

Interview
Judge John Forte
April 27, 1994

Interview conducted by Nancy Earsy
Videotape length 60 minutes

JF: I graduated from college and Harvard Law School, both of which were interrupted by service in the armed forces. I was a Navy pilot in World War II for four years, then, beginning my last year of law school, I was recalled for active duty with the Navy and spent two years in Korea. When I came out I was the Assistant District Attorney for Middlesex County and joined a law firm to become trial counsel. I ended up with my own offices, one in Boston and one in New Bedford. In 1968 Governor Volpe nominated me to be justice of the Concord District Court and I was inducted May 1, 1968. My tour of duty as a judge will end this August 1st when I attain the age of 70—mandatory retirement. For the last 17 years I've been assigned to the Superior Court. The Superior Court sits in the county seats of each county of Massachusetts. I'm just about finishing a stay in the Worcester Superior Court and next month I start Essex County criminal session in Lawrence

INT: What towns does the Concord court serve?

JF: Lexington, Bedford, Concord, Acton, Maynard, Stow, Carlisle—eight towns. As well as state highways that go through those towns.

INT: Thinking about the different towns and the different cases that have come before the Concord Court, are there differences in the kinds of cases that come from the different towns?

JF: Not now. We used to have a lot of drunkenness cases when drunkenness was a criminal offense. There were one or two towns that had their share whereas others didn't have very many. Aside from that, no.

We've had murders in just about all the towns, and of course you start off with speeding cases, which are now handled as non-criminal, but way back they were handled as criminal matters. All the towns had those and everything in between. So I can't say there was any different crime added to from any of the particular towns.

INT: Thinking about the Concord Court when you first came to Concord Court in 1968, in 1970 and the present time, do you think there are differences in how the court operates?

JF: No, I think the court still operates in the same system under the laws of our Commonwealth. The only difference is there is a lot more business. Both civil and criminal.

INT: In any particular areas?

JF: Drugs have increased. In the sixties we'd see marijuana, but now in the courts we hardly see marijuana, we see all kinds of heavier drugs up to crack and there's been a large increase in trafficking the cocaine.

INT: What about juvenile cases then and now?

JF: I don't think they vary. More drugs with the juveniles now than you [had] before. But life was about the same in criminal court system except it's more crowded now.

INT: I'd like you to tell us a little bit about what a District Court judge does on a day-to-day basis and explain the system a little bit. What would happen in the Concord Court on a typical weekday from nine AM to when it closes?

JF: Court opens at nine and usually the first thing is the overnight arrests, the arraignments. Some days would be followed by criminal trials, some days would be followed by civil trials. Then there's the juvenile session, small claims session, supplementary process session, summary process session, so that was the day. I think it was Mondays and

Wednesdays we had criminal trials and Tuesdays and Thursdays civil trials and on Fridays was juvenile and on Thursdays we had small claims, summary process as well as supplementary process.

INT: And does the court usually work weekends?

JF: We used to be open Monday through Saturday noon. We used to have a Saturday session but with the court reorganization all the courts went to Monday through Friday and there is no longer a Saturday session. Of course, Sundays we're not allowed to open.

INT: How many cases would come before the court on let's say a typical Monday?

JF: It varies from court to court. I'd say about thirty arrests each day.

INT: And you mentioned a word—arraignment. Can you explain what arraignment is?

JF: Arraignment is when a person is brought before the court, is informed of the charges against him, and if it is a crime that would permit his being sentenced or incarcerated, he'd be informed of his right to an attorney, and if he couldn't afford one, the court will appoint one for him. Usually at the arraignment after they read [the charges] he's asked to say, "How do you plead?" and "Guilty or not guilty?" However, if he requests counsel, and his counsel is not present, he will not be asked to enter a plea. He will not be asked to enter a plea until he is represented by counsel. That's the arraignment, where he is officially informed of the charges against him. They are read to him by the clerk.

INT: What would the judge's responsibilities be in accepting a plea?

