

## ORAL HISTORY OF BRUCE TERRIS

### VI. REFLECTIONS ON THE LAW AND ON LIFE

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 Steve Steinbach, and the interviewee is Bruce Terris. The interview took place in Bruce Terris's office on Friday, January 16, 2015. This is the sixth interview.

MR. STEINBACH: Good morning, Bruce.

MR. TERRIS: Good morning.

MR. STEINBACH: Let me start with a very broad general question reflecting all the way back on when you graduated from Harvard Law School in the 1950s until today. If you had to do it all over again, would you be a lawyer?

MR. TERRIS: Absolutely.

MR. STEINBACH: And why?

MR. TERRIS: Well the first reason I think it's very consistent with my personality. I'm not saying by that every person ought to be thinking about becoming a lawyer. I think it has a lot to do with personality, and I think for some people that makes sense and for an awful lot of other people it doesn't make any sense at all. It doesn't bother me to be in combat so to speak. I'm a litigating lawyer, and that's not all lawyers. I don't think I would like to write wills and plan estates and do a host of other things that lawyers do all the time, give advice to corporations. But a litigator I think is consistent with my personality. I'm combative. I enjoy matching my

mind and ideas up against other people, trying to persuade judges and what have you, so it fits with me.

MR. STEINBACH: You've also combined your legal skills and background with a public interest approach throughout your career. Is there something about being a lawyer that helps when you're working inside the government or that helps when you're dealing with issues of social policy?

MR. TERRIS: I definitely think so. It obviously helps if you're going to do litigation. You have to be a lawyer to do that. But I think litigation is an effective way to affect social policy, and I think you are right that that's given me considerable satisfaction for at least some portions of my career, like when I worked for the Crime Commission. I was doing, I guess, what a lot of lawyers do, which is to take policy positions and write memoranda and all that kind of thing. I think lawyers are valuable in that situation too.

MR. STEINBACH: Suppose that you couldn't have been a lawyer, that that was prohibited. Have you ever thought back on alternative careers? Baseball player, movie star?

MR. TERRIS: Oh, sure. Like every young guy, I would rather have been a baseball player, but I was pretty far away from being a major league baseball player. My baseball abilities were not exactly close to that line, or even to be a high school baseball player. The other thing I really thought about, to go seriously to your question, I seriously thought about becoming a doctor and if I had, I would have practiced medicine with my father. That would have been a wonderful thing to do because I had a tremendously close

relationship with him and I had great admiration for him. I know he contributed an awful lot to society, in quite a different way, and I certainly would have enjoyed that. But I guess I was maybe overly influenced by seeing that operation when I was a very young boy. As I've gotten older and been thinking more seriously about that, I think it's possible that I could have gotten over it and enjoyed being a doctor.

MR. STEINBACH: I think on slightly different alternative paths we talked about that you had explored, or at least for a year, you were a law school teacher and decided not to pursue that. You had mentioned before something about becoming a judge, that you had thought about that as a possibility. Why don't you explain a little more?

MR. TERRIS: I never really thought about it as a possibility because I'm not the kind of person that lobbies to become a judge. I don't know if there are people who do that or not, but that's not my style. But I did get an offer to compete to be a judge – in other words, give the government some papers, and I guess I would have been considered against 50 other people. But I didn't think it was the appropriate judgeship. At the time I did not think I was adequately skilled in what happens in a trial court. I think I was then and now adequately skilled for an appellate court, but that was never offered or even suggested to me. But that's one of those things that if out of the blue somebody said I was going to be a judge and if it had been the right kind of court, I would have taken that very seriously.

The law school professor [job] I didn't take terribly seriously. Earlier in my career, when a couple of very good law schools indicated interest in me, I hadn't had any experience in teaching at that time, and it's conceivable that I would have accepted if it had been the right law school and if it had been consistent with what my family situation was, and what have you. Later on when I taught a year of law school – I think I may have said earlier in our conversation together – I thought it was bad for the soul. I was thinking actually after that session, because you're a teacher, I think it's different teaching younger people [like you . . .]. But it just didn't seem right to me, these people who were in their 20s and I was essentially manipulating the discussion – that I didn't think it was really good for me for a lifetime of doing that.

MR. STEINBACH: Let's not change your career. It's been productive and spectacular enough. So let's imagine a nephew or niece of yours in college, or the son or a daughter of a co-worker: "Mr. Terris, should I be a lawyer or not? What would you advise me nowadays?"

MR. TERRIS: I would build on what I said a moment ago, which is what kind of person are you, what kind of characteristics, and what do you want to do in law? In other words, when you say "lawyer," it's too broad a subject. There's a tremendous difference as I indicated before between being a litigator and being somebody who advises people on wills or handles divorces or advises corporations or whatever. I think there's enormous differences in that kind of thing. And you also, I think you have to talk about what you

want to do in life. Do you want to make \$10 million, because that's going to tell you what kind of law you're going to have to practice, and does that fit with your ideas of what you want to do with your life? If you want to be a grassroots activist helping poor people, you're not going to make \$10 million, and on the other hand, you're going to get some very important benefits from doing that kind of work, and that may fit very well with you. So I think it really depends very much on what people want to do with their lives, what kind of ideas they have, social ideas, other kinds of ideas, and their personalities.

MR. STEINBACH: There are some doctors out there who would say, "I had a great career but medicine has really changed, it's much more bureaucratic, don't go into medicine." What are the challenges that a young lawyer, brand new to the profession, faces that maybe you didn't have to face?

