

ORAL HISTORY OF JUDGE JAMES ROBERTSON

This interview is being conducted on behalf of the Oral History Project of The Historical Society of the District of Columbia Circuit. The interviewer is Ann Allen, and the interviewee is James Robertson. The interview took place at the offices of JAMS, 555 13th Street, N.W., in Washington, D.C., on July 28, 2015. This is the seventh interview.

MS. ALLEN: Judge Robertson, do you have a statement you would like to make for the record?

MR. ROBERTSON: I do actually. I have spent some time in the last couple of days going over one of the recent transcripts, and I realized that the transcriber of these tapes is accurate to a fault. Lawyers are used to being embarrassed to read what they have actually said when it comes back on a transcript, but the embarrassment seems to have diminished over the years because court reporters seem to give a break to judges, and then when you see a transcript of what I said on bench, it doesn't have all of the "uhms" and throat clearings and quiet chuckles and restarting sentences that appear in this transcript. So just for the record, I have edited this transcript to make me look much more articulate than I really am. End of statement
[laughter].

MS. ALLEN: An excellent statement. All of us have our "uhms" and "ers" on record. I think we're winding down, or moving slowly, to the end of this interview, which I have really enjoyed immensely, and I know there are a few things that you just wanted to talk about briefly, so I'm going to turn it over to you with a softball question of what would you like to discuss first.

MR. ROBERTSON: This interview and oral history is being done under the auspices of and for the D.C. Circuit Historical Society of which I have been a member and a supporter, if not a terribly active participant, for some years. I am a fan of history and I read history. It's a little daunting actually to think that I am history or that history pays attention to anything that a district judge does or thinks or has done. I remember just before I became a judge and after I learned that I was going to be nominated, I spoke to a partner at the Cravath firm. I was up in New York with my wife and felt a little puffed up and I said, "I'm going to be a district judge." And he said, "Well, two things you need to know. First of all, you will never know again whether you have a funny joke." And he said, "You have to remember that district judges write on water." What we write disappears. It's not precedent. Nobody pays attention to it unless the court of appeals rules on it. And with a very few exceptions of very famous and well-noted district judges that, of course, has proven to be true, so that the cases that I have decided probably have very little historic value.

We have talked about, I think, two of them, the two occasions on which the Supreme Court reversed the Court of Appeals which had reversed me. And I have waxed, if not eloquent, at least delighted, about those cases, because it doesn't get any better than to have the Supreme Court reverse the Court of Appeals who reversed you. Those are the *Hamdan* and *Hubbell* cases.

If you look on Wikipedia, or if anybody wants to know anything else that I've done that is noteworthy, you will probably find references to the *Schroer* case and to a case called *American Council of the Blind* and I'm going to mention them briefly and say a little something about them.

Schroer was a decorated Army Special Forces Ranger Colonel who retired from the Army and was looking around for something to do and saw an advertisement by the Library of Congress that they needed a terrorism expert to do research, and that was right up his alley. That's what he had done in the Armed Forces. He was a combat veteran. So he applied for the job. The Library of Congress was thrilled to have him apply for the job, and he got an enthusiastic offer which he enthusiastically accepted. And then the next day or shortly thereafter, he called up his new boss and said, "I think we should have lunch." So they went out to lunch, and at lunch he said to her, "You should know that when I report for work next month, I'm going to be wearing a dress, because I am transgender and I am preparing myself as I am required to do before all of the formal surgery and so forth is done. I'm required to live as a woman for a certain length of time." The person with whom he was having lunch said "Oh," and went back to the Library of Congress and consulted with the Office of General Counsel and called him up and said maybe not. Maybe not. He was represented by the ACLU. Art Spitzer and others filed suit. The suit landed before me, and I didn't quite know what to make of it because Title VII of the Civil Rights Act of 1964,

which is the core discrimination statute, protected against discrimination “on account of sex” but had been construed up until then not to provide any protection either for homosexuals – nor had there been any mention of transgender persons. And frankly, I being sort of a conservative, or if not conservative, a not very adventurous judge, thought that that was probably the solution I was going to have to reach in this case. But I had a law clerk, and I’m going to name him here because he deserves a lot of credit for the decision I finally entered in the case. His name is Matt Peed. And Matt Peed came from Georgia and Duke Law School, and was, I think it’s fair to say, of a conservative mindset when he came to me, but Matt retired into his office, and I didn’t see him for weeks. He was studying, and reading, and thinking and agonizing about this case. He came to see me finally, and he said, “Judge, we have to deny this motion to dismiss. There is protection under the statute, and we can find it, and there is a case out in Illinois in which a judge decided something like this and we should follow that reasoning and we should rule in favor of Schroer.” And then I started to wrestle with it. And Matt and I wrestled and wrestled until we came up with an opinion denying the motion to dismiss. Ultimately Schroer, whose name I think now is Linda Schroer, won a substantial judgment in my court.

The amazing thing about this story is that not only was it the first time that any transgender person has been granted rights under Title VII in this country, but within 15 minutes after that decision was filed

electronically in the Court CM-ECF system, somebody had edited Wikipedia to note this. (I should note that this discovery was made by a law clerk!) The LGBT websites, of which there are many, many, many, lighted up with news, and I was the hero of the LGBT movement for a day or two until they went on to something else.