JF: To accept a plea the judge must go through [the charges] with the defendant to make certain that the defendant understands what he's doing. We go through a lot of questions: have you been under the influence of drugs or alcohol? Has anybody forced you to plead guilty? Any threats

been made against you? Then we'll have the prosecutor recite the allegations against him and then we'll ask the defendant, "Did you hear that?" "Are those facts true?" Any changes to make?" Then we have to make certain that he knows what the maximum penalty is, knows what the recommendation of the prosecution is, and make certain that his plea is knowingly and voluntarily made. That is the judge's function when a defendant offers a plea of guilty.

INT: There is another plea that is called *nolo contendere*.

JF: *Nolo contendere*—that means "I do not wish to contest." It is a technical plea of guilty. There's a third plea where the defendant claims that he is not guilty but the evidence is so overwhelmingly against him that he is going to be found guilty. I don't accept [those] pleas unless there is some history of mental illness. Those are the three pleas. Of course there is the plea of not guilty.

INT: Right. And let's take that. What if someone pleads not guilty at the arraignment? What happens next?

JF: Are you asking now, or are you asking back in the days of the 1970's?

INT: Let's try the 1970's.

JF: The 1970's. We've set a date for trial. Today under the new rules we'd have to set a date for conference, a date by which discovery is to be completed, and then a date for trial. So procedures have changed a little bit. Under the rules of the criminal procedure now, if the attorney and defense counsel and the prosecutor agree on a recommendation, the court cannot go beyond that recommendation and impose a harder or heavier sentence. If the judge wants to, he has to inform the defendant and if I decide to give you a sentence greater than has been agreed upon, I will allow you to withdraw your plea of guilty and let you stand trial. Usually

it's before a different judge. That wasn't true in the 1970's.

INT: So in the 1970's if an agreement was reached...

JF: It wasn't by another judge. There was what we called the "A judge" and the "B judge" of the rule. The "A judge" was what I just told you about—he would not exceed the recommendation. A "B judge" would tell the defendant, "I'm not bound by any recommendations, and I can throw the book at you. Do you still want to plead guilty?" I was a "B judge." The thing is, I wasn't bound by it and they still wanted to plead guilty, it helped me decide whether they were entering the plea of guilty voluntarily. But we can't be a "B judge" anymore.

INT: What are the differences in court proceedings when a juvenile is arrested and an adult?

JF: The difference between an adult and a juvenile? An adult is arrested, he must be brought to court the next session of court and a complaint must be sought and issued against him. A juvenile does not have a criminal complaint lodged against him. A juvenile has a delinquency complaint, delinquent in that he committed a certain offense. He's informed of his right to counsel; we have an arraignment but it's in a closed session, in a juvenile session. The only ones that can be present are an additional judge, the clerk, probation officer, the prosecutor, defense, his attorney, his parents, and his clergy if he wishes. If he is declared delinquent, it's not a criminal record, it's delinquency, whereas the adult would be either found guilty or not guilty. If he's found guilty, it's a criminal record.

INT: I think that gives us some good background to go into the events that happened on Memorial Day weekend in 1971. There was a protest brought by the Vietnam Veterans Against the War that involved Concord and Lexington and eventually Bunker Hill. When and how did you learn

that this protest was planned or happening?

JF: I think I was contacted sometime Friday. If I'm not mistaken, the group wanted to camp out on the Lexington Green and [there] was some dialogue going on between that group and the Selectmen. On Friday I don't think we knew what the results were going to be. On Saturday morning there was a meeting and if any event was going to be a problem—whether it would be mass arrests—we had discussions. Captain Furdon [of the Lexington Police] was [there]. There were a couple of problems that arose. One was that if there was going to be a mass arrest and a police officer would make ten, fifteen, or twenty, twenty-five arrests, we recognized there might be a problem if it ever went to trial—the police officer identifying that person as being one that he arrested and [testifying] what he arrested him for and what he observed. So I think it was agreed that when a police officer made an arrest in a mass arrest he would escort the arrestee to a bus or whatever they used for transportation. And he would be photographed with his arrested person. That way if it did go to trial, there would be evidence that “Yes, this is the fellow I arrested and this is why I remember it, and I'll tell you why I arrested him and what I observed him do.” We didn't know when it was going to be. If I recall correctly, my family was away and I was to join them Saturday evening, but things were getting a little warm so I stayed home.

