Oral History of STANLEY HARRIS
May 22, 2002

This is the sixth session in an oral history conducted under the auspices of the oral history project of the Historical Society of the District of Columbia Circuit. The interviewee is Stanley Harris, a lawyer in practice and in the judiciary, and the interviewer is William Ross. The date is May 22, 2002.

Mr. Ross: Judge, we had been talking the last time about your district court experience, but wanted to ask you a couple of things about the federal law, the Federal Rules of Civil Procedure, the Code, and the whole framework which governed to a considerable extent your work. Do you have any thoughts about the good and bad things in that what you think could possibly be done to improve it?

Judge Harris: No, I confess I don't, and that in part I suppose is a function of my own individual personality. We all know the saying about some people viewing the glass is half empty and others viewing it as half full. I'm just one of those people who tends not to find fault with a system within which I function, but rather to accept the system and function as best I can within it.

Mr. Ross: And trying to make it work. How about -- well, let me cue you a little bit. I was a trial lawyer specializing in what were usually large, cumbersome, prolonged proceedings. And I had some deep frustrations with those. One of the aspects that I was conscious of because I was often on the wrong side on this is the use of procedural delay under the Federal Rules as a defense tactic to handicap or defeat a defendant who is either short in cash and resources or perhaps for other reasons feels that it cannot stand the delay. That it will have to propose a compromise or something. The Rules for a clever and unscrupulous lawyer allow a

great deal of that to be done. I tried to avoid it in my own practice, but sometimes clients are very demanding in that area. Do you have any thoughts about that?

Judge Harris: Well, I think trial judges on the district court which is where, of course, the period in which we are interested in at the moment, I would have anywhere between let's say 150 and 230 cases pending at any given moment in time. And I have always been among those who has been willing to cooperate with the parties in setting dates if they can cooperate. There are judges who rigidly hold a certain schedule, but if both parties, both sides to a case are happy with a particular schedule, I'm happy with it. Because if I'm not working on Case A I can go to any one of 150 other cases. And the situation which you throw out is an interesting one, and I'm sure occurred, and I would have counted in a situation such as that on a party who felt aggrieved by conduct of that nature to call it to my attention, in which case I would have interceded, but I have no recollection of such a situation ever arising in any of my cases.

Mr. Ross: It occurs to me -- I won't put words in your mouth, but is this in part a reflection of the kind of litigation that you encountered in the District of Columbia, because in my experience, very large scale cases tended not to be tried in the District for a variety of reasons whether they are brought by the government or by private persons? Do you think that's true?

Judge Harris: I think that's correct, and of course one thing that is greatly frustrating along these lines is that you have some litigants who are notoriously hard-nosed with respect to the discovery process and the discovery process I think is more and more frequently abused to try to grind down a party with limited resources and I think -- I don't have any trouble naming one example. For example, if you get Williams & Connolly in a case you can count on extremely hard-nosed litigation with very tough discovery problems and they tend to make their

opposing parties defend against very vigorous litigation.

Mr. Ross: That could be said about a number of Washington firms that I've litigated with -- firms who take no prisoners, I heard one lawyer say. I was going to go on with a question or two about federal discovery, great engine as it is. When you have two General Motors litigating against each other with deep stakes, you can be sure that there will be no mite, no piece of dust, no molecule or relevant fact that will not come out in the course of a federal discovery. And I often felt that there is something to be said for the British procedure, which I also got involved in from time to time, just enough to give me a little flavor of it, in Canada and also in England. They don't have much of that sort of stuff. Of course they have discovery, but it's much more succinct -- you really have to come forward and show a judge or a magistrate whether your three months of deposition are necessary and critical, and so everything proceeds much more rapidly. Now whether that's good or bad I don't know, but do you have some thoughts about that?

