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INSTITUTE OF JUDICIAL ADMINISTRATION (IJA)
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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1 [START RECORDING]

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

3 00:00:15 JUDGE ROSEMARY BARKETT: How are you, Sarah?

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

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

11 HARRINGTON: Yes.

12 JUDGE BARKETT: You've done a lot.

13 00:00:34 HARRINGTON: It's been almost 20 years—more than 20 years since
14 I clerked for you.

15 JUDGE BARKETT: - -?

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

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

19 HARRINGTON: That's great. So you have had a fascinating life,
20 and we're going to talk about it today. And I think we're

21 going to do what many people do, which is start at the

22 beginning. So go back to your roots. Can you start by telling
23 00:00:55 us about your family? Where were your parents born?

24 JUDGE BARKETT: Well, my parents were both born and raised in a
25 very small village in Syria and they had an arranged marriage.

26 My mother came home from the village and found a party ongoing
27 and wanted to know what the party was about and they said it's

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28 your engagement party. She said to whom? And they said to
29 that guy over there. And she said oh, I hate him.
30 00:01:25 He steals our chickens. She maybe was around 14, he was about
31 19. And so she was married, and they were supposed to come with
32 my father's brothers to the United States, but she got pregnant
33 and so they had to wait. And his brothers left and went
34 directly to Ellis Island, where they were picked up by another
35 brother who took them to Miami because that's where he had
36 settled. And then after my mother gave birth, they tried to
37 come again with a visa, but the quota system that was in place
38 at the time caught them. So instead, they — patience is not a
39 virtue that my family shares in -- and so they didn't want to
40 wait till the following year to try the quota—to get past the
41 quota system. And they somehow made it to Marseilles and got a
42 boat and went to Mexico and tried to get in that way, but the
43 quota system caught them again. So they spent 20 years or so
44 in Mexico where my siblings and I were born, except for my
45 eldest brother.

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

48 JUDGE BARKETT: No, no. That's amazing. I can't imagine how
49 they did what they did moving through three
50 00:02:56 different cultures with children, not speaking the language or
51 knowing the cultures in each one as they moved through them.

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

54 JUDGE BARKETT: Not any English at all. Well, I take that

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55 00:03:13 back. I think my sister had taught us three words: New York
56 Yankees, Notre Dame, and I forget what the third one was. So
57 we knew those words and have been lifelong fans of both,
58 actually. But there were happy events and sad events. We lost
59 two of my brothers after we came to this country. My brother,
60 George, who had been in the seminary and had stayed in Mexico
61 had some sort of very rare heart disease. So he was brought to
62 Miami, but he passed away very young there. And then
63 approximately a year and a half later,
64 00:03:59 my other brother, Emilio, was killed in a construction
65 accident. So most of my youth, my mother was in mourning
66 clothes. But there were also have a lot of happy memories of
67 being in elementary school at Gesu, which is a Catholic
68 Elementary School in downtown, Miami. I was on the basketball
69 team and made friends with somebody in the sixth grade that I'm
70 friends with today. She lives in California.

71 HARRINGTON: Wow.

72 JUDGE BARKETT: And actually just lost her husband
73 unfortunately. So I remember doing that, being in the school
74 00:04:39 play. I think I was Mary Magdalene, actually. I don't
75 remember exactly—

76 HARRINGTON: [Interposing] More on that later.

77 JUDGE BARKETT: - -. Basically.

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

80 JUDGE BARKETT: Yes.

81 00:04:51 HARRINGTON: Yes.

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

90 HARRINGTON: Amazing.

91 00:05:27 JUDGE BARKETT: It was nice.

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

94 JUDGE BARKETT: I guess primarily in three ways: language,
95 music and food. We spoke—my parents spoke Arabic to each other
96 and to my eldest brother, sometimes. They spoke Spanish to us
97 and then eventually, we threw in the English as well. So there
98 was a lot of language exchanges going on. I did learn—I
99 learned enough Arabic to ask my father for money in Arabic and
100 he was more wont to give it to you then. And food, we had

101 00:06:14 Arabic food and Mexican food. As I was growing up, I had never
102 heard of corned beef hash until I was in my twenties. And
103 music. My father would play Arabic music that we found
104 horrifyingly loud. My mother loved Mexican music and my
105 sisters and I loved American musicals and we would buy the LP's
106 and sing all—knew all the words to all of the songs in these
107 various all-time musicals that I still love.

108 00:06:46 HARRINGTON: That's fun. I can remember someone asking you

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109 when I was clerking; was it more of one or more of the other
110 and you said it was a hundred percent of all of them.

111 JUDGE BARKETT: I think that's right.

112 HARRINGTON: Yeah.

113 JUDGE BARKETT: I felt that way anyway.

114 HARRINGTON: That's a nice way to think about it.

115 00:06:58 JUDGE BARKETT: [Interposing] Yes.

116 HARRINGTON: That you're building and not taking things away.
117 So when you finished high school, what did you decide to do and
118 why?

119 JUDGE BARKETT: Well, I, I always wanted to do something in the
120 theater. I would make my sister—my younger sister— sit and
121 listen to me while I read plays to her and played all the
122 parts. And so I wanted to go to Catholic University in
123 Washington, which was, from my limited research at the time,
124 one of the best schools for theater in the country and my
125 sister had sort of paved the way with my parents, and I had
126 00:07:35 applied and I think I had gotten accepted. So I was all set to

127 go and then somehow, I decided that I should enter the convent
128 instead. There were three or four people in my graduating
129 class who had been slated to go into the convent right after
130 graduation; they had known this is what they wanted to do for
131 years, but it had never occurred to me. I don't think I was
132 particularly religious beyond going to mass

133 00:08:05 on Fridays and on Sundays. But I just got it in my head that's
134 what I should do and so that's what I did.

135 HARRINGTON: And you don't remember what got it in your head?

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136 JUDGE BARKETT: I, I don't think so. I had this exchange once
137 with the former—one of our very first Republican governors of
138 Florida and he was a very flamboyant figure, and I was on the
139 [Florida] Supreme [Court]. I had been involved in his divorce
140 case when I was working for the trial firm that I was working
141 for at the time. It's going to be a silly story, but anyway,
142 you guys can cut it if you

143 00:08:47 want. But when I was on the Supreme Court, he discovered me
144 again and said we have to go to lunch and I said governor, I
145 can't. We ended up going to lunch and he said, tell me your
146 whole life story. I said governor, everybody knows my whole
147 life story by now. And he said, no, no. Where did you go—
148 where did you grow up? Miami. Where did you go to school?
149 Notre Dame Academy. And then what? Well, then I entered the
150 convent and—he said, well, why did you do that? And I said
151 because I thought God wanted me. And he said I don't blame
152 him.

153 00:09:22 HARRINGTON: Mm-hm. All right. That's nice. God has good
154 taste.

155 JUDGE BARKETT: He was funny—

156 HARRINGTON: [Interposing] That's right.

157 JUDGE BARKETT: Claude Kirk.¹ Quite a character.

158 HARRINGTON: That's amazing.

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

160 00:09:35 HARRINGTON: So can you tell us a little bit about your life in
161 the convent?

¹ Claude R. Kirk Jr. served as the governor of Florida from 1967-1971.

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162 JUDGE BARKETT: The first two years of the novitiate were
163 equivalent to like a junior college so that when you finished
164 two years, you would have an AA degree. And you also at the
165 same time, of course, were having religious studies throughout
166 the two-year period. Then you would be sent to either Barry
167 College in Miami or, I was one of the lucky few who got to go
168 to Spring Hill College in Mobile, Alabama. It's a small
169 liberal arts school run by the Jesuits, and a lot of the
170 Jesuits were there finishing up their degrees. So there was a
171 lot of competition with Jesuits—they're a little bit arrogant
172 and of course, competitive between the several of us about
173 getting top grades at Spring Hill. So—and then I taught
174 school, which I loved, and elementary school mostly. And then
175 I was told that I was in charge—I was to be in charge of the
176 choir even though I didn't really have any training to be in
177 charge of the choir, but I was told that the Holy Ghost would
178 help me, which the Holy Ghost did, sort of, in the form of this
179 wonderful woman who was the organist for the church and for the
180 school. And so she handled most of the musical stuff while I
181 handled the discipline and also, I got to wave my arms around
182 like a real conductor. So I had a ball doing that.

183 HARRINGTON: Nice.

184 JUDGE BARKETT: We put on a wonderful production of the Wizard
185 of
186 00:11:28 Oz in one of the municipal auditoriums. We put on Christmas
187 pageants, and we even had the kids between grades three and
188 eight singing the hallelujah chorus in three parts.

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189 HARRINGTON: Wow.

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

192 HARRINGTON: Very cool.

193 JUDGE BARKETT: So, and I got to do that at mass on Sundays. I
194 climbed on top of the pew and conducted the whole congregation
195 in singing. So I took seriously the confidence
196 00:11:59 builder that the Holy Ghost was helping me.

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

199 JUDGE BARKETT: Yeah, I guess. I guess.

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

203 JUDGE BARKETT: Approximately seven or eight or years after I
204 had entered. I had already taken my final vows, so it was a
205 pretty hard decision. It took me a couple of years really
206 00:12:25 to decide to actually do it because you felt like you were
207 breaking a promise. But there were all kinds of things
208 happening in the world at the time. This was around '66, '65,
209 '66, '67. I think I ultimately left in '67. The Vietnam War,
210 protests against the war. Huge civil rights protests all over
211 the country. People were marching and doing something. And,
212 and I think I had become influenced a little bit by the
213 00:13:06 philosophers, Hans Küng² and Teilhard De Chardin³ and was

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.
[Britannicahttps://www.britannica.com/biography/Hans-Kung](https://www.britannica.com/biography/Hans-Kung)

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214 distressed, I guess, is the word - I'm not sure that's the
215 right word -- when they were being muzzled, as it were, by the
216 church saying they couldn't write this or say this and I
217 didn't—I—I've never felt that anybody should be punished for
218 asking questions; why is this this way, why is that that way?
219 I think the combination of all of that. I also saw that our
220 teacher across the hall from me was a lay teacher doing what I
221 was doing and so I didn't feel anymore that we were doing as
222 much as maybe we should be doing. Plus I'm not going
223 00:13:51 to discount the fact that I was growing into being independent
224 minded and—so I think all of that together made me think that
225 the convent was a temporary vocation. I don't regret having
226 been in it.

227 HARRINGTON: Yeah.

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

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

233 00:14:29 JUDGE BARKETT: [Interposing] Yes, I am.

234 HARRINGTON: - - now?

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

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>

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239 was fun.