MR. TERRIS: That's a very difficult question. I don't know exactly. I'm not sure that that much fundamentally has changed. Maybe I'm wrong because I'm an older lawyer, not a young lawyer, so maybe I just don't really appreciate the challenges of young lawyers. I mean lots of things have changed obviously, but fundamentally, I mean the profession to me looks quite similar to when I was coming out of law school. You can go into the government, a variety of different kinds of government, particular kinds of jobs. You can go into large law firms, and you're going to make a lot more money doing that than probably any other job in the law. You can go out in private practice yourself, maybe prepare for it by being in

government or in a large law firm for a few years, but then go out and practice by yourself. You can to some degree go into public interest law, although that is different. There was no such thing when I got out of law school, a handful of jobs in the country, probably not anywhere near a hundred jobs in the entire country. So that certainly has changed, and I think people coming out of law school for a large number of lawyers ask themselves the question whether that's what they want to do. And an awful lot more want to do it than can get jobs. So that certainly is a change. I think other than that, the basic structure is not that different.

MR. STEINBACH: So your nephew or niece has gone to law school and they've graduated and they come to you before they start their first day of work and say, "Mr. Terris, I'm a lawyer, how do I get to be a really good lawyer? What do I have to do?"

MR. TERRIS: I think the most important thing is to go to some place that, if you can, you are going to get the practical education in law that you didn't get in law school. I know law schools now do much more practical education than when I was in law school, lots of clinics and things like that, but I still would stick to my point. There's still a limit to how much practical education you're really getting in a law school environment. I think it's good that law schools do that, but I still think the most important thing is when you come out of law school to go into a situation where there are very good lawyers and there are lawyers who are willing to take time with their junior people. Closely editing your work to allow you to learn to

really write as a lawyer, which to a great degree you don't learn in law school. The kind of people that when they're working on cases aren't just going to give you little pieces to go out and research and bring them back and you aren't going to participate really in the case. A kind of atmosphere, whether it's a law firm or government or wherever, where the more senior people include the junior people in the discussions and the strategy formulations. That's where you really are going to get your education. Law school, if it's done anything for you, in my opinion, has taught you to think as a lawyer. It sure changed my whole way of thinking. But that doesn't make you a lawyer. That makes you prepared to become a lawyer. That's what I'd be looking for, that kind of atmosphere. Very good lawyers who are willing to include you in the package, you're not just doing drudge work.

MR. STEINBACH: To follow up on what you just said, law school changed the way you think so that you ended up thinking like a lawyer. What does that mean to you?

MR. TERRIS: It means not mainly acquiring or spitting out information. It means being able to analyze, that when somebody gives you a problem, that you can analyze it. That covers not just analyzing legal issues, which law school of course should acquaint you with how to do that, but that also is transferrable to any kind of an issue. It first of all makes you a skeptic, it ought to make you a skeptic about almost anything, so that you don't just say, "Oh, that's what somebody said so that must be it." You approach every proposition as a skeptic. Certainly I do, and I think most good

lawyers do. I was amazed in the first year of law school – it was like getting hit in the head with a 2” x 4” – the way that I thought at Harvard College, and I had done very well at Harvard College, didn’t make any sense at all. At Harvard College they essentially asked me what are the causes of the Civil War, and on an exam, I would write for three hours and give them enormous amounts of information. But that’s what it was. It was information. For the most part I was not really analytic.

MR. STEINBACH: So when a new, big case comes into your office and at any level of being a lawyer, you’re in charge of trying to figure out what to do, how to staff the case, how to manage the case, how to investigate the case. What are your thoughts on how that should be approached, based on how you approached questions like that?

MR. TERRIS: In many ways the most important thing are the facts, not the law. Ultimately of course it’s got to be the law too but the facts are really where you’ve got to start. You’ve got to start by really investigating as deeply as you can what the facts of the case are. We had a meeting right here, I was sitting in this same chair yesterday, in which we were considering whether we were going to bring a particular lawsuit. We discussed both facts and law, a memo had been prepared, a very detailed memo, about at least a number of the legal issues that were involved. And we hadn’t written such a memo on the facts, and it quickly became apparent, which I didn’t find surprising, that the law was not the most critical thing, that the most critical thing was, what do the facts show.

And we would assign it, to go back to your question, we would assign it to one of the young lawyers, and we would basically say, “this is your case, now we may not bring it, but at this point, you ought to see this as your case.” And the point I always make to young lawyers is: you’re not going to do anything creatively if you think it’s my case. If it’s my case, you’re going to give me a lot of facts, and you’re going to give me a lot of law, and you’re not really going to have thought through what this is. So you’ve got to assume this is your case, and should we bring it or should we not bring it, and if we are going to bring it, what’s our strategy, and we will talk that through together, and I hope I can make some contribution to that. But you’re going to know more than I do at that point, you’re going to have done the work, and I may have more experience than you, so I hope I can contribute, but you’ve got to think of it in this way. That’s how we really start.

MR. STEINBACH: I hesitate to ask this since I’ve been interviewing you, but how do you approach interviewing a fact witness, someone who’s either cooperative or hostile – how do you prepare for that?

MR. TERRIS: I learn as much as I can before I talk to the person, but frequently I don’t know that much. It depends where in the case we’re at. If we’re early in the case – I had a case fairly recently of a woman that has a potential action against the federal government for discrimination, racial discrimination, and she named I think four or five people that worked in her same unit who were also African-Americans and said they would have

the same view that she did. Well I got from her as much as I could about her views about the racial discrimination, but I didn't know a tremendous amount about how these other people would talk, so I was starting fairly early in the process. Very frequently what you're doing is going to have several interviews, obviously not if the person won't talk to you or they really have nothing to say, but if they really have something that's useful. You're going to have several interviews, and you'll gradually get deeper in because you will have learned. First you talked to this person and then you talk to three or four other people. Now you know an awful lot more, so you really need to go back very frequently to the first person, and so you go through this kind of process of deepening your understanding.