Judge Harris: My thoughts on that would be minimal in part because of the background that we discussed. We are all different. Gary Gesell, for example, always maintained control of his cases from the discovery standpoint, and his standing rule was that if the parties had a dispute on discovery they were to call him and come immediately to his chambers and he would work it out. Well, Gary was an experienced civil litigator, and as I've indicated, I had been a basically federal regulatory agency lawyer before becoming a judge so that I never had any practical civil trial experience from the standpoint of preparing a case for trial. That, coupled with the fact that we always had more cases than we could handle and that we had magistrate judges with considerably more civil trial experience than I had made me reach

the conclusion very early on on the district court that if a case indicated that it was going to be one involving significant discovery disputes, I would simply refer it to a magistrate judge for what we referred to as a three-part purpose of discovery, scheduling and pretrial so that it was out of my bailiwick and I could turn to other cases and the discovery could be handled by somebody else rather than having me embroiled in the nitty gritty day-to-day disputes that so often occur in the discovery process.

Mr. Ross: It would be very time consuming I would think.

Judge Harris: Yes, and the temptation of getting a magistrate judge in on that is irresistible.

Mr. Ross: You found that that worked pretty well, with the magistrate judge.

Judge Harris: Yes. Because (a) all of them have had significant civil trial experience and (b) not being in court in trials they are available to the parties so that they can immediately get in the middle of discovery disputes and resolve them and get them worked out. So it worked out from every standpoint.

Mr. Ross: Did you get involved in bankruptcy matters in your time?

Judge Harris: To a very, very limited degree. We would get appeals from the bankruptcy court occasionally, but the standard of review is quite limited, and rarely did we have to do anything of great significance in that area. We have always had a series of competent bankruptcy judges in the District of Columbia, and with the standard of review being one that gives the bankruptcy judge a lot of leeway, we did little more than satisfy ourselves that the Bankruptcy judge had not made a mistake and that was about it.

Mr. Ross: How about the quality of lawyers before you? Take the government

counsel. They would be all over, a lot of them would be in the Department of Justice, U.S. Attorney's Office. Did you have a feeling over time about that? Comments about it?

Judge Harris: Well, I had a high opinion of the quality of the government lawyers that appeared before me. The city is one which is very attractive to lawyers. That, I think, is particularly true of the United States Attorney's Office, which is very attractive to lawyers. So if you put together the city and the United States Attorney's Office, the twin attractions of those two attracted awfully qualified folks who would want -- in fact my son later did -- would often spend several years in private practice after a clerkship and then would decide they wanted the autonomy that could be gotten only in an office like the Office of the United States Attorney and would come to the United States Attorney's Office for a period of years. And the same with other government agencies, although typically from the litigation standpoint, it was the United States Attorney's Office who had litigating attorneys often backed up by agency counsel. Relatively rarely did you have cases that would be prosecuted by an Independent Counsel and I had several of those, a HUD investigation conducted by Independent Counsel Arlin Adams, a former judge from the Third Circuit. They would attract good lawyers, typically ones who had been in government, most typically former Assistant U.S. Attorneys. So by and large I would say the quality of government representation was very high.

Mr. Ross: I was involved in quite a number of antitrust defenses, defending private persons who were being sued by the Department of Justice or by private claimants or both. And in several of those were criminal cases and were taken very seriously by the defendants. We conducted a good defense, but our client was clearly guilty from our standpoint and conceded their guilt to us in private and we won, I think, because these cases were usually

tried by department lawyers with some assistance from the U.S. Attorney's Office who were short-term and lacked experience. And we had one Section 2 Sherman Act case involving conspiracy, fixed prices in the southern part of the United States, which was very complex factually. We had five different lawyers from the department heading up the case during the period it was active. All except one had been with the department two, three or four years, no more than that. They were transferred off for reasons which had nothing to do with our case. Things got dropped by the way, all the way along and in the last stages of it, when we were settling it for what was almost a total victory. We're dealing with a young man who just clearly beyond his depth and knew it, and all he could do with the case was to settle it. We had this one veteran who came on the case a short time and he got a lot of things straightened out. Then they had some kind of political crisis and he was taken off to put some fires out. Do you have any thoughts about that problem?

