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Oral History of Distinguished American Judges

HON. HARRY T. EDWARDS, U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT: An Interview

with
Judge Pamela A. Harris, United States Court of Appeals
for the Fourth Circuit

June 1, 2017

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JUDGE HARRIS: Judge Harry T. Edwards of the U.S. Court of Appeals for the D.C. Circuit has kindly agreed to reflect on his career with me today. I'm Pamela Harris, now a Judge on the U.S. Court of Appeals for the Fourth Circuit, but more importantly, the former law clerk to Judge Edwards. I

00:00:40 am so happy to conduct this interview on behalf of NYU Law's Institute of Judicial Administration, and thank you, Judge Edwards, for participating. Judge, we have a lot of ground to cover because you've had a very wide-ranging career in private practice, as a teacher and a scholar, as a judge and a very successful tenure as Chief Judge of the D.C. Circuit. And there is some overlap in those roles, as you know. Even as a judge, you've continued to teach and do scholarly writing, and one of the things that we'll talk about is how these different aspects

of your career have come together and influenced each other, but we'll start at the beginning with your childhood. I know you grew up mostly in New York in the Bronx and Manhattan with your mother, Arline Ross Edwards and your two sisters, Vern and Pam. Can you tell us what that was like?

00:01:29 JUDGE EDWARDS: I only have a recollection from about age five. I think we moved when I was a baby, from South Carolina to Delaware, maybe one or two other places, and then we ended up in the Bronx, East 222nd Street, in a very unpretentious lower middle class, well-integrated neighborhood, and that was where I did elementary school and a year and a half of junior high school. But my parents were eventually separated, and so I lived with my mother and my two sisters who were born two and then four years after me, and we did those

early years in the Bronx, and I went to P.S. 21 in the Bronx, and walked to school. It was a happy time. It was totally unpretentious, but a very happy time.

JUDGE HARRIS: Now, if I'm remembering right, did you spend a year living with your grandparents during that time? Was that around

00:02:35 that time?

JUDGE EDWARDS: Yeah, it was after we lived in the Bronx on 222nd Street, and then when my parents were either divorced or divorcing, and my mother was clearly a single parent, she decided that she wanted to make things better for us. So she decided to go back to school to get her Master's degree at Smith. She was in social work and she became a psychiatric case worker and she got her masters at Smith.[1] So, I was farmed out to my grandparents and

[1] Located in Northampton, Massachusetts, Smith College is a private all-women liberal arts college.

they lived in Manhattan in Harlem on 110th Street, and my sisters were farmed out to an aunt and uncle in Washington D.C., and they stayed with my aunt and uncle down here in Washington D.C.

JUDGE HARRIS: So what was that like? You lived right in Harlem?

JUDGE EDWARDS: Yeah, 110th Street is right at Central Park, right at the edge of Central Park.

00:03:33 I've gone back there a number of times just to look at the building. It was a great time. It was a great time for lots of reasons, because my grandparents ended up being wonderfully influential in my life. My grandfather was a lawyer. I didn't know much about his practice, but more than that he was just a stunning human being. He was a man of great integrity, very quiet, very soft spoken. And my grandmother adored me. There were a lot of cousins and to my advantage and

disadvantage, I was the favorite. And she made it very clear that I was a favorite, which I liked, my cousins didn't like so much. She did it so much that there were times later on when—they moved to New Rochelle, New York, and we used to go there for Sunday dinners all the time, and during one of those Sunday dinners my mother yelled at me for something. I was a young kid running around doing something wrong and my grandmother heard her and she said, "Don't you speak to my boy that way."

My mother looked at me and I said, "Mom, I didn't do it." But we

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were *very*, *very* close. And my grandfather just set a standard by his mere existence. It was the way he spoke, the way he thought. He was kind. He was very smart. There was no pretense. It was a small unpretentious apartment, but there was a lot of classical music recordings in the apartment, and that

was where I learned and fell in love with classical music, and I've never lost that love. I remember he had a set of Beethoven, which I used to play over and over and over again. I love symphonies to this day because of that time. But they just set a standard for me. The other thing that that time in Harlem did was to give me a sense of my black heritage, because I was in Harlem. It allowed my grandparents without any spoken lectures to make it clear that I had a sense of who I was and where I came from. It was evident. You were living with your racial

00:05:44 community and there were a couple of friends who I grew up with who really kind of taught me the ways of life and how to exist and protect yourself and move around. It was a perfect time for me. It was a godsend to have that time with them.

JUDGE HARRIS: After that, you went to high school in Uniondale, Long

Island and, I don't want to embarrass you, but you were a bit of a star. Class president all four years, varsity track, varsity football, academic success. How was high school for you? Do you have particular memories, good or bad?

JUDGE EDWARDS: We went from 222nd Street, and then I was in Harlem and I took the train back. I had an aunt and uncle who still lived

00:06:30 in the Bronx, and I used that address to go back to school in the Bronx. And so I did junior high school, a year and a half of it, in the Bronx. It was clear to me and my little mind then, as I think about it now, that these city schools were not the preferred setting, that there must be a better way to do this, educationally. I didn't feel that in elementary school. I thought my elementary school education was terrific. It was not so clear to me in junior high school. So when my

mother came back, she made a decision
00:07:10 and she didn't discuss it with us. She said, "We're going to find a house out in Long Island and we're going to get you out of the city." She didn't say it in any way that was announcing a great event. She said, "I'm going to buy little house." And it was very little house out in Uniondale and Uniondale was literally country. We moved out to that little house and I finished eighth grade and then started high school at Uniondale High School. The great advantage for me, and probably one of the best breaks I had in my early
00:07:41 life was, I was in the first graduating class in Uniondale High School and I cannot tell you what a great advantage that was. We were always at the head of the line. We set the standards and it just was liberating. Racially, it was not integrated. The Bronx was, Uniondale was not. There may have been five

black kids in the high school the whole time I was there. So, you had that to deal with. Socially, it meant you didn't have much of a social life. We had to go back into Queens where we had some relatives to be able to have a social life. But in terms of being at the high school, and how it helped me to grow it was spectacular because I did have a lot of activities. I began to develop

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a confidence that was real and my mother always reinforced that. She used to drive back to the Bronx every day to go to work, which is a two hour drive each way. So she was working hard. So it was really on us to make it, and Uniondale offered me all those opportunities. I was class president like you say, and I ran track, and [was] editor of the newspaper, and all of those different things, but it was mostly a sense of confidence. The other thing was, I think I started to understand, in

some ways, that a black person could make it in a largely white setting, and that there was no reason to assume that that was not possible even though no one was talking about it- at all. But it was happening and we were living in a world that was still dealing with serious racial issues. Here I was in a setting that was *not* integrated, and yet life for me was fine. I did not feel disadvantaged at Uniondale

00:09:44 High School. I felt there was nothing I couldn't do there.

JUDGE HARRIS: And you were elected class president all four years.

00:09:51 JUDGE EDWARDS: Yes.

JUDGE HARRIS: As one of a handful of black kids at the school?

JUDGE EDWARDS: Yeah, there may have been two other blacks in the senior class. The interesting thing about that was there were a couple of things in the high school that made me know that racial issues were still

around. One was in my last year, the class advisor, Mr. Mullen if I remember correct. No, that may have been the principal. But in any event, the class advisor, I think an English teacher, came to me and said, "You can't run this year." And I said, "Where did that rule come from," or something to that effect.

He said, "I just made the rule," and I said,

00:10:30 "Why is that?"

He said, "Because someone else should have a turn."

I said, "Suppose my classmates want me as the president."

He said, "You can't run."

So, I went home. Even though my mother worked hard, she didn't let stuff like that pass. I said, "Mom, there's a weird new rule. I can't run for president."

She said, "Oh, we'll go deal with that."

And sure enough, she did, and the principal told the class advisor no, that rule was not going to stand, and so I was elected. It was clearly racist. There was no question about it.

The other incident was in a Spanish class. Now, I was having enough trouble with language classes. This was very traumatic. I was praying I was going to pass Spanish so I could go to college. The Spanish teacher was a mousey little woman. I can still picture her. I was sitting next to my buddy, and I must have leaned

00:11:22 over, the way kids do in school, and whispered something to him. She wheeled around and said, "Do you think he's your n**, slave?" And the class stopped cold. First of all, it didn't make sense. In context, none of us knew what it meant, but we heard the N word, so we were blown away. I kind of lost my breath, as

did my friends, and we walked out. None of us could speak. We didn't know what to say, but I did know to get my mother. So, I got mom back in again. The teacher was let go at the end of the year and I made it through Spanish, but that and the absence of social life was enough to make me know as I was leaving high school, that there was a race issue that I was going to have to deal with throughout my life, sure enough.

JUDGE HARRIS: It sounds as though your mother was a very important influence in your life at this point. You've already alluded to that, but can you say a little bit more about your mom's influence on you, and how she shaped the way you were thinking about the world at this

00:12:24 point?

JUDGE EDWARDS: Yeah, I mean, mom was no nonsense. In a lot of ways, she was ahead of herself. With my sisters, she wasn't. She was very

traditional, and they later on complained that mom always had tough rules and was very demanding because they were girls. I didn't feel that. With me, I felt totally liberated

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with her. It was, "What do you want to do?" And I'd say X, she'd say, "Go do it," and would say it in a way that it didn't cross her mind that I couldn't do it. That was the way I was raised. She was totally confident and she wanted me to be totally confident. You do what it is you aim to do, just do it well and believe you can do it. And that was the way it always went with her. I remember one time in the Bronx- there are little incidents in your life you never forget- we were outside playing with my little friends. We were all in elementary school, and someone pushed me into dog poop. So, I was crying. I knocked on the door. You run to your mother, right? And she opened the door and looked at me.

She saw what was going on. I said, "Mom".

She said, "What?"

I pointed to my situation. She said, "Why are you standing there? Why don't you go clean yourself up and go back out and play?"

I said, "Oh, okay mom."

That was kind of the way she was, you know, you get on with your life, and if you think falling in dog poop here on 222nd Street is the worst you're going to face, you've got a long way to go, son. That's essentially the message I got from her. Go do what you have to do. And when she went

00:13:59

back to Smith, it kind of dawned on me even though I was young, this was a big move, and that she had the confidence to take it on. She was raising us on her own. So, you're kind of getting that message we can do whatever we have to do. When we were in Uniondale, she was driving back and forth every day, four hours

commuting to support us and letting us know that even when we would have to take care of ourselves, we could do it and she would be there. The one good thing she did, which clearly affected who I became, and this is

00:14:35 something you would know, when she had time she talked to us. A lot. She had a lot of interesting cases. We would sit down and she would talk about her psychiatric cases, these caseworkers. She was very insightful about people, and so that had an impact on me. She watched people. She listened. She was able to assess them, gracefully, not harsh judgments, but she had something that caused her to always care about the people that she was around, and she was a great reader of people. And I think I tried to emulate that as the years went on, which explains some things that have happened in my life, I think.

JUDGE HARRIS: It was when you were

finishing high school, I believe, that your mother met the man who had become her husband and your stepfather, Thomas Lyle, and I know you ended up taking his first name as your middle name, which is a lovely gesture. Do you want to talk about that relationship a little?

JUDGE EDWARDS: Yeah, Tom, my stepfather, he was clearly one of the male giants in my life. I guess he and mom were dating when I was in high school. But back then, parents didn't tell you anything, unlike nowadays where kids feel like they're part of the parental roost and know

00:15:53

everything. That was not the way it worked back then. I had no idea. I think my mother was dating, but at a certain point it got serious, and initially, I was anxious about this person, someone dating my mother, that's kind of weird, but then it wasn't, because he was a really nice man. He was a very gentle man, as

well-read is anyone I had ever met. He had been in the postal service for many, many years. That's what he did. He was one of those people, whatever he did, he did it really well, but he was very quiet and

00:16:26 graceful, and well-read. So there was never any acrimony between Tom, my sisters and me. We all adored him. He did not try and step in and control my life. But he was someone I felt I could always turn to if I had had a question. As I was finishing high school, the family moved to Queens, and that's where they stayed. After that move, Tom and my mother got married, and he brought his—he had four daughters, two of whom lived with us. He was just a marvelous presence. I'm not a patient person, and he was. Whenever I go into my very impatient modes, I think about him. I think about what would dad— I called them

00:17:19 dad- what would he do? And I'd say,

well, he'd get a glass of bourbon, smoke a cigar, and read a book. I don't do any of those. I read the books… but it was calmness, and that was terrific. I had no relationship with my father.[2] He had moved to Michigan. So it wasn't until after college that we got back together, and I was completely angry about that. Very angry, because I tried to write him a few times, and there was just no— he was unable to, I later learned. It wasn't that there was anything nasty going on, he just wasn't able to do it, but I was angry about it. So, by the time I got to the high school, I said to my mother, "Can I change my name?" She said, "You can, if you really want to." And so, I was born George Harrison Edwards III, which was weird. I had never been called George Harrison, and I said, "Well,

[2] George H. Edwards served in the Michigan House of Representatives.

how about Harry, which everyone calls me,

00:18:18 and how about Tom for a middle name?"

And I think she smiled and said, "Whatever you want, son."

And so we changed my name as I graduated from high school and he was the one who caused me to do that. He didn't directly cause me, but he was the reason why.

JUDGE HARRIS: That's a really nice gesture. College was at the Cornell School of Industrial and Labor Relations,[3] and you started in 1958, graduated in 1962. How do you think about your experience there, the education you got there?

JUDGE EDWARDS: That was great luck. I was really lucky. I went through high school, not the way your son or his buddy, Joey, my godson has— the way they do it nowadays. I was

[3] The New York State School of Industrial and Labor Relations at Cornell University, founded in 1945, provides degree programs focused on the American workplace, particularly on the relation between management and labor.

focused enough. I could get decent grades, but I didn't worry myself sick about it. I liked my activities, and I didn't get in any trouble, because I

00:19:10 would have died if I did. But, I got through with decent grades, and I didn't think hard, hard about college. I knew I was going to go to college, because that's what the family did. At some point it occurred to me well, I suppose I ought to start thinking about it. My mother came home from work one night and she said, "Do you know anything

00:19:33 about Cornell?"

I said, "No."

She said, "You probably should look there."

I said, "Why?"

She said, "Because we had this mediator at work today who was handling a dispute between management and a group of employees, and was talking about the Cornell School of

Industrial and Labor Relations." She said, "It sounds like a really interesting place."

And I said, "Oh, okay, that's fine." That was really it. That was my introduction to Cornell. So, I added it to my little list and I went to my guidance counselor in high school and said, "What about Cornell?" And again, this was another piece of racism.

He said, "You're not suited to go to Cornell."

I said, "Why is that?" to which I got no answer. Then I was determined that I was going to apply to Cornell. So, I applied to Cornell and a couple of other schools. I think my guidance counselor told me I

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should go to West Virginia State or Alfred. That was it. I applied to Cornell, not sure that even if I got there that I'd go, because I wasn't sure I was going to pass

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Spanish [laughter], which was really

worrying me. But in any event, I got in, and it's a state supported school within the university, because Cornell has the school of liberal arts, it has agriculture, it has engineering. They're different schools. Three or four of them are state supported within the university. And so it made it a relatively small setting and the application was going to be more easily noticed, I later figured out. And I think that was my lucky break. My application was more easily noticed. I had *a lot* of activity, decent grades, and enough so that I was going to be in play, and I got into Cornell. It was the best thing that ever happened to me, educationally. It was a terrific education. I was with people of sorts that I had never seen in my life, all these preppy well-off people. They came from worlds I didn't know existed. They didn't

00:21:41 faze me, but it was interesting. It was like going to the zoo.

JUDGE HARRIS: When I went to college, I met people from prep school and I was like, oh, that's real? I thought that was just in novels.

JUDGE EDWARDS: Right. You thought it was a book. It was strange, but I was innocent, and I went there. My first couple of days and my mother drove me up. They helped me take the bags to my room. She kissed me, and she said, "Do well." And they left.

JUDGE HARRIS: Different time.

JUDGE EDWARDS: And I thought about it and I said what a

00:22:17 gift she just gave me. She totally trusts me. She gave me no instructions whatsoever. She didn't say clean anything, do anything,

00:22:24 nothing. She kissed me goodbye and said, "Do well."

JUDGE HARRIS: This is really neither

here nor there, but I just have to ask you, because I know that you were deeply engaged in the college searches of some of your clerks, like my son, Joey. In the process of getting them to college and dropping them off, and when you look at what we do now compared to what we did back in your day, what do you think?

JUDGE EDWARDS: It's unbelievable. I mean, I laugh every time I think about it. The amount of time I spent with Joey on college applications, I didn't spend that kind of time with application to Cornell. But anyway, when I got there and then those first couple of days they wore reserved for fraternity and sorority rush. They were fixed days. You were supposed to sit in your dormitory room, and the fraternities came by and knocked on your door, and invited you to coffee so they could check you out. Now, during orientation, I had decided I'm going to go to Sigma Chi

or whatever. I didn't know. I was so naïve. Sigma Chi? I laugh about it now. They were all white, historically white. Blacks were not allowed to walk in front of the building, much less be in it, but I 00:23:30 didn't know any of that. So, I'm waiting for Sigma Chi, and a couple of others to come knock on my door. No one knocked on my door. And the second day, I said, well this is surreal. And it finally dawned on me. This is not going to happen. And it didn't, and it wasn't until my second year, there were two or three Jewish fraternities who would take blacks. That was it. But it didn't. And the good news for me, and this is my mother and my grandfather, I let it roll. It's like, whatever. I got to do what I got to do. I got work 00:24:03 to do and I got to go earn some money, and get some jobs, and do well in school. But socially, it kind of set the standard. So, academically,

Cornell was spectacular, and they taught me well, and they gave me the confidence to do well. Socially, it was a complete nightmare.

JUDGE HARRIS: How many black students were there?

JUDGE EDWARDS: I don't think there were more than ten in the whole campus the whole time I was there. And you could not date cross-racially back then. I mean, the first woman I fell in love with was a Cornellian, Lois Tukman. And Lois and I are still best friends, and my wife loves her. She, my wife, kiddingly says, "You have good

00:24:42 judgment in women." Lois and I couldn't date. She was from Buffalo. She couldn't date a black guy. And my parents and grandparents would not want me to bring a white girl home. That was not within the realm of possibility, so we were both facing the same thing. Interracial dating was not possible. We loved each

other and we have continued that love for years, ever since. But you couldn't date. You went parties, you never had a date, and that got old after a while. In my senior year, I finally, with one of

00:25:19 my other African American friends, there were a couple of us, Joe Simpson, he was a year behind me. I said, "Joe, I'm going to buy a car and we got to just go somewhere spring break."

He said, "Okay." He was very quiet. And my sister called and said, "Do you want to come down to Fisk?" She was at Fisk University,[4] which is predominantly

black, and it's where all the girls in the family had to go, because they were very protective of the girls and they wanted the girls to go to a finishing school type college, and

00:25:29 Fisk would protect them. So my

[4] Fisk University is a historically black university located in Nashville, Tennessee.

sisters were at Fisk and she said, "Do you want to come down here for spring break?"

And I said, "Yeah."

She said, "Do you want to me to fix you up?"

I said, "That would be good."

It was hard being there [at Cornell] socially, but academically it was the best thing that ever happened to me.

JUDGE HARRIS: You told me once that Cornell was where you really started to learn to be a

00:26:14 writer.

JUDGE EDWARDS: Right. I like writing, as you know, from high school, because I was editor in chief for the newspaper. I didn't know what I was doing. I liked to write, and no one else seemed much interested in it. So I did it, and it was great fun to do it. So, I got a sense of trying to put packages of writing together. But when I went to Cornell, they killed you. And that

was back when first year writing courses were serious and you turned in, as I remember, three papers each week, and they destroyed you. They ripped them to shreds. I don't think I ever got a paperback that wasn't torn to shreds with all kinds of markings. And they made you write in all kinds of voices, some of the great writers, and they made you replicate them. Then the Industrial Labor Relations School was known for writing. So, you were

00:27:03 writing huge papers each week, not each semester, each week, and by the time I finished Cornell, writing was no big deal to me. I loved it. I knew how to research. I knew how to

00:27:15 put words together. I was comfortable with it. I was comfortable being critiqued, and that was the best thing they ever did for me, and it was both in the Industrial Labor Relations School and in some of the liberal arts courses that I took.

JUDGE HARRIS: That's invaluable for where you ended up.

