BRUCE J. TERRIS, ESQUIRE

Oral History Project
The Historical Society of the District of Columbia Circuit
BRUCE J. TERRIS, ESQUIRE

Interviews conducted by:
Steven A. Steinbach
May 22, May 29, December 4 and December 22, 2014
January 8 and 16, 2015
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NOTE

The following pages record interviews conducted on the dates indicated. The interviews were recorded digitally or on cassette tape, and the interviewee and the interviewer have been afforded an opportunity to review and edit the transcript.

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PREFACE

The goal of the Oral History Project of the Historical Society of the District of Columbia Circuit is to preserve the recollections of the judges of the Courts of the District of Columbia Circuit and lawyers, court staff, and others who played important roles in the history of the Circuit. The Project began in 1991. Oral history interviews are conducted by volunteer attorneys who are trained by the Society. Before donating the oral history to the Society, both the subject of the history and the interviewer have had an opportunity to review and edit the transcripts.


With the permission of the person being interviewed, oral histories are also available on the Internet through the Society's Web site, www.dcchs.org. Audio recordings of most interviews, as well as electronic versions of the transcripts, are in the custody of the Society.
INTERVIEWEE ORAL HISTORY AGREEMENT

Historical Society of the District of Columbia Circuit

Oral History Agreement of Bruce J. Terris

1. In consideration of the recording and preservation of my oral history memoir by the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees and agents (hereinafter “the Society”), I, Bruce J. Terris, do hereby grant and convey to the Society and its successors and assigns all of my rights, title, and interest in the tape recordings, digital recordings, transcripts, computer diskettes, and DVDs of the interviews of me as described in Schedule A hereto, including literary rights and copyrights. All copies of the tape recordings, digital recordings, transcripts, computer diskettes, and DVDs are subject to the same restrictions herein provided.

2. I also reserve for myself and to the executor of my estate the right to use the tape recordings, digital recordings, transcripts, computer diskettes, and DVDs and their content as a resource for any book, pamphlet, article or other writing of which I or my executor may be the author or co-author.

3. I authorize the Society to duplicate, edit, publish, including publication on the internet, and permit the use of said tape recordings, digital recordings, transcripts, computer diskettes, and DVDs in any manner that the Society considers appropriate, and I waive any claims I may have or acquire to any royalties from such use.

Bruce J. Terris (Signature) 11/5/15 (Date)

SWORN TO AND SUBSCRIBED before me this 

____ day of ________________, 2015.

________________________
Notary Public

My Commission expires: ____________________

ACCEPTED THIS 14th day of December, 2015, by Stephen J. Pollak, President of the Historical Society of the District of Columbia Circuit

________________________
Stephen J. Pollak
Schedule A

Tape recordings, digital records, transcripts, and computer media resulting from six interviews of Bruce J. Terris, on the following dates.

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The transcripts of the six interviews are on six CDs.
INTERVIEWER ORAL HISTORY AGREEMENT

Historical Society of the District of Columbia Circuit

Oral History Agreement of Steven A. Steinbach

1. Having agreed to conduct an oral history interview with Bruce J. Terris, for the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees and agents (hereinafter "the Society"), I, Steven A. Steinbach, do hereby grant and convey to the Society and its successors and assigns all of my rights, title, and interest in the tape recordings, digital recordings, transcripts, computer diskettes, and DVDs of the interviews as described in Schedule A hereto, including literary rights and copyrights.

2. I authorize the Society to duplicate, edit, publish, including publication on the internet, and permit the use of said tape recordings, digital recordings, transcripts, computer diskettes, and DVDs in any manner that the Society considers appropriate, and I waive any claims I may have or acquire to any royalties from such use.

3. I agree that I will make no use of the interview or the information contained therein until it is concluded and edited, or until I receive permission from the Society.

Steven A. Steinbach 11/2/15

Steven A. Steinbach

SWORN TO AND SUBSCRIBED before me this
2nd day of November, 2015.

Cynthia R. Falls
Notary Public

My Commission expires: November 14, 2018

ACCEPTED THIS 14th day of December, 2015, by Stephen J. Pollak,
President of the Historical Society of the District of Columbia Circuit

Stephen J. Pollak
**Schedule A**

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ORAL HISTORY OF BRUCE TERRIS

I. ONE PERSON, ONE VOTE

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 Thursday, May 22, 2014. This is the first interview.

MR. STEINBACH: We decided to start today by focusing on the reapportionment cases, the Supreme Court decisions from the early 1960s establishing the one person, one vote principle. By way of background, we’ll focus primarily on Baker v. Carr [369 U.S. 186 (1962)], in which you, Bruce, assisted Solicitor General Archibald Cox in arguing to the Court, and then Gray v. Sanders [372 U.S. 368 (1964)], in which you helped prepare Attorney General Robert Kennedy for his argument before the Supreme Court, and then a case in which you yourself argued, Wesberry v. Sanders [376 U.S. 1 (1964)]. That’s just by way of background. I wonder if you could start by summarizing from a very high-level perspective what the reapportionment cases were generally about.

MR. TERRIS: The United States had a system that actually was borrowed from the British, which the British called the “Rotten Borough System.” You would think that all congressman or all legislators in a state legislature would represent approximately the same number of people. The theory is that when you have a legislature, it is representative of the public as a whole. Deliberately the United States Senate is not that way, but the House of Representatives was intended to be approximately that way, and the state legislatures were
intended to be approximately that way. But what had happened over many, many years – I think probably they started out roughly equal in the various districts but they weren’t reapportioned. The legislative body involved did not reapportion them as population shifted, and as population shifted, you can end up with a district having a hundred times as many people as another district, or even worse malapportionment than that. So the end result is a legislature not at all representative of the public, and so it really was fundamentally wrong in terms of what democracy is about.

MR. STEINBACH: This was a situation that was both at the national federal level with the House of Representatives and the various state legislatures?

MR. TERRIS: That’s correct. And almost all state legislatures and in most of the states’ House of Representative districts.

MR. STEINBACH: You first I guess got involved in reapportionment issues when you worked at the Solicitor General’s Office. Is that right?

MR. TERRIS: That’s correct.

MR. STEINBACH: Do you remember when you joined the SG’s Office?

MR. TERRIS: I know precisely when I joined the SG’s office. I joined the office in a sense in the summer of 1958, a year after I graduated from law school. I say “in a sense,” because I got a job which was considered to be a temporary job in which I was to be kind of the handyman of the Solicitor General, not to be actually an Assistant to the Solicitor General, which is the title that most of the people in the office had and I guess still have, but I was to do odd jobs for the Solicitor General, help on his speeches and things of that kind. So I was
not a regular member, and over about roughly the next year I became a full-fledged member.

MR. STEINBACH: So you were part of the Eisenhower Administration’s Solicitor General’s Office initially?

MR. TERRIS: That’s correct. People were not appointed on the basis of politics. Nobody ever asked me what my politics were when I joined it.

MR. STEINBACH: Did the Eisenhower Administration have a role, even before the Kennedy years, in formulating a government policy on reapportionment?

MR. TERRIS: Not on the merits. *Baker v. Carr* came up during the Eisenhower Administration, the very end of the Eisenhower Administration, and the Solicitor General then was J. Lee Rankin. He was my boss when I did personal work for him and was still my boss when I became an official Assistant to the Solicitor General. But yes, it came up during the Eisenhower Administration.

MR. STEINBACH: Did you personally have any involvement in the reapportionment decision-making in the SG’s Office in the Eisenhower years?

MR. TERRIS: Yes. I handled this issue the entire time I was in the Solicitor General’s Office. I was assigned this work not because of any special knowledge that I had. It happened I was chosen to review the briefing in *Baker v. Carr*, and once I reviewed the briefing of *Baker v. Carr*, every subsequent reapportionment case, I handled the briefing in that case.

MR. STEINBACH: What position do you remember the Eisenhower Administration took on *Baker v. Carr* when you were working on the briefs?
MR. TERRIS: They had the position that *Colegrove v. Green* [328 U.S. 549 (1946)] that held that reapportionment wasn’t justiciable should be overruled, that it should be justiciable, and in fact, Lee Rankin’s position I think was probably stronger than Archibald Cox’s was.

MR. STEINBACH: Archibald Cox comes in with the Kennedy Administration to be the new Solicitor General, and you continued in your tenure in the SG’s Office?

MR. TERRIS: Correct. Everybody’s tenure continued.

MR. STEINBACH: Were you the primary deputy in charge of the reapportionment work in the SG’s Office?

MR. TERRIS: Certainly not officially. I’m not sure that anybody knew why some people were chosen for a particular case. It showed up on your desk, it was your case. All the reapportionment cases after *Baker v. Carr* showed up on my desk, presumably because I was thought to know something about them having handled the earlier cases.

MR. STEINBACH: So Archibald Cox comes on board. What do you remember about him, your interactions with him, what was he like as a person, as Solicitor General?

MR. TERRIS: First of all, in a sense I knew Archibald Cox from Harvard Law School. I had taken Labor Law with him, so my first sighting of him was not in the Solicitor General’s Office. Archibald Cox was a very brilliant man and a tremendous oral advocate, the best oral advocate I ever saw. I think there may have been a tie or two in the Supreme Court. Now I haven’t seen a lot of Supreme Court arguments since I left the Solicitor General’s Office, but he was a tremendous oral advocate. He had the ability to do something I had
never seen anybody ever having the ability to do, and I suspect very few
people ever had, and that was he had the ability to lecture the Supreme Court.
That was his natural human posture.

MR. STEINBACH: And they let him get away with it.

MR. TERRIS: It would have been very difficult, very difficult, for them to not let him get
away with it. It was so much in his blood, it was like it would have taken
insulting him, it would have taken a scene virtually to have prevented him
from lecturing them. He was telling them what the law provided. There was
no doubt about what it provided, he was telling them what it provided. On
the other hand, he was not a man who had tremendous human connections
with people in the Solicitor General’s Office. He was definitely the classic
New England Yankee. I did not have many meetings with him. He was not
a man with a great sense of humor or idle talk. He certainly didn’t mention
what the baseball scores were yesterday. But he was a tremendous lawyer.
No question about that.

MR. STEINBACH: So your relation with him inside the office was largely professional rather
than personal?

MR. TERRIS: Definitely. Completely professional. But I think his relationship with
everybody in the office, even much more senior people than myself, was
completely professional.

MR. STEINBACH: Did you work with him on matters other than reapportionment?

MR. TERRIS: Yes. I handled a wide variety of cases like everybody else in the Solicitor
General’s Office, but there were not a lot of meetings with him. I would
review a paper, it would go either to the first or second assistant, which was
the progression, then it would go to him. I would very rarely talk to him
about a case. It came up from time to time, definitely not on a weekly basis,
probably not even a monthly basis, but once in a while there would be a
meeting or I would talk to him about a specific case.

MR. STEINBACH: So on the reapportionment discussion specifically, or the question about the
government’s position on those cases, how would you summarize
Archibald Cox’s overall philosophy or his overall thoughts about where the
reapportionment decision should go from his perspective?

MR. TERRIS: He was enormously sympathetic to Felix Frankfurter’s position, which was
of course essentially that the issues were not justiciable, and if they were
justiciable, that the Court should not be digging very deeply into the merits
even if it had gotten past the justiciability issue. My description would be:
when I went to law school, those at Harvard used to talk about the notion that
at Harvard you learned what the law was. You didn’t use the law for any
particular purpose, this was the law, the majesty of the law. The people who
went to Yale, they used the law to accomplish their various positions that
they thought were good things for the country. Archibald Cox exemplified,
perfectly exemplified, that idea of what Harvard Law School was about.
Therefore he approached reapportionment that you didn’t start by saying
what’s good for this country, what should democracy in this country really
mean. He really started with legal propositions that made him not very
sympathetic to the whole notion. But he was in a very bad spot because his
two bosses, the President of the United States and the Attorney General of the United States, had different views than that. So it was a difficult problem for him.

MR. STEINBACH: Let’s go there next. President Kennedy had actually taken a position on reapportionment before becoming President. What’s your recollection of that?

MR. TERRIS: Right. From my standpoint, I had not talked to the President about it, it occurred before I was even around, but it was of course well known that that was the position and very strong position of the President of the United States. That was background when we got to the legislative reapportionment issues. When we were dealing with *Baker v. Carr* and the cases about the legislative reapportionment issues, of course I knew what the President’s position was, but there weren’t really direct run-ins or disagreements with Archibald Cox at that point, it’s just that I knew how reluctant he was. I knew how he wasn’t enthusiastic about it. There was also another unusual thing going on because the *New York Times* correspondent, both for the Supreme Court and for the Department of Justice, was Tony Lewis. Well Tony Lewis had happened to write an article when he was a Nieman Fellow at Harvard Law School about reapportionment, and he was taking a position through this whole time period, he was not a neutral, he was not a journalist, he was a vigorous advocate for reapportionment, and he was talking to Cox all the way through this rather lengthy scenario and so that complicated the matter too for Cox and really for the Department of Justice.
MR. STEINBACH: Where does the Attorney General Robert Kennedy fit in this scenario about reapportionment?

MR. TERRIS: As far as I knew, he was not involved, and I don’t think he had to be involved at the *Baker v. Carr* level. I might be wrong. If there were private conversations between Cox and Kennedy, I don’t know about them. Certainly if there were any conversations, I have no doubt what Kennedy’s position would have been, which would have been a vigorous proponent of the courts and therefore the Department of Justice getting into reapportionment. Kennedy clearly got involved at the time that he argued the only case, as far as I know the only time he was ever in court let alone in the Supreme Court, when he argued the Georgia County Unit case. I assume that Cox wanted him to argue that. It’s a normal rule – at least it was then, I don’t know if it still exists – of the Attorney General handling one Supreme Court case. Kennedy argued that case, I assume, without any friction with Cox.

MR. STEINBACH: Let’s set the stage for that by focusing a little on *Baker v. Carr*, where the Supreme Court ultimately held that these questions were in fact justiciable. I take it you were involved in the government’s brief in *Baker v. Carr*.

MR. TERRIS: I reviewed it.

MR. STEINBACH: Did you write it or review it, or what was your role?

MR. TERRIS: I never, and none of my colleagues ever, wrote briefs. We reviewed them, and sometimes and frequently reviewed them heavily, but we didn’t write them. In fact, an interesting thing here, the only case that I can remember clearly in which there was a brief written in the Solicitor General’s Office
was the brief that was written by Archibald Cox personally on the standards for state legislative reapportionment. I have it just a few feet from here, I have the page proof of that brief in which Cox wrote on the front of it a note to me which basically said, “Keep your hands off it.”

MR. STEINBACH: He wanted to write it himself.

MR. TERRIS: He had already written it. It was a page proof. But he wanted me to read it because maybe there was a mistake somewhere, but he didn’t want me editing his brief [laughter].

MR. STEINBACH: So on the *Baker v. Carr* brief which you reviewed – and the government’s position I guess was that these kinds of questions were not political and were in fact justiciable by the Court – did Cox argue that case?

MR. TERRIS: Yes.

MR. STEINBACH: Were you there when he argued it?

MR. TERRIS: Yes, and he walked out of the courtroom and said to me, “Frankfurter’s right.”

MR. STEINBACH: And Frankfurter was taking a position adverse to the government – what Cox had argued.

MR. TERRIS: Right. I’ve been around a lot of lawyers in my more than 50 years of practicing law, and people don’t come out of courtrooms and say the other guy’s right. Your mind just won’t let you do that. It does not happen.

MR. STEINBACH: So Cox argues a position he doesn’t think is legally correct and wins the case.

MR. TERRIS: And wins the case [laughter].
MR. STEINBACH: Did you have any sense what his reaction was?

MR. TERRIS: Years later looking at the whole package, not just *Baker v. Carr*, he said the most important cases that he was involved in were the reapportionment cases.

I think he may have forgotten how much he waivered during this process.

MR. STEINBACH: So the government emerges from *Baker v. Carr* with a victory. These matters are justiciable by the courts.

MR. TERRIS: An enormous victory.

MR. STEINBACH: And the next in line I think is the case you started to talk about a second ago, the Georgia Unit case that the Attorney General himself argued, *Gray v. Sanders*. Can you tell us what the Georgia Unit system was?

MR. TERRIS: I think it was unique to the country. I never have heard of any other system, any other state, that had this system. They had maneuvered the reapportionment question into the Executive Branch, and the way they did it was essentially setting up something like the Electoral College. In other words, you got a certain number of units for winning County X, but the counties didn’t have units that were directly representative of how many people they had. Like in the legislature over the years, the changes in population resulted in rural areas having too many units, far too many units, and the cities, and particularly the suburbs, having far too few units. So you could easily win the governorship or any of the other executive positions in Georgia not having a majority of votes or anywhere near a majority of votes. So that was the issue: is that constitutional?
MR. STEINBACH: So that’s the case that Attorney General Robert Kennedy argued, and what you think is likely his only Supreme Court appearance.

MR. TERRIS: I’m almost sure it’s his only appearance.

MR. STEINBACH: You reviewed the briefs on that case.

MR. TERRIS: Correct.

MR. STEINBACH: Did you assist in preparing Attorney General Kennedy for the argument in the Supreme Court?

MR. TERRIS: I did in a way, but I want to be very careful [as to what I did] – I spent maybe an hour, maybe somewhat more than an hour with him. He may have had somebody else giving some kind of help to him, although I tend to think probably not. What I did was very light. I certainly didn’t write his argument. I talked to him about the case, that’s what I really did, for an hour or so. I say that because this is a man with no real experience, and he went into the Supreme Court without notes, and he gave this argument, and it was pretty good. I’m not going to say he was Archibald Cox. He certainly didn’t have the posture of Cox to be able to lecture the Court in that same fashion, but it was a pretty good argument. I can tell you when I went there on the day of the argument and he didn’t have anybody sitting with him at counsel table and when I saw he didn’t have any notes, I almost fainted [laughter].

MR. STEINBACH: But he conveyed the essence of what you had hoped he would tell the Court?

MR. TERRIS: Absolutely. And he did a very good job.

MR. STEINBACH: How was he received by the Justices? Do you remember that?
MR. TERRIS: I suspect the Attorney Generals generally, this is what happens with them. The Attorney Generals come and this is a ceremonial argument, in a sense, and the Justices know that the Attorney General is not a skilled oral advocate. They’re obviously careful about what questions they ask; they don’t want to look like they’re embarrassing the Attorney General, so it’s a little bit stilted.

MR. STEINBACH: What was your sense when you met with Kennedy to talk about the preparations for the case about his convictions about the underlying issue he was arguing?

MR. TERRIS: There was no question about that. He was fully into it. We’ll come to a discussion later on about legislative reapportionment, when it became even more clear in my mind about where he was coming from.

MR. STEINBACH: So Kennedy delivers the argument to the Court on the Georgia Unit case, and is it your sense that he picked that case because of its significance and importance to argue in his only Supreme Court appearance?

MR. TERRIS: I would think that probably Cox had recommended it to him. I tend to think that Kennedy didn’t sit down with the government cases for that term, and start looking through which one was the best. I would guess that Cox had recommended it – and I think it was a good case for Kennedy to be arguing. However it may also reflect that Cox wasn’t that into reapportionment. In other words, Cox very much wanted to argue the big cases, and he argued more cases, way more cases, than J. Lee Rankin. He used to argue two cases in a two-week session. I think most Solicitor Generals have never done that. It’s a very heavy burden. So he was really into arguing cases in a very heavy
way, so I think there was a little bit of, this isn’t the field that I’m most interested in.

MR. STEINBACH: And the government and Kennedy prevail in that case – and I guess you do too since you worked on the brief – and the Supreme Court says that the Georgia system violates the one person, one vote principle. Is that basically right?

MR. TERRIS: Right.

MR. STEINBACH: Let’s focus on *Wesberry v. Sanders* which is when you argued a reapportionment case to the Supreme Court. What’s at issue in that case? What were the facts?

MR. TERRIS: The facts in that was the basic legislative reapportionment, but involving the House of Representatives. And of course the House is divided between states, and so you can get some pretty bad [discrepancies] in how many people are represented in different districts just because of that division between states, but that’s in the Constitution. That can’t be changed. So the question, though, is within a state, and particularly states with a large number of congressmen – California, New York – that what happened was the same kind of malapportionment I was talking about before. You get some districts that would have a couple hundred thousand people and then another district that would have two or three times as many people. That would come from changes in population and then the state legislature not doing what it’s supposed to do to keep the districts relatively equal in population.
MR. STEINBACH: This case rose from Georgia also. But this had to do with allocation of
national representatives in the House of Representatives, as you indicated. I
take it you also must have worked on this brief?

MR. TERRIS: Correct.

MR. STEINBACH: You ended up being selected to argue the case – a very significant case,
because it’s the first time the Supreme Court is addressing the question of
national reapportionment. How did it come about that you argued the case?

MR. TERRIS: I have no idea [laughter]. All I know is somebody came to me and said,
you’ve been assigned to argue this case. And to put it mildly, I was more
than slightly surprised. I was the most junior person in the Solicitor
General’s Office. I was 30 years old, and it was the most obvious case for
the Solicitor General to be arguing. I’ve got to assume that he wasn’t
overjoyed with the case. It’s possible also that we – I forgot how much time
we had, we did not have the standard half hour. I think it may have been ten
minutes versus twenty, since the [lawyers] who brought the case had most of
the time. But it was very strange that some punk like me would have been
assigned to argue it [laughter].

MR. STEINBACH: But you must have been gratified.

MR. TERRIS: Oh yes indeed. Absolutely.

MR. STEINBACH: And you knew at the time – or I guess I should ask, did you know at the time
how significant this case would turn out to be?

MR. TERRIS: Oh, sure. Yes. It was the first case on legislative reapportionment. It was
clearly going to have an enormous effect on the state reapportionments,
which were also pending at essentially the same time. You didn’t have to be a great student of American law to have figured out how important this was.

MR. STEINBACH: Had you argued in the Supreme Court on other matters prior to *Wesberry v. Sanders*?

MR. TERRIS: I had. I probably argued about seven or eight cases by that point, none at the same level of importance.

MR. STEINBACH: So you realized the significance – that this would be the most important argument you’d had so far. How did you prepare?

MR. TERRIS: I didn’t really prepare differently. First of all, I knew an awful lot about the subject. The Solicitor General’s Office in general, at least at that time, [did not assign cases strictly by subject matter]. There was some idea of this guy knows this much about this or had handled a prior case, but it wasn’t done absolutely. I was handling every single reapportionment case. I don’t why exactly that occurred, but it happened. Anyway, I knew an awful lot about reapportionment at that time. And I basically prepared the way I had been trained to prepare in the Office. Obviously I read the briefs very, very carefully. I read the main cases and other supporting material very carefully, and I read every case, to some degree, some of them were of much less importance and I didn’t spend as much time on them, and then I wrote out the argument. I didn’t do what Robert Kennedy did and show up in front of the Supreme Court with nothing in front of me [laughter].

MR. STEINBACH: So when you went into the room, did you have some sense which Justices were with you, which were against, whether you’d win, whether you’d lose?
MR. TERRIS: Absolutely. In my lifetime at least, it’s been obvious in most of the cases in the Supreme Court where most of the Justices line up, that yes, when you walk in there, you have a very good idea who your friends are.

MR. STEINBACH: So what was your sense when you walked in, that you were going to be well received by the Court, or that this was an uphill struggle?

MR. TERRIS: We took a very limited position, which I can’t say that I remember exactly what the conversations were fifty years ago, but [we] were very nervous about not biting off more than we thought the Supreme Court could chew. Our argument that the case should be sent back so that the District Court could reconsider this problem certainly meant that we were not totally confident that we could prevail head-on on one man, one vote.

MR. STEINBACH: The Government’s position was that what had been structured in Georgia for the Federal house seats was wrong, unconstitutional, but needed to be addressed –

MR. TERRIS: Actually, not. We did not ask the Supreme Court to say as much as you did, but to say that it should go back to the District Court, which had not considered the merits of the constitutional argument, in order to consider the merits. We were obviously playing for time. It would start there, go to the Court of Appeals, and end up in the Supreme Court, but that we weren’t ready to make the full-out argument.

MR. STEINBACH: When you argued in front of the Court, did you have the sense that some of the Justices wanted to go further than maybe the Government was suggesting?
MR. TERRIS: I can’t really remember, but I’m sure I must have, because the Supreme Court is always a very open discussion. There’s not too much concealment of people’s views in Supreme Court arguments.

MR. STEINBACH: Tell me what you remember about that argument.

MR. TERRIS: I don’t remember very much, that’s the strange thing. I was enough of an experienced advocate by that point so that I was perfectly confident being in the Supreme Court. A lot of people would say, you must be so nervous, but I really wasn’t. The rush of adrenaline once you’re in front of the Supreme Court is such that it really wouldn’t have mattered whether it was the Supreme Court or a magistrate court somewhere.

MR. STEINBACH: Do you remember any particular exchanges or banter with any of the Justices?

MR. TERRIS: I don’t.

MR. STEINBACH: How did you think you did?

MR. TERRIS: I basically thought I was a pretty adequate Supreme Court advocate. Maybe some other people didn’t, but I thought I could handle it.

MR. STEINBACH: Did you leave the Wesberry argument feeling that your arguments had been well received?

MR. TERRIS: Yes, I definitely did. And I also thought there was a substantial chance the Court was going to go beyond our position. In a sense, we had planned it that way, to the extent that by taking the limited position, we thought if there were Justices ready to go where we wanted them to go, they would bite.
They would go on. In other words, we did nothing to be persuading them “don’t do it.” We were just saying, you should be doing at least this much.

MR. STEINBACH: You argued this in November 1963 and the decision comes down in February 1964. Were you present in the Court when the decision came down?

MR. TERRIS: My guess is that I was, because the people in the Solicitor General’s Office at that time, the announcements, I believe, were always on Monday, and we went up every Monday.

MR. STEINBACH: The Supreme Court decided what in the Wesberry decision?

MR. TERRIS: Essentially it had to be equal. It didn’t have to be strictly equal; nobody would [complain about] differentiations in population [of a couple thousand]. And you might also have some other reasons [for differentiations] like county lines and things of that kind. But it was essentially one man, one vote.

MR. STEINBACH: Applied to the House of Representatives.

MR. TERRIS: Correct.

MR. STEINBACH: Do you remember at all Justice John Marshall Harlan’s statement in Court that day?

MR. TERRIS: I didn’t remember it until you had me read it.

MR. STEINBACH: I’ll just quote it. Justice Harlan said, “I consider this occasion certainly the most solemn since I have been on the Court, and I think one would have to search the pages of history to find a case whose importance equals what we have decided today.”* He wrote that in dissent, obviously very troubled by

what he considered quite a significant decision by the Court. Your
reflections on that?

MR. TERRIS: Well it’s interesting. When you had me read that, I thought about it for a
while. In many ways, of the people who served on the Court when I was
arguing regularly, the Justice I admired the most was Justice Harlan.

Because I guess I had been heavily influenced by my Harvard Law School
training in that I, to a considerable degree, maybe not as much as Archibald
Cox, but to a considerable degree, I had that idea that the law is not just to be
a weapon for whatever happens to be my political view. In deciding the
Justices I admired the most, my calculus was the number of times that they
voted on the Court differently than they would have voted in the Congress. I
often got Harlan’s vote. Most of the cases I argued I lost 5 to 4, with the
usual 5 to 4 split, and I usually got his vote – but I often thought that if he
had been in Congress, he would have voted differently than he voted in the
Supreme Court.

MR. STEINBACH: So that he would have favored the principle of one person, one vote, but
didn’t think it was constitutionally mandated.

MR. TERRIS: That’s correct. That’s just a guess on my part.

MR. STEINBACH: Were you surprised at the breadth of the Supreme Court’s decision in
Wesberry, going beyond what the Government had recommended and
actually declaring unconstitutional the lack of equality in House seats?

MR. TERRIS: I don’t know that I would say “surprised.” We certainly were doubtful about
that. As I said before, if we’d been fully confident that that’s where we
thought the Court was going to go, we wouldn’t have had this idea of sending it back to the District Court in Georgia and have it move slowly up through the courts. But on the other hand, I’m not sure that we thought it was a tremendous surprise either. And I think that we thought that our strategy was a good strategy – it might very well come out this way.

MR. STEINBACH: I noticed that you argued the Wesberry case on November 19, 1963, which was three days before John Kennedy was assassinated in Dallas. Any recollections of what it was like inside the Solicitor General’s office or inside the government when you heard that news?

MR. TERRIS: I do have a recollection, interestingly enough given the discussion we’re having today. I had a radio, an old beat up radio, in my office. Most people didn’t. I didn’t play it, but somebody came into the office and said the President had been shot. In fact the person who came into my office and said that and said I should start playing it was Steve Pollak. Obviously we were shocked, which is an understatement. It was grim. The attitude in the Solicitor General’s office during that Administration was so positive about the kind of work that we were doing, the work on civil rights, the work on other kinds of things – the feeling of working for the federal government in the Kennedy Administration was just a tremendous feeling. And to have this unbelievable event occur, it was really horrible, just horrible. People were just not working for the government; it really was a sense of something very, very special.
And by the way, this is a different topic but it’s why I think people have badly misjudged the Kennedy Administration. I think that attitude in the government and in the country as a whole was far more important than whether he got eight bills through Congress or fifteen bills through Congress. It’s a tremendous ability to move the country. This year, with President Obama, if President Obama had some more of that, I think one would feel the difference enormously.

MR. STEINBACH: This is a great topic that we’re going to spend some time on in future sessions, your whole sense of the Kennedy Justice years, your work after you leave the Justice Department for Robert Kennedy himself. I think there’s so much to explore we can come back to.

After John Kennedy is no longer President, the reapportionment battles still continue, and in fact the *Wesberry* decision is handed down in February when Lyndon Johnson is now the President and the Attorney General is still Robert Kennedy. Is that correct?

MR. TERRIS: Yes.

MR. STEINBACH: So the next step in terms of these issues is whether the one person, one vote principle should be applied to state legislatures, both state houses of representatives and state senates. I take it that there was a lot of angst inside the Solicitor General’s office about that particular question. What’s your recollection of that?

MR. TERRIS: Of all the issues, except for the sit-in cases, which also had a tremendous amount of controversy about them and which I did not handle, the one man,
one vote principle with regards to the state legislatures had, in my experience – I’m sure other people had other experiences that I wasn’t involved with – but in my experience was the most controversial issue that I had anything to do with[. . .]. Tony Lewis was running around the Justice Department as a lobbyist for reapportionment, talking to everybody he could get his hands on. I’m sure he talked multiple times to Robert Kennedy. I’m sure he talked multiple times to Archibald Cox, and at a much lower level, he talked multiple times to me and people in the Civil Rights Division. So people knew even before the issues really had become joined, people knew what was going on and people were talking to each other about it and Lewis was telling people what was happening with the different players. The normal course of events was the government’s position would be first formulated in the Appellate Section in the Civil Rights Division, would go up to the Assistant Attorney General, Burke Marshall, then there would be memos at all those levels, and then it would come up to the Solicitor General’s office, which since I was handling reapportionment, was me. So all these memos were around.

MR. STEINBACH: About the state legislature reapportionment question?

MR. TERRIS: What should be the standard? How tough the reapportionment standard should be, and most importantly, should it be in both houses at the state legislature? There was a big argument going around that, after all if the United States Senate is completely malapportioned, why shouldn’t the states have that same kind of right for their senates? So these are the kinds of
issues that were floating around. All the memos that came up to the Solicitor General were for a very strong, aggressive position of the federal government. But everybody knew that this was not the Solicitor General’s position. I wrote a memo, and I thought about this memo very carefully about how this should be done. It was fifteen single-spaced pages in which besides arguing the legal merits of it, I basically ended up by saying this was an issue that in my opinion should be decided at the highest levels of the government. I did not go outside the chain of command. I knew Robert Kennedy personally during this time, I guess we’ll talk about that some other time. So I could have gone to Robert Kennedy very, very easily, outside channels. I did not do that, and I thought it would have been wrong to do it. I wasn’t particularly worried I would lose my job, I just thought it would be wrong to do it. First of all, I knew I wouldn’t have lost my job because I would have had protection from Kennedy, but I wouldn’t have done that. But what I did say was that it should be decided at the highest level. Cox – I think this shows a very good thing about Cox – he sent that memo on to the highest levels. I know now that it went to the White House. He did not have to do that. So that precipitated the most interesting meeting I was ever involved in in the government.

MR. STEINBACH: So there’s a series of memos written by various people inside the government about what position should be taken on the state reapportionment question. And, am I right, that most people’s sense is that the Solicitor General himself is not really on board?
MR. TERRIS: He’s not on board.

MR. STEINBACH: So after these memos, there’s a meeting that you remember to discuss these issues?

MR. TERRIS: Correct. Robert Kennedy held a meeting. Everybody that was important in the Administration was at that meeting except for the President. Larry O’Brien was there; Kenny O’Donnell was there; Sargent Shriver was there. Steve Smith was there. Those were the most important political people in the government at that time. Burke Marshall was there, not because he was a politician but he was the Assistant Attorney General for the Civil Rights Division and a very, very smart man. And I was there sitting in the back [laughter]. I was there I think only because Kennedy wanted me there. I’m sure he did not expect me to participate and didn’t intend for me to participate. The meeting I’ve come to believe was a fake. It purported to be a meeting to decide what the government’s position was. I believe in retrospect that the meeting was carefully programmed to figure out a method of getting Archibald Cox to take what Kennedy regarded as the right position.

MR. STEINBACH: Programmed by whom?

MR. TERRIS: By Robert Kennedy. It went like this: Kennedy called upon Cox to summarize what the situation was. Cox gave his Harvard Law School lecture. I don’t remember exactly, but it was certainly at least a half hour. Nobody else talked during that period. The ultimate point of what Cox was saying was the Supreme Court will never buy it – will never buy strict one
man, one vote. Of course this is a trump card for him. None of the other people in the room, with the possible exception of Burke Marshall, can really be the expert on what the Supreme Court was going to do. They can be experts on politics and all kinds of things, what’s good government and everything, but he’s the expert on what the Supreme Court is going to do. During that lecture, deep into it, Kennedy leaves the room, goes and gets himself some orange juice, comes back, sits down, Cox is still going on. Kennedy then calls on O’Brien and Kenny O’Donnell: what’s the politics of this? They say, it’s not going to help the Democratic party. These seats are going to the suburbs, yes they’re going to move from the rural areas, which are Republican, to the suburbs, but they’re mostly Republican too, and they’re not going to the big cities. Kennedy then said, that doesn’t matter, that this is a fundamental question of democracy, that people have got to have equal ability to vote for the legislature. Then he comes back to Cox, and Cox essentially does a short form repeat of his first lecture, and he says again that the Supreme Court will never buy it. Kennedy, I’ll never forget this, Kennedy says to Cox, “Archie, I’m sure you’ll find a way.” Well, this was so shrewd. Archibald Cox had a very big ego. He had good reason to have a big ego. What Kennedy had done, he had challenged him. He said to him, I’m sure you can find a way to persuade the Supreme Court. Well, that was so on the nose. The Solicitor General’s office is down the hall from the Attorney General’s office, and so Cox and I walked together back to the Solicitor General’s office. Cox was saying to me, “Kennedy doesn’t
understand.” And I kept thinking to myself, “You’re wrong about this one. He understands.” We get back to the office, and Cox basically says to me he’s going to write the brief.

MR. STEINBACH: He, Cox?

MR. TERRIS: Yes. He’s going to write the brief. He’s not sending it to – the normal thing would be to have it go down to the Appellate Section of the Civil Rights Division, and they write the brief. Cox writes the brief himself. And of course he does just exactly what Kennedy challenged him to do. He sits down to figure out a way that he’s going to almost get to where Kennedy wants, not quite, almost to where Kennedy wants to persuade the Supreme Court. So he writes the brief, he tells me not to touch it, it goes to the Supreme Court. The Supreme Court goes beyond him to hold one man, one vote, and the whole scenario I’m absolutely convinced is what Robert Kennedy figured out is how he had to do it. He couldn’t take the risk that Archibald Cox, who was a very principled man, would not sign the brief. That was the huge danger. Yes, Kennedy could have ordered a brief to be filed, and with Bruce Terris and Oscar Davis, then the First Assistant, would have gone over the brief, but it would have been devastating, potentially devastating, to do it that way. So that’s the way it went.

MR. STEINBACH: Devastating because the Court and the public --

MR. TERRIS: -- would know that Archibald Cox believed that the brief was so wrong that the Solicitor General wouldn’t even sign it.
MR. STEINBACH: So did Kennedy actually push Cox beyond the legal positions he really wanted himself to articulate? Did Kennedy make in effect Cox go beyond what he thought was right?

MR. TERRIS: No, he didn’t. I don’t think he ever went beyond that meeting. He was shrewd enough that by challenging Cox, Cox would get almost to the right place, or even get to the right place. He didn’t get absolutely to where I think Kennedy wanted, but he got almost there. But the Supreme Court wasn’t going to dice it at the end and say, we’re going to stop here. If you’re going to get this far, you ought to have one man, one vote.

MR. STEINBACH: So it sounds like a remarkable example of political acumen on the part of the Attorney General.

MR. TERRIS: I think it was. It was a brilliant idea.

MR. STEINBACH: So Cox argues in the Supreme Court.

MR. TERRIS: And of course very persuasively. He was a tremendous oral advocate, after all.

MR. STEINBACH: This is, I take it, the cases that become Reynolds v. Sims [377 U.S. 533 (1964)], where the Supreme Court accepts and goes beyond the government’s position and concludes that one person, one vote should apply to both houses of all state legislatures. Are you in court that day when it was decided, and do you remembering that dramatic announcement?

MR. TERRIS: Yes. I do, and of course I was overjoyed. And there was a little bit of a discussion between Tony Lewis and Cox [laughter].

MR. STEINBACH: Tell us about that. Anthony Lewis and Archibald Cox in the Supreme Court?
MR. TERRIS: They’re leaving. It’s over and Tony Lewis says, what’s it like to be at the Second Constitutional Convention? Because of course to Tony Lewis this was enormously important. And Cox says, it’s awful [laughter].

MR. STEINBACH: So yet another victory for the Solicitor General he’d rather have not received. But for you this must have been a sweet vindication after all these years.

MR. TERRIS: Yes. For a young lawyer to have had the opportunity to be able to participate in this kind of thing was really fantastic. What can you say?

This controversy over what the right standard should be for state legislatures has one more small chapter. There was a case that came up after the four cases that were decided by the Supreme Court that included the Reynolds case, in which Robert Kennedy was no longer the Attorney General, and Nicholas Katzenbach was the Attorney General. I believe it involved Colorado but I’m not 100% sure that I remember that correctly. I got a call one day from the Attorney General, which was not usually within my routine, and Mr. Katzenbach asked me to come and talk to him. I went down there, and he said, I’m really worried about the Colorado case – I’m worried that Archibald Cox is not going to be willing to support reapportionment in the Colorado case. So we had a discussion about the Colorado case. I can’t even remember what the particular nuance was, but there was a nuance that hadn’t been decided, or at least thought yet to be decided, in the Reynolds case and the other cases decided at that time. So Mr. Katzenbach wanted me to talk to him about how he could talk to Cox about persuading him to take the right position in that case. I talked to him.
I edited that brief too, and it came out the way that Katzenbach wanted, which was the same as what Kennedy had wanted, so apparently Katzenbach was successful in persuading Cox.

MR. STEINBACH: Bruce, some of what we’ve talked about today you’ve summarized at greater detail in a piece you wrote in *Supreme Court History* in 2007, which we’ll attach to the transcript of this interview. I wonder if you would just for a second reflect on the importance of the reapportionment cases. What was the end result – was this good for the country? How do you feel about your role in having been part of these historic decisions?

MR. TERRIS: I think it was enormously important for the country in both a positive way and in preventing a very negative situation. I think the positive way was that it moved political power from rural areas to the suburbs and to some extent the big cities, and I think it was crucial to this country. I think you got different kinds of people in legislatures and you got much more sophisticated people, people who are much more attuned to a country that is the most important country in the world facing enormous problems both internally and externally. I think it was absolutely crucial that that change occurred. But if it hadn’t, if you think about what if it hadn’t occurred – it had to occur. The country couldn’t continue along a line in which the legislatures became worse and worse apportioned and were essentially run by rural areas which are very unrepresentative of the country. You almost have to say to yourself

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somehow if this hadn’t occurred it would still have occurred. It had to occur.
The country couldn’t exist that way.

MR. STEINBACH: And looking back personally after a career with many other
accomplishments, your sense of your own pride and satisfaction in having
been involved in the reapportionment decisions?

MR. TERRIS: I feel very happy about it and proud of it. I’ve been in some other important
kinds of issues, but this is clearly the most important, and it was again, for a
young lawyer, it was mind-boggling that you had that kind of chance. I work
with young lawyers here and I think the level they’re allowed to work on,
then I think to myself, what I was working on when I was in my late 20s and
early 30s and it’s overwhelming really.

MR. STEINBACH: It not only turned out well, it turned out to be historic.

Well, thank you. We will move on in other sessions with other parts of your
life. Thank you, Bruce.
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 Thursday, May 29, 2014. This is the second interview.

MR. STEINBACH: Good afternoon, Bruce.

MR. TERRIS: Good afternoon.

MR. STEINBACH: We are going to focus today on background – what ultimately brought you to Washington, D.C. to work in the Justice Department, and there’s a lot before that. So why don’t we start with the first, which is the date you were born and the place you were born.

MR. TERRIS: I was born in Detroit, Michigan, and it was August 3, 1933, I’m told [laughter].

MR. STEINBACH: Why don’t you tell us generally about your parents: where they grew up, where their ancestor’s families originally came from, to the extent you know.

MR. TERRIS: My father’s family came from what I think was called White Russia and now is Belarus. I know essentially nothing about that background. My father never talked about it, and I guess I wasn’t smart enough to ask. They came I believe in the 1890s to New York, and they moved to Michigan. My father was born soon thereafter in 1902. They lived in a neighborhood, I am told, where they spoke Yiddish. My father, I was told, did not speak English until he was about 5. Other people in my family said that isn’t right, that he did
speak English before then. Obviously I don’t know. He was a very smart
man. He got into the University of Michigan but his family was not wealthy
at all. His father was in the scrap business, getting things from the railroads,
the Grand Trunk Railroad, getting debris, things that they didn’t care about
and had left there, and he would sell them and that’s how he made his living.
He died, I don’t know how old he was exactly – my father could have been in
his teens, maybe a little older than that, but something like that.

MR. STEINBACH: So this would have been your paternal grandfather who died?

MR. TERRIS: Yes. I never met my paternal grandfather, and I don’t believe I ever met my
paternal grandmother either. So my father couldn’t stay at the University of
Michigan. I don’t think he was there very long at all because it was too
costly. He couldn’t live at home if he went to Michigan, so he went instead
to what was called then Wayne University in Detroit. I believe at that time
he studied to become a doctor. We didn’t have the system we now have of
going four years to undergraduate school and then having four more years of
going to medical school. I believe it was just one piece. I don’t know how
long that was. In the very early 20s, he got his medical degree and he went
to practice medicine in Detroit. I’ll come back to that in a minute.

He had five siblings. He was the oldest, and he was the only one that I
believe went to college. It’s possible that one of his sisters did, but she
unfortunately got tuberculosis when she was very young and had to go live in
Colorado and she died fairly young. I did meet her. I went out to Colorado
with my father and I think I met her once, maybe more than that. The rest of
the children did not go to college. It was a family that was certainly strapped. I don’t know that I would call them poor. Poverty – and this may not be the place [to say this], but my experience with poverty, with which I do have considerable experience by working on the street – in many ways has a lot to do with money but also has a lot to do with [the way] you see the world, and I have a feeling they weren’t poor in the sense that they may not have had a lot of luxury but that they were very forward-looking and optimistic about where they were going.

My mother’s family I think came to the New World roughly at the same time. They came from Poland. They went to Toronto and that’s where she grew up. Her parents moved to the United States and to Detroit – so maybe that’s when she moved to Detroit too. She was a nurse and she worked at the hospital where my father practiced[. . .]. She also had several siblings. I’m not exactly sure how many because they weren’t all in Detroit.

I was born as I indicated before in 1933, and it was in Detroit, and we lived on the east side of Detroit.

MR. STEINBACH: In the city itself?

MR. TERRIS: In the city itself. That’s where my father’s office was, on the east side of Detroit, and that’s where huge – then, not now – automobile factories were. His practice was heavily automobile workers. And at that time nobody had insurance, so he was paid or he was not paid as the case might be. Certainly we were not wealthy, certainly not in the time before I was born and even after that. They were struggling. I don’t want to make this into that they
really were in difficult times. He was a doctor, he was making money, and he was doing reasonably well.

In the late 1930s, probably around 1937, just a few years after I was born, the family moved to Grosse Pointe City. There are a whole string of Grosse Pointes, and people think of Grosse Pointe as being a very wealthy place, and there were some very wealthy people[. . .]. Edsel Ford was building a place there when he died and it never got completed and that was one of the fun things for young people to do, to explore that place. But in general there were not very many wealthy people. There were certainly upper middle class people, well-off people, and we were, I would say, up until World War II, not among them. We were perfectly middle class. I’ve gone back to Grosse Pointe after that and I looked at the neighborhood and it was a very nice neighborhood but the houses were very small. Today there are probably few doctors in the United States that live in houses as small as our house was.

MR. STEINBACH: So you’ve gone back to Grosse Pointe City and looked at your childhood home?

MR. TERRIS: Yes, and I sort of remembered it not being too large, but when I saw it, I really knew it wasn’t very large. My brother was born I think in 1936, my sister in 1938. We had three bedrooms. My sister had the smallest. She was, of course, by herself. The two brothers were together in one bedroom. We had bunk beds, and if we had not had bunk beds, I think the beds would essentially have occupied every square inch of the bedroom. And we had
one bathroom in the hall that [the whole family] used, and we had a kitchen and quite a modest sized dining room and living room, and a nice sized backyard. Not the way the suburbs are now, but a nice sized backyard. About the size where you could play croquet.

MR. STEINBACH: What type of practice was your father in?

MR. TERRIS: My father did everything. I always have said to people he did everything but brain surgery. He was a family practitioner, is what people would say today. I don’t think they used that term then. He did obstetrics. He’d get up in the middle of night and go to the hospital. He would do surgery. His usual workday and week – I’m getting ahead of myself. I’ll come back to this because I don’t know what his work day and week was in the 1930s, I was too young. But when we came back from the war, and I’ll explain about that in a little bit, when we came back from the war in the 1940s, I know quite well what his work week was.

MR. STEINBACH: He practiced throughout the whole time you were growing up?

MR. TERRIS: That’s correct.

MR. STEINBACH: Did your mother continue working as a nurse when she had children?

MR. TERRIS: No. She was completely at home. She was a tremendously devoted mother and a fastidious home keeper. We also had help in the house. You would think we wouldn’t need it for such a small house, but my mother was so unbelievably fastidious. I used to joke, when I was a little older, of course, that my mother had her hands out to catch the dust before it hit the floor. I can remember constantly being chastised and even hit in the head for having
the drawers in the room pulled out and not put back into place. My mother was a very careful housekeeper.

MR. STEINBACH: Do you recall whether your mother had formal schooling to become a nurse, or did she have college education?

MR. TERRIS: No, she did not. And my father I think didn’t really have a college education. I think he probably had some courses like that. They were not broadly educated, but they were both smart and they both gradually absorbed an education. Long before they died, they were people with quite an extensive, what I would call an education, but it didn’t come from a college.

MR. STEINBACH: Your father’s a doctor, your mother’s a nurse. No pressure on you to become something other than a lawyer?

MR. TERRIS: No. There was no pressure, but I wanted to become a doctor. I really had this thought – now this was of course a little later when I was in junior high school or maybe the beginning of senior high school – that I wanted to become a doctor because I wanted to practice with him. I was enormously close to my parents and I just thought that that would be the most wonderful thing in the world. Unfortunately something happened. I believe it was in 9th grade they had something called “career book” in which the students would go out and they would research the subject that they wanted, the profession, the job, or whatever they wanted to become. I was an enormously dedicated student even at that age, so I wrote the whole history of medicine, but one of the things I did besides going back to Galen and the Greeks and all those kind of people is I went to see my father in his practice. So [I went to] see
him operate. Well I saw him operate, and one of the two operations he did
that morning was a goiter operation. A goiter operation is enormously
bloody. When that operation was over, I was finished [laughter]. I couldn’t
be a doctor anymore.

MR. STEINBACH: Did he know that at the time? Did he regret having brought you in that day?

MR. TERRIS: I don’t think so. He didn’t really care that I become a doctor. He really
cared that I become somebody, but I never got the impression that I broke his
heart that I wasn’t going to practice medicine.

MR. STEINBACH: So you probably have no recollections of growing up in the first four years in
East Detroit?

MR. TERRIS: No I really don’t. The one thing I do remember is we had rhubarb in our
backyard and I used to go out and eat it [laughter].

MR. STEINBACH: What was your neighborhood like when you moved to Grosse Pointe City,
when you were growing up?

MR. TERRIS: There were all these small houses. It was just being developed, the portion of
Grosse Pointe that we were in. Many, many vacant lots. Quite near our
house, only a block or two from our house, was something called Snake
Woods. The children in the neighborhood, of which there were many, used
to troop over and thought it was quite exciting to go into Snake Woods.
There was enough room so you could play baseball on vacant lots. In the
beginning, when we were really small and couldn’t hit the ball very far, we
could play in our front yard, which wasn’t a very big front yard. Once we hit
a ball through the neighbor’s window. It was a very laidback neighborhood.
It was a totally, totally segregated neighborhood, but it wasn’t just segregated between whites and blacks. There were restrictive covenants in Grosse Pointe that barred Blacks, Italians, and Jews. I don’t know what happened about the Jews in our case, but I assume the reason is that my name is not Jewish, and at least my father did not look at all Jewish. My mother, somebody might, if they were thinking about it, decide that she was Jewish, but they probably wouldn’t have been thinking about it because they probably would have thought that no Jew would even think about coming to Grosse Pointe. Now the fact is there were not many Jews in the whole east side of Detroit, so it wouldn’t have been in a real estate agent’s mind. To the best of my knowledge, there were three Jewish families in Grosse Pointe out of about 75,000 people in the 1950s. Since there were not that many people in Grosse Pointe in the 1930s, the number of Jews would have been considerably less.

MR. STEINBACH: So this is not a Jewish enclave in the Detroit area; just the opposite it sounds like.

MR. TERRIS: Jews were on the west side.

MR. STEINBACH: Did you know growing up that you, I guess, weren’t supposed to live there? Did you know that as a child, and did that matter to your experiences?

MR. TERRIS: I doubt that I knew, but the question really relates to a lot of other things. I certainly knew that the community wasn’t Jewish and that, for example, in high school there was a Hi-Y club that had a Christian orientation to it. The people in the neighborhood of course were going to church, observing
Christmas and all that kind of thing. I certainly knew I was different, but I don’t think it really bothered me a great deal. My family was in many ways very Jewish. I always used to joke, it wasn’t quite accurate, that my father never said a sentence that he didn’t have a few Yiddish words in it. He did that a lot. His friends and my mother’s friends were all Jewish. They were from the west side of Detroit and they were very Jewish. We were almost totally non-religious, almost totally. The only thing we did religiously was I think most years we went to a Passover Seder, where interestingly enough my father always presided. I don’t know whether he knew all the words or not or what they meant, but he used to say the service at a speed that was beyond the way a human voice can normally move. I can’t speak English at the speed he could speak this Hebrew. I suspect he didn’t know what he was saying, but I could be totally wrong. We also lit the Hanukkah candles, and that was about it, until the time that I should have been bar mitzvahed, but I wasn’t, and I was confirmed. My mother took me all the way across town twice a week to get a very poor religious education from a Reform synagogue. So they did care about it, but our home certainly [did not have] a very religious atmosphere.

MR. STEINBACH: Did you grow up – by being Jewish in this community, as a very small minority member I guess – did that ever affect you in your relationships with your friends, or was that something that you ever had any experiences with that stick in your mind at all?
MR. TERRIS: I never felt in the slightest bit discriminated against, treated in a different way. Now I don’t know how many people knew I was Jewish. Certainly some people did, but I think in the entire time that I lived in Grosse Pointe, I can remember one anti-Semitic comment being made to me. If they didn’t know I was Jewish, they wouldn’t have directed it particularly to me, but I didn’t hear anti-Semitic comments. So no, I really was not affected in any significant way.

MR. STEINBACH: What was your elementary school like. Neighborhood school?

MR. TERRIS: Neighborhood school, about five or six blocks from my house.

MR. STEINBACH: Public school?

MR. TERRIS: Let me back up. I couldn’t speak until I was three. I’m almost sure that the reason is I have a very poor ability to distinguish sound. I am horrible at learning language. I got A’s in Spanish in high school and at Harvard. If they ever taught those courses so that you had to speak or understand Spanish, I would have gotten an F. But in those days they did it on paper. I was in great shape. Occasionally they’d speak a little bit of Spanish in class, and I understood none of it. And I’ve never been able to learn Hebrew, although I’ve spent an enormous effort to do it, and never could learn to speak it. I could read it a little bit but I couldn’t speak it and couldn’t understand it.

MR. STEINBACH: But you couldn’t even speak at all until you were three?

MR. TERRIS: I couldn’t speak. But in the meantime, my mother, who as I told you was about the most devoted mother around, first carted me off to a neighborhood
nursery school, and then she found, I think at about age 2 – I don’t know what to call it, nursery school wouldn’t be the right word – something called the Merrill Palmer Institute, which was completely across the city and it was I believe for gifted students. Don’t ask me how anyone would even know I was a gifted student, particularly since I couldn’t say anything. My guess is my mother and father were worried. So she used to spend, it must have been three hours a day, taking me and then coming back and getting me at the end of the day. And for the next couple of years, that’s where I spent my time. I can remember very fondly what a challenging atmosphere it was. I don’t remember the details of course, but I do have this remembrance of doing puzzles and things like that.