Judge Harris: No, I think your point is absolutely valid. There's a dichotomy in government lawyers appearing in the district court that perhaps I should have clarified. If you have a trial situation, there is no question but the Department of Justice and agency lawyers rarely have developed trial skills. But a very significant number of the cases that would result in litigation before us on the district court would involve preliminary injunctions, cross motions for summary judgment and things such as that which the agency counsel, Department of Justice counsel, could handle and with a high degree of competence as opposed to the examination, cross-examination skills that take time to develop in which the agency and Department of Justice lawyers rarely have an opportunity to develop as do -- to the extent that the United States Attorney's Office lawyers are able to.

Mr. Ross: I think it's probably just an inevitable function of the government that has many things to do and at times insufficient staff. How about what I call the vexed subject of lawyer conduct following ethical standards and any change in that in your overall law experience over the time you were before the bar? Do you have thoughts about that?

Judge Harris: Well, my thoughts parallel those of I think about 100 percent of the judges and senior members of the bar that there has been an unfortunate deterioration in civility between lawyers. I am somewhat at a loss as to why to figure that is true. When I was practicing law, I extended courtesy routinely to opposing counsel and was routinely dealt with civility by opposing counsel. It was just an assumption and your word to opposing counsel was good and his to you was good. We never had essentially the fiction of a lawyer saying I'd like to let you do this but my client won't let me. I think that any lawyer worth his salt tells the client what ought to be done with respect to scheduling and other problems. But perhaps it's a function of there being so many more lawyers now, but there is a marked reduction in the civility level between opposing counsel today, which is to a minor degree one of the many reasons I decided that rather than sticking around until becoming significantly older, I would slip away.

Mr. Ross: Well, that leads me into another area I was going to ask you about, and that is your feelings about retirement and reasons for retirement. I will say for the record that you look vigorous, many years younger than your calendar age and you clearly could have gone on trying cases and judging cases and being an active judge indefinitely in a retired status at some point, but still active senior judge. Why did you decide to step down?

Judge Harris: Well, that's a complex question and I think we do not always understand ourselves as well as we might like to. It was a lot of factors. I watched a number of

judges senior to me whom I respected greatly and saw what happened with them. I mentioned Aubrey Robinson, Gary Gesell and John Pratt earlier as three judges to whom I would go occasionally for some reinforcement of my thinking or correction of mediocre thinking. But Aubrey Robinson had planned to retire and move to South Carolina, and I remember a meeting that I had with Aubrey and Joyce Green of our court and Joyce was still active. She had just taken senior status and she was talking about how the lesser burdens of senior status were appealing to her and how she could spend a little more time as a grandmother and do a little more traveling and Aubrey, who affected a bit of a gruffness, after she finished talking about enjoying senior status, he uttered a two word response. He said, "Get out." And she was taken aback and he said again, "Get out. Don't stick around here forever like some of these other folks have done." And that was something that I had been thinking about after watching Gary Gesell, for example, and John Pratt, both of whom stayed very active and made terrific contributions to the court into their mid-80s, but then both developed cancer and died within a relatively short time frame, I believe at the age of 84. But they were never free of the spider web of the trial judge. Today, with fax machines and computers an appellate judge can have a place at the beach or on the Eastern Shore and go down there and function as well as he could in chambers and have a much more relaxed life. But a trial judge is a captive of the courthouse, particularly for example, you sentence a lot of criminal defendants, and when they come out of prison, they are put on supervised release under our present system and then when they commit another crime, they are brought in immediately for you to attend to to determine whether to revoke their supervised release or not. So you're always tied to the courthouse and I just decided after watching others. Among others to whom I talked was Tom Flannery, whose career was somewhat like mine in

