

**THE HISTORICAL SOCIETY
OF THE NEW YORK COURTS**

ORAL HISTORY PROGRAM

Honorable George Bundy Smith



Found on exterior entrance to New York Court of Appeals

THE HISTORICAL SOCIETY OF THE NEW YORK COURTS

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ORAL HISTORY

**Subject: Hon. George Bundy Smith
New York State Court of Appeals**

An Interview Conducted by: Sandra Jefferson Grannum

Date of Interview: August 19, 2009

Location of interview: OCA Studio, 25 Beaver Street, New York, NY

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Oral History Project

SUBJECT: Hon. George Bundy Smith

INTERVIEWER: Sandra Jefferson Grannum

DATE: August 19, 2009

[00:00:00]

SJG: Welcome. This is an interview with the Honorable George Bundy Smith. We're doing an oral history for the Historical Society of the New York State Courts. My name is Sandra Jefferson Grannum and I had the privilege of being Judge Smith's first clerk on the New York State Court of Appeals. Good morning, Judge, how are you today?

GBS: Good morning. How are you?

SJG: I'm well. Thank you, sir. We're so happy to have the privilege and honor of interviewing you for these important documents. So let me ask you, Judge. You were born in New Orleans and grew up in Washington, D.C. What was it like back then?

GBS: Well, first of all, let me say that Sandra Grannum was one of my best clerks. She was one of the first clerks I had at the New York State Court of Appeals and her excellence has continued after she left me.

Now, I was born in New Orleans, Louisiana. I was there for only a brief time. I grew up in Washington, D.C. And I grew up at a time when Washington, D.C. was racially segregated. I went to what were called division two schools because division one schools were reserved for whites. We could not go to theaters or

restaurants, libraries, and even churches. So that was a very trying time and there were many of us who wanted to change that fact in history. I graduated from junior high school, Banneker Junior High School, in 1952. And at that time, Thurgood Marshall¹ was fighting segregation in schools and we knew it. And by the time that 1954, May 17th came around, he had won a victory in the Supreme Court of the United States indicating that racial segregation in schools was unconstitutional.²

[00:02:08]

SJG: Wow. That was a very exciting time. Things needed to change and that was the beginning of change. Judge, you had an opportunity, though, to go to school, to high school, in a different environment. Would you please tell us about your experiences at Phillips Academy?

GBS: Well, when I was in junior high school, Banneker Junior High, in the eighth grade someone came to the school from Exeter and he talked to a few of us about going to prep school. And I applied to Phillips Exeter Academy, to Phillips Andover Academy, and to Mount Herman School for Boys. Now, Phillips Exeter is in Exeter, New Hampshire, an excellent institution. Phillips Academy at Andover is its main rival. It is in Andover, Massachusetts. And Mount Herman School for Boys in Mount Herman, Massachusetts, is also an excellent school. I did not get in to Exeter, got into Phillips Academy at Andover, and they gave me a full scholarship, and that was the only thing that enabled me to go.

¹ Thurgood Marshall, Associate Justice of the Supreme Court of the United States, 1967 - 1991.

² *Brown v Board of Educ.*, 347 US 483 (1954).

I was the only African American in my class and one of just several African Americans in the whole school. So it was a really different experience for me, other than the fact that when I was in junior high school, my twin sister, Inez Smith Reid, and I had spent a week at a religious camp.

[00:04:02]

That was the first time at Andover that I had any contact with white people. So it was a cultural shock at first. But I will say that the faculty at Andover and the students, by and large, were very friendly and I had a -- I wouldn't say a wonderful time, but certainly a learning experience at Andover.

SJG: That's great. So then after you graduated from Andover, you decided to attend Yale University.

GBS: When I was in the sixth grade at Charles Young Elementary School, my then homeroom teacher, Inez Burke, came into the room and she was so excited that a student had gotten into Yale University. And right then I said to myself, "I'm going to go to Yale." I had never heard of Yale before then. But she was so enthusiastic and so excited that I said, "That is the way to go." And so I wanted to go to Yale. I went to Phillips Academy because at that time many of its graduates went to Yale and to Harvard. And so I applied from Andover to Yale and to Harvard. I got into Yale, was told I was in Yale, and so I withdrew my application to Harvard and to Wesleyan University in Middletown, Connecticut, another excellent academic institution.

[00:06:07]

SJG: All right. So while you were at Yale, you had an opportunity to study abroad and you studied in France. Is that correct?

GBS: Well, I spent my junior year at Yale in France. I often say that that was the best year I spent in college. I admit that I'm a Francophile. I like the French. I like Paris. I've been back a couple of times since. But I applied on the Sweet Briar College junior year in France program to go to France. I got a scholarship. I will say that I believe that Yale paid part of my way to go to France. I was there with a group. I think I was the only African American in that group. We spent six months in tour of France, in the middle of France, trying to learn the language and then we went to Paris for our education. And so I went to a place in Paris called the Institut d'Etudes Politiques. And after a year I got a certificate there. Then returned to Yale where I graduated back in 1959.

SJG: What was it like in Paris at that time?

[00:07:56]

GBS: Well, at that time, a couple of things really stood out. First of all, there were very few, if any, African women. There were a lot of African male students there but very, very few women. There were some women from Guadalupe and Martinique, but very few from Africa. Secondly, France at that time was fighting Algeria. Algeria wanted its independence and so you would see police officers in the subway, one with a gun trained on an Algerian and the other officer searching that Algerian. And so that left a lasting impression on me. Now, at the time I was in Paris, Charles de Gaulle was not in power. But during the time I remained in Paris, he returned to power. And that was a very exciting

time. You wondered whether or not Paris would end up with a revolution or with fighting. But Charles de Gaulle, another person that I admire, knew what he thought Paris and France should be and he tried to instill that in the people of France. And he served there for several years, after which he returned to his home outside of Paris where he subsequently died.