So when I got to grammar school, Richard Grammar School is what it was, I was quite far ahead of the other students, and much of the time I didn’t spend in class. I spent time doing workbooks. Then they tried to deal with it, my being ahead, I think it must have been around my second year. In Grosse Pointe at the time, one group of students came in in September, and another group of students came in February, so there were children in September who were in the middle of the first year, middle of the 10th grade, etc. They jumped me a half grade so in September, each year, I was in the middle of the year, not the start of it. I guess I went to Richard up until the time I was 9.

MR. STEINBACH: So this is before high school. You stayed at Richard all the way?
MR. TERRIS: No. Up until junior high school and then across the street from Richard was Brownell Junior High School, but I didn’t start at Brownell because during the war, almost the entire time, I was going to school at numerous schools all over the United States.

MR. STEINBACH: Okay, let’s save that. Let’s focus on the years before the war starts, I suppose, while you’re in grammar school equivalent.

MR. TERRIS: Up until age 9.

MR. STEINBACH: Okay. I’m going to start with your home life during that time period. What was your family like? What were the evenings like? What did your parents emphasize in values? However you want to tackle that.

MR. TERRIS: I remember all that very clearly for the period after the war.

MR. STEINBACH: Then generally, however you’d like to respond to that.

MR. TERRIS: Let me try to put the two together.

MR. STEINBACH: Okay.

MR. TERRIS: Before the war, my father’s practice struggled. A lot of people didn’t pay him.

MR. STEINBACH: This is the Depression decade?

MR. TERRIS: It’s during the Depression. The reason I know people didn’t pay him is because after my father went in the Army, which we’ll talk about in a minute, my mother got the assignment – my father was in Florida actually at the time in training – and my mother got the job of going from patient to patient to try to collect the bills that they owed my father, and I got the job of going with her because I guess maybe it was seen as too dangerous for my mother to go
all by herself. So I know that there were lots of debts owed my father. After
the war, however, when my father came back from the Army, he built an
enormous practice, an enormous practice. His day really informed the rest of
our days, other than obviously I went to school and the other children went to
school. He’d be out of the house at about 7:00. In those days, he at least,
and I think doctors generally, made home calls. He would make home calls
for a while. At least two or three days a week he would go to the hospital,
both visit patients, and do one or two surgeries a day. Later in the day,
probably around noon or something, he’d start on his office hours. He would
see an enormous number of people, probably 40 or 50.

MR. STEINBACH: Was it still mostly auto workers at that point?

MR. TERRIS: Yes. Same practice. He’d come home at 5:00 sharp. Dinner. Everybody’s
to be there at dinner. We’d have dinner for about an hour, he would then go
back to the office until about 8:00 or 9:00, and he’d make more home calls.
So I probably wouldn’t see him again that day, maybe if I stayed up
particularly late doing studying or something I might, but otherwise I
wouldn’t. Then on Saturdays he’d work half a day – sometimes we did
things like go to the University of Michigan football games or do something
else together. Often I went with him on his house calls on Saturday and
Sunday. He made house calls on Sunday. Not all day by any means, but
probably a couple hours. And that was what he did during the week. His
interests were he read medical magazines and he played the stock market.
That was his great challenge, to play the stock market. Because now he was
making money and he had something to invest.

I left out something about my mother that I think would tell you something about how careful she was at bringing us up. Every day in the morning, all the way through high school to the day I went off to Harvard, we’d line up, we’d have breakfast. We’d have a full, enormously healthy breakfast. Every meal was enormously healthy. We would then line up and the three children would be given a dose of cod liver oil. Every single morning until I went to college.

MR. STEINBACH: And you did the same with your kids?

MR. TERRIS: No [laughter]. If I tried that with my kids, they’d run away from home.

MR. STEINBACH: So when you had these family dinners promptly at 5:00 – discussions? I guess you did it up until age 9, but then after the war you’d be 13 to 17 until you go off to college.

MR. TERRIS: I think we had a lot of discussions. Starting at least when I was 11, I would say, I started reading the newspapers quite thoroughly. I also started reading – this may have been a little older than that but not much older – books about anti-Semitism in the United States. I’ve forgotten his initials, but [Gerald L.K.] Smith. There was a very famous anti-Semite. Father [Charles] Coughlin, worked out of Royal Oak, Michigan, so I read books about all that and what have you. I know that there were discussions at the table. My parents were certainly intelligent people, and so, yes, I think we had a fair amount of that. I remember, for example, when I was in, I believe it was in 9th grade, that I did a big project on the Yalta Conference, and again I
probably overdid it. I used to go downtown regularly and not only take the clippings from the *Detroit News* and *Free Press* but clippings from all over the country that were on the Yalta Conference.

MR. STEINBACH: Then that would have been in high school, right?

MR. TERRIS: It would have been around 9th grade. It could have been 10th, because let me think, Yalta was 1945 so I was only 12 years old, so it was probably 8th grade actually.

MR. STEINBACH: Before we start on the war, the 1930s was obviously the decade of the Depression, although by the end of the 1930s you’re only 6 or 7. You probably don’t have a personal sense of that.

MR. TERRIS: My family did not seem to be operating on the basis of the Depression. My father may have worried about it. Sometimes he would be paid in eggs or things like that, so I’m sure he was worried, but at home there was no reason for me to be, that I felt anything like that. I did not feel as a little kid that anything was being denied me.

MR. STEINBACH: So Pearl Harbor happens when you’re probably 8 years old. Do you have any recollection of worrying that a war might come prior to that?

MR. TERRIS: No, not prior to it, but I can remember the exact moment that I heard about it. I was at my maternal grandparents, who lived in Detroit at that time, and I can remember this old radio – I guess it probably wasn’t old then but it was one of these things that kind of looked like a looped top that sits on the floor – and hearing Franklin Roosevelt’s speech, the great speech of Franklin Roosevelt about [Pearl Harbor] being attacked. Of course I couldn’t
comprehend quite what that effect was going to be on me and my family, but obviously I could feel the enormous tension in our room together and of course in Franklin Roosevelt’s speech.

MR. STEINBACH: How did your dad get involved in the Army or whatever he actually did during the war? Was that an aftermath of Pearl Harbor?

MR. TERRIS: Yes.

MR. STEINBACH: What happened?

MR. TERRIS: He never would have been drafted. He was 40 years old, and I believe that the draft age for doctors was 40. In other words, below 40 they would be drafted. He joined the Army I believe in December 1942 and he was 40 at that time. From a selfish point of view, going into the Army was crazy. Now he really had the opportunity for the first time in his life to make a substantial amount of money. Lots of doctors were leaving. He could have had a tremendous practice. People were flocking to Detroit, factory workers were getting paid far more money than they used to, all that kind of thing. He felt an enormous debt to the United States, an enormous debt. I don’t know how much he knew about his family’s situation in Russia, but he felt this enormous debt, and it was increased by the kind of feeling that he and a lot of other Jews had about Franklin Roosevelt and that this country was fundamentally not anti-Semitic and that this was just a marvelous thing for Jews like him to have a fair chance. So he joined the Army, and he was assigned and had his early training in Florida.

MR. STEINBACH: And you stayed in Michigan while he went to Florida?
MR. TERRIS: For about a month we stayed in Michigan, then the rest of the family got on a train and we went down to Florida. Now I didn’t go to school – I think he was in Florida for only about a month or two more. I didn’t go to school in Florida, nor did my brother. My family got the two of us – my brother was three years younger than I am – got us Army uniforms and the units that were in Florida used to march around Miami Beach. They were in Miami Beach in the fanciest hotels probably in the United States. I don’t know if they were fancy when the Army took them over, but they were inherently a very fancy place, and these units would march around the streets in cadence, all the commands, left, right, all that kind of stuff, and we would go out in the street with our Army uniforms and salute them. We would walk from block to block, there were no cars on the street, there were only these units marching around, and these two punk kids were out there saluting them. That’s my recollection of that. From that point on, we went place to place with my father until the middle of 1945 when the war ended.

We went to Carlisle, Pennsylvania, which I can still remember is the coldest place I can remember in my life. It was probably February of 1943, and we went to other places; I don’t know the sequence, it’s probably not important anyway. We went to Kalamazoo, Michigan; we went to LaCrosse, Wisconsin; we went to Takoma, Washington; we went to Elsinore, California; we went to San Francisco, California. I think that we went to all of them, and I went to about ten schools. One of them I went to for one day, one for three days, and others for a year.
MR. STEINBACH: This was because the Army was constantly reassigning your father to be the medical doctor for trainees or recruits all over the country?

MR. TERRIS: All kinds of people. And he also made matters a little worse because when my father saw things that he thought were not appropriate, he protested. When he protested, he got transferred. I can remember in LaCrosse, Wisconsin, they had him and some other people training by crawling over the ground while there was live machine gun fire over them. A soldier fairly close to him got killed, and another soldier was wounded. My father had some things to say about that, and before long we were not in LaCrosse, Wisconsin, anymore.

MR. STEINBACH: So from your perspective, was this fun and exciting to move from place to place, or very difficult because you were constantly changing schools and losing friends, or what was it like?

MR. TERRIS: I think exciting probably would be closer to it. First of all, I was with my family. My mother was spending full time taking care of the children. My father lived with us so it wasn’t like the family was broken up. I did well in school, so it really wasn’t that hard. In Kalamazoo, Michigan, I think I was there only about ten days and I won the spelling bee in the school. I got a promotion for another half year beyond where I was because one of the schools, I’m not sure which one, didn’t have half grades like we had in Grosse Pointe, so they either had to put me back or put me forward, so I got put forward another half grade. That’s why I ended up graduating from both high school and college very young. It was fun, and it was fun to go to
different places. I mean San Francisco, when we ended up there, was terrific. For a few months – we lived downtown before our apartment got completed, it was under construction – I sold newspapers on the cable cars. I’d get on the cable car, sold some newspapers, and the cable car would go down a half mile, and then I’d get off and get on another cable car coming back. For a young kid, this was pretty exciting, so I loved it. It probably did me a lot of good and I learned an enormous amount about the United States. We always drove, except for that first trip to Florida, and we went to all kinds of places that I’d never see at that age.

MR. STEINBACH: That’s fascinating. I think you told me it was around this time you started to read the newspaper and follow current events.

MR. TERRIS: I followed the war particularly. I followed the war across the Pacific, from island to island, I followed the war in Russia. I read the newspaper quite carefully.

MR. STEINBACH: Recollections about what it was like to grow up during the war? Do you remember anything changing besides the fact that you’re moving from place to place? Did it affect your daily life, your family?

MR. TERRIS: My mother was such a tremendous home keeper. She really prevented probably any of the stresses that you would say to yourself it must’ve been stressful to do this or this, but it really wasn’t. It really wasn’t. And some of it was actually almost luxurious. I forgot that another place we were at was Fresno, California, at Hammer Field. My father was an officer, a medical
officer, and we spent the whole summer at the Officer’s Club swimming pool. For kids, you can’t beat that [laughter].

MR. STEINBACH: Did you ever worry that we might not win the war?

MR. TERRIS: I don’t think so. But, of course, at that age I wasn’t too acute. I mean certainly at the time of Pearl Harbor, there was reason to be worried. I might have had a little bit of worry because I was reading the newspaper soon after that and certainly there were things in the newspaper that weren’t going so well. I can remember reading about the German campaign being quite successful in the Soviet Union. So I think I had some worry, but not enough so you could say this was really having a significant impact on me.

MR. STEINBACH: Is this before you wrote your report in 9th grade on medicine?

MR. TERRIS: Yes, that was back in Grosse Pointe. So was the Yalta conference report.

MR. STEINBACH: Did any of the war experience or your involvement in life in the Army as a child in any way sort of make you want to pursue some sort of public service career?

MR. TERRIS: I don’t think at that time I really had gotten to that point. I think the closest I was getting to that point was when I was in high school, once I began to develop actual political attitudes.

MR. STEINBACH: Recollections of Franklin Roosevelt as President?

MR. TERRIS: My family was enormously supportive of him for the reasons I said before. I can remember, we did come back to Grosse Pointe a few times for relatively short periods, and I can remember in 1944 that there was a straw poll in Richard Grammar School . . . between Dewey and Roosevelt. The vote for
Dewey was 7 to 1. That vote tells you a lot about Grosse Pointe. I was among the one. My family was Democratic, and I became even more to the left when I was in high school, but I didn’t have discussions with people in Grosse Pointe about my political views [laughter].

MR. STEINBACH: You must remember the excitement when the war ended.

MR. TERRIS: Yes. We were coming home. It had the same excitement as everybody else in the country, plus it meant we were going home. My father, of course, was very excited, he was going to resume his practice. One interesting thing about what happened during the war is we spent, as I indicated to you, we spent much of the war in different places in California, and my father decided that he probably wanted to come back to California. This was a very difficult thing to do because half of the doctors in the Army who had been in California had the same idea, and so they were giving oral exams [to get a California license] and passing almost nobody. The doctors in California were not looking forward to thousands of additional doctors pouring into the state. My father was one of the very, very few who passed, and the question he thinks determined it was, “What was Rocky Mountain spotted fever?” Don’t ask me how he knew that. He had never practiced in the Rocky Mountains, but he knew a lot of medicine, and he got it right.

MR. STEINBACH: So you had just turned 12 a few days before the war against Japan ended in 1945. Your family goes back to Grosse Pointe. Your father resumes his medical practice.

MR. TERRIS: And we went back to the same house. We had never given up the house.
MR. STEINBACH: Who took care of his practice while he was away?

MR. TERRIS: Nobody. It was gone.

MR. STEINBACH: So he managed to get many of the same families to come back?

MR. TERRIS: He came back in the first instance to be a very junior partner with a doctor who had a practice. Fairly soon, he went out and started a practice by himself. He had a tremendous bedside manner. The proof of this wasn’t really Detroit, because there he had people who knew him, but when he went to California years later, in 1954, he built another practice almost instantly. All he had to do was put a sign up and the first person came in, that person would tell everybody in the world. So he had an enormous practice.

MR. STEINBACH: So you return, as I said, when you’re about 12. Can I ask you before you go further, do you have any recollections of the atomic bombing at the end of the war?

MR. TERRIS: Yes. I can remember that and how completely puzzling that was. Probably to almost anybody it must have seemed like an overwhelming thing – what is this kind of thing? For a child of my age, that’s what I can remember, what does that mean that there’s a bomb that wipes out a whole city? What is this? And then, of course, some thoughts about the moral – not in any tremendous depth, I don’t want to pretend about that – this incredible number of people being killed.

MR. STEINBACH: Obviously we all look backwards knowing about the Cold War. When the war ends, do you think all is going to be well, or are you and your family already sort of worried about future relationships with the Soviet Union?
MR. TERRIS: I’m a Leftist at this point. I’m not a Communist, but I’m a Leftist. I took – you probably know because you’re a historian – there was a newspaper called PM. I took that – and when I say I took that, I literally mean I, not my family because they didn’t particularly read it – and at least for part of the time when I was in high school I took it. There was a teacher in high school who had the same sort of ideas who became to some degree kind of my mentor, so at least part of high school I was very into that kind of thing, so there certainly was a period there where I was very sympathetic to the Soviet Union and wasn’t worried. I don’t know when that changed.

MR. STEINBACH: How does someone who grows up in a town that is 7 to 1 in favor of Dewey end up, in high school, no less, becoming a “Leftist”?  

MR. TERRIS: The mentor probably had something to do with it, but I also think that I have an innate skepticism, to a certain degree, [a sense] of rebellion. I think some of those characteristics are very Jewish characteristics, so my being at least ostensibly Jewish, and in a real way culturally Jewish, because my family was really culturally Jewish.

MR. STEINBACH: Let’s focus on your high school years, which I think would be about 1946 to 1950, approximately? Since you’re in the college class of 1954.

MR. TERRIS: That’s right.

MR. STEINBACH: Tell me the name of your high school, where it was, what you remember.

MR. TERRIS: It was Grosse Pointe High School. Brownell was across the street from Richard, and Grosse Pointe High School was next to Brownell, so it was all one big complex. It was a very good high school, public. The upper middle
class kids in Grosse Pointe went to private schools. At that time I think my father probably had the money to pay for me to go, but it would have never crossed his mind. And my brother never went to private school. My sister did, but that’s because she got herself into a little bit of trouble so my parents thought that getting her out of town, nothing really terribly serious, but from my parent’s point of view, it was trouble. It was a very good school, and it was really pretty uneventful. I was the sports editor for the school newspaper for a semester. I played tennis. I got on a very good tennis team that when I was there it had won something like 250 out of 251 dual matches, won every dual match the year I was there. I came close but didn’t beat the second ranking tennis player in Michigan. I was nowhere near as good as that suggests, but I had a good day, almost a really good day. I had been appointed by somebody, I don’t know who did that, to be the chief justice of the supreme court of the school. It was supposed to deal with honor issues. My recollection is there were very, very few [issues] that I dealt with. I got very good grades. I was second in my class, and I was tied for first until the last semester. Never could deal really with literature courses [laughter].

MR. STEINBACH: What did you excel at?

MR. TERRIS: I think I was probably just pretty good at everything. There was certainly, I can remember in mathematics there was a guy who was better than I was and really was a wiz at it, but it wasn’t that difficult for me to get A’s, and so I got all A’s except for one. It was a pretty uneventful high school career.

MR. STEINBACH: What did you do in the summers?
MR. TERRIS: When I was younger, I went to camp I think for a few weeks for at least several of the summers. When my father was in the Army, nothing happened except for that one glorious summer at the Officer’s Club swimming pool. During high school, I believe one of the summers, I think this was when I was in high school, I got the assignment of re-painting the white picket fence in our back yard, and I painted it at the speed that Rembrandt would have done it. I was so careful with the painting I was doing that it took almost the whole summer. My parents were not overjoyed by that.

In 1946, I spent much of the summer after school let out by getting on the, I believe it was the trolley. Detroit was only one block from our house and so I walked up there, got on a trolley, went down to Briggs Stadium, and saw virtually every home game because my hero, Hank Greenberg, was there that year. Unfortunately, they traded him after that year, and I never quite fully forgave them. I think other summers I really don’t know exactly what I did. I went to the lake which was about a mile from the house and swam some days. Certainly near the end of my high school time, I spent a lot of time playing tennis. One summer I won the junior championship for Grosse Pointe. Probably a lot of people would say I goofed around [laughter].

MR. STEINBACH: You graduated from high school, do you remember what year?

MR. TERRIS: 1950.

MR. STEINBACH: Did you know at that point or think what you might want to be when you had a career?
MR. TERRIS: I thought about going to law school. People then, children then, knew so much less than they know today and have done so much less thinking about it than today. It’s just amazing. I didn’t know anything about colleges. I really didn’t know anything about what kind of work [I wanted] to do. The reason I say I may have thought about law is I wasn’t going to be a doctor – so it was almost like, and I know it sounds absolutely ridiculous, what else is there to do? It’s a profession. I didn’t really think about teaching. Maybe I should have, but I didn’t. And I almost didn’t have any idea in my head what I was going to do. I knew I wasn’t going to be a carpenter. I was a complete klutz with my hands. So vaguely law was something I was thinking about.

MR. STEINBACH: How did you end up at Harvard College?

MR. TERRIS: That supports the point I just made almost in spades. I was going to the University of Michigan; that’s the only college I applied to. I had gotten in. Virtually every student in my high school who had grades above a certain level went to the University of Michigan. If you got grades a little below that, you went to Michigan State. If you got grades a little below that, you went to Kalamazoo or Albion or Wayne. Nobody went east to school. There might have been a couple of people going to school in Ohio. That was really being adventuresome, going some distance. I think I calculated there were three people, other than myself, that went to school in the east. From the private schools, they were all going east, but in the public high school, the only people that went east were people whose families were the occasional family in high school that were upper middle class. Other than that, nobody
was going east. One guy went to Harvard. They recruited him to play football. So it never even dawned on me.

There was a patient of my father’s – it’s kind of interesting I still remember his name because I probably saw him only two or three times in my life – his name was George Cobb. He was a rare patient for my father – he was an engineer. My father always did a lot of bragging about his children in between talking to his patients about their medical problems. And I’m sure he bragged to George Cobb that I was doing well in school, and George Cobb said, “Well, if your son’s doing so well in school, the best school – this guy had gone to Cornell – the best school in the country is Harvard, so why doesn’t your son go to Harvard?” It never dawned on my father either that his son go to Harvard. So my father came home and said, “George Cobb said that Harvard is the best school in the country. You have good grades, why don’t you go to Harvard?” Well I took the College Boards and I got, I think, in the top 1%, and I applied to Harvard. It was also the only other school I applied to. And I got in. So I went to Harvard [laughter]. I had never been there, and knew nothing about it other than George Cobb.

MR. STEINBACH: You accepted without having gone there, and the first time you visited is when you showed up as a freshman?

MR. TERRIS: My father and mother drove me there, dumped me off, and that was that.

MR. STEINBACH: Describe, I guess, your college experience. Let’s start that generally, and we’ll go from there.
MR. TERRIS: First of all, half of the Harvard class at that time – I’m not really sure if I have it right – I believe half the class had gone to eastern prep schools, and there were of course many, many other students who had also gone to private schools beyond that. The number of public school students was very low. I think there were 100 people in my class of roughly 1,100 from Exeter and 100 from Andover. That’s where Harvard got its students. And of course from the moment I got there I thought to myself to some degree, I’m really kind of over my head. These people seem to know so much more than I know. I had been to a very good high school, but in comparison, it seemed like they knew everything and I hardly knew anything. I came there with the attitude, I was not going to do that well. I don’t mean to say I was going to flunk, but if I were in the middle of the class, that would be perfectly good. After all, it’s been said to be the best school in the country, so if I got in the middle, that would be good. So I started and I can remember one class – about the greatest books. John Finley, a great classicist, taught in Sanders Theatre, this enormous place with probably 500 students sitting there, and he lectured on *The Iliad*, *The Odyssey*, *The Aeneid*, Dante, Milton. That was it. The next semester, now I’ve gone blank on the teacher [Thornton Wilder], which is really bad, but you’ll know immediately because he was a visiting professor and he was the author of *Our Town*. We read *Don Quixote*, *War and Peace*, *Great Expectations*, *The Red and the Black*, and *Our Town*. That was just an overwhelming course. I had read *War and Peace* before because I had done a paper in my senior year in high school on *War and Peace*, *Anna
Karenina, and Resurrection, the third novel of Tolstoy, which had gotten a B [laughter].

MR. STEINBACH: In high school?

MR. TERRIS: In high school. And I got a B in this course too, in literature again [laughter]. And in my first year at Harvard I took a political science course and I took Spanish and a course in writing in which they were attempting to improve my writing. I had almost no extracurricular activities at Harvard. I just worked harder than anybody at Harvard. Nobody has ever out-worked me in school, I can tell you that. There have people that have worked as hard, but nobody has out-worked me. And that’s why I got good grades, not whatever is in my head. To show you the extremes of this, I took a political science course, Political Theory, starting with Aristotle and Plato and running up to date. [The book for the course had excerpts from the great thinkers.] At the beginning, I thought – this seems so incredible that I would’ve ever thought this – [. . .] I said to myself, “well I have to really work hard at this so I’m going to read the whole book” [laughter]. Well there are only about twenty pages from Plato or Aristotle or what have you in the textbook. In a couple months I had to give that up. That was impossible. I think what happened is the excerpts started getting shorter and shorter and the books [longer and longer]. So I surprised myself and I did better than I thought I would the first year. I got half A’s and half B’s, and then the second year, except for one half course, that was the only B I got, and that came from – I’ll never forget this to this day – taking calculus, and it was a three-hour exam and I was
finished in an hour, but I could not get one problem [laughter]. I just simply
could not get one problem.

MR. STEINBACH: I’m sorry this process is bringing back bad memories [laughter].

MR. TERRIS: I died that I couldn’t get one problem. I got a B. From that point on, all my
grades at Harvard were A’s. My experience there, I worked enormously
hard, I had a small group of very close friends, they expanded my horizons
very, very substantially. Just one small indication, they loved to go to good
movies, so I went with them. I probably saw every good English movie that
came out during those years. Alec Guinness and all the rest of them. Then
my junior year, instead of taking four courses I took five because I wanted to
take three my last year so I could write my thesis. I really didn’t have any
idea what I wanted to write it on.

MR. STEINBACH: Tell us what you decided to major in.

MR. TERRIS: I majored in History, with particular attention to American. I also took
European History and also took Chinese and Japanese History. I took
American History, with unbelievably good professors. The two Schlesingers
[Arthur Sr. and Arthur Jr.], [Oscar] Handlin, who was an expert on
immigration, and Frederick Merk, who was an expert on the Westward
Movement. Those lectures were just wonderful. I took Economics, basic
economics, which I’m certainly glad I did. I took Constitutional Law from a
historical point of view, not of course the way a law school would teach it.
Those were probably most of the courses I took.

The mentor for my thesis was Sydney Ahlstrom, a very young man at
the time who later became a foremost authority on American Protestantism. He’s the one who suggested that I write my thesis on the foreign policy views of Charles Beard. I put an enormous amount into this thesis. I rented an apartment – it wasn’t really an apartment, it was one room – and I used to go there every afternoon. I’d go to class in the morning, go to the apartment in the afternoon, and come back to the library and study for my classes in the evening. I read I believe everything that Beard ever wrote, and he wrote a lot. My trouble was, and I’ve always had this trouble, trying to be too comprehensive, and there was a limit on how long your thesis should be. It became apparent that I was going to exceed it, and so I had to change the thesis title to the Foreign Policy Views of Charles Beard Prior to World War II. I finished the thesis, and there was a three-person oral exam in which [Samuel] Huntington was on it and the younger Schlesinger, and I’ve forgotten the third person. I was so stressed. I can remember the most stupid answer that I gave because they asked me – and why I couldn’t have anticipated this I don’t know – what was my favorite American novel. Well I was exceedingly poorly read, as I’ve said to you before about how bad I was at literature anyway, that the only novel whose name came to my mind was *Moby Dick*. The most standard answer that anybody could ever possibly give. Anyway, that’s my recollection of that oral examination.

Before that I had become a member of senior Phi Beta Kappa, which means that after the group of the first eight, I was in the 16 after the first eight, which was based entirely on my grades, and this was not going to
mean what my honors were going to be. And the question was whether I
would get a *summa*. I went home after my final exams and had an operation
for a polynoidal cyst, and as I was coming out of my anesthetic, my mother
was standing there, and she said to me, “You got a *summa!*”

MR. STEINBACH: That was a nice recovery [laughter]. That’s great. Other college memories?

MR. TERRIS: As I say, I did very little on an extracurricular basis. I tried out for the
freshman tennis team. I didn’t make it. I really wasn’t even close to those
other guys. I learned to play squash, which I could play reasonably well, but
unfortunately I haven’t played since. I enjoyed school really a lot.

MR. STEINBACH: Did the Korean War affect your college experience in any way?

MR. TERRIS: Not really. I had an exemption, and after the war it was possible I would be
drafted. It turned out they didn’t draft me because of my eyesight. But no. I
paid attention to it. The bigger thing during college was McCarthyism.

MR. STEINBACH: Good, I was going to ask you about that.

MR. TERRIS: That certainly was a big thing among my small group of friends. At that
point I think, as I said to you before, some of my political views were based
on rebellion. Since everybody that I was dealing with were liberal
Democrats, I became a moderate Republican [laughter].

MR. STEINBACH: Fascinating.

MR. TERRIS: I didn’t defend McCarthyism, but the very fact that I wasn’t screaming in the
halls about it – I can remember the hearings and all that kind of stuff; it was
constantly being talked about – the very fact that I hadn’t gone berserk about
it made me seem to be a fascist to my colleagues. That was probably the big
political event. The interesting thing was that I was enough of a moderate Republican – it’s kind of interesting compared to what happened later when I got out of college, got out of law school. I for a brief period of time did some work for John Kennedy’s opponent in the Senate race [in 1952] who I believe, I’m not sure of this, was [Senator Henry Cabot Lodge, Jr.]. But that shows you how much of a rebel I am [laughter].

MR. STEINBACH: So you had some political activity in college.

MR. TERRIS: Very minor.

MR. STEINBACH: Right before you graduated, I guess, the Brown v. Board of Education [347 U.S. 483 (1954)] decision came down. Do you remember that at all?

MR. TERRIS: I remember it, but I’m not sure exactly, I can’t even remember the date in comparison to my graduation. My graduation was, of course in college was 1954, so it’s got to be the same time. It could have been after I graduated.

MR. STEINBACH: It was in May I think of 1954.

MR. TERRIS: We weren’t lawyers. Most of us didn’t even care about being lawyers.

MR. STEINBACH: When was the [Lodge]-Kennedy election?

MR. TERRIS: I think it was relatively early after I came to Harvard. It might have even been 1950, right after I came.

MR. STEINBACH: Did you ever tell Bobby Kennedy that you did that?

MR. TERRIS: No [laughter]. He might have thrown me out.

MR. STEINBACH: If you have the indulgence, let’s take you from college to law school. When did you first start thinking about law school as somewhat of a certainty?
MR. TERRIS: I don’t know if it was a certainty, but at the time when I took the
Constitutional Law course, that was the reason for taking it.

MR. STEINBACH: Do you remember who taught that?

MR. TERRIS: [Robert McCloskey.]

MR. STEINBACH: But that was part of planting the seed that maybe you’d be interested in law?

MR. TERRIS: The course wasn’t really a good test because there’s a huge difference
between constitutional law as a historical phenomenon and constitutional law
as a lawyer. But I was interested in the course, and I thought it was
something of a decent test.

MR. STEINBACH: So you decided to apply to law school. You went straight through from
college to law school?

MR. TERRIS: Exactly.

MR. STEINBACH: So you would have had to have applied during your last year or two of
college.

MR. TERRIS: Correct.

MR. STEINBACH: What took you to Harvard Law School?

MR. TERRIS: I never even thought of any other place. I knew it was an awfully good law
school. I knew Cambridge, and I liked Cambridge. The details of trying to
find a place to live, to have somebody to live with, all those kinds of things
would be much easier. It never even occurred to me to go anywhere else.

MR. STEINBACH: Before you started Harvard Law School, did you have any sense what you
might do with a law degree?
MR. TERRIS: That’s kind of a hard question. I don’t think I really thought I was going to
go into a big law firm, but again I knew almost nothing. It seems amazing
today, everybody knows so much. I didn’t know anything. I didn’t know the
structure of the law world in any real sense – how big law firms, smaller law
firms, government operate – I knew almost nothing about that kind of thing,
so I didn’t think in any kind of detail, even moderate detail, about what I was
going to do. I was going to become a lawyer and then I’d figure it out.

MR. STEINBACH: So Harvard Law School, from 1954 to 1957 – give us an overview from a
very sort of high level of your experience there.

MR. TERRIS: Again, maybe even more than when I went to college, you’d think I was
tremendously confident, I had done well at Harvard College. I wasn’t.
Before classes started the first year, there was a meeting of all the first-year
students. The Dean loved to say at this meeting before classes started, [. . .] look
to the left of you and look to the right of you, two of the three of you are
not going to be here at the end of this year [laughter]. He then said, that isn’t
quite the way it is anymore. In any event, I was quite scared, am I going to
be able to do decently? I guess I thought I wouldn’t be a dropout or fail.
When I went to Harvard Law School – and I’m still a tremendous believer in
the Socratic method; I’ve taught a year at law school – almost everybody
taught the Socratic method. That, for somebody like me, was enormously
stressful. I think probably to everybody, but it was very stressful. You say to
yourself, “They’re not telling me anything. What are the rules? What are the
principles? What are all these questions?” And never an answer. Very
frightening. The great master of this, Warren Seavey, taught me Agency.

Most of the other people too, Professor [Benjamin] Kaplan was probably the
greatest professor I ever had. It was just very difficult to put your arms
around it and say, “I understand. I’ve got this.”

Then in the middle of the first year they had practice exams which were graded by second-year law students. I was very mediocre. I never volunteered in class. It seems strange, isn’t it, I’m a litigator for 50-odd years, and I’m basically an introverted person, and I never volunteered. My first year, they had you sit in particular seats so they could call on you, and they went around the room systematically so I had to answer. After that, I never sat in my assigned seat, I always sat in the back. I think it may be true that I never said a word in class my second and third years. I won’t swear to that, but that may be true. So I went through the year, I studied enormously hard, as I said before, nobody ever out-worked me, took the exams, studied very hard for the exams, went back to California, my family had moved there – we haven’t come to that yet. My family moved in 1954 when I graduated from college. My father set up his new medical practice. I found out my grades, which were very close to the top of the class, and then I found out that I had been elected to the Harvard Law Review. So that of course changed the world considerably.

The second year, I didn’t do quite as well on the midterms. I did well enough, but not quite as well. And then in the end of May or June, whenever the exams were, I essentially physically collapsed, undoubtedly from the
strain of the work. I used to go to class in the morning, I’d then go to the Law Review from probably 1:00 after eating lunch and stay there to 9:00 in the evening, except for eating dinner, and then I would work from 9:00 to 1:00 or 2:00 in the morning on my classwork. And I did that every single day. Obviously the weekends I didn’t have class. I literally collapsed. At the time when exams started, my father the good doctor, found me a doctor in Boston who happened to be a Nobel Prize winner. I went into Peter Bent Brigham Hospital, and there I was lying for the next couple of weeks during exams and the Vice Dean (many jokes about the term “Vice Dean”) Livingston Hall came to visit me to make sure that I was really not faking [laughter]. They didn’t require me to take the exams over again – I think believing that since I had done so well the first year that maybe there was a possibility that I really was sick [laughter]. So I went back to California and immediately my temperature went to 105. So I did have something very serious.

MR. STEINBACH: Do you know what it was?

MR. TERRIS: There was some talk that it was hepatitis. I don’t think probably that was what it ended up. It was some virus.

MR. STEINBACH: This is the end of your second year?

MR. TERRIS: Yes. The end of my second year. I had forgotten, I had been elected to Article Editor of the Law Review in the spring, so I had to come back to Harvard for the Law Review early to start work on putting out the initial editions. I worked very hard during my third year too. Fortunately I did not
get sick. My grades were approximately the same. I think they went down a
couple of places in the class. But I enjoyed Harvard Law School, even
though I was working tremendously hard. I found it fascinating, challenging.
I found the Law Review enormously challenging. The work on my case note
and the broader note taught me an enormous amount about writing, going
over every single word. I mean, the number of hours that we spent going
over my note that ended up I think being six pages of the Law Review, we
probably spent 20 to 30 hours going over it. We took apart every sentence,
every word, “Why did you do this, why is this word here, why did you
choose this word not that?” It was done, when I was a second-year student, a
third-year student working with me on it.

MR. STEINBACH: What was the topic?

MR. TERRIS: It was a totally dull, horrible topic. I can’t even remember what it was
exactly. It was a terrible topic, as to which I had no choice. They were
assigned. So that’s pretty much how law school ended.

MR. STEINBACH: Any other memorable professors? You mentioned Professor Seavey and
Professor Kaplan. Did you take Archibald Cox?

MR. TERRIS: Yes. I had him as a teacher in Labor Law. There were a lot of awfully good
professors. When they were electives, I tended to choose my courses by the
professor. I took all of Kaplan’s courses. I think I took Patent and
Copyright.

MR. STEINBACH: Just because he taught it?
MR. TERRIS: Because he taught it. And [Louis Loss], who had been head of the SEC. I chose him because he was so good as a teacher. I didn’t care about securities litigation. I had Paul Freund. I also had Henry Hart.

MR. STEINBACH: Was the Justice Department, Internal Security Division, is that the first job you had out of law school?

MR. TERRIS: Yes it was, but before that, I was going to go to Cravath after my second year. I don’t know why. I think I wanted to find out what big law firms were like, but because I got sick, that got cancelled. Then my third year I decided I wasn’t going to a big law firm. I tried to get a clerkship. Then, clerkships in the Supreme Court were directly from law school. You didn’t go to a Court of Appeals clerkship first. So I applied to two or three Supreme Court Justices. Strangely enough I can’t even remember whether I had an interview. I think I didn’t, but I’m not really sure. I also applied to about three court of appeals judges, two or three, where I did have interviews. These are the people I wanted, and I didn’t get those. I didn’t try to get anything else. I wasn’t really that interested in a clerkship, but obviously a Supreme Court clerkship is one thing, or a Judge David Bazelon clerkship, or a Skelly Wright, that’s a different ballgame. But I wasn’t as such interested in a clerkship. It’s not surprising that I didn’t get the ones where I had interviews. I graduated from [high school] when I was 16. I graduated from law school when I was 23, and I was a basically fairly immature 16 and 23. There would be a lot of people coming out of Harvard Law School who would have done a lot better than I would. So despite my having good
grades, and of course other people would have good grades too, it wasn’t terribly surprising. I was only interested in coming to Washington. The young woman who I was interested in had come here, so whether I would’ve come to Washington otherwise, I’m not sure. It’s conceivable I wouldn’t have. It’s conceivable I would have gone to San Francisco. But there of course there was no obvious place to go unless it was a big law firm, and I wasn’t that interested at the time.

MR. STEINBACH: I think we should save for next time your starting in the Internal Security Division of the Justice Department. I just wondered if there was any employment you had after law school before you entered the Justice Department.

MR. TERRIS: No. I can tell you why I ended up there and we can go on next time. The Justice Department, and they may still have this, had something called the Honors Program. Obviously it’s intended to attract people who had done reasonably well in law school, so I decided that I did want to go to the Department of Justice and I wanted to deal with constitutional-type issues. There was no such thing as a Civil Rights Division then. It was a section of the Civil Division, and if you went to the Civil Division, you couldn’t be guaranteed you’d go to the Civil Rights Division. I didn’t want to go to the Civil Division if it wasn’t the Civil Rights Division, so I decided – and there have been a lot of comments about this over my career since then – I chose to go to the Internal Security Division, which did deal indeed with constitutional issues [laughter].
MR. STEINBACH: That will be fascinating to explore next time. Can we do just one other area very tangentially? Maybe we’ll come back to this, but since this is the part in the oral history that’s focused on more of your personal family background, can you tell me just briefly about your wife and your children, your family?

MR. TERRIS: Sure. First of all, I’ve had two wives. My first wife, Shirley DuVal, was a Catholic, and a deep-seeded part of my personality I think is to be very interested in religion. I’d actually gone out for a fair length of time with a Catholic girl before I went out with Shirley. I met Shirley in law school, and we got married a year after I came to Washington. I had become very deeply immersed in Catholicism and I became a Catholic, and this caused an enormous rupture with my father, who did not talk to me for two years, and only because of my mother’s strenuous activities, we got back together, and we did fully get back together. I was a practicing Roman Catholic through all the time that my wife lived, and she died very suddenly from an aneurism. Very suddenly. Within hours.

MR. STEINBACH: Did you have children at that point?

MR. TERRIS: Yes. We had three children. They were adopted. The two older are girls, and the youngest is a boy. We lived here in Washington. We lived in Crestwood, which is not a segregated community. Quite the opposite. The children went to private schools. The oldest daughter went to where you teach, Sidwell, for high school. I think she may have gone to public school before then. I think that’s possible. I can’t actually remember exactly. The next daughter went to a Catholic school, and the son went to Beauvoir and
then later went, after I returned to Judaism, went to Charles E. Smith, the Jewish school.

MR. STEINBACH: How old were your children when your first wife died?

MR. TERRIS: I thought I had it written down.

MR. STEINBACH: We can look and come back to this.

MR. TERRIS: The children – the oldest daughter was around 15, and the boy was I think about 8.

MR. STEINBACH: Then you subsequently remarried after your first wife’s death?

MR. TERRIS: Correct.

MR. STEINBACH: And your current wife’s name is?

MR. TERRIS: Sally Gillespie. She also is not Jewish, but she is not practicing anything, and she’s the person that said, “If you’re a Jew – I had at that point stopped being Catholic – if you’re supposedly a Jew, why don’t you do something about it?” And that led to a whole sequence which we can talk about in more detail because that’s a long story.

MR. STEINBACH: Okay. And tell me just quickly what your three children do today.

MR. TERRIS: My daughter went through nursing school and became a midwife and now works for an insurance company in managing difficult medical cases. In other words, what kind of care they get so that they get good care and also I guess don’t bleed the insurance company. I suspect that’s how it would be defined.

The second daughter doesn’t work. She did work as a secretary in a Jewish school. Her husband is a patent draftsman. The children are scattered
all over the place. The oldest daughter is in San Diego. My second daughter is in Seattle.

My son is in Berkeley. He, I suppose in some way influenced by me, went to law school and he graduated from Berkeley. He had graduated from Hebrew University as an undergraduate, and then he went through Berkeley, went into a private law firm, which he detested, and then decided he was going to be a therapist, so he is now a therapist, which he loves. So that’s what the three of them do.

Sally Gillespie has a daughter named Sally Phillips, and she is a fairly senior official in the Department of the Treasury. She runs a unit there. She was deeply involved in the bailouts of the banks over the last few years. So except for my second daughter, all of them have a lot of education. The daughter of Sally Gillespie, who I regard fully as my daughter, because she came to live with us when she was still a teenager, she has an MBA degree, and my son has [law and therapy degrees]. My oldest daughter has a nursing degree from Case Western.

MR. STEINBACH: I guess I should ask you about your current wife’s profession or career.

MR. TERRIS: The reason I got to know her is she was the office manager of this office.

MR. STEINBACH: Your current law firm?

MR. TERRIS: Yes, this law firm.

MR. STEINBACH: Well why don’t we leave it for now, Bruce, and we’ll pick up next time with you coming to Washington and joining the Eisenhower Justice Department,
and we’ll go from there through the Kennedy years and it should be quite interesting.

MR. TERRIS: Okay. I hope so.

MR. STEINBACH: Thank you so much.
ORAL HISTORY OF BRUCE TERRIS

III. COUNSEL FOR THE UNITED STATES

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 Thursday, December 4, 2014. This is the third interview.

MR. STEINBACH: Good afternoon, Bruce.

MR. TERRIS: Good afternoon.

MR. STEINBACH: We had just taken your story up to the end of your days in college and your graduation from Harvard Law School, and I want to start with a big-picture question. When you got out of law school, did you have a sense of what your career might be like, what you might do with your law degree?

MR. TERRIS: No, except I wasn’t really interested in going to a big law firm and making a lot of money. I had signed up with, of all people, Cravath after my second year of law school. As it happened, I got very sick at the end of the second year of law school, and so I didn’t ever go to Cravath. I was just sort of trying to find out, if I’d gone there, probably why I didn’t like it. I wasn’t really thinking that’s what I wanted to do. So when I was getting out of law school, I basically was looking at two places. I tried to get a clerkship, and I also applied to the Department of Justice. They had something called then the Honors Program; I think they still do. I felt quite confident that I was going to get a job there. I had done well in law school, so I was trying to get a clerkship.
MR. STEINBACH: We talked last time that in the end, in lieu of a clerkship, you took the position with the Honors Program.

MR. TERRIS: I was looking at a very narrow spectrum, which was Supreme Court Justices, and a couple of the best Court of Appeals judges in the country, and I didn’t get those, so I was happy to go into the Honors Program.

MR. STEINBACH: So it’s the Fall of 1957. You apply, and you’re accepted. The Honors Program, was that a one-year commitment back then?

MR. TERRIS: No, it was becoming a lawyer in the Department of Justice without any particular commitment.

MR. STEINBACH: Did you have any choice where you were assigned at the beginning?

MR. TERRIS: Yes. They asked where you wanted to be assigned. I went into something that my liberal friends consider a grave deficit on my resume [laughter]. I went into the Internal Security Division, which, of course, its main purpose, although not only purpose, was in the efforts to deal with Communism in the country. The reason I went there was really because I wanted to be involved in constitutional law, so I didn’t want to go in the Civil Division which has a scattering of all kinds of stuff, or the Criminal Division, which handles various kinds of criminal things. I really wanted to deal with constitutional law, and that’s what the Internal Security Division did, so I went into the Appellate Section of the Internal Security Division.

MR. STEINBACH: This part of the Department of Justice was established, I think, in the Eisenhower Administration.

MR. TERRIS: Correct.
MR. STEINBACH: What was the purpose? You mentioned briefly dealing with Communists inside the United States. What was the purpose of the Internal Security Division that you thought when you got there?

MR. TERRIS: The purpose was the country believed that it had a very serious problem of Communist infiltration in a variety of different kinds of places. It had a number of statutes and it had investigations by Congress. There was some actual spying going on by the Soviet Union. It handled those kinds of cases. It also handled some other kinds of things like enforcing whatever that’s called now – the Foreign Agents Registration Act, I believe it is. It’s been a long time since I’ve dealt with that. So it did some other things too.

MR. STEINBACH: When you were in law school, did you have any interest or take any classes relating to internal security issues?

MR. TERRIS: No. I doubt there were any.

MR. STEINBACH: Why did it interest you? Why did you pick that as one of the places in DOJ that you would like to work, and in fact ended up working?

MR. TERRIS: Really because I wanted to deal with constitutional issues. There was no Civil Rights Division, I believe, at the time. Or maybe it was just being started, I can’t remember. I don’t believe it existed. But in any event, [the Internal Security Division] seemed like the place where I would be most likely to get constitutional issues and not be diverted with other things which I really didn’t want to do.

MR. STEINBACH: And you ended up in the Appellate Section, so were you ever involved in doing the actual underlying investigations in the Internal Security Division?
MR. TERRIS: No. It was all litigation. I think some of it actually was in district courts, but a lot of it was appellate, and even though I was fresh out of law school, I got to argue one or two cases. It was, as it turned out, a tremendous place to be because there was a guy there, I can remember to this day his name, Philip Monahan, who did the reviewing of everything. I used to turn into him twenty pages of nicely typed-up material on white paper, and I would get back from him a pile of yellow paper. It was entirely in his handwriting. The only thing left of my white paper were the block quotes that he had cut out and stapled onto it, and I learned how to write a brief.

MR. STEINBACH: As a government lawyer, he was your main teacher?

MR. TERRIS: He was my main teacher, and he was terrific.

MR. STEINBACH: Would you have had any contact at all with J. Edgar Hoover and all the FBI folks who were doing all the internal investigations?

MR. TERRIS: No.

MR. STEINBACH: Do you regret not having that kind of exciting contact?

MR. TERRIS: That would have been interesting to have had some contact like that, but I was just the lawyer who’s handling what comes out of the pipe.

MR. STEINBACH: So these cases are investigated and tried and either won or lost, and then it’s just handed to you to win the appeal.

MR. TERRIS: Right.

MR. STEINBACH: Do you remember what kind of cases you handled on appeal for the Internal Security Division?
MR. TERRIS: I really don’t. A little later, I guess, we’ll come to what I did in the Solicitor General’s Office on this subject, because I handled essentially all the cases that came to the Solicitor General’s Office of that kind, and we can talk about how that happened to occur.

MR. STEINBACH: Okay. So do you remember anything while you’re still in the Internal Security Division where you had to take a position or argue about the Smith Act or the Subversive Control Act or any of the statutes that the government was enforcing back then?

MR. TERRIS: I don’t really have any recollection. This was a long time ago, but my recollection is that I didn’t really handle the big cases like when I was in the Solicitor General’s Office; what I handled in the Internal Security Division was much more routine, ordinary cases.

MR. STEINBACH: The Internal Security Division was run by this famous guy at the time, Tommy Tompkins. Do you remember him? Any contact with him at all?

MR. TERRIS: I don’t remember any contact.

MR. STEINBACH: And there was a famous case during the time period, a prosecution of a Soviet spy whose American name was Rudolf Abel. Any connection with that?

MR. TERRIS: I handled that case when I was in the Solicitor General’s Office.

MR. STEINBACH: Later on and after he had lost and appealed its way up?

MR. TERRIS: That’s correct.

MR. STEINBACH: What do you remember about that story, even if it’s a little ahead of the chronology?
MR. TERRIS: It was just an interesting case. In other words, nothing very unusual happened in my work on that case, but it was a big case.

MR. STEINBACH: So you’re at the Internal Security Division for about a year before you transfer over generally to the Solicitor General’s Office.

MR. TERRIS: Almost exactly.

MR. STEINBACH: Did the Internal Security Division linger on during the Kennedy years?

MR. TERRIS: It did linger. I have now forgotten when it got abolished. I don’t think it got abolished that promptly. An interesting thing, because you won’t ask a question about this – years later, when Robert Kennedy was a Senator from New York, I got a call. I can’t now remember if it was from him personally or from his office, I think it must have been from his office. Would I like to run a study of whether it made any sense at that point – this is now in the mid-1960s – to continue all these legal efforts to deal with Communism in the United States? I was asked how much [the study] would cost. I made some guesstimate, and that’s certainly all it was, and I never heard back. It showed Kennedy was wondering too whether all this made much sense, at least at that point. Maybe it made sense at an earlier point, but not at that point.

MR. STEINBACH: What was your assessment at the time – I know we have 50 years of reflection on this in the meantime, but at the time, when you were in the Eisenhower days – what was your assessment of the significance of the Communist or the subversive threat to the country?
MR. TERRIS: Well I certainly thought it was exaggerated. I’ll give you an illustration that I gave to people at that time. I believe it was the Communist party in Montana, but it might have been Wyoming. It had, I remember reading in legal papers in my litigation work, three members. Two of them were FBI informants. So they had three people who were mostly spending their time informing on each other, because of course they didn’t know who was an informant. That was to a considerable degree what I thought that this was about. That in other words, it was exaggerated. It was people getting themselves worked up where I certainly thought attention should be paid to it, but that it was too much and certainly to some degree was distorting legal principles that we had in the country. On the other hand, I didn’t completely agree with the liberal position, at least of some liberals, that this was all nonsense, that it really didn’t matter who was a Communist and who wasn’t and that these were just people with concern for the poor and for minorities and what have you. That was not something that I accepted, and I still don’t. Communism was a terrible doctrine, and the fact that many people in this country had sympathies for it for good, moral reasons, did not make it any less a terrible doctrine.

MR. STEINBACH: And meanwhile there were people like Abel who were actual Soviet agents.

MR. TERRIS: Absolutely. He was in a different category. Certainly the country had to deal with people of that kind.
MR. STEINBACH: So you were somewhat skeptical, you just said, while you were in DOJ. Do you remember any tension or struggle between the skeptics and the true believers?

MR. TERRIS: No, but I can’t say that I became a dissident, so to speak. But there’s no doubt that the other people, most of the other people in the Division, had a considerably more aggressive attitude than I did, and probably most of them came to the Division because they had an aggressive attitude, just like I would have been gone into the Civil Rights Division if there had been one. Ultimately when [the Civil Rights Division] was created, that’s the kind of people that went into it.

MR. STEINBACH: But this was three years, when you joined, three years passed since the fall from grace of McCarthy and the Supreme Court had started to cut back on the government’s sort of broader prosecutions. Times had changed a little bit when you first got involved in it. Did you get to do any constitutional issues in that Division?

MR. TERRIS: I’m sure I did, but the cases I handled there were not really big deal cases. My guess is that the more important cases didn’t go to a guy who just walked out of law school.

MR. STEINBACH: You’ve kind of hinted that you’ve taken some flack over the years from your liberal friends for this first career start. What do you think about that now, and what do you say to them?

MR. TERRIS: As I said to you a moment ago, my basic attitude was that a considerable amount of the attention to Communism was appropriate. Obviously people
like McCarthy and some of the other people in Congress who ran the House Un-American Activities Committee, I didn’t agree with them then and I don’t agree with them now. However, dealing with Communism then was a much more complicated question than the way I think it got posed very frequently between people like McCarthy, who didn’t care a bit about civil liberties of anybody and were not at all careful about the facts, and people who said, well there’s nothing to this at all, the country shouldn’t be paying any attention to it, it’s a terrible violation of civil liberties to be even inquiring about this kind of thing. I think that discussion was not a good discussion, and I think it was a legitimate question for the country to be investigating, but on a more intelligent basis than often was occurring.

MR. STEINBACH: Did you have the sense that the Eisenhower people had their eye, at least in part, on the preservation of civil liberties?

MR. TERRIS: I did. I thought that when I was in law school, and I thought that later on as well. Certainly Eisenhower was not a McCarthyite, and I think he saw it as serious problem about the line the country should take.

MR. STEINBACH: You mentioned a few minutes ago that even after you left the Internal Security Division, some of Internal Security matters got transitioned over to you.

MR. TERRIS: When I came to the Solicitor General’s Office – I really need to tell you what happened in going into the Solicitor General’s Office because then you can put it into some context.

MR. STEINBACH: Alright. Go ahead.
MR. TERRIS: I got chosen to go to the Solicitor General’s Office out of the blue, not to be an Assistant to the Solicitor General, but to be the personal assistant to the Solicitor General, J. Lee Rankin. J. Lee Rankin for a year had had somebody who was his personal assistant, and he was supposed to help on speech writing, research into speeches, and things like that, not to be a regular member of the Solicitor General’s Office. That’s what I was asked to come and do. Oscar Davis, the First Assistant to the Solicitor General, a wonderful man and a wonderful lawyer, chose me because he and I had the same grades at Harvard College. That’s what I was told later on. Not law school, Harvard College. Even though I was not going to be an Assistant to the Solicitor General, that still seemed to me a wonderful opportunity. It was a one-year job. After I got there, I did a lot of fooling around, putzing around I would say, and helping the Solicitor General on speeches he was going to give. I can remember I did an elaborate research job into the inadequate assistance of counsel in criminal cases. J. Lee Rankin was the kind of Republican that doesn’t seem to exist much today – meaning he was an excellent, fine person, not a great lawyer, but a perfectly adequate lawyer, but certainly not a great lawyer, excellent ideals and ethics and all those kinds of things. So I helped him for a while, and then it became clear that there really wasn’t a job there. There wasn’t a full-time job, so they started giving me minor stuff to edit, which was the main job of the Solicitor General’s Office, to edit materials that come out of the various divisions of the Department of Justice. So I started editing oppositions [to certiorari] in habeas corpus cases,
prisoners who were filing papers in the Supreme Court. And so I did that for a while, and I guess somebody in the Solicitor General’s Office thought I wasn’t such a terrible lawyer, even though I wasn’t an Assistant to the Solicitor General, so they made me an Assistant to the Solicitor General. The office was made up, although I never asked this question, of all liberals, and they were getting these cases that came out of Internal Security. None of them wanted to handle these cases, so they said Bruce Terris, he’s an expert, right? He spent a year in the Internal Security Division, so we’ll give him all these cases, and that’s what happened. I think for a number of years every one of these cases that came in the office, I was the editor of the brief, and I argued some of them.

