THE HONORABLE RICARDO M. URBINA

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

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The Historical Society of the
District of Columbia Circuit

United States Courts
District of Columbia Circuit

THE HONORABLE RICARDO M. URBINA

Interviews conducted by:
Eugene B. Granof, Esquire
November 4, 2010
March 8, April 11, September 11, October 25, November 28 and December 12, 2011
January 10 and March 15, 2012

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NOTE

The following pages record interviews conducted on the dates indicated. The interviews were recorded digitally or on cassette tape, and the interviewee and the interviewer have been afforded an opportunity to review and edit the transcript.

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PREFACE

The goal of the Oral History Project of the Historical Society of the District of Columbia Circuit is to preserve the recollections of the judges of the Courts of the District of Columbia Circuit and lawyers, court staff, and others who played important roles in the history of the Circuit. The Project began in 1991. Oral history interviews are conducted by volunteer attorneys who are trained by the Society. Before donating the oral history to the Society, both the subject of the history and the interviewer have had an opportunity to review and edit the transcripts.

Indexed transcripts of the oral histories and related documents are available in the Judges' Library in the E. Barrett Prettyman United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C., the Manuscript Division of the Library of Congress, and the library of the Historical Society of the District of Columbia

With the permission of the person being interviewed, oral histories are also available on the Internet through the Society's Web site, www.dcchs.org. Audio recordings of most interviews, as well as electronic versions of the transcripts, are in the custody of the Society.

INTERVIEWEE ORAL HISTORY AGREEMENT

The Historical Society of the District of Columbia Circuit

Oral History Agreement of Ricardo Urbina

1. In consideration of the recording and preservation of my oral history memoir by the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees and agents (hereinafter "the Society"), I, Ricardo Urbina, do hereby grant and convey, upon my death, to the Society and its successors and assigns all of my rights, title, and interest in the tape recordings, transcripts and computer disk of my interviews as described in Schedule A hereto, including literary rights and copyrights. Prior to my death I retain all of my right, title, and interest in the tapes, transcripts, and computer disk and their content, including literary rights and copyrights. I also reserve for myself and to the executor of my estate the right to use the tapes, transcripts and computer disk and their content as a resource for any book, pamphlet, article, or other writing of which I or my executor may be the author or co-author.

2. It is agreed that during my lifetime the entire tape, transcript and computer disk shall not be made available to anyone other than myself, the interviewer, and the Society without my express written permission.

3. It is agreed that the Society shall not authorize publication of the transcript or any part thereof, including brief quotations, during my lifetime without my express written permission.

4. All copies of the tapes, transcripts and computer disk are subject to the same restrictions herein provided.

5. In the event of my incapacity I designate Coreen Urbina (215 Perry Ave., Greenville SC 29601), Luis Urbina (41 Dogwood Dr., Middletown NY 10940), and William T. Marshall (36 Lakeview Dr., Morris Plains NJ 07950) to make decisions in order of their survivorship related to the use of the interview of me. If all of these designees predecease me or are otherwise incapacitated, I authorize the Society to make such decisions on my behalf.

6. After my death I authorize the Society to duplicate, edit, publish, including publication on the internet, and permit the use of said tape recordings, transcripts and computer disk in any manner that the Society considers appropriate, and I waive any claims I or my estate may have or acquire to any royalties from such use.

Ricardo Urbina
Dated:

SWORN TO AND SUBSCRIBED before me this
20th day of OCTOBER, 2014.

N. K. GOR
Notary Public, State of South Carolina
My Commission Expires 1/16/2024

Notary Public

My Commission expires 1-16-2024

ACCEPTED this 21ST day of January, 2015, by Stephen J. Pollak, President of The Historical Society of the District of Columbia Circuit.

Stephen J. Pollak

Schedule A

Tapes recordings, digital recordings, transcripts, computer diskettes and CDs resulting from nine interviews of Ricardo M. Urbina conducted on the following dates:

Interview No. and Date	Number of Tapes or CDs	Pages of Final Transcript
No. 1, November 4, 2010		1-30
No. 2, March 8, 2011		31-61
No. 3, April 11, 2011		63-100
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No. 8, January 12, 2012		235-262
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The transcripts of the nine interviews are contained on one disk.

INTERVIEWER ORAL HISTORY AGREEMENT

The Historical Society of the District of Columbia Circuit

Oral History Agreement of Eugene B Granof

1. Having agreed to conduct an oral history interview with U.S. District Judge Ricardo Urbina for the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees and agents (hereinafter "the Society"), I, Eugene B Granof, do hereby grant and convey to the Society and its successors and assigns, all of my right, title, and interest in the tape recordings, transcripts and computer disk of interviews, as described in Schedule A hereto, including literary rights and copyrights.

2. I authorize the Society to duplicate, edit, publish, including publication on the internet, or permit the use of said tape recordings, transcripts and computer disk in any manner the Society considers appropriate, and I waive any claims I may have or acquire to any royalties from such use.

3. I agree that I will make no use of the interview or the information contained therein until it is concluded and edited, or until I receive permission from the Society.

Eugene B Granof
Dated: 1/16/15

SWORN TO AND SUBSCRIBED before me this
16th day of January, 2015.

Notary Public

My Commission expires:

ACCEPTED this 21st day of January, 2015, by Stephen J. Pollak, President of The Historical Society of the District of Columbia Circuit.

Stephen J. Pollak

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ORAL HISTORY OF THE HONORABLE RICARDO URBINA
FIRST INTERVIEW
4 NOVEMBER 2010

This is the first interview of the Oral History of U.S. District Judge Ricardo Urbina as part of the Oral History Project of The Historical Society of the District of Columbia Circuit. The interviewer is Gene Granof. The interview took place in the chambers of Judge Urbina at the United States Courthouse in the District of Columbia on Thursday, November 4, 2010, at 12:00 p.m.

Mr. Granof: Good morning, Judge Urbina. As you know, I've already done the introduction, and we've had a preliminary conversation. I guess we should start chronologically at the beginning. You told me about your family, your father and your mother, and I think that's an interesting story, so perhaps you can tell me where they were from and how they met?

Judge Urbina: All right. My father came from Honduras, Central America, and my mother from Puerto Rico. They met in New York City, actually, as a result of knowing some mutual friends. I don't know much about the romance, except that my father became very enamored with my mother and went through all the traditional courting rituals that were then typical, especially in the case of people who came from other countries. They got married in New York and had three sons.

Mr. Granof: When did they get married?

Judge Urbina: They were married in the early 1920s.

Mr. Granof: Had they been in the country a while before they were married?

Judge Urbina: I think they had been in the country a couple of years. My father worked for a dental technician, creating molds for false teeth, and my mother was trained as a secretary, and she started working with small businesses and eventually worked her way up with a larger corporate entity, a pharmaceutical entity. So, yes, they

met early on. I've heard them speak about the Depression and some of the difficulties that they encountered. Both my father and my mother grew up in an environment that one might call very comfortable. My mother's father was a merchant in Puerto Rico, had several businesses – a restaurant and a clothing store and so forth. My father was raised by his grandmother, although his mother was present. He always called his grandmother his mother. His father was killed when he was young. His father was in the military, and it was a fatality in some war that was going on. He grew up on a farm, what he called an estate, which was a large tract of land owned by his grandmother, who also had businesses in the city of La Ceiba and in Roatan, which is where he was born. So they came from what I imagine were comfortable circumstances. I believe they must have been comfortable because both of them were very well educated, although they had only graduated high school. My father spoke impeccable English and impeccable Spanish. They went to a Jesuit institution called St. John's College High School, much like the one that exists here in town. My mother had excelled, I'm told, in her early studies. I know for a fact that she was well educated.

Mr. Granof: She spoke English too?

Judge Urbina: Oh yes. Except for her accent, her English was perfect. And I know that she knew many things in terms of basic education because, as I'll tell the story as we go on, at one point, she had to home school me in order for me to catch up to the grade level that I was placed in.

Mr. Granof: Yes, you had mentioned that. What interests me is what drove your parents to come here. It's fascinating. You have two single people, they didn't come with

their families, they came alone and they came from prosperous circumstances. Why?

Judge Urbina: I gather that when they left their home countries the United States still represented a land of opportunity, and I believe that it was not long after they arrived that circumstances changed radically. Fortunately, because they both had enough education to get by, they were able to find employment, but I do remember stories about my father getting beaten up when he tried to break picket lines to get jobs. So I think that was basically it. They came here feeling that they had a cushion, but the cushion more or less diminished to the point where they were really struggling.

Mr. Granof: So they really came from prosperous circumstances, but as a matter of free choice because they saw this as a greater opportunity?

Judge Urbina: Yes, they did. I think my father was anxious to see the world and to experience more in life than he had in the small town he was from. Although Puerto Rico was then considered a very separate country, it was strongly linked to the United States. The mass emigration to the United States from Puerto Rico had not begun, but people with business interests like my mother's father were quite willing to send their children to the United States for opportunities.

Mr. Granof: Do you know how old they were when they came here?

Judge Urbina: I think they were both teenagers, their late teens.

Mr. Granof: That is just an amazing story, that teenagers, basically from prosperous circumstances, decide to take off and explore the world. Of course they did have

the advantage of speaking English. I guess that's what you do when you're young?

Judge Urbina: Well, I suppose so. I guess there were many people around that time that either by choice or otherwise came to the U.S. with the American dream in mind.

Mr. Granof: Are your parents still alive?

Judge Urbina: No. They passed away. My father was in his mid-80s, and my mother was in her early 90s. She died about eight years after he died.

Mr. Granof: So you have good genes for a long life.

Judge Urbina: I hope so.

Mr. Granof: Have you ever been back to either Honduras or Puerto Rico to where they were from?

Judge Urbina: Yes. When my mother died, my wife and I went back to Puerto Rico and we visited her hometown, and we stayed there for a week or so. We traveled throughout Puerto Rico so I could kind of connect the memories that she had planted in my mind with the actual locations and the people, and that was quite beautiful. I did not visit Honduras until about five years ago when my wife and I decided to go to the very town in which my father was born, Roatan, and interestingly enough I have relatives there. We went to the capital of the little island and I retrieved my father's birth records, which were handwritten in this beautiful kind of script, the way they used to do in those days, and chronicled such facts as marriage, of his mother being married, or not being married. It was very interesting how they would characterize people. I think his mother was married, but his mother's mother, the grandmother, had not been married when

she had children. The birth records, I didn't truly expect to find them because there's no computerized system of keeping those records. So my wife and I stood in line and waited patiently, and I say patiently because people in different countries have great patience for doing things. People stood there, nobody complained, and finally when it was our turn I told the clerk who I was and what I wanted. I saw her go back and blow dust off old leather-bound journals, and she pulled one, and I thought oh boy, she's not going to find it. But she found the page, and it described when my father was born, where he was born, his parents, his deceased father, his mother, and the grandmother and so forth. I found out through those records, because I was able to research them further, that my great-grandfather, not my grandfather, but my great-grandfather, came from Scotland to Honduras as one of these soldiers-of-fortune guys with Standard Food or one of those big companies. And there was a notation that he had had a child. He had been with a woman who had a child but they were not married so it was kind of interesting.

Mr. Granof: So you have Scottish ancestry?

Judge Urbina: Yes I do. So now I have to go visit Scotland.

Mr. Granof: I don't know if you're fluent in Spanish, but do you speak it?

Judge Urbina: Yes, I am fluent in Spanish. When I was growing up, my father would speak to me only in English, and my mother would speak to me only in Spanish, so I got a good foundation because my mother spoke very good Spanish, as did my father. Of course when he'd speak to my mother, he'd speak to her in Spanish. But I supplemented my initial introduction to Spanish in the home with studies. I

studied Spanish in high school and then I took advanced courses in Spanish in college.

Mr. Granof: Does your wife speak Spanish?

Judge Urbina: Yes she does. And my children speak Spanish.

Mr. Granof: That's wonderful. It's terrific to be bilingual like that. I was thinking about how much richer an experience you had going back to both Honduras and Puerto Rico speaking the language of the country.

Judge Urbina: Well yes, it was a wonderful experience in that regard and for another reason as well. My father, and I'll show you his picture, my mother's and father's picture over there --

Mr. Granof: I was going to ask whether that was a picture of them.

Judge Urbina: In the Latino culture, there's kind of a strange love-hate relationship with Europe, especially Spain. Unless you're from Spain, then you probably, if you're Latino, you're probably the product of some conquest that the Spanish inflicted on some indigenous population.

Mr. Granof: I can understand that.

Judge Urbina: And so there's this love-hate relationship, plus, especially with respect to Latinos whose ancestry hails from the Caribbean part, and other parts, South America as well, there was an influx of African slaves, and so -- I don't want to brand Latinos -- but sometimes you find that some Latinos are not too anxious to speak about their African origins. They tell their Spanish origins and they downplay their indigenous origin.

Mr. Granof: Is there still a fair amount of discrimination in Latin America, especially Brazil say?

Judge Urbina: I think there is. I mean it's interesting. Have you ever watched – not that you would be tempted to – but if you ever watch Spanish soap operas, the stars of these shows are always Caucasian looking, they're always beautiful, they don't really show much of an African presence unless it's servants in these shows. Latinos don't talk about this out loud. They may talk about it to each other, but they never talk to non-Latinos about this because it's a taboo. But my point being that when I got to Roatan, I saw the most interesting looking people. People with skin much darker than mine with green, green eyes – I suppose you would see this in Brazil and many other places I'm sure – but it was such a contrast from what I was used to because of the history I read. The whole set of islands off Honduras were mostly indigenous, Carib, Arawak, and Mayan – Mayan on the mainland. Then when slaves were brought to that region, many of them gravitated towards islands once they were freed and many of them kept themselves quite segregated, and many of them do so now. The bottom line is that the British came – this is what I've read – the British came when fighting the French and told all these inhabitants, mostly African on the islands, that they had to swear allegiance to Britain, and they refused. As a consequence, many of these African slaves or direct descendants of African slaves were taken off these islands, because the British feared they would join the French in the battle, and were deposited in certain areas off the Honduran coast, Roatan being one of them. Roatan is an island right off the coast. My father never spoke about our African ancestry for

reasons I've already explained, so getting to see these people and then actually getting to meet one of my cousins who had a very British name who still lived there, a very lovely lady, dark skin like me, was quite an interesting kind of anthropological experience.

Mr. Granof: So there really is just a tremendous mix of diverse genetic characteristics, which is not surprising; we've got some of it here in the United States.

Judge Urbina: Oh absolutely. I think there's a lot of it that people don't know or don't admit to. I read a book recently called *The Known World*, which is about blacks in Southern Virginia in the early 1800s, old slaves, and the whole culture that grew out of that. It's an historical novel but it's a novel. So yes, these issues of race and color are all very interesting.

Mr. Granof: Yes. And now when you went to see your cousin, what was her reaction?

Judge Urbina: Well actually I didn't go to see her because I didn't know she existed.

Mr. Granof: I should say, when you met her.

Judge Urbina: Right. It was a beautiful thing.

Mr. Granof: How did you find out about her?

Judge Urbina: Well, the island is small, and there was this young gentleman who was kind of a server at the restaurant at the hotel that we stayed at, and we got to talking. He spoke very good English, and when he heard my name, he said, "Well, you know there's a woman who lives here who was Urbina but now she's Smith because she married somebody, and I wonder --" And I said, "Gee, I'd love to find out." So he researched it, and he went to her home and he mentioned my interest. This

lady had actually met my daughter, who had years before visited Roatan. And I found out that the woman and I were related. What a pleasure and surprise.

Mr. Granof: How about the Puerto Rican side? You said you had been back?

Judge Urbina: Yes. I've been back to Puerto Rico. I know that I have many relatives there, but I didn't try to track them down. I wanted to spend more time just kind of looking at the island. I don't have any relatives that I would consider close relatives. I know that my grandfather had many children -- I think he had six, including my mother -- and that the family was widespread. Many of them got to the United States and died of one thing or the other. One of my mother's sisters died of the aftermath of alcoholism, a brother died of the aftermath of alcoholism, and there were a couple other deaths, so my mother and a sister were really the two remaining that lived here. Her sister died before she did, her older sister, and then my mother. So I never got to know much about our Puerto Rican relatives.

Mr. Granof: But from what you said, it was a rewarding experience for you to go back to Puerto Rico.

Judge Urbina: Oh absolutely. My mother spoke so affectionately of her home growing up, and she would relate stories about what it was like as a child playing in the streets and watching the horses and buggies go by on the cobblestones. I went to the very same – I can't say it was the same house but certainly the same block where she grew up – and indeed the streets were covered with cobblestones. That really brought back such precious memories of my mother's description of things. She always spoke about the beauty of the island. Of course, Puerto Rico has been ravaged by drugs and organized crime, and sometimes we hear so much about that

that we forget that Puerto Rico is really a garden spot. It's just one of those places where God has touched the earth. So I got to see that. It just reinforced all the positive things that my mother expressed and felt about the island.

Mr. Granof: What a wonderful experience.

Judge Urbina: Yes, it was.

Mr. Granof: So, when your parents came to the United States as teenagers, and they're well educated, and they were able to get jobs in the 1920s, and then the Depression starts.

Judge Urbina: Right.

Mr. Granof: And they were living in New York?

Judge Urbina: That's right.

Mr. Granof: In Manhattan?

Judge Urbina: In Manhattan, yes.

Mr. Granof: Do you know, was it Upper Manhattan, Upper West Side?

Judge Urbina: I think they were living on the East Side, at least that's where I was born. I was born at 108th Street and Lexington Avenue. Now exactly where they were living, I think it might have been in the vicinity of that because I know that so many of my relatives were still there when I was growing up. Even though I wound up living in Queens, I would still go back to the city, and that's where my cousins and other relatives lived.

Mr. Granof: In the 1920s and 1930s that area was really quite different than what it is today, wasn't it?

Judge Urbina: Yes. I gather that my parents were in the minority there but were able to stay there because of their work. They worked nearby, when they had a job, were working, and I gather that they were tolerated because they were just hard working, regular people.

Mr. Granof: When did they have children?

Judge Urbina: My oldest brother is almost 13 years older than me, and the middle brother is 11 years older.

Mr. Granof: So your older brother was born -- help me out with the dates.

Judge Urbina: I'd have to do the math, but he was born I would say in 1933, and my other brother was born in 1935. I was born in 1946.

Mr. Granof: Okay, so you were really a post-War boom baby.

Judge Urbina: That's right. I was one of those baby boomers. My brothers were born before that, and although we grew up in the same household, they left to go into the armed forces when they were 17 and 18 years old; they left together to go to Korea.

Mr. Granof: To go to Korea?

Judge Urbina: Yes. So I was born in 1946. We were still living in Spanish Harlem until I was approximately nine, and that's when my brothers left, when I was eight or nine.

Mr. Granof: They lived through World War II. Are they still alive today?

Judge Urbina: Oh yes. They're both in New York.

Mr. Granof: Are they retired?

Judge Urbina: One of them has been retired for quite some time, my oldest brother. My other brother works as security for the Marriott LaGuardia Hotel.

Mr. Granof: Are you close them? Do you see them?

Judge Urbina: Yes. We're very close.

Mr. Granof: Are they married?

Judge Urbina: They're married. They have children. My oldest brother has been married three times and has children from two of those unions, one of whom is a niece that is now in law school in Charlotte. My next oldest brother has been married three times. He has a daughter who is a Ph.D. audiologist and he has a younger son who is in his early 20s and also lives in New York.

Mr. Granof: Do you have a family reunion every once in a while?

Judge Urbina: The children of my brothers pretty much lead independent lives and are not as accessible as we'd like them to be even though I think most of them are still in the New York vicinity.

Mr. Granof: They're all busy?

Judge Urbina: They're all busy. But we stay in touch. My niece, my oldest brother's daughter, and I are very close. We speak to each other three or four times a month, especially now during her law school experience. She's at the University of Charlotte; it's a small law school that has just been accredited.

Mr. Granof: What year is she in?

Judge Urbina: Her first semester was in January of 2010, so she's now in her second semester.

Mr. Granof: I won't ask you if she's enjoying law school.

Judge Urbina: No, I don't think she's enjoying it. She's scared to death all the time.

Mr. Granof: When your brothers went into the military and off to Korea, why did they do that?

Judge Urbina: To be honest, they didn't want to stay in the house. My father was a very, very difficult man, for reasons which I now understand, being an older person myself. I think he was very frustrated with many things in life, to be perfectly candid. He was a very bright man but could not get the kind of advancement that he really thought he was worthy of. In other words, he wound up ultimately as being a tool-and-die maker, which is a pretty good job, but he couldn't pass the Post Office exam. He wanted a good, long-standing federal job and that was a frustration. I'm sure there were other frustrations in his life that would make him moody and unpredictable. My brothers were at that age, you know, 17, 18 years old, when their wild oats need to be sown. So my oldest brother enrolled in the Air Force, and the middle brother enrolled in the Marines to fight in Korea.

Mr. Granof: I can understand the Air Force, but the Marines?

Judge Urbina: Well, if you knew my brother, you'd know why he picked the Marines. When they left, I was traumatized because I felt I was being left alone.

Mr. Granof: You were pretty little then.

Judge Urbina: I was nine. Let's see, I was born in 1946. I was very little. I think what happened is they joined and then the war ended. So they might have joined perhaps toward the end of the struggle.

Mr. Granof: You must have been close to them, or at least looked up to them as older brothers?

Judge Urbina: I looked up to my brother Al, the middle brother, very much because he was a tough guy.

Mr. Granof: He's the one that joined the Marines.

Judge Urbina: Exactly. And I adored my oldest brother. He did things for me – our relationship was and still is quite exceptional in that he would come back from school and he would save half of a candy bar for me, you know, things that you just don't forget. He was my go-to person. He was a person who I could trust. Maybe my mother was too, but she had her hands full. She worked full-time and she raised a family, and that was always the case. But he and I, we were tuned in and still are.

Mr. Granof: Did they think of going to college?

Judge Urbina: My brother Louie did go to college. He graduated from Hunter College.

Mr. Granof: Was there any expectation that you would go to college or that your brothers would go to college? Did your parents expect that of you?

Judge Urbina: My parents certainly expected it of me. I think life was significantly less of a struggle when I came along. I mean as I progressed toward that age, I think they were more secure. They weren't highly paid people but they were well established, and the whole American dream became much more feasible for them. When I went from New York City to Jackson Heights and was enrolled in a Catholic grammar school in fourth grade, then once I started that process, once I began to experience some success, everything was, the whole milieu, was to train to go to college or to get some great job.

Mr. Granof: That's interesting that the difference of being born in 1946 versus, say, 1936, or even before, because of the range of insecurity in the 1930s. That whole generation was traumatized by the Depression and it wasn't until the post-War period that the American dream started being realized for a whole range of people. Apparently, that was true for your parents, and you and your brothers.

Judge Urbina: I think that's exactly correct. And I wouldn't have analyzed it that way except for this conversation and kind of reviewing things in my mind in advance of this. Again, this was part of the explanation for my father's anxieties that I didn't appreciate until much later when I realized this was a culture where the man in the house was supposed to be the breadwinner, and where my father as the man in the house felt he was not living up to his potential. I think he did. I think he approached things in the right way. But, let me put it this way, I think this constituted some of the kind of "post-Depression" traumatic syndrome that he had.

Mr. Granof: Piled on with all the other difficulties of growing up in a culture which still was fairly discriminatory.

Judge Urbina: Yes. And he was very sensitive about that.

Mr. Granof: Now, when you grew up, your mother worked?

Judge Urbina: Yes.

Mr. Granof: Was that common?

Judge Urbina: By this time, there was much more of a Puerto Rican presence in that area, in the late 1950s. From what I recall, there was a lot of ethnicity in terms of Italians and Irish, and then the Latinos were beginning to move in. In fact, I think when I left New York there were more Puerto Ricans in New York City than there were on the island. Literally. I mention that because those of us who had parents, who both could work, they did work.

Mr. Granof: What are your earliest childhood memories? Did you view your family as being reasonably comfortable? You had enough to eat, and that sort of thing?

Judge Urbina: Yes. I did not think of us as being in any material way deprived. I didn't have a larger context to compare it to, but I ate fine. Of course I spent a lot of time with the babysitter who was an older lady who my mother had known from Puerto Rico. She was very kind, spoke no English, but very kind and loving.

Mr. Granof: She was probably good for your Spanish.

Judge Urbina: Probably was. And so I was inconvenienced from time to time. I didn't like having to go from school to after-school activities every day because I saw some kids going home and so forth, but I never drew the conclusion that I was in a bad situation as compared to other people.

Mr. Granof: When I grew up, my grandparents barely spoke English, and the culture was such that I thought that the real America was always somewhere else, like the Midwest, like Chicago. It took me until adulthood to realize that the urban areas were just as much America as the farmland of the Midwest. I wonder if you had that sense at all, or people around you had that same sense of not really being quite in the cultural mainstream.

Judge Urbina: I think that's a very interesting point. Now that I can look back I can give it a name, but at the time it was just manifested as a sense of being uncomfortable. I could never feel fully comfortable with my surroundings and with people and so forth. I think that was because, as now I would characterize it, I was kind of a marginal person in many respects. I wasn't white, I wasn't black. My birth certificate says "white," which is absurd, but that's the way it was in those days. My environment constantly gave me mixed signals about who I was and whether I was accepted or not, and who were the people that were, and who I was in

relation to them. Even as a child I remember going to after-school and encountering incidents which I think might have been racially prompted. Even though it was kind of an ethnically eclectic group, still it was mostly white.

Mr. Granof: I can't say that I had that, but I do remember, for example in the first grade, when you learn to read, the readers that they had were "Dick and Jane Go to See Grandpa on the Farm." Well their grandpa looked nothing like my grandpa and we didn't live on a farm.

Judge Urbina: Exactly. And it's not a complaint, it's just an observation. One question I've been asked from time to time is how would I compare the racism I experienced in New York City with the racism I experienced when I came to Washington. The best I can do is to say that when I felt racism growing up, it wasn't that people said they were better than me, it's just that they said I wasn't as good as they were because they were Italian or I wasn't as good as they were because they were Irish. When I came down south, it was the same phenomenon, but turned on its head because they said I'm better than you are. It was nuanced differently. So I had to kind of understand that distinction because when I had incidents growing up, and I didn't have a lot, I don't mean to overstate that, but when I noticed, it was always because there was a cadre of people who were excluding me because I was not part of that group.

Mr. Granof: You weren't Italian or Irish.

Judge Urbina: Exactly. But then of course when I came to Washington, it was different.

Mr. Granof: It's surprising how long racism persisted. Into the 1960s.

Judge Urbina: Well, I think even then it was a real phenomenon but it was much more discreet and isolated. It wasn't kind of a general policy anymore.

Mr. Granof: It was becoming unfashionable.

Judge Urbina: Exactly: and the New York Athletic Club, for example, was stuck in its old ways and eventually it was going to have to give those up.

Mr. Granof: We'll get to that in more detail later, but growing up, you started school, in New York Public Schools? You lived in Manhattan?

Judge Urbina: Right.

Mr. Granof: And you were having some difficulty there?

Judge Urbina: Well, I didn't realize I was having difficulty. Apparently I was, but it wasn't the kind of difficulty which the teachers or the principal brought home or communicated to my parents.

Mr. Granof: You weren't a discipline problem?

Judge Urbina: No. I was not. I mean, from time to time I had a scuffle here and there, but no. Nothing unusual. In fact, one of the most pleasant memories I have was from a principal called Mr. Schumaker who, when my mother came to tell the principal that we were moving to Queens, she first told the teacher, the teacher called the principal, and the principal came down. I'll never forget it because it was the first time I got this kind of positive feeling from my school environment. The principal spoke to my mother and was very polite, very kind, and he said, we're going to miss Ricky, he's a real gentleman, and he's going to go far in life. I had never heard that from anybody before.

Mr. Granof: And you were in what grade then?

Judge Urbina: I was in the third grade.

Mr. Granof: So you went through the first, second, and third grades, and kindergarten?

Judge Urbina: Yes. Three different public schools first through third grade.

Mr. Granof: Why three different public schools?

Judge Urbina: As an accommodation to my mother's schedule and the babysitter's schedule. When this lady was not taking care of me, my grandmother took care of me, so from time to time my mother's schedule would change and she had to find a school that would provide the kind of aftercare that would accommodate that, and as a result of that I wound up going to three different grammar schools.

Mr. Granof: Were you able to walk to those schools?

Judge Urbina: I was walked to the schools, and by the time I got to the third grade I could walk several blocks to my grandmother's house.

Mr. Granof: Were your memories, to the extent that you have them, were they pleasant?

Judge Urbina: The truth is, I have more memories of the aftercare or post-school daycare than I actually have of lessons and learning, and I think the reason became apparent later on.

Mr. Granof: And let's get to that. When you got to the fourth grade, your family moved to Queens?

Judge Urbina: Right.

Mr. Granof: You told me about your father's and mother's decision, mainly your father's decision, to move to Queens. I take it you weren't involved in that?

Judge Urbina: Oh no. I wasn't consulted. But I did, of course, listen to conversations, and I knew that the neighborhood was becoming increasingly more dangerous. I knew

that there had been times when my mother and I on our way to the fourth floor walkup would have to step over people who were passed out on the stairs with needles in their arms and things of that sort.

Mr. Granof: That was in your apartment building?

Judge Urbina: That was in my building.

Mr. Granof: So you were in a fourth floor walkup?

Judge Urbina: That's right.

Mr. Granof: Now by the time your family decided to move, had your brothers left?

Judge Urbina: Yes. They were gone, and that's when – my parents were still looking to achieve the American dream – this is the recollection that I have. Because now when I recall what they were saying, they really felt that this was not the environment they wanted to raise me in and that they wanted to put me in a school where I was capable of advancing myself. So I think that was a big piece of the American dream, the educational part.

Mr. Granof: They wanted a better life for you.

Judge Urbina: Exactly.

Mr. Granof: And for themselves as well.

Judge Urbina: Oh absolutely they wanted it for themselves. I think they felt they deserved a better life. I know that they saved a lot; they must have saved a lot to buy the home. It wasn't a luxurious home, but given their income and so forth, I know that they must have saved a lot and sacrificed a lot. So they looked, and I don't know what led them to Queens, I don't know why they went there. I remember going to a lawyer's office, the first lawyer I had ever met, who was involved with

the transaction. And next thing you know, my mother was telling me we were going to move to Queens.

Mr. Granof: This was in the 1950s?

Judge Urbina: Yes. I was nine years old, so yes.

Mr. Granof: That was when Queens was really being developed.

Judge Urbina: Yes. It was a really beautiful area. I mean Queens was called Long Island in those days. But you're right, it was being developed, and as a consequence, although there were homes built, there was still a lot of expanse of undeveloped land. To me it was almost like living in a park because there were animals there and birds, and at the back of my house there was this huge lot which extended I'd say an acre or more, and so I would go with the dog and play in the back there. It was just a wonderful place. Now there are several hotels there.

Mr. Granof: So you went from a fourth floor walkup in crowded Manhattan, highly urban, to suburban Queens?

Judge Urbina: Yes. That's right. Suburbia in many respects, and so I was thrilled, of course.

Mr. Granof: A single-family house?

Judge Urbina: A single-family house. Semi-detached. It turned into a two-family house when my father had the foresight to develop the first floor into a second apartment. I knew there was going to be a lot of work involved because my father was hell-bent on making it a beautiful home. He wanted to make sure that it was one of the nicest homes on the block.

Mr. Granof: As a tool-and-die maker, and someone who had the skills to work as an assistant dental technician, it sounds like he was probably pretty handy.

Judge Urbina: He was handy, and what he couldn't do, he knew what should be done. So he could create a blueprint in his mind of how things should be laid out and where they should be. He had some skills. I mean, as I said, he had skills in a number of different areas, but especially now as I look back, I can see he taught me things that I've been able to retain over time about gardening and about home repairs and things of that sort.

Mr. Granof: Did you have aftercare there?

Judge Urbina: No.

Mr. Granof: You probably didn't need it.

Judge Urbina: No. It was about three-quarters of a mile walk to school. My mother took me the first day of fourth grade, and after that I walked back and forth myself.

Mr. Granof: They decided to put you in parochial school?

Judge Urbina: Yes.

Mr. Granof: Because?

Judge Urbina: They weren't particularly religious. I mean, they believed in God, but they were not particularly religious. They were both Catholic, or had been born Catholic, but they didn't go to church or any of that.

Mr. Granof: They must have felt that the school was going to give you something that the public school couldn't. I know Catholic schools don't charge a lot, but there's some charge.

Judge Urbina: Yes. There was some charge. My father had had a very good experience with the Jesuits when he went to high school in Honduras. My mother, I don't recall if she said she went to a parochial school or not, but there certainly was the influence of

the Church back in Puerto Rico on her, and I think that influence was a very positive one in terms of family structure and that type of thing. So they were both in favor of having me go to a school where I would be taught by religious teachers.

Mr. Granof: So here you are, a nine-year-old, and you show up the first day, and does anybody look like you?

Judge Urbina: Well, not too many people, no, actually. The school was right on the cusp of what is now called Corona, Queens, and that area was beginning to become, instead of white, was beginning to become African-American, so there were a couple of kids, a few, who were of color, but it was mostly Italian, Irish, and Polish.

Mr. Granof: What was it like for you coming in?

Judge Urbina: You know on one hand kids can be very mean, but on the other hand kids have this kind of universal value that they grow up with, and if you have value in their value system, it's not so hard to get integrated.

Mr. Granof: I think I know where you're going with this, but I want you to explain it.

Judge Urbina: Well, athletics was one of the things that really helped me. The nuns weren't too encouraging with the athletic part, but there were also Christian Brothers. They were very much into athletics. And also the academics. After I was able to catch up, I was able to distinguish myself academically, you know the things that schools do, spelling bees and things of that sort.

Mr. Granof: But you were more than just a good athlete. I mean certainly when you got to college, and even in high school, in college you were an outstanding athlete.

Judge Urbina: I was, but not in grammar school. Interestingly enough, I wasn't physically developed. I was small by comparison. My mother was 4'8" and my father was about 5'2". All of us – the sons are much larger – but I didn't get my height until I'd say, 8th grade, first year of high school. So I didn't excel. Although I had the heart, I didn't have the physical equipment to really excel. But I tried hard, and I was on a par with other kids. Of course we had one or two exceptional guys, but I was not one of them.

Mr. Granof: So you get there. Let's start with the academics. You go in and you hadn't had any problem with academics before, had you?

Judge Urbina: No. But I think that I had never previously been challenged academically, and that's to put it mildly. I may have mentioned to you at one point earlier, I came in thinking that that was the least of my problems. At least I didn't think about the academics as a problem.

Mr. Granof: And you were in the fourth grade. In first grade, you're not so conscious of these things, but in fourth grade, you are.

Judge Urbina: Yes, because kids are beginning to evolve, and they're beginning to show signs of where they're going. So one of the exercises was for the nun to ask each student -- everybody had the same book -- to read a paragraph. When it came to me, I couldn't read it. It became apparent that I really couldn't read. So that became quite an embarrassment, and one that I was not prepared for.

Mr. Granof: How did you get to the fourth grade without knowing how to read? I mean this is the 1950s in New York.

Judge Urbina: The only thing I can think of, and I don't know the answer to the question, this is partially speculation, is that I must have been plucked out of these schools, first through third grade, at a point before it became apparent that I was academically deficient. That's giving the schools the benefit of the doubt. If a kid couldn't read, then you would think the kid had some handicap of some kind. But none of that ever came to my attention that I recall. So when the nuns – or rather when the particular nun, and I remember her, Sister Viola, who was stern but fair – found out I couldn't read she called my parents in for a conference.

Mr. Granof: You still remember? You got up and you couldn't read?

Judge Urbina: Oh yes. I stood up and I began to try to read but I couldn't read words that had any more than a few letters in them. The teacher thought it was nervousness at first. She said, "Okay Ricardo, take your time." And I just couldn't.

Mr. Granof: Did they ever think that maybe you need glasses or something like that?

Judge Urbina: They never brought it up. She said, "Okay, well you sit down." And I guess at that point she noted that she needed to speak with my parents.

Mr. Granof: So she called your parents in? Were you there?

Judge Urbina: Yes, I was there. My recollection is that she was really quite nice and she had already developed an idea, she meaning Sister Viola, which was to keep me back a year because she, for whatever reason, felt I had the aptitude to catch up in a year. My father very vocally and very emphatically rejected that idea, and so did my mother. I'm not exactly sure why, because I was young, I was young for my grade -- I graduated high school when I was 17 -- so I could have been kept back. In those days it was not uncommon as you know, but nowadays they don't do

that. In any event, maybe my parents felt that I would feel branded or that it would be a hurdle that would be difficult for me to overcome, but they said no, and of course it went back and forth. Sister Viola said he doesn't know anything. I didn't know my multiplication tables, and I couldn't read. I didn't have any basic skills. They went back-and-forth, back-and-forth, until my father said give him one semester, one term, one-half of the year, and if he's not caught up by January, then we'll agree. As I remember, she rolled her head and she said okay. So from that day forward, my mother would sit with me every night.

Mr. Granof: Your memory of that is so clear. It was clearly an important event.

Judge Urbina: Oh, it really was. It was a turning point for me. And I'm so grateful to the nun, Sister Viola, and to my parents. I mean, not that it would have been the end of the world for me to stay back a year, but once the decision was made not to, you know, the nun agreed provisionally, and my father set the plan, the nun agreed provisionally, and my mother then, of course, was delegated with the task of making it happen. Once that happened, it was a feeling that I had to do this in order to live a life that I wanted to live. That is to say, to be on a par with the other students, to be able to get along with the other students, to feel comfortable with the other students.

Mr. Granof: That you had strong family support seemed to make a critical difference.

Judge Urbina: Absolutely. And the confidence they had. My father was not really the nurturing type. He's not the kind that would sit me on his knee and say, "Well, you know son you can do this." He just said "Oh yeah, you're going to do this."

Mr. Granof: They set expectations for you. And your parents were willing not just to set the expectations but to take the time to make it happen.

Judge Urbina: Yes. And they never waivered. They said this is going to happen. So after a semester, I was caught up. I could read.

Mr. Granof: What did they do? How'd they do that? You were going to school at the time, right?

Judge Urbina: Yes, I was going to school every day.

Mr. Granof: Your mother helped you with the cards?

Judge Urbina: Right. So the multiplication tables were the first thing.

Mr. Granof: I think you said the cards were folded in half?

Judge Urbina: They were folded in half with the two-times table, the three-times table, they were all listed in order, and she would quiz me on that in the evening and quiz me on that in the morning when I got up and was having breakfast. I would have hot cereal every day. She would quiz me on that and then the reading. She would spend time going carefully over the books that we were using and then assign me to continue the readings on my own which I did before I went to bed. So it was about an hour-and-a-half or so of tutoring with my mother and then maybe another hour or so of learning things on my own.

Mr. Granof: Did you feel you were making progress? Was this a sense of confidence on your part?

Judge Urbina: Yes. I felt I was making progress for two reasons. One is that my mother felt I was making progress, and the other was that I was increasingly better able to participate in the class activities, discussions, and homework.

Mr. Granof: The sister must have felt you were making progress as well?

Judge Urbina: She was very pleased. God bless her. She was very pleased. I think she was a little surprised, but she was very pleased. It was not long before she was treating me like everybody else, and there was nothing to suggest that I was not a true full-fledged member of the class.

Mr. Granof: So you got through the fourth grade. Was your father involved in helping you or was he just sort of in the background saying this is the way it's going to be?

Judge Urbina: He was basically the supervisor, but from time to time he would do a pop quiz to see.

Mr. Granof: To make sure that you were where you were supposed to be?

Judge Urbina: That's right. He would make sure of course that I didn't watch any television. *I Love Lucy* was popular. There were a couple of shows on TV that I used to like to watch, but --

Mr. Granof: Your family had a TV?

Judge Urbina: Oh, they had a TV, yes. So he would do a pop quiz, and he would get very unhappy if I didn't get a hundred percent on his pop quizzes. The pop quiz, he would throw me the newspaper and say, "Here, read the front page to me."

Mr. Granof: So he was involved.

Judge Urbina: He was involved. I was very afraid of my father.

Mr. Granof: Why was that? Because he was demanding?

Judge Urbina: He was a real tough guy. He was unequivocal in his demands, and he was quite explicit in expressing his disappointments. It was the kind of household where my father ruled all, including my mother; it was kind of an Old Country attitude.

Mr. Granof: This was not atypical of Latin households, was it? Sort of a macho culture?

Judge Urbina: It was a very macho culture. It was typical, maybe this was an extreme example, but it was relatively typical.

Mr. Granof: So from then on, it sounds like you breezed through academically, at least elementary school.

Judge Urbina: It's interesting, as I look back I realize that I was entitled to feel more confident than I actually did because I had caught up, but that feeling of needing to catch up stayed with me for a very, very long time.

Mr. Granof: Did that help you, do you think, as a motivator?

Judge Urbina: It did. And sometimes I think it hindered me because I felt I had to overcompensate. I felt that I had to study twice as much as everybody else in order to be able to stay up because that's the pattern that had proved successful in the fourth grade, so I had to do more, do more, do more than everybody else is doing, and that was I guess the imprint of how to succeed. If he does one hour of homework, I'm going to do two hours of homework, and so forth.

Mr. Granof: Because you didn't really realize how smart you were?

Judge Urbina: Well, I don't know about that.

Mr. Granof: You won't say that, but I can say that. I've taken up a lot of your time here.

Judge Urbina: This has been fun.

ORAL HISTORY OF THE HONORABLE RICARDO URBINA
SECOND INTERVIEW
8 MARCH 2011

This is the second interview of the Oral History of U.S. District Court Judge Ricardo Urbina as part of the Oral History Project of The Historical Society of the District of Columbia Circuit. The interviewer is Gene Granof. The interview took place in the chambers of Judge Urbina at the Federal Courthouse in the District of Columbia on Tuesday, March 8, 2011 at 1:00 p.m.

Mr. Granof: Good afternoon, Judge. Last time we got you through the fourth grade, and you told a wonderful story about how your parents, and particularly your mother, drilled you to catch you up, and so academically, from then on, you were pretty solid?

Judge Urbina: Yes. I was pretty solid because I had established roots mostly as a result of my mother's diligence, and also I had developed a level of confidence that permitted me to understand that effort and results had a direct correlation.

Mr. Granof: Things seemed to be going pretty smoothly for you from then on.