[00:09:58]

SJG: So then after studying, you know, you grew up in D.C., went to those schools, then you went to Phillips Academy and Yale, and you studied in France. Then you had to decide, “Well, what do I do with my life now?” What made you decide to choose a career in law and to apply to Yale Law School?

GBS: I went into law because I wanted to fight racial segregation. As I said before, Thurgood Marshall was at that time leading the way, along with other people like Robert Carter and Jack Greenberg. And they were at the Legal Defense Fund. Legal Defense and Educational Fund. And while I was at Yale, Martin Luther King visited the school. Thurgood Marshall visited the school. So I went to law school to try to prepare myself to fight segregation. And one of my professors, my constitutional law professor at Yale was a man by the name of Louis Pollak, P-O-L-L-A-K, who subsequently became the dean of the Yale Law School, went to the University of Pennsylvania, and finally became a federal district court judge in Pennsylvania and at times sat and sits on the Third Circuit Court of Appeals. So I was influenced to go to law school because I wanted to fight racial segregation and for the two years after I left the Yale Law School I was at the NAACP Legal Defense and Educational Fund.

[00:11:57]

SJG: Judge, let me take you back to law school for a minute. You mentioned earlier your twin sister Inez Smith Reid. Well, she also attended Yale and I understand you had something to do with that. Could you share that with us, please?

GBS: Well, during my last year at Yale, I wrote to my twin sister and suggested that she apply to the Yale Law School. My twin decided to apply to both divinity school and to law school. And she got into law school. And we were the only two African Americans in our class, 1962 class, at the Yale Law School. She is now a judge on the District of Columbia Court of Appeals. Not the federal court of appeals but the highest court in the District of Columbia, where she has served for a number of years. So I'm pretty pleased with my twin sister. Following her graduation from Jackson College of Tufts University she went to Yale Law School, then went to UCLA to get a master's and then got her Ph.D. at Columbia University. So she is a pretty special person.

SJG: Absolutely. I had the pleasure of working for her, as you know, when she was the corporation counsel for the District of Columbia and it was certainly a privilege to work with her at that time. You are now in law school and we've got the Freedom Rides happening in the South. This is the Civil Rights Movement. And you're a student in law school, there to fight segregation. You get involved?

[00:13:54]

GBS: In the summer of 1960, I had gone on a program to Africa, a program called Crossroads Africa. And the leader of my group, which went to Guinea and Senegal and Nigeria, was Reverend Doctor William Sloane Coffin, Jr. I had

known him because I attended Battell Chapel at Yale and he was a very dynamic pastor. He had come a couple of times to Andover and he had spoken. Now, I went to Africa with him and with a group of persons. There were two other African Americans in the group, two women, and we built a school.

And coming back to Yale, in May 1961, one Sunday morning, I picked up a copy of the New York Times and I read that a bus had gone into Alabama. Persons there had been taken off the bus and beaten. And that really disturbed me. It just so happened that that Sunday evening, Reverend Coffin called me and said, "We're going to take a ride. We can't let this situation continue in the South." So to make a long story short, on that following Wednesday we flew from New York to Atlanta and we took a bus from Atlanta to Montgomery, Alabama. There were in that group another person from the Yale Divinity School or from the religion department, a person by the name of Gaylord Noyce.

[00:16:08]

And there were two people from the department of religion at Wesleyan University. And they went with us. In Atlanta, we met a couple of African American students. So we all took that bus from Atlanta to Montgomery, Alabama. When we got into Montgomery there was an angry mob at the station. But fortunately, then-President John F. Kennedy³ had called out the National Guard and we were protected. We went to the home of Martin Luther King, had a very, very, very delicious dinner and we discussed whether or not we should go on from Montgomery, Alabama to Jackson, Mississippi the next day. John

³ John F. Kennedy, President of the United States, 1961 - 1963.

Maguire was from Wesleyan University. David Swift was from Wesleyan. Both professors. And we collectively decided to go on.

Now, Martin Luther King at that time was under some kind of court order in Alabama to, in essence, stay put. So he did not go to the bus station with us the next morning. But 11 of us went to the station and we all sat down at a lunch counter. I ordered a cup of coffee, which I got. And all of a sudden I got a tap on a shoulder and a person said, "You're under arrest." So that all 11 of us were arrested.

[00:18:08]

Those who were white went to one jail. Those who were African American went to a separate jail. We were there only for a relatively short time. But I can remember that during that time we would sing songs, we would talk about why we were there, why we had decided to come on the Freedom Ride.

And as the result of that, we from the north were convicted. We were convicted a second time and then we appealed to the appellate court in Alabama, which confirmed the conviction by two-to-one vote. The case then went to the Supreme Court of the United States and in 1965, four years after our arrest in May 1961, the United States Supreme Court unanimously vacated our convictions, citing the case of *Boynton against Virginia*.⁴ Now, Justices Black⁵ and White,⁶ Hugo Black and Byron White disqualified themselves. Now, I'm not sure why Hugo Black disqualified himself but I believe that at the time of the Freedom Ride, Justice

⁴ *Boynton v Virginia*, 364 US 454 (1960).

