naturalization ceremony of newly naturalized citizens that took place at this point in the Archives rotunda. Normally they happen in the courthouse in the courtrooms, but usually once a year the United States Archivist will offer the rotunda as a venue for the naturalization ceremony. Well, it turned out that an invitation to President Obama to be the guest speaker was a very timely one since immigration reform was high on his list of priorities, and I just so happened to know some of the people that had worked on those issues and worked in the White House, some of whom happened to be former members of the Criminal Section of the Civil Rights Division who thought that was a terrific idea. They worked it up the chain and got President Obama to be the guest speaker of the naturalization ceremony in December of 2015, over which I was the presiding judge.

MS. COLES: Did anything in his comments stand out to you?

JUDGE ROBERTS: Well, he was able to bring forward some of the comments he was making generally, as a matter of policymaking before Congress, making before

other gatherings where there was so much talk about immigration and immigrants, and he reminded the people assembled there that we are a nation, I think he called it, we are a nation of immigrants. He was emphasizing that so many of the people now and the people from whom we descend were immigrants. Importantly we are also a nation of indigenous people. We are also a nation of folks who were extirpated from shores in Africa over here involuntarily, so we're also a nation of them. But we indeed are a nation of people from this land and other lands, and so many of the immigrants who came have contributed tremendously to our growth as a nation. I think it was important for him to mention it then given the struggle that was going on in public and in Congress over how we are to be the best we can be when our doors are being locked to those who have been oppressed or beaten from other lands who seek asylum here, or others who bring with them the skills and labors who try to work hard and make us even better and how we should be responding to them. So I think his remarks were very much welcomed then, and it was felicitous that this coincided with the time he was focusing on that as a policy matter and coincided with the time I was presiding over a naturalization ceremony at the National Archives.

MS. COLES: Very fortuitous confluence of events.

JUDGE ROBERTS: It was indeed. So that was some fun as well, but there were other things that you do as a judge that the public might not necessarily think about. I was happy to have led in achieving diversity in law clerk hiring in my

court. For example, the beginning of the Share The Wealth program that I helped facilitate was really key in that effort. That's a program where the Just The Beginning Foundation that had been created by a lot of black federal judges throughout the country created an effort to try to increase opportunities for potential law clerks of color to interview with judges, particularly judges of color, to increase their opportunity for being seen, particularly at a time when other judges said I've never seen any law clerks of color apply to me, or it's hard for me to find them, and so on. I ended up hiring about thirty-nine law clerks during my time on the bench. Twenty-seven of them were women, and twelve of them were men. Seventeen of the thirty-nine clerks were black. Of that seventeen, we had eleven who were black women and six who were black men. Six of my law clerks were Asian or Latino surnamed, so of my thirty-nine law clerks, twenty-three were people of color, and sixteen were white. I was quite happy to have gotten very, very talented law clerks during that period that represented the full scope of the diverse country that we are.

A couple things that I was kind of fond of was I helped to facilitate a study to improve jury impaneling and jury service while I served on the Board of the Council for Court Excellence. I told you before, part of my practice just as a sitting judge during trials was to go back into the jury room after the jury had delivered a verdict and to thank them personally, shake their hands, and ask them to please let me know if there are ever any things we can do to make jury service better for them or more attractive

for them. So this was a bit of an outgrowth of that wish on my part to always make jury service better, and helping to facilitate the careful study that the Council for Court Excellence did I found very useful.

One of the things I was paying a lot of attention to just as I was leaving the bench was to develop some innovations to celebrate the successes of returning citizens. Very often when defendants, particularly in white collar cases, have finished their terms of imprisonment and then were serving out their terms of supervised release, which broadly is termed probation, they're out on supervision, but they're out. If they have, for example, a two-year period that they have to be supervised, often times in white collar cases, they will have completed a lot of the requirements that they had to complete on supervision, for example, paying back all the restitution, performing their hundreds of hours of community service, doing other kinds of things like that. Fairly easy to do in the white collar cases. We routinely get from the probation office recommendations that we release those supervisees from usually the remaining one-third of their period of supervised release because they had complied with all the conditions to date, there was little risk they would reoffend, and there was no danger in letting them out in the community without any conditions of continuing supervision, and usually those made sense. I'd sign some order agreeing with their recommendation in chambers and just send it back, and the supervisees would then be free to do what they had to do with no more supervision.

What was more unusual was cases involving, for example, drug defendants who had been convicted and sentenced under the harsh sentencing guidelines and had been put on supervised release with conditions you had to remain drug-free, you have to remain violence-free, you can't be picked up for any other offense, you have to report to drug rehab, all kinds of other more strenuous conditions that they had to comply with. So I got reports from the probation office that some of these defendants, many of whom grew up in neighborhoods where all they knew and all they ever witnessed, and all they ever saw was hustling drug sales as a way to live and as a way to make a living.

