

11-8-1982

Interview with Thomas F. Green, Jr.

Thomas F. Green Jr.
University of Georgia School of Law

Repository Citation

Green, Thomas F. Jr., "Interview with Thomas F. Green, Jr." (1982). *Oral Histories*. 17.
https://digitalcommons.law.uga.edu/oral_histories/17

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ORAL HISTORY PROJECT

Tape 3
Erwin C. Surrency Interviews
Thomas F. Green, Jr.
November 8, 1982

SPEAKER: ECS

If you will, tell us how you came to be appointed to the law faculty.

SPEAKER: Green

The alumni became alarmed and displeased by the fact that the Law School of the University of Georgia was not accepted by the accrediting association. Whereas, Mercer and Emory were both accredited. The Law School had a dean who was respected, of course, but he was not very progressive and he was getting old.

SPEAKER: ECS

Who was that?

SPEAKER: Green

The dean was Sylvanus Morris. The alumni approached the newly-created Board of Regents of the University System and presented their case for reorganization of the Law School.

SPEAKER: ECS

Who were the leaders of this group?

SPEAKER: Green

I think that Hughes Spalding was one of them. I should also have said Judge William H. Barrett and Harrison Jones. At that time I was practicing law in Athens and was not in close touch with the Law School. I do know that the alumni were successful in convincing the Board of Regents that something must be done to improve the

Law School. This resulted in a reorganization including the appointment of a new dean. Professor Edmunds of the University of South Carolina Law School was made Dean of the University of Georgia Law School and he joined the faculty and took over his duties, I believe, in 1928. The two part-time professors on the faculty were replaced. The full-time men, Dean Sylvanus Morris and Professor Robert McWhorter, were retained. Two Harvard graduates, who had had some experience in the practice of law, were named to the faculty: Harmon Caldwell who served on the Emory faculty and Alton Hosch. Later Mr. Edmunds left and Professor Harmon Caldwell was made Dean. Caldwell had a remarkable career with the University of Georgia. A few years after he became dean, he served as president and was made Chancellor of the University System of Georgia. He served well and built up the faculty while he was dean.

Plans were developed for a new building. Apparently, the legislature and the Board of Regents were not willing or able to furnish the money, but the alumni put on a campaign that was quite successful and the building construction began. At that time, the Law School, which for many years was in the Academic Building along with other departments, had been moved into a building on Broad Street across from the University campus which the alumni and friends had purchased earlier. It was an old converted club building. I don't know what the name of the club was, but the club had abandoned the building and sold it to the University. The building was purchased with funds raised by the alumni of the Law School. I have named some of the professors who were appointed

as a result of the reorganization. I need to add one other name, and that is my own. I was appointed in 1929. It would be more accurate to say that I began to teach in 1929.

One criticism of the Law School was that prior to Edmunds' service, the case method had not been used. Dean Morris felt that the case method, as it was used by the many schools in this country, was not the best way to teach. But under the reorganization, the case method was installed. I had not studied under the case method, as I studied at Georgia during Morris' career. It was necessary, therefore, that I study in a law school that used the case method of instruction before I began to teach. This idea developed in the mid-year. I was expected to start teaching in September 1929, so I looked for a law school that had a good reputation and at which it would be possible for me to start in mid-year. The University of Chicago was on the quarter system, so it was possible for me to go there and take the spring and summer courses. I was able to attain a degree from that institution after completing only half the work I would have normally been required to undertake. I registered there as an undergraduate, although I had an LL.B., the first degree in law, from the University of Georgia. Someone on the Chicago faculty suggested to me that I should work on a graduate degree since I already had the first degree. The dean at Chicago approved that, so I had to make that change in the degree I sought. I had to leave after two quarters to teach, but the two following summers I went back to Chicago. I received their graduate degree in 1931, after the summer session of 1931. In the meantime I had been teaching at Georgia and I remained on

the faculty there for about forty years, although I was not in residence all that time. There were very few students in the Law School, mostly women from 1941 until 1946.