⁵ Hugo Black, Associate Justice of the Supreme Court of the United States, 1937 - 1971.

⁶ Byron R. White, Associate Justice of the Supreme Court of the United States, 1962 - 1993.

Byron White had been in the Attorney General's Office and had been involved in that Freedom Riding situation. But in any case, our convictions were reversed.

[00:20:03]

Now, by the time the convictions were reversed, I had graduated from the Yale Law School, had taken the bar exam in New York. Thank God, I had passed it on the first try. But you still have to get through a committee on admissions to become a member of the bar. At that time I was a convict. But I got through and they admitted me to the bar of the State of New York, where I have been a member since March 23, 1963. So I am delighted and blessed to still be a member of the New York State Bar.

SJG: Wow. So you were actually at one of the lunch counter sit-ins and arrested. You were also on a bus that was actually attacked. And I believe there's a story about what you were doing while the bus was under attack. Do you want to share that with us?

GBS: Well, I was so frightened about my exam.

SJG: Your law school exams?

GBS: My law school exams. At that time, and then still in many areas today, many law schools, your whole grade depended upon that one exam. So you could attend class faithfully, take careful notes but everything depended on that one exam. And there was a course I was taking called Future Interests. And I had that book as well as other law books with me and I studied very carefully because as opposed to the people outside who wanted to do us harm, they could hurt you but law exams could kill you. So I chose to study as much as I could. One of the bad

things about being in jail was they took my law books away, and I have never been able to make up that time lost in my law books.

[00:22:38]

SJG: Well, Judge, this is really amazing because you still carry books around with you. You still carry papers around with you and it's interesting to know that you were like that even while you were in law school. So this is not a new thing, right? So, Judge, after law school you started your career at the Legal Defense and Education Fund.

GBS: Right.

SJG: And you worked on some significant cases. But there's one in particular involving the University of Mississippi. Could you share that with us?

GBS: When I first got to the Legal Defense Fund in 1962, Constance Baker Motley⁷ was going constantly into the South to try to get James Meredith into the University of Mississippi. And we who were back in the office were researching the law, various aspects of the law, and trying to ensure that he was able to attend the University of Mississippi. One of the great pleasures of my legal career was working with Constance Baker Motley, who subsequently became the Borough President in Manhattan. She became the first African American judge on a federal district court. And she passed a couple of years ago, but she certainly was a fighter and a credit to the African American race and to Americans in general.

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⁷ Constance Baker Motley, Judge of the United States District Court for the Southern District of New York, 1986 - 2005.

And so I'm very pleased that I was able to assist in getting James Meredith into the University of Mississippi. He got in. He made the comment one day that he felt that the professors at the University of Mississippi wanted him to succeed and would help him in any way they could. At the time, he moved onto the campus there were crowds that didn't want him there and that said so in so many words. And I can remember President John F. Kennedy going on television supporting the fact that James Meredith had a right to go to the University of Mississippi and that the federal government would back him.

Now, many, many years later, I went to the University of Mississippi and the atmosphere was very, very good and the University of Mississippi today is a different place than it was back in the summer of 1962.

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SJG: So after your time with the Legal Defense and Education Fund, you embarked on a series of clerkships. And I just wanted to ask you what made you decide to take that route as opposed to going into private practice? You know, maybe hanging out your own shingle. And then, of course, please share with us, you know, your experiences as a clerk for the distinguished jurists that you worked for.

GBS: Well, I served as a law clerk to three very fine African American judges, one by the name of Jawn Sandifer⁸-- and he spelled his name J-A-W-N Sandifer -- on the Civil Court and in the Supreme Court of the State of New York. In New York, the Supreme Court is a trial court and not the highest court in the state. I subsequently

⁸ Jawn Sandifer, Justice of the Appellate Term of the Supreme Court, First Judicial Department, 1969 - 1992; Judge of the New York City Civil Court, 1964 - 1968.

served as a clerk to Edward Dudley,⁹ who had been ambassador to Liberia and who had been a borough president in Manhattan, who was a Supreme Court Justice, and who, when he was an ambassador, had urged the State Department to send African Americans who were interested in the foreign service not only to African countries but to other countries around the world. And then I spent two years with Harold Stevens,¹⁰ who was the Presiding Justice of the Supreme Court Appellate Division, First Department.

[00:27:41]

Now, I served for a total of nine years as a law clerk. When I got out of law school, my twin sister and I were told, “It’s unlikely that you would get into any law firm.” Law firms at that time by and large were not taking African Americans and were not taking women. So I did not apply to law firms. Now, since I got off the bench in 2006, I have been at a law firm in New York called Chadbourne & Parke. I’m a partner there now. An excellent law firm. And we are still working at that law firm and others to get African Americans, women, Latinos, Asians into the upper ranks of law firms. But I became a law clerk because I saw that that was a route to becoming a judge, which I wanted to do, because when I was in Washington, D.C., there were some white judges, not all but some, that we felt were not fair, particularly to African Americans and I wanted to do my part to change that and to try to be a fair jurist.

⁹ Edward R. Dudley, Justice of the Supreme Court of the State of New York, First Judicial District, 1965 - 1985.

¹⁰ Harold A. Stevens, Presiding Justice of the Appellate Division of the Supreme Court, First Judicial Department, 1969 - 1973, 1975 - 1977; Judge of the New York State Court of Appeals, 1974.

