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Oral History of Distinguished American Judges

HON. ROSEMARY BARKETT
IRAN-U.S. CLAIMS TRIBUNAL
U.S. COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT

An Interview
with
Sarah E. Harrington

November 2, 2022

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MS. SARAH E. HARRINGTON: Hello, Judge Barkett.

JUDGE ROSEMARY BARKETT: How are you, Sarah?

HARRINGTON: Thank you for being with me today. I am, as you know, Sarah Harrington. And as your former clerk, I am pleased and honored to conduct your interview, your oral history interview on behalf of the Institute for Judicial Administration and NYU as well.

JUDGE BARKETT: And I am thrilled to see you and to see—it's so fun to see what former clerks have done with their lives.

HARRINGTON: Yes.

JUDGE BARKETT: You've done a lot.

HARRINGTON: It's been almost 20 years—more than 20 years since I clerked for you.

JUDGE BARKETT: - -?

HARRINGTON: Yes. Hard to believe, but I'm very happy to be here with you again and thank you for joining us.

JUDGE BARKETT: I'm happy. I love NYU.

HARRINGTON: That's great. So you have had a fascinating life, and we're going to talk about it today. And I think we're going to do what many people do, which is start at the beginning. So go back to your roots. Can you start by telling us about your family? Where were your parents born?

JUDGE BARKETT: Well, my parents were both born and raised in a very small village in Syria and they had an arranged marriage. My mother came home from the village and found a party ongoing and wanted to know what the party was about and they said it's
your engagement party. She said to whom? And they said to
that guy over there. And she said oh, I hate him.

00:01:25 He steals our chickens. She maybe was around 14, he was about
19. And so she was married, and they were supposed to come with
my father’s brothers to the United States, but she got pregnant
and so they had to wait. And his brothers left and went
directly to Ellis Island, where they were picked up by another
brother who took them to Miami because that's where he had
settled. And then after my mother gave birth, they tried to
come again with a visa, but the quota system that was in place
at the time caught them. So instead, they — patience is not a
virtue that my family shares in -- and so they didn’t want to
wait till the following year to try the quota—to get past the
quota system. And they somehow made it to Marseilles and got a
boat and went to Mexico and tried to get in that way, but the
quota system caught them again. So they spent 20 years or so
in Mexico where my siblings and I were born, except for my
eldest brother.

HARRINGTON: Did they speak Spanish before they got to
Mexico?

JUDGE BARKETT: No, no. That's amazing. I can't imagine how
they did what they did moving through three
different cultures with children, not speaking the language or
knowing the cultures in each one as they moved through them.

HARRINGTON: So tell me about your early years in Miami. You
arrived not speaking English, or not much English?

JUDGE BARKETT: Not any English at all. Well, I take that
back. I think my sister had taught us three words: New York
Yankees, Notre Dame, and I forget what the third one was. So
we knew those words and have been lifelong fans of both,
actually. But there were happy events and sad events. We lost
two of my brothers after we came to this country. My brother,
George, who had been in the seminary and had stayed in Mexico
had some sort of very rare heart disease. So he was brought to
Miami, but he passed away very young there. And then
approximately a year and a half later,
my other brother, Emilio, was killed in a construction
accident. So most of my youth, my mother was in mourning
clothes. But there were also a lot of happy memories of
being in elementary school at Gesu, which is a Catholic
Elementary School in downtown, Miami. I was on the basketball
team and made friends with somebody in the sixth grade that I'm
friends with today. She lives in California.

HARRINGTON: Wow.

JUDGE BARKETT: And actually just lost her husband
unfortunately. So I remember doing that, being in the school
play. I think I was Mary Magdalene, actually. I don't
remember exactly—

HARRINGTON: [Interposing] More on that later.

JUDGE BARKETT: --. Basically.

HARRINGTON: That's great. And did you work in your parents’
market, Barkett Market?

JUDGE BARKETT: Yes.
JUDGE BARKETT: Yes, yes. They had. When we first moved to Miami, my father bought a small grocery store right near the Orange Bowl, actually. And we would—I would ride my bike taking groceries to people who called in and it was just, just a small neighborhood. It was old. It was back in the fifties where life was like that. You called up and the grocer—who would also be the butcher, would cut up your meat, bag your groceries and send their kids off to deliver them.

HARRINGTON: Amazing.

JUDGE BARKETT: It was nice.

HARRINGTON: Yeah. And how did your family mix Syrian culture and Mexican culture and U.S. culture when you were young?

JUDGE BARKETT: I guess primarily in three ways: language, music and food. We spoke—my parents spoke Arabic to each other and to my eldest brother, sometimes. They spoke Spanish to us and then eventually, we threw in the English as well. So there was a lot of language exchanges going on. I did learn—I learned enough Arabic to ask my father for money in Arabic and he was more wont to give it to you then. And food, we had Arabic food and Mexican food. As I was growing up, I had never heard of corned beef hash until I was in my twenties. And music. My father would play Arabic music that we found horrifiedingly loud. My mother loved Mexican music and my sisters and I loved American musicals and we would buy the LP's and sing all—knew all the words to all of the songs in these various all-time musicals that I still love.

HARRINGTON: That's fun. I can remember someone asking you
when I was clerking; was it more of one or more of the other
and you said it was a hundred percent of all of them.
JUDGE BARKETT: I think that's right.
HARRINGTON: Yeah.
JUDGE BARKETT: I felt that way anyway.
HARRINGTON: That's a nice way to think about it.

JUDGE BARKETT: [Interposing] Yes.
HARRINGTON: That you’re building and not taking things away.
So when you finished high school, what did you decide to do and
why?

JUDGE BARKETT: Well, I, I always wanted to do something in the
theater. I would make my sister—my younger sister—sit and
listen to me while I read plays to her and played all the
parts. And so I wanted to go to Catholic University in
Washington, which was, from my limited research at the time,
one of the best schools for theater in the country and my
sister had sort of paved the way with my parents, and I had
applied and I think I had gotten accepted. So I was all set to
go and then somehow, I decided that I should enter the convent
instead. There were three or four people in my graduating
class who had been slated to go into the convent right after
graduation; they had known this is what they wanted to do for
years, but it had never occurred to me. I don't think I was
particularly religious beyond going to mass

on Fridays and on Sundays. But I just got it in my head that's
what I should do and so that's what I did.

HARRINGTON: And you don't remember what got it in your head?
JUDGE BARKETT: I, I don't think so. I had this exchange once with the former—one of our very first Republican governors of Florida and he was a very flamboyant figure, and I was on the [Florida] Supreme [Court]. I had been involved in his divorce case when I was working for the trial firm that I was working for at the time. It's going to be a silly story, but anyway, you guys can cut it if you want. But when I was on the Supreme Court, he discovered me again and said we have to go to lunch and I said governor, I can't. We ended up going to lunch and he said, tell me your whole life story. I said governor, everybody knows my whole life story by now. And he said, no, no. Where did you go—where did you grow up? Miami. Where did you go to school? Notre Dame Academy. And then what? Well, then I entered the convent and—he said, well, why did you do that? And I said because I thought God wanted me. And he said I don't blame him.

HARRINGTON: Mm-hm. All right. That's nice. God has good taste.

JUDGE BARKETT: He was funny—

HARRINGTON: [Interposing] That's right.

JUDGE BARKETT: Claude Kirk.\(^1\) Quite a character.

HARRINGTON: That's amazing.

JUDGE BARKETT: Anyway. So I did that. That's what I did.

HARRINGTON: So can you tell us a little bit about your life in the convent?

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\(^1\) Claude R. Kirk Jr. served as the governor of Florida from 1967-1971.
JUDGE BARKETT: The first two years of the novitiate were equivalent to like a junior college so that when you finished two years, you would have an AA degree. And you also at the same time, of course, were having religious studies throughout the two-year period. Then you would be sent to either Barry College in Miami or, I was one of the lucky few who got to go to Spring Hill College in Mobile, Alabama. It's a small liberal arts school run by the Jesuits, and a lot of the Jesuits were there finishing up their degrees. So there was a lot of competition with Jesuits—they're a little bit arrogant and of course, competitive between the several of us about getting top grades at Spring Hill. So—and then I taught school, which I loved, and elementary school mostly. And then I was told that I was in charge—I was to be in charge of the choir even though I didn't really have any training to be in charge of the choir, but I was told that the Holy Ghost would help me, which the Holy Ghost did, sort of, in the form of this wonderful woman who was the organist for the church and for the school. And so she handled most of the musical stuff while I handled the discipline and also, I got to wave my arms around like a real conductor. So I had a ball doing that.

HARRINGTON: Nice.

JUDGE BARKETT: We put on a wonderful production of the Wizard of Oz in one of the municipal auditoriums. We put on Christmas pageants, and we even had the kids between grades three and eight singing the hallelujah chorus in three parts.
HARRINGTON: Wow.

JUDGE BARKETT: And I got to, you know, do the whole routine and - -.

HARRINGTON: Very cool.

JUDGE BARKETT: So, and I got to do that at mass on Sundays. I climbed on top of the pew and conducted the whole congregation in singing. So I took seriously the confidence builder that the Holy Ghost was helping me.

HARRINGTON: And a preview of being a judge and being in charge, right?

JUDGE BARKETT: Yeah, I guess. I guess.

HARRINGTON: So you were at the congregation of Saint Joseph and then at some point, you decided to leave. When did that happen and why?

JUDGE BARKETT: Approximately seven or eight or years after I had entered. I had already taken my final vows, so it was a pretty hard decision. It took me a couple of years really to decide to actually do it because you felt like you were breaking a promise. But there were all kinds of things happening in the world at the time. This was around '66, '65, '66, '67. I think I ultimately left in '67. The Vietnam War, protests against the war. Huge civil rights protests all over the country. People were marching and doing something. And, and I think I had become influenced a little bit by the philosophers, Hans Küng\(^2\) and Teilhard De Chardin\(^3\) and was

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\(^2\) Hans Küng (1928-2021), a Swiss Roman Catholic theologian whose early work questioned some traditional church doctrines, and later focused on interreligious cooperation and the devising of a global ethic. [Britannica](https://www.britannica.com/biography/Hans-Kung)
distressed, I guess, is the word — I'm not sure that's the right word -- when they were being muzzled, as it were, by the church saying they couldn't write this or say this and I didn't—I've never felt that anybody should be punished for asking questions; why is this this way, why is that that way? I think the combination of all of that. I also saw that our teacher across the hall from me was a lay teacher doing what I was doing and so I didn't feel anymore that we were doing as much as maybe we should be doing. Plus I'm not going to discount the fact that I was growing into being independent minded and—so I think all of that together made me think that the convent was a temporary vocation. I don't regret having been in it.

HARRINGTON: Yeah.

JUDGE BARKETT: It was a, a wonderful experience. When we first entered, there were all these kids. We were all 17, 18-year-old kids and everybody was trying to out-good the other guy and it was just such a nice atmosphere.

HARRINGTON: Are you in touch with any of your sisters—

JUDGE BARKETT: [Interposing] Yes, I am.

HARRINGTON: —— now?

JUDGE BARKETT: When I was appointed to the Supreme Court, you usually, ask a priest or a rabbi to say the, the inaugural prayer. And I asked one of the nuns from the motherhouse to come and do that. She was thrilled and I was thrilled and it

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3 Pierre Teilhard de Chardin (1881-1955), a French philosopher and paleontologist known for blending science and theology in his theories. [https://www.britannica.com/biography/Pierre-Teilhard-de-Chardin](https://www.britannica.com/biography/Pierre-Teilhard-de-Chardin)
HARRINGTON: Yeah, that's nice. So what—are there things about your family's experience or your early experiences in life that you feel like have shaped you as a person or particularly you as a jurist as we move into your legal career?

JUDGE BARKETT: I mean, I don't know how you, —it's hard to answer a question like that because I think you are the sum of all the experiences you've had, which includes your family. I mean, I think I was very lucky in the family that I was born into. They were extraordinarily supportive, even though they did not want me to go into the convent and they tried very hard to persuade me not to do that. But once, once I decided that is what I wanted to do, they were, they were very supportive. So I think, you know, their example certainly—had to have been an influence in my life. They were extraordinarily hard-working people. And, you know, the journey from Syria to France to Mexico to the United States, that was extraordinary. People said to me back in the sixties, seventies, eighties, "Oh, you've accomplished so much" and I laughed because I haven't accomplished anything compared to people that were doing that kind of thing, you know,[like my parents did] in those days under the hardships that existed. So, all of that was an example, an inner sense of duty that you grow up with that I still can't shake. It's kind of an automatic thing. It's, it's strange. And it's not just my parents, it's my sisters and brother and my cousins. They're all doers. They're all
achievers. And they are all very caring. We have a family reunion every year. We've had it for—this will be our 53rd year.

HARRINGTON: Wow.

JUDGE BARKETT: I've been to almost all of them.

HARRINGTON: Wow.

JUDGE BARKETT: And we have something like 120, 150 people that come every year and these are people that have grown up with each other because they've seen each other at this event every year. And like during my retention campaign, they were just terrific, even though they didn't always agree with me politically as it were.

00:17:09 HARRINGTON: That's amazing. So then you decided to go to law school. What made you decide to do that?