JUDGE EDWARDS: Yeah, absolutely value.

JUDGE HARRIS: I know there are people you've encountered at every stage of your life who have been especially important to you, and you've already talked a little bit about Lois, but were there other people from your college years who helped to kind of shape your life, people you kept close?

JUDGE EDWARDS: The other person my age was Dave Slovic and Mickey Schwerner. [5] Dave was a year behind me and he was my closest buddy at Cornell. I mean, we were hand and

00:28:01

glove. We did everything together and there were a lot of—there wasn't overt racism at Cornell, because what was going on was, I thought about

[5] Michael Henry Schwerner (1939-1964), a member of the Congress of Racial Equality, was murdered while working to promote voting amongst African Americans in Mississippi.

this later and tried to write about it a little bit. As a black person in that setting, in that Ivy League setting, you realize what was happening. They assumed you were different. They thought that was a compliment to say you're different, meaning blacks are not normally able to do what we do here. And you kind of smiled to yourself, like they thought that was a compliment. But in any event, it worked to my advantage in another way in that my intellectual capabilities were never questioned. That just didn't come up the way it did in later years when the schools tried to open up pursuant to affirmative action, and so, if you were black that people immediately assumed there was a doubt, and I had to warn my son against this. My son 00:29:01 is a summa cum laude graduate from Yale, but I had to still warn him, watch out what you're going to face 'cause it's different from what I

faced. What I faced was just a sea of white people, but none of whom doubted my intellectual abilities because I was black. So, that was a great advantage for me. It allowed me to just learn and do really well. Dave was one of the few friends who took me—who did what my grandfather said—this matters—my grandfather said, "Your friends are the people who will let you do for them what they want to do for you."

He was absolutely right. I didn't get it. I was willing to take some of my friends home with me, but they always had a reason why not. And I knew why, but they were perfectly happy for me to go home with them and to introduce me to their families to showcase me. Dave did it both ways. I went to see Dave in Illinois with his family. He

00:30:03 came with me, both to New York and to Washington D.C., and in fact, when we came to Washington where I had an

aunt and uncle, they fixed us up and Dave was totally comfortable in interracial dating. None of it fazed him. So, he was really important, because we were just close. That was it. We were just really close friends, and then in terms of Mickey Schwerner when I finally got into the Jewish fraternity, Mickey was my closest—Dave was in the fraternity too, but Mickey Schwerner, who later got killed in the Civil Rights Movement in, I think it was '64, 1964, Schwerner, Goodman, and Chaney.[6] It was a horrible period. I was in law school, and I remember sitting in front of the television crying. I

00:30:47 couldn't believe he got killed in Mississippi. I couldn't think about. I remember I went a week when -I just- my mind went blank. He was a marvelous human being. He was kind.

[6] Michael Schwerner, Andrew Goodman (1943-1964), and James Chaney (1943-1964).

00:30:59 He was gentle. He had a little cocker spaniel, some little dog that used to follow him around campus. And we roomed together. We both used to work in the kitchen together. He was totally unpretentious, and he was determined to go south and get involved in the Civil Rights Movement and he said, "Are you going to do it?"

I said, "I can't." He said, "Why?"

00:31:15 I said, "Because I'll die. Because I'll do something that will get me killed and I have to do it a different way."

He said, "I understand."

But I couldn't believe it when he died. But again, he was just a really close, dear friend. His loss was a horrible loss. I'm still in touch with his widow, Rita, who has stayed in Civil Rights, she and her husband that she later married. But the other two—the other principal mentor for me, great irony

in this, Jean McKelvey,[7] woman in labor relations, which didn't happen back

00:31:52 then. And she was a giant. Little itty bitty thing, but she was a powerhouse. And she took me under wing. She totally believed in me. It was kind of like having mom on campus. She didn’t treat me like a son, but she pushed me like crazy. And she stayed with me even after I left and followed me every step of the way in my life to make sure that every

00:32:15 open—she spoke at my investiture. She got me in the National Academy of Arbitrators. She got me arbitration jobs later on. When she was on her death bed, I remember visiting her in the hospital in Rochester, and I think I had just gotten divorced, and I brought her flowers, which she went on and on about how wonderful they

[7] Jean McKelvey (1908-1998) joined the inaugural faculty at the Cornell School of Industrial and Labor Relations in 1945.

are. Then one of my classmates said, "I don't know why she likes your flowers. She hates flowers."

I said, "What can I tell you?"

But in any event, I'm talking to Jean and I'm telling her what I was doing, and I said, "We just bought a place on Cape Cod," or something like that. She looked at me. She looked like she was about to die until that moment. She said, "How can you afford a place? You're getting divorced?"

I said, "Jean, you seem to be doing fine." She was still mentoring. But she stayed with me and she was the first person who

00:33:08 gave me a true insight into mentoring. I understood what it was, mostly because of what she gave me in the very beginning. And the thing that I loved best was that she was a woman, and so that gave me some additional insights that proved terribly useful to me later on when I

started battling matters that had to do not only with race, but with sex discrimination, because Jean was always on my mind.

JUDGE HARRIS: When you say she gave you insight into mentoring, do you have a sense of what makes a good mentor?

JUDGE EDWARDS: There are a number of things based on what I learned from her, and then what I think I've sensed since then. Part of it is you have to choose carefully. You're not sure what's happening when you're doing that, but you really want to grab someone, so to speak, who you have reason to

00:34:09 believe is going to be worthy of this opportunity. 'Cause that's the way I saw it. It was an opportunity for me, and I like to think if I'm doing it, I'm going to give you an opportunity, not because I think I'm great, but because I want to try and help you open some doors. So, that's

the first thing, but then the devotion includes not just "I care about you." It's I care about you so much that I am going to be really demanding of you. I am not going to expect anything less than your very best, period, and if you're not up to that, let's not do this, because the mentoring goes two ways. You know, I tried to do it with you. It's two ways. I'm going to give to you and you're going to give back, not to me, but you're going to give in a way that I feel, based on my experience, is satisfactory and you have to stay with it. But they have to know there's a difference between

00:35:08

mentoring and using. And there are people in my position, and your position now, who can use younger people for their talents 'cause it advances us, and there are people like us who can *mentor* young people, and the mentor is a big responsibility, because a mentee is

trusting us. That is to always be there for them no matter what it is and if your trust is really high, the door is open, they will come to you with pretty much anything, knowing they can give it to you in confidence. You'll listen very carefully, the way my mother would have wanted me to do, listen very, very carefully. Don’t snap to quick [judgments]. I like to think, in part, because of my mother, I can get to those judgments pretty fast. When you get to know your mentees, you can make them pretty fast. But you’ve got to listen to understand the person, what really makes them tick, and then push them,

00:35:57 push them really hard. Ask more of them that they ever would have asked of themselves, and make them know that they can do it.

JUDGE HARRIS: And we were talking about your first very powerful mentoring relationship and how you

think about mentoring, and I wanted to take this opportunity to say that, obviously, I always think

00:36:18 of you as the most important mentor I ever had. And for what it's worth, my recollection lines up exactly with yours. I try to tell my clerks and the people I mentor about this, that the thing you gave me most powerfully as a mentor was this absurdly high set of expectations for me, that I did not think in a million years I could meet, but I was so scared that I thought I should try. And then it turned out I could. And so, it's really interesting for me to know where this comes from for you, because that really was the key to it for me: that you set these expectations. That you had a better sense than I did myself of what I was capable of, and that you were prepared to push me in that direction, and that you knew me well enough, but you took the time to know

me well enough, to know what I could do, to know how hard I could be pushed, and it just meant the world 00:37:13 to me. So, I guess I want to take this opportunity for you to know you've given back everything you got. It really made a huge difference for me.

JUDGE EDWARDS: My mother would be very glad to hear that.

JUDGE HARRIS: So would mine. All right. Now, we are at the beginning of your legal career and your decision to attend law school at University of Michigan. How did you decide to go to law school and how did you pick Michigan?

JUDGE EDWARDS: Law school wasn't on my radar, initially. When I went to school, labor relations of some sort. I didn't know what that meant. That's where it was and I liked it, industrial labor relations, whatever that meant. But as I grew, I saw there were some other

possibilities, and then I was in student government at Cornell. I got elected vice president of student council. That was a big step for me. To take that on was a big step for me Dave Slovic, my buddy and I, were out in the middle of the night putting up big poster. That was a

00:38:12 big decision for me, but because of that, I was picked to escort Martin Luther King when he came to campus. And that had an impact on me that was beyond belief. He was just amazing. He was just an amazing person to be with, to talk to. He was all the best of whatever you've read about him, unbelievably brilliant, captivating, and that had an impact.

00:38:39 I decided I was going to go into the ministry. And I applied to theology school my third year, and I got admitted, and I was going to go/Dave said, "Are you sure?" And I said, "Yeah." And he wrote with me. He said, "Maybe I'll go too." I said,

"Dave, you're Jewish." He said, "What? So what?"

But in any event, I was very serious. And Jean

00:39:01 McKelvey, my mentor at Cornell, and Kurt Hanslowe,[8] another professor at Cornell, who taught at the law school and also at the labor relations school, both sat me down separately and said, no, you don't want to go to theology school. There's nothing wrong with it, but you're going to have more opportunities to have an impact if you go to law school, and so you should go to law school. I said, "Well, but I was also thinking about doing graduate work in college administration," and they both looked at me like that was a really stupid

00:39:30 idea. So, I didn't pursue that very far, and I did not want to take the

[8] Kurt L. Hanslowe (1926-1983) was on the faculty of the School of Industrial and Labor Relations and Cornell Law School.

Graduate Record Exam. So, law school became a real idea for me and they both pushed Michigan. I got admitted to Stanford, Michigan, Cornell, and Cornell was a free ride. I had no money. And so, having a free ride and being able to be a dorm counselor and having room and board, the whole bit, that was very tempting. I did not want to stay at Cornell another three years though. I wanted to move on and they pushed me hard. I said Stanford, they said no. I was on the way to Stanford. They said no, Michigan is a school, and then it was a better school, and they said it's certainly going to be better for labor relations, because Russell Smith[9] is there and he's one of the giants in the field. And so off I went to Michigan and my father found out. I had no connections, and he urged me to come to Michigan, and

[9] Russell A. Smith (1906-2002) taught at the University of Michigan Law School from 1937 until his death.

00:40:26 this was a strange conversation as you can imagine with my father who I didn't really know, urging me to come to law school. And I think he probably used some connections to make sure that my application didn't get lost anywhere, because he was in the state legislature in Michigan. He was a pretty powerful guy back then, and that was how I ended up going to Michigan.

JUDGE HARRIS: And how did that affect your relationship with your father?

JUDGE EDWARDS: We had to learn how to exist. We didn't know how to exist. I realized that what had bothered me, his inability to reach out to me and my sisters, was about things that he was struggling with [and] had nothing to do with us. So, I didn't feel damned anymore, but that doesn't make it easy to come back together. It was very hard to come back together.

00:41:16 That first summer I stayed with him, the first summer before law school, I stayed with him and I got introduced to Motown, the Motown Record Company [10]and Berry Gordy,[11] as Esther Edwards, his sister, and my stepmother. Esther Edwards was married to my father, and she and I became very, very close. So, the good news was my dad and I was struggling to get together, and we did things together, but sometimes it was tumultuous. We had some arguments, but I got to be involved with Motown.

JUDGE HARRIS: Just to be clear, so your father is married to the sister of Berry Gordy.

JUDGE EDWARDS: Yes, very close—the whole relationship for me and Motown is very close and when Pamela and I, my wife and I now, got married, our

[10] Motown is a Detroit-based, African-American owned record company renowned for its role in the racial integration of popular music during the 1960s.
[11] Berry Gordy (1929-) founded the Motown Record Company.

honeymoon was at Berry Gordy's place in California. I spent that summer with them, spent a lot of time at Motown, got to know

00:42:12 all the artists, not just Berry, but the Supremes, and Stevie Wonder, and Marvin Gaye, and—

JUDGE HARRIS: Who is your favorite?

JUDGE EDWARDS: Marvin Gaye was kind of crazy, but he was awfully good. He was really good. I'm blanking on Berry's best friend... Smokey, Smokey Robinson is a really nice guy. He's a very good artist, but I think probably the best artist was Marvin.

JUDGE HARRIS: Did you meet Smokey Robinson?

00:42:40 JUDGE EDWARDS: Oh, yeah. We had dinner together. Pamela has a picture when they did "Motown the Play"[12], in New York. We went to that opening with Berry, and Smokey was

[12] "Motown the Musical", based on the Berry's Gordy's biography, premiered on Broadway in 2013.

there and Pamela said, "Get your camera out. I'm going to sit and snuggle next to [laughter]—" and we have a picture of her. Yeah, we have stayed very close to Motown. Berry and I are very close, but that's when it all started, just before I started law school. And Esther Edwards, my step-mother, she was another giant female. Interesting I had these giant women coming into my life. My mother starting, and then Jean McKelvey, and then Esther, and just watching her do—Berry did music and performing arts- Esther did the business, and she was really good. They had no training. They just went and did it, which was kind of my mother's message. You just go and do it. You want to have an international market in music. Berry said, "Well then go to Europe and get one," and that was essentially what they did and I watched in amazement. Their success is clear, but it

started there. My dad and I kind of got a relationship together. I helped him run for reelection, handing out leaflets, and so we developed a relationship, which was

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nice, and he watched from a distance as I was in law school. I found out from friends later on that he would always call, and see how I was doing. He was very proud, even though you would never say we were very, very close, but he was very proud.

JUDGE HARRIS: I'm sure he was. So, you have described law school as your time of intellectual awakening, and I know you earned all kinds of academic honors when you were there: Order of the Coif, Law Review, best-in-class awards, a

00:44:32

scholarship. What was it about law school that inspired you like that? Were there particular subjects or issues? Was it just the environment, generally?

JUDGE EDWARDS: You know, that's a

good question. You and I have talked about that and I'm not entirely sure. It obviously hit something in my system that was there to be tapped. I was comfortable with it from day one. You're nervous, you're on a curve. It's tough curves, and you know that. You know—well, not at Yale you wouldn't know it, but at Michigan you were on real curves, and you knew you were going up against everyone sitting in the room, and that determined your fate. It didn't bother me. Cornell helped me to understand how to be orderly and organized, so I knew how to take good notes. I knew how to do outlines. I was comfortable with that. One of the things that helped

00:45:22

me was I don't have any free time. I had to work. I had to wait tables while I was in law school, which I hated, but I had to. I had no choice. I eventually got a dorm counsel job, but I had to wait

tables.

JUDGE HARRIS: Don't take this wrong, but I think you probably were the worst waiter of all time. I don’t see you being that good.

[Laughter]

JUDGE EDWARDS: I was not happy waiting on my classmates, but in any event, I was able to get past that by my second year. So, I had little time. I had to focus on what I was doing, which is the same at Cornell. It was kind of the same pattern, time well spent. When I had to sit down and study, I had to sit down and study. And I had some great professors, Frank Allen[13] who was my criminal law professor, he left me with my mouth open, because he was one of the few people I've ever

00:46:07

experienced who understood the Socratic methodology. Most people can't teach it. They pretend. He

[13] Francis A. Allen (1919-2007) was a professor of law and dean of Michigan Law School.

really could. I would go back and reread the whole assignment for the day that we just went through before I started the next day. He was that good, because I had to rethink every— so I kind of got into this mode of thinking like a lawyer, so to speak. I said, "This is kind of neat. I'm really enjoying this". And we had no exams till the end of the year. We had one stupid exam in writs, old writs. To this day, I must've had more than an F, but I had no idea what those writs were. And fortunately, they counted for nothing, but you had no clue how you were doing. You had no sense. And you I had no sense of how your classmates were doing. The other thing I found about me, and it probably speaks more than just how I study, I would not do study groups.

00:47:05 And there were a lot of study groups.

In fact, Dave Ebel,[14] who finished first in my class, a judge on the 10th Circuit, very smart guy, they were shrewd, because he would have multiple study groups. He would size up the class and have a study group A, and then he'd have another study group B, and I looked at it, and I laughed and I said, "I don't do study groups. I either do this on my own or I don't get it done," and that kind of explains a lot about me, I think.

JUDGE HARRIS: I remember when I clerked with you, you had a rule that we couldn't talk to clerks in other chambers, that we were doing this as a chambers by ourselves, or we weren't doing it at all at. Is it the same idea?

JUDGE EDWARDS: Yeah, I think so. You can't kid yourself. If you're sitting there and working—if I'm

[14] David Milton Ebel (1940-) served on the U.S.Court of Appeals for the Tenth Circuit from 1988-2006. https://www.fjc.gov/history/judges/ebel-david-m

sitting in a study group, I can kid myself about what I know. If

00:47:55 I have to do my own outline, it's either there or not, and that's kind of the way I feel about all of what I've done. And that's why I love that we're in areas where we have to write a lot, because talk counts for nothing. So, you and I can talk to our colleagues all we want, it doesn't matter because that's not what we release. What we release is a

00:48:15 written opinion, and you either researched it and wrote it, or you didn't, and so that's why I don't sit and chat with my clerks about a case that we're about to hear. I don't want to waste that time. Let's go research and write it and then I'll see what you get, but that clearly started in law school. I was just lucky in law school. I loved it. Once I remember I was waiting for the last grade in Torts, which would tell

me whether or not I got in Law Review, because it was all on grades, everything was on grades. So, that was just to get an invitation. You had to make the grade cut, and that postcard—they used postcards—that postcard came in with an A. I thought I'd died and gone to heaven. I had made Law Review and now you have to still write on. So, the fact that you made Law Review didn't mean you made it, it meant you had the opportunity now. That didn't faze me 00:49:05 in the least. I was totally comfortable that I'd produce whatever they wanted. But once I did that, Pam, my confidence was there. It was done. You know, you've gone through it in law school. There is a certain moment in law school you know I can do this, and I love it, and I'm going to do it for the right reasons, and I'm going to have fun for the rest of my life doing it. And that was my moment when I realized I can compete

with any of these people in this room. So, that's not on the table. So I don't have to worry about that.

00:49:36 I need to focus on the work and trying to do something good, but it was nice to have that out of the way. That was a huge moment.

JUDGE HARRIS: Your first job out of law school in 1965 was at a Chicago law firm, Seyfarth, Shaw, Fairweather, Geraldson[15], which is one of the best labor law firms in the country. Can you say a little about how you ended up there, because I do know that despite your amazing success at law school, you had somewhat limited job prospects after you graduated.

JUDGE EDWARDS: Yeah, racism was clearly there. I mean, the market was racist, period. Blacks were not in any of these major firms. They weren't in any major government

00:50:17 jobs. I wasn't feeling that directly

[15] The firm is now Seyfarth Shaw LLP.

in law schools, 'cause quite frankly, even though most of my classmates were, relatively speaking, conservative, they were really good guys—and they were mostly guys- but they were decent people. There were no race cards. They looked how you were doing, period. So, I didn't feel it then until I started applying for jobs. Then it was *very* clear. I would go to interviews, and this was [19]'64. And I would be told by partners from firms whose cases I now hear and decide, "You got a really good record here, but we can't hire a negro," and they would say it completely. They weren't hiding anything back in that day it wasn't seen to be a problem. We can't hire a negro. We just couldn't do it. Our clients wouldn't tolerate it. I said, wow. This is going to be interesting. This is across the board. These are major cities we're 00:51:10 talking about across the country. I

talked to Russ Smith[16], who was my mentor at Michigan. He was very quiet, respectful, conservative guy. I told him and he quietly said, "I'll take care of this," and I can imagine the conversation he had. I think he called Seyfarth, which was the best labor law firm on the employer side in the country at that time. And I think he called them and said, "Hire him, or else, because he works for me. He's done wonderfully well, and I'm endorsing him, and you cannot not hire him." So that's what happened. I got the summer job there and then they brought me on the following year. And I knew the firm was torn. There were some people in the firm who were torn over it and it later worked out fine, but it wasn't fun going through it.

JUDGE HARRIS: Let me just pause there for a minute. That experience

[16] Russell A. Smith taught at the University of Michigan Law School, 1937-2002.

could make someone really

00:52:10 bitter and angry, I would imagine, and I've never gotten the sense— that's not how I would describe you. This doesn't seem to be something that left you angry and bitter. I mean, how do you get past something like that?

