THE HONORABLE
STANLEY S. HARRIS

U.S. District Court for the District of Columbia

APPENDIX

Oral History Project
The Historical Society of the District of Columbia Circuit
Oral History Project
The Historical Society of the
District of Columbia Circuit

United States Courts
District of Columbia Circuit

The Honorable Stanley S. Harris
U.S. District Court for the District of Columbia

Interview conducted by:
Randell Hunt Norton, Esquire

April 6, 1995
The following pages record an interview conducted on the date indicated. The interview was electronically recorded, and the transcription was subsequently reviewed and edited by the interviewee.

The contents hereof and all literary rights pertaining hereto are governed by, and are subject to, the Oral History Agreements included herewith.

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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 who sat on the U.S. Courts of the District of Columbia Circuit, and judges’ spouses, lawyers and court staff who played important roles in the history of the Circuit. The Project began in 1991. Most interviews were conducted by volunteers who are members of the Bar of the District of Columbia.

Copies of the transcripts of these interviews, a copy of the transcript on 3.5" diskette (in WordPerfect format), and additional documents as available – some of which may have been prepared in conjunction with the oral history – are housed in the Judges’ Library in the United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C. Inquiries may be made of the Circuit Librarian as to whether the transcript and diskette are available at other locations.

Such original audio tapes of the interviews as exist as well as the original 3.5" diskettes of the transcripts are in the custody of the Circuit Executive of the U. S. Courts for the District of Columbia Circuit.
Historical Society of the District of Columbia Circuit

Interviewee Oral History Agreement

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, Stanley S. Harris, except as otherwise provided herein, do hereby grant and convey to the Society and its successors and assigns all of my rights, title, and interest in the tape recordings and transcripts of interviews of me as described in Schedule A hereto, including literary rights and copyrights. All copies of the tapes and transcripts are subject to the same restrictions, herein provided.

2. I reserve the right to use the tapes and transcripts and their content as a resource for any book, pamphlet, article or other writing of which I am an author or co-author.

3. I authorize the Society, subject to any exceptions contained herein, to duplicate, edit, publish, or permit the use of said tape recordings and transcripts in any manner that the Society considers appropriate, and I waive any claims I may have or acquire to any royalties from such use.

[Signature of Interviewee] Date

MAR 12 1996

SWORN TO AND SUBSCRIBED before this 12th day of March, 1996.

Ellen M. Whitaker
Deputy Clerk
United States District Court
for the District of Columbia

My Commission Expires

Nancy Mayer-Whittington, Clerk

ACCEPTED this 21st day of April, 1996, by Daniel M. Gribben, President of the Historical Society of the District of Columbia Circuit.

Daniel M. Gribben
Schedule A

Tape recording(s) and transcript resulting from 1
(number)

interview conducted by Randell Hunt Norton on the following
(interviewer)
dates:

April 6, 1995 (2 tapes)
(Transcript of 31 pages)
Interviewer Oral History Agreement

1. Having agreed to conduct an oral history interview with Judge Stanley S. Harris for the Historical Society of the District of Columbia Circuit, Washington, D.C., I, Randell Hunt Norton, do hereby grant and convey to the Society and its successors and assigns, all of my right, title, and interest in the tape recordings and transcripts of interviews, as described in Schedule A hereto, including literary rights and copyrights.

2. I authorize the Society, to duplicate, edit, publish, or permit the use of said tape recordings and transcripts 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.

[Signature of Interviewer] Date

[Signature of Notary] Date

SWORN TO AND SUBSCRIBED before this 15th day of March, 1996.

My Commission expires

ACCEPTED this 26th day of April, 1996, by Daniel M. Gribbin, President of the Historical Society of the District of Columbia Circuit.

Daniel M. Gribbin
Schedule A

Tape recording(s) and transcript resulting from \textsuperscript{1} (number)
interview conducted by Randell Hunt Norton (interviewer) on the following
dates:

April 6, 1995 (2 tapes)
(Transcript of 31 pages)
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Date of Birth: October 19, 1927 (Washington, D.C.)

Marital Status: Married; three sons.


College and law school: Virginia Polytechnic Institute, 1945 (while in Army); University of Virginia, B.S., 1951, LL.B., 1953. Principal extracurricular law school activity: Editorial Board (1951-'52) and Managing Board (Articles Editor, 1952-'53), Virginia Law Review.

Legal experience: United States District Judge, District of Columbia, December 1983 to date.


Principal bar association activities:
Member of the District of Columbia Bar; The Bar Association of the District of Columbia (Chairman, Annual Convention Committee, 1969-'70; Board of Directors, 1968-'71).

Prior American Bar Association activities: Vice-Chairman, Gas, Electric and Nuclear Energy Committee of Administrative Law Section, 1966-'67; Vice-Chairman of the Committee on Administrative Practice and Specialization in the Law (Administrative Law Section), 1968-'71; Vice-Chairman, Communications Committee (Administrative Law Section), 1969-'71; member, Select Committee on Courts and the Community 1974-'75; Faculty Member, ABA National Institute on Appellate Advocacy, 1980.

Former member, Federal Communications Bar Association; Assistant Secretary of FCBA in 1964-'65; Secretary of FCBA in 1965-'66; member of FCBA Executive Committee in 1966-'69.

Former member, Federal Power Bar Association.

Principal awards:
Lawyer of the Year Award (1982) from The Bar Association of the District of Columbia; Judiciary Award from the Association of Federal Investigators; and Dedicated Service Award from the District of Columbia Bar.

Principal non-court judicial responsibilities:
Member, Committee on Criminal Law of the Judicial Conference of the United States, 1988-1994; Chairman, Committee on Intercircuit Assignments of the Judicial Conference of the United States, 1994-. 
RESUME

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PERSONAL DATA

Home address: 1314 Independence Avenue, S.E.
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Date of Birth: November 21, 1948

Married to Linda B. Norton; 2 children, Jackson
(DOB 10/22/79), Thomas (DOB 11/9/82)

EDUCATION

B.A., with distinction, Economics, University of
Virginia, Charlottesville, Virginia, 1970.

J.D., University of Virginia, Charlottesville,

POSITIONS HELD

Law Clerk, Honorable Joseph M. Hannon, Judge,
District of Columbia Superior Court, September

Private practice of law with the firm of MacLeay,
Lynch, Bernhard, Gregg & Attridge, Washington,
D.C., August 1974 to February 1981.

Private practice of law with the firm of Thompson,
O'Donnell, Markham, Norton & Hannon
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Harding) Washington, D.C., February 1981 to
present; partner, 1984 to present.

BAR MEMBERSHIPS

Virginia, 1973; District of Columbia, 1974; United
States Court of Appeals for the District of Columbia Circuit,
1974; United States Court of Appeals for the Fourth Circuit,
1975; Supreme Court of the United States, 1978; Maryland, 1984.
PROFESSIONAL MEMBERSHIPS


PROFESSIONAL ACTIVITIES AND HONORS.

VOLUNTEER AND COMMUNITY ACTIVITIES

NORTON --- We are with the D.C. Oral History Project and it's on April 6, 1995, starting at about ten minutes after three in the afternoon. Just to be clear I did not get the first part. This is an interview with Judge Stanley Harris by Randell Norton in connection with the D.C. Circuit History Project. All right. Now Judge Harris I understand from reading some of your biographical materials that you are a native Washingtonian and I might as well start at the beginning. You were born in Washington.

JUDGE HARRIS --- Yes.

NORTON --- And your parents were?

JUDGE HARRIS --- My father was Stanley R. Harris, nickname Bucky Harris, who managed the Washington Senators baseball team which had him in Washington. My mother was Mary Elizabeth Sutherland whose father Howard Sutherland back at that point was United States Senator from West Virginia, which had her in Washington and so they both were here and both met and things led to me and my brother and sister.

NORTON --- You have a brother and sister? Are they older or younger?

JUDGE HARRIS --- Younger.

NORTON --- When were you born?

JUDGE HARRIS --- October 19, 1927.

NORTON --- So you missed the famous 1924 season.*

JUDGE HARRIS --- Unfortunately yes. [Laughter]

NORTON --- I understand that your father was manager of the Senators as well as a number of teams. The Yankees and a few other teams.

JUDGE HARRIS --- Yes he managed the Washington Senators on three separate occasions, managed the Detroit Tigers on two separate occasions, also managed the Philadelphia Phillies, the New York Yankees and the Boston Red Sox.