But speaking of writing on the water, that decision was not appealed by either side. I granted a little bit to the government and I granted a little bit to – I think I did not grant her what's called front pay. Both sides had reason to appeal, and neither side did. The ACLU didn't really want to hazard that opinion to the tender mercies of the Court of Appeals. And the government, the Library of Congress, had the same reaction, so nobody appealed. You can find the opinion out there, but I doubt that it's ever been cited by anybody anywhere. It's an interesting commentary on the way the law works.

The other quirky case that appears on Wikipedia if you Google it, you will find some reference to a case called *American Council of the Blind*. The American Council of the Blind filed suit and said that the United States Department of the Treasury was violating discrimination laws by refusing to issue currency that accommodated the needs of blind or other visually challenged people who could not tell a one-dollar bill from a five-dollar bill from a ten-dollar bill from a twenty-dollar bill, unlike almost every other country in the world which does provide ways for visually impaired people to sort out their money. For example, the

5 Euro bill is smaller than the 10 Euro and so forth. The Pound or the Deutsche Mark or almost any other major currency in the world, there are size differences, vivid color differences, or in some way tactile differences.

MS. ALLEN: A lot of foreign currencies have writing on the edge.

MR. ROBERTSON: Right. Embossing or writing on the edge or additives. It turned out that there are two organizations for the blind and the visually impaired, and they were at odds about this case. The American Council of the Blind was the plaintiff in the case, and the other group, I've forgotten the name of it, but they were either amicus against it or didn't think we should make a big thing of it or thought there was something sort of discriminatory about singling out blind people. In any event, after a lengthy hearing and after quite a long time waiting for briefs, I decided that the Council for the Blind was correct, and I issued an order to the United States Department of the Treasury that they redesign the currency so that it would be accessible to blind people. Well, that case wound up on Stephen Colbert's *Daily Show*.

MS. ALLEN: Really?

MR. ROBERTSON: Colbert had great fun with this opinion. You may be able to find it on YouTube. He had somebody make up a five-dollar bill that had fur on one side of it, and I've forgotten what else, but he had fun with it. Oh and by the way, the Court of Appeals, Judge Judy Rogers writing, affirmed me in that case I am happy to say.

MS. ALLEN: Excellent. What did the Department of the Treasury say?

MR. ROBERTSON: Well, they first of all made the accurate point that by statute nobody can mess with the one-dollar bill. The one-dollar bill is a greenback. It's got George Washington on it. It's protected by statute. Well, that's fine. Keep the one-dollar bill and change everything else. So finally the case was settled with the Treasury Department agreeing that the next time any major bill was redesigned – they wouldn't redesign them all at once because it's incredibly expensive and they have to plan for phasing money out and so forth – but the next time bills were redesigned, they would make some accommodation, and basically we were going to have to leave it to them as to how to do it, but they were going to do it.

A few weeks ago I had occasion to go to the bank and get a few \$100 bills which my wife and I wanted to give to one of our grandchildren for the occasion of a graduation. I don't deal with \$100 bills. You can get \$100 bills out of the ATMs in Las Vegas, but not around here. The \$100 bill to my surprise and pleasure has indeed been redesigned, and if you look at it, you can see that it has a sort of foil strip on it.

MS. ALLEN: I hadn't noticed that. I don't really deal in \$100 bills.

MR. ROBERTSON: I don't either, but you can feel that it's a \$100 bill. Well the wheels of justice grind slow but exceedingly fine, and I was very pleased to see that. So *The Council for the Blind* and *Schroer* ensure that if there is any legal legacy that I leave behind, it's probably those two cases and *Hubbell*. So much for writing on water.

MS. ALLEN: If you don't have many cases going to trial, there are not a lot of opportunities to write.

MR. ROBERTSON: Well, it might work that way. You end up writing more for the cases that don't go to trial because the cases that go to trial get decided by a jury and it's yes or no. The verdict is guilty or not guilty. It's plaintiff or defendant and so many dollars. You may write an opinion along the way or after or a challenge to it, but you don't write as much for a case that is actually being tried. And, of course, I think I probably wrote something like 1,000 published opinions. Frankly, I didn't keep track of it. But if you go back and look at them, as I do from time to time, you find some decisions that actually have been cited elsewhere and are somewhat important. But they are just minor points along the way, and they are frankly not all that memorable. I wrote a few opinions in the pharmaceutical field that received some notice. I wrote one opinion in the antitrust field which 50% of the antitrust bar absolutely loved and thought it was groundbreaking, the other 50% disapproved of it, and so did the Court of Appeals. So that one is gone, too. That one involved baby food.

So you really don't, I don't at least, spend much time thinking about or remembering or unearthing or doing archeology on the actual cases I've decided. You decide them, you write the opinion and you move on. One case that I made a note to you and to myself to talk about is the *Cobell* case. Have I talked about that in previous sessions?

MS. ALLEN: You have not.