About five o'clock that next morning (at least it seemed that hour) the assistant chief probation officer gave me a call at home, woke me up and said, “We've got four or five hundred (I forget the figure) arrested last night and they're being housed in the town barn.” It's not a very conducive place to hold people until Monday. “Can you open court?” I said, “I have no authority to open court on a Sunday, but my Chief Justice might have authority to give me permission to do it.” The Chief Justice of District

Court at that time was a great chief justice, Franklin N. Flashner. I called him at his home. I believe I awakened him, and I told him what the problem was and he said, "I'll call you back in a few minutes." Well, he called me back and said, "I have found some authority under the civil defense law that grants me the right to give you authority to open court on Sunday. Good luck!" And that's why we opened court on Sunday.

INT: Good luck? You mentioned that you had had some discussion with Captain Furdon.

JF: I believe it was with Captain Furdon, yes.

INT: Was he the Lexington person who contacted you to do a little planning?

JF: Either he or Chief Corr or both of them, I'm not sure. That's a few years back. I understand Chief Corr retired and Captain Furdon became Chief and now Chief Furdon is now retired. I'll be following soon.

INT: Were you aware of any injunction against the use of the Lexington Green by these protestors?

JF: No, I was not. Now the injunction would not have been issued by a District Court. If a temporary restraining order or injunction was issued, it would have to have been issued by the Superior Court. Had one been issued, and they violated it, then they would have been brought before the Superior Court for contempt.

INT: So that was a charge that would not come to you as the sitting District Court judge?

JF: No, the District Court does not have authority to grant restraining orders or injunctions. That's an equity power. The District Court is very limited with equity powers for a petition.

INT: But what I understood you to say was not only could you not grant it, you could not enforce it either.

JF: No, no. If the Superior Court had issued an injunction and if a person violated that injunction, he would have been cited for contempt of court in that he violated a court order and they would have had to go before that court for whatever proceedings would follow.

INT: So the kind of charges that could come before you as Concord District Court judge were violations of criminal laws, is that right?

JF: That is correct. There is no limit as to what kind of a criminal complaint can be issued by the court. There is a limitation of jurisdiction. For example, if a murder is committed and a defendant was charged with murder, he could be arrested and a complaint issued by the District Court for murder. But rather than having full jurisdiction to try him and sentence him, the District Court would not have that jurisdiction. All the District Court could do is conduct a probable cause hearing, that there was probable cause to believe that the defendant did commit the offense charged and then if probable cause is found, the District Court sends the case to a Grand Jury, which is conducted in the Superior Court. The District Court has jurisdiction for sentencing to a house of correction and any crime that does not require a sentence to a state prison. There are some [cases] now where we have concurrent restrictions over sentences, for example, two and a half years in a house of correction or up to five years in state prison, something of that nature.

INT: You mentioned that you first learned that people had been arrested on Sunday when you got a call from a police officer. Had you ever had so many people in your court before that day?

JF: That was the largest arrest I had ever been involved with, and I hope it will remain the largest.

INT: Did you have any help besides your probation officer opening up the court?

JF: Yes, Dusty Rhodes was our clerk and not only did he have his staff come in, but the Waltham District Court clerk's office came over and helped out Mr. Rhodes' office because all these complaints had to be typed up. Then we had a problem of providing these defendants with counsel. So we had four or five counsel come and volunteer. The only one I can remember now was a fellow who lives in Lexington, Julian Soshnik, and he represented a number of them. I wish I could remember their names because they did a service for the court and the defendants.