JUDGE EDWARDS: That's my grandfather. I think it's just kind of in your head, because I later found out he had gone through some stuff in New York. He was next up to be head of the tax department in New York State, and they split the department so he couldn't get it, and you never heard about anything in the family. It's just move on in life with dignity and grace. You take what you have and do well with it, and things will work— it's kind of that. And think about it, what else is there to do? Scream and yell? Back then, screaming and yelling would have meant nothing. So

the thing that

00:52:59 occurred to me was to go to the person I trusted, my mentor, and this is what a mentor is for, and say "Here's my issue." Well, it's the mentoring thing again, and he said to me, "I will take care of it," and he did. And so, I couldn't get myself worked up otherwise. Yes, does that make you anxious? Yes, 'because I'm looking at my record and all these other guys are getting jobs everywhere with records that are not as good as mine. Do you think about getting tense? Yes, but you can't afford to. You just couldn't afford to, because you got to try it the other way first. You want to see—all I need is to get in the door. That's what I had learned by then. Let me in the door. I don't care what you're thinking about when you let me in. If you let me in, I know I will succeed. And that, again, was my mother and my grandfather. I'm

not worried that you're thinking bad things about black people when you let me in the door. That's your problem. That's not my problem. You just let me in the door, and you'll be lucky that you did, and I'll be fine. And that was kind of what I did.

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JUDGE HARRIS: One of the really interesting things about you is that your career has been so varied, so that you've seen the legal profession from a lot of different angles. But what did your time in private practice teach you about what it takes to succeed as a practicing lawyer, and what can be satisfying about being a lawyer in private practice?

JUDGE EDWARDS: Even though there were some hurdles to jump to get to the firm, the firm was wonderful. First of all, it was in the day when firms were not like they are now, so large. They were relatively large I

guess for
Chicago, 30 people, maybe. That's nothing now. So, I'm in a setting - and that was like a lot of Chicago firms back then, 30 to 100- where everyone knew
00:54:56 everyone, you got mentors quickly, people who watched over you. You got into work quickly. You didn't have to worry about billable hours. You worked very, very hard, but you didn't have to worry about bringing clients in. The partners did it, because the firm had a reputation. They just had clients. So you got to do real work very, very fast and you were pushed pretty hard, and so I got to see my firm partners and mentors up close because you were living with them. And what you saw was people who not only were incredibly smart, but who had a lot of integrity. They cared deeply about the profession and they had common sense. That's one of the things that practice taught me,

these people, the good people in the professional world in practice, have common sense. They're dealing with real problems, and some of them are just legal issues that you have to struggle through, and some of them are

00:55:52 about people dealings. You have to figure out which, and then you work through the problem, and I love that both about the firm and labor law, 'because you had a lot of people problems you were working through in negotiations and in arbitration. But the people who were leading us, Lee Shaw[17] in particular, who was my mentor, the biggest impression that

00:56:12 they left on me apart from just being really good lawyers, [was] they knew how to try cases. They knew how to negotiate. They knew how to interact with other people. They knew how to lead, but the thing that was most

[17] Lee C. Shaw (1913-1999) was a founding partner of Seyfarth, Shaw, Fairweather & Geraldson.

important about them was integrity. They were totally honest people. They were about the right thing. If I lose doing it right, then I lose. It meant I should have lost, but I'm going to be honest, and boy, did that leave an impact on me. They always were that way. I never saw them cut corners, ever. And Lee Shaw was also… I didn't run into many issues racial issues there, but I did run into one. I was moving along and had some clients that I was either the second person on or actually doing the principal work, and I had one situation where it just wasn't good. And, you know, you're nervous as a young associate. You knew it was racist with this client. You don’t

00:57:10

know what to do. But again, I'm not going to raise the race flag and create a stir without thinking about this carefully, so I went to him and said, “I'm a little nervous, sir, what should I do here?” And his

response, again, it was one of those telling moments in my life, he said, "Oh, those people are terrible." He said not to worry about it. "I'll put so-and-so on them, and here, you take these two clients." He gave me two for one, and he blamed them, not me. Well, that really buoys you—your confidence just takes off and you say wow, am I lucky to have a leader like this, and that's the way he was.

JUDGE HARRIS: So, Lee Shaw was not black, right?

JUDGE EDWARDS: No. There were no other blacks in the firm.

JUDGE HARRIS: Okay, and I know you've thought about this, the potential for kind of cross racial or maybe cross gender mentoring, and you sort of cautioned black law students against a sense that they should only be seeking black mentors. Can you say a little more about that, the importance of these kinds of cross racial mentors, in your life?

00:58:08

JUDGE EDWARDS: Yeah, again, you and I have talked about that, and you know why is my feeling so strong about that? I guess it's because my life experience. I know the truth of what I'm saying, that is it's crazy to limit yourself in mentor selection by race or sex. It's insane, when you think about it. You're looking for a person with whom you can interact, white or black. That's one thing. The second thing is, it may be that the white pool is larger and has more experience and access to places where you want to be. And so, why would you limit yourself to a racial pick when that itself is limiting? It doesn't make any sense. And it helps the potential 00:59:07 mentor to understand black students are just like any other students. They're students with the same anxiety, the same issues, and they should not assume that the responsibility only falls on people

of the same race, or people of the same sex. That's insane. We're people in the same profession, and we ought to be serving each other, and I strongly told my black students, "No, don't think you're going to come to me all the time. Go see professor so-and-so. He has more time. I don't know anything about trust and estates. Why would you ask me that? Go talk to him," but, they'd say, "But," hesitating. I'd say, "Go knock on his door and talk to him. You'll get to meet him, "and I feel that very strongly. Now, I mean, black students need to understand that not all white people are bad people. It's just a silly notion. I said, "They're just people, and a lot of them are really good people and have a lot to offer you, so don't limit yourself. Socially, do whatever you want, but professionally, don't do it."

JUDGE HARRIS: I know this was advice

you gave me early on too, about male mentors, and you are exactly right. I want to make sure you have the opportunity to give that

01:00:16 advice to other people too. So, you left the firm after about five years to begin the next part of your career as an academic, teaching, producing scholarship at University of Michigan Law School. You became a tenured professor just three years later and then you taught at Harvard Law School where you were also tenured. What made you decide to go into academics? How did you make that decision to leave the firm where I know you were so happy?

JUDGE EDWARDS: I was very happy at the firm. I had no interest in thinking about other possibilities. It didn't occur to me. The family then was in Highland Park, Illinois. We liked where we were living. I liked the commute to

the firm. I liked what I was doing. I had great mentors. I was getting clients of my own. I was very happy. At the same time, there was a lot of tumult in society over

01:01:14 racial integration, in the universities, especially. In the late sixties, seventies, women and blacks were beginning to rise up and say, this is nonsense. There are no women. There are no blacks in these universities, in the elite ones especially, either in the classrooms, or in teaching. And they started protesting, and it happened at Michigan. In fact, Michigan was one of the leading places. It was a lot of controversy there and the students demanded there were—now some black students who had come in under affirmative action programs and they were demanding that you hire some black professors, and the schools did what all the schools were doing. They said to the students, "Well, you

find someone for us," which was totally outrageous and the students said, "Well, didn't Harry Edwards graduate here? Didn't he perform the way you would expect a professor to perform? So, they pushed it that way, and the invitation came. I was dubious, because I liked what I was doing, and Lee Shaw and I talked and Lee said, "No, you'd be crazy not to try it. What do you have to lose?" For him, it wasn't a race issue. He just thought it would be cool that I might be teaching at an elite school. He said, "Why not? If you don't like it, you'll come back, you'll be a partner, but go and do it and see what you think." So that took great pressure off of me. I went back to Michigan after I had negotiated, and then I was going to go back to sign the contract with the dean, and I met a picket line at the door. The black students were picketing, and I started to walk in, and they screamed

01:02:11

every obscenity at me that you could imagine. How could I dare across the picket line? And I'll never forget the woman, I can't remember her name, but she was later one of my students. 01:03:13 I stood there calmly, like my grandfather would have wanted me to and I said, "I'm going upstairs. I think I'm going to be giving some redress to your concerns. I'm going to sign a contract to join the faculty." She looked at me, and said, "Well, why the hell are you standing here? Go upstairs." I said, "This is going to be a very interesting time here." [Laughter] When I negotiated with the dean, and I know you'll ask me about this, so I might just as well answer you now. It was clear in my mind that I was teaching labor law related subjects. That was it. And I sensed that the dean might put something else on the table, and he said, "Well, do you want to teach

employment discrimination, civil rights, something?" I said, "No." He looked and I said, "No, absolutely not. I'm a labor lawyer. I'm a really good labor lawyer, and that's what I'm coming to do." Now, there

01:04:12 were two things going on. One, there was truth in what I said. I was a labor lawyer, and that's what I wanted to do, and two, I also knew you could get marginalized, and any new blacks coming into these teaching positions—and that's what happened in some schools. They would get marginalized. They would get shunted off into courses that were not then thought much of in civil rightsy stuff. It was not a big deal then, and you shovel them into that area and there they're stuck. And I said, "Not happening." I said, "Maybe later on, if I have some interest in civil rights or employment discrimination, maybe I'll do a seminar, but not now." And that was

the way I started. And this one last piece if I can, to that, I was lucky with the students. The black students, on average, were a little bit older than the average law student when I first started. And 01:05:06 they said to me when I first came on, "Can we have lunch, or dinner, or something?" I said, "Sure." The message that they wanted to give me was this, "Look, we don't want you protesting. We don't want you on picket lines. We don't want you creating a stir. We want you or your teaching and scholarship to be as good as Professor St. Antoine".[18] He was the other labor law guy, and later dean, and very good teacher, and very good scholar. And I listened, and they said, "If you do that, you're going to take tremendous pressure off of us, because you're going to credit us. If you're seen

[18] Theodore J. St. Antoine (1929-) has taught labor law at the University of Michigan Law School since 1965 where he also served as dean from 1971-1978.

to be serious and credible, our white students are going to take us more seriously, as will our white professors," and that really was their strong concern.

I said, "Well, you and I are thinking the same way. So there's no problem," and that's exactly what I set out to do, that is

01:06:00 to be the best teacher that I could be, and the best scholar that I could be.

JUDGE HARRIS: And you loved it, right?

JUDGE EDWARDS: Loved it.

JUDGE HARRIS: The teaching and the writing.

JUDGE EDWARDS: I loved it. And, you know, I was a nervous wreck initially as, you know, you've done it, when you first start teaching. I was very nervous. This is a new venture, and no one tells you how to do it. You walk into a class room,

01:06:21 and I had just had knee surgery.

Pam, it was the worst thing. I just had knee surgery, and I couldn't really walk, and I was on the stage in a chaise lounge… in a chaise lounge. [Laughter]

JUDGE HARRIS: Good way to build respect with your students right off the bat.

JUDGE EDWARDS: Right? I think a lot of people dropped after the first class. This is not going to work, but then I got into it. I loved it. I loved the teaching. And then the scholarship I had to think about who I was going to be and how I was going to do it, and that has evolved a lot over the years. The teaching, I was always drawn to immediately. I loved working with the students. I loved pushing them. I loved the class room, size didn't matter. And you felt the same thing in teaching.

JUDGE HARRIS: Did you not

01:07:05 have a preference as between sort of

the big lecture classes and the smaller discussion oriented classes?

JUDGE EDWARDS: The big classes are more fun.

JUDGE HARRIS: Yeah, I agree.

JUDGE EDWARDS: Absolutely. Small classes are nonsense. You're making up stuff, and big classes you set an outline for yourself and you've got to get through a bunch of material, and it's rigorous and the students are counting on you to get them from A to Z. It’s a real challenge. In the seminars, it's blah, blah, blah, and people like to pretend it's very intellectual and thoughtful. It's not. It's nonsense. We do it. It’s okay. Students are entitled to have some of those. The big classes are rigorous, no nonsense, and every day you walk in there, you know the feeling. You're a nervous wreck. Can I get them from here to there today, and will they understand what we did

yesterday, and will it make sense tomorrow? I love that. It's a great challenge.

JUDGE HARRIS: It's a million balls in the air. It's like you've been working out for two hours when you get off the stage. So, were there ways in which your time in

01:08:08 private practice affected the way you thought about your job as a professor and a scholar and sort of the way you thought about what academics should be?

JUDGE EDWARDS: Oh, yeah. It had a profound impact. I came in with a love of the profession, and not all our professors did. I learned about— I've done a lot of this. I didn't understand the disconnect between the profession in the academy, and it wasn't so great when I first started, it became much worse, but I came in with a clear

respect, admiration for practice, practitioners, and what the

profession is about at its best. And I believed in it. And labor law made it really easy to understand that, because we're dealing with people, not just litigation, and board cases and all, but a lot with people, so you really had that feeling. You understood how lawyers can make a 01:09:03 difference in the lives of people and so when I taught, I really wanted that to come through. I wanted students to understand, yeah, there are these secondary boycott cases, but understand how this is happening and understand what the conversation is before the lawyer advises the client, and before the union says X to the workers, etc. I wanted to bring that to the classroom, and I've always done that. In later years I've moved it up to experiential learning, different out of the big—I don't want to do the big lectures 01:09:35 anymore 'cause I don't want to grade anymore in that way, but I thought

that was terribly important to make sure I connected the profession with the classroom, so that my students could get excited about the profession in ways that I felt excited about the profession. That was very, very important.

JUDGE HARRIS: And we'll talk about this more, but was that unusual at Michigan at the time, or were there a lot of professors who had that kind of sense of joy and potential in the practice of law?

01:10:02

JUDGE EDWARDS: I think there were more then, then it developed. So, I would say it was probably a decent mix. The mix changed in all elite schools as the years went on, and the mix was off. It became too theoretical at a certain point. But back then I didn't have a sense of imbalance. Ted St. Antoine, for example, had been in labor before he came into teaching on the labor side. I was on the management side and I

think there were a number of people who had that… More important than that, they had no disdain for the profession. So, even if they didn't have much experience, they had no disdain for it. That's what changed. So, when I first started teaching, I didn't see that disdain. There was great respect for the profession, and I certainly had it, and I had the experience. I hope the students were benefitting from that.

01:10:59 JUDGE HARRIS: Were there any big differences between your experience teaching at Michigan and teaching at Harvard?

JUDGE EDWARDS: Yeah, Michigan was collegial. When I started writing about collegiality later when I went on the bench, and I had to think about where was this all coming from, it was Michigan. It

01:11:17 really was a collegial faculty, in the sense that people were respectful of one another, supportive of one

another. They shared ideas openly and respectfully. There was not much back biting. You always have some in faculties, but I didn't see much of it, and people cared about the young people coming on and nurturing them and making sure they were going to get through okay. Harvard was a tense place, to say the least, and they knew it. I'm not saying anything that was foreign to anybody. Collegiality was not a notion that they lived by. Each lived by his, because there were no women, one or two maybe, for his own professional achievements. Now, the advantage of Harvard was that if you were teaching labor law there, they would say to you and say to the world, he's the best labor law person in the world, because he's at Harvard. This is different from Yale, just so you

01:12:22

understand, or you are the best tax person in the world. They would give you that, but otherwise there were no

precious conversations and dinner parties, and sharing of time, and going to football games with colleagues, which made it kind of a home away from home, not at all at Harvard. That was one of the reasons I went and then left. It just wasn't the same experience. So, I got a sense, the contrast helped me understand what collegiality could mean when I came on the bench. The other thing going back to Michigan and the difference between practice and the academy, one of the big events—and this connects with my involvement in women's rights—when I was a year into my time at Michigan, Robin Fleming,[19] who was an old labor law person was president of Michigan, and there was a woman in the National Highway Safety Institute, a young woman, Cheryl

01:13:23 Clark, I'm trying to find her now. I

[19] Robin Wright Fleming (1916-2010) was the president of the University of Michigan from 1968 to 1978.

just wrote them and said can you find her for me? Apparently, she complained to the university that she was doing a job in that institute managing guys, and they were making more than she was making. She was more qualified and she was managing guys. And the answer that she was essentially given was that "well, it costs more in the market to get guys than women. We can get you all cheaper." That's really not a good explanation, is it? And so she complained. She was not a firebrand or anything, and it got to the president, and he called me, 'cause he knew I was in labor law. I got this young kid at the law school, call him. He said, "Would you take this case for me and represent her with the university in handling her claim?" "Yeah, okay. I'm happy to do it," and we met. It's open and shut. I mean, it's not an

01:14:23 interesting case for lawyers. It's a clear case of sex discrimination, but I went. I called the university and I called the head guy in personnel, a lawyer. They're university attorneys, and I said, "So, we'll have a hearing."

He said, "Sure," and there was a pause and I said,

"Wait, can you tell me what is a hearing going to be?" He said "Well, you'll come and present your case and then we'll go decide."

I said, "Really?" I said, "Are you going to put anything on?"

He said, "No, we'll listen to what you say and

then we'll decide." I said, "Well, normally, if I put on evidence and it's not contested, I'm going to win."

And he said, "Well, that's not the way we do it. You don't want to do it?"

I said, "Oh no, I wouldn't miss this

for the world." I said, "I've got to see this." That's exactly what happened. We went, there's a big table of people and one

01:15:11 of their designated people was kind of the judge. We put on our case, which was airtight. We won, except they said, thank you, and they left and they wrote a decision saying we lost, because it costs more to bring in guys than it does to bring in women and so that's that. It's not sex discrimination. So, I'm a young faculty person now, and I'm just starting. I don't know what I'm doing, but I'm really mad. So, I go to Fleming, and I said, "I don't mean to threaten you, Mr. President, but I will blow this place apart if we don't get a fair hearing. I will go to the press. I will file a lawsuit." I didn't even know if I could file a lawsuit, but I was amazed at how bold I was and I said, "That's not due process. That's

totally unfair." I said, "You're a labor law person. You're going to let this happen?" And the press got wind of it. Worst mistake the 01:16:02 University ever made, good for women though, and he had no choice, but to give us a real arbitration, and guess who our arbitrator was? My mentor, Russell Smith, poetic justice. And Russell is a very serious guy, so if Fleming was not concerned about him being honest, it took him two or three months to write a really long opinion explaining to everyone what sex discrimination was, and unequal pay for unequal work is not permissible, he ruled. Cheryl Clark won, and what it did was to blow open the issue at the University of Michigan. That was my little contribution, and there were speeches. There was picketing and they had to change all of the evaluations of women in all departments going forward, because

everything was now open, fair game. So, that eventually got me on the national commission, President Carter's International Women's Year Commission,[20] where I got to meet all the women who were kind of the leaders in the movement back then.

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JUDGE HARRIS: So, you've said before that the election of President Carter in 1976 was pretty pivotal to your career, because President Carter put you on this commission. He put you on the Board of Directors at Amtrak where you became Chair of the Board and then obviously in 1979, he nominated you to the D.C. Circuit. So, what are your thoughts about President Carter and about the way in which he was making these appointments?

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JUDGE EDWARDS: First of all, I like the man. He's a really good man.

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[20] The 1977 National Commission on the Observance of International Women's Year was tasked with "draw[ing] up recommendations for ending the barriers to women's equality in the United States." http://www.presidency.ucsb.edu/ws/?pid=7247

He's just a good human being. People quibble about how he managed the White House because he was too hands-on and etc... But the only thing I think about with President Carter, because it had such a direct impact on me and people who were close to me, was that one of the things he said when he came in, and other people had said it and never done it, I am going to get more blacks and more women on the federal courts, because there aren't any, and he said it's disgraceful. On the Courts of Appeals I think there was one woman and two or three blacks in the whole country, something like

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that, talking about one or two, one in three, and he said, "I'm going to change that," and lo and behold, he did it. He set up merit commissions around the country in each circuit, and he said, "Your job is,"—and the head of my commission, the D.C. Circuit Commission, was Senator

Tydings,[21] and they had a bunch of really smart interesting people, black, white, male, female, whose job it was to find qualified people, women and blacks especially, find them. Now, the Commission nominated people who were not black and not women, but their job was to make sure that that pool of candidates includes women and blacks. We got Pat King[22], we got Ruth Ginsberg[23] out of my commission. I came out of it, Ab Mikva[24] came out of it. And he did that around the country and the net result was we finally started to have African-Americans and women on the district courts and the Court of

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[21] Joseph Davies Tydings (1928-) was a Democratic senator from Maryland from 1965 to 1971. In 1972 Senator Tydings argued *Eisenstadt v. Baird* before the Supreme Court which established a right to privacy.