MR. STEINBACH: What's your approach to preparing for trial? It's two or three weeks before a trial, do you hibernate in a hotel, do you carry on your normal life? What do you do?

MR. TERRIS: In general, I don't hibernate until right upon the trial, then that's about all I'm going to do. We frequently are litigating out of town so that works rather well. There's nothing else to do out of town but concentrate on the trial. What you really should be doing, and I think normally we do a fairly good job here doing this, is preparing way before that, preparing thoroughly way before that. Because you're going through stages – in the kinds of cases that we have, we go through elaborate fact discovery over a long period of time – we're not talking about discovery over two or three months; fact discovery may take six or nine months [or even longer].

Then we are going through experts' reports and expert discovery, and we're dealing with our own experts in tremendous detail. So we're going through each one of these phases in a tremendously intensive examination of the case, so you're sort of digging deeper and deeper at each level. Very frequently, as far as the documents are concerned, you don't remember them anymore because you read them for the first time maybe two years before trial, maybe even more. So you've got to go over all the documents, or at least important documents, again. There's no question that in the few weeks before trial you're in a much more intensive phase, but you should have gone through these phases in a way that doesn't leave you in a sort of semi-panic at that point. You're not doing a very good job if that's the situation.

MR. STEINBACH: So you've made it to trial and you're arguing in front a jury.

MR. TERRIS: Almost never in this office in front of a jury. I think I may have been in front of a jury in my career two or three times.

MR. STEINBACH: Interesting. What's the most recent? Was it a while ago?

MR. TERRIS: A long time ago. At least twenty years ago, maybe thirty.

MR. STEINBACH: And that's a function of the type of the practice that your firm has pursued?

MR. TERRIS: Exactly.

MR. STEINBACH: Are you happy with that, or do you wish you'd had more jury trials?

MR. TERRIS: That's kind of hard for me to say. I don't know that I'm the greatest jury trial lawyer, partially because I haven't done it very much, but also I think

again a little bit is my personality, that I feel more comfortable trying to persuade somebody who is a lawyer like I am and we presumably, to a large degree, are thinking in the same kind of way. I don't feel very comfortable frequently dealing with lay people[. . .]. I don't want to make it sound like I'm denigrating jury lawyers, but it's, you're being clever, you're not exactly tricking people, but it's not a pure "I'm convincing you because my ideas are better than the other guy's." (I'm wrong, by the way that it's been that long, now that I'm thinking about it. It's probably has been ten years since I had a jury trial.)

MR. STEINBACH: I'm getting the sense that arguing in front of a judge is more intellectual, and arguing in front of a jury is more emotional, argumentative?

MR. TERRIS: I think that's right. As I say I've only done it a relatively small amount, but what I read in the legal press, which has [articles] about how I won that \$500 million case in front of the jury with a whole sequence of tricks. There are not too many tricks in front of a judge.

MR. STEINBACH: How do you prepare for arguing in front of a judge or a panel of judges? Say you have an appellate argument next week, what would you do between now and next week?

MR. TERRIS: I am not able, or at least I'm not willing, to go in front of judges without having an oral argument in front of me.

MR. STEINBACH: Meaning a prepared script?

MR. TERRIS: A prepared script. In an appellate court these days, almost never could you, even if you wanted to, give a prepared script. This is definitely a

change in the way courts behave. When I came out of law school and did arguments, you did a substantial portion of your argument the way you want to give it. I happen to have an ability, which is a nice ability to have – it's not the most important ability, but it's a nice ability to have – and that is I can read an argument and most people will think I'm not reading. But even so, it's certainly desirable not to be doing that that much. Occasionally I read, but it's quite occasionally. When you're actually in court you don't see this very often, of the lawyer not having the script in front of him or her. Archibald Cox, and we'll come to this later I think when we talk about lawyers, who is certainly the best oral advocate I've ever seen. I'm going to put aside Edward Bennett Williams because I only saw him once, and he was terrific and he has a reputation of being terrific, but Archibald Cox was a tremendous advocate, and he had a script that he had written out. You didn't get the feeling that he was reading, but he often was.

But anyway I write out a script. I practice that script many times to myself. I almost never have a moot court. I hate moot courts. They scare me more than the argument. The argument doesn't scare me, never did. When I first went into the Supreme Court when I was 27, I was scared momentarily for ten seconds, but the adrenaline goes after that and I didn't feel it, but moot courts make me nervous as all get-out. I've had a couple of them. On Supreme Court arguments, Georgetown now likes to have moot courts for people. I didn't have enough nerve to say to them, "I

don't need your moot court." So I did that. And I had a moot court over at the Department of Justice on a case that they were interested in. That's what I do.

MR. STEINBACH: One more question that just occurred to me. How do you handle losing?

MR. TERRIS: That really depends. I'm not a good loser. I mean, I can't say that I am a good loser. I'm a very competitive person. I'm a very competitive person when I play tennis, and I'm a very competitive person in my law practice. But it does depend. When I was young and I lost a whole slew of cases in the Supreme Court 5 to 4, it didn't affect me a bit. Edward Bennett Williams could have argued those cases or Archibald Cox, and they wouldn't have won. There was no more chance of winning than flying to the moon. So there's no sense in me getting all upset about this kind of thing. It was inevitable.