SJG: OK. So that was definitely one of my questions, why you would decide to go onto the bench. So you felt that that was an opportunity for you to have more impact as opposed to being a litigator?

GBS: At that time, yes. The civil rights at that time was certainly a very important aspect of law. Is still a very important aspect. But I thought it was confining and I wanted to get a broader experience in the law. Being a litigator gave me that opportunity. As a law clerk, I would look at cases, the way that lawyers were dealing with cases. When I was in appellate courts as a clerk, I would see how the appellate courts looked at what the trial judge or justice had done and I think those experiences were invaluable.

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SJG: Mm-hmm. Is it your view, Judge, that it's important for a judge to have a diverse, wide range of experiences? And you see that as valuable for the bench?

GBS: Well, certainly if a judge has been a litigator, has been a law clerk, has been involved in community activities, he or she brings a wide experience to the bench. There are four Appellate Divisions in New York State and on the New York State Court of Appeals, where there are seven judges, when you look at those judges they come from a wide variety of backgrounds. Some have been judges before they got to the Court of Appeals. Some have been litigators. Some have been law professors or clerks in the court. Some had been administrative judges. So there's a wide variety of experiences and I don't think that a judge necessarily has to have all of those experiences before he or she gets to the Appellate Division or to the Court of Appeals. But it is necessary, I think, for the court as a whole to have

at the table persons of different backgrounds who can bring different experiences to the floor. That, I think, is very important. I think it's very important to have on appellate benches minority judges, whether they are Hispanic or African American or Asian or gay or lesbian. All of those factors I think play into a bench that represents the community and can bring to the fore different experiences.

[00:32:58]

SJG: So, Judge, after you clerked, it would seem like the next step would have been immediately to the bench. But you took a position as administrator for Model Cities. Why did you make that move?

GBS: Well, at that time, one of Abraham Beame's, Mayor Abraham Beame's¹¹ advisors was Percy Sutton,¹² the Borough President of Manhattan. Percy Sutton was one of the persons responsible for my becoming a judge and certainly Harold Stevens was another person who was instrumental in my becoming a judge, as well as other persons. But Percy Sutton called me one Christmas morning just before Abraham Beame took office and said that Mayor Beame was going to appoint me as administrator of Model Cities. And so while that wasn't a judgeship it was a step in the direction of becoming a judge and I served for a year and a half as administrator of Model Cities and then Abraham Beame appointed me to an interim term on the bench.

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Now, administrator of Model Cities -- Model Cities received federal funds. There were maybe 6,000 employees there. And there was an opportunity to do a lot of

¹¹ Abraham Beame, Mayor of the City of New York, 1974 - 1977.

¹² Percy Sutton, President of the Borough of Manhattan, New York, 1966 - 1977.

good because Model Cities funded a number of programs. Whether they were drug fighting programs or scholarships or programs that got people familiar with the police department or the fire department, got them involved in housing. So it was a very, very good experience to be administrator of Model Cities.

SJG: That's great. So you were appointed to the Civil Court in New York City by Mayor Beame. You mentioned that Percy Sutton was involved in that process. What was it like at that time to pursue, you know, being appointed to the bench? You know, did you have to go through committees? You know, Democratic committees or whatever, or Republican, whatever, to get that position?

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GBS: Well, prior to becoming a judge, getting an appointment, a person had to go through a screening committee. And I think screening committees made up of lawyers and laypersons are very, very important. And right now there are screening committees where bar associations appoint some members, community groups appoint some members. But I think that's vital to having a very good bench. So I had gone through some screening committees when I was appointed -- First of all, I took a pay cut from an administrator to a Civil Court judge. Not that much of a pay cut, but a pay cut nevertheless. And I took a chance that I would get the appointment. At that time, the Civil Court was and still is elected. So I was appointed for an interim term, had to run in November. I expected opposition but that opposition did not occur, so that I was able to get four-party support: Democratic, Republican, Liberal, and Conservative. And while I started to raise funds for my campaign, I decided that I

didn't need it and I sent money back to those who had contributed to the campaign. So fortunately I was elected to the Civil Court in November of 1975. And I took office immediately after a summer spent in the Criminal Court. Transferred to the Family Court where I served for 14 months.

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SJG: OK. But after the Civil Court you were elected to the Supreme Court.

GBS: Well, in 1979, again I went through screening committees. And in 1979, I was reported out of a screening committee, got the designation of the Democratic and Liberal parties. At that time Manhattan and the Bronx were together. You had to run in both of those boroughs and I did and I succeeded in winning.

At that time, I didn't raise any money. I printed up some flyers at my own expense, most of which I distributed myself in some areas of Manhattan and some areas of the Bronx. And fortunately, I was able to prevail. Now, I know today, both in the city and in upstate, there are people who spend tens and hundreds of thousands of dollars to be elected to whatever bench they are running for. I was fortunate that I did not have to raise that sort of money and was able to become a member of both the Civil Court and the Supreme Court.

SJG: Judge, do you have an opinion or thoughts on whether it's better to have our judges elected or appointed, since you've been through both processes?

[00:39:57]

GBS: Well, I would not like to see all judges appointed. I think there are problems with both the election and the appointment of judges. I am pleased that in New York State there are a lot of people who feel that judges ought to be elected. I do think,

though, that there should be some option of public funding because elections have become just too expensive. Now, way back in 1974-75, judges were elected to the highest court in the state, the New York State Court of Appeals. And as a result of three very contentious elections in the 1970s, New York State amended its Constitution to make judges on the Court of Appeals appointed. Now we have a Commission on Judicial Nomination that has to report out three to seven names. The Governor has to appoint one of those persons and the New York State Senate has to approve them.

