

Oral History of Carol Garfiel Freeman
Second Interview
March 10, 2021

Jodi Avergun: OK, today is March 10th, 2021. This is the second session of the oral history of Carol Freeman. It is 1:00 PM Eastern Time and 10:00 AM Pacific. We are still speaking over Zoom with Carol because COVID still requires that. Carol is going to go through a number of her cases and her career experiences once she moved to Washington, D.C. and some important work that she did for the next couple of decades, I guess you'll take us through, Carol. So I'm going to hand it over to you. As last time, I might interrupt with a question or two but I'm going to hand it over to you to begin.

Carol Freeman: Fine, good morning. We left off my life, when I had just accepted the position with the Criminal Division of the Department of Justice in Washington, and I needed obviously to move from New York to Washington to accept that position. My first cousin, Jack Yatteau, was an FBI agent, and he and his wife and son had just moved also to Washington from New York. I went down to Washington at one point, I don't recall exactly when. Jack walked around with me to help me find an apartment to live in. I liked the area of Georgetown, and we looked in Georgetown. My cousin, the FBI agent, said you cannot move into a basement apartment. There were some very attractive English basement apartments but he didn't think that was safe for his little cousin. I ended up finding a very nice apartment on M Street, which turned out to be a one-room duplex. It was one flight up over a store but the kitchen and the living room were on one

level, and there was a staircase that went up to another level where there was the bathroom. So that was my first apartment living in Washington by myself.

When I reported to the Department of Justice there must have been some kind of a sign-in procedure. And I met another new lawyer, new hire, Arthur Burnett, who was assigned to the General Crimes section of the Criminal Division. Later on Arthur also applied to the U.S. Attorney's office and we spent some time talking about when there would be a vacancy in the office because we were both in line to be Assistant U.S. Attorneys. Arthur later was a Magistrate Judge in the Federal Court and then was appointed to the Superior Court. And he's been involved in the ABA Criminal Justice Section of the ABA and I've known him for years and years and years. And it just occurred to me that I met him and his wife the first day I signed into the Justice Department.

But in any event, the Criminal Division had a number of different sections, one of which was the Appeals and Research section, and they assigned me to the Research unit of the Appeals and Research section. And I think I was the only person in the Research unit. They assigned me to start drafting jury instructions for all the crimes in title 18 of the U.S. Code. They probably should have given me some better direction on what to do because I started at the beginning, and I was drafting instructions for criminal trials on military medals, Smoky Bear, and the flag, which clearly would not be needed because I'm sure none of those cases ever went to a jury trial. Maybe the ones involving misuse of military medals did. I believe I have

some recollection of a case involving that recently. But it wasn't very interesting frankly.

Next door to where I was sitting was the Appeals unit headed by a very impressive woman named Beatrice Rosenberg, who actually was a Wellesley College graduate and one of the first really prominent woman lawyers I think in the Washington area. And they did all sorts of interesting things like responding to cert petitions, drafting appellate briefs, drafting briefs for the Supreme Court occasionally. And at least a few of them who I ran into in other contexts like the U.S. Attorney's office, Ted Wieseeman and Jerry Nelson, became good friends later on. But in any event, I was there in the Research unit.

One of the most significant events in the fall of 1963 was that one day when the Emperor of Ethiopia, Haile Selassie, was visiting, he and President Kennedy rode down Pennsylvania Avenue in an open limousine, and I was standing there on Pennsylvania Avenue and waved at them and saw both Kennedy and Haile Selassie. This was probably October of 1963.

And obviously the most important event of the fall of 1963 was on November 22nd, when Kennedy was assassinated in Dallas. I suspect that his trip with Haile Selassie may have been one of the last times a President traveled around in an open limousine because I'm sure that after the assassination, Presidents never traveled like that again. The assassination, of course, was very upsetting to everybody. I didn't have a TV set at that point, and so I went up to my cousins' apartment on Pooks Hill and Bethesda and watched everything that happened with them. And the day of

the funeral, we went down and stood at the corner of Connecticut Avenue and K Street. And we watched the funeral procession go to St. Matthew's Church. And what I remember most was the absolute dead silence. All you could hear was the clip-clopping of the horses' hooves and the feet marching. Dead silence, except for all the hoof beats and the feet marching in the procession. And I remember Charles de Gaulle, the President of France, because he stood out. He was so much taller than everybody else. That was one of the most dramatic events that I have ever witnessed in my life.

Now, new hires in the Justice Department always had the opportunity to go up to the Attorney General's offices and meet with the Attorney General. On November 22nd, I and probably a lot of the other new hires had not the opportunity to do that, and so at some point after the assassination, we did have the opportunity to go up and meet with the Attorney General, Robert Kennedy, John Kennedy's brother. But it was a very subdued meeting, and it certainly wasn't the kind of meeting we would have had had it happened before November 22nd. The other relevant consequence of the assassination was that Chief Justice Earl Warren was appointed to head a commission on the investigation into what happened and how it happened. And I called up Judge Metzner, who I had clerked for, to ask his opinion as to whether I should apply to be a member of the staff of that commission. And the Judge suggested that I not do that, and that I stay in the Justice Department. And that turned out to be a good decision - because I was still in the Justice

Department, I had the opportunity to become an Assistant U.S. Attorney, which most of us who were there think is the best job we've ever had.

Jodi Avergun: Sure. I'll agree with that.