JUDGE BARKETT: I think it was a combination of wanting to be independent which you couldn't do in the classroom. I was teaching school. After I left the convent, I was teaching school in, in-lay schools. And of course, you're in the classroom the whole time, so I wanted independence and I also had this huge intellectual curiosity about things that affected everybody, like reading a contract to buy a car or, or signing a lease on an apartment. And then on a broader—in a broader sense, wanting to know why laws were passed, why this law and not that law and how did this one come about? So I think it was just a combination of that although my family members would say is because I like to argue. It's always that.
HARRINGTON: Maybe both.

JUDGE BARKETT: Maybe all three, yes.

HARRINGTON: And you went to the University of Florida for law school. Did you think about leaving Florida at that point? I know you have traveled far and wide since then, but—

JUDGE BARKETT: [Interposing] No, because of money.

HARRINGTON: Yeah.

JUDGE BARKETT: You know, the University of Florida was the cheapest option and it never—and we, we weren't steeped in this culture of like wanting to go to noteworthy schools or anything like that. It was a matter of getting an education that you could use to make a living.

HARRINGTON: That makes sense. And while you're in law school, were there particular subjects that you were very interested in or did you have ideas about the kind of lawyer you were going to—wanting to become?

JUDGE BARKETT: No.

HARRINGTON: No.

JUDGE BARKETT: Law school was a little overwhelming in that I was learning words that I had never heard before, like “tort.” What is a tort? And I had a liberal arts education starting in the convent, where, you know, was—primarily, I,-- I had a degree in English Literature and Education. So a lot of these concepts were, were very new. But primarily, I think I just wanted to start working and I ended up in a trial firm, which in retrospect was very interesting because to me now, it seems like a combination of
both teaching and theater.

HARRINGTON: Hmm, right.

00:19:36 JUDGE BARKETT: Because you have to present a play as it were.
You have to decide what witnesses you want to go first and in
the middle and last and all of that.

HARRINGTON: Interesting.

JUDGE BARKETT: It's—it was.

HARRINGTON: So before we get to your first job, you—when you
graduated from law school, you were the first woman at the
University of Florida to ever earn the Miller Memorial Award
for the outstanding senior graduate. This will be a theme in
our conversation today: the first woman to do many things.

00:20:04 JUDGE BARKETT: Yes.

HARRINGTON: Nowadays, law school enrollees are a little bit
more than half women, but that was not—certainly not the case
when you were enrolled?

JUDGE BARKETT: No, there were only two or three or so, four
women when I was going to law school.

HARRINGTON: Yeah.

JUDGE BARKETT: And they had this custom that when a woman
walked into the classroom or into the library or was called
upon in class, the guys would shuffle their feet on the
wooden floor and there would be this tremendous racket. I
suppose it was supposed to embarrass us or something.

HARRINGTON: Huh.

JUDGE BARKETT: So I have a memory of that. They don't do that
anymore.
HARRINGTON: That's terrible.

JUDGE BARKETT: It's old. But I have happy memories too.

It wasn't all just embarrassing things. I was the first woman on the, on the moot court team and that--you know, this whole thing is sort of like a therapy session because it's reminding me of all these stories that I'm probably cluttering up this video with --but I remember we went to Atlanta for a competition of the moot court team and we had a set amount of money that the law school gave to us. And the boys were going to make out much better financially than I was because they could share a room and I had to have my own room. But they were very good guys and so they decided that we would all pool the money and divide it evenly so that everybody would have the same amount, which was fine, except that when we were checking out the next day, I was in this very long checkout line and the first guy comes up to me and hands me this cash and says, this is for the room last night, and then the next guy comes up and does the same thing. And by the time the fourth guy came up, everybody in the lobby was staring and the guys were all just grinning. But it was funny.

HARRINGTON: That's very funny.

JUDGE BARKETT: Yeah.

HARRINGTON: Love that. Were you, at that stage, at least motivated to be the first woman to do things?

JUDGE BARKETT: No, I never thought of that.

HARRINGTON: Yeah.

JUDGE BARKETT: My head doesn't work that way. An opportunity
comes up and I— say yes, and without really thinking of this consequences of being the first woman. I mean, I'm not naive enough not to realize that on some occasions, it helps, but also, I'm very aware enough to know that in some occasions it hurts.

HARRINGTON: Yeah.

JUDGE BARKETT: So.

HARRINGTON: And you've said your family was very supportive of your choices. They were supportive of your choice to become a lawyer, too, is that right?

JUDGE BARKETT: Yes.

HARRINGTON: Okay.

JUDGE BARKETT: Yes. They were—they made their views known, but once you decided to do something, they were extremely supportive. My sister, another perfect example. She had been married for 23 years, had three children, and her husband passed away suddenly. He was an automobile dealer. So the question was should she take over the dealership, which is what she wanted to do, and we were all saying, oh no, sell it, sell it. It's too much of a hassle.

No, she wasn't going to sell it. And once she decided to do that, they were, they were extremely supportive and she should be the one sitting here. Her story is much more interesting. She ended up when she passed away a couple years ago owning something like seven or eight dealerships; Jaguar dealerships, Ford dealerships and, and so forth anyway. So yes, they were all very supportive—we were all very supportive of her, they
HARRINGTON: Yeah.

JUDGE BARKETT: And they don't, they don't measure success by material gains exactly.

HARRINGTON: You've mentioned your sisters a few times and I can remember. When I was clerking, they were on the, like always put them through when they called list and—

JUDGE BARKETT: [Interposing] And they would call.

HARRINGTON: And they called a lot.

JUDGE BARKETT: All kinds of stuff, yeah.

HARRINGTON: I have sisters too. It's nice that they were such an important part of your life.

JUDGE BARKETT: Yes.

HARRINGTON: Yeah.

JUDGE BARKETT: And still are.

HARRINGTON: Yeah.

JUDGE BARKETT: The two that are left.

HARRINGTON: That's great. So as you said, then you went to a trial firm after law school.

JUDGE BARKETT: Yes.

HARRINGTON: Were there any cases that sort of stick in your mind that had a big influence on you, or?

JUDGE BARKETT: Not really. We, we did all kinds of cases. We did marital cases, and we did personal injury cases, a lot of personal injury trials, but really anything that came in the door, which was great preparation for being a trial judge.

HARRINGTON: Yeah. Did you do many trials or did things
JUDGE BARKETT: [Interposing] Yes.

HARRINGTON: Okay.

JUDGE BARKETT: But they were all short. It wasn't like what you see in federal court now where people are in trial for like three months or something. Our trials in state court were two days, three days, sometimes a week, sometimes two weeks, but many times, just a couple of days.

HARRINGTON: And did you—while you were doing that job, did you think about becoming a judge?

JUDGE BARKETT: No. No. I—we just worked. I mean, we didn't— I didn't participate—I'm embarrassed to tell you, but I didn't participate politically or civilly very much. Between family obligations and work, that was primarily what we did. So it never occurred to me that I would know anybody to be a judge.

HARRINGTON: And then 1979 rolled around and things changed. And then Governor Bob Graham\(^4\) appointed you as a state circuit court judge, which is a trial court judge.

JUDGE BARKETT: Yes.

HARRINGTON: How did that happen?

JUDGE BARKETT: Well, I, I, I had left the firm that I'd been with for all these years and was a sole practitioner and I was just having to realize that that I had too much work to be a sole practitioner. So I either had to hire somebody or, or go work for a firm or do something else. And two members of the Judicial Nominating Commission that I knew—because we were

always small trial, trial city, West Palm Beach, at the time.  

00:26:06 They came to me and said we, we want you to apply for the  
circuit court because we want a trial lawyer to be a trial  
judge, which is not to say somebody that didn't have trial  
experience couldn't also be a great judge. But they thought  
that it would be good to have somebody that understood what a  
trial lawyer's life was like would be a good addition to the  
bench, so. I said, well, okay but I don't know anybody. And  
they said, well, you don't have to know anybody and—you know,  
as I said, it was a small trial town and everybody kind of knew  
everybody. So, I got appointed to the, to the trial bench.  

00:26:47 HARRINGTON: And did you preside over all kinds of trial cases?  
JUDGE BARKETT: All kinds.  

HARRINGTON: Okay.  

JUDGE BARKETT: Criminal, all kinds of civil cases,  
constitutional cases. Was always very interesting—the, the  
judges from other countries where I would talk sometimes were  
always very interested in the fact that our trial courts also—  
and state trial courts, did constitutional questions on  
occasion  

HARRINGTON: Right.  

00:27:15 JUDGE BARKETT: Because they—many of those countries still had  
separate constitutional courts. But yes, we did everything.  

HARRINGTON: What was the biggest sort of change transitioning  
from a judge—from a lawyer to a judge?  

JUDGE BARKETT: Control, I think. It was great to be in  
control because as a trial lawyer, you have very little
control. First of all, the judge sets the schedule, so you have to show up for trial when the judge says you have to show up for trial. The judge makes the decision and sometimes, it's a decision that you think is dead wrong. The other lawyers set deposition dates. And so your whole life is kind of controlled by extraneous things. And when you become the judge, you get to set the trial schedule, and you get to decide cases exactly the way you think they should be decided.

HARRINGTON: That sounds better.

JUDGE BARKETT: It sounds much better. Yes.

HARRINGTON: And then you became the chief judge of that court, right?

JUDGE BARKETT: I did.

HARRINGTON: How did that happen?

JUDGE BARKETT: Well, I—there were a few of us that got very interested—I got very interested in organization and court management issues and trying to figure out how we could accelerate the whole trial process so that cases didn't take so long. And in the process of all of that, well, I—we decided I should run for being chief judge and of course and—not of course. I said of course, but I mean I—well, I say of course because they wanted somebody to go implement all this stuff and I was willing to do it and so I was appointed and—or elected by the other judges and we did some stuff to try to make fairer the distribution of cases and try to set guidelines for when a case should be completed and things of that, of that nature.

HARRINGTON: Yes.
JUDGE BARKETT: But then, I went over to the Fourth District Court of Appeals, so I—

HARRINGTON: [Interposing] Yeah.

HARRINGTON: —I, I didn't stay as long as I would have liked to have done whatever was necessary to make things a whole lot better although I think we made it a little better for a while.

HARRINGTON: And nice that your colleagues were the ones who chose you to be the judge actually.

JUDGE BARKETT: Yes.

HARRINGTON: It's a vote of confidence.

JUDGE BARKETT: Yes.

HARRINGTON: Yeah.

JUDGE BARKETT: Yes.

HARRINGTON: So as you say, in 1984, you became an appellate—a state, appellate court—

JUDGE BARKETT: [Interposing] Yes.

HARRINGTON: —judge. How did that happen?

JUDGE BARKETT: Same kind of way that one—somebody was retiring and somebody else came and said you should apply for that. I said—I—I'm very bad about—I mean, I always say yes to things, most things—almost all things, actually. And I mean, it makes it sound as though I'm very reactive rather than—but I think that is how it, it kind of happens. I never think that I'm—I—I'd be the one to, to initiate some of these things. I think it has to do with that whole imposter syndrome thing.

HARRINGTON: Mm-hm.

JUDGE BARKETT: I don't know.
But anyway, that's how it happened.

HARRINGTON: That's interesting because you've been so successful and, you know, still feel like yes.

JUDGE BARKETT: Yes, but I don't know how exactly, Sarah.

HARRINGTON: I think people are getting an inkling from watching this, I hope. So had you ever been an appellate litigator before you became an appellate judge?

JUDGE BARKETT: We did our own appeals—

HARRINGTON: [Interposing] Okay.

JUDGE BARKETT: —in the trial firm that I was in.

We totally did our own appeals. If somebody else appealed one of our cases, we responded and did the appeal. And if we were appealing, we also did our, our own appeals.

HARRINGTON: And did that feel like a better fit for you being an appellate judge?

JUDGE BARKETT: Not—I loved it, but I loved being a trial judge too. And I think I'm cursed or blessed with really liking what I'm doing at the time, but also being willing to go do something else and liking that too. So I, I have loved both. They're now—they're advantages and disadvantages of both.

HARRINGTON: Yeah.

JUDGE BARKETT: But I enjoyed both of them.

HARRINGTON: So you mentioned that there are sort of pluses and minuses of the trial—being a trial judge and being an appellate judge. Can you expand on that a little?

JUDGE BARKETT: Well, as a trial judge, of course, you don't have to get anybody else's vote for making a decision. You
really have control of the whole case and you can make
decisions. You also have the freedom to try to work with the
parties when you think that—I mean, there were several cases—
kinds—not kinds of cases, but several cases where the plaintiff
was partly right, but the defendant was partly right too, but
the outcome had to be one or the other and you had the freedom
to talk to people and try to get them to work something out,
and I like that. On the other hand, the appellate work, the
disadvantage was that you have to have another person vote with
you in order to effectuate the result that you want. And so
that's kind of a disadvantage. I would have liked to have
decided all my appellate cases all by myself. And—but at the
same time, the advantage was this intellectual challenge of
organizing the issues and trying to work through them and
understand the reason for them. I think there are judges
unfortunately, who decide things from a gut feeling and there
are others who try to follow the, the line of cases that ends
up either where you are or that diverges before you and goes
into two or three different branches and you're trying to
coordinate all of them and find the right answer. It's sort of
like an intellectual puzzle—

HARRINGTON: [Interposing] Yeah.