that he had been the United States Attorney before he became a district judge. And we both had taken senior status at the same age, at age 68, and Tom was 81, and when I was thinking of leaving, I went to him and said, "Tom, if you had your life to live over would you have left sooner?" And his answer was very simple. He said, "Yes." Then, too, you've got the vexing salary problem. I mentioned earlier that I had taken a 60 percent income cut when I first became a judge 30 years ago and that only became more aggravated, and I think I'd like to talk a little bit later about the overall aspects of that, but the disposable income which a judge receives has been shrinking steadily through the years and having reached retirement age, I did spend five years working full-time as a senior judge in effect -- I will now use the term that Chief Justice Bill Rehnquist has used in talking to Congress: working for nothing. That is, with an Article III judge having his income for life, you are going to the courthouse and receiving no more compensation than if you stayed home and just played golf or, as I have opted to do, get into some mediation and arbitration on a part-time basis. So you're working for nothing, you're tied to the courthouse, you would like to leave while you still can function effectively rather than have people wonder, what? Does that Judge Harris still have all his marbles or we have got somebody who is slipping a little? A lot of factors went into it, but I finally decided that I would leave before getting to the point where people had their doubts about me.

Mr. Ross: Do you find that the experience of retirement and doing something else and confronting a schedule in your life which is different because you're not going down to that court every day and doing the various things you're doing, do you find that exciting and interesting?

Judge Harris: Yes, I do, but there is one factor that is very difficult to adjust to. I

am accustomed from the time I started practicing until I entered public service in 1971 to having a secretary and accustomed since I became a judge to having law clerks, and they would do so much for you and you would function as a part of a team, and in the district court you also would roll in a courtroom deputy who would schedule things and facilitate meetings with counsel. And the judge is just one -- in effect -- just one part of a five-person team. Now I have to make my own travel plans if I have to go somewhere for an arbitration, and goodness, we lose the ability even to make reservations on planes. We're not sure how to proceed we become so spoiled by our staffs. On the other hand, it's nice having the relative informality of an arbitration proceeding. For example, at the end of the first arbitration which I handled after I had left the court I took a minute to tell counsel and the parties that for almost 30 years I had been accustomed to receiving a phone call from a courtroom deputy that the parties were ready for me to come into the courtroom and I would come in the front of the courtroom and they would rise and I would sit down and we'd have a formal proceeding and then I would walk back out and it was rather nice as a change to have some greater degree of personal interaction with counsel and with parties than can be had as a judge. And I found that very pleasant.

Mr. Ross: I went through that same kind of thing. It took me a long while to get used to the fact that I couldn't call up somebody and have a messenger take something anywhere I wanted in Washington. And also one thing that vexed me. I had a secretary for 28 years. A wonderful woman. And she finally wore out and retired. During that time, she had noticed when she started with me that my checkbook was a mess. She would have to go and do it. She said tactfully, "Mr. Ross, perhaps you would allow me to keep your financials." I was somewhat taken aback by this, although I knew my balance was always out and I overdrew and this and

that. So finally I said yes and she kept it for 27 years, and boy, it was just like I came from Mars when I retired. Did you have your secretary keep your checkbook?

Judge Harris: No, but she did practically everything else and she was with me for about 40 years.

Mr. Ross: Forty years. That beats mine. I keep telling my wife, you know, that we have little disagreements with the best of wives and I said, "I can't be all that bad. Betty Murray has worked for me for 28 years." Well, it's a change and an exciting one, it can be. I think it broadens you.

Judge Harris: Well, it is nice, too, not to -- these are all of the factors that go into decisions like that. But the traffic congestion in Washington has become progressively worse and worse and worse. When I was a young lawyer, commuting was not all that difficult and then when I first went on the bench it was a little worse. Although one commute, in particular, when I was on the District of Columbia Court of Appeals, makes me think of the unique nature of Washington. I typically would come in the Whitehurst Freeway and then drive behind the White House on my way to Pennsylvania Avenue and one morning on the way to the D.C. Court of Appeals, I looked to the left as I passed the White House and there was Dick Nixon getting on the helicopter and waving goodbye after he had resigned from the Presidency. And these things happen in Washington as opposed to other areas. The traffic has gotten so bad that with no one willing to come up with a decent solution, I certainly do not miss the commute, although now I'm living inside the Beltway as opposed to outside the Beltway. The commute has become such a hassle and it is nice not to have to get up at a set time every morning and be at the courthouse at a set time every day.