Carol Freeman: At some point in early 1964, I was transferred from this Research sub-unit to the General Crimes Section, and that was much more interesting. I only remember a few things that I did in General Crimes, one of which was involved with bombings of trains in the upper peninsula of Michigan. I really don't remember much more about that. But there was one case that was really quite interesting. On an ESSO tanker somewhere on the high seas, a seaman named Johnnie Leonard Schwarzauer knifed one of his fellow sailors and killed him. And the tanker put in to Mobile, Alabama. The rule was that if a crime occurred on the high seas, the district where the ship first landed was the district that had the jurisdiction to try the defendant for the crime. So Mr. Schwarzauer was charged with murder in the case in the U.S. District Court in Mobile, Alabama. And this happened to be a case that was assigned to me for supervision of some sort, and the U.S. Attorney, Vernol Jansen, came up to Mobile to talk about the case. And this was in the late spring of 1964. And Mr. Jansen invited me to come down and help him try the case. And I thought that was a terrific opportunity. Now, if you remember, which you may not, the spring and summer of 1964 was the summer when the first Civil Rights Act was passed. And I happened to arrive in Mobile, Alabama as a Justice Department lawyer at that time, early July. Now the Justice Department was not very popular with a lot of people in Mobile, Alabama at the time, and I believe that if I had been a man, Mr.

Jansen probably wouldn't have invited me down. But I did not look like a Justice Department lawyer. So I got the opportunity to go down there. The only time I ever personally witnessed segregation of some sort was the first morning I was in Mobile, I went out of my hotel into the main area and saw two drinking fountains, one marked white and one marked colored. Now in New York City, I never saw anything like that. I had not seen anything like that in Washington, although it is possible that there were some relics of that kind of segregation still existing in some parts of the District of Columbia. But I had not seen anything like that. I'd read about it. I'd heard about it. But it was a little startling to see it actually.

Anyway, we started the trial and it was very interesting. But then Mr. Schwarzauer decided to plead guilty. So the trial was short-circuited. But this being a very friendly town, that evening the judge, the U.S. Attorney, his assistant and I think probably the defense attorney also, they took me out to dinner at an old Southern-type restaurant in the bayous somewhere, which was interesting. And the other memorable thing was that the newspapers thought I was really newsworthy. Here was a female Justice Department lawyer and a female criminal lawyer, female lawyer. They didn't see a lot of them there. They interviewed me wrote up a story about me on the front page of their paper. And one of my sons found the paper a few years ago and framed it, and were we in my apartment in Washington, I could read you the headline. But it's something about, I'm trying to think exactly what it said, something about, I don't remember, but they talked about the fact that I liked to make pies. Which was something they thought

was newsworthy. And they noted that I liked trials, and that nobody would know that I was a lawyer because I was small and whatever. And that was the same day the paper reported on the passage of the Civil Rights Act.

Jodi Avergun: Uh-huh.

Carol Freeman: Anyway, so that was a very interesting and enjoyable aspect to my life in General Crimes.

Jodi Avergun: Carol, I think we'd love to see the article and maybe even try and get a picture of it when you're back in Washington. And we can include it with the transcript of the oral history, I bet.

Carol Freeman: Absolutely, absolutely. And the other thing that happened in the spring of 1964 was that I got a letter, addressed to me at my New York home with my parents, from the U.S. Attorney in Washington, asking if I was still interested in the position there. I think I had said that I had applied, but they probably sent generic letters saying we don't have any openings but we'll keep your resume on file. And I think they were trying to clear out their files. They sent me a letter, was I still interested? I said absolutely, and here I am in Washington. So I went down and I had an interview, probably with Charlie Duncan, possibly with David Acheson. David Acheson, son of Dean Acheson, was the U.S. Attorney in the District at that time. And Charlie Duncan was his principal assistant, very, very nice guy. He ended up being I think general counsel of the EEOC, and I haven't tracked exactly what he did, but I knew him off and on over the years. He unfortunately died several years ago. Nice, nice, very nice person.

Anyway, so they had me on file and they actually, when I was there at the interview, sent me to talk to *the woman* in Criminal Trial at the time. A woman named Barbara Lindemann, who will appear later in this interview. It developed that in the summer of 1964, the U.S. Attorney's Office in Washington had more appellate briefs to respond to than they had assistants who were able to respond to them. So they sent over some of the briefs to the General Crimes Section of the Department of Justice. One of them was a case called *Charles M. Luck v. United States*, and I was lucky enough to be assigned that case to brief and to argue. So I wrote the brief. There were two issues in it. The police had caught somebody burglarizing a business, and they interrogated him at the scene. And he made some statements that were offered in evidence at the trial. The only – this was pre-*Miranda* – but there was a case called *Mallory*, which talked about delay in presenting an arrested person before a commissioner, who would then advise him of his rights. So that was one issue. That was what appeared to be the major issue. But the other issue was that Mr. Luck had been arrested as a juvenile, and had been waived to the adult court, and convicted of, I forget what, even though I looked it up last night. Probably housebreaking of some sort. Housebreaking is what the District of Columbia calls burglary. Anyway, so the Assistant U.S. Attorney during Mr. Luck's trial had, Mr. Luck having testified, impeached him with this prior conviction in adult court after waiver by the juvenile court. The subsidiary issue, which nobody really thought was significant, was whether it was appropriate to impeach a defendant by use of a prior conviction in the adult court after waiver by a

juvenile court. And I argued the case. I had a little moot court with some of the Assistants in the Appellate Division of the U.S. Attorney's Office. I argued it on September 23rd, 1964. That day –

Jodi Avergun: Why do you remember that date, Carol? I have to ask that.

Carol Freeman: Because that was one date that changed my life.

Jodi Avergun: Ah, OK.