Now, I was first appointed by Governor Mario Cuomo¹³ to the Supreme Court, Appellate Division in 1987 and then in 1992, he appointed me to the Court of Appeals, where I served for 14 years. A term is 14 years. And I was not reappointed. I was 69 at the end of that term and then-Governor Pataki¹⁴ decided to appoint someone else to that position.

[00:42:00]

SJG: So you've been a trial level judge and an appellate judge. How would you compare those experiences and which did you prefer?

GBS: Well, I certainly liked being a trial judge. Trial judge has the power to do what he or she feels is best and that person interprets the law as he or she sees it. So that person is supreme in his or her courtroom. When a judge gets to the Appellate Division, four or five judges sit on a case, and so a judge has one-fourth of a vote or one-fifth of a vote. When he or she gets to the New York State Court of Appeals, he or she has one-seventh of a vote. I wanted to go to an appellate court,

¹³ Mario M. Cuomo, Governor of the State of New York, 1983 - 1994.

¹⁴ George E. Pataki, Governor of the State of New York, 1995 - 2006.

and I liked sitting around the table listening to everybody else state his or her views and being able to state my views at the same time. So I liked being on appellate courts. If I had to choose it today and were to go back into a court, I would like to go back to an appellate court. But let me say my judicial career is over. I'm 72 years of age. I'm not looking to go back to a court.

SJG: So, Judge, would you share with us what the process was for your being appointed to the Court of Appeals? And, I guess, even before that, when did you decide that you were ready to move on to the Court of Appeals?

[00:44:05]

GBS: Well, first of all, Governor Mario Cuomo appointed me to the Appellate Division, and I can remember one time being across a park looking at the Appellate Division, saying to myself, "One day I want to sit there." And the same thing when I went to Albany. Again looking across a park saying, "One day I want to sit there." And I tried to prepare myself to sit on those courts. For example, when I was on the Civil Court, I wanted to get experience in the Criminal Court and in the Family Court, which I did. I was also an Acting Justice on the Supreme Court. Those things prepared me for the Supreme Court. When I got to the Supreme Court, I sat for a while on the criminal side. I wanted to sit on the civil side because I thought that that would enhance the experience, to go to the Appellate Division. So it did. And at the same time there were organizations that I wanted to become a part of, particularly the Association of the Bar of the City of New York, now known as the New York City Bar, was one where I served on some

committees. And I was very active in my church, still am. So I tried to prepare myself in that way and in trying to help persons with whom I was associated.

[00:46:09]

Now, after being appointed to the Appellate Division of the Supreme Court in 1992, I got a call one day saying that Fritz Alexander,¹⁵ who was then the only African American on the New York State Court of Appeals, was going to resign to become a deputy mayor for then Mayor David Dinkins.¹⁶ And I then thought that I had a reasonable chance of being appointed to that Court. I was the only African American in the First Department. There were several highly qualified African Americans on the Appellate Division, Second Department and a couple of highly qualified African Americans on the Fourth Department. None on the Third Department. So I thought my chances were good. And during that process, I know that Governor Cuomo called for my opinions, which were delivered to him. I went through screening committees, not only the Association of the Bar, but several women's groups and other groups. And so I was in effect screened not only by Governor Cuomo but several bar associations and other groups and then by the Judiciary Committee of the State Senate. And I was able to get the unanimous backing of that committee and the unanimous vote of the New York State Senate. I'm very pleased with both of those.

[00:48:33]

SJG: So, Judge, you're now on the Court of Appeals, and you're making decisions with a group of folks that you have to basically form a consensus with or not?

¹⁵ Fritz W. Alexander, II, Judge of the New York State Court of Appeals, 1985 - 1992.

¹⁶ David N. Dinkins, Mayor of the City of New York, 1990 - 1993.

GBS: Well, I think that as you sit around the table -- Well, my view of serving on the Court of Appeals was that you worked by yourself, you read the cases, you read the briefs from the parties, you got the input of your law clerks. And let me say that no judge on any court can get along without very good law clerks and I was fortunate enough to have several very good law clerks, some of whom have gone on to be in law firms or in situations dealing with the public, the US Attorney's Office, the Supreme Court, etc. You have to have very good clerks. Once a judge has studied and then hears oral argument, then he or she goes to the table and he or she brings his or her input to the table and maybe as the result of listening to other judges or maybe even reading some of their writings, a judge makes up his mind.

[00:50:19]

So in the Court of Appeals, we would prepare for oral argument. Then after oral argument we would go into a room and we would pick a card and that card would have the name of a case on it. If I got the name of a particular case, I had to report on that case the next morning at the judges conference. And I would speak first and then we would go around the table. The least senior judge would speak after me, going all around the room until we got to the Chief Judge, who was Judge Judith Kaye¹⁷ when I was there. And then we would have back and forth. Maybe opinions would go through several writings. And then, finally, when we were back in Albany we would vote that a certain opinion would come out.

¹⁷ Judith S. Kaye, Chief Judge of the New York State Court of Appeals, 1993 - 2008; Associate Judge, 1983 - 1993.

SJG: Judge, you've shared with us your educational background, your life experiences dealing with segregation, your involvement in the Civil Rights Movement, your motivation to become a lawyer and then a judge. How has that impacted on your views and your decision-making as a judge?