240 00:14:50 HARRINGTON: Yeah, that's nice. So what—are there things about
241 your family's experience or your early experiences in life that
242 you feel like have shaped you as a person or particularly you
243 as a jurist as we move into your legal career?

244 JUDGE BARKETT: I mean, I don't know how you, –it's hard to
245 answer a question like that because I think you are the sum of
246 all the experiences you've had, which includes your family. I
247 mean, I think I was very lucky in the family that I was born
248 into. They were extraordinarily supportive, even though they
249 did not want me to go into the convent and they tried very hard
250 to

251 00:15:27 persuade me not to do that. But once, once I decided that is
252 what I wanted to do, they were, they were very supportive. So
253 I think, you know, their example certainly—had to have been an
254 influence in my life. They were extraordinarily hard-working
255 people. And, you know, the journey from Syria to France to
256 Mexico to the United States, that was extraordinary. People
257 said to me back in the sixties, seventies, eighties, "Oh,
258 you've accomplished so much" and I laughed because I haven't
259 accomplished anything compared to people that were doing that
260 kind of thing, you know, [like my parents did] in those
261 00:16:09 days under the hardships that existed. So, all of that was an
262 example, an inner sense of duty that you grow up with that I
263 still can't shake. It's kind of an automatic thing. It's,
264 it's strange. And it's not just my parents, it's my sisters and
265 brother and my cousins. They're all doers. They're all

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266 achievers. And they are all very caring. We have a family
267 reunion every year. We've had it for— this will be our 53rd
268 year.

269 HARRINGTON: Wow.

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

271 HARRINGTON: Wow.

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

278 00:17:09 HARRINGTON: That's amazing. So then you decided to go to law
279 school. What made you decide to do that?

280 JUDGE BARKETT: I think it was a combination of wanting to be
281 independent which you couldn't do in the classroom. I was
282 teaching school. After I left the convent, I was teaching
283 school in, in-lay schools. And of course, you're in the
284 classroom the whole time, so I wanted independence and I also
285 had this huge intellectual curiosity about things that affected
286 everybody, like reading a contract to buy a car or, or signing
287 a lease on an apartment. And then on a broader—in a

288 00:17:53 broader sense, wanting to know why laws were passed, why this
289 law and not that law and how did this one come about? So I
290 think it was just a combination of that although my family
291 members would say is because I like to argue. It's always
292 that.

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293 HARRINGTON: Maybe both.

294 JUDGE BARKETT: Maybe all three, yes.

295 00:18:16 HARRINGTON: And you went to the University of Florida for law
296 school. Did you think about leaving Florida at that point? I
297 know you have traveled far and wide since then, but–

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

299 HARRINGTON: Yeah.

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

305 00:18:43 HARRINGTON: That makes sense. And while you're in law school,
306 were there particular subjects that you were very interested in
307 or did you have ideas about the kind of lawyer you were going
308 to—wanting to become?

309 JUDGE BARKETT: No.

310 HARRINGTON: No.

311 JUDGE BARKETT: Law school was a little overwhelming in that I
312 was learning words that I had never heard before, like “tort.”
313 What is a tort? And I had a liberal arts education starting in
314 the convent, where, you know, was–

315 00:19:09 primarily, I,— I had a degree in English Literature and
316 Education. So a lot of these concepts were, were very new.
317 But primarily, I think I just wanted to start working and I
318 ended up in a trial firm, which in retrospect was very
319 interesting because to me now, it seems like a combination of

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320 both teaching and theater.

321 HARRINGTON: Hmm, right.

322 00:19:36 JUDGE BARKETT: Because you have to present a play as it were.

323 You have to decide what witnesses you want to go first and in

324 the middle and last and all of that.

325 HARRINGTON: Interesting.

326 JUDGE BARKETT: It's—it was.

327 HARRINGTON: So before we get to your first job, you—when you

328 graduated from law school, you were the first woman at the

329 University of Florida to ever earn the Miller Memorial Award

330 for the outstanding senior graduate. This will be a theme in

331 our conversation today: the first woman to do many things.

332 00:20:04 JUDGE BARKETT: Yes.

333 HARRINGTON: Nowadays, law school enrollees are a little bit

334 more than half women, but that was not—certainly not the case

335 when you were enrolled?

336 JUDGE BARKETT: No, there were only two or three or so, four

337 women when I was going to law school.

338 HARRINGTON: Yeah.

339 JUDGE BARKETT: And they had this custom that when a woman

340 walked into the classroom or into the library or was called

341 upon in class, the guys would shuffle their feet on the

342 00:20:33 wooden floor and there would be this tremendous racket. I

343 suppose it was supposed to embarrass us or something.

344 HARRINGTON: Huh.

345 JUDGE BARKETT: So I have a memory of that. They don't do that

346 anymore.

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347 HARRINGTON: That's terrible.

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

349 00:20:48 It wasn't all just embarrassing things. I was the first woman
350 on the, on the moot court team and that--you know, this whole
351 thing is sort of like a therapy session because it's reminding
352 me of all these stories that I'm probably cluttering up this
353 video with --but I remember we went to Atlanta for a
354 competition of the moot court team and we had a set amount of
355 money that the law school gave to us. And the boys were going
356 to make out much better financially than I was because they
357 could share a room and I had to have my own room. But they
358 were very good guys and so they decided that we would
359 00:21:30 all pool the money and divide it evenly so that everybody would
360 have the same amount, which was fine, except that when we were
361 checking out the next day, I was in this very long checkout
362 line and the first guy comes up to me and hands me this cash
363 and says, this is for the room last night, and then the next
364 guy comes up and does the same thing. And by the time the
365 fourth guy came up, everybody in the lobby was staring and the
366 guys were all just grinning. But it was funny.

367 HARRINGTON: That's very funny.

368 JUDGE BARKETT: Yeah.

369 00:22:02 HARRINGTON: Love that. Were you, at that stage, at least
370 motivated to be the first woman to do things?

371 JUDGE BARKETT: No, I never thought of that.

372 HARRINGTON: Yeah.

373 JUDGE BARKETT: My head doesn't work that way. An opportunity

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374 00:22:11 comes up and I—I say yes, and without really thinking of this
375 consequences of being the first woman. I mean, I'm not naive
376 enough not to realize that on some occasions, it helps, but
377 also, I'm very aware enough to know that in some occasions it
378 hurts.

379 HARRINGTON: Yeah.

380 JUDGE BARKETT: So.

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

384 00:22:36 JUDGE BARKETT: Yes.

385 HARRINGTON: Okay.

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

394 00:23:09 No, she wasn't going to sell it. And once she decided to do
395 that, they were, they were extremely supportive and she should
396 be the one sitting here. Her story is much more interesting.
397 She ended up when she passed away a couple years ago owning
398 something like seven or eight dealerships; Jaguar dealerships,
399 Ford dealerships and, and so forth anyway. So yes, they were
400 all very supportive—we were all very supportive of her, they

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401 00:23:36 were all very supportive of me.

402 HARRINGTON: Yeah.

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

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

408 JUDGE BARKETT: [Interposing] And they would call.

409 HARRINGTON: And they called a lot.

410 JUDGE BARKETT: All kinds of stuff, yeah.

411 00:24:01 HARRINGTON: I have sisters too. It's nice that they were such
412 an important part of your life.

413 JUDGE BARKETT: Yes.

414 HARRINGTON: Yeah.

415 JUDGE BARKETT: And still are.

416 HARRINGTON: Yeah.

417 JUDGE BARKETT: The two that are left.

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

420 JUDGE BARKETT: Yes.

421 00:24:12 HARRINGTON: Were there any cases that sort of stick in your
422 mind that had a big influence on you, or?

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

427 HARRINGTON: Yeah. Did you do many trials or did things

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428 00:24:34 mostly–

429 JUDGE BARKETT: [Interposing] Yes.

430 HARRINGTON: Okay.

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

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

438 00:24:57 JUDGE BARKETT: No. No. I—we just worked. I mean, we didn't—
439 I didn't participate—I'm embarrassed to tell you, but I didn't
440 participate politically or civilly very much. Between family
441 obligations and work, that was primarily what we did. So it
442 never occurred to me that I would know anybody to be a judge.

443 HARRINGTON: And then 1979 rolled around and things changed.
444 And then Governor Bob Graham⁴ appointed you as a state circuit
445 court judge, which is a trial court judge.

446 JUDGE BARKETT: Yes.

447 HARRINGTON: How did that happen?

448 00:25:32 JUDGE BARKETT: Well, I, I, I had left the firm that I'd been
449 with for all these years and was a sole practitioner and I was
450 just having to realize that that I had too much work to be a
451 sole practitioner. So I either had to hire somebody or, or go
452 work for a firm or do something else. And two members of the
453 Judicial Nominating Commission that I knew —because we were

⁴ Daniel Robert “Bob” Graham served as governor of Florida from 1979 to 1987.

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454 always small trial, trial city, West Palm Beach, at the time.
455 00:26:06 They came to me and said we, we want you to apply for the
456 circuit court because we want a trial lawyer to be a trial
457 judge, which is not to say somebody that didn't have trial
458 experience couldn't also be a great judge. But they thought
459 that it would be good to have somebody that understood what a
460 trial lawyer's life was like would be a good addition to the
461 bench, so. I said, well, okay but I don't know anybody. And
462 they said, well, you don't have to know anybody and—you know,
463 as I said, it was a small trial town and everybody kind of knew
464 everybody. So, I got appointed to the, to the trial bench.
465 00:26:47 HARRINGTON: And did you preside over all kinds of trial cases?
466 JUDGE BARKETT: All kinds.
467 HARRINGTON: Okay.
468 JUDGE BARKETT: Criminal, all kinds of civil cases,
469 constitutional cases. Was always very interesting—the, the
470 judges from other countries where I would talk sometimes were
471 always very interested in the fact that our trial courts also—
472 and state trial courts, did constitutional questions on
473 occasion
474 HARRINGTON: Right.
475 00:27:15 JUDGE BARKETT: Because they—many of those countries still had
476 separate constitutional courts. But yes, we did everything.
477 HARRINGTON: What was the biggest sort of change transitioning
478 from a judge—from a lawyer to a judge?
479 JUDGE BARKETT: Control, I think. It was great to be in
480 control because as a trial lawyer, you have very little

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481 control. First of all, the judge sets the schedule, so you
482 00:27:40 have to show up for trial when the judge says you have to show
483 up for trial. The judge makes the decision and sometimes, it's
484 a decision that you think is dead wrong. The other lawyers set
485 deposition dates. And so your whole life is kind of controlled
486 by extraneous things. And when you become the judge, you get
487 to set the trial schedule, and you get to decide cases exactly
488 the way you think they should be decided.