Carol Freeman: Because it – Charlie Duncan came and maybe Mr. Acheson came up to hear the argument. Justice Brennan that day happened to be escorting a group of British judges around, and they stopped in to hear the argument. So here I was, my very first argument, before all these judges and justices. The panel of the U.S. Court of Appeals was Judge Danaher, Judge McGowan, and I forget who the third one was. [It was Judge Wright.] But anyway, I got a call either that afternoon or the next day from Charlie Duncan saying that I would get the next vacancy in the U.S. Attorney's Office. So, that's why I remember that date. The end of the case was that Judge McGowan took the impeachment issue and wrote an opinion suggesting that judges have discretion in allowing prosecutors to impeach defendants with prior convictions. In exercising this discretion the judges should take all sorts of things into consideration, such as how long ago the conviction was, what it was for, whether it was for a crime similar to that which the defendant was currently on trial for, and a number of other considerations. And so there were a series of subsequent decisions expanding on that issue. Congress ultimately enacted a statute, and I've lost track of where that went, I meant to check it out last night, I think severely limiting use of impeachment by

prior conviction, and if I may, I would like to add a little bit to this part of the interview after I check it out. [District of Columbia Code § 14-305]

Jodi Avergun: Yes, we will [inaudible]. Carol, we'll put a placeholder. And then when we meet and record next, we can plot it in. We can start with that, OK?

Carol Freeman: Yeah. I meant to do that last night but got distracted with some of the other things I was writing up to talk about.

Jodi Avergun: No worries.

Carol Freeman: But this turned into a really big issue in the District of Columbia. So the *Luck* case, everybody who was around in the '60s, '70s, probably the '80s also, everybody knew the *Luck* case. And that was my case. And if I'd been on the Warren Commission staff, I wouldn't have had it. Incidentally for anybody's who's interested, the citation is 348 F2d 763, and it was decided in early 1965.

Carol Freeman: Perhaps at this point, we should note, everybody probably who's reading this knows this, but in the 1960s, all felonies in the District of Columbia, whether they were under the U.S. Code or the D.C. Code, were tried in the United States District Court. And appeals from the District Court went up to the U.S. Court of Appeals for the DC Circuit. There was a local court called General Sessions, which had jurisdiction over misdemeanors in the DC Code and some civil matters, but I'm not going to talk about them because I didn't have anything to do with them. And appeals from this General Sessions went up to another appellate court, which was probably called the DC Court of Appeals. The U.S. Attorney's Office was very small relatively at that point, I think there were about 50 Assistants altogether,

and there are now over 300, I think. When lawyers began in the Office, they usually went to General Sessions and learned about charging issues. They learned about misdemeanors, non-jury trials. They learned about jury trials in misdemeanor cases, and then after a while, they would go to the Federal Court, probably to the Appellate Division and then to one of the other federal sections, a Criminal Trial section, a Special Proceedings section, and a Grand Jury section. And the Appellate Division handled appeals from both General Sessions and the U.S. District Court. So, somebody resigned from the U.S. Attorney's Office in December of 1964, and I took over his place. And it would have been a he. As I said, most people who started in the office, started in General Sessions. But because I had come from Justice and from the *Luck* case, they assigned me to the Appellate Division. The appellate division at that point was headed by Frank Nebeker, who clearly over the years has been a mentor of mine. He must have been in his early 30s at that point. He later sat on the D.C. Court of Appeals, became the first Chief Judge of the Court of Veterans Appeals, and then returned to the D.C. Court of Appeals as a senior judge. There were about eight, seven or eight assistants in the section, the division. And Frank taught us when we're writing an appeal, to be thoroughly familiar with the record, go up to the Court of Appeals, dig out the trial record and read it over carefully, talk to the trial assistant, see what the trial assistant thought might be an appropriate issue to talk about, depending of course, on what the defense appellate lawyer is raising. But you have to talk to the trial assistant, you have to look at the record itself, and the philosophy, I know

it was Frank's, it may have been in general in the office, was that you are a better trial assistant for having done appeals, and you're a better appellate assistant if you have done some trials. And I personally, having come up in that system, I think that's absolutely true. When I went over later on to Maryland Public Defender's Office, the people there didn't have the same philosophy, but I am convinced that you're a better appellate lawyer for having done a trial, and vice versa.

And so that was the Appellate Division. We did have moot courts before somebody had an appeal. We did our research. People nowadays would not believe the decennial digests that we had to go through. I don't know if you remember them. There was a very extensive library in the U.S. Courthouse. Our office was in the U.S. Courthouse. And to do research, WestLaw had published all the appellate opinions with their headnotes, but they were published, republished every ten years in bound volumes. So you had to go to the bound volumes, and then there were I think, bound volumes every five years before the ten-year period. And then there were slip opinions each year or even each month. It was very, very tedious. So that's what we spent a lot of time doing, too.

Jodi Avergun: I don't remember that, Carol. I don't remember, you know obviously when I graduated law school, we were still in books. But I do very well remember having to Shepardize in red-bound Shepard's book.

Carol Freeman: Yes, yes.

Jodi Avergun: So, but . . .

Carol Freeman: Very few. The lawyers today do not know how lucky they are.

Jodi Avergun: I agree.

Carol Freeman: So I spent a lot of time in the library there. I don't remember all of the cases that I wrote briefs on. There probably were 50 or more. I was in appellate for about two years. I had saved all the briefs I wrote but when we moved a few years ago to an apartment, the powers that be told me I had to trash them, so I don't have them anymore.

Carol Freeman: I do remember one funny case. Well, it wasn't funny, but my reaction to a statement in the transcript was funny. It was probably one of the first briefs I wrote. It was a murder case where a guy had gone to the house of his estranged wife with a loaded gun, a revolver, and killed her. And how did this work? The transcript said that he had gone with a loaded gun and six rounds of ammunition. And I thought a round would be enough to load the revolver. So it would be six bullets. So I wrote that he'd gone with a loaded gun and 36 bullets, which the Assistant who tried the case, who I think at that point had left the office, Dan Resnick, very, very nice guy, who just died recently. He was astounded, but here I was from New York City. I didn't have any information about guns or revolvers. And somehow, whatever the transcript said, made me think that he had a fully-loaded gun, and 36 bullets in his pocket. Anyway, so that was pretty funny. But most of the appeals that I handled did not include anything as funny as that. And that case was affirmed anyway, despite that.