JUDGE BARKETT: —and I love that part of it.

HARRINGTON: I heard about a talk once that Justice Sotomayor
and Justice Kagan did, and Justice Sotomayor talked about how
when she writes opinions, she tries to make people feel
something. And Justice Kagan said when she writes opinions,
JUDGE BARKETT: Yeah.

HARRINGTON: And then she said, well, we're very different, you know. Where do you feel like you land on that spectrum?

JUDGE BARKETT: I—maybe in the middle.

HARRINGTON: Yeah.

JUDGE BARKETT: I—no, more on, more on Justice Kagan side, I think. I, I, I don't think opinion writing is the place for like, including poetry or funny stories, although there's this wonderful case. I'm not going to go into it, but anyway, it's very funny. But I don't, I don't think that's the place for appellate opinions and as you may remember, my law clerk manual had a very strict structure of how an opinion ought to be written and what should be included, and where so that it would be organized and hopefully, every kind of reader would understand it.

HARRINGTON: You mentioned earlier in our conversation that at—in trial work, there's sort of a theatrical element—

JUDGE BARKETT: [Interposing] Yes.

HARRINGTON: —right? Do you think—and my view is there's less of that when you get to the appellate level—

JUDGE BARKETT: [Interposing] Oh, there is.

HARRINGTON: —but it doesn't go away, right? I say as an appellate lawyer, but also, I want to know what do you think about that?

JUDGE BARKETT: Well, I think it's less. I mean there's not really a production. You write the brief and you appear at
oral argument, and I'd love to interview you and find out why you think it's theatrical in the appellate realm.

HARRINGTON: So, I mean the audience is different, so there's less theater. But—

JUDGE BARKETT: [Interposing] Yes.

HARRINGTON: —there is still some—

JUDGE BARKETT: [Interposing] A little bit.

HARRINGTON: Yeah.

JUDGE BARKETT: Trying to be persuasive.

HARRINGTON: Right. Right.

JUDGE BARKETT: Yes.

HARRINGTON: Yes. There's—it's more—the theater is more intellectual, I guess. Yes.

JUDGE BARKETT: Yes.

HARRINGTON: So then you were not in that court for very long.

In 1985, Governor Graham appointed you to the Florida Supreme Court, where you were, I believe, the first woman ever to be on that court. Is that right?

JUDGE BARKETT: Yes.

HARRINGTON: Yes.

JUDGE BARKETT: I was.

HARRINGTON: Here we go. We come again to this. What was that like?

JUDGE BARKETT: What was that like? The first time I was asked what it was like to be the first woman justice, I think I answered it very flippantly by saying, well, I don't have anything to compare it to because I've never been the first
male justice. But I think it was a bigger deal than I thought it was going to be in Florida. Florida is a big state and—

HARRINGTON: [Interposing] Yeah.

JUDGE BARKETT: —there was a lot of publicity about the fact that I had been appointed, and also the workload was very different than I anticipated. It was much greater because in addition to all of the cases that we would hear, we had all of the administrative work to do as well -- the

00:36:22 budget—preparing the budget for the legislature and in essence lobbying for it, certifying how many judges we needed in all of the various circuits in Florida. And as I said, it's a huge state. So it involved a lot of things.

HARRINGTON: And did that administrative work fall to the more junior justice on the court? Did you have to do a lot of that?

JUDGE BARKETT: No. I think all you had to do was—well, I was going to say open the door, but I think that's in this—on the U.S. Supreme Court.

00:36:52 HARRINGTON: Yeah.

JUDGE BARKETT: I don't really think we had to do anything exactly.

HARRINGTON: But famously when you joined, the bathrooms were marked “justices” and “ladies.”

JUDGE BARKETT: Yes.

HARRINGTON: So did you use the justices’ door, or did they change that?

00:37:04 JUDGE BARKETT: They did change it.

HARRINGTON: Okay.
JUDGE BARKETT: They actually had to put in a bathroom in the judges' chambers where we would have conferences because there was only one bathroom. And I did say if you don't want me to follow you in there, you better do something about that or something along that line. But they were very funny about the whole thing and very welcoming. The court—the members of the court were very welcoming. I particularly remember Justice Jimmy Adkins,⁵ who was like the dean of the court. He was the oldest member of the court and was a very sort of legendary figure in North Florida, where all the good old boys are.

HARRINGTON: Yeah, it's a different state.

JUDGE BARKETT: And he had been married six times or something like that, and he came into my office the first day I was there and he said, “I want you to remember that you are one seventh of this court and you have an equal right to speak as any other justice here, and I hope you don't forget that.”

HARRINGTON: That's very welcoming.

JUDGE BARKETT: And indeed it was. Yeah.

HARRINGTON: Yeah, that's nice.

JUDGE BARKETT: He may have said that because I think I was on his side the very first time I opened my mouth.

HARRINGTON: One seventh, but you should throw that seventh my way.

JUDGE BARKETT: Yes, right.

HARRINGTON: Were there any particular cases you can remember

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that stand out to you from your time on that court?

JUDGE BARKETT: I wanted to kind of review before this, but I just didn't have time to go through the cases that we had. But I mean, the constitutional cases, the Florida constitutional cases, the search and seizure, the Fourth Amendment cases and of course, the death penalty cases.

HARRINGTON: Right. So you became sort of well known for being against the death penalty. That was the public perception of you from your time on that court. Do you think that's a fair characterization of your views?

JUDGE BARKETT: I think it's fair to say that I was very concerned about the death penalty and the death penalty issues. I became very concerned about the procedural difficulties of applying the death penalty fairly and equally. First of all, I, I had this overarching impression once I got to the court and we began hearing death cases, that an overwhelming number of them involved very poor people and very mentally disabled people. I thought it would be racial, but—and I've never done an actual study, but, but what hit me was again the poverty that these people came from and the mental disabilities that many of them had. And so that bothered me, and the criteria for applying the death penalty became very—well, it defied definition really. And so I would be very concerned when—the, the states were required—-the Supreme Court said that you had to have aggravating factors in order to narrow the number of people that would be eligible for the death penalty. So the states set out some
criteria, and some of the criteria just defied definition. Florida had the, the aggravating factor of “cold, calculated and premeditated murder.” And in conference with the, with the boys, I, I said well, what is “cold, calculated and premeditated?” How can that be different than premeditated murder? How do you apply that? And so the opinion that ultimately came out said something like you had to have heightened premeditation, but it is beyond me how you can have heightened—how can you be more premeditated than premeditated?

00:40:47 HARRINGTON: Yeah.

JUDGE BARKETT: Or—some states had an aggravating factor that said you had to commit the murder with an utter disregard for human life. You know, I don't mean to be colloquial, but duh, what murder isn't—doesn't occur with a total disregard for human life? Or “heinous, atrocious and cruel.” A murder had to be more heinous, atrocious and cruel. And we spent a lot of time, I remember, in conferences on our Supreme Court trying to decide whether this murder was particularly heinous, atrocious and cruel. There would be debates about ‘does that mean that the murderer had to intend it to be [more heinous or cruel]’, or [does that mean] ‘that the victim had to feel it as being [more heinous and cruel]’ as opposed to any intention on the part of the murderer [that it be more cruel]? I mean it was just really difficult and, and unfair, and a checkerboard pattern of applications of all of these [criteria] across the states made it very unfair to me. So I had—yes, I had those concerns. If I were confronted with a case that clearly,
clearly met all the
criteria, then I, I felt that I had, I had an oath and I had to
apply the law. But I think that I applied the law more
carefully than others might have.

HARRINGTON: Hmm.

JUDGE BARKETT: Because again, we go back to this whole thing
that there are some judges who would feel like this was an
atrocious thing that happened and therefore death is
appropriate.

HARRINGTON: Yeah.

JUDGE BARKETT: And I looked at it—we very seldom debated guilt
because it was generally pretty straightforward. But I looked
at it more from the sentencing perspective of whether or not
you were really narrowing the, the number of people that were
eligible for the death penalty, which is what I saw as the
responsibility laid down by the Supreme Court at the time that
we were deciding these cases. I know that's a very long
answer, but it's a complicated—

HARRINGTON: [Interposing] Yes.

JUDGE BARKETT: —answer.

HARRINGTON: That's fascinating. Did you feel that you
were swimming upstream in that effort among your fellow
justices?

JUDGE BARKETT: Sometimes.

HARRINGTON: Yeah.

JUDGE BARKETT: Although sometimes not. We, we reversed a
death—in Florida, we have a very different standard for
reasonable doubt than does the 11th Circuit. After I got on the 11th Circuit I was shocked to find out that it was different. But in Florida, we had a standard that said if you have only circumstantial evidence, and the circumstantial evidence can indicate both innocence and guilt, you must acquit, because you cannot then say that it has been proven beyond a reasonable doubt, right? And in the federal system, they just let the jury decide whatever they want to decide.

HARRINGTON: Yeah.

JUDGE BARKETT: And so we reversed a, a death penalty case. All seven of us signed on to it because of this principle; there was only circumstantial evidence and it could point to either innocence or guilt. And, and I remember getting a lot of grief for that case in my confirmation and also the court took, took some hits in the press for reversing that case because I think it had been sort of an egregious murder. But, you couldn't tell whether this guy actually did it and I think that the decision was correct.

HARRINGTON: And this is before the days of the Innocence Project and more publicity—about false conviction.

JUDGE BARKETT: Yes

JUDGE BARKETT: And this is an opinion written by one of our more conservative judges, too, who applied that principle of
HARRINGTON: [Interposing] Interesting.

JUDGE BARKETT: —correctly, I think.

HARRINGTON: Were you surprised in your later phases that the death penalty issue is the thing that kind of stuck to you for a while?

JUDGE BARKETT: I don't know that I was surprised. My head doesn't work that way either. Things just happen and whatever it is, it is and you, you deal with it. But yes, it did. That became an issue during my merit retention campaign where you were accused of—and my thereafter, confirmation where you were accused of being soft on crime, which I never understood exactly what was meant by that.

HARRINGTON: [Interposing] Yeah.

JUDGE BARKETT: I mean—I wasn't for crime.

HARRINGTON: Right. Who is?

JUDGE BARKETT: Who is? Of course.

HARRINGTON: Yeah.

JUDGE BARKETT: So.

HARRINGTON: So 1992 was a big year. You became the chief justice of the Florida Supreme Court. Again, the first woman ever to do that.

JUDGE BARKETT: Yes.

HARRINGTON: And you went through a merit retention campaign.

JUDGE BARKETT: Yes.

HARRINGTON: What can you tell us about how you became the chief justice? Was that—
JUSTICES.

HARRINGTON: Yeah.

JUDGE BARKETT: And we really honestly take turns—took turns at it, although there have been instances of rejection. So it's—it was validation in a sense that I wasn't so wacky that they weren't going to let me be chief justice. So I got all the votes from all the other justices when it was my turn as it were. And how—that's how that happened. And again, I, I appreciated the opportunity to work a lot on organizational issues and case management issues. I tried really hard to coordinate and, and combine all of family law issues, trying to get the “one family, one judge” concept accepted because there were a lot of problems in family cases. One judge might have the delinquency case, another judge might have the dependency case, another judge would have the family’s divorce case. And these poor people—mostly poor people were having to run around to different courts and leave work and lose their jobs. Plus sometimes, the judges would not know what the other judge was doing in that particular instance. I was trying really hard. We've managed to make some progress in that area, but I don't think enough.

HARRINGTON: Interesting, huh.

JUDGE BARKETT: I mean, you can't stay in one place and end up working more on it. I think more needs to be done in that whole area of family law, but....

HARRINGTON: Interesting. And so then you had to have—(coughs), excuse me, a retention campaign.
JUDGE BARKETT: Then I had to have—but I wasn't the first one. They had started two elections prior to mine where special interest groups had started challenging in retention races—in a few retention races in the Supreme Court. I think the first one was a ballot initiative having to do with taxes and some small special interest group challenged some of the justices based on that. And in the next year, Lee Shaw⁶ was challenged. He had written the opinion in, in the abortion for

00:47:58 minors case,⁷ where the court, where the court found unconstitutional a law that prohibited abortions for people under 16 or some age, but it didn't provide for a way for a minor, for example, to go to a judge in order to get permission [for an abortion] when it might be a case of incest or when the parent whom you were supposed to get permission from was actually the one who had raped the child. And so we sent it back to the legislature saying that there needed to be a judicial way of addressing that problem. So, he got challenged and got by and then it was my turn next, and I got challenged by

00:48:55 basically the same group on the choice issue.

HARRINGTON: So when—the retention campaigns come up, is it sort of automatic every certain number of years, or?

JUDGE BARKETT: Well, you're, you're on the ballot every six years—

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JUDGE BARKETT: —yes. With a yes, no vote, but your hands are tied. You cannot campaign unless there is a formalized campaign against you.

HARRINGTON: I see.

JUDGE BARKETT: So theoretically, that's how a justice in Tennessee, for example, got ousted because somebody didn't challenge her until this very, very wealthy group challenged her like a month before the elections and it's hardly enough time for you to be able to put together a campaign. A lot needs to be done, I think, with reference to judicial elections in, in states, so—at any rate. There was this group that had challenged Lee and was challenging me as well. But in my case,—rather than going on the choice issue, they went on the soft on crime issue, thinking that might work better.