MR. STEINBACH: So this became your bailiwick, like it or not, for the rest of your SG years?

MR. TERRIS: Well, no. First of all, it tapered off, just because the cases weren’t there. I don’t know what my percentage in a year would be, I would guess 15% or something like that. I did the regular work in the office, but this little slot they figured they could dump on me.

MR. STEINBACH: What was Solicitor General Rankin’s background?

MR. TERRIS: He came from Nebraska, and I think he was in private practice. He was a very decent guy.

MR. STEINBACH: So you served as his personal assistant, wrote speeches, not that much to do, they gave you other briefs to edit. Anything else during that one year when you were his personal assistant that you can recall?
MR. TERRIS: Not really. As I said a moment ago, there wasn’t a job really there. The guy before me, I don’t know what he was doing for a year, but there certainly wasn’t enough work for me. So I can remember when I first came there I worked on the inadequate assistance of counsel, but after that, that was a big project, but after that, I really didn’t have much to do. So I think that’s when it began to dawn on people that this was not a good arrangement.

MR. STEINBACH: So in 1959 you become an Assistant to the Solicitor General, and that’s the title you retain until you leave the Justice Department in 1965, is that right?

MR. TERRIS: Right.

MR. STEINBACH: Before we get a little specific about all the administrations and your particular cases you argued, just talk about the duties and responsibilities of being an Assistant to the Solicitor General. What was it like then?

MR. TERRIS: It was a tremendous place to work for somebody of any age, but for somebody my age, it was an absolutely marvelous place to work. Of course the people, it was a small office then – not like now, it has close to thirty lawyers now. I believe we had nine then, and I can’t remember if that included the Solicitor General or not. A very small group. Everybody ate lunch together; one or two people might have something else to do; not the Solicitor General, but everybody else went to lunch together. We talked law during lunch, people talked about their cases, so it wasn’t just my cases that I was working on, I was listening to what people were saying about the other cases. I can still remember our vehement conversations about the sit-in cases a little bit later and how people would formulate an argument for the sit-ins.
There was a lawyer there by the name of Wayne Barnett, he was a phenomenal lawyer about tax matters and had a tremendous ability to think through those matters, and I can remember at lunches talking about those cases. It was an enormously valuable learning experience.

MR. STEINBACH: All men?

MR. TERRIS: Of course. There were almost no women in the profession at the time.

MR. STEINBACH: So even by 1965, still all men in the Solicitor General’s Office?

MR. TERRIS: All men.

MR. STEINBACH: Was the SG’s Office viewed then, as it is now, as the Tenth Justice – did it have that stature that it currently does?

MR. TERRIS: Well the people there thought that, let’s put it that way [laughter]. It had tremendous stature, and its stature certainly grew when Archibald Cox came in to be the Solicitor General. Archibald Cox was the best oral advocate I have ever seen.

MR. STEINBACH: Leaving aside personalities for now and specific cases for now, what was the day-to-day job like for you during those six years?

MR. TERRIS: A brief would come to me, sometimes it would be a brief on the merits, and it would be 40 or 50 pages long.

MR. STEINBACH: Written by whom?

MR. TERRIS: It comes out of the Division, the Appellate Section of the Division. It comes up, probably in most instances went through the Assistant Attorney General in the Division. I don’t know how much they touched it. It probably depends on the personality of those people. And then it would come to the
bottom of the Solicitor General’s Office – me. I would edit it, sometimes talking to the author, sometimes not if I didn’t need to. So I would edit. It would then go to the First Assistant or the Second Assistant to the Solicitor General, depending what the category of case it was, and then it would go to the Solicitor General. Usually there were not a tremendous amount of changes made in the later process, so the editing was really done by me and people at my level.

MR. STEINBACH: This might depend on a specific case, but would you get involved in decisions about what the government’s position should be in front of the Supreme Court?

MR. TERRIS: Yes and no. Most of the time, the position was pretty obvious. Most cases don’t raise real issues as to the Government’s position. I told you in detail about how in the reapportionment cases the issue of one man, one vote was decided by Robert Kennedy. That was certainly an unusual event, that elaborate a method for determining the government’s position, but occasionally it occurred. I can give you an example. A case involving the head of the Communist Party in the United States came to me. I don’t think certiorari had been granted by the Supreme Court. The government did not want to allow him out of the country. He had cancer, and it was believed to be terminal. I’m not sure what the exact motion was, before the Supreme Court. The question was raised whether to allow him to leave the country. He wanted to go to the Soviet Union where they would give him free
treatment. The issue came to me and I went to the Solicitor General about this.

MR. STEINBACH: Do you remember which administration you were in?

MR. TERRIS: I believe it would have been under Cox, but I’m not entirely positive. I pointed out to people that our basic attitude seemed to be about Communists if they wanted to stay in the country, we deported them, and if they wanted to leave, we didn’t let them leave. And that did not seem to me like much of a policy, particularly with a man who is apparently dying of cancer and what possible reason did we have to not let him go? I ended up winning on that proposition. Once in a while you get situations in which the issue was should the government confess error, and that would happen from time to time, and there would be real debate in the Solicitor General’s Office about those kinds of cases.

MR. STEINBACH: So you’d edit briefs, and ultimately those would go to the Supreme Court. Who would, in general, determine who argued the cases?

MR. TERRIS: I don’t know the answer to that [laughter]. I assume that the First Assistant, maybe the Second Assistant, would talk to the Solicitor General about that. I would think that probably the First and Second Assistants had the big voice. Obviously the Solicitor General would have first choice. Archibald Cox used to argue two cases a Supreme Court session. In a two-week session, he would argue two cases. My guess is, and I’m almost positive, J. Lee Rankin didn’t do that, and probably no other Solicitor General has, that’s an enormous burden. So he would clearly get first choice, and then somehow a
decision was made, to divide up the others. We had so few people there in the Solicitor General’s Office, each of us would argue about three cases a term.

MR. STEINBACH: You’re in the SG’s Office for six years. How fun a job was that?

MR. TERRIS: Seven years, six years as Assistant Solicitor General, one other in this lesser position. It was a tremendous job. When I was there, I thought I was going to spend the rest of my career there, and I can explain to you why that didn’t happen a little later.

MR. STEINBACH: But while you were there you loved every minute of it, is that fair?

MR. TERRIS: It’s got to be one of the great legal jobs in the world. It’s a fantastic place to work. It’s not only the [work was] important, the intellectual atmosphere was at such a high level. I mean you have so much you can learn from these other people. Oscar Davis, Philip Elman was the Second Assistant. Having lunch with them every day, talking law, I mean it was fascinating.

MR. STEINBACH: How hard did you work?

MR. TERRIS: Not terribly. I mean I didn’t goof around, but I basically worked eight hours a day. It was rare that I needed to work into the evening. It occurred once in a while, but essentially we had enough people in the office to do the work in the office. Supreme Court briefs are rarely emergencies. I know now there are all these death row cases, but when I was there, there weren’t emergencies for the most part, so you did your work.

MR. STEINBACH: You, Bruce, have probably a pretty unique position in terms of the SG’s Office history as being someone who worked in three different
administrations. Now maybe there are other people in the history of the country who have done that, but that’s pretty unique to have served in the SG’s Office under Eisenhower, and then under John Kennedy, and then under Lyndon Johnson’s administration. So what I would like to do is sort of take you through each one and get your perspective on not just the SG’s Office, but the Justice Department under Eisenhower, the Justice Department under Kennedy, the Justice Department under Johnson. So maybe if we can start with the Eisenhower administration. Big question: When you got there and when you worked there, what did you think of the Eisenhower Justice Department?

MR. TERRIS: I didn’t really have a perspective, because of course I hadn’t seen what the Department of Justice was like under any other administration. I didn’t [have much of a perspective on the] Justice Department because the Solicitor General’s Office was really a thing of its own. As I said, all those people who were in the Solicitor General’s Office, I’m sure, were liberal Democrats. The Eisenhower administration had done nothing to try to load up even this very important office with people that were Republicans or conservatives or anybody else in particular. They let it run itself.

MR. STEINBACH: How did that happen?

MR. TERRIS: In the year 2014 that seems utterly impossible, but it didn’t seem impossible then, that [was the way] the government was supposed to run. Oscar Davis and Phil Elman continued to be enormously influential, the First and Second Assistants, and J. Lee Rankin certainly was not going to load it up [with
Republicans]. He couldn’t tell them that they shouldn’t hire this kind of a person who had terrific credentials, so there was just no effort to turn the office around into some kind of quasi-political entity.

MR. STEINBACH: So the SG’s Office seems not very ideological at the time.

MR. TERRIS: No. Not at all.

MR. STEINBACH: Would you say that was true of the Eisenhower Justice Department as a whole, not as ideological as DOJ nowadays would be?

MR. TERRIS: Oh absolutely. I never had the feeling that politics was really involved.

MR. STEINBACH: Again back to the whole Eisenhower Justice Department, I guess you arrived right when the Attorney General was Herbert Brownell, maybe he was leaving as you were arriving.

MR. TERRIS: It was Rogers.

MR. STEINBACH: So William Rogers the whole time you were there?

MR. TERRIS: I’m almost sure it was William Rogers. Let me bring up a point that answers your earlier question a little better. *Baker v. Carr* went to the Supreme Court at the end of the Eisenhower Administration. J. Lee Rankin was enthusiastic about the notion that the government should support [the position] that the federal courts had jurisdiction over reapportionment. Archibald Cox had enormous doubt about that.

MR. STEINBACH: I remember you said that. So there’s a deep irony there.

MR. TERRIS: Yes. Isn’t that a tremendous irony?
MR. STEINBACH: Is that because, if you know, Rankin just thought that way, or did he have to take it up the chain of command and get the Eisenhower Administration’s blessing for that position?

MR. TERRIS: He might have had to go up the chain of command, I really don’t know that. But I don’t think it was such a difficult thing. I mean Rogers was certainly no extreme right-winger. So even if he went up the chain of command, I don’t think he probably would have had any problem with it. Archibald Cox really embodied in many ways the ideology of Harvard Law School.

Harvard Law School in many ways embodied the philosophy of Felix Frankfurter, so it’s not too surprising that Cox had that attitude. I don’t know if I said this to you in our earlier session, when he came out of arguing *Baker v. Carr*, he said to Tony Lewis, who was *The New York Times* correspondent – talked to him about it and how he felt about the decision when *Baker v. Carr* came out, and he said he felt awful.

MR. STEINBACH: Intellectually awful, I guess.

MR. TERRIS: Yeah, right.

MR. STEINBACH: The late 1950s in the Eisenhower Administration are deeply concerned with desegregation and the aftermath of *Brown* and Little Rock, the *Brown II* [349 U.S. 294 (1955)] litigation. Any involvement personally in any of that?

MR. TERRIS: I don’t remember that much in the Eisenhower Administration. It was certainly at fever pitch in the early days of the Kennedy Administration. As I mentioned before, the sit-in cases were a very prominent, enormously difficult legal issue, intellectually. Everybody in the Solicitor General’s
Office was strongly on the side of the sit-ins, but putting together a legal argument was enormously difficult. That was debated very hotly within the Office, how that was going to be done. People in the Office were also involved – I was not involved – in things that were happening in the South, at least on some of the emergency things. These were emergency-type things that were occurring. I think some of the people in the office may even have gone to the South. I have a vague feeling that Steve Pollak, who got us together on these interviews, was involved in that, but I’m not sure.

MR. STEINBACH: Well we can give him the credit for that if it’s all right with you.

MR. TERRIS: I’m almost sure he was involved in the civil rights issues.

MR. STEINBACH: You’ve mentioned a couple of times that the sit-in cases posed challenges for the Justice Department. First of all, why is that a federal issue, and second, what were the challenges, and how did they get resolved?

MR. TERRIS: I didn’t handle the cases, but I was part of a lot of discussions about them. In order to find that the sit-in convictions could be overturned, you had to find state action, but what was occurring was classic non-state action. It was private people saying they didn’t want to have Blacks in their restaurant. The state action didn’t start until the police came and removed the sit-ins because the owners of the restaurant said they were trespassing. You go to court, they get convicted, that’s a state action. The trouble with that argument is that it converts essentially everything that’s private action into state action. Somebody walks into my house and I say you have to leave and they won’t leave, and I call the police department and they arrest him, is that state
action? What if I’m a prejudiced person and the reason that I have that view is that I don’t like Black people? Well generally in this country we assume that that’s not illegal in the absence of a statute. Maybe terrible, but it’s not illegal. So that’s the debate, how are you going to work it out? I can’t remember how the Solicitor General’s Office worked it out, but it did [laughter]. And the Supreme Court did too.

MR. STEINBACH: So the 1950s are fading away. There’s an exciting election in 1960 involving Eisenhower’s Vice President. Did you have any connection or involvement at all with Richard Nixon when you were in the SG’s Office?

MR. TERRIS: No.

MR. STEINBACH: So he runs against John Kennedy in 1960, and Kennedy wins, obviously, and you stay on in the Solicitor General’s office. Is that pretty normal?

MR. TERRIS: That’s totally normal.

MR. STEINBACH: And the fact that he got elected didn’t change what you wanted to do in your job?

MR. TERRIS: No.

MR. STEINBACH: Okay, so we get a new Solicitor General, who you’ve told us a little bit about, Archibald Cox, and he’s the SG all the Kennedy years.

MR. TERRIS: Right, and more.

MR. STEINBACH: And even into the Johnson early years. And we have an obviously new Justice Department run by the President’s brother. How did things change between the Eisenhower Justice Department and Bobby Kennedy’s Justice Department, in general?
MR. TERRIS: In reality, you wouldn’t feel any change. You wouldn’t feel a change unless the Justice Department starts taking positions that people would feel were really wrong. There was a change, though. The appointment of Robert Kennedy was regarded in the Department of Justice as horrible, absolutely horrible. I gave a talk yesterday to people here in the office about John and Robert Kennedy, and in doing so I looked up some quotes from John Kennedy, and one wonderful quote of John Kennedy was, people had obviously been criticizing him for appointing his brother as the Attorney General, and his response was, “Well, I thought that it would be a good thing if Robert learned a little bit about the law before he went into private practice” [laughter]. Well that’s sort of what the position in the Department was, it was thought to be terrible. The prestige of the Department depends at least to some degree on who the Attorney General is. If the President thinks it is perfectly appropriate to have the head of the Department of Justice to be somebody who’s totally unqualified, which he certainly was, the effect on the morale and the attitude was I think fairly serious. Now what happened over the next three-plus years: I think by the end he was regarded as a tremendous Attorney General. I regard him as probably the best Attorney General in my lifetime, and I think lots of people do. But he certainly didn’t have the qualifications to become that kind of an Attorney General.

MR. STEINBACH: How did he go from unqualified to the best Attorney General in your lifetime?
MR. TERRIS: Well first of all, the people he appointed at the top levels were excellent. He was a man who was not the slightest bit afraid of other people being smarter than he was. He obviously thought that listening to people who are smarter than you is a pretty smart thing to do. He was enormously serious in what he did in the decisions he made. I gave an illustration before on a decision about reapportionment, done in a very serious way. He certainly was not politically motivated [as to criminal] prosecutions. He prosecuted Democratic politicians across the country. He went after Jimmy Hoffa – there’s a lot of debate about whether he went too far, he was too aggressive, but that was certainly not political, going after one of the most powerful, if not most powerful, labor union leader in the country. I just think he impressed people that he was a very, very serious man who wasn’t playing politics.

MR. STEINBACH: How did people get over the fact, if they did, that he was the President’s brother, and for that reason alone shouldn’t have been the AG?

MR. TERRIS: I’m not sure in a funny way whether they ever got over that. In a sense they would say, it’s still the wrong decision because it looks bad, but we were wrong, and the President was right. He was qualified. He did have the ability to do this. It sure didn’t look it. There was nothing in his record that proves it, but he proved it by doing the job.

MR. STEINBACH: It sounds like there was a lot of rumbling in the Justice Department when he was first nominated. Nowadays that would be all over the news, and the
opposition in the Senate would use it. Was this all kind of kept quiet, or did it become public?

MR. TERRIS: I don’t know. I can’t remember that. But I think the general thought that Robert Kennedy wasn’t qualified certainly was public. It was so obvious. I don’t know how much people went around with an ear to the ground in the Department of Justice. But I guess you were kind of suggesting how did that change. I met Robert Kennedy in February 1961. There was a knock on my door. He walked into my office. He said he was going through the Department to talk to the people and meet the people that he was going to work with. That went a long way, I think for most of us. That was pretty impressive. This guy who is the Attorney General, cares enough. He didn’t spend much time in my office because he was going to go through the building.

MR. STEINBACH: That’s remarkable. So you had personal interactions with him on the reapportionment cases, and then later we’ll talk about even getting involved in the Robert Kennedy campaign.

MR. TERRIS: I had other interactions too.

MR. STEINBACH: But at Justice, any other specific matters where you and Bobby Kennedy interacted?

MR. TERRIS: I was at some meetings where he met with young attorneys and that kind of thing, but putting that kind of thing aside, which had no real substance, although certainly people appreciated it. And I probably told you this, I prepared him for his only argument in the Supreme Court. I should be very
careful about the word “prepared,” because I don’t think I did him any particular good. I don’t know how he prepared, but he seemed to have done a very good job of preparing. All I did was talk with him. I don’t get the credit for his oral argument.

MR. STEINBACH: There’s a lot of excitement in the Justice Department during the Kennedy years with civil rights, and there’s the March on Washington, and the whole Cuban Missile Crisis. Did any of that atmosphere of excitement permeate the SG’s Office? Do you remember anything about that?

MR. TERRIS: I think my short answer to you is it permeated the country. That’s partly what I talked about yesterday when I talked to my colleagues here in my office, that for people of my generation, that was an extraordinary time in the country. The feeling that the country could solve its problems, that as a community we could work together and solve problems, I think was enormous. Especially for people my age. When John was assassinated, I was 30. So we’re talking about my late 20s, and I know in my own life how exciting it was. I was doing community organizing on the street in one of the poorest sections of Washington, and the excitement in the country made it so much more thrilling to be doing that kind of work, to be having the feeling you were making some kind of a contribution to your country. And in John Kennedy’s great statement about not asking what your country can do for you but what you can do for your country, to me encapsulated what that period was like.
I asked Robert Kennedy to dedicate our little community center in a poor area of Washington that we had set up. He came and gave a little talk, and it was truly remarkable, and of course even more remarkable when I compare it to what seems to me [the atmosphere in] the country today, which is so pessimistic, such a feeling of inability to solve problems. That doesn’t mean, of course, there were no problems then. That’s a different matter. Civil rights issues were an enormous problem obviously, and not easy to solve by any means, but it still was just a really marvelous time in the kind of public sense, community sense.

MR. STEINBACH: Did you ever have any interaction yourself with President Kennedy?

MR. TERRIS: No. The only time I was ever in his physical presence was three weeks before his assassination, I was invited to a reception at the White House, but I didn’t talk to him. I didn’t have enough nerve to march up to the President and start chatting.

MR. STEINBACH: How about Vice President Johnson before he became President?

MR. TERRIS: I happened to [be] with him for a few minutes when he was Majority Leader.

MR. STEINBACH: This was back in the 1950s then?

MR. TERRIS: It had to have been late in the 1950s.

MR. STEINBACH: Do you remember what that was about?

MR. TERRIS: I do remember. I was given the assignment of escorting the Lord Chancellor of England around Washington, and one of the things that they gave him to do was to see Lyndon Johnson. So I went with him to see Lyndon Johnson, and there were about ten or twelve people in the room, and I had never seen
anything like it. It was one of the most amazing things I ever saw. Lyndon Johnson went around to those twelve people, and I would say in five to ten minutes, he made every one of them think that he loved them, that he was the closest friend of theirs they had ever had, that he would remember them for the rest of their life, and it was just fabulous that he was meeting these people. When he was finished, you said to yourself, “This man is capable of becoming President.” Amazing.

MR. STEINBACH: That force of personality.

MR. TERRIS: Amazing. He just occupied the entire space, he just totally occupied it.

MR. STEINBACH: And then he becomes Vice President and sort of disappears. We’re about to get to the Johnson years.

MR. TERRIS: He’s the absolute opposite of Robert Kennedy’s personality.

MR. STEINBACH: Before we get to Johnson, one other large question. There’s been a lot of negative commentary over the past several decades about the Kennedy Justice Department, about the Kennedy years. What’s your reflection on that?

MR. TERRIS: I guess I don’t even know what this negative commentary is.

MR. STEINBACH: We’ll leave that out then. Sum up what the Kennedy Justice Department was like in the Kennedy years from your perspective.

MR. TERRIS: My perspective: they were highly professional, excellent people running the Divisions. None of the things that I saw indicated politics intruding on what should be professional, legal decision-making. I had a feeling of tremendous morale. After they got over the beginning that we talked about before –
about how could Robert Kennedy possibly be qualified to be Attorney
General, but it became clear that he was qualified. Who knows how he got to
be qualified. The people had a great feeling of morale. I really don’t have
any feeling of how anybody would have a contrary view.

MR. STEINBACH: To be more specific, and I’m not suggesting my view, but there’s been
criticism that the Kennedy folks dragged their feet on civil rights, and it was
in the end Johnson who saved the day. Any perspective on that?

MR. TERRIS: I don’t think it’s accurate. Today you imagine that the civil rights revolution
was so obviously the right thing for the country to do, that you somehow read
back from today and say, the President of the United States should have
proposed on Day One sweeping legislation, sweeping orders. Yes, I suppose,
in a certain sense that’s right, but that isn’t the way government works. What
you’re reading back is later history into an earlier time. There is no question
that the Kennedy administration was very worried about how you do this. In
many ways, the power in Congress was in the hands of Southerners, and if
you didn’t do something with Southerners, you were going to have a terrible
time getting legislation through Congress. Somehow you had to meld the
Republicans, who again were a heck of a lot better than they are today on
these kinds of issues, and to meld them with the Northern Democrats, but to
get around enormous power that’s in the Southern Democrats, and also you
have an enormous sociological problem. A democracy, even when it’s doing
the right thing, can’t do it at the end of a bayonet. So there’s no question
about they were not prepared to just go full-tilt, put your head down, we’re
going to jam this through. I knew the priest that was in a sense the chaplain for the Robert Kennedy family, a marvelous man, Father [Richard] McSorley. He told me a conversation that he had with Robert Kennedy about segregation and the Catholic Church in the South and how vehement Kennedy was that this was outrageous. So it wasn’t where the Kennedys were coming from, it’s how you get to where you want to go.

MR. STEINBACH: That’s good.

One more recollection from the time, August 1963, Martin Luther King’s March on Washington. Were you here? Do you remember it?

MR. TERRIS: I was there.

MR. STEINBACH: You went to the March? What do you remember about it?

MR. TERRIS: I remember how far away I was from the stage [laughter].

MR. STEINBACH: Did you have the sense at the time that this would be something that people would be talking about forever in American history?

MR. TERRIS: Oh yeah. And I was involved – I wasn’t an important person involved – but I was involved in this. There was something called the Coalition of Conscience here in Washington. Marion Barry, who, of course, just died, was in the Coalition of Conscience. Walter Fauntroy was the head of it, and I was a member, and everybody there who was much more important than I was. We worked on Home Rule and civil rights issues and poverty issues. I was doing community organizing in the Shaw neighborhood. I was deeply involved in all that. During the Kennedy years, there was, again, that’s part of the feeling that people had, you felt you could go out and do something.
You weren’t going to change the world by yourself, but you and millions of other people might.

MR. STEINBACH: When you did this Coalition of Conscience and your community organizing, was that as a Department of Justice detail or in your private capacity?

MR. TERRIS: Totally private.

MR. STEINBACH: Okay, we’ll come back to that maybe in the next session.

We talked last time about President Kennedy’s assassination, where you were, what you remembered.

MR. TERRIS: Nobody forgets that.

MR. STEINBACH: Then suddenly there’s a new President, and you end up working for that new President for almost two more years. Tell us about the Johnson Justice Department to the extent that differed from the Kennedy Justice Department.

MR. TERRIS: Well it really didn’t. First of all, for the first part Robert Kennedy was still Attorney General. Archibald Cox was still the Solicitor General. There might have been one or two changes in the personnel of the ordinary people in the office, the top people in the office weren’t changing, so the job really didn’t change. I’ve told people, for me, that was the end of my youth – the assassination of John Kennedy was horrendous. So for me it was very important, but as far as the job was concerned, it really didn’t change other than the kind of feeling I think lots of people had of this marvelous opportunity that occurred under John Kennedy was over.

MR. STEINBACH: Tell us more why you define that as the end of your youth.
MR. TERRIS: Because the feeling that I indicated before. I just felt the country was on such an upward course, and to have an assassination – it’s one thing to lose in an election, or both terms are over and you get a new President who may be entirely different, but to have it end in the way it ended was just so shocking to the system, shocking as a person. The assassination itself probably had a greater effect on me than any death that I’ve ever had. I was very close to my mother and father, but their deaths did not affect me nearly as much. They were old, their deaths were much more expected. But this had an effect. The three days after the assassination, my wife and I sat immobilized looking at the television set and watching this stream of people walking past the casket, and it was just such a shock. Which of course later on became even worse in 1968 with both King and Robert Kennedy being shot down, but 1963 was bad enough.

MR. STEINBACH: So you have those three days of national trauma. What’s it like to go back to the Justice Department after that?

MR. TERRIS: Well I can’t really remember exactly. I’m sure it affected myself and everybody else, but, besides what it did to the people’s psychology, the Department of Justice really wasn’t enormously affected. The same people were there, the same people took their job very, very seriously, and in essentially the same way. And certainly Lyndon Johnson, when he came into office, until his term was blighted by the Vietnam War, people felt very good about a lot of things that he did. Without the Vietnam War he probably
would be considered a near-great President. In that category. He did some phenomenal things.

MR. STEINBACH: The Vietnam War doesn’t really kick in during your Justice Department years. So you’re there during the push for the Civil Rights Act of 1964, Johnson’s reelection, the Voting Rights Act of 1965, the beginning of the Great Society. What’s your role, the Department of Justice’s role, in those big efforts?

MR. TERRIS: I don’t think I had really any direct involvement when I was at the Department of Justice. The Great Society, the War on Poverty, was my next job, but the Department of Justice was essentially a continuation of my prior work. I was still working on reapportionment. Even after Robert Kennedy left, there was another problem with Archibald Cox about whether he was going to support one man, one vote in another state, I think it may have been Colorado. Nicholas Katzenbach, who was the new Attorney General – I think it was when he was Attorney General, not Deputy Attorney General, but it was after the assassination, I’m fairly sure – called me in to ask me about whether there was going to be a problem with Archibald Cox. I really didn’t know much about it at that point. Cox hadn’t said anything to me. That worked its way out. Cox did do what the administration wanted. I don’t know if I said before, the [Kennedy] Administration on this issue was the President actually because he had written an article on this subject, so he personally had a position.

MR. STEINBACH: Tell us about Katzenbach.
MR. TERRIS: I didn’t have an enormous amount of contact with him. He was also a smart man, a good guy, and what [contact] I did have I was impressed by. There were a lot of good people running the Department.

MR. STEINBACH: I think Archibald Cox stayed on as Solicitor General through about the same time as you were in the Office and left.

MR. TERRIS: I think he stayed somewhat later because he’s the guy that got rid of me [laughter].

MR. STEINBACH: A story yet to be told. You have no overlap with Thurgood Marshall, who becomes the next Solicitor General.

MR. TERRIS: No.

MR. STEINBACH: Did you know him or ever have any professional work with him?

MR. TERRIS: No.

MR. STEINBACH: Any other recollections, thoughts, interactions about Archibald Cox? You’ve told us about his work on the reapportionment cases, his brilliant background from Harvard Law School. Any other interactions?

MR. TERRIS: I can tell you a little bit about him as an oral advocate. I’ve never seen anybody in the Supreme Court do this, and I’m not sure anybody ever has. He transferred from Harvard Law School to the Supreme Court. He lectured students like me at Harvard Law School, and he lectured the Supreme Court. He of course had a posture that was absolutely straight up and down, and so he would stand there straight up and down telling some people that didn’t know as much about law as he did what the law was, and he got away with it. It would have been hard not to get away with it. It would have been hard for
a Supreme Court Justice to have dealt with him. He was very smart, he was very well-prepared, and it would have been difficult, and I didn’t see too many Justices doing it. They didn’t always of course vote the way he wanted them to, but he was in command, and that’s not easy in the Supreme Court.

MR. STEINBACH: Let’s jump ahead when he was Special Prosecutor. Did you have any interaction at all then?

MR. TERRIS: None.

MR. STEINBACH: So tell us the story – this is ahead of the game but you brought it up – about his involvement with your leaving the Solicitor General’s Office.

MR. TERRIS: Well one weekend, it probably was in April 1965, I got a call from Steve Pollak. At this point he was the Deputy General Counsel of the Office of Equal Opportunity. He said to me that Sargent Shriver was in the process of setting up a national program of legal services for the poor, and the two people that he had working with him to do that, Edgar and Jean Camper-Cahn, had been setting it up, and they had been the great driving force of this, they had quit. They’d had some kind of a dispute with Sargent Shriver, and they had simply quit. He was trying to set up a national meeting, I believe for June, it might have been July, of all kinds of major political figures, legal figures, with later-Justice Powell involved, he was the President of the American Bar Association at the time, and so this was in cooperation with the ABA.

Well, Steve called me undoubtedly because he thought I knew a lot about poverty and community organizing. But anyway, I cared about these
issues, and he wanted simply to find out whether I would run this program. Well, I told him – this was on a Friday, I believe, or it may have been a Saturday – that I would work on it over the weekend. There were about two months to get this thing done. But I said that Sargent Shriver had personally to go to Archibald Cox on Monday to ask him that I could do this and I could return to the Solicitor General’s Office. The Solicitor General’s Office isn’t doing much at this time. All the briefing is finished for the term. All the arguments were finished for the term. There’s some work, but it’s the low point of the year. Not even the new briefs for the new term were coming in. So I thought it was perfectly reasonable, and if this was so important to the Administration, that that would work. I worked that weekend. Monday came. I’m told that Shriver did go to Archibald Cox and that Archibald Cox said no. I’ve often wondered why he said no. I hadn’t had any real run-ins with him during my time in the office. I always wondered whether that session in which he was sitting outside of Robert Kennedy’s office for half an hour, 45 minutes while I was talking to Kennedy [about Kennedy’s Supreme Court argument] had really bothered him. In any event, he said no. So then of course the question was, was I going to go back to the Solicitor General’s Office, and I thought about it, and I decided that this work was too important to leave it. In retrospect, it was certainly too important to leave it. I didn’t of course know that this was going to grow into the size program that now exists in the country.
I got a guy from Georgetown Law School to help me, and the two of us put together this program, and it was a terrific program. We got a person that you may have heard of (I’m joking), Pat Wald. There were really no good documents on legal services for the poor in existence at that time. We went to Pat Wald, I think she had four or five children, and asked her – I don’t know why we thought she was capable of doing this, in a sense nobody was capable of doing it – whether she could put together a small book on legal services for the poor, and in a period of three or four weeks, she wrote a book on legal services for the poor. So I’m not at all surprised the amazing things she has done since, because that was probably more amazing than most of the things she’s done since.

MR. STEINBACH: That sounds great. Let’s defer the whole post-DOJ activities that you’re engaged in until next time. Any going-away conversation with Archibald Cox?

MR. TERRIS: No. Never even saw him. I believe I saw Archibald Cox only once again in my life after that, and that was when [Ken] Gormley’s book about him came out. That’s years later.

MR. STEINBACH: Let’s back you up then to your Solicitor General’s career. It’s my understanding, and I think this is from your resume, that you were involved in maybe seventy Supreme Court briefs, give or take, writing and or reviewing.

MR. TERRIS: All reviewing. The only brief that I can remember the Solicitor General’s Office ever produced by itself – there may have been more, but I certainly
never heard of them – was Archibald Cox’s own version of that reapportionment brief, and he wrote it himself. In fact, I have the page proof here, and on the front of it, it basically says, “Bruce, here’s the brief; don’t touch it.” Short form of exactly what he said.

MR. STEINBACH: At least you could go home early that day.

MR. TERRIS: [Laughter]. And I didn’t touch it. I wasn’t that dumb.

MR. STEINBACH: But you did significant editing on other briefs that would come up from below.

MR. TERRIS: Of course. That was my job.

MR. STEINBACH: Dozens over the course of your career. And I also understand that you argued, I think, sixteen times to the Supreme Court directly yourself while you were in the SG’s Office.

MR. TERRIS: Correct.

MR. STEINBACH: Do you remember your first Supreme Court argument?

MR. TERRIS: No.

MR. STEINBACH: Do you remember being scared or anything about your first Supreme Court argument?

MR. TERRIS: It’s a funny thing. In fact I just said something to a colleague, I think it was this morning actually. I was in synagogue and the guy who’s frequently there asked me whether I wanted to have this particular participation in the service. I had told him that I never wanted to have it, it’s a fairly minor thing that you have to do, and I had told him no, I don’t want to, it makes me nervous to do it because I have such a poor command of Hebrew. I said to
him this morning, you know I don’t get nervous when I argue in the Supreme Court, but if you ask me to say something in Hebrew in synagogue, I’m not going to do it.

MR. STEINBACH: Now you can’t say that you never got nervous from the very beginning, or did you find this a place where you were at ease?

MR. TERRIS: You get nervous in a sense. I’m not saying I’m not thinking about it. Of course, I’d be crazy if I said that. But when you’re finished with the first two sentences in the Supreme Court, you’re not really nervous anymore. You’re so focused on what you’re doing that you’re really not nervous. I think that’s the way baseball players playing in the World Series feel. That’s their job. Once they’re into it, they can’t think of anything else. And I think that’s the way I felt in the Supreme Court. And of course I had a great advantage. I had seen a lot of Supreme Court arguments before I ever got up because I was in the Solicitor General’s Office and I saw all these very good people arguing in the Supreme Court. I had a tremendous advantage.

MR. STEINBACH: But like a baseball player, there’s a lot of practice before the game.

MR. TERRIS: We didn’t have moot courts.

MR. STEINBACH: You did not have moot courts?

MR. TERRIS: I hate moot courts. You ask if I’m nervous, I’m nervous at a moot court. But you get to the Supreme Court, you have got too much to think about.

MR. STEINBACH: Was that a standard, I guess, non-practice in the SG’s Office, to never have rehearsals?
MR. TERRIS: I can’t remember the people that were in the Solicitor General’s Office having a rehearsal. I can remember, strangely enough, a rehearsal for Abe Chayes, a professor at Harvard Law School, who later became the top lawyer at the State Department, he was making an argument, and we had a moot court for him. But I don’t remember any moot court when I was in the Solicitor General’s Office, for me or anybody else [in the Office]. I don’t know if that’s smart or not. I’m pretty sure of it.

MR. STEINBACH: So like any lawyer representing any client, you’ll have your own personal views that sometimes aren’t the same as your client’s. Do you remember any instances where you argued in front of the Supreme Court and thought to yourself, “I’m wrong,” or “I think we’re on the wrong side”?

MR. TERRIS: Let me tell you something. That almost never happens. Not to Bruce Terris, not to anybody. If you can’t get yourself into believing in your argument – now, it depends on how you phrase it. If you phrase it, “When you sit down, Bruce Terris, and when you decide how you would decide this as a judge,” express it that way, I might say “I will come out against the position I’m in,” but that’s not the sequence. The sequence is, you get the case, you get the brief, you edit the brief, you then study the cases [cited in the brief] in preparation, you draft the argument. You really never ask that question, how would I decide the case if I were completely separate from representing this client. So in my whole history of 50-odd years of being a lawyer, I don’t think I can say to you that that’s ever occurred.

MR. STEINBACH: So as an advocate, you become a believer.
MR. TERRIS: It doesn’t mean what you would do if somebody the next day said you are now appointed as a judge, if I got that same case, now I might look at it completely differently, but as an advocate, I never really ask that question.

MR. STEINBACH: I ask that because in several instances – and it’s not just you, but the SG’s Office at the time in the Kennedy years, seemed to be pushing a certain position, and the Warren Court takes that much further, much more liberally, much broader. That must have been an interesting dynamic for the government to be asking for “x,” and the Supreme Court giving you “x plus.”

MR. TERRIS: That’s an interesting illustration that you just said. Of course that happened, I wouldn’t say much further, but somewhat further, in the reapportionment cases. The interesting thing is that when the Solicitor General’s Office – and I’m obviously talking about my stay there – when the Solicitor General’s Office formulates its position, it’s doing several things at the same time. It’s trying to predict the best argument it can make to get all or most of what the administration wants, what the government wants. So it’s trying to predict what’s going to be a persuasive argument, what can win. It’s also separate from that, trying to decide what the administration’s position ought to be. Forget about whether you’re going to win or lose, what’s our position? And the way the Solicitor General’s Office operated, at least at that time, was truly an attempt to argue what is good for the country. And you’re also arguing the administration’s position. At times the Solicitor General’s Office might say, that isn’t maybe the best for the country. When I was there, probably half of those Communist cases, most of the people in the Office
would have hoped they were going to come out the other way. So it’s a very tricky on how you formulate positions.

At Harvard Law School when I was there, the ideology was the majesty of the law. There’s the law. It’s not just how you use the law for your political purposes, there’s such a thing as “the law.” At Yale, it was a place where, at least many of the professors were using the law for what they regarding as good purposes. A lot of people in the Solicitor General’s Office (they weren’t all from Harvard) had that kind of majesty of the law ideology. There is “the law” that we have to be faithful to. We don’t just do good and use the law to do good. So that too goes back to your thing about what we would argue and then sometimes the Warren Court would go beyond us because, in effect, our own sort of inner feelings about the law limited how far we were comfortable in arguing.

MR. STEINBACH: So as someone who has argued – at least, well even then in the SG’s Office, sixteen times and then later on before the Supreme Court and in other courts – you have lawyers in your office now, or maybe you get invited to the SG’s Office and you’re meeting with people who have never done it: tell them how to be a good appellate lawyer.

MR. TERRIS: Hah. Well the one thing I tell them is you’ve got to attempt to tell a story. That’s true of brief-writing too. You’ve got to tell a story. What I say to people is, you basically want to tell a story in which there are no exits. Once you start with me, you’re going to end up with me, and the exits from the path that I’m going to tell, the story I’m going to tell, I’m going to have to
cut off those exits, so that there are no exits. You start with me, you’ve got
to end up with me. So that’s a big part, I think, of how you persuade people
in a court. In terms of oral argument, you’ve got to obviously simplify. I
have a trait that I think is good for an oral advocate. My wife says, if she
says “x,” I’m going to say “maybe not quite x,” so that my immediate
reaction is kind of a caveat, a response. That’s maybe bad at home
[laughter], but it’s good in a courtroom. In other words, when I’m asked
something or a judge says something, my mind operates in response very,
very quickly, very quickly translating it into how it fits into my story. And I
think that’s a trait that’s a very valuable one. I don’t know how much of it
can be taught and how much of it is innate. At least those are a couple of
things that I tell people.

MR. STEINBACH: How do you deal with a hot bench where you utter a sentence and you get a
thousand questions?

MR. TERRIS: They’re all hot now. If you’re in an appellate court, where you have three
people or more, they’re all hot. When I first started arguing, it was not nearly
as hot, even the Supreme Court wasn’t nearly the way it is now. There’s no
argument today in the Supreme Court. In many ways, you don’t get anything
out of your mouth. You’re asked questions or get speeches from them, and
then you have to react to their speeches. And that’s true of all the appellate
courts that I’ve been in for years now. District court is a little different
because one guy can’t think of so many questions probably one after the
other, bam, bam, bam. But appellate courts, you answer questions.
MR. STEINBACH: If you had the power to tell the Supreme Court how to behave, should they go back to the old days and let the lawyers talk more, or is what they do now better?

MR. TERRIS: That’s an awfully good question. I think they should do a little more of the way it used to be. I don’t think it’s appropriate to essentially use the argument time not to deal with the lawyer but to deal with their compatriots. What they’re really doing is talking not to the lawyer but to the guy down at the end of the bench. They’ve got time to do that. They have meetings to do that. I think one of the problems judges generally, and Supreme Court Justices in particular have, they have too much confidence that they know the case. They don’t know the case the way the lawyer knows the case. They never do, even though they are smart, and certainly there are many very, very smart Justices and judges, but they don’t [know the case]. They almost never [let the lawyers argue. This is particularly bad when they do not let] good advocates [argue] – and most of the lawyers in the Supreme Court are awfully good advocates, there are not a lot of poor advocates in the Supreme Court, especially these days because now for the first time [there is] a professional bar of Supreme Court advocates that did not exist before. So I think that’s a mistake. They should ask real questions, if it’s unclear what the person is saying, definitely ask the question, but I think to some extent they want to hear themselves talk.
MR. STEINBACH: When you argued in front of the Supreme Court during your SG days, do you remember any adversaries, any lawyers who argued against you in the Supreme Court who really impressed you?

MR. TERRIS: Not really. That doesn’t mean that there weren’t people that were good advocates on the other side when I argued, but I really can’t remember. For the most part I can’t remember who they were at all. The one I do remember is in the Communist cases, a guy by the name of [Leonard] Boudin, who happens to be the father of the judge. I’m amazed that guy ever became a judge.

MR. STEINBACH: First Circuit.

MR. TERRIS: Right. How he [Michael Boudin] ever became a judge after that, given what his father’s position was. I think it’s a great thing for this country.

MR. STEINBACH: Let me broaden the question. You’ve talked a bit about Archibald Cox’s ability as an oral advocate. Any others, not that you were necessary against them, any other people you saw argue that you thought were tremendously good?

MR. TERRIS: The top people in the Solicitor General’s Office were awfully good. Ralph Spitzer was there, he was never the First or Second Assistant. He became a law professor at Pennsylvania later. I can remember an argument that he made in a tax case that involved an enormous amount of money, and on the other side was Erwin Griswold, Dean of Harvard Law School. Spritzer wiped him out. It was terrible. I remember at the time, it doesn’t sound like an enormous amount of money anymore, but I remember we were told that
Griswold had been paid $100,000 for this argument, and it was pitiful in comparison. Spitzer was just so much better. But there were other people too, Philip Elman and Oscar Davis. There were a lot of people in the Solicitor General’s Office who were really awfully good.

MR. STEINBACH: I noticed in the briefs that you worked on Boudin’s name, but I also noticed Thomas Emerson, he was on the other side of a case that you were involved in.

MR. TERRIS: I don’t remember.

MR. STEINBACH: I think he was connected with Yale Law School.

MR. TERRIS: It sounds rights.

MR. STEINBACH: We have previously talked about, or I’ve sent you, several Supreme Court cases that you worked on, and I just wondered about any recollections you might have. Several of them have to do with internal security issues.

MR. TERRIS: As I said, when it came time to assigning those cases, I think the powers that be said to themselves – first of all, he is very junior, and so he’s willing to accept these cases and the rest of us don’t want to be tainted with this stuff, so that’s how I ended up with them. I handled a couple of cases [involving] the House Un-American Activities Committee. I once joked to people, there was a time that I thought I had lost more federal statutes being held unconstitutional than anybody in American history, because there were two minor provisions in the Immigration and Naturalization Act that I lost. Up until recently it was very unusual for federal statues to be held unconstitutional. About fifteen years ago, I noticed that in one week there
were three federal statutes held unconstitutional, so I can’t claim this great
distinction anymore, if it ever was true. It may not have been. But I’m sure I
was given those cases because there wasn’t a lot of clamor for other people to
argue them.

MR. STEINBACH: In the internal security cases, the blockbuster, at least it seems to me, a case
argued by Rankin at the very end of the Eisenhower years, the *Communist
Party v. Subversive Activities Control Board* [367 U.S. 1 (1961)]. You’re on
the brief, and this is a 5-4 decision written by Frankfurter that required the
Communist party to register. What do you remember about that?

MR. TERRIS: Gee, I’ve forgotten that there was actually a case on that side that was won in
the Supreme Court. I lost all my cases 5 to 4. I don’t really remember about
the Smith Act case. I can remember, and you might be interested in this, I
remember, one of the cases involving the House Un-American Activities
Committee, that Frankfurter was so irritated with my argument that he took
his chair and swiveled it. The wall of the Supreme Court is very close to the
back of the Justices, so he swiveled his chair and he was facing the back
wall. His face must have been six inches or a foot away from the wall. He
was so irritated about the argument I was making. Of course what I was
doing, I was looking for a fifth vote. I wasn’t looking for his vote. I knew
where his vote was. I had that vote, and I was looking for a fifth. Of course I
didn’t get a fifth. There was no chance that I was going to get one of the
five, and that may also have been why I got the assignment. No one in the
world believed that the case is going to come out anything other than 5 to 4.
MR. STEINBACH: That sounds familiar from nowadays. When you went up there – let’s generalize about all sixteen of your cases at once. Could you count the noses even before you started most of the time?

MR. TERRIS: Well in those kinds of cases you could. I can’t remember now some of the other cases that I argued that were a little less politically affected, so there may have been others. There were after all a few cases that I won, so they may be the ones that you couldn’t do the count before you went up there. Like the two Immigration and Naturalization Act statutes, I think I pretty well knew how they were coming out, and most of the Communist cases the same thing is true.

MR. STEINBACH: One of the immigration cases – would Schneider v. Rusk [377 U.S. 163 (1964)] be one of those cases? The issue was whether the government can take away someone’s citizenship who returns to the country of their birth for a period of time and then comes back to the United States. Does that sound right?

MR. TERRIS: I think you had to do something more there, like vote or something. I think it’s usually tied to doing something. I think one of the cases may have involved serving in a foreign army, and the other one maybe voting.

MR. STEINBACH: And you argued that it was rational for Congress to have distinguished between [native-born] citizens and others who went back to their home country, and you lost five to four.

MR. TERRIS: Correct [laughter].
MR. STEINBACH: The *New York Times* said in an article I noticed about the case that more than 40,000 citizenships had been taken away under that law before the Supreme Court struck it down.* Any other recollections about that particular case?

MR. TERRIS: No. I’ve blotted them out, given the result [laughter].

MR. STEINBACH: Then you have another immigration and naturalization case before the Supreme Court. Anything to add?

MR. TERRIS: No.

MR. STEINBACH: And there were a couple where people testified in front of Congress or refused to testify.

MR. TERRIS: House Un-American Activities Committee. Those were the cases that [Leonard Boudin] argued. In fact I believe there were five cases in a row in the Supreme Court, and I argued two of them and other people argued the others. Not in the Solicitor General’s Office; other people.

MR. STEINBACH: It looked like for various reasons the Supreme Court figured out a way each time to rule against Congress.

MR. TERRIS: Exactly.

MR. STEINBACH: How about any other Supreme Court decisions that you remember?

Obviously, setting aside reapportionment.

MR. TERRIS: I really don’t remember my other ones. A little bit strange I guess, but I don’t.

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MR. STEINBACH: Let’s talk about the Court in general, the Warren Court. There’s somewhat of a turnover while you were in the SG’s Office, but a pretty core group remains. Black and Frankfurter leave and get replaced later on, but let’s start with the large question about your reflections on the Warren Court, from your personal perspective.

MR. TERRIS: As you would expect, it’s kind of a mixed bag. The Justice I admired the most, and still do, from that Court is Justice Harlan. The reason I admired him the most was because I believe that he frequently voted against his political views, and to me, that’s really one of the most important things that a great Justice should do. It isn’t a place to be simply translating what you would do in Congress into a legal arena, and I think most of the Justices wouldn’t have voted any differently if they had been sitting in Congress than as they were on the Supreme Court. He certainly was also very intelligent, and his demeanor was wonderful on the Court. He did not act like he was superior to the people who were arguing in front of him.

Earl Warren was, I think it’s fair to say, not smart enough to be the Chief Justice of the United States. I probably agreed with most of his political views. On the other hand, Brown v. Board of Education and getting that done as a unanimous decision was very impressive. Of course that’s probably where his skills most played out, as a very good politician, and getting that decision out that way probably took the skills of a politician more than the skills of being a great legal scholar.

I was never enormously impressed with Tom Clark. Justice Black
I thought was a very smart man, a good Justice. Douglas was also a very smart man but not a very good Justice.

MR. STEINBACH: Because?

MR. TERRIS: I don’t think he really took it with the seriousness that the job demands, and that the public has a right to expect, to do the research that’s needed. I had a case long after this, in which I think I lost 5-4 too, which I represented the plaintiff, Cesar Chavez, and every bit of Douglas's background would tell you that he would have voted for me almost knee-jerk. He didn’t. I lost five to four. I had the feeling he wasn’t even paying attention, even to figure out where his political views were.

MR. STEINBACH: It sounds like you tussled with Justice Frankfurter from time to time.

MR. TERRIS: And Frankfurter, of course, was a very smart man. Very smart. Tough to deal with at oral argument. He didn’t give really any ground. And I thought Justice Stewart was a very good Justice, pretty smart, pretty fair. I don’t know who I missed.

MR. STEINBACH: Did you have any interaction while you were in the Justice Department with Byron White?

MR. TERRIS: No.

MR. STEINBACH: So he went from the DOJ to the Supreme Court without you knowing him personally. Did you know any of the Justices personally or outside of professional work?

MR. TERRIS: No.
MR. STEINBACH: What was your sense – this would have been the very tail end of your SG
days – of Justice White or Justice Goldberg?

MR. TERRIS: I’m not sure I ever argued in front of Goldberg. I think I didn’t. I knew
Justice Goldberg because he was involved, this was a later time, on setting up
the Center for Law and Social Policy, which I and Charlie Halpern set up, so
I knew him. Justice White certainly wasn’t one of the great Justices, but he
was a solid man.

MR. STEINBACH: So now it’s just obvious looking back how profoundly significant the
Warren Court was in American legal history. Was that clear at the time, or
was it just one case after another they decided?

MR. TERRIS: I think it was fairly clear. It was dealing after all with civil rights, really very
basic issues of civil rights. There were of course other issues,
reapportionment is awfully important. It’s hard to figure what would have
happened today if we hadn’t done something about reapportionment at that
time. Certainly there were other issues, but I think the civil rights issues by
themselves are critical. Theoretically, you can imagine the Johnson civil
rights laws being held unconstitutional. If you imagine that for a moment,
now it seems like that’s so impossible. It was possible.

MR. STEINBACH: In the meantime there’s all these rights for criminal defendants coming
down the chute, much more expansive interpretation of the First Amendment
for the press. . . .

MR. TERRIS: That’s right. They probably weren’t as important as the others, but they were
very, very important.
MR. STEINBACH: When we pick up next time, you will have left the Justice Department and
be on to the next phase of your career. Look back on joining the Justice
Department and the eight years you spent there. Reflections on your public
service career up to that point?

MR. TERRIS: It was very, very rewarding. I had a great feeling about the things that I did
in terms of how I made a contribution. It was fun. I don’t know if I said this
to you before, but I’ve said it to a lot of people: I can never remember in my
entire career going to the office that I didn’t look forward to it. I know that’s
just fantastic, but it is true, and it’s certainly was true of that period. I
learned an awful lot about law. I learned an awful lot about how to think and
act and what have you. I’m not sure whether I have said this to you or not:
the start of it really though is Harvard Law School because Harvard Law
School taught me how to think. I had gone to Harvard College, and you say,
did they teach you how to think? The answer is no. They would ask a
question and I would give them back everything I knew. They would ask,
what’s the cause of the Civil War? If you asked me that on an exam, I would
write furiously for an hour, and everything would come out. Suddenly at
Harvard Law School – and I’m an enormous believer in this – they used the
Socratic method, in which they never told me. They never told me anything.
What’s the law? Tell me the law, and I’ll write it down. I had to think it
through. That was an enormous experience, and then the years after that
associated with these tremendous people in the Solicitor General’s Office, it
was just really wonderful.
MR. STEINBACH: Would I be right in concluding that when you look back over your Justice years, by far your proudest accomplishment is the reapportionment cases?

MR. TERRIS: That’s right in the sense – that’s the biggest thing, the thing that somebody wrote a book about recently. But everything else I did was wonderful too. The other briefs I handled, briefs on the merits in the Supreme Court, almost all of them had some considerable importance, maybe not as important as reapportionment, but they were intellectually challenging. So even if something wasn’t the most important thing in the world, it was a challenge to do it right.

MR. STEINBACH: Good. Well we have plenty more to cover, starting with the War on Poverty when we next meet. Bruce, thank you very much, and we’ll reconvene shortly.
ORAL HISTORY OF BRUCE TERRIS

IV. POVERTY, CRIME, POLITICS, AND ACTIVISM

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 Monday, December 22, 2014. This is the fourth interview.

MR. STEINBACH: Good morning, Bruce. How are you?

MR. TERRIS: Good morning. I’m fine, thanks.