MR. ROBERTSON: Well, *Cobell* was a famous case. Still is. Eloise Cobell was a Native American. I've forgotten which tribe she was from, somewhere up in the Northern Plain states, Blackfeet, perhaps, who brought suit against the United States Department of the Interior, also the Department of Treasury, but mostly the Department of the Interior and the Indian Affairs Section of the Department of the Interior, complaining about the behavior of the United States over the previous 125 years in dealing with the trust accounts of Native Americans. It's a very, very long story and one that frankly I'm not prepared to talk about in any detail this morning. I don't need to anyway because so much has been written about it. *Cobell*, when it was originally filed, was assigned to Judge Royce Lamberth. Judge Lamberth labored with and over that case for, I think, 13 years, issuing opinion after opinion after opinion and dealing with appeal after appeal after appeal. I think there were nine trips to the Court of Appeals. The suit was so complicated and the attorneys were so combative that the case developed its own toxicity really within the small group of people who were litigating it. The plaintiff's lawyers and the Justice Department lawyers did not get along, and that's a euphemism for the way they behaved. Judge Lamberth became increasingly disturbed by what he saw as the behavior of the federal government in not producing documents, not producing information, and resisting much of what the plaintiffs wanted. But in fairness, some of the lawyers on the plaintiff's side were pretty outrageously difficult people.

I won't try to reconstruct the whole history of it, but suffice it to say there came a time, sometime around 2008, when the Court of Appeals had had enough of whatever they saw that was happening in this case, and they not only reversed Judge Lamberth but remanded the case with instructions to the court, which meant to the Chief Judge, to assign another judge to the case. In other words, they fired Judge Lamberth from the case. That was shocking. To my knowledge, they had only done that once before that I knew of which was when they took the Microsoft case away from Judge Jackson. They may have taken a case away from Judge Sporkin. But Royce Lamberth was the next most senior judge on our court after Tom Hogan, who was still the Chief Judge. He was about to become Chief Judge himself, was universally respected among other judges on our court and on the Court of Appeals for being a hard worker, a call-it-as-he-sees-it, stand-up straight-forward judge. If he had one characteristic that may have gotten him into trouble with the Court of Appeals, it was that Royce Lamberth was never afraid to use all the power that a judge has to sanction or hold people in contempt. And at one point, he held the Secretary of the Interior in contempt. He may have held the Secretary of the Treasury in contempt. He was, shall we say, frustrated with the government. But the Court of Appeals said 'no more Lamberth, give it to somebody else.' Well, I confess here that I volunteered for the case.

MS. ALLEN: You did?

MR. ROBERTSON: I did. I suppose for the sake of history, I'll make that confession right out in front of everybody. I volunteered for it because I had my own theory about the way warring lawyers should be dealt with. And the theory was partly home-grown and it was partly the offshoot of a speech I once heard by Judge Robert Merhige. Have I mentioned him before?

MS. ALLEN: No. It's such a distinguished name from the past.

MR. ROBERTSON: Judge Merhige, of the Eastern District of Virginia, sitting down in Richmond, gave a talk at one of our judicial conferences here maybe 25 years ago, which I attended and heard and it stuck in my mind. He said the way to deal with the problem of incivility among lawyers is not to pass rules or sanction people but to lead by example. And he said that when he was a practicing lawyer and a new case came into his office, he made it a habit to call the lawyer on the other side and say 'Let's go out and have lunch together.' And he said that when you break bread with another lawyer, you get to know him a little bit, you can talk about the children, you can talk about their backgrounds. It's awfully hard to yell and scream and be nasty to them in court. Such a simple yet human way of dealing with conflict.

One of the first things I did when I got the *Cobell* case was to bring all of the lawyers together. I remember we sat in a jury room some place, and I've forgotten whose jury room, and the electricity in that room was palpable. You could see that the lawyers could hardly stand to be in the same room together. That's how bad it had gotten. There was one lawyer

in particular on the plaintiff's side and I, for the sake of his privacy and maybe my liability, won't mention him. But everybody who was involved in the case knows who I am talking about. He was just impossible. And that poison had spread everywhere. Well, long story a little bit shorter, after that meeting I recalled for these people the Merhige story and I said that I wanted them to go have lunch together. I said as a matter of fact, come and have lunch in the judges' dining room. So it was a little strained, it was a little awkward, but we all had lunch together.

MS. ALLEN: In the dining room?

MR. ROBERTSON: In the judges dining room, and slowly but surely people began to warm up a little bit to each other. Well, I don't mean to put too much weight on that little trick, but suffice it to say that after a couple of hearings and a couple of long opinions – and I'm going to name another law clerk here who was critical to this effort, her name is Emily Coward. Emily was indispensable in helping me through the two long opinions that I issued in this case. They led up to the settlement of the case. The case was settled just before I retired. Now I have dined out on that settlement ever since. My JAMS publicity thing says that I settled the *Cobell* case.

I just recently facilitated, I would have to say, the settlement of another major Indian claims case in which I was selected by the Justice Department and by the Indian tribes because of the work that I had done in the *Cobell* case. But the historical purposes of this interview would not be served if I sat here and told you that it was I who settled the *Cobell* case.

The *Cobell* case was settled principally because the Obama government had decided that it wanted it settled. There were four people in the Interior Department and the Justice Department who basically got it done.

MS. ALLEN: These were Obama appointees?