HARRINGTON: And what was it like to campaign?

JUDGE BARKETT: Oh, it is terrible. I didn't like it.

HARRINGTON: Really?

JUDGE BARKETT: Well, I take that back. I didn’t like asking for money. I hated asking for money. And there was a sort of sub rosa attitude I had that said, if you guys don't want me, fine. You know, but you still had to work hard because you didn't want single issue people to win in a retention campaign. So I worked hard and—Florida is such a huge state and, you know, there isn't the kind of money that you have in a regular campaign. And so, I had one person as a staff person, I think maybe two—towards the end. And the part that I liked the total
best was the question and answer period after I gave a speech. I would give a speech and then it would be open for questions and answers and then I could really talk about—

HARRINGTON: [Interposing] Yeah.

JUDGE BARKETT: —things people wanted to talk about in a way that hopefully, they understood. So I enjoyed that part, but.

HARRINGTON: I remember seeing a photograph of you, I think, riding in a convertible and like waving to the crowd.

JUDGE BARKETT: That was, that was Lawton Chiles's inauguration.

HARRINGTON: Is that what that was? Okay.

JUDGE BARKETT: Yeah. And we all had our own little convertible and rode in his parade, but it was his election parade.

HARRINGTON: You—I mean, I think of you as sort of an extrovert and such a warm person. And so I would imagine that you would like the—interacting with people — —.

JUDGE BARKETT: I love, I love people—

HARRINGTON: [Interposing] Yeah.

JUDGE BARKETT: —at a distance. No, no, no. I love people. I do. I talk to everybody because I,—I like them. I want to hear what—who they are and what they're doing. And—

HARRINGTON: [Interposing] Yeah.

JUDGE BARKETT: —so I do, I do enjoy that.

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8 Lawton Chiles served as governor of Florida from 1991 to 1998.
HARRINGTON: So then in 1993, President Clinton nominated you to a seat on the 11th Circuit. Is that something you went after or did they again come to you?

JUDGE BARKETT: Well, there was a lot of talk when Clinton was elected. And ultimately, I think the president's lawyer called and asked if I were nominated, would I accept? And I said yes. At that time, my parents were both somewhat ill and my sister was their caretaker and living with them. And so I was traveling to Miami from Tallahassee almost every weekend to help out as much as I could. And so the idea of living in Miami, choosing to live in Miami, we couldn't do that. Now, the justices on the Florida Supreme Court can live anywhere in the state and they have a budget to travel and so forth. But then,

you were expected to move to Tallahassee, which I did, and, and—sorry, but that reminded me of another sort of family story where—which kind of shows you both the support that family members have, but also how they view these “important” jobs. My mother was being—my sister was taking my mother to vote in the merit retention campaign we were just talking about.

HARRINGTON: Mm-hm.

JUDGE BARKETT: And my mother was complaining because I wasn't coming home for as many family events as I used to when I lived in, in West Palm Beach. So my sister says, well, mom, you know, first of all, she's lives in Tallahassee and it's much further to come to Miami from Tallahassee than it was from West Palm and secondly, she's got so much more work to do
than she had to do when she was in West Palm. And my mother said “well, then why are we voting for her?” And that is a true story, and that shows you what they think is important is that

00:54:01 you spend time with your family.

HARRINGTON: I hope she voted for you, though.

JUDGE BARKETT: I hope so, too.

HARRINGTON: You'll never know, right?

JUDGE BARKETT: I'll never know is right. Anyway. So I was happy to think about—being able to move to Miami.

HARRINGTON: And your confirmation process was a little contentious and a close vote.

JUDGE BARKETT: [Interposing] It was.

HARRINGTON: Can you tell us about that?

00:54:25 JUDGE BARKETT: It was. The same group that had targeted me during my merit retention campaign took the prepackaged attack and took it to the Senate. And—so they began that soft on crime, choice issues attack. Fortunately, I had been in Tallahassee for 10, 15 years by then. It was a different time where Republicans and Democrats were friends, and although they may have debated how to deal with an issue, there was not much debate about what the issues were and what the problems were that had to be addressed. And I had friends that were both Republicans and Democrats, and they were

00:55:26 supportive of the court and they were supportive of me. As Chief, I was able to give a speech to the House, which had been something that had been suspended for several years and then
they asked me if I'd come over and talk about the status of the judiciary, which I did. And so when my confirmation was challenged, their support was very, very important to me. I was supported by both senators. One was a Republican, Connie Mack,9 and one was a Democrat.10 And—but I did have to go through this, this, this process of being attacked. It also helped that my sister who was a, a Republican and—because she was an automobile dealer, knew a lot of very wealthy Republican influential people, and they supported my candidacy. So that helped.

HARRINGTON: And did they—did anyone step forward publicly to support you?

JUDGE BARKETT: Well, Connie Mack.

HARRINGTON: Yeah.

JUDGE BARKETT: But well the people in my state did.

HARRINGTON: Yeah.

JUDGE BARKETT: And I think I got the vote from Maine. He was a Republican that also voted for me out of [committee for] the confirmation. But it was a—it was an interesting process. I learned that it really is not about you. It's about one political party trying to embarrass the other political party and—

HARRINGTON: [Interposing] Yeah.

JUDGE BARKETT: —the senators at my hearing were not interested in my answers particularly. There were only interested in

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9 Cornelius Alexander McGillicuddy III (also known as Connie Mack) served as a Senator from the state of Florida from 1989 to 2001.
10 The Democratic senator was Bob Graham. After serving as governor of Florida, Graham served in the U.S. Senate from 1987 to 2005. See also supra note 4.
getting their questions kind of on the record.

HARRINGTON: Yeah.

JUDGE BARKETT: There's also very—I don't want to say raucous exactly, but—even though it was short notice, many of my family members wanted to go. So there must have been 20 or 30 people. My aunts and uncles from Jacksonville who were in their eighties came in their winter coats, and my cousin from Chicago came down and my nieces and nephews, and every time in the hearing when a senator would come out and sit on the—whatever, the dais. They would run up—somebody would run up to them and talk to them, and I was just like, “oh my God, what are they saying to them?” I was mortified. They were—totally took over the, the hearing room. Oh, it was very funny.

HARRINGTON: That's amazing.

JUDGE BARKETT: Anyway.

HARRINGTON: Did the attacks on your record feel personal to you?

JUDGE BARKETT: No. And they weren't—what happened? During the three hour—there apparently was a three hour—well, not apparently. There was a three-hour debate on the senate floor and Connie Mack was very supportive and, and Bob, Bob Graham was very supportive. And then when Orrin Hatch\(^\text{11}\) got up, he prefaced everything he said about by saying that I was a lovely person, I had a lovely family. It was the American dream, but I was too soft on crime and so on and so forth. And one of my law clerks took the tape and excerpted all the nice

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\(^{11}\) Orrin Hatch served as U.S. Senator from Utah from 1977 to 2019.
things he said about me and it was very funny tape when he finished with it anyway.

HARRINGTON: Nice. Do you want to tell us a story, another story about Orrin Hatch?

JUDGE BARKETT: Oh, Orrin Hatch. Yes.

HARRINGTON: Speaking of Orrin Hatch.

JUDGE BARKETT: Speaking of Orrin Hatch, his chief of staff during the confirmation process before I had my hearing sent out to all of the conservative columnists and editorial boards and newspapers across the country this package of prepared materials, urging them to use all of this material against my nomination. Well, it happened to hit the desk of a columnist on the Orlando Sentinel, Charlie Reese. And Charlie was a very conservative columnist, but again, he had been in Florida and he knew me and he knew what I had been doing as, as chief justice and as a justice before that. So he wrote this wonderful column railing about the use of taxpayer dollars to do this side issue, and also railing about the fact that Orrin Hatch had apparently already made up his mind before he even had a chance to hear my responses to any of the of the charges that were being brought. And so it resulted in my—during one of my Washington visits going over with Janet Reno\(^{12}\) to the cloakroom of the Senate and Orrin Hatch came off the floor, apologized very nicely.

HARRINGTON: Wow.

JUDGE BARKETT: And said he was very sorry, but that he didn't

know anything about what his law—what his chief of staff was doing or a staff member was doing and the staff member had been reprimanded severely.

HARRINGTON: Very interesting.

JUDGE BARKETT: I said “thank you very much.”

HARRINGTON: So you joined the 11th Circuit. How was being a federal appellate judge different from being a state appellate judge?

01:00:36 JUDGE BARKETT: Mostly, it was different in terms of the substantive law, which is different, of course. And—you know, you're dealing with federal statutes, whereas in state courts, you're dealing mostly with state statutes, although you're dealing with constitutional issues in both courts. So—but primarily, it was the substantive law; the process, the appellate arguments, the debates and conference, the writing of opinions, all are pretty much similar.

HARRINGTON: Okay. Did you feel that your approach to judging and being an appellate judge evolved over time as you moved among the different courts?

01:01:14 JUDGE BARKETT: Maybe refined it somewhat. I, I ended up for several years. I don't know at what point I started doing this, but writing the draft opinion before oral argument so that it forces you to be much more disciplined about what you think about the case as opposed to just off the top of your head. And I always felt that it would be more helpful if the judges were forced to write their opinions before oral argument and they would be a little bit more prepared.
HARRINGTON: Do you think it would make them less inclined to be swayed by oral argument?

JUDGE BARKETT: No.

HARRINGTON: Okay.

JUDGE BARKETT: I definitely do not think that. I know that's a sort of a criticism of that approach. But—when I used to be a member of the faculty here at NYU, the judges would—there would be a debate about whether that made a difference or not. Like most debates, many of the people debating it had never done it, so they really weren't very knowledgeable, I don't think. But the people who have done it, the ones I know, were willing to change, but it was much easier to change the opinion once—the mechanics of writing the opinion.

HARRINGTON: Yeah.

JUDGE BARKETT: And it never bothered me to decide that I was wrong about a particular approach or, or a particular issue and change it after oral argument.

HARRINGTON: As your law clerk, I enjoyed that approach because it meant one fewer document you had to produce.

JUDGE BARKETT: I don't know.

HARRINGTON: Yes.

JUDGE BARKETT: And it was easier to do whatever you had to do, either write a dissent afterwards or—

HARRINGTON: [Interposing] Right.

JUDGE BARKETT: —a concurring opinion because you had done all of the work and you were much more comfortable in your views
about the case, right?

HARRINGTON: Yeah, absolutely. That makes sense. So there's a question that appellate advocates always want to ask judges and so I'm going to ask you which is what role—it's very kind of egocentric question. What role do you think oral argument plays in deciding appellate cases?

JUDGE BARKETT: First of all, clarity. I think—I don't think it's all that unusual. I mean generally you understand the case from the briefs, but sometimes, you get to oral argument and I, I have heard all three members of a panel say, oh, was that what this case is about? You know, it was totally misunderstood from the way the briefs had been written. So the first thing I think that oral argument does is clarify what the case is about and what the issues actually are. And, and I think it also must give the lawyer a sense of—I don't know. A better sense of, of making sure that the judges understood your position because you're there and you're listening to them and they're listening to you, as opposed to

never having oral argument. You have no idea of what the judges are thinking when they're reading your briefs. So I think that's a good thing that oral argument does. And then the third thing is, of course, what you know happens, which is one judge trying to use the oral argument to educate another judge—

HARRINGTON: [Interposing] Yeah.

JUDGE BARKETT: —or to persuade them, or to make sure that a particular point is understood. And that happens—
HARRINGTON: [Interposing] Yes.

JUDGE BARKETT: —as you know.

HARRINGTON: Yes. That's an important part, yes. So you have had varying number of law clerks and different jobs. What kind of characteristics do you look for when you're choosing law clerks?

JUDGE BARKETT: First of all, writing ability. I would want to make sure—I mean being an appellate judge, the, the biggest part of what you do is communicate in writing and you—I—you only have a law clerk for a year, sometimes two. Most judges—I did only for a year, and you don't want to spend the year teaching them how to write. So I would first of all look to see what writing experience they had and it didn't matter. Could be in a newspaper. I've hired newspaper—former newspaper reporters who went to law school or of course people on law review, although in some instances you had to teach them to write clearly since they—so that would be the first thing. Secondly, of course, intelligence. You'd want somebody that would understand the issues. And thirdly, their experiences, their background, both academically and worldly. What they did before law school, what they did after law school, what other things did they do in law school besides just study? That was important to me because I wanted people who had world experience of some, of some sort. And also mostly personality and whether you could get along with the person that you were hiring or they could get along with you. So I saw that mostly, mostly as an ability. I mean, you can't tell whether
somebody's going to work out or not although I've been very, very, very lucky in law clerks. But you can tell if they're not going to work out, that, that there's something not quite right.

HARRINGTON: Yeah, it's interesting. I always say to people, I think the best measure of whether you have a successful clerkship is how well you get along with your judge, how well you—

JUDGE BARKETT: [Interposing] Yes.

HARRINGTON: —clerk, right, and I had a wonderful experience clerking for you and felt we got along great. But it's sort of the thing that's the hardest to tell because you have this, you know, 30-minute interview.

