

**Oral History of STANLEY HARRIS**  
**June 3, 2002**

This is the seventh 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 June 3, 2002.

Mr. Ross: Judge, this is June 3. It is the seventh session of your oral history on Side A of a new cassette. We are coming to the point of a sum up or wrap up of this oral history, which doesn't mean that we won't have further sessions after you and I have both reviewed the transcripts to pick up on other things. We can cover almost anything in this area that you had thought about or think about. I would like to ask you now about a couple of your significant cases which are mentioned. You have mentioned here or are mentioned in your earlier oral history. One is the Vietnam protest case, which is mentioned in your resume.

Judge Harris: You must be referring to the case that I had in the Superior Court back in 1971 when the Vietnam protests were going on and I had the assignment of Judge-in-Chambers one day. That is, a judge is assigned to be available to police officers for arrest warrants, search warrants, to the citizens for protective orders and that type of thing so that anybody who needs something immediately is not unduly delayed. And I received a call from Harold Greene, who was then the Chief Judge of the Superior Court. And Harold very quietly, in a low-keyed voice, said that he had a protest case that he would like me to try and would I mind taking it. And I said, "Of course not." Well, it turned out that there were 850 co-defendants. They had all been arrested on the Capitol steps. And that proved, as might be expected, to be

quite an administrative nightmare. I seriously question whether any other judge in the country has ever had a case with 850 co-defendants in a criminal case.

Mr. Ross: I think you may be right.

Judge Harris: And an awful lot of those criminal co-defendants, by the way, were named Johnny Appleseed. They had given false names to the Metropolitan Police and somehow or another the Metropolitan Police who had been doing the arrests had never even heard of Johnny Appleseed.

Mr. Ross: It could have been George Washington or Julius Caesar, maybe.

Judge Harris: But we ended up in the case with selecting eight representative defendants and having a trial, and after a fairly lengthy trial, the jury acquitted them. And so the case was overall dropped by the United States Attorney's Office, which relieved me as I envisioned the rest of my time on Superior Court trying batches of people who refused to vacate the Capitol steps when they were ordered to do so by the Chief of the Capitol Police and I think the reason, parenthetically, that they were acquitted was that while the entire episode was on video tape, somehow or other the video tape did not include the clearly noticeable warning by the Chief of the Capitol Police to the demonstrators that if you do not vacate the steps of the Capitol within ten minutes we will be forced to arrest you for unlawful entry. And that was nowhere on the tape and the defendants said they didn't hear anybody say anything about leaving.

Mr. Ross: Great big crowd. The jury figured in those cases. In that case, they were not -- how do you think, based on your appraisal of the jury or sense of the jury, were they reacting to this?

Judge Harris: Difficult to tell. I think it's hard for a trial judge to really get a

good sense as to the jury. There are so many things that you have to be conscious of. The conduct of the lawyers, looking at the clock as to whether it is time for a break. It's like managing a stage production and it is difficult to focus in on any one thing and get a real good read on a jury.

Mr. Ross: Do you recall the names of the lawyers who were involved in that case, the prosecutor and the defense counsel?

Judge Harris: Well, the lead prosecutor was Assistant United States Attorney Luke Moore, who was the head of the Superior Court prosecutions team. Luke, of course, had been the United States Marshal and later became a judge on Superior Court. He was a marvelous guy.

Mr. Ross: He sure was.

Judge Harris: Chuck Work, another Assistant U.S. Attorney, was the number two prosecutor on the case. Chuck later became, I believe, president of the District of Columbia Bar. Among the defense counsel, Phil Hirschkop sticks in my mind and I believe Ralph Temple was also an attorney.

Mr. Ross: Temple, yeah. We were involved in that case and I was trying to pin that down. That was the time when I was chairman of the organization that Ralph was representing.

Judge Harris: There was, to me, a rather remarkable little sidelight to that case. One of the defendants was a rather attractive looking young woman who was quite a zealot with respect to the Vietnam War and the military in general. And every time that she would pass this one particular deputy marshal, she would kick him. And it was something that I kept trying to

keep under control, and at the end of the trial when they were acquitted she came up to the bench. She said, "Judge, I never thought we could get a fair trial." And I said Miss, whoever you are, I forget her name. I said, "That's what we are here for," and left the bench. And the odd footnote to it is that later, this woman who was so anti-military and so difficult to contend with in the courtroom joined the Army in a rather remarkable transformation.