Mr. Ross: One of my close friends, a partner with Covington, was a person with unbelievable capacity for being concerned with detail. His wife is a lovely woman, very outspoken, and he retired from Covington early, took early retirement. He had a lot of things he wanted to do, and I met Marjorie about nine months later, and I hadn't seen Bill for some time and I asked her how he was. And she said, "Oh, he's all right. Do you know he's gone back to work? He's gone back to Covington." I said, "No." She said, "Well, I sent him back. After having him around the house for several months, telling me how to sort the laundry and to pack the refrigerator, I said, it's either you're staying home and I'm leaving or you're going back to work and I'll stay." Did you have anything like that?

Judge Harris: I had the reverse of that as a matter of fact. As I was considering the possibility of retiring, I brought it up with my wife, and at the time I was the -- among other things -- the Chairman of the Committee on Intercircuit Assignments of the Judicial Conference of the United States and there was nobody who could step in and fill that role without a drop in the efficiency of the functioning of that particular rather important role, and so I was projecting a fairly long time in the future for retirement, in part because of law clerks who were with me to whom I had made commitments. In part because I wanted to not to adversely affect my secretary. But I was very fortunate in that I was able to let my clerks finish their clerkships. My secretary was marvelous. Her position was I will stay with you as long as you want to stay at the courthouse and I'll leave anytime you want to leave, so I was not going to have an impact on her that would be negative. And when I told my wife that I had pretty much decided to retire and that I had projected it, I can't remember, perhaps a year in the future, she said why wait so long? And while I have affiliated with JAMS, I think the nation's largest private arbitration and

mediation organization, which is particularly big in California and not as large here, I should make it clear that I did not leave the court to affiliate with JAMS. I left the court because I decided to retire from the bench, but felt that I did not want to be professionally inactive and that getting into arbitration and mediation would enable me to be useful and keep mentally active and physically on a lesser scale, and that's been a good thing. And it may have made my wife happier too in that I'm not here all the time.

Mr. Ross: With that tactful observation, I wanted to turn to alternative dispute resolution of which your work is one part. Do you have some thoughts about the shift from being a federal judge to being a mediator or arbitrator? How you perform the function? Do you approach the cases very much as you approach them as a judge?

Judge Harris: I approach them, yes, as I did as a judge because analytically arbitration is little different from a non-jury trial with much more relaxed rules of evidence and rules of procedure and a much more comfortable setting within which to function. So it simply seems to me to be just that, a more relaxed way of resolving a dispute between the parties without getting into a series of complex objections and instant rulings thereon and the likelihood of an appeal and all of the delays that can come with having a jury. I have enjoyed it. I have always enjoyed resolving disputes. I like to think that I bring to a dispute an unbiased mind and do my best to try to come to the correct result and you do that in a different setting in the arbitration area. My mediation experience essentially is nonexistent to this point. What I found is that there are relatively few federal judges who retire while they still are able to function effectively. Most stick around and then are not that much in demand, except for some of the younger ones. There are relatively few federal judges who retire as I did. Some are retiring quite

early, before they have vested their lifetime income as an Article III judge. What has happened is with the diminution of the compensation of Article III judges, there are a number of them on the bench and they are looking at having to pay the college education for their kids and say, hey I just can't hack it on this salary, and so they go back to private practice at younger ages than used to be the case. But there are relatively few who would leave in their early 70s and still are able to function. So what I've found is that a retired federal judge with a modestly decent reputation who doesn't drool is pretty much in demand, so I've been gobbled up for more arbitration than I had anticipated.