Judge Urbina: Yes. Smoothly, I would say, the fourth grade through the eighth grade. The school system I was in at the time ended at the 8th grade. I had Christian Brothers in the sixth, seventh, and eighth grades, and they were wonderful teachers. One of them in particular I think probably had an influence on me that lasts even into the present. Certainly its effects last even into the present. His name was Brother Francis, and he seemed to recognize traits and qualities and characteristics in me that he was prepared to talk about, and that at first prompted him to want me to consider the religious life. In other words, he was very

interested in recruiting me to become a Brother. I was very flattered of course, being young and impressionable.

Mr. Granof: When did he come into your life?

Judge Urbina: Sixth grade.

Mr. Granof: So he was your sixth grade teacher?

Judge Urbina: Yes. Sixth and seventh grades. Actually, I had him for a course in the sixth grade, but he became my main instructor in the seventh grade.

Mr. Granof: Up to the sixth grade, did you have a single teacher, and then from the sixth grade on, you moved from subject to subject?

Judge Urbina: Yes. The teacher would move. Different teachers would come in to teach different subjects. He taught religion, and he taught math. And then another Brother, Brother Benedict, taught English and civics and so forth. When I went home and mentioned to my parents that Brother Francis wanted me to think about going away the following summer for a retreat with a view toward entertaining the religious life, they flatly rejected that. As perhaps we discussed earlier, they did believe that the Catholic school methodology for teaching was very good and that the teachers were thorough and motivated people, but they did not want me in the religious life. So the second influence, and probably the most powerful influence he had on me, was as an athlete. He saw in me some quality as an athlete and, although I didn't see it because I was not what I considered to be outstanding, I ran track. He was very much involved in organizing the Catholic Youth Organization, Catholic Youth Association, track meets and things of that sort. And so I became a part of that system of training and athletics.

Mr. Granof: Let me back up just a bit. When did you decide that you wanted to run track?

Judge Urbina: Probably in the sixth grade. In the sixth grade is when I was invited to begin to join the track meets. And then in the seventh grade I became more serious about it. My parents agreed. Although at first they were reluctant to let me do anything that might distract me from my studies, but then my mother actually thought that it was a good idea, and my father, who had been a runner back in Honduras, was cautiously encouraging about it, as long as it didn't detract from my study time. So in the seventh grade I began to run track meets. I never won anything, but I enjoyed it, and I did well enough to feel that I was making some progress. I was small. I did not grow to my current size, height at least, until I'd say probably my second year in high school. So I was small, and although I was wiry, I wasn't what you call strong like some of the big guys were. So in the seventh grade I ran some track meets, and then in the eighth grade, I began to run more successfully. Never winning, really, but qualifying to run in what they call seeded heats, which means that the runners in the seeded heat were the ones who had already qualified to run on that level, and so I got to run some relay races.

Mr. Granof: Not everybody ran track at the school, so there must have been some choice, initially, to say "I'm going to try this"? You must have been reasonably good at it, or at least felt it was something you could do.

Judge Urbina: Yes. Brother Francis thought it was something I could do. Now, my oldest brother had run track when he was in high school, but my other brother was a basketball player, and he wanted me to play basketball. He wanted to be my coach for basketball, but I didn't show any talent for basketball, so I chose to run

track in the hopes that it would be something that I would enjoy and that I could attract girls. So that's what I did. From grammar school, moving to high school, that became something that I was familiar with and something that I decided to pursue.

Mr. Granof: So the sixth, seventh, and eighth grades went pretty smoothly?

Judge Urbina: They did. Again, the studies went well. In the seventh grade I took exams that qualified me for a full scholarship to a school called Bishop Laughlin, which was also in New York City but not in Queens, where I lived. I was really very proud of getting into Bishop Laughlin because it was a very good school academically. So when I learned that I had qualified through the testing to get a full scholarship there, I was very happy.

Mr. Granof: Your parents must have been happy.

Judge Urbina: Well they were happy, but they didn't want me to go to school there because I would have to take a bus and two trains.

Mr. Granof: Where was it?

Judge Urbina: It was in Brooklyn, and I lived in Queens. And they didn't want me traveling on the trains, so they were protective, and I think that what they felt was the time factor was not going to work in my favor in terms of the travel time. Around that time, though, while I was in the seventh grade, a high school just opened in Queens, again a Catholic high school. It was taught by the Brothers of the Sacred Heart, a religious order that was brought from France to the United States by the Jesuits, so they were very Jesuit-oriented. My father had studied with the Jesuits

and liked them. So I applied to go there, and that's where I wound up going. Monsignor McClancy Memorial High School is what it was called.

Mr. Granof: So you entered there in the ninth grade?

Judge Urbina: Yes. I went there in the ninth grade. That would have been 1959.

Mr. Granof: Did you start doing track there?

Judge Urbina: Well, the track coach actually encouraged me to join the track team, and I did join. As soon as I got there I joined for cross-country, but I didn't enjoy it. I didn't enjoy the long-distance running; I didn't enjoy the long-distance workouts. What I really wanted to do was to play basketball, and so I dropped track and I competed with students to get on the Junior Varsity, freshman, basketball team. But I was not talented in basketball, or if I did have talent, I certainly didn't show it or cultivate it. So after not being too successful that first year in high school in basketball, I dropped out. Actually, no. The track coach was very disappointed that I had stopped running track, and he knew that I hadn't been successful that first year in basketball. So he went to the basketball coach behind my back and asked the basketball coach not to entertain my interest when I returned my second year but to refer me to him, the track coach. And that's what happened.

My high school was an extremely strict high school. Most of the students were first and second generation, mostly Italian, Polish and Irish. A few Latinos. No dark Latinos like me. The Latinos that were there were mostly from Central and South America, probably of well-to-do families. It wasn't a well-to-do school, but it was a highly sought after school in terms of the education. The school was only two years old when I started there.

Mr. Granof: So did they have the junior and senior classes?

Judge Urbina: No. It was in my second or third year -- I think it was in my second year -- that the first senior class graduated. Of course none of that impressed me at the time. I figured a school is a school is a school, and the fact that there weren't very many people of color, the fact that it didn't have much of a history, I didn't pay that much attention to it because the school was so demanding, the Brothers were just so demanding in terms of academics. Every week for five weeks we were tested in every subject. Each subject had a potential of ten points, so you'd take exams in every subject every week. At the end of the five weeks there would be an exam, and how many points you scored out of fifty on that exam would be added to how many you scored on the weekly exams that preceded the five week final exam, and that would be your grade. We had three years of Latin, four years of math, and three years of science. It was a rigorous academic high school. You come from New York?

Mr. Granof: Yes.

Judge Urbina: Well, as you might remember, the Regents Exams were very popular in terms of standardized tests. And I think the school was very conscious of that, trying to make sure students did well, because the faculty felt that it was a college-prep course.

Mr. Granof: Did most of the kids go to college?

Judge Urbina: Yes. Almost all the kids who graduated at that time went to college out of that school. Not all the kids that entered the school graduated. Many kids were thrown out because of disciplinary problems. There was a zero tolerance for

smoking or even violating the dress code. The principal would come and measure your cuffs. Seriously. If your cuffs were more than seven inches in diameter, which would mean they were pegged, they'd send you home. The second time you were expelled. Of course this was not a problem for me, but the fellows with all the big hair, if the principal caught a student with long hair attending class, he would simply come to the classroom and cut the extra hair off. The school disapproved of that kind of greasy big hair flared out beyond the temple.

Mr. Granof: And this was, let's see, you said 1959?

Judge Urbina: 1960, 1961, 1962, 1963. Those were the four years.

Mr. Granof: So that really was before Vietnam and the whole cultural revolution.

Judge Urbina: Yes. It was before that.

Mr. Granof: Did you wear a suit and tie?

Judge Urbina: Yes. Suit and tie every day. A suit and tie every single day. You could not come to the classroom unless you were dressed in a suit and tie, a blazer and tie. These were very scary times too. I'm sure you remember them.

Mr. Granof: This was an all-boys school?

Judge Urbina: Yes. I say scary times because, if you recall, this is around the time of the Cold War and all the threats, the nuclear threat. Even when I was in grammar school, we'd have these drills where we'd run out into the hallway. I don't know what that was supposed to accomplish because if there was a bomb, it was all over. But we thought about it, and we talked about it, in grammar school and in high school, and I think in the back of our minds there was the thought that any day could be the last.

Mr. Granof: It was a scary time.

Judge Urbina: They were scary times, and I remember that. I remember going to bed at night, and of course, you'd say your prayers – "If I should die before I wake" -- that was a serious thought because there was always this notion that a bomb could drop while you were sleeping, and it would be all over.

Mr. Granof: Do you think you got that from school? Did school encourage that, or was that really just the news?

Judge Urbina: It was the news, and every once in a while you'd turn on a TV show and they would portray something of that sort, and it would really leave an impression. I'm not suggesting I was running around terrified all the time, but this was something in the back of our minds. And at the same time as that uncertainty, there was always the very strong impulse to do well in whatever you were doing. It was an interesting time. Around my sophomore year, I firmed up my intention to go to college. There was a guidance counselor at the school, and at least at that time, my sophomore year, it was just a matter of trying to do as well academically as I possibly could and then finding the money to go to college. I believed that my parents would find the money to send me to college, but they were counting on me to do well academically. That was my end of the bargain. Well, fortunately, I did well academically. I had an A average, which is good, and I started doing well as an athlete. After quitting track my first year, my track coach, the track coach that wanted me as his athlete, persuaded me to come back on the team. I started running as a sophomore during the second half of my sophomore year. I had grown a bit, I was lifting weights, and was a little bit

stronger, and I wasn't so intimidated by the bigger guys, because there are always those fabulously mature guys that look like sprinters and young gods. One thing I did learn was I could do the workouts. The coach was -- I wouldn't call him a disciplinarian -- but he was a very skilled technician. He knew exactly what to do; he had experience as a track coach before he came to McClancy.

Mr. Granof: Was he one of the Brothers?

Judge Urbina: No. He was a layperson. He had a wonderful, beautiful wife and two kids. He always exuded such confidence in himself, in not only what he was doing but with the rest of the team members and with me. One of the things he did for me in particular was to deal with the psychology of running in a way to help me develop self-confidence. He would talk to me about my potential, and whenever I doubted him, he would prove me wrong. He would order me to do a particular workout with the rest of the group, and I could do it; many could not. And then he'd say, "Well, you probably were using 60 percent of your capabilities. Next time I give you this workout, I'm going to ask you to do it in the following way, either more repetitions or faster." And next thing you know, I was really beginning to believe him that I did have some potential. And at the end of my sophomore year, I ran a relatively strong half-mile, for a sophomore, and I used that summer between my sophomore and my junior year to lift weights and to run, to work out, and to think more seriously about the possibility that track might be a scholarship.

Mr. Granof: You said you were running the half-mile mostly?

Judge Urbina: Yes. I ran the half-mile, and I ran the quarter-mile. I ran cross-country as well because they needed somebody for that.

Mr. Granof: I wonder where you ran cross-country in Queens?

Judge Urbina: Van Cortand Park in the Bronx. And that's where we'd compete every weekend, in Van Cortland Park. Took the train up to the Bronx. But the workouts were always on the track, round and round and round we'd go.

Mr. Granof: What were the times like for a high school sophomore doing the quarter-mile and half-mile, if you remember?

Judge Urbina: I do remember. I remember my fastest half-mile in my sophomore year I think was 2:08. I think my fastest quarter-mile was maybe 55 or 56 seconds, which were times that weren't going to win me any championships, but they were such a leap from where I was even at the beginning of that season when I was running 2:15, 2:18 for the half-mile. I had been running 63, 62, 59 for a quarter; now I was running 56. I thought, well, you know, this whole phenomenon of working hard and getting a result, this guy -- my track coach -- knows what he's doing. So I matured a little bit over that summer, physically and otherwise, and I started my junior year fully invested in doing well academically, because now I had a goal, and doing well as a track athlete. And in New York there were these Catholic High School Association championships in Madison Square Garden. That was the big event for the indoor season.

Mr. Granof: That was a big event.

Judge Urbina: Indeed it was. I used to love running in Madison Square Garden. They even had a band that would play as people ran around the track. It really was a circus.

Mr. Granof: I can imagine what a kick it must have been, in New York, at Madison Square Garden, which is so iconic.

Judge Urbina: Exactly. I loved all of that. So at the end of the indoor season, they have these championships, CHSA championships at Madison Square Garden. I had not run in any of what they call seeded heats throughout the season, although I had made marked progress, and a couple of the coaches had already started watching me, a couple of college coaches and several of the high school coaches had started watching. But I hadn't done anything spectacular up to that point, so my coach tried to get me in the seeded heat because there was this fellow, JohnWeber, who was from Chiminade High School. Weber was the premier half-miler at the time, and my coach said, "You can beat him."

Mr. Granof: He was from where?

Judge Urbina: Chiminade High School. Do you remember Chiminade? A Catholic high school. I forget exactly where it's located. But my coach said, "You can take him," so he tried to get me in the seed with Weber, but the officials wouldn't let me in because I had not qualified to be in the seeded heat, so I had to run in the unseeded heat. They ran that heat, and he won the seeded heat, and everybody presumed that the people who placed in that heat were going to be first, second, or third. Then they ran my heat, and I won my heat, and I won it two-tenths of a second slower than Weber had. So a lot of eyebrows went up. Then the outdoor season came and I continued my progress to the extent that I won my first two championships with a 1:57. I think it was at Randalls Island, which is part of New York City.

Mr. Granof: So your times really went down.

Judge Urbina: Yes, I was improving, and now the limelight had shifted a little bit. People were beginning to take notice. It's interesting because it doesn't happen nowadays because I don't think track has that kind of appeal anymore, but in those days it was not unusual to see track on the front page of the newspaper.

Mr. Granof: You know, that's my impression, that track was much bigger in the 1950s and 1960s than it is today.

Judge Urbina: Yes. It was on television all the time. They had these relay rivalries between the various colleges, and it was kind of interesting and fun.

Mr. Granof: It gets a big play during the Olympics, but that's about it.

Judge Urbina: That's really it. So as I phased into my senior year, I ran cross-country again and did reasonably well. I was less resistant to the long-distance running. I could see it added value. You know, in the beginning I said why would I want to run this, I'm not going to be a distance runner. But now I could see it had value, even though I wasn't great at it. I was good, but I wasn't great at it. I knew it had value because it was making me stronger. After cross-country, we started running indoors, and now things started happening. This is when things really materialized for me. I was totally undefeated my entire senior year. Every race I ran, whether it was an 800, whether it was a quarter-mile, I mean not relays, in terms of times, I was on a relay that didn't win, but all the individual events I ran, I won. I set records in the 1,000 yards and I set records in the 800 yards. My high school record still stands. In fact, the interesting transitional twist is this: I ran the national championships at Madison Square Garden my senior year, and at

that track meet -- for high school, it's held during the day and then the colleges have the night -- in the afternoon a lot of college coaches come to see the high school runners. So I ran the 1,000, and I won and set the record at the time. Immediately after the meet, two alumni from Georgetown approached me and said, "You know, we'd like to talk to you. We talked to your coach, the coach says it's all right. Would you and your coach mind coming across the street to the hotel?" And I said fine. And that's how I met Steve Benedek, my college coach. It's a funny story. Steve Benedek was an Hungarian refugee who had fled from Hungary because he was being hunted by the Communists. He was a resistance fighter. He also was an Olympian in the Pentathlon, so he was an established athlete. When he came to the United States, he came with nothing but his reputation, and his reputation got him a spot as a coach at Georgetown. He didn't speak English very well, but he was just stunningly handsome, and just stunningly short. Beautiful blue eyes with tan skin and kind of a lot of wild beautiful hair. I walked into the room, and he's not there. The alumni say, "The coach is waiting for you, just step right inside." So I walked through the door and there's the renowned Steve Benedek sitting in a chair, and he's just staring at me. Mind you I'm 17, just turned 17. He waves me over, and I walk over, and he looks at me and he jumps out of his chair and says, "Do you want to be a champion?" But he says it really loud and scary. I said, "Excuse me?" And he says, "Do you want to be a champion?" So next thing I know, I am practically frothing at the mouth, jumping up and down, and saying yes, I want to be a champion. And then he scolds me because he says to me in his broken English, "Ricky, you looked

behind your shoulder when you were going down the home stretch. You do not do that." And I appreciated that, I appreciated him being critical, even though it was a victory. So I was really impressed with this guy. There were the best half-milers in the country at Georgetown at that time, and of course I knew who they were, and some of them would still be there if I went there the next year. Back at the high school, my guidance counselor said, "No, you don't want to go to Harvard," which was also recruiting me. They don't give out scholarships, they give you what they called a work-study, but it's like a scholarship, as you may know. I actually had about thirty scholarship offers my senior year. My high school discouraged me from going to Harvard because they said if you go to those non-Catholic schools you're going to lose your religion.

Mr. Granof: I had heard that, that Catholic schools, certainly in the 1950s and 1960s, were pushing kids into the Catholic college system, Notre Dame and Georgetown, but I don't think that lasted into the 1970s and 1980s.

Judge Urbina: No. The times were very different. You know when I went to Georgetown -- I started in 1963 and graduated in 1967 -- there was not one basketball player of color on the team.

Mr. Granof: Hard to believe.

Judge Urbina: And the coach was heard to say, and not clandestinely, that he didn't want to contaminate the sport. I was the first athlete of color ever recruited by Georgetown, and when I was recruited, there was some resistance among the administration to the coach having done that without going to the administration first to clear this unprecedented commitment.

Mr. Granof: Well, Georgetown, being in Washington, must still have had, at least part of it, that flavor of segregation.

Judge Urbina: Well, I've read the reason why Georgetown's colors are blue and gray is so that it would not offend either side during the Civil War.

Mr. Granof: I didn't know that. Still, Georgetown, academically, in the 1960s, its reputation was as a good school.

Judge Urbina: Oh, it's a wonderful school. And Georgetown's School of Foreign Service was well integrated by the nature of the training it provided. The college had no women. Not one. That changed, I think, just before or just after I graduated. So yes, it was a conservative institution, and the happiest years of my young life were there. I mean I must say it was heaven. It was just absolute heaven. I had a wonderful time socially, and I thought academically they did an outstanding job. Most of the credit for my collegiate academic success belongs to my high school experience.

Mr. Granof: Because they really pushed you?

Judge Urbina: They really did. They really opened up my mind. They really expanded my thinking. They really planted a lot of seeds, which are still growing. That was my high school.

Mr. Granof: So you had a wonderful high school education academically?

Judge Urbina: I did. I had a wonderful high school education academically. Socially, it was limited because it was track and then home. I didn't hang out. I never got in any trouble. I've been asked how I avoided getting into trouble. It's because I was much more afraid of my father than I was of the police. If I ever got into any kind

of trouble, I would have told the police "Execute me right on the spot. Do not take me home."

Mr. Granof: Did your parents come to the track meets?

Judge Urbina: Yes. In the beginning my father was still uncertain about it. It was my mother who in my junior year said, "You should let him do this." In my junior year, when I won my first championship, there was a big article in the Long Island newspaper, so I took it, I put it down in front of my father, and said, "There it is," and from that point on, he was very much in favor of me continuing on. He considered me to be a chip off the old block because he was a successful runner at one point.

Mr. Granof: What did the guys do?

Judge Urbina: Well this was interesting. We had dances. I wasn't in all the cliques. I'd say there was a very active social life, but for the students who got from the first through the fourth year, it was limited because of the demands that the school placed on us. There was, interestingly enough and contrary to what I see nowadays, a lot of encouragement to be involved in extra-curriculars and sports. I think the typical Jesuit mindset was they really felt that cultivating the body was a very important part of cultivating the mind. So between the extra-curriculars and studies, most of the social life was on the weekends. I occasionally would go out with my friends or girls on the weekends, but it was all very modest; it involved a shop or a movie or something, but life was pretty much aimed at doing well in school.

Mr. Granof: It appears that doing well as an athlete and then you were doing well academically, that had to do something for your self-confidence.

Judge Urbina: It did. It really did. And it not only helped me with my self-confidence, but it also provided me with an image, a self-image, that I was able to grasp and hold onto for the remainder of those years. By that I mean I was a dark-skinned Puerto Rican; spoke Spanish before I spoke English; I was in an environment where there was nobody that looked like me; and it was difficult socially because there weren't very many African-American or Puerto Rican girls, so I was limited in who I could date and who I could go out with, especially in those days. So there were things that could have affected me adversely in that respect, but I developed a self-image that was very positive. Because of track in particular. You know, running around in circles and following the coach's orders and getting good results and then reading your name in the newspaper really helped my self-confidence.

Mr. Granof: That must have helped you with your peers as well.

Judge Urbina: It did. In fact, I developed a clique of friends – maybe clique is not a good word. I developed a group of friends who remain close and have a couple of "reunions" a few times a year – we're celebrating our 52nd anniversary reunion this October.

Mr. Granof: That's wonderful.

Judge Urbina: That picture right there [pointing to a picture in his chambers] is one of them. That fellow [pointing], he married a nun just before she took her final vows while she was about to complete her studies. She left the convent for him and they had

ten children. A few of them are doctors, a few are lawyers, and the others are teachers or public servants.

Mr. Granof: It sounds like high school really was just made for you in terms of the academic experience, the athletic experience, and even the social experience.

Judge Urbina: Yes. I developed a lot of respect for many things. You can respect something because you're supposed to respect something, or you can respect something or someone because they've earned it. I went into the experience having respect for what I was about to encounter, and I left the experience feeling respect for what it had done for me.

Mr. Granof: What was your relationship with your brothers at this time? Were they involved at all?

Judge Urbina: I'm trying to think whether they were then back from Korea. One was in the Air Force, and one was in the Marines. Yes, they were back in the latter years. They weren't there during my high school years, the end of high school, beginning of college, they weren't back. My oldest brother and I were always very close. In fact, it was he who I called to make sure that I wasn't missing anything from some of the things we talked about last time, and he's been my mentor and my role model since I was a child. And my other brother, who is just a wonderful, warm human being, very funny and very tough, he also was on the scene, but he didn't go to the track meets. He always kind of led his own life, and it didn't overlap too much with mine. It does now, but it didn't then.

Mr. Granof: So you move on to college, to Georgetown. You're recruited for your athletic ability, but certainly you had the academic ability as well.

Judge Urbina: Yes. They wouldn't recruit someone who they felt would not be able to make it academically, and my grades were good so they felt safe.

Mr. Granof: You're starting at Georgetown and you have to decide what course of study to pursue. In those days, I think, there was less flexibility in the curriculum generally, and fewer choices, but you still had to make some choices.

Judge Urbina: Absolutely. And actually one of the big choices was right from the get-go. When I was a kid, I had made the mistake – doctors in those days would come to your house when you were sick, remember that?

Mr. Granof: Oh yes. They all had M.D. license plates.

Judge Urbina: That's right. Whenever the doctor would come, I'd carry his bag down to the car. My parents thought that was the cutest thing, so they decided I was going to be a doctor. So when I applied to Georgetown, I applied to be in their pre-med program, and after about a year-and-a-half of that, it just ate me alive. Organic chemistry. There were some courses in which I did very well and other courses in which I did not do very well, and I was so used to being successful academically. Organic chemistry just ate me up alive. I determined that as good as my academic background was, I just didn't have the science part of it down well enough, so I decided I was going to have to switch.

Mr. Granof: You lasted a year-and-a-half into it?

Judge Urbina: Yes. I think the initial reaction I had to quitting was disappointment because I knew my parents would be so disappointed. And then I just scrambled to try to find something as a substitute. A couple of the guys on the track team who had just graduated or were about to graduate were going into law school. So I talked

to them, and I decided that there were things about the law that I really found interesting. I had very good experiences in writing when I was in college. I had English teachers who enjoyed my writing, and I had some experiences where public speaking was involved. So I said maybe the law is a match. So I took the LSATs and I did well enough to get into Georgetown Law School on my own. There was no affirmative action involved. So that's the course I pursued.

Mr. Granof: What courses turned you on that you really enjoyed the most?

Judge Urbina: When I switched out of pre-med, I decided I would major in English and Spanish, English with a Spanish major. Spanish, of course, was something I was acquainted with, but I had never studied it formally. I wanted to be able to speak it because I thought it would be beneficial to me to be able to speak the language and assert myself as a Latino in a more credible way. So that was nice. In that niche were a lot of courses I really found fascinating. The history of Latin America, Mexico, the whole conquest of Peru. I realized for the first time that I had a very strong kind of anthropological interest in people, in life, in history. I thought this was fascinating.

Mr. Granof: Also there's a wonderful tradition of Spanish literature.

Judge Urbina: Yes. There was that too. I had some problems reading some of it in Spanish, but it was good, it was very good. Do you speak a foreign language?

Mr. Granof: Well, I can't say I speak French, but that's what I took in college.

Judge Urbina: So you know exactly what I mean when I say that when you learn another language, even if you decide not to speak it later on, your mind goes through something. You have to switch the verbs around. You can say things in one

language that are difficult to translate, so it gives your mind a certain degree of exercise and acuity. So that was that. And then there was English. I really enjoyed English. The teachers were very demanding, but once again, I had had wonderful teachers – one in particular who I hated, but now when I think back was probably one of the most valuable teachers I had in high school – who required us to write a composition of 250-300 words every week with no form of the verb "to be." If there was any form of the verb "to be" in it, he would pick it up and tear it, and you would get zero, which would put a serious dent in your grade point average.

Mr. Granof: Why did he not want you to use any form of the verb "to be"?

Judge Urbina: You know, nobody ever had the courage to ask him. We just did what we were told. But now that I think back, I imagine he wanted us not to be so dependent on the verb "to be." He wanted us to find more dynamic verbs so that we didn't get accustomed to writing by just creating a predicate, putting something in the middle as the form of the verb "to be" with predicates on either side. He wanted us to be creative and to massage language a little bit better. That's what I think he wanted. I really enjoyed the English courses.

Mr. Granof: It doesn't sound like I had anywhere near the kind of rigorous education that you did in high school. It wasn't until college that I was really forced to learn how to write.

Judge Urbina: It's interesting. You're probably wrong. You probably did know how to write very well. I'll tell you something I've noticed. The law clerks that I've hired who have had math and science backgrounds are wonderful writers. Wonderful legal

writers. They seem to have the mechanism for getting to the source of things and explaining it in simple terms. I've had two former math majors as law clerks, and I've noticed their writing skills in both instances.

Mr. Granof: I've always admired people who can just sit down and write and there's a logical flow.

Judge Urbina: And that's the best we can hope for. I think people who tell you that they can sit down and write like that all the time are not telling you the truth. I may have a day where the thoughts flow. Someone once said, "I don't like writing, but I love having written."

Mr. Granof: Judge Kennedy told me that.

Judge Urbina: Really?

Mr. Granof: Yes. I said, "How do you feel about writing," and that's exactly what he said. So you're in college and you decide after about a year-and-a-half that pre-med is not what you really want to do, and you switch to an exciting major, Spanish, with some English, taking some English courses, and you also say you're going to go to law school. When did you make that decision?

Judge Urbina: Let me go back and make sure that I clarify one point. When I took organic chemistry that first year, I pretty much decided while I was in the second semester of that course not to proceed further with it. However, I didn't drop out of pre-med until later because I told myself that what I was going to do was to go back and take organic chemistry again because I dropped out of the course. But I did continue to take the math and other pre-med courses, but even that became so onerous that by the-year-and-a-half, two-year mark, it was over.

Mr. Granof: So when did you decide that you wanted to go to law school?

Judge Urbina: I think it probably was at the end of my junior year, once I had spoken to teammates or former teammates who were in law school. They seemed to be enjoying their experience. I had never seen the law school. I don't think I had ever taken a law-related course other than social studies, something like that, so I was pretty much taking the whole thing as a matter of faith, that this would be the thing for me. And as it turned out, I was right and I was wrong. We're not into that phase yet, but just to give you a little preview, at the end of 1967, my last year in college, I had to make up my mind if I was going to compete for the Olympics, whether I was going to try to train for the Olympic trials. The Olympic trials were here, and then the Olympics were in Mexico in 1968. So in 1967 I got married. I started law school. I was working 25 to 30 hours a week, and I was training so as to qualify to run the Olympic trials here. I don't know whatever possessed me to think I could do all those things at once.

Mr. Granof: I was going to say, how did you train and be in law school the first year? And plus getting married.

Judge Urbina: So my point being that the decision to go to law school as it turns out was a very good one, but it was an uninformed one because first of all, I didn't really know what law school entailed. I found out. And second of all, training for the Olympics and going to law school at the same time, had I had a realistic concept of what that meant, I probably wouldn't have done it. I would've picked one or the other.

Mr. Granof: How did you do it?

Judge Urbina: Well, I found a coach. My college coach was no longer available.

Mr. Granof: Is that because he was involved in other things?

Judge Urbina: The University was getting rid of him because of contentions between him and the administration. They were making way to introduce another coach.

Mr. Granof: You still have tremendous admiration for him.

Judge Urbina: Absolutely. I love him dearly. He has a big ranch out in Olney, Maryland, which, among other things, is a day camp and a horseback-riding academy. For a person who came over to this country with nothing in his pocket, he's now a multi-multi-millionaire. He's a very dynamic man. I'm glad that everything has worked out for him. But I was looking for a coach, and I found a fellow, and he agreed. Actually, I found two -- one at first and then another to train me. Of course I could train only about four days a week because of the other conflicts. I think being able to compartmentalize things in life has its advantages and disadvantages because when I thought of my training, I would think of my training and nothing else. When I went to school, I would think of school and nothing else. When I went to work, I would think of using this job to maximize the benefits of this job, and so forth. But I did not spend enough time stepping back and looking at the relationship between all those things plus my new bride, and so it was a very unhappy year for me. I did qualify to run the Olympic trials. I ran the Olympic trials in California, and I missed by one stride. My first year of law school was not representative of what I felt I could do. Problems in my marriage developed. I blame myself, not anybody else. So it was rough.

Mr. Granof: Tell me about your college career in track, which clearly was successful enough to put you in contention for the Olympics.

Judge Urbina: It was successful. When I was recruited for Georgetown, Georgetown recruited seven individuals, all of us on full scholarships. We had to pay for nothing. And of course I looked at the experience as a job, this was my job, just like my parents said being a good student was my job. This was my job. I took it very seriously. With all due respect to the other people that came in with me, by the time I was a senior, I was the only one left in that group of seven. Three had failed out, three had been injured irreparably. The coach's techniques were harsh. He had that kind of European "pain is good" attitude, which was okay, I survived it. I had my injuries too, but some of the other guys, they just weren't ready for that, and some of them wound up with back, leg, and other problems. But in the meantime, my first year I was on the cross-country team that won what was then called the Big East Championships. My freshman cross-country team won that. And then as a freshman it takes a while to build back up. It's probably the same in other sports, but even if you do very well as a senior in high school, then when you enter college, you're not expecting that first year to rise up the ranks right away; you kind of have to re-establish a base and let your body catch up. So I did well as an athlete; there was nothing spectacular.

Mr. Granof: It's interesting that you were still running cross-country.

Judge Urbina: Oh yes, this coach insisted. Even the sprinters ran cross-country. Even the sprinters would do 15-mile workouts.

Mr. Granof: What were you running primarily, other than cross-country? Were you still doing the half-mile?

Judge Urbina: During cross-country season you just run cross-country. But then indoors it was the 1,000, the 880, the 1,500, an occasional mile, and relays. Georgetown, especially when I was a sophomore, Georgetown had the most – when I got into my sophomore year – the most amazing array of half-milers. Just an amazing array. That was considered to be Georgetown's specialty, the half-milers. Of course, Villanova also had great athletes. There was a tremendous rivalry between us. We won various championships. At one point during my freshman year, the varsity two-mile relay team -- I was ineligible to join that squad because of my freshman status -- ran a world record in the two-mile relay. I joined them the next year, and the team continued to win various championships. I was on teams that ran record times in the mile relay. By the time I was a sophomore, I was running 1:50.1, 1:50.2 relay legs indoors, which was good. And Villanova had great athletes, Tommy Sullivan and Noel Carroll and Ian Hamilton – all these guys from Ireland. It was wonderful. Then my junior year is when I got out on my own because, as I said, the coach put me in featured races running solo for various championships. That's the year I won those races; that's the year I won the Nationals; I was NCAA champion. Everything fell into place. It was very nice. And, of course, in the meantime you're a big man on campus. It was very nice. I didn't have to pursue any women, they all seemed to like me. The teachers knew you. And Georgetown was grateful. The track team was then *the*

athletic team. We had world recognition. We had some of the finest runners anywhere, and the school got a lot of publicity as a result of that.

Mr. Granof: If you were to point to something, what would you point to as your best athletic accomplishment?

Judge Urbina: I'd say my proudest athletic accomplishment would probably be that race in Madison Square Garden, the one with the picture of me crossing the tape that's on the cover of the book my son gave me. My nemeses at the time were two twins who went to Seton Hall. They were just fabulous runners. The last lap one of them passed me and opened up about ten yards, and then I caught him and passed him on the last turn. I think that race was my finest because it called upon me to use the perfect synchronicity between my energy, my strength, and my relaxation. I was confident. There was never a moment in that race when I didn't think I was going to win. Even though he passed me in the last lap, I knew I was going to win this race. And it was a record, it was a national record. But I think probably my best accomplishment as the world sees it was winning the NCAA championship.

Mr. Granof: And that was in what race?

Judge Urbina: That was in the 880. Cobo Hall, in Detroit. That's probably recognized, as far as objective standards, winning the nationals. But the race, the ICA4 championship was probably my proudest.

Mr. Granof: Which leads me to the question I've always wanted to ask runners, which is how much of running is psychological?

Judge Urbina: I'd say a lot of running is psychological, and I appreciate that now more than ever because now I have a better understanding of exactly how psychological it is. You have to be able to fine-tune your body. You have to be able to build your cardiovascular and muscular strength in a way so that a runner can access one's greatest capability. That's why the coach, for example, would have us run sometimes 100, occasionally 130 miles a week. It's so that the body would be strong, the cardiovascular system would be strong, so that when you called upon it, it would be ready to perform. I had many friends who were very talented but who, when they got into a race, could not handle it. Psychologically, something would happen and their muscles would tighten up, and they just could not get their body to perform. It was difficult to get through. It was difficult to understand as to why that happened. I could see running poorly in a workout and running well in a race, but sometimes these guys would have wonderful workouts, but they could not match it in a race. So that leads me to believe that a lot of it is psychological. I think that the body has to be capable of obeying your mind when your mind asks you to relax, no matter how tense the situation. And if your body can "relax" – and I use that word in quotes because I don't want it to mean the conventional kind of relaxation – if you can tell your body to relax, everything comes in tune and your body becomes most capable of responding to what your mind tells it to do.

Mr. Granof: The other question: how did you manage to balance a difficult academic schedule with the demands of being a national championship runner, which as you've said may entail running 130 miles a week? How did you do that?

Judge Urbina: Well, not without some consequences. In the beginning, I was able to do it by just being exhausted all the time.

Mr. Granof: I was going to say, when did you sleep?

Judge Urbina: When you sleep, you really sleep. It takes adaptation. For example, we would work out twice a day. We would work out at 7:00 in the morning and then we would work out approximately 3:30, depending on your class schedule in the afternoon. That would happen during the cross-country season and the outdoor season. During the indoor season, we would work out once a day.

Mr. Granof: How long were these workouts?

Judge Urbina: The cross-country workouts were long; they were two, three hours long. The indoor workouts were not as long but they were rigorous. You would run a quarter-mile and jog a 110 and run a quarter-mile, and you would do that over and over. During the outdoor season, the morning workouts were light. We would go to the upper field, do a lot of stretching, we'd do some quarter-miles, and we'd do this and that, and then the afternoon workout was more rigorous. We would run some time trials or we'd do some volume work. But to answer your question, again, a lot of it would have to do with pacing yourself. That's why social life had to be very carefully monitored because you needed down time. Nutrition was an issue, not because there wasn't food at Georgetown. There was plenty of food, but for example, sometimes if you're starting a workout at 3:30, 4:00, the cafeteria closes at 7:00. If you didn't feel like eating right after you worked out, we'd wind up getting in the car and driving to the Hot Shoppe – there used to be a Hot Shoppe across Key Bridge, remember that one? – and loading up on a bunch

of food at 10:00, 11:00 at night, then hitting the sack, and waking up the next morning. When you're young, as you know, you can do a lot of things, and when you think back on it, you say, how the hell did that happen. But, let me tell you this, my senior year, I ran a race at Madison Square Garden on a Friday night. I remember the race because it was a feature event. I ran against a fellow called Toomey, who was a Marine and was a fabulous runner and who I had beaten a couple of times. The papers had kind of played up the rivalry, although we were friends, and I beat him that night again with a record time. I took a plane that night, flew out to California, and the next day I ran against the Italian international champion in a similar event. He beat me. I took second place. I wasn't able to muster up the finishing speed I needed. I went back, got on the plane, and on the plane I got so sick, the stewardess – they called them stewardesses then – took pity on me. She came over, and covered me up; I was shivering, trembling. I got back to the campus, and I had mono, and a serious case of it. So I stayed in the infirmary for several days. I was just worried to death because I knew I was missing valuable training time, but the bottom line is athletes break down, and I did.

Mr. Granof: So you were balancing all of that. The discipline must be incredible. I don't know if you want to talk about it, but how did you manage to get married?

Judge Urbina: Well, you know, it seemed like I had an agenda. One of the things on my agenda was to get married. I don't know why. Nobody was pushing me, not my wife-to-be or my family, but it seemed to me that that was on my agenda, to establish stability, to go to law school, and try to get into the Olympics. So I was dating a

nurse at the Nursing School at Georgetown, and one day a nurse from Camden, New Jersey came down to stay with another friend of the nurse I was dating. One thing led to another, and next thing you know I started going out with the friend that came down from Camden, New Jersey. She and I hit it off, so she would come down periodically, and I would go to Camden periodically, and we struck up a romance. So when I graduated in 1967, we got married.

Mr. Granof: Where you had the time for romance is something that mystifies me.

Judge Urbina: It mystifies me too. It's amazing to me. I try to think back on how it came to pass, and to tell you the truth, I can't reconstruct it exactly. I know we were very much infatuated with each other, I'll tell you that. Sometimes during the summers we would spend time together, and we had some quality time, but we really didn't know each other as well as we should have. She was a nurse here in town, and she stuck by me the whole way. You asked the question earlier, and maybe we'll end on this one at this point because I can elaborate more, but you asked how I was able to do a number of things. One of the things I needed to do that year, 1967, was to get sponsorship, to get an organization to sponsor me, pay for my way to various meets so I could compete, pay for my equipment, shoes and things in preparation for the Olympic trials.

Mr. Granof: Was this when you were in law school?

Judge Urbina: The summer before starting law school. I needed to find an organization so I could depend on it placing me in the meets and make me competitive. I applied to the New York Athletic Club, and I don't know if you remember from the book I showed you --

Mr. Granof: Vividly. But that's a whole topic that I think is fascinating.

Judge Urbina: So that was one of the things I had planned on.

Mr. Granof: How did your parents feel about you getting married?

Judge Urbina: They liked my choice, and they liked the idea. They thought it would create a type of stability that would be good for me, especially since I was going to be going to law school. They liked her very much and liked her family, and her family liked my family, so all things in that regard seemed just fine.

Mr. Granof: This is probably a good time to end. Thank you for all of your time.

ORAL HISTORY OF JUDGE RICARDO URBINA
THIRD INTERVIEW
11 APRIL 2011

This is the third interview of the Oral History of U.S. District Judge Ricardo Urbina as part of the Oral History Project of the District of Columbia Circuit. The interviewer is Gene Granof. The interview took place in the chambers of Judge Urbina at the United States Courthouse in the District of Columbia on Monday, April 11, 2011 at 12:30 p.m..

Mr. Granof: Last time we talked, I think we got you just about to your first year of law school where, as I recall, you were juggling more than any first-year law student could be expected to do. You had just gotten married, you were competing on a national level in track, and of course enduring all the problems and difficulties of starting first-year law school. So, how did you manage to get through the first year of law school, particularly competing in track, which takes up a lot of time?

Judge Urbina: I think that the main ingredient to being able to get through that first year was ignorance. If I had really thought it through, I would have clearly seen that it was far too much to expect of myself, but in addition to those things that you mention, I was also working 20 to 25 hours a week. What happened was, I was able to organize my time well, and even with good time and organizational skills, I still found that I was deficient in each one of those categories. I wasn't home enough, I wasn't training enough, I was on the job, and that went okay because it wasn't terribly demanding. I was a clerk messenger at Hogan & Hartson. And then there were my studies. Now, at one point I got so burnt out that I decided that maybe I should just drop out of law school. There was this one professor who took a particular interest in me. He noticed that I had kind of stopped going to classes, so he sent a message through one of the other students that he wanted to see me. I went to see him. We had a long talk, and he was an extraordinarily positive

influence on me in that he bolstered my self-confidence, and he urged me to be more realistic in terms of what I was doing and how I was doing it. His advice took hold actually the second year because at the end of that first year I went out to California and I ran the Olympic trials. They took three people, I was fourth.

Mr. Granof: That must have been a disappointment to come that close?

Judge Urbina: Yes, it was a disappointment, but everything happens for a reason. My wife and I, we had some difficulties, but we were able to work them out. I decided to continue working but to cut back on my hours and to spend on other priorities all the time and energy I would have dedicated to running. I stopped running altogether. So that gave me kind of a margin of time and energy that had been misspent, so to speak. So all of that together gave me some kind of new energy, some revitalization, for the second year. But, basically, for the first year that's how it worked, and that's how I managed.

Mr. Granof: Who was the professor?

Judge Urbina: His name was Richard Gordon. He was a Georgetown undergrad alumnus; he was a Georgetown Law graduate; he had been a National Debating champion in undergrad; and he had been a Moot Court champion in law school. I learned about these things much later. For all I knew, he was just another kind of paper-chase type law professor. Apparently he took an interest in me. He noticed, and whatever it is he saw he thought was worth cultivating. So he made a difference. His words, coupled with the experience that I had, a very positive experience I had during my employment at Hogan & Hartson my second year, really re-energized and re-focused me. I parlayed my clerk/messenger job up into a

clerkship, thanks to a junior partner at the firm who tried medical malpractice and personal injury cases primarily, and criminal cases.

Mr. Granof: Who was that?