MR. ROBERTSON: They were Obama appointees. One was Ken Salazar, who was the Secretary of the Interior, one was David Hayes who was the Under-Secretary of the Department of the Interior, and, by the way, had been an Oberdorfer law clerk. The third was Hillary Tompkins, the Solicitor of the Department of the Interior, which is like General Counsel of the Department of the Interior. And the fourth was Tom Perelli, who was either the Deputy Attorney General or maybe an Assistant Attorney General. Those people did what they had to do to pull the right levers to get this case settled. And it settled for a huge amount of money – I think \$3.4 billion dollars. They had to go to Congress to get enough money to fund it. I'm happy to accept all of the accolades that come to me for settling that case. When Royce Lamberth presided over my portrait hanging, he was kind enough to mention the *Cobell* case and to give me credit for settling the case. But the case wouldn't have settled without the people that I just mentioned. Now, the alumni of the case. Steve Harper was a plaintiff's lawyers, and not, by the way, the obstreperous one [laughter]. Steve Harper is now an Ambassador.

And life has gone on. Eloise Cobell has passed on. But the *Cobell* case was really quite a tour de force for me, for Royce Lamberth, for the

nine opinions of the Court of Appeals, for Secretary Salazar, who by the way is now a partner in my old law firm of Wilmer Cutler Pickering Hale and Dorr and who was importantly involved in the settlement of the most recent Indian case that I was a mediator of. So what goes around, comes around. Salazar is still an important player in that field.

I think that tape recorder ought to be filed with the Historical Society with the transcript of this because it has done yeoman's work in this history and it is obviously a historical object all by itself.

MS. ALLEN: I think I told you my 6-year-old granddaughter when she saw the tape recorder said, "What's that?" [laughter].

MR. ROBERTSON: Some two or three years after I became a judge, I had some lawyers before me in the courtroom one morning who were very, very serious and very anxious and very distressed about some discovery disputes they were having. It was for them a real nail biter and they were upset and angry with each other and I issued an opinion at the close of that thing. Not an opinion, but about a two-line order ruling on the dispute and telling the lawyers to "lighten up." And that little two line order went viral or whatever the pre-Twitter, pre-YouTube version of going viral was. It was circulated by emails all over the country and I got a lot of responses from old friends who thought that was pretty funny. As I was saying earlier, I think lighten up would be a pretty good inscription to put on my tombstone. I'm going to see what I can do to make that happen. And speaking of fun, the other really fun case I had was one of the birther

cases. And birther is now a well-known word meaning cases that challenge the citizenship of Barack Obama. The case was filed by a former Marine officer, long since retired, and now, I think a retired reserve officer who hadn't been in uniform for many, many years, but whose complaint said that he was still technically subject to recall in the Armed Forces of the United States, if ordered to do so by the Commander in Chief. And who could not be certain if the person purported to be Commander in Chief was actually his Commander in Chief. Because it hadn't been proven that he was born in the United States. Well, it turned out – I dismissed the case in an opinion that I will cheerfully confess was snarky. I made the comment somewhere in the opinion that many people, perhaps as many as a few dozen, were convinced that Barack Obama had not been born in the United States and I got all kinds of hate mail for that comment about only a few dozen of them. But I think for the first, or maybe the second time in my 16 years on the bench, I issued with the opinion an order to the lawyer who signed the complaint to show cause as to why he should not be sanctioned for violating Rule 11. Well the lawyer turned out to be an 80-year-old man in Washington who had had – and I use the verb form very deliberately – who had had a distinguished career. I think he may have even been a Rhodes Scholar at some point in his life, but he had apparently gone off the rails and filed this kooky lawsuit. And to make a long story short, he responded to the show cause order with a blistering response. And I wound up issuing some sort of letter of censure

and no financial sanction at all. The birther case ended with a whimper instead of with a bang. But it is something of a footnote to my “legacy,” whatever it is. I often think that the real legacy that I leave to the judiciary and to the legal system of the United States, has nothing to do with any case over which I presided. It has to do with something called Oscar.

MS. ALLEN: Oscar. Is Oscar an acronym?

MR. ROBERTSON: OSCAR is an acronym. It was selected by the late, lamented, famous and revered Third Circuit Judge Eddie Becker. Judge Becker helped me with the creation, implementation and roll out of a computerized system, an online computerized system, for dealing with the flood of paper that came in every year for law clerk applications. OSCAR stands for on-line system for clerkship applications and review. That’s OSCAR. Here’s the story. I had been, as I think I indicated earlier, the chair of the Judicial Conference Committee on Information Technology. That was a very, very interesting job, and I enjoyed doing it very much. And somewhere about the second year of that assignment I got it into my head that the way we were dealing with law clerk applications was just crazy. Every year it all happened on a day certain because by gentleman’s agreement the whole judiciary had established a nationwide calendar. All law students take a course in procrastination in law school and learn to live by deadlines. On the agreed deadline, the mailman would arrive with hand trucks full of boxes full of applications from law clerk applicants. Applications that would come in by FedEx, UPS, regular mail and express mail. They’d

come in in huge envelopes and then letters started coming in from law professors and people recommending candidates. The recommendations would have to be married with the applications, and then somebody would have to go through the applications and sort them out and do a first cut. And I'm talking about 400 or 500 applications every year, all or most of them arriving simultaneously.

MS. ALLEN: Wow.