NORTON --- Did you?--

JUDGE HARRIS --- He went into the Hall of Fame in, what, 1975, I guess.

* In 1924 the Washington Senators won their only World Series under first-year manager Bucky Harris.
NORTON --- But you stayed in Washington the whole time he was--

JUDGE HARRIS --- Yes.

NORTON --- How did that work? I mean what was it like being the son of a baseball manager?

JUDGE HARRIS -- It was a great life. My father was a very unassuming guy, simply felt that he went to work like everybody else and just had a different kind of a job as others and that proved to be a problem later when he was elected to membership in the Hall of Fame because they called us and said what do you have that you can let us have up here for display in the Hall of Fame and we basically had nothing. I mean my father just felt that he was just going to work like anybody else and essentially we had no souvenirs or anything like that. But he would just ... during the whole time that I was growing up whenever he was managing Washington he would just grab me by the hand and off we would go to Griffith Stadium and I had a uniform and watched all the games and was on the field with the club and it was a great life.

NORTON --- How about when he was managing out of town?

JUDGE HARRIS --- We just stayed here although typically ... basically it would just be that he just was not here and the rest of us were. Later my parents became divorced in the forties at some point.

NORTON --- Now where did you go to school?

JUDGE HARRIS --- I went to elementary school at Horace Mann Elementary School in Washington then went to Landon School in Bethesda for the 7th, 8th and 9th grades. One trouble with being a baseball manager is that you are going to be fired and Dad was fired lots of times and while I was at Landon he was fired and couldn't come up with the money to keep me at Landon so I went to Wilson High School, Woodrow Wilson High School here in Washington for the 10th, 11th and 12th grades.

NORTON --- My son goes to Wilson not that the historians much care about that. [laughter] Did you play any sports in high school?

JUDGE HARRIS --- Yes, played basketball, football, golf and baseball. That normally is totally infeasible because you can only play one sport in a season but one year I had hurt my back and couldn't play baseball and was asked to fill in on the golf team toward the end of the season which I was able to do.

NORTON --- And then college was the University of Virginia.

JUDGE HARRIS --- University of Virginia.
NORTON --- Why ... why Virginia?

JUDGE HARRIS --- I went to Virginia for I guess for fairly unique reasons. It was the best combination of a college baseball school and law school. And those were the two things I wanted and I felt that they were best combined in Charlottesville.

NORTON --- And you -- you went on and got your law degree at UVA as well.

JUDGE HARRIS --- Right.

NORTON --- Was that back in the time when you didn't have to go four years and then three years or did you?

JUDGE HARRIS --- That's correct. I enlisted -- I graduated from Wilson in 1945 when I was 17 and World War II was still going on and I enlisted in the Army and so I spent two years in the Army and then went to Virginia in 1947, when I got out of the Army, and they had what they then referred to as a professional option, I think they called it, but in effect your first year at law school could count as elective credits towards your undergraduate degree so that I got through in six years which was a big help after spending two years in the Army.

NORTON --- Let me stop this and make sure that I am recording it because.

JUDGE HARRIS --- Sure [machine off] OK.

NORTON --- Any particular friends or memories that you have about the University of Virginia?

JUDGE HARRIS --- No it is just that I loved it in Charlottesville. I'm a big booster of the University of Virginia and still take most of my clerks from the University of Virginia Law School. But it was just a great six years.

NORTON --- And then where were you admitted to the Bar?

JUDGE HARRIS --- Here in Washington. I gave a little thought to practicing in New York because my parents were then divorced and my mother had a sister and a brother-in-law in New York and I thought that she might be happy up there but fortunately decided against going to New York and became admitted here. Went with Hogan and Hartson when I graduated from law school.

NORTON --- You went straight to Hogan & Hartson.

JUDGE HARRIS --- Right.

NORTON --- How many lawyers did they have back then?
JUDGE HARRIS --- I had a wonderful first two years at Hogan & Hartson and when I joined the firm I was the 25th lawyer that they had. 25th out of 25 and the next two years they added five lawyers all of whom were lateral entries. So at the end of two years I was the 30th lawyer in a 30 man firm.

NORTON --- Which I guess was a huge firm back in those days that was a lot of ... 

JUDGE HARRIS --- Covington* of course then was the biggest. Hogan and Hartson was not too far behind even Covington. Back in those days that was a big firm.

NORTON --- Well do you -- who were some of the other lawyers that you worked with at Hogan?

JUDGE HARRIS --- Well I had an offer that was probably a little peculiar in that I just happened to apply to Hogan & Hartson and I had spent the year before my third year of law school as a summer intern at Covington and Burling, but ended up accepting an offer from Hogan & Hartson and the offer which I got was not simply to join Hogan & Hartson but to join Hogan & Hartson and do radio and television work so that I ... that was understood that's where their need was and that's what I went right into. And the senior people in the radio and television part of the firm, number one man was a man named Duke Patrick who had been general counsel of the Federal Radio Commission, next to him was a man named Lester Cohen. The firm had a number of people doing trial work. It was then the firm that did more trial work I think than any other firm including Covington, although Covington was bigger and the principal partner there was Edmond Jones whose nickname was Nubby and everybody who was around at the time knew Nubby Jones.

NORTON --- How long did you stay in radio and TV law?

JUDGE HARRIS --- That had a quirky ending to it also. After I had done that work pretty much exclusively, although I did some work on trial cases, and other matters just to broaden my exposure, the firm's largest client was El Paso Natural Gas Company and the partner in charge of its work was a man named George Horning. Something happened there and El Paso decided that they did not want George Horning to continue to do their work and they said to the firm if you reconstitute the people who are doing your Federal Power Commission work we will stay with you. We will give you time. We don't want kids to come into it, we want partners, and so I was asked to start doing power work and so I started doing power work after about 13 years of exclusively radio and television work. I couldn't get away from the radio and television field. I started doing power work and

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* Covington & Burling.
that was my principal responsibility, but the radio and television section -- kept grabbing me, too, and I found myself in the intolerable position of being the only lawyer in town who was trying to specialize in two fields, in two federal administrative fields, and one just can't keep up with two at one time.

NORTON --- You started at Hogan and Hartson when 1950...

JUDGE HARRIS --- 1953.

NORTON --- And so you worked until the mid-sixties exclusively in radio and TV and then how long did you continue to work at Hogan and Hartson?

JUDGE HARRIS ---... well... the Court Reform Act of 1970 was passed by Congress which created the new Superior Court and modified the jurisdiction of the D.C. Court of Appeals. Until then this court as you know was the trial court of general jurisdiction instead of doing what district courts all over the country do.

NORTON --- That would be the U.S. District Court ...

JUDGE HARRIS --- Correct... exactly. And when Superior Court was created they had to add a significant number of new judges to it and they tried to get a good mix of folks and they did get good people to go on Superior Court when it was created. They -- that is the Nixon Administration's Justice Department -- wanted very much, among other people to go on the court, to be a then young partner from one of the major law firms and I was the one that they targeted and I said no about 99 times. I was making too much money and I was entirely happy at Hogan and Hartson, but I got a call the night before names were to be sent to the White House saying would I please agree to going on Superior Court. At that time there was no such thing as the Judicial Nomination Commission which came along later in 1974 and the President had the same sort of a free shot at appointments that he has with respect to Article III judges. And I just finally decided, well if they ask you to do it how do you say no. Really do I really want to walk in the front door of the same law firm for my entire career, and if I don't like being a judge I can go back to Hogan and Hartson. So I agreed to do it.

NORTON --- Without at least not trying to be offensive, do you -- can you explain why it was that they were after you?

JUDGE HARRIS --- Judicial selection is also quirky. There is always some reason why a particular person is targeted, and as I reconstruct it in my first year of law school one of my classmates was George Revercomb. George was then the Associate Deputy Attorney General at the Department of Justice. George
left the University of Virginia Law School after his first year to go into the service during the Korean War, but I think it was George who basically kind of felt that I would be good and targeted me and then of course George ultimately came on ... went onto Superior Court himself as a part of the same process and later came on this court until his death a year or so ago.

NORTON --- And you were on the Superior Court for how long?

JUDGE HARRIS --- From January of 1971 until September of 1972 when I went on the District of Columbia Court of Appeals.

NORTON --- How did you come to be selected to the Court of Appeals?