I got reports that some of these supervisees had complied with every single one of the conditions that had been imposed at the time of sentencing and that they had only about one-third left of the time under supervision; that under close supervision they had not picked up any further criminal cases, they had complied with the stay-away orders, they had complied with the furlough curfews, they had done everything that was required of them, even stringent supervision requirements, that they had complied with all of them; and the probation officer would say this person has been completely compliant, we view their behavior to show that there's little risk of recidivism, there's no risk anymore of any danger to the community, and we recommend that they be released from further supervision. That, to me, was frankly more of a remarkable event than a

white-collar defendant who had paid back all the money and stayed crime-free.

So I realized that returning citizens like that came to court in their early lives often to get their hands slapped, and that's all they'd see. People putting them down. People criticizing them. People locking them up. Hearing about jail sentences. Hearing about probation violation revocations. They rarely came to court where they could experience being lifted up and supported and praised. So I decided when I started getting some of these, I would not just sign off on an order and send it back to the probation officer and let them notify the supervisees, yes, you're free now. I decided, I would of course coordinate with the lawyers from both sides in advance and with the probation officer, that I was setting it down for an in-court hearing. I'd have the defendant show up in this in-court hearing, and I'd take the bench, and I'd say to the probation officer who would show up, I understand that you have a petition, and I'd let the defendant hear that petitioner, the probation office, say we're petitioning for an early release from supervised release and give all the reasons why, praising the supervisee for doing what she or he had done. And I'd turn to the defense counsel and say, defense counsel, do you have anything you want to say about this petition, and I'd want the defendant to have the chance to see her or his lawyer stand up and be able to advocate on their behalf and listen to defense counsel pump them up. And then I'd turn to the prosecutor, and I'd say, United States, do you have any position on this.

I'd already know the government would not oppose it. The government would stand up in the defendant's presence and offer no opposition to what the probation office had recommended because they had agreed that he or she had shown that the person had earned the right to be released. Then I would turn to the defendant myself and offer some remarks of my own, some praise of my own, comments about how that person had done everything that was required of that person, and that we felt proud of what that person had done. So then I would announce in open court in the presence of all the people assembled that I was granting the petition, I was releasing the defendant early from any further supervision. And I would always ask at the end, may I please have your permission to step down off the bench and to shake your hand and congratulate you. Those were very special occasions.

MS. COLES: How did the defendant react to those circumstances? Were they taken by surprise, they didn't know what was happening?

JUDGE ROBERTS: Yes. They were taken by surprise. Most often they choked up like I do when I think about these hearings that I hold, but it's an opportunity to allow these people who had always been accustomed to being shot down and slapped down to come into our justice system and to see that our justice system is not one dimensional, that we are also there when it's appropriate to do so to not just slap them down but to also lift them up.

MS. COLES: Do you know of any other judges who've adopted this practice?

JUDGE ROBERTS: I certainly hope so. I've recommended that toward the end of my tenure to the probation office to ask them to suggest to other judges. I've suggested it to maybe one or two other judges that I thought would be receptive to that. I haven't monitored it to find out, but it was certainly something that the probation office agreed with and invested itself in, and I'm hopeful that that practice has spread. It's somewhat comparable to what Judge Walton has done by agreeing to take over a docket called the Drug Court so that when people have been released and they're on supervised release, he will routinely call them in on a regular basis to find out how they're doing, to make sure that they're keeping up with their requirements to make sure that they're staying clean, to give them guidance when they might need guidance if they seem to be going astray.

Again, it's an effort to embrace returning citizens who could use more embracing, who could use the guidance, and who have a lot to benefit from the resources of our system and not just be slapped down by it.

MS. COLES: In July 2013, you became Chief Judge of the U.S. District Court of the District of Columbia. How did your responsibilities change?

JUDGE ROBERTS: First, I'd like to point out, when I became the Chief Judge, it was the first time that the district court leadership (the Chief Judge, the Clerk of Court, and the Chief US Probation Officer) was all African American. That was a notable landmark in the Court's history.

Now, to your question, serving as the Chief Judge involved both the ceremonial and the substantive.

MS. COLES: Let's talk about your ceremonial duties first.