[22] Patricia A. King, Professor Emerita, Georgetown Law School, who previously served in the Office of Civil Rights, the U.S. Equal Employment Opportunity Commission, and the U.S. Department of Justice. https://www.law.georgetown.edu/faculty/patricia-king/

[23] Ruth Bader Ginsburg, Associate Justice of the U.S. Supreme Court https://www.oyez.org/justices/ruth_bader_ginsburg.

[24] Abner Joseph Mikva (1926-2016), a Congressman from Illinois in the 1970s later appointed to the U.S. Court of Appeals for the D.C. Circuit in 1979. https://www.fjc.gov/history/judges/mikva-abner-joseph

01:19:11 Appeals, and that had an impact on state courts, because it was a trickle-down effect. So, I love the guy for what he did. It was something that was so important. We had never had a place, and he said he was going to do it, and he made it happen. And I've loved everything that he has tried to stand for ever since. I think he's just a really good human being, cares about the world.

JUDGE HARRIS: When they asked you to consider being nominated to the D.C. Circuit, was that a hard decision for you at all?

JUDGE EDWARDS: Yeah. I didn't mean to interrupt you. Your question was what is it a hard decision. Yes, it was a hard decision. I liked what I was doing by then. Now, I love teaching. Why do you want to mess with my mind and ask me to do this? And the first question I asked was, "Can I keep

01:19:55 teaching?" If they had said no, I would not have done it, interestingly, and I'm firm on that. I'm sure I would not have, and they said no, there's no problem. You can teach. Once I

01:20:05 knew I could keep doing that, I was pushed by people to take it seriously and remember quite apart from your own interest, we don't have African Americans on the federal bench, so it's important that we get African Americans on the federal bench. The other thing was, it wasn't something I thought about. I didn't have any sense of the D.C. Circuit. I knew

01:20:30 Washington a little bit because I had been chairman of Amtrak, but I wasn't a Washington insider. This is cut-throat here when you're not part of it. I didn't know Washington, and so that's a little unnerving, and it was too expensive. I didn't have any money, and to move to Washington then, the market was terrible then.

I didn't have the money to do it. So, all of those things weighed heavily, and they didn't give you a bonus for signing— as you know. They don't give us a bonus for signing onto the federal court. So, I 01:21:01 thought long and hard, and decided to go ahead and do it. I'm glad I did, but it was not an easy decision. I was very happy in Michigan.

JUDGE HARRIS: What was the process like, your nomination confirmation process? It was really smooth wasn't it, back in the day?

JUDGE EDWARDS: It’s so different from what you all have gone through. In ‘79, those commissions were running, and so they were kind of gathering names and getting people to say they're interested, and having interviews, and deciding whatever they were going to decide. And so, they came up with recommendations during the course of 1979. I don't remember the exact time table. And

then, those names went to the attorney general and the attorney general advised the president on who to pick to nominate. Again, I'm a novice, I have no idea what any of this means. I knew a couple of people on the 01:22:00 committee, but it didn't mean anything to me. I mean, Ab Mikva was well-connected, he was in the House of Representatives. Ruth Ginsberg was much more connected. Pat Wald[25] was much more connected. I don't know what to do. Pat King, who teaches at Georgetown Law School, was a good friend of mine and she was on my committee. I said, "Pat, what do I do? Is there something I should say to someone to help myself out in this process now? I'm among nine people who have been recommended by the committee, but they're only going to

[25] Patricia M. Wald was the first woman appointed to the U.S. Court of Appeals for the D.C. Circuit and the first woman to serve as Chief Judge of that court. https://www.fjc.gov/history/judges/wald-patricia-mcgowan.

take three or four."

And she said, "Call Barbara Babcock," who is a professor at Stanford, and she had been a buddy of ours and I had forgotten about her. She was an assistant

A.G., I think, I don't know whether she was head of criminal, or legislative, but in any event, she was at the Department of Justice, and I called her. We had been buddies,

01:22:55 and I said, "Barbara, can you help?"

She said, "Not until I help the women." She was very clear. She said, "I've got to get the women on the court first Harry, and then, if I know that that's going to happen, I'll do what I can to help you."

I said, "Okay, just tell me what to do."

She said, "If the time comes, so think about it. I want you to

01:23:13 write a letter, the strongest letter you can write on your own behalf that I will sign and give to the attorney

general."

I think she changed one word in the letter. So, I gave her that letter and she gave it to the attorney general, and I was picked off of the committee and nominated. So the nomination came in December of 1979. I had a hearing in February of 1980, two months later, two people showed up. I was confirmed two days later, and commissioned, and that was it. I think it was 45 minutes, at most. The hearing was about nothing. And what a difference from nowadays. I think what we're doing now is outrageous with nominations. It's not the way it should be. I don't think everything has to be 45 minutes, but I think what we're doing now, what your group of judges has had to go through, I think makes no sense. It's too politicized.

JUDGE HARRIS: Certainly very different. All right, so here you are in 1980. You're sitting on the

D.C. Circuit, 39 years old. I believe that made you the youngest federal court of appeals judge then sitting, one of a handful of black judges. You wrote an article[26] about two years later, talking about your impressions of that job at the very beginning, and I want to check back, and see how your thoughts have held up over time. Obvious from the article that you love the job from the start, but one of the things you wrote about that really struck me, you were comparing the benefits of arbitration and litigation, and you said that it seemed to you as a judge now, that there was more room for the exercise of common sense in an arbitrator's work than in a judge's.

01:25:00 What did you mean? And how do you see the role of a judge, if it is not to exercise common sense?

JUDGE EDWARDS: As you now know as an

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[26] Edwards, Harry T., *Advantages of Arbitration Over Litigation: Reflections of a Judge*, 35 NAT'L ACAD. ARB. PROC. 16, 17 (1983).

appellate judge, we are severely limited in what we can do. We work within the confines of specific records, so if it's not in the record, you can't say, "Wait. Something else occurred to me". In an arbitration, you can. You can say, "Let's take a recess and talk to the parties". You know there are other things that might be going on, but you're stuck with the record. It might be a terrible record. You're stuck with the law or rule that applies. You're stuck with the law of the circuit. We're supposed to follow the law of the circuit, and we're supposed to write narrowly. When we write, we're not supposed to reflect on things that occur to us. It's a very limited responsibility. I think it's an important responsibility, and I think it plays a very important role in our democratic society, but there's much more you can do to solve people

01:25:50 problems in arbitration and mediation than you can in the federal courts. First of all, it takes much more time in the federal courts and invariably more money, but beyond that, there isn't the flexibility. Maybe a district court judge has the time and wherewithal to say "Stop. Let's go talk". I don't think that happens anywhere near as much as it can happen in labor arbitration, but that made me know for sure what our role was. It caused me to think I'm in a very limited role here and if I'm going to do it right, I have to stay within the confines of law. That's what I teach and I tell my students: "No, I don't care what your general feelings are about goodness and justice. We go with the record. Was the issue preserved? They argued it above? Do they have case law supporting it?" That's it, and it had a huge impact, and I try to say faithful to that ever since.

01:26:50 JUDGE HARRIS: You've written about the judicial decision-making process a lot, and you've talked about the difference between easy cases, and then hard, or very hard cases. Is there more room for kind of the exercise of what you would think of as common sense in sort of a handful of harder cases, or do you feel like it's the same job, no matter what the case is like?

JUDGE EDWARDS: Same job, but there's room because the law is not so clear. So in what I would call the very hard cases, where there's no clear answer by reference to existing law, or the law of the circuit, or Supreme Court precedent, then the judges have to figure out based on all the sources available to us how should we decide that. Now, generally we're supposed to still go narrow. We're not supposed to say, oh wait, we get to say a whole lot. We're supposed to say a little bit

based on the sources that we have. But there are clearly some cases where we have freedom, because a law is not clear, and what affects those decisions? A lot of things. Common sense is certainly one of them. Existing law in related areas is another thing. A judge's background and ideology. Political leanings may come into play that is, you know, I'm

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a product of X, and so these things occur to me. Now, if the court is working right, that should all be on the table and we should be talking about those considerations so that we come up with a best result, but some cases are just flat out ideological and political, and sometimes they are because the statutes say so. The statute says the judge's decision is essentially ideological or political and so the room is there, well, it's going to matter who's sitting on the panel and whether they're wedded to their political and ideological

beliefs.

JUDGE HARRIS: I don't know if you can do this, but can you give an example of a statute like that or a case like that?

JUDGE EDWARDS: Well, the antitrust laws are the first example that would occur to me- where there is all kinds of room for theories of antitrust law that are in part political or ideological. I mean there was the Bork theory of antitrust law[27] and other theories that would a good example. And I'm not saying that with any strong feeling

01:29:06 one way or another, but the people who want to study how we work and think that we're political or ideological in our decision-making don't account for the cases where the

[27]Robert H. Bork's theory is set forth in his book *The Antitrust Paradox* (New York Free Press, 1978). Bork sat on the U.S. Court of Appeals for the D.C. Circuit. The Senate did not confirm his 1987 nomination to the U.S. Supreme Court. https://www.fjc.gov/history/judges/bork-robert-heron

statute is effectively requiring us to make judgments of that sort. So what are we supposed to do? We're told to do, we do it.

JUDGE HARRIS: So, ultimately you left Harvard and returned to Michigan. Can you talk a little bit about how you made that decision?

JUDGE EDWARDS: Yeah, the Harvard period, at least in terms of my life as I think back on it, was crucially important with respect to a number of things. First of all, I was brought there, made the offer to come to Harvard for the same reason, Michigan that is, they were under pressure to add African Americans to the faculty. What's interesting about all this conversation and reflecting on it is there is a lot of stuff about race and African

01:30:03

American, etc., and that really wasn't what was dominating my existence as I was moving along.

But, in fact, it was pervasive as I was moving along just because the country was going through so much stuff. But in any event, it was certainly true at Harvard, Harvard was under pressure to get African American faculty members, and so I got an invitation to visit, which was clearly to look at me to see whether they were going to make me an offer to stay. And Becky, my wife then, had just started her a PhD, and so there was a question to do this or not, and I said to her, "Do you want to just stay at Michigan and keep going?" She said—you can imagine the conversation. She said, "What about

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the kids?" I said, "I'll take them with me. I'll take care of them in Harvard," and she kind of laughed at me the way you can imagine, yeah, really? But in any event we all went to Harvard. So you're clearly coming with a kind of pressure that's not self-imposed. It's there. You know

what this is all about. And they take themselves very seriously. They really believe that they are the kings, no queens, kings of the world, and that's the setting in which you're supposed to feel blessed that you're coming into. I did the labor law thing, and did it well, and it went well, but it was an entirely different environment. So, my skill set was being tested now. Not so much in labor law, with a different set of students, and I had to do it well with a different set of students, but also with a different set of colleagues. Interactions were different. They were not collegial. They were not warm and gracious. They weren't hostile, they just weren't gracious. And so being able to get in that comfort zone was good, to be able to feel like I could 01:32:03 do it, and do it at a very high level was good. Now, that helped to magnify me professionally in labor

relations, because I was at Harvard. At Harvard you get the benefit of things you probably don't even deserve, just because you're at Harvard. It's still true. You're at Harvard? Oh wow. And so, arbitration work, conferences, speeches, a lot of things started to explode for me, and my name recognition, and work recognition really went up during that period, and my confidence went up, because I was playing in a different field and felt totally comfortable. But one of the important things that happens was I met Richard Chait, Dick Chait, who was at the Graduate School of Education. He's a PhD. He's now one of the closest friends I have in life. But he was running a program and it was in the summers, the graduate school and the business 01:33:00 school together, bringing in top administrators from around the country from universities, and it was

to just teach them in a lot of different areas, and he heard about me, and he said we'd like to teach him some things about employment law and law generally. Would you take that piece of it? They were learning all kinds of things, business, and

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they just came because they were smart people, and they wanted to be smarter, and hang around with smart people, and so it was great fun. I think I did that for six or seven years, but it started there. What happened for me that was important was, and this is where I began to expand. I decided to write a book in higher education and the law, and Pam, that's a book about the law, because higher education in law is a misnomer. Higher education is affected by *everything* in the law. And that's what I found out as I started writing that book and I said to myself, I'm totally comfortable doing this. I'm now in

constitutional law; I'm now in torts stuff; I'm now in litigation stuff that's broader than labor; and, it gave me great confidence to be working in those areas. And so, when I left Harvard, I had that as something additional to my 01:34:16 professional package that I did not have. The other thing that went on with Harvard, there was clearly some of the race stuff going on, because there was pressure. And when I was asked did I want to stay could they come and visit, I've told you this, I told you can come and visit my classes on days when it's convenient for me, which threw them off. And when they made me the tenure offer, I had Yale in hand. Yale made me an offer in the fall and Harvard was still reviewing me, and Harvard was following Yale, but Yale made me an 01:35:00 offer with a very light visit. All I did was go down there and talk to faculty members. And you talk about

different schools, this is all very interesting to me because Yale was a school where the faculty rank ordered themselves. And so, I'm not going to name names, but when I met with so and so.

JUDGE HARRIS: Please?

JUDGE EDWARDS: When I met with so and so, he said, "After me, the next two or three smartest people on the faculty are…" And it was real and the whole conversation was that way. They thought who's the smartest, who's the next one. It had nothing to do with discipline. It was irrelevant. It didn't matter what you were. You're at Yale. You can do anything, but just so you know, if you come here, I'm the smartest, the next [laughter] I said, this is a very strange place. I don't think I'll do that. It was nice to have

01:35:51 the offer, and they were very nice.

Harry Wellington,[28] I think, was the dean and we became very good friends. He pushed me very hard. In fact, my wife and I stayed at a place of his in England one summer, and I thought about it, and we decided to take the Harvard offer. And then what happened, and again, we're back to race again, the Boston Cambridge area was racist as sin. It was a completely segregated community. You're a this or a that. You're a Braham, you're Irish, you're black, whatever. Everyone was segregated. And it was very uncomfortable. If you showed your Harvard card quickly enough, you were safe. So, if I went in to an Irish area where it might be dangerous, as long as I can identify myself as someone from Harvard, I was okay. I began to worry about the kids. My son was maybe in second grade, my

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[28] Harry Hillel Wellington (1926-2011) served as the dean of Yale Law School from 1975 to 1985.

daughter was in kindergarten, and we bought a place in Chestnut Hill. It was awful. The neighbors didn't really talk to you, and I hated it. We all hated it. And I just came home one night and I said, "Who wants to go back to Ann Arbor?" and they leaped at the dinner table. "When daddy can we get out of here?" And 'cause I was afraid they were going

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to lose their identity as black people, and that's not the way we were raising them. We did not want them to lose their identity, or feel uncomfortable about it. And I felt this would not be a comfortable place. And other black scholars and teachers in the Harvard community who had come from other places were saying the same things. We would get together occasionally. And the dinner parties were really funny, because someone would say "Is this place weird or what?"

And it was weird, not because, it was

just generally this way, but the blacks who were there, thought of themselves as being different. And one person at dinner one time said, "You ever meet so-and-so?" And he's a black person in the community.

"Yeah, what about him?"

"He doesn't know that he's black."

They were kind of a product of the assimilationist model where we're here, we've escaped it, and so don't

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do the black thing on us, and it was all weird to all of us who had come from other places. So, my family and I got out, I called Ted St. Antoine, who was the dean. He had always said you want to come back, any time, and I called him. I said, "I think I want to come back," and he said, "When do you want to fly out, and we'll talk about." And I flew out. We went out to dinner. We drank much too much. I signed a contract on a napkin. I tried to stay sober enough

so the contract was very favorable to me and I went back and I went on sabbatical for a semester coming back and then we got a nice house, and we were back in Ann Arbor. But the Harvard experience, I don't completely damn it, because professionally, I grew. I was challenged immensely, not collegially, but I was challenged and I got the Institute for Educational Management, which I worked with and it made me get into other areas, which served me really well as a prelude to the D.C. Circuit. It was very, very important.

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JUDGE HARRIS: Another thing you talked about in this early article was that the job of being a judge could feel a little isolating and that you thought you could address this through teaching and writing, and it certainly turned out that way. You've stayed remarkably engaged in the academic world, to

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teaching at NYU and other law schools, writing scholarly books and articles.

So, is that something that you think of as a necessary part of being a good judge, or is it more personal, just something that helped you to be happy and productive as a judge?

JUDGE EDWARDS: No, I think it's personal. I don't think every judge would be so inclined or interested. I had the love of teaching, and I had begun to enjoy the writing. Ironically, I started doing much better writing when I got on the bench than I did in the academy. I did a lot of labor law specific writing in the academy, but I started to expand and if you look at the stuff I started to do as I left, I was expanding. And my own measure of it is it was not only different, but dramatically better. 01:40:13 I got better. I matured in my writing; I was thinking better.

JUDGE HARRIS: You mean you think even in your scholarly writing?

JUDGE EDWARDS: Yes, in my scholarly writing. Forget it. I'm talking about scholarly writing. It was more interesting, significant, and some of it- the disjunction between higher education and the law-[29] who knew that was going to be one of the most cited opinions of all time? But I started thinking once I got to the judgeship, I don't know why that happened, why I felt freed up, and I started writing about a lot of different things. I did a little of labor law, and I wrote a couple of things. I use my labor law background in judging to affect some of our decision-making, because there were some theories, like in the duty of collective bargaining that would come up in the D.C. Circuit, and I had some strong notions about that,

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[29] Edwards, Harry T., *The Growing Disjunction between Legal Education and the Legal Profession* 91 Mich. L. R. 34 (1992).

01:41:06 and I felt the law was a mess. And as I look back on those cases, I smile because I was clearly writing— this is opinions now, I was clearly writing with reference to an article that I had written on the duty to bargain,[30] because I felt I needed to get the law of the circuit going in the right direction, and eventually did, I think. And one other colleague, Larry Silberman,[31] who is on the court, he got it. He understood what was going on, and there were several big things that I did like that that were a product of the work that I had done

01:41:38 in the academy. My writing got better when I went on the bench. My academic writing got better.

JUDGE HARRIS: And more wide-ranging.

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[30] Edwards, Harry T., *Legal Aspects of the Duty to Bargain* in *Faculty Bargaining in the Seventies*, edited by T. N. Tice and G. W. Holmes. Ann Arbor, Mich.: Institute of Continuing Legal Education, 1973.

[31] Laurence Hirsch Silberman (1935-) is a Senior Judge on the U.S. Court of Appeals for the D.C. Circuit https://www.fjc.gov/history/judges/silberman-laurence-hirsch

JUSTICE HARRY T. EDWARDS: Much more wide-ranging.

JUDGE HARRIS: So, I mean it must relate to what you were doing as a judge. So, for you, what is it that you were getting out of your academic writing that you weren't getting out of your opinion writing?

JUDGE EDWARDS: I could run more widely. I mean, I could take on

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ideas. As judges, as you know, we're limited. I've only done it a couple of times. The opinion on employees being forced to go to arbitration when they're fired.[32] It was a big case. It was big at the time, and I remember it came to us. It was a nothing case. I think it was a single practitioner who, I think he may even used to have been in the legal division in the court, and he didn't think he had much of a case. And I looked at this thing, this

[32] *Bailey v. Federal National Mortgage Association*, 209 F.3d 740 (D.C. Cir. 2000). https://caselaw.findlaw.com/us-dc-circuit/1074037.html

person was told that she had to use arbitration. She couldn't bring her civil rights claim or something like that to the court. She had to use arbitration. She had to pay for it. And I just couldn't stand it anymore. I had to write. I helped his complaint along. It’s one of the few times I will admit it. And I'm blanking on the name of it, but I wrote it was huge, a huge decision and all of my prior colleagues in

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labor law, and in an arbitration were like “wow”, because they knew what I was doing, I was damning what was going on. And it was saying you can't make these people go to arbitration in lieu of bringing a civil rights claim into the federal judiciary, and you surely can't do it if you're going to make them pay, because what they have to pay to use arbitration is not the same as what they have to pay to go into court. It is entirely different. So if

you're going to charge them the arbitration, you pay it, the employer pay it. The Supreme Court, I think five to four, went the other way when they eventually got a case like that. But that was where I wrote in the extreme. I mean, I was literally writing a law review article and I was writing it for an audience and they all got it—

JUDGE HARRIS: In the opinion.

01:44:00 JUDGE EDWARDS: In the opinion. It was literally a law review article in the opinion and fortunately Judge Silberman was with me, our third colleague dissented, she was apoplectic because I'd really gone wide. It's what I call wide angle opinion writing and that's not what we should normally do. I took it as wide as you could go and made more

01:44:21 out of that complaint than anyone could possibly. It had been thrown out on a motion to dismiss, I think. There was nothing there. And I said,

"Larry, I think we really have to say something."