[00:51:55]

GBS: Well, I think that every judge brings his or her life experiences to the table. A person cannot suddenly become a judge and say, "I'm just going to look at a piece of paper and decide a case based on that piece of paper." A judge brings his or her life experience. Now, there's always been an issue about judges making law. If you read Benjamin Cardozo,¹⁸ *The Nature of the Judicial Process*, he states in that little book that judges make law and they are forced to make law because no legislature and no making of a constitution can see all of the ramifications of a particular word in the constitution or a particular law. So judges definitely do make law and I think a judge has to be careful that he looks or she looks at everything and decides the case in that way.

SJG: During your time on the Court of Appeals, Judge, what opinions that you authored would you consider your most important or significant decisions?

GBS: Well, there was one opinion called *People against Wesley*,¹⁹ which I authored soon after I got to the Court. A case which established that DNA evidence could be used in New York State courts. Now, in that particular case the DNA evidence was used to affirm that person's conviction. But as you know, there have been a

¹⁸ Benjamin Nathan Cardozo, Chief Judge of the New York State Court of Appeals, 1927 - 1932; Associate Judge, 1914 - 1926.

¹⁹ *People v Wesley*, 83 NY2d 417 (1994).

number of persons who have been found innocent because of DNA evidence. So I'm particularly pleased that DNA evidence is in New York State courts and that it can be used both to find somebody innocent and to convict someone.

[00:54:36]

Another case was *People against Benevento*,²⁰ dealing with a lawyer and whether or not he or she has given adequate representation to a defendant. Now, in the federal system, there's a case by the name of *Strickland*,²¹ in which the Supreme Court of the United States said in order for a conviction to be reversed, a lawyer has to have done something wrong, number one, and but for that error made by the counsel, the result would have been different. Now, in *People against Benevento*, the New York Court State of Appeals took a different view and *Benevento* was based on a prior case that in essence said that an appellate court has to look at the whole case and determine whether or not the representation given was adequate. So I'm pleased with that case, as well.

[00:56:16]

I also authored a case where we determined that the New York State Constitution did not require that courts be open to the public.²² And I know that people go back and forth on whether or not courts should be open to the public. The downside of opening courts to the public is that some judges, some lawyers, some witnesses may play to the camera instead of dealing with that case in the courtroom. So that is the danger. I would certainly like to see courtrooms open to

²⁰ *People v Benevento*, 91 NY2d 708 (1998).

²¹ *Strickland v Washington*, 466 US 668 (1984).

²² *Courtroom Tel. Network LLC v State of New York*, 5 NY3d 222 (2005).

the public but I can understand how people would say, “Well, if we do there is a certain amount of grandstanding that just should not be a part of the court system.”

SJG: Judge, I have to ask you about another decision. I believe it’s *LaValle*.²³ Is that the death penalty case?

GBS: Yes.

SJG: Talk a little bit about that decision and, you know, what you think is the significance of the court actually determining that the death penalty was unconstitutional in New York State.

[00:57:51]

GBS: Well, when I became a member of the New York State Bar back in 1963, the death penalty as I recall was on the books and the Supreme Court of the United States had not decided *Furman against Georgia*,²⁴ where it declared the then death penalty unconstitutional as it was applied around the United States. Shortly after that decision, and this was in the 1980s, the Court of Appeals declared that the death penalty statute in New York State was unconstitutional. That was a decision in which both Justice Albert Rosenblatt²⁵ and Judith Kaye, who subsequently sat on the Court of Appeals with me -- Justice Rosenblatt was the trial judge and Justice Kaye, then sitting on the Court of Appeals, overturned that decision. So from that time on governors in New York State, including Governor Cuomo, had vetoed any passage of the death penalty. And so as a judge, both trial

²³ *People v LaValle*, 3 NY3d 88 (2004).

²⁴ *Furman v Georgia*, 408 US 238 (1972).

²⁵ Albert M. Rosenblatt, Associate Judge of the New York State Court of Appeals, 1999 - 2006.

and appellate, I did not have to worry about imposing the death penalty. And then when Governor Pataki was voted into office, he said he would sign the death penalty law and he did so. And so while I was on the New York Court State of Appeals, several cases dealing with the death penalty came before the court.

[01:00:05]

Now, in *People against LaValle*, the Court of Appeals decided by a four-to-three vote that one instruction made the whole death penalty legislation unconstitutional and that part of the legislation said that a judge had to tell a jury that had found that a person had committed the act of murder and then was deciding whether or not to impose the death penalty, a judge had to tell a jury, “If you do not unanimously vote for the death penalty or you don’t unanimously vote for life without parole, then I the judge must sentence this person to 25 years to life.” And for some of these very heinous murders, we concluded that a jury would decide 25 years for this horrible crime -- maybe double murders -- is insufficient, so a jury in effect is going to be coerced into voting for the death penalty. That was the reason that we declared it unconstitutional.

[01:01:35]

Now, even while that legislation was going through the State Legislature, that issue had been raised. The specific issue that you are coercing jurors into a death penalty vote. Now, once I left the Court, after having decided *People against LaValle*, the court decided *People against Taylor*,²⁶ in which a trial judge, recognizing that there was a problem with this charge, had told the jury if you --

²⁶ *People v Taylor*, 9 NY3d 129 (2007).

Well, had told the jury, “Whatever you decide, this person is not going to get out of jail during his lifetime because I, the trial judge, would sentence him or certainly will probably sentence him to a term that he cannot get out of prison during his lifetime.” And so it was argued on the part of the Queens District Attorney, who, by the way, opposes the death penalty, that this changed the situation and that the death penalty should now be reinstated in New York.