INT: Now if you knew on Saturday that something might happen...

JF: Might happen.

INT: How much preparation could you do in advance? Could you put a few lawyers on alert on Saturday?

JF: It was no sense alerting anybody until something did happen. I did not contact any attorneys on Saturday because I didn't know if anything was going to happen. The last I heard there was a dialogue going on between the group that wanted to camp out and the Selectmen and if I'm not mistaken, weren't they offered some alternative sites to camp?

INT: Yes, they were. There was one site, Lincoln field, which had very recently been the town dump and they had just re-grassed it.

JF: Well I didn't know, but there was an alternative. I thought there was going to be a solution between us so I wasn't that concerned.

INT: You mention that you got volunteer lawyers. Did you have any additional help from other judges? Or were you it?

JF: I think Dave Williams came over and he took one or two sets of arraignments but aside from that, I think I conducted all the arraignments.

INT: What were your impressions of the protestors when you saw them in your court? Do you remember?

JF: Their dress you mean? Or their attitudes?

INT: All impressions.

JF: Well, I respected them. They were standing up for what they thought was right. Their dress was what you'd expect from somebody who had spent the night in a barn, and some came in with their clothes disheveled, but they had to be given all the respect of any defendant and I had to give them all their rights and etc. You don't look at a defendant by their looks to decide they are guilty or not guilty, they're human beings.

INT: How about specific memories or mental images of the vets themselves?

JF: I didn't know one from another, because there were men, there were women and right now, I don't recall any uniforms or anything to indicate a person was a veteran.

INT: Some people have mentioned to us that a couple of the folks who were arrested used wheelchairs. Do you have any memory of anybody being in a wheelchair?

JF: No I don't. If they were, it would stand out because the federal courthouse was not set up for handicapped people and there had been times on other occasions where I've had to arraign people outside on the ground because there is no access for a wheelchair. But I don't recall having to do that in this case. I'm not saying there weren't any, but I just have no memory of it.

INT: What was the tone of what was going on as the people came into the court?

JF: It was businesslike. We had them enter in groups of ten. They were read their rights, counsel filed an appearance for them, counsel had already spoken to them in the bus and gave them instructions and they entered pleas. Most of them entered pleas of "not guilty" to the charge of disorderly person, and entered a plea of *nolo contendere* ["no contest] to the

charge of violating a town bylaw¹. The prosecution requested that the complaint for a disorderly person would be dismissed and we would dismiss that if the defendant consented to it. For those that plead *nolo contendere* to violation of the bylaws of the town, they were found guilty and fined \$5.00.

INT: Let's take those charges one at a time and let's take the disorderly conduct one first. What's the source of law for the disorderly conduct charge?

JF: I think it's Section 53 of the statute from 65. Do you want me to read it to you? The statutory authority for disorderly person is Chapter 272 in the General Laws Section 53, which I'll read to you.

“Stubborn children, common street walkers, both male and female, common railers and brawlers, persons who with offensive and disorderly acts or language, accost or annoy persons of the opposite sex, lewd, wanton, and lascivious persons in speech or behavior, idle and disorderly persons, prostitutes, disturbers of the peace, keepers of noisy and disorderly houses, and persons guilty of indecent exposure may be punished by imprisonment in jail or a house of corrections for not more than six months or by a fine of not more than \$200 or by both such fine and confinement.”

That was most recently amended in 1983.²

INT: From the language it sounds like it has very early origins. “Brawlers and railers” sounds quite old fashioned.

¹ The Lexington bylaw, Section 25, reads: “No person shall engage or take part in any game, sport, picnic or performance on the Battle Green, without the written permission of the Selectmen or other board having charge and control thereof, and no person shall climb upon, deface, mutilate or otherwise injure any tree, shrubbery, monument, boulder, fence, seat or structure thereon, or behave or conduct himself on the Battle Green otherwise than in a quiet and orderly manner in keeping with a respectful regard and reverence for the memory of the patriotic service and sacrifice there so nobly rendered.” This town bylaw was in effect in 1971, and dates back to 1923 or earlier; it was not amended until the 1980's. The fine could have been as much as \$50.