Mr. Ross: Do you find that the arbitration process is actually a more expedited process than a trial for a lawsuit brought under the federal rules?

Judge Harris: Yes. Although certainly in a significant case it isn't cheap either. Parties still have to pay their lawyers. They still have to pay a court reporter if there is a significant amount of money involved. I had spent the last couple of weeks in Pittsburgh in a case about a $20 million arbitration. The parties had to bear the costs of three arbitrators. This happens to be the first one in which I was not the only arbitrator. There are two others. So there's that cost. On the other hand, they are not in years of waiting to get the case tried. Not in extensive pretrial discovery disputes, not in filing and pursuing and defending against a motion for partial or complete summary judgment or one thing or another. They are not looking at the three- or four-year proceeding perhaps followed by an appeal that is very expensive. So while arbitration is not necessarily inexpensive in a case in which there is a significant amount at stake, it certainly is materially less expensive.

Mr. Ross: And expeditious also.

Judge Harris: And certainly much more expeditious.

Mr. Ross: Yes. How do you handle discovery in presentation of factual issues in an arbitration?

Judge Harris: Thus far I have not run into any significant discovery problems. The litigants with whom I have dealt, and I'm still pretty new at this, reflect considerably more cooperative attitudes in arbitration than I believe they would have reflected had they been in court where they must constantly protect their record and must show the diligence of their representation and keep the record pure from that standpoint. And they seem to me to be more antagonistic in the court litigation mode than in arbitration where they are seeking to reduce their costs, get as much information to the arbitrator as they can and don't seem to get distracted by record protecting mechanisms that can take up time and result in hostility.

Mr. Ross: Have all of your arbitrations been final in the sense that your decision is not appealable?

Judge Harris: Yes.

Mr. Ross: I gather that some are not. I participated in one that was not final and turned out to be a large waste of time because in the last analysis we were not permitted to decide the case.

Judge Harris: Well, I have been so busy since I got into the arbitration and I am not as expert about some of these subtleties such as the one you are putting your finger on now. I keep meaning to get to the Federal Arbitration Act and find out under just what conditions someone may go into a court and say the arbitrator either was biased or was clearly arbitrary in his decision, but certainly if one does, there is some right to go into court to seek relief from an

arbitration result, but it is so limited. I did have an experience that I found quite enlightening to me. I, along with several other JAMS neutrals, went a couple of weeks ago to the headquarters of the General Electric Company up in Fairfield, Connecticut, and we met with key members of their legal staff because they have a list of neutrals that has not been updated in some time and they wanted to meet a representative group of us who were connected with JAMS. The one thing that struck me, and it was though I was in a cartoon strip and somebody turned the light bulb on, the most highly ranked lawyer dealing with alternative dispute resolution made it clear that they don't like arbitration. Then he explained why and he said, "Well, we aren't always sure of the quality of the arbitrators that we get and we have no right of appeal." And suddenly it occurred to me why I have proven to be more in demand than I had anticipated and by that I mean, it does appear that, through my years as a judge, I established a reputation as being unbiased and fair in resolving cases and so I apparently am a known quantity from that standpoint, whereas if they were to use somebody who had not been a judge, they would not have a basis for evaluating whether that person might come up with an off-the-wall result in an arbitration against which they could do essentially nothing.

Mr. Ross: That's a good quality. It will stand you in good stead I would think. Maybe it's time to begin to go to a more of a general coverage of some things that we haven't talked about. Although, as I say, I think it will be a good, long opportunity for you to recap and wrap this up. Could you talk about the awards and honors and achievements that you've received and include such things as some of your most significant cases so we can have on the record some sense of those parts of your life experience?