MR. STEINBACH: We had last time taken you through your career up to the point of your years in the Solicitor General’s Office and the Department of Justice, and when we pick up today, you’re on the verge of leaving there to other ventures. But I want to start with what we covered just briefly last time. While you were still in the SG’s Office, you participated, or were asked to participate, in a conference that involved Sargent Shriver in the new Office of Economic Opportunity that became known as the National Conference on Law and Poverty, of which you served as the co-chairman. So if you could just remind us again how that opportunity became available to you, and then we’ll take it from there.

MR. TERRIS: I guess I should say that if I’d been asked the day before I started work on that conference how I was going to spend the rest of my life, I probably would have said in the Solicitor General’s Office. After all, it’s hard to beat that as a legal job, and so I think it’s very possible that that’s what would have happened. But totally out of the blue, I believe it was on a Friday,
Steve Pollak, whom I had worked with in the Solicitor General’s Office, I believe his title was the Deputy General Counsel of the Office of Economic Opportunity, and he told me that they were going to have a conference starting a legal services program for the poor. I didn’t know that, I don’t think it probably was even public knowledge at that point, and the people that were running the conference, the two Cahns, Edgar and Jean, who had really done wonderful work on just opening up this whole area, had had some kind of a fight with Sargent Shriver, and they quit. They were going to set up this conference for Sargent Shriver at the Office of Economic Opportunity, and something had happened, and they were gone. There was nobody to set up this conference. I never knew, and still don’t know, what the fight was about. But Steve said to me, “Would you be willing to run this conference?” I said to him that I would be willing to run it, but that I didn’t want to leave the Solicitor General’s Office. This was not a permanent job, the conference was going to take place in two or three months, and so I wanted to make sure that Sargent Shriver was personally going to talk to Archibald Cox to grease the wheels so that I wasn’t going to have to leave the Solicitor General’s Office.

MR. STEINBACH: So then what happened?

MR. TERRIS: Well, I worked that weekend. We had very little time to set up this conference. When I say, “we,” I was the only person that weekend. On Monday I was later told that Sargent Shriver went to Archibald Cox, and Archibald Cox said “no.”
MR. STEINBACH: “No” that you could not remain at the SG’s Office and still work on this conference?

MR. TERRIS: Right.

MR. STEINBACH: And then you had a choice to make?

MR. TERRIS: I had a choice.

MR. STEINBACH: And how did you make the decision to leave the Solicitor General’s Office?

MR. TERRIS: It was a very hard choice, but I thought the subject of the conference and what it was intended to do was of such enormous importance, really for the country, it was something that was changing the whole structure of how we deal with poor people and their relationship to the law, that I really couldn’t say no to it. Somehow I probably thought there was a possibility that if this program got started that I might be the one to run it, but I had no promise for that, and in fact I didn’t even ask for a promise.

MR. STEINBACH: After this conversation and after that weekend, how much more time did you spend at the SG’s Office before you transitioned to the conference?

MR. TERRIS: Not one minute.

MR. STEINBACH: So that very same week, you started to work full time? Was that a federal government position?

MR. TERRIS: Yes.

MR. STEINBACH: So the conference was part of the OEO?

MR. TERRIS: That’s correct.

MR. STEINBACH: And employed you as an OEO official?
MR. TERRIS: I can’t remember now the technicalities of it, but I would think that was it. I was certainly a federal government employee, and I’m sure I was getting the same grade that I had been in the Solicitor General’s Office, but I can’t remember those kinds of details.

MR. STEINBACH: Okay, we’re in the middle of 1965, we’re at the beginning of the Great Society’s War on Poverty. Describe that effort and the sort of excitement it generated when it was first announced by President Johnson.

MR. TERRIS: I think people who cared about the country’s problems involving poor people thought this was a marvelous idea and that the federal government would take this seriously in a coordinated way – not just here’s a program here and there’s another program over there, but a coordinated program. I mean things like the Job Corps to train large numbers of poor youth, many of them minorities, so they could get jobs. Most of them were unemployed. I mean just marvelous ideas that were being tried out. Head Start for young children. It was really I think just a fantastic set of ideas that they were working on, and this was going to be a major part of it.

It was particularly interesting to me because I was doing the same kind of work on the street here in Washington at the time, and that’s undoubtedly why Steve Pollak asked me to do this work – that he thought I knew something about the problems of poor people, more than most people did, so I think that’s why I was asked.

MR. STEINBACH: Which we’ll come back to in a few minutes. The conference is run by the Office of Economic Opportunity which is a new government agency, headed
by Sargent Shriver. Remember the creation of that and what its mission was perceived to be?

MR. TERRIS: It was to start carrying out these kinds of ideas that the President had, the Job Corps, promoting Head Start, and there were a lot of others that now have largely bitten the dust, and I can’t remember the details of – but essentially a coordinated program to deal with all the major problems of the poor.

MR. STEINBACH: Had you had any interactions previously with Sargent Shriver personally?

MR. TERRIS: Never.

MR. STEINBACH: Back when he was running the Peace Corps, no involvement?

MR. TERRIS: No. And I didn’t have any when I had this job either. I don’t think I ever saw him. I might have had one meeting with him.

MR. STEINBACH: So your particular focus at this conference I gather had to do with legal services for the poor?

MR. TERRIS: That’s exclusively what it involved.

MR. STEINBACH: Which was one aspect of OEO’s focus on the War on Poverty?

MR. TERRIS: Correct.

MR. STEINBACH: Explain that to us. What’s the thinking behind providing additional or new legal services to the poor? How does that get at the root problems of society perceived at the time?

MR. TERRIS: Everybody potentially has legal problems, and the difference, of course, is people with money can hire a lawyer, and poor people can’t. But the truth is poor people have far more legal problems than the average middle class person has. The poor person frequently runs into housing problems, getting
evicted or getting increases of rent, or the apartment they’re renting isn’t up
to code. All kinds of things like that. Then they have consumer problems,
they’re often taken advantage of, so that’s a frequent kind of problem. So
poor people have frequently, unfortunately, numerous legal problems. The
thought is that if you don’t deal with those problems – you may improve their
lot by getting their teenager a job or their young adult a job – but many of the
other problems are going to continue to exist, and a lawyer can be very useful
on that.

MR. STEINBACH: When this conference is in the planning stages, at that point is there any
federal coordinated effort to provide legal services to the poor already in
existence?

MR. TERRIS: I don’t believe there were any. I should say that it’s important that this was
not just OEO’s proposal, it was also the American Bar Association’s. It was
a very close ally and participant in this, and the president of the American
Bar Association at that time happened to be Lewis Powell, so he was quite
heavily involved in it. He spoke at the conference, and the Bar Association
throughout the country was a very important ally because they, of course,
have local bar associations everywhere, in the same cities and states where
you want to put legal service programs. OEO didn’t have any offices all over
the country, but the Bar Association had entities affiliated with it
everywhere.
MR. STEINBACH: Can you remember how many weeks you had between the time you left the SG’s Office and the conference occurred, and what you did during those weeks?

MR. TERRIS: I mostly went crazy, but I think it was two or three months. I was very lucky to get two people to work with me. One was Jack Murphy who was a young professor at Georgetown Law School. I don’t remember how I happened to get him, but he basically did the administrative things. I basically put the program together. I don’t want to minimize though the administrative and make it sound like I did the important things and he did the unimportant things. Putting together a conference with hundreds of people coming from all over the country in a couple of months is an enormous undertaking, and he did that. The other person who was equally important was somebody who would be well known to everybody, and that was Patricia Wald. I don’t know how we happened to decide that she should be the one that would write our little book on legal services for the poor, which she did (even though I think she had four children). In a few weeks, she put together the only book that I think existed at that time on legal services for the poor. She went into these different areas, housing, consumer, etc., and somehow she produced this document that could be given to every one of the people that came to the conference and could tell people who really had no idea what we were even talking about, would have something in their hand that told them what we were talking about.

MR. STEINBACH: Had you had any previous contact with later-Judge Wald?
MR. TERRIS: I didn’t before. I did afterward, and we’ll probably talk about that in some of the other episodes in my career.

MR. STEINBACH: Tell us about the conference itself. How long was it? How many people attended? What happened all day long?

MR. TERRIS: It was in this marvelous auditorium over at the State Department, which is a beautiful auditorium. It had several hundred people. They were lawyers from everywhere. Many bar association officials in different parts of the country. There were legal services personnel in existing programs. There were legal services at a very low level in comparison to the need that existed in various parts of the country. Now I’ve got a block on what the name of that organization is, but it was also affiliated with the American Bar Association and local bar associations, and their people came. We invited them to come to the conference because they were obviously people who had an interest in this field. I think it lasted two days. It might have lasted three, but I think it was either two or three. Lewis Powell spoke, and Sargent Shriver spoke, and academics from different parts of the country that we recruited and had the beginnings of knowledge. There weren’t people with a lot of knowledge, but they had the beginnings of knowledge, and so they laid out the field in rather a rudimentary way. In comparison to today people would regard it as very rudimentary. But that’s the best that could be done then.
MR. STEINBACH: I guess this conference is credited to leading to the formation ultimately of the Legal Services Corporation. Do you agree with that conclusion? How did the conference affect that?

MR. TERRIS: There’s no question, it went directly to it, because right afterwards, when the conference ended, Sargent Shriver put people to work to start putting together a legal services program for the country. It [didn’t start] somewhere else. It started in the Office of Economic Opportunity.

MR. STEINBACH: So the conference issued I guess recommendations or findings. Do you remember?

MR. TERRIS: I think it maybe did some, but mostly that isn’t what it did. It was intended basically to get the interest of important people all across the country so that people could come back to them and say, okay, now we’ve got some money, how are we going to do this in Des Moines?

MR. STEINBACH: So Sargent Shriver and the OEO after the conference participate in drafting legislation that ultimately becomes the Legal Services Corporation. Are you involved in that effort at all?

MR. TERRIS: I was involved for a short period of time, a few months, and I didn’t get the job of running the program. Once more a more senior person got the job [laughter], so after working there for a while and when the new people came in, I left.

MR. STEINBACH: So you had maybe intended after the conference to stay on in this area, but then ended up – is the next step in your career the National Crime Commission?
MR. TERRIS: Correct.

MR. STEINBACH: Before we get there, let’s go back to why maybe Steve Pollak called you in the first place, and you’ve mentioned this several times previously. Even back when you were in the SG’s Office as a government attorney, in your private capacity you were involved significantly as, for a lack of a better term, a community organizer in the Washington, D.C. area. What got you interested in that sort of participation in the local community?

MR. TERRIS: When I came to Washington, my fiancé was a social worker in a settlement house down on I believe 9th and Q, but I may be a block off. It may have been 8th and Q when I think about it. I can remember that they wanted to set up a credit union, and I being a lawyer, somebody thought that I ought to be able to do that, so I did. That led over the next couple of years to doing more things and ending up setting up a block club, setting up a non-profit housing corporation, setting up programs for tutoring children. A few years later, that didn’t happen the first couple of years, we set up medical services on Saturdays for people to come in, doctors and nurses and other medical professionals to come in to provide free medical services, a women’s club, a men’s club. We set up a small community center where men could pitch horseshoes and they had a pool table. I got Robert Kennedy to come down and dedicate it. So we did a whole variety of things over [many years].

MR. STEINBACH: I think what you’re referring to is what was called the 1500 Block Club?

MR. TERRIS: That’s the block club. The housing corporation was called Better Homes, Incorporated, and that led to the Housing Development Corporation.
MR. STEINBACH: Let’s focus on the 1500 Block Club first, which when I heard you describing just now and when I read about it previously reminds me almost of 50, 60 years earlier of Jane Addams and the settlement houses at the turn of the century. So what’s going on with the Block Club? What’s its objective, and what do you do?

MR. TERRIS: When my fiancé left that settlement house in a couple of years she’d become my wife, and we continued to work in that area without being paid to do it. And then another fellow by the name of James Gibbons and his wife Kathleen were the other two key people. He was the head of an insurance company in town. Not the usual head of an insurance company. So what we did is, we knocked on doors. We got the men in the neighborhood to form a block club, and then we bought a building so they could play pool in the building. We bought houses and rehabilitated them ourselves. We set up tutoring in the block, and this program was run by a young woman named Jane Hardin. It was standard community organization, and we spent a lot of time doing it. We formed a Women’s Club, and then the women started baking things and they sold them in various places in Washington to get money for things that the Women’s Club wanted to do.

MR. STEINBACH: And for you this is night time and weekend work?

MR. TERRIS: Right.

MR. STEINBACH: 1500 Block, is that referring to a particular street in town?

MR. TERRIS: I think it was 8th Street, I’m trying to think about that.

MR. STEINBACH: In Northwest?
MR. TERRIS: Yes.

MR. STEINBACH: You separately had mentioned the Better Homes organization of which you were one of the founders. Tell us the concept behind that and what you did.

MR. TERRIS: The concept was, at the start we would go and buy a building, we’d get people to donate money to buy a building.

MR. STEINBACH: Who’s “we?”

MR. TERRIS: Jim Gibbons and myself. And then on weekends and in the evenings we would work to fix them up with the people who lived in them and other people in the neighborhood. So in other words, I’m certainly not one of the great carpenters of our time, to put it mildly, but there were other people in the neighborhood who knew some things, and when we had some really skilled things to be done like electricity, we would hire people. So we bought a few buildings in that block and fixed them up. Then we graduated from that into going to the federal government, which had a program under which they would loan money for this purpose, and that was the Housing Development Corporation, which we set up. And so that was basically our concept, and since that time, much bigger enterprises have been formed in lots of places in the country.

MR. STEINBACH: So your prototype, the Better Homes model, obtained funding, I gather, from the Federal Housing Act?

MR. TERRIS: Correct.

MR. STEINBACH: And became sort of a model that was replicated nationwide?
MR. TERRIS: I’m sure if we hadn’t existed the model would have still occurred. People were thinking of doing this kind of thing, certainly independent of us, and it was I think a fairly obvious thing to do, but we were certainly one of the earliest.

MR. STEINBACH: Is this rehabilitation of certain buildings, is that the same general geographical area as your other work?

MR. TERRIS: It was on the same block.

MR. STEINBACH: In Northwest, in the central city of Washington?

MR. TERRIS: Right.

MR. STEINBACH: And you had also worked in establishing a credit union for the center city in Washington?

MR. TERRIS: That was the first thing that we did, that I did really, because that was before I started working with Jim Gibbons. When my wife, then-fiancée, was working at the settlement house.

MR. STEINBACH: Tell us about that idea and concept.

MR. TERRIS: All over the country, people have set up credit unions to help poor people. They work pretty much the way other credit unions do except for of course if you’re aiming at poor people, then you’ve got to sell it with them and work with them both to use it and to use it responsibly. But I basically wasn’t the person who did the work on the credit union. I started it. In other words, the people that wanted a credit union weren’t lawyers and they thought that I had some expert ability to fill out the papers, file them, figure out what the right structure was, that kind of thing.
MR. STEINBACH: So all these separate voluntary activities, while at the same time you were arguing in the Supreme Court for the SG’s Office, all of that is what brought you to the attention of the OEO personnel who asked you to run the Conference on Law and Poverty that focused on legal services.

MR. TERRIS: I think that’s right. And it also had to do, I suspect, although he never said that, that it was why Robert Kennedy ended up having a good friendship with me.

MR. STEINBACH: Tell us about the time that you invited Bobby Kennedy to the dedication of one of these Washington efforts that you were involved in.

MR. TERRIS: This was right at the time, it became clear later that it was the time, that he was thinking about running for the Senate. I went to his office. He had said at an earlier meeting with a bunch of young lawyers, including me, if you have something you need to talk to me about, come and see me, so I said to myself, I’m going to go and see him. So I went to see him to ask whether he would come and dedicate this center. I explained to him what we were doing, the things I just said to you, and he said he would. The day that this occurred, the dedication was going to be at something like 6:30 at night and I went down to his office.

MR. STEINBACH: Was he still Attorney General?

MR. TERRIS: He was still Attorney General. I went to his office, and the two of us went down to get in his limousine. I was cordoned off to sit in the front seat with the glass partition dividing me from him because it became obvious later the person he was talking to was a Congressman from New York City [laughter],
and when I later learned he was going to run for the Senate, I knew that’s what he was talking to the Congressman about. But I couldn’t hear what was going on. We went over to the building where our little community center was going to be with its pool table. That was going to be a center for the men in the neighborhood, which it certainly did become. He was mobbed by the little children there. I, of course, having no experience with this kind of thing – I’ve never been an advance man – tried to get the children off him, and he emphatically told me not to do that. He gave a little talk, and he left. But I think that experience made him feel considerably closer to me.

MR. STEINBACH: This is a very hard question and somewhat out of context. What made him so charismatic? You just described this situation that we can all picture as a typical Bobby Kennedy moment. Nobody would have mobbed anybody else who came to the dedication.

MR. TERRIS: That is absolutely right. That is absolutely right. Defining what charisma is I think may be one of the hardest things one can do. Because he wasn’t, he certainly wasn’t charismatic in small group conversations. I mean in comparison to the time that I spent a few minutes with Lyndon Johnson, it wasn’t even the same ballgame. Lyndon Johnson in those small conversations was enormously charismatic. Robert Kennedy wasn’t. But I think what somehow came through was how much he cared really about his audience – that I think you could tell it without a lot of words that he really cared to be there with those children. If there had been all adults there, it wouldn’t have been the same. I think he had a feel for children, and of
course he had a lot of them, and I think he had a feel for them. And I think they could sense it. I find that a very inadequate explanation.

MR. STEINBACH: Before we leave the topic of legal services to the poor: Decades have passed. Look back and reflect on your efforts to begin the process of providing legal services for the poor. How proud are you of what you did? How successful were you? What would you say the state of play is now?

MR. TERRIS: Well, I am proud of it, although it was a relatively short time in my life and certainly lots and lots of other people have done all kinds of important things in it. I think it’s an enormously beneficial program, but unfortunately it hasn’t worked nearly as well as it should have because Congress has not provided the money that it should. I’m not sure that it hasn’t actually over the last decade or two had a decline in the amount of money if you take into account inflation, and Congress has simply not been willing to expand the program in a way that it should have. There’s an enormous demand, and if you go to any legal services program what they basically will tell you is we turn people away, people that are just as deserving of service as the people we do serve. So I think that’s a pity. That’s really too bad.

MR. STEINBACH: So it’s your sense after all these decades that the need is still there, it’s unmet in large respect?

MR. TERRIS: It’s still unmet. If somebody asked me what’s wrong with the American legal system, this is what’s wrong with it, and it exists even more acutely in the criminal field. When you read about some of the things that occur from
failure to give adequate legal services to people that are accused of crimes, even serious crimes, it’s a terrible blot on our system.

MR. STEINBACH: When you say “this” is what’s wrong with the legal system, what do you mean by “this?”

MR. TERRIS: Inadequate resources to have the number of lawyers that are needed to provide services to people that are poor.

MR. STEINBACH: After your efforts on the legal services front, you transitioned to what colloquially becomes called the National Crime Commission. I think technically President Johnson established a Commission on Law Enforcement and the Administration of Justice, but we can call it the National Crime Commission because that’s easier. Tell us just generally to start off: what was that entity, and how did you get involved in working with it?

MR. TERRIS: I don’t remember exactly how. I was thinking I was ready to move from the Office of Economic Opportunity. I believe I got a call from Jim Vorenberg who was going to be the executive director – I think that’s probably the title he had, the head of the staff of the Crime Commission – and asked me if I wanted to be the Assistant Director and to work on police/community relations. I’m not sure how he heard of me, because I didn’t know him, and I don’t believe he was at Harvard Law School when I was a student there. So somehow I think he had learned that I had some knowledge of the problems of poor people, so I had that offer. And then he also asked me at the beginning to work on narcotics and drug problems.
MR. STEINBACH: This is another almost call out of the blue for you. Had you been seeking other jobs at that point? Had you looked around and thought about maybe going to a private law firm or something?

MR. TERRIS: I certainly hadn’t thought about going to a private law firm because I didn’t want to go to a private law firm. Although I don’t remember exactly, I’m sure that didn’t happen. It would have been contrary to my whole thinking about what I wanted to do in life. So I don’t remember whether I had made any efforts to try to find a job. I might have and simply hadn’t found one. But I don’t think I had. I think I was still enjoying the work I was doing at OEO, which was kind of early work on setting up the new legal services program. But on the other hand, I certainly would have entertained and did entertain any good job offer.

MR. STEINBACH: So Vorenberg calls and asks you to consider working on the National Crime Commission. What was the National Crime Commission?

MR. TERRIS: It was an effort to try to put together a program for the country to improve all the different elements of the legal system that deal with crime – police, prosecutors, corrections institutions. This isn’t an institution, but it’s obviously very involved, which is narcotics and the whole drug problem, and to take a look at that in a unified way to try to make significant improvements and maybe to get the federal government involved in a way that it hadn’t been.
MR. STEINBACH: Is this somehow connected with the War on Poverty, or what was the motivation for Johnson establishing this comprehensive overview of the criminal process?

MR. TERRIS: I don’t think it really had to do with the War on Poverty. It’s not my recollection that it did. I think it came from the escalating levels of crime in the country and the feeling that that couldn’t be dealt with unless there were some major improvements in the institutions that dealt with crime.

MR. STEINBACH: Describe how the Commission was set up, organized, and structured.

MR. TERRIS: The Commission had a number of major people from the private sector. I think the Attorney General may have been formally on the Commission, but certainly that wasn’t where he was going to spend major time.

MR. STEINBACH: This would be Nicholas Katzenbach?

MR. TERRIS: Yes. But he did spend some time on it, and then there were people from all kinds of [organizations], the bar associations, from corrections, people that were major figures in the institutions that dealt with one aspect or another of crime. And then you had staff that were going to write a very detailed report – were going to go out to all kinds of academics and get them to write preliminary papers and then put those preliminary papers together. Facing me on the wall right in front of me is about, I would say, close to 18 inches of material that came from [the Commission] – all those white documents there, then the blue ones to the left is the actual report which is much smaller, but in each one of the areas they did more detailed reports.
MR. STEINBACH: These reports, I’m just looking, cover the police, juvenile delinquency, the courts, narcotics, etc., and your particular focus, or your particular aspect of the Commission’s work was on, largely, not exclusively, police/community relations?

MR. TERRIS: That’s a part of the police report, and then that was summarized and put into the overall report.

MR. STEINBACH: Right. And the overall report is called, “The Challenge of Crime in a Free Society,” issued in, I think, 1967, although we can verify that.* What was it that got you interested in police/community relations, or were you just assigned to that particular sub-topic?

MR. TERRIS: I was assigned to it, but I had been interested in it before. If you’re doing work on the street with poor people, it’s inevitable you’re going to do some thinking about how they relate to the police. Frequently poor people and their children have one kind of problem or another with the police and with the institutions that deal with crime, so I had done a fair amount of thinking about it. I had also set up another institution actually on Capitol Hill, that was a different idea, which was to set up a laundromat which would then become its own little kind of community center to get help for people. In doing that, one of the things I’d done in that area was to go on patrols with the police.

MR. STEINBACH: What did you learn from that process?

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MR. TERRIS: One thing I learned is how boring it is. You can drive eight hours a night and nothing in the world happens, which may be a serious problem. I’ve never seen anybody write about it, but it’s maybe a serious a problem because it may lead people, from human instinct, to want to do things that maybe you shouldn’t do, for a policeman to do. It allowed me to talk to police officers for long periods of time and to talk to them about their relationship with African-Americans and the problems as they saw it in the relationship.

MR. STEINBACH: So you brought that level of experience with you to your work on the Commission?

MR. TERRIS: Right.

MR. STEINBACH: You’re there for two or three years, 1965 through 1967.

MR. TERRIS: It wasn’t three years because you have the pieces of two years that – I think it was probably even less than two.

MR. STEINBACH: But it’s a considerable amount of time, one to two years. Tell us generally how you spent those one-to-two years.

MR. TERRIS: A lot of reading, and then at the end a lot of writing, and a lot of talking to people, talking to police. For example, the staff of the Commission itself had a police officer who headed the police portion of it and he had been I believe a captain in the police force in San Diego if my recollection is correct, and I talked to him, and he had a deputy running that section of the Commission who also had been a police officer. So you can learn a lot through people like this who had had a lifetime experience in police work. So I talked to them, I talked to other people on the Commission staff. And I also, I guess
this is part of my personality, I also thrust my nose into some things that weren’t strictly within my bailiwick, like sentencing and things of that kind, and wrote short papers on them that then got considered by other people.

MR. STEINBACH: So in your particular area of police/community relations, you spent an intensive amount of time collecting information, scholarly works, interviews. I noticed in some of your publications there’s a fair amount of data, polling data. Did you commission any of that or did you find it, or what?

MR. TERRIS: I found it. I don’t think anything was commissioned by the Commission itself.

MR. STEINBACH: Are you working largely by yourself, or do you have a staff that’s doing this for you?

MR. TERRIS: I’m all by myself.

MR. STEINBACH: So you’re spending months trying to learn as much as you can about the relationship between – well you tell me – between community and police? What are you trying to learn?

MR. TERRIS: Correct. I’m trying to learn – you didn’t need to do a lot of learning that there was a problem. The real learning is in, what are the solutions? How do you deal with this problem, which is in the newspaper today and yesterday and for the last few months, it’s the same problem. I don’t mean to say that it’s as bad today or how it compares, but it’s essentially the same problem. I certainly had to learn about what the problem is, but that’s probably the easiest thing. The hard thing is, what do you do about it?
MR. STEINBACH: So let’s define or describe the problem to start with that you learned, discovered, ended up writing about, in your work on the Commission.

MR. TERRIS: The problem is there’s a lot of hostility between African-Americans – poor people generally but certainly African-Americans and the police. It comes in a number of different ways. One is crime is high in African-American neighborhoods, but victimization is high too. People almost always sort of think of it as a lot of African-American criminals. They tend not to think about the fact that almost all the crime that is committed by African-American criminals is committed against other African-Americans, it’s not committed largely against people in the white community. I know people in the white community think that isn’t true, but it’s absolutely true. So when you talk about good police work and thorough police work and having a lot of officers on the street, in one way that’s bad for the African-American community, but in another way, it’s extremely good for the African-American community. They need that kind of protection, and if they don’t get that protection, it does very bad things for the community in a whole variety of ways. People being victimized, people being afraid to go outside of their houses when it gets dark, all kinds of things, so it’s a very difficult problem how you deal with this. The problem is also exacerbated by the police seeing the bad side of any community. That’s who they see. They don’t spend their time around upstanding citizens. They don’t pay any attention to upstanding citizens to a large degree. What they’re paying attention to is the person on the corner who looks to them, by the way they’re
dressed or the way they walk or something else, that they think leads them to believe that person might be involved in criminal activity. They may very often be wrong, and the stop-and-frisk problems we have today revolve around this. But on the other hand, they’re not always wrong. Policemen learn a lot by spending fifteen years out on the street. So it’s a very, very complicated problem, and one that’s not easily solved by solutions that say, well, you shouldn’t be stopping any more black youths than white youths. I don’t know if you remember this quotation from Jessie Jackson. Jackson said once that he was walking down the street at 2:00 in the morning and when he saw a young black man walking towards him on his side of the street, he crossed over to the other side of the street. Now that’s a very telling statement, and it tells you a lot about the problem of how you deal with very complex problems in neighborhoods where African-Americans live.

MR. STEINBACH: So you’re focused in part, in terms of the problem, on rising crime rates, especially violent crimes, especially black-on-black crimes, in center city areas across the country. You also – and I’m getting this from your writing and the Commission’s publications – you also identify really rampant negative attitudes towards the police on the part of minority groups, which existed at the time. What do you think the root causes of those negative attitudes were?

MR. TERRIS: Attitudes of African-American toward police or police toward African-Americans?
MR. STEINBACH: The community members toward the police.

MR. TERRIS: Well first of all I think there are some bad policemen. I don’t think there’s any question about that. I think it’s very difficult to be a policeman, even if you started out being a saint, it would be very difficult to be a policeman. But they don’t all start out being saints either. There are people who become policemen because they have an attitude, they want to be big-shots, they want to be dominant over people, and particularly over black people. I think that exists. I don’t think that’s most policemen by any means, but that exists, and it doesn’t take a lot of people to become the figureheads for a bigger group. So if you have a small number of policemen who treat African-Americans in a totally improper way, they become the symbol of police generally, they are the police. People don’t say, well I’m counting now, there are only five percent of the police who are like this. The person who’s treated badly doesn’t know that, and to them this is the police. So that’s part of it.

Part of it, though, is even with the best of policemen it’s a very difficult problem. Do you stop people and start asking questions of 18-year-old young people? I think policemen will tell you that to do that helps to control crime, but it also helps make people very irritated at you, and so I think it’s very uncertain about what method you should be using. [Rudolph] Guiliani’s idea that you go and enforce the small statutes and ordinances in a community – that he thinks reduces crime. Maybe it does. I think that’s not as clear as people argue, but let’s assume it does. That’s going to make an awful lot of people in the community mighty irritated, the feeling that every
time I jaywalk and they say to themselves, well I know a white community where people jaywalk all the time and they don’t get arrested for that. So there are many, many different kinds of things. And then of course the African-American community has other grievances which can spill over to the institutions of authority generally; the way drugs are treated is really pretty terrible in this country. It shows that basically whites and African-Americans use drugs at roughly the same level and yet the people who go to jail are African-Americans. The police are part of that same system.

MR. STEINBACH: One of the things the Commission points out, which is interesting and almost ironic, is the sense back in the 1960s, that as police departments had become, and police work had become, in the previous decade more professional – police become more educated, more training – that rising professionalism at the same time it aggravated or worsened police/community relationships. What’s the cause-and-effect going on there?

MR. TERRIS: I don’t really know. I think the fact that you’re getting a few somewhat better-educated police officers, I think that’s useful, I think that’s a good thing, but unless you really change the structure of the police department and how it sees its job, I don’t think that will make that enormous a difference. What I wrote about coming out of the Commission was to argue that police officers have to see themselves essentially as people serving the community, not just serving the community by locking up serious criminals – of course serious criminals have to be locked up – but that they have a variety of tasks. [The police are] out on the street, nobody else is out on the street, nobody
else is dealing with the ordinary population in the way that police do – they have to see themselves as public servants in that kind of way. Attacking crime is part of it, but it’s only a part of it. They see a young person they think has got a problem, they should be trying to figure out what to do about it. They’re not going to become the social worker, but they can get that person help, and they’ve got to see their job I think in that way. And if they did see it in that way, I think it would have a cascading affect [on] the attitude of the public.

MR. STEINBACH: You point out in what you write that so much of the day-to-day role of a policeman is not investigating or stopping crime or shooting a target but simply human interactions and relationships much like a teacher or a social worker. Elaborate on that.

MR. TERRIS: Most of us, after we get to say age 18, don’t deal with teachers. Most of us don’t deal with social workers. The person who has contact with people if he gets out of the car is the policeman. This was one of the things I was arguing for, getting out of your car and walking the streets, and more police departments are doing that today than at that time – so you’re dealing with individual people. They’re often the only person from the government, from authority, people deal with, and so that’s a very important relationship as to whether the person you’re dealing with thinks that they are being respected as a person. So the policeman is an important person in our society. It’s a very, very important relationship.
MR. STEINBACH: You write in your publications related to the police/community relations – you call among other things for police who can in effect become more sympathetic, empathetic, as human beings, almost as if you need or are trying to create more of a mentor relationship on the part of a policeman. Am I reading that right?

MR. TERRIS: That’s right, because a lot of the situations, even the criminal situations, are quasi-criminal and quasi-social work. I mean you don’t want to forget the criminal. For example, if you’ve got a situation, which police have all the time, they go into somebody’s home and the issue is whether the husband has been beating the wife or girlfriend or whatever, that’s a criminal situation and you don’t want to ignore it as a criminal situation. It’s also a social work situation, depending on the level of what’s happening, and trying to figure out what’s happening, and trying to end it with a situation that protects the woman but doesn’t shatter what might still be a decent relationship and a family. It’s a very complicated problem and one that policemen really need a lot of training in, and then a lot of empathy.

MR. STEINBACH: Your Commission recommends, among other things, more citizen advisory groups. What was the thought there?

MR. TERRIS: When incidents do occur – let’s take the incidents we’ve been having lately of police killings of civilians – it’s important to have a public institution that can deal with them and has different kinds of people on it and can provide some wisdom to the public, to the politicians, to the police, and in appropriate situations, conduct their own investigations if there’s not another
way to do it. Now the ones we’ve had lately, investigations have been done by prosecutors, but frequently that has not occurred in the past, and having an advisory board that does that in an effective way can make a contribution. Usually they’re too weak to do it, they’re not set up properly and they don’t have the resources to do it.

MR. STEINBACH: Your group also called for more minority recruiting for police officers and police leadership. Explain the thinking behind that.

MR. TERRIS: There’s no question you’re not going to have a good system if you have a mostly black community and you have mostly white officers. Even if the white officers were every bit as empathetic with the community as black officers, the black community is going to see it as that the institutions of authority, of power, are in white hands. It doesn’t work. You can’t have that. The police have to relatively closely mirror the community. It doesn’t have to be perfect. If the community is 50% black, if there were 40% black officers I don’t think anybody’s going to rise up and say that’s terrible. But also the officers who come from a black community are going to have a certain kind of empathy, a certain kind of knowledge, that’s going to be superior to people who don’t come from that community and they have to be taught in the classroom about it. So I don’t think there’s any question, that also is important.

MR. STEINBACH: A final recommendation, or a further recommendation, of the Commission was a ban or prohibition on certain types of what were deemed to be excessive or aggressive police conduct. That brings up one of the things that
the Commission did [which] was to put neutral observers in squad cars, which sounds very much like what you did in your laundromat days.

MR. TERRIS: It’s not too surprising because I arranged some of that for other people on the Commission staff.

MR. STEINBACH: Tell us about that project, which seems intriguing.

MR. TERRIS: I just told them that I had done that, and Jim Vorenberg immediately thought it was a very good idea for other people to do it too so that they can get a feeling for it, and I think he did it himself. My dim recollection is that he did.

MR. STEINBACH: One of the conclusions was that in a small but still significant percentage of cases there was what the neutral observer deemed to be aggressive or excessive police misconduct. Did it surprise you that you were able to see and document that so easily?

MR. TERRIS: It’s not terribly surprising because I think a considerable number of police officers don’t think of what they’re doing as being wrong. I’m not talking now about shootings or something like that, I’m talking about things that are aggressive but are well short of that. I think they frequently don’t understand. Training is really enormously important, and not training once. I think that’s one of the big deficiencies is the idea of a person comes into the police academy, train them for six months or whatever it is. These kinds of things have to be repeated over and over because they go to deep-seated things in your own psyche, so if you’re not training people over and over so it becomes clear, we really mean it, this isn’t just what we’re doing because
you’re becoming a police officer and you’ve got to go through training, we mean it.

MR. STEINBACH: So you collect this information, you end up as a Commission making certain recommendations of the sort we’ve been focusing on, and you write this up as part of the Commission’s report. Why don’t you take us through that process of getting your ideas and recommendations approved by the Commission or published.

MR. TERRIS: This is one time in my life I had a real problem with a writing project. I unfortunately acquired so much information that I really needed to write a book by myself, not do something for the Commission. I wrote a much too long detailed document, and it really looked like that I was going to have trouble getting it cut down to the right length within the time period that was essential to get it done, and so the person who ended up rewriting it was Patricia Wald [laughter].

MR. STEINBACH: Who we’ve heard of before.

MR. TERRIS: That’s right. And so I can’t remember though whether what she rewrote was the portion that went into the big volume on the police or just the portion that went into the summary Commission report. But anyway, she rewrote one of those two, and she did a good job of it.

MR. STEINBACH: The essence of the police community section of the National Crime Commission’s findings and report is essentially your brainchild.

MR. TERRIS: Yes. What she did is edit. She did a fairly thorough edit, but the ideas were my ideas, and she did a very good job of improving it.
MR. STEINBACH: We’re going to come back to more on your Crime Commission work in a second, especially about narcotics, which we haven’t focused on yet, but in terms of police community relations, you end up publishing several other works in a variety of legal journals, which we’ll reference in footnotes in this interview transcript.* So in 1967-1968, you are probably one of the nation’s premier leaders, experts, consultants, on this particular topic. Would that be fair?

MR. TERRIS: I’m a little reluctant. I wasn’t a consultant, because nobody came to me to say, “Please, we want help changing our police department.” That, I think, probably would never have happened without somebody having direct police experience, and it didn’t happen with me. I think I did have considerable expertise, and I think the article I wrote for the Political Science Journal, which is one of the leading –

MR. STEINBACH: American Academy of Political Science.

MR. TERRIS: – is one of the leading periodicals in the country in the political science field, has my ideas down to a reasonable length. So yes, I think I did know a lot. There probably wasn’t anyone who knew more than I did.

MR. STEINBACH: If you could put yourself back in 1968 when you’re finally consolidating these ideas and putting them in the streamline form such as in the American

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What was your sense of how your ideas were being received at the time?

MR. TERRIS: I didn’t really have an outside audience in the sense that when it came time to write, we were no longer really dealing with the outside world. We were all focused on getting a document out in the time period that was given to us, and it was an enormous enterprise, as those volumes on the shelf indicate. It was a tremendous, complicated enterprise. Within the Commission and the staff, my ideas were welcome. There was, I guess, a little bit of tension that I had with the police people that were the head of the staff on the police about setting up special advisory commissions and community relations boards and things of that kind. I was not terribly popular with the police people. So there was a little tension, with that kind of thing. But essentially the ideas I had were I think Jim Vorenberg’s ideas too. But as I say a little bit of tension with the police people.

MR. STEINBACH: Do you have any sense in the next five to ten years following publication of the Commission’s recommendations in your particular area, to what extent police departments across the country paid attention to what you all had recommended, or carried on life as normal and ignored what you suggested? How influential was the Commission’s work?

MR. TERRIS: I’m really not sure about that, either in this field or any of the fields that the Commission dealt with. I think it had some influence, but you know it’s almost a truism, these commissions, they do elaborate things, the documents they produce are wonderful documents, and they sit on the shelf. If you ask
people, they would say that’s always what happens. I think I may be a little
too cynical, but I think it’s largely true. You’re only going to really get an
effect from this kind of thing if you have a bureaucracy whose job it is
afterwards to carry it out. Now there was some effort, and I can’t remember
exactly the timing of this, the Department of Justice got money to dish out to
police departments and other institutions in the criminal justice field. I don’t
think it happened immediately, though, but ultimately it did happen, and I
think they pushed ideas like the ones that are in the Crime Commission
report. Let me put it this way: Years afterwards, I don’t know how long ago
it is now, maybe 15 or 20 years ago, there was a reprise of the Commission.
There was a meeting here in Washington in which all the people that worked
for the Commission, as many of them as possible, came together again and
had a meeting for a couple of days, and that question was asked – your
question was asked. And I think there was a feeling that some of it had had
an effect, but by no means as much as obviously the people that worked on it
hoped.

MR. STEINBACH: Did you feel at all at the time – I’m looking back now to ask this question –
but at the time you almost seem – this report is issued in 1967, 1968 – there’s
a lot going on politically and culturally then, which leads to Richard Nixon’s
election and almost a reversal of many public attitudes toward the War on
Poverty in the wake of unrest in the cities. Did you have a sense at the time
that you were writing, that this unique moment that might go away or that
you were about to be swamped by a larger societal forces? That was a very vague question, but I think you know what I’m asking.

MR. TERRIS: I do know. I think the answer to that is probably “no,” because people are not very good at doing that, even smart people are not very good at doing that. But at that moment, I don’t think anybody would have thought that Richard Nixon or people like Richard Nixon were on the horizon. I think you have to have a little bit of a footnote there because of the problem of Vietnam, but the country did not seem to be repudiating these efforts, these kinds of efforts, domestically. We should probably have been thinking about that kind of thing. People that are involved in politics, and this is politics – it’s not politics in the sense of getting elected directly, but it’s politics, it’s how you run the government – always should be thinking about that. But I think there wasn’t much such thinking.

MR. STEINBACH: I want to take you to late 2014 when we are talking together. In preparing for this session, and I know you prepared for the session also, we’ve done so by looking at your work 50 years ago. In the midst of tumultuous society self-reflection on the events of Ferguson, Missouri and Brooklyn, New York, and even over the weekend the shooting of two officers on patrol in New York City, one reaction would be to say nothing has changed, the problems of the 1960s are still with us. I’m not sure that’s your sense. Why don’t you address it from that perspective. Has anything improved?

MR. TERRIS: I think things have improved. I don’t think they’ve improved anywhere near enough, as the past few months have shown, but I think they’ve improved. I
think in fact everybody in reaction to what happened in Ferguson realizes that a black community can’t be policed by white officers. I think there’s hardly anybody that thinks that makes any sense. Regardless of what happened concerning the particular death of [Michael] Brown, the situation in Ferguson was terrible. The discrimination against African-Americans by the police, using it as a way of raising money for the city is outrageous. I really haven’t seen anybody who thinks anything like that is justified. So there are pieces of this that are certainly different than the way they were at the time of the Crime Commission or maybe a few years before the Crime Commission where that kind of stuff existed probably in half the country, and nobody really thought anything about it. So those kinds of things I think are very different. I think people today, if you said we really have to do different kinds of training, I think everybody basically knows we’re not training police officers in many communities in the right way. So there’s a big improvement, I think.

The thing with Ferguson to me – and I’ve thought a lot about Ferguson given my background, as you can imagine – Ferguson makes me very upset in many ways. I’m very upset about the liberal position, [although] I’m thorough-going liberal, which basically is second-guessing what the grand jury did and the same thing in New York. You can’t second-guess a grand jury unless you see the evidence. It’s absolutely impossible that anybody in this country thinks that you can judge that officer without actually being present at the [grand jury proceedings]. Now was that a fair grand jury
inquest? I don’t know. I am a little suspicious that the prosecutors set it up in a particular way, but I wasn’t there, and unless you read a transcript of the whole thing, and maybe even then you can’t be sure if you weren’t there. Very, very difficult to know. To me, the emphasis today should not be on the two particular officers. If we get into that, we’re going to be in a situation which in my opinion led to the death of the two officers who were killed [in New York City]. I think what you have to do is go back to what the Crime Commission was dealing with, how do you change these departments? I don’t think the issue is whether you put these two officers in jail. I don’t know whether they did the right thing or the wrong thing, but I’m very convinced that for people like me who have never faced that situation, it’s a very, very difficult situation. To me, you’ve got to change the police departments, not put two officers in jail.

MR. STEINBACH: Do you ever say to yourself, “Gosh, I wish they’d just pull out our report and do what we recommended 50 years ago?”

MR. TERRIS: Yes [laughter].

MR. STEINBACH: I’m just reflecting on one man, one vote, and your involvement in that markedly changes our political process, and the potential is there for the same result with the National Crime Commission to markedly change social relationships in our urban settings. Looking back, are you saddened, disappointed, or not the least bit surprised that things have played out the way they have?
MR. TERRIS: One of the differences is, it’s an interesting difference. The Supreme Court, even though the election-type things are done city-by-city, state-by-state and everything, the Supreme Court as a national institution could lay down the law. This is our decision, this is our country, everybody’s got to do it. The criminal justice system in this country is largely split up so there is no ability to do that that way. In many ways, that was the underlying deficiency of the Crime Commission. Not its fault, but this is a Crime Commission for the country, but it’s dealing with 50 states, thousands of cities and counties, and most of them had no connection to the Crime Commission whatsoever. In other words, if the Crime Commission had said we want the FBI to do something, there’d be a connection. President Johnson could have said, I want the FBI to do what the Crime Commission said. But there was nobody to say that to the State of Nevada. They had to be persuaded by reading this book, a much messier situation. That’s our criminal justice system in this country – completely decentralized, or almost completely.

MR. STEINBACH: Which sounds pessimistic and almost non-fixable.

MR. TERRIS: Well it’s not fixable in a clean-cut way. We’re going to do this in the next year. It’s not fixable that way. It’s got to be fixable, but in an incremental way. And that’s very, very difficult. Something is happening now. I think something good will come out of this process. If people concentrated not on these two police officers, but on what’s wrong with police departments.

MR. STEINBACH: If you were the President or the Attorney General, would you set up another national Crime Commission at this moment?
MR. TERRIS: No.

MR. STEINBACH: Because?

MR. TERRIS: Well, I was a little too quick. If I thought that the federal government was functioning, I would say my answer was no. Maybe because the federal government now isn’t functioning that that’s the best thing that could be done for the next two years. But the right way to do this would be for the President to deal with Congress and to see whether there can be some agreement on things that can be done, which means pumping some money into the police departments to do certain things.

MR. STEINBACH: Any other reflections on this important aspect of your past?

MR. TERRIS: I’m afraid to go on because I’m afraid that’ll become our main discussion, because as I said before, I’ve done a lot of thinking about this, and I’m afraid that we’ll concentrate too much on these two police officers and not on what’s wrong with police departments.

MR. STEINBACH: Larger issues such as you focused on at the very beginning back in the 1960s. Before we leave the topic of the Crime Commission, you had a role not only in police/community relations, but also at least to some extent you focused on narcotics and dangerous drugs. Why don’t you tell us a little bit about your work there.

MR. TERRIS: The main thing that I remember was a topic of particular interest to the Commission at that time, which has died down now. I’m not exactly sure why. The idea of using methadone to get heroin addicts off of heroin was being mooted about at that time, and it was a big issue with the Commission
because of course it raises moral questions. You’re giving people one
narcotic to replace another narcotic, but if that works, isn’t that a good thing?
I spent a considerable amount of time working on that, and my recollection is
that the Commission basically did support it. The reason I say it’s my
recollection is I never wrote any of the work in the narcotics field. Before we
got to the writing stage, an additional person, Tony Lapham, was brought in
because the Commission thought it was such a big topic that to have
somebody to be doing it part time was not appropriate, so another person
came in and did that.

MR. STEINBACH: We’re a couple years away from comprehensive drug legislation that
Congress passes, I think in 1970 or 1971, that becomes colloquially known as
the War on Drugs. Does the Commission play a role in bringing us the War
on Drugs, or are these sort of independent acts?

MR. TERRIS: I think they were mainly independent. Most of the discussion in the
Commission while I was doing the work was on treatment and the like.
There was some discussion of police work and what have you, but I don’t
remember anybody having some brilliant idea about how we were going to
control the marketing of drugs in this country.

MR. STEINBACH: I guess it’s fair given at least your work on it at the time to ask for a
reflection now on – here’s a big question – the past 50 years of drug policy
by our nation.

MR. TERRIS: I have a lot of opinions on a lot of subjects, but I have always been baffled by
this. I have got to tell you I’m still baffled. I’m very uneasy about legalizing
marijuana. On the other hand, clearly the efforts we’ve made to control drugs have not worked. And certainly the number of people we lock up for being essentially users and not traffickers I think makes no sense whatsoever. I mean the effect on the black community is horrible. The percentage of black males that spend time in jail because of drugs – just that alone explains much of the problems of the poor black community, the portion of the black community that’s poor. It’s terrible. But I don’t have [a solution] – it’s a very, very difficult problem.

MR. STEINBACH: Is there anything else you want to add about your work on the National Crime Commission that I may have neglected to trigger a recollection about?

MR. TERRIS: No, I don’t think so.

MR. STEINBACH: Why don’t you tell us where you’re headed next in your career, and we’ll see how far we get before we take a lunch break.

MR. TERRIS: These little slivers, I keep forgetting what the order is.

MR. STEINBACH: At some point you leave the National Crime Commission. Is that because the Commission has completed its work?

MR. TERRIS: It’s over, right.

MR. STEINBACH: And you become at some point a member of Vice President Humphrey’s office. Is that the right transition from the Crime Commission to Humphrey’s office, as far as you can remember?

MR. TERRIS: I think I did some work for a private law firm here for a short period of time, and that may have been at this time for a few months. When did I do work
for the Department of Justice Community Relations Service? Because I did
work for them too.

MR. STEINBACH: Tell us about that because I’m not certain I know this.

MR. TERRIS: I was asked by Roger Wilkins, who was the head of the Community
Relations Service. What dates do you have for that?

MR. STEINBACH: 1965.

MR. TERRIS: Oh, so it was before the Crime Commission.

MR. STEINBACH: And let me for the record here – you became a consultant for the Community
Relations Service of the Department of Justice consulting on police and
community relations in 1965.

MR. TERRIS: Right. And Roger Wilkins asked me to do that. I went to several places in
the South to deal with police problems there, and I also went there to deal
with problems of setting up the legal services programs. Those were
interesting projects. I had never really been in the South dealing with
problems of African-Americans, so I found this quite interesting.

MR. STEINBACH: This would be in which states?

MR. TERRIS: I went to Mississippi, and I went to South Carolina. I’m not sure how many
other places I went to. It wasn’t a large number. This was not over a very
long period of time. It wasn’t the regular work of the Community Relations
Service.

MR. STEINBACH: This was during the time when those states were focused on the Voting
Rights Act legislation, mid-1965. Did you have any involvement in the Civil
Rights Act of 1964 or the Voting Rights Act of 1965?
MR. TERRIS: No.

MR. STEINBACH: I meant to ask you earlier, did you have any continuing contact with Lewis Powell after your work with him?

MR. TERRIS: No. But I had a fair amount of contact during that time that I was working for OEO.

MR. STEINBACH: So let’s place you in 1967, 1968. Your Crime Commission days are over, and you’re now the Assistant to the Vice President, Hubert Humphrey, for the District of Columbia. How did you get that job?

MR. TERRIS: I’m not sure, but I have the feeling that it was also Steve Pollak [laughter]. I was brought in, I don’t know if this is cynical, I was really brought in to do what I could to prevent having a riot that summer.

MR. STEINBACH: In Washington, D.C.?

MR. TERRIS: In Washington, D.C.

MR. STEINBACH: The summer of 1967 or the summer of 1968? You started in 1967.

MR. TERRIS: That’s it. 1967.

MR. STEINBACH: So this is the summer before Martin Luther King and the riots.

MR. TERRIS: Correct. So I was to basically work on programs to deal with African-American youth. And what does that mean? It meant getting jobs, maybe that was most important, getting jobs, working with all kinds of other agencies in town, and also setting up cultural programs, music programs, we got name people to come in and play music in the parks, and that kind of thing.
MR. STEINBACH: How does all of this responsibility end up with Vice President Hubert Humphrey of all people?

MR. TERRIS: I don’t know [laughter]. I really don’t know. Probably, the President said to him, you know, we can’t have riots in Washington, I’m giving you that job.

MR. STEINBACH: Were you on Humphrey’s staff?

MR. TERRIS: I think so. Yes, I think so.

MR. STEINBACH: As a government employee?

MR. TERRIS: Correct. Oh yes, I was definitely a government employee.

MR. STEINBACH: Did you have an office in some building?

MR. TERRIS: Yes. I was with a group of people that worked more across the country. I was the only person working on the District of Columbia, and I was doing it much more intensively than they were doing things across the country. I mean I was calling the Director of the Department of Recreation as to what his programs were. I was calling the Employment Service about how many jobs they were going to get for young African-Americans. This was hands-on.

MR. STEINBACH: Did you have any personal interaction with Humphrey himself about this?

MR. TERRIS: No.

MR. STEINBACH: Did you ever meet Humphrey in the course of your work?

MR. TERRIS: I met him later. It wasn’t that – oh, wait a minute, that’s not right. I did meet him that summer, that’s right. He went around the city opening swimming pools and I rode with him.

MR. STEINBACH: So this is in the days prior to Home Rule.
MR. TERRIS: Right.

MR. STEINBACH: And it’s almost my sense that a fair amount of the District’s day-to-day business is in part the responsibility of Johnson, Humphrey, and the White House.

MR. TERRIS: Well when it comes to whether there are going to be riots, I don’t know whether that’s true. Steve Pollak had himself considerable responsibility for the District of Columbia. He was working in the White House. The reason that came up was he went on vacation for two weeks during the summer and for those two weeks, they wanted me to be in the Executive Office Building, so I had to get some kind of FBI clearance, and at that same time, John Hechinger was being considered to be the chairman of the City Council, so they thought, the newspapers thought, momentarily [laughter] that I was being appointed to be the chairman of the City Council. It was very momentary before it was discovered that all I was doing was moving for two weeks over to the Executive Office Building.

MR. STEINBACH: The first significant 1960s riot is in New York in 1964, followed by Watts the following summer, and then in 1966 and 1967, there are dozens of riots in dozens of cities. What did people at the time like you think were the reasons those riots were occurring?

MR. TERRIS: Why I thought they were occurring, I think, is very different from what most other people would have thought, that the situation for large numbers of poor African-Americans was very, very bad and that there was a feeling of hopelessness. Let me add one thing about this. One of the things I learned at
Harvard College, and I’ll never forget this particular point, Crane Brinton, a scholar of the French Revolution, said in class, and I won’t forget it, “Revolutions occur when conditions are getting better. They don’t occur when conditions are getting worse and everything is totally hopeless.” And so I think that’s a fair description of what was happening during this period. Conditions were getting better, but they were getting better at a very slow pace, and people now realize, this doesn’t have to be what my life is going to be. It doesn’t have to be this way. I want more. I want more for my children, and people – I think that’s in many ways underlying what happened with the riots. Things were getting better, but they were very bad. Both statements are correct.

MR. STEINBACH: I was going to ask you, because we’re now after Martin Luther King’s civil rights progress, we’re after two major legislative enactments on civil rights, and we’re after the War on Poverty even – and then there’s starting to be significant, almost routine, catastrophic unrest in our cities summer after summer after summer, and that must have been very difficult to experience personally and as a society.

MR. TERRIS: Absolutely. There are lots of people in society who think to themselves, “I’m doing some good things, our society is doing good things, and look what’s happening, things are getting worse. African-Americans didn’t used to riot.” Of course that’s forgetting a few riots that did occur earlier in our history. “But African-Americans didn’t used to riot, and now we have these improvements going on and look what’s happening.”
MR. STEINBACH: So one of the reasons you were brought in to work on youth programs, etc., was to try to do all that could be done within the government to prevent Washington, D.C. from also erupting in 1967?