MR. ROBERTSON: In the Court of Appeals, 1,000 applications. In fact, one year I did get 1,000 applications or more in my chambers. So it was an enormous burden, and every year it got worse and worse because clerkships became more and more important to people looking for jobs. And I said there's got to be an easier way to do this. I started asking questions in the judiciary. Well, the Office of the Director of the Administrative Office of the US Courts had a lot of IT people, but they didn't want to deal with it. It was just too complicated. And they said why don't you go to the Federal Judicial Center, because they've got IT people there too. The Federal Judicial Center said no, we don't want to deal with it either. I'm making a long story. It really was a tedious story, because there were turf wars between the Federal Judicial Center and the Administrative Office for years, about IT stuff and lots of other issues. Neither team wanted to handle it, and I finally said, "You know, we don't have to invent the solution here, we can buy this stuff off the shelf." Long story a little bit shorter, I got some people together and we put together some rough

requirements for what we'd like to see and we got a request for proposals out to five or six providers of software to see if any of them were interested in adapting this program.

We put together a small committee and Judge Becker was one of them. Judge Lamberth was very helpful on this one. He had been involved with the IT Committee. In fact, I took his place on the IT Committee. And there were two or three others. And we had a committee and we supervised the work of this off-site guy who was developing the program. And ultimately the product that we rolled out was the product that we now know as OSCAR. There was a period of two or three years when it was hard to get people to buy into it. Some judges didn't trust it. They thought it would encourage people to send too many applications. There were people who didn't want to deal with it. But OSCAR finally became the standard for law clerk applications. And what it enabled a judge to do was to make a quick review of all the applications that came in. So, if, for example, I wanted only law students from Harvard, Yale, Michigan, Virginia, Pennsylvania, Georgetown, Stanford and Berkeley – which unfortunately many judges do – I would screen for those. Those are the only ones that I would read. Or if I wanted only somebody who was in the top 10 percent of the class, I could screen for that. Or if I wanted someone who had experience in the singing of barbershop quartets, I could do that. Actually, that's not so far off the mark. There is a judge in the Eastern District of Virginia, in Alexandria who routinely looks for clerks

who have singing experience because she likes to sing. And her clerks sing with her in choirs and singing groups and so forth. It's perfectly okay with me. And it also provided automatically for letters of recommendation to marry with the clerkship application so that you could see everything in one screen, in one program. You could screen what you wanted, put together what you wanted, you could get it down to the 15 or 20 folks you wanted to interview and then go from there.

MS. ALLEN: And OSCAR churns on today?

MR. ROBERTSON: OSCAR is still there as far as I know and is still doing well. The last thing I want to mention has to do with law clerks. I'm sure I have said earlier somewhere in this history that having law clerks is one of the great joys and benefits of being a judge in the first place. But I've had about 35 of them. They are so much a part of the whole experience. And they have been so important to the work that I have been doing that I'd almost like to add an addendum of this thing identifying them. But I, just for the hell of it, I have pulled up on my iPhone, a spreadsheet that I have of all the addresses, of hundreds of peoples' names and addresses. And I have them sorted. So here are my law clerks. The first two were Claudia Salem and Mike Yeager. Claudia had been an intern for Judge Urbina. Michael Yeager was my younger son's best friend. They rode bicycles together across the country after they graduated from high school. Michael grew up across the street from us. And I was a brand new judge and I didn't know who I was hiring and I hired Michael Yeager. Yeager and Salem

are now both involved in the immigration business, if you will. Claudia is in the Office of the General Counsel at the Immigration and Naturalization Service and Michael Yeager is doing congressional relations work for INS or one of the new alphabet soups that has to do with border control. The next two were Charlie Moore and Syd Patel. Charlie Moore was a late applicant for the job. He had been I think number 1 or 2 in his class at Stanford Law School. A brilliant fellow. Syd I think is referred to as a second generation immigrant. Her parents both came from India. She was raised in this country and went to law school at Yale. Brilliant, wonderful people. Neither one of them is still a lawyer. Charlie went on from me to clerk for Judge Tatel, went on from Tatel to clerk for Justice Breyer, went to Williams & Connolly for a while and then escaped into the money and is now doing, I don't know, not a hedge fund but he's doing private equity in New York and is probably worth three times, ten times, fifteen times what any of the rest of us are. But Charlie was one of the smartest people I ever met in my life. Syd is brilliant, too. She is a poet. And we talked earlier about lawyers who were contract lawyers who went to work for a few months so they could be sculptors?

MS. ALLEN: Right.

MR. ROBERTSON: Syd is a poet. She has a poetic soul. She came to me after doing a lot of research on bride burning in India because a cousin of hers had been a victim of the whole bride burning thing, and she was more interested in the human rights part of things than she was in the law. She married at the

end of my clerkship. She had a clerkship with Judy Rogers after mine, but she didn't do it because she got married. Then she got divorced. And now she's living out in California. Long story.

MS. ALLEN: Not practicing law?

MR. ROBERTSON: She's writing. She's teaching yoga. She's living in Haight-Ashbury and she's happy.

MS. ALLEN: Good.

MR. ROBERTSON: Then came the dynamic duo of Sean Fox and Lisa Stevenson. They were kind of my all-American law clerks. Sean was an athlete and had been a White House fellow and was the leader of the law clerk's softball team at the Courthouse and was clearly a leader. Absolutely a leader. And Lisa, who was British born, had gone to the University of Michigan. Sean is now running a dot com company in California, not a lawyer anymore. And Lisa Stevenson is, or recently was, I think is, Acting General Counsel of the Federal Election Commission, which is a vexed job. She had been a partner at the Zuckerman Spaeder firm, and she's now over there. A huge job. Then came Stephanie Marx and Todd Richman.