And so I took a leave from the University of Georgia serving as an attorney for O.P.A. and later the War Food Administration. As indicated in my earlier remarks, Dean Morris was removed from the deanship, but it was desired to keep him on the faculty as a lecturer. I do not know whether or not he served until his death. He died not long after the end of his service as dean. I do not have information as to whether or not he delivered any lectures. The provision was made, however, for him to do so and be paid as a member of the faculty.

SPEAKER: ECS

Was he respected?

SPEAKER: Green

He was highly respected in so far as I know. There was no ground for criticism except the failure to acquire accreditation for the school. He was a good teacher, rather strict, and he expected you to attend class, study, and be prepared. He could be sarcastic and hard on his students who did not comply. I was active in student activities when I was a student in the Law School, and some of them, such as intercollegiate debating and the Glee Club, took me out of town. When I returned one day, my classmates told me that the Dean, while calling the roll, discovered that I wasn't there, and was told that I was out of town. He said, "Does Mr. Green think we are having a correspondence course here?" We all liked him, although we sometimes resented his severity.

When I joined the faculty of the University of Georgia Law School, Judge Gober, who had been a prominent lawyer and judge, had been a member of the faculty there for a while. He taught evidence. When he was no longer teaching the course, my father, who had taught evidence in the Law School, advised me to ask for the course. I did and was assigned the course in evidence. I taught it for the rest of my teaching career, along with other courses. Evidence is a subject that I devoted a great deal of time to in research and public service, as well as teaching.

Federal Rules of Procedure for U.S. District Courts and Magistrates contained a very brief section dealing with evidence rules. The Advisory Committee wisely did not attempt to restate the various doctrines which make up the law of evidence. This was a wise decision because undertaking the drafting of other Procedural Rules and Evidence Rules by the same committee at the same time would probably have been too big a job for the Advisory Committee and inconvenient for the Supreme Court. It might have resulted in a disapproval of both sets of rules. This, however, does not mean that the rule (No. 43a) would be permanently acceptable. As Attorney General Mitchell said "...some day some other advisory committee should tackle the task of revising the rules of evidence and composing them into a new set of rules to be promulgated by the Supreme Court." Proceedings of Cleveland Institute on Federal Rules. p.186 (1938).

This was the message that I sought to give the bench and bar in 55 Harvard Law Review 197-225 (1941) and 5 Vanderbilt Law Review 560 (1952). Others gave their support and a special committee

to study and report on the advisability and feasibility of adopting a system of uniform rules of evidence in the Federal courts was designated. Chief Justice Warren appointed Professor Thomas F. Green, Jr. of the University of Georgia Law School to serve the special committee as Reporter. In this capacity I did much research and prepared a preliminary study of the advisability and feasibility of drafting and promulgating by the U.S. Supreme Court of uniform rules of evidence. This study was included in the report of the Special Committee on Evidence to the Standing Committee of the Judicial Conference of the United States (of which Conference Chief Justice Warren was chairman). Sec. 30 Fed. Rules Decisions 73-117 (1962); 40 Georgia Law Review xi-xv (1969).

The conclusion and recommendations of the Special Committee that rules of evidence in the Federal courts should be improved and that uniform Federal evidence rules are both advisable and feasible, were accepted and an advisory committee on evidence was appointed. I was one of those appointed. A committee draft was sent to the Supreme Court and the Court promulgated Federal Rules of Evidence for United States Courts and Magistrates to be effective July 1, 1973, 56 F.R.D. 183. Chief Justice Warren E. Burger sent the Rules to Congress on February 5, 1973. Congress enacted Public Law 93-12 postponing the effectiveness of the Rules unless and until expressly approved by Congress. The Congress made several amendments and enacted the amended rules into law, January 2, 1975 to be effective July 1, 1975.

A copy of the 1975 law passed by Congress and explanatory notes by The Federal Judicial Center were published in 1975 by West Publishing Company.

SPEAKER: ECS

How did you come to write your book?