[01:03:09]

The case went to the New York State Court of Appeals and by a four-to-three vote it upheld *People against LaValle*. What is significant, or one of the significant things about that case, is that Judge Robert Smith,²⁷ with whom I sat on the Court for a couple of years, and who is a very able judge, former partner in a law firm -- Judge Robert Smith, who had been appointed by Governor Pataki, changed his vote. In *LaValle* he had dissented and had said, “We ought to uphold the conviction.” In *People against Taylor*, he in essence said, “The Court has decided this issue in *People against LaValle*, and I, Judge Robert Smith, believe that we should stand by our decisions. So I am going to vote to uphold *LaValle*. So by a four-to-three vote, that decision was upheld. And so we now don’t have a death penalty in New York. The Assembly, as I understand it, has refused to entertain death penalty legislation and I think in the overall scheme of things we should not have a death penalty. The American Bar Association has called for a moratorium in the imposition of the death penalty because it says that after viewing the situation in several states it is unfairly applied and I, for one, think

²⁷ Robert S. Smith, Associate Judge of the New York State Court of Appeals, 2004 - 2014.

it's unfairly applied, that it is used very often against minorities rather than being imposed in a fair way against all people.

SJG: Judge, you had a wonderful career on the bench. You also were very active in the community. Would you share with us some of the things that you're most proud of? I know several things you've done and, you know, working with the Metropolitan Black Bar Association, which you helped co-found. Are there some other things you'd like to share with us?

[01:05:57]

GBS: Well, I have always been active in my church. My father was a pastor, although my parents were divorced and it was my mother, Beatrice Bundy Smith -- and I get the name Bundy from her. It was my mother who really instilled in us the need and the love of education. I mentioned the fact that my twin sister has a doctorate. My brother, Sidney Smith, was a scientist. He got his Ph.D. He taught and he worked for the Schering-Plough Corporation for a number of years. He got his doctorate at Howard University. And then after he retired from Schering he went to divinity school and graduated from Drew Divinity School in New Jersey and became an ordained minister.

My wife, Alene Smith, was a professor at Hunter College. She's retired now. She has her doctorate from Columbia Teacher's College. Both of my children, George, Jr., and Beth, have obtained master's degrees. My son George works for ESPN as a sports reporter. He is sent to many places in the country to report on sports. My daughter teaches at Nassau Community College. So not only did I try to instill in my family the need and the necessity for education, but I tried to do

the same thing for youngsters, whether it's an elementary school or high school or college setting or law school setting I try to instill the same thing.

[01:08:14]

I'm also pretty active in my church and have been. I grew up in Washington in a church called Plymouth Congregational Church. Here in Manhattan I attend Grace Congregational United Church of Christ in Harlem. Was the Chair of the Board of Trustees for over 25 years. Am still on the board. And I have been active in bar associations. As you mentioned, I was one of the founders of the Metropolitan Black Bar Association, which merged with the Bedford-Stuyvesant Lawyers Association to form the MBBA. I was its first Chair of the Board. And that organization is ongoing. I'm a life member of the MBBA, a life member of the National Bar Association. And so I still try to be very active in bar associations.

SJG: You're also a member of Judicial Friends, correct?

GBS: Yes. I'm a member of Judicial Friends.

SJG: Well, a former member, I guess.

GBS: No, no, I'm still a member.

SJG: Oh, you can stay a member?

GBS: After you --

SJG: OK, great.

GBS: -- retire. It's an organization of largely minority judges, particularly African American, although any judge of any ethnic persuasion is welcome. And that is a

group of judges who just try to do things to help other judges and help in the community.

[01:10:01]

We once a year try to put on a reception for law school students, particularly those minority law school students. We go to a church in a community once every year and we try to rotate the boroughs. This past year we were at Saint Philip's Episcopal Church in Manhattan in May. So we tried to go to the community and participate in services and try to make people aware that there are minority judges and that people should know that they can become lawyers or judges or court officers or court clerks or many, many other positions in our judicial system and in the court system in general.

SJG: Judge, you have been and continue to be a great role model and mentor for lawyers, law students, and judges alike. Who were your mentors?

GBS: Well, I had an elementary school teacher by the name of Harry Lewis, Jr., who was my fifth grade English teacher. We would go from class to class in elementary school. He started a French club and that's what got me interested in French. So he was a role model in addition, of course, to my mother, who will always be a role model. But he died at 44 years of age I think back in '63, just after John F. Kennedy was assassinated. I don't know if those two events were related. But he had suffered a heart attack and was in the hospital, I think, at the time of his death. So he was a person that I nominated as the best teacher in America. I forgot what program was involved there. But I did nominate him for that honor.

[01:12:37]

And then as I went to various schools there was a person named Alan [Gillingham?], a Latin teacher whom I took Latin with and who came up to me my first year and said, "I think you ought to go into this Latin declamation contest," which I did not want to do but he insisted. So I went and I was fortunate enough to win the Latin declamation prize for three years at Andover with some stiff competition. So he was certainly a role model. In fact, Andover was an institution where most of the teachers seemed to take that interest in its students and wanted people to succeed.

And certainly at the Yale Law School, professors again are very friendly. I mentioned Louis Pollak before. He was certainly an inspiration. There was a person named Guido Calabresi,²⁸ who became the dean of the Yale Law School, is now a judge on the Second Circuit, a person whom I think is at the Yale Law School. He's still involved there with his wife.