JUDGE BARKETT: I know.

HARRINGTON: Do you feel like you're kind of gauge for that—got better over time?

JUDGE BARKETT: I think so. I think I got better at gauging it a little bit, but—

HARRINGTON: [Interposing] Yeah.

JUDGE BARKETT: —like I said, it's so—I don't know. I got better because my past experiences with so many law clerks has been so wonderful, and I'm still in touch with many of them who, who, who take the time to answer me back when I write to them --.

HARRINGTON: What are you trying to say?

JUDGE BARKETT: No, I think you know that something is not going to work out.
HARRINGTON: Yeah.

JUDGE BARKETT: I had one law clerk applicant come in and say, “My husband will be working in Tampa and I just want you to know that he's my first priority.” I didn't know what to do with that statement, but I figured it wasn't going to work out so well.

HARRINGTON: Yes, that's probably a safe conclusion. Did you change the way you used your law clerks over time?

JUDGE BARKETT: I don't think so.

HARRINGTON: Yeah.

JUDGE BARKETT: I mean, I think the—mostly, we went back and forth with draft opinions a hundred times. It seems like—and that hasn't changed. I just finished drafting my paper for the new court that I'm on, and I think I turned it in after—it was the 36th version because I keep editing and editing. And every time you see it, you reorganize it and then—and I think I continued to do that. And then the other thing that we used to do that I still do, only I only have one law clerk now. But—and that is on important cases, get everybody to read the draft that I'm working with one law clerk on and sit around the table and offer more suggestions and so forth. I mean, I value the input—

HARRINGTON: [Interposing] Yeah.

JUDGE BARKETT: —and—so I think I still do that.

HARRINGTON: That makes sense. So for most of your time on the 11th Circuit, it was a pretty conservative court. You are not a particularly conservative jurist. How did it feel to be in
sort of the ideological minority of the court?

JUDGE BARKETT: Well, it was mostly disappointing if I lost a vote of—if it involved a sentencing or loss in a death penalty case, it was more than disappointing. I would feel that sometimes I hadn't worked hard enough to be as persuasive as I could have been. And I think it must have taken a toll from the perspective of other people. My friends would say that it would take a week after coming back from oral argument for me to act normal again.

HARRINGTON: Interesting.

JUDGE BARKETT: So it mattered to me, but I wasn't always in the dissent. And I was able to sometimes persuade judges you wouldn't have thought that I might be able to persuade. I think I got Ed Carnes\(^1\) to agree with me on a death penalty case, for example.

HARRINGTON: Yeah.

JUDGE BARKETT: And it helped that I got along with all of the judges. I think that's probably the first step that you have to take if you want to try to be persuasive. If they hate the messenger, they're not going to listen to the message no matter how great the message is or how right it is.

HARRINGTON: Yeah.

JUDGE BARKETT: So the first step is you have to make sure that they at least respect the messenger. I used to say that to the appellate judges that would come through the Institute, that

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it's important to, to understand that you're part of a group now, even though you didn't pick the group to be part of.

HARRINGTON: Yeah.

JUDGE BARKETT: And that if you, if you want your opinions to be heard, you have to make sure that they don't start out by hating you before you even open your mouth.

HARRINGTON: Yeah. I can remember going with you to an en banc sitting in a contentious death penalty case and seeing that it took a toll on you and then seeing you interact with the other judges and they were really—you were sort of like this firefly among them. They were drawn to you because you're such a warm and open personality. And I wonder, does it take effort for you to sort of set aside the, the challenging feelings you have about the deliberations and then be social or—

JUDGE BARKETT: [Interposing] No. Isn’t that's strange? I mean, I'm genuinely there when we're in this party mode or drink mode or—

HARRINGTON: [Interposing] Yeah.

JUDGE BARKETT: But it, it does help. People are going to—Ed Carnes will not remember this, I don't think, and maybe I shouldn't use his name like that, but anyway, one, one time he drafted a, a dissent to an opinion of mine that was—I thought very harsh. So I called him up and I said, Ed, I thought you were my friend. He said I am your friend. I said, well look, this opinion is terrible. He said what? I toned it down so much.

HARRINGTON: That's funny.
JUDGE BARKETT: Well, go work on it some more.

HARRINGTON: Well, you wrote many dissents while you were on that court.

JUDGE BARKETT: Yes.

HARRINGTON: Did you take a—did you have a different approach to writing dissents, a different sort of writing style or anything?

JUDGE BARKETT: Not really. Well, not really, and it was much easier to do having written the majority opinion, than to convert it.

HARRINGTON: Yeah.

JUDGE BARKETT: So the approach in writing was the same. I think I was careful not to be—I don't know how to put it, abusive or, or arrogant or—about the, the majority and to, to speak to the arguments rather than the, the person writing the other side.

HARRINGTON: Yeah.

JUDGE BARKETT: It was always fun where I had—if I had somebody also dissenting, who would do this wild crazy like the majority is terrible and so on and so forth. But I tried to be—I tried to write in a, in a legalistic style that exposed what I thought were the flaws in the arguments that the other side was using.

HARRINGTON: Yeah.

JUDGE BARKETT: Hopefully, I've succeeded in doing that—

HARRINGTON: [Interposing] Yeah.

JUDGE BARKETT: —pretty much.
HARRINGTON: I enjoyed working on the dissents. You know, it's just a different experience and it's sort of fun.

JUDGE BARKETT: Yeah.

HARRINGTON: How did you decide—

JUDGE BARKETT: [Interposing] Do you think we did try to be careful and not be personal and the dissents? I think we tried.

HARRINGTON: I remember once you said take out respectfully which, you know, you're not the only jurist who does that. There are some—it's so—it sends a message, but the, the dissenting opinion was very respectfully written, so. But that's stuck with me. How did you decide whether to write a concurring opinion or dissenting? Did you feel like you needed to sort of save those chips?

JUDGE BARKETT: I don't think I wrote very many separate concurring opinions. I didn't think that was a good approach to things.

HARRINGTON: Yeah.

JUDGE BARKETT: And mostly, I could handle things that I disagreed with or, or that should have been written maybe differently via a memo to the writing judge, and that would take care of any—most of the objections that I would have had because I don't think it's, it's good collegial message to constantly be writing a separate dissent. Well, this is the way it should really be written. I don't think that—that doesn't do anything. It doesn't help you in, in a collegial sense, and it also doesn't really help the law, I don't think,
very much if you're constantly doing that. I would write a separate opinion if I thought and couldn't get the majority to resolve it a different way, and I thought that it might affect the law badly. So I would write in that instance. As far as dissents go, I think I always had—I didn't write big long dissents in every single case, but I wouldn't, I wouldn't—I couldn't concur if I didn't agree with the, with the result. But you have to remember that over 70% of cases are decided unanimously. So it isn't like there are that many dissents regardless of how many they appear to be from a particular person.

HARRINGTON: And maybe you've just spoken to this, but did you have a particular strategy about trying to build coalitions among your fellow judges?

JUDGE BARKETT: Mostly just trying to write persuasively and to some—sometimes, sometimes it wasn't, it wasn't possible, but sometimes it was.

HARRINGTON: Yeah.

JUDGE BARKETT: I did get the court—the panel—to change its mind in a qualified immunity case. And because they had written it one way and I thought that the police officer was not entitled to qualified immunity. And I wrote this long memo to the panel, and they agreed, and they changed their mind. And, and then on—at the 11th Circuit Conference—well, before the 11th Circuit Conference, the Supreme Court reversed the decision by viewing the tape.\[^{14}\] I

don't know if you remember the case, but they viewed the tape the way a jury would view the tape of, of the incident, which I didn't think was right, but at any rate. And so at the 11th Circuit Conference, Justice Thomas, as we were shaking hands—he was shaking hands with everybody, said, "Oh Rosemary, I’m sorry about such and such a case," whatever, and I couldn't help saying, "Well, there's a good thing that came out of it. You all got to see what a jury actually does."

HARRINGTON: Did he laugh?

JUDGE BARKETT: He sort of laughed.

HARRINGTON: That's funny. Was the culture on the 11th Circuit sort of different than the other courts you've been on, like more cooperative, less cooperative, or?

JUDGE BARKETT: It was slightly different because they were living in so far apart from one another, whereas on the Florida Supreme Court, everybody was in Tallahassee—

HARRINGTON: [Interposing] Yeah.

JUDGE BARKETT: —and it became very familial. You know, you could be arguing and you became—you were able to argue like a family would argue where—whereas on the 11th Circuit, you were much more cautious about the arguing. You were much freer on the Florida Supreme Court because you were all going to go to dinner that night or to an event and, and they, they were very good to me. I mean I was always being picked up and taken along with one couple or another couple. And they—I played tennis with them all the time. We had—I have a picture of us,
me and a couple of the justices, other justices on the Supreme Court, all in tennis shorts and Sandra Day O'Connor and her husband when she came to Tallahassee and we all played tennis together.

HARRINGTON: Fun.

JUDGE BARKETT: I played with John Paul Stevens, too. And an interesting story about that is we played tennis a day after the Supreme Court reversed another opinion of the Florida Supreme Court that I either was on the majority or, or had written the majority. And it was the helicopter case where the helicopter came lower than 100 feet or something, and the question was whether, without probable cause, could they do that? And Justice Stevens wrote the dissent, but I—but they reversed me five four. And so he took a tennis ball and he drew a helicopter on it and he had the date and five four.

HARRINGTON: Do you still have it?

JUDGE BARKETT: I think I do, but the writing has faded so badly that I'm the only one that knows what was there.

HARRINGTON: Yeah, that's fun.

JUDGE BARKETT: Yes, he was, he was funny. Another, another side effect of that whole—of that, of that particular case was we had written this—Florida court, I think the—had written it as a majority opinion. I think everybody signed on to it. So it wasn't like I was out in left field. And then our Attorney General, Bob Butterworth, appealed the thing and when I found

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out he appealed it, we—Tallahassee is a small sort of town so

that you were always going to the same events as the

legislature, the executive branch and the professors and the
court. So I saw Bob Butterworth, who was a friend, sort of.

You know, he was a friend. But I saw him at this event and I

yelled at him. I said, how could you appeal that case? That

is just so wrong. And I said, "All those people are doing is

they’re a bunch of voyeurs and they just

want to look at people sunbathing in their yard coming down

that low. You shouldn’t permit it and you shouldn’t have

appealed.” So anyway, the appeal goes on. The court rules

against us or reverses us five four. And the day the opinion

came out, the reason justice—the justice was in town was

because the, the judges, the chief judges were all meeting and

they happened to be meeting in Orlando and I was sitting sort

of on the side there and I receive a package and—of course, I

can't wait to see what it is. So I'm trying to peek at it and

I hope it—it's, it's from the attorney general, Bob

Butterworth, and it's a black bathing suit inside saying just

in case you needed this.

HARRINGTON: That's amazing. I mean, that is a good

illustration of the great relationships you have had with

everyone in your life, I think. You know, you're a bridge

builder.

JUDGE BARKETT: I like people.

HARRINGTON: Yes, and they like you. You know—

JUDGE BARKETT: [Interposing] It's funny.
HARRINGTON: And sort of on that topic, much ink is spilled these days about how polarized courts are.

JUDGE BARKETT: Yes.

HARRINGTON: And do you feel like that has changed over time?

JUDGE BARKETT: Yes.

HARRINGTON: Yeah.

JUDGE BARKETT: I, I mean—of course, I've been gone now since 2013. It's been a while, it's been during that period of time, so I haven't really seen—I mean even our court has—the 11th Circuit when I was on it, we were sociable. We were collegial in that, in that sense. So I don't know what it's like now, but certainly, the opinions have gotten a little more polarized, it seems to me, but I haven't really studied it.

HARRINGTON: When you were on the 11th Circuit, there were some notable cases where you wrote dissents, and then the Supreme Court overturned the decision from which you were dissenting. I'm thinking about Faragher\(^\text{17}\) and—

JUDGE BARKETT: [Interposing] Yes.

HARRINGTON: Maples\(^\text{18}\) versus—

JUDGE BARKETT: [Interposing] ——.

HARRINGTON: Exactly. How did that feel when that happened?

JUDGE BARKETT: Well, it felt great. Are you kidding? Was terrific.

HARRINGTON: Yeah.

JUDGE BARKETT: Ruth Ginsburg signed the slip opinion on Maples


01:22:31 I happened to be by to say hello. It was funny.

HARRINGTON: That's very fun. So you were on the 11th Circuit for, what, 20 years, something like that?

JUDGE BARKETT: Yeah, I think so.

HARRINGTON: As you approach the end of the second decade, did you start to feel a little antsy, like you're ready for a new challenge?

JUDGE BARKETT: Maybe. I do seem to have a track record of moving from job to job.

HARRINGTON: But 20 years is a long time in one place, wasn't it?

JUDGE BARKETT: Yes, it is. But I think, I think I wanted—but when once I reached senior status age or years or however they calculate that, I wanted to give the president the opportunity to appoint another judge. So if I took senior, he would appoint another judge, and there would be two of us in my place kind of instead of just one. And so I knew that I was going to take senior at some point, but then the State Department called and said Justice McDonald is retiring from the Iran-United States Claims Tribunal, would you be interested in filling that spot? And of course, I wasn't sure I knew what the Iran-United States Claims Tribunal was, but I'm always interested in everything, so I said why? I don't know. And they told me about it. And then Harold Koh who was—had been the, had been

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head of the legal department under Hillary, called and said I should really do this and that told me a lot about it and said it's the only place where Iran and the United States can really communicate and talk to each other. It's a great opportunity and so I said—

HARRINGTON: [Interposing] You said yes?