SPEAKER: Green

Georgia did not have an up-to-date book on evidence, so I talked to the leading publisher of legal treatises in Georgia about such a project. They said they would publish the book if I would write it. I began to write it, and after I had written a good part of it, I received a letter from another lawyer who had contributed articles to the Georgia State Bar Journal who asked if he could help. I suggested that we get permission to reproduce those articles as chapters in the book, agreeing that he would be given credit as one of the writers of the book. He agreed to that and also wrote one chapter which had not been previously published. So, there were really two authors of the book. My co-author was Carl Harper who was regional attorney for an agency of the federal government at that time. He was also a member of the Georgia Bar and was of great assistance to me in the preparation of the book.

SPEAKER: ECS

Now will you tell me when your father left the Law School?

Was he on the faculty at the same time you were?

SPEAKER: Green

I mentioned that my father was a law teacher. He was a member of the faculty when I was a youngster. Before I went to college, he decided to go back into the practice. Therefore, he was not there during the reorganization or during the period of time about which I am talking. However he was a Trustee of the University and later a member of the first Board of Regents.

SPEAKER: ECS

Will you tell us about your trial practice course? How did you start teaching trial practice and evidence together? When did you start teaching trial practice?

SPEAKER: Green

Dean Hosch was on leave serving in the armed forces in the Judge Advocates General Department. He was on duty even after the end of the war because he served on the staff of the war trials in Nurembourg. While he was away, Professor Schinn served as acting dean. For many years, the Law School had had a practice trial court usually conducted by a practicing lawyer. The part-time member who was doing that resigned and acting Dean Schinn asked me to take it on. I had practiced law before joining the faculty and had been a government attorney. Schinn insisted that I take the job. I substituted that for one of the courses I had been teaching. The court was conducted by having senior law students try cases. These were fictitious cases, sometimes based on actual cases. The instructor presided as judge and furnished written statements of the assumed facts of the case. The cases were designed to give experience in different types of civil cases. Each student was assigned a case for either the plaintiff or defendant and was expected to attend and observe the performance of the other members of the class when they tried cases. The students seemed to enjoy this and I found it an interesting undertaking.

SPEAKER: ECS

Did you combine this with evidence courses?

SPEAKER: Green

They were two separate courses and after I took on evidence I continued to teach it until I retired.

SPEAKER: ECS

Can you give us some interesting instances that took place? For instance, when I was a law student, I heard about students making up cases by going out and reenacting cases on various parts of the campus. For example, attacking someone in the student recreation area.

SPEAKER: Green

That may well have been, but that method was not used by me and I am not familiar with it. Nonetheless, I suspect it did happen, for some instructor must have authorized it.

SPEAKER: ECS

Did Dean Schinn do anything notable during his career as Dean here?

SPEAKER: Green

I was not in residence during most of Schinn's service as Dean, so I am not in a good position to comment on that. I would imagine that an acting Dean would not have much opportunity to develop any new ideas or anything of that kind, particularly since he had a very small student body. It would have been necessary to handle situations differently to a certain extent during that period of low enrollments from how they would have been dealt with in a time of normal operations. Appreciation for Schinn's service was shown by naming a prize, awarded to students, for him.

SPEAKER: ECS

What do you consider is the most significant thing that happened during your career at the Law School? What is the most significant advancement made during the time you were a teacher here?

SPEAKER: Green

I think that the last two Deans have been able to accomplish more during their service than anyone else has been able to contribute before. The school has developed greatly under Dean Cowen and Dean Beard. Dean Alford served between Cowen and Beard but resigned after a few months.

SPEAKER: ECS

Did you practice law with your father at all?

SPEAKER: Green

Yes, I did. I tried a few cases and did other work. I started out in his office while I was a student. I guess as a sort of glorified office boy. Then I graduated and was admitted to the Bar. I practiced law in his office. A clerk, I suppose is what they call me.

SPEAKER: ECS

During your time as a teacher here, you witnessed the issue of admission of Blacks to the Law School. Will you tell us how the faculty reacted, in general, to that situation?

SPEAKER: Green

The Faculty was divided on integration. I was one of those who favored integration.