Mr. Ross: Yes. These turnarounds. Let me talk to you about a couple more cases. What about the Hinckley case, the young man who attempted to assassinate the President?

Judge Harris: Well, that was quite unique, of course. John W. Hinckley, Jr. shot President Reagan, along with Jim Brady, and a Secret Service Agent named McCarthy also was hit. And that happened just before I became the United States Attorney. I remember being in my chambers in the District of Columbia Court of Appeals when I heard the news of the President's being shot and, of course, had no idea at the time that I would end up being the United States Attorney at the time of the prosecution. But there was a superb team that was put together by the time I became the United States Attorney. The lead prosecutor was Roger Adelman who was a very able and extremely talented prosecutor. There were two other Assistant U.S. Attorneys assigned full-time to the case, Dick Chapman and Marc Tucker. The case also had assigned to it full-time three Metropolitan Police Department homicide detectives, two FBI agents, one Secret Service agent and they worked together in harmony and extraordinary dedication. A number of decisions in the case had to be made by me, but I could not be active in the actual trial of the case. The U.S. Attorney's Office, of course, here is so large that no U.S. Attorney can spend his time in a courtroom trying a case no matter what his experience and I was not an experienced prosecutor, so I did not want to play an active role. Roger Adelman, however, wanted me in the

courtroom full-time during the trial. And looking at about a three-month trial, and I simply could not do that and attend to all the other duties I had as U.S. Attorney, so I cut the baby in half and told Roger that I would be in the courtroom when the government was presenting evidence, but would not be in the courtroom when the defense was presenting its, and that worked pretty well. We had an interesting problem with respect to the testimony of President Reagan. The White House kept telling me that they would be glad to have the President available for a video-taped deposition and the line prosecutors and I were agreed that we did not want to have John Hinckley and the President in close confines in the deposition and also President Reagan was at that time, who now is 90 and has Alzheimers, but is an extremely warm and likeable person, and we felt that his effect on the jury would be enormous. But it became apparent to me that Nancy Reagan and Mike Deaver on the President's staff did not want to have him testify, I suppose in part because they didn't want him to relive the experience. In part, perhaps, because they didn't want to have it look as though the President was coming down on this confused young man. So Roger Adelman and I -- I turned down their request for a video-taped deposition, but we still wanted a shot at him, so Roger and I went up to the White House and spent about 45 minutes with the President and with Jim Baker and Mike Deaver in the Oval Office trying to convince him that we wanted his testimony and needed it. But we did not succeed in having him agree to testify and we would not agree to going the video-taped deposition route, so he did not testify. The team worked incredibly hard. I made it a regular practice during the trial to call them. Each night I would watch the ten o'clock news at home and then take our dog for a last walk, come back in my home at about 11:15, pick up the telephone and call them at the office to say good night. They were always there. And when I'd get up in the morning and go out and get the paper and

bring it in, I would call the office and say good morning and they were always there. But I wanted them to know that I knew they were there, so I made two calls every day at the end of the evening and early in the morning. But the jury unfortunately was just hopelessly confused by the insanity defense and my soon-to-become colleague, Barrington Parker, lost a little bit of the skills that he had earlier as a trial judge and the case was not as well tried as I would have liked to have seen it. For example, we had one situation in which we had four photographs that the FBI had of bullet fragments that were taken from those who had been shot. We had a lengthy argument as to whether the photographs of the bullet fragments were admissible or not admissible. And Judge Parker ultimately concluded that we could put two of them in. Well, they were either admissible or they weren't admissible, but to say we will let two of the four come in was indicative of a compromise. And we know what the jury was thinking because we had the unprecedented, I believe, situation in which shortly after the jury returned its verdict of not guilty by reason of insanity a congressional committee had a hearing and brought up a number of the jurors to testify before it and those jurors in their testimony made it quite clear that the insanity defense was beyond their ken and that they were just hopelessly confused as to what should be done.

Mr. Ross: Well, it has some lack of clarity.