He said, "Go ahead, try. Let me see what you can produce," and he was with me on it. Most of the time we write narrowly, as you know, and so the difference between the academic writing that I do and the stuff that I do on the bench is completely different in that way. I'm limited by the record. I'm limited by the case law precedent, whereas in the academic writing that I'm allowed to do, I can think about issues like legal education, how we should teach and think broadly, and comment on why it's so important. I can't do that in an opinion.

JUDGE HARRIS: So, in that sense they might really kind of balance each other, right? The things you can't put in your

01:45:10 opinions, you're writing over here.

JUDGE EDWARDS: Absolutely. But I mean the other side of it, the

conjunction between the teaching and judging is really neat. You asked, "Should everybody do it?" No. But for someone like me, I can't imagine not doing it. I can't imagine someone like you not doing it and I'm waiting for you to get into teaching, because you'll experience the same thing. It's cross-fertilizing. There is no question. I'm now teaching stuff I never used to teach: federal courts in the appellate process, decision making. Labor law, I don't even know labor law anymore. I used to be the guru in labor law in the D.C. Circuit. Labor law cases would come up and people would just call me, and I wasn't on the panel, and they would say what should we do with this? Not so much anymore. I don't care about that anymore, because all these new issues: administrative law, appellate 01:46:04 decision-making, collegiality. So now I can teach in those areas, and so

when I'm teaching federal courts and the appellate process and there are administrative law issues there, I can think about the stuff we're doing in the court, and just the opposite. I have given students problems from the court and have them write them out and rethought. There was one case where I realized, and I told my two colleagues we were wrong, and it wasn't so much that the students were right, is that in grading, I realized we had just messed up the issue. We had read too much into something. And that goes on. Fortunately, I don't see that very often, but the cross-fertilization is fabulous because administrative law, which is what the D.C. Circuit does, is a body of law, and it has a big reach. So, I'm always thinking about where—whether it's ripeness, or standing, or cause of action—whatever it is-

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I'm thinking about where is the law of the circuit going? How should it

play? And I'm teaching that stuff so I'm correcting myself, and then that helps me in my decision-making. And my law clerks love it too, because they know that's what I'm doing, and they know that's the way I'm thinking. So I tell them, their work is the grunt grind

01:47:23 work. I'm thinking bigger picture and the teaching really helps that.

JUDGE HARRIS: It seems that makes perfect sense to me. It sounds as though it would be great, but let me ask you this. How do you make the time for this? Because you also said in this first article that you were learning to sort of come to terms with a crushing workload as a judge. So how do you manage your judge work so that you also have time to do the teaching and the academic writing because it seems impossible to me sitting here right now.

JUDGE EDWARDS: No, it won’t. I'll tell you when it won't, well you have

one thing in common with me. We're both driven. We're driven to do things and we're driven to do it at a high level, and that's one thing you do. A second thing is you learn how to stay away from stuff you shouldn't say yes on. That is say, know an invitation. And when

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you get hot, and I've tried to get away from that "being hot" period. I don't want to be hot anymore. I don't want all the invitations. I've lived that, but you do. You go through periods when you're hot, and "Oh, let's call Judge Harris", and you have to start picking and choosing and making yourself say, very simply, "Oh thanks so much, but I'm otherwise committed," and it's never a lie, because you're always otherwise committed. I learned to do that now. That doesn't answer your question because there was still a period when there was a crush. I worked long hours, but I wasn't

unhappy. The big step for you will come, and this has something to do with me, is when the kids are all gone that makes it a little bit easier, and you have a willing and understanding spouse. I'm taking an accumulation of learned knowledge here and answering your question, and 01:49:16 you give yourself playtime that is not interrupted. So, if I'm working really hard, I mean, this is what my wife and I now do, and I told her when we got married. I said, "Look, you got to understand what you're marrying. I work all the time. But here's the deal, I will not work in the summer. I'm going to be working like crazy during the year, doing all kinds of things, and comfortably, but I promise you during the summer months, that's our time." And we've eventually bought a house, and we love it, and it's worked. That's absolutely the way it works and when we hit that car, and we're going to

be doing it soon, we get in that car and pack it up and go to Cape Cod. I'm done. So, that's one of the ways you do it. And it can be playtime anywhere, anyhow. It can be I like to travel and we're going to go to Maine, we're going to go to Cape Cod, but you have to have time you know

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you're working to get to when you can cut it off. That's really an important part of the answer. As I think back I think that has monitored me throughout much of my

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professional life even when I had kids. It's harder when you have kids, because they're there to be attended to. The only other answer I can give you is I'm driven and I love it. If you're doing stuff you like to do, its fun. It keeps your brain going and you're trying to figure out, can I make a difference here? And stay away from stuff that's not important. I think that's the best answer I can give. There are periods

that are crushing.

JUDGE HARRIS: Are there pieces of the work you delegate? Are there ways of managing your chambers that you think have helped you to be efficient on the judge side to free up time for the teaching?

JUDGE EDWARDS: Yeah, remember I came into judging knowing I had to do teaching. Otherwise, I wouldn't have done it. And that was not a mistake at all. Managing the chambers, now, I don't know why I had

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this instinct, but from day one I had a sense that you have to manage the chambers, meaning I knew there were judges in the system who didn't really manage the chambers. They did their work, but other people attended to who gets assigned what and when, and deadlines, and they work on their opinions, but I felt the job was very different. I felt, especially nowadays as opposed to

Learned Hand's[33] days where, you know, you come in and you have a lot of books around you and just read and reflect, we don't have the time, so there is so much stuff we're trying to do. I decided early on, and Larry Silberman, one of my colleagues on the D.C. Circuit, confirmed he watched for a while, and he had been out and done a lot of things. He said, "I'm going to take one of your secretaries, I'm going to hire and on one position, because you know how to run an operation the way I want to

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run it." He is the same way in terms of wanting to run a tight operation. We know what we want to do. I felt that the people who are working with me had to be able to look to me, 'cause I'm the one in charge, and know what I want, because that's the whole mission of the chambers. And

[33] Billings Learned Hand (1872-1961), an American jurist and legal philosopher who served on the U.S. District Court for the Southern District of New York and the U.S. Court of Appeals for the Second Circuit. https://www.britannica.com/biography/Learned-Hand

so, as some of my clerks in recent years have said, thank god, judge. You tell us exactly what you want. We don't have to worry about that. That's pressure off. Sometimes it's hard to meet the deadline, but we also know we can talk to you, but it really is better to have someone say this is what I want. So that's one of the things I learned early on from day one. You make the decisions. No, my special judicial assistant does not decide how the judge works. I decide how I work. No, my special assistant doesn't schedule me. I schedule me. And no one does anything with the law clerks but me.

01:53:00 And so I gave them bench memos as part of their assignment early on, and I limit them to mostly to preparing for argument, dispositions after argument, and drafting opinions. And so I'm trying to frame for them: this is what you're going

to be doing, and now in recent years they help me with teaching. Which is really helpful, and they love it 'cause they get to go to New York sometimes, but they have a whole schedule for the whole year laid out for them. Here are the cases you're going to sit in on. These are the bench memos you're going to write. Here's the deadline for getting them to me, and I expect them on time and they know that, and I expect them to be very, very high quality, and you don't talk to law clerks in other chambers. Why? Two reasons: I don't think we should decide the cases before we hear argument, and that's what law clerks want to do. So, if

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you're talking to law clerks from other chambers, you're all trying to figure out what the right answer is. My feeling is I want to go in and hear what my colleagues say during argument and it may change my mind. So, I said we stay in chambers. After

argument and when the judges' decide, that's different. And then, in recent years I let all of them go to all the oral arguments. I didn't do that in the old years, and they enjoy it and its fine with me, because they learn more. They see every argument, but only one person is assigned for that day. And they have their deadlines. And on opinion writing, I just watch the year and decide when they should be giving me drafts, and I schedule it. And they know when to do it, like this past year, I called them all in and I said, "I think we can clean everything out before the Christmas-Hanukkah holiday," and they all looked, and I said, "So here's how we're going to do it." They winced a little bit, and I said, "Won't it be good, we are going to finish every opinion. We're going to get concurrences and you're going have all your bench memos done for

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January, and you're going to leave with nothing left."

And they said, "Okay, let's do it."

It was interesting for me to watch. We did it. But the thing that was important was that it was very clear that they wanted to be led, and they knew I wasn't being unreasonable. They also understand because I tell them from day one, I say, look this is the Edwards Chambers. I don't mean the Edwards Chambers is better than any other chambers. I don't care

01:55:29 about any other chambers. Here is what I care about. Pam Harris and others like you preceded you, and what they did was set a standard of excellence. You're not going below that, so don't give me anything that's garbage. That means its well-researched, it's well-written, and it's on time. Don't do it. And if you can't do it, don't stay. Because that's what the chamber's mantra is,

and I put it that way. That's what our mantra is, "We do good work," and then when we had those moments where we've gotten a bunch of stuff up, I call everyone and I say, "Yes, we nailed it. Everything's out. It's looking good. You guys.—" And the ones who messed up in their opinion drafts, they know it, because they give me their drafts and then I go to work on them. Some of them are okay, some of them are not-so-good, and I don't say anything unless it's a disaster. And I give it back to

01:56:20 them, and unless they're stupid, they know what they did wrong. And if they have the pride that I try and instill in them, they'll try not to make that mistake again. I had a guy this year, his first draft—it's hard,—but boy, he missed the mark, two, three, four places. I didn't say anything to him. I redid it. It's fun. I like writing opinions, and I gave it back to him, and then

they get it back for me in cite check. They don't rewrite. They just cite check and proofread, and then someone else does it again. He came in after it was circulated and he knocked on my door and he came in he said, "Judge, I just want you to know I will never screw up an opinion like that again, not to worry. I got it." He said, "That's all you want." And so I have someone who I now know is going to keep growing. He's going to grow to his capacity. He got it. He understood it. He read it and

01:57:12 like wow, how did I do that? And if they have questions they know to come in, but I try to give them a sense of- not a lot of yak, yak, yak- let's do our work and move it. You got a

01:57:25 serious question, raise it, but most of the time I won't know what you're talking about 'cause you're now working on something that I'm not working on. And so, all I can

promise you is not the right answer, but I'll remember the question. That's what I tell them. So, you know what? Be a big boy/girl, go back to your office, do the best you can. I'll remember your question and then when I start working on it, I'll know what you were worrying about and I'll see whether there is anything to it.

JUDGE HARRIS: I'm going to use that, 'cause when law clerks come to you and say I have a question about this opinion I'm drafting, that's ten opinions back in my file.

01:58:02 I literally don't know what you're talking about.

JUDGE EDWARDS: You don't know what you're doing. I tell them that honestly. I don't know what you're talking about.

JUDGE HARRIS: That's good, "I will promise to remember the question." That's smart.

JUDGE EDWARDS: If I have a problem

occasionally I try to tease people along. You remember.

JUDGE HARRIS: I do, the gentle prodding and teasing.

JUDGE EDWARDS: Really, what's that? Kind of thing, or someone who will go unnamed, who I still tease about it. Just one day, "X, I think you now have the record for being the worst cite checker in history of chambers." He was mortified, but he got it. Rather than make everyone laugh except he's pained, because he knows I got to get it up, and do little things like that to say no, I'm really watching and we really got to keep that thing moving. The other thing the people in chambers need to understand, and not all judges do it the same way, I tell them, I know everything that's going on in chambers. Why? Because I'm the one who is going to be embarrassed if we screw up. So, I have to know every single thing that's going on, when

you're doing it, when you're going to be finished, what the assistant is doing, when things are out. And anything that goes out, I don't leave it to them, they know it goes through me and out. If there is a correction, they bring it through me, and I want them to know I'm totally engaged and when I can't be, I'll stop. I am totally engaged with every word that is under the Edwards name. These are my words, you've contributed, but this is my product and I want you to know I'm watching all the time, so that we keep the quality level as high as it can.

JUDGE HARRIS: I think you are right, that judges come in two varieties, judges who think of part of the job as managing a team in chambers and judges who don't, and I'm going to go out on a limb and suggest that this may be the fact that you fall in that first camp may have something to do with the time

you spent in private practice, that you're used to the idea of managing staff, and working together to get stuff out in a timely way and get it out good.

02:00:08 JUDGE EDWARDS: Yeah, no, I think that's right. I mean, 'because that's what firms have to do. I mean, you've got to get things done. You got to get it done at a certain level, you got to get it done on time. And then the other place that helped me was when I was chairman of Amtrak. It wasn't my world, but I

02:00:22 was in a business situation where it was no nonsense and Amtrak was chaos back then. So I had to make some business judgments, and it wasn't my world, but you got to learn about stuff that's not your world. That's part of what you're trying to teach the law clerks. There's no time for whining. We can't whine, so don't tell me you've never seen this before, go figure it out. And that

really was my background, and that frees me up to think hard in the opinion writing, which is the money part of our job. If I can keep everything else going right, then when I sit down to write an opinion, I'm in heaven. I'm in heaven. I go day and night. My wife knows. I may get up in the middle of the night 'cause I thought of a sentence and write it down. I got to do it. It's in heaven. I love to get to that piece, but the only way I enjoy that is if I can keep everything else moving.

02:01:12 JUDGE HARRIS: The last feature of your new job that you mentioned in this very early article, was what you called "the great rewards associated with good relations with some brilliant colleagues on the bench," and it's clear from your later writings and from your tenure as Chief Judge, that judicial collegiality has remained

very important to you. What exactly do you mean by judicial collegiality? What is it? Why is it so important?

JUDGE EDWARDS: I've come to feel very, very strongly about that. I mean, the couple of very early articles that I wrote I was guessing about what it's like to be a judge, and I thought in terms of principled decision-making and limited role. That's the way I think about what appellate judges do. We have a very specific responsibility. We are not the Supreme Court and we have a very specific and limited

02:02:03 responsibility. But it can get out of whack. There is always potential danger in the Courts of Appeals, as you know, for ideological politicized decision-making. When I first came

02:02:15 on the D.C. Circuit in the eighties, I started in 1980, I almost left because the Court was so politicized. There were camps. You were in the liberal side or the conservative

side. Period. And you voted with that side no matter what the question was, even if there was no political component. If one of your liberal colleagues wanted X, you had to vote with that colleague - and it was insane. I hated it. It kept getting worse and worse. And we had some very strong people on the two sides. I was supposed to be in a liberal group, Mikva, Judge Wald, one of the smartest people I've ever met, Ruth Ginsberg, one of the smartest people I've ever met, and then we

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eventually got Judge Bork[34], Ken Starr[35], Thomas[36] came, Randolph[37], Larry Silberman, very strong, conservative appointments, and so on.

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[34] Supra, 27 https://www.fjc.gov/history/judges/bork-robert-heron

[35] Kenneth W. Starr, former U.S. Court of Appeals judge, U.S. solicitor general, and independent counsel during the President Clinton Administration. https://www.fjc.gov/history/judges/starr-kenneth-winston

[36] Clarence Thomas, Associate Justice of the U.S. Supreme Court https://www.oyez.org/justices/clarence_thomas,

[37] A. Raymond Randolph https://www.cadc.uscourts.gov/internet/home.nsf/Content/VL+-+Judges+-+ARR

Nino, Scalia, Justice Scalia[38]. So, I mean, you had people banging heads and very strong battles on some hard issues. We got to a place in the eighties where there were four or five cases that were about to be reheard en banc. And as you know, rehearing cases en banc is not a good thing in the Court of Appeals. It means you're in trouble. And divisions show themselves, and the judges are not happy battling against one another. People who wrote the panel opinion don't like to have their stuff reheard, so people are trying to get people on their side. It's not a happy time, and these were big cases. I really felt the Court was going to fall apart, and then we were going to start rehearing everything en banc. We were really at the worst

02:04:05 I've ever seen. I begged and pleaded

[38] Antonia Scalia (1936-2013), was an Associate Justice of the U.S. Supreme Court. https://www.oyez.org/justices/antonin_scalia

with some colleagues. And Larry Silberman, to his credit, switched his vote. And it was a critical vote. It may have affected his chances to go to the Supreme Court. I've never known for sure, but it was a critical vote and it stopped it. And those cases that were up to be reheard stopped, and then we began to quiet down a little bit. It was then that I started wondering how do you get a court to come together in a way that we can do our job, and the notion of collegiality then came to me. And it isn't about, do I like you? Do I want to hang out with you? And do we have fun together and tell jokes? It's about all of us having the same mission, wanting to get the law right. Finding it, and getting it right, following precedent, and not playing games with precedent and trying to find an angle where you can expand it or you ignore it,

02:05:12 or whatever, getting the law right.

And most of us know what that means in most cases. You can fight over the words. And you can temper it a little bit, change sentences, that's 02:05:21 okay, but that's part of collegiality. That notion occurred to me. The first step I realized along with Judge Wald, you have got to have rules on how you interact with one another. Rules matter. We had some judges back then who took forever to write opinions. I came from a world where that didn't make sense. You're in a law firm. You can't take forever. And I would say there were parties waiting for the answer that we have to give. We need to just get it out. That's not the way they operated. They did it whenever they did it and sometimes it was a long time before these opinions came out. So, you had the politicized court, you had a court that was not operating smoothly. We 02:06:06 had a clerk's office that was

ridiculous. They just didn't operate at all. They did what they wanted to do, and they were racist, we found out. Judge Starr and I actually headed a committee because we realized they were racist and playing games. They wouldn't hire black people. They hired all the white kids from certain high schools in Maryland. It was really bizarre when we realized what was going on. So, we got rid of some people and we changed that. And then we wrote rules about when you circulate an

02:06:33 opinion, someone circulates an opinion, you've got five days to answer it. Answer the opinion and if you need more time, let the colleague know, but give an answer so that they can get their opinion out. If you're going to write separately—and this was the rule we don't use much, but I used it a couple of times, if you're going to write separately, you've

02:06:55 got to produce your dissent within 30

days after the majority is made. So, if I have another judge joining me, the dissenting judge has 30 days to write. And Judge Bork and I had a 02:07:07 couple of big, big battles where I issued the majority opinion, and his dissent was to come and it came later, and then I wrote a response to the dissent. That wasn't what was important. What was important was to say to one another, we have rules of the game, on circulating, on responding, on end of the year was the other important rule in our court.

02:07:31 All of your opinions have to be done by the end of August, except for two, otherwise you don't sit. No one wanted to be caught with that rule, ‘because it's embarrassing. It isn't like, well I don't have to work. No one wants to be humiliated and have the world of lawyers know well, how come judge so-and-so is not sitting? Well, because he hasn't

02:07:52 finished his opinions. And we got into a routine and what I really believed was we should be like the Supreme Court, get our opinions done within a term. Everything we hear

02:08:02 should go out. Get it done, and then we come in fresh at the beginning. Now where does the collegiality fit—?

JUDGE HARRIS: Can I just ask you a question about the rules. Was the idea that the rules would help you just deal with each other more respectfully, or was there an actual concern that people were delaying either opinions or separate writings almost like as a form of veto to the decision that had been made?

JUDGE EDWARDS: I think it was both, certainly the former, I think was the predominant view. We're going to be more respectful of one another. We're all going to operate on the same terms. We're not taking away your judicial

independence. I'm saying you've got to be respectful of your colleagues, but to the extent that there was any mischief, it helped to control it. Yes, absolutely and I came to learn later on how important rules can be, and we talk about them all time. You've got to get your stuff done in a certain way and people get angry if you don't. You've got to have an answer. If you're going to be delayed, I just had one where we didn't even disagree, but a colleague wanted to write a concurrence and she

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got in touch with me and she said, "I got sittings coming up, and I'm really jammed up. Can you give me X period, and then I'll get the concurrence."

I said, "Sure, no problem." So that goes on.

JUDGE HARRIS: Okay, so just facilitates more respectful—

JUDGE EDWARDS: Absolutely. And then so you had that in play.

02:09:23 You still had some of this political stuff going on. And when I became chief judge, should I—[do] you want me to talk about that a little bit?