The first black student came from a family that lived in Athens. He is Chester Davenport now a successful lawyer. He was perhaps received a little coolly at first by some of the students. I know

that later on, after he had proved to be a good law student and had become more acquainted with the students, one student who had been antagonistic before said that he liked the man. He came to the Law School to get an education. I believe that he was well received by the students. The Board of the Law Review elected him to the staff of the Review. He had a good record, so I think that on the whole the school adapted well. The first Black man that we had was a very satisfactory student and I feel sure that later on there were others that achieved equal academic success.

SPEAKER: ECS

In which office did you serve during the war?

SPEAKER: Green

I started out in law work as O.P.A. State Attorney for the territory of the State of Georgia. This meant that I was the head of the legal department of an office in Atlanta that represented the Office of Price Administration in Georgia. I was later in Washington on the legal staff of the War Food Administration. So, I served in two agencies at different times during the war.

SPEAKER: ECS

When did you come back to Athens?

SPEAKER: Green

In 1946.

SPEAKER: ECS

Let me ask you a couple of questions to clarify where the Law School was located. I realize that you went to Law School in the Elks building, is that correct?

SPEAKER: Green

Yes. Well, let me put it this way. I went to school in and I started teaching in the Law School building across Broad Street from the campus, which was a converted club building.

SPEAKER: ECS

What were the facilities in that building? Did it have a Moot Court room?

SPEAKER: Green

We had no court room. Rooms had been furnished as class rooms and offices but the structure was not built for a school. The library was inadequate. The new building was badly needed, and that is the reason that they started the reorganization of the school by planning a new building. However, the reorganization took place, at least in part, before the building was ready. The reorganization began in 1929, whereas the building as I recall, was ready for occupation about 1932.

SPEAKER: ECS

Was it during that time, after they moved into this building, that the Library got a set of the National Reporter System? Do you remember?

SPEAKER: Green

I don't know what the Library contained at the time that we were in the old building. It was certainly not a very good place, as it was difficult to operate the Library in such a confined area. The supply of books for the Library was greatly enlarged after the move. I don't recall exactly what was in the old building Library.

SPEAKER: ECS

Can you evaluate, to the best of your ability, the education you got under the old Law School and the education you think students have gotten from the case method as the new method of teaching?

SPEAKER: Green

I'll start by saying that some great lawyers were developed in the old school before the reorganization. Many of the leading lawyers went to that school. Many of the students of the old school developed into very fine lawyers who were members of the leading firms of Atlanta and other cities in Georgia and virtually in all parts of the State. But the Law School has developed tremendously since the reorganization. I think there is no doubt that, in some respects, a better education is given today.

SPEAKER: ECS

You taught under the lecture method. There is sometimes the implication that the only thing the instructor was obligated to do under the lecture method was in fact to lecture. There was no class participation. Is that correct?

SPEAKER: Green

My recollection is that the students of some professors were questioned and did take part. It depended on the individual instructor. I remember one member of the faculty during that period who used a sort of a case method, but lectured entirely. He did not ask the students to describe the case or state the case. He would do that and then lecture and discuss the principle involved and so on. In other words, in that class, the instruction consisted of a lecture

and an examination at the end of the course. Other professors, although they didn't use the case method, did not depend entirely on lectures, but made assignments in a treatise and called on the students to recite.

SPEAKER: ECS

Did they give assignments for reading?

SPEAKER: Green

Oh, yes. They gave assignments and then questioned the students in the next class.

SPEAKER: ECS

What kind of textbooks would they be assigned to read?

SPEAKER: Green

Legal treatises, books that were probably produced for practicing lawyers.

SPEAKER: ECS

Did Gober, for example, design his own textbook for students?

SPEAKER: Green

I don't remember that. I think that under the system that was then in use, that is at the time I was there, that that would have been appropriate. He may have done so, but that was a long time ago, and I don't recall.

SPEAKER: ECS

Did you feel like the case method was a better system of teaching law than the lecture was?

SPEAKER: Green

I believe that is the accepted view. The accrediting agencies approved and the best law schools used the case method. However, I think

that some schools have, in addition to the case method, some other methods of instruction. I think that it was possible, as I tried to indicate previously, to train lawyers and get good results under the lecture and quiz system. It lacks one thing. It does not require the student to do as much thinking. He can memorize what he has read and get by on that.