² Section 53, a general disorderly conduct prohibition, is from Chapter 272 of the General Laws, entitled “Crimes against Morality and Good Order.” The text, printed here as it appeared in 1971, has its origins in colonial laws dating back to 1699, and has been amended over the years before and since 1971. There is strong Massachusetts case law supporting the free exercise of speech and excluding such conduct from punishment under the guise of disturbing the peace. “Mere making of statements or expression of views or opinions, no matter how unpopular, or views with which persons present do not agree is not punishable as disturbance of the peace.” *Commonwealth v. Jarrett*, 359 Mass 491, 1971.

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JF: I've never seen a brawler or a railer. I don't know.

INT: So brawlers and railers were not charged as...

JF: No, they were charged as being disorderly persons.

INT: And who would have brought those charges? Was that up to the Lexington Police?

JF: The Lexington Police took part in this. As a matter of fact, I had two copies of two cases on the dockets and Captain Paul F. Furdon was the complainant in all of these charges and he filed an application and a complaint issue against each person and he applied for disorderly person violation and violation of the bylaws.

INT: As it turned out there were four hundred plus people who were charged with this disorderly conduct and violation of the town ordinance.

JF: That is correct.

INT: That must have been a lot of paperwork, too.

JF: It was. That's why our clerk's office had the help of the Waltham District Court clerk's office for typing all these complaints out.

INT: Did that occur on Saturday?

JF: No, that was Sunday morning they came over.

INT: So Sunday morning...

JF: Everything was done.

INT: A whole clerical battalion.

JF: I think that what we did was we had one complaint typed up without a name on it, and there was an offset printing device or copy machine that reeled them all out, and then all it required was typing in the names of the individual defendants and Paul Furdon had to sign them all.

INT: So that was the way that you could handle four hundred people on a Sunday.

JF: That's right.

INT: Now we've talked about where disorderly conduct comes from. What about the town ordinance?

JF: The law would have been passed and adopted by the Town Meeting of Lexington. Article 1 section 4: "Whoever violates any bylaw of the town shall pay for each offense a fine not exceeding \$50 unless some other penalty is expressly provided by law or by some bylaws of this town." A violation of that bylaw made it a criminal offense by this section of the bylaws of the Town of Lexington.

INT: So your options as a judge were to deal with the disorderly conduct charge and to deal with this violation?

JF: That's all I had, yes. Now, the prosecution requested that the disorderly [charge] be dismissed and I could dismiss that if the defendant did not object it to. It's interesting, one little gimmick between one kind of a crime and a bylaw violation. The district attorney can *noll pross* any crime.

INT: What does *noll pross* mean?

JF: It means he does not wish to prosecute.³ Now when it comes to a town bylaw, the town counsel has that authority but I don't think I saw town counsel that day. I don't even know who he was. So he could have come in and *noll prossed* all these bylaw violations.

INT: In terms of the disorderly conduct charge being dropped, does that mean a district attorney was involved in that negotiation?

JF: No, not necessarily. The prosecution, if they feel they have a weak case, or for whatever reasons—plea negotiation or plea bargaining is the term today—they said look, if you plead *nolo* to one, I'll drop the other. And I think that's what happened. I think that was the result of the various attorneys representing the defendants, plea bargaining with the prosecution.

INT: You don't get involved in that as the judge.

JF: No.

INT: It's out of your earshot.

JF: Allegedly.

INT: I noticed that you cited that the violation of the town ordinance was up to a \$50 fine.

JF: That's right. Unless the ordinance, the particular bylaw, authorized a greater [fine] and I don't think in this case that it did.

INT: But you didn't charge anyone \$50.

JF: No, no. They violated the law and I had to recognize that, and I thought that \$5.00 was the cost of one cheap night's lodging. They had not had the best.

INT: So that was your disposition of this matter.