MR. TERRIS: I was obviously not dealing with anything fundamental. I was dealing with the surface, and at one point I almost thought I was going to cause a riot because I was told that young African-Americans were not coming in to get jobs and there were jobs available, so I put out publicity that there were jobs available, and then the number of people that came in was so huge that they were having trouble getting jobs for them. People were wondering whether I was going to be the cause.

MR. STEINBACH: What did you do on a day-to-day basis while you were assigned to Humphrey’s staff working on District of Columbia issues?

MR. TERRIS: During that summer – I have to separate summer from the rest – during that summer I nagged people. I can remember now I’d have a sheet of paper and top to bottom, there’d be thirty names, and I would start going down the list, calling, what’s going on with this, what’s happening with this? I was in many ways the official nagger in which I was going to have them get done what they promised they were going to get done. That’s largely what I did.

MR. STEINBACH: That’s to coordinate efforts inside the city’s bureaucracy to provide important services that had been previously promised?

MR. TERRIS: That they’re not going to drop the ball, it’s not going to get delayed three weeks. I called some music people to get them to come to be at concerts, that kind of thing.
MR. STEINBACH: What was your work like after the summer was over?

MR. TERRIS: The summer was over, I stayed on to work more generally in the country on things that Hubert Humphrey was interested in. A lot of good things, small business development for African-Americans, things like that. I got to meet for the first time Marian Wright (she wasn’t Edelman then), a brilliant young woman coming from Mississippi.

MR. STEINBACH: When did you meet her?

MR. TERRIS: I can’t remember exactly which of the different things that I was working on.

MR. STEINBACH: So you continued through the rest of 1967 and early 1968 to work in Humphrey’s office.

MR. TERRIS: I also was at this time teaching law at Catholic University.

MR. STEINBACH: Why don’t you tell us about that. You were a visiting Professor of Law at Catholic, 1967-1968.

MR. TERRIS: Right. I expected that I was not going to be working for the Vice President after that summer because I was hired to work on the summer [issues] and nobody expected a riot in December. So I took a job with Catholic University and then Humphrey wanted me to stay, so I did. But it wasn’t that difficult to teach law at Catholic University and still do my other job. I taught the full load, which was two courses. They were both Constitutional Law. I’ve got to tell you I don’t think it’s that hard a job to do. I probably wouldn’t want to say this to any of my professors, but it really wasn’t, and particularly because I used entirely the Socratic method. I think it may be true that except for making assignments, I didn’t say a full English sentence
in the entire two courses. I am a great believer in the Socratic method.

Apparently it worked because I was voted after that year by the students the best professor at Catholic University Law School [laughter].

MR. STEINBACH: That was a one-year experience? Did you enjoy it?

MR. TERRIS: I also taught another course because the law school got irritated with me because I didn’t hide it that I was working for Humphrey, so they said you should teach another course in the spring, so I taught a course on urban legal issues in a seminar. I enjoyed it, but I didn’t want to [be a law professor permanently]. I’d actually, when I was in the Solicitor General’s Office, been interviewed by several very good law schools, and I think I turned them down, but maybe they turned me down. I believe I turned at least a couple of them down. I didn’t want to do it then because the Solicitor General’s Office was such a great place to work – but after Catholic University, I didn’t want to do it, I was very sure I didn’t want to do it, because I really thought it would have warped my personality. And the reason is, you’re really in a position of complete control[. . .]. I’m not commenting on the work you do because I think the work you do you ought to get a medal for, I’m a great admirer of people who teach – but with law school, it was like I always felt that I was almost manipulating the situation. I knew more than they did, and besides, I’m in control, and I can essentially do anything I want, and that’s not really good for the soul to do that. So I really didn’t have any interest in continuing there or elsewhere.

MR. STEINBACH: So one year of teaching and you’ve never looked back?
MR. TERRIS: No, I never looked back.

MR. STEINBACH: I think we’re about to move to 1968 and Robert Kennedy’s campaign for the Presidency and your work on a variety of other ventures. At some point, somehow, you transitioned from being an employee of Hubert Humphrey to being a campaign staffer for Robert Kennedy. So take us through the events of early 1968: Johnson’s surprise decision not to run again and then a free-for-all in the Democratic party for the nomination.

MR. TERRIS: Well of course there was a lot of rumblings through 1967 and then into 1968 about whether Johnson was going to run. Eugene McCarthy had announced he was going to run. It seemed very clear, or at least I mistakenly thought it was very clear, that Robert Kennedy was not going to run. So I didn’t do really any thinking about the fact that I was working for Hubert Humphrey and that maybe Robert Kennedy would run, because if he ran, I knew I would attempt to join his campaign. Then of course everything changed. The New Hampshire primary occurred, and Johnson pulled out, and that day, I called Kennedy’s campaign and asked whether I could join his campaign, and I resigned from Humphrey’s staff. I don’t know if it was still Drew Pearson or his successor, but there was a little blurb that I left Humphrey’s campaign to join Kennedy’s campaign.

MR. STEINBACH: Johnson doesn’t run again because of events in Vietnam largely.

MR. TERRIS: Or maybe events in New Hampshire [laughter].
MR. STEINBACH: Exactly. Which he wins, but not at all convincingly for an incumbent President. What’s your recollection at this point? It’s 1968. Has Vietnam touched your life very much up to this point?

MR. TERRIS: No. Obviously like any American I thought about it. I was not a gung-ho person about opposing the war. I considered it a considerably more complicated issue than a lot of my friends did. I can remember during this period I happened to be, or really my wife and I were, friends of Joe Califano and his wife, and I can remember being over at his house and having discussions about all this. I was much more, I guess, not certain. During this period also, maybe a little earlier, it was definitely somewhat earlier, Robert Kennedy had gotten me a job offer from John McNaughton, who was what people called the Secretary of State for the Defense Department. He was an Assistant Secretary of Defense, and he handled all their diplomatic affairs. I’m sure that’s not the right name for it, but that’s what he did, and I would be his chief of staff. I went over and I talked to him, and I decided not to do it, partly because my attitude was rather mixed on the war, but also partly because it was very clear that would be the end of my ever seeing my family to have a job like that, and so I didn’t accept it. So I wasn’t clear on the Vietnam War itself, but I was very clear that if Robert Kennedy was running for President, I wanted to be part of it.

MR. STEINBACH: So McCarthy does well. Johnson decides not to run again. Was that announcement – it’s now deemed as a big surprise in retrospect – at the time, was that a surprising announcement?
MR. TERRIS: Enormously surprising.

MR. STEINBACH: It was?

MR. TERRIS: Yes. Either it was enormously surprising or I was a very dumb guy, let’s put it this way, because I was enormously surprised, and I think other people were too. That didn’t seem like what Lyndon Johnson would do.

MR. STEINBACH: A week or so after that Robert Kennedy decides that he too is going to enter the Democratic nomination against, at this point, McCarthy. Had you given any thought of working at all for McCarthy?

MR. TERRIS: It never really crossed my mind that I’d work for him. First of all, I didn’t think he was a heavy-weight, he had never been a heavy-weight, Senator. I didn’t think he was qualified to be president. He had obviously an issue, a very powerful issue[. . .]. His main argument was, I had the courage to stand up, Robert Kennedy didn’t have the courage to stand up, therefore you ought to vote for me for President.

MR. STEINBACH: Bobby Kennedy at this point had been a New York Senator for almost two years. Had you been involved at all in his 1966 campaign in New York or any interactions with him while he was a United States Senator?

MR. TERRIS: No. I had mainly been in government so I really couldn’t have done it, and I didn’t.

MR. STEINBACH: When Kennedy decides to announce, was it clear at that point that Humphrey was going to be the heir apparent from Johnson’s perspective, and he, too, would run for President?
MR. TERRIS: I don’t think it was entirely clear, but it certainly seemed like a possibility. I don’t think it was more than a possibility that he would.

MR. STEINBACH: I guess I’m asking indirectly, and will ask clearly: Did you think you were making a choice between Humphrey and Kennedy when you went to work for Kennedy?

MR. TERRIS: Oh yeah.

MR. STEINBACH: Why did you pick Kennedy instead of Humphrey to be the next president?

MR. TERRIS: I knew Kennedy, and I had enormous admiration for him.

MR. STEINBACH: So Kennedy announces that he’s going to run, and you call the campaign. Do you remember who you called or what you asked or what you were offered?

MR. TERRIS: No. I’m not sure. I wasn’t offered much of anything. My job was not one of the more important jobs of his campaign, I can tell you that.

MR. STEINBACH: What did you do in the 1968 Robert Kennedy campaign?

MR. TERRIS: Mostly just messed around and did research on some topics, most of which I don’t think probably ever saw the light of day in a speech, talked to some academics and some people to get them on committees. People like to fool around with that kind of stuff. We’ve got this committee of professors that deal with this or that or whatever, so I did some of that kind of thing.

MR. STEINBACH: Were you focused primarily on urban issues, police issues, the sort of stuff you had done before?
MR. TERRIS: I’m sure it was urban, it certainly wouldn’t have been foreign policy or defense. Those aren’t subjects I really had any expertise in, so I’m quite sure it was domestic.

MR. STEINBACH: You didn’t travel with Kennedy at all?

MR. TERRIS: Not at all.

MR. STEINBACH: Any interactions with him at all during the campaign?

MR. TERRIS: The only interaction I had with him during the campaign was the week before he was assassinated, there was a caravan of cars – the District of Columbia’s primary was the week before California’s – and there was a cavalcade of cars in which I was sitting in one car and as he ran by, he ruffled the back of my head. That’s my connection with him during the campaign. Other than that, I never saw him during the campaign. Of course he rarely was in Washington.

MR. STEINBACH: But he ruffled your head on purpose because he recognized you.

MR. TERRIS: I guess so.

MR. STEINBACH: That’s a good connection. We’ll count that [laughter]. So this would have been most of April, most of May, into the first few days of June that you were full-time working?

MR. TERRIS: I was still teaching too during that time period, but again, I was at the headquarters, except for the time I was actually teaching. One of my classes was in the evening and one was during the day. Except for that one class during the day, I was in the campaign headquarters. I would prepare at night for my classes.
MR. STEINBACH: How exciting was that campaign?

MR. TERRIS: The campaign was enormously exciting. The work I did wasn’t enormously exciting. I didn’t interact with important people. The people that were writing the speeches, I never saw them. They were out with Kennedy wherever he was. But the campaign, I thought, was enormously exciting. It was really a campaign that was based on Kennedy’s charisma and his ability to rouse people in a way that isn’t usual.

MR. STEINBACH: What likelihood of success did you envision at the time for the campaign?

MR. TERRIS: I didn’t go into the campaign saying Robert Kennedy is certainly going to become President. In a way it really didn’t matter. That really wasn’t a critical question. If somebody had proven to me that his chance of becoming President were 10%, I would have done exactly the same thing I did. So that wasn’t how I was approaching the issue. But I thought the chances were good [he would] win the Democratic nomination. I thought that McCarthy had fundamental weaknesses, that ultimately he would not have been able to prevail. He would have had to, I think, sweep the primaries to have done it, and of course he couldn’t sweep the primaries. He ended up losing most of the big primaries. So I felt pretty confident that Kennedy was going to win the nomination. Who knows about the actual election?

MR. STEINBACH: What was it about Robert Kennedy and his candidacy that, even now, you say you would have volunteered even if he had only a 10% chance of prevailing?
MR. TERRIS: As I think I said earlier in one of our interviews; maybe I didn’t, if not, I’m glad to say it now: I think of all the politicians in my adult lifetime, he was the most principled politician. A principled politician is in some ways a dangerous politician – and there was a danger in him, and that was he really had some very deep-seated ideas of the way this country should run. Most important, I think, what he thought about poor people. It was not a coincidence that he went out to see Cesar Chavez, that he went into the hills of West Virginia, that he went into the ghettos across the country, that he went to Indian reservations. Those [actions] were not contrived. Like the way he appealed to those schoolchildren at the community center that I’d started. These were really what he fundamentally believed, and I’d never seen anything before that time or since of a politician who really felt that way.

MR. STEINBACH: There’s this sense out there that Robert Kennedy’s hard edges were softened and mellowed a lot after his brother’s assassination. Any reflections on whether that was true from your perspective? The ruthless Bobby Kennedy from the past?

MR. TERRIS: Obviously there are people who knew him much better than I did. That’s not what I saw. His attitude on one man one vote I thought was very indicative of somebody who wanted to do what is right and had a clear idea of what democracy meant. He prosecuted all kinds of people. It was not good politics. Prosecuting Hoffa was not good politics. Now there are people who would say he went too far with Hoffa, that he wouldn’t quit. You can call
that ruthless or you can call it that he believed based on the evidence that he had that Hoffa was a very corrupting influence on American labor. I think that’s what he thought. And he also had the same idea about the corrupt Democratic politicians who he prosecuted. Yes, if you call it ruthless, maybe. And the fact is, as I said before, a principled politician in some ways is a dangerous politician. In some ways the least dangerous politician is one that goes with the flow, pragmatic, doesn’t have too many principled ideas. I think Kennedy was not that kind of politician.

MR. STEINBACH: So you’ve only been working on the Kennedy staff a few weeks when Martin Luther King is assassinated, which is an event I’m sure you can recall.

MR. TERRIS: Right.

MR. STEINBACH: What do you remember about that, and were you in Washington when that occurred?

MR. TERRIS: I wasn’t, and I’ve never been able to figure out now what I was doing there, I was in Seattle. But I don’t think I was working on the campaign. I don’t know why I was in Seattle.

MR. STEINBACH: Martin Luther King is assassinated, and do you recall Robert Kennedy’s speech in Indianapolis that night?

MR. TERRIS: I recall it then, and I have a copy right over there, because I talked to some people in my office about Robert Kennedy, and that speech is a remarkable speech. So I know that speech fairly well.

MR. STEINBACH: It is a remarkable speech. What’s your perspective on what makes it so great?
MR. TERRIS: First of all, it came straight from the candidate. It’s quite obvious it didn’t come from speechwriters. He had wonderful speechwriters, but I don’t think they wrote that speech. The other thing, I think you can tell that it came from the heart. It came from somebody who had been very deeply affected by that assassination. Of course of all the people in the country who would be just about the most affected by that assassination, certainly pretty close to the top of the most affected would be Robert Kennedy, given what had happened to his brother.

MR. STEINBACH: Correct me if I’m wrong, but prior to the assassination of Martin Luther King, there had been no major riots in the city of Washington, D.C.

MR. TERRIS: I think that’s right.

MR. STEINBACH: And then that changed after the King assassination. What was your reflection on that after having spent a good part of the previous year trying to prevent that from occurring?

MR. TERRIS: Well I didn’t think that I would have been the one that stopped it. Things like that, you feel terrible, but I really felt terrible as a citizen, not for other reasons.

MR. STEINBACH: Do you know what happened to the particular geographic neighborhood that you had devoted all your efforts?

MR. TERRIS: It wasn’t affected.

MR. STEINBACH: It was not affected during the riots?

MR. TERRIS: No. But it didn’t have stores in it. It was a residential block.
MR. STEINBACH: You at some point came back from Seattle to Washington. Describe the city at the time of the riots.

MR. TERRIS: I didn’t go into the riot areas. I would’ve been a very foolish person if I had. So I didn’t go into the areas. I got my information totally from television and the newspapers, and it was obviously a very, very sad situation. A very, very difficult situation.

MR. STEINBACH: From the perspective of working on Kennedy’s campaign, did that make the sense of urgency all the more of having somebody like him elected?

MR. TERRIS: Sure. Lots of things in the country at that point, domestically that was a terrible problem, and we still had to do something about Vietnam.

MR. STEINBACH: There’s this sense, looking back, that 1968 was the year that everything fell apart. Did people in 1968 think that way?

MR. TERRIS: I think so, at least for a lot of people, I think so. The assassinations, the accumulation of assassinations, I think had just a terrible effect on huge numbers of people. It’s one thing to have serious problems – riots, a war that’s certainly not going well – but that’s one level, but even when they’re really bad, that’s not quite the same thing as saying your democracy isn’t working, that you elect a president and he gets killed, that you have a great leader of a large minority population who was a very positive leader and a leader that’s really good for the country and he gets assassinated, and then you have a presidential candidate that’s assassinated. There’s a sense of almost hopelessness. What do you do in this kind of a system? And then what you get is Hubert Humphrey running for President from that side who’s
really not the representative of that side, and then you get Richard Nixon.

Terrible.

MR. STEINBACH: Let’s not forget George Wallace in 1968. Tell us what you remember about
the Robert Kennedy assassination.

MR. TERRIS: These things you never forget where you were and what you were doing. I
went home from the campaign office, turned on the television, and heard that
he’d been shot. I called my father who was a doctor and asked him what he
thought the situation was. My father said he thought he would die. It wasn’t
like the John Kennedy assassination which of course was overwhelming. My
wife and I sat in front of the television set for whatever it was – two or three
days – essentially without moving. This of course didn’t have that kind of
attention, but I found out, of course it was announced, that the funeral was
going to be in New York at St. Patrick’s, and so I got myself to New York.
I’m not even sure anymore, I can’t even remember how I got to New York,
but I got to New York.

I went to the funeral, and then I got myself on the funeral train that came
back. That was really a terrible experience in so many ways. I can
remember in the car I happened to be in, [John Kenneth] Galbraith was in,
the Harvard professor and Ambassador to India. Very peculiar how people
react to things like this. He went around pontificating. Very peculiar.

We arrived in the Newark train station, and a person was killed on the
tracks, which of course was horrifying. I didn’t see it, and I’m not even sure
now whether I saw the body afterwards. It was so traumatic that I’m not
even exactly sure what I saw. But that got the people that were running the railroad to slow down the train. It had been going at the usual clip and it got slowed down. I think it took, I’m not sure exactly, but it took something like eight or nine hours to get to Washington. It went extremely slowly. In all the cities, of course, the train stations were packed. But the most impressive thing were the people in the countryside, most of whom who had been waiting for hours, four, five, six hours.

MR. STEINBACH: So you’re on the train watching the people watch the train, paying their respects to Senator Kennedy.

MR. TERRIS: I’ll never forget – there was one hillside – there was one family – had a sign saying – “Goodbye, Bobby, we love you.” [Pause.]

MR. STEINBACH: Any other events from that day? Did you attend the ceremonies that took place at Arlington National Cemetery?

MR. TERRIS: I’m not sure actually. I don’t think I did, because I don’t think I got an invitation. But I’m really not positive. Because I have attended a ceremony for him there, and I don’t remember whether it was then or some time later.

MR. STEINBACH: Obviously the most important thing at the time is not your future career, but Kennedy’s death does change what you’re doing.

MR. TERRIS: That’s correct.

MR. STEINBACH: What happens to you after your job for the Kennedy campaign has ended?

MR. TERRIS: The thing that most flows from it is that, in the primary that occurred a week before his death, he of course won an enormous victory here in the District of Columbia, and it would have been impossible for him not to have won an
enormous victory in the District of Columbia. Nobody was going to beat him in this city or come even remotely close. The Kennedy campaign chose me to run for the Democratic Central Committee, the committee that ran the Democratic Party in the District of Columbia. His delegates won, his slate of delegates won, and his slate for the Democratic Central Committee won, so I was on the Democratic Central Committee. I think approximately in July, not that long after the assassination, the committee met and chose its officers, and I was chosen the chairman. Not so much I think because of me, but because of a very excellent black leader in town, Channing Phillips, who had been elected as the Democratic National Committeeman, supported me for that position. That goes way back. I knew him for a long time before on all these housing things that I had done. He was the executive director of the housing organization that I had helped form in the city.

MR. STEINBACH: So you’re essentially the chairman in D.C. of the Democratic Party?

MR. TERRIS: That’s correct.

MR. STEINBACH: Elected by the Democratic voters of Washington?

MR. TERRIS: They elected me to the committee, and then the committee elected me.

MR. STEINBACH: You served in that position for almost four years?

MR. TERRIS: Correct. Until the next primary, in 1972.

MR. STEINBACH: How big was the Democratic Central Committee? How many members?

MR. TERRIS: Probably about 25.

MR. STEINBACH: What was its function or purpose?
MR. TERRIS: I’m not exactly sure what its purpose was before our group was on it. The group that I was chairman of was an interesting group because it was an amalgamation of McCarthy people and Kennedy people. McCarthy’s people did not put up a separate campaign here. The campaign here was between this slate and a Humphrey slate. So the committee had a lot of people on it whose big issue was the Vietnam War. I would say that’s where the real McCarthy people were focused, and they were mainly white, and as I say, that was their main emphasis. The Kennedy people were more of a mix, but they were probably mainly African-American, and they had much more of an interest in the affairs in the District of Columbia and Home Rule and all kinds of other things in the District of Columbia – police activities, schools, whatever. We took it as our job that we were the closest thing to representing the people in the District, and that’s really what we really did for four years, was to essentially act in a way that we tried to reflect that point of view.

MR. STEINBACH: Before we quite get to that, let’s finish 1968. Did you go to the Chicago Convention?

MR. TERRIS: No.

MR. STEINBACH: Any role in campaigning for the rest of the 1968 electoral affair?

MR. TERRIS: I don’t think I did very much of anything. For one thing, in the District of Columbia, there was, to put it mildly, not the slightest chance in the world that Humphrey was not going to win here, so the level of campaigning was very much lower generally. I can’t really remember doing much of anything.
First of all, a number of the people on the committee were by no means enamored with Hubert Humphrey.

MR. STEINBACH: What was your personal sense? You were chairman of the Democratic Committee for Washington, you’ve now got Hubert Humphrey as your standard bearer. You used to work for him. So what was your sense of Humphrey as the candidate?

MR. TERRIS: I was very much in favor of Humphrey. I mean the choice was pretty clear that I wasn’t going to support anybody else. Not only because I was the Democratic chairman, but because certainly his ideas on domestic issues were very much closer to mine, and I wasn’t nearly as far away from him as many of my fellow committee members were in terms of Vietnam. There were other people on the committee who were for pulling out in ten minutes. So I was favorable to Humphrey, but it was hard to get myself back into campaign mode.

MR. STEINBACH: What was your personal feeling after Humphrey lost?

MR. TERRIS: I was sad about that. I certainly didn’t think we were going to get a very good result from the victor.

MR. STEINBACH: Over the next four years, you stay on as the chairman of the DC Democratic party. This is a time when Washington now finally has an appointed mayor, I think. Walter Washington was appointed in the middle of Lyndon Johnson’s presidency, and I think at this point an appointed City Council, also by Johnson. That changes later on in 1973. Did you have much interaction with the appointed Mayor and the appointed City Council?
MR. TERRIS: I didn’t have a lot of interaction with the Mayor, but I had a lot of interaction with the City Council. I appeared in front of it over and over again.

MR. STEINBACH: In what capacity? Why?

MR. TERRIS: As I indicated before, we considered ourselves the representatives of the city of the people of Washington. The City Council was not representative of the people of Washington. They hadn’t been elected to anything. So on issue after issue, we went up there, frequently myself, sometimes somebody else on the committee would have more expertise than I did and somebody else would go up. Education, health, police. I called for Chief [John] Layton to resign, and I’ve forgotten even the issue now, but it was a police/community relations issue. And a host of other issues. I went up to Congress and opposed people, nominees, that the President had appointed to be appointed judges because they didn’t live in the District of Columbia. Things of that kind.

MR. STEINBACH: That would have been President Nixon by this point?

MR. TERRIS: Yes.

MR. STEINBACH: So you function in effect as D.C.’s chief elected official?

MR. TERRIS: Well that’s obviously pushing it a little far, but in the sense that we thought what we were doing is telling non-elected officials what we thought a majority of people in the District of Columbia wanted, and they should be paying attention to that by coming as close as possible to seeing themselves as representatives of the public.

MR. STEINBACH: Were you accepted in that role, or were you ignored and marginalized?
MR. TERRIS: I think we were accepted in the role in the sense that I think we were treated seriously by the Council members. The Council members, many of whom were good people – people that themselves were really good representatives of the District. John Hechinger was a good representative. I used to play tennis with him. I think he was a conscientious chairman of the City Council. There were other people that were conscientious Council members. I think they took seriously what they thought the public wanted. But on the other hand, they also knew they were appointed by somebody else, weren’t elected, so they had pressure from other directions. So it’s not that everything I said they immediately jumped up and down and said we’ll do that.

MR. STEINBACH: I read that when Lyndon Johnson appointed the city commission, he said to the city commissioners he had appointed, “Act as though you were elected,”* which is an intriguing way of running a local government.

MR. TERRIS: [Laughter] So we were trying to push them along the same lines.

MR. STEINBACH: It sounds like largely, cordially, consensually, for the most part.

MR. TERRIS: Yeah.

MR. STEINBACH: How about relations with Congress from your perspective during these years?

MR. TERRIS: I went up to Congress a number of times too. [John] McMillan was terrible; he ran the House District Committee. I appeared before him a few times. Obviously he wasn’t going to pay the slightest bit of attention to me. The

argument that I represented somebody in the District was about as persuasive to him as if I said that I represented somebody from Mars.

MR. STEINBACH: You are during this same time period – actually a couple years even longer – a member of something called the District of Columbia Home Rule Committee. I think that’s maybe self-evident from its title, but tell us what that was about.

MR. TERRIS: It was an organization that had existed for a fair length of time, and a lot of people in the District that had titles were on it, and a lot of other people too. A fellow by the name of David Carliner was the head of it I believe at that time. I don’t think it was the most effective group in the world, because it really didn’t have a very big base. Carliner was white, not African-American. If you really wanted to have an effective Home Rule apparatus, you really had to be working through the black community. Much more power was in another group that I was in, the Coalition of Conscience, which may have ended by that time. I’m not sure exactly when it ended. That had people like Walter Fauntroy and Channing Phillips and Marion Barry and the Episcopal bishop of Washington, and a representative from the Catholic Archdiocese, Geno Baroni. It still didn’t have much power because we didn’t have elected government, but there was more power there than there was in the Home Rule Committee.

MR. STEINBACH: When you were seeking Home Rule back in the late 1960s, what did Home Rule mean at that time?
MR. TERRIS: It pretty much means what we’ve got, except without Congress being able to veto legislation of the City Council.

MR. STEINBACH: But this was for D.C. to be able to elect its own self-government?

MR. TERRIS: Yes. I’m sure that they also would’ve loved to have a Congressman and Senators, but that isn’t what the focus was. The focus started out as being able to vote for President. That seemed like a small little thing that you could get.

MR. STEINBACH: Which did get achieved before your time.

MR. TERRIS: Right.

MR. STEINBACH: So the Constitution gives Congress control over the District of Columbia, that’s pretty much undisputed. What were your arguments that the District should govern itself? What would you say to people?

MR. TERRIS: That’s not democracy. There’s no reason why you have this group of people that don’t have any democratic rights. We have more people than some states, that we should have the right that everybody else has.

MR. STEINBACH: You still have a Democratic Congress at this point, but no receptivity on this issue?

MR. TERRIS: No. Because the key committee is run by Congressman John McMillan from South Carolina. Home Rule would have been absolutely the last thing he would want. One thing we haven’t talked about, and that is the background of all this in the District is that the District of Columbia was segregated until very shortly before I came to it. Schools were segregated, water fountains were segregated. *Bolling v. Sharpe* [347 U.S. 497 (1954)] is the decision
which is the equivalent of *Brown v. Board of Education*. I believe it was
decided in 1954. I think for people today, if you ask people on the street, at
least white people, and you ask them how long has Washington been
desegregated, first of all, they might think it never had segregation.

MR. STEINBACH: Or they might say Civil War or something.

MR. TERRIS: Right. It’s amazing. It’s even amazing to me when I think about it.

MR. STEINBACH: So the District does get some sort of self-rule in 1973, I believe, when we
start electing our Mayor, electing a City Council. So you must have some
resonance of success with your arguments to get to that point, relatively
shortly down the road.

MR. TERRIS: I think the power of the South in Congress was a big difference.

MR. STEINBACH: Looking at news clippings from these years, one of the things one discovers
is that you manage to get yourself jailed at one point over District of
Columbia issues.* We have to cover all things in this interview.

MR. TERRIS: Well actually I was jailed at least twice. The first time I was jailed had to do
with housing, which we talked about in an earlier session, in which the code
inspectors came in and said one of our houses wasn’t up to code. Well we
hadn’t gotten it up to code yet.

MR. STEINBACH: This is when you were doing community work in D.C.?

MR. TERRIS: Right. But of course we were going to get it up to code. But anyway I was
arrested, and I can’t remember what happened in court, I don’t think I was
penalized in court. The other one never went to court, the time I got arrested

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when I was chairman of the Democratic Party. That occurred when a group of people were protesting in the City Council chamber the possibility of freeways being driven into the center of Washington, and I was not protesting. I was standing on the side. I was there because of my job of being chairman of the Democratic Party, but I was not part of the protest. But I was standing there. I had gone because I wanted to witness the [committee] hearing, but the hearing broke down into protests, and they swept the room. So I got picked up. But I got released after a very short period.

MR. STEINBACH: You made the *New York Times*.

MR. TERRIS: I didn’t even know that [laughter].

MR. STEINBACH: The underlying story is interesting. This is apparently how Washington got its subway funding, which was a quid pro quo. Southern leaders in Congress held up the subway funding, which had already been appropriated, until the District agreed over I guess its own objections to a highway and a bridge, which none of the local people apparently wanted. Remember that whole episode?

MR. TERRIS: I don’t remember the trade, though. I remember the fight about the highway, and I remember the people, at least one of the people, who were involved. He was on the Democratic Central Committee, Sam Smith.

MR. STEINBACH: The *New York Times* story makes it seem as if the subway funding came only after the District reluctantly agreed to the freeway, but at that meeting where
the decision was made, violence erupts and you are arrested and imprisoned, so I’m glad we cleared up that you didn’t purposely lead a riot.

MR. TERRIS: [Laughter] No. But the highway wasn’t built either.

MR. STEINBACH: Oh. Interesting. After 1972, you’re no longer officially involved in the Democratic National Committee here in the District, but the Home Rule story has continued, and you still live in the District. What’s your sense after the past 40 years of effort about D.C.’s status?

MR. TERRIS: I think the District, like probably most cities in the country, has good mayors, some not so good mayors, some corruption, probably not more than most cities. It’s not terribly well-governed. My connection with the District since that time has largely been in the areas where our firm has brought lawsuits against the District, about which in those specific areas, I know an awful lot, but in other areas, I’m just a regular member of the public. So I know something by reading the newspaper. I think democracy is a good thing, so it’s a lot better than it was, but it’s not perfect, and never probably will be.

MR. STEINBACH: Where would you go from here to make D.C.’s relationship perfect? Should it be a state? Should it have voting rights in Congress? What would you do?

MR. TERRIS: I think that should be done, but I don’t think that will change anything fundamental in the District of Columbia. I think these changes should be made, because I think it’s a symbol of the way we run our democracy, but I don’t think we would do better by our poor people, have a better educational system, a better health system. That’s got to come just by getting better people in office, hope that the economy is good in the city so we can raise
sufficient taxes – that kind of thing. That would be the same answer in Philadelphia, and the same answer in Los Angeles.

MR. STEINBACH: So the underlying social and structural problems will be with us no matter what happens politically?

MR. TERRIS: Well those kinds of things politically. Other kinds of things politically are much more important, deeper, how the city, political parties, choose people to run for office. Those kinds of things. What kind of money is there that goes to what kinds of candidates. Those kinds of things are fundamental. People say [we want to have] Senators for the District of Columbia, but I don’t think that would change very much in the District of Columbia. Two Senators out of 102.

MR. STEINBACH: As the former chairman of the Democratic Committee in Washington, do you think it’s a good thing that Washington contains only Democrats?

MR. TERRIS: Probably not. It’s probably bad everywhere that you don’t have competition[. . .]. It used to be in a great many places there was real competition in districts, in cities, and what have you. That works in a very interesting way. Let’s assume you’ve got a city or a place that is conservative. What will happen in a well-organized democratic system is that both parties will trend conservative so there’ll still be competition. In other words, in a well-run system, you won’t have, because it’s conservative, Republicans win every single office all the time, because what the Democrats will do is they’ll trend conservative to compete with them, and vice versa in liberal places. Think of the way it used to be in New England where you had
Republicans who were moderates or even liberals and they got elected.

Today in the South, there’s no such thing as a Democratic Party. I read a few years ago that in South Carolina, 10% or 15% of whites were Democrats. They essentially don’t have a Democratic Party anymore.

MR. STEINBACH: So large parts of the country are becoming one-party places, and D.C. may have been ahead of the times.

MR. TERRIS: Exactly. And no, that isn’t good. It would be much better if the Republican Party here could trend in a liberal direction. It would have to trend in that direction. Most of the people here don’t have the same views as the Tea Party. You couldn’t run a Republican Party that way. But the trouble is a lot of people here vote without ever looking at the particular person. They vote Democratic, that’s it. [David] Catania, for example, may very well have been somebody who in most places would have been a Democrat.

MR. STEINBACH: So you end up in your Democratic committee role through 1972. Did you carry that all the way through the McGovern defeat, or had you left that earlier?

MR. TERRIS: We’d been replaced. At the time of the primary, a new group of people are elected, and that was the end for us.

MR. STEINBACH: Did you have a horse in the 1972 race?

MR. TERRIS: I think I was mildly, maybe even a little more than mildly in favor, of McGovern.

MR. STEINBACH: And then McGovern wins the D.C. primary? I assume, I don’t know that.

MR. TERRIS: I’m trying to think about that.
MR. STEINBACH: In any event, you end up being replaced by the group elected in 1972. So you’re not around to be spied on by Richard Nixon?

MR. TERRIS: [Laughter] At least I hope not.

MR. STEINBACH: And then McGovern goes down for defeat, but you’re at least out of elected D.C. politics at that point. Is that right?

MR. TERRIS: Yes.

MR. STEINBACH: But before that time, you start devoting considerable effort to something called the Anacostia Assistance Corporation, which you helped found in 1968, and helped operate as executive director through 1969. Why don’t you tell us about that experience?

MR. TERRIS: Well I didn’t really found it. The founders found me, and I was the first and only Executive Director. So in a sense it kind of looks like I helped found it, but I really didn’t. This was an idea of Katharine Graham’s and Pete Quesada, who built L’Enfant Plaza. I was asked by these people and some others, but these two are the only ones I ever met with. If they ever had board meetings, I don’t remember them; I don’t think they occurred. But they funded it, and they wanted to help Anacostia after the riots. They’d bring in small businesses to Anacostia and some housing, that kind of thing. So I worked on it, it wasn’t that long. The founders didn’t have that deep an interest. I think they somehow felt, this was easy stuff. Somebody came along and gave them some resources, what have you, that this would be fairly easy to do, wouldn’t take any time to get it started and rolling. That isn’t the way things in community organizing go. People in Anacostia, naturally, had
their own ideas about things. So you go to a meeting and everything doesn’t
go right, people don’t say, oh now we’re finished with this meeting, we’ve
now decided A, B, C, and D, and we’ll get that all done in the next month.
That isn’t the way it goes, and so it went very, very slowly. I drafted up
papers for a community development corporation which could get funding
from the Small Business Administration. I don’t remember whether we got
funding or we didn’t, but after a relatively short period of time, Graham and
Quesada decided they didn’t want to continue, and that was the end of that.

MR. STEINBACH: What was the grand vision had everything gone well?

MR. TERRIS: At that time, there was almost nothing in the way of grocery stores in
Anacostia, there were all kinds of deficiencies in what kinds of businesses
were available to people, what kind of housing was available. It was a little
bit like Bedford-Stuyvesant in New York where Robert Kennedy had a lot to
do, as it happens, with all kinds of development that occurred there in the
1960s. So I think there was something of an idea that something similar to
that could be done.

MR. STEINBACH: A sweeping rehabilitation, urban renewal project for Anacostia.

MR. TERRIS: The wealthy people that were on this board I don’t think were really prepared
to put up substantial money.

MR. STEINBACH: Why would this sort of effort come from the private side rather than
government programs?

MR. TERRIS: The theory would be it would come from government but that the private
side would put money into the community so it could organize itself, that
they could have a community organization that would have some authority
and then could come to the government and ask for things, and that I would
be paid to help the community to do that. The problem is that kind of thing is
just not quick. You don’t snap your fingers and that kind of thing happens.

MR. STEINBACH: What did you do on a daily basis in these months?

MR. TERRIS: I met with people out there, I drafted up proposals.

MR. STEINBACH: There’s a reference I’ve seen to the possibility of a community electronics
plant. Does that ring a bell?

MR. TERRIS: It rings a bell faintly. That was one of the ideas for bringing in businesses
that could employ workers.

MR. STEINBACH: So it’s a variety of efforts you’re engaged in to try to stimulate economic
development in the Anacostia community that ultimately dissipates for lack
of interest in funding by the people whose idea it originally was?

MR. TERRIS: Correct. The people who hung around my office, which was actually at
L’Enfant Plaza – one of the buildings had been built recently so part of it
hadn’t been rented, so I had an office in one of the unrented spaces on the
first floor. The two guys, interesting guys, that I’m bringing up because now
they’re of course very famous, the two young guys that hung around talking
to me sometimes [were] Katharine Graham’s son and now-Senator [Richard]
Blumenthal, who’s a friend of Katharine Graham’s son, and they used to
hang around talking to me some of the time. I don’t know what they were
supposed to be doing as a matter of gainful employment. They may have
still been in school.
MR. STEINBACH: During this time period, there are several other related type efforts: the Housing Development Corporation, you’re a co-founder of that. What is that about?

MR. TERRIS: That was the successor to Better Homes. We got money from the government and from I think a foundation to get an executive director to do further work on housing in the blocks that we did. Then we went to the City and said you really ought to start a big corporation to do this kind of work, and the City did that and got all these high-powered people, really very high-powered people, to be on the board. The top union official in town, some of the top business people in town, all that kind of stuff. I was the secretary of the corporation, and it then went to HUD and got a lot of money, and it had a whole staff. Channing Phillips was the executive director, but they had a very excellent professional who ran the professional side of it.

Unfortunately what we did is choose as our first project this very large dilapidated building in Northwest called Clifton Terrace and put in large sums of money into fixing that building up. It really just shows you how tough this business is because there were big overruns, and then when the people moved in – the problem of how you run these kinds of buildings is enormously difficult. If you admit the people that most need it, the people that are the poorest, have the most problems, you run a terrible risk that the building is going to end up sociologically collapsing. If you go the other way and take essentially middle class type people, lower middle class people, who have jobs, then you say to yourself, they could probably get a place without
us. Well this thing completely fell apart as a matter of sociology and what kind of people were in the building, what kind of crime there was, and the whole enterprise within a few years had died. It was not a success.

MR. STEINBACH: How about something called Project Share?

MR. TERRIS: Project Share was a different thing. That was an amazing thing. Jim Gibbons, the guy with whom I had worked in the Shaw area of Washington, had this idea. This guy was a charismatic guy, very charismatic, and he said what we should do is we should raise money for low-income housing and we should raise it by going door-to-door[ . . .]. He put together – I participated, but I was definitely not a moving force – he put together an organization on one weekend to go door-to-door in the District of Columbia to raise money for low-income housing. In one weekend, he raised $100,000. That $100,000 was put into buying a building on Connecticut Avenue for low-income elderly people, and the building was given to the District of Columbia government. You can go to that building today. It’s on Connecticut Avenue. A few years later, I’ve forgotten who it was, the president – I think it was Clinton – came to that building to see the remarkable thing that had been done there. Nobody invited Jim Gibbons to come, a terrible thing. The project was entirely the work of a private person. Isn’t that amazing?

MR. STEINBACH: People just giving people cash out their front doors?

MR. TERRIS: Isn’t that amazing, that $100,000 can be raised on one weekend? He put together a whole organization.
MR. STEINBACH: Anacostia Citizens and Merchants Board?

MR. TERRIS: Once Katharine Graham and her friends decided it wasn’t working, that was pretty much the end of it.

MR. STEINBACH: One more: The District of Columbia Development Corporation, on which you were a member of the Board and Secretary?

MR. TERRIS: That’s the housing one I was talking to you about a moment ago with a lot of very important people.

MR. STEINBACH: So that’s a continuation of what originally was the Housing Development Corporation project that you discussed.

MR. TERRIS: Right.

MR. STEINBACH: So the Anacostia Assistance Corporation effort lasts slightly less than a year, and then it looks like your next significant career involvement is with the Center for Law and Social Policy.

MR. TERRIS: Right, except for the dates of that really start before the dates that you would see on any resume of mine because for a year or so, a group of people met together to talk about how to create that kind of an institution.

MR. STEINBACH: The Center for Law and Social Policy?

MR. TERRIS: That’s correct. It was about six or eight people, met fairly regularly, I believe Patricia Wald was one of those. But only two of us ended up once it had been put together who were interested in making that our job, and that was Charlie Halpern and myself.

MR. STEINBACH: What did you and Halpern do in helping to set up the Center Law and Social Policy?
MR. TERRIS: Charlie had been a lawyer at Arnold & Porter. In fact, he was still a lawyer at Arnold & Porter, and he wanted to practice public interest law, and so did I. So the point of this group, was to set up a public interest law firm. This was precisely the time when the Ford Foundation really began public interest law in the United States. There had been what you’d have to call public interest law firms before. The ACLU is really in many ways a public interest law firm, a very big one. And the NAACP Legal Defense Fund is really a public interest law firm too. But there was very little of it, and it wasn’t a movement. There were those firms, maybe there were a couple of others. The Sierra Club had a group of lawyers. So there were a couple of [organizations] around the country. Nobody really thought through the idea of public interest law – that you ought to have lawyers like this working in a variety of different areas.

So this little group of people met to try to develop this idea, not for the country, but for ourselves. The Ford Foundation was getting interested in funding public interest law at this exact time, and so that was an obvious place to go. We had lots of meetings with them. It turned out only two of us, Charlie and myself, were interested in this as a job. The other people dropped out. At least one practiced public interest law. One, Dan Fried, went up and started the Vera Institute up in New York. But anyway, just the two of us stayed. Then we went and recruited, I think, three other lawyers. We got a foundation grant from the Ford Foundation. Charlie was really the person more than I who raised money. I hate raising money.
I wasn’t the head of it, and I don’t even remember what the head was called, but I directed the educational program. The educational program was very interesting because we went to major law schools in the country, and we said to the law schools, why don’t you let us educate your students for a semester of their second year. They’ll come practice law with us, and they will get as good an education during that semester as if they were with you. Several good law schools, I believe Yale, Stanford, Pennsylvania, and maybe Michigan, agreed. My alma mater, Harvard, said no [laughter]. I’m sure they didn’t believe we could educate their students as well as Harvard. So I directed that program.

MR. STEINBACH: This must have been one of the first clinical experiences in law schools, now very common, but at the time they weren’t.

MR. TERRIS: Right. You’re absolutely right. It was very uncommon at the time. So that’s what I did for a couple of years, maybe just a year, year-and-a-half. During that time, I did argue the case for Cesar Chavez, which I lost.

MR. STEINBACH: We’ll come back to that.

MR. TERRIS: Afterwards I was essentially forced out by the Ford Foundation.

MR. STEINBACH: How would you define a public interest law firm? It was a new beast back then. These were not really around in the 1950s and 1960s. What is that?

MR. TERRIS: I’m glad you asked, as they say, because I gave a speech on that subject. The Ford Foundation asked me to speak at a meeting on public interest law, and I said to that group right at this time that that was a very misleading name. I did not claim that I represented the public interest. There are two sides to
litigation, and I’m not going to tell you that I’m always on the side of the
good guys. There’s a dispute about that, that’s what it’s about. Public
interest law, if the name has any meaning, it is people are getting represented
who don’t normally get represented in our legal system. That is in the public
interest.

MR. STEINBACH: So this is in a sense an extension of the Legal Services for the Poor?

MR. TERRIS: In a sense. Sometimes it is actually poor people. When I represented Cesar
Chavez’s union, they were poor people, but very frequently it’s not poor
people. When you do environmental litigation very frequently the main
people that are interested in it are middle class people.

MR. STEINBACH: So you established in effect a law firm, the Center for Law and Social Policy.
Suppose General Motors or General Electric comes to you and wants you to
take a case – do you turn them down because of who they are?

MR. TERRIS: Yes. Because they can get lawyers by themselves. By the way, we wouldn’t
even have a choice in that. The way the IRS set up the rules for receiving
money from charities, if we take in money from the Ford Foundation, we
would have had to represent General Motors for free, and even then, I think
we would have been in trouble.

MR. STEINBACH: So the clients you represented, you represented without charge?

MR. TERRIS: Correct.

MR. STEINBACH: So how did the firm finance itself?

MR. TERRIS: Ford Foundation and other foundations.

MR. STEINBACH: So it was a charitable venture.
MR. TERRIS: Right.

MR. STEINBACH: Clients would come seeking your free legal services?

MR. TERRIS: To some degree. Sometimes we went out and analyzed a problem and then went to somebody who was affected by that problem and said, “Would you like us to handle a case for you that would help you solve this problem?”

MR. STEINBACH: How did the Center for Law and Social Policy decide which cases to take and who to represent?

MR. TERRIS: It was based more on the interests of the particular people that we had. Jim Mormon had worked in the Environmental Section of the Department of Justice, so we chose him because we wanted to do environmental cases. Geoff Cowan, who later went on to become the dean of the school of communications (or a similar name) at UCLA, he worked on communications-type cases – television and the like. Charlie and I basically, I suppose, made the choices by choosing particular lawyers who had particular interests, and then we talked it out among ourselves what kind of things we were going to handle.

MR. STEINBACH: Did you yourself have any particular litigation niche during this time?

MR. TERRIS: Not really. I certainly was not an environmental lawyer. In fact there were almost none in existence, but I wasn’t one of them. I guess you would say that I cared about poverty-type programs. After all, I had the background of doing organizing [in a poor neighborhood] and starting the Legal Services program. The things I did, I represented Cesar Chavez. I also worked on
problems at D.C. General Hospital. I guess my poverty interests led me into that kind of an area.


MR. TERRIS: That’s one of the great disappointments of my legal career, that I lost that case because Justice Douglas, of all people, wrote the majority opinion. It really showed, I think, what a sloppy thinker he was. He basically always decided cases straight from his political point of view, and I think he couldn’t figure out where his political point of view should have led him. He sympathized with the Mexican laborers who were coming into California and therefore they shouldn’t be excluded. Well of course those Mexican laborers were undermining the Grape Workers Union, and Cesar Chavez was desperately trying to make that union viable so those people could get decent wages and decent working conditions. I’ve always thought Justice Douglas couldn’t completely figure out what his liberal position should have led him to.

MR. STEINBACH: It is a strange lineup in the Supreme Court. Justice Douglas along with four quite conservative Justices. You picked up the votes even of Justice White and Justice Blackmun. Okay, back up. How did the Center for Law and Social Policy hook up with Cesar Chavez in the first place?

MR. TERRIS: I don’t know the answer. I can’t remember anymore. I suspect we had a connection. We were talking to people in legal services in California, and they had some connection with the Grape Workers Union, so I think that’s
probably how it happened, that they thought that we were better able to handle the Supreme Court case. We hadn’t handled the case below, so I think they must have felt we were better able to handle cases in the Supreme Court.

MR. STEINBACH: Chavez and his union members are complaining about what and why?

MR. TERRIS: They’re complaining about – what’s happening is the country’s allowing Mexican laborers to come into the country on a seasonal basis, and they’re simply making it impossible for the Grape Workers Union to organize. If you’ve got people that are ready to do that type of very hard labor at lower wages, a union has got a bad problem.

MR. STEINBACH: So this is technically an interpretation of the U.S. immigration rules?

MR. TERRIS: Right.

MR. STEINBACH: So what’s your role on the case?

MR. TERRIS: I argued the case and handled the brief. I’m sure the students did a lot of the brief writing.

MR. STEINBACH: What do you remember about the Supreme Court argument itself?

MR. TERRIS: I don’t remember it at all. That’s probably a protective device [laughter].

MR. STEINBACH: Then the decision by the Court – again on what appears to be a sort of administrative law interpretation of the Immigration Act but really is dealing with larger social policy questions.

MR. TERRIS: Right. The kind of thing that usually appeals to Justice Douglas a lot.

MR. STEINBACH: So you end up losing the case.

MR. TERRIS: Correct.
MR. STEINBACH: You said it’s one of the great disappointments of your legal career.

MR. TERRIS: Well to lose a case, to have Justice Douglas decide against you on a liberal case, yeah, that’s a disappointment.

MR. STEINBACH: What you started to tell us before about the work you had done at the Center for Law and Social Policy for D.C. General Hospital, what was that about?

MR. TERRIS: I can’t even remember anymore. I think the level of care that was given, but I really can’t remember.

MR. STEINBACH: You represented a group of physicians, I believe. Then you also represented others: American Public Health Association, National Council Senior Citizens in a lawsuit against the FDA regarding ineffective drugs and trying to get them off the market.

MR. TERRIS: I can’t remember that either.

MR. STEINBACH: How about Ralph Nader, representing him in proceedings before the Federal Trade Commission?

MR. TERRIS: I can’t remember really doing it at the time that I was at the Center, but after I went into private practice, I handled a number of hearings before the Federal Trade Commission. The Federal Trade Commission then was involved in issuing various regulations in particular industries to protect consumers. The chairman of the Commission was a very good guy named Mike Pertschuk. It had a program that they would pay people that represented organizations to come in and represent the consumer side. So I handled a number of those kinds of cases. I think the ineffective drugs was
such a one that occurred after I was in private practice, but I’m not sure of the exact timing. I also did one involving the funeral industry.

MR. STEINBACH: Tell us how you ended up leaving the Center for Law and Social Policy.

MR. TERRIS: The guy that handled all the public interest grants of the Ford Foundation was named Sandy Jaffe. At that time, Congress had been stirred up to get interested in the Ford Foundation’s public interest grants, that they were being dished out by a bunch of liberals so therefore this is really politics. Jaffe then came to me and said you either have to resign as chairman of the Democratic Party or you have to leave the Center for Law and Social Policy. So I said, well, I guess I’ll leave the Center for Law and Social Policy, and I’ll set up my own public interest law firm. Not that I knew where I was going to get any business [laughter]. In retrospect, I’ve got to think to myself that must have been about the most stupid thing I’ve done in my life. And sheer luck that it worked. Because I had not the slightest idea where I would get any business.

MR. STEINBACH: It sounds like, on good terms you left your affiliation with the Center for Law and Social Policy.

MR. TERRIS: Correct.

MR. STEINBACH: Which still exists.

MR. TERRIS: Correct. It’s shifted a little bit in the areas that it goes into. I also started at that time – or at least was one of the major people in starting – the Alliance for Public Justice, or [a name somewhat] close to that, that was going to be
the lobbyist, so to speak, for public interest law. I was on the board at the
time, but that was not a paying [job].

MR. STEINBACH: So the next significant role in your career is to found your own law firm.

MR. TERRIS: Right. Me, by myself.

MR. STEINBACH: Your public interest law firm, which is a separate chapter which we’ll focus
on eventually. Today we’ve covered a whole range of experiences, from the
time you left the Solicitor General’s Office all in one way or another in
conjunction with public service, but in a short period of time. We’ve only
covered five or six years. Looking back now, what’s your reflections on that
part of your career?

MR. TERRIS: I guess I would have to say all of it was very interesting. Some of it was
creative, like the Center for Law and Social Policy. It’s not entirely me that
was creative, but a small group of people were creative. The start of the
Legal Services Program was obviously, I think, of great importance. It’s not
as if I did it; that was in the works. If Sargent Shriver hadn’t found Bruce
Terris, he would have found somebody else. But it’s still very rewarding to
have worked on something like that, that you know how important it is. And
I believe that sooner or later this country is going to properly fund lawyers
for poor people, both on the criminal and civil side. I believe that. I think
it’s inevitable. It’s so obviously unfair, unjust, that it will happen. So those
kinds of things are very satisfying.

MR. STEINBACH: Add to that the National Crime Commission and your work for both
Humphrey and Kennedy.
MR. TERRIS: Right. What I did for Kennedy was very small bore, you know. I didn’t do anything important for Robert Kennedy. He did some things important for me, but I didn’t do really important things for him. If I go back to look at that, I don’t, fortunately I have enough sense not to spend my time doing this, if he hadn’t been assassinated, there’s a good chance my life could have been entirely different. Entirely different. And from my personal standpoint I’m not sad that my life went where it went. I’m very sad for the country and for the Kennedy family, of course, but not for myself. I certainly would have had a job in the federal government, and I think a very good one, and who knows.

MR. STEINBACH: Our history certainly would have been very different.

MR. TERRIS: That’s a lot more important than what happened to me.

MR. STEINBACH: Well on that modest note, let’s leave it and go on next time to the chapter of your own law firm, where we are presently sitting. So it must have been successful to have lasted this long.

MR. TERRIS: That’s a complicated question. I think it’s successful. Legally, I think, it’s successful. Financially, it would depend on what day you talk to me. I believe when we first had our interview, that question would have been in serious doubt. It’s not in doubt today.

MR. STEINBACH: I promise to come back on another good day [laughter]. Thank you, Bruce.
ORAL HISTORY OF BRUCE TERRIS

V. PUBLIC INTEREST LAWYER

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 Thursday, January 8, 2015. This is the fifth interview.

MR. STEINBACH: Good morning, Bruce.

MR. TERRIS: Good morning.

MR. STEINBACH: Today we’re going to talk primarily about the founding and development over many subsequent years of your law firm, Terris, Pravlik & Millian, which began in 1970 as the Law Offices of Bruce J. Terris, all by yourself.

MR. TERRIS: Correct.