SPEAKER: ECS

Did the students have any outline to purchase at that time to help them with their courses? Anything of that nature?

SPEAKER: Green

I don't think that they had those outlines then, but later on when they had to face the case method, they did. Perhaps that is the weakness of the case method. They could obtain those aids and didn't really have to analyze the case because it was already done for them.

SPEAKER: ECS

In the 1930's, the Law School was very small. When you came back in 1946, it was much larger. Did you find any difficulty in making adjustments as a teacher from small classes to larger groups?

SPEAKER: Green

I don't remember that I did. Of course, you have a problem when you get around to the exam papers, you have a great many papers to read and grade. But as far as conducting the class was concerned, I believe that I used pretty much the same approach and handled it the same way except that there is the problem of making one's self heard in a big classroom.

SPEAKER: ECS

When the Dean assigned courses to you, did you frequently have a change of courses? In other words, I know you taught evidence for a long time, but did you frequently have to teach other courses?

SPEAKER: Green

I don't remember that I was assigned courses for a temporary period of time. I did teach some courses and then, for one reason or another, gave it up and changed the course, but I believe that was probably not planned. I don't recall being assigned a temporary course.

I asked for the course in evidence, and had to give up another course in order to do so. I don't remember what it was. So, my courses did change, and during my teaching career I taught many courses.

After I became the senior member of the faculty, I was allowed to express some preference, but I don't think that I changed any others than to get evidence. I did, however, at the request of the Dean, sometimes give up a course and take on a new course, so that in the early part of my teaching I taught a number of courses that I did not teach all the way through my career.

SPEAKER: ECS

I want to ask you how you expected your students to prepare for your class. Did you expect them to recite?

SPEAKER: Green

The assignments made in most of my classes were to read casebooks which had been selected for the course. I expected the students to read the cases that were assigned and to understand them. When I called on them, I expected them to show an understanding of the case that was being asked about.

SPEAKER: ECS

You expected them to brief the cases before they came to class?

SPEAKER: Green

Yes. I did not insist on the making of briefs, but if a student asked for information I would recommend it. I may have, from time to time, recommended in an announcement that the class do a brief, but I am not sure. I haven't taught for fourteen years. I have forgotten some of the things that happened in my career.

SPEAKER: ECS

From whom did you pattern your teaching techniques?

SPEAKER: Green

I don't know. That was a long time ago.

SPEAKER: ECS

Well did you change your method of teaching over the years that you remember? In other words, when you first started out, did you question more closely on the cases, general principles, or other related matters, and then gradually start backtracking to fill in the gaps?

SPEAKER: Green

I don't think I changed radically. I probably learned something myself. I tried to keep an open mind and I hope that my teaching improved from year to year. I can't state any generality that would apply to my teaching over the years. I would think that it changed, my methods changed some, but I couldn't point out any specifics.

SPEAKER: ECS

Describe the change around the Law School when Dean Cowen came.

SPEAKER: Green

Dean Cowen was a progressive Dean and did much for the Law School. He brought in new, very competent teachers and the Law School progressed under his leadership. I think there was a great change for the better during the time he served as Dean.

SPEAKER: ECS

What were some of the changes you saw that he made?

SPEAKER: Green

Well, those that I was most conscious of were in the faculty. He enlarged the faculty and improved the personnel by his appointment.

SPEAKER: ECS

Did he plan a new annex to the building or was there already a plan?

SPEAKER: Green

No, he did not. Dean Hosch and John Rees deserve the credit for the next to the last addition to the law building, before this recent Library Annex was built. In other words, they planned and put into execution the next to the last addition that was made to the Law School building. Those two men were responsible for that.

SPEAKER: ECS

Did Hosch have the money to proceed with the new building or did that come later, after Cowen came? Had the money already been allocated? For example, where were the classes held while the Law School was being constructed? I am sure they must have been held in other buildings.

SPEAKER: Green

I remember this very clearly, we occupied our offices during the

making of the addition in spite of loud noise from the construction.
After conferring with one of my colleagues I believe that we did
not use classrooms in other buildings but simply endured the noise.