On the other hand, the other extreme, I lost a case for a woman who had a sex discrimination case – no, I guess it was disability discrimination – and I really felt terrible because I was certain she was right, and I thought she had been very badly treated by her employer, it was an agency of the government, and I really felt terrible. So I consider it's an individual person who has been very badly affected, and the environmental cases which of course you could say maybe are more important than the individual person, although I say that with hesitation. I feel badly. For one thing the economics of this office are badly affected

by losing an environmental case but it doesn't stick with me as long as the case of the woman with the disability.

MR. STEINBACH: By now, Bruce, you've argued dozens of cases in the Supreme Court. Have you appeared in front of most United States appellate courts across the country, or at least many?

MR. TERRIS: Every one of them except for the Federal Circuit because we don't practice in that area of law.

MR. STEINBACH: And many district courts?

MR. TERRIS: Many district courts.

MR. STEINBACH: So over the course of your career you've seen many, many judges, good, bad, and ugly. Reflect if you would on some of the judges who have impressed you the most, who you've respected the most, and why.

MR. TERRIS: The judges who I know the most about are the Supreme Court Justices who I argued before when I was in the Solicitor General's Office. I say that because, first of all, I appeared before them numerous times, each one of them numerous times, and I saw a lot of arguments that other people in the Solicitor General's Office argued, and I read all the opinions from that period. I don't read all the opinions anymore. I read opinions if they have something to do with our practice. So I knew an awful lot more about those Justices than the subsequent ones – who many of them I've appeared once or twice before, but really I don't think it's very fair to judge them on one or two appearances.

I'm also very hesitant. I think you always have to take it with a considerable grain of salt, that you just don't say all the good Justices are the ones who voted for me, and all the bad ones are the people who were on the other side. I really don't feel that way. I guess the Justices who I argued in front of in the early part of my career that I particularly admired, probably most Justice Harlan because I believed, and I can't prove this proposition, but I believed many of the things he decided he would not have decided in that way if he were in Congress. To me, that's almost a bottom line test of a fine Justice who isn't just reflecting [his or her] political opinions – that they're really trying to base what their decisions are on the law. Now of course they are affected by their other opinions, there's no way to avoid that. And they should be, so I would put him probably number one. Felix Frankfurter of course was a great mind, and I would certainly rate him highly. On the liberal side, whose vote I may never have gotten, Justice Black was certainly a fine Justice. I thought Potter Stewart was a very good Justice too. Maybe not quite as smart as the very smartest of the other Justices, but certainly a smart man. And certainly a man trying to find out what the right place for his vote was, that it wasn't just foreordained where he was going to come out. And I thought Justice Brennan was a very good Justice. I do not think Justice Douglas was a good Justice. I don't think he paid much attention, at least not at the point I was arguing in the Court. It may be that in an earlier part of his Supreme Court career that he was different. I don't think he paid

much attention to the arguments, and I think he could have decided any case that came to the Supreme Court probably within fifteen minutes after a brief appearing on his desk. Most of the other Justices I don't think, that I argued in front of, were as smart as the people that I mentioned.

MR. STEINBACH: Try to distill and summarize what you just answered. What makes a great Justice or a great judge? Or, if you had ended up being a judge or a Justice, what would you have aspired to?

MR. TERRIS: I think you have got to be smart to be a Supreme Court Justice. These are hard questions, they're extremely important questions, and you obviously have to be very smart. The harder thing, however – that you probably are or you aren't by the time you've become a Supreme Court Justice, you're not going to become too much smarter. The hard thing, I think, is the right demeanor – how do you decide cases, how do you decide them so you're just not voting your political instincts? Because I think that's wrong in so many different ways, but maybe most importantly why it's wrong is that why should anybody have confidence in a judicial system if it thinks that what the Justices, the highest level of the judicial system, are simply a different place but still Congress, still politicians, voting their inclinations. And that I think is enormously hard to do because, as I say, you can't put aside all your lifetime of ideas and just think all you're doing is a mechanical thing of interpreting words and statutes. It's much more complex, and it's a very difficult thing to do, and I don't think the

Supreme Court as a whole does a very good job of that. Not a terrible job, but not a very good job.

MR. STEINBACH: Let's build on those principles and put you on the Supreme Court in the early 1960s, and along comes Bruce Terris and the Justice Department, really pushing the envelope on one person, one vote. How would you have decided that case?

MR. TERRIS: Hah! It's very hard to answer, and the reason why it's hard to answer is as an advocate, I never really push myself the way you need to if you are a judge push yourself to say, "How would you, Bruce Terris, really decide this case?" You kind of edge yourself up to that, but you don't quite get to really forcing yourself to decide. In a way it's kind of destructive to force yourself to decide, because if you ever do convince yourself that you're not right, you really are undermining your creativity, your ability to argue, so you really don't do it, and I never really have tried to do it.

You can come back to this if you want to, to that exact question, but let me give you a different example. I didn't handle the sit-in cases when they were in the Solicitor General's Office. They were there when I was there, and they were [intensively] discussed within the Solicitor General's Office, among us. I don't mean with the Solicitor General, but among the Assistants to the Solicitor General, we discussed them in great detail. I had a lot of trouble with that case, and I believe enormously strongly in civil rights, but I really had trouble with that case. The reason I had trouble was, it seemed to me it was calling state action what people

were doing in a private environment – that if that was state action when the owner of the restaurant turned away Black potential patrons, why wasn't it state action if somebody in their house did exactly the same thing? And isn't that fundamentally inconsistent with democracy? Now if you have a statute about the restaurant, which of course we fairly soon thereafter did get such a statute, that's different because that's a judgment, that's not like my home or your home; it's a judgment that that's a public place and it should be governed in a way that doesn't allow for racial discrimination. That in fact is what the Fourteenth Amendment was all about. But in any event, that was a big, big problem for me at the time. It didn't matter what I thought because I wasn't working on it anyway, but in our discussions, elaborate discussions that we had within the Office. We used to go to lunch at the Federal Trade Commission every day, virtually everybody in the office, other than the Solicitor General, and that was a major topic of conversation for quite a long time.