Judge Urbina: Bob Maynard. He was wonderful. Handsome and just terrifically dynamic, and after accompanying him to court on a few occasions, I appreciated how the law unfolded within this venue as well as the skills of a person who would be trying these factual and legal issues. It was an in-your-face adversarial endeavor that was very much in keeping with my competitive nature.

Mr. Granof: Was this at the end of your first year?

Judge Urbina: This was just as I was beginning my second year.

Mr. Granof: So that was, I think, an unusual experience in that most law students, at least when I was going to law school, did not have the opportunity to translate what they were learning into the real world of practicing law.

Judge Urbina: Right. That's correct. It was unusual for those days. Now many law schools have clinical education programs that give students a chance to actually taste what it's like to work for someone actually practicing law. In those days, everything was very academically oriented; everything came out of the book. At least my recollection is that it was all kind of dry appellate decisions and so forth, but I really got to understand the anatomy of a controversy by watching Maynard in depositions and watching him in the courtroom.

Mr. Granof: Were you on scholarship at Georgetown?

Judge Urbina: No. Undergrad, but not at the law school. I got into the law school on my own merits. I had good law boards, which was a surprise because up until that time I

hadn't done very well on standardized tests, meaning that I did well but I didn't believe that I had ever performed up to par with what I would have expected of myself. But the law boards were fine, so no, I wasn't on scholarship.

Mr. Granof: In those days did you take a prep course to take what today would be the LSAT?

Judge Urbina: No. I read a book. My mother got me a book to prepare for the LSAT, and that was it.

Mr. Granof: So it must have been hard financially without a scholarship even though law school tuition wasn't anywhere near what it is today.

Judge Urbina: I was fortunate because during those days, or in that era, the government was very responsive to student needs, and I applied for financial aid, and I got it. Not only did I get it, but also the installment payments were quite reasonable. And then when I started teaching at Howard Law School in 1974, having graduated in 1970, each year I was there resulted in a certain reduction in the amount of my indebtedness because teaching at Howard was considered to be putting something back into the community. So I never felt, certainly not to the extent that some others felt, and currently what happens, what law students nowadays feel, I never felt that great pressure. When I graduated law school, I thought I was making a lot of money. I was making $12,200 a year, and I thought I had struck it rich.

Mr. Granof: And that was adequate at the time?

Judge Urbina: It wasn't so bad.

Mr. Granof: With regard to your experience in law school, particularly in the first year, were you terrified?

Judge Urbina: Yes. I was terrified. I felt very much out of place. Never having taken any law-related courses, like nowadays you may take some political science or other types of law-related courses in college. I had not done that. I had never even seen the law school before my first day of school. And of course in those days, maybe at other schools, but certainly at Georgetown, they would terrify you. It was "Look to your left, look to your right, one of you won't be here by the end of the year." My recollection is that out of a class of 900, only 600 returned the second year. So they did indeed flunk out one-third in the first year. I was one of very few minorities in the law school. I just felt I was among students who had come well prepared. They knew about business. Not all the students, obviously, but the ones I was paying attention to. They kind of knew about business. Their families had been in business so they had some business background of some kind. So "terrified" is a good word.

Mr. Granof: Was the course fairly standardized in the first year, so you took property and criminal law and civil procedure?

Judge Urbina: Yes, and torts. And most of the courses were year-long courses, so you didn't get an exam until the end of the second semester.

Mr. Granof: Which made it scary because you had no idea how you were doing.

Judge Urbina: Yes, no practice taking exams. I think one of the courses, it might have been torts, gave exams at each semester, the other ones did not.

Mr. Granof: Did they use the Socratic method, which was pretty common in those days?

Judge Urbina: Yes, the Socratic method. And the Socratic method I now appreciate the value of, where you ask a question and then you turn the answer into another question and

so forth, and I appreciate the exercise, but some professors used it I think much more effectively than others, and the ones that used it effectively, by the time they were done with you, you felt, even if you hadn't gotten all the answers correct or if you hadn't cracked the logic that he was interested in, you felt more acquainted with what you were supposed to know and had better insight into the process. Other professors, on the other hand, would just kind of demean and criticize and make fun; it was not a very positive reinforcement.

Mr. Granof: Particularly the first year, it seems to me that they try to train you to "think like a lawyer," and at least the second year, they're trying to bore you to death. I don't know if that was your experience?

Judge Urbina: I think actually the way it goes is, and I don't disagree with this platitude, first year they would scare you to death; second year they work you to death; third year they bore you to death.

Mr. Granof: I think that's right. At least some courses, I think tax was a required course, and I found that tax was a very difficult subject to teach with the Socratic method.

Judge Urbina: Right. As was civil procedure. A couple courses just did not lend themselves to that, but I will say this, that after my first year and having performed not up to par and feeling very much on the edge of deciding not to proceed, I did find that when I came back the second year that a lot of what I learned the first year really took root and the thinking process had improved significantly.

Mr. Granof: So you felt more comfortable the second year?

Judge Urbina: Yes. And I liked the courses the second year. I liked commercial paper, both sales and transactions, and evidence. It all wasn't so strange as it had been the first year.

Mr. Granof: You continued to work at Hogan throughout your second year?

Judge Urbina: Yes. I continued to work at Hogan for the first semester of the second year. The gentleman I mentioned, Bob Maynard, decided to move back to Cincinnati, which is where he was from, and I decided that, again, that provided a margin of time that I could better spend doing my school work. So then the second semester of my second year I didn't work. And then in my third year, I volunteered as an investigator for the Public Defender Service here in town.

Mr. Granof: I'm curious; you had been essentially high performing as an athlete during your first year, shooting for the Olympic trials, and then you said you cut it off. So did you get exercise?

Judge Urbina: I continued to jog and run, but it became kind of an adjunct to my daily routine. I truly needed the exercise in order to keep a relatively stress-free mind.

Mr. Granof: I can understand that.

Judge Urbina: I totally gave up the urge to be competitive.

Mr. Granof: During your three years of law school, is there anything in particular that stands out in your law school experience, anything that really turned you on or interested you?

Judge Urbina: There are a couple of things, one that not necessarily turned me on but really grounded me in a better understanding of what I was doing and what I hoped to do. First of all, it was the era of the Civil Rights Movement, and I was fortunate

enough to be around many bright people at the law school – plenty of bright people there – minorities, African-American, Latino people, out in the community that were motivated. And of course in the study of law I necessarily encountered very important cases that were emerging at the time.

It was a revolution, so to speak, in the criminal law around that time in terms of individual rights and liberties, so all of that prompted me to look more closely at what it is I might be doing in light of those interests. One of the things that was unfortunate about that period was that during my first year of law school, I was still training in hopes of getting to the Olympics, I applied to an organization in New York, an athletic club, that I hoped would accept me and sponsor me, as I needed some sort of sponsorship to help me move about the country from time to time to compete in events, keep up my training, and at the same retain a certain amount of qualified eligibility to run in other meets.

Mr. Granof: I'm glad you mentioned that because that was such an important part of our discussions, and I wouldn't want to skip over that. And this was what year?

Judge Urbina: It would have been going from my first year to the second year, so 1967 to 1968.

Mr. Granof: This was a time after college when in order to compete you needed a sponsorship?

Judge Urbina: Yes, I needed a club, and there were several clubs that would pay for your way to run an important track meet, say in Detroit, or meets that would have the kind of visibility but at the same time that were official AAU meets that would record your time and retain that time as a qualifying time or would enter your time as a potential qualifying time for the final group that would be permitted to compete at the Olympic trials. I needed shoes, I needed equipment, and so forth, and all my

friends -- the ones that had decided to continue running after law school and were from the New Jersey/New York area -- had applied to the New York Athletic Club for sponsorship and had been admitted.

Mr. Granof: Which is a good deal?

Judge Urbina: Absolutely. That was it, that was the paramount organization, quintessential organization for promoting the success of athletes, I thought, from that area. All my friends had gotten in, my roommate had gotten in, another fellow with whom I ran, Bob Zuminsky had gotten in, Jim McDermott, all these fellows who were really fine athletes and who wanted to continue running had gotten in. But when I applied, I got silence and then when I followed it up, I got a letter back saying that their quota had been filled. I don't know if I was naïve. I knew about the New York AC's policies during my college years because the New York AC was infamous: they were exclusionary, they didn't permit Jews, they didn't permit Latinos, they didn't permit minority people period to join, and I found this quite incongruous for a club in the middle of New York. You might have thought something like that could happen in Alabama or Mississippi, but New York? So I said now that I'm credentialed, I've run well, I've been a national champion and so forth, their policy will change. Well, it did not change. So a couple of my fellow law students had parents who were quite well placed in the legal community in New York and who became interested in this issue. The issue got some visibility when Frank Lipski, who was a writer for the *New York Times* -- I think I showed you some of his writings -- he just died recently, he was a well-known sports writer, and he took umbrage at this. He flew down, met with me,

wrote a series of articles about this, and because of those articles, people became interested, and some of the law student colleagues of mine came and said, "My father's very interested in representing you." Well, for better or for worse I felt that I did not want to get any more distracted than I already was, that getting myself entrenched in litigation while I was trying to study was probably not a good idea. I had other alternatives, so I joined the Philadelphia Pioneers Club, which was then a wealthy club and was very interested in having me run with it, and they wound up helping me go where I needed to go and pay my expenses and so forth, and were delighted to do so. To this day, I still have some mixed feelings about whether I did the right thing, whether I should have invested myself more in fighting this battle because I know the inequities affected other people after me, although I understand that since then the policy has changed.

Mr. Granof: You would think that it would after a generation.

Judge Urbina: Maybe they changed a while ago; I have not tracked it. Up until about 15 years ago, I am sure those policies were still in place. Because my brother, Al, lives in New York, my other brother lives upstate in New York, but the New York AC was infamous for that type of thing.

Mr. Granof: It's amazing that they kept that going, up to 15 years ago.

Judge Urbina: Well, their position was, "We're a private club. We can accept whomever we want, we can reject whomever we want," and they never stated it was along racial lines.

Mr. Granof: So it was very subtle, or at least they tried to keep it subtle.

Judge Urbina: Well they certainly didn't make it easy. The facts speak for themselves, but they didn't make it easy. I think discrimination was morphing into, as you said, something more subtle than it had been in the past.

Mr. Granof: Were there some repercussions for the New York Athletic Club in terms of the publicity beyond this?

Judge Urbina: Yes, there were. The New York Athletic Club was the sponsor of a couple of truly important track meets. As I mentioned previously, track was then a much more popular sport. There was weekly television coverage of track meets, and the NYAC organized a meet every year, an indoor track meet, that was the premier meet where people would compete in preparation for the Melrose Games, which was a very popular international event. While I was a first year law student, Georgetown and other schools decided in protest not to go to that meet, and interestingly enough, my arch-nemesis when I was a runner at Georgetown, a fellow by the name of David Patrick who was a fabulous miler and half-miler, led the protest for Villanova, and about half of the schools, the big-name schools, bowed out of the meet because of what they learned about the New York AC's policy.

Mr. Granof: Apparently this did not cause the New York AC to change its policy.

Judge Urbina: No. I'll tell you another interesting story because I think it's relevant to this. When I was a senior, we ran a track meet outdoors, and the year before I ran, Tommy Ferrell, who was a very well-known half-miler and was an Olympian, had won this meet in the half-mile, and I was rostered to run that event, and the meet was run by the New York AC. This is when I was a senior. So the

New York AC went out of its way – this is my opinion – to bring in the best half-milers they could. There were several wonderful half-milers from Ireland who were well known, Noel Carroll, Ian Hamilton, and others, and they wanted to capture this meet. Villanova wanted to capture the meet, but the New York AC wanted, in my opinion, to make sure that this feature event was captured by someone that they viewed approvingly. Bob Zuminsky was on my team, and with David Patrick and Ian Hamilton, it was a star-studded field. We ran the race. I won the race. At the end of the race, two coaches came over and said, "You broke the record." I said, "Oh really." Actually, the timers, who were from the New York AC, said that the record was unofficial because only two of the three timers actually timed the race.

Mr. Granof: And you think that was fishy?

Judge Urbina: Absolutely. And everybody else thought it was fishy too. You don't forget to start your stopwatch at a feature event.

Mr. Granof: To me, it's just astounding because it resonates back to the 1936 Olympics with Jesse Owens in Germany.

Judge Urbina: You know who Avery Brundage was, right?

Mr. Granof: Yes.

Judge Urbina: Okay, well he was very involved, he was the head of the AAU, he was also very involved with the New York AC, and there was a whole policy that he dictated in the area of track and field.

Mr. Granof: So he was a bigot?

Judge Urbina: I think it's safe to say that. I think his own colleagues said so. So, yes.

Mr. Granof: It's just amazing. That's quite a story. I guess in the end it had a happy ending in the sense that time and events have caused the New York AC to change, and hopefully they have different people.

Judge Urbina: Well, everything had a happy ending. This is why I can look back even at situations that were certainly intensely unpleasant at the time and say that everything happens for a reason. I mean, if I had made it to the Olympics, who knows, maybe I would have quit law school; maybe I wouldn't be a judge. And as I review the things in my life that have occurred, my wife, my children, everything, seems to be the product of the fortunate and the unfortunate. When I say the unfortunate, I mean the fact that even when things were not as I planned, they developed beautifully.

Mr. Granof: That may be because you have certain qualities. No matter what you would have done, you would have probably finished successfully.

Judge Urbina: I'd like to think so, but I think I've been very fortunate that things have fallen into place in my life.

Mr. Granof: Getting back to the academics of law school, are there any professors that stood out particularly?

Judge Urbina: One that stood out was Sam Dash. Remember him?

Mr. Granof: Oh, yes. He was the district attorney of Philadelphia at that point.

Judge Urbina: Exactly. Very famous, Hoffa trials, the whole thing. He was my Criminal Law professor, and he was very tough.

Mr. Granof: So you really had expert teaching.

Judge Urbina: Oh boy, did I. And again, people would tell war stories about him, and he would tell a few about himself, but when you're there, you're not as impressed as when later on you look back at it. So yes, he was one of those people who left a powerful impression on me. There were two professors who taught a course together, one was Edwin Cantor, and the other I think was Stuart Greenberg. One was a lawyer and a doctor, the other was a lawyer, and they taught a course called Legal Medical Practice. As you know, I had had an interest way back in medicine, and so the topic was interesting to me, and they taught the course together, and they were just exquisite. It was a beautifully well-balanced course. They did not overwork us, but at the same time, they were very demanding and their interplay, the way they complemented each other, and the way they comment and agree and disagree, it came just at the right time as I was developing this appreciation for litigation. This was another example of how important litigation is, and how important it is to avoid it if you could. So yes, I think those two gentlemen were wonderful. And one other fellow who cultivated a real interest in torts for me, which I ultimately wound up teaching on the law school level, was Professor Crabb, but I can't remember his first name. He wasn't a particularly dynamic fellow. He was small, and he had a wonderful grasp of ideas. He was not a paper-chase type professor, but he knew how to ask questions, and he would go from student to student and often would include me, even when I didn't raise my hand. After a while I did raise my hand because I really enjoyed him and he wasn't one of those intimidating teachers. He knew how to ask questions and he knew how to use the Socratic method in ways that

were not embarrassing or demeaning but were, as I said earlier, stimulating and helped you turn your own consciousness on itself, as to how you were thinking. He was very good, and I've always had a real affection for torts, I really enjoyed torts, and I think that's how it started.

Mr. Granof: So it appears that you took an interest in litigation. It looks like that was where you were headed.

Judge Urbina: Yes. You know, if my parents had been involved in business, I might have gone into the business end of it. Litigation involved the powers of persuasion. When I was in high school, I had one very good experience on my feet, and that was during a debate. I had an English teacher who was just superb – I hated him, but he was wonderful – and that good experience on my feet left me with an impression that I could probably be good on my feet at some other point in time. But that didn't happen until much later, when I began to see what it was like working with jurors and looking them in the eye and using the power of personality as a foundation for the power of persuasion.

Mr. Granof: Did you have any clinical experience other than with Mr. Maynard?

Judge Urbina: I did go to a couple of trials as an investigator for the Public Defender Service.

Mr. Granof: And that was in your third year?

Judge Urbina: That's correct. And all the criminal trials were here in the U.S. District Court because there was no Superior Court until 1971. All the criminal cases in the District of Columbia up until then were tried in the U.S. District Court. And then the Superior Court was created, and that's when things changed. But the point is that I would come over here to the federal court two or three times during that

semester and watch the trials, watch Judge Bryant, and I'd watch Judge Waddy, and I'd watch Judge Jones and Judge Pratt, and I got a really kind of interesting impression of the judge's function, but more specifically, of the trial process and the blend of qualities and characteristics and disciplines that one needed to engage.

Mr. Granof: That's an extraordinary experience in law school, so you were very fortunate.

Judge Urbina: I was very fortunate. It wasn't that I sat down and drew up a plan. I just instinctively did this and that, trying to find a way to feel more and more comfortable, and that's what ultimately happened. I was recruited out of law school by the Public Defender.

Mr. Granof: So you get to your third year of law school, and you're working as an investigator. That must have given you an exposure to some interesting cases.

Judge Urbina: Yes, it did, and some serious cases. I worked on two rape cases, two murder cases, and a couple of other cases. Three of them actually got to court on motions. I remember one experience in which the lawyer for the Public Defender Service with whom I was litigating filed a motion to suppress evidence. The motion came before Judge Bryant.

Mr. Granof: Who the courthouse is named after?

Judge Urbina: Exactly. It was a house that was under surveillance in Georgetown, and there was a very strong suspicion, rising to probable cause in the issuance of a search warrant, that marijuana was being stored there and then shipped off to purchasers. In Georgetown if a house is on two streets, the first floor on one street may be the second or third floor on the other because the houses are built on hills. The search

warrant was defective in that it authorized a search of the second floor, not the third floor, and when the warrant was executed, they found the stuff on the third floor. The lawyer I was working for said that's not what the warrant says. I said to myself, "I want to see how the judge resolves this one" because it was just a plain mistake.

Mr. Granof: So how did he resolve it?

Judge Urbina: He said the evidence is suppressed because the warrant was not correct, and it was certainly not exact,. He said that when you're going to surveil a house, and you're going to invade people's privacy, even if it's a house where there's marijuana, the warrant has to be correct and exact. I thought that was interesting.

Mr. Granof: You graduated from law school in 1970?

Judge Urbina: Exactly, and I took the bar in 1970. And then we had to wait for the results. This is kind of a cute story. In those days, *The Washington Post* had the names of the people who passed the bar the night before they actually came out officially. I was having dinner with a priest that night, and I excused myself for a minute, and I went to the phone and I called *The Washington Post* and asked if they had the results of the bar exam. This was in November. The bar exam had been in July. They said they did, and I asked if they had a minute to look and see if I made it. "Yeah, sure, what's your name?" I said, "Urbina, U-R-B-I-N-A, first name, Ricardo." There's this long, long pause. I hear him flipping, flipping, flipping, and then flipping back, flipping back. I was thinking "Oh no, oh no." So he says, "I'm sorry, your name's not here." I said, "Are you sure?" He says, "Yeah, Urbina, R-U-B-I-N-A." I said, "No, no, no, U-R…." So he goes back, "Yeah,

it's here, it's here!" It was heart attack city. But anyway, so in 1971, working for the Public Defender, after I just passed the bar they started giving me cases. I tried my first murder case when I was 25, in 1971. I tried three others before I left the Public Defender, but the first one involved a young lady who had shot her boyfriend between the eyes accidentally. I felt that I was equipped on a technical level, but I felt kind of emotionally overwhelmed by the responsibility of representing this woman who was definitely going to prison if – the case was before probably one of the smartest judges I've ever appeared before, and that was Leonard Braman. Do you know him?

Mr. Granof: I've heard the name, yes.

Judge Urbina: Wonderful judge. Very technical oriented and tough.

Mr. Granof: He was a Superior Court judge, right?

Judge Urbina: Yes, Superior Court judge. And then I tried another murder case. It was a shooting at the Whitelaw Hotel. I don't know if you know where that is. It's downtown here, and was a Whitelaw Hotel back from the 1800s when only white people could stay there, but it's located in an African-American part of the city. This fellow was patrolling the halls – it was a very bad neighborhood in those days – with a shotgun at the request of the owner, and some other guy had it out for him. The long and the short of it is that the other guy started coming up the stairs, and the defendant raised his rifle and shot, and the bullet went through the door, ricocheted off the stairwell, ricocheted off that door, and as the guy was coming up the stairs, hit him, and he died. The wonderful lawyer that I worked with, Paul Chernoff, was lead counsel and is now a judge in Massachusetts. I

don't know if you know him. Paul Chernoff. I had this big Afro, and they still tease me over at the Public Defender's because they still have a picture of me. We went to the Whitelaw Hotel and we drew string to track the path of the bullet to demonstrate that it could not have been an intentional killing, that he was just trying to scare the guy, because the guy wasn't even within sight. We tracked the bullet, and I was peeking out as though I was shooting a gun. Ultimately, the government dismissed the case.

Mr. Granof: That's an extraordinary story.

Judge Urbina: And that's Paul Chernoff. All I did was tag along on that one. It was very interesting.

Mr. Granof: Let me go back just a little bit. It occurred to me that you were in law school in 1968, correct?

Judge Urbina: Yes.

Mr. Granof: And 1968 was certainly a time of troubles in D.C.

Judge Urbina: Indeed. On the day the riots started, I drove through the riots on my motorcycle on my way home, and it was a terribly emotional experience for me. I remember stopping at a light on the way home, not far from me, it must have been maybe L Street, and this crowd came down the street, and they picked up a trashcan and threw it through the window of a liquor store. Everyone was so angry because of the death of Martin Luther King. There were a lot of protests. It was a time when you could not help but think about what was happening in this country.

Mr. Granof: So you get to your third year of law school, and you've been an investigator, and I don't know how many cases you handled as an investigator.

Judge Urbina: Not that many. Maybe five or six cases, where I actually went out and spoke to witnesses. I sat in on the briefings on other cases, but maybe five or six at most.

Mr. Granof: And clearly your experience gave you a taste for this kind of litigation. So you get to your third year. Was there a military draft at that point?

Judge Urbina: Yes, there was a draft. I took my physical at Fort Holabird., and I failed it because I'm asthmatic.

Mr. Granof: So you didn't have to worry about that?

Judge Urbina: No. I wasn't a 4F, but I was low on the totem pole.

Mr. Granof: Vietnam was still in the picture.

Judge Urbina: Yes. Vietnam was still in the picture.

Mr. Granof: So essentially you had to make a decision as to what you're going to do after law school. When did you make a decision, and how did you make it?

Judge Urbina: Well, I applied to the Public Defender Service. I remember writing the letter, and I got a letter of support from Stan Harris, who was then a partner at Hogan & Hartson and who took a liking to me. He later became Judge of the Superior Court and subsequently of this court. I figured that I wanted to do something that was more or less public interest and in keeping with my desire to make a difference. Again, because I didn't have a business background, I didn't think that it was realistic for me to think about business law. I didn't have the confidence to pursue anything along those lines, certainly not by myself. So while I was trying to make up my mind, I applied to the PDS. I got an interview and then I got the acceptance, I didn't really have to do very much after that.

Mr. Granof: Did you apply elsewhere?

Judge Urbina: No, I never applied anywhere else because this was what I wanted, and it happened.

Mr. Granof: Was this a time, unlike say the present and the past ten years, in which students particularly were very conscious of moving into public service or doing things that made a difference?

Judge Urbina: I can't say generally, but if I had to guess, I would say most of the Georgetown people went into business.

Mr. Granof: Law firms? Or corporate counsels' offices?

Judge Urbina: Yes, law firms or business-oriented. Yes. That's what I think. Now, the most outspoken people in the class, meaning people who not only spoke out in class but people who made their ambitions known, all wanted to go into the criminal law arena. They wanted to be Edward Bennett Williams or they wanted to be F. Lee Bailey. So there was that kind of contingent of, you know, "I'm going to be a great criminal lawyer." Joe diGenova was in my class; he became the United States Attorney, first an Assistant and then the United States Attorney. So there was a movement towards that type of work, but I wouldn't say there was a big surge to get into public service. Maybe at Howard Law School, where there was a different mindset.

Mr. Granof: So your third year you get accepted at the Public Defender's. I presume you have to go through a bar review course?

Judge Urbina: Yes. I did that. I took the bar review course while I was in school. I think this was the first time that Bar-Bri was offered, and Sherm Cohen, who was a professor at Georgetown, started Bar-Bri, and I took that course, and I took my

time with it. I started studying for the bar in March and took the exam in July. So I took the long course. I could not imagine why some of my friends wanted to take this three or four week course and kind of cram everything in. That didn't make sense to me. So I took the longer course where you go on the weekends and then at the end it's a kind of repetition. The intensified course is the one that the other people take, but you've already been through the less-intensified program. So I took the bar, and I found out in November, and I passed it the first time.

Mr. Granof: So here you are, you're a lawyer, and you're at the Public Defender's where you had some understanding, some experience of what they do and how they do it, and you report for work, and what do they say, "Here's your first case?"

Judge Urbina: Well, that's a good question because I have such vivid memories of this. The Public Defender's Service was then known as the Legal Aid Agency.

Mr. Granof: How big was it? How many lawyers?

Judge Urbina: I'd say nine or ten.

Mr. Granof: So it was small?

Judge Urbina: Very small. And it was just in transition to becoming the Public Defender Service. It was what was called the Community Defense Organization, CDO.

Mr. Granof: Funded by the government?

Judge Urbina: Funded by the government. Exactly. And so there were a few lawyers there who had been there for a couple years. They were very experienced; there was a class of lawyers, my class that came in. I was one of four minority people that came in that group, and I got a supervisor, Larry Schwartz. I don't know if you've ever heard of him. He was wonderful. He's passed away at a very young age. It was

a very collegial, intense environment in that the training was very intense. You went through a three-week training program, from 7:00 or 8:00 in the morning until whenever it was over, sometimes 7:00 or 8:00 at night.

Mr. Granof: I'm curious what the training consisted of. Was it like the National Institute of Trial Advocacy – NITA – program?

Judge Urbina: Yes, it was something like that. You got a lot of materials to read, you got a lot of cases to read, there was some aspect of lecture, but a lot of it was dealing with direct examination, hypotheticals, exercises – direct examination, cross examination.

Mr. Granof: Putting you through a mock trial?

Judge Urbina: Exactly. How to deal with the burden of proof and that type of thing over and over and over again. And then at the end of that training, you got a caseload, and you were to report to your supervisor, but these cases were yours.

Mr. Granof: How many cases did they assign you?

Judge Urbina: Well, it wasn't terribly onerous. The most number of cases I had at any one time was 50.

Mr. Granof: That's a lot.

Judge Urbina: It is a lot of cases. But fortunately they weren't all coming to trial at the same time so they were at various stages. So if a case was coming to trial, I also was looking at the investigation of another case, so I was engaged in different aspects of trial preparation or case preparation.

Mr. Granof: Did you have an investigator to help you?

Judge Urbina: I did. A law student. I actually had three, and they were all very good. One of them later on became president of the bar.

Mr. Granof: Who is the person that became president of the bar?

Judge Urbina: I'm trying to remember her name. Very, very lovely lady. Her name will come back to me. She was president of the bar here, if I recall. She and a friend of hers did criminal investigations for us. She was at Georgetown at the time.

Mr. Granof: So they give you cases to start, and do they give you, I wouldn't say easier cases, but the less serious cases, or did they give you a major felony to start with?

Judge Urbina: No. That's an important question, and as you ask it, it comes back to me. I started off by dealing with juvenile cases. In those days, juvenile cases were jury trials. It was before *McKeiver v. Pennsylvania* where the Supreme Court decided that the Constitution did not entitle juveniles to jury trials.

Mr. Granof: What was the case you just mentioned?

Judge Urbina: *McKeiver v. Pennsylvania*. And so even before I got the results of my bar exam, I was assigned to the Family Division of the court where I would help. Under the Student Practice Rule, because I hadn't gotten admitted to the bar yet, I would represent juveniles who were charged, and I would try to work out the bond situation when they came before a commissioner. In those days they were commissioners. I would try to arrange for this person to either go home or to go to an appropriate facility if it was a drug issue. So I got my feet wet there.

Mr. Granof: Some of these juvenile cases can be serious -- major felony cases -- but I don't know if they started you out with that?

Judge Urbina: No, my recollection is that they were mostly misdemeanor type cases for the first month or two and then some of the more serious cases began to pop in.

Mr. Granof: Such as?

Judge Urbina: This homicide case where this young lady shot her boyfriend.

Mr. Granof: The misdemeanor cases were?

Judge Urbina: They were almost all petty larceny, disorderly conduct, soliciting for prostitution, simple assault. Now in those days, simple assault was a misdemeanor but it was jury triable. Unlawful entry. That's pretty much it. Oh, carrying a concealed weapon.

Mr. Granof: So you get your first jury trial case. Do you remember your first jury trial? I'm sure you do.

Judge Urbina: I definitely remember it. It's the one that I mentioned where the young lady shot her boyfriend.

Mr. Granof: The first jury trial case you had was a homicide?

Judge Urbina: Yes. And because she was a juvenile at the time, if I lost the case she would be put in an institution until she was 21. They did not view it as being the same as an adult homicide case, which would be a different story. The interesting thing about this case was that this young lady was from the south, North Carolina, and had come to Washington, D.C. to live with her aunt because the conditions down south were not good for her. So while living with her aunt she took up with this fellow who was a city guy and looked slick, and they got to liking each other a lot. He was kind of a juvenile delinquent type, he had a gun, and he brought it over one day. The long and short of it is that she was playing with it and it went

off and shot the guy exactly right between the eyes. So during the trial – this is the one before Judge Leonard Braman – during the trial, the prosecutor comes over, and this is during the government's case, and he says, "Are you going to put your client on the stand?" and I said, "No, I don't think so," and he said, "I think you better." "Why's that?" "Because we've got a bit of evidence that you may not know about yet." I said, "What is that?" He says, "Well, your client is pregnant, and she's pregnant by the deceased, and I've got a witness who's going to get on the stand and say that she was violently jealous of the fact that the deceased was seeing other women and one in particular," and there lies the motive. But up until then, it was an accident. What else could it have been? It was an accident. She loves the guy.

Mr. Granof: So in the middle of the trial, he dumps this on you?

Judge Urbina: Yes, and she had not said a word about this, nothing. So I took her back, and we had this conversation. I said, "I may have to put you on the stand, are you ready for that?" and she says yes. So I put her on the stand, and she testified that she wouldn't kill him if she was going to have his baby, which is a pretty powerful argument. So she was acquitted, and she went right back to North Carolina right after that. It wasn't a causation issue, it was just a matter of intent; did she intend to do this or not? That was the only issue the jury really had to focus on.

Mr. Granof: You must have felt pretty good about that.

Judge Urbina: I felt great. I mean I felt proud and I felt happy because I knew my supervisor was going to be happy.

Mr. Granof: Who was the head of the PDS?

Judge Urbina: A woman named Barbara Babcock. The PDS was criticized for not having enough minority lawyers, and Barbara Babcock made an effort to remedy that. She had recruited me from law school, and so when I came there were three other African-American attorneys, and I think we felt, certainly a couple of us at least felt, because I remember when we had this conversation, that it was important for us to live up to the standards, and to demonstrate that we could live up to the standards, of the office. So that was another reason why that victory at the outset was kind of real fun.

Mr. Granof: The name Barbara Babcock rings a bell. Was she an assistant attorney general at some point?

Judge Urbina: Yes, and indeed she was in town recently to celebrate the 40th anniversary of the Public Defender Service. I saw her, and during a reception, I publicly thanked her for going out of her way to recruit me and other minority attorneys. And later on she came back to me and said "Thank you very much for saying that."

Mr. Granof: I don't see how the Public Defender Service could have functioned on into the 1970s and 1980s given the demographics of Washington as an elite white institution.

Judge Urbina: True. But Barbara Babcock was ahead of the curve, and you have to remember that here at the U.S. District Court, for example, there were almost no minority law clerks. There were a couple of minority judges when I started here, but prior to that time, there were almost no minority judges. The Public Defender Service in the District of Columbia was then -- and still is -- considered to be the best in the country because it started this tradition of recruiting only the elite. Several of

the people that came in were either from Ivy League schools or were just brilliant law review people, and you didn't always find minorities among that strata of the legal community. But as you can see, it still is the premier public defender service in the country and it certainly hasn't suffered from the fact that it's well populated by minorities.

Mr. Granof: And one of the reasons that it's an attractive place to work is it's one of the few places that you can get hands-on trial experience?

Judge Urbina: True. On the defender's side, yes. Plus it's in an ideal locale, and you have federal prosecutors trying the cases even though you're in a state court.

Mr. Granof: What difference would that make? Are they better quality lawyers?

Judge Urbina: Oh, yes. The assistant U.S. attorneys are very high quality, high technical quality trial attorneys. They go through a lot of training, they're very carefully screened, they're well-credentialed, and usually they have had some years of experience before they're invited to come on. It's a very difficult position to get, and it's understood to be a position from which you can launch into just about anything you want to do, because when you come out of the U.S. Attorney's Office, people know you've worked under pressure, you've done trial work, you've been where the rubber hits the road. To have that on the state level as well as on the federal level means that you as a defender have to deal with that.

Mr. Granof: So you're trying a whole different variety of cases.

Judge Urbina: Variety of cases and quality of representation on the government's side.

Mr. Granof: How long were you with the Public Defender Service?

Judge Urbina: A little over two years and then a good friend from law school, Howard Libby and I, decided that we'd go into private practice. His family was a wealthy real estate family here in Washington, he was from Washington, and his family and I got along very well, and he and I got along very well, and he was going to do mostly commercial litigation, which I was willing to learn. Again, I didn't have the business background, but at this point, I believed that I could learn almost anything.

Mr. Granof: Because you were a litigator? That's the way litigators think.

Judge Urbina: That's exactly right. That's exactly correct. So we tried it, and the assumption, or the presumption, that we had premised our partnership on was that we would get plenty of overflow business from his parents' real estate. His father wasn't a lawyer, but he was a very successful real estate businessman. That didn't happen. I guess these people, these people meaning the potential clients, didn't want to entrust their big money deals to these two guys who are wet behind the ears. So we got some business, but I had to go back into criminal law in order to make sure the firm made money, and that's when I had some of the most interesting cases that I tried before going to Howard three years later to teach.

Mr. Granof: Let me finish up with the Public Defender Service. You were there for approximately two years. How many cases would you say you tried over that period?

Judge Urbina: I'd say I tried 14 felony cases, about half of them non-jury trials.

Mr. Granof: Jury trials?

Judge Urbina About seven or eight jury trials, including jury trials for juveniles that would have been felonies if brought against an adult, for example murder. I'd say of those, I'd say that I had six of those juvenile cases, and the rest were just felony cases.

Mr. Granof: But a jury trial is a jury trial whether it involves a juvenile or not.

Judge Urbina: Yes. And the thing was that the cases came very quickly. In fact, there was a joke that I would never make it to thirteen in a row because thirteen is an unlucky number. Jury and non-jury verdicts, I had twelve acquittals in a row, and I was shooting for thirteen, and thirteen was a mixed verdict, so I didn't get a full acquittal.

Mr. Granof: So you had twelve acquittals in a row?

Judge Urbina: Yes, in a row. And, yes, I did.

Mr. Granof: That's a terrific record.

Judge Urbina: It is. I don't want to take full credit for it because the training was good and the cases were right. I tried cases that could be won. I didn't have clients that said "I don't care, just try the case, I know there's no chance." And usually the client would say, well you know, "What do you think?" And I'd tell them, and if I felt we could win it, I'd say I couldn't guarantee, but there's a chance we could win this. So that's what we did.

Mr. Granof: And you had clients as well that you told this is the time to get a plea?

Judge Urbina: Yes, and there were times when I would go to the U.S. Attorney and say, "Listen, this guy has had a bad life, his mother's a junkie." And I would try to do the things that lawyers do when they're trying to present the other side of the equation to the prosecutor.

Mr. Granof: So you had a terrific record. Irving Younger, the noted teacher of evidence and trial tactics, says that to be an experienced jury trial lawyer you need 25 cases under your belt, and the only place you get it is either the U.S. Attorney's Office or the Public Defender's or something similar. And you accomplished that.

Judge Urbina: Yes, I mean certainly before I came on the bench I had more than 25 under my belt because I got to try several felony cases while I was teaching at Howard Law School. The deans at the law school -- and I served under three or four of them -- were trial attorneys. So when I told them that if I'm going to teach criminal procedure, if I'm going to direct a criminal justice clinic, I have to have ongoing experience in that; otherwise, I'm teaching from a limited basis. They all understood, and they said just don't let that interfere with your teaching.

Mr. Granof: You tried 25 cases over a two-year period?

Judge Urbina: Twenty cases, yes. During my Public Defender service I tried about 14 felony cases, and about half were jury trials. During my seven years on the Howard faculty I tried some additional cases on my own or in a supervisory capacity.

Mr. Granof: Plus handling other cases in which you had to decide whether to go to trial or get a plea? That must have been fairly intense.

Judge Urbina: It was. And I'd say as I look back that I had the best of both worlds because while I was at the Public Defender Service I had a bevy of incredibly bright and supportive colleagues. Then when I went into private practice, even then, even if I was doing some civil stuff, some depositions, and this and that, I was still able to return to the criminal practice to kind of reinforce me. And then when I was at Howard, I had an army of students who were dying to help me. So I had the best

of both worlds because I never lacked support, which I think is a big ingredient in what some might say is success.

Mr. Granof: So it strikes me that you thrived on litigation.

Judge Urbina: I did. I loved it. I still love it. And I tell the jury this: I say my favorite part of the job is working with juries, then as a lawyer and now as a judge. I love to watch well-tried cases; it's a work of art. I just love it. I love to watch good lawyers at work. I love to watch how they explore and probe and how they get the job done, how they exert their powers of persuasion. And the flip side of that is I have a very low tolerance for lawyers who don't prepare or lawyers who cheat.

Mr. Granof: I can understand that. Now, I think Irving Younger says that he thinks the jury is the smartest person in the room collectively. Do you agree with that?

Judge Urbina: Absolutely. Absolutely true, and for the longest time, my gut told me that, but I'll tell you how I now have empirically validated that. I teach a course called "The American Jury." I've taught it for about 15 or 16 years at GW, and it's a graduate course. During one of the thirteen sessions that constitute the course, I invite jurors who have been in trials before me to come in and to tell these lawyers what it is that the lawyers they saw did to impress them, what they did well, what they didn't do well, how jurors think, what they notice, what they observe, how they deliberated, what they considered important, were they able to follow the judge's instructions, and so forth. I mean it's fascinating. I let jurors ask questions after re-direct examination. I allow them to after re-direct examination. I look over, they hold up a piece of paper, I read the question, the lawyers read the question,

and the lawyers tell me whether or not they want me to ask the question, and if they do I'll ask the question. And, invariably, in the beginning the lawyers -- especially defense attorneys -- say "Oh, you know, this is terrible." Well, as it turns out, the lawyers love it because they get insight into what the jury is thinking, and half the time, more than half the time, the lawyers look at the question and say, "Oh, the jurors don't understand something because we're using jargon, legal jargon, we've failed to explain what the basis is for this and that, and so that tells me something." Then, when we have these classes, the jurors are so intelligent. Some of them are extremely articulate, some are less articulate, but that's not the point. Rather, the point is the things that they deduce about the evidence and what is really going on. They'll say something, for example, "Well, yeah, we thought he did it. But when we talked, we said it looks like he did it, but the government didn't prove it." I mean, what else can you say? There's the essence of it. You know they can follow the court's instructions. They can presume this person innocent, even in the face of some incriminating evidence, if they have a reasonable doubt, and they're always able to articulate reasonable doubt. So I totally agree with Irving Younger.

Mr. Granof: Now as a trial attorney, in the two years that you tried a number of cases before juries, did you also try any just before judges?

Judge Urbina: Yes. Rarely. I tried one case before Judge Gesell when I was on the Howard faculty. It t was the result of my suing the Catholic church on the basis of discrimination, because my secretary at Howard Law School, her daughter was told that she could not return at the end of the summer to her high school, and the

reason that the priest offered was that she had been late in paying tuition. My secretary was a very sweet lady, a single mother, she said, "You know, I told him I now have the money so I can pay the money, and school hasn't started yet, but he said no." And in addition to that she said, "I know other parents who have been late, and their children were allowed to return." And I said, "Well, how do you explain that?" And she said, "They're all white." She was in Montgomery County, it was a nice Catholic school, Irish priest, the brogue, the whole thing. So I called him up. I said, "Father, I teach at Howard Law School," and told him about my secretary's experience." I said, "Can you see your way clear to let her in because this is really harsh, she's a single mother." He says, "Oh no, we can't do that," and he hangs up. So I call back the next day and I said, "Father, I went to Catholic school myself and I have a real appreciation for a Catholic education and so does Mrs. Whitman, so could you just see your way clear? She tells me there will not be any more problems; she thinks she got a child support payment late." The priest replied, "No, I told you I'm not going to do that." So I said fine and then drafted a complaint that named the bishop, every single member of the Catholic hierarchy, including the priest, and sought a temporary restraining order. Herb Reed, who was then the dean of the law school joined the case. So we went to court before Judge Gesell. Do you remember Judge Gesell?

Mr. Granof: I do indeed.

Judge Urbina: He was a no-nonsense fellow.

Mr. Granof: And smart.

Judge Urbina: Smart as can be. Anyway, so I stand up and make my opening remarks. I say I have available a witness, Mrs. Whitman, and the array of lawyers from Hamilton & Hamilton – do you know that firm?

Mr. Granof: I've heard of them.

Judge Urbina: It used to be the firm that represented the Archdiocese of Washington, representing the Church in matters coming before the local courts. So the long and the short of it is we get there and Judge Gesell looks over, looks at me, looks at them, looks at me, and says, "What is this about?" I tell him, and the Church's lawyers say that's a distortion of truth, it's a contract, she failed to live up to the contract, and the school just can't afford to proceed with its function when people don't pay on time. So I responded, "Well, I've also got a witness that will say that students who have failed to pay their tuition on time who happen to be white are currently enrolled in the school." Big silence. So he says, "Call your witness." So I put Ms. Whitman on the stand, she testifies, she breaks down and cries, very credible. They barely even cross-examine her because they figure better leave her alone. Then they put the priest on the stand, and the same thing happened then as I've seen happen in several of these Title VII cases that I've presided over, at least three that I can think of, where the defendant loses because of sheer arrogance which is irrepressible.