JF: Yes.

INT: Did all of the protestors go along with this?

JF: No, some would not, and we eventually had trials and I don't remember how many trials we had. You'd have to get that from the clerk's office. They would have a record of the trials. I have just a vague memory that there were trials but not too many.

INT: In the case of the defendants making their judgments about whether to accept this or not, did any of them mention other issues such as constitutional issues?

JF: Constitutional issues were not raised on Sunday. I believe that in some of the trials the defendants wanted a trial basically to make statements and I honestly don't recall those statements today.

INT: If some of them decided to make statements about their first amendment rights or other constitutional issues, would that be something that a district court judge could take into consideration?

JF: Oh yes, because if they made arguments that, for example, a bylaw was not in conformance with the Constitution I'd have to make a decision whether that bylaw was constitutional or not, but that wasn't raised.

INT: If you decided that the bylaw didn't impinge on anyone's right to petition their government or their first amendment rights of free speech, the issue was just whether or not they were on the park violating the park ordinance, what would be their recourse then if they wished to push it?

JF: They could have appealed for trial by jury. In those days we had what we called *de novo*, which meant that a lawyer had a bench trial before a judge in the district court. If you didn't like the finding or you didn't like your sentence, you could appeal to a trial by jury. In those days those trials were held in the Superior Court. Since then we have the six person jury trials that are conducted in the District Court. Don't forget, our Constitution gives everybody a right to a trial by jury and even though they were brought before a District Court and only a judge they did not waive their trial by jury.

INT: And this is our state Constitution?

JF: Well a federal Constitution, although our state Constitution is strong when it comes to trial by jury. In our state Constitution, even with the civil side, we have a right to a trial by jury on those matters for which there was a right to a trial by jury when the Constitution was adopted. A lot of actions have been developed since then like Chapter 93A of the General Laws, the Consumer Protection Act. But there was no such law when the Constitution was adopted. The legislation did not provide a trial by jury on that so the defendant doesn't have, or the plaintiff in that case, doesn't have a right to trial by jury for violation of Chapter 93A of the General Laws.

INT: But they might if they were found to be a common streetwalker,

brawler or railer.

JF: Yes. Oh yes.

INT: Or a disorderly person.

JF: That is correct because that was a crime. Matter of fact, when drunkenness was a crime, if the defendant was found guilty of drunkenness, he could request a trial by jury. I must tell you, for the drunkenness ones, in the wintertime they would ask to be sent to a certain place where all their friends were and we wouldn't see them again until next spring.

INT: They kept them warm.

JF: That's what they went there for.

INT: Looking back at the time, what was your reaction to this protest on that Sunday when you were hearing all of this?

JF: Politically I had no reaction. To me it was just another court business day that had to be conducted and we tried to do it in the best spirit and the best ideals of the court system.

INT: Do you think that the protested arrests had any long-term impact?

JF: Well, today's the day President Nixon is being buried and he was the one that stopped Vietnam, called the troops back. I think the protestors certainly had an effect politically in the government. There's a big difference between Vietnam and World War II. In World War II everybody wanted to get into the service, there was patriotism, but in Vietnam there was nothing we were fighting for; at least the people didn't know what we were fighting for, why we were there. All we knew [was] that we were having tremendous losses. And it was quite a reaction. I think in the long run it showed that if we don't have feelings by the public we shouldn't get into foreign [wars]. Now we have things going on...we're in Romania, Bulgaria, we're over in Africa for a while, Desert Storm [the Gulf War]... Being a judiciary, we have no political comments.

INT: If a similar situation came up now do you think, how do you think people would respond?

JF: Similar in what? Violating the laws? Or protesting against a government edict?

INT: Protesting is what I'm thinking about.

JF: We've had all kinds of protests throughout the history of the United States. I recall sometime in the 1930's wasn't there a march in Washington, a protest by the veterans? I think General Douglas McArthur was then in charge and was called out; only I think they camped out on the Washington [Mall].