MS. ALLEN: Did you always have a woman and man?

MR. ROBERTSON: No. It happened that way. I was trying to be even handed but I wasn't. It wasn't deliberately woman and man. Stephanie has probably gone as far as any of my law clerks in government. She is now in the White House General Counsel's office doing all kinds of sophisticated stuff. Before that she was Senator Schumer's – I think she was his Chief of Staff. She

had a big job. She, by the way, is married to a partner of the Wilmer Hale firm, and, by the way, I did her wedding. And I did Syd Patel's wedding.

MS. ALLEN: You were saying earlier that you went online?

MR. ROBERTSON: Oh yes. I did tell you that, but that was much later.

MR. ROBERTSON: Stephanie's co-clerk was a guy named Todd Richman who worked for a Boston law firm for a while and is now a Federal public defender across the river in Alexandria. After Richman came Cassie Motz and Harry Wingo, two fabulous people. Both Yalies. Cassie is the daughter of two judges, Fred Motz of the District of Maryland and Diana Motz of the Fourth Circuit, and she is the granddaughter of Daniel Gribbon of the Covington & Burling firm, so she was born to the purple, no question about that at all. She worked for a while as a Special Assistant to the Attorney General of Maryland, who is now a candidate for President of the United States. She has left that job and is now running a foundation in Baltimore, doing good works there. I did her wedding too.

Harry was an NCAA boxing champion at the Naval Academy, a Navy Seal, a Yale law student, an African American. It was great fun to walk down the street with Harry Wingo. He was always checking the buildings to make sure there were no snipers nearby because he was hard-wired into this whole military security thing. It took Harry six months to stop saying "sir" at the beginning and end of each sentence that he spoke to me. There's a long story about Harry which I guess I will not put on this tape. But anybody who meets Harry should ask him about his ride in

a sports car on his first vacation from Naval Academy, when he and a classmate of his were riding with two young ladies and somebody got into the back seat with a knife. Shall I finish that story?

MS. ALLEN: Yes [laughter].

MR. ROBERTSON: Harry was a brand new midshipman at the Naval Academy, African American kid, home for his first vacation, went out for a date with a young woman and one of his classmates was in the back seat with another young woman. I guess it wasn't that small a sports car, but it was a small car. They were driving along and some nut jumped in the back seat of the car and said "Drive." Kind of a carjacking thing.

MS. ALLEN: Sounds like a movie.

MR. ROBERTSON: Harry began thinking about how he was going to solve this problem, and once again, to make a long story short – he tells a rather long story of driving up and down Connecticut Avenue and being told what to do – began to think, well, do I do this or do I not. Finally he did. He smashed the car into another one and used the moment of confusion to turn around, jump into the back seat, grabbed the guy with his hands, and put his eye out with his thumb.

MS. ALLEN: I mean under the circumstances

MR. ROBERTSON: Whereupon, of course, the police gathered and Harry was braced up against the car because young black guys in cars are obviously guilty of something. But when the cops realized what he'd done, he became --

MS. ALLEN: A hero.

MR. ROBERTSON: A hero – of the cops and at the Naval Academy and every place else. And the story has gone with Harry all of his life. And anybody who knows Harry knows to be careful.

MS. ALLEN: So what is he doing now?

MR. ROBERTSON: He is now the President of the Washington, D.C. Chamber of Commerce. A distinguished job for a distinguished guy. I'm deliberately doing this because I am so proud of my law clerks that I really think I should cover this ground.

MS. ALLEN: It's very interesting. They've done such a variety of different things.

MR. ROBERTSON: The next two law clerks were Sean Palmer and Matt Solomon. Two men. Sean went from my chambers to Covington & Burling, but he moved to Amsterdam with his partner four or five years ago, and I frankly haven't heard much of him since then. He was doing great before he went and I'm very fond of him. Sean's co-clerk was Matt Solomon. Matt has had a very distinguished government career as an AUSA in the Fraud Section of the Justice Department, and now I think is Deputy Chief of Enforcement at the Securities and Exchange Commission. Very distinguished government service. I did Matt's wedding.

After two men, came two women, Stephanie Brooker and Kelly Cochran. Stephanie went on to become law clerk to Judge Motz, the Fourth Circuit Judge Motz. From there she became an Assistant United States Attorney and served with great distinction for a number of years. And now she has a very high position in the group which calls itself

FinCEN. I don't remember what the alphabet soup stands for but it's financial. It's part of the new government, all new Dodd-Frank financial enforcement establishment. Kelly is now with the Treasury Department doing the same kind of enforcement work. Kelly went first to Wilmer, Cutler, Pickering, Hale & Dorr – then Wilmer, Cutler & Pickering – and then into the Treasury Department, where she is now serving in financial enforcement. After Kelly and Stephanie came Jihee Suh and Vassily Thomadakis, my ethnic clerkships. Jihee is second-generation Korean. She is now working as an Assistant United States Attorney in New Jersey. Vassily Thomadakis is second-generation Greek, now working as an Assistant United States Attorney in Boston. Both of them came to see me in Washington faithfully every once in a while. Jihee was here for a reunion I had last year. She is a wonderful woman. I wish we could get her back to Washington in some government job, and I haven't given up hoping that she will come back. Vassily, same thing. I don't know how he stays away. He's a great Georgetown basketball fan. He will come down here four or five times a year just to see a basketball game. His mother was a very distinguished historian and professor and academic at Harvard and connected with Dumbarton Oaks. She was very important at Dumbarton Oaks at one time.