Mr. Granof: It comes out.

Judge Urbina: Exactly. It's just there, and Judge Gesell sits back, and listens to the testimony. I cross-examine a little bit, not much, and he says, "Sit down." I see him gesturing and talking, and the last thing I hear is "Settle it." They settled it. And I settled it.

Mr. Granof: This is after you were with the Public Defender?

Judge Urbina: This is when I was teaching at Howard. This was my secretary.

Mr. Granof: In the time that you were with the Public Defender, those two years, were there any insights that you developed in dealing with juries that were perhaps useful? I know that the trial advocacy courses basically teach that each attorney has to develop his own style, what works for "A" may not work for "B."

Judge Urbina: Absolutely. Well, I think what worked for me was an ability to credibly communicate with the jury as well as with the judge. I was able to find a point, either a point of law, but usually a point of fact, that I could translate into the mindset of the average person, and while some lawyers believe that in order to win a case you have to change a jury's beliefs, my theory was you don't have to change a jury's beliefs, you just have to change their attitude, because attitude is much easier to change. You don't have to persuade them to give up their beliefs to change their attitude. If you change their attitude, they'll carve an exception out of what they believe for the sake of this particular case, and that's what I was able to do.

Mr. Granof: When you say "change their attitude," would that mean essentially develop a trust with the jurors, so that the jurors basically say, "I can trust him"?

Judge Urbina: "I can trust him, and I understand his point of view." I'll give you an example. I tried a civil case involving a woman who was assaulted by a police officer in a situation where the woman had just driven a bunch of elderly people to the site of an election, and the opposing camp – this was a local election – the opposing camp, somebody called the police and said that this woman – who was a very

kind of upper middle class African-American woman – had a gun. The police officer comes to the scene and he's drunk. So he comes to the scene, he's got a lot of alcohol on his breath, and he acted strange. He approaches my client, and he says, "You have a gun?" and she says, "No I don't have any gun." He says, "Well let me see your purse." She says, "No, you can't look in my purse." Well he grabs the purse and she resists, and he yanks it and pulls her shoulder out. No gun, of course. I was asking for a lot of damages in this case, her reputation, her pain and suffering, doctors' bills, and so forth. So at closing argument, I said several things. The other side was trying to change the jury's perception to believe that this pulling of the pocketbook off the shoulder could not possibly have done this much damage. And they buttressed it with other inferences. So when I got up to do my rebuttal, one of the things I said was, "When God made this world, he made rocks and he made roses." And I walked over to my client, and I put my hands on her shoulder, and I said, "And when He made Mrs. So-and-So, he made a rose. Roses are fragile." And I could tell that that kind of resonated, and all it was was tweaking of that theory that says you take your victim as you find them. And then of course I ask for the instruction on that as well to kind of fortify my argument. But that's what I mean. They may have believed, well generally speaking, an incident like that doesn't result in such serious injury, but I was able to change their attitude for this case.

Mr. Granof: She must have been an attractive witness as well.

Judge Urbina: She was very attractive, she was sophisticated, and she was there doing work for free, trying to get people to vote type of thing.

Mr. Granof: I'm surprised the government didn't settle that one.

Judge Urbina: Well, you'd be surprised at cases the government doesn't settle, even today. You'd be surprised. They kind of dig in, and sometimes they simply decide they're not going to settle no matter what.

Mr. Granof: Well, I've taken up a lot of your time. Thank you.

ORAL HISTORY OF THE HONORABLE RICARDO URBINA
FOURTH INTERVIEW
21 SEPTEMBER 2011

This is the fourth interview of the Oral History of U.S. District Judge Ricardo Urbina as part of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewer is Gene Granof. The interview took place in the chambers of Judge Urbina at the United States Courthouse in the District of Columbia on Wednesday, September 21, 2011.

Mr. Granof: Good morning, Judge. Just to give a timeline for this fourth interview, you graduated from law school in 1970 from Georgetown and then spent two years as a public defender, and then two years in private practice. And then you started to teach at Howard University Law School?

Judge Urbina: Yes. That started in September of 1974. Actually, I continued in private practice on, of course, a much more limited basis while I was teaching full time. The deans under whom I served all understood that in order to teach the subject matter that I was teaching, which involved trial work and criminal trial work in particular, it was necessary for me to be involved in more than just the theoretical sense. So in addition to supervising the students, I also was able to try a case or two on my own each year, usually a murder case or a complex civil case.

Mr. Granof: How did you get to Howard? Were you an adjunct professor first or did they just ask you to teach, and if so, why?

Judge Urbina: The best I can make of it is the University wanted to create a criminal justice program that would enable students to get a more intensive opportunity in learning the criminal law and actually applying the criminal law in trial situations. Such a program already existed at the time at Georgetown Law Center, and the newly appointed director of the program at Howard wanted to replicate what he knew Georgetown had to offer, so he created a program and wanted an assistant,

someone who would be the deputy director, someone who could handle the academics and at times supervise students in court. So he approached me and asked if I would be interested. I said yes, I went and met the dean, and then I started a few weeks later.

Mr. Granof: Did you know him beforehand?

Judge Urbina: No, I did not. I knew of him, but I was not personally acquainted with him.

Mr. Granof: So it must have been your reputation that led him to you?

Judge Urbina: Well, I gather that my reputation had something to do with it. I know that at the time when I would go to court I would often meet with young lawyers, even before I started at Howard, and to some of whom I would give advice. I had tried several cases quite successfully by that point, and so it's possible that he had heard about me.

Mr. Granof: Was this separate from the criminal law course that students take in their first year or did you actually teach criminal law?

Judge Urbina: Actually, it was both. The first year I was there, I did not teach Advanced Criminal Procedure but taught the five-credit course for students who qualified. That was the academic component of the Criminal Justice Clinic. That was taken in the second semester of the second year. It was competitive to get into. But it was in essence a course in Criminal Law and Procedure that was preparing these students to actually step into court in their third year. After the first year of performing this function, my duties were expanded. I became the director of the program, and I hired at first one and then two assistants who would manage most of the supervisory work in court. In that second year I was in a newly created

position as the director with authority to hire two young attorneys who would be supervisors. I had additional flexibility, and the law school asked me to teach Advanced Criminal Procedure. I had also been assigned to teach Torts, so I was teaching Torts, Advanced Criminal Procedure, and the academic component of the Criminal Justice Clinic.

Mr. Granof: So you had a full load.

Judge Urbina: Oh yes.

Mr. Granof: At Howard, and I don't know if this is true when you were at Georgetown as well, were students required in their first year to take Criminal Law?

Judge Urbina: Yes. I think that might have changed during my almost eight years at Howard, but in some schools now I think Criminal Procedure comes first and then Criminal Law comes second,. As I recall my studies, Criminal Law came first and that was taught by Sam Dash, who was a well-known attorney.

Mr. Granof: I remember that you had said he taught you at law school, and, as you put it, he was a very inspiring teacher.

Judge Urbina: He was. My recollection is that I took Criminal Law and then later Criminal Procedure when I was in school myself, and at Howard I believe it was same thing: Criminal Law and then Criminal Procedure.

Mr. Granof: And you were on the Criminal Procedure end of it?

Judge Urbina: Yes.

Mr. Granof: So students had to apply for this program because it was advanced, is that right?

Judge Urbina: That's right. They had to qualify. Only the most qualified were accepted, based on their academic record and other interests that would have supported them as viable candidates in that program.

Mr. Granof: How many students did you have in that program in a particular year?

Judge Urbina: In the academic component, we accepted as many as 15, and not all of them moved on to the actual clinical part. I'd say on average we had about 12 or 13 students actually litigating in court by the time the third year rolled around.

Mr. Granof: So how did it work in terms of assignment of cases? Would the court appoint these students under your supervision to handle criminal cases?

Judge Urbina: Yes. Under the court rules, these students were permitted, once certified, to pick up cases with the understanding that a supervisor would be with them at every stage. So yes, we would pick up cases just the same way that Criminal Justice Act attorneys pick up cases. We would sign up, and then on a given date the deputy clerk of the court who was in charge of assigning cases would assign cases to the students.

Mr. Granof: Initially you did a lot of the supervising, is that right?

Judge Urbina: That's right.

Mr. Granof: And then that was more than one person could handle, so you hired two other people to do the supervising?

Judge Urbina: That's correct.

Mr. Granof: When these cases were assigned to the students, I mean they're brand new, and I think just any criminal case is a serious matter.

Judge Urbina: Yes. These were all misdemeanors, but in those days, unlike today because there has been a change in the law, many misdemeanors, most misdemeanors, were jury triable, so yes, you're right, this was a very significant responsibility.

Mr. Granof: So these young lawyers -- they're not even lawyers yet because they're not admitted -- they're trying jury cases?

Judge Urbina: Yes. Occasionally the cases would actually ripen into a jury trial. More frequently, the students would do as most lawyers do: investigate the case; get discovery from the Assistant United States Attorney assigned to the case; and then if the evidence seemed significant or overwhelmingly in favor of the government, they would discuss the possibility of a plea. Sometimes these young students would get evidence suppressed by filing motions to suppress evidence once they learn the police had, in the student's view, trespassed on the rights of the accused. They were very good at that. They became very well known in the court system as having that aptitude. During the eight years I was there, I think we supervised three or four jury trials, but the rest were either resolved by guilty pleas or were dismissed.

Mr. Granof: So here's this young person, maybe not so young, but a young lawyer and he's handling a jury trial.

Judge Urbina: Yes, of course with the supervising attorney present. In fact, a couple of the lawyers that currently practice before me are graduates of that program and are individuals that I accompanied through their first jury trial at Howard.

Mr. Granof: So this was an extraordinary program.

Judge Urbina: Yes, it was extraordinary. It was a reflection of what we thought Georgetown was doing at the time. All law schools are different and the ideologies are a little different. While in each law school the process is a little different, my students were known as persons who were approachable, who could be approached and with whom the prosecutors could discuss matters concerning the case, and the Georgetown students were a little more scorched earth in their approach. Both approaches are very legitimate. Georgetown didn't try any more jury cases than we did during that period. After a while it became a little competitive because, first of all, the CJA lawyers were having some of their cases siphoned off to lawyers who are handling matters for free. Second of all, there are a limited number of cases for these two pools of students, and so it became a little more competitive. The courts -- and this is my impression, and a very biased one -- the courts generally favored Howard, not only for the reason I mentioned -- which was that we seemed more flexible in being able to work out arrangements -- but also because many of the accused are African American and almost all of my students were African American, and they developed a much quicker rapport. The Georgetown students were largely Caucasian and they did an excellent job, they were wonderful, but I think that we had the inside track as far as that goes.

Mr. Granof: Did you have to develop the curriculum for the academic part?

Judge Urbina: Yes. But we borrowed, with the permission of Georgetown, very significant chunks of their training program. We fashioned it to accommodate our view. When I say "our" view, I mean the original director, Peter Weisman, and myself. Peter Weisman, by the way, the first director, was a graduate of the Prettyman

Intern Program over at Georgetown, which awards a degree that affords its students a Masters in Trial Advocacy, so he was very, very well-trained, and he knew the ins and outs of Georgetown's program. We revised Georgetown's program, but not in a major way, and we would continue to update it. The academic component was tough. It was tougher than most criminal procedure courses in that there was a very strong requirement for understanding the cases and being able to apply them in more than just a theoretical way.

Mr. Granof: On occasion you also taught Torts?

Judge Urbina: Yes, I taught Torts every semester. Actually, that was my favorite course to teach. I really enjoyed it, as I had when I was in law school.

Mr. Granof: I can understand why. It's a fun course to teach.

Judge Urbina: It is. It's real life problems, real life people, and of course even the theoretical part is interesting. But yes, I taught Torts.

Mr. Granof: And everybody remembers the Cardozo opinion.

Judge Urbina: Yes. *Palsgraf*.

Mr. Granof: And you spent days on that?

Judge Urbina: Yes, well I can tell you a funny story about *Palsgraf* if you'd like.

Mr. Granof: Sure.

Judge Urbina: Well it was my practice as a law professor to ask the students to be prepared for every class and to be prepared to answer questions and to debate with one another. That was my methodology. If a student, however, was not ready, I only asked that they leave a note on the podium saying, "Professor, I'm not prepared today," and I would make note of that and not call on that person. They were

allowed to have two or three of those for the entire semester. Now *Palsgraf* was one of my favorite cases to teach because, as you may recall, there was a Cardozo opinion which was the minority opinion but which later on became a majority opinion.

Mr. Granof: And the facts were wonderful.

Judge Urbina: And the facts are absolutely fabulous. Long Island Railroad, things exploding, something falls on somebody's head. Well, it's kind of fun. So I came into class that day all geared up to teach this. After doing some preparation, I rushed to class, and the class was I'd say maybe forty people, so I look at the podium and there were a couple of notes. I looked at them and set them aside, and I started to talk about the case. As I would typically do I walked up and down the aisles back and forth calling on different students to comment on the position that a prior student had articulated, doing the Socratic thing, changing the hypothetical and then bringing it back to the case, and all this time I'm walking around the classroom. So I go back up to the front of the classroom, and this one student -- a very good student, she usually sat in the front row -- she's waving a note, a piece of paper, at me. So I said to myself, "So now she's decided she's not prepared; I'm going to ignore her for a bit, you know, let her sweat it." So I just looked past her and I kept on walking and calling on people, and finally I walk back to the front of the room and there she is waving this little piece of paper, kind of shaking it at me. So -- almost in a very dismissive fashion -- I snatched the piece of paper and I read it, and it said, "Your zipper is down." So looked down, and indeed not only is my zipper down, my shirt was peeking out, and the class went

hysterical. I mean people literally fell off their chairs they were laughing so hard. And I had to laugh too because it was very funny.

Mr. Granof: That you can tell the story now indicates -- well, you were embarrassed, I'm sure.

Judge Urbina: I was embarrassed without a doubt. I got such a kick out of the class because they got such a kick out of it, so I just joined in the festivities. But anyway, Torts. There was another professor who also taught Torts, and once every six weeks we would have our classes face off in the moot courtroom over a torts issue, making oral arguments. It was another methodology for getting students to grasp the case and its holdings and applicability in a slightly different way than you would in the traditional classroom.

Mr. Granof: It's interesting because my sense is that whether you ever try a torts case in your life after you get out of law school, and probably most people don't, it is one of the courses that makes you begin to think like a lawyer. You realize life is not simple. I wonder if you have the same view of that.

Judge Urbina: I do. Because as you pointed out earlier, Torts is kind of a human subject matter. There's a lot of human interaction. Of course there's that phase of it that delves into toxic torts, but even there, there is a strict examination of duty -- duties that people have to one another -- and rights that people have, to expect that people are going to live up to their duties. So even in the most common situation, you find that the courts recognize that there are inherent rights and there are inherent duties and that people have those responsibilities to one another. In a society like ours where we'd like to think of ourselves as free, there are duties that limit our freedom because we cannot bring harm, financial or otherwise, to others. Another

course I would've liked to have taught but did not, even though it was one I also admired, was Contracts for that very same reason. Again, it was interactions: was there a meeting of the minds? what were the parties' expectations? Sometimes I would remind the students that Torts and Contracts were in many respects similar in that in Contracts the ideal was to create a remedy that would bring the parties back to where they would have been had the obligation been fulfilled. And likewise in Torts we seek to bring the aggrieved party back to the original status that that party would have been entitled to had the tort not occurred. So in either instance you have to imagine what the contract would have been or how to compensate this person to bring him back to the situation, theoretically, that he would be in had the tort not occurred or had the contract been fulfilled . So it was exactly like what you just said, which is a real examination of human conduct and human responsibility.

Mr. Granof: And also I suppose it really is the development of the common law. Torts and Contracts really were developed by the courts, by judges.

Judge Urbina: Exactly. That's right, and it goes way, way back. Way back. And it gives us an opportunity to track how we have evolved as a society in terms of what duties and responsibilities we have with respect to one another.

Mr. Granof: I always get annoyed by the criticism that judges shouldn't be making law when in fact contracts and torts are really judge-made law stretching back, I don't know, 800 years.

Judge Urbina: That's correct. And the body of common law is, on the civil side in particular, the body that controls the outcomes in civil litigation: contracts and torts. Those

concepts haven't really changed that much. They've been updated to deal with modern technology, but those concepts, as you say, were created in the common law.

Mr. Granof: I can see where they're wonderful courses to teach, a lot of fun to teach. You obviously like teaching. I think you mentioned that you're still teaching a course, "The American Jury." Is that at George Washington Law School?

Judge Urbina: It is, and in fact I had a class on Monday, a couple days ago. The course itself is for graduate students getting their Masters in Trial Advocacy at GW, and one of the thirteen sessions that make up the course is dedicated to jurors who have been in cases over which I've presided or over which Judge John Mott, who teaches with me, has presided. The jurors came to the class. Now, when word got out that this class was going to take place, the United States Attorney, Ron Machen, called and asked if he could send a representative to that class just to listen and watch. Avis Buchanan, the Director of the District of Columbia Defender Service, was present, and A.J. Kramer, the Director of the Federal Public Defender, also came, not to participate but just to listen to these jurors talk. And the whole idea was that this is coming from the horse's mouth. What impressed these jurors? What types of things the lawyers did that were effective? What types of things the lawyers did that failed? How well equipped to resolve the case did the lawyers make them feel? And so forth and so forth. It was a great class.

Mr. Granof: I guess Irving Younger --

Judge Urbina: Yes, one of my icons.

Mr. Granof: He says that one of the most important things for lawyers to get across to jurors is that the jurors need to trust the lawyer, that there has to be a bond of trust, so they can believe he's a straight shooter, believe what he's telling them. I guess the question is, is that true?

Judge Urbina: Oh yes, I agree with that one hundred percent. The lawyer, especially in a trial situation, is going to convey his or her interpretation of how the facts should be construed, and of course there's more than one view as to how facts can be construed. In order to adopt in whole or in part the lawyer's interpretation as reasonable and realistic and in keeping with the actual evidence, that interpretation of the facts has to be trusted. And in order to trust an interpretation, you have to trust the lawyer who is presenting that interpretation of the facts.

Mr. Granof: At the same time you were teaching at Howard, you said that you tried one or two cases a year?

Judge Urbina: Yes.

Mr. Granof: When you were trying cases as a professor at Howard, you were before your students who I assume went to class and yet also observed you trying cases.

Judge Urbina: Well, yes I tried to try these cases during the part of the year when there were no classes. I had to do the preliminary work during the school year, but I didn't want to jeopardize my status by having to be away from class for periods of time because I was trying cases. So I tried to try these cases in May, June, July and August, and the assigning judges were all very accommodating in that respect. Let me add that the students who were in the city during those months, because they didn't go away at the end of the school year, not only came to the trial, but

also served as trial assistants and investigators in those cases because they enjoyed it so much. So it was the best of all worlds.

Mr. Granof: You had plenty of help.

Judge Urbina: I had plenty of help. I was getting paid, albeit at a CJA rate. I was teaching, in a sense at least indirectly, sometimes even directly, with the students who were in attendance, and I was having fun. There were two cases, in addition to the one I previously mentioned, that come to mind. One had to do with a gentleman, an older gentleman in his late sixties, early seventies. He was known in the community as Alcatraz Whitey. He was a white gentleman, and he worked at a flower stand that was run by his boss, another person of some repute in the city at the time. Whitey Alcatraz was an alcoholic as well as a hard-working fellow whose alcoholism did not interfere with his ability to make a living. One day after a work day, he returned to his home, which is actually in the vicinity here, kind of poor apartments where he had rented a basement apartment that wasn't much of an apartment. He would come back from work and he would sleep on a mattress in the backyard just to relax. He had a cadre of friends, also all alcoholics, and they would spend time together drinking at the end of the day. Well, one evening he came home and he laid down on that couch -- or mattress -- and he woke up to screams and yells. And as he woke up, he saw that a few of his friends had come into the yard and they were arguing. One of his friends threw a chair at a woman, another one of his friends, and missed her, and the chair hit him. So he started complaining about what was going on, and the assailant, who was a young African-American fellow, his blood was up and got angry and picked up a piece

of the chair that he had thrown that had a screw coming from the end of it, and he began to approach Whitey. Now these two fellows on all other occasions had been friends, but here it was alcohol that created a hostile situation for both of them, so Whitey backed up and, as the story goes, as recited by witnesses who saw it, he backed up and kind of went down the stairs toward the little basement apartment where he lived. If that had been the end of it, there would be no case. Unfortunately, Whitey reemerged through the back door back into the yard with a knife, and they scuffled, and Whitey stabbed the young man right through the heart. He died. Now the prosecution charged my client with first-degree murder on the theory that even if you are facing an assailant and you withdraw from the confrontation to a place of safety and then you reemerge, you have now become the aggressor and consequently you pay the consequences as the aggressor. My theory is different. And so it went to trial, and in closing arguments, my theory being, as I said in closing argument, that these people all knew each other; Youngblood, the deceased gentleman, knew that Whitey could not escape from the basement because there was no exit, knew that the door could not even be latched because he, Youngblood, had helped him bar the door from the inside on occasion. There was no telephone in that apartment. Consequently, that apartment would have been, as I put it in my closing argument, that would have been his coffin. His only chance was to get back out and hope that the situation would defuse or that he could run away, but of course when he came back out, Youngblood was there, the confrontation continued, Youngblood died, and therefore it was a matter of self-defense. At the end of the government's case, the

judge dismissed the first-degree murder charge and reduced it to second-degree, a decision with which I did not agree, and the trial went on. My client did not testify, although the prosecutor begged me -- begged me -- to let my client testify. My client was so old -- I mean, no, he wasn't old -- he was so aged in terms of his physicality and everything else that when he tried to whisper in court everyone could hear him. He had very bad hearing. All that aside, he was a very nice man. Now, what may give this case particular significance was that this was during the time, early 1970s, when there was a lot of hostility of blacks towards whites. It was open, blatant, it was in the wake of the riots, and there was still a lot of hostility aimed at whites and others because of the plight that the African-American community felt it was suffering, especially in light of the death of Martin Luther King. So the day I was retained for this case the fellow who came into my office unannounced said, "I've got a friend, I heard you're good, I want you to represent him." He told me the story, and I said, "Well, why have you picked me?" and he said "Because I need somebody of your color to try this case." Then he mentioned Whitey, says he's white, and that the only chance he's got in front of a black jury is with a black lawyer. So after some initial negotiation, he pulled out a roll of money with a rubber band around it. He gave me my retainer, and we proceeded. The jury deliberated I'd say half a day, and they came back with not guilty. So it was a wonderful victory, and Whitey was very happy, and I was glad that he wouldn't have to spend the remainder of his life in prison.

Mr. Granof: Why did you disagree with the judge's decision to dismiss the first-degree murder charge? How did that hurt your client?

Judge Urbina: No, actually I'm sorry, I must have misspoken. I disagreed with his decision not to dismiss the second-degree murder charge. He dismissed only the first-degree. I thought he should have dismissed the entire case, but he felt that there was enough leeway in the facts for a jury to make a determination either way, and so he proceeded on the second-degree murder.

Mr. Granof: So that was a real victory.

Judge Urbina: It was nice, and it was a confidence booster because I was still very young and so forth. I had a big Afro.

Mr. Granof: I cannot imagine.

Judge Urbina: I'm going to bring you pictures. You're going to laugh when you see this. You want to hear about the other case?

Mr. Granof: Yes, definitely.

Judge Urbina: It was about 1977 or 1976. I was still practicing law. I had a loose association with some lawyers while I was teaching at Howard, and one of these lawyers came to me and said, "We have a case and there are three defendants. One of the defendants has a lawyer that's been assigned by the court, the other two do not. I want you to take one of the defendants because I'm going to take the third." We talked about the case, and the case was basically this: there were some demonstrations here, actually right in the vicinity of this courthouse, by the Black Panthers. Remember them?

Mr. Granof: I do.

Judge Urbina: And the Black Panthers were protesting something specific, some kind of brutality that had been inflicted on the black community, and there were hundreds, literally hundreds, of people being held back by police officers as the Black Panthers marched. During the fray, one of the police officers pushed one of the protesters back into the crowd, and when that happened, another protester came forward and he hit her with the night stick. My client jumped to her defense and beat up the police officer. There were other incidents that were very related in time and proximity that resulted in the other two people being charged, but my client had the most serious charge, which was assault with intent to kill, which I think was an exaggerated charge. Another charge was assault on a police officer, which was not an exaggerated charge. And so we went to trial, and as you might imagine the times were such that the newspapers got hold of the story. The trial lasted for about two weeks. The government called a lot of witnesses to attest to what had happened. We filed pretrial motions. I filed a motion attacking the constitutionality of the statute, assault on police officer statute, and so forth. The judge rejected everything and said, "No, this is going to trial." A very good judge. Again, one with whom I did not agree on many points. Judge Waddy was his name. So we went to trial, and the prosecutor, Phil Kellogg, I'll never forget this, he's a really nice guy, was a member of the U.S. Attorney's Office for years. I've known him as a lawyer, the head of a firm with a very successful practice here in town, a very nice man. He was the prosecutor, and it was a tooth-and-nail fight. Now the lawyer with whom I was associated -- Landon Dowdy -- was an older lawyer, very seasoned, very wise, very experienced in not only trial work

but in life. He was also a pianist, he was also an artist, a painter, and so forth. Very eccentric -- not because of those features, but in addition to those features. So Landon Dowdy was pretty much in charge of the choreography of everything, and I was more than happy to learn from him. So he said, "We're going to do this, we're going to do that." We went to trial, the government put on these witnesses, and one of the witnesses for the government, in fact the fellow who was alleged to be the victim, the main victim, on cross-examination --

Mr. Granof: This was the police officer?

Judge Urbina: The police officer, yes. Landon said, "Well, you know, when you got there, you were angry already, weren't you?" He said, "No, I wouldn't say I was angry already." The examination went along those lines and ultimately he said, "To tell you the truth, I was unhappy and resentful because even though these Black Panthers" -- he was African-American by the way, the police officer -- he said, "Even though the Black Panthers were calling each other 'brothers,' no one ever referred to me as a 'brother,'" which I thought was interesting. There was a little more drama when I got up to cross-examine. It's probably not relevant to the story, but my client testified, the other two did not. What I recall about that experience is that this lawyer, Landon Dowdy, made his closing argument second. There was a lawyer -- Malofsky -- who made his closing argument first, Landon Dowdy made his closing argument second, and then I made my closing argument last. When Landon Dowdy delivered his closing argument, the courtroom could have heard a mouse. But he did something that I found extraordinarily interesting. He pointed out the police officer victim's testimony

and highlighted the part about "they never called me brother," and then he went through the history -- the biblical history and beyond -- about brothers who didn't get along. He went through Cain and Abel and told the story; Romulus and Remus, told that story; and the others, I can't remember them all. Five or six brothers that had committed fratricide during the course of their relationship. The jury was all black. We picked our jury carefully, we wanted older black people, people who were church-going, and who understood references to the Bible, because even though we didn't know we were going to use that particular line, we thought that that community would be mature enough to understand how civil rights, conflicts, and those things evolve and flare in a given situation. So the jury took three days to deliberate. In the meantime, it was on the news every night, it was on the radio. There was notoriety, and it was interesting, and we felt even before the verdict that we had done our very best. The jury came back with "not guilty" on all counts for all three. The prosecutor, Phil Kellogg, came over and it was very cordial. He congratulated us all.

So those were the projects I had while I was teaching, and it was fun and it was instructive, it was educational, and it was memorable.

Mr. Granof: Anything else that you can say about your teaching that you want to put on the record? You've covered a lot of ground.

Judge Urbina: Well, in the very beginning of my teaching career, I felt that I would be a good teacher because a I considered myself a good trial lawyer. I probably would not think of myself today as being a good trial lawyer. I don't think I was mature enough to know the things I needed to know to be a good trial lawyer. But I

started my career as a teacher saying to myself, "Well, you know, you have to be able to teach the jury, and you have to be able to speak to them, and I can do that, and I like the subject matter, so I'll be a teacher at least part-time," although it became full-time. But as the years went by, I found out that the real pleasure in teaching is not to transplant one's ideas into other people's minds, because that's arrogant. You really can't tell people how they should think, but to give life and vitality and vigor to ideas so that when they do assimilate them, it will create new ideas, and it will enlarge, it will advance them in their way of thinking, in their way of acting, in their way of serving the law, understanding that being a lawyer means being a servant, and feeling responsible in a way such that, as I mentored people over the years, a few of them are judges, a couple of them are congressmen, all at Howard, they come back to me and say, "Your influence was significant" for this reason or that reason, and that's become an aspect of joy as I look back on my teaching.

Mr. Granof: So it was really inspiring students?

Judge Urbina: Inspiring students to do well, to understand, to endeavor, to apply the law in a way that's fair.

Mr. Granof: And maybe to move beyond what you've taught them in the course so that they really had the ability to think for themselves and to go forward?

Judge Urbina: Yes, exactly. To think for themselves, to go forward, and to do it with confidence. I think young people, young lawyers, sometimes law school doesn't inculcate very much confidence. They understand the adversary system, they understand advocacy, they understand the desire to win and so forth, but they

don't really have -- maybe it's changed, I don't think so -- they don't really have the psychology in place to deal with other people's problems. As I tell them, you know people don't come to see you because they're happy. They come to see you because they feel they are aggrieved or that they need to defend themselves against someone who's attacking them. That person has a state of mind that is usually not only unhappy, but also agitated. To be a good lawyer, you have to be able to calm them down and look into the situation and to deal with it in their best interest, while at the same time keeping things under control.

Mr. Granof: During this period, what happened to your practice? You were in practice with another person. Did that continue or did that sort of break up?

Judge Urbina: It dissolved. The more I became invested in the teaching, the less time I wanted to spend outside of it, so one case a year was plenty. And, of course, that wouldn't be enough to sustain a legal relationship with another lawyer. So we all kept in touch and we all enjoyed each other's company from time to time, but the cases I handled were usually what I picked up and the law students would help me with.

Mr. Granof: So, you're happy, you're teaching, you're really good at it, and in 1981 you go on the bench. Tell me how that happened.

Judge Urbina: The dean of the law school, Charlie Duncan – I served under three different deans, and he was one of them. He came to me and he said, "Rick, have you ever thought of being a judge?" I was about thirty-three at the time. I said "No, I never have." So he says, "Here, fill this out," and it was an application for a Superior Court position on the bench. I filled it out, gave it back to him the next

day, and he perused it, kind of nodded, said, "I didn't know this, I didn't know that," and he says, "What's this Latino thing? What is that?" So I explain to him my mother is Puerto Rican, my father is from Honduras. He says, "I never knew that." And he says, "Well that's helpful." And next thing I know, he, as the Chair of the Judicial Nominations Commission, had submitted my name. So the process evolved, and my name went up as among three. The first time I think it was in 1979, and then I didn't get it.

Mr. Granof: Did you expect to get it?

Judge Urbina: I was told I would probably get it sooner or later, but another lawyer who had an extraordinary reputation and history here in the city, an African-American lawyer, Bill Gardner, was also up for the position. When I learned that was the situation, I said I can't compete with him, he deserves it. He's been a lawyer a long time. I said I certainly could use some help the next time around, but as for this time, just consider me not in the pool. And he was appointed. Then in 1980, my name went up again for another vacancy. President Carter nominated me but then lost the election. So President Reagan in 1981 withdrew all the Democratic pending nominees.

Mr. Granof: I can't remember whether the nomination required Senate confirmation.

Judge Urbina: Yes, it does. Not the Judiciary Committee but the Governmental Affairs Committee. Mac Mathias was the Chair. So during that time, all the pundits, all the people who felt prepared to predict things, said that I didn't have a chance because I had been nominated by President Carter, and President Reagan wasn't about to pick up a nominee that had been nominated by the previous

Administration. But my friends, people who really knew me, and more importantly knew the political landscape, said, "No, I think they're wrong. I think President Reagan will find you a very attractive candidate." So people on the Republican side got active just to make sure the President knew who I was and was aware of my credentials as a potential nominee, and I became President Reagan's first appointment.

Mr. Granof: Was this the kind of appointment that the President personally gets involved with, or is it essentially either his White House legal counsel or the Attorney General's Office? Who really advises him, because he's dealing with the Cold War and other problems? In other words, who did you have to persuade?

Judge Urbina: Well, White House counsel was pretty much in charge of the decision making, but -- this is what I'm told -- as a new President, he and his wife, Nancy, were pretty much hands-on with the early decision making. Fred Fielding was White House counsel at the time. Now, again, it's a confluence of coincidence and good fortune. Fred Fielding knew who I was from my track career. Fred Fielding got a phone call from Chuck Richey, who was a judge on this court. I had appeared before Judge Richey a number of times here in federal court. He knew me, he liked me. We didn't have a personal friendship, but I went to him and I said, "I'd like very much to be a Superior Court judge." I didn't know he knew Fred Fielding at the time, but I thought it would help if I could get the support of some judges, especially federal judges. Judge Richey picked up the phone right in front of me and called Fred Fielding, and he said, "I've got a friend" and so forth. Although Fred Fielding already knew who I was, I don't know if he knew

that I was a candidate at that point. But the way the story goes is that three of us had been nominated by President Carter. President Reagan withdrew those three, then he looked at those original three and other candidates, and I was one that he selected to continue on. Henry Greene was the other one. So Henry Greene and I were selected, which I understand was thanks to the attention focused on us and me in particular by Fred Fielding, and I'm told with the direct acquiescence of the President.

Mr. Granof: That's really interesting. I would not have thought that for a Superior Court judgeship that the President would be so personally involved in that.

Judge Urbina: Maybe he wasn't, but I've heard this from more than one source. I do know for a fact that Fred Fielding submitted this to the President directly. Now whether he had to actually persuade the President or present my case to the President himself, I don't know. The rumor is that he actually did and that the President actually gave me the nod, probably because it was his very first judicial appointment after becoming President. So maybe he was paying attention.

Mr. Granof: You did say that, but that really bears some emphasis. You were the first Reagan judicial appointee.

Judge Urbina: That's right. As President. I'm sure he made judicial appointments as governor.

Mr. Granof: When did you find out about this? Was it 1980, 1981?

Judge Urbina: Well, 1981.

Mr. Granof: Yes, that makes sense. President Reagan was sworn in in January 1981.

Judge Urbina: So I think I heard that the President had advanced my name on St. Patrick's Day. I know there were two holidays. My name had gone forward in March and then the hearings were done in April. So by April.

Mr. Granof: I take it you had no trouble in the Senate getting confirmed? You say Mac Mathias was the Chair of the Governmental Affairs Committee?

Judge Urbina: Yes, and his main person, the one who carried the load for him in doing all of this, was his staff counsel. He was a young guy, but he was tough. He was very tough. When I met with him, he told me, "See all these cases you have pending? Are you expecting fees in these cases?" I said, "Yes." He says, "You have to get rid of them." So I had to find lawyers to give the cases to.

Mr. Granof: How many cases could you have had?

Judge Urbina: Three. Not all of them were litigation, some of them were helping people, and none of them pending trial. And he said, "No, you have to get rid of these cases." So I got rid of the cases. But he was tough. He wanted to make sure that there was nothing that would even appear improper.

. Mr. Granof: So the way the process works, I mean you get nominated by the President, and then do they schedule a hearing or does Mathias or his counsel call you and say they'd like to talk to you?

Judge Urbina: Yes. You get a phone call from the appropriate committee authorities. You go in and you're questioned. Your application is reviewed. Questions relating to particular things within your application.

Mr. Granof: But not before the Committee members themselves? This is staff?

Judge Urbina: Yes, that's right. This is kind of a vetting thing. They make sure that there isn't anything that's going to create a problem. If they spot something, then they discuss it. I didn't have anything at the time so I was fortunate, but they went through everything with a fine tooth comb, and then took it to the subcommittee, and then the subcommittee took it to the main committee, and then the main committee called me in for hearings.

Mr. Granof: How long did the hearing last? Was it pro forma?

Judge Urbina: It's very pro forma. Half an hour, 45 minutes.

Mr. Granof: And you were sworn in when?

Judge Urbina: I was sworn in -- I have the plaque on the wall -- April, 1981.

Mr. Granof: Yes, it reads Associate Judge, Superior Court, April 1981. So this was something new for you. How old were you then?

Judge Urbina: I was thirty-five.

Mr. Granof: Thirty-five. Still pretty young.

Judge Urbina: Yes.

Mr. Granof: Though with a fair amount of trial experience.

Judge Urbina: Yes. And a fair amount of life experience. I think first of all the fact that I was Latino did not escape the attention of the appointed authorities.

Mr. Granof: Did they make a big deal of that?

Judge Urbina: No. They did not make a big deal of it at all. Of course the Latino organizations made a big deal of it, but no. And I met President Reagan. I have that beautiful picture.

Mr. Granof: How did you happen to meet him?

Judge Urbina: He invited me, he invited many people, to a White House reception, and I met him there directly and have that picture. I really enjoyed meeting him.

So, I got sworn in in April, and I took the bench maybe by the end of May because I had to finish up my teaching responsibilities. So I think by the end of May I went on the bench. I put myself through kind of a training program.

Mr. Granof: Do they have a judge's school?

Judge Urbina: Oh yes, but you don't get to go to judge's school until you've been on the bench a few years. It's in Reno, Nevada, and it's called -- I forget the formal name of it, but it's a school that all state judges would want to go to, and that didn't happen for a few years. Because I think the theory is that you need to be on the bench for a while before you really get a sense of what you need to know.

Mr. Granof: It seems to me that a brand new judge comes in and needs some direction or assistance or mentoring, whatever you want to call it.

Judge Urbina: Well, I had all of that. The Superior Court did have, and still does have, a very rigorous training program for the judges. In fact, not only new judges go through it, but whenever the assignments change, the judge that's moving into a particular division gets training, or retraining, for that particular division. So if you've been in the Civil Division for a year but now you're going to be moved to the Criminal Division, before that move happens you're trained. You're a brand new judge and you know you're going to be in the Family Division, you train. Other judges train you, and you get materials.

Mr. Granof: So somebody puts together for a new judge, for example, a curriculum, a guide, some material and then lectures?

Judge Urbina: Yes. Frequently what'll happen is it'll be broken down into a week or so of lectures and interactive opportunities where there's kind of a roundtable with judges and you, and one judge will take the lead on a particular aspect of what you will be doing. For example, one judge will talk about domestic relations and the new law and what's been happening and what the new procedures are, and what resources there are. Then another judge will get up and talk about juvenile delinquency cases and what's happening at Oak Hill, because that's all in the Family Division.

Mr. Granof: So that's all substance, but do you get any training or does someone lecture on setting up your office and case management, the kinds of problems that you would get to see?

Judge Urbina: No. I don't recall any lecture on how to set up the office. I think you get a lot of help from other judges, secretaries, law clerks and so on. In terms of case management, yes. Part of those lectures focuses on case management. I do remember that those talks concentrated on the do's and the don'ts and the dangers, for example, of granting continuances and the effect that that has on the manageability of your calendar.

Mr. Granof: In other words, they don't want you to fall behind.

Judge Urbina: That's right. Judges are given some time if they want time before they actually begin to sit and after the training is over to sit in on court proceedings. They are particularly encouraged to sit in on court proceedings in the division of the court that they will be sitting on. So I got to sit in on various family matters. I was assigned to the Family Division.

Mr. Granof: Did you have a choice as to which division?

Judge Urbina: As a new person I would not have a choice. As a veteran, I'm sure I could have asked to go somewhere or to avoid going somewhere. But as a new judge you go where you're needed, and the Family Division was heavily overloaded with cases at the time. So I sat in, and I actually sat in the gallery, and on a couple of occasions I sat up on the bench with Judge Thompson and one or two other judges, which surprised them because I don't think they had ever had anybody do that, sit up there with them. And I did, and I really enjoyed being able to look at things from that perspective without yet being engaged in the decision-making process. I watched the judge, I watched how things went, I watched how the courtroom personnel managed things.

Mr. Granof: Were you thinking when the judge made a ruling, "How would I have handled it?"

Judge Urbina: No, I don't recall that thought, but I do recall figuring out why, trying to figure out why, he decided it that way. Most of the time it was pretty obvious, but other times it wasn't. But I never caught myself second-guessing the judge.

Mr. Granof: So this lasted for how long?

Judge Urbina: I think I must have done that for about a week and then I started my duties, and the very first set of duties I had was in Juvenile Delinquency Court, Juvenile Court as it's called. It was very challenging. The issues were tough in that, although the legal issues weren't particularly tough, you had people, young men fifteen or sixteen years old, charged with a murder, rape, child molestation. These weren't just petty larceny cases. Some were, but within the array of cases over

which I presided, there were some very serious cases. And of course everybody takes these cases very seriously. The lawyer would take it seriously. I seem to remember that you don't call it "guilty," you call it "involved." You found the person "involved." And so then there would be the sentencing part, which would involve sending these children to an appropriate institution until their twenty-first birthday if it was a truly serious offense. So it was emotionally hard. It was taxing in the sense of trying to figure out what is the right thing to do for this young man and the community given the circumstances in front of you. But it very well equipped me to do what I needed to do.

Mr. Granof: When you say "very well equipped," you mean?

Judge Urbina: The first day I sat on the bench I felt able and capable of doing what needed to be done.

Mr. Granof: Was there at that time a choice between trying some of these people as adults, for example if you're sixteen and you commit a murder or some heinous crime?

Judge Urbina: Yes, part of my duty was to decide that. In some of the arraignments, it became very clear that the person was under consideration for adult prosecution. That choice would be subject to the lawyers making arguments. As you would imagine, the Public Defender Service handled many of the juvenile cases, and they were very, very good at pointing out alternatives and mitigating facts, and the government, of course, very frequently wanted the protection of the community first and foremost in the judge's mind.

Mr. Granof: So these are tough decisions.

Judge Urbina: They were.

Mr. Granof: Are you initially hearing just juvenile delinquency cases?

Judge Urbina: Yes. Initially just juvenile delinquency cases. That was a part of the calendar that was overburdened, that was lagging. The presiding judge of the division was Judge Kessler, and she had done a fabulous job, but the resources were just not there. I mean one of these murder cases would take a week, two weeks, to try. Even though you weren't impanelling a jury because it was the judge that heard the case.

Mr. Granof: So there is a trial?

Judge Urbina: Oh yes, there is a trial. And the person has to be found "involved" beyond a reasonable doubt for a conviction.

Mr. Granof: Was evidence presented?