489 HARRINGTON: That sounds better.

490 JUDGE BARKETT: It sounds much better. Yes.

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

493 JUDGE BARKETT: I did.

494 HARRINGTON: How did that happen?

495 JUDGE BARKETT: Well, I--there were a few of us that got very
496 interested --I got very interested in organization and court
497 management issues and trying to figure out how we could
498 accelerate the whole trial process so that cases didn't take so
499 long. And in the process of all of that, well, I--we decided I
500 should run for being chief judge and of course and--not of
501 course. I said of course, but I mean I--well, I say of course
502 00:28:51 because they wanted somebody to go implement all this stuff and
503 I was willing to do it and so I was appointed and--or elected by
504 the other judges and we did some stuff to try to make fairer
505 the distribution of cases and try to set guidelines for when a
506 case should be completed and things of that, of that nature.

507 HARRINGTON: Yes.

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508 JUDGE BARKETT: But then, I went over to the Fourth District
509 00:29:18 Court of Appeals, so I–
510 HARRINGTON: [Interposing] Yeah.
511 HARRINGTON: –I, I didn't stay as long as I would have liked to
512 have done whatever was necessary to make things a whole lot
513 better although I think we made it a little better for a while.
514 HARRINGTON: And nice that your colleagues were the ones who
515 chose you to be the judge actually.
516 JUDGE BARKETT: Yes.
517 HARRINGTON: It's a vote of confidence.
518 00:29:37 JUDGE BARKETT: Yes.
519 HARRINGTON: Yeah.
520 JUDGE BARKETT: Yes.
521 HARRINGTON: So as you say, in 1984, you became an appellate—a
522 state, appellate court—
523 JUDGE BARKETT: [Interposing] Yes.
524 HARRINGTON: –judge. How did that happen?
525 JUDGE BARKETT: Same kind of way that one—somebody was retiring
526 and somebody else came and said you should apply for that. I
527 said—I—I'm very bad about—I mean, I always say yes to things,
528 00:29:58 most things—almost all things, actually. And I mean, it makes
529 it sound as though I'm very reactive rather than—but I think
530 that is how it, it kind of happens. I never think that I'm—I–
531 I'd be the one to, to initiate some of these things. I think
532 it has to do with that whole imposter syndrome thing.
533 HARRINGTON: Mm-hm.
534 JUDGE BARKETT: I don't know.

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535 00:30:30 But anyway, that's how it happened.

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

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

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

542 JUDGE BARKETT: We did our own appeals—

543 HARRINGTON: [Interposing] Okay.

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

545 00:30:49 We totally did our own appeals. If somebody else appealed one
546 of our cases, we responded and did the appeal. And if we were
547 appealing, we also did our, our own appeals.

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

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

555 00:31:27 HARRINGTON: Yeah.

556 JUDGE BARKETT: But I enjoyed both of them.

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

560 JUDGE BARKETT: Well, as a trial judge, of course, you don't
561 have to get anybody else's vote for making a decision. You

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562 00:31:45 really have control of the whole case and you can make
563 decisions. You also have the freedom to try to work with the
564 parties when you think that—I mean, there were several cases—
565 kinds—not kinds of cases, but several cases where the plaintiff
566 was partly right, but the defendant was partly right too, but
567 the outcome had to be one or the other and you had the freedom
568 to talk to people and try to get them to work something out,
569 and I like that. On the other hand, the appellate work, the
570 disadvantage was that you have to have another person vote with
571 you in order to effectuate the result that you want. And so
572 00:32:25 that's kind of a disadvantage. I would have liked to have
573 decided all my appellate cases all by myself. And—but at the
574 same time, the advantage was this intellectual challenge of
575 organizing the issues and trying to work through them and
576 understand the reason for them. I think there are judges
577 unfortunately, who decide things from a gut feeling and there
578 are others who try to follow the, the line of cases that ends
579 up either where you are or that diverges before you and goes
580 into two or three different branches and you're trying to
581 coordinate all of them and find the right answer. It's sort of
582 00:33:16 like an intellectual puzzle—
583 HARRINGTON: [Interposing] Yeah.
584 JUDGE BARKETT: —and I love that part of it.
585 HARRINGTON: I heard about a talk once that Justice Sotomayor
586 and Justice Kagan did, and Justice Sotomayor talked about how
587 when she writes opinions, she tries to make people feel
588 something. And Justice Kagan said when she writes opinions,

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589 00:33:31 she tries to make people think something.

590 JUDGE BARKETT: Yeah.

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

593 JUDGE BARKETT: I, I—maybe in the middle.

594 HARRINGTON: Yeah.

595 JUDGE BARKETT: I—no, more on, more on Justice Kagan side, I
596 think. I, I, I don't think opinion writing is the place for
597 like, including poetry or funny stories, although there's this
598 wonderful case. I'm not going to go into it, but anyway,
599 00:34:01 it's very funny. But I don't, I don't think that's the place
600 for appellate opinions and as you may remember, my law clerk
601 manual had a very strict structure of how an opinion ought to
602 be written and what should be included, and where so that it
603 would be organized and hopefully, every kind of reader would
604 understand it.

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

607 JUDGE BARKETT: [Interposing] Yes.

608 00:34:31 HARRINGTON: —right? Do you think—and my view is there's less
609 of that when you get to the appellate level—

610 JUDGE BARKETT: [Interposing] Oh, there is.

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

614 JUDGE BARKETT: Well, I think it's less. I mean there's not
615 00:34:46 really a production. You write the brief and you appear at

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616 oral argument, and I'd love to interview you and find out why
617 you think it's theatrical in the appellate realm.

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

620 JUDGE BARKETT: [Interposing] Yes.

621 HARRINGTON: —there is still some—

622 JUDGE BARKETT: [Interposing] A little bit.

623 HARRINGTON: Yeah.

624 00:35:08 JUDGE BARKETT: Trying to be persuasive.

625 HARRINGTON: Right. Right.

626 JUDGE BARKETT: Yes.

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

629 JUDGE BARKETT: Yes.

630 HARRINGTON: So then you were not in that court for very long.
631 In 1985, Governor Graham appointed you to the Florida Supreme
632 Court, where you were, I believe, the first woman ever to be on
633 that court. Is that right?

634 00:35:25 JUDGE BARKETT: Yes.

635 HARRINGTON: Yes.

636 JUDGE BARKETT: I was.

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

639 JUDGE BARKETT: What was that like? The first time I was asked
640 what it was like to be the first woman justice, I think I
641 00:35:41 answered it very flippantly by saying, well, I don't have
642 anything to compare it to because I've never been the first

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643 male justice. But I think it was a bigger deal than I thought
644 it was going to be in Florida. Florida is a big state and—
645 HARRINGTON: [Interposing] Yeah.

646 JUDGE BARKETT: —there was a lot of publicity about the fact
647 that I had been appointed, and also the workload was very
648 different than I anticipated. It was much greater because in
649 addition to all of the cases that we would hear, we had all of
650 the administrative work to do as well -- the
651 00:36:22 budget—preparing the budget for the legislature and in essence
652 lobbying for it, certifying how many judges we needed in all of
653 the various circuits in Florida. And as I said, it's a huge
654 state. So it involved a lot of things.

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

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

660 00:36:52 HARRINGTON: Yeah.

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

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

665 JUDGE BARKETT: Yes.

666 HARRINGTON: So did you use the justices' door, or did they
667 change that?

668 00:37:04 JUDGE BARKETT: They did change it.

669 HARRINGTON: Okay.

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670 JUDGE BARKETT: They actually had to put in a bathroom in the
671 judges' chambers where we would have conferences because there
672 was only one bathroom. And I did say if you don't want me to
673 follow you in there, you better do something about that or
674 something along that line. But they were very funny about the
675 whole thing and very welcoming. The court—the members of the
676 court were very welcoming. I particularly remember Justice
677 00:37:33 Jimmy Adkins,⁵ who was like the dean of the court. He was the
678 oldest member of the court and was a very sort of legendary
679 figure in North Florida, where all the good old boys are.

680 HARRINGTON: Yeah, it's a different state.

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

686 HARRINGTON: That's very welcoming.

687 00:38:04 JUDGE BARKETT: And indeed it was. Yeah.

688 HARRINGTON: Yeah, that's nice.

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

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

693 JUDGE BARKETT: Yes, right.

694 00:38:15 HARRINGTON: Were there any particular cases you can remember

⁵ [James Calhoun Adkins, Jr.](https://supremecourt.flcourts.gov/Justices/Former-Justices/Justice-James-Calhoun-Adkins-Jr.) served as a Justice of the Florida Supreme Court from 1969 to 1987. His biography is available at <https://supremecourt.flcourts.gov/Justices/Former-Justices/Justice-James-Calhoun-Adkins-Jr.>

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

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

701 HARRINGTON: Right. So you became sort of well known for being
702 against the death penalty. That was the public perception of
703 you from your time on that court. Do you think
704 00:38:44 that's a fair characterization of your views?

705 JUDGE BARKETT: I think it's fair to say that I was very
706 concerned about the death penalty and the death penalty issues.
707 I became very concerned about the procedural difficulties of
708 applying the death penalty fairly and equally. First of all,
709 I, I had this overarching impression once I got to the court
710 and we began hearing death cases, that an overwhelming number
711 of them involved very poor people and very mentally disabled
712 people. I thought it would be racial, but—and I've never done
713 an actual study, but, but what hit me was again the poverty
714 00:39:29 that these people came from and the mental disabilities that
715 many of them had. And so that bothered me, and the criteria
716 for applying the death penalty became very—well, it defied
717 definition really. And so I would be very concerned when...—the,
718 the states were required...—the Supreme Court said that you had
719 to have aggravating factors in order to narrow the number of
720 people that would be

721 00:40:08 eligible for the death penalty. So the states set out some

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722 criteria, and some of the criteria just defied definition.
723 Florida had the, the aggravating factor of "cold, calculated
724 and premeditated murder." And in conference with the, with the
725 boys, I, I said well, what is "cold, calculated and
726 premeditated?" How can that be different than premeditated
727 murder? How do you apply that? And so the opinion that
728 ultimately came out said something like you had to have
729 heightened premeditation, but it is beyond me how you can have
730 heightened—how can you be more premeditated than premeditated?

731 00:40:47 HARRINGTON: Yeah.