Where are we? We've gotten as far as Lisa Kaufman and Ashley Lunkenheimer – two women, both distinguished collegiate rugby players.

MS. ALLEN: They both played rugby?

MR. ROBERTSON: They both played rugby and they both were all-stars.

MS. ALLEN: Did you know that?

MR. ROBERTSON: I did not when I hired them, but they were both all-star and NCAA top-gun rugby players. Ashley is the daughter of a well-known United States Attorney from Philadelphia and is now back in Philadelphia where she too is an Assistant United States Attorney, married to her partner and they are the parents of three children, two of which were born within months of each other. Ashley used to tell a hilarious story of going to birthing class with her partner. Because they were required to do slow dancing and they were both out to here with their pregnancies. Ashley is fabulous fun.

Lisa Kaufman married a park ranger and moved to the mountains of California where she and he built a house. She comes down from the mountains to work as a permanent law clerk for a federal judge in Fresno. And the last I heard she is still doing that. So that was two women rugby players.

That brings me to Rob Ditzion and Mona Sahaf. Rob and Mona were the two law clerks that I had when I decided that *Hamdan* case and I believe I have mentioned them both.

MS. ALLEN: Yes, you did.

MR. ROBERTSON: Rob went to work for a plaintiffs' law firm outside the Boston area and has recently moved to the Massachusetts Attorney General's office. Mona was an Assistant United States Attorney here and has also moved recently into the financial enforcement field with one of the government agencies,

but I frankly lose track of which agency is which. She, Stephanie Brooker, and Kelly Cochran are all in the same field.

Ruza Afram, now Ruza Shellaway, and Matt Peed were my next two law clerks. Ruza started at what used to be called Hogan & Hartson, now Hogan Lovells, then moved to a government agency, and has now become Assistant General Counsel at Vanderbilt University. And Matt Peed I've already told you about, but what I haven't told you is that Matt was the lawyer who represented one of these pirate cases from the horn of Africa. What country am I thinking of?

MS. ALLEN: Not Somalia?

MR. ROBERTSON: Yes. Somali pirates. He represented the fellow charged with piracy. His actual function in this particular piracy takeover was as a mediator. My understanding is that he mediated the release of hostages and then was arrested himself and charged with conspiracy. And brought to trial here in the District of Columbia before Judge Huvelle.

MS. ALLEN: How could there be jurisdiction?

MR. ROBERTSON: International piracy jurisdiction reaches anywhere you can grab anybody.

MS. ALLEN: Oh. Okay.

MR. ROBERTSON: And this guy lived here in the United States. He went from Virginia to Somalia to --

MS. ALLEN: To be the mediator.

MR. ROBERTSON: To be the mediator, and when he came back he was arrested.

Then there was Emily Coward and Jonathan Olin. Emily is the lawyer who was so helpful to me in the *Cobell* case. She is now in North Carolina where her husband is a professor at the University of North Carolina, and Emily is doing work for some public interest organization down there. Jonathan has also escaped private practice. Last I saw of him, he was in the Justice Department, where he is now getting to a pretty high place in the Civil Division. And that leads to Anna Baldwin and Eric Citron. I did Anna Baldwin's wedding too, to Emma Cheuse, in California. No need for the Universal Church there. Anybody can marry anybody. Anna works on election law in the Civil Rights Division of the Justice Department. Let's see. Bill Meeks and Bharat Ramamurti. Bharat also a second-generation Indian. Came to me from the Boston Red Sox.

MS. ALLEN: The Red Sox?

MR. ROBERTSON: He had a summer intern job with the Red Sox and when he graduated from law school they offered him a job in the General Counsel's office. He said, "I don't want to work for the General Counsel, I want to work for the statistician." The famous statistician of the Boston Red Sox, Bill James, who is the guy who really brought statistics to baseball. He was the predecessor of the hero of Michael Lewis's *Moneyball*.

MS. ALLEN: In the movie.

MR. ROBERTSON: In the movie and the book. Bharat was, and is, fascinated with statistics. I did Bharat's wedding, too, and I'll come to that in a minute. Bharat and Bill Meeks knew each other I think in law school. Bill Meeks is now one

of my only law clerks who is still in private practice. And he has gone to work in New York for one of the premier plaintiffs' law firms doing work in securities class actions. Bill Meeks will be able to buy all of us within a few years. Wonderful guy. I hired law clerks because I liked their stories, I liked what they had done in life.

MS. ALLEN: And kept on doing.

MR. ROBERTSON: I didn't want to hire anybody who went straight from college to law school to a clerkship. I wanted people with life experience. Bill Meeks had been a tree surgeon and he'd written a book about ice cream parlors.

MS. ALLEN: Where was he from?

MR. ROBERTSON: Somewhere in New York. Wonderful guy. And Bharat. I have told you about the statistics. About the time Bharat and Bill were getting ready to leave, I announced that I was going to retire. I had a short clerkship left because I was going to retire in June and the clerkship began in September. I didn't have a full-year clerkship. Bharat's girlfriend was a woman in the Wilmer Hale office in Boston.