Judge Harris: No question about it.

Mr. Ross: Why did you reject -- this is a point of interest, I think would be interesting to lawyers -- why did you reject the video deposition of the President?

Judge Harris: We did not think it would be that effective with the jury and the three Assistant U.S. Attorneys who were handling the case on a day-in and day-out basis agreed. All with the help, by the way, of a senior Assistant United States Attorney named Vic Caputy

who was extremely experienced. I think Vic was in his 70s at that time, but was a regular and very helpful part of the team also. They felt strongly that they did not want Hinckley to be in the presence of the President in a small room for a video-taped deposition. It was a combination of those factors that led us to conclude that we just would not do it.

Mr. Ross: Yes. What sense did you and your team get of Hinckley's motivation which, of course, has been a matter of discussion for many years? Why did he end up there or outside the hotel entrance with a gun shooting at this President?

Judge Harris: I don't know that anybody can really answer that ideally. Certainly I can't, but the basic difference between the psychiatrists who testified in the trial and there were multiple psychiatrists. The defense psychiatrists, of course, took the position that he was mentally ill. Our psychiatrists took the position that he was not mentally ill, but rather suffered from multiple personality defects including narcissism, and it seemed to be he was obsessed with the actress Jodie Foster at Yale, that he communicated with her and it seemed to me sort of a bizarre attention-getting device. He had gotten some psychiatric help in Colorado before wandering around and ending up in Washington. But interestingly enough, after he was found not guilty by reason of insanity, as is required by District of Columbia law, he was sent to St. Elizabeths for a psychiatric evaluation, and when he came back from there, the evaluation of the St. Elizabeths' psychiatrist was precisely that of the government psychiatrists at trial. That he did suffer from multiple personality defects but was not mentally ill. But he continues to be held to this day. June Green inherited the case after Judge Parker died. I'm not sure who has it now since June Green died recently, about a year ago at age 85, within about a week of the time that she left the court. But it's an interesting dilemma as what to do with him now. Our psychiatrists

back at that time were concerned that if Hinckley and his parents cloaked him in the insanity defense that that could well tip him over the edge of having multiple personality disorders indeed crossing into the nether world of mental illness and that he would cloak himself with that to absolve himself from feeling responsibility or guilt for what he had done, and there seems to be validity to the approach that they took at that time. One of the things that I mentioned was that I had to make a number of decisions. One of them that I made during the trial was that we had four psychiatrists lined up to testify for the government. But the first two, Park Dietz, a psychiatrist who at that time was a professor at the University of Virginia Law School and now practices in California, and Sally Johnson, who was the chief psychiatrist at the Butner Correctional Institution and was a part of the federal prison system. They were such superb witnesses and took about a week each that I made the decision and I'm not sure Roger Adelman has forgiven me since. We haven't brought the subject up. I concluded that we should not put on the other two psychiatrists that were waiting in the wings because of the time that we were taking and because the first two had been so outstanding.

Mr. Ross: Well that must have been a memorable experience.

Judge Harris: It was that.

Mr. Ross: I'd like to ask you now about the Lockerbie Scotland air case that's also called the Pan American 103 case. Could you tell us about that? That's obviously a major and still continuing matter.

Judge Harris: Actually, I did quite little in the case, although it was probably about the most significant case I had as a judge. It happened that the two Libyan intelligence agents were indicted here in the District of Columbia under a statute which gives jurisdiction in