MR. STEINBACH: Do you want to circle back and any other thoughts on one person, one vote?

MR. TERRIS: No. Partially because of these interviews, I looked at a couple of books that I have that deal with the Solicitor General's Office, a biography of Archibald Cox, etc. It just occurred to me, it's such an ironic thing, Archibald Cox decided long after, later in his life, that this was the most important thing that he did in the Solicitor General's Office. This little dinky guy Bruce Terris, that I really won this battle with him. Here's this

eminence of the law in this period, certainly one of the great lawyers, and somehow I persuaded the guy who really decided, which was Robert Kennedy, in a way that made the difference, kind of made me chuckle.

MR. STEINBACH: In fact, since we started the process of these interviews, there's been an important book by a scholar, J. Douglas Smith, called, *On Democracy's Doorstep*,<sup>†††</sup> which examines in great detail all of the litigation surrounding one person, one vote and really does make you front and center as, if I can say so, a hero – or *the* hero – of the argument. Have you had a chance to look at Smith's book, and what's your reaction to it?

MR. TERRIS: My basic reaction is he probably gives me a little more credit than I deserve, but overall, it's a very competent book. The question of how much credit you give to one person or another is pretty subjective, but it's a good book, and he was very intelligent when I talked to him.

MR. STEINBACH: In a sense it circles back to where we were a half hour ago about the importance of an older lawyer listening to someone in the trenches who's really done the homework and is able to persuasively put forward a new position.

MR. TERRIS: I might say Robert Kennedy wasn't the kind of person who would be a mentor to lawyers, but he was definitely a man who would listen to other people. I mean that was one of his most outstanding characteristics. He would listen. He would have people come to his house – I wasn't one of them – great academics, people who were experts in the field, and just

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<sup>†††</sup> Smith, J. Douglas. *On Democracy's Doorstep: The Inside Story of How the Supreme Court Brought 'One Person, One Vote' to the United States*. New York: Hill and Wang, 2014.

simply talk to them. He welcomed people talking to him who were junior lawyers in the Department.

MR. STEINBACH: We talked about judges. Any other judges you care to reflect on who we may have omitted?

MR. TERRIS: Not Justices, but I certainly early in my career argued quite a bit in front of the Court of Appeals in this Circuit. I really have argued pretty much through my career in this Circuit, but particularly relatively early in my career, maybe sort of mid-career. Certainly I had great admiration for Judge [David] Bazelon, Skelly Wright, [Harold] Leventhal. They were very fine judges. They were creative judges and smart.

MR. STEINBACH: I think it's probably only fair since you're still practicing law at a law firm in town not to ask you for similar comments about currently sitting judges.

MR. TERRIS: That's correct. Let me add one District Court judge. When Judge [Charles] Richey was appointed, I was the chairman of the Democratic Party and I went in front of the committee in Congress and I opposed him on the ground that he didn't live here and that this was essentially a court supposedly for the District of Columbia, that is its jurisdiction. Later on I had a major case in front of him, and first of all, he didn't act at all hostile. In fact he joked with me, about how I had opposed him. It involved the development of Georgetown. He basically indicated that I was going to win, and then the opinion came out, and I lost. And I don't know how I happened to be in front of him again, maybe it was another case or maybe it was some further aspect of the Georgetown case. He said to me, "You

know, Bruce, when you were in front of me, you totally convinced me, but when I went back and thought about it when you weren't around to make your argument, I decided that you weren't right." And I thought to myself, "that's a pretty good judge." I didn't like losing, of course, but I thought, that's a pretty good judge.

MR. STEINBACH: Beyond judges, how about lawyers that you've either worked with or worked against. Any come to mind? I know you've mentioned Archibald Cox repeatedly. Any other colleagues or adversaries whom you look at with great respect?

MR. TERRIS: The people in the Solicitor General's Office were terrific lawyers. Let me start one step earlier. The year I spent in the Internal Security Division at the Department of Justice, there was a guy there, Phil Monahan, who, he wasn't even the Section Chief, but he edited all the briefs. And I think I earlier said, I believe I said during these interviews, that he threw out [all of my work]. None of my briefs ever appeared in print, but I learned an enormous amount from him. And that's when we talked a few minutes ago about having a mentor or having somebody, whatever the name is, that you can really learn from. I learned an enormous amount how to write briefs from this man, because I looked over all the changes he'd made – which were total, essentially, but I tried to figure out, why did he do this? He obviously had a reason for what he was doing. [He'd] completely toss it out rather than do little edits, so he taught me an enormous amount.

Then when I went to the Solicitor General's Office, that was just a marvelous place to work. I said before that we met every day at the Federal Trade Commission. We talked about our cases. The people that were there were enormously good lawyers. They were very good advocates in the Supreme Court. Oscar Davis later was on the Court of Claims. Phil Elman, who became a Federal Trade Commissioner. Lou Claiborne, a tremendous advocate. Ralph Spritzer was also a great oral advocate. Wayne Barnett, who was the most unbelievable mind on dealing with tax law, he just used to regale us at lunch about tax law, some particular tax case. For some reason he handled all the tax cases in the Solicitor General's Office at the time, and he'd go through it in detail showing how this should come out. It was almost like it a language beyond me, it was so precise as to how to do this. And I mean these people, and there were of course others as well, it was a tremendous education for me. That wouldn't have happened if we didn't have these lunches because basically that didn't happen in editing briefs. The First Assistant, Oscar Davis, didn't come and talk to me and say, "here's a brief, now I want to talk to you about how you ought to do it." It would just be given to me, and I would edit it. Nobody would really even talk about it. So I would basically make up my own mind as to where to go. Now of course I was editing a good brief. These were coming out of divisions, appellate sections of the various divisions of the Department,

but still I wasn't getting anything from conversation in meetings on particular cases, but these lunches were just tremendously educational.