JUDGE BARKETT: —yes.

HARRINGTON: Why did the State Department come to you? That's interesting.

JUDGE BARKETT: Why? Well, I had been involved a little bit in international law. I had worked with the American Society for International Law, and Charlie Brower, who was on the Iran-United States Claims Tribunal, was a big—had been involved greatly and continues to be with the American Society for International Law. And I worked with a couple of professors to work on a handbook for judges on international law, and then also worked with them to try to insert a program on international law in all of the circuit conferences, which we did pretty successfully, I think. And so they knew—so that the people who do the international law knew about me a little bit, and I think they wanted to replace a judge with another judge. It's—in international courts, sometimes there are not very many former judges, and I think the State Department was interested in maintaining a judicial presence on this court and it coincided—I don't know. Because I had been doing all of these other things, they were aware that I knew something about—
HARRINGTON: [Interposing] Yeah.

JUDGE BARKETT: —international law. Unlike—I usually talk about the, the judge from Brazoria County, Texas, where Brazil filed a lawsuit and he said, I don't know why they're filing here, unless they're confusing Brazil with Brazoria. And then he proceeded to say, we've never even seen a, a Brazilian or Bolivian, in Brazoria County. We don't even have a Bolivian restaurant here either.

HARRINGTON: Oh my gosh. They did not call that guy.

JUDGE BARKETT: It was funny.

HARRINGTON: Yeah.

JUDGE BARKETT: So I said I did know a little bit more about international law than he did.

HARRINGTON: Yes, amazing. Can you tell us what the tribunal does?

JUDGE BARKETT: Yes. I’ll get my teaching hat on, which I love to do. If you remember, in 1979, the Iranian Revolution sort of came full force into the United States embassy, and they kidnapped all of the personnel, or a lot of the personnel. I think some 54 or so hostages were taken from the embassy and kept for over a year and a half, and many of the methods that the United States tried to get the hostages back were not successful, and so finally they entered into a treaty. But in addition to the hostages, there had been a lot of businesses that were taking place in Iran because we were great friends with the Shah. And so the Iranian government took over all of those properties and
the United States froze a lot of the assets of Iranians that
were located in this country. So when the treaty was entered
into, it did several things. Number one, it freed the hostages
immediately, which was of course the desired result. Secondly,
it provided that Iran would reimburse the American businesses
for whatever businesses had been taken. And thirdly, the
United States would return to Iran all the property and
material that they had taken or frozen at the time. And of
course, then they needed a tribunal to decide things, like an
American company might say that they had lost property and it
was worth $3 million, and the Iranians would say no, no, it was
only
worth $500,000. And so a decision had to be made on all the
claims that American businesses had against Iran and all the
claims that Iranians had against the United States. So that's
how the, the Tribunal was formed. There are nine members:
three Iranians, three members from the United States and three
third-country members. At the present time, we have one from
Switzerland and two from Germany. So it's nine of us and over
the past—it's been going on a long time, but over the past, 39
years or so, the court has resolved over 4,000 claims. And all
of the individual claims of Americans and Iranians have been
resolved. I think something like $2 billion has been awarded
to Americans, and something like a billion and a half to
Iranian claimants. And now, the only thing that's left are
claims that Iran has made against the United States involving
some thousand contracts for the sale of military equipment. So
Iran is claiming that much of the military equipment that was supposed to have been sent wasn't sent or it—they paid more than they should have paid for it and so forth, and they're trying to get that back and that's what we're doing now.

HARRINGTON: And these are contracts from before 1979 that are—

JUDGE BARKETT: [Interposing] Yes. Everything has to have occurred prior to 1979 in this court, which causes all kinds of—

HARRINGTON: [Interposing] Yeah.

JUDGE BARKETT: —grief in terms of proof and in terms of the clarity of the issues and—it’s very hard to understand why it has gone on so long, except that a lot of people suggest that it’s a vehicle by which open remains—communications would remain open between the two countries. I—of course, we don’t know that part of it.

HARRINGTON: Right.

JUDGE BARKETT: We have to decide the cases as the parties present them to us, and that's another aspect of arbitration. Much of it, if not all of it, is controlled by the parties. So if the parties say they want a six month delay, we have to give them a six month delay.

HARRINGTON: And so is this more like a trial court but with nine judges? Like are they presenting—

JUDGE BARKETT: [Interposing] It's a combination of trial and appellate court because we do hear testimony—

HARRINGTON: [Interposing] Yeah.
JUDGE BARKETT: —and at the same time, a lot of it is oral argument by, by the lawyers. Deliberations are interesting because it's like an en banc every day for a week or two at a time, which is very—

HARRINGTON: [Interposing] Exhausting.

JUDGE BARKETT: —exhausting, yeah.

HARRINGTON: Interesting.

JUDGE BARKETT: Yeah.

HARRINGTON: Do you have good relationships with your fellow judges?

JUDGE BARKETT: Yes.

HARRINGTON: Yeah.

JUDGE BARKETT: I like everybody.

HARRINGTON: Of course, yes.

JUDGE BARKETT: I like everybody. No, I do. The Iranians are very pleasant. We all—we go to dinner every six weeks or so that that we're all in town and it's just the judges, not their spouses. And it's a good—it's a good system to keep everybody collegial, which it is. It wasn't always that way. The very first year, I am told, two of the two Iranian judges that were originally appointed were upset with a Norwegian—I think it was a Swedish or Norwegian judge, who had ruled or indicated his ruling for—was going to be for the, the American side and they apparently grabbed him around the neck in the stairwell and were choking him and they had to be pulled off by several law clerks.

HARRINGTON: Oh my.
JUDGE BARKETT: -- remember that. But those are days and they were recalled and there was a lot of brouhaha about it at the time. But this was a long, long time ago and none of that—

HARRINGTON: [Interposing] Yeah.

JUDGE BARKETT: --happens now.

HARRINGTON: Do you share a common language or do you have translators?

JUDGE BARKETT: No—yes and no. We have translators when we have hearings because a lot—even when we don't have, even when the presentations are in English, a lot of the representatives from Iran are there in the courtroom, so they need to have translations. But when we are in deliberations, we just use English, which poses a different kind of problem in terms of being persuasive because—

HARRINGTON: [Interposing] Yeah.

JUDGE BARKETT: --you have nine people who come from different backgrounds and different cultures and different languages really. And even though they speak English, it's not their first language so that their—there are misunderstandings about what you're trying to say. So when I talk about or when you remember when we talked about writing clearly for every kind of audience, there's another layer on it where you have to write in a way that is clearer to somebody—where English is not their first language.

HARRINGTON: Yeah.

JUDGE BARKETT: And it's really hard.

HARRINGTON: Yeah.
JUDGE BARKETT: We had a big debate at some point because somebody—one of the American judges was talking about or had written about being hoisted on their own petard, and they were like, what, what? What are you talking about? A bomb?

Because they were looking at the French word. So you do have to write even more clearly than clearly.

HARRINGTON: Yeah, interesting.

JUDGE BARKETT: So.

HARRINGTON: You are, I believe, the only woman on the court.

JUDGE BARKETT: Yes, but I wasn't the first only woman.

HARRINGTON: Okay.

JUDGE BARKETT: I replaced Gabriella Kirk McDonald—

HARRINGTON: [Interposing] Okay.

JUDGE BARKETT: —who had been on the Yugoslavian tribunal and then was moved over to this tribunal. She had been also a district judge in Texas, if I'm not mistaken. Had a wonderful history of doing civil rights work before she was appointed to this court. But she became ill, and I think she's okay sort of now, but—because of her illness retired from that court, so—

HARRINGTON: [Interposing] She broke—

JUDGE BARKETT: —I replaced.

HARRINGTON: She broke the barrier for you.

JUDGE BARKETT: Yes.

HARRINGTON: Yes.

JUDGE BARKETT: There, yes.

HARRINGTON: And is the experience of being the only woman different in an international court than in a U.S. court?
JUDGE BARKETT: I kind of think so. I mean, there are some things that the same. You know, people ask, well, have you suffered discrimination? The discrimination, I think, that women suffer now, other than the blatant kind, is this occurrence that happens when you’re going around the table and everybody’s giving their views and you give your views and they’re pretty clear and nobody says anything. And then one of the guys, one next or the one following, repeats what you’ve said. And then everybody says, oh yeah, I agree with him.

JUDGE BARKETT: It’s like, wait, what?

HARRINGTON: Yes. I know of what you speak. Yes.

JUDGE BARKETT: I know and it’s funny because on this new court, I did have visits with the Australian judge who’s a woman and the Chinese judge who is also a woman, and we talked about this phenomena and they both said the same thing: yes, that happens all the time.

HARRINGTON: That’s amazing. So that’s not different from the U.S., but—

JUDGE BARKETT: [Interposing] Yeah.

HARRINGTON: —it happens more in the international courts.

JUDGE BARKETT: Yeah.

HARRINGTON: That’s fascinating. So this court is in The Hague. Do you split your time between The Hague and Miami?

JUDGE BARKETT: I do.

HARRINGTON: Yeah.

JUDGE BARKETT: I go back and forth and I have an apartment in
The Hague right in the middle of the Old Town, and it's a lovely city and it's a great lifestyle because you do a lot of walking, a lot of biking, and food seems fresher.

HARRINGTON: Yeah.

JUDGE BARKETT: I don't know what to tell you. Yes. And there's music all the time.

HARRINGTON: That's great.

JUDGE BARKETT: Yes.

HARRINGTON: So we are filming this in 2022. We were supposed to film it in 2021. It was postponed because we're in the middle of a pandemic or maybe towards the end of the pandemic. I wonder how has the pandemic changed the work of the court or the tribunal?

JUDGE BARKETT: We did work throughout the pandemic on Zoom and that was something new. It forced us, like it forced many other courts and businesses to prepare to work remotely.

HARRINGTON: Yeah.

JUDGE BARKETT: Because we had always--the rule had been that if you were sick and it was supposed to be a deliberation day, there would be no deliberation unless everybody was there. And this whole Zoom experience then has sort of solved that problem because if you cannot be there because of illness or some other reason, you can be there on Zoom and participate that way. So we did do a lot of our deliberations that way.

HARRINGTON: Do you deliberate from Miami ever?

JUDGE BARKETT: Yes, I did.

HARRINGTON: Nice.
JUDGE BARKETT: Yes. Very nice.

HARRINGTON: Yes.

JUDGE BARKETT: Although I like living in The Hague part time. I like the ability to go back and forth.

HARRINGTON: That sounds fun. So most recently, you've been an ad hoc judge on the International Court of Justice.

JUDGE BARKETT: Yes.

HARRINGTON: Can you tell us about that?

JUDGE BARKETT: Well, that—I mean sort of a pretty great cap to a judicial career. The International Court of Justice, also known as the World Court, is the judicial arm of the United Nations and it has 15 judges from 15 different countries, and our American judge had to recuse on a new case that was filed by Iran against the United States. And they had appointed what they—a substitute judge is called— a judge ad hoc. They had appointed one, Judge Brower, but he had resigned in June, and so they needed to replace him and they asked me if I would be willing to do that and of course who wouldn't want to serve on the World Court? It's like the World Supreme Court or something like that.

HARRINGTON: Pretty cool.

JUDGE BARKETT: Yeah.

HARRINGTON: Yeah.

JUDGE BARKETT: Very interesting also. Slightly different from the court that I'm on, on the tribunal. Here, they do require that you write a paper. They have oral argument, and then you

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20 Charles N. Brower’s biography is available at https://www.law.gwu.edu/charles-n-brower.
are required—every judge is required to write a paper expressing their views on all of the various issues. And then that's exchanged before deliberations, which is what I'm going back for now.

HARRINGTON: Interesting. And I watched a video of the oral argument, and as we—

JUDGE BARKETT: [Interposing] Yes.

HARRINGTON: —discussed, you don't get to ask any questions—

JUDGE BARKETT: [Interposing] No.

HARRINGTON: —which is like, whoa, mind blowing, you know.

JUDGE BARKETT: And they read to you.

HARRINGTON: Yeah.

JUDGE BARKETT: Well, that's not just this court. That's—the other court, the other tribunal that I'm on as well.

HARRINGTON: Yeah.

JUDGE BARKETT: They literally read for a week. The—two days or two-and-a-half days to one side, two-and-a-half days to the other side, and their lawyers will stand at the podium and read to you, and we also see it on live note as they're reading it. And you can ask questions, but the lawyers cannot answer—can choose not to answer because they have to go back to their countries because the ramifications of an answer might affect the country. So it's not like an exchange that you have back and forth as we do here in the states.

HARRINGTON: And what is the point of having it done orally as opposed to just doing it with the briefs?

JUDGE BARKETT: Yeah.
HARRINGTON: I'm sure you've asked this question. Is it just tradition, or?

JUDGE BARKETT: It just is.