the District of Columbia for terrorist acts committed overseas against American nationals. When the two Libyan intelligence agents were indicted, the indictment was randomly assigned to me. I read the indictment and it was quite lengthy. I think it was about a 50-page indictment and a remarkable, remarkable bit of investigative work that had gone into it. What happened in the case is rather remarkable in that they placed the bomb on a plane in Malta, which then flew to Frankfurt, Germany, and then the suitcase containing this bomb with a timer was put onto a flight to London and then it was placed on a flight to the United States. But the plane was a little bit delayed in getting out of London, and as a result, the timed bomb went off over Scotland as opposed to over the Atlantic Ocean and that meant that bits and pieces of the plane and everything on it were scattered over miles and miles of Scottish countryside. And they fanned out hundreds if not thousands of people just checking virtually every inch that they could and they found a little piece of metal, about the size of a fingernail, that they were able to identify as coming from a timer that had been manufactured in Switzerland and sold to the Libyan government. And from that they began to piece together how this all came about and to track the actions of the two Libyan intelligence agents who were responsible for it. I kept in contact with the people at the Department of Justice periodically to see what the likelihood was of our getting the bodies of these two intelligence agents so that I would have had the trial. They were never produced. I confess that I thought that it was quite likely that they might go for a fishing trip in the Mediterranean and suffer some sort of an accident that might prove fatal to both of them because I did not think that Muammar Qadhafi ever wanted them to come to the United States where they might work out a deal and talk. And ultimately, quite a few years later, the case was tried before three Scottish judges in the Netherlands and one of the two agents was found guilty.

One was acquitted. The one who was found guilty is now serving a life term. I'm not sure where he is incarcerated. But I never had to do any work in the case beyond reading the indictment and following it and I also read a couple of books about the case just so that if I got it I would be as informed as possible. One of the books was about the victims -- the Americans who had been on the flight. It was a very moving thing and a very tragic act of terrorism that killed about 260 people.

Mr. Ross: You never had any discovery proceedings?

Judge Harris: No.

Mr. Ross: I see.

Judge Harris: No one ever entered an appearance.

Mr. Ross: But it was a fascinating case. I would like to ask you now some more questions about your family. We had only the briefest coverage of your family. You mentioned your mother, Mary Elizabeth Sutherland, was the daughter of a Senator and I remember vaguely about Senator Sutherland. Can you tell us something about her?

Judge Harris: You mean about my grandfather Senator Sutherland or about my mother?

Mr. Ross: About your mother and that will lead back into your grandfather.

Judge Harris: Well, my mother was a lovely woman and wonderful woman. She met my father when I guess she was about 20 and he was then managing and playing for the Washington Senators baseball team here, and ultimately they fell in love and got married in 1926 -- October 1, 1926 -- so that it would have been just after the baseball season. Ultimately in the 1940s they became divorced. A profession such as baseball which has somebody on the road as

much as baseball requires its players and managers to be can be very tough on marriages and I think that was a contributing factor to their difficulty. But they remained very good friends and had a good relationship through the years.

Mr. Ross: Was she raised in the Washington area?

Judge Harris: No. Basically in West Virginia.

Mr. Ross: Was her schooling in West Virginia?

Judge Harris: Well, she went to Madeira School out here in suburban Virginia, but that was when my grandfather served two terms in the House of Representatives and then one term in the Senate so that she came up here as a girl. I'm not sure what year. I can't put my finger on it. And like a lot of women she fudged her age by a year, just one year. I don't have the dates pinned down in my memory.

Mr. Ross: Did you know the senator at all? Ever meet him?

Judge Harris: Yes. We were close.

Mr. Ross: Tell me about him and your relationship.

Judge Harris: Well, he was a very dedicated man of high ability and absolute bedrock ethics. If a constituent even sent him a pack of matches, he would send it back to them and say, "I'm sorry, I don't feel I should accept anything from anyone." And I think of the state of our political life today where integrity does not exist to the extent that it did back in those days. And I don't mean that my grandfather was unique in that respect. I think there was a broad respect for the process of government and a higher degree of integrity than I think we see today. The mass media and attention-getting politicians now seem to seek, whether that has contributed to some of the degradation of standards or not I don't know, but he was a fine man, whom I've

always been very proud of. And I did get to know him pretty well. He lived well into his 80s and I had a chance to spend considerable time with him which I treasure.

Mr. Ross: Was he a native of West Virginia?

Judge Harris: Originally from Missouri.

Mr. Ross: Missouri. And what was his educational background as far as you can recall?

Judge Harris: I knew it at one point, I can't recall it now. Westminster College sticks in my mind because he was from Fulton, Missouri, but I'd have to check his biography to be able to recall that at this point.

Mr. Ross: Was he in politics in West Virginia?

Judge Harris: I do not think he was. He was with the David & Elkins Coal Company for a time in Elkins, West Virginia. I don't believe he held elective office in the State of West Virginia before becoming a United States Congressman.