JUDGE HARRIS: Sure, because you became chief judge—

JUDGE EDWARDS: The collegiality piece was there. I mean, that was very much on my mind. It was not a happy court when I became chief judge. We were badly split. And the conservatives were angry about things that were going on. There was a task force: race, ethnicity, and sex. And

02:10:03 it was going to be some judges, and some members of the bar, and they were going to review those issues, and issue a report. The conservatives were livid, because they said, "That's not what judges are supposed to do. We take cases when we get them. We can't opine otherwise." And there was a bad split on the courts, and a lot of

02:10:21 people angry about that. Then Judge

Mikva, he was then the chief judge, he announced that he was going to be counsel to the president before he left, and he had two or three months left when he was still going to be chief judge. There were some judges who were furious and saying, "You can't continue to be chief judge. You just announced that you're going to be counsel of the president. We hear cases coming from that branch." It's an appearance problem and he felt he wanted to do it. So, it's a lot of anger coming in. And I came in and I said, wow, this is going to be interesting because it's a really angry court.

JUDGE HARRIS: This is 1994?

JUDGE EDWARDS: Yeah, I think '94, yeah. Very angry court and we had a meeting of the Judicial Council, and something came up. It was on the task force thing. People

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were really angry about that. I had already made a decision on task force

that I was not going to let it be far ranging. We were asking for trouble. And I tried to make it clear, we're going to deal with things like sexual harassment in the building and things like that, but we can't otherwise opine, and I also had said anyone who wants to write separately and dissent, help yourself. My conservative colleagues were flabbergasted.

They said, “We can really write?”

I said, “Yeah, why not? You’ve got a view? Help yourself. What do I care? I'm not afraid of your view. I have my own view.” But the most important thing that happened, I said something in that meeting to this day I can't remember what it was. Judge Silberman was clearly upset. And this is my mother again, watch people. He stormed out. What would my mother do? I stormed right out after him.

02:12:08 I went down to his chambers and I

said, "What is your problem? Did you think I said X?"

And he's not a timid guy." Yes."

I said, "No" right back to him. I said, "Not what

I said." I said, "I'll never play politics in this court. As chief judge, I can't do that. I have to serve everybody, that's the only way we're going to be able to operate."

And he looked at me and he said, "You're really going to do that?"

I said, "I absolutely am."

He said, "I'll back you on anything."

He said, "First of all, I don't know why

any idiot would take this job, the chief judge, but you have it and I'm going to back you."

Now, he was essentially the figurehead for the conservatives and he's a very strong personality, and he said, "I'll back you," and indeed the test of that came at the first judges meeting when I put together a

budget and someone started to nickel and dime me on the budget. He slammed his hand on the table and said, "Stop it. This is the chief judge's stuff. I don't want to waste time sitting here going over a budget. Let's get out of here," just the way he would say it. And from that day forward I had my shot to now try and bring together the court. That was now my mission. I had seven years to see if I could bring together the court, because I got a break on conservative-liberal and I had someone on a conservative side. I said, "Look, we're willing to tone it down if you don't play politics," that's all I need. It's like my foot is in the door. That's all I needed. Then you got to figure out how do you do it.

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JUDGE HARRIS: I think when people talk about collegiality they sometimes mean different things. And so, I think it would be helpful to

clarify what you're talking about when you talk about collegiality. I mean, is the idea that there will not be disagreement or dissent anymore, and that everyone will always be unanimous on everything?

JUDGE EDWARDS: No, the idea

02:13:55 is that we're all going to be aiming for the same thing, that is, to find the law and not play politics, and not worry about the few cases that are so hard that no one knows, and the panel composition may make a difference in that kind of a case. But the first thing I had to do was, we had rules, so I had that working for me, you had to get people to calm

02:14:16 down and get their brain straight, and I wasn't sure what that would take. So, I liked to fool around making cards on the computer. I love the computer. That was one of the other things I did as chief judge, get into automation. So, I'd start making these funny cards, like Judge

Randall's birthday came, and he likes to fish, so I got a picture of him fishing and I put it on the card and made some message about fishing and happy birthday. I got gifts too. I just used my money and I got a gift that I thought would be appropriate. The first person to whom I sent a gift, soon as my secretary delivers it, I get a call back. He says, "Harry,"

I said, "Yes?"

He said, "I got a gift. Why?"

I said, "'Cause it's your birthday, dummy."

And he said, "Oh, I didn't know what was going on here."

I said, well this is going to

02:15:14 be a real challenge. But I decided, all right, stay with it. This is going to work, and I sent gifts, birthday cards. I'd come by chambers and say, "What's going on? What do you need?" Talk to people, see what was bothering them. I knew some of

them couldn’t stand me for reasons that had to do with old political stuff, not judging, and they all quickly understood I was working on the courts behalf. Automation was a great help to me because I could give them things that would facilitate their work, and I was good at it. I made the automation team come up to speed, and we developed some programs that really helped the courts work, and even when the judges balked, I could put my reputation on the line and say it's going to work. The other thing I did was to tell the judges [if] anything goes wrong, I'm responsible. Don't go after the managers. You cannot attack my

02:16:11 managers. I'll pick the managers, and I'm responsible for whatever happens. Well, now I got managers who are totally loyal to me because we would talk privately, and I would say, they're going to come after me, but you and I are going to have a

conversation afterwards if you screw this up. And I changed the clerk's office. I brought in a new clerk, Mark Langer, who is there now, godsend. We changed the legal division completely and made it a brand new, really good unit, and got a new director. And we put in automation and we started talking to one another, and then I had lunches. They were two things that really kind of brought us together as human beings: lunches when we would bring in other people like Dan Snyder[39] from the Redskins. He wasn't as controversial then and it was actually an interesting lunch. He told us about running a football

02:17:02

team. The head of the Smithsonian, Colin Powell[40] was my first guest and he was revered. And when I called

[39] Daniel Marc Snyder (1964-) is an American businessman and majority owner of the Washington Redskins football team.

[40] Colin L. Powell (1937-), a four-star U.S. General, former Joint Chief of Staff and U.S. Secretary of State. https://www.britannica.com/biography/Colin-Powell

him, I know him because his son clerked for me, he knew exactly what I wanted to do, and he came in understanding that I was trying to bring a group together. And what happened was, and Pam, it was interesting to watch it, these

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people, they're all smart and interesting in their own life, but they didn't really understand each other. They started talking about things that had nothing to do with cases that were of common interest. They started to figure out, "oh, you like to go to Vermont",—or "you like to fish," or "how's your golf game?" And then they would start talking about world affairs. But we were coming together on terms that had nothing to do with the judicial work that we were doing. So, there was respect developing, even if we weren't best buddies. And the other thing we used to do was have dinners at the end of the year with our

spouses. And the first few times we did that, it was spectacular. And Larry Silberman actually lent us his house a couple of times, drank a ton of wine, and laughed about the year and how hard it was, and laughed about our law

02:18:13 clerks, and laughed about the cases, and that was kind of the end of the year. It was kind of our celebration. And then we all got rested and started a new year. That really worked, and the magic for us, the icing on the cake was Microsoft. We had the big Microsoft case,[41] which back then was one of the biggest cases the D.C. Circuit ever heard, and it was very controversial, and big money then, and all the big players were in it, Chief Justice Roberts was one of the—everybody worked on that case. There were a ton of the best lawyers in the

[41] United States v. Microsoft Corp., 253 F.3d 34 (D.C. Cir. 2001). https://cyber.harvard.edu/msdoj/msft_ruling.html

country. It was a big deal. We had three days of hearings, and my instinct said to go to my colleagues immediately, and I said we're going to do it en banc, no panel. Let's just do it en banc, because we're going to hear it en banc anyway. And they said that was good. The thing that was interesting to watch was

02:19:08 their determination to prove that we were a collegial court. The newspapers had already predicted we were going to split on political lines, and I still saved the

02:19:17 headlines. "D.C. Circuit is going to be a wild show. The liberals [are] going to this, the conservatives…"it was unbelievable. And I smiled to myself. I said watch us. And we streamed on internet. It was the first time the judges agreed to it. They were a model of judicial behavior. Everyone was prepared. Everyone was respectful. No one was attacking

someone else during oral argument. Their questions were respectful. And then the deliberations, I wish we could have videotaped them for life, so that people could see what judges can do at their best. Our interactions—and we split the case up. It was a one hundred twenty-five page opinion and everybody wrote a piece. And the papers all got it wrong on who wrote what and we all laughed about it. We never said anything. They were all guessing who wrote what. One hundred twenty-five pages, unanimous opinion, unsigned, and the interactions 2:20:10 between the judges in trying to finish this section, you could imagine it. It's really hard when you disagree.—There were some areas in antitrust I didn't even understand, and there were two of my colleagues, they were really at each other.

"No, you can't say this. You've got

to say that," but they weren't angry. They were just pushing hard. I got to a point I didn't think we could finish with it being unanimous, and so I sent a note around to everyone saying, "Okay, we're going to close it down". I was working nights. My clerk and I were sleeping here. And within a minute of writing that email, I got emails back from a couple of colleagues saying, "Under no circumstances. We are going to deliver you a unanimous opinion, and we're going to get it done. So just be patient a little bit longer." It was amazing, so I'm tearing up like, wow and darned if they didn't. They closed the gap. We packaged it and it went out. There was a sense of pride that came with the delivery of that decision, like nothing I've ever seen in my whole life from the judiciary. And it has carried us forward, 'cause all of us who were

here remember it, and remember what we were doing and how important it 02:21:22 was to us. And since then, whenever new judges come in, I always send them my collegiality article,[42] and they all laugh at me. I say "No, that's who we are. This is a court about trying to get the law right. We're not trying to do politics, and we follow the rules, and you got to be part of that."

The new judges who come in, I always send them a signed copy of the collegiality article, and that's the way we think now, that the three chief judges who followed me all take the same line. That is the D.C. Circuit knows how to do 02:21:56 collegiality. We may disagree sometimes, but we do our work, and we're all looking to get the law right, respectfully.

JUDGE HARRIS: So your tenure as

[42] Edwards, Harry T., *The Effects of Collegiality on Judicial Decision Making*, 151 U. Penn L. R. 5 (2003).

chief judge from '94 to 2001, I would think it's fair to say it was widely acclaimed, and even in the popular press there were articles about the return of collegiality to the D.C. Circuit. You may already have answered this question, but is there a sort of a particular capstone or achievement that you think of as kind of the preeminent achievement of your time as chief judge?

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JUDGE EDWARDS: No, I think the Microsoft decision kind of highlighted it as much as anything—, the whole process, not just the decision. And you know that was just great fun for us, because the scholars couldn't believe it. They just expected a mess. And I just smiled to myself and I said well, just read it. It's all there. It's what it says. For me, getting the pieces of the operation—now, a lot of judges would have no interest in this. This

is just me. I like automation. I really wanted good I.T. stuff, and I told the I.T. people, we're going to get it done, and there's certain programs that we are going to—and they said, "Well, we can't do that."

02:23:20 I said, "Well, then I'll shut everything down."

They were more mortified. They said, "You can't."

I said, "Watch me."

They got it done. I said, "Thirty days, get all of this data into this kind of program so all the chambers can get the data. We're doing all of this now, but back then no one had heard of it.

I said, "It has to be possible. Why do we care that there's data sitting in this big machine and no one can get to it? Convert it. Put it into a program, so we can get access to case data," and they said, "We can't do it."

I said, "Then get someone else or we're shutting it all down."

They got it done in thirty days, and that was what we did in automation, and I got them to have a sense of pride. I kind of made them a heroes group, because we were doing things that was really serving the Court, as little as getting a BlackBerry, the Administrative Office of the Courts

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tried to forbid us from giving the judges BlackBerries. This is before the iPhones and all that. And I said to them, "You've lost your minds." They said, "There's security issues." I said, "Explain them to me." They didn't know what they were talking about. I said, "You know what? We're going to spend our own money, and every judge is going to get a BlackBerry." It's those kinds of things were really exciting to me. I could see the results. Now, the judges weren't identifying it in any

particular way, but they were comfortable and that I knew. Their chambers were comfortable and I would make sure. I would go in and say, "What do you need?" like David Tatel[43], who was blind. He needs certain kinds of equipment. So, I go to David, I said, "David, have you got the fanciest stuff in the country yet?" And he got used to that. So whenever I see him now he says, "Harry, there's this great new gadget out." But I wanted him to know, I'm going to have money put aside if I can run this budget. I used to squeeze all the offices and put it all into automation, so that I could upgrade everyone's system, staff as well as judges. And that's not the way the courts were running. And I would not send any money back.

02:25:17 I would squeeze every office and say

[43] David S. Tatel (1942-) a judge on the U.S. Court of Appeals for the D.C. Circuit. https://www.cadc.uscourts.gov/internet/home.nsf/Content/VL+-+Judges+-+DST

you have money left, it goes into the I.T. program so that we can get everyone up to the best speed we can get. So, for me, that was kind of a private capstone and when I left, I felt the Court was in good shape on automation, which I really wanted, because that's helped us a lot.

JUDGE HARRIS: I want to talk about the relationship between the different spheres in which you've operated, the legal academy on the one hand, and practice and judging on the other. You have some very well-known views on this issue, which you set out in one of the most cited law review articles of all time, "The Growing Disjunction between Legal Education and the Legal Profession,"[44] published in the Michigan Review in 1992. Can you explain first a little bit the thesis of your article, how you see the relationship between the

[44] Edwards, Harry T., *The Growing Disjunction between Legal Education and the Legal Profession* 91 Mich. L. R. 34 (1992).

academy and the actual work of

02:26:06 lawyers and judges, what it is, what it should be?

JUDGE EDWARDS: Yeah, that was an interesting time. I went back and read that article again recently and I now recall the explosion that I caused. I had to laugh. So, I'm on the bench now. I've been in the academy, and it's still connected to it, but what you started to see after I left the academy full-time, up until the time I wrote that article in the early nineties, was a lot of PhDs coming into the elite schools and the elite schools thinking, wow, this is

really cool. We'll have a lot of PhDs here and they'll teach a lot of theory. I'm overstating, obviously, to just get to the point. The point that I was concerned about was we had a growing population of teachers who didn't much care about the profession. They didn't care much

about what lawyers do, but they loved having the law school base, very happy to be in law schools. It paid well, prestigious, and they could focus on theoretical matters that were of interest to them. That didn't bother me. What bothered me was I thought there was a growing imbalance. I thought that they were being credited more than people who taught in traditional ways, who had focused on doctrine, had focused on practice, had focused on experiential learning, and had worried about the profession and professional matters, what are lawyers worrying about? What are judges worrying about? What are members of Congress and agencies worrying about? And attending to those matters. That's where I come from and I think that has a place in the law. We were starting to fall away from that. These people not only didn't much care about it as a general matter, again, I'm

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overstating, they were openly disdainful. There were people who would come to classrooms and say, "You're going to go into practice?" like that's a lower form of life, and that's the message they were imparting to their students, and I was furious with what I was watching. I had some big fights with people, and I finally said, oh, what the heck. I'm going to write about this. Now great irony is the law clerk who worked with me on this, Matt Adler,[45] is a Yaley, and he's a theoretician, but he loved it. He loved every minute of it. He said "Oh, judge, this will be so much fun to go after that." And my message was we're corrupting the legal academy, and we're corrupting the profession. The profession is no longer focused on the ethical needs that they ought to be focusing on, the needs of the

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[45] Matthew Adler is currently a professor of law and professor of economics, philosophy, and public policy at Duke University.

community. They're focusing on money, period. Overstating, but that's what I was seeing. The academy is no longer focusing on trying to attend to the needs of the profession and the rest of the world. They're indulging themselves with these theoretical fantasy matters, and you read some of the stuff that 02:29:00 they're producing in law reviews. No one knows what they're talking about. What I did was survey all my law clerks. It was wonderful and they were all saying, yeah, it's really as bad as you think, judge. It’s all nonsense. The firms aren't doing what they ought to be doing. We never read the law review articles that are happening and some of the 02:29:17 people we have in law schools teaching us were ridiculous. They were teaching deconstructing law in the first year before we knew what the law was. I thought that was insane. And I wrote that article and

I had the data from my law clerks, and it was like an atomic bomb. I did not anticipate it. I just wanted to say what I wanted to say.

JUDGE HARRIS: Judge, were you surprised at how controversial the article turned out to be, because it was very controversial.

JUDGE EDWARDS: It was very controversial. I was hoping that it would be heard. I didn't expect the reaction that we got, which was huge. There was a whole symposium edition that the Law Review produced after that, where people had an opportunity to respond to me—I didn't get a chance to respond to responses, but I wrote then, too. I was

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mischaracterized. The people who were attacking were saying that I was only in favor of doctrine. That's all I wanted law schools to be. That's why I had to go back and read it again recently. I re-read it a

few times, and I was saying no, what I want is balance, and you can't preference people because they have a PhD, and because they want to teach theory. Law school shouldn't be more than that. And I think Priest[46] was at Yale and he was one of the people I went after because his view of what the academy should be is the legal academy should be a graduate school, a general graduate school, and I went after him directly. I don't even know him as a person, but I said, "That's outrageous. We train people to go into a profession where you have to be licensed, where we serve people in a specific way. That's our mission. We're a professional school." But theory is okay. I teach theory. I

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love theory. It has its place, but it can't be the whole thing. That

[46] George L. Priest (1947-) has taught at Yale Law School since 1981 where he has focused on "antitrust, the operation of private and public insurance, and the role of the legal system in promoting economic growth." https://law.yale.edu/george-l-priest

was huge. I mean, I had no idea, it set off a battle. I'm really glad it happened. The ABA[47] weighed in. They had their own report about teaching and how people are doing. One of the things I think, and I won't say it's a direct aftermath of my article, but it's an aftermath of

02:31:20 the big battle that was going on in the academy -one of the things that happened, in my view, is that clinical teaching got better in the schools that could afford it, because that was not true before. They began to bring in clinicians who were really smart and really good, and they let some of them have tenure, which they didn't before, and they started to get real. That started to build. The other side of it, the balance between those who wanted to attend to the profession and those who are theoretical, I still worry

[47] The American Bar Association. https://www.americanbar.org/

about that. I think it's an issue.

JUDGE HARRIS: I know that one of your prescriptions for reform really was about the hiring of law professors and more balanced hiring in terms of who's coming in. Do you feel there's been any progress?

JUDGE EDWARDS: Well, the problem is the young people now, and here is the damning part of for them,

02:32:06 they have to produce a tenure type piece before they're allowed on the market. That's insane. I didn't have to do that.

JUDGE HARRIS: I didn't

02:32:17 have to do that.

JUDGE EDWARDS: No, none of the people who put this in motion were subject to that kind of review. We were judged on reputation, or work, wherever we had been, whatever, presentations. Now, these young people, and a couple of them we know who are just going into the market, they have to produce very serious

articles. And that means they're not going to have time to practice. And that's what drives me crazy, is that the law schools—and they're not unhappy about that- the elite schools, their attitude is it's a bad thing if you're in practice too long. Then you're tarnished. We don't want you to be in practice too long, which to me is completely insane. But the 02:32:57 worst thing is you've taken too many people away from the market who are very smart and might want to go into teaching, and essentially prohibited them from doing any serious practice 02:33:07 work.

JUDGE HARRIS: One of the things I read into your article, and you tell me if this is right or not, it’s a bit of impatience or exasperation with a kind of cynicism about the law. That is, we have a lot of law professors who have this kind of disrespect for legal practice, and that that bleeds over

into their students who are now being trained to think very cynically about what the law can do, and whether the law can be sort of a positive force for good in society. Is that part of what's driving your sense in this article?

JUDGE EDWARDS: Yeah, absolutely. I mean, we're going in to a profession that operates in a certain way. We have rules. We have principles. It doesn't mean that they're all what they ought to be, but that's part of what your job is, to get them fixed if they're not what they ought to be. But you need to understand it. And you need to respect what's here, 'cause it's a lot better than most of what's in the rest of the world. And that's the thing I always tell my students. Please don't drive me crazy with ill-informed critiques, 'cause compare us to what? And when you look at what we have as opposed to what you see in

other countries, we're doing pretty well, thank you. Now, we make some bad mistakes and we know how to fix them, but we have to attend to that. That means we have to take seriously the doctrine of the statutes, the administrative schemes, etc... Take them seriously and work to get them working at their best. I just have no patience with law professors who are, "Who needs to work? That's all mundane stuff. Let's just chat about something theoretical" that no one's ever going to use ever. Now I don't mind a few courses like that. That's okay. But no, I have a lot of impatience with that. And the courses that I teach now, and they're not the only kinds of courses anyone should teach- they're experiential, 'cause I can take stuff that's being done at the court and have students engaged in it as we do it. And it's really eye opening for a lot of them. They have

02:35:06 no sense that this is the way it operates. And I think no student should leave law school without a sense of how the profession operates.