732 JUDGE BARKETT: Or—some states had an aggravating factor that
733 said you had to commit the murder with an utter disregard for
734 human life. You know, I don't mean to be colloquial, but duh,
735 what murder isn't—doesn't occur with a total disregard for
736 human life? Or "heinous, atrocious and cruel." A murder had to
737 be more heinous, atrocious and cruel. And we spent a lot of
738 time, I remember, in conferences on our Supreme Court trying to
739 decide whether this murder was particularly heinous, atrocious
740 and cruel. There would be debates about 'does that mean that
741 the murderer had to intend it to be [more heinous or cruel]',
742 or [does that mean] 'that the victim had to feel it as being
743 [more heinous and cruel]' as opposed to any intention on the
744 part of the murderer [that it be more cruel]? I mean it was
745 just really difficult and, and unfair, and a checkerboard
746 pattern of applications of all of these [criteria] across the
747 states made it very unfair to me. So I had—yes, I had those
748 concerns. If I were confronted with a case that clearly,

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749 clearly met all the
750 00:42:00 criteria, then I, I felt that I had, I had an oath and I had to
751 apply the law. But I think that I applied the law more
752 carefully than others might have.

753 HARRINGTON: Hmm.

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

758 HARRINGTON: Yeah.

759 JUDGE BARKETT: And I looked at it—we very seldom debated guilt
760 00:42:30 because it was generally pretty straightforward. But I looked
761 at it more from the sentencing perspective of whether or not
762 you were really narrowing the, the number of people that were
763 eligible for the death penalty, which is what I saw as the
764 responsibility laid down by the Supreme Court at the time that
765 we were deciding these cases. I know that's a very long
766 answer, but it's a complicated—

767 HARRINGTON: [Interposing] Yes.

768 JUDGE BARKETT: —answer.

769 HARRINGTON: That's fascinating. Did you feel that you
770 00:42:53 were swimming upstream in that effort among your fellow
771 justices?

772 JUDGE BARKETT: Sometimes.

773 HARRINGTON: Yeah.

774 JUDGE BARKETT: Although sometimes not. We, we reversed a
775 death—in Florida, we have a very different standard for

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776 reasonable doubt than does the 11th Circuit. After I got on
777 00:43:10 the 11th Circuit I was shocked to find out that it was
778 different. But in Florida, we had a standard that
779 said if you have only circumstantial evidence, and the
780 circumstantial evidence can indicate both innocence and guilt,
781 you must acquit, because you cannot then say that it has been
782 proven beyond a reasonable doubt, right? And in in the federal
783 system, they just let the jury decide whatever they want to
784 decide.

785 HARRINGTON: Yeah.

786 JUDGE BARKETT: And so we reversed a, a death penalty case.
787 00:43:46 All seven of us signed on to it because of this principle;
788 there was only circumstantial evidence and it could point to
789 either innocence or guilt. And, and I remember getting a lot of
790 grief for that case in my confirmation and also the court took,
791 took some hits in the press for reversing that case because I
792 think it had been sort of an egregious murder. But, you
793 couldn't tell whether this guy actually did it and I think that
794 the decision was correct.

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

798 JUDGE BARKETT: Yes

799
800 JUDGE BARKETT: And this is an opinion written by one of our
801 more conservative judges, too, who applied that principle of
802 00:44:31 law—

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803 HARRINGTON: [Interposing] Interesting.

804 JUDGE BARKETT: –correctly, I think.

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

808 JUDGE BARKETT: I don't know that I was surprised. My head
809 doesn't work that way either. Things just happen and whatever
810 it is, it is and you, you deal with it. But yes, it did. That
811 became an issue during my merit retention campaign where
812 00:44:57 you were accused of—and my thereafter, confirmation where you
813 were accused of being soft on crime, which I never understood
814 exactly what was meant by that.

815 HARRINGTON: [Interposing] Yeah.

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

817 HARRINGTON: Right. Who is?

818 JUDGE BARKETT: Who is? Of course.

819 HARRINGTON: Yeah.

820 JUDGE BARKETT: So.

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

824 JUDGE BARKETT: Yes.

825 HARRINGTON: And you went through a merit retention campaign.

826 JUDGE BARKETT: Yes.

827 HARRINGTON: What can you tell us about how you became the
828 00:45:26 chief justice? Was that—

829 JUDGE BARKETT: [Interposing] We—it's elected by all of the

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830 justices.

831 HARRINGTON: Yeah.

832 JUDGE BARKETT: And we really honestly take turns—took turns at
833 it, although there have been instances of rejection. So it's—
834 it was validation in a sense that I wasn't so wacky that they
835 weren't going to let me be chief justice. So I got all the
836 votes from all the other justices when it was my turn as it
837 were. And how—that's how that happened. And again, I, I
838 00:46:02 appreciated the opportunity to work a lot on organizational
839 issues and case management issues. I tried really hard to
840 coordinate and, and combine all of family law issues, trying to
841 get the “one family, one judge” concept accepted because there
842 were a lot of problems in family cases. One judge might have
843 the delinquency case, another judge might have the dependency
844 case, another judge would have the family's divorce case. And
845 these poor people—mostly poor people were having to run around
846 to different courts and leave work and lose their jobs. Plus
847 sometimes, the judges would not
848 00:46:50 know what the other judge was doing in that particular
849 instance. I was trying really hard. We've managed to make
850 some progress in that area, but I don't think enough.

851 HARRINGTON: Interesting, huh.

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

855 00:47:14 HARRINGTON: Interesting. And so then you had to have—
856 (coughs), excuse me, a retention campaign.

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857 JUDGE BARKETT: Then I had to have—but I wasn't the first one.
858 They had started two elections prior to mine where special
859 interest groups had started challenging in retention races—in a
860 few retention races in the Supreme Court. I think the first
861 one was a ballot initiative having to do with taxes and some
862 small special interest group challenged some of the justices
863 based on that. And in the next year, Lee Shaw⁶ was challenged.
864 He had written the opinion in, in the abortion for
865 00:47:58 minors case,⁷ where the court, where the court found
866 unconstitutional a law that prohibited abortions for people
867 under 16 or some age, but it didn't provide for a way for a
868 minor, for example, to go to a judge in order to get permission
869 [for an abortion] when it might be a case of incest or when the
870 parent whom you were supposed to get permission from was
871 actually the one who had raped the child. And so we sent it
872 back to the legislature saying that there needed to be a
873 judicial way of addressing that problem. So, he got challenged
874 and got by and then it was my turn next, and I got challenged
875 by
876 00:48:55 basically the same group on the choice issue.
877 HARRINGTON: So when—the retention campaigns come up, is it
878 sort of automatic every certain number of years, or?
879 JUDGE BARKETT: Well, you're, you're on the ballot every six
880 years—

⁶ [Leander J. Shaw, Jr.](#) served as a Justice of the Florida Supreme Court from 1983 to 2003. His biography is available at <https://supremecourt.flcourts.gov/Justices/Former-Justices/Justice-Leander-J.-Shaw-Jr.>

⁷ [In re T.W.](#), 551 So. 2d 1186 (Fla. 1989), available at <https://law.justia.com/cases/florida/supreme-court/1989/74143-0.html>.

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881 HARRINGTON: [Interposing] Okay.

882 JUDGE BARKETT: –yes. With a yes, no vote, but your hands are
883 00:49:14 tied. You cannot campaign unless there is a formalized
884 campaign against you.

885 HARRINGTON: I see.

886 JUDGE BARKETT: So theoretically, that's how a justice in
887 Tennessee, for example, got ousted because somebody didn't
888 challenge her until this very, very wealthy group challenged
889 her like a month before the elections and it's hardly enough
890 time for you to be able to put together a campaign. A lot
891 needs to be done, I think, with reference to judicial elections
892 in, in states, so—at any rate. There was this group
893 00:49:51 that had challenged Lee and was challenging me as well. But in
894 my case,—rather than going on the choice issue, they went on
895 the soft on crime issue, thinking that might work better.

896 HARRINGTON: And what was it like to campaign?

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

898 HARRINGTON: Really?

899 JUDGE BARKETT: Well, I take that back. I didn't like asking
900 for money. I hated asking for money. And there was a sort of
901 *sub rosa* attitude I had that said, if you guys don't want me,
902 fine. You know, but you still had to work hard because you
903 00:50:27 didn't want single issue people to win in a retention campaign.
904 So I worked hard and—Florida is such a huge state and, you
905 know, there isn't the kind of money that you have in a regular
906 campaign. And so, I had one person as a staff person, I think
907 maybe two—towards the end. And the part that I liked the total

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908 best was the question and answer period after I gave a speech.
909 I would give a
910 00:51:02 speech and then it would be open for questions and answers and
911 then I could really talk about—
912 HARRINGTON: [Interposing] Yeah.
913 JUDGE BARKETT: —things people wanted to talk about in a way
914 that hopefully, they understood. So I enjoyed that part, but.
915 HARRINGTON: I remember seeing a photograph of you, I think,
916 riding in a convertible and like waving to the crowd.
917 JUDGE BARKETT: That was, that was Lawton Chiles's⁸
918 inauguration.
919 HARRINGTON: Is that what that was? Okay.
920 00:51:25 JUDGE BARKETT: Yeah. And we all had our own little
921 convertible and rode in his parade, but it was his election
922 parade.
923
924 HARRINGTON: You—I mean, I think of you as sort of an extrovert
925 and such a warm person. And so I would imagine that you would
926 like the—interacting with people - -.
927 JUDGE BARKETT: I love, I love people—
928 HARRINGTON: [Interposing] Yeah.
929 JUDGE BARKETT: —at a distance. No, no, no. I love people. I
930 00:51:47 do. I talk to everybody because I,—I like them. I want to
931 hear what—who they are and what they're doing. And—
932 HARRINGTON: [Interposing] Yeah.
933 JUDGE BARKETT: —so I do, I do enjoy that.

⁸ Lawton Chiles served as governor of Florida from 1991 to 1998.

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934 HARRINGTON: So then in 1993, President Clinton nominated you
935 to a seat on the 11th Circuit. Is that something you went
936 after or did they again come to you?

937 00:52:07 JUDGE BARKETT: Well, there was a lot of talk when Clinton was
938 elected. And ultimately, I think the president's lawyer called
939 and asked if I were nominated, would I accept? And I said yes.
940 At that time, my parents were both somewhat ill and my sister
941 was their caretaker and living with them. And so I was
942 traveling to Miami from Tallahassee almost every weekend to
943 help out as much as I could. And so the idea of living in
944 Miami, choosing to live in Miami, we couldn't do that. Now,
945 the justices on the Florida Supreme Court can live anywhere in
946 the state and they have a budget to travel and so forth. But
947 then,
948 00:52:47 you were expected to move to Tallahassee, which I did, and,
949 and—sorry, but that reminded me of another sort of family story
950 where—which kind of shows you both the support that family
951 members have, but also how they view these “important” jobs.
952 My mother was being—my sister was taking my mother to vote in
953 the merit retention campaign we were just talking about.