HARRINGTON: Okay.

JUDGE BARKETT: It's just the way they do it and they, and they are very loath—unlike many courts that I've been on that were willing to change things like administratively and other ways, these tribunals are very loath to change the way things are done.

HARRINGTON: Yeah, interesting.

JUDGE BARKETT: I mean, I—when I first got there, of course, I was very anxious till I get this thing over with and I thought, well, why do we have to have a two-hour lunch period? We could just have half an hour. And I was—they were appalled. The Europeans expect a two-hour lunch period, so we're going to have that.

HARRINGTON: Might as well enjoy it, I guess.

JUDGE BARKETT: Right. Well.

HARRINGTON: So what is the next job you have in your sights on?

JUDGE BARKETT: [Interposing] Oh my God, I don't think there is one. I think I will now have served on more types of courts than anybody ever else, I think. I mean the state court, federal court, trial court, intermediate appellate court, Supreme Court, International Tribunal and the World Court.

HARRINGTON: Pretty cool.

JUDGE BARKETT: What should I do, Sarah?
HARRINGTON: Yeah.

JUDGE BARKETT: I could—

HARRINGTON: [Interposing] Traffic court?

JUDGE BARKETT: Yes, I could do that, I suppose.

HARRINGTON: You mentioned when you're talking about your childhood, about how music was an important part of your life, too. Are you musical other than being a choir leader?

JUDGE BARKETT: Well, you know, I play the guitar a little bit. I'm not very good. I wish I were talented. I would—that would have been a really fun career. But I played and entertain myself and my friends. We do sing-alongs, things like that.

HARRINGTON: Yeah, that's fine. So you mentioned teaching, and I know you taught in elementary school and then later in upper grades, and you have continued sort of teaching even as you've been a judge.

JUDGE BARKETT: I love teaching.

HARRINGTON: Yeah.

JUDGE BARKETT: I love trying to explain concepts in a way that's understandable. I do like it. I've taught at the National Judicial College. I did that for several years and of course doing this international work with the Rule of Law Initiative from the ABA\textsuperscript{21} involved lectures to different judiciaries and different kinds of audiences. And I like doing that, too.

HARRINGTON: Yeah. And you have also taught here at the Institute for Judicial Administration—

\textsuperscript{21} Information about the American Bar Association’s Rule of Law Initiative is available at https://www.americanbar.org/advocacy/rule_of_law.
JUDGE BARKETT: [Interposing] Yes.


JUDGE BARKETT: Yes.

HARRINGTON: What do you think are like the most important lessons for new appellate judges to take into their work?

JUDGE BARKETT: There are several. Probably the, the most—well, first of all, as I said before, I think it's really important to get along with judges and to see the best in them socially so that you can at least have a, a reasonable conversation when you're, when you're debating the cases. I think it's very important to write clearly and persuasively. I do remember Allison22 reminded me that I had co-taught with Tim Terrell,23 who taught appellate writing here. And I think analyzing your writing skills and developing them and being clear is very important. But one of the most important things, I didn't teach it, but somebody else that was here at a time that I was here did. He talked about listening with an unrebutting mind24 and I think, that's been huge for me.

I keep trying to do that. I do not always succeed at it because there's a—

HARRINGTON: [Interposing] Yeah.

JUDGE BARKETT: —there's a natural—you know, communication is very difficult, period. And when you're—when someone is speaking to you, you are—they are first of all, they are

Reference is to the Executive Director of the Institute of Judicial Administration at NYU Law at the time of this interview.

Timothy P. Terrell is a Professor of Law at Emory University and has served as a member of IJA’s New Appellate Judges Seminar faculty.

The “non-rebutting mind” was a concept introduced by Dr. Isaiah Zimmerman, Washington School of Psychiatry, as part of his teachings on conferencing and collegiality at IJA’s New Appellate Judges Seminar.
filtering it through their filters. And then when you're receiving it, you're filtering it through your filters. And there's a tendency when they say the first part of the syllogism, for example. You immediately want to jump in and say, but that's not, you know, instead of listening to the whole thing and trying to understand what their position is. So I think probably one of the most important things is to listen with an unrebuttering mind until you understand the other person, and then you can move in and either agree or disagree with reasons.

HARRINGTON: That's fascinating. That is not how lawyers are taught to think, right?

JUDGE BARKETT: No.

HARRINGTON: Yes.

JUDGE BARKETT: No.

HARRINGTON: That's fascinating. But I can see how that is—facilitates communication and teaching.

JUDGE BARKETT: Right. I think all of that helped.

HARRINGTON: Yeah. Would you ever imagine as a next phase of your career doing full-time teaching?

JUDGE BARKETT: Maybe. I've taught—I taught at the University of Miami Law School, a summer or so ago. The, Introduction to American Law for the masters of laws program students who are primarily from out of the country.

HARRINGTON: Yeah.

JUDGE BARKETT: So I enjoyed that. It's a lot of work.

HARRINGTON: Yeah.
1887 JUDGE BARKETT: It's a lot more work than writing an opinion.

1888 HARRINGTON: Is it? Interesting. I have heard a story about

1889 when you were here at the IJA Appellate Judges Seminar. That

1890 you led the whole group in singing of the

1891 01:45:30 songs of the different branches of the military, and it made me

1892 wonder, how did you come to know those songs?

1893 JUDGE BARKETT: Well, first of all, as I said, we were singing

1894 from all the American musicals of the fifties and sixties and

1895 seventies. And you just learned a lot of those camp songs

1896 when, when we were young. The IJA thing came about because I

1897 brought my guitar

1898 01:45:57 one summer and several of us were singing at the hotel, and the

1899 next night was I think the dinner. I was at the table with

1900 Judith Kaye25 and we started talking about singing. We started

1901 talking about musicals and then we started, you know, singing

1902 quietly. Some of the—to see who knew the words and the next

1903 thing you know, the whole table was singing out loud and got

1904 everybody involved. So the next year, they decided to sort of

1905 have it more formally.

1906 HARRINGTON: A sing-along, sort of?

1907 JUDGE BARKETT: They said, we do this. I said, well, I'll

1908 01:46:38 emcee it. And so what I did—would do is I would go around to

1909 the different tables of judges, pick a judge and say now you

1910 have to sing your state song. So somebody from North Carolina

1911 would have to sing, "Nothing could be finer than to be in

25 Judith Kaye was the Chief Judge of the New York Court of Appeals and an alumna of
NYU School of Law. Chief Judge Kaye was the proponent for NYU Law to have a lecture
series honoring the work of state courts, resulting in IJA’s annual William J. Brennan, Jr. Lecture on State Courts and Social Justice.
Carolina" and Indiana, you know, something about Indiana, so forth. And then the following year, we had a lot of people from the JAG Corps coming, and so I didn't want to ask them to sing from their state, so I asked them to sing from their service and of course, they all got into a competition to see who could sing the loudest of their own songs.

So that's how that happened. It was a lot of fun. That's a lot of fun. So in your life, you have traveled around the world and given lectures all over the world, including in Syria, where your parents are from.

Can you tell us about your experience of going to Syria?

Well, the first time we went to Syria, my sisters and I went. Two of my sisters. So three of us went. The consul for Syria had an office in Detroit, and as my sister was a big deal—automobile dealer, she knew him, and so he kind of arranged for us to meet Asma Assad, Assad's wife. So we went to some event in Jordan, and then we got a driver and we drove into Syria and met with Assad's wife.

And it was a fascinating experience. I thought she was going to give us like 15 minutes, we were told. We were there for an hour and a half, mostly because my sisters were talking about their children to her. I was mortified again. But she was beautiful and lovely. It's just a shame what has happened in Syria. And then the second time was a
couple of years later when I went as part of an ABA delegation and the—it was a seminar over three or four days that had been co-sponsored jointly between the ABA and the British Syrian Society, which was run by Asma Assad's father, who was a doctor in London. And I remember we met Assad. He met with all of the presenters in the, in the program, and he had us sitting facing each other in a long line, and he sat in the middle facing us all and he would ask us questions: what do you think Syria needs more of? And there were exchanges and you—there's no way you could have predicted what was going to happen in Syria with him and—

HARRINGTON: [Interposing] Yeah.

JUDGE BARKETT: —and, you know, the people there, sadly.

HARRINGTON: Did you have any family still in Syria?

JUDGE BARKETT: I do.

HARRINGTON: Okay. And you do now?

JUDGE BARKETT: I do.

HARRINGTON: Okay.

JUDGE BARKETT: We saw them the first time when we went. We, we had a driver take us out to the village where my father's family grew up. And the one brother that was left had all of his family, so there was a huge number of people.

HARRINGTON: Wow.

JUDGE BARKETT: And they—it was really—it was great. They were—as soon as we—they didn't know we were coming. As soon as we arrived, all the pots came out and they started making the grape leaves and the kibbi and everything else.
HARRINGTON: Wow.

JUDGE BARKETT: It was great.

HARRINGTON: Were they a part of your life growing up, where your parents in touch with them?

JUDGE BARKETT: No, not really.

HARRINGTON: Yeah.

JUDGE BARKETT: And also, my father—my mother’s sisters ended up going to South America. I mean, the exodus from Syria was partly to South America, partly to the United States—

HARRINGTON: [Interposing] Yeah.

JUDGE BARKETT: —and other places.

HARRINGTON: What about your other international travels? At any place leave a big impression on you or surprise you?

JUDGE BARKETT: Well, we went—I went to Tunisia shortly after their revolution, and I remember being very struck by one of the—one of the judges there. We started talking about marching in the protests, and I said, what was that like? And she said I kissed my children goodbye in the morning and I knew that I had to be prepared to die.

HARRINGTON: Wow.

JUDGE BARKETT: And it was just like, oh my God.

HARRINGTON: Right.

JUDGE BARKETT: And it was, it was very—moving is not exactly the right word, but very impactful to, to actually talk to somebody who, who was that willing to die for her beliefs. It was incredible, and unfortunately things haven't stayed the same at all—in all of these places. Egypt—we went to Egypt and...
drove by the square where there had been some protests. It's just—it's—it was a remarkable time and then now it seems to have regressed.

HARRINGTON: Do you find that with your work on the Iran-U.S. Tribunal, that you are able to have dialogue with your Iranian counterparts? You said that you have dinner together.

JUDGE BARKETT: Yes. I think we tend to stay mostly on neutral topics.

HARRINGTON: Yeah.

JUDGE BARKETT: I mean, I would love to ask them what is happening with the women in Iran right now.

HARRINGTON: Really? That's interesting.

JUDGE BARKETT: [Interposing] I'm not sure.

HARRINGTON: —put them on the spot?

JUDGE BARKETT: But I am not sure. But it, but it would be putting them on the spot.

HARRINGTON: Yeah.

JUDGE BARKETT: On the other hand, they have no hesitancy in talking about our situation here in the United States.

HARRINGTON: Really? That's interesting.

JUDGE BARKETT: So—

HARRINGTON: [Interposing] Yeah.

JUDGE BARKETT: Yes.
HARRINGTON: Do they ask you about it or just tell you what they think about it?

JUDGE BARKETT: Well, it's just general conversation, you know. An election occurs, everybody's talking about it. We all talk about it, and they join in.

HARRINGTON: That's interesting. So one theme, as I've noted running through your career, is that you were the first or the only woman to hold several positions and I wonder if you can sort of tell us a little bit about what it felt like to break those barriers. You said that you it wasn't a goal you set out for yourself to do.

JUDGE BARKETT: I don't—I just I'm not conscious of it as I said—

HARRINGTON: [Interposing] Yeah.

JUDGE BARKETT: —in a, in a specific way. I'm certainly conscious of it that I'm the only woman in the room a lot of the times.

HARRINGTON: Yeah.

JUDGE BARKETT: But, I mean, you sort of get used to that.

HARRINGTON: Yeah.

JUDGE BARKETT: And I mean to be honest. I, I want other women very, very much, but I also—I don't want ideologues, even if they're women.

HARRINGTON: Right. We talked a bit about how this experience of saying something and having no one react, and then having a man repeat your idea and everyone—

JUDGE BARKETT: [Interposing] Yeah.
HARRINGTON: —saying that’s a great idea, which I think is a universal experience among professional women and maybe all women. Are there other ways in which you felt like you’ve been underestimated or discriminated against because of your gender?

JUDGE BARKETT: I, I think so. I think that, that you are more prone to be discounted in, in a room full of actors, different people. But can I say that, you know, I haven’t gotten a job because of my gender or anything like that? No, I don’t think I can. Can I say that some people opposed me getting a job because of my gender? I’m sure there have been occasions when that has happened when I—I’ve been aware of it.

HARRINGTON: Yeah.

JUDGE BARKETT: So I just—I think I’ve just been very fortunate frankly.

HARRINGTON: That makes a lot of sense. Have you, have you found a community in among other women judges?

JUDGE BARKETT: Yes. In a sense, yes. I feel very strongly that you have to be supportive of women’s organizations and groups, even though sometimes it’s a little hard.

HARRINGTON: Yeah.

JUDGE BARKETT: But I think, I think you have to be supportive of other women’s groups to the extent that you can be, and so I—

and I think, I think it's important to help other women. And most of the time, the only way to help is being inside one of these groups because people don't reach out to you on an individual basis.
HARRINGTON: Yeah.