We argued before the U.S. Court of Appeals. On the Court at that point were Warren Burger, who became Chief Justice later, Judge David Bazelon, Judge J. Skelly Wright, Judge Henry Edgerton. I remember Judge Edgerton

dissented in one of my cases. It was a raid on an after-hours case, and the issue was that the police had gone in without announcing their authority and purpose. And Judge Edgerton thought they should have done that. He dissented. The case was affirmed. A lot of the people in the Office were not fans of Judges Bazelon or Wright, because they were, tended to be more liberal in their decisions, writing. But I always enjoyed arguing before them. Very often, you'd be even, ready to do an appeal, ready to argue a case. And even if Judges Bazelon or Wright were presiding, they would say, we do not need to hear from the Government, because the issue raised was so clearly not one that would warrant reversal.

A footnote about Judge Burger. He had been a friend or an acquaintance of the judge that I clerked for, and I believe he was the one who swore me in as an Assistant U.S. Attorney. And some years later, when I was married and my father-in-law was a partner in a Rochester, New York law firm, we were going down to Florida to visit my in-laws. I was seated in the plane and Judge Burger, at that point he was the Chief Justice, he walked on, he saw me, he said hello, he shook my hand. And my father-in-law was just so impressed that I knew the Chief Justice. So that was a footnote there.

Jodi Avergun: That's a great story. I like hearing that.

Carol Freeman: Yeah. My father-in-law was a very, very nice guy and very old-fashioned in a number of ways. He did refer to the secretaries as the girls. But he was I think, excited that his daughter-in-law was a lawyer. His daughter got a Ph.D. His son started at law school but decided it was really not for him, got an MBA, and became a State Department official. But here he really

had a lawyer in the family, even though the lawyer was a girl. Anyway, that's a personal footnote.

So, OK, the summer of '65, just so that I would get some trial experience, I was detailed over to General Sessions, where police would bring in the people they had arrested the night before. And there would be hearings, preliminary hearings, bail hearings, and there was a big counter that Assistants would sit at and citizens would come in with complaints or the police would come in about the cases that they were bringing to court that day. Well, the one episode of my counter that I remember most vividly was a man who came in with a bandage all around his neck. And he announced that he did not want to prosecute, must have been his girlfriend, who had slit his throat. That was very vivid to me.

The other thing that we used to do would be to have hearings in basically domestic matters. A lot of the matters that came before the Assistant U.S. Attorneys in General Sessions were disputes between neighbors, disputes between family members, and very often, we would get the parties together and try to settle a case without there being a criminal conviction involved.

The other thing obviously that I did there was I would have trials, and I tried several non-jury cases. I think the first trial I ever had was before Judge Catherine Kelly, and it involved somebody who had siphoned gas out of Tim Murphy's car. Tim Murphy at that point was the head of the U.S. Attorney's Office in the General Sessions division. He later became a judge of the Superior Court, and was also a very nice guy, and a personal friend. So I tried that case. Generally, you would be in court handling all matters

before a particular judge. A police officer or a secretary from the U.S. Attorney's office would hand you a folder with the charging documents that you hadn't seen before, and you'd have to conduct a trial at that point. There wasn't a lot of preparation involved, but you'd know who the charging officer was, and you'd call him and you'd read "directing your attention to January 12th at 10:00 am. Where were you? What happened?" That was the way you learned to try cases. But I think I also earlier, in the earlier interview talked about how we had this five-month criminal trial when I was a law clerk, and I observed all of the Assistants trying cases and learned a lot of the lingo from them.

I did have one jury trial in General Sessions. It was a man named Basel Anthony Poulos, and he was charged with an unpaid board bill. He had walked out of a hotel on Capitol Hill and not paid his bill. That was the jury trial, and he was convicted.

OK, so then after the summer, I went back to Appellate and started somewhat of a campaign to be transferred over to the Criminal Trial division. Now at that point, there were very few women in the Office. I don't know that we've talked about that here. I may have mentioned that I did do a study of the women in the U.S. Attorney's Office in DC up to 1970, and there were only 13 women during all that time. The first woman was appointed in 1921. There was another one in the '20s. They had resigned by the middle of the '30s. There were a few women who were appointed in the '40s doing mainly collection work. By the time I got there, there were two women in the Civil division. There was Sylvia, I'm sorry, there were

three women in the Civil division. Sylvia Bacon, who ultimately became a judge in Superior Court and a professor at Catholic University. She was in the Civil division. I'm not sure I've counted up all of them. I ended up being the eleventh woman in the U.S. Attorney's Office. The woman before me, Barbara Lindemann with whom I had interviewed, had apparently committed reversible error, and this is what delayed my transfer to the Criminal Trial division. And I've been saying that for a number of years. It was what I was told, and it was confirmed last Saturday when I was on a Zoom call with several of my colleagues in the U.S. Attorney's Office, one of whom was a little older and had been there before, in Criminal Trial before me. And he confirmed that this woman committed reversible error and was criticized for that. Of course, no man ever committed reversible error.

Jodi Avergun: They were reluctant to transfer you to the Criminal Trial division because a different woman had committed reversible error, and they were concerned that that's what women do.

Carol Freeman: Yes, exactly. Exactly. In one case, she apparently had things on her table that did not relate to the case but were prejudicial. So it took me probably longer than it would have taken other people to get over to Criminal Trial. During that period when I was still in Appellate, John Terry, who had been the Deputy Chief, moved over to Criminal Trial, and I was appointed Deputy Chief of Appellate. John also later became a judge on the D.C. Court of Appeals. During the year '65 to early '66, I started . . . Are you still there?

Jodi Avergun: I'm here. Yes.

Carol Freeman: I had an incoming call, and I needed to delete it.

Jodi Avergun: OK. Yes, I'm here. You didn't disconnect us.