Judge Urbina: Yes. And if you forgot, the defense attorney would enlighten you that the Rules of Evidence apply. So it was very, very challenging, and later on that experience formed the basis for reforms that I convinced the Chief Judge to make as a result of my service in the Family Division. In 1985 I became the presiding judge of the Family Division, a position I kept for three years. The Family Division increased from having three judges to having thirteen judges. It was a hard sell to Chief Judge Moultrie because the Criminal Division also needed judges, and there is a limited pool of judges. But I explained that these kids really needed the cases adjudicated properly in order to be able to put them on track, hopefully for some rehabilitation, and if not, then to put them on track for the kind of incarceration and therapy that was called for. So in 1985 first he gave me six judges and then he permitted the magistrate judges, who were called commissioners at the time, to

take on some of the responsibilities, preliminary responsibilities, so that the judges could then handle more of the mainstream cases.

Mr. Granof: You said one of the reforms was getting more judges?

Judge Urbina: Yes. And the other was, well there were a few, but the one that stands out, the one that I'm probably most proud of, is the creation and the implementation of the Child Support Guidelines. At that time, the enforcement of child support rights by the city government was abominable. There were files and files and files of petitions for child support that were not honored and not pursued and not prosecuted. There was no formula, so identical situations before a judge in one case might create a child support obligation of $20 a month and then an exactly similar case would be $200 a month, so we needed a body of rules to govern that. New York had done some work. I read a couple of books by the lawyer who had created a whole new structure for child support in New York and the rationale behind it, and Judge Kessler, who by that time had moved on but was still very much on board, helped me a lot as the former presiding judge, and we had meetings once a week at 7:00 in the morning to create these guidelines. There were lawyers who represent children. There were lawyers who represent mothers. There were lawyers who represent fathers. There were the two magistrate judges and three Superior Court judges, and these people would meet faithfully at 7:00, 7:30 in the morning, every week to hash over issues such as let's devise a mathematical approach, but at the same time let's consider how this mathematical approach applies to actual situations? For instance, suppose we have a woman who's got four children by different fathers and this mathematical approach is

going to create a bonanza for her. Those types of issues, were, of course, contentious and we argued about them. After we created the rules, we tried to implement them, but the Court of Appeals said, "No, you don't have that kind of power. You don't have the power to create substantive law." So we picked up the whole package, took it over to City Council, and they adopted it without a change. And it became the law of the District of Columbia, and still is.

Mr. Granof: And this was something that really was at your instigation?

Judge Urbina: It was at my instigation, but I had people instigating me. There were a number of women who felt very strongly about this. Activist lawyers, one of whom had been on the Judicial Nominations Commission when I went up. Very intelligent law professors from schools that felt strongly about this. And so I didn't conceive of the idea; they brought the idea to me. But I thought the idea was a very good one and that we had the resources and the brain power and the wherewithal to do it, so we did it.

Mr. Granof: Was this when you were the presiding judge?

Judge Urbina: Yes.

Mr. Granof: There was a four-year period before that, 1981 to 1985, were you reviewing juvenile cases all that time?

Judge Urbina: No. During that time I think after about a year-and-a-half I moved into the Criminal Division and heard all criminal cases.

Mr. Granof: How about in that year-and-a-half before? Was it all juvenile cases?

Judge Urbina: Yes. It was all juvenile delinquency cases.

Mr. Granof: What else does the Family Division hear? Divorces?

Judge Urbina: Divorce, custody, child support, adoption, termination of parental rights, juvenile delinquency.

Mr. Granof: That's a wide range.

Judge Urbina: That's why we needed more judges. That's why we needed more resources, because it's the whole landscape.

Mr. Granof: But for the first year-and-a-half you were just doing juvenile delinquency?

Judge Urbina: Yes. I was the most junior judge, and I was happy to be doing what I was doing.

Mr. Granof: And then after that year-and-a-half you went to the Criminal Division?

Judge Urbina: Yes, and I first heard misdemeanors and then tried felonies, and then after that I became presiding judge.

Mr. Granof: So you were in the Criminal Division for how long?

Judge Urbina: About two years. So it was a year-and-a-half out and then another two years and then Family.

Mr. Granof: You went back to the Family Division?

Judge Urbina: Right.

Mr. Granof: As presiding judge?

Judge Urbina Yes, and during that period while I was presiding judge, I also was assigned to Domestic Relations. So I had a calendar in addition to doing the administrative work. And I became the judge presiding over the notorious *Gerry M* case. This was a case that was brought when Judge Kessler was presiding judge, and I inherited it. The case was prosecuted civilly by the Public Defender Service and a whole cadre of lawyers seeking to improve conditions in the juvenile detention facilities, Oak Hill, Cedar Knoll, and so forth. The objective was to improve all

the conditions: the physical conditions, the conditions with respect to education and teaching and counseling, everything.

Mr. Granof: What year was this?

Judge Urbina: As soon as I became the presiding judge, that's when I got the case. So it was about 1985.

Mr. Granof: And the name of the case was?

Judge Urbina: *Gerry M.* They don't use the whole name.

Mr. Granof: That case got a lot of publicity, didn't it?

Judge Urbina: Yes it did. It's still alive. There's been a lot done to improve the education and the well-being of children. Two of the main facilities were closed down because they lacked what they needed, and the system was set up for providing young people who had been convicted of crimes with resources outside the jurisdiction, so that if they had emotional problems or some other kind of problem that couldn't be dealt with in the existing facilities the obligation of the city was to identify and locate facilities outside that could deal with the specific issues these children had.

Mr. Granof: It's an ongoing problem today?

Judge Urbina: Oh yes. It's an ongoing problem today. After I left, Judge Rufus King, took over the position, and then Judge Levy. Judge King took over the position of chairing the Child Support Guidelines Committee. Judge Levy took over the *Gerry M.* case. And then I phased out.

Mr. Granof: Your time at the Criminal Division was about two years?

Judge Urbina: It was more than two years. Then after my period as presiding judge, the power behind the changes and the kind of dynamic approach the court took to anything it addressed was Carl Moultrie. He was the chief judge. He was a no-nonsense fellow and non-traditional, and he was tough.

Mr. Granof: He wanted to move things.

Judge Urbina: Oh yes. He knew his responsibility as chief judge is to make sure justice was administered in a timely way, and if it was the administration of the court that was holding it back, that would change. And it did, he changed it. Because so many adults were being detained long term for crimes with which they had been charged, being detained without a trial in certain categories of cases because there weren't enough judges, he created special calendars and put judges in charge of these special calendars so as to address only those cases where people were being preventatively detained. So I had a calendar for a little over two years that had nothing but first-degree murder, rape, and child molestation cases. That's all I did. Because these were the type of crimes for which defendants were being detained. They're the defendants that the government had proved were too dangerous to release into the community. So that's all I did. Sometimes a deliberating jury was walking out, and a new panel was being brought in for the next case. And we did it. We, meaning the court, did a fabulous job of reducing pre-trial detention time by creating procedures to make the processing of cases better, more efficient, coordinating with the police, coordinating with the Office of Corporation Counsel, coordinating with the U.S. Attorney's Office, all so that things worked better.

Mr. Granof: During that period, it seems to me the reputation of the Superior Court was pretty good. That is, it's a court that's regarded with considerable respect in the community.

Judge Urbina: Oh yes. And the national community actually. Of course, it's the only court where the President makes appointments to what is, in effect, a state court. But in addition to that, my memory of and my experience on that court, now as I reflect, indicates that the judges appointed to that court during that period were so bright and so motivated and so selfless in the way they did their job that the court could not help but succeed, and Chief Judge Moultrie was an inspiration. The people that came in from the U.S. Attorney's Office and from the Public Defender Service -- people like Tim Morrison, Fred Weisberg, who is still there and the most senior of all the judges there, and Judge Burgess -- these are the people, just brilliant folks, who wanted to be judges and who really had a commitment to this community. As you know, you have to live in the District to be a judge in the District of Columbia court system. It was one of the proudest experiences I could possibly have, associated with these people who are very bright, very idealistic.

Mr. Granof: What was the quality of representation?

Judge Urbina: It varied from division to division, and even more so it varied from case to case. The lawyers that represented the juveniles were generally very good because they were highly motivated. Regarding the lawyers that represented the persons charged in criminal cases, in those days as I recall there was not a system -- which we have here at Superior Court now -- for creating a panel of lawyers. Now in order to get CJA appointments you have to be on this panel, and these panels

consist of lawyers who have distinguished themselves through their experience or otherwise. That didn't exist at the time so you just had a large pool of CJA lawyers, and some of them were better than others.

Mr. Granof: The Public Defender people I gather were always good?

Judge Urbina: Always good.

Mr. Granof: And prosecutors, U.S. Attorneys, knew what they were doing?

Judge Urbina: Yes. Every once in a while you'd get a rookie that wasn't quite up to snuff. Not from the Public Defender but from the U.S. Attorney's Office.

Mr. Granof: Are there any cases that stand out in your memory particularly from the Juvenile Court?

Judge Urbina: There are. But if we could stop because I have a 12:30 meeting. This would be a good time to stop?

Mr. Granof: Oh absolutely. You've gone a long time. Yes, this would be a good place to stop.

ORAL HISTORY OF THE HONORABLE RICARDO URBINA
FIFTH INTERVIEW
25 OCTOBER 2011

This interview is the fifth interview of the Oral History of U.S. District Judge Ricardo Urbina as part of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewer is Gene Granof. The interview took place in the chambers of Judge Urbina at the United States Courthouse in the District of Columbia on Tuesday, October 25, 2011.

Mr. Granof: Judge, the last time we talked, and I don't yet have the transcript back from the transcriber of our last session, but my notes indicate that you were about to tell me some of the interesting cases that you had on the Superior Court.

Judge Urbina: As you know, the Superior Court during those days, and perhaps to a certain extent the present, was a court whose various divisions covered every type of controversy indigenous to Washington, D.C. Violations of the D.C. Code as well as common law civil actions that had jurisdiction in the District of Columbia. Most of us served in every division of the court. The major divisions, of course, were Criminal, Civil, and Family. There was also a Tax & Probate Division, which was not frequented by all the judges but by a presiding judge and a deputy presiding judge because those matters were not as extensive as the other divisions. I had a case in the Criminal Division, probably one of the most difficult cases for me personally, that involved the prosecution of a young man, probably in his early 30s, who was considered in his neighborhood to be kind of a mentor to children and just kind of a general do-gooder. This gentleman had inherited a very beautiful old house in a neighborhood that was not very good. But he had taken care of the house, it had many, many rooms, and consequently he took people in, usually children, whose parents were in rehabilitation, drug treatment,

or were otherwise in dire straits because of one set of circumstances or another. He would actually take the children to school. His general reputation was that of someone who was a truly altruistic person. Now, as circumstances developed, there was a group of boys in that house, and one of them was confronted by a teacher who felt that the boy was not right; there was something wrong with the way his personality had changed and his lack of attention in class and his general mood of unhappiness, and this was one of the children whose parents were occupied by circumstances outside the home. This young man, who was 11, was staying with the defendant in the case. I say "the defendant" because as facts were developed and investigated by the police and Home and Family Services, it was determined that this man was molesting these boys. And indeed, an indictment was brought against him -- a multi-count indictment because the boys were the objects of sexual abuse, sodomy, and physical abuse to a certain extent beyond sexual abuse. So these five boys were the alleged victims of the criminal behavior in the indictment. However, all the boys were between the ages of 10 and 14, and all of them allegedly had been sodomized. None of them had complained, except this one boy who told the story. The police in their vigor to investigate this matter kind of trespassed on the defendant's rights, and as a consequence there were some pretrial matters that addressed the legitimacy of the searches and the information and materials and evidence that were seized. Now, I say this case was difficult for me. Every judge has cases that are difficult, and this was one of them, but it was difficult for me because I had just come out of a three-year term as a presiding judge of the Family Division where most of my

work had to do with youths. Now I was in the Criminal Division when this trial came up. The presiding judge is kind of the chief administrative judge of the division, and consequently she or he gets intimately involved not only with the administration of the division, but also with constructing remedies for children who are afflicted or parents who are afflicted in one way or the other. So it involves some degree of intensity beyond just hearing cases. Three years of this included various aspects of exposure to community organizations and youth victims. So I was highly sensitized to issues regarding children. And then the first thing I get is this case involving five boys. The boys were brought to court, and two of them categorically refused to testify. They did not want to tell all in front of a bunch of strangers. They were mortified, they were embarrassed. They felt emasculated, and they absolutely refused. So two of the alleged victims opted out of the case for all intents and purposes.

Mr. Granof: There's very little you can do to make a juvenile testify.

Judge Urbina: That's correct. And in addition to that, there's plenty of sociological and psychiatric evidence that forcing a child to testify under these circumstances can be irreparably harmful, so when the kids said they didn't want to do it, no one tried to force the situation. Now, with respect to the evidence, as to one of the seizures the police had not followed appropriate procedure; they had not secured a warrant in its proper form. The lawyer who was representing this defendant was a very good lawyer from the Public Defender Service, and he brought to light the fact that there had been constitutional violations in the seizure of certain evidence, and I suppressed it. Of course, what a judge gets paid to do is to review and make

judgment calls based on the law. However, in the back of my mind I was feeling uncomfortable because in a sense I saw myself as an instrument working against the administration of justice in this particular instance in that the evidence was very strong, very condemning, but by the same token it had to be excluded. So the charges concerning two boys ultimately went to trial. The evidence suppressed did not affect the case of these two boys. The two boys actually took the stand and they testified. Now, I forgot to mention one very important footnote that made me particularly uncomfortable with this defendant. He had HIV and was on the brink of full-blown AIDS and never used protection. According to the testimony of the boys, when he sodomized them or whatever he did, he never used a condom, which would outrage anybody. Any human being would be outraged by that. But, of course, as I said the case went to trial, and the defendant was convicted and sentenced to a very, very long time in prison. I tracked the health status of the boys for 3 1/2 years. All of them, not just the two. I tracked them through Social Services, and thank God none of them came down with anything. Not with anything. So that was good. But again, I thought that was one of the more difficult cases.

Mr. Granof: At least suppressing the evidence did not mean that the defendant got off scot-free. The prosecution had enough evidence to convict him, and you as a judge could impose a substantial sentence.

Judge Urbina: Yes. And the circumstances were so aggravated. When the boys testified, they said that one boy was left in one room and could overhear what was going on in

the next room where the other boy was being molested. So the circumstances were aggravated enough to justify a very long sentence.

Mr. Granof: That raises a question I've always wanted to ask a judge. I don't know if you're familiar with the case that I call the "Decent Christian Burial" case. It's a Supreme Court case. Do you know the case?

Judge Urbina: I think I do.

Mr. Granof: Basically there was a teenage girl who was missing -- I think she was a teenage girl -- and the police believed the defendant had killed her. He refused to talk to the police, but they knew that, strangely enough, he was religious in some sense, and the detective transporting him over a substantial distance, a hundred miles or so, said, "You know, it's starting to snow and this poor girl wherever she is will not have a decent Christian burial." And ultimately because of that he confessed. A majority of the Supreme Court found a way to avoid suppressing the evidence. Justice Brennan, who I admire in so many other respects, dissented. And here's the problem, the dilemma, that I wanted to ask you about. If you suppress evidence in a case like that, and you're dealing with the parents of the child who knows this guy is the killer of their daughter, do you risk private justice and private vengeance?

Judge Urbina: Yes. The answer I think is yes.

Mr. Granof: So how does a judge deal with that?

Judge Urbina: Well, hopefully, I think judges make an effort, especially in sensitive circumstances like these, to do the best that they can to explain why they are doing what they do. And the explanation may during times of extreme emotion

not have the desired effect immediately, but in fact I think that whether the parents or other interested people truly understand that at the moment, or come to understand it later on when the emotions have subsided, that that explanation is critical, that that explanation is extraordinarily important because it helps to remove the specter of arbitrariness from the layman's thought process. The layman is trying to figure out, "My God, how can this be that the guy did it and now the judge says we can't use the evidence." To introduce a rationale for that that is faithful to the law, to the Constitution, as I said may not make sense at the moment, but hopefully over time it comes to light that it does. For example, look at the wonderful work that Adam Walsh has done. You know him? He's the one that has that show "Most Wanted." His son was decapitated, and they found the son's body several years later. Well, he turned that anger and that rage into something very positive. Fortunately, in that case it wasn't as a result of any court intervention that they weren't able to find the child.

But I had one case, and this was not necessarily one of the most difficult cases, but it certainly was one of the most interesting, and I think it touches on your inquiry, your question. It involved a bar fight. I was then a judge in the Superior Court. The case involved a bar fight, and all the people involved were very intoxicated. Not falling down drunk, but all of them were highly, highly under the influence of alcohol. These two Asian gentlemen were sitting at a table, and there were three white youths sitting at another. The establishment was a drinking establishment, and I don't recall all of the facts, but somehow a banter between the two groups went back and forth. Finally, one of the white youths and

one of the Asian youths stood up and they clashed, and in the course of that fight between these two people, the Asian youth was thrown back. His hand fell on a shot glass, just a little shot glass. He palmed the shot glass with the open part up and the closed part down, and in a martial art move, he thrust it up, and it went up, the glass cut up, all the way through the fellow's face, bumped his eye all the way up through the forehead. Obviously, the youth was maimed. The fellow who did the harm was charged with assault with intent to commit mayhem. The parents of the victim came to the sentencing. I fully expected that there would be boiling rage expressed by the parents of the boy who was harmed. And, indeed, when the father stood up it was pretty clear that he was very angry and that he was adamant about asking the court to impose a substantial sentence. The mother got up, and the defendant was there with his family, and the injured person, he was in the courtroom as well, with his family, and the mother of the victim got up to speak, and the defendant stood up and he looked at the mother, and he said, "I'm so sorry." And he just started crying and crying and crying. And then the mother walked into the well of the court, she walked over to him with the marshal standing ready nearby, and I had a feeling that this was going to be okay. She approached him and she put her hand on his face, and she said, "I forgive you. Don't let this ruin the rest of your life. I forgive you." I was on the verge of tears. I had to take probably a full minute to compose myself. I had never seen anything like that in my life. Never. And so I think she probably understood that if she did not forgive the defendant, especially in light of the his obvious remorse and acceptance of all the responsibility involved, if she did not forgive him, she

would have a miserable life and so would her son, who fortunately, had successful plastic surgery and the signs of the struggle were not conspicuous. And the defendant's family was there, a wonderful close Asian family who were there to support their son, and everybody walked out together.

Mr. Granof: That's a very heartwarming story. But that was a case, it sounds like, in which it wasn't pre-planned, it was purely circumstantial, an action of the moment, almost reactive, and without much thought.

Judge Urbina: Right. I think that's right. So you see so many interesting things. One of the wonderful parts of being a judge is that the human drama plays out in front of you all the time, and in almost every instance you can find a piece of that drama that applies to you. The human experience. No matter what's playing out, whether it's anger or whether it's fear or whether it's lust or whether it's passion, whatever it is you can catch glimpses of yourself in a way that helps you kind of understand. If it's a bad act, of course you don't forgive it, you don't absorb it as though it were okay. But by the same token, as I think I said to you once earlier, one of the features of being a judge is that before you step into the courtroom every day, or even sit down to review the litigation, the controversy on paper, it's important to kind of get centered, to kind of take several deep breaths, and the best the judge can do is to try to take those things that threaten his or her objectivity and kind of push them into the background so that you can operate on an even keel and fairly. Because if you take the bench and you're in a bad mood, and I've done it -- something bad has happened on the way to work or I'm having pain or whatever -- and you take the bench and you're in a bad mood, it's

incredible how that can adversely affect your equanimity. One time I was about to sentence somebody, and it was obvious to the lawyer -- I guess they all knew me by then -- that I was not in a good mood, and the lawyer had the wherewithal and the courage to say, "Judge, would you mind taking 10 minutes before we go any further with this?" And I said, "Why?" And he said, "Because I can see you're not feeling well." And I said, "All right," and I got up and walked out, and he was right. When I went back, I was feeling much more like myself. So it's important.

Mr. Granof: That's because judges are human.

Judge Urbina: Absolutely. We are human. You're right, we're human, but we're still responsible to act on the highest level.

Mr. Granof: So if you come in one day and you have a bad cold to sour your mood, you've got to really make an effort to put that aside?

Judge Urbina: Yes you do, just like you have to make an effort to put other things aside. When you've got a case involving the suppression of evidence, and the evidence is clearly condemning of the person, you have to. And if you don't do that -- I'd like to think I always do that. Maybe I haven't, but I'm sure that if there are instances when I haven't done that, it's been one of the few instances where I have looked back and felt uncomfortable with myself. You know one of the things I believe a judge has to learn is not to look back. Just do what you've got to do, keep on going, because if you start agonizing over the past or obsessing about the future, then you get disoriented, and that's not good either. So it's really important for the judge to find that neutrality. The very same thing that we

preach to the jury. Another task is to get that jury into a frame of mind where they can do what you are asking them to do. And so I say to the jury, "You know, we act as a team. I'm the judge of the law, you're the judge of the facts." And I tell them, "Sometimes I wake up in the morning, I open the newspaper, and I jump to conclusions about any number of things that I'm reading about. But when I walk in here, there's no jumping to conclusions. You can't jump to conclusions, I can't jump to conclusions, because our job is not to jump to conclusions but to make decisions based on the facts and the evidence."

Mr. Granof: So you have to be very careful about that. I mean, you take a lot of pains to instruct the jury along those lines. Is that something that all judges do?

Judge Urbina: Yes. I think all judges do. I think some may be a little more jury-oriented than others, but I happen to believe not only in my heart but in my mind that that collection of 12 or more people is just an incredible engine for justice. Now do I always agree with the jury? Well, sometimes I know more than the jury knows, so I have more information. But do I think that more than 95% of the time they've come to a reasonable conclusion based on the evidence. Yes, I do. And I think that the judge has much to do with cultivating a state of mind in the jury right from the *voir dire* all the way through the trial. The way the judge interacts with the lawyers, the way the judge makes rulings, the way the judge treats people when they come into the courtroom. I think they assimilate that and then they kind of rise to the occasion.

Mr. Granof: I think Irving Younger, the noted lecturer on trials, said that he thought that collectively the jury was the smartest person in the room. Do you agree with that?

Judge Urbina: Absolutely. I absolutely agree. And juries have courage, which is needed. I mean think about it. You get these total strangers who come off the street and they come in there and then they're told they're going to make the most important decision of the day. Some of it involves them understanding things they've never heard before. It's very courageous. But in addition to that, if they come to respect each other during this period called a trial, come to respect each other, they really do act as a collective intelligence. I'm very proud of the way our jury system works.

Mr. Granof: So you think that people, aside from the fact that they should settle cases if they can, but they shouldn't be hesitant if they think they're in the right to have a jury hear their case? Maybe even as opposed to a judge.

Judge Urbina: Yes, I do. Juries have a sense of justice that I think goes beyond the parameters of what a judge is entitled to consider. For example, there is a lot -- unquestionably -- there's a lot of intuition involved in how juries reach decisions. They listen to witnesses. They detect, collectively -- separately and collectively -- arrogance. They detect people who are not truth tellers. They look at the social justice involved. When we give a jury a case and say, "Here's a civil case, you figure out how much the pain and suffering is worth," we give them no formula for that. Nothing. Just how much is this pain and suffering worth? I mean hospital bills are one thing. You know, $10,000, are you going to compensate them? But when you say this person's going to be in pain for the next 25 years of their life, everyone around them is going to suffer, and they're going to suffer. Well, that takes a really human ingredient that I think is served better by the jurors

collectively than the judge. Because the judge is one person, and the collection of that knowledge and life experience of those 12 people, or however many there are, I think constitutes a high level of justice.

Mr. Granof: So let me ask you a provocative question about the medical profession. When you mention pain and suffering, many doctors want to limit the jury's ability to calculate damages. They think jurors are too much swayed by emotion. But from what I gather, you don't necessarily agree with that?

Judge Urbina: Well, I don't have as much empirical information in my head as I should to be able to accurately react to that question, but I will say this: I think we as the general public hear more about the exceptions than we do the average case. For instance, we hear about the *McDonald's* case where the person got burned.

Mr. Granof: The *McDonald's* case is a very interesting one because, much to its credit, *The Wall Street Journal* ran a story -- it was their second lead, I'll never forget it -- in which they interviewed the jury foreman. What didn't come out in all the brouhaha and the criticism of the jury is that, first, this woman was severely injured. Second, McDonald's heated its coffee hotter, much hotter, than is normal because they wanted it to stay hot when people took it out. But they posted no warning. And most important, there had been a substantial number of injuries of people burned that McDonald's was aware of and took no action. And the jury said, "That didn't make sense to us." So when you really looked at the facts of the case, the jury's decision looked pretty reasonable.

Judge Urbina: Well, there you go. And unfortunately the real facts of the case are not always reported in the media. In addition, in that *McDonald's* case I think – I should

know this, but I think – there was a review of the outcome, and the damages were reduced.

Mr. Granof: They were reduced, and considering the size of McDonald's and the billions of dollars of revenue, the final amount of the damages was really a drop in the bucket for them. It was just a shot across their bow to say you should not do this.

Judge Urbina: Yes, you should care more about your consumers.

Mr. Granof: Yes. And once you're warned of the danger, you really should react to it.

Judge Urbina: Exactly. Especially when you're making a lot of money and you are serving the public. You should be very, very careful.

Mr. Granof: I think your point is well taken that what gets the publicity are the exceptional cases, and in some instances it's the advocates of a position, like the advocates for limiting damages, that pull these cases out and publicize them.

Judge Urbina: Yes, and these television shows that kind of sensationalize little tidbits of the trial. As a lawyer, you know, and as a lawyer, I know that juries are not frivolous. I mean sure, you probably have juries in different places that don't have all the benefits that we expect of juries here, you know, education and so forth, exposure, kind of a cosmopolitan exposure and the like, but I still don't think that that's something that generally undermines jury outcomes. I think what I hear about a case where there's been a verdict that runs counter to popular demand, I always think that must have been a pretty brave jury. This latest case in the news is about a mother being on trial for killing her infant daughter. Well, you know that when you present only a splash of certain facts, of course the conclusion will be determined by those facts. But if the lawyers are doing their job, especially the

defense lawyer, and he identifies what a reasonable person would think is a reasonable doubt, and the jury acquits, the jury is doing its job. The jury is doing what the judge told them to do. The jury in that case -- the one in which the mother was tried for killing her baby daughter -- some of them were interviewed and spoke quite convincingly about the prosecutor's failures in the case. So I think many times juries are courageous. Now are there horror stories? I teach a class, and one of the sessions has to do with jury nullification. So we talk about how in some states, for example certain jurisdictions within Maryland, jurors are told that they are in effect able to override the evidence in a case with a verdict that is tantamount to jury nullification. But most of the time, in most jurisdictions, the judge tells a jury that it has to decide the case based on the law and the facts, and that they have no latitude on that. So I give my students a hypothetical. I say, "Well, there's a series of convictions, all of them young African-Americans. Many of the convictions are justified because the defendants possessed a small amount of crack cocaine or a large amount of cocaine. But it seems like there is a surge of prosecutions aimed at a particular segment of the population These young people are being sent away for extended periods of time, and then the community kind of gets fed up with it and says, 'No, we're not doing this anymore.' Maybe the jurors don't think it through exactly like this, but essentially they believe these laws are unfair, and we're not going to ratify these laws with a verdict of conviction." I say to my class, "What do you think of that?" Of course people raise their hand and say that sounds right, that's part of why the jury exists, which is to act as a kind of filter, to make sure that there's not

just one person making a decision. I say to the class, "Okay, let me change the hypothetical a little bit. We're in the South in the 1940s and 1950s, and an African-American man is accused of raping or molesting a white woman. There is really no evidence other than the fact that the African-American man once said something very complementary to other people about this white woman, but the white woman claims that one night he came in and raped her, when in reality there is also evidence that she had a lover in addition to her husband. But the jury convenes, and the jury decides that even though there is evidence that some people would consider supports reasonable doubt, they decide 'no, we're going to convict this guy because even if he didn't do it, he shouldn't be talking about a white woman,' and I say, 'what do you think about that?'" That's jury nullification, it's just a different set of circumstances in which the jury decides to ignore the law and make its own determination. So you can't just talk about a concept in a vacuum. You have to consider what the overall ramifications and implications of a practice are, and the class found it interesting. I find it interesting.

Mr. Granof: It is an interesting hypothetical. This is the class that you teach at GW?

Judge Urbina: American Jury, yes.

Mr. Granof: I think we've talked about that, and you've been teaching it for a while.

Judge Urbina: Now, twenty years.

Mr. Granof: As an experienced and capable trial lawyer, which you were before you went on the bench, to what extent do you feel tempted as a judge to intervene in a trial? A

well-known criminal court judge in New York, Sam Leibowitz, was always accused of taking over the case.

Judge Urbina: I remember those stories. And one of the lawyers got up to the bench and said, "Look, judge, I don't mind you trying the case, but if you do just don't lose it." Of course at this stage, thirty years out, I guess that temptation is not as strong. But without taking over, I do note often what I consider to be flaws in the way the examination is going or in a failure to object. I note these things, and if it's a criminal case, and I think the defense is failing, I will do something about it. I may not take over the case, but I'll call the lawyers to the bench and I'll say, "I notice you haven't been objecting, I notice that you haven't raised certain points that you claim you were going to raise in the opening statement. Are you not feeling well?" Usually, something to perk them up because sometimes lawyers, like all human beings, get a little apathetic. And maybe only a few times in my whole career I've had to remove a lawyer because I felt that he was not doing an adequate job of representing a criminal defendant. I do notice it, and every once in a while I'll interject and reword the question. It'll be the same question but reworded in a way so that the witness will understand it. But no, I'm not tempted too much to take over.

Mr. Granof: You came on the Superior Court in 1981?

Judge Urbina: Yes.

Mr. Granof: And then from 1985 to 1988, you were the presiding judge of the Family Court? Then you got appointed to the federal bench in 1994?

Judge Urbina: Correct.

Mr. Granof: Did you serve a lot of time in the criminal division?

Judge Urbina: Yes. I spent I'd say probably almost half of my time in the family division, but then as far as the civil and criminal divisions, Chief Judge Moultrie put together -- I may have already told you this, I'm sorry if I did -- he put together a cadre of judges charged with the responsibility of clearing up the backlog. The problem was that this was a period of time when many people were being arrested and being preventatively detained because the laws had changed. Regarding certain crimes, the presumption of releasability was not applicable anymore so people were being arrested for these crimes and being detained for sometimes a year-and-a-half before they went to trial. The crimes were murder, rape, and child molestation. And during that period, a little more than two years, that's all I tried, and it was one case after the other. As the final instructions for the deliberating jury were delivered, they would be walking out one door and a new panel would be walking in the front, because that's how quickly we were trying to process these cases so these people didn't have to sit in jail without a trial.

Mr. Granof: What period of time are we talking about? Was it 1988-1994 time period?

Judge Urbina: Yes. I was in the criminal division of the court from 1988 to almost 1991, and then I went to the civil division. I think my memory is right. I was not enthusiastic about being in the civil division until I got into it, and then I found it really interesting and really challenging. And if the truth were known, I probably liked civil better than criminal. I really enjoyed the dynamics. The lawyers, of course, were a whole new crop. Most of them I had never seen before because they were the civil bar as opposed to the criminal bar, and they were different. So

I had a whole new group of lawyers, different types of trials, a real variety of cases. Personal injury cases which I really enjoyed. Medical malpractice cases. Some really fine, fine lawyers. Tom Green and other people trying cases in front of me. So it was very productive and enjoyable, so to speak. An enjoyable time for me.

Mr. Granof: So, you spent a lot of time in the criminal division where you had to do sentencing. How did you find that? Difficult? Was there any particular way you approached it?

Judge Urbina: My approach to sentencing has always been pretty much the same, and I must say that it's become more difficult as I've gotten older. Not that it was ever easy. My approach, I tried to take a textbook approach to sentencing, which means that you look at the four corners of the person. There's always a good written report that tells you about the offense as well as the person's life circumstances, their criminal history, and other pertinent matters. What I try to do when I put all that information together is divide up the relevance of the information and to give weight to the information based on four categories: deterrence, both general and individual; incapacitation; rehabilitation; and retribution. I look at those four things, and I discuss all four with the defendant. My approach has always been the same.

Mr. Granof: This was true when you were in the Superior Court?

Judge Urbina: Yes, this was true in the Superior Court. Only I probably did not review all the elements with the defendant as I have done in federal court, which I insist on doing so that they'll know what my reasoning is. Repeat offenders. There were a

lot of those in the Superior Court. People who were career offenders so to speak. Lots of past convictions, for this, that, and the other thing. So those defendants would probably warrant having incapacitation be a heavy factor in their sentencing because they just can't seem to adjust to the norms of society. Then retribution --

Mr. Granof: When you say incapacitation, you mean taking them out of society?

Judge Urbina: Oh yes, taking them out for a period of time. Because it looks like they've been in and out and in and out, and in the meantime they're victimizing people so the idea is to take them out of the mainstream long enough so that fewer people get victimized. And then there's retribution, which is punishment, and some crimes lend themselves more to the punishment aspect. I always explain that they call it an offense because you are offending society and that people are afraid of you. People are afraid you'll steal their identity, people are afraid you'll hit them in the head. Whatever it is, and therefore there's a response that society demands for that. Then of course there's rehabilitation, and that is aimed at, for me, seeing whether or not this person by the time the sentencing comes around whether there's evidence of this person being a good candidate for rehabilitation or not. Sometimes if the person is out in the community pending sentencing and it's a long period, that person may have already started doing things -- getting into a drug programs, for instance -- and I always encourage that and give it due credit. So there's rehabilitation, retribution, incapacitation, deterrence. Now, in this court, the deterrence factor has been a major factor.

Mr. Granof: You say "this court?"

Judge Urbina: In the federal courts. In the court across the street -- the Superior Court -- frequently I'd see the same people over and over and over again. So I'd become familiar with them. Sometimes I would see them in the early stages in the juvenile court and then they would graduate to adult court. In this court, the sentencings are sometimes even more difficult in a variety of ways. For example, we deal with a lot of white collar crime here. I believe that people who had all the advantages in life, who nevertheless turned to criminal behavior, do not merit some of the considerations that people who had no options in life, the options weren't handed to them, or they were narrow, or they weren't good from the start. As a consequence, those more fortunate people start off in a very negative posture before me. Now, by the same token, rehabilitation and so forth, sometimes the more fortunate people who have committed white collar crimes have tremendous resources for rehabilitation. They've got a very supportive family; they've got children; they've got respectability; they've got skills; and they've got an education. These are all factors that suggest that they are appropriate for reinsertion into the community, if they've got the help, if they've got the resources, if they've got the will of course. So there you have it. Lately, I've had a whole series of these bribery kickback cases. Sentenced one such defendant yesterday. And these are very difficult. The whole family is lined up in the front row -- children, grandparents, father, mother. Everybody's lined up there looking at you, waiting to hear what you are going to say, what you are going to do. Should you lock defendants up despite the good things they have done, for which they deserve credit? And many of these people have done really good things.

They've started organizations; they've helped youth; they've been in the military; and so forth. But going back to the operative point, this matter of deterrence is really important. About two years ago, in a bribery case a person came forth from the audience to speak on behalf of a defendant about to be sentenced. He said, essentially, "Judge, please be lenient on my friend. He doesn't deserve a long period in prison. Besides, as for this bribery, kickback stuff, everybody's doing it." Everybody's doing it? Well, he didn't know it, but he just gave me a reason to give this guy more time because if people think they're going to get a slap on the wrist, there is no deterrent. These people were stealing. This one guy, $71,000 was seized in his home, and he stole another $118,000. Good guy. Good family. Nice person. And it's not an aberration. You know sometimes, as I said to the defendant, anybody can be crazy, anybody can do a crazy thing that happens to be illegal on a particular day, that shouldn't overshadow all the good stuff they've done. But in that case it was a pattern from year to year. The defendant hired one company, a phony company, and he improperly invoiced and kept the money 245 times. With another phony company, it was 115 times. So this was a premeditated plot to do things over a period of time, and I said a judge can't just set that aside. This was a premeditated effort over years.

Mr. Granof: And you certainly want to send a message that it's not acceptable conduct and there are consequences for criminal behavior.

Judge Urbina: Exactly. But it doesn't make it any easier when you look at the people in front of you.

Mr. Granof: How much discretion did you have as a Superior Court judge?

Judge Urbina: Significant. I'd say the last half of my term there, there were some mandatory minimum statutes that came in. They were enacted to respond to guns and drug cases. And so it was a mandatory minimum. But, generally speaking, we had a lot of discretion. It was good and it was bad. It was good because, obviously, if you are the judge studying the situation, it should be your responsibility to respond accordingly. It was bad because when you have several judges with the very same situation and they all give different, disparate sentences, one's probation, one's ten years, it doesn't really look good.

Mr. Granof: So how do you resolve this dilemma between uniformity in sentencing and restrictions and standards imposed by the legislature that result in sentences which clearly seem to be inappropriate, which everybody says don't make any sense?

Judge Urbina: Well, for a while the sentencing guidelines were mandatory. We could depart, but the justification to depart from a given guideline range was very slight. The Court of Appeals would reverse you in a minute if your justification wasn't solid. So the disparity part of the dilemma was not too prominent. But then the Supreme Court said that to the extent that these guidelines were mandatory they were unconstitutional, but you still had to consult them before issuing a sentence. And I do. Not only because the law requires it, but also because I think it makes sense. In many instances, I thought the guidelines were on the money. When I look at the guidelines, I say, "Yes, this looks right." There were those aberrations where the guidelines called for 30 years because people in a particular district wanted their legislator to make this a heinous crime and give everybody 30 years. So you had those, but generally speaking, I thought the guidelines were right. So now,

even though the guidelines are advisory, I still look at them first and I discuss them first, and then if I'm going to go outside the guidelines, sometimes I will go below, I rarely go above, I have to justify it under 18 U.S. Code, Section 3553.

Mr. Granof: As a Superior Court judge, you didn't have those guidelines?

Judge Urbina: No.

Mr. Granof: At least not to the extent you have them now.

Judge Urbina: That's right. And it was difficult because sometimes you had a heart-rendering story about this person. Sometimes the family would come in and give you examples of how this conduct is not characteristic. Other times, though nobody said anything, you could read it and you'd know that this defendant's child is now going to be a pretty much left to its own resources. That child in Family Services has already been there, so you know that the implications are far reaching, and it's painful. It's painful. I won't imply that I stay up at night, but I tell you it is painful. It is so painful sometimes. In the Superior Court in particular, because we're talking about that, I had a streak, and I literally mean a streak, of murder convictions, gang-related, protecting turf type murders. One of them involved the use of a machine gun in broad daylight at a stop light, just gangster style. These guys were unbelievable. Strong. Never touched drugs themselves. Never. They laughed at the people who used drugs. Clean-cut. Some of them were like this [snap of fingers] with math. During the questioning, you could see that they calculate stuff, and you say, "My God, this kid could have gotten an MBA. This kid could have been a model person." And you say instead, "He's going to prison

for 40 years." What a waste. What a waste. So those moments really made it very difficult.

Mr. Granof: In sentencing, to what extent are judges, or you in particular, concerned about public reaction? You certainly don't want a critical editorial in *The Washington Post.*

Judge Urbina: This is true, and consequently, a lot of it is the luck of the draw because some judges, for one reason or another, they just never drew a case that was going to be that publicly controversial. Maybe it'll be a high profile case, but it won't be publicly controversial. Other judges will get several of those cases. And the judges in Superior Court that get several of those cases and provoke the ire of the public, they probably will never be a federal judge because somebody is going to hold that against them. That's how arbitrary this process is. But getting back to your point, sometimes now it's easier because I have no ambitions to move on; to the contrary, and my appointment is for life. When I was in Superior Court, and I really wanted very much to do the right thing and to be perceived as doing the right thing, there were moments when I would say, "Now if I do this, there's going to be a scathing reaction. If I do that, there won't be." And I must admit that there were times when I thought about it, but never for more than 30 seconds to a minute, I must say. I mean, not that I'm courageous or anything, but I if you don't do the right thing, you have to live with yourself. And, fortunately, the "controversial" things I might have done in giving a heavier or a lighter sentence, whatever it might be, never inflamed the wrong people. I know that another judge who is on this court -- you may already know who it is -- made a courageous

decision and then they tried to use it against him when he had his confirmation hearing. That was Judge [Henry] Kennedy.

Mr. Granof: I think Judge Kennedy told me about that.

Judge Urbina: I'm sure he did. It was very unpleasant and very unfair. But anyway, that aside, we are talking about the complications of sentencing.

Mr. Granof: And that leads to a question about judges facing election.

Judge Urbina: Horrible. That system has got to go. More than 90% of the judges in the United States are elected. Did you know that?

Mr. Granof: I think I read that, and I was shocked by it.

Judge Urbina: I read it recently, and I was shocked by it. I thought it was much lower. It's more than 90% that are elected, and how inappropriate is that?

Mr. Granof: For me it's totally inappropriate.

Judge Urbina: Well, I'll tell you that my sister-in-law is a judge in Fairfax [Virginia]. I don't think she's ever had to suffer too much of this, but I know I have other friends who are judges in states that have elections for judges, and what they tell me is that the way you get the word out about who you are is by campaigning, by ads and so forth, but the way you do that is to get money. And the way you get money is from people who appear in front of you and organizations that contribute money. Now how awkward must that be when you have a lawyer in front of you who's contributed to your campaign or a company or an organization, and now they're litigating a matter in front of you. I don't know, but maybe there's support for this in the federal system, but I think that would be incredibly unseemly.

Mr. Granof: I can't imagine going to such a system in which federal judges were elected. It seems to me that the respect the federal judiciary has, and I think it has broad respect among the public, is because they serve for life. They're generally very good, smart.

Judge Urbina: And they're not vulnerable to political manipulation.

Mr. Granof: I think we'd have a different country if we didn't have an independent judiciary.

Judge Urbina: I agree.

Mr. Granof: I wanted to ask you about the Family Court because that's so different than Criminal. First, there are no jury trials, right?

Judge Urbina: No. When I first started at the Public Defender Service, there were jury trials for juveniles. I tried two or three, perhaps more than that, jury trials of juveniles accused of what would have been felonies, and soon thereafter the Supreme Court decided a case, *McKeiver v. Pennsylvania*, which held that the Constitution did not require jury trials for juveniles. So that became of great assistance to the Family Court in operating successfully because every juvenile had been demanding a jury trial. So that changed.