JUDGE HARRIS --- At that time again they had a free shot. There was no -- still no nominating commission. That didn't come along until 1974, and in 1972 I was called down to the Department of Justice by Don Santarelli; who -- whose official position with the department I can't remember.

NORTON --- Yeah, he was ... I think deputy or something at that point.

JUDGE HARRIS --- Yes. And I thought that Don was going to ask me to -- about going on the D.C. Court of Appeals, and instead he asked me what I thought about Sylvia Bacon who was another Superior Court judge who had been at the Department of Justice before she became a judge. And I told him that I thought that Sylvia was very talented and would be a very good choice and about a week later he called me back down. He said since we last talked people keep telling me that we should go with you and will you do it? And I said yes.

NORTON --- Now in your 18 to 20 months of service on the Superior Court, that was before it had its full jurisdiction that it has today...

JUDGE HARRIS --- Correct.

NORTON --- What sort of cases did you deal with during that period?

JUDGE HARRIS --- I was there such a short time that ... the felony cases had not yet been transferred over from the United States District Court. So I basically was the ... had misdemeanor assignments, civil assignments, family division assignments. I suppose the most unique assignment I had on Superior Court stemmed from a telephone call that I got from Harold Greene who is now on this court but then was Chief Judge of Superior Court. And I was the ... filling in the Judge in Chambers responsibility for Superior Court, which there always
has to be somebody to whom people can go for arrest warrants, search warrants and that sort of thing, and I had that duty and got a call from Chief Judge Greene who said I -- we then were being inundated by problems from the Vietnam protestors and Judge Greene said would you be good enough to take one of these Vietnam protest cases? And I said sure if you want me to. Well, it turned out I think I may then have become the only judge in the country to have had a criminal case with 700 codefendants because I ended up, without Judge Greene's having told me, with the 700 people who were arrested on the Capitol steps when they refused to clear the premises when ordered to do so. So that was quite a mess dealing with all of them.

NORTON --- How did you deal with it?

JUDGE HARRIS --- We dealt with it in a very -- it was very tough from the standpoint of keeping track of 700 defendants and notifying them as to what was going on -- the government and defense counsel worked out an agreement whereby eight representative defendants were selected to go to trial and we had a trial, roughly a two-week trial, probably around June of 1972. The -- I had very mixed feelings. I thought that they were guilty of illegal entry because they didn't vacate the Capitol premises when they were told to by the Chief of the Capitol Police, but I was very much aware of the fact that if the jury found them guilty that I had about 690 defendants still to deal with. In retrospect, fortunately the jury found them not guilty ...[laughter] and the government dropped all the other cases.

NORTON --- Now obviously your judicial activities changed when you were appointed to the D.C. Court of Appeals. Who was on the Court then?

JUDGE HARRIS --- Well the ... you still had Andy Hood who had just I guess stopped being the Chief Judge of the Court. Marvelous judge and marvelous person. The D.C. Court of Appeals had been a three judge court prior to court reorganization and so you had Frank Meyers, Andy Hood, and I am drawing a blank on who the third one was. With the court reorganization came Gerry Reilly, who became the Chief Judge of the court who had been the general counsel of the National Labor Relations Board, Walter Yeagley, Frank Nebeker had been a member of that court and was still there. Austin Fickling was there. Catherine Kelly was there. John Kern was there. George Gallagher was there at the time, so the ... that was the group that I joined.

NORTON --- How did you -- I guess the question that they suggest asking is was it sort of a collegial group ...

JUDGE HARRIS --- Yes, it was a very collegial group. And we had disagreements as you will have on appellate courts, but they were always in a -- during that period, always on a very high plane.
NORTON --- guess by that time you were ... you were essentially the state Supreme Court ...

JUDGE HARRIS --- correct ...

NORTON --- rather than the appeals going through to the D.C. Circuit.

JUDGE HARRIS --- That's correct. Previously, as you intimate, anything from the District of Columbia Court of Appeals as it existed prior to court reorganization could be appealed to the United States Court of Appeals for the District of Columbia Circuit, but one provision of the Court Reorganization Act of 1970 provided that the District of Columbia Court of Appeals would be the highest court in the jurisdiction so it became the equivalent of a State Supreme Court and there was appeal only to the Supreme Court from then on.

NORTON --- Did you -- well how long were you on the D.C. Court of Appeals?

JUDGE HARRIS --- From September of 1972 until February of 1982.

NORTON --- Now there were obviously over that time a number of other judges that were appointed to the court. Can you remember any of those?

JUDGE HARRIS --- Well, my former partner John Ferren, who had been doing the pro bono work at Hogan and Hartson, came to the court. Ted Newman came to the court .... And another former partner of mine Jim Belson came from Superior Court to the D.C. Court of Appeals, and I still remember getting a phone call from him. I had ... been on the court for a pretty good while and had no plans to leave when I received a call from Jim Belson saying that he had been asked to go on the Court of Appeals and before he decided what to do he wanted to know if I had any plans to leave and I said no and he said "all right, I'll come." And he came, whereupon not too long thereafter I left and I always felt a little bad about that ever [laughter] since.

NORTON --- You did all right. [laughter]. One of the things -- I mean I might as well ask you this -- I mean it was written up in the paper -- the famous flap with Judge Newman and him being reappointed as chief judge and the so-called "gang of four" and all that. Do you have any recollections of that or do you -- are you willing to tell me about that?

JUDGE HARRIS --- Well there is nothing that I could tell you that has -- hasn't been written about it. Unfortunately it got characterized in some circles as having racial overtones, which assuredly it did not. We had an interesting bit of coverage on it by the Washington Post which of course is a relatively liberal
publication and they had a young reporter named Ben Weiser who had gone to Brown which was the same school that Judge Newman had gone to and I had known Judge Newman well and we were good friends. He served on Superior Court with me and came on at about the same time that I did. But then Weiser who was covering the dispute over whether Judge Newman should become the Chief Judge of the Court of Appeals as soon as he came on it and thought that perhaps the four of us were the bad guys and as he continued to cover it through the months he came to conclude that we indeed were properly motivated and were concerned about Newman's -- not ability, because he is a very bright guy -- but about his ... whether temperamentally he would be a good chief judge. And that was the basis on which we opposed him.

NORTON --- Was there any specifics -- I mean that you can share about him that the problems with him being a chief judge in terms of his temperament?

JUDGE HARRIS --- Just a bit -- he was more volatile than we felt was ideal. It was actually his re-appointment, his redesignation as chief judge, that we opposed.

NORTON --- How did you go -- how did that work in terms of opposing him?

JUDGE HARRIS --- I really can't remember much about the details except that Frank Nebeker and Gerry Reilly --and Gerry Reilly at that point had taken a retired status although he was still active [now in the Article III system you can take senior status and continue to sit and in the Article I court system across the street the comparable thing is called retired status which makes it sound as though you are not there, but in fact you are and Gerry Reilly continued to be very active on the court as a "retired" judge], but the four of us who were active judges who were speaking ... willing to speak out in opposition to Judge Newman's redesignation as Chief Judge were George Gallagher, John Kern, Frank Nebeker and I.

NORTON --- Now any ...

JUDGE HARRIS --- But I should say that to this date I still go to all retirement dinners when somebody leaves the D.C. Court of Appeals, I still feel very close to it, and when I go I always have a very pleasant greeting to and from Judge Newman and we have a good chat. It's just a difference of opinion as to whether he should have been the chief judge of the court or not. NORTON --- Any particularly memorable or significant cases that you remember dealing with on the Court of Appeals? -- or, as they say, stick out in your mind?
JUDGE HARRIS --- Well as I mentioned to you before you turned on the tape recorder, I know I am not alone in feeling this way, but I -- judges ever since I have been a judge have had more work than they can handle and I think we tend -- most of us tend to have the feeling that we are looking through the wrong end of a telescope and we zero in on a particular case and get it done and move this telescope over to the next case and you -- I think in a way we're sort of mechanics. We try to take a case apart and put it back together and then go on to the next one, and there are few things that I really recall about cases. I do remember that I thought the law was quite uncertain as to how the Jencks Act should be applied, that's Section 3500 of Title 18 of the United States Code dealing with turning over the statements of witnesses and what constitutes statements and when do they have to be turned over. I did try to straighten out that area of the law through a sort of a trilogy of three opinions in different cases. I can't remember what they are. One case ... sticks out in my mind, because it is the kind of thing that doesn't happen very often, but there was a case involving a defendant Keith Crews who was arrested on the Washington Monument grounds and the park police wanted to take a picture of him. Somebody had been going into the ladies' room on the Washington Monument grounds and robbing people -- women -- who were using it. And the police wanted to take a picture of him so that they could show it to the victims to see if they could identify him and it was too dark for that, so they took him to the police station where they took his picture. And they later showed that picture to victims who identified him and he tried to suppress his identification which in effect would have meant that he would suppress his existence, if you suppress the availability of a victim to identify the person who had robbed them. And we had a two-to-one division on the panel which decided the appeal for Crews' conviction. Judge Nebeker and I were in the majority and I am pulling a blank on who made the dissent. The court went en banc on the case and Nebeker and I went from being a two member majority to being a seven-to-two minority and certiorari was granted in the case and the Supreme Court took the position that Judge Nebeker and I had taken by a vote of nine to nothing which was sort of gratifying. So that one sticks in my mind.