Carol Freeman: OK. Anyway, I started picking up matters from trial assistants who maybe had a motion to suppress but they were in trial so they couldn't handle the motion to suppress and they would give it to me to handle. So I started picking things up and ultimately did move over to Criminal Trial. And many of the cases we had were drug cases. And the drug cases in those days involved the Harrison Narcotic Act and what you had to do was show that there was no tax stamp on the drugs that were passed. I do, however, remember one young man, whose name was John Walsh, who was living in a converted chicken coop somewhere and he was a marijuana advocate. I had to prosecute him for possessing marijuana and I remember him saying something along the lines, "This is not right. I should not be prosecuted for possessing marijuana." Most of the drugs involved were heroin, hadn't quite gotten into PCP, weren't involved with cocaine. It was basically heroin in the '60s, at least the early to mid '60s. We also had CDW's, that is, carrying a dangerous weapon, which is a pistol without a license, so you had to make sure that your file contained the certificate of the chief of police that defendant so-and-so did not have a license to carry a pistol in the District of Columbia. Of course, nobody had a license, I think, except policemen and maybe security guards. But you had to prove that. We had assaults with a dangerous weapon, which could be a car, it could be a beer bottle, it could be a shoe. We had robberies, pick pocket and armed

robberies. We had second degree murder cases. And I can still picture one murder case I tried where I had a picture of the deceased sitting in a chair having been shot. The picture showed the hole. He was shot with a shotgun. Not hole, but the results of the shooting. I did not handle sex cases. Alfred Hantman, who was Chief of the Criminal Division, thought of me as his daughter and he did not want to sully me with any case involving sex. At this point, Barbara Babcock, who was with the Public Defender Service, was defending people in rape and other sex type cases, but there were no women prosecuting sex cases in the '60s, or at least the mid '60's.

Carol Freeman: I didn't have trouble with any of the judges. I just went in and I did not expect to have trouble. I went in. I was professional. I did what I had to do. I didn't fool around. And I got along quite nicely with all the judges. One judge, Judge Holtzoff, was alleged to object to people crossing their legs in court. And I didn't have a lot before him but one case, I remember, I was before him I was very careful not to cross my legs. There was one episode when I was trying a case with Judge Youngdahl. (These are all older men at that point. I mean really older, like 60s, 70s.) I was trying this case and the defense lawyer was cross-examining the officer and somehow there was a pause and I asked to go the bench and I asked if we could have a recess. This was before redirect and it was because, frankly, I needed to use the bathroom. The Judge granted the recess and when we came back it turned out that the defense lawyer thought I wanted to clue the officer into something or other. But that was cleared up.

Carol Freeman: I do remember a case with Judge Sirica, who turned out to be the hero of the Watergate cases, where the defense lawyer objected to something and at the bench I thought it was actually a good objection. The judge was about to overrule it and I sort of asked him to grant the objection and so he did. I didn't have trouble with the jurors. I generally thought they paid more attention to me than they would to a man because I was different. I thought they listened more carefully. The one rumor was that postal employees would vote against the government. So we all tended to strike employees of the Post Office. I had one case where there was a postal service employee and I thought he looked like a really good juror and I left him on. And they acquitted and it turned out that he was the lead juror in advocating for a not guilty verdict.

Jodi Avergun: Well. The lesson is, the moral is, don't listen to rumors that are sweeping generalizations.

Carol Freeman: Right. I remember two cases that are worth mentioning. There was a very highly competent Black woman lawyer named Dovey Roundtree. I was prosecuting a woman for stabbing another woman to death and Dovey Roundtree was representing the defendant and we were trying it before a woman judge. Probably June Green. So we had a woman judge, two women lawyers, a deceased woman and a defendant woman. It was very interesting. But there was really no defense to the case. In closing argument I used that old argument that lawyers talk about: If you don't have the facts, argue the law. If you don't have the law, argue the facts. And if you don't

have either of them, shout. And I said, "Ladies and gentlemen, Mrs. Roundtree is shouting." The defendant was convicted.

Jodi Avergun: [laughter]

The other noteworthy case that I had was my one first degree murder case. A man named Freddie Archie Brooks had killed a relative of Lynwood Rayford, who was the coroner at the time. I don't remember much about the case except that in preparation for trial, the family of the deceased and some other witnesses came into my office with the detective from the homicide squad who was in charge and we spent an hour or so talking about the case and what was going to happen and how it was going to go. And finally after an hour one of the witnesses, one of the relatives of the deceased said, "And who is the lawyer who is going to try the case?" He hadn't realized that I was the prosecutor. That I was the lawyer. That's one of the few instances where somebody really didn't realize who I was.

We have some more things. It was customary among people in our office when you were in the trial section to occasionally go out riding with people from the homicide squad. And I did a few times go out with Robert Boyd and Bernie Crooke in the evening. We didn't come upon any homicides when I was with them but we did go into one house where one had occurred. So that was sort of fun. You got to know the police officers. Bernie Crooke ultimately became Police Chief in Montgomery County at one point. Anyway, so that was there. David Acheson, I guess, resigned and a man named David Bress became the U.S. Attorney. At one point before Passover, he told his secretary to contact all the Jewish men in the office

because he wanted to invite them to his house for the Seder. So she took him literally and did not invite me. Which, you know – There were a few instances where being a woman was different. But usually I was accepted and just treated like anybody. Later on – where are we on timing here?

Jodi Avergun: So we have a whole hour. You know we scheduled an hour and one-half for today so I can go a little bit longer. It's up to you.

Carol Freeman: Well. There was a professor named Monroe Freedman who advocated letting lawyers call their clients to the stand if the client wanted to lie about a defense of some sort. Mr. Bress asked me to write the response to Monroe Freedman's article, I think it was in the D.C. Bar Journal, which I did. It was published in the D.C. Bar Journal or whatever it was called at the time. If you want I can go into what I wrote here in my notes as a side bar. My thoughts about defendants who lie. And I can make that very quick.