JUDGE BARKETT: But in the structure of a woman's group, for example, they're much more willing to come and tell you what they need and give you—

HARRINGTON: [Interposing] Yeah.

JUDGE BARKETT: —the opportunity to help. So I think there's a very big value in participating and being part of women's groups for that purpose.

HARRINGTON: Yes, I think they're very supportive. I can remember when I was clerking, there was a meeting in Miami of the woman's—what is it? The women judges?

JUDGE BARKETT: The women judges.26

HARRINGTON: And there was a hurricane. Remember?

JUDGE BARKETT: [Interposing] Oh, yes.

HARRINGTON: —came through Miami. So—that was quite an experience.

JUDGE BARKETT: A couple of them had to go to my apartment and help me mop up the water.

HARRINGTON: Yeah.

JUDGE BARKETT: I think the, the lights all went out at the Loewe's hotel. They had to—

HARRINGTON: [Interposing] Yeah.

JUDGE BARKETT: —go up and down the stairs, right?

HARRINGTON: Yes. That's quite an experience.

JUDGE BARKETT: Yes.

HARRINGTON: You know, this is maybe a question that you've sort of answered in some ways, but I wonder how it has been, you know, being a woman and being an immigrant affected the way you approach—the way you sort of look at our legal system and our constitutional system?

JUDGE BARKETT: Again, I think we are the sum of all of our experiences, and I don't know that you can separate out threads and attribute some view or something to a particular thread. I think you're—the totality of what you've seen, what you've experienced, what you've done. And so I, I think clearly, all of the experiences: my convent experience and the way people treated each other, my family experience and my—being an immigrant has, has had to have an effect in, in how specifically—I'm not sure I can say it except to say it's made me; it's made me care about people. It's made me understand more realistically what people go through than maybe somebody else who hasn't experienced it, although I think I—I think I have a sense of what people experience sometimes when I myself haven't experienced it.

HARRINGTON: Yeah.

JUDGE BARKETT: But I feel empathetic. Maybe the whole of all of those experiences helps make you more empathetic.

HARRINGTON: That seems like an important trait in someone passing judgment on things.

JUDGE BARKETT: Yes.

HARRINGTON: Yes.

JUDGE BARKETT: Yes.
HARRINGTON: What do you see as—just sort of looking forward to the next generation or so, as the big legal or cultural or societal issues that are going to be confronting these up-and-coming generations?

JUDGE BARKETT: Ironically and sadly, I really think it’s the same issues that keep confronting us.

HARRINGTON: Yeah.

JUDGE BARKETT: Justice and equality for all, manifested in a lot of different ways. I—you know, many of the speeches I give have to do with being open to correcting the mistakes we make. I point out that the reason why I think America is so great or and has been so great is not because we’ve accomplished justice, because I think it’s clear we have not in so many areas, but because every time we—I don’t want to use the colloquial words, but anytime we make mistakes, we do eventually correct them. And it’s this willingness to correct the mistakes that I think makes, makes us great. In racial justice, yes, we had Brown versus Board of Education,27 but before we had Brown versus Board of Education, we had Dred Scott28 and we had Plessy versus Ferguson,29 and we had these horrible cases that actually validated—

HARRINGTON: [Interposing] Yeah.

JUDGE BARKETT: —slavery or, or separate and unequal.

HARRINGTON: Yeah.

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JUDGE BARKETT: And so—but then, but then we got Brown and we've fixed it, sort of. We obviously haven't fixed it yet, and we still have so much to do in racial justice, especially with police brutality and things of that nature. The same thing with women, you know. Yes, we got the amendment letting us vote, but you still couldn't serve on a jury and you still—I mean, there were so many things that you were still being unable to do as a woman.

HARRINGTON: Yeah.

JUDGE BARKETT: And then eventually, all of those things got undercut and we became more and more equal. Are we equal today? No.

HARRINGTON: Yeah.

JUDGE BARKETT: We still have these horrible—I don't know if you saw the, the lecture I gave here. Had a lot to do with violence against women and—

HARRINGTON: [Interposing] Yeah.

JUDGE BARKETT: —how we have really messed up the law in that area and not given women protection from domestic violence and other kinds of gender violence. We still have to do a lot in that regard. Immigration. So—I mean it, people do not understand that we have a treaty which requires that we grant asylum to people who are entitled to it, that we grant relief

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if they are going to have to be sent back to a place which is going to persecute them or kill them. We have treaty obligations and those treaty obligations have been passed into law as well.

HARRINGTON: Yeah.

JUDGE BARKETT: So it isn't a question of like, we don't have to do any of this stuff. We're obliged by law to do that.

HARRINGTON: Yeah.

JUDGE BARKETT: And we're not, we're not, I don't think, applying it correctly and fairly and evenly and specifically.

HARRINGTON: Yeah.

JUDGE BARKETT: So immigration is another area. Qualified immunity has to be reviewed again. We, we have to make people responsible for violating other people's constitutional rights. And when, when you read the opinion on qualified immunity from the very beginning, it makes a lot of sense. We don't want to hamstring police officers from doing their job. But it has gotten so out of kilter that now we say if a woman—if a woman comes into the police station showing or talking about being abused, the police officers can just ignore it according to the opinion that is presently guiding the law. That's just not right.

HARRINGTON: Yeah.

JUDGE BARKETT: So all of those things, I mean that's what I—I mean, those are all the things I think of sort of on the top of my head.
JUDGE BARKETT: I'm sure they're—
HARRINGTON: [Interposing] That's a long list.
JUDGE BARKETT: Yeah.

HARRINGTON: You know, for people of my generation—I was born in the seventies. It felt like for a long— for the first few decades that there was this talking about acknowledging mistakes and changing the course of things. There was sort of a joint effort to move things in the right direction and in recent years, it maybe has felt like there's been a turn in a different direction. Do you see that sort of like two steps forward, one step back thing—?

JUDGE BARKETT: [Interposing] Yes.

HARRINGTON: —as part of the—

JUDGE BARKETT: [Interposing] Yes. But that's been historically the way—

HARRINGTON: [Interposing] Yeah.

JUDGE BARKETT: —we, we—we've done that.

HARRINGTON: The pendulum.

JUDGE BARKETT: You know, I was thinking about it too— privacy and the internet. People do have an expectation of privacy, even though they put things on Facebook, for example, but they think it's only their friends and their family that are going to be seeing it. They don't think an employer is or somebody else and I think that we need to work at rethinking all of that.

HARRINGTON: Yeah.

JUDGE BARKETT: Marital law is another one. I mean we have a
lot of work to do.

HARRINGTON: Yes.

JUDGE BARKETT: As it were.

HARRINGTON: Yes. I mean—so one thing I hope and I know is coming across in this interview is your sort of your warmth of spirit and your love of people, as you've said. One thing that goes along with that I've always admired about you is your sense of optimism. You seem—

JUDGE BARKETT: [Interposing] Yes.

HARRINGTON: —or at least that you project optimism. You seem very skilled at finding sort of the silver lining and the bright side and hope for the future. Do you have any tips you can share with the rest of us? Is it just your nature or do you work at that?

JUDGE BARKETT: I think it is—I think it is my nature and that's why we—you know, everybody's so lucky to be born where they're born, to be born of the parents they're born to. They can't take credit for those things, to be—have the personality that they have.

HARRINGTON: Yeah.

JUDGE BARKETT: I may have gotten a lot of that from my parents as well, from my mother who—you know, we used to joke and say that if we were in a—if we, if we have rear-ended someone she would believe that the guy had backed into us instead of us.

HARRINGTON: Yeah.

JUDGE BARKETT: I mean she was very optimistic, I think, at least in—I came towards the end. I was the second youngest.
HARRINGTON: Yeah.

JUDGE BARKETT: So she was older by the time she had me and then my sister.

HARRINGTON: So we just have to try to be more like you, I guess?

JUDGE BARKETT: I don't know about that.

HARRINGTON: Yes.

JUDGE BARKETT: No, you don't want to do that, but I'm, I'm grateful for how, how lucky I've been in so many ways.

HARRINGTON: Yeah.

JUDGE BARKETT: So I think that's very cool.

HARRINGTON: So do you have any advice you would give to people who are just starting out in their legal careers, like how to pick a path?

JUDGE BARKETT: Yeah, I'd say yes to everything.

HARRINGTON: Yeah.

JUDGE BARKETT: Every time you have an opportunity to volunteer for something or to be on a committee or to—whatever, something comes up and it's—within your attention or upon your attention or—I would say yes, say yes. Participate in as many things as you can participate in. It's going to make you a better human being because you'll understand more just about the world, if nothing else, but also how the world works. And secondly, it will expose you to a whole lot more people who—I mean, I didn't do these things in order to get a benefit from it, but you do get a benefit because then they know you and when you're being considered to be on this board, or that
board, on this court, on that court, at least there is a group of people that are making the decisions that have been exposed to you and understand you. So I would say, say yes.

HARRINGTON: And you have, in describing your career, have described it in terms of gratitude to be presented with these opportunities—

JUDGE BARKETT: Yes.

HARRINGTON: —and of course, you have also earned these opportunities with your work and your intellect. Do you—looking back, do you regret any decisions you made, any things you didn't say yes to or things you did say yes to you that you wish you hadn't?

JUDGE BARKETT: I don't think so.

HARRINGTON: Okay.

JUDGE BARKETT: But again, it's—again, it's luck, Sarah. It's—my mind doesn't work that way. I don't think in terms of regret. I've, I've—and I am sure that in hindsight, your memory filters out the bad things, so I'm sure—

HARRINGTON: [Interposing] Yeah.

JUDGE BARKETT: —I don't remember whatever it is I would have regretted.

HARRINGTON: That's great.

JUDGE BARKETT: So I can't think of anything right—

HARRINGTON: [Interposing] Yeah.

JUDGE BARKETT: —right now. I mean, I think I've benefited in some way from every experience that I've had.

HARRINGTON: So that brings us to our final question, which is
what is—

JUDGE BARKETT: [Interposing] The final question?

HARRINGTON: Yes, which is what is the question that you wish people would ask you when they interview you?

JUDGE BARKETT: Well, let's see. You didn't ask me about walking on the Camino del Santiago de Compostela.31

HARRINGTON: Tell me about that.

JUDGE BARKETT: No, you didn’t ask me about skiing in San Moritz and in Austria and other places in Europe. Those things would have been more fun to talk about. Well, we talked about my—playing the guitar badly, but fun. Those kinds of things.

HARRINGTON: Yeah. The non-work parts of your life.

JUDGE BARKETT: Yeah.

The non-work parts of life.

JUDGE BARKETT: Because I think you have to have that too.

HARRINGTON: Yes.

JUDGE BARKETT: I mean everything—and it’s amazing that you can do a lot of both things.

HARRINGTON: Have you had times in your life when you’ve had to work harder to sort of fence off the non-work things, to make—

JUDGE BARKETT: [Interposing] Yes.

HARRINGTON: —time for that?

JUDGE BARKETT: I—yes. Right now, for example, I work with my law clerk. If I’m in in the states, she’s in The Hague, and there's a six-hour difference. So I—if I get up in the morning...

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31 The Camino del Santiago de Compostela, also known as Way of St. James, is a network of pilgrimages through the Iberian peninsula leading to St. James the apostle’s shrine in northwestern Spain.
and I go straight to my computer with a cup of coffee to call—
because I work with her on FaceTime every day.

HARRINGTON: Yeah.

JUDGE BARKETT: If I start with that, I'll never get off the
computer, and so I have to—I have to find ways not to start
with that and call her like at like 10:00 instead of at 7:00.

HARRINGTON: Yeah.

JUDGE BARKETT: And try to get these other things in or done.

HARRINGTON: Yeah.

JUDGE BARKETT: But there—I mean—but then there are lulls, as
you know, and so sometimes, you don't have to call everyday—

HARRINGTON: [Interposing] Yeah.

JUDGE BARKETT: —because there's a lull in the, in the pace of
the deliberations or in the pace of whatever it is you're
doing.

HARRINGTON: Do you think you'll ever just retire, maybe when
you're 100? You're only 83, so you got lots of time.

JUDGE BARKETT: I don't know. I can't imagine retiring. What
would I do? Just watch TV all day?

HARRINGTON: I can't imagine you retiring either, but—

JUDGE BARKETT: [Interposing] No. No, I don't have any plans
right now. I mean, I plan to keep doing what I'm doing until I
can't do it anymore.

HARRINGTON: Yeah.

JUDGE BARKETT: Unless something else comes up.

HARRINGTON: Right. To say yes to?

JUDGE BARKETT: To say yes to, right.
HARRINGTON: Nice.

JUDGE BARKETT: Yes.

HARRINGTON: All right.

Well, that's the end of the questions. We really appreciate you coming here.

JUDGE BARKETT: Thank you.

HARRINGTON: That's wonderful to spend time with you.

JUDGE BARKETT: Thank you, Sarah. It's been a great opportunity to come back to NYU.

HARRINGTON: Yeah.

JUDGE BARKETT: I really enjoyed coming back to New York and coming back to the campus.

HARRINGTON: Thank you to IJA and NYU for having us here.

JUDGE BARKETT: Yes, indeed. Thank you.