NORTON --- Now you were -- your next position was as U.S. Attorney for the District of Columbia, is that correct?

JUDGE HARRIS --- Yes.

NORTON --- How did it come to be that you were appointed U.S. Attorney?

JUDGE HARRIS --- Never had any idea of becoming the United States Attorney. I had never been an Assistant U.S. Attorney. I had never been a prosecutor anywhere. But in 1974 Home Rule Legislation was passed which created the Judicial Nomination
Commission which meant that the President -- instead of having the free shot that he still has with respect to Article III judges which he did have with respect to judges in that Article I court system -- the President could only pick from three names which were submitted to him by the nomination commission. The geographical area from which judges in that court system could be picked was shrunk. Previously under statute it was recognized that this is a large metropolitan area and judges could be picked who lived in the District of Columbia, Montgomery County, Fairfax, Arlington County, Prince Georges County, in other words, the contiguous geographical areas to the District of Columbia. That was changed and you had to be a District of Columbia resident to come on the court and I felt that the -- unfortunately, the judicial selection process was becoming politicized. At the same time judges' salaries were being terribly compressed. I took about a 70% income cut when I left my law firm to become a judge in the first place and then Congress wouldn't raise its own salaries and wouldn't raise judges' salaries either, and I had kids that were getting close to college age and I was in my mid-fifties and was just about to start talking to law firms about going back to private practice when I was asked to become the United States Attorney and I thought that would be a great way to leave the District of Columbia Court of Appeals. I had no idea at the time whether that would lead to another judgeship or back to private practice, but I thought it would be a wonderful experience and so I agreed to do that.

NORTON --- When you say that the selection process was getting politicized, what do you mean by that?

JUDGE HARRIS --- Well... it became -- in the first place you had an awful lot of lawyers who spent their entire professional life practicing in the District of Columbia and many of whom had grown up in the District of Columbia and because they happened to be living across Western Avenue or across the Potomac River they no longer could be considered for judgeships here, which I thought shrunk the talent pool rather considerably. And there were lots of cries that the make-up of the court should more accurately reflect the racial make-up of the District of Columbia, and it became -- anytime you have a commission that is making the choices as opposed to what you can do in the Article III system where I could go to you and say "Randell, I would like for you to become a judge in this court. Will you do it?" And that's how you get the best possible people by simply picking them and offering them the spot. I don't mean it in the pejorative sense but I think it meant that no longer could whatever administration it was simply pick the person that they thought would be the best person for the job.

NORTON --- I read -- I actually went back and looked at a couple of old articles and one of the things -- the speculation I guess
was going about in the Post ... was that this had been a long

term -- I mean the Reagan Administration had taken a long time to
replace Chuck Ruff who had been appointed by Carter, I guess, and
do you know anything about that? Or do you know -- I guess that
the -- that's not a very good question here particularly for a
lawyer -- how did you come to get asked to be U.S. Attorney?

JUDGE HARRIS --- Well what happened if you have looked at
newspaper stories at the time there were two people who were
interested in becoming the U.S. Attorney at the time, either of
whom would have been quite good in my view. One was Paul
Friedman who now is on this court and the other was Joe DiGenova
and each of them had support but neither had enough support to
knock off the other. And as a result Chuck Ruff stayed as a
holdover U.S. Attorney, -- and certainly Chuck was a very able
guy -- for a long period of time, and for reasons which I
couldn't tell you, people at the Department of Justice and/or the
White House concluded that if I were interested in doing it that
I would be a good person to break that logjam and take on the
job.

NORTON --- Was there anybody in particular who was sort of
carrying your torch over there?

JUDGE HARRIS --- Well, I'm sort of in a screwy position. I have
had four presidential appointments, but I have never been active
in politics in any way whatsoever, and the appointments that I
have had have just been a result of a telephone call saying --
asking me would I do this. So I couldn't tell you really how it
all came about.

NORTON --- The -- you indicated I think before we turned on the
microphone that you had -- or one of the times it was off -- that
you had not had any experience as a prosecutor before this. What
did you do -- I mean how did that affect your coming on as United
States Attorney?

JUDGE HARRIS --- Well it necessitated quite a crash learning
program. I had a period of time between the time I agreed to do
it and the time that I was actually going to begin the job and I
spent much of that time talking with prior Assistant U.S.
Attorneys,, present -- then present Assistant U.S. Attorneys, just
trying to learn everything I could possibly learn about how the
office ran before suddenly being thrown into the pool as the
United States Attorney. And as a practical matter not being a
prosecutor is not that much of a detriment here as it might be
somewhere else because here the office is so big that the United
States Attorney can't prosecute cases personally as a practical
matter and hasn't been able to for years.
NORTON --- What -- how would you describe the function of the United States Attorney in the District of Columbia... at least when you were serving here.

JUDGE HARRIS --- Well it is just basically administering an office of what by the time I left it was about 220 assistant U.S. Attorneys. The ... Washington as a city is enormously attractive to young lawyers. The United States Attorney's Office is enormously attractive to young lawyers and the talent pool that is available to the U.S. Attorney's Office is pretty mindboggling. And it is just -- it was a wonderful group of people to work with, and during the period of time that I was the United States Attorney I hired 70 assistants. It was a period of growth for the office. There are an awful lot of decisions -- prosecutorial decisions that I had to make notwithstanding not having been a prosecutor, but it wasn't that much different than what you do as a judge. You hear what the facts are and decide what you think ought to be done.

NORTON --- Why do you -- why was there so much growth while you were U.S. Attorney in the office? Was it a change in the function or increase in the crime problem?

JUDGE HARRIS --- I think it was basically -- largely the increase in drug usage, although crack didn't come along until about 1985 and didn't become a major problem for the courts until late '85 and early '86. But there was -- I think it was probably largely drugs.

NORTON --- I know that at various times there have been discussions about the -- the rather unique situation of D.C. having a United States Attorney's Office as ... both the federal and the local prosecutor. Were you involved in any discussions or anything about that?

JUDGE HARRIS --- No, I was presented with the system in which the United States Attorney's office prosecuted in both court systems. It is a system that I have always felt worked well. As I just indicated, the United States Attorney's Office is able to attract extremely talented people, and so it works. It works very well.

NORTON --- What sort of relationship or dealings did you have with the local government? -- the D.C. Government?

JUDGE HARRIS --- I did everything I could to work as closely as I could with the local government because of course by then there was Home Rule and I had some sensitivity to the fact that I was a white male Republican appointee and that there were people who really liked to see the District of Columbia do its own prosecuting the way a state might, and so I went to an awful lot of trouble to make myself accessible to -- anytime anybody asked
me to speak to a community group I would go, and ... there was a
group made up of the head of the Department of Corrections and
somebody from the D.C. ... from the City Council and a number of
others what we tried to share attitudes towards problems. I just
-- so I tried very hard to deal as effectively as I could with
many others, including with the Corporation Counsel who at that
particular time was Judy Rogers, who later came on the D.C. Court
of Appeals just about the time that I came on this court, and
then of course Judy later became ... went on the D.C. Circuit.
But we had a very good working relationship when she was the
Corporation Counsel and I was the United States Attorney.

NORTON --- I -- one of the other articles I read indicated that
at some point you testified against -- down at the City Council --
against the law to essentially ease the parole system or let
people out earlier. I think that may have been in response to
the ... some of the court orders, the overcrowding orders and you
indicated that they should build more -- I am paraphrasing here --
that they should build more prison facilities rather than
letting these folks out earlier. I mean do you recall that, or
am I paraphrasing that wrong?