Jodi Avergun: Well, Carol this is your oral history and we should talk about what you want to talk about. And if we need to schedule more time, then we'll do that. So please, I'm sure it will be fascinating.

Carol Freeman: OK. Over the years, and I've defended people in criminal cases from 1969 through 1998, I have only come upon one client who had told me he was guilty, but wanted to lie to an alibi and I talked him out of it. I have changed my thinking from when I wrote for Mr. Bress that this is essentially appalling to think of a lawyer calling a witness to the stand to lie. The current thinking is that lawyers are not allowed to do that and I absolutely agree for most witnesses. You cannot put on false evidence, tangible evidence that you know is false. You can't call a third party as a witness

who you know is going to lie, but my personal feeling about a client is that you only know he is going to lie if he has told you that he is guilty but wants to testify to something different like my one client did. You may be convinced that the government's evidence is overwhelming, but in my mind you do not personally know that he's going to lie unless he told you he is. But apparently the current thinking is that if the story the client wants to tell is contradicted by overwhelming government's evidence, even if the client has not flatly said he wants to lie you can't allow your client to tell his story. In either event, what are you supposed to do? Well, if you can't talk him out of it, you are supposed to ask to be relieved of your representation and you're not supposed to tell the judge why, so if he grants your motion to be relieved, the defendant will just figure out the next time I won't tell the truth to my lawyer, I'll just lie to my lawyer which is not helpful. If the judge denies your request to be relieved, what do you do? If you call the client to the stand, you're supposed to just say, "Tell the ladies and gentlemen of the jury your name, what do you want to say about the case?" which is clearly a flag to the jury because this is not what you've done with other witnesses in the case. So, I think this is probably a more academic exercise than a really practical one. As I say, I only had one client who ever really wanted to do that and he was, I was able to talk him out of it. So that's a sidebar.

Jodi Avergun: Did he not testify at all in that case, Carol?

Carol Freeman: What?

Jodi Avergun: Did he not testify at all or he just didn't tell that party?

Carol Freeman: He did not testify. He was accused of a robbery in Montgomery County. He had told me he was guilty, but then he said he wanted to testify that he was out in Arizona. He didn't have any train tickets or bus tickets or car tickets of any sort. He just wanted to say he was in Arizona and I told him that the prosecutor was a very smart guy, and would be able to show that he was lying, so don't do it. And he didn't. I mean I've had clients who've testified where, in most cases, they turned out to be cases where the evidence was iffy. I've had clients who testified and been found not guilty, because I think they really were not guilty. But I've never had somebody who wanted to testify falsely, that I knew was false. I mean, if you have a self-defense claim, you do not know which story is correct, unless your client says, "well I really meant to hurt this guy but I'll say he struck first even though I know I did." That never happened.

Carol Freeman: OK, back in January of 1968, I was on a ski trip and I was on a ski lift and I found myself quoting robbery indictments, and I decided this is enough. So I applied to a number of firms in the District of Columbia, most of which did not make me an offer. But one small anti-trust firm did. They thought perhaps it would be helpful to have somebody who knew how to try cases, even if they weren't anti-trust cases. The firm was Bergson, Borkland, Margolis & Adler, which I joined in September, no I joined in January of '69. They have since dissolved, when the Reagan administration stopped pursuing anti-trust issues.

But before that, we have to talk about 1968. 1968 was obviously a very bad year. I had been to visit some friends in Guatemala. Right after I left the

American Ambassador and some other people were assassinated. Then in April, Martin Luther King was assassinated. I had been interviewing a firm on that Friday when the riots in Washington started, and one of the people in the firm, probably the person who was the reason I went to interview the firm, was sort of a friend, and so I ended going out to Virginia with him and staying with him over the night. I went back to my apartment. I was living in Southwest at the time and fires were burning, National Guard were patrolling the streets. It was really a very unpleasant situation, somewhat similar to the situation on January 6th of this year. I went up to the courthouse and I ended up staying in General Sessions overnight, when the police were bringing in rioters and other people, and we would be arraigning them all through the night. So that was April. Then later on I do remember receiving the trial folder for one of the young men who had been, was charged with, and I believe convicted of, breaking into a store on D Street near the courthouse. So that was 1968. I resigned in December of 1968, and before I went to work at the firm, I went down to General Sessions and picked up a case. I don't remember the client's name, but this was a very interesting case particularly for somebody who had just left the U.S. Attorney's office. It was a young man who had been walking along the street. Maybe it was New Year's Day, maybe it was right after New Year's, and it was cold and he had a very very bulky coat that he was wearing. And he was arrested by a police officer for carrying a dangerous weapon, CDW pistol. And in fact he did have a pistol in his pocket. But I met him, probably at the courthouse, I talked with him and my recollection is that we

went down to the police property office, and did an experiment with the gun and the coat. I cannot believe now that we actually had that ability to do this but I'm confident that we did. So I had the gun in his pocket, I had the coat and my feeling was you could not see a pistol in a pocket when the guy is walking with his very bulky coat on. (Whether or not we did the experiment with the gun at the property office, I had him wear the coat to court for the motion to suppress.) So we went to the motion to suppress and at the hearing the officer said, "well as he was walking along he put his hand in his back pocket and the coat fell away and I saw the handle of a gun." So of course, the motion to suppress was denied which was too bad. So I got home that day and I got a call from the Assistant U.S. Attorney who said, as we were walking out of the courtroom the officer said to me, "how did you like what I slipped in there?" He had lied. So the government dropped the case, and this was very interesting because I know that as an Assistant U.S. Attorney, we were familiar with what we called "dropsy cases" where the officer said, well as the defendant was running away from me, he dropped the drugs, or he dropped the gun. And we didn't know for sure, we thought well, maybe they're fudging a little bit, but here was an instance of a policeman admitting he lied.