Mr. Ross: Did he continue to live in the District after his term?

Judge Harris: Yes he did, and he became the Alien Property Custodian at one point following World War I, which was a significant government position and held that, then lived on Wyoming Avenue here in Washington until his death.

Mr. Ross: So you were over there sometimes in his home?

Judge Harris: Yes.

Mr. Ross: He was in yours?

Judge Harris: Yes. Frequently.

Mr. Ross: Would you continue Judge, and tell us something about your brother

and sister and your relationship with them?

Judge Harris: Well, we were close although of course several years difference in age means you are doing different things when you are young. My sister, after graduating from Woodrow Wilson High School here in Washington, went to nursing school in Baltimore. And unfortunately while being in the hospital or perhaps in some public transportation ride or something ended up contracting tuberculosis and that washed her out of nursing school, and when she finally recovered from that, she did not go back to school and ended up marrying a man who became a minister. They ultimately divorced after she and her husband had several children, then she moved to Orlando, Florida, where she has been living ever since, although for a time her husband was the Chaplain at the United States Military Academy at West Point, which was an interesting experience for her and for him, of course. My brother also went to Woodrow Wilson High School here and then went to Wake Forest University. I enjoyed playing a lot of sports. My brother was a better athlete than I, and after his junior year at Wake Forest, turned professional and played professional baseball for several years. And then he set three years as the maximum time period within which he would be willing to play in the minor leagues before leaving baseball if he didn't get to the big leagues. My own decision was a little bit different. I played varsity baseball at the University of Virginia, but knew that I would never be a good enough hitter to make the big leagues and so was not tempted at all to play in the minor leagues for a while.

Mr. Ross: Good field, no hit.

Judge Harris: That's reasonably accurate. (Laughter) I would add I have no doubt but that my brother would have made the big leagues today with there being more teams,

but at that point there were 16 teams.

I might add with respect to my brother that after he finished with professional baseball and came to Washington and got into the stock brokerage business when I was practicing law, we had never, with five years difference in our ages, had the opportunity to play together and we started playing the top rung of softball competition in Maryland and it was great fun being teammates. So we played together for quite a few years and won a couple of championships and had a great time. The difficulty is that a couple of high school knee injuries, coupled with playing competitive sports into my 40s, took me to the point of needing a couple of knee replacements at this stage of my life.

Mr. Ross: You really suffered for your addiction. Were these brothers and sisters close? Did they play a meaningful role in your life? I know that's a hard question.

Judge Harris: It is a hard question. I'm deeply attached to both of them. Like most brothers and sisters, we don't see as much of each other -- well, practically you don't see as much of anybody you really care about as you'd like to these days with so many activities going on and with my sister in Florida. My brother is still in this area, so we're able to get together occasionally. His life and ours are divergent and it's hard to get together.

And as one further footnote as I think back to my brother and my playing on the same softball team and what a pleasure that was. My father had never seen me play a game because whenever I was playing baseball and later softball, he was always with his team, so he never saw me play. And finally after my father retired he had an opportunity to come to a softball game in which my brother and I were playing. So that was the only time he ever saw us play at a game together and it was the only time he ever saw me play in a game at all, and we happened to run

up against a practically world-class pitcher and had a perfect game thrown against us at the one game my father got to see. (Laughter)

Mr. Ross: Oh, dear. How about other recreation and hobbies? I know baseball was a big part of your life. What else can you say about your interests?

Judge Harris: Well, they are varied. We had a sailboat for a number of years which we enjoyed greatly and kept at Annapolis, but after we had kids we concluded that we weren't able to use it enough and disposed of it. I've enjoyed playing golf and went out the other day, a year after my retirement from the court, and played a weekday morning. I think that's the first time in my life I've done that. I thought when I became a judge I'd have time to play a little golf and improve my game, but it never worked out that way. I never could get away from the courthouse. I've enjoyed photography through the years. But basically my professional life has been very demanding and there has been very little time for many other activities.

Mr. Ross: Are you following the Kemper?

Judge Harris: I was doing a lot of things. I've gotten into arbitration and mediation since retiring from the court and I had an awful lot to do over the weekend and I worked most of the weekend. And I thought, wait a minute, this is retirement?