Judge Harris: Well, I don't have any listing in front of me of awards, although

there have been a few. 1982 was a funny year for me in that until February 1982 I was on the District of Columbia Court of Appeals and then I became the United States Attorney and thus was, in effect, a practicing lawyer again for about ten months of the year. So that was an odd year in that in 1982 the Bar Association of the District of Columbia picked me as its recipient of its Lawyer of the Year Award, which happened to be in the tiniest little window of time imaginable because for the last 30 years I have been basically a judge except for that little window as a lawyer. And when they gave me that award, I then became the first government lawyer to have received that award. Later Chuck Ruff, who preceded me as United States Attorney, later received the Lawyer of the Year Award, I think for his time as White House counsel. But in that same year, I also received the Judiciary Award from the Association of Federal Investigators, so it was odd that in one year to receive an award as a judge which I was for part of the year and as a lawyer which I was for part of the year. Gee, I'm hazy on awards. I don't pay that much attention to them.

Mr. Ross: Let me cue you a little bit. I'm referring here to a resume which you prepared in connection with your JAMS work and it does list special honors and memberships. Let me ask you about some of these things. And they will be miscellaneous. Talk about your work on the Committee on Intercircuit Assignments. That's an awfully important job.

Judge Harris: Well, I had spent six years on the Committee on Criminal Law of the Judicial Conference of the United States and under prior Chief Justices, if a Chief Justice picked a judge to serve on a Judicial Conference committee, it tended to be pretty much a career long assignment and people would stay on the same committee practically until they retired. Chief Justice Rehnquist decided, and I think he was quite right, that it would be better to broaden

the participation in Judicial Conference committees by Article III judges and so he established a theoretical but not absolute rule that a judge would serve only six years as a maximum on any committee or combination of committees. So I finished my six years on the Criminal Law Committee, which I found a fascinating assignment, and also a very educational assignment. That is, I was on the cutting edge of learning what was coming along in the criminal law area before it hit me as a judge, so there were a lot of benefits, as well as an opportunity to be of service. But when I ended that six years I realized that I had reached the point at which the Chief Justice had set his maximum theoretical period of service on a Judicial Conference committee and so I relaxed and thought okay, now I can devote 100 percent of my attention to my cases again. But then Tom Hogan from our court who had been the Chairman of the Committee on Intercircuit Assignments before me resigned that position. It is very tough for an active judge to be the chairman of a Judicial Conference committee. And I think that is particularly true for the Committee on Intercircuit Assignments. And I might digress to sort of explain that there are two ways in which an Article III court which is in need of extra help on a short-term basis can get it. They can get it through an intra-circuit assignment. Let's say in the Fourth Circuit, for example, suppose the Eastern District of Virginia needs help and they can get a judge from the Western District of North Carolina to come help them. Well that's done. An intra-circuit assignment is effected by the Chief Judge of the circuit. If a judge is to go from one circuit to another, the only statutory authority for that sort of movement by a judge is vested in the Chief Justice. The Chief Justice obviously cannot devote his time to handling the hundreds of intercircuit assignments that come up every year and necessitate significant paperwork and interaction between the borrowing court and the lending court and the judges who are affected and the Administrative Office of the

United States Courts and ultimately the approval of the Chief Justice is required. So the job is a significant one and Judge Hogan had occupied it for four years, and he and his secretary were worn out from trying to do that and keep up with his case load. So he left after four years and then I was asked to take that assignment on, which I did, and found it to be very time consuming, but fortunately within about a year or so of the time that I undertook that chairmanship, I was eligible for senior status, so that prompted me to take senior status virtually immediately so that I would be able to cut down a little bit on the intake of cases and be able to function in a completely effective way as Chairman of the Committee on Intercircuit Assignments. It is an unusual Judicial Conference committee in that most Judicial Conference committees are made up of representatives from each of the circuits and they function as true committees with assignments and reports and any number of things that a regular committee would do. The Committee on Intercircuit Assignments, on the other hand, is odd in that it functions as the alter-ego of the Chief Judge in effectuating his exclusive power to make the intercircuit assignment of a judge from one court in a circuit to another court in a different circuit. So it is pretty much of a one-person operation. The chairman of the committee working with his secretary and working with somebody at the Administrative Office of the U.S. Courts and getting all the paperwork and sending the material to the Chief Justice for his approval. And it is not simply a matter of rubber stamping a deal that somebody makes out. Very often you are advised as chairman of that committee that all of the judges on a particular court had to recuse themselves and it becomes necessary to go out and recruit let's say three judges to sit on a different circuit to help it out. You always have to bear in mind also that you don't want any intercircuit assignment that if it were on the proverbial front page of the *Washington Post* might cause embarrassment to the