Mr. Granof: My impression of the Family Court, which is probably a limited impression, is that it deals with divorce and custody and that sort of thing?

Judge Urbina: Well, actually, no. Family Court includes child support, adoption, abuse and neglect, juvenile delinquency, domestic relations, and termination of parental rights. All those areas come within the Family Court. As a public defender I was assigned initially to do the "criminal" cases, which were the juvenile delinquency cases. So it was interesting, it was nice for me because I got some early jury trial

experience. After *McKeiver v. Pennsylvania* came down in 1970 all the cases post-1970 were non-jury, but cases post-1970 that had been brought pre-1970 still were entitled to jury trials. So I got a couple of jury trials in there. Also in 1970 the Superior Court was created. Previously, it was the Court of General Sessions. The Superior Court was given jurisdiction over felonies, but all the felony cases brought before 1970 were here in federal court. This federal court had jurisdiction over everything. So it was a wonderful experience for me as a public defender starting in the Court of General Sessions, then moving directly to the Superior Court, and then having a back-and-forth with the federal court. So it was all very, very interesting. I got to meet different judges and had different experiences. And I was a kid, with a big Afro, and it was all so exciting.

Mr. Granof: By the time you got to the Family Division as a judge, there weren't any jury trials?

Judge Urbina: That's right. That changed in 1970, and I didn't come on the court until 1981, so there were no more left over jury-triable juvenile cases.

Mr. Granof: As a judge in the Family Court, you clearly heard a number of juvenile cases?

Judge Urbina: Yes.

Mr. Granof: But how about the other kinds of cases? The child support, divorce cases, custody battles?

Judge Urbina: Yes. Domestic relations, which was a part of the Family Division, embraced all of that, and indeed, when I assumed the position of presiding judge in the Family Division, the position was handed over to me by Judge Gladys Kessler, who had been the presiding judge, and there were a couple of things kind of incubating at

that time that she reminded me were important and that she would assist me with even after she left, and those were the creation of child support guidelines and the *Gerry M.* case. In the District of Columbia, child support was pretty much the individual assessment and judgment by the judge on a case-by-case basis. The opinion of those who examined the system was that it was not producing fair results. First, not enough custodial parents were getting into the court system for relief. Second, the awards -- meaning child support awards -- were uneven, inconsistent, and not reflective of the needs of the child in many instances. So I gathered a committee of about 14 or 15 people, and some of them were lawyers for fathers who were non-custodial; some of them were lawyers for mothers who were custodial; some of them were academics; some of them were judges; and it was a wonderful cadre of dedicated people. It was really one of the most fascinating experiences I've ever had as a judge. We met twice a month at 7:30 in the morning, thanks to my Puerto Rican coffee. Everybody flocked to the meetings, the meetings were very energetic, the hour notwithstanding. I take very little credit as the chairman of the committee because the real thinking was done by those other members who had a great expertise in these areas, including the academics and lawyers. We even had a speaker -- a woman who was a lawyer and had written a book in New York about divorces and children -- and she came, actually on her own dime, and spoke to us early one morning. So the bottom line was that we produced what later on was adopted by the City Council as the Child Support Guidelines which would govern the award of child support in the District of Columbia. It met with some resistance. The Court of Appeals,

first of all when we put it out, the Court of Appeals said you don't have authority to make substantive law, so therefore any decision based on these guidelines is invalidated. Okay, fine. So we took it right over to the City Council. The City Council said great, we'll adopt it. And they did. And that became the law. Things have changed somewhat since then, but it was untouched for a decade. We developed formulas for how much money the non-custodial parent had to pay. There were some sticky issues in there. The whole theory was that the child should be in the same situation financially, or close to it, that it would have been in had the parents stayed together. That was the theory. But there were some glitches because, for example, in applying the formula fairly, you had women who had several children by different fathers, and they were making a killing because with each child there was a certain percentage of the salary from each father that she received. So we had to carve out an exception for how to deal with that because it wasn't fair. So it was very interesting, very challenging for me because it wasn't an area that I was actually familiar with in terms of having given it much thought. But the people on that committee were just superlative. They were just so good.

Mr. Granof: Who did you have on it?

Judge Urbina: Judge Rufus King; we had an academician from AU whose name I can't recall; we had lawyers from the Women's Bar and the Men's Bar. I can't remember all the names because I wasn't personally acquainted with them except for this experience, but they were wonderful. They came to the meetings. Most of those meetings had a quorum at 7:30 in the morning.

Mr. Granof: So this was, in effect, a major legislative contribution?

Judge Urbina: Yes, it was. And I'm very proud of it. Again, I don't take any major credit for it at all. These people, many of them, knew more about the --

Mr. Granof: But you were running it?

Judge Urbina: I was running it, yes. But they knew so much and they did so much work that the end product was adopted wholesale by the City Council.

Mr. Granof: Now my impression of divorce and custody is that it can really be bitter and difficult, particularly the cases that wind up before a judge. You almost have to be a Solomon.

Judge Urbina: Well, the judge has the task of trying to bring everybody whose emotions are high kind of down to a rational plateau, and judges can frequently do that. The problem comes when the lawyers aggravate the situation, especially when clients want a pound of flesh and the lawyers are ready to extract it. That creates more animosity, more vitriol, and then the judge has them to deal with the lawyers as well as their clients.

Mr. Granof: There's a substantial divorce bar in the District, and maybe in most jurisdictions. How were they? Are they pretty good?

Judge Urbina: They were pretty good. And once in a while you have somebody who wasn't really a divorce lawyer but was doing a divorce case, and sometimes they weren't quite as practiced as they should be, and they made things more, rather than less, difficult. But no, I thought the divorce bar had wonderful people. Marna Tucker and others who are just spectacular divorce lawyers.

Mr. Granof: I would think that splitting up money and property, that could be done maybe more straightforwardly than custody?

Judge Urbina: Yes. That's true. Once the judge decides the custody issue, then it's up to the parties to work out the details so the least amount of trauma affects the child. But when it comes to the assets, "I want the plates."

Mr. Granof: "I want the Redskins tickets."

Judge Urbina: Right. "I want the silver. I want that silver carafe." My God. You're looking at the lawyers and you say, "Come on guys, help me out here."

Mr. Granof: Who gets the dog?

Judge Urbina: Yes, the dog was frequently a big issue, when both people are in love with the dog.

Mr. Granof: I would think one of the most difficult issues that a judge would confront in Family Court is you have a custody arrangement, and maybe it's joint sharing or maybe it isn't, and then one of the parties, say the wife, falls in love with somebody in another state or maybe has a job opportunity in another state and wants to take the kids with her. Then the arrangement, which seems to be working, is suddenly disrupted. There's no good solution.

Judge Urbina: You're exactly correct. It's very difficult.

Mr. Granof: How do you work those out?

Judge Urbina: Frequently, the good lawyers would have built a provision into the divorce agreement saying that that could or could not happen without the consent of the other. That, coupled with the fact that around that time many states were instituting interstate compacts so that it was actually regarded as kidnapping if the

child was removed in violation of the agreement or a court decree. And there was comity so that if the mother or father took the child to another state and the non-custodial parent said this is against our agreement and it's against the law, then a proceeding could be initiated in the other jurisdiction to force that person to bring the child back. But none of these are very happy solutions because in the meantime the child is suffering. The child is traumatized. A lot of times the parents are so angry at each other they just don't appreciate how adversely affected the children are. It's very hard. But a judge can only do so much.

Mr. Granof: I've taken up a lot of your time here. Thank you again for your time.

Judge Urbina: It's always a pleasure seeing you.

ORAL HISTORY OF THE HONORABLE RICARDO M. URBINA
SIXTH INTERVIEW
28 NOVEMBER 2011

This is the sixth interview of the oral history of U.S. District Judge Ricardo Urbina as part of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewer is Gene Granof. The interview took place in the chambers of Judge Urbina at the United States Courthouse in the District of Columbia on Monday, November 28, 2011 at 1:00 p.m.

Mr. Granof: Judge, on November 2nd you were honored in connection with the District's Hispanic Month?

Judge Urbina: Yes, I was. The Hispanic festivities last for about a month. It's kind of like the Hispanic recognition, and it's all over the country, not just in the District of Columbia.

Mr. Granof: And, in fact, it was a very nice ceremony. But, in addition, you made an announcement.

Judge Urbina: Yes, I did. I announced that at some point early in 2012, probably by May, that I will be taking full retirement.

Mr. Granof: And why did you decide to do that?

Judge Urbina: Well, I've been on senior status now for close to a year, and I thought that I would experiment with senior status to see if it would create enough room in my life to get some other things done. But although the case load has sharply decreased because I'm not taking new cases, the intensity of the job requires a lot of focus and attention even when I'm not in the courthouse, consequently cutting in on the very thing that I want to create more of, which is time. I decided that I wanted to spend more time with my grandson and my wife, and that I want to take some creative writing courses and try my hand at something else.

Mr. Granof: Creative writing? Where would you do that? I know that DC offers a program, various universities around DC.

Judge Urbina: Various universities in DC and Virginia. The premier writing schools, I think, are in Boston, and I believe my wife told me there are some in the Midwest that are absolutely exceptional. But I think I would start small. I have had an idea for a book for quite some time, some science fiction. And I think I'd start small and see how things actually play out in terms of time and feeling gratified by the experience of writing. I may also do, in addition to that, some mediation.

Mr. Granof: Now between the Superior Court and the federal bench, you've been a judge in public service for how many years? Thirty something?

Judge Urbina: Yes. In April, it will be thirty-one.

Mr. Granof: So, that's a good long time of service. And lest anybody think that you're not young at heart, I found out that you recently made a purchase of a vehicle that perhaps you could tell us about.

Judge Urbina: Actually, I rode it into work today. It's a 1300cc motorcycle. It's my fifth motorcycle. This is the second of two motorcycles I've bought in the last three years, having sold the first one. The first day I was backing into my parking space, which is right next to the Chief Judge's parking space, as he's pulling his town car into the space parallel to where I'm parking. Judge Lamberth just couldn't take his eyes off the motorcycle. He was just transfixed by the motorcycle, even though I tried to get his attention. Anyway, he got out of the car, and without even looking at me walked over to the motorcycle and he looked at it, and he looked at it, and he said, "Ric, tell me this isn't yours." So I said,

"Yeah, it's mine." But I've always enjoyed motorcycle riding. And I found out, quite inadvertently, that there are several judges -- federal and state court judges -- that have the same hobby.

Mr. Granof: So tell me what color it is.

Judge Urbina: It's a beautiful deep, almost plum red with a lot of chrome. So it's a clean machine. It's a brand new model. The other bike I had was a 2004 model. This one's a cruiser, which means it's not a speed bike; it's one that you might use if you were going to go on a long trip.

Mr. Granof: And do you plan on taking it on long trips?

Judge Urbina: Well, I plan on taking it on trips. I haven't worked up the courage to take a real long trip because I need to find a companion who would go with me. But I would like -- when the time is right and my back is comfortable because I'm still just a year out from having back surgery -- but when I'm totally comfortable, yes, I do plan on taking some trips. And Judge Rankin -- Edwin Rankin from across the street -- he also rides. One of my judge friends from the West Coast rides a lot. And a good friend of Judge Robertson rides, and has ridden across the country, back and forth several times on his motorcycle.

Mr. Granof: I know, for example, just in Montgomery County there are parts of it that are more rural. Terrific areas. You know, two lane roads to ride.

Judge Urbina: Right. They have beautiful places in this vicinity.

Mr. Granof: But you get a medal for courage for riding that in the District.

Judge Urbina: Well, I'm very careful. I took a course put on by the National Foundation for Motorcycle Safety. It's a nationally accredited course. It's like boot camp. And

in the span of about two-and-a-half days you put in eight hours a day, so that's maybe sixteen hours and a little more. You take written course work, and then there's an obstacle course where you learn how to ride your motorcycle under conditions that are created by the instructor. And if you pass this course, and not everyone does, all 50 states recognize it as an entry to get your motorcycle license. So, if you pass this, you don't have to take the state test. And you get your motorcycle license automatically.

Mr. Granof: I have no doubt that you're probably very careful as a rider, and I think maybe most motorcycle riders are careful. But the concern is other drivers who are not paying as much attention or misjudge the stopping distances, or make a turn without looking to see there's a motorcycle on their right.

Judge Urbina: Yes, it is a concern, and that's one of the things they teach you is that drivers of automobiles don't see you because their eyes are not trained to look for you. So there are a number of things that motorcycle riders are instructed to do. For example, not to ride in the middle of the lane behind other cars, but try to ride more to the left or more to the right so that their rear view mirrors can plainly see you. To have at least two seconds of stopping time. That is to say if the car in front of you passes a certain point, there should be at least two seconds of time by the time you reach that point. And all of that plus a lot of other kinds of interesting and pragmatic rules for safety have made me a much more careful driver of my automobile. I'm much more vigilant now because I don't want to be one of those people that don't see motorcycles. You know, sometimes people will turn, and that's the biggest cause of motorcycle accidents. They make a left

turn in front of a motorcycle because they didn't see it. So I try to make sure that while I'm driving my car I'm very careful, and then, of course, when I'm driving my motorcycle I'm especially careful.

Mr. Granof: Well, you know, included in this oral history is a section at the end for pictures. And we've got to get a picture of you on that motorcycle or with the motorcycle just to show you really are youthful.

Judge Urbina: Thank you.

Mr. Granof: One other question. I asked your wife if she's going to ride with you, and I think her answer was something like, "no way."

Judge Urbina: That's correct. She's quite adamant and unswerving in her resolve not to ride on the back of the motorcycle.

Mr. Granof: Last time I think we got through your tenure at the Superior Court. I don't know if there's anything that we didn't cover, any case that you want to mention or any other matter.

Judge Urbina: I think we covered the cases.

Mr. Granof: So, is there anything else about Superior Court? I know we covered a lot, so this is just a wrap-up question on that.

Judge Urbina: Only to say that that experience was one of the finest experiences I think anyone could have at that stage of their life. The judges over there -- certainly at that time -- were extraordinarily motivated. Very highly motivated to do the right thing whether they were sitting in the family division or whether they were sitting in the criminal division or wherever they were sitting. It was especially evident in seeing how they related to children and how hard they worked to try to get other

agencies to meet the needs of children. Also, these were some of the smartest human beings I've ever been around. They were just absolutely, spectacularly intelligent people. And even though you have 60 or more judges -- now it's even higher -- you're going to run into people with different personalities and different egos and so forth. But I have to say this, any judge, even if he was calling someone who perhaps did not necessarily associate with this judge for one reason or the other, any judge could call any other judge at any time and that judge would drop what he's doing or she's doing, go to chambers, and answer questions related to a particular situation that the calling judge was involved in.

Mr. Granof: So it was a collegial relationship?

Judge Urbina: Very collegial relationship. Very collegial relationship. I mean I couldn't be prouder. I don't think I could be prouder of belonging to a group of judges than I am, knowing that I was there for thirteen years. It's just wonderful.

Mr. Granof: What's interesting to me, after talking with both Judge Henry Kennedy and with you -- I know Judge Kennedy spent a fair amount of time on the Superior Court -- is that the Superior Court doesn't get a lot of press. At least, I don't think the public is conscious of what the Superior Court judges really do, and how good they are.

Judge Urbina: I think you're probably right. Maybe that's a good thing. I don't know. The flip side of that is I'm always a little bit put off by reading a newspaper article that identifies the judge by whom he or she was appointed. If a newspaper article says, "so and so appointed by" you know that the article is going to be unfavorable. Because they're kind of building up a critique, a base for a critique

-- this is my opinion. So, if in the old days I did something that maybe the press didn't like they would say, "and Ricardo Urbina, appointed by President Reagan."

I do think those Superior Court judges deserve a lot of credit. I mean the judges over here get a lot of attention because this is a federal court and obviously we deal with federal issues, and they are presented in the media. But those Superior Court judges work so hard. They work so hard. I used to get into work at five o'clock in the morning. And I don't want to talk about myself, but just as an example. I got into work at five o'clock in the morning almost every day and the Chief Judge was already there.

A judge might come in on a particular day, he has a murder trial, she has an assault trial, and before they can even get the jury into the room on that, they may have to deal with a child abuse and neglect situation. When the time came that a decision had to be made as to whether or not all the abuse and neglect cases should be taken away from the judges who had presided over them for many, many years and put into a family court, every single judge objected even though it was going to make their life easier. Every single judge, because they wanted to oversee those kids. They wanted to personally ensure that their directives with respect to DC Public Schools, with respect to the various other agencies that were involved, would be followed. And they had developed relationships with these kids. I know I did. I know everyone else did. Relationship meaning you had seen them go from bad to worse, or from bad to worse to better. Sometimes you saw them first in the juvenile justice system, then you saw them in the adult system. You know you got a chance in the juvenile justice system to see the

factors that were adversely affecting them -- the father was a drug addict, the mother was a prostitute. You know, that's not every case, but just as an example, because many of these kids came from homes where the parents or parent were really doing the best they could, which wasn't enough because of the environment that they were in. That's why I say that I will always speak well of the Superior Court and the former Superior Court judges with whom I now serve on this Court: Henry Kennedy, Gladys Kessler, Colleen Kolar-Kotelly, Emmet Sullivan are perfect examples of what I'm talking about. One thing that supports this is that the litigants and the lawyers and the jurors all seem to come away with a decent respect for the Superior Court. I've not heard negative comments, and maybe that's the most that could be expected because a lot of people aren't going to be happy.

Mr. Granof: Aren't happy to be on the jury?

Judge Urbina: Yes, they're not happy to be there, so when they get there almost everybody feels inconvenienced. Some people just feel entitled not to be there, but almost everybody feels inconvenienced. So that's their starting point. And to get from that point to ending the experience without verbalized, negative observations, I think that means a lot. And I can tell you that the Court evolved -- in my presence those thirteen years -- in a very important way. There were judges on that Court, myself included, who did things to open the courthouse up to the community. And they still do that because it created a precedent. There's a particular time period during the month of October during which the public is invited to come in. The Spanish speaking community is invited to come in. There are lectures, things

that aren't necessarily related to an actual court proceeding. The judges took very careful heed of instructions and directives we got from the National Judicial Council about trying to make jurors happier. Not taking them for granted. Not doing things that create an unpleasant feeling such as have them line up in the hall for an hour before you let them come into the room. So as a judge I can say we had to be confronted with these things because when we're getting ready for trial, you know, we're thinking about the case, we're thinking about the lawyers, and we may not be paying as much attention to the jury and their needs. So I've carried that forward, and I know that the other judges here have. I know that the judges over in in Superior Court have done so as well, although their situation in the Superior Court is much, much more crowded than it is here. You've got six or seven thousand people going through their courthouse every day. You could shoot a cannon down the hall here and never hit anybody. Not a person. But my point is that those judges in Superior Court were, as I said, not only intelligent and dedicated, but they were sensitive and anxious to really meet the needs of the community.

Mr. Granof: I know Montgomery County in Maryland has this one day or one trial. And I don't know whether the District had a similar policy.

Judge Urbina: The District still does. I voted for it when it was first mentioned because it has obvious appeal. When jurors come to court, they know they're going to be there for one day, they're not going to have to wait for a whole week. Or they're going to be there for one trial, which means for the duration of one trial. But the problem with the system is it uses up too many jurors too quickly. And we have a

very small jury pool. All the jurors have to come from within the borders of the District of Columbia.

Mr. Granof: So that's a population of 556,000?

Judge Urbina: Yes. It was less in the past because there wasn't the influx that we now have. And the system for calling those jurors in was defective in that some people were being called twice, and some people weren't called at all. To this day I still meet occasionally a person who says, "I've lived in the District for thirty years and I've never been called for jury duty." So, yes, judges as administrators, we try -- I think successfully -- to do things to make it better for jurors. I started -- I like to think I started -- a tradition of feeding the jurors in the morning. So, when I had a trial, I would stop off at the Giant Food, right there on Eighth Street, and I bought donuts and bagels and juice. Mostly unhealthy stuff. But something I knew people would like in the morning, and I brought it in. And so I would tell the jurors, "Ladies and gentlemen, come a little early, have a little beverage." It also cut down on mistrials because when people break bread together, they learn to respect one another and they learn to get along.

Mr. Granof: That's an interesting thought.

Judge Urbina: Yes, it's a dynamic that I observed. For the longest time I'd come in, I would peek in in the morning to say good morning, and everybody would be there with the newspaper in front of their faces. Nobody's talking. Because, you know, we had told them, "Don't talk about the case, don't talk about the case, don't talk about the case." So I guess they figured, "We shouldn't talk about anything." But I would tell them, "You can talk about whatever you want, just don't talk

about the case. You can have juice." So, when we got here, Judge Walton -- who's another one of the people from across the street -- and I were, I think, two of the people right from the start, and then eventually others did it. Almost everyone. We found out that there was a special budget at the AO's office just for that, so we didn't have to use our money. And every day -- and I start a trial on Friday -- every morning they came in and there was juice, there was coffee, there were bagels, there was fruit. And they could munch on that all morning long, which is good, especially for people with diabetes who need to have something to eat every few hours..

Mr. Granof: Absolutely. Have you ever served on a jury?

Judge Urbina: No. I'll tell you this. It's a true story. About five years ago I got called for jury duty, and went over to the Superior Court. The law says I am ineligible to serve on a jury in this court. So I went over to the Superior Court and, of course, I was still in the memory of many of the people there. The lawyers there, many of them practice here. And, of course, many of those judges I've known for a long time. So I actually got out of the large auditorium hall and into a courtroom. So that meant I was now officially in the group that was going to be examined. So, I come into the courtroom, I sit down in the audience, and I look over and see three lawyers. And I look at the defendants and the next thing you know they're putting us in the jury box and they're going through a system of striking. And the judge looks over -- it was Judge Geoff Alprin -- the judge looks over, totally straight-faced and he says, "Mr. Urbina." I went to the bench and he says, "You say you are familiar with court proceedings?" I say, "Yes I am, your Honor."

He says, “and how might that be?” And I say, “Well, sir, I was a judge on this court for a long period of time.” And he says, “Well, do you recognize any of the people here?” And I said, “Yes sir, I recognize Mr. So-and-so and Mrs. So-and-so.” I said, “By the way, what are the charges?” He said, “Assault with intent to kill,” and so forth. And the lawyers are looking because they know this must be a charade because they know we know each other. I’m pretty sure. And so he says, “Do you recognize anybody else?” I said, “Well, actually, I recognize two of the defendants.” He said, “Well, how do you know them?” I said, “Well, that gentlemen there was on probation to me for an assault charge several years ago, and that gentlemen right there I sentenced him shortly before going across the street to the federal court.” So, with a totally straight face Judge Alprin said, “Do you think that that might affect your ability to be fair in judgment?” I said, “Absolutely not.” Well, the lawyers went crazy. This one lawyer gulped so violently that his necktie literally jumped. And he wanted to say something, but he didn’t want to offend me. Anyway, but Geoff Alprin, he was just perfect. So I went back and sat down, and they actually didn’t strike me right away. I actually got to a point where I said, “Well, maybe I’m going to make it,” although I didn’t. But I know judges who have been jurors. Judge Mott, for example, has been a juror. And when I was there sitting in Superior Court one of the judges on the Court of Appeals was on one of my juries. So, it happens.

Mr. Granof: That’s interesting as to whether or not a judge coming into the jury room sitting as a juror would have far more influence than a regular juror.

Judge Urbina: Of course, the jury doesn't know you're a judge. And I think judges would bend over backwards to make sure that the jury never finds out. I know with Judge Mott, for example, the trial was in the courtroom directly next to his courtroom, and when they were on recess, he would sneak out and go next door to his own office to get his messages and so forth, and then sneak back in to make sure nobody saw him. But I think judges, and even lawyers, in most instances, would go out of their way not to unduly influence.

Mr. Granof: I think that's true. But just in ordinary conversation in breaks jurors might ask one another, "Well, what do you do?"

Judge Urbina: Yes, that's true, and you don't want to lie. But there is a role for a lawyer. I think the lawyer, the architect, the medical tech, there are a number of professions in which the thinking is very organized, and the professionals are naturally inclined to know how to organize things -- evidence, materials, data. And so there's a role for a person like that in a jury.

Jury selection is going to be interesting for me over the next few months because the Court has set trial for this Friday. It's a Title VII case. But then on February 3rd I start this homicide trial. And I've asked the jury office to please select jurors that say from the get-go that they're available to serve for six weeks to two months. Hopefully, that will eliminate a lot of the back and forth, and the hemming and hawing and lying to the judge about commitments. You know, if you have a group that says, "OK, fine. I'm available for six weeks, two months," then we can start eliminating jurors. From that point I think it'll be easier.

Mr. Granof: What kind of a case is it? I know you said it's murder.

Judge Urbina: It's the killing of a confidential informant, a federal witness, who was a drug dealer, but who was working for the government to get evidence against the defendant. The government alleges -- that part is clear, it's uncontested -- that the defendant had his girlfriend, who is also charged, seduce this guy and bring him to a particular place so he could kill him, which happened. And this is all public information. The girlfriend said, "I never knew he was going to kill him. I thought they were going to have a confrontation, he was going to intimidate him. I had no idea he was going to kill him." The defendant has announced, through his counsel, that he wasn't there. Now, unfortunately for the defendant, his sister and his girlfriend, as well as other family members, were found to be suborning perjury by trying to create a scenario to back up the defendant's story. So they're also charged, but they are not going to be tried in this Court at the same time.

Mr. Granof: Why would this take two months? That seems like a long time.

Judge Urbina: I'll tell you why. There's no eye witnesses, at least none that I know of. The entirety of the government's case is circumstantial, and sometimes circumstantial evidence is even more persuasive than direct evidence. But in this case they're going to use cell towers all over the city to triangulate as to where people were at particular times. The girlfriend -- and this is uncontested -- made three hundred phone calls to the deceased over a short period of time, which supports the government's theory that she was in the process of seducing him. And she made one-hundred fifty to her boyfriend. So they're going to triangulate and try to use the science of it. The defendant's not conceding anything. So there's going to be a lot of experts that come in, and I think that's why it's going to take so long.

Mr. Granof: And I assume the government thinks this is an important case in the administration of justice.

Judge Urbina: Oh, yes. In fact, they took the easy way. They didn't charge him with murder, they charged him with obstruction of justice by committing murder. So this case was a capital case when it first came in. And it was only a few months ago that the Attorney General said, "No, we're taking the death penalty off the table." But, yes, the government says this is not to be tolerated. You cannot have the government asking people to help it, and then having them murdered. As far as the government is concerned, this deserves the maximum response. So, that's what they're doing.

Mr. Granof: I can understand it. Well, how did you get from the Superior Court to the federal bench?

Judge Urbina: Well, interestingly enough, during the Bush I administration, at the end of that term there were several vacancies here which the first President Bush did not fill. As a consequence, President Clinton gave Eleanor Holmes Norton -- Congresswoman Norton -- a kind of senatorial privilege, just like a senator might have, to compile a list, collect candidates, have them interviewed, and have the chair of a committee reviewing the candidates for her write a report and send it to her. I think there were three names for each vacancy. And then she would decide who she was going to send to the White House. And when I learned that this was going to happen, surreptitiously, my mentor, Judge Pryor, saw me in the parking lot, I'd say a few months before this process had started.

Mr. Granof: And Judge Pryor was on the federal bench?

Judge Urbina: Judge Pryor was the Chief Judge of the Court of Appeals across the street.

Mr. Granof: The DC Court of Appeals?

Judge Urbina: The District of Columbia Court of Appeals. And we had been friends for a very long time. We used to run together, and his best friend was my son's mentor. So there was a connection there. Anyway, he saw me in the parking lot one day and he said, "Ric, have you thought at all about going across the street." And I said, "Well, the thought has come to my mind." He says, "You really should think about it, and think about it soon because you've gotten to the point where if you don't move soon, you're not going to be able to move." So I thought about it overnight, and I thought about it the next day, and then I found out what the procedures were -- it's a big thick application -- and I went forward from there.

Mr. Granof: I assume you submitted the application to Eleanor Holmes Norton?

Judge Urbina: To the Commission. The Federal Judicial Nominating Commission. There's two nominating commissions, the DC Nominations Commission for the Superior Court and DC Court of Appeals, and the U.S. Commission for the District of Columbia District Court. They don't do anything with respect to the U.S. Court of Appeals.

Mr. Granof: So you submit an application, and where does Congresswoman Norton come in on that?

Judge Urbina: The Committee calls you in. Seventeen members or more. They ask you questions. One or two of them have been assigned to go through your application with a fine tooth comb so that they can ask you really pointed questions when you're in there. And when I got in there, the interview went very well.

Mr. Granof: What do they ask you?

Judge Urbina: Some of the questions you might expect, such as why do you want to be a federal judge, and how do you sustain an attitude of objectivity, especially in cases where there's an aspect to them that pulls at you. And, of course, I had all those experiences in Superior Court. And fortunately, that day -- because some days I'm just totally inarticulate -- but that day I was able to articulate my thought process, and they were impressed by that.

Mr. Granof: What did you say when they asked, "Why do you want to be a federal judge?"

Judge Urbina: I said in plain English that I had at that point been a judge for twelve years or so, and that I thought I was pretty good at it. Also, that I really liked it. And that I was at the stage of my life where I was no longer a kid, but I'm not an old man, and I thought that I had enough energy and by this point in time enough wisdom to move to another position where I could do the community even more good.

Mr. Granof: And obviously the members of the Commission thought it was a good answer.

Judge Urbina: Now that the process is over and I look back, I suspect that the President, but more specifically, that Norton -- and even more specifically, members of that Commission -- wanted a Latino to go up because there never had been one. So that made some sense.

Mr. Granof: Were there a lot of applicants, do you know?

Judge Urbina: There were a lot of applicants because there were six or seven openings. And this Court was in dire straits at that time because during the Bush era Jay Stephens was the United States Attorney, and he brought every crack cocaine case in the District of Columbia to this Court. No matter how small the amount. Why did he

want it here? Sentencing guidelines. Stiffer penalties. So as a result of that, the judges that were here, and there were six or seven vacancies, had not tried a civil case, some of them for three or four years, because they had to try one criminal case after another criminal case because of the speedy trial rules. And they were just livid with the experience of not being able to try cases or have some variety to them. So when we came aboard, they were just as happy as they could be because they unloaded -- very fairly I might say because Judge Lamberth is the one that devised the process of how the new judges would get the cases -- they unloaded the cases, and they had a lot of cases because they couldn't try the civil cases. I had a calendar of three-hundred eighty cases, and then they redistributed stuff. And next thing you know, we were trying cases and things were beginning to level off.

Mr. Granof: I can understand a federal judge thinking, "I didn't go on the federal bench just to deal with crack cocaine issues."

Judge Urbina: That's right. And not have any discretion in the sentencing department to boot. Because the sentencing guidelines were mandatory in those days, and they required stiff sentences. They were severe. Now, with all due fairness, although there were glaring examples of unfairness by requiring judges to impose sentences within the guidelines, there were many examples where the guidelines were right on the money, where the penalties they dictated were appropriate. And, personally, I was all for the notion of not having one judge give a person probation for the very same offense that another judge gives a person ten years, because that disparity in sentencing doesn't look fair, and it probably isn't fair.

Mr. Granof: And it leads to judge shopping.

Judge Urbina: Exactly. When possible. But, of course, as we all know, three or four years ago -- maybe a little more, yes, five years ago -- the Supreme Court made the guidelines advisory instead of mandatory; it was mandatory that they be consulted, but not mandatorily applied. But anyway, getting back to it, that's what happened and things worked their way forward from there.

Mr. Granof: So the Judicial Nominating Commission chooses how many?

Judge Urbina: In that era, three for every vacancy.

Mr. Granof: So they do have a lot of people applying. And what's the next step?

Judge Urbina: Then it goes to Congresswoman Norton. I think the very next step, although it was never visible to us, is that they did a check. Of course, the Congresswoman would not want to nominate somebody who's going to run into problems with the FBI at this stage. So they hold the names close to the chest. She selects the ones that she thinks should go, and they do a preliminary background check. I think the FBI may be involved. And when it looks like a candidate is viable, then the Congresswoman would announce who she was selecting, and then the White House comes in and begins to vet the candidate.

Mr. Granof: So, out of the three for each vacancy she selects one?

Judge Urbina: One. She may send all three names, but she specifically emphasizes her preference. This is what I've heard.

Mr. Granof: Were you interviewed by her?

Judge Urbina: Oh, yes. Every person whose name went forward was interviewed by her.

Mr. Granof: Had you known her before?

Judge Urbina: Not really. I had met her several times, but we never had much of a chance to talk. But that particular day, when I went to her office on the Hill, there was a lot of construction going on right outside her window. So we could barely hear each other . But it was very cordial and pleasant, and I thought productive. Some of the questions she asked were predictable, and other questions were not exactly what I would have expected. I don't remember exactly what they were, but I remember I didn't get thrown.

Mr. Granof: How long did the interview last?

Judge Urbina: With her?

Mr. Granof: Yes.

Judge Urbina: Oh, half an hour at most.

Mr. Granof: But half an hour among twenty-one or so, or eighteen to twenty-one potential nominees, that's a lot of time.

Judge Urbina: Well, she worked very hard to come up with her recommendations. It was a golden opportunity because there were so many vacancies. She worked very hard, and that Judicial Nominating Commission worked very hard. All these people had full time jobs and none of them got paid to do this. So they had to really restructure their schedules.

Mr. Granof: And when did you learn that you were her choice, at least for one of the vacancies?

Judge Urbina: I was sworn in in July. I think I heard in March or April. Maybe a little before that. And then, once she designates you and the President nominates you, then, as everybody knows, you have to go before the Senate.

Mr. Granof: March or April of?

Judge Urbina: Nineteen Ninety-Four.

Mr. Granof: Nineteen Ninety-Four. And I guess that's before the '94 congressional elections?

Judge Urbina: Right.

Mr. Granof: So, did you get a call from the White House or from Congresswoman Norton's office?

Judge Urbina: You mean when I was confirmed?

Mr. Granof: No, at the stage where they say, "The President is going to nominate you."

Judge Urbina: Yes, I got a call from Congresswoman Norton.

Mr. Granof: That said the President's going to nominate you?

Judge Urbina: Yes. She said, "I've advanced your name to the President, and it's my understanding that he's going to nominate you. You'll be hearing from representatives of the White House for the next phase of preparation."

Mr. Granof: After she submitted your name, as well as others, did you hear from anybody at the White House or the Justice Department who said, "We'd like to talk to you too?"

Judge Urbina: Yes. I think all of us were called in for an interview at the White House, and I know this for a fact -- I didn't remember it until you mentioned it -- at the White House there was the counsel, deputy counsel, and some of the higher-ups in the White House structure. Not the President. And they knew everything. They knew the answers to everything they were asking because there was already that much paperwork in their hand. But I think they just wanted to get a sense, "Is this person presentable, does he strike me as being a little crazy?" You know,

"What's this person like? Is he articulate? Is he going to embarrass us in some way?" That's what I think that was for. I think it was mine to lose at that point.

Mr. Granof: How long did that kind of interview last?

Judge Urbina: Forty-five minutes. And then there was a lot of preparation for the Senate hearing, and then the hearing happened.

Mr. Granof: And what's the preparation like? So you go to the White House, and you're interviewed. And at some point the White House tells you the President is going to submit your name.

Judge Urbina: Yes, and then they try to give you some feel for when it might happen, when the name is going to be advanced. And then you hear from a representative of the Senate Judiciary Committee. They call you in for a brief interview, and that brief interview is one of the things that the White House people prepare you for. It's interesting, because now as I'm thinking about it things are beginning to surface again. The Department of Justice plays a very significant role in this. In fact, the vetters were often from the Department of Justice. So once the White House says you're good to go, the vetters come in from the Department of Justice. And they have everything in front of them. And they'll ask you a question, "What about this case? Why did you do this here? What was your thinking on this, and what was your thinking on that?" I was a little bit worried at that time because, at the end of the Bush Administration, there was a very loud uproar about judges deciding matters that should not be decided by the judiciary. And an example of this was what they called judges running prisons, judges running mental institutions, and so forth. Now at that time, I was the presiding judge of the *Jerry*

M. case, which I had previously talked about. As you may recall, the *Jerry M.* case involved the juvenile facilities in the District, and the City was sued by the Public Defender and others for inadequate educational and rehabilitation opportunities as well as housing at Oak Hill and, I think, Cedar Knoll. This gave me a little bit of concern for a split second, but you do the right things because you do the right things. But, you know, thoughts do creep into your mind. And I thought, "I've been running for all intents and purposes the juvenile facilities now for about six years. I have held the City in contempt. I have required the City to pay enormous fines for not doing things on time." So, I said to myself, "Well, is this going to be an issue because legislators don't like judges running institutions in the Executive Branch, albeit the Executive Branch of the City?" But it never came up.

Mr. Granof: It strikes me that in the seventeen years since your Senate confirmation hearing, here we are today and nothing has changed. The legislature, if anything, has gotten even more concerned about supposedly "activist" judges.

Judge Urbina: Yes. And that was one of the questions that they prepared me for, "activist" judges. Actually, it would be too difficult to be an "activist "judge. You have the law. That's why we have the law, so that a judge is bound to apply it. I think most of us believe that. But what people don't generally understand, even many lawyers don't understand, is that especially in the federal system there are so many gaps. The Court of Appeals -- and this is a very small jurisdiction so to speak -- but the Court of Appeals used to be and probably still is just an extraordinary decision-making body. They churn out decisions and decisions and

decisions. You've got about sixteen trial judges plus senior judges, and they're trying cases and cases. So the body of law is pretty well developed, albeit common law or criminal law, whatever. Domestic law. When you get into the federal system, you have law that covers the entire country. And even though you're working out of a specific district, there often are situations that have no precedent, and maybe another jurisdiction has decided a similar issue. But circuits don't agree on everything. I mean you may find different interpretations. That's why it goes to the Supreme Court so often. The Fifth Circuit says one thing, the First Circuit says another, and the DC Circuit says another. So I think the perception that judges are kind of insinuating themselves into situations has more to do with the judges' duty to exercise discretion when there is no clear-cut precedent to follow.

Mr. Granof: Well, the notion that being a judge is simply a matter of engineering, like measuring, or applying a T-square -- if that were the case you wouldn't need the kind of people that we select to be judges. You want them to be smart, you want them to have good judgment in the first place.

Judge Urbina: Right. And that's why, incidentally, why so many judges, whatever their politics, were so offended by the sentencing guidelines. I mean why do you go through all of this trouble to pick people of integrity, wisdom and experience, and then tell them you can't use your judgment, you do what this chart says. I think that's why so many judges railed at the mandatory sentencing requirements.

Mr. Granof: I can understand that. It produces results which the judge and maybe many independent observers would say are unjust.

Judge Urbina: Correct. That is correct.

Mr. Granof: As I understand it, there's an office in the Justice Department which is responsible for this process, getting judges confirmed?

Judge Urbina: That's right. And the people there were just tremendous. I think there were two women and one man, but they knew everything in that file, and probably more. And they knew everything about the members of the Committee and who might raise a ruckus. They had already tested the waters. My situation was a little bit out of the ordinary in that there was a whole block in Congress that was already supporting me: the Congressional Hispanic Caucus. A whole block of Congress. And the Black Caucus was also supporting me.

Mr. Granof: And who got you that support? I take it you didn't go calling?

Judge Urbina: No, I couldn't, but I had some very strong Republican supporters, lawyers who are partners at Akin, Gump. One in particular who works both sides of the aisle. You know Akin, Gump has a very powerful Democratic side and Republican side. In the Latino community there were plenty of good lawyers. Many of them who were my former law clerks were there, and they were savvy and had influence on the Hill now with the Congressional Hispanic Caucus. I had been a member of the Black Bar, the National Bar Association, and the Washington Bar for a very long time. That's one of the first organizations I had gone to when I wanted to be a Superior Court judge. So in my duality as a Latino and also having, you know, African elements, that was a natural coalition. So people within those ranks also exerted the influence that they could. And when I say exerted influence, what I think they did was they just made sure that my credentials were known so that

decision makers wouldn't be reacting to less than the best information. And the credentials, for example, were that I spent seven years at Georgetown and I taught at Howard for eight years. So there was no question about my commitment. And I had a very good reputation as a trial lawyer. So those things were there. I don't mean to brag, but those things were there, and I think people were smart enough to pick them up. And so I didn't meet any resistance.

Mr. Granof: I take it you were interviewed by the Judiciary Committee staff?

Judge Urbina: Yes.

Mr. Granof: And was that a fairly thorough interview or was it more pro forma?

Judge Urbina: It was pro forma. Pretty *pro forma*. The main part of that Committee that interacted with me was the Democratic side.

Mr. Granof: Who was the chairman of the Judiciary Committee, if you remember?

Judge Urbina: Senator Simpson. He was from Wyoming. He was on the Republican side, and he actually conducted a lot of the questioning in the case.

Mr. Granof: Alan Simpson?

Judge Urbina: Yes. He was terrific. He asked me a lot of questions.

Mr. Granof: He's a very down to earth guy.

Judge Urbina: Oh, he's a very down to earth guy, let me tell you. At the time, there was somebody after me. Somebody who really hated me because when I was a Superior Court judge I had ruled in a domestic relations case that he had to stay away from his ex-wife. He had kicked his wife in the stomach when she was pregnant with his child. He was a very brutal fellow. And the bottom line was I directed him not to go near the family, including the children for a year. And he

got a 1-800 number, he wrote every judge in this Court, the Court of Appeals, every judge in the District of Columbia. He wrote a letter indicating why I was not qualified to sit as a federal judge.

Mr. Granof: And this was just an ordinary citizen?

Judge Urbina: Yes.

Mr. Granof: He didn't hold any public office.

Judge Urbina: The man was very malicious. I could tell you more, but it's not necessary. He actually went to the hearing and stood outside. He didn't make a fuss. He stood outside and handed out flyers. After the hearing, Simpson comes down and he says, "Congratulations." He's got these huge hands. And he said, "You're squeaky clean. That's good, stay that way." And then he says, "By the way, do you know this guy?" I said, "Yes, I know who he is." He says, "He's a nut." I was so relieved. You never know what people are, or how people are interpreting things.

Mr. Granof: That guy who opposed your nomination was a crackpot, wasn't he?