INT: The Bonus Marchers?

JF: The Bonus Marchers, that's right. We had protests right from the Boston Tea Party. This is part of our American spirit!

INT: Do you think it's more prevalent here in Lexington and Concord?

JF: I should hope it would be.

INT: After this event, were there other protests and arrests that came before this court?

JF: No, but I do recall there was some protests against some company down in Cambridge that was involved in making parts for atomic weapons. I can't think of the name of the company but there were a lot of trials that resulted in that. If I'm not mistaken, those that went on trial wanted to give speeches. And they lasted a long time. The Draper Lab.

INT: There was a Draper Lab in Cambridge.

JF: Yes, and I think there were a lot of protests against the Draper Labs that violated various city ordinances or violations of General Laws.

INT: Do you think justice was done that day [Memorial Day Sunday, 1971]?

JF: I hope it was. We tried to do justice. I'm going to tell you an

interesting aspect of this. Years later one of the volunteer defense lawyers, I heard he went up to the Governor's Council to get some applications for the gubernatorial pardon for all these people and when he was asked how many he wanted he said something about four or five hundred. I think they asked him to leave. I don't know if anybody ever did receive a gubernatorial pardon. Do you know?

INT: Not that I know of.

JF: I would think some time along the line it would be in order.

INT: Do you have anything at this point that you would like to just add?

JF: About that day in question? I wish it had not happened on a Sunday! That was just personal. No, I will now compliment the police in the way they handled the work. I have nothing but the greatest respect for my probation department for what they did in seeing that the court had the proper records and background checks on each defendant. And of course the clerk's office was overwhelmed [but] they did a fabulous job, and everybody just chipped in and did their work. I forget how long it took us but I think we were out a little after noon, weren't we? We started around nine and I think we probably finished sometime around one.

INT: It was quite a day's work.

JF: It was a day's work, yes. Good luck to you on your project.

INT: What you think of the project that we're doing and can you see any use for it?

JF: Yes, I think it's a great project. You know, this is going to show that people can protest, can make a difference, and even though they may have to suffer a few consequences (in this case, I think they were minor) I think it just shows that we still have the right spirit. And I'm glad you have this project so those that come after us can see what happened.

INT: Two things that happened was that the Selectman who was in charge was voted out of office in the subsequent selectmen's election.

JF: Really?

INT: I was wondering if you had any feelings about the Lexington town government as opposed to the Concord town government at the time because in Concord there was no problem at all with people staying here.

JF: Did they camp out someplace in Concord?

INT: They camped at the North Bridge, which of course was not town property but government property [a National Park] so perhaps that made it easier.

JF: Well no, I assume that the town officers of both towns were carrying out their duties to the best of their abilities and they—somebody—has to make decisions. Who was the Selectman?

INT: Robert Cataldo. He was subsequently voted out of office.

JF: Was he recalled or just not re-elected?

INT: He was not re-elected.

JF: There was no recall petition.

INT: There was an election coming up. I have a sort of court culture question having to do with dress codes. Things have changed over the years, but back in the 1970's, what was your typical court...this was a little different, if you don't mind telling us.

JF: I always wanted to have a dress code. I wanted the people to come in and show respect for the system, not for an individual, but for the system of our court, and I used to have a bunch of extra neckties and for those who came without a necktie. I'd let them have a necktie. That was great until I was invited to attend a Sunday sermon in the church where the minister was the trustee of a library and he was going to give a sermon on censorship. My wife was a trustee of a library so I was dragged along with her, that's

how I got there. When I saw how the people dressed going into that church I felt that I was a little out of step with time. So I relaxed my dress code. I didn't formally announce it but did not push for the neckties and jackets. Times have changed. Now you should see how jurors come to court. Oh, it's amazing!

INT: You told us a little bit about when you came into the court system and how there were some changes that needed help to implement.

JF: There were a lot of changes. I forget what the changes were. I think the first thing is we started on time, a little thing like that. I can't remember what they are; don't forget that was twenty-seven years ago when I first went on the bench.