954 HARRINGTON: Mm-hm.

955 JUDGE BARKETT: And my mother was complaining because I wasn't
956 coming home for as many family events as I used to
957 00:53:34 when I lived in, in West Palm Beach. So my sister says, well,
958 mom, you know, first of all, she's lives in Tallahassee and
959 it's much further to come to Miami from Tallahassee than it was
960 from West Palm and secondly, she's got so much more work to do

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961 than she had to do when she was in in West Palm. And my mother
962 said "well, then why are we voting for her?" And that is a
963 true story, and that shows you what they think is important is
964 that
965 00:54:01 you spend time with your family.
966 HARRINGTON: I hope she voted for you, though.
967 JUDGE BARKETT: I hope so, too.
968 HARRINGTON: You'll never know, right?
969 JUDGE BARKETT: I'll never know is right. Anyway. So I was
970 happy to think about—being able to move to Miami.
971 HARRINGTON: And your confirmation process was a little
972 contentious and a close vote.
973 JUDGE BARKETT: [Interposing] It was.
974 HARRINGTON: Can you tell us about that?
975 00:54:25 JUDGE BARKETT: It was. The same group that had targeted me
976 during my merit retention campaign took the prepackaged attack
977 and took it to the Senate. And—so they began that soft on
978 crime, choice issues attack. Fortunately, I had been in
979 Tallahassee for 10, 15 years by then. It was a different time
980 where Republicans and Democrats were friends, and although they
981 may have debated how to deal with an issue, there was not much
982 debate about what the issues were and what the problems were
983 that had to be addressed. And I had friends that were both
984 Republicans and Democrats, and they were
985 00:55:26 supportive of the court and they were supportive of me. As
986 Chief, I was able to give a speech to the House, which had been
987 something that had been suspended for several years and then

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988 they asked me if I'd come over and talk about the status of the
989 judiciary, which I did. And so when my confirmation was
990 challenged, their support was very, very important to me. I
991 was supported by both senators. One was a Republican,
992 00:55:56 Connie Mack,⁹ and one was a Democrat.¹⁰ And—but I did have to
993 go through this, this, this process of being attacked. It also
994 helped that my sister who was a, a Republican and—because she
995 was an automobile dealer, knew a lot of very wealthy Republican
996 influential people, and they supported my candidacy. So that
997 helped.
998 HARRINGTON: And did they—did anyone step forward publicly to
999 support you?
1000 JUDGE BARKETT: Well, Connie Mack.
1001 HARRINGTON: Yeah.
1002 00:56:36 JUDGE BARKETT: But well the people in my state did.
1003 HARRINGTON: Yeah.
1004 JUDGE BARKETT: And I think I got the vote from Maine. He was
1005 a Republican that also voted for me out of [committee for] the
1006 confirmation. But it was a—it was an interesting process. I
1007 learned that it really is not about you. It's about one
1008 political party trying to embarrass the other political party
1009 and—
1010 HARRINGTON: [Interposing] Yeah.
1011 JUDGE BARKETT: —the senators at my hearing were not interested
1012 00:57:03 in my answers particularly. There were only interested in

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.

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1013 getting their questions kind of on the record.

1014 HARRINGTON: Yeah.

1015 JUDGE BARKETT: There's also very—I don't want to say raucous
1016 exactly, but—even though it was short notice, many of my family
1017 members wanted to go. So there must have been 20 or 30 people.
1018 My aunts and uncles from Jacksonville who were in their
1019 00:57:26 eighties came in their winter coats, and my cousin from Chicago
1020 came down and my nieces and nephews, and every time in the
1021 hearing when a senator would come out and sit on the—whatever,
1022 the dais. They would run up—somebody would run up to them and
1023 talk to them, and I was just like, “oh my God, what are they
1024 saying to them?” I was mortified. They were—totally took over
1025 the, the hearing room. Oh, it was very funny.

1026 HARRINGTON: That's amazing.

1027 JUDGE BARKETT: Anyway.

1028 HARRINGTON: Did the attacks on your record feel personal
1029 00:57:58 to you?

1030 JUDGE BARKETT: No. And they weren't—what happened? During
1031 the three hour—there apparently was a three hour—well, not
1032 apparently. There was a three-hour debate on the senate floor
1033 and Connie Mack was very supportive and, and Bob, Bob Graham
1034 was very supportive. And then when Orrin Hatch¹¹ got up, he
1035 prefaced everything he said about by saying that I was a lovely
1036 person, I had a lovely family. It was the American dream, but
1037 I was too soft on crime and so on and so forth. And one of my
1038 law clerks took the tape and excerpted all the nice

¹¹ Orrin Hatch served as U.S. Senator from Utah from 1977 to 2019.

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1039 00:58:38 things he said about me and it was very funny tape when he
1040 finished with it anyway.

1041 HARRINGTON: Nice. Do you want to tell us a story, another
1042 story about Orrin Hatch?

1043 JUDGE BARKETT: Oh, Orrin Hatch. Yes.

1044 HARRINGTON: Speaking of Orrin Hatch.

1045 JUDGE BARKETT: Speaking of Orrin Hatch, his chief of staff
1046 00:58:56 during the confirmation process before I had my hearing sent
1047 out to all of the conservative columnists and editorial boards
1048 and newspapers across the country this package of prepared
1049 materials, urging them to use all of this material against my
1050 nomination. Well, it happened to hit the desk of a columnist
1051 on the Orlando Sentinel, Charlie Reese. And Charlie was a very
1052 conservative columnist, but again, he had been in Florida and
1053 he knew me and he knew what I had been doing as, as chief
1054 justice and as a justice before that. So he wrote this
1055 wonderful column railing about the use of taxpayer dollars to
1056 00:59:42 do this side issue, and also railing about the fact that Orrin
1057 Hatch had apparently already made up his mind before he even
1058 had a chance to hear my responses to any of the of the charges
1059 that were being brought. And so it resulted in my—during one
1060 of my Washington visits going over with Janet Reno¹² to the
1061 cloakroom of the Senate and Orrin Hatch came off the floor,
1062 apologized very nicely.

1063 HARRINGTON: Wow.

1064 JUDGE BARKETT: And said he was very sorry, but that he didn't

¹² Janet Wood Reno served as U.S. Attorney General from 1993 to 2001.

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1065 know anything about what his law—what his chief of staff was
1066 01:00:21 doing or a staff member was doing and the staff member had been
1067 reprimanded severely.

1068 HARRINGTON: Very interesting.

1069 JUDGE BARKETT: I said “thank you very much.”

1070 HARRINGTON: So you joined the 11th Circuit. How was being a
1071 federal appellate judge different from being a state appellate
1072 judge?

1073 01:00:36 JUDGE BARKETT: Mostly, it was different in terms of the
1074 substantive law, which is different, of course. And—you know,
1075 you're dealing with federal statutes, whereas in state courts,
1076 you're dealing mostly with state statutes, although you're
1077 dealing with constitutional issues in both courts. So—but
1078 primarily, it was the substantive law; the process, the
1079 appellate arguments, the debates and conference, the writing of
1080 opinions, all are pretty much similar.

1081 HARRINGTON: Okay. Did you feel that your approach to judging
1082 and being an appellate judge evolved over time as you
1083 01:01:14 moved among the different courts?

1084 JUDGE BARKETT: Maybe refined it somewhat. I, I ended up for
1085 several years. I don't know at what point I started doing
1086 this, but writing the draft opinion before oral argument so
1087 that it forces you to be much more disciplined about what you
1088 think about the case as opposed to just off the top of your
1089 head. And I always felt that it would be more helpful if the
1090 judges were forced to write their opinions before oral argument
1091 and they would be a little bit more prepared.

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1092 HARRINGTON: Do you think it would make them less inclined
1093 01:01:50 to be swayed by oral argument?
1094 JUDGE BARKETT: No.
1095 HARRINGTON: Okay.
1096 JUDGE BARKETT: I definitely do not think that. I know that's
1097 a sort of a criticism of that approach. But—when I used to be
1098 a member of the faculty here at NYU, the judges would—there
1099 would be a debate about whether that made a
1100 01:02:13 difference or not. Like most debates, many of the people
1101 debating it had never done it, so they really weren't very
1102 knowledgeable, I don't think. But the people who have done it,
1103 the ones I know, were willing to change, but it was much easier
1104 to change the opinion once—the mechanics of writing the
1105 opinion.
1106 HARRINGTON: Yeah.
1107 JUDGE BARKETT: And it never bothered me to decide that I was
1108 wrong about a particular approach or, or a particular issue and
1109 change it after oral argument.
1110 01:02:46 HARRINGTON: As your law clerk, I enjoyed that approach because
1111 it meant one fewer document you had to produce.
1112 JUDGE BARKETT: I don't know.
1113 HARRINGTON: Yes.
1114 JUDGE BARKETT: And it was easier to do whatever you had to do,
1115 either write a dissent afterwards or—
1116 HARRINGTON: [Interposing] Right.
1117 JUDGE BARKETT: —a concurring opinion because you had done all
1118 of the work and you were much more comfortable in your views

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1119 about the case, right?

1120 01:03:04 HARRINGTON: Yeah, absolutely. That makes sense. So there's a
1121 question that appellate advocates always want to ask judges and
1122 so I'm going to ask you which is what role—it's very kind of
1123 egocentric question. What role do you think oral argument
1124 plays in deciding appellate cases?

1125 JUDGE BARKETT: First of all, clarity. I think—I don't think
1126 it's all that unusual. I mean generally you understand the
1127 01:03:25 case from the briefs, but sometimes, you get to oral argument
1128 and I, I have heard all three members of a panel say, oh, was
1129 that what this case is about? You know, it was totally
1130 misunderstood from the way the briefs had been written. So the
1131 first thing I think that oral argument does is clarify what the
1132 case is about and what the issues actually are. And, and I
1133 think it also must give the lawyer a sense of—I don't know. A
1134 better sense of, of making sure that the judges understood your
1135 position because you're there and you're listening to them and
1136 they're listening to you, as opposed to
1137 01:04:10 never having oral argument. You have no idea of what the
1138 judges are thinking when they're reading your briefs. So I
1139 think that's a good thing that oral argument does. And then
1140 the third thing is, of course, what you know happens, which is
1141 one judge trying to use the oral argument to educate another
1142 judge—

1143 HARRINGTON: [Interposing] Yeah.

1144 JUDGE BARKETT: —or to persuade them, or to make sure that a
1145 particular point is understood. And that happens—

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1146 HARRINGTON: [Interposing] Yes.