Mr. Ross: One gets that sense. Tell me about your boat a little bit. I'm a sailor and I've had boats all my life.

Judge Harris: Well, one of my partners and a very close friend for years was a man named Frank Reifsnyder, and Frank and I worked at Hogan & Hartson together. We jointly bought a sailboat, a Pearson Vanguard, 32 1/2 foot sloop which we kept at Annapolis and jointly owned for quite a number of years. I would add that joint ownership worked out beautifully

because every time we would leave the boat we would have to leave it immaculate for the Reifsnyders and vice versa, so we always went to a clean boat and so did they and never had the problem of saying oh, let's leave these dishes soaking and we'll get them when we come back.

Mr. Ross: And that's fatal.

Judge Harris: It also, of course, cuts the costs in half, so that worked out very well for someone on a judge's salary educating kids.

Mr. Ross: Did Nancy Lee like sailing?

Judge Harris: Not a great deal.

Mr. Ross: I wouldn't have thought she would.

Judge Harris: Although Frank had children from his first marriage and the sailboat for him was a wonderful opportunity to be able to get together with his sons.

Mr. Ross: Did you sail with Bozey or see something of him?

Judge Harris: No, although I had known Bozey for years.

Mr. Ross: How about writings? Are there any writings you'd like to note -- I mean of your writings or written things that you would like to mention here to put on the record?

Judge Harris: I've never written anything except what I've done as a judge. I have worked hard as a judge and never had time to do anything beyond the job that was in front of me, so I never ventured into anything else, although God knows there is a warehouse full of opinions that have been written through the years.

Mr. Ross: Yes, I bet there are. Have you ever thought about possibly excerpting some of the more interesting ones and publishing, maybe it would be a private publishing event if it wasn't commercially feasible or a list of your opinions with some commentary and narrative?

Judge Harris: I don't know whether it would be of interest to anybody but me, but there are so many things that I have to do from the standpoint of family history, such as going through 40 years worth of slides and photographs and trying to organize those and everything else, I doubt I'll ever get to that. I think judges tend to forget their cases, though. You focus very intensely on a case while you are working on it and then you focus equally intensely on the next one and they tend to get out of your mind, so it's quite intriguing now and then when I run across an opinion in an old case and have the flood of memories in connection with the processing of the case coming back to me. And, I should note, my secretary very graciously had all of my slip opinions from the D.C. Court of Appeals put in bound volumes, and West Publishing has provided me with bound volumes of my district court opinions.

Mr. Ross: I've had the experience of sometimes coming across something I wrote 30 years ago, and if I hadn't had my name on it, I wouldn't have recognized it. If you were a benevolent dictator, someone who could make things happen and decide on matters around you, what changes would you make in the law broadly and you can address things like law practice, the court system, law teaching, law and government, lawyers in government, anything that you want to?

Judge Harris: Well, I'd have trouble tying together many thoughts at this point. Several thoughts occur to me. One, I think we desperately need some sort of reform of the class action mania that has come along and has driven so many companies into bankruptcy with virtually no real true liability for what they may have done. I think we have way too many lawyers and having too many lawyers results in too many lawsuits because they need to keep active and make a living. With my own kids, for example, with respect to law school, I never

encouraged anybody to go to law school. I said, "It's up to you. If you want to go, there are too many lawyers. I think you'd be a good one if you did it," but my old friend Catherine Kelly, one of my colleagues on the District of Columbia Court of Appeals, used to go to great lengths to discourage people who consulted her and discouraged them from going to law school because the law schools graduate more lawyers than the profession can accommodate or assimilate. And I think that part of that is that law schools being popular, more and more universities have developed law schools because they can get revenues from them and graduate just too darn many lawyers. I've had one recurring if I were a dictator thought, but I'd argue with myself on both sides of it. I think I'd like to see a rule that nobody could become an appellate judge without having been a trial judge first and nobody could become a Supreme Court Justice without having gone the route on both courts before. Where that breaks down a bit is that I think it's more difficult to be a good trial judge than it is to be a good appellate judge. That is, it requires a different collection of skills for one to be a good trial judge. Working on an appellate court is an extension of law review from its analysis and writing and doesn't require the quick decision making and people skills that a trial judge has to have to be good. Judges, of course, are human. I have enormous respect for the judges that I've known, but there's a range. There are some outstanding judges and there are some that are not so good, which is true of any profession of course. One problem that we have now, of course, is a concern of the bar and I think to a large extent when you get below the Supreme Court level, the function of the entire judiciary throughout the country, and the bar is concerned that too much of the decision-making process is controlled by law clerks and I'm afraid that that's a concern that has some validity. All the judges that I have known on the courts on which I have served -- and I've been a member of three