MR. STEINBACH: You talked to us last time about when you left the Center for Law and Social Policy in 1970 and the reasons why you decided to do that. What alternatives did you explore in terms of career paths before you decided to embark on hanging out your shingle?

MR. TERRIS: I really didn’t explore very much, and in retrospect, that doesn’t show a lot of intelligence. I was in effect booted out of the Center for Law and Social Policy by the Ford Foundation. I didn’t go around seeing whether anybody would care to have me work for them. I wasn’t interested in a big law firm or really any traditional law firm, and since I knew enough about what the situation was in public interest law, I knew that there wasn’t a lot of possibilities there, although I suppose I could have gone and asked NRDC,
for example, whether they would like to hire somebody, but I didn’t. I really didn’t even think about that very much. I basically thought that I could set up a public interest law firm myself and that that would be very challenging and a lot of fun to do.

MR. STEINBACH: At the time you were exploring that possibility, were there models out there? Were there other public interest firms? Or was this something that was really kind of new?

MR. TERRIS: There really aren’t many firms like ours even today, and there weren’t any, at least that I knew of, then. You have to be a little careful when you make kind of a broad statement like that. In some ways, lawyers who handle tort cases, contingent fee cases, you could say they don’t charge their clients, and they’re doing a public service, which I think they are. There are people subsequently that have handled cases, like the tobacco cases, of course they made a fortune doing it, but that doesn’t show they weren’t doing a public service. There are some kinds of lawyers that serve what are largely unrepresented portions of the public. The big difference between our firm and the other firms is very few people have used the fee-shifting statutes which allow you to get your attorneys’ fees from the defendant, and what’s different about that, it’s much harder financially to do that. We know there are thousands, tens of thousands, of lawyers in the country who handle contingent fee cases, and some of them are not very successful, but some of them are hugely successful, multi-millionaires. Financially, that’s a very different kind of structure than ours and therefore attracts a different kind of
person, I think. We can’t possibly make huge sums of money. It would have
to be some kind of miracle that I don’t know where it would come from, and
so this is a very different kind of thing. So when I went out, I was thinking
about fee-shifting cases, but I was also thinking about handling ordinary
cases for people in the District of Columbia. It turned out I did not – very
rarely have we had a case of that kind. I did have a case way back in the
beginning of a psychiatrist who had been fired, and I got his job back. But in
general, it’s been fee-shifting cases.

MR. STEINBACH: So let’s explore what that means. You defined it in part by explaining why
it’s not contingency fee. I think it would help to define why it’s not
pro bono, or maybe it is. What does the fee-shifting concept involve, back
then and even to this day?

MR. TERRIS: In general, in American law, unlike British law, in American law, the winner
of a lawsuit does not collect attorneys’ fees from the defendant. People pay
for their own lawyers, win or lose, and so that means that if you have a
person that has a case that may be very important to them, but you can’t
collect a large fee, then that person, if they’re of modest means, which most
people are, really can’t hire a lawyer in this country. Now if they’ve been
maimed in an automobile crash and they’ve got a good case against the
defendant who maimed the person, they can get a lawyer because you might
get a million dollars in a lawsuit, and a lawyer can get a third or 40%, and so
that’s very attractive. Fee-shifting statutes are mostly federal, most of them
are environmental – there are some others – [EEO cases and] disability cases
under IDEA – there are some other statutes. If you lose, if you represent a plaintiff and you lose, you get nothing. You lost the case, you don’t get any attorneys’ fees. If you win the case, you can get reasonable attorneys’ fees, market-rate attorneys’ fees, from the defendant. Well, that’s financially still a very difficult problem because first of all, it’s very hard to win all your cases, and you don’t get [more than] reasonable fees when you do win the case, no matter how marvelously you win it, and so you’ve got to win an awful big share of your cases, and you’ve got to be willing, even though you’re getting reasonable rates for that case, it means looking at your practice as a whole. You’re not going to make nearly as much money as what the market would normally give to people who are just representing people on a normal basis, who pay by the hour.

MR. STEINBACH: I take it there’s timing issues with the flow of funds because you’re not paid until it’s over.

MR. TERRIS: Correct. Absolutely.

MR. STEINBACH: On the fee-shifting idea, is that something that had been reflected in federal statutes? How far back does that go? 1960s, or what’s the genesis of that?

MR. TERRIS: It’s largely I think the 1960s, but I think if you looked you could probably find a federal statute or two that goes back considerably further than that. For example, the False Claims Act goes back further than that, and that’s not in the environmental field, and you can get attorneys’ fees under that statute.
MR. STEINBACH: So you’re leaving the Center for Law and Social Policy – which I guess I should ask, did the Center for Law and Social Policy, had they pursued fee-shifting-type litigation?

MR. TERRIS: Some of their litigation was fee-shifting because it was under environmental statutes, or maybe some others as well, but it didn’t have to use fee-shifting statutes because they were getting money from foundations, particularly the Ford Foundation.

MR. STEINBACH: I guess I want to go back into your mindset in 1970. There’s not a lot of models out there. This is not something that’s widely perceived as a way to establish and run a law firm. Where does this idea come from, and how do you have comfort that it might work?

MR. TERRIS: Part of the problem is looking from today, it doesn’t look like such a smart idea in terms of finances. Somehow I thought that I could. I probably didn’t really think I was going to have a totally public interest practice, there would be something of a mix. But I thought I could attract public interest clients, but I really didn’t know where exactly I was going to get them. It was very fortuitous that almost immediately the Sierra Club Legal Defense Fund essentially decided to retain me for their most important environmental cases anywhere in the United States during the next ten years. I had no idea that was going to happen. A person who had been at the Center for Law and Social Policy took over, became the head of the Legal Defense Fund, Jim Moorman, and he thought I was a fairly good lawyer, so I started handling really the most important environmental cases in the country.
MR. STEINBACH: But you had decided to go the public interest law firm route on your own before that was a possibility?

MR. TERRIS: That’s correct.

MR. STEINBACH: Go back and sort of walk through the logistics. You walk out the door of the Center for Law and Social Policy. You need an office, a license, a telephone. What did you do?

MR. TERRIS: That was solved fairly simply. I don’t know how exactly this happened, I mean I don’t know how he knew that I was available. A person who had been the Second Assistant to the Solicitor General when I was in the Solicitor General’s Office, Phil Elman, a very fine lawyer, had been a commissioner of the Federal Trade Commission, and he had left to set up his own practice. He said, why don’t you come and we won’t have a partnership but come and be with me and we’ll have a common secretary and a common office. So that problem got solved really quite simply because he already had an office and a secretary.

MR. STEINBACH: Where was your office?

MR. TERRIS: It was on Sunderland Place, just off New Hampshire Avenue.

MR. STEINBACH: So do you open – the two of you are there physically, but you’re by yourself in terms of the structure of your practice – and you start that in 1970?

MR. TERRIS: Right.

MR. STEINBACH: I just want to follow up with one other sort of distinction. What is it that differs from this model from what some people might call a pro bono practice?
MR. TERRIS: Presumably there’s nobody that has a pro bono practice entirely because the only way you can do that is essentially have foundation funding. I suppose NRDC in a sense is a pro bono practice. When they represent somebody, they don’t charge them because they get money from members and foundations and what have you. Pro bono mainly exists in law firms, like very large law firms that of course charge corporate clients and similarly wealthy clients, substantial amounts of money, and then do good work by doing pro bono work for a small percentage of their total practice. But obviously you can do that if your other clients are paying you very substantial amounts of money.

MR. STEINBACH: I want to read you something you once said at a panel discussion that concerned the report of something called the Ash Council, which goes back to the Nixon Administration, and ultimately gets published in the Administrative Law Review of the ABA. You said at the time:

“I want to make it clear that neither I nor any other so-called public interest lawyer claims to represent the public interest. Instead, attorneys who are sometimes labeled and sometimes even label themselves as public interest lawyers represent people in our society who are all too often without adequate legal representation, consumers, the poor, environmental groups, and the like.”

MR. TERRIS: Those couple sentences do contain what I think is the heart of being a public interest lawyer, and that is so many people in this country can’t afford legal representation. And it’s not merely the poor; middle class people, even upper middle-class people can’t – I can give you an example. We represented a group of people in North Carolina where FedEx was going to have flights going over their neighborhood at all hours of the day and night, almost constantly. They thought this violated the National Environmental Policy Act. They retained us to [bring a case]. Well this was I would say an upper middle-class neighborhood. Those kinds of cases, even with us charging very low rates, way below market rates, would cost a couple hundred thousand dollars. It’s not easy even for an upper middle-class neighborhood to raise a couple hundred thousand dollars. So unless you have a situation where there’s fee-shifting and you can say there’s a good chance of winning, they have trouble retaining a lawyer. NEPA doesn’t have a fee-shifting provision. It’s one of the few environmental statutes that doesn’t have it. And so we did handle that case. We didn’t win it. Essentially they ran out of money, and we were doing it for free at the end, and that’s really the problem in this country.

And so to go back to your question, what I think is in the public interest is to represent people like that, not because they’re necessarily right in every single situation. These are complicated issues. You can debate who was
right, but what is certainly right is that their side of that discussion, of that
dispute, be represented.

MR. STEINBACH: Have there been people over the years who’ve been critical of you or sort of
given you flack over your use of the term “public interest” to explain what
you do? For instance, a businessperson would say, on the opposite side of
the issue from you, “I’m representing the public interest, why should you
claim that title?”

MR. TERRIS: I can’t remember anybody ever saying it quite like that. I’ve actually been
the person who has tried to argue with people, and that article that you read is
part of that, saying to them, “don’t confuse this with ‘we’re on the right side
all the time.’” That is I think offensive to people, and it’s clearly not true,
and so we should be accurate about what we we’re doing. If we’re accurate
about what we’re doing, we’re representing people in legitimate cases that
don’t have representation, I have absolutely no problem with standing up to
anybody and saying, this is in the public interest. Even though you may be
right, Mr. Businessman, that in the argument that we’re having, the specific
argument, that your argument is correct, and my argument is not. But what
I’m doing to represent a very large number of people, is in the public interest.
I haven’t really heard people complain about that. We’ve certainly had a lot
of defendants complain about the cases we’ve brought.

MR. STEINBACH: This article I referred to is fascinating in other respects. Because you wrote it
almost five decades ago and so much of it still resonates. You make
reference in here, among other things, to the power of industry and big
corporations and how all too often, if not inevitably, they act in their own interest and not in the interest of consumers or the breeders of air or the drinkers of water, as you put it. And you go on to say that business cannot be expected to regulate itself.

MR. TERRIS: It’s not supposed to. The heart of this kind of thing is they’re really not supposed to. In our society, they are supposed to be maximizing the money they make. They’re supposed to be trying to be as efficient as they can. They’re supposed to push that side of issues in our society. I don’t condemn General Motors for trying to make as much money as possible by having the best car and selling as many cars as it possibly can. But then somebody else who represents the public has got to look over their shoulder and say, that’s fine, but you’ve gone too far here in this particular instance.

MR. STEINBACH: Explain why that should be through litigation or the courts, as opposed to through legislation.

MR. TERRIS: Well the start is legislation, because the courts don’t start from a blank sheet of paper. They almost always start from legislation. Sometimes it’s common law, but more often than not, it’s legislation. I thought you were going to ask why isn’t it enough that we have government bureaucracies that are supposed to do this. And the answer to that is that government bureaucracies are extremely important to it, and I’d probably even have to say even more important than private litigation. But bureaucracies often fail, and they often fail for reasons that are well known to political scientists about how industry
through its financial power, its ability to capture regulators. To rely entirely on government bureaucracies is a bad mistake.

MR. STEINBACH: All of this is in the context of your comments on something called the Ash Council. Do you remember what that was about and how you even got involved in writing this?

MR. TERRIS: I don’t. Sorry, I don’t.

MR. STEINBACH: It’s somewhat off-topic, but one more statement you make in this article. You say, in effect, it’s disconcerting that we’re even focusing on some of these issues at a time when the country is still engaged in a horrible, immoral war in Southeast Asia. And you wrote that in 1971, and it occurred to me that we haven’t really covered in any of our previous interviews your sense of the Vietnam War, to the extent you were opposed to it – what you said and did – so now would be a good chance.

MR. TERRIS: I’m a little startled actually by that sentence. That sentence is stronger than I remember my position as being. But I guess I must have come around to that. I was much, in general I think, not as strong as that. I found the Vietnam War a complicated issue. I think near the end, however, I think it had gotten to that point where not much was being achieved and an awful lot of harm was being done. But earlier on, how we got into it and how John Kennedy first in small steps and Johnson in big steps got in, I did not find it self-evident that that was something that was wrong to do. It certainly turned out that way.
MR. STEINBACH: By the time you wrote that, we’re in the third year of the Nixon Administration with still no peace at hand.

MR. TERRIS: And not seemingly achieving anything and very large numbers of people dying.

MR. STEINBACH: Okay, let’s go back then. You’ve moved into Sunderland Place, you’ve got this idea, you somehow get the word out that you’re available, and you get your first significant client, which is the Sierra Club Legal Defense Fund. What did they want you to do, and what did you do?

MR. TERRIS: The first thing I did was they had a case in the Supreme Court, Sierra Club v. Morton [405 U.S. 727 (1972)] that involved standing. It’s interesting that we’re talking about standing because I have a very detailed article that I’m now trying to pedal to law reviews, on the issue of how wrong the Supreme Court is on standing. But in any event, that case was in the Supreme Court, and it had been in my opinion and in the opinion of Jim Moorman, badly handled in the lower courts – that the Sierra Club had taken the very broad position that it had standing regardless of whether it had any members that actually used the area that was going to be made into a ski resort. And so Moorman wanted me to write – this would be improper today under the Supreme Court rules – wanted me to write a brief on behalf of other national environmental organizations, there were about five of them, explaining how essentially the Sierra Club had standing but unfortunately they hadn’t argued correctly in the District Court, and it ought to go back to the District Court, because they did have lots of members that used these areas, that it was the
perfect plaintiff. After all the reason it’s called the Sierra Club is because it
was started by John Muir in order to deal with the Sierra Nevada Mountains.
So anyway I wrote a very detailed brief on all the law of standing up to that
point, but I thought the most important thing I did was put a picture of the
area they were going to destroy on the front page, on the inside of the front
page of the brief. And the Supreme Court did remand, said that there wasn’t
standing the way it was litigated, but did remand it to the District Court, and
in the District Court the Sierra Club showed it did have members who used
the area. The developers abandoned the project, and that [beautiful] area is
still pristine.

MR. STEINBACH: As in the picture, still?

MR. TERRIS: That’s right.

MR. STEINBACH: So that’s the first significant assignment you had. We’re going to cover in
more detail your other environmental work and your other work in the law
firm, but I thought we should focus at least initially on your sense, looking
back, on how your firm has grown and evolved since 1970 when you started
out by yourself. How many partners or lawyers do you have now?

MR. TERRIS: We have a total of eleven lawyers.

MR. STEINBACH: And you have now been at this for almost 45 years?

MR. TERRIS: Correct.

MR. STEINBACH: So big picture overview of looking back – the growth of your firm?

MR. TERRIS: We grew very, very slowly at the beginning. At the very beginning, I did all
the work myself. There was nobody else. I researched the briefs, wrote the
briefs. And we did a lot of environmental work as I said. The Sierra Club, wherever it had an important case, they basically gave it to me. I mean I handled cases for them in California, Florida, all over the place. But I also handled cases on appointment by the federal court, in the District of Columbia Court of Appeals, criminal cases, several cases that involved people with insanity defenses. Judge [David] Bazelon was then a very prominent Court of Appeals judge, and he was very interested in that, but I didn’t win any of those cases. I think I did open up some important issues, but I think there’s just a limit to how far the courts are going to go in recognizing defenses based on serious drug problems. So those weren’t successful. But for that decade, that first decade, we basically handled fee-shifting cases.

MR. STEINBACH: By yourself most of that decade?

MR. TERRIS: No. Within a few years I had one or two other people that were working with me. They weren’t partners, but they were working for me. As I said before, we handled mostly big environmental cases. Then in about the middle of that period, NRDC lost one of its more prominent lawyers, so they took his case load and gave it to me. I guess they didn’t have a replacement at the time. Essentially – I don’t know if you want me to keep going through the basic history, not the individual cases, but the basic history.

MR. STEINBACH: That would be very helpful.

MR. TERRIS: We were being paid by the hour during that period of time by the Sierra Club and NRDC and a couple other national environmental organizations. So if
money came in through fee-shifting, it would go back to them, not to us. 
Well that, of course, meant we were at that point not really operating very 
differently from any other law firm, we just had different type of cases and a 
different type of client. But essentially we were doing work, being paid on 
an hourly basis, and were being paid below market rates. We weren’t paying 
our lawyers, including myself, market rates in the District of Columbia. 
After that decade – this is rough obviously, there aren’t sharp lines here – we 
were no longer getting cases from the big environmental organizations. They 
thought – I’m not sure they were right – that it was cheaper for them to do it 
themselves, even though they were paying us below market rates, and we 
were getting very good results on some of our cases, a lot of our cases. But 
they were doing what people sort of knee-jerk do, which is to say, gee, when 
we write that $20,000 check to Terris, somehow that looks like an awful lot 
of money, so gee, maybe we can hire somebody to do this kind of work. So 
by the end of that decade, we were losing business. 

NRDC started doing cases under the Federal Water Pollution Act, and 
they said to us, you know, these look like really quite easy cases, you really 
can bring a whole bunch of them at the same time. We got from them a 
whole bunch of cases, and I’ve forgotten how many we brought all together, 
something like 15 cases at the same time. And they had basically told us this 
is really quite easy, these people will all settle, because the cases are set up in 
a quite simple way, they seem on the surface to be very simple – the 
company reports to the EPA or to the state how much pollution they
discharge, you take out their permit, you compare it to how much they discharge, that’s it. They lose. They discharge 50, they’re allowed 30. You win. Well, that’s one of the biggest jokes you can imagine. We took about 15 cases all at about one time, and we said to ourselves, one lawyer will be able to handle this. Well that lawyer was overrun with the amount of work, and the cases did not settle. They didn’t settle in part because we insisted we were going to get adequate penalties. We weren’t going to just get injunctions. The statute provides for penalties, and we started applying the criteria that EPA said you’re supposed to apply. So ultimately we got some very good settlements. We got one $10 million settlement and some other results of that kind. But these cases went on and on and on, and instead of having one lawyer working on them, we had half the law firm working on them. So that’s when we shifted.

We also would handle some cases for groups of people. I earlier talked about the airport case in North Carolina. And we handled some of the environmental cases for groups of citizens. We had a very interesting one about the Helen Hayes Theatre in New York. We handled Water Act cases for a considerable period of time, and a large number of them, close to 100, all over the eastern part of the United States. Then we’ve gone on in more recent years to handle cases involving poverty issues and cases involving toxic waste. And those are also very large cases. We’ve shifted when it became harder to find good water quality cases, so that led us to be looking for other things. So we have moved as the opportunities were available.
MR. STEINBACH: You currently have eleven lawyers. What’s the largest number of lawyers that your firm has had over the years?

MR. TERRIS: We actually now have in a sense I think thirteen, but in general we’ve never gone over eleven, and that’s been dictated essentially by the size of this law office, which we own. At the moment, we’ve gone to thirteen.

MR. STEINBACH: But unlike a lot of firms that were started in the 1970s, you resisted the temptation to double and triple, etc., in size over the decades. Did you consciously try to keep yourself this size?

MR. TERRIS: Partially. We certainly didn’t want to become a 100-lawyer law firm. I don’t know if it would’ve even been possible. The risk for our kind of law firm, as you get bigger and bigger, I think, multiplies. We wouldn’t have wanted to do that anyway. We are a small group of people, we know each other well, we get along very well. We wouldn’t want the bureaucracy. But the other thing is literally the size of this building. So even if we got a case or something that we needed more lawyers, we would have trouble how to handle it.

MR. STEINBACH: So you’re in a room, let’s hypothesize, with other founding fathers of law firms, and you’re all sharing experiences and commiserating and celebrating. What would you say were the challenges, looking back, of running your own law firm?

MR. TERRIS: The biggest challenge for our kind of firm is certainly financial. As you noted earlier, the money comes in and it’s very delayed, it comes in in spurts. We’ve had at least I think three times and maybe more, it might be four –
three times where partners didn’t get paid for a substantial period of time. In at least a couple of those occasions, it was very difficult to know when the money was going to come in. We have borrowed substantial sums of money at times, which certainly made my wife very nervous. So that’s been by far the biggest challenge. It’s just very hard to run a law firm in which you have a very limited number of cases. We don’t have many cases in this law firm. We have eleven lawyers, and at the moment, we may have six, seven, eight cases. That’s all we’ve got. And these are big cases. They’re complex cases. Most people wouldn’t think a law firm like our size would handle cases like this. Something else we’ve forgotten about in the discussion about finance is that it not only requires lawyers, they also require very large expenses, namely expert expenses. We’ve had up to a dozen experts in a single case. We’ve had cases in which we’ve laid out a million dollars that we paid to experts. So it’s not simply delay, it’s not simply that we sometimes don’t win a case and therefore we lost everything. Sometimes we win the case, and the company, even though it’s a Fortune 500 company, goes bankrupt. So that’s overwhelmingly the problem we’ve had.

MR. STEINBACH: So finances first and second and foremost.

MR. TERRIS: Right.

MR. STEINBACH: How about other aspects of running a law firm? What do you look for when you hire lawyers?

MR. TERRIS: I don’t think it’s very different than what anybody else would look for, except we obviously are looking for people that care about public interest
law. But that’s not a very hard thing to come by, because the people that are going to apply here would be out of their minds to apply if they didn’t have an awfully great interest in public interest law because they’re not going to make the money that they’re going to make some other place. The people that we get here are all people that certainly their credentials would allow them to get a job in a big law firm in Washington. So if they come here, unless there’s something wrong with their minds, they want to practice public interest law. Other than that, we look very much for the same thing that anybody else does.

MR. STEINBACH: So you have a pool and you select the best people you can from that. How do you as a manager retain those people, keep them satisfied, so they don’t go elsewhere?

MR. TERRIS: An awful lot of them have gone elsewhere. In recent years, it seems to have changed, and now the people who come here seem to stay. But the basic method of keeping people here, I think, is really a feeling that they’re the kind of people who want to accomplish something, they want to feel good about what they do, they don’t want to be protecting General Motors to go back to that illustration from getting sued on safety defects. They’d rather be on the other side of that fight. Whether or not General Motors ultimately is right or is not right because that may be a very complicated question, but like me, they’d rather be on the side of the small guy against the big guy. So that’s certainly part of it.
Another thing is that the kind of cases we handle are enormously interesting. At least I think they are, and I think the people here think they are. I don’t really deserve a lot of applause for what I do because, to me, I’ve had the most fascinating law practice imaginable. It’s really been fantastic. Every day when I come to work I look forward to it.

And the way we work here I think is also attractive to our young lawyers. We don’t say to them, “We’d like you to do a 5-page memo and here’s the topic.” Now this is all second-hand. I’ve never been in a big law firm, but I’ve gotten it from other people. So they are given a 5-page memo and they come back in three or four days and I give them something else to do. That isn’t how we’re structured. We’re structured that we say to the newest associate if we possibly can, “This is your case. It’s your case to think about and to figure out what our strategy is and how we’re going to go about it and how we’re going to win this case. We’ll give you all kinds of help. We’ll have meetings, we’ll talk to you, we’ll go back-and-forth, but it’s your case.” Otherwise you’re not going to be worth anything to us. You’re not going to be creative if we just give you a little job to do and then you come back in a few days and then we give you another job and another job. Now that isn’t always true. Sometimes we have two or three people on a case, but then we basically say to them, you two or three, it’s your case, and it’s not the partner’s case. So there’s an enormous amount of interaction. I think it’s very interesting to people the kind of work that they do. And even when some of the work is intrinsically boring, like if you have to go through an
awful lot of documents. You can’t always make that the most interesting thing in the world, but I think basically the people here find this a very, very challenging environment, and that overrides that they are not making $150,000 or $200,000 a year.

MR. STEINBACH: It’s a very, very competitive legal environment out there, as you know. How do you distinguish yourself? How do you attract clients? How do you get the word out that you exist and have this particular niche?

MR. TERRIS: Let me back up. When we were doing Water Act cases, we were finding those cases ourselves and then we would go to environmental groups, particularly Friends of the Earth, and say, do you want to bring this kind of case? Or the American Canoe Association – they basically would want to bring any good clean water case. And since they weren’t paying any money, they said terrific, great for us. We get a lot of publicity, we do good for the environment, etc. So that’s part of how we do it, we ourselves generate cases, bring them to our people who have been clients with us for years and years and years. However, we also are pretty well known, so there are people who come to us. The Honeywell case up in New Jersey, they came to us because they knew we’ve done a lot of work in New Jersey on water cases. To me, the surprising thing isn’t that we get some cases. What’s surprising to me is our doors don’t get knocked down doing cases because we’re known everywhere. In the old days, we did get cases like that. When we started there were no environmental lawyers in the country. Essentially there were none. Probably a year after I started out, I was one of the more
experienced environmental lawyers in the country. Today half the lawyers in
the country took Environmental Law courses in law school, and they would
love to handle one environmental case on what they would regard as the
good guy’s side. So there’s people out there all over the place that would be
willing to do it for free. Well, we can’t do it for free. So we don’t get as
much of that kind of traffic that I wish we did.

MR. STEINBACH: In terms of being the managing and founding partner of this firm, how hard is
it to – all the stuff you have to deal with like staff and property regulations
and taxes and employment rules. How do you learn all that and how
challenging has that been?

MR. TERRIS: For the most part, I don’t handle it. We’ve had good office managers. We
have a good accountant, an accounting firm, that does our taxes and directs
the office manager how to do the books in the correct way. Those things are
brought to myself and my two partners in a fashion that is pretty focused. In
other words, it isn’t that I have to go out and I have to do all these things.
It’s brought to us in a way that the issues are fairly clear and we can make
decisions without being an expert in all those fields that you said. And now
we have an administrator who’s also technologically very, very good, which
today is the biggest headache. Taxes, staff, and all that is minor in
comparison to have your computer system operate, because somehow it
always seems that it isn’t operating, and I’m an idiot on these things. I think
one can basically assume that given my age. So that’s the biggest problem
today.
MR. STEINBACH: A couple other general questions about your practice here over the years.

Has your firm ever done any defense work or considered doing defense work?

MR. TERRIS: You mean in the environmental field?

MR. STEINBACH: You’re representing the corporation, you’re representing what you would say is not the “public interest” plaintiff.

MR. TERRIS: No. But that’s an interesting question that you’ve asked. Years ago, I mean really a lot of years ago, I read in one of the legal newspapers that there was a lot of agitation among general counsels of big corporations that they were being overcharged and not getting as good service as they should get from their usual law firms, and I wrote the general counsels of several large corporations. I said, why don’t you think about a different kind of law firm? We wouldn’t have handled anti-environmental cases or something like that, but we might have handled some neutral kind of things. Or even some environmental things that would help them on the environmental side. I never even got a response [laughter].

MR. STEINBACH: So no business has ever reached out to you to be kind of like the angel on the shoulder telling them how to do these things consistent with the laws?

MR. TERRIS: Never. And I think it’s quite clear from our relationships with defense counsel over the years that this wall between us is absolute. And you see it in individual cases – not always, but you see it in individual cases about which they get very worked up. Some of the defendants and counsel get
very, very worked up. I just think they regard [our work] as it’s almost un-American.

MR. STEINBACH: To do what you do.

MR. TERRIS: That’s right [laughter]. Something almost morally wrong is involved here, something really fundamental.

MR. STEINBACH: Looking back again over the past forty-plus years, have you ever thought of leaving, doing something different?

MR. TERRIS: No.

MR. STEINBACH: Never?

MR. TERRIS: Never. I should be a little more clear about that. Definitely nothing except for public service, and years ago I was approached – when would this have been? – in the Carter Administration, I think, people asking me what kind of a job would I be interested in. But the jobs that I was interested in were so high that I didn’t really expect anybody was going to bite. And then years ago also I got a request, do I want to put in some kind of paperwork for a district court judgeship? – which I did not do because I didn’t think, at that point at least, I was qualified to be a district court judge. I thought I was qualified to be a court of appeals judge, but not a district court judge. Today that wouldn’t be true, but at that time it was true.

MR. STEINBACH: So other than the possibility of a significant job in an administration or some judicial appointment, you never thought about being a different type of practitioner?
MR. TERRIS: No. Never. It really goes back to what I said before. This law practice, from my standpoint, is the most fascinating law practice I can even imagine. The kind of meetings we have, when we think about strategy and how we’re going to go about doing things, is so challenging to me and so interesting about how to do it. And then I get a good feeling obviously about the things we do. But even aside from the good feeling about the things we do, just the mechanics of law practice, it’s been terrific.

MR. STEINBACH: There’s a lot of lawyers who have been practicing for decades who when you get them over a beer will say, practice isn’t as fun as it used to be; it’s far more cumbersome; it’s not nearly as exciting; it’s much more bureaucratic; it’s hard to deal with clients; etc. Do you share the views that life as a lawyer has gotten worse, or do you feel differently?

MR. TERRIS: I don’t feel that at all. I don’t feel it in the slightest.

MR. STEINBACH: You’re just as excited and happy doing what you do as in 1970?

MR. TERRIS: Absolutely.

MR. STEINBACH: That’s great.

You founded your firm with enormous experience in matters such as the role of the police, community relations, one man, one vote, even national security issues. Did you ever think that you would end up spending so much of your practice as an environmental lawyer?

MR. TERRIS: I would have thought it was crazy. But you know, it’s particularly so because there wasn’t really an environmental field when I went to law school or up until virtually the same time as this law firm got established. There
essentially were no environmental lawyers. The Ford Foundation deserves a
tremendous amount of credit for this. Around 1970 when it started funding
NRDC and started funding other kinds of people in the country and the
Environmental Defense Fund was getting started at that time. That was
really the beginning of real environmental law in the country, so it would
have been impossible for me to have dreamt about it before that time.

But people would say I’m really not an environmentalist. Most of the
people in this field I think are people that go out and they hike and they put
up tents overnight and they do all those kinds of things. I don’t do that, never
have. I can remember when I was a teenager at the camp I attended, I
paddled around in a canoe for a few hours and that kind of thing, but the only
thing that I’ve ever done that environmentalists might recognize as a core
environmental-type activity was when a group of people retained our firm to
fight about the High Ross Dam in the State of Washington. They said, you
can’t represent us unless you come and see this magnificent area where they
want to build this dam, and so they said you have to go out there. Well, the
dam, this magnificent area, was not on a road. It was a two-day, three-day
hike into the mountains of Washington. My wife came along and her knees
have never been the same since that time because she’s certainly also not a
real environmentalist. My knees didn’t get hurt by it, but it was all I could
take, those three days. So, no. The answer I guess is a long-winded answer
that says I couldn’t have dreamt that this is what I was going to spend much
of my life on.
MR. STEINBACH: So the evolution of your environmental practice has been almost more
fortuitous than by design, I suppose?

MR. TERRIS: Yes, I think for the reasons I said earlier, we move from one type of case to
another kind of case, we went to where the opportunities were. But I’m also
very interested in other kinds of things. I’m very interested in poverty law,
so we started doing a lot of that kind of work.

MR. STEINBACH: You’ve told us that your clients in the environmental field included the Sierra
Club, the NRDC – National Resource Defense Council – are there others that
come to mind?

MR. TERRIS: Friends of the Earth has probably been the biggest. American Canoe
Association, we represented them on a lot of water cases for years. For some
years we represented the National Wildlife Federation. So we’ve represented
most of, or at least a number of, the big environmental organizations, but
most of that’s been a long time ago. Some of the people we represent now
are national ones. The Sierra Club we do still represent in some things. But
we also now represent local environmental groups too.

MR. STEINBACH: How would you describe your firm’s expertise in the environmental area to a
perspective client?

MR. TERRIS: I would immodestly say: very close to total. If you look at our
environmental resume,* which I guess is about thirty pages long, it’s got
lawsuits in almost every conceivable area. One area we have not [worked] is
the nuclear area. But just about every other kind of case you can imagine.

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* “Environmental, Preservation, Land-Use, and Zoning Matters Handled by Terris, Pravlik &
Millian, LLP.”
Highways, power stations, refineries, toxic waste, air quality, water quality, land use. On and on.

MR. STEINBACH: Right. I noted several dozen: historic preservation, land use, zoning, Endangered Species Act, wetlands preservation, on and on and on. You must be, for a firm, unique to have developed specialty and expertise in so many areas of environmental law.

MR. TERRIS: I think the reason is that we can do a new area – if somebody brought us a new area, we would know how to go about it. In other words, we might not – if somebody brought us a new thing, we might not already have expertise in a substantive way. But the methodology of handling an environmental case we would know, and we would also know the underlying kinds of issues that have come up again and again in different kinds of cases. Take standing or exhaustion of administrative remedies and primary jurisdiction. There are a whole bunch of basic kinds of issues that come up in all kinds of cases. It doesn’t matter which kind of a case you’re talking about. So we have expertise in an awful lot of those. But basically we know how to go about an environmental case so that if somebody walked in the door today and said here’s a new one, and you’ve never done one exactly like this before, and we’d say, that’s right, we haven’t, but we know how to do it.

MR. STEINBACH: So you have environmental organizations as clients. Are there sometimes individuals or citizens groups that you also represent in the environmental field?

MR. TERRIS: Yes.
MR. STEINBACH: Describe those sorts of cases.

MR. TERRIS: I described earlier the North Carolina group. They got themselves together and they were very worried that their neighborhood was going to be badly hurt by planes constantly flying over it, so they got themselves together. We represented them. Sometimes there’s an individual, not as often, but occasionally, that comes to us. We’ve handled a number of cases for citizen groups in different parts of the country. We have a case now in western Pennsylvania that we represent local environmental groups.

MR. STEINBACH: What cases and results have you been proudest of – that you’ve worked on that your firm has accomplished in this field?

MR. TERRIS: There’s one that doesn’t have a landmark decision but it was of enormous importance. It was in the District Court in San Francisco and involved the federally-owned roadless areas in the country that we wanted to tie up so that they would have the potential to be designated for preservation. Once you drive roads through wild areas, they really can’t be considered any longer for preservation. In that case I can’t remember exactly how many acres it involved but something like 30 or 40 million acres. It was an enormously important case. We got an injunction that lasted for many years, and the result was that much of this area has been preserved. It covered all kinds of places in the West. In other words, it was not one given place; it covered all kinds of roadless areas.

MR. STEINBACH: Was it Forest Service connected or other entities?
MR. TERRIS: I can’t remember if it was all Forest Service or part of it. I think it was all Forest Service.

MR. STEINBACH: Which ultimately led to I guess the promulgation of some roadless regulation?

MR. TERRIS: Right.

MR. STEINBACH: In the Carter Administration, perhaps?

MR. TERRIS: I think that’s right, because it was back in the 1970s. And I remember one of the more startling things in my practice. I went in to argue a temporary restraining order in the morning. The judge said, “I’m going to decide whether there’s going to be an injunction issued, not the temporary restraining order, so you’ve got two hours for lunch and come back and you argue.” So instead of having a little half an hour argument, it was a four-hour argument, and we got the injunction. So that’s one of the big successes. Another big area was Sierra Club v. Fri [412 U.S. 451 (1973)].

MR. STEINBACH: Which ended up in the Supreme Court.

MR. TERRIS: That’s correct. And we won on a tie vote.

MR. STEINBACH: Did you argue?

MR. TERRIS: I argued that case. A very smart guy at the Sierra Club, the president of the Sierra Club, came up with this idea, I have to give him credit – Larry Moss. He brought the case to us to argue about how to protect the areas of the country that had good air quality, not bad air quality. The statute had no specific provisions to protect those areas. We developed a theory about how it could be protected by the statute even though [the statute] was not specific
on the subject. So that resulted in the law being that you couldn’t significantly degrade clean air areas. It ended up with Congress having to take action and passing legislation in that field that protected those areas, which still exists. It’s still an important part of the Clean Air Act. So that was very important. Then a case was brought to us about – these were all in the 1970s; that was a time when we really were getting cases bringing completely new issues and enormously important issues – this was a case that involved clear-cutting in a national forest in West Virginia. We got a ruling that you couldn’t clear-cut these kinds of areas. That so panicked the lumber industry that that went to Congress, and although we didn’t get everything we wanted, we got a [statute with a] substantial amount of protection against clear-cutting in national forests throughout the whole country, which was also extremely important.

MR. STEINBACH: It’s interesting in both the Sierra Club v. Fri case and the clear-cutting West Virginia case that you’re doing cutting edge even in advance of legislation in this area – that then Congress after the courts rule steps in and comes up with some kind of [law]. That must have been exciting and fun.

MR. TERRIS: It was. I’m trying to think of those which were most important. Then, of course, the Laidlaw case.

MR. STEINBACH: Before that, you actually, I think, argued Kleppe v. Sierra Club [427 U.S. 390 (1976)]. Did you argue that under NEPA in 1976?

MR. TERRIS: Okay, yes. A different Sierra Club case.
MR. STEINBACH: Different *Sierra Club* than what you referred to earlier. To deal with preparation of regional environmental impact statements.

MR. TERRIS: We’d been brought in to do a lot of work on what was then an enormous effort to mine coal in the Great Plains states, particularly Montana and Wyoming. They had low sulfur coal and the thought was that if an enormous number of mines opened up, it was going to be, from an environmental point of view, devastating to those areas. The issue was whether you were going to get a comprehensive environmental impact statement that covered not just an individual mine – these were mines that were going to be on federal government land – that you had an overall environmental impact statement which would evaluate the effect on this whole area of much of two states. The government wasn’t willing to do it. We won it in the Court of Appeals. The government took it to the Supreme Court and technically we lost; however, to a substantial degree we actually won because what the Supreme Court said about what had to be done pushed the law under NEPA quite significantly towards looking at problems as a whole in a macro way and not just looking at individual projects. So it was certainly not a complete defeat, and that law continues to be good law today.

MR. STEINBACH: Then you started to mention your argument in *Friends of the Earth v. Laidlaw* [528 U.S. 1967 (2000)], which is relatively recent, in 2000, in the Supreme Court. Tell us about that.

MR. TERRIS: That case largely involved the law of standing, which is present in almost all environmental cases. Virtually no defendant gets sued [in an environmental
case] that doesn’t say that you don’t have standing. We took that through to the Supreme Court. We won in the Supreme Court, and it’s one of the major cases on standing. One of the few that’s actually been won in the Supreme Court upholding standing. But it’s also a case in which we ended up not getting paid because the company went bankrupt. I shouldn’t say we didn’t get paid. I think we got paid $10,000 on a bill of over $1 million.

MR. STEINBACH: How would you summarize the holding of the Laidlaw case and why you think it’s one of the more significant of the standing cases in the Supreme Court?

MR. TERRIS: It certainly was very clearly important under all the environmental statutes that deal with harm to individual people. It basically said that the harm that was critical was to individuals and you didn’t have to prove environmental harm itself – that the whole project was causing harm – that if you can show that a particular person was harmed, then the representative of that person, the organization, Sierra Club, had standing. It applied a proposition that I would have said existed before Laidlaw. Obviously you don’t know a proposition is controlling until you get a Supreme Court ruling, and certainly Justice Scalia didn’t think that that was the law before. So that was very important. And it also had a mootness issue in it that was important. It reiterated prior Supreme Court law that a case is not moot unless there is really no possibility that the harm is going to continue.
MR. STEINBACH: The significance of *Laidlaw* is that it allows individuals who are affected by action that has to do with the environment to bring a suit even if they can’t establish or show overall harm to the environment? Is that right?

MR. TERRIS: Right.

MR. STEINBACH: Would you say that’s still valid standing law?

MR. TERRIS: Yes. That’s clearly the law today. Part of that really was not clearly established before then. Most of the lower court cases did support it. The most important thing about it was it clearly was more hospitable to environmental standing, and so it’s had a very big influence on lower courts quite outside of technically how big the change was. There have not been a lot of standing cases lost in lower courts since then, environmental cases.

MR. STEINBACH: What’s prompted you to write a big law review article about standing even recently?

MR. TERRIS: I’ve done a lot of thinking about standing. It’s not only *Laidlaw*, we’ve had a lot of standing cases in lower courts, and it essentially dawned on me that the law of standing has no constitutional support whatsoever, that it’s been made up by the Supreme Court. They just made it up. You’d say to someone, come on, that’s not possible. Where would you look to find support for constitutional standing? You would look to the language of the Constitution, that would be the first place you’d look. There’s nothing in the Constitution that supports it. It says you can only bring a case or controversy. Well, these are cases and controversies in ordinary English language, and there’s no indication that those words meant something different 200 years ago. So
then where else would you look? Let’s look at the English history. Well, a number of distinguished scholars have looked at that history and have found no support for it. Quite the opposite: there is some indication that England allowed people to bring a lawsuit, individual people to bring lawsuits, representing the public in a number of the different kinds of common law writs of action. So then look at early American history. There’s nothing to support it in early American history. So where did it come from? It came from the Supreme Court, in roughly the last 100 years, it made it up. They said this is required by the Constitution. It’s not a case or controversy unless you have standing, but that’s circular. That doesn’t tell you where you got it from.

MR. STEINBACH: So Justice Terris would eliminate all standing requirements?

MR. TERRIS: Yes. But only in one sense, constitutional standing. The argument is whether the Supreme Court has the right to make that decision or Congress has. Congress of course can decide we don’t want to have these kinds of cases in the federal courts, but in this other field, we think it’s so important the public be able to bring lawsuits that we’re going to allow it. So in my view, the standing people who think that they are cutting down on judicial activism, have actually done the most judicially activist thing around by saying, we decide this and Congress doesn’t, whereas the non-activist proposition is to say this isn’t our job, jurisdiction, generally, is in the hands of Congress and it’s also in the hands of Congress in this matter.

MR. STEINBACH: Fascinating. Has any Justice gone on record along these lines?
MR. TERRIS: No. As far as I know, it’s never been presented to the Court.

MR. STEINBACH: Maybe we can race and get this transcript online before even a law journal publishes and break some news [laughter].

Your firm has over the years I guess, I’m just generalizing here, won consent decrees and injunctions and civil penalties in environmental matters and has also received awards, you personally and your firm, for your environmental practice. Reflections on that?

MR. TERRIS: Let me just talk about the penalties because one of the things you can do, the statute basically says that the penalties go to the federal government. The courts have allowed kind of an end run around this, and this by the way I think annoys some defendants – that you can set up the penalty award so that it doesn’t go to the federal government. It’s used for other environmental purposes. We got a consent decree in New Jersey for $10 million, and we used that $10 million to set up a foundation in New Jersey that gives out money regularly for environmental causes. We don’t run it. We have nothing to do with it, but it’s been set up with a lot of prominent people on the board. We’ve also in other places gotten money and used it to buy land that would be added to existing parks so it would also be kept for environmental purposes, preserved for environmental purposes. So there have been a number of those kinds of things that I think have been useful. We got an award from the Hackensack Riverkeeper, which gave us a lifetime achievement award, and then also the National Wildlife Federation was nice
enough to give us an award. It is nice to have people think you do something worthwhile.

MR. STEINBACH: When we talked previously about the police issues you worked on in the 1960s and we reflected on recent events, the more things change, the more things stay the same, I’m wondering if your reflections on the environmental progress this country has made are somewhat different – that, in fact – I don’t want to put words in your mouth – but looking back over the last 30 or 40 years, there’s been extraordinary progress, it would seem, in the environmental field.

MR. TERRIS: I think you’re absolutely correct. We were talking about it a few moments ago. There was no environmental movement of consequence. The Sierra Club had existed for many years, of course, and there were other groups that were important, but there wasn’t a real environmental movement. People didn’t even really understand the danger to the environment up until roughly the same time, a little before, our law firm was founded. So you didn’t have courses in law school, you didn’t have environmental organizations, you didn’t have bureaucracies in the federal and state governments that dealt with this. That’s enormously changed. On the other hand, we now know the dangers and the harm that’s caused is immensely greater than we probably imagined in 1970. Climate change in itself – it’s no longer that we’re putting a little bit too much pollution into the air and therefore that causes people to get ill and even to die earlier than they should die. That’s certainly serious, but it’s not like we are going to destroy the planet that human beings live on.
It’s gone to a level of environmental danger that is immensely greater. And when you see what the environmental problems of China, say, are today, you realize what could have happened if we hadn’t started doing the things we did in 1970 and earlier. So you’re absolutely right, and yet we probably feel more threatened today than we did at the beginning.

MR. STEINBACH: As proud as you are of your contributions to the one person, one vote outcome, you must be as equally proud of your contributions to the environmental law field.

MR. TERRIS: I think that’s right.

MR. STEINBACH: Your firm has handled other matters, and I think where I want to go next is the work you did on behalf of the women of the Foreign Service in the State Department, which is an extraordinary tale of its own. Why don’t you tell us about that matter?

MR. TERRIS: Very close to the beginning of the firm, we started doing work, and I’m not sure what the sequence is, whether Alison Palmer came to us first or some other people in the State Department came to us first. But in the 1970s we handled a number of State Department individual cases, people with individual problems. There was a Grievance Board and we fought for [Foreign Service officers] to keep their jobs and that kind of thing. I can’t remember now whether that was before Allison Palmer came to us or not, but in any event, early in the 1970s, Allison Palmer came to us. She was a Foreign Service officer, a very feisty woman, not a person who backs down. Most people who litigate that’s true of. That’s one thing I’ve learned about
clients in all kinds of fields that have come to us. They tend to be feisty people, and she certainly was. She claimed the Foreign Service was not treating her like they were treating male Foreign Service officers.

Her case started as an individual case but quickly became a class action and not only for Foreign Service officers but also female Foreign Service applicants, in a whole variety of different kinds of things – promotions, evaluations, awards, on and on, a long sequence of things as to which we claimed that female officers and applicants weren’t being fairly treated. It was very complicated litigation, very lengthy litigation, which we lost in the District Court and we appealed. And the case, lo and behold, came in front of a panel of the Court of Appeals, that one of the judges was a person who somehow keeps coming back into my life in a completely professional way: Patricia Wald. She wrote the opinion reversing, and then it went back to the District Court, and we ended up with a settlement in which all the substantive things that the State Department was doing that were discriminatory were remedied. We looked at statistics of all these things and made sure that they were corrected. Then the individual women who had been discriminated against in the past had a process in which they could get relief, benefits based on what kind of discrimination had occurred to them. Ultimately I think the whole case took over twenty years. I can’t say I’ve done an investigation of the State Department in the last few years but I have some degree of confidence that that problem is totally over. In the world we live in now, to reinstate that kind of discrimination I think would be impossible.
MR. STEINBACH: When I looked at Judge Wald’s opinion, one of its opening lines is, “This class action began over ten years ago.” [Palmer v. Shultz, 815 F.2d 84 (D.C. Cir. 1984)] And you just told us the whole thing took almost twenty years by the time it was finished, which has got to be, from the perspective of running a law firm, a big deal to jump into and to stay with for all that period of time.

MR. TERRIS: This particular case and the delay in getting attorneys’ fees had a huge impact. This was the biggest case in terms not necessarily of importance, although this was enormously important, but in terms of how much work we put into it.

MR. STEINBACH: You identified I guess in the course of discovery in the lower court at least seven different areas where the allegations were that women in the Foreign Service were being disadvantaged, which must have taken enormous amounts of effort to uncover through discovery and expert testimony, etc.

MR. TERRIS: Right. We were paying experts to analyze this material. We had expert statisticians.

MR. STEINBACH: Then you’re developing several different types of legal claims that the facts fit into under the employment discrimination laws at the time. Lots of this strikes me as relatively new at the time, that this was a very significant gender discrimination case.

MR. TERRIS: It was pretty early in the process. I won’t say there weren’t any other cases at the time, but it was early.

MR. STEINBACH: Judge Wald wrote the opinion, but Robert Bork and Harold Greene were also on the panel. Do you remember the argument?
MR. TERRIS: It’s funny, I don’t remember arguments very well. I think I get so focused on the argument that I don’t have very much distance. I don’t even remember more recent arguments that well.

MR. STEINBACH: This is a matter that you personally handled most of the way through?

MR. TERRIS: Yes, but there were certainly associates. At the very beginning, I handled it probably by myself because it came very close to the beginning of the firm. But over the twenty years when we got more lawyers, there definitely were other lawyers working on the case.

MR. STEINBACH: Did you take the leading role in writing the brief?

MR. TERRIS: The basic method that we use in this office, I haven’t written a major brief for a long time. I am basically the editor and also an important part of the strategy. I don’t want to say the strategist because as I said before, we like to impose on lawyers involved in a case heavy responsibility for being the strategist. But I’m certainly very heavily involved in the strategy.

MR. STEINBACH: And you argued in front of the D.C. Court of Appeals.

MR. TERRIS: Yes.

MR. STEINBACH: I noticed your firm to some extent served as, once there was a settlement, as the monitor of court orders and consent decrees. Do you remember that?

MR. TERRIS: In the Palmer case?

MR. STEINBACH: Yes.

MR. TERRIS: We definitely were doing that. We weren’t court ordered in the sense that you have a monitor and then you get paid automatically for that kind of
That kind of monitor doesn’t represent the plaintiffs. We were representing the plaintiffs.

MR. STEINBACH: How significant was the victory in the Palmer case?

MR. TERRIS: I think it was enormously significant, but I’m sure some people would say, and there’s certainly some truth to this, this was going to happen anyway. I mean you probably won’t find any government agencies today that were operating the way the State Department was operating when we sued them. So you could say sooner or later this was going to get remedied. But it got remedied I’m sure faster, considerably faster, and had a great benefit to the women in the Foreign Service – and I think I would say to the country, to not have a system in which you’re essentially not taking advantage of half the people in the country in terms of their talents. So I think it’s an important decision.

MR. STEINBACH: So wholly apart from the State Department itself, it’s a watershed moment for all federal hiring with respect to women?

MR. TERRIS: I’m sure that people who were in personnel jobs in the government, I would think, would have known about this case and it would be more of a push to get these kinds of things remedied and not to continue the historic way that women were treated.

MR. STEINBACH: Your firm has brought other employment-related litigation against other federal agencies and private employers.

MR. TERRIS: Indeed. But those have been individual cases. They’re not cases that would change the world.
MR. STEINBACH: Not class actions like the Palmer decision was?

MR. TERRIS: Right.

MR. STEINBACH: Your firm has handled many other matters, but some others are worth reflecting on. Your firm has handled a variety of civil rights cases. Any recollections or reflections on any of those?

MR. TERRIS: It’s now a long time ago, and I don’t remember the details. We handled a housing discrimination case a while back. We also represented the Black Panthers for a period of time as to their troubles with the FBI. Unfortunately, the funding source of that collapsed after a while. It was a difficult litigation. We had a judge that wasn’t exactly favorable to that kind of a case. I would call him a conservative judge.

MR. STEINBACH: What were your claims on behalf of the Black Panthers?

MR. TERRIS: Again, it’s a long time ago, but they were being spied upon and FBI people were interfering with the things they were doing. The Panthers – large numbers of people didn’t like them and didn’t like their views. The things that we were representing them about were fully protected First Amendment rights, and the FBI was interfering with them. I think by the year 2015, I think people pretty well know the FBI wasn’t exactly following the Constitution at that time on many of these things.

MR. STEINBACH: Your firm has recently been involved in litigation against the District of Columbia regarding preschool special education. What’s that about?

MR. TERRIS: That’s a case under IDEA, the acronym, that the federal government requires that the states, in return for getting a lot of money from the federal
government, identify children that have disabilities, mental or physical
disabilities, and then evaluate them and come up with a specific plan as to a
remedy for those children. This lawsuit involved children 3 to 5-years-old so
they would be getting treatment, services at that time which would help them
so that by the time they got to school age they could ideally participate in the
regular school system. The District had the worst ratio in the country for
identifying such children. It identified approximately 3% of the total number
of children in the District as disabled. All the other States did better. Many
of those other states didn’t do well, but the District being entirely an urban
jurisdiction, and one with substantial amounts of poverty, would be expected
to have higher percentages than in other states.

We won that case in the District Court. It got reversed in the Court of
Appeals on the ground that the class definition was not done correctly.
We’re now back in the District Court for resolution, which I think will occur
in the next few months as to whether the District still violates IDEA. I feel
fairly confident there will be an injunction again. In the meantime, however,
I should say, because of our lawsuit in the District Court – the District
government said it was because of our lawsuit – the District has improved
very substantially. It’s no longer the worst in the country, so a very large
number of children are getting services that they would not have gotten.

MR. STEINBACH: You made the decision to take that case?

MR. TERRIS: Yes.

MR. STEINBACH: What motivated you to become active in that matter?
MR. TERRIS: Because I think it’s important that disabled children get these kinds of services. Otherwise they really run the very serious risk that they will not develop to the limit of their capability. There’s lots of evidence that if you get to these children early, that substantially increases their performance in school and then later on in life. I think it’s a very important issue and one as to which there was every possibility we could be successful. And the fact is we have been successful on the merits of this. The District’s main interest I think at the moment is to make sure they don’t pay our attorneys’ fees.

MR. STEINBACH: I ask because your firm’s resume has as one of its objectives to provide high-quality legal representation to individuals and groups that cannot otherwise afford such services. And it seems consistent throughout the past 45 years that that’s what your firm has pledged to do.

MR. TERRIS: Nobody else could do this in the sense – one of the people that brought the case to us was a lawyer, a very dedicated woman helping children of this kind, but she’s an individual practitioner, and she didn’t have the resources to bring a case of this kind, so we could do it. And of course we weren’t paid. We paid for experts, and unfortunately under this statute, you don’t even get recompense for those experts if you win, so this is going to come out of our pocket regardless. But we felt we were in a position to do it.