1147 01:04:41 JUDGE BARKETT: –as you know.

1148 HARRINGTON: Yes. That's an important part, yes. So you have
1149 had varying number of law clerks and different jobs. What kind
1150 of characteristics do you look for when you're choosing law
1151 clerks?

1152 JUDGE BARKETT: First of all, writing ability. I would want to
1153 make sure—I mean being an appellate judge, the, the biggest
1154 01:05:02 part of what you do is communicate in writing and you—I—you
1155 only have a law clerk for a year, sometimes two. Most judges—I
1156 did only for a year, and you don't want to spend the year
1157 teaching them how to write. So I would first of all look to
1158 see what writing experience they had and it didn't matter.
1159 Could be in a newspaper. I've hired newspaper—former newspaper
1160 reporters who went to law school or of course people on law
1161 review, although in some instances you had to teach them to
1162 write clearly since they—so that would be the first thing.
1163 Secondly, of course, intelligence. You'd want somebody that
1164 01:05:44 would understand the issues. And thirdly, their experiences,
1165 their background, both academically and worldly. What they did
1166 before law school, what they did after law school, what other
1167 things did they do in law school besides just study? That was
1168 important to me because I wanted people who had world
1169 experience of some, of some sort. And also mostly personality
1170 and whether you could get along with the person that you were
1171 hiring or they could get along with you. So I saw that mostly,
1172 mostly as an ability. I mean, you can't tell whether

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1173 somebody's going to work out or not although I've been very,
1174 01:06:28 very, very lucky in law clerks. But you can tell if they're
1175 not going to work out, that, that there's something not quite
1176 right.

1177 HARRINGTON: Yeah, it's interesting. I always say to people, I
1178 think the best measure of whether you have a successful
1179 clerkship is how well you get along with your judge, how well
1180 you—

1181 01:06:44 JUDGE BARKETT: [Interposing] Yes.

1182 HARRINGTON: –clerk, right, and I had a wonderful experience
1183 clerking for you and felt we got along great. But it's sort of
1184 the thing that's the hardest to tell because you have this, you
1185 know, 30-minute interview.

1186 JUDGE BARKETT: I know.

1187 HARRINGTON: Do you feel like you're kind of gauge for that—got
1188 better over time?

1189 JUDGE BARKETT: I think so. I think I got better at gauging it
1190 a little bit, but—

1191 01:07:05 HARRINGTON: [Interposing] Yeah.

1192 JUDGE BARKETT: –like I said, it's so—I don't know. I got
1193 better because my past experiences with so many law clerks has
1194 been so wonderful, and I'm still in touch with many of them
1195 who, who, who take the time to answer me back when I write to
1196 them - -.

1197 HARRINGTON: What are you trying to say?

1198 JUDGE BARKETT: No, I think you know that something is not
1199 going to work out.

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1200 HARRINGTON: Yeah.

1201 01:07:28 JUDGE BARKETT: I had one law clerk applicant come in and say,
1202 "My husband will be working in Tampa and I just want you to
1203 know that he's my first priority." I didn't know what to do
1204 with that statement, but I figured it wasn't going to work out
1205 so well.

1206 HARRINGTON: Yes, that's probably a safe conclusion. Did you
1207 change the way you used your law clerks over time?

1208 01:07:54 JUDGE BARKETT: I don't think so.

1209 HARRINGTON: Yeah.

1210 JUDGE BARKETT: I mean, I think the—mostly, we went back and
1211 forth with draft opinions a hundred times. It seems like—and
1212 that hasn't changed. I just finished drafting my paper for the
1213 new court that I'm on, and I think I turned it in after—it was
1214 the 36th version because I keep editing and editing. And every
1215 time you see it, you reorganize it and then—and I think I
1216 continued to do that. And then the other thing that we used to
1217 do that I still do, only I only have one law clerk now. But—
1218 01:08:38 and that is on important cases, get everybody to read the draft
1219 that I'm working with one law clerk on and sit around the table
1220 and offer more suggestions and so forth. I mean, I value the
1221 input—

1222 HARRINGTON: [Interposing] Yeah.

1223 JUDGE BARKETT: —and—so I think I still do that.

1224 HARRINGTON: That makes sense. So for most of your time on the
1225 11th Circuit, it was a pretty conservative court. You are not
1226 a particularly conservative jurist. How did it feel to be in

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1227 sort of the ideological minority of the court?

1228 01:09:10 JUDGE BARKETT: Well, it was mostly disappointing if I lost a
1229 vote of—if it involved a sentencing or loss in a death penalty
1230 case, it was more than disappointing. I would feel that
1231 sometimes I hadn't worked hard enough to be as persuasive as I
1232 could have been. And I think it must have taken a toll from
1233 the perspective of other people. My friends would say that it
1234 would take a week after coming back from oral argument
1235 01:09:44 for me to act normal again.

1236 HARRINGTON: Interesting.

1237 JUDGE BARKETT: So it mattered to me, but I wasn't always in
1238 the dissent. And I was able to sometimes persuade judges you
1239 wouldn't have thought that I might be able to persuade. I
1240 think I got Ed Carnes¹³ to agree with me on a death penalty
1241 case, for example.

1242 HARRINGTON: Yeah.

1243 JUDGE BARKETT: And it helped that I got along with all of the
1244 judges. I think that's probably the first step that you have
1245 01:10:18 to take if you want to try to be persuasive. If they hate the
1246 messenger, they're not going to listen to the message no matter
1247 how great the message is or how right it is.

1248 HARRINGTON: Yeah.

1249 JUDGE BARKETT: So the first step is you have to make sure that
1250 they at least respect the messenger. I used to say that to the
1251 appellate judges that would come through the Institute, that

¹³ [Edward Earl Carnes](https://www.call.uscourts.gov/judges/hon-ed-carnes) was appointed to the Eleventh Circuit in 1992 and took senior status in 2020. More information about Judge Carnes is available at <https://www.call.uscourts.gov/judges/hon-ed-carnes>.

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1252 it's important to, to understand that you're part of a group
1253 now, even though you didn't pick the group to be part of.

1254 HARRINGTON: Yeah.

1255 01:10:48 JUDGE BARKETT: And that if you, if you want your opinions to
1256 be heard, you have to make sure that they don't start out by
1257 hating you before you even open your mouth.

1258 HARRINGTON: Yeah. I can remember going with you to an en banc
1259 sitting in a contentious death penalty case and seeing that it
1260 took a toll on you and then seeing you interact with the other
1261 judges and they were really—you were sort of like this
1262 01:11:11 firefly among them. They were drawn to you because you're such
1263 a warm and open personality. And I wonder, does it take effort
1264 for you to sort of set aside the, the challenging feelings you
1265 have about the deliberations and then be social or—

1266 JUDGE BARKETT: [Interposing] No. Isn't that's strange? I
1267 mean, I'm genuinely there when we're in this party mode or
1268 drink mode or—

1269 HARRINGTON: [Interposing] Yeah.

1270 JUDGE BARKETT: But it, it does help. People are going to—Ed
1271 Carnes will not remember this, I don't think, and maybe I
1272 shouldn't use his name like that, but anyway, one, one time he
1273 drafted a, a dissent to an opinion of mine that was—I thought
1274 very harsh. So I called him up and I said, Ed, I thought you
1275 were my friend. He said I am your friend. I said, well look,
1276 01:12:00 this opinion is terrible. He said what? I toned it down so
1277 much.

1278 HARRINGTON: That's funny.

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1279 JUDGE BARKETT: Well, - - go work on it some more.

1280 HARRINGTON: Well, you wrote many dissents while you were on
1281 that court.

1282 JUDGE BARKETT: Yes.

1283 01:12:16 HARRINGTON: Did you take a—did you have a different approach
1284 to writing dissents, a different sort of writing style or
1285 anything?

1286 JUDGE BARKETT: Not really. Well, not really, and it was much
1287 easier to do having written the majority opinion, than to
1288 convert it.

1289 HARRINGTON: Yeah.

1290 JUDGE BARKETT: So the approach in writing was the same. I
1291 think I was careful not to be—I don't know how to put it,
1292 abusive or, or arrogant or—about the, the majority and to, to
1293 01:12:47 speak to the arguments rather than the, the person writing the
1294 other side.

1295 HARRINGTON: Yeah.

1296 JUDGE BARKETT: It was always fun where I had—if I had somebody
1297 also dissenting, who would do this wild crazy like the majority
1298 is terrible and so on and so forth. But I tried to be—I tried
1299 to write in a, in a legalistic style that exposed what I
1300 thought were the flaws in the arguments that the other side was
1301 using.

1302 HARRINGTON: Yeah.

1303 01:13:17 JUDGE BARKETT: Hopefully, I've succeeded in doing that—

1304 HARRINGTON: [Interposing] Yeah.

1305 JUDGE BARKETT: —pretty much.

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1306 HARRINGTON: I enjoyed working on the dissents. You know, it's
1307 just a different experience and it's sort of fun.

1308 JUDGE BARKETT: Yeah.

1309 HARRINGTON: How did you decide—

1310 01:13:27 JUDGE BARKETT: [Interposing] Do you think we did try to be
1311 careful and not be personal and the dissents? I think we
1312 tried.

1313 HARRINGTON: I remember once you said take out respectfully
1314 which, you know, you're not the only jurist who does that.
1315 There are some—it's so—it sends a message, but the, the
1316 dissenting opinion was very respectfully written, so. But
1317 that's stuck with me. How did you decide whether to write a
1318 concurring opinion or dissenting? Did you feel like you needed
1319 to sort of save those chips?

1320 01:13:58 JUDGE BARKETT: I don't think I wrote very many separate
1321 concurring opinions. I didn't think that was a good approach
1322 to things.