Judge Urbina: Yes, he was. And a dangerous one actually. He fled to Puerto Rico, and the marshals had to go get him. But that's another whole story.

Mr. Granof: Anything else you remember about the hearing?

Judge Urbina: Yes, my mother is sitting in the back row -- she's in a wheelchair -- and Senator Simpson's standing there talking to me. And all of a sudden I see out of the corner of my eye that my mother is gesturing. Not to me, but to Senator Simpson. So he goes, "Who's that." I said, "That's my mother." "So he walks all the way to the back, and I walk behind him because I know what's going to happen. And

she's sitting there, she looks up, she says, "Why did you have to ask him so many questions?"

Mr. Granof: How old was your mother at that time?

Judge Urbina: Well, eighty-nine. You know. She was annoyed that he would be apparently challenging my credentials by asking me so many questions.

Mr. Granof: Senator Simpson must have gotten a big kick out of that.

Judge Urbina: Oh, he laughed and he sat down and he explained it to her. And I wrote him a nice letter afterwards. It was very nice.

Mr. Granof: So, apparently, you sailed through. You didn't get a rough time at all?

Judge Urbina: No, I didn't have a rough time. The anxiety was the worst part. And the paperwork. Every lawyer you ever had a case with, and so forth. Then the FBI, another thing like that. Then the ABA, another thing like that. Then the Department of Justice, another thing like that. And the White House. Much of it was repetitious, but still you want to make sure that everything is right, and that you don't leave things out, and that your answers are clear, of course. And at the same time you're still a judge and you're still working every day. So that part was a little nerve-racking. But, no, thank God I did not have a problem.

Mr. Granof: And how long did it take between the hearings and the vote?

Judge Urbina: I think the vote happened in June, so about two months.

Mr. Granof: So the whole process, from your application to the Judicial Nominating Commission in Washington until the time you were confirmed, took how long?

Judge Urbina: Six months.

Mr. Granof: So that was a pretty good, rapid pace compared to what other judges have gone through and what's happening now.

Judge Urbina: Oh yes. That was a rapid pace even as compared to judges who came on to this Court subsequent to that group. Because when I came on, a whole bunch of us came on at the same time. Emmet Sullivan, and myself and Ricky Roberts and Gladys Kessler and Colleen Kollar-Kotelly and Henry Kennedy. You know, this Court really needed, as I mentioned earlier, really needed the help. And I must say that Eleanor Holmes Norton did a good job with all the collecting, screening, expediting.

Mr. Granof: And so you get sworn in in June?

Judge Urbina: July.

Mr. Granof: July of 1994.

Judge Urbina: Yes. In fact, I submitted my application to resign from the Superior Court a half-hour before I came over here because I didn't want there to be a lag that would result in my family getting no benefits if something happened to me. In that half-hour lag my wife and my family would get nothing. So I made sure that I signed and came right over here and took the oath. Investiture was much later. But I took the oath then.

Mr. Granof: And so you take the oath, and you're now a federal judge. What happens next?

Judge Urbina: Well, maybe we should save this for the next time.

Mr. Granof: Sure.

ORAL HISTORY OF THE HONORABLE RICARDO M. URBINA
SEVENTH INTERVIEW
12 DECEMBER 2011

This is the seventh interview of the oral history of U.S. District Judge Ricardo Urbina, as part of the Oral History Project of the District of Columbia Circuit. The interviewer is Gene Granof. The interview took place in the chambers of Judge Urbina at the United States Courthouse on Monday, December 12, 2011.

Mr. Granof: The last time we talked we were at the point where you had just become a federal judge. And one of the things that you did before I left was to give me a list of sixteen of your high profile cases during the time you were on the federal bench. What struck me when I looked through them was the variety, the significance, the complexity and, perhaps, the uniqueness of cases in the federal judicial system. Would you comment on that as a federal judge, particularly compared with your service on the Superior Court.

Judge Urbina: Well, I didn't select those cases having in mind those characteristics you just mentioned. To be honest, the law clerks and I discussed cases which might be considered high profile because they drew attention for one reason or the other. But now that you mention it, and as I recall the cases on the list, it is a very diverse group of cases. Some of them civil, some of them criminal, and even within the civil and criminal arenas themselves, some of them are quite different. The cases that came to me as a Superior Court judge, whether they were civil cases or criminal cases, evolved out of situations usually within the geographic borders of the District of Columbia, and the applicable body of law was well developed. That is to say, for example, the criminal cases were often appealed and the civil cases were also frequently appealed, but to the extent that they were or were not, they were definitely cases that fell within a certain common law

range, a certain statutory range, a certain regulatory range. So you got to see cases of the same type arise, and cases of the same type that had already been frequently addressed by the appeals court. But in the federal system you have many different districts -- ninety-four -- and you have different circuits that oversee those districts. So sometimes you find that even cases that are quite similar are treated very differently because one circuit may rule on a matter in this way and another circuit may rule on it in that way. In addition to that, there are far fewer cases, I think, in the federal system than in the District of Columbia Superior Court system because the Superior Court is a court of unlimited jurisdiction. In the federal court, we're taught that the first thing you look at is whether or not there's jurisdiction. And jurisdiction is not always easy to acquire in a federal court. And in those instances where cases are decided, very few of those cases actually get appealed. Most of the civil cases settle, and most of the criminal cases plead guilty. So, although you have a much broader geographical area in which federal cases arise, you have fewer of them coming into the system. So the variety that you see is often a natural product of different situations and circumstances. For example, one of the first and most interesting cases -- I don't even think it's on that list -- that I addressed as a fresh federal judge was a case involving some developers in Florida who were sued by the EPA. I think it was the EPA and the Department of Interior because it was a certain type of fly that lived on these marshlands that was considered an endangered species. And what did I know? I had never encountered a case like that in Superior Court. Never even close to it. And so the plaintiff in that case was actually a fly. The lawyers

had a great sense of humor about it. They brought in a 12-by-12 picture of this fly. The fly won because interestingly enough what happened is that this fly, unlike any other type of fly that we know of, had a proboscis that that would suck up the nectar from a particular flower and move to another, instead of having the biting beak that most flies have. As a consequence of that feature, they would actually pollinate the marshland the way a bee might. So, talk about different cases and unique cases. That was my first experience with this type of so-called unique case, and I think it went from there. From spies who had to be sentenced because of their spy activity in the United States on behalf of another country, to the Secretary of the Department of Agriculture's case coming before the Court, which again was one of my first cases. And then there are Constitutional issues such as whether a person who is fatally ill has a right to use drugs that have not been sanctioned by the Food and Drug Administration, and so forth. So, yes, I would say that your observation is correct.

Mr. Granof: On this EPA case, why was it brought in the District?

Judge Urbina: Because the suing party was the EPA and I think also either the Department of Agriculture or the Department of Interior. So, as a suing federal agency, why it was brought here, I don't know. I guess they could have sued down in Florida. But when they filed suit, they filed suit in this court.

Mr. Granof: And they could get jurisdiction over Florida developers under the statute?

Judge Urbina: Yes, they could. I don't recall if there was a motion for a change of venue in that case but, in any event, it was all litigated on paper and ultimately the fly won.

Mr. Granof: Do you think that the EPA brought it here because they thought Florida judges might be more sympathetic to local developers.

Judge Urbina: Well, that's quite possible. Maybe Florida judges would be more practical minded in terms of being sensitive to the needs of developers who were trying to develop this land into something other than marshland, whereas judges here who are kind of detached from that situation could look at the matter as a purely legal issue.

Mr. Granof: One of the things that struck me was the number of cases involving prisoners at Guantanamo Bay. That's not true any in any other district court in the United States.

Judge Urbina: We have all the Guantanamo Bay cases. I think that's by virtue of the statute. I don't know if any other court could have jurisdiction. I'm not sure of that. But statutes often require that cases be brought here, as opposed to anywhere else -- voting rights cases, for example -- and the applicable statute placed all those Guantanamo cases squarely before us. I thought when the cases came in -- and there were scores and scores of them originally -- that then Chief Judge Hogan and now Chief Judge Lamberth really did an amazingly good job of providing the leadership on how to address these matters as a unified body while not disturbing each individual judge's judicial independence.

Mr. Granof: And how did they do that?

Judge Urbina: Well, for example, one thing that first became apparent to us -- meaning the judges -- was that there were procedural issues and evidentiary issues that had never been presented to another court as far as we knew. For instance, the burden

of proof, how we were going to impose it. By that point, Congress had already gone back and forth trying to create military tribunals. The Supreme Court said that it's unconstitutional the way it had been constructed. So by the time we got these cases it was very clear that the Supreme Court was paying attention, that Congress was paying attention, and that the President was paying attention to how these cases were going to be handled. And in that regard, I think the country was paying attention to how we were going to manage this. And one of the first things that Chief Judge Hogan did was to create a uniform way of dealing with the cases. In other words, procedurally he literally sent out a standing order on what happens first, what happens second, what happens third -- these are all procedural matters, not substantive -- so that the government knew, the petitioners knew, and the judges knew exactly what steps to follow. And along the way we also had to learn how to interpret facts in a way that the circuit court would find acceptable. The first twenty-two or twenty-three cases -- in fact, every case that was decided in a fashion favorable to the petitioner -- were reversed, even though the trial court decisions were based on factual findings. So that sent us a message. Not in my mind a very pleasant message since, as you know, trial judges are used to finding their own facts and not having the interference of an appeals court when it comes to matters of fact. When it comes to matters of law, of course they have the right to insinuate their views and to make the ultimate decision. But the Court of Appeals was looking at the way we were judging the facts. The standard was preponderance of the evidence, and the trial judges were looking at the evidence the way judges do: is it 51% on this side and 49% on the other? That's a

preponderance. Well, now, the Court of Appeals didn't feel that that was an appropriate way to address it.

Mr. Granof: They didn't feel that preponderance of the evidence was a reasonable test?

Mr. Urbina: No, they agreed that preponderance of the evidence was the way to go, but they said that we -- the trial judges -- were not applying the standard properly.

Mr. Granof: That's kind of extraordinary, isn't it?

Judge Urbina: Yes, very extraordinary. Very extraordinary. And I think many of the judges -- at least some that I heard from -- felt that our domain, our province, was being usurped.

Mr. Granof: And how did the Court of Appeals rationalize it? I'm sure they didn't say we are reversing factual findings.

Judge Urbina: No, they didn't. Now I said, I think at an earlier interview, "Thank God for the Court of Appeals," because they have time to review and to pass judgment on decisions that we may make in a tenth of a second, or a minute, or two minutes, or whatever it is. They have plenty of time to review that, to really scrutinize what we've done and why we've done it. However, what I recall the Court of Appeals did in many of these decisions was to review the facts and then to take the facts and comment on how a particular fact could not reasonably be interpreted in a fashion favorable to the petitioner. The same with the next fact, and the next fact, and the next fact, so that in total there was unreasonable construction of these facts, with the result that cumulatively the trier of fact -- in this case the district judge -- was seen as misapplying the preponderance of the evidence.

Mr. Granof: I guess in all these cases there's always a difficult balance of national security concerns. If you let this particular individual out, is he going to go back and become a terrorist again posing a danger to the United States and to American soldiers and civilians?

Judge Urbina: Yes, and this is a legitimate concern because I have read that some of the people who were released -- I think they were probably released as a result of mechanisms other than the court's decision -- actually were back on the battlefield in not too short a time. And this was a terrible dilemma because many of us still have these cases, myself included. This was a terrible dilemma because we judges know that there are some really bad people in Guantanamo; we just don't know who they are. I mean because some of these people were swept up in these kind of dragnet situations where the United States would come in, and inhabitants of a particular region would say, "I know that this guy, and this guy, and this guy were with the Taliban," but you never knew for sure if they were just doing it for the money -- because a lot of times there were rewards, bounties -- or whether they were doing it because the informant belonged to one tribe and the person that was accused belonged to another tribe, and tribalism is very intense. We, as the judges, in my opinion, didn't really know. So we have to apply the standards as we understood them. Somebody's accused of a crime, the evidence can be not so overwhelming or very overwhelming, but they're always presumed innocent, and we go to trial and figure it out based on the facts, not on any subjective motivation, but on the facts. I think it's been very hard for the judges because all these judges here on this court are really dedicated to doing the right thing, and as

they try to do that they found themselves kind of bumping up against the Court of Appeals.

Mr. Granof: But even aside from that, in at least one case you did decide that a particular individual was, in fact, a dangerous person?

Judge Urbina: In certain cases the findings were not hard to reach. In certain cases the findings were easier to make than in others because the government had access to reliable information. For example, in some cases there was powerful direct and circumstantial evidence. This person was seen on the field, in the battle of so and so. This person here is photographed with Taliban leaders, and so forth and so forth. Those cases were not as difficult as some others where you had second and third hand hearsay, and within that framework of hearsay you find enhanced interrogation techniques producing information that's been utilized down the line. Do you ignore it? Just because somebody is interrogated in a highly intrusive fashion such as water boarding doesn't mean that the person is not telling the truth. And if this is the truth, then you're on your way to examining a person who was intimately involved with Osama Bin Laden and others who planned the bombings on 9-11. But what do we know about the reliability of these statements, which was something else that Chief Judge Hogan and ultimately the Court of Appeals had to comment on in terms of what -- for lack of a better term -- what presumptions would go along with evidence that spoke to the guilt or to the non-involvement of a particular person. These cases are very difficult.

Mr. Granof: It appears that the decision-making process in the trial, the mechanics, are far different than what would be used to in trying an ordinary criminal case. Just the evidentiary part of it. Is the individual being held in Guantanamo even present?

Judge Urbina: Not usually. In the rare instances where the petitioner was present, it was by teleconference, videoconference. Now, that's a complication. Sometimes the experts would have to be present by videoconference, and at the other end there was cross-examination going on wherever the videoconference was taking place and it was being televised here. In addition to that, procedurally, for example, the accusations would be brought in various incarnations. For instance, the accusation that would be public and the facts that supported that allegation to the public were X. So when the lawyers came in they would address the public part of the hearing by addressing X. Then the courtroom would be closed, the public would be ejected, and now you've got the real opening statement which is Y. It touches upon all this classified information that could not be discussed in open court. So, yes, you have the back and the forth. And these same types of problems would also arise in connection with discovery where the petitioner says, "I want to know this, I want to know that, I want to know the name of this person who's accusing me. I want to know that, I want to know where this happened." And the government would fight, would resist providing certain information because even though, if it were a criminal case, the defendant would be clearly entitled to this, it's a civil case. It's not a criminal case. These Guantanamo cases are civil cases, so there are no criminal constitutional rights involved *per se*.

Mr. Granof: But if it's a petition for *habeas corpus*?

Judge Urbina: It's still a civil case. What they're doing is they're attacking the legality of the detention, but the detention is not a criminal matter. It's the result of parties being in a state of war, capturing war criminals -- or alleged war criminals -- and then when these so-called criminals petitioned for release, Congress said, "No, they don't have the right to do that. These are not American citizens." Well, the Supreme Court said that they certainly do have the right. They are on American land. Guantanamo is not Cuba. Guantanamo is an American installation in Cuba. They are on American land, they're being held primarily by American forces and, therefore, the detention whether it's legal or illegal is by American forces. And so they have the right to ask the courts to determine whether they're being illegally detained.

Mr. Granof: How do these Guantanamo cases get to you? Does the person held at Guantanamo get a lawyer? Who is his lawyer?

Judge Urbina: This is another one of the myriad complications. I'm proud, I'm very proud to recognize the overwhelming selfless response of American lawyers to take these cases for free. Cases where they had to fly to Iraq, or they had to fly to Guantanamo. They had to fly to all these various places to do investigations. They take the cases for free. So, to answer your question more directly, there's a controversy, the court becomes aware of the controversy because maybe the petitioner has sent the court some notice that he's being held. A lawyer enters, and the accused has to authorize the lawyer to act on his behalf.

Mr. Granof: So, say you get a letter from the petitioner, or some communication that comes to you. Do you then appoint the lawyer? How does he get a lawyer?

Judge Urbina: Well, the way it happened, at least within the ambit of the cases I was handling, is that the various law firms and federal defenders around the country created a consortium of lawyers that would do this.

Mr. Granof: And would you appoint them?

Judge Urbina: And then when the case came up, I wouldn't appoint particular lawyers, but lawyers would volunteer to take the cases. But the petitioner would have to authorize it. Now, in some instances, the petitioner would be complaining for one reason or another, but he did not want an American representing him in an American court. Petitioners don't know anything about the American court system. As far as they're concerned we were just an arm of the United States forces there. So, in some instances, some of these people were really in bad shape. Some of them, for example, refused to eat. And so for some of them there were decisions the court had to make about force feeding them with tubes in their stomach. Some of them just flatly rejected having Americans appointed by the American government represent them in these matters. So these lawyers, many of them, really had to go the extra mile to win the confidence of these imprisoned people.

Mr. Granof: And I assume just one of the mechanical problems is getting an interpreter.

Judge Urbina: That's another thing that I didn't know until these cases started coming in. There are many, many dialects, because many of the tribes speak a variation of the same language. So, yes, getting a competent and appropriate interpreter who gives an accurate iteration of what has been said is critical. Early on, the lawyers for the petitioners produced evidence that some of the government's interpreters

themselves were saying that the interpreting going on could not be trusted because the interpreters were not good enough, or were misinterpreting. So there was another complication for the judges.

Mr. Granof: How do you solve that?

Judge Urbina: Well, eventually I think the coalition -- the State Department, the CIA, the FBI, and the Department of Defense -- got their act together and were able to create a cadre of interpreters so that at least I didn't hear any more complaints after a certain point. But sometimes the complaint was not about a current interpreter, but rather it was about documents back there, way back when, that were interpreted and now were being used against the petitioners.

Mr. Granof: A complaint comes in and somehow a lawyer volunteers. And the lawyer files a writ of *habeas corpus* in your court, or it's assigned to you. What do you do then?

Judge Urbina: Well, the procedures that Judge Hogan had set up would require the government to file what we would call the equivalent to a complaint. That would set forth the allegations. Then the petitioner would have an opportunity to respond to that. And then once the issues were joined, the court would set up a schedule.

Mr. Granof: How did the petitioner respond? In writing, I assume?

Judge Urbina: Yes. The lawyer would say, "Well, that's their version. We'll tell you what the petitioner's version is: they were minding their own business; these troops came in; next thing you know they were being dragged away from their village," and so forth.

Mr. Granof: And so then you hold a hearing of some sort?

Judge Urbina: You hold a hearing to try to schedule things. How much time do you need for the discovery, how much time do you need for this, and how much time do you need for that? What necessary arrangements will the court need to make? For example, "Can you tell me at this stage if we're going to have to have a video conference for this? Can you tell me how many experts you're going to call?" Matters like these were important because, for instance, the government would want to know who these experts were so they could research them and find out whether these experts had leanings in a particular way or had a reputation for being this or that. So it was a process of sorting out things, not like in a criminal case where the constitutional rights of the accused and the established rights of the government are present side by side, and the court manages in the interest of justice to meet both sets of obligations. It was different than that.

Mr. Granof: Assuming the lawyer representing the petitioner asks for discovery, doesn't this present all sorts of discovery issues, including whether he's entitled to classified information and whether the lawyer himself is cleared for classified information?

Judge Urbina: That's exactly correct, because the lawyers all had to have a clearance up to Top Secret. I guess this might happen occasionally in a criminal case, although I can't recall that it actually happened to me. In some instances the lawyers were qualified to get this information, but their client was not. So the lawyer could not tell the client everything that the client wanted to know because some of this was restricted by a protective order. So that was another complication in the management of these cases.

Mr. Granof: So these really are unique?

Judge Urbina: Yes.

Mr. Granof: Do you hear live witnesses?

Judge Urbina: Speaking hypothetically, one scenario that the government might present is that of a particular person who was working with both Iran and the Taliban, and there was evidence of facilitating weaponry, and things of that sort. But then an expert would come in and say, "That's impossible because the Taliban assassinated a whole group of Iranians who came to Afghanistan to try to negotiate something." And the expert would talk about the Shias versus the Sunnis and how the government's allegations don't make any sense because someone who is from one group would never associate with the other. And then another expert would come in and say, "No, it's true that there were a group of Iranians who were killed by the Taliban. However, Iran is an opportunist; it's an opportunistic nation state. It takes an advantage where it can find one, and when it saw opportunities to do this and that, it would do it." So, that's the kind of thing that would either come out of live testimony or documents as evidence.

Mr. Granof: And in that case you had to review some highly classified material and a lot of it?

Judge Urbina: Yes.

Mr. Granof: And that was submitted by the government?

Judge Urbina: Yes.

Mr. Granof: Was your law clerk cleared?

Judge Urbina: Oh yes, everybody had to get a clearance. Not only did everybody have to get a clearance, but also if I were working with one law clerk, another law clerk could not look, would not be able to work on it, even if that other clerk was cleared. If I

was working on something that contained classified material, I couldn't take it home. I would have to read it here, and then I would have to put it in the safe before I left.

Mr. Granof: Is there anything like that you've dealt with? Is this really unique?

Judge Urbina: No, there's nothing else I've dealt with that's like that. No.

Mr. Granof: And this raises the question as to whether the federal courts are well equipped to do this. What's your view on that?

Judge Urbina: There's been literature on this that has praised the job that federal judges have done in this regard. And I think the praise and the commendation are well placed. However, there's also been a suggestion that judges with lifetime appointments who do nothing but terrorist-type cases would do a better job. They wouldn't have the security issues because everything would be before those judges who would be specially trained and cleared for these types of cases whether it's a *habeas corpus* matter or whether it's a terrorism trial. So there wouldn't have to be the back and forth about whether or not this or that should be presented. That judge would say, "Give me everything," and the matter would proceed in that fashion. And that judge would have the authority to take appropriate steps on the criminal side or take whatever appropriate steps he or she might need to take on the civil side. That idea to me makes sense. You wouldn't want judges who were subject to political pressure. You wouldn't want judges who were beholden to a President or administration or anything.

Mr. Granof: They would have to have the independence.

Judge Urbina: They would have to have a lifetime appointment so that nobody could mess with them. They'd have to be something in the order of Article III judges, not Article I judges. When I was across the street in Superior Court, we were Article I judges. So what you need are judges who have the independence of knowing that, "I don't care what the administration thinks. This is the way it's going to happen."

Mr. Granof: These cases arising out of Guantanamo Bay, they're here uniquely in the District Court in the District of Columbia?

Judge Urbina: Yes, the *habeas corpus* cases.

Mr. Granof: But terrorist cases aside from those?

Judge Urbina: They can be tried anywhere. There have been a couple in New York, as you know. But there's a whole controversy. For a while the notion was to bring them here, but the security issues are just enormous. You would have to close out an entire three, four, five, six block radius, and people would have to be flown in on the roof by helicopter. You couldn't just take regular roads to come to the courthouse. You'd never know where snipers are. I mean it would be a nightmare. The same thing with the federal court in Greenbelt, Maryland. Any urban area would suffer greatly in terms of the inconvenience, or worse because terrorists or terrorist sympathizers might do anything to just demonstrate their disdain for what's happening. But federal judges have successfully tried quite a few terrorists.

Mr. Granof: I think they did the hearings in Alexandria. One in the 9/11 case.

Judge Urbina: Yes. And in New York, the blind cleric. And there's been a couple of others. And they've been fine, but the minute there is the threat of a policy change

regarding Guantanamo prisoners, then senators begin to object, congressmen begin to object, and persons who have an interest or a stake involved begin to object because of the security issues. And I'll tell you another issue. In New York there was a trial, maybe 7 or 8 years ago. I don't recall the name. But there was a terrorist on trial and during the court proceedings -- this is a criminal case -- the defense asked for certain information which was critical to the cross examination of a witness. It was very important information, but it had to be turned over and it was. As that information was being used to cross examine this witness, this Government witness, the cell that that person worked out of closed down within the hour. In other words, what I've read is that the minute these sleepers saw that information was being compromised concerning their cell, they closed the cell down and they moved on. The FBI had been in surveillance of the cell the whole time, but then that just disappeared. You know, if people have constitutional rights, they've got constitutional rights. If you don't give those rights to them, the conviction is going to be reversed. And if you do give the rights to them, it may sabotage the trial. So, again, because of the impracticality of having to treat these terrorist cases as regular criminal cases, I'm thinking this other arrangement of a special court that I suggested might be a better one.

Mr. Granof: How about military commissions?

Judge Urbina: Well, you know, they tried that and the Supreme Court said no, the way they were constituted. But what I'm talking about basically is kind of a military commission with one or three judges. But I think the configuration and the rules that would

govern those proceedings are what makes the difference, not so much what you call them.

Mr. Granof: And the independence? The argument against military commissions is that they're always subject to command influence.

Judge Urbina: That's right. You know, they're Army people. They're armed forces people. They might be viewed as naturally biased. You need someone or some people who are not connected in that way. I'm not saying that military commissions would be naturally biased, but there would be an appearance of bias or impropriety if you get career military people to be the judge of these folks here.

Mr. Granof: Your suggestion of establishing this special court of independent federal judges who would specialize in terrorist cases would solve that problem, wouldn't it?

Judge Urbina: Yes, I think it would. And the selection process would have to be one not too dissimilar from the process that selects federal judges now. You'd need a neutral body, people who were prepared to scrutinize the candidates in a way so that the end product is someone that they can trust, people who would be neutral and objective.

Mr. Granof: And you could solve those security issues by trying the cases in Guantanamo?

Judge Urbina: That's right, exactly. And there wouldn't be this back and forth and hesitancy.

Mr. Granof: You've also had some interesting issues in a case involving the Islamic Republic of Iran.

Judge Urbina: Yes, I think I remember that. This was a very interesting case that involved a bombing in Israel, but the plaintiffs were American students who sued here. These Americans went to Israel to have their first year of college provided by the

university there. I think it was in Tel Aviv. And these students were just, as any students might be, excited. They had just attended an orientation, and they left the campus. They were sitting in a café, sort of like you and I sitting here now. And this was some of the most dramatic testimony I have ever heard. There was a gentleman and two ladies. They were sitting down just kind of reveling in the weather and the beauty of the environs and the excitement of the adventure. They had a glass of wine, and the testimony of this fellow was that as he reached across the table to clink glasses with a newly found colleague, she suddenly disappeared. He said she was gone. He did not even hear the explosion at that instant. The woman disappeared completely. Of course, she was killed. And the gentleman who was with her escaped but with serious shrapnel injuries -- nails that drove deeply right into his heel and right arm.

Mr. Granof: But he survived?

Judge Urbina: He survived, and he was the one that testified. And then the rest of the testimony was aimed at showing that Hamas had planned this whole thing. They had promised they would do it, and they did it. This was an *ex parte* trial. I don't think that Iran was actually represented. Iran didn't show up at all.

Mr. Granof: Did anybody show up on the other side -- that is, for the defendants?

Judge Urbina: No, nobody. There were people in the audience, but nobody identified themselves. We, meaning everyone who had an interest, went to the limit of making every effort to make sure that Iran knew what was happening and what the potential consequences were if this matter were actually entertained by the court. Iran ignored the entire thing.

Mr. Granof: Did you have to determine whether the court had jurisdiction?

Judge Urbina: Yes. I determined that the court had jurisdiction. There is a statute, that talks about -- these were American citizens -- that talks about what the parameters of jurisdiction are in instances like this. And I forget what the reasoning was, but I decided that clearly there was jurisdiction, and that Iran had been served and that they knew about the proceedings.

Mr. Granof: They didn't challenge jurisdiction?

Judge Urbina: They didn't challenge anything. It's interesting because later on, in other cases where Iran was named, there was a lawyer here in town who represented Iran and actually came to court in various instances to represent it. I think what happened was that Iranian funds got frozen, and there was a lot of Iranian money in this country that was frozen. In subsequent cases -- I don't know if as a direct consequence of this or not -- there was a lawyer here in town that represented Iran and actually came to court in various instances to represent it.

Mr. Granof: There was one case that I thought was interesting because you decided it one way, a three-judge panel of the court reversed, and then an en banc hearing was granted and they reinstated your opinion. Which seems to me to indicate the difficulty of the issues and how reasonable people can come out on different sides.

Judge Urbina: How reasonably, really smart people, not including myself, how reasonably really smart people can differ. But we know that, of course, from the way the Supreme Court splits often, because reasonable people can see things differently.

Mr. Granof: To sort of draw you back a bit on this, when you first got to the federal court as a judge and you're confronted by these issues, was it a surprise? Did you expect this?

Judge Urbina: Well, yes. It was a surprise. I didn't expect every aspect of what I experienced. Of course, I had practiced in this court as a lawyer, and I had read the newspapers and tracked cases as they came along. And I certainly knew the administrative structure of the court and the general types of cases -- civil and criminal, but not the family cases like I had across the street. So I had a good general sense, but these Guantanamo cases came as a complete surprise. As far as cases are concerned, the big shock was the political implications. The political attention, the political tension that accompanied some of these cases. I had felt pressure before as a trial judge on the Superior Court. You know, this person is accused of heinous crimes, and people died. And so forth and so forth, and I'm going to rule the way I think I should whether the public likes it or not. You know, I knew that.

Mr. Granof: It'll make *The Washington Post* and some of the local papers, but it's rare that you're going to get much congressional concern.

Judge Urbina: Right. Exactly. But then you come across the street and you've got congressmen and members of the cabinet charged with crimes, serious crimes. And, you know, a crime is a crime and you learn how to handle that. You look at the crime, you look at the evidence, you look at the elements. The government had got to prove them, and that's that. But my goodness, some of the fanfare that surrounded some of these cases, *Espy* in particular.

Mr. Granof: Espy was the Secretary of Agriculture who was charged with accepting gifts?

Judge Urbina: Yes. Right. He was charged with accepting gifts, he was charged with bribery, and he was charged with different types of fraud. Again, you look at the crime, you look at the elements and you make your rulings accordingly, and then the jury decides. But in this case, it was strongly colored by racial issues and political issues. There were special prosecutors. Not members of the Department of Justice, not members of the U.S. Attorney, special prosecutors who were taken out of private practice and assigned these cases to prosecute. *Sun Diamond* was another one. And there was just a whole different swagger. It's hard to describe exactly what it was, but there was something very different in the mode and the intensity and the tension because you knew, for example in the *Espy* case, that there was going to be a lot of evidence about the resentment that -- allegedly -- that certain government officials had over the fact that he was the first African American to be Secretary of Agriculture. And you knew that the defense was going to attack the government's motivations. Why they were motivated to make such an issue --

Mr. Granof: This was in the 1990s?

Judge Urbina: Yes, 1997. So, he had previously been the Secretary and then there was a new administration that came in that pursued him.

Mr. Granof: This was the Bush administration.

Judge Urbina: Yes, the Bush administration. He had already been the Secretary and then the Bush administration came in and these charges just arose out of investigations.

Mr. Granof: Was this an independent counsel?

Judge Urbina: Yes, an independent counsel.

Mr. Granof: I know there's been criticism of the independent counsel statute because the feeling is that once you turn these independent counsels loose, they don't have the same balanced judgment --

Judge Urbina: Or the same training. These are people who may have been pretty good trial lawyers. Some of them came to the position with a lot of experience, but it takes a lot of training of here to have that kind of balanced perspective where you don't leap to conclusions. After the trial -- Espy was acquitted of everything -- I had about 8 or 9 of the jurors in that case come to my class. This was the graduate course I was teaching. And the jurors were white and African American and Hispanic. It just so happened I had a pretty good mix. And they were disgusted. They were angry. They were disenchanted with the way the government had acted. They felt that it was -- I mean this is what they said -- they felt that there was a travesty of justice going on here. They didn't even focus on whether Espy actually committed these crimes, they just didn't like the attitude of the prosecutors.

Mr. Granof: They felt that he was being pursued for political reasons?

Judge Urbina: Yes, they did.

Mr. Granof: Any maybe for racial reasons?

Judge Urbina: And maybe for racial reasons. Yes. Clearly. And the ones who actually spoke to that point -- the racial reasons -- were the white jurors. They saw it. An interesting story out of that trial. This lady took the stand -- put on by the prosecutor -- and she testified in a very controlled fashion. The prosecutor asked her very discreet questions, and she answered the questions which were supposed

to create the backdrop for events that would be proven thereafter. And so she testified, and then she was submitted for cross examination. And this was very interesting. The lawyer got up and began to come at her the way you might expect, and one of the other lawyers at the table wrote, "She's sympathetic," and shoved the note -- I saw it. And shoved it across. I mean I could see it. It was right there. "She's sympathetic." And it was big letters. And the lawyer, to his credit, looked at it, and it was like a transformation. Anyway, the main lawyer in the case, there were two of them. Two very, very good lawyers.

Mr. Granof: Defending?

Judge Urbina: Defending Espy, yes. For free. They began to ask her, and she said, "Oh, no, no, no, no, wait a minute." They said, "You're here today to testify on behalf of the government, aren't you?" She said, "No, I'm here today because I was subpoenaed to be here." He says, "Well, but -- ." And then the lawyer began to get -- from her tone of voice you could see that he's beginning to re-scrutinize -- and he said, "Well, how did you come to be a witness in this case?" And then she went off. She said, "I'll tell you how I got to be a witness in this case." She says, "I was eight months pregnant when that man" -- she pointed right at the special prosecutor -- "that man told me I have to go to California." She had worked in the Department of Agriculture. She said, "That man there told me that I had to go to California, so I flew to California. He knew I was pregnant. I told them. They put me in a room, and they ignored me for three hours. Didn't even offer me a glass of water. Then he came in and he was very rude. That man, right there, was very rude." The jury is eating this up and the defense lawyers are just grinning

from ear to ear. She says, “So don’t ask me questions as if I’m here because I want to help the government convict Secretary Espy. I’m not.” So, I mean, there it was. I had never seen anything like that in a trial.

Mr. Granof: Did the special prosecutor representing the government, did he object?

Judge Urbina: He jumped up when she began to go off. I said, “No, no, no, no. Leave her alone. Let her testify.” No, he didn’t do any re-direct. He left her alone. He knew that.

Mr. Granof: This was dynamite. He was a good enough lawyer to know that?

Judge Urbina: Irreparable damage, and he didn’t want to touch it.

Mr. Granof: To what extent, as a judge, could you have an impact. I mean this was a criminal trial, and the facts come out, and I’m sure you make evidentiary rulings like you just told me about. But could you have had much of an impact on the course of the case or the outcome?

Judge Urbina: Well, I’m trying to think what there was in the case that might have been so controversial that if I had decided it otherwise I would have had an impact. And I must say that early on in this case there was an attack on the indictment, and the attack was on one or two counts in the indictment that were based on a statute that was originally enacted after the book *The Jungle* came out in the early part of the twentieth century. .

Mr. Granof: They were going after Espy under a statute that was intended to apply to meat packers?

Judge Urbina: Yes, and I didn’t think that that was right, but the Court of Appeals reversed me. I mean this was before the trial, way before the trial. They sent it back down and said, “No, this meat packers statute applies here. Keep on going.” So, I did and,

of course, the count stayed in the case. I don't think my evidentiary rulings were at all controversial. I mean there were points where lawyers were arguing one thing or the other, but nothing that would have been dispositive. The only dispositive thing that I did was knock out a count and then have to reinstate it. But, no, I mean I try all of my cases pretty much the same. When I try cases before a jury, my main concern is that the jury not be unduly manipulated, not be flimflammed, and be presented the very best evidence available so that they -- it -- can make a decision based on the evidence. I don't like nonsense, I don't like histrionics. So I don't have an agenda when I come into a trial, other than to protect my jury. I mean I'm very proprietary about the jury. That's my jury, and you're not going to mess with it. And that's how I treat the entire proceedings. So the only thing that really will drive me in one direction or the other is when I see somebody trying to do something that's inappropriate in front of the jury or to the jury, then I'll react. The independent counsel -- special prosecutor, independent counsel -- asked for two hours for closing arguments, two-and-a-half hours. No, I wasn't going to do that to these jurors. So each side had an hour and ten minutes. It was a long trial, but this jury was tired. The trial took five or six weeks. I think it would be hard for the jury to concentrate on these long arguments.

Mr. Granof: I know that in Lincoln's time, before modern communications, people would listen to three hour orations. But nobody does that anymore.

Judge Urbina: No, and you're right. If the jury has paid attention during the trial, you're not really going to tell them too much that they haven't already figured out.

Sometimes a lawyer will be able to piece things together that may not have become apparent during the presentation, but they'll take a little from here and a little from there and piece it together and the jury will have one of those "aha" moments. But, generally speaking, that's not the way it works. If the jury has paid attention then all they need at the end of the trial is kind of a refresher and a presentation of what's persuasive in a persuasive way. This is persuasive, that is persuasive, and then they decide. But, anyway, my point is that the prosecutor asked for an inordinate amount of time, and I said, "No, you can't have it."

Mr. Granof: I think you told me previously that the prosecutor read his argument?

Judge Urbina: Read his closing, yes. Read his closing argument. That's right.

Mr. Granof: This was an experienced prosecutor.

Judge Urbina: Yes it was.

Mr. Granof: Why would he want two hours?

Judge Urbina: An experienced prosecutor. Came from California. Was an experienced prosecutor, his wife is a judge. So he's been around. I don't exactly know why. I think he may have gotten discouraged with the quality of his own evidence. I'm only guessing. He's really robust, a very handsome fellow, beautifully dressed all the time, articulate and, I think, relatively knowledgeable about the law, but by the time the end of this trial rolled around, I don't know if he was just tired or if he was discouraged by his own evidence. I don't know why, but as soon as I said, "You cannot have a couple hours," he argued and argued and I said, "No." And he literally pulled it out, and read it, and then spilled a cup of water on the podium computer.

Mr. Granof: He must have been tired.

Judge Urbina: Poor guy. I mean I actually felt sorry for him.

Mr. Granof: This raises a question. As an experienced trial lawyer, is this a situation where really less is more? The idea is if you're going beyond an hour are you really doing anything for your case or are you actually undermining it because the jury is wandering and saying to itself, "Oh, I wish this guy would stop."

Judge Urbina: Yes, I think that's right. I mean if you're an extraordinarily captivating speaker, and you're really skilled at portraying something that was less evident during the trial, then you could get away with an hour. But otherwise, no. Forty-five minutes is plenty. And then when lawyers spend this much time -- say the prosecution in a criminal case -- I always have to either let the jury rest, send them to lunch or do something. Because they're not going to sit down for another hour or so to listen to another set of arguments. That's not fair to the party that follows because they've been spent. The jury's been spent, and now the defense, or whatever it is, is going to be arguing a case when the jury is spent. So, no.

Mr. Granof: Now, this was a two-month trial. Now is that, compared with the Superior Court, was that on the long side?

Judge Urbina: This was the longest trial I had ever tried. I told you about that other case where the gentleman was molesting the boys. That trial took about four weeks. Four or five weeks. But this was the longest trial I had.

Mr. Granof: And is that long even for the federal court system?

Judge Urbina: Well, I know that the Chief Judge, our current chief judge, tried a case for more than a year. And there've been a couple of cases that go eight or nine months because it's a criminal enterprise gang that is being tried or some major part of it. But, generally speaking, trials don't last that long. Even complex criminal cases usually don't take more than a month.

Mr. Granof: I can't imagine being in trial for two months.

Judge Urbina: You get tired. And you know the jury is tired because if they're doing their job they're paying attention. Now when you and I pay attention as lawyers in the case, we're paying attention to things we already know. When the jury is paying attention, they're learning. I mean their mind is straining to drink it all in and to pay attention, figure out words and understand the concepts. So it's even harder for them.

Mr. Granof: Now, in terms of the number of trials, in the Superior Court probably you were constantly in trial, often jury trials.

Judge Urbina: In certain assignments I was constantly in trial. For example, I mentioned that for two years I was trying nothing but first degree murder and rape cases, and that's because people were being preventively detained in connection with those cases. So, as one jury was filing out to begin their deliberations, another new panel was being brought in the front door. So, yes, we tried a lot of cases. That wasn't the situation all the time, but yes. I mean there were times when things were that busy, one after another, after another, after another.

Mr. Granof: How does that experience compare with the trial schedule in your experience as a federal district judge?

Judge Urbina: It doesn't compare. I mean, I think probably most of us don't try more than three or four cases a year. The exception to that was just before I came onto this court -- when I came on with some other judges -- the then U.S. Attorney was bringing just about all crack cocaine cases and just about all gun cases in this court even though the Superior Court was the logical place to bring them. And as a consequence, the judges -- and the court was understaffed at that time, was understrength as far as judges were concerned because there were many vacancies that President Bush had not filled -- the judges here had not tried a civil case in years because the dockets were congested with criminal cases that many thought should have been brought in the Superior Court. So they had to be tried, one after another after another criminal case because those cases were time sensitive -- speedy trial requirements. So those judges, like Judge Thomas Penfield Jackson, Judge Lamberth, Judge Hogan, and Judge Robinson -- Aubrey Robinson -- they were constantly in criminal trial for that reason. But once that situation got rectified and the court got fully staffed, I think we've had much more control. We have our own individual calendar, and we pretty much control when cases go to trial. And I think rarely -- I can't speak for other judges that comfortably -- but I believe that rarely are we so pressed that we have to try one case after the other after the other. That may happen for one or two cases or three cases, but I think that's the exception rather than the rule.

Mr. Granof: You're probably doing a lot more writing because a lot of cases are disposed by summary judgment.

Judge Urbina: Yes. A lot of cases get disposed of on summary judgment, and our circuit has made it clear that even though the issues are reviewed *de novo*, that's the rule, they really expect us to explain why we've decided to dismiss a case or to grant a motion for summary judgment. They really want an explanation. So there are full-fledged opinions written in order to fully inform the parties -- most important -- and, of course, the Court of Appeals when and if it reviews the matter.

Mr. Granof: During my practice here, I always expected and always got written opinions, which were detailed.

Judge Urbina: Yes. And that's the way it is. In some other districts, I understand, it's not that way. They don't have to write as much, and they're not expected to write as much by their supervising circuit.

Mr. Granof: One practice that I've encountered, which I thought was interesting, was that a judge will issue a tentative decision after reading the summary judgment motion and the briefs. Then he will call the parties in for argument, and, in effect, say "What's wrong with my decision?" or "What's right with my decision?" So you do have an opportunity to persuade the judge.

Judge Urbina: Yes, that's a very good practice. I don't do it, but I've heard about that. It sounds like an excellent way, first, to avoid error and, second, to give the lawyers an added opportunity to add to or subtract from the logic of your outcome.