INT: Having probation officers living...

JF: I would appoint people that lived in the district. In those days, the judge had the authority to appoint probation officers. The clerk had the authority to appoint the assistant clerks but needed the approval of the presiding judge. I felt when it came to probation officers, if they were to work in the community, I'd like to have them be part of the community and know the community rather than coming from miles around. When they couldn't get here on time on snowy days there would be problems. But by and large our probation officers knew their district, knew their territory.

INT: What initially attracted you to the law? Why did you go to law school, and how has your view of human nature and our legal system changed during your years as a judge?

JF: Why I went into law? I think I always wanted to. My dad was a judge of the Superior Court for umpteen years. He was also a professor of law at Boston University and he had a student, my mother, and after myself and my brother and sister were off at school, my mother went to law school. She'd ask dad these various questions at the dining room table and

dad wouldn't answer them. He'd start off with the youngest and then go to the next youngest and then to me, and if we couldn't figure out the answer, he would give the answer. So we had law at the dining room table. I almost made a career in the Navy but then I decided I preferred to get my college degree and I planned to go back in the Navy after my college degree, but when I got accepted at Harvard Law School I decided to go to law school. I have no regrets. I have enjoyed the practice of the law immensely. It has changed, though. I was first admitted to the bar in 1951. In those days the practice of law was a profession. Today from what I see in some of the counties it's cutthroat. From a judicial standpoint the worst thing that has happened is the word processor! We used to get a brief that was an argument with citations on those points, but now they just [keep pressing keys]! Finally the Superior Court issued a ruling that briefs cannot exceed twenty pages. One person tried to get around it—he had a twenty-page brief, single-spaced—and it was given back to him. There's all kinds of new laws coming up, new interpretations, and it's a real fascinating field to be in.

INT: Are there records that the clerk and the court...Dusty Rhodes, you said...

JF: I forget his real first name. We always knew him as Dusty. Maybe it was Dustin. He passed away a number of years ago and we had an acting clerk, Warren Birch, who has since passed away, and then our clerk was Paranick, and he retired, and now we have a new clerk. I don't know where they store the records. We have a large storage area on the second floor in this building and whether they're still there, I don't know. Every so often we'd see these storage boxes, and I know the state does have a repository for old records but I don't know whether all these old records are still here. That's not the function of the judge, that's the clerk magistrate's

now.

INT: Do you feel that dissent is alive and well in the 1990's?

JF: If you read the U.S. Supreme Court decisions you'll find there are some dissents, so from the top coming down there is dissent. Now to what extent political dissent, I don't want to comment.

INT: Any other questions?

INT2: I was arrested so I have some interest.

JF: Oh, really. What was your reaction to the court procedures?

INT2: I thought from the beginning to the end everyone did their job well, everyone was courteous, respectful; things went rather smoothly. No complaints whatsoever. My complaint was with the U.S. government to... This letter [that I found], the last paragraph even mentions you compassionately. Read the last paragraph.

JF: [Reading]

“The courtroom scenes in Concord went like a charm. The veterans had their lawyers with them. Everything had already been prepared. The poor judge, of course, had been deprived of his Sunday rest, too. We were called up, stood at the bar, and declared ourselves ‘not guilty’ to disturbance of the peace, and *nolo contendere* to the [other] charge. To have broken the town bylaw we were dunned the fine of \$5 which we paid right then and there. Out we were and the next troop entered. Then home, hot baths, stiff drinks and to bed.”

I think we've all learned to find a way to avoid mass arrests. The only time you see them now is probably to prevent injuries.

INT: All those \$5 fines—who got the money?

JF: I think for violation of bylaws it went to the town. If it was a violation of a criminal statute, it would have gone to the treasury of the Commonwealth. But I think all these \$5 fines, the prosecutor was smart in dismissing the one where the fine would go to the state and only collected

money for the fines that went to the town.

END OF INTERVIEW