JUDGE HARRIS --- I -- No, I think you put it pretty accurately.
I met on a number of occasions -- again as part of my effort to
show the United States Attorney's, not mine, but the United
States Attorney's, interests in working with local officials --
and I met with Marion Barry on a number of occasions, and he
wondered whether we couldn't divert more people from situations
in which they would be looking at incarceration, and I told him
then and still believe that by the time anybody reaches the point
of being incarcerated in the District of Columbia they are not
first offenders. And that diversion is tried, probation is tried
and that may indeed make some people feel that they don't have to
pay any particular penalty for criminal conduct -- I don't know
that would get into sociological and psychological problems that
... and I am not all that expert in -- but I assured the then and
once again Mayor that there were no soft-core prisoners in the
D.C. system and that he was just going to have to build more
facilities but he was never willing to seek to have that done.
And the facilities have been a mess ever since. Inadequate. And
we -- at the time the D.C. Parole Board, in part because of the
crowded conditions at Lorton and in part because of -- and here I
don't use the term in the pejorative sense again -- but the
parole board, the District of Columbia parole board, had somewhat
of a social worker psychology, and ... as an institution thought
that everybody could be straightened out and they were letting
everybody out at about the first opportunity that they were
eligible irrespective of whether that person happened to be a
particularly hard-core recidivist who posed a danger to the
community, and I was concerned about that.

NORTON --- The -- how long were you U.S. Attorney?
JUDGE HARRIS --- From February of 1982 until December the 2nd, 1983, when I came on this court.

NORTON --- Once again I will ask you the question -- any memorable or significant cases your office handled during that time that you can recall -- stick out in your mind?

JUDGE HARRIS --- Well there is a lot that's memorable. It is a great job. Greatest, most fun job I have ever had. Never before or since have I been a part of an organization where everybody was approaching their jobs with the same sort of an attitude and same sort of effort and it was great in the kind of teamwork that I was a part of. The most notable case, of course, was the John Hinckley case when he was prosecuted for his attempted assassination of President Reagan.

NORTON --- Now, there was -- once again in reading my articles -- the Post said that your time with -- as U.S. Attorney was fairly uncontroversial except that there were some House Democrats who accused you, I think -- and this is a paraphrase -- of dragging your heels on a contempt citation of the former EPA Administrator and, as I say don't know a whole lot about that, but I just ask you do you remember anything about that.

JUDGE HARRIS --- Sure do [laughter]. Ann Burford or Ann Gorsuch -- I forget which name she was using at the time, she married later. I think it was Ann Burford at the time -- was the Administrator of the Environmental Protection Agency, and a dispute developed between the Reagan Administration and the House of Representatives as to what documents should be turned over concerning cleanup of so-called Superfund contaminated sites and Ann Burford, who was a very able and very conscientious person, found herself caught in the middle of an Executive Branch versus Legislative Branch controversy which was not of her making in any way. But she became a target of the House of Representatives because the Administration did not want to turn over certain work documents as to how they were proceeding on the Superfund cleanup sites and the House of Representatives later -- or ultimately -- decided to hold or to cite her for contempt of Congress, and the statute in the United States Code, the section of which I can't recall, places the burden of prosecuting anyone who is cited for contempt of Congress on the United States Attorney for the District of Columbia. Doesn't place it in the Department of Justice, generically, it places it on the United States Attorney for the District of Columbia.

I shall never forget being served with the contempt citation. My wife and I went to a dinner party and came home one night and there were a couple of gentlemen in our driveway when we got home about midnight and they identified themselves as being from the House of Representatives and I apologized for having them spend all that time there and invited them in to see if they wanted to
use the restroom or have a coke or beer. Well they acted more like KGB agents than [laughter] fellow members of the federal government and I ... in any event took the contempt citation, went to bed, and I thought what do I do with this now, because it isn't Ann Burford's fault that she is in this mess, and I knew that they were trying to work out some sort of settlement agreement to provide the documents that would satisfy both sides and I thought back to Watergate and realized that I was in the same kind of position that the Watergate folks found themselves in very early. By that I mean it occurred to me that what was important for me as the person charged with the responsibility for prosecuting her was that at the end of the line nobody could say that I had been told what to do or what not to do. And I came in the first morning after receiving the contempt citation and called Main Justice and said I just want to make it clear that I am not going to talk to anybody at Main Justice about this case. And that decision was respected and followed and ultimately an agreement was worked out and the papers were turned over to the grand ... the case was presented to a grand jury which did not indict her and at the end of the line I -- along with Attorney General Smith had to testify before a congressional committee and we both were placed under oath so that we would be committing perjury if we did not answer truthfully. The Attorney General was able to say that the Department of Justice never told me what to do in the case and I was able to say that nobody ever told me what to do in the case and so it all ended fine.

NORTON --- Any other memorable moments as U.S. Attorney?

JUDGE HARRIS --- No, other than just the overall pleasure of working with such a talented and dedicated bunch of folks. It was a great experience.

NORTON --- And you were appointed to this court 19--

JUDGE HARRIS --- I was sworn in December 2, 1983 --

NORTON --- '83. So you had been -- I'm sorry I lose track. You have been United States Attorney for how long?

JUDGE HARRIS --- A little over a year and half.

NORTON --- And how did you come to be appointed to this court?

JUDGE HARRIS --- Another phone call saying are you willing to do it? [laughter]

NORTON --- Who was it from? Do you remember?

JUDGE HARRIS --- Fred Fielding who was White House Counsel and also chairman of the -- what was ... the Reagan Administration had a seven member committee that was doing the judicial
selections screening and Fred Fielding was the chairman of that as -- in his capacity as White House Counsel -- and he called and asked if I was willing to come on this court and I said I was.

NORTON --- I am told by a number of people that you are one of the earliest folks to regularly hire women law clerks. Even back when there weren't very many women in law schools.

JUDGE HARRIS --- That's correct.

NORTON --- Liz Medaglia* was a year ahead of me at UVA --

JUDGE HARRIS --- Liz was my second law clerk. My first law clerk on the D.C. Court of Appeals.

NORTON --- She seems to be doing very well.

JUDGE HARRIS --- Yes.

NORTON --- Um ...

JUDGE HARRIS --- As a matter of fact when I --I still remember George Revercomb's funeral. George -- I have been hiring mostly women and George had been hiring mostly men. At his funeral he had plenty of former law clerks who could be pallbearers and I remember turning to my wife and said that if I had any doubt before, I'm going to have ... I am definitely going to have to be cremated because those women would not be able to carry my casket. [laughter]

NORTON --- How do you -- how would you describe the -- your relationships with the other judges on this court since you have been on board?

JUDGE HARRIS --- Excellent. It is a unique court in that with the exception of some people, such as I -- I have never been active in politics, and some folks have -- but almost everybody is politically either pretty conservative or pretty liberal and the series of presidents have appointed a series of folks who reflect either a conservative political viewpoint or a liberal political viewpoint. But on this court there is great collegiality. We, of course, work basically alone but we share thoughts readily with one another, we have great relationships with each other. When we talk about politics we do so only kiddingly. We avoid serious political discussions in the interest of keeping harmony, but it is a great group and ...

NORTON --- How often do you get together with the other judges in the District Court?

* M. Elizabeth Medaglia, Esq. is a partner in the Washington law firm of Jackson & Campbell.
JUDGE HARRIS --- We have a judge's dining room which is attended regularly by probably less than half of the judges and by only about two judges from the Court of Appeals. It is a wonderful opportunity to get together and get a lot of laughs and occasionally say "Hey I've got this problem this afternoon and anybody run into it?" To get something -- you can't practice law all alone and you can't be a judge alone. You occasionally need to bounce things off somebody else to see whether your approach makes any sense or not.

NORTON --- In terms of the court administration. How does that work? How -- the function of the Chief Judge and the sort of administrative hoops that you all have to go through and the administrative responsibilities that you have.

JUDGE HARRIS --- We have almost none. It's -- serving on this court is remarkably insular because we do have the individual calendaring system. I just have my own little island. Everybody has their own little island. We get some support of course from the clerk's office and more indirectly from the Administrative Office of the U.S. Courts. But basically we each of us works in our own little world doing our best to move our cases as effectively as we can.