JUDGE HARRIS: I think that was another sort of straw man that people were attributing to you in this article. It wasn't just you didn't think there should be any theory, it's that when you talked

02:35:24 about the need for doctrine, you weren't talking about like memorizing the rules of property law under state law. You were talking about kind of the facility to think about doctrine in the way that the legal system does.

JUDGE EDWARDS: Right, especially applying precedent is really tough. It's really, as you know now, it's not easy and it's a really important endeavor in our system. The people like you and others who are coming in, have to have a capacity to do that well,

02:35:53 honestly, smart. As you know, nothing worse than a dumb colleague, and dumb meaning they don't really get it and so, they're not analyzing precedent usefully, 'cause they're not up to it. Well, we should be producing people who are up to it, absolutely.

JUDGE HARRIS: I'm going to switch gears a little bit and talk about family, because if there is one thing I know about you, it's that you prize your personal relationships as much as you do any of your professional accomplishments. And

02:36:22 when it comes to personal relationships, you've distinguished, for me at least, between what you think of as legal family and real family. Can you expand on that a little?

JUDGE EDWARDS: I mean, we have legal family, we're born, we're told there's some people in your family. And initially you're not

02:36:37 sure what does that mean, how does it count? You hope it means that all of them are great, and you love all of them, and they're all supportive of you and you of them. I don't think that's the way it typically happens, at least not in what I've seen in life. There are some members of our legal family who, for me, become part of real family, that is the people who have nurtured me and who are always there for me, and who I care about deeply, etc. But that group also includes some people who were not in the legal family. And so for me,

02:37:15 family includes that set of people, the people I can always turn to, and always turn to me. That really is as I've told you, is the most important thing for me in the end will be those few people were always there for the important interactions in your life. So, when I write an article I may get a reaction from the community,

whatever. The more interesting stuff for me is to hear the reactions from that close group, 'because they know what I'm thinking about, they care about me deeply and I trust them so much and vice versa. They'll call me about something that they're doing that's really—those kinds of sharings, they're very special.

JUDGE HARRIS: If we're going to talk about family, we should start with your wife, Pamela, who you married in 2000, and I still remember from your wedding, by the way, Judge Silberman, who turned out to be such a close friend of yours, doing a line 02:38:10 dance to, was it, "Love Train?" "Peace Train?" "Peace Train," yeah he was right in front of me. I was like this is just really weird.

JUDGE EDWARDS: That's right. Colin Powell was leading the conga line.

JUDGE HARRIS: Yes, yes. I remember. So, there was a lot of happiness at that wedding. So, what

do you want to share about your life with Pamela?

JUDGE EDWARDS: Pamela is cool. You know, I've married too much. My mother would say, who knew? I wouldn't have guessed it, because that wasn't kind of the model we had in mind. I was lucky because the women I married have all been spectacularly good, but Pamela is such a perfect balance for me. We square up equally. It's not to say anything about prior wives, who I think are really special people, but she has just taught me so much about

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so many things. It really is kind of amazing. She's this kind of well of information about anything. It could be decorating, it could be cost-benefit analysis, it could be a business issue. And I got to the point, I've gotten to the place now where I don't try to learn certain things, because I can always turn to her and ask her the answer. And so,

it saves me the time. I'll say, "Hey, sweetheart, what happened…"it could be a movie, it could be how to build the house, and she'll know the answers. She's fun. She likes to be attractive, and she doesn't confuse that or let anyone confuse that with being smart, because she has no patience with people who think girls are just cuties and all that foolishness. In fact, I don't want to get her going. I hope she didn't hear that. She's a wonderful combination of being a very beautiful woman and enjoying being that, but a really smart woman and really interesting, and she is very supportive. I mean, she is very loyal. The best thing about her, which I've come to understand, and this is where we share something in common, we equally love the people we love. She gets it that I came in with a Lois Tukman and a John Berghoff, and a Jean Berghoff as

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02:40:03

people who I deeply cared about. And I the same with the people she—it doesn't matter whether they're male or female. It's a given. You love them. I love you so, I must love them, and that's just a given. And the clerk she understands how I love my law clerks and how special they are to me. And the thing that she does is, and I like to do it too, when it comes to giving to other people- like a law clerk just had a baby- "oh I'll go find a nice, cute gift". It just comes naturally. She likes to give for no gain, just

02:41:12 because she knows it will make someone feel good. And she likes to do well. I mean the baby gives her the easiest gamble because some of the clerks now just had babies and it's always interesting hearing the response, 'cause she gets really nice stuff, which I would not know how to do. But she's very giving to those

around her, very loyal. But the best thing for me is, as I think about my life and all of what I've seen including male/female interactions, the role of women in society, she's an equal partner. We square up equally. I don't get away with anything. She doesn't get away with anything. So we have mutual respect for one another, and that's really nice in a relationship. It's a sense of love that I really like.

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JUDGE HARRIS: And your children, Brent and Michelle with your first wife, Becky, and I know you're so close with Brent's children, Balthazar and Ella. Do you want to talk about them?

02:42:05

JUDGE EDWARDS: Yeah, Michelle is in D.C. with her kids. We don't see them as much. Brent[48] is a professor at Columbia University and he and his wife live up there. He's the real

[48] Brent Hayes Edwards is a professor of English and comparative literature at Columbia University.

intellectual in the family. He's a powerhouse. He just produced another book. He's a smart

02:42:27 guy, not because he's my son. He's a really smart guy, and he's doing extremely well, but he's got two kids who we see as much as we can when I go to and N.Y.U. to teach. Balthazar and Ella, he's almost eight. She's almost six, and we just adore them. I think if it came down to a choice between me and Balthazar, Pamela would take Balthazar in a heartbeat.

02:42:54 it's not even close. She'll walk around the house sometime just mimicking him and gets such joy. "Do you remember how Balthazar does his arms like this?"

"Yeah, I do." But

02:43:03 they're a great joy. They're smart little kids and they're what you hope grandkids will be for you. They give you a special joy that you don't get in other ways and other places. And Brent tries hard to make sure that we

have time with them. With him, you know, he's independent. He knows and likes what I do, but it was clear from day one that he was going to do just what Henry's going to do with you and your husband. He's going to do what he wants to do and he wanted to do comparative literature and jazz. His recent book is amazing on literature and jazz. And have his own life in his own world, and he's done that comfortably, knowing that he is dearly loved, and I'm not going to get in his way as an adult.

There’s a wonderful respect between us quite apart from just dad and son, which is really special.

JUDGE HARRIS: And then as you say there are people to whom you

02:44:02 might not be legally related, but they count as family. And I know we've talked about some of them, but are there people who have been especially important to you?

JUDGE EDWARDS: Yeah, and they really

keep each day, week, month, year going, 'cause they're always there in my mind, and I know I can always call them, or write them about whatever, and we're always interacting. John and Jean Berghoff. I met John through mutual friends when I was in my second or third year of law school and they came down to see a friend. He went to Northwestern Law School. He was a year behind me and the friendship has never been lost. I ended up in Chicago. He was with a firm in Chicago. He's practiced for many, many years at Mayer Brown, brilliant lawyer and his wife is a decorator and their three kids, very close to the three kids. I've spent many a night

02:44:58 in Chicago with them. But John knows me inside out. So there's all the things that have pained me and all the things that made me feel good, he understands, and I with him. When he

comes visit us in Cape Cod, we'll take a drive occasionally, and we know what we have to talk about. Things in our lives that are just really important and we totally trust one another. And Jean, the same but with John, it's guy to guy, Lois Tukman, the woman I mentioned to you who I fell in love with at Cornell, who Pamela now adores, she also knows, as much as John, she knows me inside out. We have stayed close through all these years, and still love each other. I officiated the wedding of two of her kids. I know all of her kids. I know her husband well. They have a place on Martha's Vineyard. We usually see each other each summer, and Lois and I talk all the time. We immediately know how to catch up. You know, I'll say, "Did you fall down on the bike again? Is your knee all right?"

02:45:58

And she'll say to me, "Did you see the physical therapist?" And, "How

are your law clerks this year?"

She'll know the questions to ask.

She won't remember the answers.

She'll say, "Is the thing with Judge so-and-so okay now? Did you get that

02:46:17 resolved?" And how nice it is to have those kinds of friends. Dick Chait, the fellow with whom I worked at the Harvard Institute for Educational Management. He is smart as hell, but he's funny as hell. He's such a special kind of person, and we've been very, very close over the years. Dick can click in like that on anything that I raise. It could be any issue that I write about. It could be a family problem. It could be anything. He can tap in immediately. When my godson Joey was thinking about colleges, Dick is

02:46:54 nationally known for his work in consulting with colleges on their problems, so he knows everybody. So, I said, "I need help with Joey," and he said, "Tell me what you need," and

then he would rank the colleges, explain what Joey was going to be looking at, talked to Joey on the phone. This is a friend. He didn't even think twice about it. He said, 02:47:14 "Find a time with his parents when he can fly up to Boston. We'll have lunch together, so I can get to know him better." That's the kind of friend—and Lois and Mel, all of them, John did the same thing. They're all always there and then there are a bunch of the clerks who I just love, who are very special. And there are a few of you who I just connect 02:47:36 with fairly routinely, and who have kind of been deep in my life. You certainly are one of them from day one. We clicked from day one. It was just magically good and caring, and you let me push you, which was really nice. There are other clerks I'm very close to, but I think of that group of people in particular who I'm interacting with a lot, and

that's what I mean about family. I can call you all any time. And it's nice to have the role reversal where you all grow up, and so where I used to be the one who had advice, the only one who had advice to give, it changes. And now you all are at the stage where I can call you on things and say, "I need some advice. What do you think?" That's nice.

JUDGE HARRIS: Let's talk about this clerk family because, at least from where I'm sitting, that is just an extraordinary thing, how you've made a family out of this kind

02:48:33 of sprawling group of law clerks and brought us together, and put us in touch with each other, and stayed in our lives as a friend and a mentor, someone who is maybe up in our business a little bit. And, you know, sitting in your shoes now or standing you in your shoes now as a judge, I understand that takes a lot of time. It takes a lot of time and

a lot of effort, and it's really rewarding, but it asks a lot of you. So, what made you decide to make that commitment to building a family out of what could have just been a 02:49:04 cordial, professional relationship.

JUDGE EDWARDS: I don't know that it was done by design. I mean, the kind of thing you're talking about—and there ebbs and flows- because the needs of the people you're close to are changing over time as you mature, so it's not like there's a crush.

JUDGE HARRIS: What if we all had a big problem at the same time? Then what would you do?

JUDGE EDWARDS: I think it was I was so young when I started, too young, but you can't say no, that I engaged with them like a kid, even though I was the judge and in charge, there wasn't a lot of years difference between us. And so we hung out a lot. I mean we partied, and had dinners, and drank

wine together, and so maybe that planted the idea that there are going to be people in this clerk group who 02:50:04 are going to be really, really special. And then indeed there were. And I enjoy it. I mean, you're engaged in a life I'm engaged in and love, and you can help me do that better, which is really nice. So it seemed natural to me. I'm not saying at some moment in my life I decided let's do that. It just began to happen, because I liked the people, they seemed as devoted to the work that I was doing as I was, and committed. They were giving everything that they had. They were interesting and smart, and they were fun so my mother's side started coming out.

JUDGE HARRIS: It's your mom.

JUDGE EDWARDS: Yeah, if I see something, we're going to talk about it, and I'm going to care about you, and I'm going to push you, and that

was kind of the way I grew up. And I've heard judges say, and I think one was doing it pointedly, I didn't comment and he didn't say anything to me directly, but it was clear what he was saying. He said, "You know, people talk about law clerks and family. They're not my family," and I just smiled. And I said, to myself, that's completely wrong. Among the closest people in my life now are my former law clerks. Pamela would say the same thing very comfortably. And we have many other friends, but she would agree among the closest people in our lives now are the former law clerks. It's a wonderful relationships.

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JUDGE HARRIS: You have primed me to see the rewards in that relationship. And I see it already. I mean, is there anything better than marrying a law clerk. How great is that?

JUDGE EDWARDS: How great is that? It is terrific, because you're

connected to them and you can kind of think about what you want to say. I remember your husband when I'm officiating. He said, "Judge, please don't say anything bad about me." I said, "I promise, Austin, I won't say anything bad about you."[Laughter].

JUDGE HARRIS: It was a lovely wedding. Let's talk about another aspect of your history, which is that you've really been a racial pioneer in a lot of ways: one of the only black students in your classes, the first black law professor at University of Michigan, one of a very small number of black judges, especially when you were appointed. You drew on some of those experiences in an article you wrote in 2004, "The Journey from Brown to Grutter: From Racial Assimilation to Diversity,"[49] published also in the Michigan Law

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[49] Edwards, Harry T., *The Journey from* Brown v. *Board of Education to* Grutter v. Bollinger: *From Racial Assimilation to Diversity*, 102 Mich. L. R. 944 (2004)

Review. And you talked about the shift from assimilation to diversity as a means of achieving racial equality. Can you explain a little bit about what you meant and how you've seen that shift play out in your life?

JUDGE EDWARDS: Yeah, that was interesting for me. I was not going to do the race stuff, professionally. It wasn't like I sat there and pouted and said that. There were things that I really wanted to focus on professionally that I had to stay focused on. And I knew living in the time in which I live that you can get very distracted if you get into the race stuff. And it can be consuming, ‘because it's very

02:53:08 important. I felt initially I had a different kind of fight to fight, that is to prove myself as a great professional and to do it at a very high level. And I knew that that would have some consequences that

would be positive. And so, I focused on that. But, I was certainly understanding as I was going along that there were these racial issues out there and that they're happening. At some point, I knew I had to sit down and try and say something, but I needed time to digest it, and the celebration of *Brown v. Board of Education*[50] seemed like the right time. I said you have to sit and write something. The nice thing was my son helped me with that, 'cause there were some stuff on African American history, and literature, and politics that he knew much better than I did. And we talked about it and he gave me information. I sat down and I made myself think about what had been

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going on, because we were still fighting about affirmative action.

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[50] *Brown v. Board of Education of Topeka* 347 US 483 (1954) https://www.oyez.org/cases/1940-1955/347us483

And so, one, I wanted to explain to people what's been going on 'cause I remember some of the law clerks, a couple of law clerks, who I'm really close to were dismayed that I would say in that article, the reason I got the positions I got was because someone took affirmative action to 02:54:31 make it happen- like "judge, you're diminishing yourself." I said, no. You're naïve. You're not understanding the world. The only way we got anywhere in those days was someone like Carter or whatever, making a conscious decision that we have got to find qualified black people, and qualified is the point, and put them in positions they've 02:54:50 never been in. They've been excluded from those positions. I don't kid myself about what happened at those times when it did happen. I wanted to talk about that and say to people, you need to get off your high horses when you think about this and

understand what we were facing. We were an excluded group. It wasn't just limited. We were out. There were things we could not do. We were not in the law firms. When I did that first law review article at Michigan, I was amazed that I wrote that, but I surveyed all these Midwestern law firms. There were no blacks, associates, partners, nothing in all these firms. So I had seen that building, and I wanted to say you've got to understand what people were trying to do when they said we need affirmative action to change what's happening there, and you need to get off your high horse and understand it. But then it occurred to me, there was a change in the law because of the way the Supreme Court was writing and they were talking about diversity- and it occurred to me, there's something else going on culturally. My generation and before grew up with an assimilationist goal,

not completely, but a lot. You understood if you could somehow blend in, that's what you did. And that was good if you were lighter and your hair wasn't the wrong kind of hair, you could blend more easily, but blending in was the mission, because otherwise you were in trouble, 02:56:14 because if you could be identified as black, well, your place in society is not good. I realize that we had begun to change with our thinking a lot about it. We were now adopting a model. It was a diversity model, groups taking pride in who they were, and blacks taking pride, because that was the only way you could fight the fight. We couldn't assimilate. That wasn't going to happen. And so, what we finally realized, it just started happening, and sometimes very overt with the afro hair and clothes, and songs, or whatever, but it was our way of saying black is beautiful. Period. That's the end of that

conversation. We're not doing that anymore. Now we can deal with the problems, but we're not going to try and sneak in, because we're not white, and that's not happening. We don't want to be white, okay? And other groups started doing it, which was one of

02:57:12 the things that began to, I think, continue to promote and help blacks to understand it’s perfectly okay. Yeah, we're good and we're happy with who we are. And I felt like what was happening is we were celebrating diversity in some ways, and that was kind of the answer. That is we should be celebrating diversity in all these places that were trying to bring people in who had been excluded, and it's not just blacks, and it's not a quota. It's thinking of this as a positive thing. And when you look around and you realize, wait, how come we don't have any ‘whatever’? Then you should at least wonder are

we doing something to exclude people for the wrong reasons, and we ought to think about that and I think that's what the Supreme Court was trying, as well as they could, to say. I just felt I wanted to write about that and say yes, that's what's

02:58:05 going on, but you all first need to understand our history, and understand why we're in this situation. We didn't ask for it. You gave it to us. I'll give you a current example, Pamela and I were so blown away. We went to dinner with a colleague, close to them, and during the course of dinner something about race came up, and my colleagues said "Why do you say that? You're not really black."

Pamela looked at me and she didn't want me to answer. She said, "That's totally ridiculous. Why you saying that? He absolutely

02:58:45 is black and not only that, he's very proud of it. We're not getting it."

And I went to the restroom, and she said when they continued talking he said, "Did I say something wrong?" She said, "Yes, you absolutely said something wrong. Your suggestion is that it's not a good thing to be black, or like black. He is black and he's very

02:59:07 comfortable being black. That has nothing to do with his measure as a judge, as a person, or anything." And that's the kind of stuff we've been seeing forever. And that's part of what was prompting me to sit down and try and write through this piece. And to say we got to keep going to keep going forward.

JUDGE HARRIS: And when you say keep going forward, do you see a continued need for these kinds of positive actions to make sure that blacks are being been given meaningful opportunities?

JUDGE EDWARDS: Yeah, I think we can't let up. And sadly it's more

than just blacks now. Valuing your identity is a good thing, unless it leads to when I value my identity, I'm going to push everybody else down. We're seeing too much of that nowadays. And that's really scaring the daylights out of me. The value of identity stuff is fine.

I love that the people are proud of who they are, whatever it is, but not when the result is "all right, this is my group and the hell with your group," and there's more of that going on now than I expected to see given all of what we've done since I went to law school. I would have thought we were going to get past that and there's still too much of it. Yeah, we

03:00:22 always have to watch, and I'm not talking quotas. I don't believe in that. I'm not going to hire someone who is not qualified. And so, I don't expect anybody else to hire someone who's not qualified. You

can't do the work? No, you're not going to work with me and I do not hire black law clerks just to hire black law clerks. I think over the course of my career, it's been about 10%. But I'm definitely looking and I also wanted my colleagues to look, and now more of them are actually looking, which is *amazing*, now that I look at it. It's routine for them. It's not a big deal, but it's part of what they're doing. And it doesn't matter whether conservative or liberal, they're doing it. For me, I'm so cheered by that, because that's not the way it was in the old days. Yes, we have to keep asking are we doing it right?

JUDGE HARRIS: What about

03:01:09 at law schools? Do you have a feel for how black students are faring at law school these days, and whether more needs to be done there?

JUDGE EDWARDS: Yeah, I

3:01:17 mean, that's why I just recently

wrote a piece on racial stigmas and stereotypes.[51] That's the other thing that's bothering me. It came from things that I've seen and heard in law school. There are still some professors in some law schools who are people of ill-will, who openly disparage blacks because they're blacks, and I got wind of that, and a sense of it. I just decided I had to write about racial stigmas and stereotypes on the one hand to say we hope you all don't think we're not seeing this, 'cause we are, and it's getting old. But on the other hand, more importantly, to say to people who are African American like me, do not let this distract you. Again, that's my mother and grandfather. I feel so

03:02:05 strongly and I say that to my black students, "Do not let this distract

[51] Edwards, Harry T., *Reflections on Racial Stigmas and Stereotyping* (2017). https://its.law.nyu.edu/faculty/profiles/representiveFiles/Reflections_on_Racial_Stigmas_3AA11E64-1B21-6206-60DD925A45CDBBB3.pdf.

you. That's their problem, not your problem. You can't let this bring you down," and I told my law students that. When I did the presentation of this paper at Michigan, one of the questions from one of the students, he said, "Suppose there are protests going on now, and I have to take time to do that, should I take the time to do some of the…" and he hesitated. I'm hesitating because he was hesitating. I said, "Are you trying to ask me how much time you put in your school work and can you afford to sacrifice that time to go out and do a whole lot of protesting?"