1323 HARRINGTON: Yeah.

1324 JUDGE BARKETT: And mostly, I could handle things that I
1325 disagreed with or, or that should have been written maybe
1326 differently via a memo to the writing judge, and that would
1327 take care of any—most of the objections that I would have had
1328 because I don't think it's, it's good collegial message to
1329 constantly be writing a separate dissent. Well, this is the
1330 01:14:34 way it should really be written. I don't think that—that
1331 doesn't do anything. It doesn't help you in, in a collegial
1332 sense, and it also doesn't really help the law, I don't think,

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1333 very much if you're constantly doing that. I would write a
1334 separate opinion if I thought and couldn't get the majority to
1335 resolve it a different way, and I thought that it might affect
1336 the law badly. So I would write in that instance. As far as
1337 01:15:01 dissents go, I think I always had—I didn't write big long
1338 dissents in every single case, but I wouldn't, I wouldn't—I
1339 couldn't concur if I didn't agree with the, with the result.
1340 But you have to remember that over 70% of cases are decided
1341 unanimously. So it isn't like there are that many dissents
1342 regardless of how many they appear to be from a particular
1343 person.
1344 HARRINGTON: And maybe you've just spoken to this, but did you
1345 have a particular strategy about trying to build coalitions
1346 among your fellow judges?
1347 01:15:40 JUDGE BARKETT: Mostly just trying to write persuasively and to
1348 some—sometimes, sometimes it wasn't, it wasn't possible, but
1349 sometimes it was.
1350 HARRINGTON: Yeah.
1351 JUDGE BARKETT: I did get the court—the panel—to change its
1352 mind in a qualified immunity case. And because they had written
1353 it one way and I thought that the police officer was not
1354 entitled to qualified immunity. And I wrote this long memo to
1355 the panel, and they agreed, and they changed their mind. And,
1356 and then on—at the 11th Circuit
1357 01:16:24 Conference—well, before the 11th Circuit Conference, the
1358 Supreme Court reversed the decision by viewing the tape.¹⁴ I

¹⁴ [Scott v. Harris](#), 550 U.S. 372 (2007), available at

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1359 don't know if you remember the case, but they viewed the tape
1360 the way a jury would view the tape of, of the incident, which I
1361 didn't think was right, but at any rate. And so at the 11th
1362 Circuit Conference, Justice Thomas, as we were shaking hands—he
1363 was shaking hands with everybody, said, "Oh Rosemary, I'm sorry
1364 01:16:57 about such and such a case," whatever, and I couldn't help
1365 saying, "Well, there's a good thing that came out of it. You
1366 all got to see what a jury actually does."
1367 HARRINGTON: Did he laugh?
1368 JUDGE BARKETT: He sort of laughed.
1369 HARRINGTON: That's funny. Was the culture on the 11th Circuit
1370 sort of different than the other courts you've been on, like
1371 more cooperative, less cooperative, or?
1372 JUDGE BARKETT: It was slightly different because they were
1373 living in so far apart from one another, whereas on the Florida
1374 01:17:28 Supreme Court, everybody was in Tallahassee—
1375 HARRINGTON: [Interposing] Yeah.
1376 JUDGE BARKETT: —and it became very familial. You know, you
1377 could be arguing and you became—you were able to argue like a
1378 family would argue where—whereas on the 11th Circuit, you were
1379 much more cautious about the arguing. You were much freer on
1380 the Florida Supreme Court because you were all going to go to
1381 dinner that night or to an event and, and they, they were very
1382 good to me. I mean I was always being picked up and taken
1383 along with one couple or another couple. And they—I played
1384 01:18:07 tennis with them all the time. We had—I have a picture of us,

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1385 me and a couple of the justices, other justices on the Supreme
1386 Court, all in tennis shorts and Sandra Day O'Connor and her
1387 husband when she came to Tallahassee and we all played tennis
1388 together.

1389 HARRINGTON: Fun.

1390 JUDGE BARKETT: I played with John Paul Stevens, too. And an
1391 01:18:31 interesting story about that is we played tennis a day after
1392 the Supreme Court reversed another opinion of the Florida
1393 Supreme Court that I either was on the majority or, or had
1394 written the majority. And it was the helicopter case¹⁵ where
1395 the helicopter came lower than 100 feet or something, and the
1396 question was whether, without probable cause, could they do
1397 that? And Justice Stevens wrote the dissent, but I—but they
1398 reversed me five four. And so he took a tennis ball and he
1399 drew a helicopter on it and he had the date and five four.

1400 HARRINGTON: Do you still have it?

1401 01:19:17 JUDGE BARKETT: I think I do, but the writing has faded so
1402 badly that I'm the only one that knows what was there.

1403 HARRINGTON: Yeah, that's fun.

1404 JUDGE BARKETT: Yes, he was, he was funny. Another, another
1405 side effect of that whole—of that, of that particular case was
1406 we had written this—Florida court, I think the—had written it
1407 as a majority opinion. I think everybody signed on to it. So
1408 it wasn't like I was out in left field. And then our Attorney
1409 General, Bob Butterworth,¹⁶ appealed the thing and when I found

¹⁵ [Florida v. Riley](https://www.oyez.org/cases/1988/87-764), 488 U.S. 445 (1989), available at
<https://www.oyez.org/cases/1988/87-764>.

¹⁶ Robert A. Butterworth, Jr. served as Attorney General of Florida from 1987 to 2002.

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1410 out he appealed it, we—Tallahassee is a small sort of town so
1411 01:19:58 that you were always going to the same events as the
1412 legislature, the executive branch and the professors and the
1413 court. So I saw Bob Butterworth, who was a friend, sort of.
1414 You know, he was a friend. But I saw him at this event and I
1415 yelled at him. I said, how could you appeal that case? That
1416 is just so wrong. And I said, "All those people are doing is
1417 they're a bunch of voyeurs and they just
1418 01:20:24 want to look at people sunbathing in their yard coming down
1419 that low. You shouldn't permit it and you shouldn't have
1420 appealed." So anyway, the appeal goes on. The court rules
1421 against us or reverses us five four. And the day the opinion
1422 came out, the reason justice—the justice was in town was
1423 because the, the judges, the chief judges were all meeting and
1424 they happened to be meeting in Orlando and I was sitting sort
1425 of on the side there and I receive a package and—of course, I
1426 can't wait to see what it is. So I'm trying to peek at it and
1427 I hope it—it's, it's from the attorney general, Bob
1428 01:21:08 Butterworth, and it's a black bathing suit inside saying just
1429 in case you needed this.
1430 HARRINGTON: That's amazing. I mean, that is a good
1431 illustration of the great relationships you have had with
1432 everyone in your life, I think. You know, you're a bridge
1433 builder.
1434 JUDGE BARKETT: I like people.
1435 HARRINGTON: Yes, and they like you. You know—
1436 JUDGE BARKETT: [Interposing] It's funny.

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1437 HARRINGTON: And sort of on that topic, much ink is spilled
1438 01:21:31 these days about how polarized courts are.
1439 JUDGE BARKETT: Yes.
1440 HARRINGTON: And do you feel like that has changed over time?
1441 JUDGE BARKETT: Yes.
1442 HARRINGTON: Yeah.
1443 JUDGE BARKETT: I, I mean—of course, I've been gone now since
1444 01:21:42 2013. It's been a while, it's been during that period of time,
1445 so I haven't really seen—I mean even our court has—the 11th
1446 Circuit when I was on it, we were sociable. We were collegial
1447 in that, in that sense. So I don't know what it's like now,
1448 but certainly, the opinions have gotten a little more
1449 polarized, it seems to me, but I haven't really studied it.
1450 HARRINGTON: When you were on the 11th Circuit, there were some
1451 notable cases where you wrote dissents, and then the Supreme
1452 Court overturned the decision from which you were
1453 01:22:16 dissenting. I'm thinking about Faragher¹⁷ and—
1454 JUDGE BARKETT: [Interposing] Yes.
1455 HARRINGTON: Maples¹⁸ versus—
1456 JUDGE BARKETT: [Interposing] - -.
1457 HARRINGTON: Exactly. How did that feel when that happened?
1458 JUDGE BARKETT: Well, it felt great. Are you kidding? Was
1459 terrific.
1460 HARRINGTON: Yeah.
1461 JUDGE BARKETT: Ruth Ginsburg signed the slip opinion on Maples

¹⁷ [Faragher v. City of Boca Raton](https://www.oyez.org/cases/1997/97-282), 524 U.S. 775 (1998), available at <https://www.oyez.org/cases/1997/97-282>.

¹⁸ [Maples v. Thomas](https://www.oyez.org/cases/2011/10-63), 565 U.S. 266 (2012), available at <https://www.oyez.org/cases/2011/10-63>.

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1462 when

1463 01:22:31 I happened to be by to say hello. It was funny.

1464 HARRINGTON: That's very fun. So you were on the 11th Circuit

1465 for, what, 20 years, something like that?

1466 JUDGE BARKETT: Yeah, I think so.

1467 HARRINGTON: As you approach the end of the second decade, did

1468 you start to feel a little antsy, like you're ready for a new

1469 challenge?

1470 01:22:47 JUDGE BARKETT: Maybe. I do seem to have a track record of

1471 moving from job to job.

1472 HARRINGTON: But 20 years is a long time in one place, wasn't

1473 it?

1474 JUDGE BARKETT: Yes, it is. But I think, I think I wanted—but

1475 when once I reached senior status age or years or however they

1476 calculate that, I wanted to give the president the opportunity

1477 to appoint another judge. So if I took senior, he would

1478 appoint another judge, and there would be two of us in my place

1479 kind of instead of just one. And so I knew that I was going to

1480 01:23:24 take senior at some point, but then the State Department called

1481 and said Justice McDonald¹⁹ is retiring from the Iran-United

1482 States Claims Tribunal, would you be interested in filling that

1483 spot? And of course, I wasn't sure I knew what the Iran-United

1484 States Claims Tribunal was, but I'm always interested in

1485 everything, so I said why? I don't know. And they told me

1486 about it. And then Harold Koh who was—had been the, had been

¹⁹ [Gabrielle K. McDonald](https://thedig.howard.edu/featured-people/honorable-gabrielle-k-mcdonald) served on the Iran-United States Claims Tribunal from 2001 to 2013. Her biography is available at <https://thedig.howard.edu/featured-people/honorable-gabrielle-k-mcdonald>.

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1487 head of the legal department under Hillary, called and said I
1488 should really do this and that told me a lot about it and said
1489 it's the only place where Iran and the United States can really
1490 01:24:08 communicate and talk to each other. It's a great opportunity
1491 and so I said—
1492 HARRINGTON: [Interposing] You said yes?
1493 JUDGE BARKETT: —yes.
1494 HARRINGTON: Why did the State Department come to you? That's
1495 interesting.
1496 JUDGE BARKETT: Why? Well, I had been involved a little bit in
1497 01:24:26 international law. I had worked with the American Society for
1498 International Law, and Charlie Brower, who was on the Iran-
1499 United States Claims Tribunal, was a big—had been involved
1500 greatly and continues to be with the American Society for
1501 International Law. And I worked with a couple of professors to
1502 work on a handbook for judges on international law, and then
1503 also worked with them to try to insert a program on
1504 international law in all of the circuit conferences, which we
1505 did pretty successfully, I think. And so they knew—so that the
1506 people who do the international law knew about me a little
1507 01:25:14 bit, and I think they wanted to replace a judge with another
1508 judge. It's—in international courts, sometimes there are not
1509 very many former judges, and I think the State Department was
1510 interested in maintaining a judicial presence on this court and
1511 it coincided—I don't know. Because I had been doing all of
1512 these other things, they were aware that I knew something
1513 about—

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1514 HARRINGTON: [Interposing] Yeah.