MR. STEINBACH: It’s impossible to read a law firm resume and not ask about something labeled, “Harris v. Florida Elections Candidacy Commission.” [122 F. Supp.2d 1317 (N.D. Fla. 2000)]
MR. TERRIS: Well, in *Bush v. Gore* [531 U.S. 98 (2000)], the main events we had nothing to do with. We were involved in non-main events that had the potential to be important. There had been a lawsuit brought about how the ballots of people in the military were being treated. Somebody else had brought the lawsuit, and then they felt they were overwhelmed because things were moving at an incredible speed, and they asked if we wanted to handle the case. So we said okay. There was nobody to pay for it, of course, and there wasn’t even a fee-shifting statute. So we handled it. We went in a very short period of time to the District Court, to the Court of Appeals, to the Supreme Court – and I’ve forgotten how many days we did this in, something like four or five. I think there was a substantial issue to prevent the count going forward. I think the one thing one can say definitely in the *Gore, Bush* dispute is it had little to do with law and an awful lot to do with politics, and when the chips were down, nobody was going to consider a new issue. Just like the outcome was dictated by politics, that whether we had a good case or not, it was decided on the basis of politics. But I might say that in the lower courts, every single judge, all four judges we got, just happened to be Republicans and so we didn’t get any breaks.

MR. STEINBACH: That must have been a whirlwind of events.

MR. TERRIS: It was. Because we were working all night. Half the office was here all night getting these briefs out in no time. It was something.

MR. STEINBACH: Have I left out anything significant in focusing on the past decades of your law firm?
MR. TERRIS: Let me add a couple things. We’ve brought two big cases against the District of Columbia on Medicaid, and one of them we won in the District Court. Judge [Gladys] Kessler issued a very long detailed opinion of what was wrong with the program. We’ve been monitoring her order ever since. I forget how long that is, fifteen years or something. And there’ve been substantial improvements; there’s no question about that. Although they still haven’t complied with the court order; I should say the court order was translated into a settlement. So that’s a major activity that we still are doing. We also have another Medicaid case against the District in which we have twice lost in the District court. It was reversed the first time, and now we’re in the Court of Appeals again. It’ll be argued again in February, about providing prescription drugs to people on Medicaid and telling them if the drugs are not provided, that the pharmacy is required to say why, so the Medicaid beneficiaries have the right to contest that. The District doesn’t require an explanation and leaves people essentially defenseless when the pharmacy on the instructions of the District doesn’t fill the prescription. So that’s also an important case in the poverty field.

I should say one other thing about the cases we’ve handled in the environmental field. We’ve brought a number of very big cases involving toxic waste and the one that’s been completely resolved involved Honeywell in Jersey City. We won that case. The result was Honeywell had to dig up the same amount of material taken out of the 9/11 site, an enormous amount of material, and that area is virtually restored now and will be developed.
The recession in the country has slowed this down, but it will be developed into a model area of Jersey City. There will also be an expansion of the college there, and it will certainly have an enormous impact on Jersey City. It’s a very large area, so that’s extremely important.

MR. STEINBACH: I’ll ask one final question. As a father you look back with pride over your children’s lives. You must feel to some degree that way about the success of your law firm?

MR. TERRIS: Yes. I do. It wasn’t an easy thing to do, and I guess it shows you that there are things that it’s better you don’t know about in advance or the ramifications of them. You might have been too chicken to do them. And the thing is if somebody came to me today and asked should I do this, I’d be very hesitant to say yes – because part of what’s happened, I have to admit, we’ve had some very good luck. Some very good luck. I think we’ve done a good job, but I’m not sure we still would have been able to do this without having very good luck. There were times we were very, very close to being at the margin as to whether we just could continue, and suddenly we won a case and got a lot of attorneys’ fees. The Palmer case was the first example.

MR. STEINBACH: But knowing what you know looking back, you’d do it again?

MR. TERRIS: Oh definitely. Now that I know I have the luck [laughter].
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,* 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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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.
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Bruce J. Terris, Founder

Bruce J. Terris, the firm's founder, graduated summa cum laude from Harvard College and magna cum laude from Harvard Law School. In 1957, Mr. Terris joined the Department of Justice where he served in the Solicitor General's Office. During his career in the Solicitor General's Office, Mr. Terris argued 16 Supreme Court cases on behalf of the government, including Westberry v. Sanders (the Congressional redistricting case, which established the principle of one-man, one-vote), Schneider v. Rusk, and Kennedy v. Mendoza-Martinez (the constitutionality of two federal statutes relating to the expatriation of citizens). He extensively reviewed approximately 70 Supreme Court briefs, including Abel v. United States (a Soviet espionage case), Baker v. Carr, and the related 1964 reapportionment cases. Mr. Terris also had the honor of preparing Attorney General Robert F. Kennedy for his only appearance in the Supreme Court.

After leaving the Solicitor General's Office, Mr. Terris was co-chairman of the Conference on Law and Poverty, which resulted in the formation of the Legal Services Corporation, which provides legal services to the poor throughout the country. He was Assistant Director of the President's Crime Commission where he supervised the Commission's work on narcotics and police-community relations. In 1968, he was co-founder of the Center for Law and Social Policy, one of the first public interest law firms, which represents consumers, the poor, and other usually unrepresented persons before federal administrative agencies and in the courts. With the Center, he represented César Chávez and the California farm workers union in a suit to prevent Mexican agricultural workers from entering the United States, which was lost, 5-4, in the Supreme Court (Bustos v. Mitchell); represented physicians at D.C. General Hospital and the District of Columbia chapter of the Medical Committee on Human Rights in legal actions to improve care at the hospital; represented the American Public Health Association and the National Council of Senior Citizens in a suit which resulted in an order requiring the Federal Drug Administration to speed procedures to get several thousand ineffective drugs off the market; and represented Ralph Nader in proceedings before the Federal Trade Commission.

In 1970, Mr. Terris founded Terris, Pravlik & Millian, LLP, then known as the Law Offices of Bruce J. Terris. Mr. Terris founded the firm with the purpose of providing high-quality legal representation to individuals and groups that could not otherwise afford such services. The firm has provided these services for over 40 years in the areas of environmental, civil rights, and poverty law. Mr. Terris has continued his prior Supreme Court practice in Sierra Club v. Fri, 412 U.S. 541 (1973)(Supreme Court held, by affirming the court of appeals, 4-4, that the Clean Air Act prevented significant deterioration of air quality in clean air areas; this case led to the adoption of the significant deterioration provisions of the Clean Air Act), Sierra Club v. Morton, 427 U.S. 390 (1976)(Supreme
Court held that the National Environmental Policy Act required preparation of a regional environmental impact statement for subregions of the Northern Great Plains but not the entire area, *Friends of the Earth v. Laidlaw Envtl. Services (TOC), Inc.*, 528 U.S. 167 (2000) (Clean Water Act citizen suit in which the Supreme Court found that the citizens had standing to pursue their claims regarding the unlawful discharge of mercury), and *Harris v. The Florida Elections Canvassing Commission* (challenge to Florida’s 2000 presidential election results). He also has represented clients before administrative agencies and the lower courts, including in all but one court of appeals.

Mr. Terris was the commencement speaker and was made an honorary fellow of the University of Pennsylvania Law School in 1977. In 1981, the National Wildlife Federation awarded Mr. Terris its Conservation Law Award.

Mr. Terris received the Lifetime Achievement Award from the Hackensack River Keeper in 2005.

*Terris, Pravlik & Millian, LLP* is a public interest law firm that litigates cases for clients with matters involving Environmental Law, Civil Rights Law, and Employment Law.
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Steven A. Steinbach serves as Chair of the History Department at Sidwell Friends School, Washington, DC, where, since 2006, he has been teaching courses in United States History, American Government, and European History.

Prior to arriving at Sidwell Friends, Mr. Steinbach spent twenty-five years as a partner and associate at Williams & Connolly LLP, Washington, DC, where he specialized in criminal and civil litigation. He also served as a law clerk to the Hon. Arlin M. Adams, United States Court of Appeals for the Third Circuit. He is a member of the Board of Directors of the Historical Society of the District of Columbia Circuit.

Mr. Steinbach holds degrees from Harvard College (AB 1978), Yale Law School (JD 1981), and the Graduate Institute of St. John's College at Annapolis (Masters of Arts in Liberal Arts 2013).
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Attorney General Kennedy versus Solicitor General Cox: The Formulation of the Federal Government's Position in the Reapportionment Cases

BRUCE J. TERRIS*

In a recent article in this journal, "May It Please the Court? The Solicitor General's Not-So-'Special' Relationship: Archibald Cox and the 1963–1964 Reapportionment Cases," Helen J. Knowles shows how the Supreme Court went beyond the arguments of the Solicitor General, Archibald Cox, in establishing "one man, one vote" as the governing principle for the election of state legislators. In making this demonstration, Ms. Knowles also shows how Attorney General Robert Kennedy prevailed on Cox to support the plaintiffs in six reapportionment cases despite Cox's serious doubts about this position. In doing so, Ms. Knowles was more than generous in describing my small part in this story.

Ms. Knowles' article is largely based on the memoranda prepared in the Department of Justice and White House concerning the federal government's position in these cases. The purpose of this paper is to provide further information concerning the respective positions of the Attorney General and Solicitor General on reapportionment and the manner in which the differences between them were resolved based on the author's personal participation in these events.

The place to start is neither with the Attorney General nor with the Solicitor General. In 1946, in Colegrove v. Green, the Supreme Court considered a challenge to the discriminatory apportionment of congressional districts in Illinois, which had not been redrawn since 1901 despite census figures establishing substantial demographic changes. In a 4–3 vote, the Court upheld the dismissal of the action and held that the case was not justiciable. The holding is usually summarized as
being based on the political-question doctrine. However, of the four majority votes, only two joined the opinion of Justice Frankfurter that found that apportionment was not justiciable because it presented a political question. Justice Rutledge, the fourth vote, wrote a separate concurrence in which he argued that the matter was in fact justiciable, but that the Court should nevertheless exercise its equitable discretion to refuse relief to the plaintiffs because of the particular circumstances of the case, and not because it presented a political question.4

Subsequently, in 1958, then Senator John Kennedy wrote an article for the New York Times Magazine entitled “Shame of the States.”5 Senator Kennedy argued that, as a result of malapportionment, “rarely in electing state legislatures, does an urban vote, in effect, count for as much as a rural vote.” He detailed numerous examples of state legislatures across the country that either engaged in deliberate malapportionment or refused to redistrict as populations shifted from country to city. He argued that this was the “most fundamental and the most blatant” form of discrimination against urban areas, and he advocated the elimination of these electoral imbalances.6

In 1959, in Baker v. Carr, the District Court for the Middle District of Tennessee ruled, per curiam, that it could not intervene in a challenge to the apportionment of the Tennessee legislature and therefore dismissed the complaint on the ground that the issue raised a political question, relying on Justice Frankfurter’s opinion in Colegrove v. Green. After the Supreme Court noted probable jurisdiction on November 21, 1960,7 the federal government, through President Eisenhower’s Solicitor General, J. Lee Rankin, decided to file an amicus brief in support of the plaintiffs.8

Shortly thereafter, John Kennedy became President, Robert Kennedy Attorney General,
and Archibald Cox Solicitor General. The logical assumption was that the new administration would eagerly support the plaintiffs in the Supreme Court. After all, President Kennedy had previously expressed his position, and it was generally assumed that judicially ordered reapportionment would greatly help the Democratic party by shifting seats in state legislatures from rural to urban areas.

The federal government filed an amicus brief in support of the plaintiffs. The brief—which, by chance, I was assigned to review in the Solicitor General's Office—argued that, contrary to Colegrove, the challenge to malapportionment of state legislatures does not present a political question. It contended that the position in Colegrove was contained in a plurality opinion, endorsed by only three Justices, and that, in any event, that position had been "undermined by subsequent developments." The brief further argued that malapportionment of state legislatures greatly exceeds the malapportionment of congressional districts, creating voting disparities that "at some point become so gross and discriminatory as to violate the Fourteenth Amendment."

Despite the position taken by the government in its brief, the new Solicitor General had serious doubts about the role of the federal courts on this issue. Victor Navasky reports that Cox at first suggested that Oscar Davis, the First Assistant to the Solicitor General, argue the case, despite its enormous importance. Ultimately, Cox was convinced to argue it. The government asked for an unusually large amount of time for oral argument by an amicus—forty-five minutes—which request was granted. The argument occurred on April 19, 1961.

Two weeks later, without explanation, the Supreme Court set the case for reargument at the start of the fall Term. The government submitted a new amicus brief that strengthened its prior arguments. It argued forcefully that legislative malapportionment was not a political question and that the plurality position in Colegrove was no longer relevant or applicable, particularly in the case of malapportionment of state legislatures. The brief further argued that the "need for constitutional protection [was] urgent" because state malapportionment was "subverting responsible state and local government" and was markedly "more severe than Congressional malapportionment," and that electoral disparities were worsening. The brief argued, as President Kennedy had done several years earlier in his article in the New York Times Magazine, that "the most glaring consequence of malapportionment of state legislatures is the gross underrepresentation of urban interests" and "discrimination against urban areas."

The brief advocated that the "starting point" for a constitutional apportionment system was "numerical equality" and "per capita equality of representation" and that "equal representation" based on population "is ingrained in our constitutional system."

Cox again delivered the argument for the government in Baker v. Carr. After being harshly questioned by Justice Frankfurter during the argument, as Cox and I walked out of the courtroom, he whispered that "Felix Frankfurter is right." It is of course extremely rare for an advocate in the Supreme Court or in any court even to think, let alone admit, that his position is wrong. The investment of time and, even more important, psychic energy virtually always induces advocates to think that their position is right or, at least, not wrong. Cox's statement undoubtedly reflected both his honesty and his deep-seated doubt about the use of the courts to remedy the malapportionment problem.

Whether or not Justice Frankfurter was right in the abstract, he was not right in terms of the subsequent jurisprudence of the Supreme Court. The Court in Baker v. Carr held that the plaintiffs' equal protection challenge to Tennessee's legislative apportionment system was not a political question and presented a "justiciable constitutional cause of action" under the Fourteenth Amendment.
emphasized that the opinion of Justice Frankfurter in Colegrove, upon which the majority below had relied to dismiss the case for lack of subject-matter jurisdiction, was approved by only three of the seven Justices in the case, that this plurality was in tension with other precedent establishing that there was subject-matter jurisdiction, and that the challenge was justiciable. Thus, the federal courts were now open to cases challenging legislative malapportionment.

The first case flowing from Baker v. Carr turned out not to be a legislative malapportionment case. Rather, it concerned statewide elections. Gray v. Sanders22 involved use of Georgia's county-unit system in Democratic primaries for the nomination of United States Senators, the Governor, and other statewide officials. In those bygone days, the Democratic primary in Georgia was the equivalent of election. Each county was given a specified number of unit votes, ranging from two unit votes for the least populated counties to only six unit votes for the most populated counties. The majority of the county-unit vote determined the nomination. Because of the wide disparity in population among counties, the value of a vote was as much as ninety-nine times greater in rural, less populous counties than in populous counties.

Again, the federal government submitted an amicus brief supporting the plaintiffs.23 The brief argued that the Georgia county-unit system was unconstitutional because the arrangement grossly and systematically discriminated against voters in populous counties in favor of voters in rural counties. The brief argued that the Fourteenth Amendment requires, "at the very least, ... [that] the point of departure must be equal or substantially equal treatment of all voters."24 The brief further argued that "once it appears that persons similarly circumstanced have been denied equality of voting rights," then such scheme is unconstitutional unless any "differentiation has a relevant and substantial justification."25

It was customary, at least at that time, for Attorneys General to argue one case during their tenure in office. Kennedy wanted to argue Gray v. Sanders. Navasky describes a meeting, attended by Deputy Attorney General Nicholas Katzenbach and Assistant Attorney General for Civil Rights Burke Marshall, in which they maneuvered Cox into suggesting that Kennedy make the argument.26 Cox's ready acquiescence to giving up a case of this importance, without making any effort to argue the case himself, is only understandable based on his attitude toward reapportionment. In contrast, Kennedy's interest in arguing the case fore-shadowed his support for "one man, one vote" in the subsequent legislative cases.

Kennedy argued that the county-unit system in Georgia violated the Fourteenth Amendment. In his prepared remarks, he did not go all the way to support "one man, one vote," but did insist the Georgia system be constitutional.

Bruce J. Terris (above), the author of this article, helped Robert F. Kennedy prepare for his only Supreme Court argument. Terris argued seventeen cases while serving in the office of the Solicitor General.
D-6


standard, I strongly urged that this standard
should be "congressional districting based
directly on population, without any substantial
deviation." 36

The Supreme Court not only held that the
Georgia apportionment grossly discriminates
against voters in the Fifth District, but also
decided to determine the standard to apply in
congressional elections. The Court held un-
equivocally that "the command of Art 1, s 2
... means that as nearly as is practicable one
man's vote in a congressional election is to be
worth as much as another's." 37 Wesberry
therefore firmly established that "one person, one
vote" applies to congressional elections.

On June 10, 1963, less than three months
following its initial enunciation of the "one
man, one vote" principle in Gray v. Sanders,
the Court noted probable jurisdiction in four
of the six state legislative apportionment cases
discussed by Ms. Knowles, including Reynolds
v. Sims. 38 Later that same year, the Court noted
probable jurisdiction in the other two cases
decided with Reynolds v. Sims. 39 Together, these
six cases involved challenges to the mal-
apportionment of state legislatures in Alabama,
Colorado, Delaware, Maryland, New York, and
Virginia. The Court was asked to consider
whether the "one person, one vote" standard,
adopted in Gray v. Sanders for statewide elec-
tions and in Wesberry v. Sanders for congres-
sional elections, also applied to the apportion-
ment of both houses of state legislatures.

The most difficult of the state apportion-
ment cases for Cox was WMCA v. Simon. 40
It involved a challenge brought by five of the
six most populous New York counties to the
apportionment scheme of both houses of the
state legislature. However, the voting dis-
parity in New York was not nearly as egregious
as that of the other state apportionment cases.

Ms. Knowles describes the series of
memoranda written for Attorney General
Kennedy by the Solicitor General, Deputy At-
torney General Katzenbach, Theodore Sorensen,
President Kennedy's Special Counsel,
John Douglas, the Assistant Attorney General
for the Civil Division, various lawyers in the
Civil Rights Division of the Department of
Justice, and myself. All the memoranda, even
that of the Solicitor General, recognized that
legislatures ought to be apportioned accord-
ing to the principles of "one man, one vote" as
a matter of public policy. 41 The dispute con-
cerned whether to advocate in the Supreme
Court that the Fourteenth Amendment com-
pelled this result, particularly in both houses
of the legislature. 42 All the memoranda, ex-
cept for those of the Civil Rights Division
and myself, urged that the federal government
not support a "one man, one vote" principle
in both houses. Katzenbach, Sorensen, and
Douglas all would have supported all of the
plaintiffs but would not have asked the Court
to hold that the Fourteenth Amendment re-
quired adoption of a "one person, one vote"
standard. Cox's memorandum argued that the
government should not advocate a "one man,
one vote" standard because, in the unlikely
event the Court adopted this strict standard, it
would precipitate a "major constitutional cri-
sis" that would cause "an enormous drop in
public support for the Court." He emphasized
that the standard would render forty-six out of
fifty state legislatures unconstitutional, caus-
ing "great damage both to the country and to
the Court.", and openly "doubt[ed] whether
the decision could be made to stick." 43

During this time, Anthony Lewis, the New
York Times correspondent covering the Depart-
ment of Justice, was lobbying all the players
in support of the government adopting a "one
man, one vote" standard. 44 He had written an
article for the Harvard Law Review on mal-
apportionment while a Nieman Fellow at Harvard
Law School in which he argued that the Four-
teenth Amendment required "equitable rep-
resentation." He gave as an example of ine-
quitable representation district disparities of
4 to 1. Whether or not Lewis's efforts were
fully consistent with journalistic ethics, he had
staked out a position independent of being a

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reporter. He closely followed the internal debate and probably knew more than even the direct participants about what was happening within the Department of Justice.

After the numerous memoranda had been circulated, Attorney General Kennedy held a meeting in the large antechamber of his office. The meeting was attended by Cox, Sorensen, Special Assistants to the President Kenneth O'Donnell and Lawrence O'Brien, President Kennedy's brothers-in-law, Stephen Smith (who had run his presidential campaign in 1960) and Sargent Shriver, then the director of the Peace Corps, Assistant Attorney General Marshall, the Chief of the Appeals and Research Section of the Civil Rights Division, Harold Greene (later the chief judge of the federal district court in Washington, D.C.), and myself. This meeting was extraordinary not only because of the importance of the participants, but because several had no obvious connection to the topic under discussion.

In retrospect, it was clear that the meeting was not intended to decide the position of the federal government in the reapportionment cases then before the Supreme Court. That decision had already been made. The Attorney General had decided to support the plaintiffs in all the cases and to attempt to induce the Supreme Court to adopt the "one man, one vote" standard.

The meeting was designed for another purpose: to persuade Archibald Cox to sign a brief supporting the plaintiffs. It is extremely likely that the position of Cox and the federal government had greatly influenced the Court in its crucial decision in *Baker v. Carr*. At least, this was the prevailing view at that time in the Department of Justice. Kennedy realized that if Cox did not sign the brief in *Reynolds v. Sims* and argue the case, it would be obvious to the Court that the Solicitor General did not support the federal government's position. The Court had great respect for Cox, not merely because of his office as the Solicitor General but also because of his great intellect and his deep feeling for the role both of the Court and of his office. On the other hand, Kennedy understood that he could not just order Cox to support "one man, one vote."

At the meeting, Kennedy started by asking Cox to explain the issues in the pending cases. Cox described the issues in his usual brilliant manner, in detail and at length. Most important, he emphasized that there was no sound basis for the federal government to argue for "one man, one vote" in both houses of state legislatures and therefore to support the plaintiffs in all of the pending cases. He concluded that the Supreme Court would not go this far and the Administration would be hurt in taking such an extreme position. During Cox's presentation, Kennedy briefly left the room to get some orange juice and returned to the continuation of Cox's talk.

O'Brien and O'Donnell then discussed the politics of the issue. They stated that, contrary to popular belief, reapportionment would not help the Democratic party because reapportionment would largely add to the number of suburban seats. Kennedy quickly dismissed the discussion of politics. He said that it did not matter which party would gain; malapportionment was simply wrong. After some more discussion, Cox repeated his contention that the Court would never approve "one man, one vote" and it would hurt the government even to ask for it. He said that he did not know how a brief in favor of strictly equal representation could be drafted. Kennedy then ended the meeting by saying: "Archie, I know you will find a way."

Interestingly, no one, not Kennedy or anyone else, had formulated what substantive standard the federal government should present in its brief. Such a clear decision would probably have resulted in a confrontation with Cox. Instead, it was just assumed that the government's brief would support the plaintiffs in all the cases and that Cox would somehow figure out how to do this and follow his conscience at the same time.
Cox and I walked together down the fifth-floor corridor between the Attorney General’s Office and the Solicitor General’s Office. On the way, Cox said to me, “He doesn’t understand.” While I diplomatically did not reply, I thought about how much Kennedy did understand. He not only understood the fundamental legal-political issue but he understood his man, Archibald Cox.

Cox did just what Kennedy challenged him to do. Instead of the government’s brief being drafted in the relevant division of the Department of Justice—in this case, the Civil Rights Division—and then edited by an Assistant to the Solicitor General such as myself and then the First or Second Assistant to the Solicitor General, Cox wrote the brief himself. It may have been the only brief during my tenure of seven years in the Solicitor General’s Office written personally by the Solicitor General. And Cox did what Kennedy expected; he figured out a way to support the plaintiffs in all the cases.

Cox’s brief, which was filed in the first of the state apportionment cases, *Maryland Committee for Fair Representation v. Tawes*, was the principal brief for all the cases. It did not argue for the strict “one man, one vote” standard. Instead, he argued that the “basic standard of comparison is the representation accorded qualified voters per capita.”

The brief argued that state apportionment violates the Equal Protection Clause if any one of three tests is met: (1) the apportionment creates “gross inequalities in per capita representation without any rhyme or reason”; (2) the apportionment is based on criteria that are “contrary to express constitutional limitations or otherwise invidious,” such as race or sex, or is based on criteria that are “whimsical” or “irrelevant,” such as a county’s geographic location; or (3) the apportionment subordinates popular representation as a whole “to the representation of political subdivisions to such a degree as to create gross inequalities among voters,” giving control of the legislature to small minorities of people. However, Cox’s brief did hold open the possibility that the Equal Protection Clause might establish a stricter standard, including the “one man, one vote” principle. In the briefs filed in each of the cases, Cox argued that all the state legislatures before the Court violated one or more of these tests.

Subsequently, before the Supreme Court decided the state reapportionment case, it noted probable jurisdiction in *Lucas v. Colorado General Assembly*. This case, which involved the Colorado legislature, presented an even more difficult factual situation for Cox than the previous five state cases. One house was apportioned almost exactly according to population. The other departed from a population basis only to the extent that 36 percent of the people could elect a majority of the state senators.

Moreover, in a recent referendum, every county in the State had approved the apportionment, including the populous areas against which the apportionment was most discriminatory.

Once again, Kennedy was concerned about Cox’s position. Deputy Attorney General Katzenbach met with me confidentially to discuss whether any problems were likely in formulating the government’s position. I did not know of any, and none developed. Cox had apparently convinced himself that the government could support the plaintiffs in virtually any case involving substantial malapportionment.

The brief acknowledged that “the present case is admittedly closer than those which preceded it.” Nevertheless, it argued that the per capita inequalities in the state senate, which were growing because of population trends, were sufficient to make a prima facie case of invidious discrimination. The brief further argued that this discrimination in per capita representation resulting from the gross malapportionment of the senate had no rational relation to permissible objectives of legislative apportionment.

To Cox’s great surprise, the Supreme Court’s decisions in all six of the state apportionment cases went further than the federal
government and Cox's position and embraced the principle of Gray and Wesberry that votes must be treated equally. In Reynolds v. Sims, which contained the main holding in the six cases, the Court held that, "as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses . . . must be apportioned on a population basis." The Court held that an individual's right to vote for state legislators is unconstitutionally impaired when its weight is diluted substantially when compared with votes of citizens living in other parts of the state.

Navasky reports that when Chief Justice Warren was reading the opinion, Anthony Lewis gave Cox a note asking: "How does it feel to be present at the second American Constitutional Convention?" Cox wrote back: "It feels awful." It is safe to say that few advocates who win a case of this importance have such feelings in their moment of victory.

The result of Reynolds v. Sims and the accompanying state apportionment cases was to end malapportionment. Of course, new problems have arisen, most particularly...
increasingly sophisticated and extreme gerrymandering. Nonetheless, there are few people today who would disagree with the proposition that Attorney General Kennedy and the Supreme Court were right that the Equal Protection Clause of the Fourteenth Amendment prohibits the malapportionment of state legislatures.

Finally, I want to emphasize that this article is not intended to denigrate Archibald Cox in any way. He was certainly one of the great Solicitors General in American history. He was a brilliant lawyer and outstanding oral advocate. Few lawyers have come close to his commanding presence before the Supreme Court, when he virtually lectured the Justices on the law. Nonetheless, in the formulation of the government's position in these enormously important cases, which significantly affected the American system of government, Robert Kennedy's political acumen outmatched Archibald Cox's legal brilliance. It may be worthwhile for lawyers to ponder this lesson.

ENDNOTES

1Shina Majeed of Terris, Pravlik & Milian, LLP made major contributions to this article.
1Some of this material had been previously discussed in: Victor Navaisky, Kennedy Justice (New York: Athenaeum 1971); Arthur M. Schlesinger, Jr., Robert Kennedy and His Times (Boston: Houghton Mifflin Co., 1978); Lincoln Caplan, The Tenth Justice: The Solicitor General and the Rule of Law (New York: Alfred A. Knopf, 1987); and Ken Gormley, Archibald Cox: Conscience of a Nation (Reading, MA: Addison-Wesley, 1997). However, those authors did not have access to many of the memoranda relied upon by Ms. Knowles.
1328 U.S. 549 (1946).
1Id. at 565. See also Cook v. Fortson, 329 U.S. 675, 678 (1946).
16Id., p. 40.
19Id., pp. 9–10.
20Id., p. 16.
21Navaisky, p. 302.
25Id., p. 38.
26Id., p. 40.
28Id., p. 27.
31See Brief for the United States as Amicus Curiae in Gray v. Sanders, No. 112, filed December 27, 1962, in U.S. Supreme Court, Records and Briefs, Vol. 372.
32Id., p. 35.
33Id.
34Navaisky, pp. 305.
35Id.
36Id., pp. 305–06.
37372 U.S. at 380–81.
38Id. at 380–81.
40Wesberry v. Sanders, 376 U.S. at 7 (1964).
46Wesberry v. Sanders, 376 U.S. at 8.
43 See Knowles, pp. 284-85, 288-89.
44 Memorandum, Archibald Cox to Attorney General, August 19, 1963, p. 18.
45 Navasky, p. 302.
49 Ibid. See also Memorandum, Archibald Cox to Attorney General, February 4, 1964, p. 1.
51Navasky, p. 321.
52 See, e.g., League of United Latin American Citizens v. Perry, 126 S.Ct. 2594 (2006) (state legislature's decision to override a valid, court-drawn redistricting plan mid-decade was not sufficiently suspect to give shape to a reliable standard for identifying unconstitutional political gerrymanders); Bush v. Vera, 517 U.S. 952 (1996) (Texas redistricting plan unconstitutional because of racial gerrymandering); Davis v. Bandemer, 478 U.S. 109 (1986) (political gerrymandering case challenging Indiana's state apportionment scheme diluting Democratic votes was justiciable under Equal Protection Clause).
Bruce J. Terris

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Washington, D.C. 20005
(202) 682-2100

Born: Detroit, Michigan

Birthdate: August 3, 1933

Education: A.B. Summa Cum Laude
Harvard (1954) Phi Beta Kappa
L.L.B. Magna Cum Laude
Harvard (1957) Article Editor
Harvard Law Review

Post Graduate Study
Georgetown University
Political Science

Honors: Honorary Fellowship
and Commencement
Speaker

University of Pennsylvania
Law School 1977

Conservation Law Award
National Wildlife Federation 1981

Professional Experience:

1957-1958 Attorney, Internal Security Division
Appellate Section, U.S. Department of Justice

1958-1959 Personal Assistant to Solicitor General, J. Lee Rankin, Department
of Justice

1959-1965 Assistant to the Solicitor General,
Department of Justice

Argued 16 Supreme Court cases on behalf of the
government, including Wesberry v. Sanders (the
Congressional redistricting case); Schneider v. Rusk and
Kennedy v. Mendoza-Martinez (the constitutionality of two
federal statutes relating to the expatriation of citizens)
(subsequently argued an additional 4 Supreme Court cases)

Wrote or extensively reviewed approximately 70 Supreme Court
briefs, including *Abel v. United States* (a Soviet espionage case); *Baker v. Carr* and the 1964 reapportionment cases; and a large number of civil rights and criminal cases

Prepared Attorney General Kennedy for his only appearance in the Supreme Court

1965  
Co-Chairman, National Conference on Law and Poverty sponsored by the Attorney General and the Director of the Office of Economic Opportunity – this conference had a major part in starting OEO legal services for the poor.

1965-1967  
Assistant Director, National Crime Commission – supervised all work on police/community relations and early work on narcotics and dangerous drugs

1965  
Consultant, Community Relations Service, Department of Justice, on police/community relations

1965  
Consultant, University Research Corporation – wrote proposals relating to crime and training the poor to be lawyer’s aides

1967-1968  
Assistant to the Vice President for the District of Columbia – worked on youth programs and the District’s problems generally – developed a detailed program to coordinate all activities of SBA, EDA, and other government agencies relating to minority business

1967-1968  
Visiting Professor of Law, Catholic University (teaching two sections of constitutional law)

1968  
Campaign staff of Senator Robert Kennedy, doing research on urban problems

1968-1969  
Executive Director, Anacostia Assistance Corporation, a non-profit organization of businessmen and others, to provide financial and technical assistance relating to economic development, housing and education to community groups in a poverty area of Washington, D.C. – established a center for packaging black businesses, started a local development company, worked on beginning a community electronics plant (which never came to fruition), and wrote an elaborate proposal for a special impact grant

1969-1970  
Co-founder and Senior Attorney, Center for Law and Social policy, a non-profit organization which represented consumers, the poor, and other usually unrepresented persons before federal administrative agencies and in the courts concerning consumer,
environment, health, and other problems and which had law students who came to the Center for five months and received a semester's credit – personally represented the California farm workers union in a suit to prevent Mexican nationals from entering the United States to work in the fields, which was lost, 5-4, in the Supreme Court (Bustos v. Mitchell) – represented physicians at D.C. General Hospital and the District of Columbia chapter of the Medical Committee on Human Rights in legal actions to improve the care at the hospital; represented the American Public Health Association and the National Council of Senior Citizens in a suit which resulted in an order requiring the Federal Drug Administration to speed procedures to get several thousand ineffective drugs off the market; represented Ralph Nader in proceedings before the Federal Trade Commission – ran educational program

1970


Representative cases include:

Sierra Club v. Fri., 412 U.S. 541 (1973), in which the Supreme Court held, by affirming the court of appeals, 4-4, that the Clean Air Act prevented significant deterioration of air quality in clean air areas – this decision resulted in Congressional legislation to protect the air quality of clean air areas

Sierra Club v. Butz, 3 ELR 20071 (N.D. Cal. 1972), in which the court granted, under the National Environmental Policy Act, a preliminary injunction against the development of 50 million acres and ordered the Forest Service to prepare environmental impact statements before allowing development of roadless areas in national forests

West Virginia Division of the Izaak Walton League of America v. Butz, 522 F.2d 945 (4th Cir. 1975), in which the court of appeals declared that the Forest Service practice of clearcutting in national forests violated the Organic Act of 1897 – this decision resulted in Congressional legislation regulating clearcutting

Sierra Club v. Morton, 427 U.S. 390 (1976), in which the Supreme Court held that the National Environmental Policy Act required preparation of a regional environmental impact statement for subregions of the Northern Great Plains but not the entire area
Palmer v. Shultz, 815 F.2d 84 (1987), in which the court of Appeals held that the Department of State had discriminated against female Foreign Service Officers in numerous personnel areas — previously in the same case, the Department of State agreed to hire 75 additional female Foreign Service Officers to settle allegations of discrimination in hiring.

Public Interest Research Group v. Powell Duffryn Terminals, Inc., 720 F. Supp 1158 (D.N.J. 1989), affirmed in part, 913 F.2d 64 (3d Cir. 1990) in which the court imposed a penalty of over $4 million (the largest ever imposed in a citizen suit) and injunctive relief for violations of the Federal Water Pollution Control Act.

FOE v. Laidlaw Envtl. Services (TOC), Inc., 528 U.S. 167 (2000), a Clean Water Act citizen suit in which the Supreme Court held that the Fourth Circuit erred in finding the case moot due to availability of only civil penalty relief and not injunctive relief. Supreme Court also held that the citizens had constitutional standing to pursue their claims. Lower court decisions are found at 890 F. Supp. 470 (D.S.C. 1995) and 956 F. Supp. 588 (D.S.C. 1997), and 149 F.3d 303 (4th Cir. 1998).

Publications:


Author of article in February 1968 issue of New Jersey Municipalities, “The Responsibility of City Government: Win the War or Preserve the Peace.”

Author of article in Winter 1968 issue of Legal Issue (Catholic University), “Black Versus Blue: The Crisis in Police Community Relations.”


Author of Legal Services for the Elderly (National Council on the Aging, 1972)


Author of article in July-August 1974 issue of Juris Doctor, "Hard Times Ahead for Public Interest Law"

Co-Author of article, the Leasing of Federal Land for Coal Production, Natural Resources Defense Council v. Hughes, 15 Houston Law Review 1175 (1978)


Author of article in 2003 issue of Widener Law Review, "Standing on Weak Ground"


Other Activities

1960

Co-founder of a credit union in the slums, one of the first organized on a geographic basis

1961-1965

Co-founder and President of Better Homes, Inc., a non-profit corporation with the purpose of buying and improving housing in slum areas in Washington (the corporation was the model for approximately half a dozen other similar non-profit organizations in Washington, and was the recipient of the first funds in Washington under the Federal Housing Act of 1961 for the rehabilitation of houses for low-income families)

1961-1966

Co-organizer of the 1500 Block Club, an organization of the people living in two blocks of the slums of Washington (the organization had a small community center, women's and men's
clubs, and a large tutoring program)

1965-1979 Co-founder of the Housing Development Corporation, later chairman of the board – wrote the proposal for the creation of this large, well-financed, non-profit real estate development corporation to provide housing for low-income families throughout the Washington area – the first of its kind in the country, it originally received over $300,000 a year from the Office of Economic Opportunity – OEO used it as a model elsewhere.

1965-1966 Member, Coalition of Conscience, a coalition of organizations to promote civil rights in the District of Columbia

1968-1972 Chairman and Member, District of Columbia Democratic Central Committee

1968-1972 President and Member of the Board, Project Share – this organization raised over $100,000 in funds for non-profit housing for low and moderate income people

1968-1974 Member of the Board, District of Columbia Home Rule Committee

1970-1971 Member of the Board, Anacostia Citizens and Merchants, a broadly representative citizens group with the purpose of improving the Anacostia area

1974-1977 Member of the Board and Secretary, District of Columbia Development Corporation, a non-profit corporation intended to develop housing for low and moderate income people and support business ownership by minorities

1976-1978 Co-chairman, Air Quality Task Force, National Coal Policy Project

1976-1981 Member of the Board, Council for Public Interest Law, a national organization encouraging the expansion of public interest law

1977-1978 Member, Litigation Committee, Friends of the Earth

1978-1980 Member, Litigation Committee, Environmental Defense Fund

1979-1980 Member, Advisory Panel on Synthetic Fuels, Committee on Science and Technology of the House of Representatives
ENVIRONMENTAL, PRESERVATION, LAND-USE, 
AND ZONING MATTERS HANDLED BY 
TERRIS, PRAVLIK & MILLIAN, LLP

RCRA HAZARDOUS WASTES

We have represented citizens in suits under the Resource Conversation and Recovery Act (RCRA) designed to require the remediation of properties contaminated with hazardous waste that presents an imminent and substantial endangerment to human health and/or the environment.

In Interfaith Community Organization v. Honeywell International, Inc., 263 F. Supp. 2d 796 (D.N.J. 2003), affirmed, 399 F.3d 248 (3d Cir.), certiorari denied, 125 S.Ct. 2951 (2005), we represent the Interfaith Community Organization, the Hackensack Riverkeeper, and several individual plaintiffs in a citizen suit brought under RCR that is resulting in the excavation and removal of 1.5 million tons of toxic hexavalent chromium residue from a 34-acre site in Jersey City, New Jersey (known as the Roosevelt Drive-In Site or Study Area 7), and a clean-up of the deep ground water and sediments in the Hackensack River. The District Court for the District of New Jersey ordered the excavation after finding, among other things, that (1) the plaintiffs, some of whom live within a mile of the site, had standing to bring suit; (2) the site represents an “imminent and substantial endangerment to human health and the environment” under RCRA; and (3) the necessary permanent remedy for those endangerments is total excavation of the waste and remediation of contaminated sediment and deep groundwater.

The Court of Appeals for the Third Circuit affirmed the district court’s injunction, noting that the citizen-plaintiffs had met a higher than necessary standard in proving Honeywell’s liability and that “the time for a clean-up has come.” The firm continues to represent the plaintiffs in proceedings before Special Master Robert G. Torricelli, appointed to oversee the implementation of the injunction. The excavation is scheduled to be completed in 2009. Other remedial efforts will continue beyond that time.

In January 2006, in an effort to expand the relief obtained with regard to Study Area 7, we brought another RCRA citizen suit against Honeywell, Hackensack Riverkeeper v. Honeywell International, Inc., D.N.J., Civ. No. 06-022 (DMC), seeking remediation of chromium contamination to soils, groundwater, surface waters, and sediments associated with the properties adjoining Study Area 7. These properties are designated by the New Jersey Department of Environmental Protection (NJDEP) as Study Areas 5 and 6. The case is consolidated with Jersey City Municipal Utilities Authority v. Honeywell International Inc., D.N.J., Civ. No. 05-5955 (DMC) and Jersey City Incinerator Authority v. Honeywell International Inc., D.N.J., Civ. No. 05-5993 (DMC). In an effort to remediate and redevelop Study Areas 6 and 7, which together comprise 100 acres along the Hackensack River, Honeywell and the City of Jersey City have proposed a redevelopment plan that is designed to transform this contaminated area into a live-where-you-work neighborhood. Our client, Hackensack Riverkeeper has worked with them to ensure that the remediation that precedes this transformation is protective of human health and the environment. To that end, the consent decrees agreed to by the parties include rigorous financial assurance requirements and multiple layers of institutional controls.
The remediation of Study Area 6 is being overseen by Special Master Torricelli in conjunction with the remediation of Study Area 7. The firm represents the Hackensack Riverkeeper in the proceedings before Special Master Torricelli.

Remediation of Study Area 5 is being undertaken pursuant to three consent decrees which address the soil and groundwater contamination. Like the decrees for Study Area 6, these decrees provide institutional controls and financial assurances. Under one of the decrees, an area used by Honeywell’s predecessor, Mutual Chemical, for processing chromate ore will be remediated to become the Westside Campus of the New Jersey City University (NJCU).

In *Interfaith Community Organization v. Shinn* (D.N.J.), we represented the Interfaith Community Organization which sued the State of New Jersey under RCRA alleging that the soil at Liberty State Park is contaminated with chromium and various other chemicals. In November 1998, a federal judge entered a preliminary injunction against the State, ordering that it fence the areas in question or apply one foot of fill. This was the first time a court applied the State of New Jersey’s risk remediation standard of 1 in 1,000,000 to arrive at an appropriate remediation solution. ICO also alleged Clean Water Act violations including an unpermitted discharge from the park and the illegal filling of a salt water marsh in violation of Section 404 of the Clean Water Act. After issuance of the preliminary injunction and a successful motion to enforce that injunction, the parties reached a settlement that imposes requirements to address the contaminated soils and other issues of restoration. The firm continues to monitor the State’s implementation of and compliance with the agreement.

In *United States v. Hooker Chemicals & Plastics Corp.*, 101 F.R.D. 444 (W.D.N.Y. 1984), the court granted Ontario’s motion to intervene to challenge a proposed settlement of an action involving a hazardous waste site next to the Niagara River. However, the court rejected Ontario's arguments that the settlement agreement violated public policy by not requiring a long-term, permanent remedy at the site. 607 F. Supp. 1052 (W.D.N.Y. 1985), affirmed, 776 F.2d 410 (2d Cir. 1985).

We represented the Province of Ontario in state proceedings regarding permits for two hazardous waste landfills near the Niagara River. At the SCA landfill in Model City, Ontario's participation led to an agreement to perform improved groundwater monitoring and studies regarding the appropriate cover for final closure. At the CECOS landfill in Niagara Falls, Ontario participated in a lengthy hearing before the New York Department of Environmental Conservation in which Ontario contended that the hydrogeological conditions at the site were inadequate. The DEC agreed and denied CECOS' application for a permit to expand its landfill operations.

In *United States v. Westinghouse Electrical Corp.* (N.D. Ind.), we represented the Indiana Public Interest Research Group which sought to intervene to challenge a proposed settlement of a suit brought by the federal government under Section 7003 of the Resource Conservation and Recovery Act concerning Westinghouse's generation and improper disposal of polychlorinated biphenols (PCB's) and other hazardous waste. The district court denied the motion on the ground that InPIRG had delayed too long in seeking to intervene.
We represented a citizens group in Buckingham County, Virginia, before the county Planning Board on issues concerning the continued operation and expansion of an existing toxic waste disposal facility and the potential construction of other such facilities in the county.

We have advised and represented the Province of Ontario on toxic waste issues involving the area near the Niagara River.

WATER QUALITY

We have represented Friends of the Earth, Sierra Club, the American Canoe Association, the Public Interest Research Group of New Jersey, the North Carolina Conservation Council, the Professional Paddlesports Association, the South Carolina Coastal Conservation League, Florida Public Interest Research Group, Pennsylvania Public Interest Research Group, New York Public Interest Research Group, Trout Unlimited, the Foundation for Global Sustainability, and the Atlantic States Legal Foundation and other individuals and groups in over 100 citizen suits brought under the Clean Water Act to enforce discharge permits in Alabama, Kentucky, Louisiana, New Jersey, New York, North Carolina, South Carolina, Tennessee, Florida, Louisiana, Texas, and West Virginia. Under the Act, permittees must monitor and report their discharges on a regular basis and are strictly liable for any violations of discharge limits and monitoring and reporting requirements. The suits request civil penalties for past permit violations and injunctive relief to ensure future compliance. The defendants in the suits have been municipal treatment plants and industries, which discharge directly to navigable waters and which discharge indirectly to such waters through municipal treatment plants.

We succeeded in reversing the trend of barring citizens access to the federal courts through the concept of standing as a result of our victory before the Supreme Court in *Friends of the Earth v. Laidlaw Environmental Services, Inc.* (TOC), 528 U.S. 167 (2000). The Court held that the citizens could sue to enforce the NPDES permit issued to Laidlaw without establishing harm to the waterway. They only needed to show harm to their interests in the waterway.

We have obtained court decisions on a number of issues of first impression in citizen suits under the Act, including: (1) the first decision awarding summary judgment on liability issues (*SPIRG v. Monsanto Co.*, 600 F. Supp. 1479 (D.N.J. 1985)); (2) the first decision upholding the constitutionality of the citizen suit provisions of the Act (*SPIRG v. Monsanto Co.*, 600 F. Supp. 1474 (D.N.J. 1985)); (3) the first decision holding that only judicial, not administrative, actions by government agencies can preclude a citizen suit for the same violations (*Friends of the Earth v. Consolidated Rail Corp.*, 768 F.2d 57 (2d Cir. 1985)); (4) the first decision granting a preliminary injunction against further permit violations (*PIRG v. Top Notch Metal Finishing Co.*, 26 ERC 2012 (D.N.J. 1987)); (5) the first decisions imposing the then statutory maximum civil penalty of $10,000 per violation (*SPIRG v. Monsanto Co.*, 29 ERC 1988 (D.N.J. 1988), *SPIRG v. Hercules, Inc.*, 29 ERC 1417 (D.N.J. 1989), *PIRG v. Powell Duffryn Terminals, Inc.*, 720 F. Supp. 1158 (D.N.J. 1989), affirmed, 913 F.2d 64 (3d Cir. 1990), certiorari denied, 498 U.S. 1109 (1991)); (6) the first decision imposing contempt penalties for violation of a consent decree (*PIRG v. Ferro Merchandising Corp.*, 26 ERC 1362 (D.N.J. 1987)); (7) the first injunction obtained by citizens against a federal facility
for violations of the Act (PIRG v. Rice, 774 F. Supp. 317 (D.N.J. 1991)); and (8) the first decision requiring a concentrated animal feeding operation (CAFO) to apply for an NPDES permit (ACA v. Murphy Farms, Nos. 7:98-CV-4-F(1); 7:98-CV-10-F(1); 5:98-CV-209-F(1), E.D.N.C., slip op., December 22, 1998.

We have been successful in obtaining relief against federal, state, and municipal facilities as well as private facilities. In addition to obtaining an injunction requiring compliance with the Act at McGuire Air Force Base (PIRG v. Rice, supra), we have secured consent decrees ensuring permit compliance at two Army facilities and four state facilities. We have also litigated cases involving six additional government facilities, including three facilities at the federal government’s massive nuclear research complex at Oak Ridge National Laboratories in Tennessee.

On behalf of the American Canoe Association, we entered into Consent Agreements with five municipalities in West Virginia and four in North Carolina which provided for injunctive relief to prevent further violations and civil penalties which for violating their NPDES permits.

Judgments for civil penalties and settlement payments in our cases amount to over $40 million. These include the highest settlement in a citizen suit, PIRG v. Witco Chemical Corp. ($10,000,000), and, at the time of imposition, the two highest civil penalties ever imposed by a court in citizen suits (PIRG v. Powell Duffryn Terminals, Inc., supra ($4,085,000 after remand); PIRG v. Hercules, Inc., supra ($1,680,000)).

In PIRG v. AT&T Bell Laboratories, 842 F.2d 1436 (3d Cir. 1988), the court held that the community market rate, rather than the firm’s actual billing rate, was the proper measure of attorneys’ fees in such citizen suits. The court found that the firm “performed excellent work,” commended the “superb advocacy skills of plaintiffs’ counsel, Mr. Terris” and found that the firm’s billing rates fell “far short of what the Terris firm could command in the marketplace.” Id. at 1442, 1445.

In Friends of the Earth v. Gaston Copper Recycling Corp., 204 F.3d 149 (4th Cir. 2000)(en banc), the Fourth Circuit found that the plaintiff environmental groups had standing to proceed with their suit under the Clean Water Act. On remand, the district court entered an judgment of liability in July 2003 concluding that the defendant was required to pay a civil penalty of $2.34 million. The case is currently awaiting further decisions regarding standing in the district court and the Fourth Circuit.

In Chesapeake Bay Foundation v. United States, we represented citizens organizations which challenged the granting of a state-issued NPDES permit for a refinery in the Hampton Roads area of Virginia. The grounds included the failure to prepare an environmental impact statement, to assure that water quality standards would be met, and to comply with procedural requirements of the Clean Water Act. The district court held that an environmental impact statement was not required (445 F. Supp. 1349 (E.D. Va. 1978)) and that there was no cause of action in federal court (495 F. Supp. 1229 (1980); 501 F. Supp. 821 (1980)). However, the refinery was never built.
We have represented the Province of Ontario in judicial and administrative proceedings concerning the Clean Water Act discharge permit for the City of Niagara Falls wastewater treatment plant. The New York Department of Environmental Conservation first issued a renewal permit in 1982. We prepared comments on the draft permit and intervened on behalf of Ontario in New York state court when the permit was challenged by the City and industry groups. The permit was vacated by the court on procedural grounds. *Industrial Liaison Committee v. Flacke*, 479 N.Y.S.2d 696 (S.Ct. Albany Cty. 1984), affirmed, 485 N.Y.S.2d 662 (3d Dept. 1985). After the state issued a new draft permit in 1987, Ontario was granted party status by DEC to challenge this permit. We represented Ontario in negotiations with EPA concerning a new permit for the plant. We have also represented Ontario as an intervenor in related litigation brought by the City and other parties in New York state court challenging a DEC regulation which authorized technology-based permit limits for municipal treatment plants. *Buffalo Sewer Authority v. DEC*.

In 1998, we brought suit on behalf of the American Canoe Association, Inc., and other groups against a large hog farmer in North Carolina for operating a hog farm which for discharges of swine waste into a local waterway without a permit in violation of the Clean Water Act. In December 1998, the District Court for the Eastern District of North Carolina issued an Order finding that the facility in question was a CAFO and ordering it to apply for an NPDES permit from the State in order to be in compliance with the Clean Water Act. The Court also found that the hog farm had illegally discharged swine waste on at least two occasions. In 2001, the State of North Carolina issued its first NPDES permit to a CAFO as a result of this case. The district court also found that the plaintiffs had constitutional standing to sue and that the violations were ongoing at the time of the complaint as required by *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Foundation*, 484 U.S. 49 (1987). The district court’s decisions were affirmed by the Court of Appeals for the Fourth Circuit. *American Canoe Ass’n v. Murphy Farms, Inc.*, 326 F.3d 505 (4th Cir. 2003) and 412 F.3d 536 (4th Cir. 2005).

In 1991, Bruce Terris testified before the Commissioner of the New Jersey Department of Environmental Protection and Energy concerning its new penalty regulations implementing the New Jersey Clean Water Enforcement Act of 1990. In addition, the firm has provided informal assistance to NJDEP in developing methods of incorporating into penalties the recovery of economic benefits enjoyed by polluters which delay implementing pollution control measures.

Bruce Terris and Carolyn Smith Pravlik have served as panelists at numerous conferences and seminars addressing Clean Water Act enforcement and citizen suits.

**WETLANDS**

In *Alliance for Legal Action v. United States Army Corps of Engineers*, a homeowners group sued to stop the filling of wetlands for the expansion of the Greensboro, North Carolina, airport. The suit was based on the Section 404 Guidelines prohibiting the filling of wetlands unless there is
no practicable alternative and on the adequacy of the mitigation measures. The district court found that no practicable alternatives existed and that the ratio of new wetlands to the destroyed wetlands was adequate. *Alliance for Legal Action v. United States Army Corps of Engineers*, 314 F. Supp. 2d 534 (M.D.N.C. 2004).

In 1996, we brought suit on behalf of a community organization challenging the construction of a Target Store in Burke, Virginia, where the construction would result in the filling of a wetland.

**WATER SUPPLY**

We advised a Florida landowner on legal strategies for limiting growth and relieving pressure on Florida's limited water supply. Our analysis examined municipal water franchise agreements, state water regulations and statutes, the federal Safe Drinking Water Act relating to underground aquifers, and statutes affecting Everglades National Park.

**AIR QUALITY**

In *Sierra Club v. Fri*, 344 F. Supp. 253 (D.D.C. 1972), affirmed, 4 ERC 1815 (D.C. Cir. 1972), affirmed by an equally divided Court, 412 U.S. 451 (1973), the Supreme Court held that the Clean Air Act requires that air quality in areas still having clean air must be protected from significant deterioration as well as that air quality must be improved in areas with heavily polluted air. The district court ordered the government to pay more than $50,000 in attorneys' fees to the plaintiffs. As a result of this case, EPA issued regulations for the prevention of significant deterioration (PSD) of air quality in clean air areas and subsequently Congress included specific PSD provisions, based on these regulations, into the Clean Air Act itself.