He said, "Well, kind of."

I said, "No, you need to do your work first." I said, "That's why you're in law school. You'll get credentialed and then you'll be able to not just walk around protesting. You'll be able to do bigger and better things with this degree in

hand and this understanding. So you've got to think very carefully before you're sitting there trying to learn contracts and you hear people screaming outside, and say I ought to go outside and scream too. No, you should sit there and finish your contracts. And do well on that exam and get it done. And then if you have time, help yourself." And that's the way I feel. I feel like you get yourself ready first, and that's what I told the African American students.

03:03:21 You have to get yourself ready. That's what the whole point of this is, and then you're going to be positioned to make a difference 'cause these schools put you places. That's why I want African-Americans in the elite schools. That was part of the stigma article. I'm concerned the numbers in the elite schools is starting to go down. That's dangerous. It's not because the other schools aren't good. It's

because the elite schools give you something extra. Everyone in our profession understands it. When you graduate from one of the elite schools, you have openings that are not available to people in other schools. And those are openings, those are doors that we're still struggling to get in. And I want African American students to be among the people who have those opportunities. But I tell them, you've got to do your work first. I believe

03:04:10 that's true, and clearly, you know me, don't give me any "I've got to go protest." I'm not interested. You've got to get ready for your exam.

JUDGE HARRIS: Judge, let me ask you about a few other people you've mentioned to me as being really important in your life. There's your sister, Pam.

JUDGE EDWARDS: That's my

baby sister. I have two sisters and I had two stepsisters with whom I was very close that my stepfather brought. But I'm closest in later years to my baby sister, Pam, who is not a baby anymore. She is out in California. She has two daughters, one of whom's wedding I officiated, and Pamela and I are very close to the girls, her kids. One of them just had her first baby, but that's been a very special relationship because there was a period when she ran into some issues. She's very smart. She's a mathematician.

03:05:05 Some things that came up, and it was nice. She just called and said, "I need your help," and it was that kind of a situation. It was such a loving situation. It was kind of like, you're my brother. Tell me what to do. No argument, no discussion. So, you just leap in—and then she moved to Washington for a while and then got

out and went back to California. And we've been very, very close. And my wife, Pamela is very, very close to her and her two girls. So, again, they're folks with whom we interact all the time and can call anytime. And it's great comfort to know that that legal family is there and in a way that's so loving and caring. And my middle sister, Vern, when we were growing up, we were very close, less so since we've become adults and had kids.

JUDGE HARRIS: Phoebe

03:06:03 Saltan?

JUDGE EDWARDS: When I taught at Harvard, I met Phoebe. She was almost my age. So, she was someone who had been a business woman, and decided to go back to law school. She's fabulous. She's a character, someone else that Pamela loves. She's just this really smart, interesting, funny, thoughtful person. And so, she got a law

03:06:28 degree. We're very close. And she practiced labor law, because she got into the fields that I was interested in, and that got her interested and she practiced. But we became very, very close and in my first year on the court—I said, Phoebe, I need you to come down to chambers to kind of help me set up, 'cause she could do anything. I mean she was just a smart, "give me the problem" kind of person, just like my wife. Just tell me what needs to be done and get out of the room, and I'll take care of it. And we have just remained as close as two people could be for all these years. We know all about each other's kids and they were just down here recently, but again, it's the kind of person who it's not just clicking on fun things=if something serious comes up, you know you can call and have a thoughtful conversation and when you finish the

03:07:20 conversation you feel better. She's

been really special that way.

JUDGE HARRIS: She was a legend in chambers when I was there for that first year when I gather she furnished your office, basically by stealing furniture.

JUDGE EDWARDS: By stealing furniture for me in the court, 'cause we didn't get new furniture, and it was really funny, because Mr. Gomes, I think his name was, was the property person of some sort, G.S.A.[52], I don't know. And there was an issue with him, I'm not sure what.

03:07:47 She said, "Let me handle Mr. Gomes. He thinks I'm an assistant."

I said, "You mean that cute Jewish girl look, a little dark?

She said, "Yes. I have him, so whatever furniture we need, Mr. Gomes will get for us."

I said, "Phoebe, how about if I just stay out of your way and you do what you need to do?" She was terrific.

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[52] General Services Administration. https://www.gsa.gov/

She got us going. I was ready to leave. I thought it was crazy. I mean, who operates a place like that? Courts don't operate that way. We certainly don't operate that way anymore. But I didn't know what was going on, and she said, "Just leave it to me. I'll get it done."

JUDGE HARRIS: What about Vernon Jordan[53]? I know he's been a big presence in your life.

JUDGE EDWARDS: Verne is great. I mean, you got to remember this whole race thing that we talk about is ever present, even as I march along marching the way I've marched. Verne is a big figure, and he's a big figure both because he has a presence and also because he's African American and has a huge presence. And he's very interesting. He's a really loyal friend, and when

03:08:07

[53] Vernon E. Jordan, Jr. a civil rights leader and advisor to President Clinton, now an attorney at Akin Gump Strauss Hauer & Feld. https://www.akingump.com/en/lawyers-advisors/vernon-e-jordan.html

I was on the D.C. Circuit and when I became chief judge, Vernie gets all of these things. We knew each other. We weren't close buddies then, but he

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called the "Legal Times", or they called him, because they figured let's check his- Edwards'- credentials out, we'll call Verne and Jordan. Verne and I knew each other. That was it.

Vernon gave an interview that was off the charts. You would have thought we grew up together. "Oh, Harry? He's a great man. When I was at the [National] Urban League, and I had a difficult issue, I would call and consult with him."

I said, my god. And then he called me after it was published. He said, "That interview good enough?"

I said, "That was a really good interview, Vernon." But it was immensely helpful 'cause here's the "Legal Times", with this big, big article. I'm just starting out and

people are trying to figure out who is this guy? And he knew "I'm setting the stage for him", and we've now become very, very close. We talk about all kinds of things that I can't talk about as a judge, but I

03:09:55 can talk about privately with someone like Vernon, and we do it. He's just a terrific colleague. He's really very special and he's one of a kind in D.C. and he's also one

03:10:04 of a kind as a friend. He's deadly loyal.

JUDGE HARRIS: And then there's Sally Fassman.

JUDGE EDWARDS: Yeah, Sally, a friend who's just been there forever. Her former husband was a student of mine at Michigan, and so I got to know her then. They got divorced, but we still continued to

03:10:24 be very close- my wife and I and her. She's very quiet, extremely well-read, so if there is a book I should read, she is the person I'll always

go ask. And I officiated the wedding of her oldest son, very close to her other two kids. Again, it's these people with whom I've grown up, and confidant, and again someone with whom I can share really private things, and feel like total trust there and it's a really smart, caring person, that's it. That's what goes into the relationship, period. And Pamela again loves her. And they're very close, they hang out.

03:11:05 So, that's real nice.

JUDGE HARRIS: I don't think I appreciated it until I became a judge, how important it is to have that kind of relationship with just people you can talk to and trust.

JUDGE EDWARDS: And trust, and it's a select group. And they get it. They're into you when you raise

03:11:21 the question, because they understand who you are, and where you've been, and what you really think. They click in. They don't need an

explanation. And so that's the group I'm talking about, fits that mold. And the other person very important in my life was William Coleman[54], who just passed away. And, again, he did it more like I'm doing it. That is, his goal was to be as good as you could possibly be in whatever he did, and to make his impact that way, but he also understood the racial issues, and he participated in *Brown vs. Board of Education*, and he watched over people quietly. And that's what—a lot of the black community didn't get him at all- but he watched and helped people along the way. He didn't know me. I was coming along, we were on this A.B.A. commission on law and the economy, or something like that, and I was on it, and I don't know what we

[54]William T. Coleman, Jr. (1920-2017) was an advocate for civil rights and the second African American to serve in the U.S. cabinet. https://www.nytimes.com/2017/03/31/us/politics/william-coleman-jr-dies.html

were talking about. Issues

03:12:22 that no one has ever thought about again, I'm sure. But in any event, we thought it was terribly important. Lloyd Cutler[55] was the president's counsel, as I remember correctly, Carter's counsel, was on the commission, may have even been chair, and some issue came up. I said, "Well, you know, I'm not sure I agree. I may have to write separately." And I got a call. My secretary said, William T. Coleman Junior is on the telephone. You know, he was very abrupt and he wanted you to speak to him correctly. And I said, "Oh, Mr. Coleman, thank you".

"Professor Edwards, how are you today?" And he said, "I don't think it's necessary for you to dissent." I said, "Why is that, Mr. Coleman?" "Your position would not be the same

[55] Lloyd N. Cutler(1917-2005). https://www.britannica.com/biography/Lloyd-Norton-Cutler

as Mr. Cutler's, and if there is a possibility of your being on the court, he is going to be influential. There is no reason to irritate him now on an issue of so little significance. So, if you want to join one of the other opinions, fine, but don't write separately."

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"Thank you very much, Mr. Coleman. I understand. I will not write separately." And then he guided me thereafter as best he could in the process and getting through. He would explain things to me that I didn't understand and watched over me. We stayed close until he began to get too frail. He was a smart guy, no-nonsense guy, but he watched over people, again, in a way that not everyone understood. And it meant a lot to him, that people didn't get. He's very special, and he knew the game and that's what I needed. I didn't know the game. I didn't know the Washington game. He

knew it. He was in it. It was kind of like he sees me, and said, don't screw this up and I'll tell you what to do. That's exactly what happened.

03:14:18 JUDGE HARRIS: One of the things I found most remarkable about your paper on racial stigmas and stereotyping, was that on the one hand, you deal really openly and honestly with sort of grinding persistence of these racial stereotypes, and on the other, you insist on hope and optimism in the face of all of that. Why is that sense of optimism so important to you?

JUDGE EDWARDS: Because you can't make it if you're not optimistic. If you don't believe in something, you're not going to get there, or your chances are diminished. You may get there, but it'd be more of an accident than anything else. So, and again this comes from my upbringing, if you

really want to do something, you have to believe you can do it. So it's better to look at the positive way than the negative way, and I believe 03:15:02 that strongly. Why am I going to waste time? I already know there are obstacles, but I'm not going to sit there and pine over them. I have to figure out how to move forward. So, I mean I just really believe that. When you're talking about the racial stigma stuff, the other side of it is, I have my place in this country. You and nobody else is going to take 03:15:24 it away from me. It's that simple. It's like no, you're not going to take this away from me just because you have a thing about blacks. I really don't much care what you have a thing about. That's my attitude. And I want my students to know that. Don't get hung up on that. That's their problem. Now, when they're making it hard for you because they're in a position that can make

it difficult for you, then you have to strategize, and you have to figure out how to get around this person or this obstacle. And you and I know there may be some racial animus there, but there may not be. This person may just be an irritable person. And you could be right, white, and do the same thing to you, so don't judge it too quickly. The first thing to figure out is how to get where you want to get. But I just believe what my mother said, "You're not going to get there if you

03:16:12 don't think you can get there." Now, don't try to go somewhere where you shouldn't be going 'cause you're not up to it. That's the other thing I learned. Why do that, and then be

03:16:20 angry with people that you didn't make it? So, part of it is, my grandfather says "grade yourself. You don't need anyone to grade you if you're doing something". So, you set really high standards and then grade

yourself on what you've done. And if you did lousy work than give yourself a D and don't let it happen again. That's essentially what he told me. It was very clear. And I'll never forget that. I didn't understand initially what he meant when he said grade. He said, "Yeah, they're going to grade you in schools. You don't need them grade you. If you keep your standards high enough, you'll know what you're doing." Boy, he's right. And when I do lousy work, I know it's lousy, and I have to decide whether I can let go of lousy now or not. And if I can't, 'cause my standards say that would be a mistake, I don't let it go, just can't go. But, I think, on the optimism thing,

03:17:14 Ta-Nehisi Coates' book[56] on the plight of blacks in America, it really bothered me this message to his son,

[56] Te-Nehisi Coates, BETWEEN THE WORLD AND ME, New York: Spiegel & Grau, (2015).

and he was essentially saying to his son, *as I read him*, that there is no hope. We're at the bottom of the mountain, son. We're not getting up there. They're not letting us up, and so get over it. Don't even worry yourself about it. You can be proud of being black, but you're not going to get anywhere. I don't buy that for a second. I would never have told my son that, ever. And I don't think any parent should tell their black child that. That's an outrage. You should be saying to your child, or daughter, look, here are the opportunities and what is it you want to do, and believe that you can, and know that you can, and know that you have every right to share in the fruits of this country, that everybody else does, and go do it. And I totally reject his message.

03:18:11 And some people say I'm reading him wrong. I don't think so. I don't even suggest that he ought to go that

way. I think his suggestion is just wrong.

JUDGE HARRIS: I'm probably not the first person who's made this connection, but to me there is a very strong link between your article about the disjunction between the legal academy and practice and then this paper on the racial stigmas and stereotyping, because both of them read to me, like a rejection of cynicism about what the legal system can do for the country, what the prospects are for racial equality in the country, and kind of a strong sense of that's just a luxury you can't afford, and that none of us really can afford to just be cynical and write this thing off as done. Do you see any kind of commonalities between those articles?

JUDGE EDWARDS: Yeah, I

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hadn't thought about it, but yeah, it's my drive. I mean, it's part of what you're talking about is I'm not

going to look for the negative. I have no patience with foolishness. I mean, I used to have a sign over the kitchen table with my kids "No whining." That's what I grew up with, no whining. Just do what you got to do. And that's what I saw in 03:19:20 the academy, these people with that luxury to do nothing and not understand. You can do nothing, but that can't be the whole law school. So, we'll have a department of nothing theory, that's fine. But let the rest of us do things that the profession needs and get off our back, and don't tell me that I'm drowning in doctrine, and give me the back of the hand like I'm being stupid. No, I'm not being stupid. I'm telling you the profession had needs and we have to attend to them. The same thing I felt about my black students 03:19:54 and young black people. No. Yes there are problems there, but no, you

can't sit and whine. You need to get up and do what needs to be done. Now, another hard issue for me with the black issue is those who are in the highly disadvantaged class, because I don't have easy answers for kids who are in bad schools, who don't have parental support, who 03:20:17 don't have books waiting for them when they come home, don’t have someone talking to them and fertilizing what they're doing in school, and who are in gang infested areas and face guns, and things like that. I wish I knew the answers. I know what the problems are, and I don't mean to suggest I could go into classrooms with those kids and say, “Just do it,” because they're missing some resources, and I'm not stupid about that. And that's all the more reason I have no patience with black students who have the tools now and they are in the elite schools, and they have the opportunities to do it.

I have no patience with them not doing it. I don't want to hear about it. Go do it and take advantage of this opportunity, and then you're going to make a difference. I think you've heard this from me before.

JUDGE HARRIS: I have, particularly "I have no patience with foolishness" [laughter] but I will say just in going back and reading these articles, it really did strike me that there was this kind of through line through your writing, and in everything I have ever heard from you, which is kind of cynicism about the prospects for legal reform in this country is a luxury, and I don't have it, and you would say to me, Pam, you don't have it either. Maybe some people can afford that, but neither of us can.

JUDGE EDWARDS: I agree.

JUDGE HARRIS: And I see that so clearly in your writing, and it's been really interesting to me to

go back and kind of trace the development of that thought.

JUDGE EDWARDS: Yeah, I think these are people who have been too indulged and who have been living too easily, and they don't really get it. Those of us who are well-placed to make a difference need to go ahead and do it. I feel that very

03:22:03 strongly.

JUDGE HARRIS: It was inspiring to me when I was here in 1990, and it's inspiring again today. Listen, you have been kind and patient enough to go through this exercise, so I want to give you a chance to reflect back on what we've talked about, and see how things seem to you as you look back on your own

03:22:22 remarkable career. Most people consider themselves successful and very lucky if there is one thing they can point to as a professional legacy, but you could choose from a lot of different things. You've got

your body of work as a judge, you've got your scholarly writing, you've got your culture of collegiality that you did so much to bring about on the D.C. Circuit, you've got your chambers family, and all of us whose careers and lives you've nurtured, you've got the way you've been a role model, fighting stereotypes about African Americans. How do you think about your professional legacy? What's important to you?

JUDGE EDWARDS: I wouldn't begin to know how to answer that question. The best I can say is I like to think of myself as someone who the close people in my life, the ones I've been talking about, who really know me and know

03:23:23 the work that I'm doing and understand it, and understand the threads in it, the whole thing, that they would say throughout all of it he was deadly serious in what he did, and he tried to do it at the highest

level. And if that group assesses me that way, then I will feel like I've done the best I can. Because whether you make a mark or not, you know, who knows? Sometimes you do, sometimes you don't, and sometimes is no way to measure that. If I've been loving and supportive and pushed some of my law clerks, the fruits of that are hard to measure. But if they're happening, that's good and I'm glad, but I would not claim that I'm responsible for the goodness that you and some of your colleagues show in the talents, etc. I would claim that I had the opportunity to push you like crazy, and that's good, but I mean, you already had the talent. So, I've been lucky or had some good opportunities. And that's what I would hope that close group would say. He took advantage of the opportunities that he had, and he wasn't afraid to grow. There were spots when I could have been timid,

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and I've thought about that, but I was willing to go ahead and venture like post-Harvard. All right, Harry, get yourself into more things now, forensic science work that I've been doing recently. I'm not a scientist. If I had to do something again, I would try and learn science better, but I let myself get into that, and

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that's an important fight, to try and get the forensic science disciplines, and so, I got a chance to work with the National Academy of Sciences and I was willing to take that chance, and it's made a difference in the sense that we've exposed the problem to the world. Whether it's going to get corrected remains to be seen, but it's a venture I'm really glad I had

03:25:19

an opportunity to work in and push hard at and stay at the highest level I could stay at, and that kind of thing. But I think what I care about most is that group that I've been talking about. What are they

thinking? If they feel like I'm doing it the way I ought to be doing it, then I feel like I've done the best I can.

JUDGE HARRIS: Judge, from what you just said, and I think this would be clear from this entire discussion we've had, that you really seem like a person who is marked by your relationships more than anything else, that those have been the important things in your life and the things that have done the most to make you who you are. Is that how you see it?

JUDGE EDWARDS: I think that’s absolutely right. As I kept talking, yes, that's absolutely right. There’s no question about that. Those relationships are really important.

JUDGE HARRIS: I don’t know what more one could ask. Look, and it's not like you're done, right?

03:26:08 You're still in it. You're still

sitting and deciding cases, you're teaching, you're writing. What's your hope and ambition for the future? What's next?

JUDGE EDWARDS: As long as my brain is going, I to want to keep going, and Pamela says the same thing. She said, "No, you got to keep working. I don't want you

03:26:21 bothering me." And she gets at it. and I want work, and the teaching and the judging are the two things that I want to focus on now. I mean, I'll do occasional projects here and there, but I've been there done that with a lot of them. I don't want to do a lot of them again. I've got law review articles and stuff like that. The teaching and judging is consuming in terms of time, and then have fun, and that's really the other piece to it. We go to the Cape every summer. We're going to go to England this summer and I'm going to do a piece on

03:26:57 collegiality at Oxford, and I'm very

excited about that. And even Pamela got that immediately when we got that invitation, because we don't leave the Cape in the summer. But we both said no, we've got to do Oxford and we've got to do collegiality because that's something I care about. So, I'd say work as hard as I can in doing these things for as long as I can, and have

03:27:17 fun, but the having fun is important. And I want to thank you for doing this with me. This was really special and I love you, and I'm so glad that we had an opportunity to do this together.

JUDGE HARRIS: Judge, it has been such a privilege for me, and a pleasure, but mostly a privilege having a chance to explore your life a little bit more. I mean, I always say you've been like a father to me, and part of that means like with a parent there is a whole part of your life that I didn't really know that

much about. You had one before I came along. So this is really been just a wonderful experience for me and I want to thank you also on behalf of the NYU Law Institute of Judicial Administration for all the time and attention you've given this project. I think it's been really valuable.

JUDGE EDWARDS: And I thank

3:28:06 them as well for making it possible.

[END RECORDING]