Jodi Avergun:

Did that not ever occur to you when you were prosecutor? Because at least when I was a prosecutor, Carol, I always, and even for a long time as a defense attorney, always gave the benefit of the doubt to the government, to government agents, thought that they were completely beyond reproach. So I'm just wondering if, as a prosecutor, because for the very most part,

DOJ in particular values the integrity of its prosecutors and it wouldn't even occur to most prosecutors that this could happen. So, did it never occur to you when you were a prosecutor?

Carol Freeman: We assumed the police were telling the truth.

Jodi Avergun: Of course.

Carol Freeman: Because we put them on the stand. We wouldn't have put them on the stand if they hadn't been telling the truth.

Carol Freeman: So I resigned from the U.S. Attorney's office, I went to work for this small firm. There were four named partners and maybe four or five other associates. There were a few interesting cases, one of which involved the Kentucky tobacco farmers who were suing all the networks – ABC, CBS and NBC – for trade libel for publishing the anti-smoking ads saying tobacco will kill you. The networks won that one. Then at the very beginning there was a case involving, we were representing a company called General Host, a case called Armour versus General Host, ended up in the Supreme Court. I think the firm must have been hired just for the Supreme Court issue, and it had to do with a consent decree that had been entered into by Armour some years earlier. I didn't do an awful lot on it but I did get my name on the brief and I did get to sit at the table with the other lawyers during the Supreme Court argument, and I got one of the white plumes that they used to give out to lawyers because, in the olden days of course, you had an ink pen and you wrote with a plume, a feather point. I still have that white plume! The more interesting case was a case involving closed circuit telecasting of football. Probably, thinking about it, this is like

50, 49 years ago, it must have involved blackouts of local games that were not being published, telecast on the regular channels. This was in the early days of cable TV, and I do not remember exactly what it was about. But it must have ended up with cable television, so that was sort of fun even though I don't remember much about it.

Carol Freeman: The firm was small and congenial and a good firm to work at. We did have lunches occasionally at the Army-Navy Club where the other woman Associate and I had to go in the back staircase. Nowadays nobody would put up with that.

Jodi Avergun: I'm sorry, why did you have to go in the back staircase?

Carol Freeman: Because we were women. We couldn't go in the front.

Jodi Avergun: Wow. That seems like that could happen in the 1800s, not in the 1970s, which is where I think we are in the chronology, right?

Carol Freeman: Yeah, this was 1969 to 1971. I was only with the firm basically until the end of 1971. During that time I did get one of, I got a few appointments to represent people in criminal cases in the U.S. District Court. One of them was rather short-lived. It was a man named Charles Manley Williams and he had knifed somebody and killed him at a place called Manpower Inc., which was a place where unemployed people would go to try to get employment. And Mr. Williams was incarcerated – he was locked up for want of bail – and I would go over and interview him at either the jail or the U.S. courthouse cellblock, and he started writing me letters. The last one of which included the wonderful phrase, “Carol baby, I want your lips, hips and fingertips now.” At which point I went down to Chief Judge Curran of

the U.S. District Court and asked to be relieved of the appointment. Which he said, "oh we can't have that." He relieved me of the appointment. But I think it must have been shortly after that, that he appointed me to represent a man named Rufus Brown who was charged with Samuel Williams and Paul Proctor in a liquor store robbery at the corner of 24th and Pennsylvania, at which a judge's father was killed. Do you want to go a little longer and get into all of that case, because that's a big case?

Jodi Avergun: Yeah, whatever you want Carol. I can continue until 3:00, I don't have another call until 3:00 o'clock. Noon your time. And that should be enough time to talk about that case, or we can stop here and pick up. Let's schedule another time.

Carol Freeman: Let's do that and we'll start with Eros Timm next time. OK. Rufus – OK, where are we now?

Jodi Avergun: We're at, we were just getting on for armed robbery.

Carol Freeman: No I'm thinking which year we're in?

Jodi Avergun: '72?

Carol Freeman: Must have been the fall of '69. OK, maybe it was in June? Anyway, Rufus T. Brown, Paul Proctor and Samuel Williams were charged with a liquor store holdup at 24th and Pennsylvania, at which the father of Judge Burka from the Superior Court, General Sessions still, was killed. There were three people, maybe four people, who were in the store at the time of the robbery. One was Mr. Burka, who was sitting on a stool. There were two employees of the liquor store and I think Mr. Burka had worked there previously. And there was a woman from Australia who was living

temporarily in the District who was in there as a customer. And these two guys went into the store, one of them was clean-shaven and the other one had a small goatee and a mustache. And the one with the goatee and mustache, as the case, as the robbery occurred, shot and killed Mr. Burka. They ran out, they got into a car that was driven by somebody else and they escaped. Now the clean-shaven and the small goatee and the mustache are crucial. A week later, the week after the murder, Rufus Brown and Paul Proctor were at an after-hours club when the police raided it. Now an after-hours club was a place where somebody would have an establishment where you could go and get liquor and probably drugs and other stuff after the official closing time for such establishments in the District of Columbia. And it wasn't licensed either, of course. Anyway, so Brown and Proctor were arrested there, and the police took Polaroid pictures of them. And the Polaroid pictures showed that Rufus Brown, my client, had a small goatee and a mustache, and Paul Proctor, the other one, had a full, bushy beard. A really bushy beard. And, so some months later a reward was posted for \$5,000 for information leading to the arrest possibly and conviction of the people charged in the murder of Judge Burka's father. And a guy named Julius Foreman was sitting in the DC jail. He needed \$5,000 to make bond and he decided he would tell the police that his friends Brown, Proctor, and a guy named Samuel Williams were the ones who were involved in this robbery. So they were arrested and charged with felony-murder and other offenses. The police held a line up, at which at that point lawyers were not required to be and the woman from Australia picked out Brown and Proctor.