NORTON --- What responsibility then does the Chief Judge have?

JUDGE HARRIS --- Well the Chief Judge has a lot of administrative responsibilities which I couldn't clearly define for you. He also works on -- handles all the grand jury matters that come up, and if somebody is brought before a magistrate for presentment and is detained, they, before the case is indicted or before it's referred to the judge for regular assignment, they would appeal conditions of release to the chief judge, large number of those .... I am thankful that my combination of age and years of experience on this particular court are such that I will not have to serve as Chief Judge.

NORTON --- You talk about administrative responsibilities. That's mostly of the staff -- I mean the support staff?

JUDGE HARRIS --- Yes.

NORTON --- There is very little I gather in terms of the other judges.

JUDGE HARRIS --- That's correct. Of course, the court has a calendar committee that works out difficulties in case assignments. It has a rules committee it has -- a number of committees that assist and work with the chief judge in dealing with the day-to-day problems where we have to interact or interface in ... so that we function smoothly as a unit.
NORTON --- I gather the assignments both criminal and civil are basically at random.

JUDGE HARRIS --- Totally.

NORTON --- Yea.

JUDGE HARRIS --- Right.

NORTON --- There are never any cases -- I mean I guess I should ask this where the Chief Judge says no I think judge so-and-so would be the best one to handle it?

JUDGE HARRIS --- I shouldn't say totally because there is an exception. The ... after the Hinckley case there was a rule change here that permitted the United States Attorney to go to the Chief Judge when a -- I forget the language of the rule -- but when a protracted or high visibility case was ... indicted, was about to be filed they could go to the Chief Judge and ask that the case be specially assigned and if it was going to be a very high visibility case or long case or something like that. The Chief Judge -- happens very rarely -- but the Chief Judge could then go to one or two or three judges and say how does your calendar look for the next six months? Are you in a position to take this on without busting your regular calendar?

NORTON --- You mentioned the sort of different political views of the appointees to this court. I'm not sure exactly how to ask this but the -- this is a visible court that handles a lot of politically charged cases and a lot of politically charged issues. To what extent do you think that the ... the politics of the issue or perhaps the ... the high visibility of the issue affects the decisions or the way the cases are decided in this court?

JUDGE HARRIS --- I would like to say zero and I think we are as close to it as you can get. But we are all human beings and we are all the end product of all of our experiences and thoughts. I believe that everybody on this court does a super job of leaving their political views behind them when they walk into that courtroom. I personally think that it is not at all difficult to have a view about what a particular political question may be and blot that totally out of your mind when you go in and are faced with a set of facts and a legal problem.

NORTON --- What sort of relationship do you and the judges on the District Court have with the Circuit here since you are all in the same building?

JUDGE HARRIS --- There inevitably is going to be tension between trial courts and courts of appeals. I have seen that from both sides when I was an appellate judge, which I was for nine and one
half years. I always took particular pains whenever I wrote an opinion reversing a trial judge never to be critical of the trial judge. I would say that the trial judge had made X mistake or Y mistake, but do so in a way that didn't make the trial judge look bad because we are all part of the same system of administering justice. I ... I think sometimes that a little of that is lost in the relationship between the D.C. Circuit and our court now. I think some of the ... some opinions are not written with the same degree of sensitivity that I like to think I showed in writing appellate opinions and that I think should be shown.

NORTON --- What difference if any do you think it makes that an awful lot of people on the D.C. Circuit are not -- didn't practice in this area and are from various other parts of the country?

JUDGE HARRIS --- I don't know that that makes a difference, but I think a greater difference would be attributable to ... to a person's background whether somebody had a trial -- had trial experience, experience actually representing clients or whether the experience is largely in academia.

NORTON --- Do you think it applies to any circuit court or is that a particularly -- I mean do we -- because of the nature of the D.C. Circuit that we get more ...

JUDGE HARRIS --- Well, I think this is rightly or wrongly viewed as more of a national circuit here and so people do come from different parts of the country and there are plenty of good lawyers here and I would be happy to see the D.C. Circuit populated by District of Columbia lawyers. With 45,000 lawyers I think we have got plenty to do it. But I don't quarrel with the fact that they bring in people from other parts of the country, either.

NORTON --- The ...

JUDGE HARRIS --- But there -- I have served for six years on the Criminal Law Committee of the Judicial Conference of the United States and have dealt with district judges from all over the country and all of the different circuits and there is just always tension between trial courts and appellate courts. It is just part of the game.

NORTON --- Did you ever have -- when you were an appellate court judge did you ever have a trial court judge call you up or button-hole you and say [laughter] you were wrong?

JUDGE HARRIS --- ...

NORTON --- I'm not going to ask names, I was just curious.
JUDGE HARRIS --- Well one of my closest -- I served on Superior Court for a time and the number of the people on the Superior Court when I was in the D.C. Court of Appeals were among my closest friends and there was one who was uniquely close to me who if he thought I was at all wrong would -- had no reluctance in saying so, and which I took very well. But only one. [laughter]

NORTON --- I know there has been a fair amount of publicity --not not -- well not quite as much recently but certainly over the last four or five years about the increase in the criminal docket in the District Court, in particular the drug docket. I mean is that something that has affected the practice since you started here?

JUDGE HARRIS --- Well it has had an enormous effect on the court and presents an interesting question as to court management, but I think it is more theoretical than real. When Jay Stephens was the United States Attorney, two things happened that had great impact on this court. The first was the development of crack. Crack came in in late 1985 or early 1986, and it is such an incredibly bad drug and almost instantly addictive, and at about the same time Congress passed the Sentencing Reform Act of 1984 which created the Sentencing Commission, which in turn adopted sentencing guidelines; then Congress went beyond the Sentencing Reform Act and the guidelines and created a series of mandatory minimum prison sentences and among those was the mandatory minimum sentence of 5 years in prison for possession with intent to distribute 5 grams or more of crack which of course is a smokable form of cocaine. And then you run into the problem of what sort of prosecutorial discretion is exercised, and Jay Stephens during his time as United States Attorney felt that the people who were distributing crack were contributing to the deterioration of the quality of life in the city and to the addiction that was spreading, and I don't quarrel with that conclusion at all. I think it is absolutely correct. But the U.S. Attorney could bring somebody, let's say who has seven, eight, nine grams of crack which -- five grams of crack in weight is equivalent to a twenty-five cent piece, a quarter -- and it is not a whole lot of crack.

NORTON --- But that was the cut-off for the presumption for ...

JUDGE HARRIS --- For the mandatory minimum ...

NORTON --- distribution.

JUDGE HARRIS --- If you had five grams you subjected yourself to a mandatory minimum of five years. If you had 50 grams of crack with intent to distribute you had subjected yourself to a mandatory minimum of ten years. And Jay Stephens had the office bringing us a lot of cases that involved 7,8,9 grams of crack and
so before crack I could try -- and I did run the figures -- I could try an average of 7 civil cases a year. After crack -- it's about 1986 when the mandatory minimums and crack coincided -- I went to where I could only try one civil case a year. And needless to say that ill-served our civil litigants as we simply couldn't get to the civil cases. We could set civil cases for trial but with the Speedy Trial Act and its highly undesirable -- in my view -- 70 day provision, we would repeatedly have to bump civil cases in order to try drug cases and other criminal cases. But our calendar for a long time was driven by a significant percentage of cases with fairly small quantities of crack. When Ramsey Johnson became the United States Attorney on appointment by the Attorney General before President Clinton could name Eric Holder as the United States Attorney, Ramsey Johnson changed the policy to one pursuant to which they would bring to this court only cases involving 50 grams or more of crack unless there was a gun involved. And that meant that an awful lot of the smaller cases that had tied us up so much were then going to Superior Court which with over 60 judges is much more able to handle that kind of quantity of cases.

NORTON --- Has that continued with Eric Holder?

JUDGE HARRIS --- Yes.

NORTON --- So, that it is easing in terms of the calendar.

JUDGE HARRIS --- That's correct except we ... every cloud has a silver lining and every silver lining has a cloud. We've been getting more and more in the last few years fairly significant drug organizations being brought in where there are conspiracies and continuing criminal enterprises charged in large quantities -- particularly, again, crack cocaine which is more common here than the powdered cocaine, although heroin is beginning to make somewhat of a comeback, unfortunately. But we are getting a number of cases that are taking 3 or 4 months to try. And that's in addition to other cases that I had. Not too long ago I had an 11 defendant case involving money laundering and an undercover police officer holding himself out as a drug dealer and buying cars for cash and the car dealers not reporting that to Internal Revenue Service as required by law, and that case took 5 months to try. So we are getting some of these cases that take a long time to try and there you go with your civil calendar. You can't get to it during those periods either.