courts and sat on five others -- and the judges have more to do than they can handle and you have to place a lot of reliance on your law clerks. And if a judge's instincts and common sense and legal learning are not sufficiently good to be able to distinguish good from bad work or flawed work by a law clerk who has very little experience, you can end up with some law being made that is not as good as we would like it. And I think that's part of the reason for my earlier thought that I'd like to see appellate judges have trial court experience before they become appellate judges because they just simply too often do not have any sense as to what happens in the courtroom and you end up in my view with some silly reversals.

Mr. Ross: Let me go back to the question of fairness and the ability of the non-deep pocket litigator to advance or defend positions in complex matters in the federal courts. You were talking about class actions. I've long thought that the discovery rules which are, of course, great engines for truth when they are properly and efficiently used but offer too much of a temptation on the part of either plaintiffs or defendants who have deep pockets to defeat causes simply by prolonging them and their expense -- and even in a very legitimate use of the discovery, it can become overwhelming for a particular defendant or even a plaintiff. Have you ever thought about the possibility of adopting something more like the British system in discovery, which puts more of a premium on conciseness and expedition and limiting discovery and also discourages the bringing of a lawsuit itself because of the possible occurrence of costs, the way it assigns costs in litigation? If one brings the lawsuit and loses, the costs can be quite crushing. Have you ever thought about whether our system would work better as a whole if we went more to the British style?

Judge Harris: I think I must yield to you with respect to aspects such as discovery

of the British system. I just have no familiarity with that. I am troubled by the so-called American rule as opposed to the British rule on costs and attorney's fees in our court system. I think that we would be helped very significantly in the overload of cases, including many of which are frivolous and brought with the objective of achieving some sort of a nuisance settlement value. I think that if we could assess costs against the losing party, we could get rid of a lot of unwanted and undeserving litigation in this country.

Mr. Ross: So it might be something that some state might try in an exploratory way.

Judge Harris: I would hope so.

Mr. Ross: They haven't so far as far as I know. And that would be an approach to dealing with the problem of overwork and overload in the court systems I suppose.

Judge Harris: Yes it would.

Mr. Ross: And because it seems that state legislatures and Congress are probably never going to be willing to fund courts in the way in which judges would think was ample and adequate.

Judge Harris: Well, I think the federal court system is probably funded adequately -- not ideally -- but adequately, and I have no real personal knowledge of funding of state court systems.

Mr. Ross: Well, you were in the equivalent of a state court system.

Judge Harris: But the funding was federal.

Mr. Ross: Right. That's true. How about law school, law teaching, law training?

Judge Harris: I tend to defer to the academics in areas like that. I went to the

University of Virginia Law School. Thought they did a marvelous job down there. I've had very little exposure to other schools and have never gotten much into academia at all. And the Bar Association of the District of Columbia was a voluntary bar and I'm sure you have seen some of those wonderful photographs back from the '30s and '40s when one montage could show all 350 members of the bar and everybody knew everybody and everybody's word was their bond and it was a wonderful fraternity. There still were not that many members of the bar when I started practicing in 1953. It became apparent as the bar grew that there were needs -- in particular, in the area of lawyer discipline and whether a lawyer might have a drinking or a drug problem and needed to have the public protected from that particular lawyer. A better mechanism and what the voluntary Bar Association of the District of Columbia was among the entities looking into was the creation of what is often referred to as integrated or mandatory bar. I happened to have been made chairman of what was called the Bar Association's Committee on the Integrated Bar, which I hasten to add had nothing to do with race but had to do with a mandatory bar, and then the District of Columbia Bar was created to which every lawyer who wishes to practice in the District of Columbia must belong. So, when I left the District of Columbia Court of Appeals after serving nine and one-half years on that court, the District of Columbia Bar, the mandatory bar, integrated bar, if you would, presented me with a Distinguished Service Award. The Bar Association of the District of Columbia is something in which I had been active, as I indicated, with that one committee chairmanship among other things and in addition to giving me the Lawyer of the Year award in 1982, they also very graciously gave me an award for a Distinguished Career in 1996. I went to the Landon School in Bethesda for seventh, eighth and ninth grades. Later served on the Board of Trustees at Landon on a couple of occasions. In the