JUDGE ROBERTS: In the ceremonial column, I recall a number of things. I presided over the investitures of District Judges Christopher "Casey" Cooper, Tanya Chutkan, Amit Mehta, and Randolph Moss; the naturalization ceremony at the National Archives Rotunda when President Obama was our guest speaker; and the unveiling ceremony of Judge Friedman's portrait. In 2015, I hosted the court's Black History month celebration on the theme of black excellence when Howard University Law School Dean Danielle Holley-Walker moderated the panel discussion among attorney Rufus McKinney, Judge James Robertson, and Professor Lisa Crooms-Robinson, and the Duke Ellington School of the Arts Show Choir performed. At various times, I hosted in my chambers members of visiting foreign judiciaries and foreign government officials from the Philippines, Hungary, Lesotho, Thailand, Mali, Kenya, Namibia, South Korea, and Hong Kong. I administered the oaths of office to: the new Secretary of the US Department of Housing and Urban Development, Julián Castro; the new Chair of US Federal Energy Regulatory Commission, Norman Bey; the court's first new Magistrate Judge in over 16 years, G. Michael Harvey; Magistrate Judge Alan Kay for a renewed term; the new US Attorney for DC, Channing Phillips; and the Acting US Marshal for DC. I also represented the District Court on numerous occasions including at the

Supreme Court when Justice Scalia lay in repose; at the installation of the new US Secretary of Labor, Tom Perez; at the judicial investitures of US Court of Federal Claims Judge Patricia Campbell Smith, U.S. Court of Appeals for the Armed Forces Judge Kevin Ohlson, and DC Superior Court judges; at the Washington Bar Association's annual banquet, its Ollie Mae Cooper lecture and awards ceremony, and its Judicial Council Symposia; and many more events. I was also called upon to perform ceremonial functions for the U.S. Probation office, the Clerk's Office, the D.C. Bar, the Legal Services Corporation, the DC Circuit Historical Society, the Pretrial Services Agency, the Administrative Office of the US Courts' Defender Services Office, the Judge Thomas Flannery Lecture, and the Judicial Council's Standing Committee on Pro Bono Services.

MS. COLES: Sounds like you got to see a lot of history being made. What did your substantive responsibilities consist of?

JUDGE ROBERTS: Well, I served on the Judicial Conference of the United States, the highest policy making body of the federal courts; the D.C. Circuit Judicial Council; the D.C. Circuit Court Security Committee; and the D.C. Circuit Historical Society Board. I led monthly executive sessions of District and Magistrate judges and restarted a previously stalled review process for a proposed local rule governing *Brady* disclosures that the court ultimately adopted as Local Criminal Rule 5.1.As Chief, I was reassigned from the general wheel for case assignments to the special assignment wheel that received case remands from the court of appeals or revived cases

previously handled by judges who were no longer on the bench. I also empaneled grand juries, including one that Special Counsel Robert Mueller's office used; adjudicated grand jury related motions, and handled special requests from grand jury forepersons. An additional law clerk slot is allocated to the Chief Judge to help manage the additional responsibilities. That was welcomed. I hired and supervised the Special Assistant to the Chief Judge whose myriad duties ran the gamut from handling press relations and overseeing the Program Officer to investigating and mediating employee grievances. I appointed chairs and attorney and lay members of two court advisory committees: the first Magistrate Merit Selection Panel in over 16 years, and the Grievance Committee. I co-chaired the D.C. Circuit Judicial Conference planning group and delivered at the conference memorial remarks about Judge Thomas Penfield Jackson. I was pleased to nominate Judge Emmet G. Sullivan for the coveted American Inns of Court Professionalism Award and to see that he was selected to receive it. I also served as the appointing official for one member of the D.C. Judicial Tenure and Disabilities Commission, and one member of the D.C. Judicial Nominations Commission. In that capacity, I reappointed the current chair of that Commission. I served as a rating official for the Director of the Pretrial Services Agency.

MS. COLES: Any other responsibilities?

JUDGE ROBERTS: Yes, part of my job included handling emergencies. For instance, when one of our judges was seriously injured with prospects of a lengthy hospitalization, I immediately directed the Clerk to plan to install teleconferencing in the Judges' Conference Room should the judge want to participate in executive sessions by phone, and to make sure the electric lift beside the bench in that judge's courtroom was fully operative should that judge want it or need it. I took those 4 a.m. calls from the Clerk to decide on delayed openings or court closings due to weather conditions. I also hosted a new D.C. Circuit Judge who sat with me on the bench during a jury trial to have a first-hand view of the dynamics of presiding over an actual trial.

MS. COLES: After serving as a federal judge for 18 years, why did you decide to retire?

JUDGE ROBERTS: My active service ended with a medical retirement. My doctors advised that it was time, although I had wanted to stay a bit longer. My retirement has allowed me to do some volunteering, catch up on some reading, and take more time outdoors.

MS. COLES: Thank you, Judge. That brings us to the end of the interview. You've led a fascinating life, and I'm happy to have had the opportunity to learn more about it.

JUDGE ROBERTS: Thank you. It has been a pleasure speaking with you.