NORTON --- As a practical matter what happens to the civil cases? Or what has happened to the civil cases?

JUDGE HARRIS --- Basically we are trying ... trying to increase the number of cases that go to mediation or arbitration, but that's still only a small percentage. The Bar here still is relatively unwilling to have their cases tried by magistrate
judges, although we have three very good magistrate judges and they get the same juries that we do. I don't understand why the Bar won't accept more cases. It may be that, and I don't know this, but perhaps some defendants simply want to put off... are perfectly happy to put off the day of reckoning in a trial, and so they may not be that aggrieved by the fact that we cannot reach their cases.

NORTON --- So, it still means that there is a substantial possibility of delay if the folks don't settle the case or agree to a magistrate...

JUDGE HARRIS --- Yes...

NORTON --- Just sort of looking...

JUDGE HARRIS --- ...but this has a by-product. There was a time when everybody would bring any case they could in this court. If they could possibly create diversity jurisdiction, they would come here rather than going into the Superior Court where the delays were endemic. Then the Superior Court began to respond to its caseload by assigning a number of judges to exclusively civil calendars and then if you could manage to go to Superior Court, it became more desirable for plaintiffs to go over there because they could get tried because there is no Speedy Trial Act and they didn't have all the mandatory minimum prison sentences that brought so many drug cases to us. These things have a strange way of working out.

NORTON --- Do you have any thoughts or a crystal ball as to whether any of this tort reform -- federal tort reform legislation that they have talked about will have the same kind of effect of having all the defendants removing their diversity cases over here from Superior Court?

JUDGE HARRIS --- I have no real feel for that.

NORTON --- Yeah, me neither. It just occurred to me.

JUDGE HARRIS --- [laughter]

NORTON --- How about the sentencing guidelines. How have you dealt with those and how have you felt about how well they work?

JUDGE HARRIS --- When they came in I was a member of the Criminal Law Committee of the Judicial Conference of the United States and we had to deal with them. And I have dealt extensively with the Sentencing Commission through that role. I started out, like I think 99 percent of the existing district court judges in the country, in not liking the sentencing guidelines.
NORTON -- Why was that?

JUDGE HARRIS --- Because they do take ... they do reduce your ability to tailor your sentence to the peculiarities of a particular defendant. That initial feeling has been changed and, while I do not like the mandatory minimums -- the mandatory minimums result occasionally in gross equities. Some low level mule gets talked into carrying a package from New York to here -- may not even know what's in it -- and if there is 50 grams of crack he's off for ten years. But if you put the mandatory minimums aside -- which unfortunately we can't -- I have come to think that the guidelines are a good idea because the strong opposition that has continued from District Court Judges to the sentencing guidelines seems to me to be coming more and more from judges who I think would basically be using an awful lot more probation than incarceration, and you would end up with inequities or inconsistencies in sentencing that the sentencing guidelines were intended to correct.

NORTON --- Looking at sort of the bigger picture in terms of federalizing an awful lot of crimes, I saw you did a Washington Post Op Ed piece, in 1991 where you raised some concerns about the essentially making some more violent crimes -- homicides involving the use of a firearm that crossed state lines and that sort of thing -- as a federal offense and putting them in the federal court as opposed to -- to the state court system. Do you still have the same feelings? I guess I have probably ought to ask you what are your feelings about that?

JUDGE HARRIS --- They are exactly the same as I expressed in the Post Op. Ed piece. We have more work than we can handle now and if you federalize any more crimes that typically are state or here the District of Columbia within their bailiwick it just would interfere more and more with our ability to handle those cases which historically and properly belong in the federal system.

NORTON --- And ... has it made ... I mean as a practical matter, has it made a significant difference in terms of the type of cases that you are able to handle.

JUDGE HARRIS --- I am not sure I understand what your question is.

NORTON --- Well, it's -- it's getting late and I am not doing very well [laughter] with my questions. I guess as a practical -- have you seen it since -- because I gather there have been in the past several years a bit of a trend towards federalizing what used to be the old state law, common law type of crimes perhaps in an interest of imposing more severe penalties or sentences -- have you noticed that that really has made a significant
difference with respect to the -- to the -- your ability to handle cases that you say are traditionally federal cases?

JUDGE HARRIS --- It hasn't made any meaningful difference yet. But the difficulty you have is with the politics of it in that members of Congress cannot have an effect on the local prosecution of what would traditionally be called local crimes. And yet they have constituents that want -- they want to believe or they want to convince they are doing something in the area of fighting crime. So how can they do it? They can't affect the local prosecution of traditionally local crimes and so they turn to saying well lets federalize some of these things and they do it I think for political reasons in ways that have a negative impact on the federal court system.

NORTON --- Over and above the federal court system, do you have any feel for whether or not these -- federalizing these crimes and imposing perhaps stiffer federal penalties has had any effect in terms of deterring crime or fighting crime?

JUDGE HARRIS --- We are not seeing any of those cases yet. I mean, for example, the deadbeat dad or the spousal abuse or those things that I think have already become federalized. We haven't had any of those come in the court system yet that I have seen.

NORTON --- Do you have any explanation as to why not?

JUDGE HARRIS --- No.

NORTON --- But you are not unhappy about it? [laughter]

JUDGE HARRIS --- No. I have more than I can do as it is. [laughter]. This is an interesting way to make a living but not an easy way to make a living. [laughter]

NORTON --- In terms of your -- the difference between your practice as an appellate court judge and a trial court judge, which do you prefer?

JUDGE HARRIS --- You have a lot of appellate judges who simply by chance don't have any real trial experience and they, I think, would rot in hell before they would become trial judges, and you have some trial judges who like the autonomy of functioning by themselves and not having to get at least one more vote to dispose of a case who would rot in hell before they became appellate judges. I personally have enjoyed both jobs. I like analyzing and writing in the legal area and I like the interaction with people that you have on the trial courts. So I have enjoyed them both.

NORTON --- Did you see it as a sort of a -- this is an unfair question but let me ask it -- as a step down going from the Court
of Appeals to a trial judge over here or did you look at it as a step up because you were going to the federal system?

JUDGE HARRIS --- Well ... no, I certainly didn't view it as a step down at all. Indeed, as a matter of fact, when the Bork vacancy existed on the D.C. Circuit, there was concern expressed by the Bar about the fact that so many people from other parts of the country were being put on the District of Columbia Circuit and my name and that of Judge Hogan were informally floated by the Senate Judiciary Committee for the possibility of going on the District of Columbia Circuit, and that was done without my knowledge or approval. I have no desire -- or had no desire. I am now old enough so that I would not be put on the Circuit Court no matter what. But I had -- I concluded that whatever happened I am perfectly happy to stay here.

NORTON --- Can I ask you about memorable cases on the District Court? I know you are looking through the wrong end of the telescope, but has there been any that particularly stick in your mind or particularly interesting trials or unusual situations?

JUDGE HARRIS --- Well, when I learned that you were going to come down and talk to me, I tried to think of whether there was anything, but I didn't devote any time to it. We tend to be hummingbirds. We stop at a flower and we drink the nectar and go to the next flower. I don't know. To draw another silly analogy, [laughter] we are sort of wind up dolls. We come in and our staff tells us, OK, you've got to do this today or you've got to do that today and I just -- I can't think of anything that was really unique or extraordinary. I do -- the most unique one that I do have I hope that I never have, and by that I mean I have the indictment in the Pan Am 103 case with the shooting down of that plane over Lockerbie, Scotland, and if Colonel Khaddafi does not kill his intelligence agents before they are -- they are ever turned over to anybody. If they are turned over to this country I've got them. And if I've got that that's going to be a colossal mess. [laughter]

NORTON --- What about memorable colleagues or attorneys that appear before you, that you have dealt with? Anybody stick out in your mind?