late 1980s, I think it was, I was honored to receive the Distinguished Alumnus Award from Landon School. I had never been active in the District of Columbia Bar, the integrated bar, if you would, because by the time it was created I had become a judge. With respect to the bar association, I had served on committees. I have been an officer of the bar association and served on its Board of Directors. I had the honor of serving as President of the Lawyers Club of Washington, D.C., which is purely a social organization for lawyers that has no useful function whatsoever beyond getting together like-minded folks who enjoy each other's company and it's a pretty good group. I was an officer and member of the Executive Committee of the Barristers, another comparable organization.

I have enjoyed my career a great deal. As I indicated in one of our early sessions, I really was quite reluctant to leave Hogan & Hartson when I was asked on a number of occasions to go on the Superior Court when it was created. I have developed concern about the future of the federal judiciary. I think the federal judiciary through the years has served the country extraordinarily well and attracted extremely capable people. When I went on the bench, I took a 60 percent income cut and if anything, I think the differential has become aggravated through the years instead of alleviated and it gives me concern as to the quality of people who are willing to become judges because no judiciary can be any better than the ability of the people who are in it.

A number of years ago, Congress created a Quadrennial Commission which was supposed to look at judicial salaries and Congressional salaries and executive salaries and provide for their keeping up with inflation, but that floundered on Congress' persistent unwillingness for political reasons to vote itself pay increases and judges' pay is tied to Congressional pay. So if you look at what has happened to the federal judiciary in the last 25

years, that's a rough estimate of time, you have gone from having, almost without exception, really outstanding members of the bar going into the federal judiciary at a later stage of their career now to having a very significant percentage of people going into the federal judiciary for whom it's a promotion from an income standpoint to accept a federal judgeship rather than a cut. Unfortunately, I think the selection of judges has become more politicized than I would like to see it. I think the Bork situation was a disaster. Clarence Thomas' confirmation hearing I thought was a very sad situation. Now you have the Senate Judiciary Committee declining to hold hearings on extraordinarily talented people like John Roberts and Miguel Estrada whose qualifications to be superb federal judges are beyond question, but because they are not liberal they are not being processed by the Senate Judiciary Committee. I was interested in listening the other day to Senator James Jeffords from Vermont who left the Republican Party, which had the rather remarkable effect of giving the Democrats control of the Senate, including the Judiciary Committee. But the other day was the one year anniversary of Jim Jeffords having left the Republican Party and giving control of the Senate to the Democrats and then having a to-do about that, and I guess it sticks in my mind so clearly that as a part of his comments when he accepted everyone's compliments he turned to Pat Leahy, the Chairman and other Senator from Vermont and Chairman of the Judiciary Committee, and said, "Pat, just keep picking those judges." Well, we have a Constitution and it is up to the President of the United States to pick judges. I think any court is well served by having a mix of people on it. That is our system. If we have a Democrat as the President, you are going to have people who politically are attuned to the people selecting the judges, so you end up with a mixture of people who are Democrats and people who are Republicans because everybody has some views on the issues facing our society

and our country, but good judges leave those thoughts behind when they walk into the courtroom. I mentioned earlier when I had tough problems and wanted to be sure I wasn't going astray, I would go to Aubrey Robinson, Gary Gesell and John Pratt for guidance. Well, they were all Democrats. I happen to be a Republican. But when it came to judging, we all viewed ourselves as judges. Any political attitudes we had were left behind when we went in the courtroom. But unfortunately politics have come more into play than I like to see in the judicial selection process and recently in the confirmation process.