Mr. Granof: Do you have a lot of oral arguments on motions for summary judgment?

Judge Urbina: No, I don't. I tell the lawyers right from the outset -- actually I don't have to tell them anymore because everybody knows -- that if you can't write it, you don't know it. I say, "Take your best shot on the papers because you're not guaranteed

oral argument." Now every once in a while I'll read something and I'll say, "Well, I've got some questions here about this or that," and I'll call them in.

Mr. Granof: How about the quality of practice in this court versus Superior Court?

Judge Urbina: There were some truly exceptional lawyers that appeared in the Superior Court, frequently and routinely -- Jacob Stein and others. It was a pleasure to have them in your courtroom. And there was a fairly large contingent of those truly excellent lawyers, most of them from big firms. Then below that you had kind of a generally competent bar in criminal and civil, and then, of course, you had that bottom strata of lawyers who were stretched too far, just didn't research well enough. They had too many cases and too little time, and in criminal cases that was a real problem because the judge has an obligation to make sure that the accused's constitutional rights are addressed. And so from time to time I'd have to remove a lawyer, but generally speaking I think that I saw improvement in the Superior Court over the time I was there. And in this court, as you know, for the most part our customer, so to speak, is the government. So you have the Office of the Attorney General for D.C., and I'd say a good 60% of those people are very good. And then both on the civil side and criminal side you have the United States Attorney's Office and you've got the Department of Justice. . And they're generally very good.

Mr. Granof: And so you think that the quality of lawyering here is pretty good?

Judge Urbina: Yes.

Mr. Granof: How about civility? Has that been a problem?

Judge Urbina: You know it's never been a problem in a criminal case, never. It's been a problem in civil cases. I don't know if it's because there's money involved or whatever. I've seen less of it in the last couple of years. But in the first few years I was here lawyers would go at each other like children. Discovery, hiding documents.

Mr. Granof: And particularly in depositions?

Judge Urbina: Exactly. I was about to say that. Particularly depositions. I would get a phone call, my law clerk would answer the phone and say, "I'm writing this down, and let me see if I've got it right. You want me to interrupt the judge so that he can rearrange the seating at your deposition?" I mean I was actually there. I overheard this conversation. And it gets quiet, "No never mind, never mind, no. We're figure it out." I said to this law clerk at the time, I said "That was very good, that was excellent." I said, "How did you develop that skill?" He goes, "I have children."

Mr. Granof: You know I've taken up a lot of your time. This may be a good place to stop. Thank you again.

ORAL HISTORY OF THE HONORABLE RICARDO M. URBINA
EIGHTH INTERVIEW
10 JANUARY 2012

This is the eighth interview of the oral history of U.S. District Judge Ricardo Urbina as part of the Oral History Project of the District of Columbia Circuit. The interviewer is Gene Granof. The interview took place in the chambers of Judge Urbina at the United States Courthouse in the District of Columbia on Tuesday, January 10, 2012 at 10:00 a.m.

Mr. Granof: Good morning Judge. This is a momentous year for you because you're finally retiring.

Judge Urbina: Yes.

Mr. Granof: Well deserved.

Judge Urbina: Thank you.

Mr. Granof: And as we were talking you were telling me that you had just been given the Brennan Award at a ceremony at the University of Virginia.

Judge Urbina: Correct.

Mr. Granof: Would you tell me what the Brennan Award is, and what you got it for.

Judge Urbina: Well, the National Institute for Trial Advocacy holds, at the University of Virginia, annually, an event which is a week-long event that is aimed at improving trial skills for lawyers, both experienced lawyers and less experienced lawyers, new lawyers, and a smattering of law students. This year was its thirty-first year, which coincidentally is my thirty-first year as a judge. I have not been to this event before. I was there this weekend because I was told that I was a recipient -- one of two recipients -- of the Brennan Award. I found out at the ceremony, actually, that the Brennan Award is one which is given to persons, usually judges, who have demonstrated a deep respect and an abiding loyalty to the rule of law and the Constitution specifically. And the director of this program,

Professor Stephen Saltzburg, who teaches at GW and actually is a graduate of the University of Virginia, spoke. And in reference to my getting the award, he talked about a number of things that he personally witnessed. In that regard, he spoke about watching the Michael Espy case, which as you recall was the African American Secretary of the Department of Agriculture whose case I tried in 1996.

Mr. Granof: Yes, you had talked about that previously.

Judge Urbina: In our interviews, yes. And Professor Saltzburg had a vivid memory of several events during that trial which to him suggested that I was doing my best to keep the case on the straight and narrow, especially in light of the fact that there was a strong racial overtone to the case. As you may recall, it was prosecuted by a Special Prosecutor, not a United States Attorney or Assistant United States Attorney. And Mr. Espy was the first African American Secretary of the Department of Agriculture, and that the case was colored, so to speak, by political and racial factors which the jury could well have interpreted as motivating the prosecution. So, Professor Saltzburg spoke about that. He also spoke about the Guantanamo case involving the Uighurs, and he had some other passing references. But he also mentioned that I teach at GW, that I've done that now for 18 years, and that he has watched me teach and confirms that my approach to the law and the trying of cases is to adhere to the rules, adhere to the Constitution, and to strive for fairness. These are his words or his ideas at least. So that was the basis for the award.

Mr. Granof: Well, congratulations. It's a wonderful capstone to a career. While waiting for you in your waiting room because you were in court, I happened to pick up an

article in the National Law Journal that was written about you because you're retiring. A very nice article. Do you mind if I ask you some questions about your responses in that article?

Judge Urbina: No.

Mr. Granof: We were talking at one point about your reaction as a district judge -- or, generally, district judges' reactions -- to the Court of Appeals. And I think I had said that Judge Henry Kennedy said that "No federal judge likes to be reversed," and I guess that's true. But you had an interesting reaction to the Court of Appeals.

Judge Urbina: Well, often we have more than one reaction to any given event. You know the one that is visceral and then the one that's the result of having an opportunity to reflect. And I think Judge Kennedy is correct. I think the visceral reaction that most of us judges have when we're reversed is unpleasant. We'd like to think we do the right thing, and we don't particularly relish having the Court of Appeals telling us that we've gotten it wrong. However, I think the more stable reaction, the more fundamental reaction to a reversal, for example, is "Thank God for the Court of Appeals," which is what I said in the article. Especially in cases involving criminal defendants, in which the judge wants very much to facilitate fairness and to create an environment and a process during the trial that is fair to both sides, particularly in light of the Constitutional guarantees. But sometimes things happen. And if what happens results in a conviction that suggests to the Court of Appeals that there was error, then I welcome that. I welcome the opportunity to look at it again, or for the Court of Appeals to do so. Because I

think every judge's nightmare is to be the instrument of locking someone up who hasn't been properly convicted.

Mr. Granof: You and I also talked about another factor in the Court of Appeals' decision versus the district court's decision, and that is time. The time to consider. And I want to throw in something else, the fact that in the Court of Appeals there are three judges usually, whereas the district judge usually decides alone. Do you think that makes a difference?

Judge Urbina: Well, to be honest, I wouldn't like to have two other judges participating in my decision-making. That's one of the things I believe a district court judge appreciates. Not to say that the appellate process and procedure is not a good one, but I think most district court judges would prefer, as trial judges, to make a decision on their own as related to the trial. Now, yes, it is true -- and I might have overstated it a little bit in the article -- when I say it takes two years for the Court of Appeals to decide something that a judge has had to decide upon in two seconds, but it's not that much of an exaggeration. Over the years I have established procedures that help ensure against having to make snap decisions during trial. For example, when I'm in trial the lawyers are required, at the end of each trial day, to consult each other face-to-face and to discuss whatever issues each anticipates will come up the next day, and if there's controversy over that issue -- perhaps whether or not a certain bit of evidence would be admissible or whether a particular transcript excerpt will be usable for impeachment, or anything like that -- they have to discuss it. If they cannot reach a resolution, then the proponent of the position must inform me by 7:00 a.m., no later than 7:00 a.m.

the following morning, and the opponent by 7:45 a.m. That way, first of all, I don't have to have something sprung on me that I would have liked to have had an opportunity to think about. And, secondly, it prevents unnecessary bench conferences during the trial, which jurors hate and, incidentally, have told me frequently they interpret as the defendant hiding things as far as the evidence is concerned. So, all of that simply is to say that I try to organize my trials in a way so that fewer of those two-second decisions come up. Of course, obviously during a trial, with witnesses on the stand things happen and the judge has to decide instantaneously. But the Court of Appeals has the obligation and the opportunity to review matters more deeply and to develop the contrasting rationales looking at other federal courts, the Supreme Court and other circuits, as well as the law of this circuit, and then come up with a resolution which from time-to-time is one that could not have been anticipated by the trial judge because there was no law existing on the point.

Mr. Granof: Or because they have changed their minds?

Judge Urbina: Or because they've changed their minds. That's true.

Mr. Granof: I don't know how collegial courts of appeals are or the Supreme Court is. You probably have greater insight than I do on it.

Judge Urbina: Well, from time-to-time -- in fact, recently -- I have sat as a member of a three-judge panel on a case that is certified, usually redistricting cases and so forth. And so that's a glimpse for me into how the appellate judges think. Recently I've had a very productive and enjoyable experience with Judge Kavanaugh, who is the appellate judge, and Judge Collyer, who is the district court judge. And the

way these panels are structured is two district court judges and one appellate judge. So that's a glimpse. And my experience with Judge Kavanaugh in that particular case was a very pleasant one, a very thoughtful one, and was one where he asked us to reflect on the case, the evidence, and the law. And we went back and forth -- I think it was three people with different points of view on some matters -- but it was quickly resolved. And when we came to agreement, Judge Kavanaugh, the appellate judge, assigned himself the writing of the opinion, sent us drafts, and we looked at them, and commented, and the process was excellent. And that case, by the way, has just been affirmed by the Supreme Court.

Mr. Granof: Which court case was that?

Judge Urbina: I'm forgetting the name, but I'll give you the name in just a moment. It's *Bluman v. FEC*. The case was brought by two individuals who joined in their efforts to convince the Federal Elections Commission that residents who are not citizens should be permitted to contribute to Federal campaigns so that they -- for example, these two individuals who are living here and plan to stay here for quite some time, but do not plan to become citizens -- could influence the political process. And we decided that a person in order to be entitled to do that should be a citizen because -- these are my words -- it's a slippery slope, and once you start letting people on the basis of money influence our political process, who knows where that will lead. And, at bottom, you should have persons who have a vested interest in this country, such as citizens. So that was our decision, and the Supreme Court affirmed it. But to get back to your question, I have never seen

anything or read anything, certainly not in recent years, that would suggest that there isn't an atmosphere of collegiality among the appellate judges.

Mr. Granof: I want to ask you about something that doesn't get a lot of play, and that is the judge as an administrator-manager. How many cases are there on your docket currently? I don't think the public has any idea.

Judge Urbina: Well, I'm not a good example, necessarily, of the more common experience among judges because of my status as a senior judge. Now I have been taking no cases off of the calendar. Based on the circumstances and the requests of the Chief Judge, I've been whittling down my caseload. However, when I got here in 1994, each of us who joined the court at that point had close to 300 cases, civil cases, on our calendar. In addition to that, because the United States Attorney in the prior administration had decided to charge all crack cocaine cases in federal court as opposed to the Superior Court, there was a very substantial criminal calendar. Indeed, because of the several vacancies on this court over an extended period of time, vacancies which the first President Bush did not fill, the judges here had not been able to try their civil cases for years because the criminal cases trumped the civil cases, and the judges here were regrettably in criminal trials all the time. So, to answer your question, when I came aboard all of us had huge caseloads and the idea was to resolve those cases, to call the parties in in those cases, see which of those cases were still viable or not, which had been settled and so forth. So as of today, my caseload is very low. I have for the last eight or nine years had no motions or verdicts that have been more than six months old. So, at the end of April and at the end of September when we have to file our reports to

Congress, I have had zero cases that fall into any category that might be considered not timely decided.

Mr. Granof: Yes, I suppose no judge wants to have their name on the list put out by the Administrative Office of the U.S. Courts of cases that were not promptly decided.

Judge Urbina: Yes, that's right. And I believe that there are some judges who are still trying to make sure that those cases that would qualify to be reported are resolved.

Mr. Granof: Well, sometimes it's not the judge's fault, because it's delayed for reasons that go beyond managerial control.

Judge Urbina: I think that's right. Sometimes the lawyers ask the court to hold a decision, let's say on a motion, in abeyance because they're in negotiations to settle it and so forth. And other times there are just delays that are built into the process. For example, there are these Guantanamo cases because of the procedures and the kind of awkward way that both sides have to deal with access to classified information. Even the court reporter has to be certified for secret and top secret. I have a case right now where the petitioner, the detainee, has expert witnesses he wants to call at the trial, but the lawyers are not permitted to give those expert witnesses the information that the petitioner wants them to comment on because the experts have not yet been cleared. So you have these kinds of awkward situations that come up. But I think, generally speaking, the judges on this court are very conscientious about getting to cases in a timely way, and I think the new judges are really going to be an important factor in alleviating some of the pressure that was created when there were vacancies.

Mr. Granof: You know it strikes me that comparing a judge's administrative problems with those of a practicing lawyer -- and you've been on both sides -- a practicing lawyer can say, "Well, I won't take this case. I'll make a little less money. My schedule is full." But a judge doesn't necessarily control his schedule.

Judge Urbina: That's right. The cases come off a wheel. They're randomly assigned. The only time a judge gets a case other than through a random process is when it's a related case to a case that's already on the judge's calendar. So yes, the judge doesn't have control of that. Now when I came aboard, because of the situation I just described to you, I wanted very much to establish procedures in my chambers for my staff and myself that would help me get through the backlog and help me do it in an effective way administratively. One judge that was on this court already, had been for years, Judge Charles Richey, had devised procedures and forms and other instruments that he required the parties to abide by or to implement. And I was very impressed with that, and I've kept many of those practices to date. For example, one of the things that I find helps the lawyers, the parties and the court, is to schedule things firmly right from the beginning of the case. So when lawyers come in initially, before they began filing motions and so forth, I give them a roster -- and I'm not the only one, I'm sure -- I give them a roster of every event leading up to the final status conference. But it happens right at the beginning so that they have a clear idea of what the expectations of the court are. And I think those kind of procedures help. One other thing that I've heard judges say in recent times is that they're disturbed by the fact, and the statistics are skewed by the fact, that sometimes lawyers in a civil case or even the defendants

in a criminal case come in at the last minute to resolve the case or to plead guilty. And I have devised procedures -- I employ procedures -- that give the lawyers in either instance, civil or criminal, more than enough time before they get to that stage to have all pending matters resolved as they approach a trial date. For example, in a criminal case, I've resolved all the criminal motions so that the defendant knows where she or he stands. In a civil case I've resolved all the dispositive motions so that if the case is still viable the parties know it. And that avoids the phenomenon of sometimes the lawyers and parties coming in at the last minute with a plea that kind of undoes some of the judge's work.

Mr. Granof: How big a staff do you have?

Judge Urbina: Well, for my in-chambers staff I have three law clerks, and then we have interns. I run three intern programs a year, fall, spring, and then a full time internship -- or what some people call externships -- in the summer. The way I've structured things is that the hiring of these interns is done by the law clerks. That is, they interview the applicants -- it's very competitive -- and then they make a recommendation to me. And unless I find that there's something about this intern that would make that person unsuitable to work here, I say go ahead and make the person an offer. The fall semester we'll have five or six, and the spring semester we'll have five or six. In the summer we have externs from around the country. We may have as many as ten or eleven, and each intern and extern is assigned to a law clerk as kind of a staff member for that law clerk. The law clerk supervises, the law clerk teaches, and the law clerk utilizes that intern as a resource in working on cases. So we've been very successful in getting a lot of cases

processed with the help of interns, with the expertise of and the diligence of the law clerks, and with the system that we've put in place.

Mr. Granof: These are law students, first and second year? Or second year?

Judge Urbina: Sometimes they're at the end of their first year. Sometimes they're in their second year. Occasionally we'll have a third year. And even recently, in the last couple of years, experienced lawyers who have a job, but the job will not materialize because of the economy or something else for a long period of time, so they come in, and after making sure that they're not conflicts and that there's nothing untoward or inappropriate about them working for a particular judge, then they come aboard and that helps them to stay on top of their game and also to learn things that may be useful to their employment.

Mr. Granof: And is there money to pay these?

Judge Urbina: No.

Mr. Granof: So this is a voluntary program.

Judge Urbina: Completely.

Mr. Granof: I hadn't heard of this program. Is this peculiar to the court or something that you personally were doing?

Judge Urbina: Well I have for the last thirty-one years, since my time in the Superior Court through the present, always had interns. The intern program has become more structured during my years as a federal judge. We have training materials, there's a whole volume of materials, and exemplars and so forth that the interns must read and use as a standard. I know that I was among the first on this court to utilize interns in this kind of administratively helpful and productive way. But I

believe now that at least half of this court has interns that work for a judge in a similar fashion.

Mr. Granof: Well, that's a terrific program that you started.

Judge Urbina: Yes, I love it. And it's great because some of my interns have subsequently become my law clerks. They know what they're getting into. It's kind of a long interview. They're here for several semesters, and next thing you know they apply and I know what I'm getting into and they know what they're getting into. But even more important, at the end of the intern's period with me, the supervising law clerk will write an extensive evaluation of that intern's work, which is almost always extremely favorable and positive. And then as that intern leaves I staple his or her picture, which is on their ID card, to the inside of a file. I put the critique or the assessment of that on top and then include exemplars of that individual's work. So that if I get a call two or three years later from the U.S. government or a law firm in Chicago, I can speak about that prospect with precision and not in these kind of nebulous terms of, "Oh, yes, he did a great job. He was a nice guy." I mean I can talk about the kind of cases they worked on and the progress that was measured along the way.

Mr. Granof: Well, that's a wonderful program for you, and it's a wonderful program for the interns.

Judge Urbina: Yes, I think so. It's certainly good for me, and I think many of the interns truly appreciate the kind of support that they wind up getting as a result of the good work they've done here.

Mr. Granof: You previously made a comment about your experience regarding the lawyers appearing before you. You said that you found a lawyer can't cruise just on talent. You found preparation and organization to be critical.

Judge Urbina: Yes. And by the way, those are words that have come from jurors. As you know, I teach a course called "The American Jury," and in one of the thirteen sessions that constitute the course I invite jurors in that have been in trial before me or before Judge Mott, who is the co-teacher, and they give the class -- usually about eighteen graduate students and lawyers -- their reactions to what they saw in the courtroom, what the lawyers did well, what the lawyers didn't do well, and so forth. Almost invariably they might say something like -- and this happens every year -- "Well, I thought this lawyer was dull. She was not very exciting. This lawyer fiddled too much with the papers, didn't seem well organized, didn't seem well prepared. Didn't seem to relate well to his or her client." And they make these observations which I think are extremely helpful to these lawyers who are about to launch into the practice of law. Now the comment about talent comes from not only my experience as a judge, but also my experience as an academic. Frequently lawyers who wind up working in court, actually trial litigation, are very talented. And the talent I'm talking about is the ability to think fast on their feet, the ability to use drama and language to get their points across, and so forth. But sometimes I've noticed that lawyers who are good on their feet don't do the work they need to do on paper. So they may be ready to try a case, but their submissions are not good because they haven't spent enough time really researching. Sometimes lawyers, let's say from small law firms, are spread too

thin. So they're cruising on their talent to make their court appearances and deal with their clients, but they're not spending enough time reading the law, refreshing themselves on what's current, and so forth. And, as a consequence, someone on the other side that's well prepared takes advantage of that.

Mr. Granof: You would think that both public defenders and Assistant U.S. Attorneys carry enough of a caseload so that time is very scarce for them.

Judge Urbina: Yes.

Mr. Granof: And maybe they do well in court because they have an institutional structure in back of them that's useful?

Judge Urbina: Well, the lawyers in this court -- federal public defenders, CJA public defenders, U.S. government, Assistant United States Attorneys, Department of Justice -- my impression is they have a slightly different agenda than their counterparts across the street. I think they have fewer cases, and they have more resources. The CJA attorneys will frequently approach me and say, "Would you sign a voucher, I need this expert." So they have access to doing the kind of preparation that they really should do. And the federal public defenders, for example, have wonderful resources. Not as great as the government's, of course, but they have interpreters, and they have investigators, and they have the ability to marshal resources to really prepare their case. Now I don't think that the Public Defender for D.C. -- the agency which I was a member of for years -- has the same advantages in that those public defenders have many more cases. More of those cases actually go to trial. And, consequently, there's a bit more of a frenzy. There's more helter-skelter and less time that they can dedicate per case. This is my feeling, my

observation. So the two courts are in slightly different positions with respect to the people who service them.

Mr. Granof: Let me ask you about a case that I think we talked briefly about, which is the Blackwater case. It was a highly publicized case that went up to the Court of Appeals.

Judge Urbina: Well, it was a wonderfully interesting case, and tragic in that it involved a group of individuals, seven or eight at least, who were working for the U.S. government as private contractors from a company called Blackwater that provided these private contractors. These private contractors were alumni of the armed forces, special ops, this kind of elite unit-- like the Navy Seals. So they were highly competent warriors who were making money, and good money, on detail for the federal government in various locations. In this instance, it was in Iraq. And the situation that arose, which resulted tragically in the death of fourteen or fifteen civilians, had a number of different dimensions that made this case particularly complex and particularly interesting. First of all, there was a question as to whether or not the statute under which these cases were brought -- a statute that permitted the prosecution of crimes committed in another country to be tried here in the United States -- whether that statute was applicable under the circumstances. One reading of that statute said that the persons who were accused would have had to be employees of the Department of Defense. In this particular instance, the defendants, who were in a caravan escorting other individuals, were employees of Blackwater, and were actually contracted for by the State Department. So there was a legal controversy because these were not

DOD employees, they were private contractors for the State Department. Therefore, the defense claimed that the statute is not applicable. Well, I found otherwise. And then there were a number of issues that arose out of the procedures that were employed after the incident to get statements. These Blackwater employees almost immediately after the events were called in by superiors -- those who were working on behalf of the Department of State, and then ultimately those who were working on behalf of the Department of Defense. The long and the short of it is this. These individuals who were called in one at a time and from whom these statements and explanation and description of the events was taken, these individuals were told the following in essence: "If you don't make a statement, you'll be fired." Number two, "Any statement you make will not be used against you." Those two groupings of inducements have been amply commented on, in my view, by this circuit and other circuits in that if, indeed, these statements that I just described generate evidence, there's a problem. And the problem is that according to the cases that govern -- my reading of those cases -- you cannot use those statements. You may use evidence that was independently secured, but you can't even use evidence that was the derivative of these core statements. Well, it was very clear in the evidence that these statements were indeed used. Not only were they used to form the foundation of what ultimately became the indictment, not only were they used as a springboard from which additional investigation was done, but also these statements were subsequently used to do research even after the Department of Justice was advised by one of its internal advisers not to do this; the statements were used to go on the

internet and secure more information. So the question then became, "Can the government use these statements or any evidence that the court determines was a derivative?" I said, "No, it could not." And the cases that support it, my interpretation I thought, were from this very circuit way back in Watergate. *Poindexter* and some of those others who had a similar situation bounced around back to the Court of Appeals. Back down, up to the Court of Appeals, and ultimately, I thought, created a body of law that was pretty dispositive. So that's basically it. When I determined that that evidence could not be used to bring about the indictment in the case, the government appealed. Now there were other things that I found disturbing that were at least indirectly related to how I viewed the conduct of the government. For example, these statements -- those that I'm saying were basically prohibited, or their derivatives -- were presented to the grand jury. The government also had statements that were exculpatory and did not expose the grand jury members to the exculpatory statements. So, anyway, not to get into any more detail about that, but that was what it was about. Now when I was about to make the decision on New Year's eve, when I was about to issue the decisions, I thought it through very carefully. And I knew that there would be some strong and negative reaction to an outcome such as this. Strong and negative action, of course, by way of the Department of Justice. Strong and negative reaction as well by other parts of the government -- Department of Defense and other agencies, CIA, and so forth, that had been part of the investigative effort. And I knew that there was going to be a negative reaction among the Iraqis.

Mr. Granof: It was a big foreign policy issue.

Judge Urbina: Oh, yes. They were very angry, and understandably so. Quite coincidentally one of my former law clerks was in Iraq at the time, and there were riots. But as I said when I got this Brennan Award, there comes that moment when you say, "Are you influenced by the fact that this is going to create adverse publicity, that you're going to be criticized?" And I said, "Yes, it does influence me for about 20 or 30 seconds." And then once I get out of that kind of visceral, protective moment, then, of course, then you turn to the law, you turn to the Constitution, and my personal apprehension is not relevant to the decision I have to make.

Mr. Granof: So you make a conscious decision to set that aside?

Judge Urbina: Absolutely. And I think that's what judges are sworn to do. Now the Court of Appeals felt -- well, I won't get into analysis -- but basically the Court of Appeals said that the defense had the obligation to prove certain things with respect to these statements, and it failed to do so as to every element, every aspect of how these statements were used, and proven to be in violation of the existing law. As a result, the Court of Appeals said, the trial judge did not properly apply the law that should have controlled, and the indictment should not have been dismissed. What this did in essence was put the burden on the defendants to prove something that the case law clearly said was the government's responsibility. The way it works in my view is that the defense has to prove that these statements were tainted, and once that happened then my reading of the law was that the government has to prove that these statements were not the source of the additional evidence, but that the burden was on the government from that point

forward. And the government didn't do that to my satisfaction. But we will see. As I say, maybe the Court of Appeals is right. Maybe the Court of Appeals does want to create a new body of law on this point. I don't think the Supreme Court has turned it down yet.

Mr. Granof: So that's where the case stands now?

Judge Urbina: Yes. The Court of Appeals' decision, which may or may not be appealed. Well, it probably has been appealed. Probably sought *certiorari* on it. I believe they did, but to be honest I haven't tracked it so I don't know what the outcome is. But I think it would be a wonderful issue for the Supreme Court to resolve because it's likely that this issue is going to come up again. Who has the burden? Who has the initial burden? Does the burden shift? What does that burden consist of? There are a lot of very interesting issues which I think in current times, given the concerns about security and the wars that the United States is engaged in, so to speak, that these issues are likely to come up again.

Mr. Granof: And speaking of split-second decisions, the Blackwater defendants' case had to decide pretty quickly, and the results were tragic all around.

Judge Urbina: Yes. Of course, in my heart I would have preferred to just let it go to trial, and people who are guilty be convicted. Judges, as you know, and lawyers as well, have this compartmentalized approach to looking at matters. You know something that the average lay person doesn't. To tell you the truth, when I pick up the newspaper in the morning and I read it, I jump to all sorts of conclusions.

Mr. Granof: We all do.

Judge Urbina: Yes, that's one of the luxuries we have. When you function as a lawyer or as a judge you have to compartmentalize. You don't get to point C until you travel through point A and point B, and that travel may totally exclude any factors that are relevant to point C.

Mr. Granof: That's the difference between being a decision-maker, someone who has to decide, and being a commentator or just having an opinion about something.

Judge Urbina: Exactly. The Court of Appeals felt that this was a very important issue. I wish it had written more to provide additional guidance. They simply remanded it with some discussion, of course, obviously. Some scholarly discussion of some of the issues, but not the kind of discussion which I, as a trial judge, think I could benefit from significantly in devising the approach upon remand. So, unfortunately in a sense, because I would love to be able to preside over this case should it come to trial. But, because I'm retiring, what's going to happen is it's going to be tried by another judge, and I think that it will be the Chief Judge. Therefore, the case is in excellent hands. Excellent hands. The Chief Judge is Judge Lamberth. He's an extraordinarily competent judge. And no nonsense.

Mr. Granof: He doesn't particularly care about public opinion?

Judge Urbina: No he doesn't. He once told me, "I'm the most reversed judge on this court. So when you ask me a question, keep that in mind." Those are his words.

Mr. Granof: You're the first and only Hispanic on the bench here. And I wonder if you could comment on that. I mean you come from a Hispanic background. Does that affect you in any way?

Judge Urbina: Well, I think it would be disingenuous and inaccurate and foolish to suggest that our backgrounds don't have a profound influence on how we see the world and how we interpret events that unfold. In fact, that's good. I mean that's called diversity. So you have people who have come from very privileged backgrounds, and you have people who come from backgrounds that are a lot less privileged. It's that amalgamation, I think, whether it's in government, or whether it's in law firms, wherever it is, that really makes things work well. So diversity is very important in any process that requires thoughtful analysis. And being a Latino I grew up under circumstances that were not exactly the same as some other people. It's very important for me to bring that perspective to the fore. And when I say "that perspective" I'm not saying I take the side of any particular party in a case because that person and I resemble one another. It's not a matter of representing anybody else, it's a matter of reflecting the composition of the community that you serve. And so I think that one of the most important things that sometimes these discussions overlook is that judges talk to one another. Judges ask each other questions. Judges discuss issues, and those discussions and exchange of views are really informed. The judges' view of what's going on, of the world, form their thought process. And so if I can bring something to the fore because I've had an experience that permits me to understand it a little more clearly, just like somebody else who's a white Anglo-Saxon may bring something to the fore that helps me understand the situation, I think it can only benefit the system. I don't know if that's the answer.

Mr. Granof: It's the answer a number of judges have given.

Judge Urbina: That's exactly right. And some of it has to do with how we view the Constitution, specific provisions of the Constitution. I know that when I was a Georgetown undergad I was walking home from the movie theater one night and a cop car pulled up next to me and said, "Hey boy, what are you doing in this neighborhood." This was Georgetown the community, not the University itself. I was on my way to the University, and I said, "I'm going back to my dorm." And they looked at each other and said, "What do you mean." I said, "Well, I go to Georgetown," and they laughed. And the driver of the police car waved his finger, I went over, and he said, "Let me see some I.D.," and I produced it. And they looked at it, and they looked at each other, and then he said to me, "Don't be in this neighborhood at night. Don't come back and walk around this neighborhood at night." Well, I can tell this story to someone, and if they're sensitive and insightful they understand that as a concept. But what I bring to that is how a human being feels in that situation, and how that feeling relates to the Fourth Amendment. So, that doesn't make my experience better than anyone else's, but it does add something so that it can become an ingredient in the analysis.

Mr. Granof: Looking back on your career both as a Superior Court judge and as a federal judge, if there was something you had the power to change, what would you do?

Judge Urbina: My career? The whole thirty-one years?

Mr. Granof: Any part of it. It doesn't have to be one thing.

Judge Urbina: Well, although this may not be number one, it certainly comes to mind quickly. Often I feel uncomfortable when I have to dismiss a *pro se* individual's case and I

haven't had enough of a qualitative opportunity to examine the claim. Many of the problems that come up in the community at large are more on the civil side than the criminal side. People who feel that they've been discriminated against, who believe they've been unduly subjected to prejudice. Not necessarily by race, but that there are things at work in the process that they're reacting to. But as a judge I cannot bend over backwards to help guide them. I can give them certain information about procedures, but frequently if they can't afford an attorney I don't even get a real chance to examine the situation the way I would if they did have an attorney because, of course, the attorney would write an opposition to a motion to dismiss incorporating any number of things which I may interpret as raising a material issue of fact. The *pro se* person may be emotionally energized and fueled by the wrongdoing, but that may not enable that person to express it in a way that I would understand it. And as a consequence, a lot of those cases are dismissed.

Mr. Granof: So you would provide more access to justice? You wish there were either more private funds or public funds for legal aid?

Judge Urbina: Yes. And a procedure so that the lawyer doesn't get locked in. Because sometimes a lawyer doesn't want to be locked in for the duration. So what's needed is a procedure where, at least at the initial stages, there is an attorney who is going to scrutinize the case and provide the kind of assistance to that *pro se* person that enables the court to take a realistic view. Then that attorney can make a decision as to whether she or he wants to remain in the case. And sometimes if there's something there, there's nothing precluding that attorney from getting his

or her fee if the case is successful. Right now -- and I'm not criticizing this court or any other court -- but right now the fact that there's no constitutional right to counsel in civil cases I think disadvantages people. Frequently, these are people who are themselves disadvantaged in a way that renders unfair results.

Mr. Granof: Looking back on your career, what gave you the most satisfaction?

Judge Urbina: Well, I think one of the great elements of satisfaction in my life, strangely enough, was not anything I did from the bench, but I chaired a committee when I was a judge in Superior Court. Judge Kessler was on it, and so were several other judges. There were lawyers on it who represented custodial parents and lawyers who represented noncustodial parents, frequently the father, and there were academicians. All in all, it was a committee of about 17 people. We met at 7:30 in the morning once a week. Some of these people drove in from Annapolis to be there on time. And the purpose of the committee was to create guidelines that the court could employ to determine what was a fair result, a fair resolution of issues relating to child support. And up until that point, custodial parents -- many of them *pro se* -- had no feasible way of trying to get financial assistance. No effective way of getting financial assistance from the noncustodial parent, first of all because many of those cases were never served. The District of Columbia government failed to serve the appropriate papers. And second of all, even if they got to court the results were very despairing. One judge might order this, another judge might order that. And I saw that as having a very negative impact on the children involved. The theory was -- and this was a theory not created by my committee, but had already come up in several books that were being written at

the time about this issue -- that the child support should be an amount that to the degree possible puts the child in the same financial situation he or she would be in if the parents had not separated. So that then the child would have at least that benefit and that asset in meeting the basic educational and maintenance needs. So it happened. We worked through three years, and we got a very good result. When we tried to implement that result, the D.C. Court of Appeals said, "No, you can't create substantive law. The committee can't create substantive law on these things. This is something that has to come out of the legislature." So we took it over to the City Council, and the City Council adopted it without changing a word. And it became the law, and as a result the District of Columbia government started organizing itself and became much more proactive in getting the child support system to work.

Mr. Granof: You had talked about this before as being a highlight.

Judge Urbina: Yes.

Mr. Granof: Something that you felt was very important. And is it because family is important to you?

Judge Urbina: Yes. It's that reason. I think we all know intuitively about the impact that those young years have, those early years have, on children and how they ultimately develop, although we may not always speak about it. Over the course of my years in Superior Court I had some people who started off with me in the neglect and abuse system, then graduated to the juvenile delinquency system, and then graduated into the adult felony system. Same child. If the child, for example, didn't want to go to school because they were embarrassed about how they were

dressed or they did not have the ability to acquire things that were needed on a basic level in order to be able to study, and so forth, then that child would probably gravitate to groups in which she or he was accepted. And those groups often consisted of the same type of people who were socially disadvantaged. Some of these kids were really bright. I mean in terms of gray matter, they could do math, and they could figure out how to distribute crack cocaine -- people who could've gotten a business administration degree because they had that kind of intuitive sense of how commerce works. But because of their home upbringing, they became involved in criminal activity. Let's say, for example, typically the mother, who was the only custodial parent, she gave up along the way because she didn't have the money to do the basic things, and one thing led to another. Maybe she started using drugs. So, in my view, the impact of those early years had much to do with crime and the deeply unfortunate circumstances in which many of these young people eventually found themselves.

Mr. Granof: So, ideally, if you can provide a strong family, that's the best thing. But if you can't, then at least provide some kind of strong social safety net that can get these young people very early in childhood?

Judge Urbina: I think that's much better put than I did, but, yes, a strong safety net.

Mr. Granof: Well I think that just some of the articles about the recent research has shown that the impact of early childhood years has just been very significant. And not just in terms of how you fare economically, but in health issues, all sorts of other issues.

Judge Urbina: That's exactly right. And having just some resources in which to be able to keep pace and be able to create some degree of parity. It's not only a financial thing

but it's also a feeling of self-worth. It's a feeling of empowerment to be able to buy your kids some clothes to go to school.

Mr. Granof: At this point Judge Urbina got a message that he had to attend immediately to a matter in court. Hence, it was necessary to conclude interview number eight.

ORAL HISTORY OF THE HONORABLE RICARDO M. URBINA
NINTH INTERVIEW
15 MARCH 2012

This is the ninth interview of the oral history of U.S. District Judge Ricardo Urbina as part of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewer is Gene Granof. The interview took place in the chambers of Judge Urbina at the United States Courthouse in the District of Columbia on Thursday, March 15, 2012.

Mr. Granof: Judge, in our last interview, just as we were sort of winding things up, you were called away to be in court to handle an emergency matter, and so we didn't quite get finished.

Judge Urbina: Right.

Mr. Granof: One of the things I wanted to ask you was, what did you like about being a federal judge? And I say this in the context of your forthcoming retirement from the court.

Judge Urbina: Well, there are several things about being a federal judge that I have truly enjoyed. One is the time and the ability to think more about issues before deciding them. I had come to the federal bench from the Superior Court where the dockets were much heavier and the demands were greater in terms of case disposition. So I had thirteen years there of having to decide matters without enough deliberation on them as far as I was concerned. But being a federal judge gave me the opportunity to be much more deliberative. Secondly, I enjoyed very much the issues I faced in federal court as distinguished from the ones that I handled in the Superior Court. The issues I handled in the Superior Court were all just as important, but in this court both the criminal and the civil issues run the whole gamut.

Mr. Granof: They're more varied?

Judge Urbina: Yes, much more varied. And in many instances are more challenging in that unlike the laws that the District of Columbia's Superior Court deals with, which are tightly knit and have been clarified by appeals over so many years, the federal law, of course, is less dense as far as precedent and things of that sort. You have thirteen separate circuits, you have the Supreme Court. You have cases that are persuasive, but they may not be binding. And you have much opportunity to exercise discretion and to justify it, which is another thing I liked in that I got an opportunity to write more and in that regard present the issues in a way that hopefully were not only correct, but also provided guidance to the lawyers and the Bar generally.

Mr. Granof: When you said you got an opportunity to write more, do you like writing?

Judge Urbina: Well, I liked to have written.

Mr. Granof: I feel the same way.

Judge Urbina: You know sometimes the shorter something is, the more difficult it is to write. And I think that was Mark Twain who kind of made that observation in a much more artful way. The thing with me is I'm not patient enough in that when I see an issue and I want to address it, I want to begin to write on it. But, in actuality, the right way to approach it is to be more patient and to organize my thoughts before searching for the words to express them. And, as the years have gone by, I've become more inclined to create the outline and to be not as fixed on the words as on the concepts. Identifying the concepts and then organizing them and then going to the written expression of the terms and factors that make up the decision, that's been a wonderful discovery. But, yes, I do like to write, but I

don't appreciate the writing when it's happening as much as I do as when it's over.

Mr. Granof: It's hard.

Judge Urbina: It is hard.

Mr. Granof: Do you find that it is the writing that in many ways shapes the analysis? That when you're writing and you're forced to put thoughts in logical order, your idea of where you wanted to go initially doesn't always work?

Judge Urbina: Well, yes, in this regard. There are times when I've endeavored to organize my thoughts first, but without a preconceived notion of where they would take me. Sometimes I've seen an issue, in the case of the Blackwater employees for example, where both sides presented such persuasive arguments -- dismiss the indictment, don't dismiss the indictment -- both sides did an exceptional job in giving me fodder for a decision. But beginning to organize the ideas and beginning to give the ideas shape, and see where they lead me, that's been another kind of unique experience I've had with respect to writing.

Mr. Granof: What did you like least about being a judge? What would you change?

Judge Urbina: Well, I have not enjoyed the sentencing process. Because for so many years -- I'd say the majority of the years I've been here at the U.S. District Court -- the guidelines were mandatory. And, even though in many instances the guidelines as originally proscribed get it right, there are so many instances where I thought the guidelines didn't get it right, creating either sentences that were too light or too severe. And that part of it I did not like. I did not like the idea of having Congress or its assigned Commission govern how a judge, who's supposed to be a

person of experience and integrity, is to decide with respect to a situation that no one knows better than he or she, which is the crime or whatever it is that's taking place that is up for sentencing. So I didn't enjoy that. Of course, the guidelines were declared unconstitutional. Something that Judge Harold Greene had said six or seven times, each time being reversed by the Court of Appeals. So that part of it was somewhat alleviated. But I still maintain that sending people to prison, putting them -- as I once said in an article -- putting people in a cage for an extended period of time even with the knowledge that these people are anti-social and they've done very harmful things, even believing that it's justified, it's still not something that I've enjoyed.

Mr. Granof: This concludes interview number nine, our final interview.

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RESUME OF THE
HONORABLE RICARDO URBINA
UNITED STATES DISTRICT JUDGE, DISTRICT OF COLUMBIA

Nominated by President Clinton, Judge Urbina served as a U.S. District Judge in Washington, D.C. from July of 1994 until his retirement in May of 2012. He came to the federal bench directly from the Superior Court of the District of Columbia, where he was a judge from 1981 to 1994. From 1985 to 1988 he served as Presiding Judge of the Superior Court's Family Division. During that time he chaired a committee that developed critical child support guidelines that ultimately became law in the District. Just before his retirement from the federal bench, Judge Urbina received the prestigious Brennan Award from the University of Virginia for his deep respect and abiding loyalty to the rule of law and the Constitution.

Judge Urbina obtained his B.A. from Georgetown University in 1967 and graduated from the Georgetown University Law Center in 1970. His first job as a lawyer was as staff attorney from 1970 to 1972 for the D.C. Public Defender Service. After a two-year stint in private practice, Judge Urbina joined the faculty of Howard University Law School, where he taught from 1974 until he was appointed to the Superior Court bench in 1981. While at Howard, Judge Urbina directed the University's Criminal Justice Program. Thereafter, for more than twenty years while on the bench, Judge Urbina taught Trial Advocacy and initiated a highly regarded graduate course, *The American Jury,* at George Washington University Law School.

Both in high school and as a Georgetown undergraduate, Judge Urbina was a nationally ranked competitive runner. His high school records in the 800/880 and 1,000 yard races still stand. And in college he also set national records and won the NCAA Championship in the 880 in 1966. After graduating and while in his first year of law school, he sought to become a member of the U.S. Olympic track team and barely missed making it: he placed fourth in the tryouts for the top three, missing out by one stride.

Judge Urbina's parents came to New York in the nineteen-twenties, his mother from Puerto Rico and his father from Honduras. In 1946, when Judge Urbina was born, the family was living in Manhattan. They moved to Queens when he was in the fourth grade. He has two older brothers.

Judge Urbina is married to Coreen. They have one son, Ian, who is an investigative reporter for *The New York Times*, a daughter who works for a non-profit environmental enterprise in Washington, D.C., and a grandson, Aidan, age 10 (as of this writing).

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