In *Sierra Club v. EPA*, 540 F.2d 1114 (D.C. Cir. 1976), remanded, 434 U.S. 809 (1977), we unsuccessfully challenged EPA's regulations on significant deterioration as not providing adequate protection for clean air. However, we were successful as intervenors in the related cases brought by industry challenging the power of EPA to issue regulations since the court of appeals upheld the regulations.

EPA determined that certain PSD provisions of the 1977 Clean Air Act Amendments would not apply to sources which obtained PSD permits before March 1, 1978, and which began construction before March 19, 1979. The most significant of these provisions was the requirement that new sources use the "best available control technology" determined on a case-by-case basis to limit emissions. Representing the Northern Cheyenne Tribe, Sierra Club and Friends of the Earth, we petitioned the court to require EPA to implement the PSD Amendments as of their enactment, August 7, 1977. We also intervened to oppose industry's attempt to postpone the effective date even further than EPA wanted. The court of appeals rejected both the environmental and industry attacks on EPA's implementation of the PSD provisions of the Amendments. *Citizens to Save Spencer County v. EPA*, 600 F.2d 844 (D.C. Cir. 1979). EPA agreed to pay a portion of our attorneys' fees.
In *State of New York v. Thomas*, 613 F. Supp. 1472 (D.D.C. 1985), reversed, 802 F.2d 1443 (D.C. Cir. 1986), certiorari denied, 482 U.S. 919 (1987), we represented the Province of Ontario, Canada, as an intervenor in a case brought by the northeastern states to force EPA to require states to revise their Clean Air Act implementation plans to eliminate pollution causing acid rain in Canada. The district court ordered EPA to issue notices to the polluting states, but the court of appeals reversed on the ground that the notices could not issue unless EPA first conducted a rulemaking proceeding on the issue of whether the states' pollution was endangering Canada. We then petitioned EPA to conduct this rulemaking proceeding. After EPA refused to do so, we petitioned the court of appeals to require EPA to begin the rulemaking process. The court of appeals held that EPA was not required to make findings as to the endangerment to Canada and as to Canada having equivalent regulations as the United States until it had adequate information to issue notices to the states to remedy the situation. *Her Majesty the Queen in Right of Ontario v. EPA*, 912 F.2d 1525 (D.C. Cir. 1990). The Court further held that, even though 10 years had elapsed since the first petition to EPA, EPA's failure to act on the petitions was not arbitrary and capricious. However, the court suggested that EPA might have to act after issuance of the report of the Natural Acid Precipitation Assessment Program in late 1990. Before that occurred, Congress enacted a comprehensive acid rain program in the Clean Air Act Amendments of 1990.

We represented the Province of Ontario, Canada, by intervening in support of EPA's NOx SIP Call Rule which requires the Midwestern states and electrical utilities to reduce nitrogen oxide emissions which lead to ground-level ozone and smog in the Northeastern United States and in Ontario. The NOx SIP Call Rule was substantially upheld by the court. *State of Michigan v. United States Environmental Protection Agency*, 213 F.3d 633 (D.C. Cir. 2000).

We also represented the Province of Ontario before EPA in a proceeding under Section 126 of the Clean Air Act to consider claims by the States of New York, Pennsylvania and Maine that midwestern pollution is being transported long distances and is causing acid rain in the northeast. The sources at issue in that proceeding are the same as those that are causing acid rain in Ontario. EPA denied the petition. We advised the Province generally as to legislative, administrative, and litigation strategies to deal with the acid rain problem, including the acid rain regulations issued under the 1990 Clean Air Act amendments.

We advised the Northern Cheyenne Tribe throughout the proceedings it and EPA held to redesignate its reservation as a Class I air quality area under the significant deterioration regulations. After EPA approved the redesignation, various electric utilities and other parties challenged EPA's decision. In *Nance v. EPA*, 645 F.2d 701 (9th Cir. 1981), the court approved the redesignation. We represented the Tribe as intervenors in this litigation. The government agreed to pay a portion of the attorneys' fees in this case.

In *Montana Power Co. v. EPA*, several utilities brought suit seeking to invalidate the determination of EPA that the Colstrip power plant was subject to EPA's prevention of significant deterioration regulations. We represented the Northern Cheyenne Tribe and Northern Plains Resource Council as intervenors in support of EPA. The district court held that EPA's application of its PSD regulations to the plant was arbitrary and capricious. While the district court's decision
was on appeal, the 1977 Amendments to the Clean Air Act were passed, and EPA concluded that, regardless of its previous regulations, the PSD requirements of the 1977 Amendments applied to the plant. The utilities then petitioned for review of EPA's new determination, and the Tribe and Council again intervened. The two cases were consolidated before the court of appeals, which held that the Colstrip power plant was subject to the PSD regulations. 429 F. Supp. 683 (D. Mont. 1977), reversed, 608 F.2d 334 (9th Cir. 1979).

We represented the Northern Cheyenne Tribe and the Northern Plains Resource Council in EPA's extensive proceedings concerning the Montana Power Company's application for a PSD permit under the Clean Air Act for the Colstrip power plant which the company claimed met the Class I increments of the PSD program. After EPA initially proposed to grant the permit, we persuaded EPA to reject it. The utilities petitioned for review in the Court of Appeals for the Ninth Circuit. Puget Sound Power and Light Company v. EPA. We represented the Northern Cheyenne Tribe and Northern Plains Resource Council which intervened. Subsequently, the company made a new application to EPA, which provided for substantially better air pollution controls, and this application was approved. The utilities dismissed their case after they entered into a settlement with the Tribe under which the Tribe received jobs, air-quality monitoring, and financial assistance to compensate for the impacts of the plant on the reservation.

We represented the Roosevelt Campobello International Park Commission in a petition to review EPA's approval of a PSD permit for an oil refinery in Eastport, Maine. The court retained jurisdiction of the petition until EPA promulgated new rules which would allow the refinery to be exempt from the 1977 Amendments to the Clean Air Act. Roosevelt Campobello International Park Commission v. EPA, 684 F.2d 1034 (1st Cir. 1982). We also represented the Commission in a petition to review the existing rules for grandfathering new sources under the pre-1977 Clean Air Act. Roosevelt Campobello International Park Commission v. EPA. The refinery has never been built.

We represented Citizens Against the Refinery's Effects and the Chesapeake Bay Foundation in opposing a refinery in the Hampton Roads area of Virginia. In one case, we challenged EPA's decision to approve a revision to Virginia's State Implementation Plan which established an asphalt substitution program to offset hydrocarbon emissions from the refinery, on the grounds that the offset was inconsistent with the Clean Air Act and with EPA's Emission Offset Interpretative Ruling under that Act. In the other case, we challenged EPA's decision to issue a PSD permit for the refinery on the ground that EPA violated the Clean Air Act and its own regulations when it analyzed the modeling and monitoring data to predict the air quality impact of the facility. The court of appeals held for EPA in both cases. Citizens Against Refinery Effects v. EPA, 643 F.2d 178, 183 (4th Cir. 1981). However, the refinery proposal was abandoned.

We advised a citizens group in Wilmington, North Carolina, which opposed construction of an oil refinery proposed by the Brunswick Energy Company. Our analysis related to the compatibility of the refinery with the North Carolina Coastal Area Management Act, the Clean Air Act, and NEPA. We recommended focusing on the lack of a demonstrated need for oil refineries
in the face of current U.S. demand for oil. The project was abandoned by the company on the basis of the reduced demand for oil products through the year 2000.

In Vavra v. EPA, we filed a petition in the Supreme Court on behalf of citizens residing near Galveston Bay, Texas, seeking review of a decision by the court of appeals that EPA's conditional approval of the State of Texas' revisions to its state implementation plan and its resulting refusal to apply the Act's construction ban did not violate the Clean Air Act even though, according to EPA, the revisions did not fully comply with the Act. The Supreme Court denied the petition for certiorari. 459 U.S. 822 (1982).

In Citizens' Ass'n of Georgetown v. Washington, 370 F. Supp. 1101 (D.D.C. 1974), the court denied claims by a local citizens' organization that construction of an urban commercial development would result in increased traffic and thereby cause a violation of the Clean Air Act. While the district court subsequently ordered the District of Columbia government to pay one third of the attorneys' fees of plaintiffs (383 F. Supp. 136 (D.D.C. 1974)), the court of appeals ruled that the district court lacked jurisdiction to award fees to nonprevailing parties under the Clean Air Act (535 F.2d 1318 (D.C. Cir. 1976)).

On behalf of Group Against Smog and Pollution (GASP) in Pittsburgh, we submitted comments to EPA opposing the deferral of Jones & Laughlin Steel's obligation to meet coke oven gas emissions limitations at its Pittsburgh Works. Jones & Laughlin applied to EPA in November 1981 under the Steel Industry Compliance Extension Act of 1981 for an extension of the deadline stipulated in its consent decree for repairing its coke oven gas desulfurization system. EPA denied Jones & Laughlin's application and filed a contempt action against the company for its failure to comply with the consent decree. United States v. Jones & Laughlin Steel Corp., 804 F.2d 348 (6th Cir. 1986).


We represented residents in Frederick County, Maryland, in opposing the expansion of a fluoride-emitting aluminum reduction facility in that area in hearings before the state health department.

We prepared extensive legal analysis, comments and draft documents for the State of New Jersey protesting the failure of the City of Philadelphia to regulate excessive emissions of sulfur dioxide.

We represented the National Coalition for Clean Air and the Northern Cheyenne Tribe in support of Congressional legislation which would effectively prevent significant deterioration of air quality in clean air areas. This work included Congressional testimony and the drafting of statutory language. In 1977, Congress adopted Clean Air Act Amendments embodying most of the provisions we supported.
We prepared a legal analysis of the air-quality implications of the use of refuse-derived fuels as a substitute for fossil fuels in utility and industry boilers for the Brookhaven National Laboratory and the Princeton Center for Environmental Studies.

Bruce Terris was co-chairman of the Air Quality Task Force of the National Coal Policy Project which was an effort to obtain the agreement of environmentalists and industry on issues relating to coal development. Other members of the office did much of the environmental staff work for the Task Force. The report was published as Where We Agree, Report of the National Coal Policy Project.

WILDLIFE

In *Wilderness Society v. Hathaway*, 5 ELR 10118 (D.D.C. 1975), the Wilderness Society challenged the transfer of three large western game ranges from joint Fish and Wildlife Service and Bureau of Land Management administration to the sole administration of BLM. The district court held that the Secretary of the Interior had no authority to transfer the game ranges from the jurisdiction of the Fish and Wildlife Service and that the lack of an environmental impact statement violated NEPA. Congress subsequently enacted a statute placing the ranges under the sole jurisdiction of the Fish and Wildlife Service.

*Sierra Club v. Hickel* involved an exchange of land between the Fish and Wildlife Service and a utility company for the construction of a nuclear power plant. The court of appeals held that the exchange did not violate various wildlife statutes (476 F.2d 1048 (6th Cir. 1972)) and the Supreme Court denied our petition for a writ of certiorari (411 U.S. 920 (1973)).

*Society for Animal Rights v. Schlesinger* involved the mass killing of millions of blackbirds in Kentucky and Tennessee by chemical spraying in alleged violation of NEPA, the Migratory Bird Act and other statutes. After the court refused to transfer the case and a preliminary injunction was denied (512 F.2d 915 (D.C. Cir. 1975)), the Fish and Wildlife Service agreed to prepare a comprehensive environmental impact statement on the program and not to provide the chemical to kill blackbirds until the statement was finished. Congress subsequently passed a statute amending NEPA, partially nullifying the agreement, and allowing the chemical to be used prior to completion of the environmental statement.

We represented the Audubon Society at EPA meetings concerning the use of pesticides against blackbirds in Tennessee in violation of the federal pesticide laws.

In *Sierra Club v. Andrus*, 395 F. Supp. 1187 (D.D.C. 1975), the district court held that NEPA required preparation of an environmental impact statement on the annual budget of the National Wildlife Refuge System because budgetary decisions have a substantial effect on the management of the refuges. The court of appeals agreed that environmental statements must be prepared on budget proposals and ordered the Office of Management and Budget to issue regulations concerning the preparation of such environmental statements. 581 F.2d 895 (D.C. Cir. 1978). However, it required statements to be prepared on budget requests only when they make significant changes in
the status quo and not on an annual basis. The Supreme Court reversed and held that NEPA does not require the preparation of environmental impact statements on the budgets of federal agencies. 442 U.S. 347 (1979). The Court also stated, however, that environmental statements are required on any programmatic decisions related to the budget. Other counsel represented the Sierra Club in the Supreme Court.

*Defenders of Wildlife v. Andrus*, 428 F. Supp. 167 (D.D.C. 1977), involved the validity of the shooting hours in the waterfowl hunting regulations of the Fish and Wildlife Service. The district court held that the shooting hours were invalid because they were not based on adequate studies showing that they protected migratory birds.

*National Rifle Ass’n of America, Inc. v. Kleppe*, 425 F. Supp. 1101 (D.D.C. 1976), affirmed, 571 F.2d 674 (D.C. Cir. 1978), involved the validity of the regulations issued by the Fish and Wildlife Service to reduce the use of lead shot in duck hunting. We represented Defenders of Wildlife as intervenors in support of the Service. The court upheld the regulations.

*Conner v. Andrus* involved a challenge in the District Court for the Western District of Texas to Fish and Wildlife Service regulations prohibiting all duck hunting in designated areas of New Mexico and Texas. We represented Defenders of Wildlife in an unsuccessful attempt to intervene in support of the validity of the regulations.

We represented the Roosevelt Campobello International Park Commission in adjudicatory proceedings before EPA regarding EPA’s decision to disapprove an NPDES permit for a refinery in Eastport, Maine. The issues chiefly involved the navigational risks and the threat of oil spillage to the bald eagle and whales, which are endangered species. The Administrative Law Judge approved the permit. The court of appeals held that the ALJ did not have the best available scientific evidence concerning the risk of oil spills and required certain studies before a decision could properly be made to approve a permit. The court also held that these additional studies concerning risk would have to be addressed in a supplemental environmental impact statement. *Roosevelt Campobello International Park Commission v. EPA*, 684 F.2d 1041 (1st Cir. 1982).

We represented the Roosevelt Campobello International Park Commission as intervenors when the Pittston Company applied for an exemption from the Endangered Species Act to the Endangered Species Review Board relating to its proposed refinery. The case was dismissed when the court found that the company’s application for an exemption was premature. *Pittston Co. v. Endangered Species Committee*, 14 ERC 1257 (D.D.C. 1980).

*North Slope Borough v. Andrus*, which is discussed elsewhere in this memorandum, involved the protection of endangered species of whales under the Endangered Species Act.
HIGHWAYS

*Upper Pecos Ass'n v. Peterson* involved a challenge to construction of a road through a national forest in New Mexico to be constructed with funds granted by the Department of Commerce, on the ground that the environmental impact statement required by NEPA was not prepared prior to the grant of funds. We prepared the petition for a writ of certiorari, which was granted by the Supreme Court. 406 U.S. 944 (1972). The government then agreed to preparation of a new environmental impact statement and reconsideration of the project on the basis of it.

*Smeltzer v. Adams* involved whether the proposed construction of a highway in north-central Iowa violated NEPA and Section 4(f) of the Department of Transportation Act. The court held that the Department of Transportation was required to prepare an environmental statement before the highway could be built analyzing its cumulative impact and that the site-specific environmental statement for a 20-mile segment of the highway was inadequate. 11 ERC 1367 (N.D. Iowa 1978). A new EIS was prepared which the district court held was adequate under NEPA.

*Farmland Preservation Ass'n v. Goldschmidt* involved whether the proposed construction of an interstate highway in east-central Iowa violated NEPA. Plaintiffs, a coalition of farmers, asserted that the EIS inadequately considered alternatives, failed to consider the cumulative impact of constructing the entire interstate highway, and inadequately analyzed secondary impacts. The district court held that the environmental statement was adequate and the court of appeals affirmed. 491 F. Supp. 601 (N.D. Iowa 1979), affirmed, 611 F.2d 233 (8th Cir. 1979).

In *National Wildlife Federation v. Adams*, we brought suit in the District of Columbia on behalf of national environmental groups and local landowners challenging the construction of a highway in Kitsap County, Washington, on the grounds that the President's Executive Order 11990 relating to wetlands, NEPA, and a military construction statute had been violated. After the suit was transferred to the State of Washington, other counsel assumed responsibility for the case. The district court denied plaintiffs' motion for a preliminary injunction and summary judgment and the decision was affirmed on appeal. 13 ERC 1343 (W.D. Wash. 1979), affirmed, 629 F.2d 587 (9th Cir. 1980).

*North Carolina Alliance for Transportation Reform v. United States Department of Transportation* (M.D.N.C., No. 1:99CV00134) involved a challenge to the construction of the western section of a proposed beltway around Winston Salem, on the ground that the environmental impact statement required by NEPA was inadequate and did not properly assess the environmental effects of the proposed highway. The suit was brought in 1999 on behalf of the North Carolina Alliance for Transportation Reform and Friends of Forsyth. Shortly after we filed the complaint and a motion for preliminary injunction and/or temporary restraining order, the Federal Highway Administration withdrew the Record of Decision due to the lawsuit and problems with Winston Salem's air compliance. The Federal Highway Administration also determined that additional environmental analysis would be considered before the Record of Decision is reissued. The parties voluntarily dismissed the case. The court then held that the citizen group were entitled to its
attorneys' fees under the Equal Access to Justice Act because the government's position was in bad faith and not substantially justified. 151 F. Supp. 2d 661 (M.D.N.C. 2001).

We have advised the Sierra Club concerning its participation in highway litigation in the City of Baltimore, a citizens group concerning possible highway litigation in Baltimore County, an individual concerning highway litigation in northern Virginia, a group of farmers in Iowa regarding their rights to additional connector roads to a proposed freeway, and a citizen group in Virginia concerning a highway in the Blue Ridge, Mountains.

AIRPORTS

In Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190 (D.C. Cir.), certiorari denied, 112 S. Ct. 616 (1991), the firm represented a citizen group which challenged the approval of the Federal Aviation Administration of an Airport Layout Plan for a cargo hub in Toledo, Ohio. Petitioners claimed in the court of appeals that the approval is invalid because the environmental impact statement failed to analyze adequately alternative sites for this hub or the noise impact of its operations. The court of appeals held that the EIS was adequate because it discussed the alternatives of approving the expansion and not approving it and that the EIS did not have to discuss alternative locations in depth. The court also held that while the FAA violated the regulations governing environmental impact statements by publishing an EIS prepared largely by a contractor the FAA itself did not select, the violation did not warrant invalidating the EIS. We did not represent the petitioners in the Supreme Court.

In State of Missouri v. Coleman, we represented HUSTLE, a group of Illinois farmers and other concerned residents who intervened in order to oppose the construction of a new airport in the Columbia Waterloo area of Illinois to serve the St. Louis region. While the district court rejected our position (427 F. Supp. 1252 (D.D.C. 1977)), the Secretary of Transportation was persuaded to disapprove further federal funding for the new airport and it was not built.

In Alliance for Legal Action v. FAA, an organization of homeowners challenged the approval of plans to expand the Greensboro, North Carolina, airport for a FedEx facility. The challenge was based on the adequacy of the environmental impact statement, and particularly its treatment of alternative sites and the effects of noise. The Fourth Circuit held that the statement was "not perfect" but was adequate to support the agency decision. Alliance for Legal Action v. Federal Aviation Administration, 2003 U.S. App. LEXIS 13845 (4th Cir. 2003).

RAILROADS

Sierra Club v. ICC involved the decision of the Interstate Commerce Commission to approve a 130-mile railroad to facilitate coal development in northeastern Wyoming. The court held that the ICC decision violated NEPA and remanded the case to the agency. 11 ERC 1241 (D.C. Cir. 1978). Subsequently, however, the court en banc withdrew its earlier decision and ordered the case to be heard before the entire court of appeals. In light of the construction that had already occurred on
the rail line and the small probability that further litigation would prevent the completion of the line, the Sierra Club chose to dismiss the appeal.

We represented a Wyoming landowner and the WyoBraska Landowners Association, an organization of Wyoming and Nebraska farmers and ranchers, challenging the application of the Chicago and Northern Western Transportation Company to the Interstate Commerce Commission for authority to construct and operate a new 56-mile rail line in Wyoming and Nebraska. The Commission approved the line. The court of appeals upheld the Commission's approval, but stressed that the mitigating measures ordered by the ICC were to be taken seriously by the railroad and could be enforced by the landowners. *Mobil Oil Corp. v. ICC*, 685 F.2d 624 (D.C. Cir. 1982).

We represented the Northern Plains Resource Council in proceedings before the Interstate Commerce Commission challenging a proposed 89-mile rail line to the Powder River Basin in Montana. NPRC contended, in part, that the railroad proposal violated the Mineral Leasing Act because the railroad's backers planned to transport coal from their own federal coal leases on the rail line. The ICC first agreed with NPRC that the issue was a significant one requiring a hearing. After the hearing, an ICC administrative law judge accepted many of NPRC's contentions but ultimately concluded there was no statutory violation.

**NUCLEAR POWER**

In *Peshlakai v. Duncan*, we represented 89 Navajo Indians and Friends of the Earth in an action seeking to force six federal agencies to prepare national, regional and site-specific environmental impact statements on the mining and milling of uranium. The district court denied a temporary restraining order and preliminary injunction as to a small *in situ* mining project. 476 F. Supp. 1247 (D.D.C. 1979).

We participated at EPA hearings on thermal standards to be used at the Calvert Cliffs' nuclear power plant.

We advised a local citizens group in the Staunton River area of Virginia concerning its opposition to the construction of a pump storage and nuclear power complex.

We prepared an extensive analysis for the Natural Resources Defense Council of the legal requirements for the supplemental environmental impact statement on the proposed Clinch River Liquid Metal Fast Breeder Reactor and concerning the inadequacy of the existing impact statement. The Nuclear Regulatory Commission determined that a supplemental impact statement was required.

**GEOTHERMAL ENERGY**

We represented the Santa Clara Pueblo in hearings held by the Department of the Interior concerning an environmental impact statement on a proposed geothermal demonstration project in New Mexico. We also submitted comments for the Pueblo to the Department of the Interior which analyzed the Department's documents on the impact of the project on the Pueblo's religion. The state
air board rejected an industry proposal which would have greatly relaxed state hydrogen sulfide emission standards and thereby allowed expanded geothermal development. We also prepared a legal memorandum for the Pueblo on geothermal leases entered into by the Department of Agriculture in a national forest. The proposed geothermal demonstration project was later abandoned.

OTHER ELECTRIC POWER GENERATION AND TRANSMISSION

In Concerned Citizens United v. Kansas Power and Light, 215 Kan. 218, 523 P.2d 755 (1974), which was brought in Kansas state court, plaintiffs contended that, under Kansas law, an electric utility could not condemn land for a coal-burning power plant because it did not have proper zoning and could not show that it would be able to comply with various land, air and water quality laws. The Kansas Supreme Court rejected plaintiffs' position. However, as a result of this litigation, the Kansas legislature passed a new statute prohibiting condemnation of land until the condemnor has shown that it can comply with relevant laws.

In Woida v. United States, 446 F. Supp. 1377 (D. Minn. 1978), we brought suit under NEPA and the Rural Electrification Act on behalf of a coalition of citizens groups in Minnesota and North Dakota which opposed the construction of a large electric generating plant, an associated strip mine, and approximately 500 miles of extra-high voltage electric transmission lines. Plaintiffs sought an injunction against further construction of the unbuilt portions of the transmission lines and the microwave communications system associated with the project on the ground that the environmental impact statement was inadequate. The motion for a preliminary injunction was denied.

We analyzed for Friends of the Earth whether the Laramie River in Wyoming is a navigable river, requiring Army Corps of Engineers approval for the building of a power plant which would use its waters.

We advised a local citizens group in Utah which opposed construction of the Intermountain Power Project, a massive coal-fired generating plant. Our analysis focused on arguments under NEPA, the Federal Land Policy and Management Act, the Endangered Species Act, and the Clean Air Act.

Bruce Terris gave an address on public participation in energy-related decision-making sponsored by the National Science Foundation.

LIQUID NATURAL GAS

We participated in extensive adjudicatory proceedings before the Federal Power Commission and Federal Energy Regulatory Commission concerning applications to import and store liquid natural gas (LNG) in a terminal on Staten Island on the ground that the transportation and storage of LNG in a highly populated area is too dangerous. The facility has never been used for LNG.
We drafted bills concerning the appropriate location of LNG facilities and liability for any harm caused to persons or property due to accidents involving these facilities.

SYNTHETIC FUELS

Bruce Terris was a member of the Advisory Panel on Synthetic Fuels to the House Science and Technology Committee in 1979-1980. The Committee investigated the environmental and other problems concerning the development of synthetic fuels. We wrote papers for the Panel on the effect of environmental regulations on the development of synthetic fuels and on fast-track legislation for speeding government consideration of projects affecting the environment which were then pending in Congress.

COAL DEVELOPMENT

*Sierra Club v. Morton* was brought on behalf of the Sierra Club, National Wildlife Federation and rancher organizations in Montana and South Dakota to prevent the Department of the Interior and other federal agencies from issuing coal leases, entering into water options, or taking other actions related to coal development in the Northern Great Plains without preparing an environmental impact statement analyzing the impact of development on the entire region. The district court rejected our contentions. 421 F. Supp. 638 (D.D.C. 1974). The court of appeals held that, if the federal government continued with its huge coal development in the Northern Great Plains, a comprehensive environmental statement had to be prepared. 514 F.2d 856 (D.C. Cir. 1975). The Department of the Interior then agreed to prepare a series of subregional environmental statements on coal development in various parts of the country. The Supreme Court reversed the decision of the court of appeals and held that the subregional statements satisfied NEPA. 427 U.S. 390 (1976). In doing so, it affirmed the requirements of NEPA as to comprehensive environmental statements when various governmental actions are interrelated.

*Cady v. Morton*, 527 F.2d 786 (9th Cir. 1975), was brought by a number of Montana ranchers to challenge the Department of the Interior's approval of a mining plan for a strip mine in Montana. The court held that NEPA required that an environmental impact statement be prepared on the entire 30,000 acres leased for a strip mine, rather than just on the first small portion of the mine, and ordered reconsideration of the lease on the basis of the new EIS.

In *NRDC v. Hughes*, we represented the Natural Resources Defense Council, the Environmental Defense Fund and western environmental organizations in a suit which resulted in a decision that the programmatic environmental impact statement prepared by the Department of the Interior on the entire federal coal leasing program was inadequate. The court's order limited federal coal leasing pending the completion of an adequate programmatic statement. 437 F. Supp. 851 (D.D.C. 1977); 454 F. Supp. 148 (D.D.C. 1978). The plaintiffs and the Department of the Interior then agreed to a settlement in which slightly more leasing was permitted and the government dismissed its appeal. The case was appealed by industry intervenors. While their appeal was pending, the Department of the Interior issued its new environmental impact statement on the federal coal leasing programs. The appeal was then dismissed as moot.
In *NRDC v. Berkland*, 458 F. Supp. 925 (D.D.C. 1978), affirmed, 609 F.2d 553 (D.C. Cir. 1979), we represented the Natural Resources Defense Council and the Environmental Defense Fund in a suit challenging the position of the Department of the Interior that the Secretary has no discretion to deny a preference right lease even if the lease would result in severe environmental harm. The district court held that environmental impact statements had to be prepared before the Department could enter into major leases and that it could consider environmental factors in deciding whether there were commercial quantities of coal to lease. However, the court further held that, if there were commercial quantities of coal, the Secretary had no authority to refuse to lease on environmental or other grounds.


**OIL DEVELOPMENT**

In *Northslope Borough v. Andrus*, we brought suit on behalf of Inupiat natives on the North Slope of Alaska against an oil and gas sale in the Beaufort Sea because of the threat to bowhead whales and other native subsistence resources. Although the district court initially denied our request for a preliminary injunction (486 F. Supp. 326 (D.D.C. 1979)), the court later upheld several of our claims under the Endangered Species Act and NEPA and enjoined actions to consummate the sale or carry out pre-exploratory activities (486 F. Supp. 332 (1980)). After all parties appealed, the court of appeals affirmed the injunction and upheld the legality of the lease sale. 642 F.2d 589 (D.C. Cir. 1980). In the meantime, however, the Department of the Interior issued a new biological opinion giving more protection to bowhead whales from oil development activities. Subsequently, the district court ordered the government to pay the Borough's attorneys' fees. 515 F. Supp. 961 (D.D.C. 1981). However, the order was vacated by the court of appeals. 689 F.2d 222 (D.C. Cir. 1982).

In *Northslope Borough v. Hammond*, we brought suit against the state portion of the same Beaufort Sea oil and gas sale in Alaska Superior Court, raising claims under state law. While that court and the Alaska Supreme Court denied a preliminary injunction, the Superior Court subsequently held that the state failed to explain adequately its reasoning as to why the sale would not harm the Alaskan natives and enjoined activities to develop the leases. The injunction was stayed by the Alaska Supreme Court. After the state issued a new decision document, the Superior Court again enjoined lease activities, holding that the state lacked sufficient information to conclude that oil development outside the barrier islands would not harm the subsistence lifestyle of the Alaskan natives. *Northslope Borough v. Hammond*, 17 ERC 1656 (1980). The Alaska Supreme Court reversed the Superior Court's holding on this issue, but held that the state had failed to make adequate findings under its Coastal Zone Management Act and remanded the case for further administrative proceedings. 645 P.2d 750 (1982). The state agreed to pay a portion of the attorneys' fees.
We filed a petition for review on behalf of the North Slope Borough challenging the Secretary of the Interior's five-year plan for offshore oil and gas development on the ground that it failed to carry out his trust responsibilities to Alaskan natives. The court of appeals rejected the Borough's arguments, but held that the plan was invalid under the Outer Continental Shelf Lands Act on grounds raised by other challengers. *State of California v. Watt*, 668 F.2d 1290 (D.C. Cir. 1981). The court of appeals remanded the program to the Secretary of the Interior for revision. After issuance of the revised program, the Borough joined five states, two local governments, and other environmental groups in filing new petitions for review. Petitioners claimed that the revised program was in violation of the prior court of appeals' order and the Outer Continental Shelf Lands Act. The court of appeals issued an order upholding the validity of the revised program. 712 F.2d 584 (D.C. Cir. 1983).

In *North Slope Borough v. Watt*, 20 ERC 1457 (D. Alas. 1984), we filed a suit challenging decisions by the Secretary of the Interior to reduce the seasonal restrictions on oil and gas drilling operations in the Beaufort Sea which were designed to protect the bowhead whale during its migration. The Borough also challenged the adequacy of the biological opinions on these decisions issued by the National Oceanic and Atmospheric Administration under the Endangered Species Act. The claims were rejected by the district court.

In *North Slope Borough v. Hodel*, we filed a suit challenging decisions by the Secretary of Interior to authorize exploratory drilling operations in the Beaufort Sea during the fall bowhead whale migration. The suit contended that noise from the drilling operations would constitute takings of bowhead whales by harassment, in violation of the Endangered Species and Marine Mammal Protection Acts. The suit also raised claims under the Outer Continental Shelf Lands Act, the Coastal Zone Management Act, and the Alaska National Interest Lands Conservation Act. The case was dismissed pursuant to a settlement agreement in which the drilling companies agreed to additional restrictions on drilling during the whale migration.

We have provided advice to the North Slope Borough concerning federal oil and gas activities on the North Slope of Alaska, including on the adequacy of proposed operating orders, environmental impact statements, regulations affecting marine mammals, biological opinions on endangered whales, coastal zone management plans, and other measures to protect the environment during OCS exploration and development and on energy production proposals. We have also provided advice concerning oil and gas activities in the Norton Sound off the western coast of Alaska to native groups.

*State of Alaska v. Kleppe* challenged the validity under NEPA of the Gulf of Alaska OCS oil and gas sale. We represented the City of Yakutat, the Cordova District Fisheries Union and United Fisherman of Alaska. The district court dismissed the action. 404 F. Supp. 26 (D.D.C. 1975). The court of appeals affirmed except that it held that the Department of Interior was required to consider the inclusion of a termination clause in the lease. 580 F.2d 465 (D.C. Cir. 1978). After oil company intervenors petitioned for a writ of certiorari in the Supreme Court, the case was dismissed as moot because of the passage of the Outer Continental Shelf Lands Act Amendments. 439 U.S. 922 (1978).
Southern California Ass'n of Governments v. Kleppe and related cases were brought by fifteen cities and counties in Southern California, the Consumer Federation of America and a number of environmental organizations to challenge the validity of the accelerated leasing program for the Outer Continental Shelf and the Southern California oil and gas sale. A preliminary injunction was denied. 6 ELR 20115 (D.D.C. 1975). After transfer to the Central District of California, the cases brought by the cities and counties were dismissed on grounds of res judicata (413 F. Supp. 563 (1976)) and the private groups dismissed their suit voluntarily.

In GOO v. Andrus, we represented Get Oil Out and others seeking to require preparation of site-specific impact statements for several proposals to develop and produce oil and gas resources in the Santa Barbara Channel. The district court held that the environmental assessments were inadequate and enjoined construction of the oil platforms. 468 F. Supp. 82 (C.D. Cal. 1979). After the new environmental assessments were prepared, the district court held that an environmental impact statement was not required. 477 F. Supp. 40 (1979).

We represented the Sierra Club and other environmental groups in challenging the first sale of oil and gas leases in the Eastern Gulf of Mexico in 1973. Plaintiffs claimed that of the environmental impact statement prepared for the lease sale was inadequate under NEPA. The district court denied injunctive relief and the court of appeals affirmed. Sierra Club v. Morton, 510 F.2d 813 (5th Cir. 1975).

Bruce Terris was a consultant to the Ad Hoc Committee on the Outer Continental Shelf and to the Merchant Marine and Fisheries Committee of the House of Representatives concerning the Outer Continental Shelf Lands Act of 1978. Another attorney in the firm was a member of the Committee on Assessment of Arctic Ocean Engineering Support Capability of the National Research Council. This committee studied engineering and environmental obstacles to development of oil and gas resources in the Arctic Ocean off of Alaska.

**OCEAN RESOURCES**

We assisted the Environmental Defense Fund in preparing comments opposing a proposal of the National Marine Fisheries to increase the maximum take permitted for important fishery resources in New England. The comments emphasized that the proposal undermined the achievement of important long-range goals of the Fishery Conservation and Management Act.

We represented Get Oil Out in supporting designation of a marine sanctuary off of California.

We testified or submitted testimony on behalf of the New England Governors' Conference in matters relating to deep-water ports and double-bottom oil tankers.

**ENERGY CONSERVATION**
We represented the Environmental Defense Fund in hearings before the Department of Transportation urging stronger economy standards for automobiles under the Motor Vehicle Information and Cost Savings Act. This work consisted of finding expert witnesses and assisting in the preparation of their testimony.

We represented a coalition of environmental groups (Sierra Club, Friends of the Earth, Environmental Defense Fund, and Natural Resources Defense Council) in a Federal Trade Commission rulemaking proceeding involving the labeling and advertising of home insulation. Through the submission of written comments, presentation of witnesses, and cross-examination of witnesses presented by other interested parties, we urged promulgation of a rule which would enhance residential energy conservation efforts through the purchase of safe and effective insulation. The Commission promulgated a rule which was consistent with our position, requiring that consumers be informed of information about the effectiveness of insulation, expressed in R-values, through labeling, fact sheets, advertisements and other promotional material.

We prepared an analysis of energy conservation for the New England Governors' Conference.

WATER PROJECTS

We represented the Deep River Citizens' Coalition, the Deep River Coalition, Inc., and the American Canoe Association, Inc., in a suit against the North Carolina Department of Environment and Natural Resources regarding its issuance of a 401 Certification under the Clean Water Act for a dam and reservoir. The North Carolina Environmental Management Commission and Superior Court granted summary judgment upholding the certification. On appeal, the North Carolina Court of Appeals held that the certification did not violate water quality standards and that the issue as to preparation of an environmental impact statement after the approval of the project was moot since the statement was subsequently prepared. *Deep River Citizen's Coalition v. North Carolina Department of Environment and Natural Resources*, 598 S.E. 2d 565 (N.C. Ct. App. 2004).

National Audubon Society v. Kleppe involved the Garrison Diversion project in North Dakota. The suit claimed that the environmental impact statement and wildlife mitigation plan were inadequate. The district court rejected the government's motions to transfer the case to North Dakota. 6 ELR 10179, 65371 (D.D.C. 1976). Plaintiff and the Department of the Interior agreed to the halting of almost all construction pending preparation of a comprehensive environmental statement and a new wildlife mitigation plan and reauthorization of the project by Congress. When the Department violated its agreement, we obtained an order from the court of appeals that the agreement was valid. As a result, the district court issued an injunction against further acquisition of land or construction. 17 ERC 1401 (D.D.C. 1981). The court of appeals lifted the injunction and reversed on the ground that the agreement had expired. 678 F.2d 299 (D.C. Cir. 1982). A settlement was then arranged which allowed a part of the project to be built, but significantly reduced the environmental harm.
We represented American and Canadian intervenors in a case challenging the approval by the Federal Energy Regulatory Commission of a proposal to raise Ross Dam in the State of Washington. The issues involved NEPA, the Administrative Procedure Act, the Federal Power Act, and the Wild and Scenic Rivers Act, including whether an environmental impact statement must consider environmental damage caused in a foreign country. The court of appeals upheld approval of the dam, in part because several of the critical issues would be considered in proceedings before the Federal Energy Regulatory Commission. *Swinomish Tribal Community v. FERC*, 627 F.2d 499 (D.C. Cir. 1980). A settlement was reached with Canada under which the project was not built.

We represented the National Wildlife Federation, other national environmental groups, and several Colorado environmental groups in an action seeking to prevent the Denver Water Board from constructing large water treatment and supply facilities in the Rocky Mountains which could cause substantial environmental damage and would be unnecessary if reasonable water conservation measures were adopted. *National Wildlife Federation v. Andrus* (D.D.C.). The case involved claims that the EIS inadequately considered cumulative impacts, alternatives, and secondary impacts; that the EIS contained grossly inaccurate data; and that the proposal was approved in violation of the Federal Lands Policy Management Act and Section 404 of the Federal Water Pollution Control Act. The case was settled when the Denver Water Board agreed to adopt conservation measures, to establish a continuing advisory Board which would include members of environmental groups, to review and comment upon the Board's development plans, to take other actions to provide more public participation in its decisionmaking process, and to pay the attorneys' fees of plaintiffs.

In *Oudas v. Block*, a landowner in West Virginia sued to enjoin construction of a small dam on the ground that the United States Department of Agriculture and Soil Conservation Service failed to prepare a complete environmental impact statement adequately assessing the impact of the project. The district court transferred the case to West Virginia. 516 F. Supp. 13 (D.D.C. 1981). The West Virginia court denied the injunction and granted summary judgment for the defendant.

**FORESTS AND PARKS**

*West Virginia Division of Izaak Walton League v. Butz* was brought by the Izaak Walton League, Sierra Club, Natural Resources Defense Council, and others to enjoin the "clear-cutting" practices of the Forest Service in the Monongahela National Forest. The district court and the court of appeals held, under the Organic Act of 1897, that the Forest Service could allow only the cutting of mature timber in national forests, not young growing trees, and that each tree must be individually marked prior to sale. 367 F. Supp. 422 (D. W.Va. 1973), affirmed, 522 F.2d 945 (4th Cir. 1975). Congress passed the National Forest Management Act of 1976 as a result of this decision, which modified the decision, but included forestry requirements providing substantially more environmental protection than previously existed.

Bruce Terris was chairman of a committee created by Senator Jennings Randolph to draft legislation governing silvi-cultural practices in the national forests in order to minimize environmental damage from timber cutting. This bill was introduced by Senator Randolph and Congressman Brown. Mr. Terris testified in support of the bill and we represented the Coalition to
Save Our National Forests in its efforts in the Congress to have the bill adopted. Elements of that
bill were included in the National Forest Management Act of 1976.

In *Sierra Club v. Butz*, 3 ELR 20071 (N.D. Cal. 1969), the Sierra Club challenged the
decision of the Forest Service to permit timber cutting in undeveloped, roadless areas within the
national forests without preparation of environmental impact statements. The court issued a
preliminary injunction against further timber sales covering 50 million acres of land. The Forest
Service then agreed to prepare environmental impact statements pursuant to NEPA before allowing
development of the roadless areas.

*Sierra Club v. Butz* was brought under NEPA, the Organic Act of 1897, and a variety of other
federal statutes to prevent the largest timber sale in the United States in Tongass National Forest in
Alaska. We participated in the briefing of this case in the Court of Appeals for the Ninth Circuit,
which remanded the case to the district court for further consideration. At the request of the
company, the Forest Service then canceled the contract.

*United States v. Parker* involved a decision by the Court of Appeals for the Tenth Circuit
holding, under the Wilderness Act, that an area in a national forest in Colorado could not be subject
to timber cutting until it had been studied for designation as a wilderness area. The government
petitioned the Supreme Court for a writ of certiorari and we wrote the brief opposing that petition.
The government's petition was denied. 405 U.S. 989 (1972).

*Sierra Club v. Morton*, 405 U.S. 727 (1972), involved the Sierra Club's standing to sue to
prevent the construction of a large resort and connecting highways and electrical transmission lines
by the Disney Company in the Mineral King area of Sequoia National Park. We submitted an
amicus curiae brief in the Supreme Court on behalf of The Wilderness Society, Izaak Walton League
of America, and Friends of the Earth. Although the Supreme Court held that standing had not been
shown, it remanded the case to the district court to allow evidence on this issue as our brief had
requested. On remand, standing was upheld and the project was not built.

We represented Natural Resources Defense Council, the Sierra Club, and other environmen-
tal organizations which intervened in *Alaska v. Carter* in the District Court of Alaska. See 462 F.
Supp. 1155 (D. Alas. 1978). The case involved the efforts of the State of Alaska to invalidate the
actions of the President, the Secretary of the Interior, and the Secretary of Agriculture in 1978 to
protect over 100 million acres of public lands in Alaska pending Congressional action to place the
lands in the federal land management system. Following the district court's decision in *Anaconda
Copper Co. v. Andrus* (discussed below) and the enactment by Congress in 1980 of the Alaska
National Interest Lands Conservation Act, the case was settled on terms that preserved all the lands
placed in 1979 by the President and the Secretaries of Interior and Agriculture in the federal land
management system.

We represented many of these same groups as intervenors in *Anaconda Copper Co. v.
Andrus and Bristol Bay Native Corp. v. Carter* which also involved industry challenges to the
President's efforts to protect Alaska lands. In *Anaconda Copper Co. v. Andrus*, the district court
held that the President's actions under the Antiquities Act to establish national monuments were lawful. 14 ERC 1853 (D. Alas. 1980). In light of this decision and the enactment of the Alaska Lands Act, the plaintiffs in *Bristol Bay* dismissed their case.

We were members of the Alaska Law Council which was formed for the purpose of providing legal resources to protect the Alaska environment. We prepared a background memorandum for the Council describing the major environmental issues facing Alaska. We also assisted the Alaska Coalition in relation to legislation and regulations concerning disposition and management of federal lands in Alaska.

We prepared an analysis for the National Parks and Conservation Association concerning the legal issues raised by proposed dam reconstruction in the Grand Teton National Park. In particular, we considered the statutory prohibitions against mining for borrow material within the park's boundaries.

**HISTORIC PRESERVATION**

*Ely v. Velde* involved litigation by local citizens under NEPA and the National Historic Preservation Act to challenge the grant of federal funds under the Law Enforcement Assistance Act for construction of a prison in a historic area of Virginia. We participated in the litigation in the court of appeals, which held that the grant was illegal without preparation of an environmental impact statement. 451 F.2d 1130 (4th Cir. 1971). After more litigation, the project was abandoned by the State of Virginia.

In *Patrons of the Adams House v. Washington*, we represented a local citizens group which sought injunctive relief to stop the demolition of a house under consideration for designation as a historic landmark. The Superior Court of the District of Columbia granted injunctive relief pending the determination by the Joint Committee on Landmarks on the historic status of the house. The house was subsequently saved.

In *Crosby v. Young*, 512 F. Supp. 1363 (E.D. Mich. 1981), we represented the plaintiffs in an effort to prevent the City of Detroit from demolishing a historic, ethnic neighborhood, Poletown, in order to build a GM Cadillac assembly plant. The claims brought under NEPA, National Historic Preservation Act, and the Clean Air Act were rejected by the district court.

We represented the Natural Resources Defense Council, Save Our Broadway Committee, Actors Equity, and seven other theater unions in challenging the destruction of two historic theaters in New York City, the Helen Hayes and the Morosco, for construction of a hotel. Suit was brought in both federal and state court under NEPA, the New York State Environmental Quality Review Act, the National Historic Preservation Act, and the Housing and Community Development Act. As a result of the suit, the Department of the Interior agreed to consider the administrative appeal to have the Morosco declared eligible for the National Register of Historic Places and the theater was found eligible. We then participated in proceedings before the Advisory Council on Historic Preservation which approved a Memorandum of Agreement allowing the destruction of the theater. Subse-
quently, the district court denied a preliminary injunction (Natural Resources Defense Council v. City of New York, 528 F. Supp. 1245 (S.D.N.Y. 1981)), the court of appeals reversed that decision and remanded for a partial trial on the merits (12 ELR 20182 (2d Cir. 1982)), the district court again ruled for the City (534 F. Supp. 279 (S.D.N.Y. 1982)), the court of appeals affirmed (672 F.2d 292 (2d Cir. 1982)), and the Supreme Court first issued and then lifted an injunction (456 U.S. 920 (1982)). In the state courts, after receiving several temporary injunctions, we lost in the New York Supreme Court, the Appellate Division, and the Court of Appeals. Natural Resources Defense Council v. City of New York, 112 Misc.2d 106 (Sup. Ct., N.Y. Co. 1982), affirmed without opinion, 86 A.D. 2d 818 (1st Dept. 1982), leave to appeal denied, 46 N.Y.2d 501 (1982). As a result, the theaters were destroyed. However, the case spurred successful efforts to confer landmark status on other New York theaters.

LAND USE AND ZONING

Coalition Against Lincoln West v. City of New York was brought in New York state court on behalf of residents of the upper West Side of Manhattan, challenging the City's approval of a massive residential/commercial development in that area. The suit was based on violations of the New York State Environmental Quality Review Act (SEQRA) and the New York City Charter requirements for public participation in land use decisions. The trial court held that the City's environmental impact statement violated SEQRA because it failed to consider reasonable alternatives to the project. The Appellate Division reversed and the reversal was upheld by the Court of Appeals. 94 A.D.2d 483 (1st Dept. 1983), affirmed, 60 N.Y.2d 805 (1983).

Sierra Club v. Lynn, 364 F. Supp. 834 (W.D. Tex. 1973), was brought on behalf of the Sierra Club and a number of local organizations challenging a grant by the Department of Housing and Urban Development for a new town which threatened San Antonio's water supply. The suit contended that the environmental impact statement was inadequate. The case was settled when the government agreed to do additional studies prior to disbursing funds and an new environmental statement was prepared.

Arlington v. Board of Supervisors of Fauquier County was brought in the Circuit Court for Fauquier County, Virginia, challenging the county's approval of a subdivision in a rural area. The plaintiffs contended that the county violated its subdivision ordinance because the plan was inconsistent with the county's comprehensive plan and other provisions of the ordinance relating to septic tanks, roads and the like. The circuit court rejected these claims and the Virginia Supreme Court refused to hear the case.

Citizens Ass'n of Georgetown v. Zoning Commission challenged as illegal the rezoning of the Georgetown waterfront to allow mixed-use development because it was inconsistent with the comprehensive plan for the District of Columbia and was adopted after illegal ex parte communications between the D.C. government and waterfront developers. The Superior Court rejected our contentions. We appealed to the District of Columbia Court of Appeals which en banc rejected both claims. 392 A.2d 1027 (1978).
We represented three Colorado environmental organizations -- Western Colorado Resource Council, Colorado Open Space Council and High Country Citizens Alliance -- and two national environmental organizations -- Friends of the Earth and the Wilderness Society -- in a challenge to a land-use plan prepared by the Bureau of Land Management for part of the North Fork Valley in western Colorado. The issues involved the right of affected citizens to raise such a challenge and the duties of the BLM under NEPA, the Federal Land Policy and Management Act, and the Mineral Leasing Act with regard to land-use planning. This challenge was rejected at the agency level.

We represented a group of citizens in Charles County, Maryland, who opposed a proposed outdoor shooting range which was to be located within one mile of the site of the largest Great Blue Heron rookery on the Atlantic Coast. As a result of this opposition, the proposal was withdrawn.

We represented the Community Planning Association of Catonsville, Maryland, at hearings of the Planning Board of Baltimore County on a proposed large subdivision.

We advised a citizens group in King George County, Virginia, concerning its opposition to proposed sand and gravel mining operations on prime agricultural farm land. We analyzed whether the developers had procured valid permits under federal, state and local law.

We represented a group of citizens in McLean, Virginia, who sought to persuade the County of Fairfax to require a developer to revise his construction plans to make the development more compatible with the surrounding environment.

**NOISE**

We served as technical consultants to an EPA project which was preparing a manual on noise enforcement litigation by state and local prosecutors.

**ENVIRONMENTAL TORT LITIGATION**

We represented a group of citizens who had brought tort suits against Koppers Industries for harm to them from breathing air pollution and from a plume of polluted groundwater near their homes due to the creosote manufactured by Koppers. Our clients were initially represented by another firm and the case was settled. Our clients decided the settlement was unfair and refused to sign the settlement papers. Koppers successfully was able to obtain an order enforcing the agreement in Arkansas Circuit Court.

We advised residents in Maryland concerning possible environmental tort litigation relating to fluids emitted by an aluminum reduction plant.

Bruce Terris advised the Canadian St. Regis Band of Mohawk Indians concerning the appropriateness of a proposed settlement of environmental tort litigation brought by the Band against a large aluminum company relating to the emission of fluorides. Mr. Terris recommended that the settlement be approved. The Band approved the settlement.
In June 1980, Bruce Terris spoke at a conference in Berlin, concerning the environmental law of Germany and the United States, on the American law of nuisance. He subsequently gave talks in three other German cities on behalf of the United States government on American environmental law.

In March 1989, Bruce Terris participated in the Thirteenth Annual United States District Court Judicial Conference for the District of New Jersey on a panel with judges and leading attorneys chaired by Fred Friendly discussing a hypothetical environmental tort case.

MISCELLANEOUS LITIGATION

We represented a number of environmental and other citizens groups in Natural Resources Defense Council v. SEC. The court reversed the district court's order that the SEC conduct further rulemaking proceedings as to whether it should require additional disclosures from corporations concerning the impact of their activities on the environment and their compliance with equal employment opportunity statutes. 606 F.2d 1031 (D.C. Cir. 1979). However, the court based its decision in part on the commitment of the SEC to consider further actions in these areas.

In Prince George's County v. Holloway, we represented a group of employees of the Naval Oceanographic Office which was being transferred from Maryland to Mississippi. The district court issued a preliminary injunction against that transfer on the ground that the environmental impact statement was inadequate under NEPA. 404 F. Supp. 1181 (D.D.C. 1975).

MISCELLANEOUS ACTIVITIES

We advised the environmental ministry of the State of Israel concerning American laws and regulations requiring an examination of the environmental impact on Israel of U.S.-funded projects in neighboring countries and on mechanisms that have been used to resolve environmental disputes between such countries.

Bruce Terris spoke in 1989 and 1993 at international conferences in Israel on the subject of citizen litigation in the United States. As a result, interest was raised in legislation in Israel to encourage citizen environmental suits. Terris assisted an Israeli lawyer in preparing a bill which would expand citizen standing in environmental suits, provide for the payment of attorneys' fees to citizen plaintiffs, and give other rights to citizens bringing all types of environmental litigation. The standing provisions were adopted.


Bruce Terris has spoken on air quality and NEPA litigation at several environmental law seminars sponsored by the American Law Institute and the American Bar Association.

Ms. Pravlik has written two articles on compliance with NPDES permits under the Clean Water Act and she is frequently asked to speak about citizen suits at legal conferences and seminars. She has repeatedly made presentations at the Public Interest Environmental Law conference at the University of Oregon.

Kathleen L. Millian spoke on environmental citizen suits in February 1993 at the American Law Institute/American Bar Association’s annual course on Environmental Law. Ms. Millian also testified on behalf of environmental groups in November 1996 at a public hearing concerning EPA’s method for calculating the economic benefit resulting from a firm’s failure to comply with pollution control laws.

We have appeared at numerous Congressional hearings, administrative hearings, meetings, and seminars concerning NEPA, the Clean Air Act, the Clean Water Act, and the recovery of attorneys’ fees under environmental and other statutes.

We have prepared comments on numerous draft environmental impact statements and environmental assessments including on coal development and related railroad construction in eastern Wyoming, a coal strip mine in Montana, the national coal-leasing program, oil and gas leasing in the Beaufort Sea, oil platforms in California, phosphate mining in Idaho, a dam in Washington, an LNG facility in New York, a geothermal project in New Mexico, and the Channel Island Marine Sanctuary in the Santa Barbara Channel off California.

Bruce Terris has served on the legal advisory committees of Friends of the Earth and the Environmental Defense Fund.

HONORS

The firm received the Law Conservationist of the Year Award from the National Wildlife Federation for 1982.

The firm was awarded the 1999 J. Henry Rushton Award for the Advancement of Paddlesports by the American Canoe Association for the firm’s litigation on behalf of the Association to protect waterways in West Virginia and North Carolina used by the Association’s members.

Bruce Terris received the Lifetime Achievement Award from the Hackensack Riverkeeper in October 2005.