And my recollection is and it must have been that at that point Proctor had shaved off his big, bushy beard and I don't know what Rufus Brown was wearing, but she picked them out. Proctor was represented by Ira Lowe and Eugene Hines, and Ira Lowe himself had a big, bushy beard. Samuel Williams was represented, he was supposed to be the driver, he was represented by a guy named Sol Rosen. Sol was a well-known defense lawyer, sole practitioner in the District. He was a Columbia Law School graduate, he was not, if I say he wasn't classy, I don't quite know how to describe it. He was a very good lawyer, but he wasn't upscale. Is that a fair way to put it?

Jodi Avergun: Was sophisticated?

Carol Freeman: He was a very good lawyer and a sole practitioner. He had his difficulties over the years, but he was the one who brought up the idea of challenging the Australian woman's identification at the lineup, because the defendants were not represented at the lineup. And this was before *Stovall* against *Denno* and before the line of cases held that defendants have the right to be represented in a line up. Anyway, so we raised the issue. The judge, Judge June Green, granted the motion to suppress her testimony, the Australian lady's testimony. And the government had the right to appeal in that case from the granting of a motion to suppress. They appealed to the Court of Appeals for the D.C. Circuit. It went *en banc*, and the Court of Appeals reversed and they held that the woman's testimony should have been, should be admitted.

Carol Freeman: We went to trial in May of 1971. I had previously gotten married in the fall of '69 and by May of '71 I was five or six months pregnant. (Laughs.) Which may have been one of the first for the D.C. courts. But anyway, so we went to trial and we put in the Polaroid pictures of our clients, which had been taken a week after the robbery. Remember my client was supposed to be clean-shaven during the robbery but in the Polaroid picture a week later he had a beard, a goatee and a mustache, and Paul Proctor, the shooter, was supposed to have had the small goatee and the mustache during the robbery, but a week later he had a big, full, bushy beard. The Australian lady testified that if these pictures were accurate she would doubt her identification of the defendants. And we also called a beard expert from Gillette, who said that it was unlikely, I forget if he said it was unlikely or impossible. He said this beard could not have been grown in a week, and we had Ira Lowe sitting at the defense table so that in closing argument I could say, ladies and gentlemen, that is a big, bushy beard. Do you think it could be grown in a week? And the clients were found not guilty. So that was a really good case. That was a nice case. And Mr. Brown didn't get into very much trouble, if any, after that, as far as I could tell. Now, I can, I'll lead into the beginning of the next, but the next is at least 15, 20 minutes, so we don't want to do that now.

Jodi Avergun: Sure.

Carol Freeman: At the time –

Jodi Avergun: Can I just ask you a question before we start the next one?

Carol Freeman: Let me just lead into it.

Jodi Avergun: OK.

Carol Freeman: So that you will know where we're going.

Jodi Avergun: OK.

Carol Freeman: OK. And I can reprise it when we start off the next time. At the same time that the Rufus Brown jury was hearing and considering that trial, there was a series of bank robberies in the northwest section of the District of Columbia. And on one of the last days of May, at the last of those bank robberies, a police officer was killed and three people were arrested. Eros Timm, Lawrence Daniel Caldwell and Heidi Fletcher. And Heidi Fletcher was the daughter of the former Deputy Mayor of Washington, and you do not get hippies named Heidi being prosecuted for murder often in the District of Columbia. I went in, I ended up representing Eros Timm and I can start the next time with how that came about, and that leads into my not going back to the law firm and becoming basically a criminal defense lawyer.

Jodi Avergun: OK.

Carol Freeman: How's that?

Jodi Avergun: I think that's fine.

Carol Freeman: That good?

Jodi Avergun: Yep, I think that's great.

Carol Freeman: OK. Because the Eros Timm trial is at least 15, 20 minutes' worth.

Jodi Avergun: Sure.

Carol Freeman: So we'll start off with that one.

Jodi Avergun: OK, I'm going to – well let me ask you this one question that I had. You mentioned, when you were talking about the last defendant and that you don't think he got in trouble thereafter. It would be interesting, I think, to just hear your views on, do defense attorneys, did you develop relationships with any of your clients where you kept up with them over the years, especially where you have such a good result and they didn't go to jail.

Carol Freeman: Sure. There are a few and I can talk about them when I talk about the particular clients. The guy with the gun in his pocket, I don't even know what his name was. I had forgotten this, but I did have contact later with Rufus "Pete" Brown. In a box of papers saved when we moved to an apartment I found several cards from "Pete" or "Pete and Mildred." I also found a clipping from the *Washington Post* reporting that Rufus (Pete) Brown was one of five inmates at Lorton who was furloughed six days a week to work counseling 1500 youngsters in Southeast. He was serving a 7-21 year term for shooting his father-in-law. He had gotten married to Mildred and had two children. This must have been in 1974, because I found a copy of a letter I'd written saying how pleased I was that he was in this program. But there are a few and I can talk about them. Because they're people whose cases are noteworthy.

Jodi Avergun: Right, right. You know I'm not asking for any sort of personal details but it's just interesting to me as a defense attorney and I imagine a number of people who might be looking at this as the kind of relationships that you form with clients, especially ones that you go to trial with and get acquitted. So I think that's an interesting aside to think about if maybe you can share

some of that the next time we talk. Let me, I'm going to – go ahead, I'm sorry.

Carol Freeman: I think most of them, particularly if they were acquitted, they really just wanted to go away and forget the case.

Jodi Avergun: I experience that myself. They can't wait to see your back. So I was just wondering if it was different, the, you know, transition –

Carol Freeman: There were definitely clients that I can talk about, and will as we go on.

Jodi Avergun: OK. Let me turn off the recording. Hang on one second.