And then I've been very lucky that I've had very good lawyers as partners here with me. They've taught me a lot too. I tend to be more law-focused, and they tend to be a little bit more fact-focused, which I think is a good corrective for me. That's pretty well my view of lawyers. To a considerable degree I think it's hard to evaluate other lawyers, but for the most part I've been disappointed with lawyers on the other side from us. Given the kind of law firms we litigate against, you would think they would generally be better. That's obviously not every lawyer that's on the other side.

MR. STEINBACH: In reflecting on some of our previous discussions, it's obvious that religion seems to have played a very important part in your life, and your religious path over your life has been far from ordinary. I wondered if you could reflect on your religious thought and practice and how that's developed.

MR. TERRIS: Yes, I think it has been enormously important to me, and it's kind of interwoven, I believe, in a complex way, that I'm not sure I can completely understand myself, with my political and social views. I've always been – let me start with the political and social views. I've always been a liberal except for a very brief period, strangely enough, when I was in college. I'm also kind of, as my wife keeps reminding me, if everybody else is saying yes, I'm likely to say no. Of course everybody else when I was going to college was a liberal Democrat and beating up Republicans

daily, and so I was for a period of my life actually was sort of a Republican. I actually did a small amount of work for Senator [Henry Cabot Lodge, Jr.] when he was running against John Kennedy.

MR. STEINBACH: We can edit that out if you'd like [laughter].

MR. TERRIS: So that's about the only period in my life that I had those kind of views, and since I got to Washington and John Kennedy took over the White House particularly, I've been a liberal Democrat. And I was as a child too. I grew up in a community that was totally Republican, probably weren't a handful of Democrats in the entire city. So that really feeds to my interest later on in trying to help poor people and what have you.

As far as religion was concerned, I grew up in a family that was Jewish, but my parents at that time never went to synagogue. My mother felt that she was duty-bound when I was I guess 12 years old to take me all the way across town to a Reform synagogue. So for a year I went to classes I think twice a week at the Reform synagogue, and they taught the Hebrew alphabet. I think we got halfway through the Hebrew alphabet. At that point Reform synagogues didn't bar mitzvah people, when you're 13, they confirmed them, and I was confirmed. And I paid very little attention to being religiously Jewish, but my family was very Jewish. My father, I joked, never said a sentence that didn't have some Yiddish word in it. That's something of an exaggeration, but it isn't too much of one, and he was very, very strongly Jewish. My family went and visited Israel. Not me, but my parents, and they gave money to Jewish causes, etc. My

family some years would have a Pesach Seder, we'd go to the brothers or sisters of my father, but there was no content.

When I was in high school and then in college, the two women that I dated most seriously – girls at that point – they were the same age that I was, were Catholic, and they took it seriously, and it was very impressive to me that they took it seriously. And so in college I began to study, under this young woman's tutelage, Catholicism very seriously. And I ended up a year after law school, I guess it wasn't in college, it was in law school, and the year after law school, I married her and I converted to Catholicism, which infuriated my father, and he didn't talk to me for two or three years. We were married for almost twenty years, and I was a very loyal Catholic, as was she, and I was quite a knowledgeable Catholic, I read a lot, until totally suddenly she had an aneurism and died within a day. We had adopted three children during that time period and they were Catholic, but very near the end of that period, my allegiance to Catholicism had begun to decline. It was always a kind of a little bit of conflict within me because I also in a strange way still thought of myself as Jewish.

In any event, she died, and then roughly a year later, I married Sally Gillespie, who is my wife today. Some period after that, not terribly long after that, I don't know how long, a year or two or something like that, she said to me, "You know, you are Jewish" – and I wasn't at that point doing anything more with Catholicism – "Why don't you do

something?” Sally Gillespie, as the name implies, is not Jewish, but she wasn’t anything else either. She had been brought up as Episcopalian, I guess, but she was definitely not Episcopalian. So I thought to myself, “Well that’s an interesting idea.” So I started to read. I knew nothing about Judaism. That’s the truth. Essentially nothing. So I began to read, and then she and I went to some courses together, and then I started going with my son to a kind of an activist-type of service, not Reform, and I did that for two or three years, and then I gradually began to take on the requirements of being an Orthodox Jew.

So I’ve basically been an Orthodox Jew now for almost 35 years. And that got deeper and deeper. Then we decided, Sally and I decided, to take a trip to Israel, and then she said to me, “Why don’t we move to Israel?” I said, “now that’s an interesting idea.” So I went and tried to figure out a way to get a job in Israel. Well I can’t speak Hebrew, and I’m a terrible language student. I figured I really couldn’t get a job in Israel that would be interesting to me, and so I said I’ll keep my job and I’ll commute, and that’s what I did. We lived in Israel. But then a time came when Sally decided that she had grandchildren here in Washington and it was too tough to be away. So she moved back, and I continued to live in our house in Jerusalem off and on, but I gradually cut that down to only spending six weeks a year in Jerusalem.