MS. ALLEN: Was she an attorney?

MR. ROBERTSON: Oh yes. And she wanted to come to Washington to be with her boyfriend. Wilmer Hale said I'm sorry we don't have a place in our Washington office for you – this was at a low point in law firm hiring. So Bharat said, you know, Paige is available. Well to make a long story short (laughter), I hired Paige as my last law clerk, and Paige and Bharat ultimately got married. And she is now Paige Ramamurti, and they have a new baby.

And I did that wedding. And that's the one I did as a clergyman because I was no longer a judge.

MS. ALLEN: So you had to go online for your credentials.

MR. ROBERTSON: So I went online for my credentials, and I'm Reverend Robertson on their certificate.

With Paige was a lovely guy by the name of Daniel Cahn, and I've kind of lost track of him. He went to Covington & Burling when he left me, but I think he's now gone to the FCC. In fact I know he has. So that if I look down this list of 34 law clerks. Oh my goodness, somehow I skipped over two very important law clerks, Joseph Hall and Abigail Carter.

MS. ALLEN: They were clerks together?

MR. ROBERTSON: They were clerks together and they were clerks between Sean Palmer and Matt Solomon – after those two and before Stephanie Brooker and Kelly Cochran. Abigail Carter had been the reader for Judge David Tatel and then she went to law school and really distinguished herself. She was a slam dunk hire for the clerkship. Abigail is now a partner in a Washington law firm, and Joseph Hall is now a partner in a Washington law firm. They are, I think, the only two law clerks out of 34 that have stayed in the private practice of law. Almost all of the rest of them are in some form of government service. It's very interesting and I'm actually quite proud of it. Although they are not making enough money of course. Well, I take

that back. Bill Meeks is a partner in a law firm in New York. Paige is in a law firm here. Matt is in a small law firm, but he's still practicing law.

As I go back up this list, government, government, government, government, government, government, government, Amsterdam, Chamber of Commerce, private foundation, federal public defender, White House, Federal Election Commission, dot com business in California. I didn't mention Kathy Zern. She was not Zern at the time. She's since been married to Peter Zern. She was what I call a stub-clerk. She was my clerk for three months because Syd Patel left to get married. So at any rate, I don't mean to stretch this out.

MS. ALLEN: I think it's an important theme.

MR. ROBERTSON: So, very few of my law clerks have become full-time private practitioners. Most of them are in public service, and actually I may be guilty of steering some of them in that direction. I used to give a lecture to all my law clerks. As a matter of fact, I bored a lot of them. I used to give them a book to read. The book was called *Generations*. It was written by a fellow named Bill Schultz. Schultz's day job was that he was the founder and chief songwriter for a satirical singing group here called the Capitol Steps.

MS. ALLEN: Oh sure.

MR. ROBERTSON: But his passion in life was this theory he had about generational cohorts. Sort of a mixed psychological, sociological, anthropological construct in

which he began with the proposition that American generations – there have been 22 American generations since the Pilgrims.

MS. ALLEN: Okay.

MR. ROBERTSON: They have followed each other one, two, three, four; one, two, three, four; one, two, three four; in four repeatable types. Dominant, recessive, dominant, recessive, dominant, recessive. It's a fascinating book, and at the end of the book, he predicts the future based on the past. I used to order my law clerks to read this book. They would kind of roll their eyes. Some of them decided they would read it, and some of them decided they wouldn't. And then I would give them a lecture about going to work for big law firms, and I would say to all of them something like this: Look, big law firms are a great place to practice law, but they will capture your soul if you allow them to because you can eat breakfast, lunch and dinner there. You can find your mate there. You can live your entire life within the confines of a law firm, and I want you to remember when you leave here that your law license is yours and not theirs. Establish an identity for yourself outside that law firm in some way – Bar, arts, public service, revolving door, be a sculptor, do something else. Don't let your whole life be sucked up into the life of a law firm because the law firm will suck it all up. Particularly in these days when they want 2,000 hours a year from associates. And I guess a lot of them took that to heart, because very few of them still are in big law firms.

MS. ALLEN: That's interesting. I think when I was a new lawyer, and I mean this is me being from Columbia, in New York City. They wanted a clerkship so they could get into a firm.

MR. ROBERTSON: That's right. That's the way it was. And for some people that's the way it still is, and there's no sin in it. It's honorable work, it's exciting work, it's interesting work, and it's very remunerative work, but it's all-consuming. At any rate, end of story.

MS. ALLEN: I think it's wonderful to have that list included.

MR. ROBERTSON: Well, they are very much a part of my history.

MS. ALLEN: Thank you very much. I would interrupt if I had a question.

MR. ROBERTSON: And it's been great fun to do this. And you and I will probably have to do some more work to get it into publishable shape. I can't think of anything that I've said over the last however many years we've been working on this that I would not want to be public, although I will go over it. I don't want to embarrass anybody if I've said anything inappropriate or something that I don't want uncovered until I die or until somebody puts lighten up on my tombstone. I will probably excise it. But basically I think I've told it like it is, and I really appreciate all of the work you've done.

MS. ALLEN: Thank you. It's really been enjoyable.