Chief Justice or the judiciary. For example, soon after I became chairman, I learned that a judge in California had regularly attended the U.S. Open, tennis open, which is played in New York and that he would call the Second Circuit or the Southern District of New York and say I am going to be in town for a couple of days, can I help you? The Chief Judge of the other court would say well, yes, we could use some help. So that in effect the taxpayers were being asked to pay for the expenses of this California judge to come to New York to watch the U.S. Open and he would sit for a day or two and then go back. I made myself very unpopular with that particular judge by saying that we just can't do that and by adopting modified guidelines that would preclude that sort of thing. And one result was that I developed the Chief Justice's confidence and I was able to bother him very, very little during my six years as chairman of the committee. It was a very interesting experience dealing with so many Chief Judges around the country and so many other judges.

Mr. Ross: I bet it was.

Judge Harris: And, as a part of it, I ended up undertaking a number of intercircuit assignments myself after having been asked to do so, and in part because I thought I'd be a more effective chairman if I had gone through the process and saw how it worked as a judge who actually went to another jurisdiction. That ended up with my serving twelve years on the Judicial Conference committees, which was double the theoretical maximum that the Chief Justice now follows.

Mr. Ross: I was thinking it would be a fascinating experience. You had learned a lot about human nature and personalities in the judiciary.

Judge Harris: Yes.

Mr. Ross: You served as a faculty member on the ABA National Institute on Appellate Advocacy in 1980. Was that an experience that left any mark or thoughts?

Judge Harris: No. I did that in conjunction with two other appellate judges. Frank Nebeker, who had been one of my colleagues on the D. C. Court of Appeals for so long and remains one of my closest friends today. Judge Nebeker later became the Chief Judge of a new court, the United States Court of Veterans Appeals and had the extraordinary experience of building a court from scratch, which was a remarkable experience and something for which he was uniquely qualified. And Paul Roney from the Eleventh Circuit and I were the principle lecturers at that Advocacy Institute which was conducted, as best I recall, I think at Fort McNair here in Washington. But that was an interesting experience. It happened to be here in Washington on that one occasion. I suppose they hold them in different places in the country and utilize different people because of the cost factors.

Mr. Ross: Do you think that advocacy can be usefully taught by a bar association entity?

Judge Harris: Not really. I have not been eager to replicate that experience because my advice to lawyers is so simple. You cannot by virtue of lecturing to a particular lawyer make him or her a better advocate than he or she is to start with and my advice is so simple, which is basically, be yourself. Be thoroughly prepared and everybody has their own style, and you can't turn the proverbial pig's ear into a silk purse. And if somebody has the ability for it, they will be good at it. You can give them some hints, but there isn't a heck of a lot you can do to make a good one that much better or a poor one that much more acceptable.

Mr. Ross: When I was training in that role, I found that the most useful

experience that I could have was to watch a very good person or a very bad person and you learned a lot.

Judge Harris: I often would tell my law clerks along those lines that they would learn more by watching poor lawyers than they would from watching good ones. To learn what not to do was more easily assimilated than trying to make yourself better by trying to emulate a good one.

Mr. Ross: And having the experience of falling into a trap or getting on the wrong side of a testy appellate judge is also very educational. I think the time has come to stop. We've concluded the cassette tape. The next time we get together, we will pick up on this more general copy. This concludes the sixth session with Judge Harris.