So I’ve become really a very committed Orthodox Jew. I guess the proof of that is Judaism really has two sets of holy documents. Most non-

Jews don't realize this. There's the Bible, the Torah, but there's also the Talmud. There's actually two related Talmuds, one is called the Babylonian Talmud, which is where it was written by Jews in Babylonia, and one is the Jerusalem Talmud, which was written by Jews in Israel. I have gone through the entire Babylonian Talmud, which is approximately sixty volumes, and I'm now half-way through the Jerusalem Talmud, which is I think roughly forty volumes. So I've taken this very seriously. And the connection with the law is – because I really think it's connected to what I have wanted to do in this world – I think basically I've been a religious person that was looking for what I wanted to do.

MR. STEINBACH: Why do you say that? Because of an underlying search for justice? Trying to improve your community? What is it that really explains that last sentence for you, the combination of religion and your career?

MR. TERRIS: It isn't a situation where a lot of people would say [. . .], I was a religious person and my religion says look at these passages that say you should care for the poor, as the Torah does, and so does the New Testament. There are plenty of people who say, that's why I'm concerned about the poor. My history is not in that linear way because I didn't know anything about anything really at the time that I first started being interested in poor people. But when I became a Catholic, there's no question about it, I became much more interested in social justice problems. My first wife was a social worker, and she worked in one of the poorest areas of Washington, and the work that I did in that area in housing and other

things started out from that. You could almost say that the Catholic views on poverty and how you deal with those problems had a great influence at that point and helped push me further into the whole social action field. And now that I'm an Orthodox Jew, I feel the same way based on the Hebrew Bible.

MR. STEINBACH: In both respects, religion has almost propped up the beliefs that you came to independently as to how to run your life?

MR. TERRIS: I think so. Right.

MR. STEINBACH: I don't know if you'll like to hear this or not, but if you reflect on the fact you started in the Eisenhower Administration, that was eleven Presidents ago.

MR. TERRIS: I have never thought of that. You said that to me before, and I thought to myself, Wow.

MR. STEINBACH: Which is one-fourth of our country's Presidents – so it's not just a distinguished career but a lengthy career, which I think gives you the right to reflect and opine on progress the country has made or not in a number of major areas that have been central to your career. So I'd be interested in your reflections. Is the country better off? Worse off? What still needs to be done? We can start with police practices and police community relations.

MR. TERRIS: Can we start on a broader thing?

MR. STEINBACH: Absolutely.

MR. TERRIS: On a broader level, obviously some things are very much improved. The civil rights revolution was an enormously important thing for this country and on this very central set of issues, the country was not living up, had never lived up, to its principles, and that's a very serious thing it seems to me in a democracy, to have this huge gap between all these wonderful documents that we have, back to the Declaration of Independence, and the way our society is set up. And of course more true in the South, but it was also very true in the North. Not in as clear-cut a way as in the South, but still very, very serious problems, we weren't living up to our principles. So that's been an enormous change and an enormous contribution. That doesn't mean those problems are all gone, because bringing up police/community relations and what's happened in the last six months shows that these problems [still exist]. But now, I think you can almost say that they are problems, serious problems, but the structure of dealing with the problems is there to deal with them. Before the civil rights revolution, the structure was totally inconsistent with even dealing with the problems. I mean it was seen as a revolution, *Brown v. Board of Education* was like a bombshell. I mean, today any changes we do in this areas wouldn't be a bombshell, it would be a way to deal with them in a constructive way. So that's I think enormously important.

I think in other ways the improvement is not nearly as great. We certainly haven't done a great job of dealing with poverty, and that's closely connected to the civil rights issues that still remain, they're

interwoven with those. Lyndon Johnson made I think a valiant effort to get started. Not only did they only partially succeed – and they did partially succeed – but now we’ve retreated. You can tell, the day you hear a candidate for office in this country really talk about poor people will be the day, because now what people talk about is middle-class people. That’s considered a very liberal position, to be concerned about the middle class.

And I think the politics today are very disappointing. I think what I would call the deterioration of the Republican Party is very sad and very dangerous for the country because we used to have two parties, they had disagreements and that’s a good thing in a democracy, but they had a lot of overlap too, so even if you had a Democratic administration or a Republican administration, they could get things done. But today, it’s almost impossible to get things done because people are acting like this is war. I mean I read in this morning’s newspaper that many of the Republicans in Congress are now very disappointed with their leadership because they worked with the Democrats. They stake out the most extreme positions, not thinking of how we’re going to get together. And that’s just terrible in a democracy.

MR. STEINBACH: So overall great progress on civil rights, far less progress on poverty and inequality and maybe the state of our politics. How about specifically on the question of legal services for the poor and the elderly: Are we better, are we worse? What’s left to be done?

MR. TERRIS: I would say that we're roughly the same as when the conference that I helped run was finished, not that moment, but let's say a year or two later when money was already flowing. Essentially there hasn't been improvement, and I think that's very disappointing because you would think over this time period the country would have tried to figure out a way to provide adequate legal services for the poor. Not just set up a very good program and then starve it of funds so that most people who are poor do not get legal services today. A program exists for them, but there are not resources.

MR. STEINBACH: Taking you earlier in your career, the work you did for the Internal Security Division on national security and free speech issues – reflect on where you think we are now compared to where we were in the 1950s and 1960s.

MR. TERRIS: Well we certainly are better off in the sense we don't have anybody comparable to Senator McCarthy, we don't have the kind of panic in Congress to be digging into all kinds of areas and thinking that there's got to be subversives out there and that even people that look like distinguished Americans are really not distinguished Americans. We really know better [than to think] that if we dig deep enough, we'll find that they once attended a meeting that there were five Communists at. You know, that kind of thing is not going on today, and that's certainly a huge improvement, because then you can deal with these problems

without having this layer of suspicion of each other. I see very little of that around today, and I think that's very good.