JUDGE HARRIS --- No it's a -- the attorneys we get such a broad range and again you -- it's ... it's like a movie buff, somebody who goes to a movie every night and sees a different number of actors. We go into that courtroom and we see such a range of lawyers that -- you deal with them and nothing really registers that's worth -- worth passing on. And colleagues -- it is a great bunch -- we do have very good relationships between the judges on this court and ... but you are closer to some than others, but it is a good group and very helpful and cooperative.
NORTON --- How about how about your chambers? How many -- how is it set up? How many law clerks and that sort of thing?

JUDGE HARRIS --- Two law clerks.

NORTON --- Is that standard? I -- or is that sort of your option?

JUDGE HARRIS --- Well when this courthouse was built -- it was completed in 1952 -- the District Court chambers were laid out so that each judge would have one law clerk and one bailiff. And the bailiff was typically -- and back in the 50's -- would be a black male employee who would kind of be present in your court appearances, would help out with family things if you needed him, and just generally became a part of the judge's family practically. Then as time went along and the case load increased -- as I'm sure you know back in the 40's and 50's and certainly before, this court pretty much closed down during the summer. Then as the case load became so great that was a luxury that could no longer be afforded. Judges no longer could get along with one law clerk but the money wasn't there for more than two employees, so the bailiff became kind of a vanishing breed as virtually everybody went to two law clerks.

NORTON --- Did you ever have a bailiff?

JUDGE HARRIS --- No.

NORTON --- That was pretty much gone by the time you got --

JUDGE HARRIS --- Yes. Judge Gesell who was a marvelous fellow and a great judge -- Judge Gesell did have a bailiff who is still here at the court, a wonderful fellow named Roy Smith who I hate to think of not having him around. He is a real asset to the institution. But that meant that Judge Gesell got along with one law clerk but he also had an enormously talented secretary named Doris Brown who had she been born a number of years later no doubt would have gone to law school and been a stick out lawyer. But she became a secretary many years ago when the openings -- opportunities for women -- were not so great, and she is now back in the courthouse following a time away from it as secretary to Judge Tatel on the D.C. Circuit.

NORTON --- How about ... outside court activities. What do you do in your spare time?

JUDGE HARRIS --- Don't have that much. It is a very demanding job. Frankly, I, and I don't say this in the complaining way but I remember when I came on this court I thought -- I do like to play golf occasionally and I thought that I would be able if my calendar broke down from time to time to be able maybe once in a while go out and play golf on an afternoon. Well I have been on
this court for nearly 12 years and have not gone out to play a round of golf since I have been here. [laughter]

NORTON --- Right ... 

JUDGE HARRIS --- We just stay swamped. [laughter]

NORTON --- Do you find its hard to cultivate friends outside of the courthouse -- I mean because you are a federal judge?

JUDGE HARRIS --- Very very hard question to answer. I am not by nature a social gadfly. I do have a number of very close friends but I do think that there is a lot to the idea that casual invitations are not extended to judges by a lot of people because somebody may think that they are trying to cultivate them or what not. And that's fine with me. I'm happy to go home [laughter] at the end of the day.

NORTON --- [laughter] OK. Do you, in terms of sort of overall judicial philosophy and I don't know if that's too broad of term, but do you have one in terms of how active the court should be in terms of social affairs and that sort of thing?

JUDGE HARRIS --- This jurisdiction is so different. If I lived in Helena, Montana, for example, that would be a real problem. But here with 45,000 lawyers I mean, hell, you can hardly have a case of significance that I am not likely to know some lawyer and you socialize with lawyers through social lawyer organizations and through long time friendships and I think in a city like this judges and lawyers can mix very easily. I really do sometimes sympathize with my colleagues who are in the smaller communities where they really do face difficult problems as to what they -- what appearance they can create by close socialization with a very good friend who also happens to be trying cases before them.

NORTON -- Do you have any feeling as to what the most significant problems that now face the judicial system or the administration of justice at the present time? You know this is a big sweeping question. Do you have any thoughts on that?

JUDGE HARRIS --- Just the only one that really occurs to me is having more to do than we can handle. I think -- I think all judges are more clerk dependent than would be ideal. I -- very few judges really are able to read all the pleadings that they would like to read and do all the analysis they would like to do. We have to find that happy medium between the best possible justice and the speediest possible justice. They are incompatible goals and you try to find a middle ground that doesn't leave you compromising one of those two goals too much and we are always giving up something. If you spent as much time on a case as you would like to you would never get it out.
NORTON --- Why do you think that the judges have become more swamped now than they were say 15 or 20 years ago? If that's a fair statement? I mean it just seems that way to me so ...

JUDGE HARRIS --- Well Congress keeps passing statutes which add to our jurisdiction. Society as a whole seems to become more litigious. We have more people incarcerated for crime. Crime has increased. That means more prisoner complaints. We have more ... more people now on the street who a number of years ago might be in a mental institution. They are out there bringing lawsuits. We are just [laughter] -- there are that many more cars on the road with that many more automobile accidents and that many more things going wrong to that many more people.

NORTON --- Do you think -- this is a pet question that I have -- do you think that the court going full tilt through the summer made it more efficient? This is my own personal opinion. I always thought it was nice to have, for all us lawyers and the court to have a month or two off in the summer where we didn't have to appear before the court.

JUDGE HARRIS --- I -- I think at the present time I don't see any choice to it. I think we have to. But there are lots of judges and I am among them who ... who feel that the pressures that do exist are such that it would be great to work out some sort of a sabbatical system so that we could turn our backs on it and get away from it for four to six months and just -- because it is just -- it always is grinding on you.

NORTON --- How do you think that the -- I mean in terms of that pressure and in terms of the pressure that the members of the bar feel as well? I mean do you feel that there is a tension between your obvious interest to move cases along and get things resolved in the -- I guess in the professional and personal interest of the members of the bar?... Or has that not been a problem with you?

JUDGE HARRIS --- Well, I have a lot of friends who are civil trial lawyers and I say to them, I hope you all understand that we really wish we could get to these civil cases, but the criminal case load is oppressive particularly with this Speedy Trial Act.-- and I might digress to say we ... that it has a seventy day limit and for reasons which I don't understand, Congress continues to treat that seventy days as though it is magic that came down from Mt. Hamurabi. If it were for example a hundred days we wouldn't have to bump so many civil trials. We would be able to have a little more flexibility and try more civil cases. The lawyers that I talk to say they understand, we understand you all are buried, but I really don't think they do. You can talk to people who have never been a judge before and let them come on a court like this or a circuit court or wherever and
they will tell you after several months they didn't have any idea how much work there is to do on a court.

NORTON --- Yeah. Do you -- do you really feel that there is this difference in perception between the bench and the bar about perhaps how hard each of us work and what the other's function is?

JUDGE HARRIS -- Yes. Yes ... the old saw about you can't know someone until you have walked in their moccasins or whatever and you can ... I remember Chuck Halleck who was one of our more colorful former Superior Court Judges, who used to be at Hogan & Hartson when I was there, attracted some colorful press when he made the comment that here in the District Court -- here in this courthouse, at four o'clock in the afternoon you could shoot a cannon down the hall and not hit anybody. Well, he was -- that was partly true. Superior Court is a high volume court with domestic relations stuff, juvenile stuff, landlord and tenant stuff. I mean, it's a beehive of people. Even when we are in trial, there aren't that many people around. So ... I think that the perception of lots of people very understandably would be that ... an understandable lack of recognition of what we are looking at with the number of cases that we have and the attention that they demand.

NORTON --- Well, I'm going -- I think I am going to wrap it up because it has been about two hours and they say you don't want to wear out your interviewee or interviewer ...

JUDGE HARRIS --- I'm afraid I have worn out your ears.

NORTON --- No, you -- this has been just great. Let me just ask one last thing, just sort of a catch-all question. Is there been any sort of particularly memorable moment or event or person that you can remember in your many years in the bench and bar that we haven't talked about?

JUDGE HARRIS --- No. If I tried to single somebody out I'd be unfair to others ...

NORTON --- [laughter] Well that's OK. I don't -- but maybe I framed the question wrong. Is there anybody else you that think would be interesting? That's fine.

JUDGE HARRIS --- No, but I think that and I say this very sincerely that the -- the courts have been fortunate to attract an awful lot of very dedicated and talented people. And they are a good bunch to work with and its -- its a nice environment where people pull for each other and pull together and its a good group.

NORTON --- Thank you. I'm going to turn off the tape now. ...
JUDGE HARRIS —— [laughter] OK.

[End of second tape] [End of interview]
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