[01:14:19]

And so all along the way there were these mentors who were interested. Certainly the three judges for whom I worked all took an interest in me. And so I'm very pleased at how -- While my parents were divorced, I never heard my father preach. I understand he was an excellent preacher. I still go to Lexington, Kentucky where he grew up for reunions. They have reunions every year. I still have first cousins there, other family members there. So all in all, I have had role

²⁸ Guido Calabresi, Judge of the United States Court of Appeals for the Second Circuit, 1994 - 2009.

models and try to at least encourage people along the way that they can do it and they should never be discouraged.

SJG: So you were a really busy man on the bench. You're involved in all these community activities, you're mentoring. You also had time to teach or at least you made time to teach. Would you share some of that?

[01:15:43]

GBS: Well, my mother again had originally been a teacher, although when we were growing up she was a government worker in the Bureau of Printing and Engraving in Washington, the place where they make money. But teaching I've always enjoyed. I taught at Bronx Community College. I taught at Baruch College, and then back in 1981, the then dean of the Fordham Law School made me an adjunct professor, where I'd teach New York criminal procedure. I've taught it since the '80s. And a couple of years ago, Fordham asked me to start a course on state constitutional law, which I teach now in the spring. Students today are getting smarter and smarter and so it's wise to try to keep up with them and teaching is one way to try to keep up. But I enjoy teaching not only because it keeps me on my toes but it forces me to engage students and to hear what's interesting and what's bothersome to them. So I think law schools as well as all educational institutions have a very great role in seeing that the United States remains in the forefront of nations in the world.

SJG: Judge, you're also a published author. You and your wife published a book together, Dr. Smith. It was called You Decide. Would you tell us about that book?

[01:17:48]

GBS: That is a book for high school students dealing with the Constitution. And that book was written around 1992 and it seeks to draw out from students and to make them aware of the Constitution and to draw out from them what they think about the Constitution, where they think the Constitution ought to lead. And particularly it focuses on the Bill of Rights. The first eight or ten amendments to the Constitution. Things like the First Amendment dealing with freedom of expression, freedom of religion. Like the Fourth Amendment that deals with searches and seizures. The Fifth Amendment that says you cannot incriminate yourself or the Sixth Amendment that says a person has the right to a jury trial and also has the right to confront witnesses. And the Eighth Amendment that says there can't be cruel or unusual punishments imposed. All of these are important aspects and provisions of the Constitution of the United States and there are also state constitutions, which have, many of them, similar provisions. Many of them have bill of rights. And in the state constitutions, very often those constitutions begin with a bill of rights, whereas the Bill of Rights in the federal Constitution came after the Constitution was ratified by states.

SJG: Judge, you've also written several articles with former law clerks. Are there any of those articles that are particular, you know, favorites of yours that you'd like to discuss with us today?

[01:19:58]

GBS: Well, I hesitate to say which ones because they were written with different law clerks.

SJG: OK.

GBS: So rather than get into that I will say that all of them written with law clerks, whether they dealt with a court or whether they dealt with aspects of the Fourth Amendment or the imposition of the death penalty or dealt with babies who were born addicted, all of those articles I was pleased to write. In addition to which, some of my clerks have helped me with revisions to publications. There's something called Commercial Litigation in New York State in which I, with the assistance of one of my law clerks, wrote the article. That person was Janet Gordon, who works in the Supreme Court and she has just helped me revise another chapter in not that work but in another appellate publication.

SJG: So, Judge, you've been in private practice now since the end of 2006 or beginning of 2007. What's it like?

GBS: Well, I will say it's different. One of the good things about Chadbourne & Parke is that it has a pro bono section and it has a pro bono committee and that committee meets periodically and it decides whether it can handle a case on a pro bono basis. So that's one excellent aspect. But I also enjoy dealing with appellate cases that the firm has and even cases at the trial level, many of them commercial cases.

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They may involve a commercial lease, other aspects of real estate. They may involve tobacco and the use of tobacco and persons who have sued tobacco companies because they say that they have become addicted because of what the tobacco companies did. There are other aspects of the firm, tax aspects, mergers and acquisitions where the firm is engaged to, let's say, deal with a road and the

building and financing of a road, whether it's in Eastern Europe or in Russia, China, in Latin America, in Africa. So there's a whole world of law that our law firm touches and that, if I were able, I would sit back and just read and read and read and be content to do that for the rest of my life.

SJG: So, Judge, tell me, what do you think of billable hours?

GBS: Well, billable hours are hours that you have to put in for a law firm. I think it's an essential part of a law firm that is there in essence to make money. The question is, while it's making money, is it also trying to do good by participating in bar associations, by pro bono cases, and I think that makes the difference. I have not been told by Chadbourne & Parke, "You've got to bring in this amount of billable hours," and I am certainly thankful for that. But I think billable hours are still essential for a law firm.

[01:24:35]

SJG: All right. Judge, let me ask you just one last question. If you had to sum up your judicial philosophy and what your career on the bench was like, how do you want to be remembered in that regard?

GBS: I would say that -- He was a judge and hope people would say, "He is a judge who tried to give 100%, 100% of the time." And I think that that statement is meaningful because if a judge or a lawyer or anybody in any profession or business or work tries to give 100%, 100% of the time, he or she is and will be successful.

SJG: All right. Thank you very much, Judge.

GBS: Thank you, Sandra Grannum, one of my very best law clerks.

SJG: Thank you, Judge.

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