I don't think it's the fault of the country, but we have very serious problems in the world, and those problems bleed into this country domestically, not nearly in as an extreme a way as in Europe, but they do here. You can find frequently in the newspaper a new investigation, a new indictment, a new sentencing of somebody who has been convicted of being a potential terrorist or for the most part they haven't actually done terrorist acts, but that's what they were planning.

MR. STEINBACH: What's your reflection on the state of environmental law?

MR. TERRIS: Of course that's an enormous improvement. There wasn't any essentially then. There weren't as serious problems either, but the problems were building, and so if there hadn't been important efforts to take care of them, we would be in a horrible state today. We'd probably be in the same situation as China, which is in horrible state in terms of the environment. So that's a huge improvement. On the other hand, the country's ability – inability – to deal with climate change is really scandalous. I mean a country like this in which you have large numbers of important political people thinking there is no climate change problem? They've got to be the only people in the world who think that. And that's terrible because of how bad this problem is, but it's also terrible in the sense of what kind of leaders do we have that when 95% or more of scientists have come to a particular conclusion, they, totally non-scientists, probably never even

read one of these document, say “I don’t believe it.” That’s quite unbelievable.

MR. STEINBACH: Again, considerable progress reflecting over the course of your career in the environmental field –

MR. TERRIS: That’s true, but we’re faced probably with a bigger environmental problem than we or the world has ever faced.

MR. STEINBACH: How about reflections on the state of public interest law now, especially compared to what you’ve seen over the years?

MR. TERRIS: Certainly again in comparison to when I came out of law school, there essentially wasn’t any such thing. Now I don’t know how many public interest law firms there are. There must be hundreds. There are so many, when I read about one, I never heard of that one before. There it is, in South Dakota. It’s amazing, and I think it’s wonderful. To me, a great contribution, and they do represent a lot of interests in this country that never got represented before.

MR. STEINBACH: One final area, which takes us back to where we started, the one person, one vote decision. Reflecting on that, how important was that? How much is our politics and democracy dependent on the results of that case?

MR. TERRIS: I think it’s almost unimaginable what would be today if that hadn’t occurred. What I’m really saying to you is: it had to occur. If it hadn’t occurred then, it had to occur ten years later, or it had to occur twenty years later. It’s not possible that the country could continue in which handfuls of people in rural areas would be in control of state legislatures

or would be in control of the House of Representatives delegation from a particular state. If you imagine it, it seems impossible to think that could exist today – that you’d almost be approaching revolution if that occurred today, because it would have gotten much worse. It wouldn’t have stayed. It would have gotten much worse because population has continued to flow from the rural areas into the cities. So it had to occur. But when I say that, that doesn’t mean that those cases were unimportant, because if they hadn’t come out that way, I think the turmoil on how to reach the result by some other method would have been a very, very serious problem for the country. Because if the Supreme Court had said no, the Constitution doesn’t do any of this, this has nothing to do with the Constitution, it has to be decided by all you politicians – I think there would have had to be things done. But you can’t figure out really how that would have been done, so I think it would have caused terrible problems in how our democracy functioned from that point until now. So I think the cases were enormously important, but not because you say nothing would have happened in that field if the Supreme Court had come out somewhere else.

MR. STEINBACH: When people are trying to figure out what to do in those cases, there was an important note of caution from those who said, for 100-plus years after the Fourteenth Amendment, we have not had one person, one vote, we’re throwing out all this history. The Supreme Court, thanks in large measure to you, threw out all that history and achieved this transformative change,

with very little outcry. We've all come to just accept it as fair. Did that surprise you? Does that surprise you? What does that say at bottom?

MR. TERRIS: That's a very perceptive question because I can't remember, and I think I would remember, a single person bringing up what would be the reaction in the country. Now it's interesting why nobody brought it up and also why it didn't occur. I think your point is a very interesting point. It certainly is an enormous contrast to, say, *Brown v. Board of Education*.

MR. STEINBACH: And active resistance.

MR. TERRIS: Right. And that is a very interesting question about why that is so. I suppose part of it is because people basically said: this is fair. This is really what our democracy demands, and it didn't have the overtones of race, which as we all know, goes deep into the soul of all kinds of people, not just African-Americans, but Caucasians and how they really see themselves in society, in a very fundamental way.

So one man, one vote appeared to be fair, but it still is curious. Your point is an interesting one in that a lot of people were going to lose political power and it was pretty obvious they were going to lose political power. You didn't have to be a terribly deep thinker to figure this out, and it really went down without much problem. Redistricting occurred. There were things people had to do, the politicians that were in office had to do something – the wrong politicians were in office, but they had to do redistricting. And somehow it was done. I think my answer is not a completely persuasive one, but I haven't got a better one.

MR. STEINBACH: But it is a very under-appreciated example of how we as a people can do the right thing – which is as good a place as any to stop, I suppose. Any final thoughts, Bruce?

MR. TERRIS: No. I thank you for the time you spent on doing this. You've done a very, very good job. I've had these interviews, and I don't think I could come anywhere near to the kind of job you've done and the preparation you've done for the interviews. I'm very impressed, and I'm thankful for it.

MR. STEINBACH: Well thank you. It's been a pleasure. It's been intellectually fascinating and wonderful to talk with you so informally for such a period of time. I know the Historical Society is in your debt for sharing your recollections with all of the legal community. So thank you, Bruce.

MR. TERRIS: Thank you.