1515 JUDGE BARKETT: –international law. Unlike—I usually talk
1516 about the, the judge from Brazoria County, Texas, where Brazil
1517 01:25:53 filed a lawsuit and he said, I don't know why they're filing
1518 here, unless they're confusing Brazil with Brazoria. And then
1519 he proceeded to say, we've never even seen a, a Brazilian or
1520 Bolivian, in Brazoria County. We don't even have a Bolivian
1521 restaurant here either.

1522 HARRINGTON: Oh my gosh. They did not call that guy.

1523 JUDGE BARKETT: It was funny.

1524 01:26:18 HARRINGTON: Yeah.

1525 JUDGE BARKETT: So I said I did know a little bit more about
1526 international law than he did.

1527 HARRINGTON: Yes, amazing. Can you tell us what the tribunal
1528 does?

1529 JUDGE BARKETT: Yes. I'll get my teaching hat on, which I love
1530 to do. If you remember, in 1979, the Iranian Revolution sort
1531 of came full force into the United States embassy, and they
1532 kidnapped all of the personnel, or a lot of the personnel. I
1533 think some 54 or so hostages were taken from the embassy and
1534 kept for
1535 01:27:00 over a year and a half, and many of the methods that the United
1536 States tried to get the hostages back were not successful, and
1537 so finally they entered into a treaty. But in addition to the
1538 hostages, there had been a lot of businesses that were taking
1539 place in Iran because we were great friends with the Shah. And
1540 so the Iranian government took over all of those properties and

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1541 the United States froze a lot of the assets of Iranians that
1542 were located in this country. So when the treaty was entered
1543 into, it did several things. Number one, it freed the hostages
1544 immediately, which was of course the desired result. Secondly,
1545 01:27:45 it provided that Iran would reimburse the American businesses
1546 for whatever businesses had been taken. And thirdly, the
1547 United States would return to Iran all the property and
1548 material that they had taken or frozen at the time. And of
1549 course, then they needed a tribunal to decide things, like an
1550 American company might say that they had lost property and it
1551 was worth \$3 million, and the Iranians would say no, no, it was
1552 only
1553 01:28:16 worth \$500,000. And so a decision had to be made on all the
1554 claims that American businesses had against Iran and all the
1555 claims that Iranians had against the United States. So that's
1556 how the, the Tribunal was formed. There are nine members:
1557 three Iranians, three members from the United States and three
1558 third-country members. At the present time, we have one from
1559 Switzerland and two from Germany. So it's nine of us and over
1560 the past—it's been going on a long time, but over the past, 39
1561 years or so, the court has resolved over 4,000 claims. And all
1562 of the individual claims of Americans and Iranians have been
1563 01:29:06 resolved. I think something like \$2 billion has been awarded
1564 to Americans, and something like a billion and a half to
1565 Iranian claimants. And now, the only thing that's left are
1566 claims that Iran has made against the United States involving
1567 some thousand contracts for the sale of military equipment. So

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1568 Iran is claiming that much of the military equipment that was
1569 supposed to have been sent wasn't sent or it—they paid more
1570 than they should have paid for it and so forth, and they're
1571 trying to get that back and that's what we're doing now.

1572 HARRINGTON: And these are contracts from before 1979 that
1573 01:29:46 are—

1574 JUDGE BARKETT: [Interposing] Yes. Everything has to have
1575 occurred prior to 1979 in this court, which causes all kinds
1576 of—

1577 HARRINGTON: [Interposing] Yeah.

1578 JUDGE BARKETT: —grief in terms of proof and in terms of the
1579 clarity of the issues and—it's very hard to understand why it
1580 01:30:06 has gone on so long, except that a lot of people suggest that
1581 it's a vehicle by which open remains—communications would
1582 remain open between the two countries. I—of course, we don't
1583 know that part of it.

1584 HARRINGTON: Right.

1585 JUDGE BARKETT: We have to decide the cases as the parties
1586 present them to us, and that's another aspect of arbitration.
1587 Much of it, if not all of it, is controlled by the parties. So
1588 if the parties say they want a six month delay, we have to give
1589 them a six month delay.

1590 01:30:40 HARRINGTON: And so is this more like a trial court but with
1591 nine judges? Like are they presenting—

1592 JUDGE BARKETT: [Interposing] It's a combination of trial and
1593 appellate court because we do hear testimony—

1594 HARRINGTON: [Interposing] Yeah.

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1595 JUDGE BARKETT: –and at the same time, a lot of it is oral
1596 argument by, by the lawyers. Deliberations are interesting
1597 because it's like an en banc every day for a week or two at a
1598 time, which is very–

1599 HARRINGTON: [Interposing] Exhausting.

1600 01:31:06 JUDGE BARKETT: –exhausting, yeah.

1601 HARRINGTON: Interesting.

1602 JUDGE BARKETT: Yeah.

1603 HARRINGTON: Do you have good relationships with your fellow
1604 judges?

1605 JUDGE BARKETT: Yes.

1606 HARRINGTON: Yeah.

1607 01:31:11 JUDGE BARKETT: I like everybody.

1608 HARRINGTON: Of course, yes.

1609 JUDGE BARKETT: I like everybody. No, I do. The Iranians are
1610 very pleasant. We all—we go to dinner every six weeks or so
1611 that that we're all in town and it's just the judges, not their
1612 spouses. And it's a good—it's a good system to keep everybody
1613 collegial, which it is. It wasn't always that way. The very
1614 first year, I am told, two of the—two Iranian judges that were
1615 originally appointed were upset with a Norwegian—I think it was
1616 a Swedish or Norwegian judge, who had ruled or indicated his
1617 01:31:56 ruling for—was going to be for the, the American side and
1618 they apparently grabbed him around the neck in the stairwell
1619 and were choking him and they had to be pulled off by several
1620 law clerks.

1621 HARRINGTON: Oh my.

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1622 JUDGE BARKETT: - - remember that. But those are days and they
1623 were recalled and there was a lot of brouhaha about it at the
1624 time. But this was a long, long time ago and none of that—
1625 HARRINGTON: [Interposing] Yeah.

1626 01:32:19 JUDGE BARKETT: -happens now.

1627 HARRINGTON: Do you share a common language or do you have
1628 translators?

1629 JUDGE BARKETT: No—yes and no. We have translators when we
1630 have hearings because a lot—even when we don't have, even when
1631 the presentations are in English, a lot of the representatives
1632 from Iran are there in the courtroom, so they need to have
1633 01:32:40 translations. But when we are in deliberations, we just use
1634 English, which poses a different kind of problem in terms of
1635 being persuasive because—

1636 HARRINGTON: [Interposing] Yeah.

1637 JUDGE BARKETT: -you have nine people who come from different
1638 backgrounds and different cultures and different languages
1639 really. And even though they speak English, it's not their
1640 first language so that their—there are misunderstandings about
1641 what you're trying to say. So when I talk about or when you
1642 remember when we talked about writing clearly for every kind of
1643 01:33:18 audience, there's another layer on it where you have to write
1644 in a way that is clearer to somebody—where English is not their
1645 first language.

1646 HARRINGTON: Yeah.

1647 JUDGE BARKETT: And it's really hard.

1648 HARRINGTON: Yeah.

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1649 JUDGE BARKETT: We had a big debate at some point because
1650 somebody—one of the American judges was talking about or had
1651 written about being hoisted on their own petard, and they were
1652 like, what, what? What are you talking about? A bomb?
1653 01:33:43 Because they were looking at the French word. So you do have
1654 to write even more clearly than clearly.
1655 HARRINGTON: Yeah, interesting.
1656 JUDGE BARKETT: So.
1657 HARRINGTON: You are, I believe, the only woman on the court.
1658 JUDGE BARKETT: Yes, but I wasn't the first only woman.
1659 01:33:57 HARRINGTON: Okay.
1660 JUDGE BARKETT: I replaced Gabriella Kirk McDonald—
1661 HARRINGTON: [Interposing] Okay.
1662 JUDGE BARKETT: —who had been on the Yugoslavian tribunal and
1663 then was moved over to this tribunal. She had been also a
1664 district judge in Texas, if I'm not mistaken. Had a wonderful
1665 history of doing civil rights work before she was appointed to
1666 this court. But she became ill, and I think she's okay sort of
1667 now, but—because of her illness retired from that court, so—
1668 HARRINGTON: [Interposing] She broke—
1669 01:34:29 JUDGE BARKETT: —I replaced.
1670 HARRINGTON: She broke the barrier for you.
1671 JUDGE BARKETT: Yes.
1672 HARRINGTON: Yes.
1673 JUDGE BARKETT: There, yes.
1674 HARRINGTON: And is the experience of being the only woman
1675 different in an international court than in a U.S. court?

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1676 JUDGE BARKETT: I kind of think so. I mean, there are some
1677 things that the same. You know, people ask, well, have you
1678 suffered discrimination? The discrimination, I think, that
1679 women suffer now, other than the blatant kind, is this
1680 occurrence that happens when you're going around the table and
1681 everybody's giving their views and you give your views and
1682 they're pretty clear and nobody says anything. And then one of
1683 the guys, one next or the one following, repeats what you've
1684 said. And then everybody says, oh yeah, I agree with him.

1685 01:35:21 HARRINGTON: Yes.

1686 JUDGE BARKETT: It's like, wait, what?

1687 HARRINGTON: Yes. I know of what you speak. Yes.

1688 JUDGE BARKETT: I know and it's funny because on this new
1689 court, I did have visits with the Australian judge who's a
1690 woman and the Chinese judge who is also a woman, and we talked
1691 about this phenomena and they both said the same thing: yes,
1692 that happens all the time.

1693 HARRINGTON: That's amazing. So that's not different from the
1694 U.S., but—

1695 01:35:46 JUDGE BARKETT: [Interposing] Yeah.

1696 HARRINGTON: —it happens more in the international courts.

1697 JUDGE BARKETT: Yeah.

1698 HARRINGTON: That's fascinating. So this court is in The
1699 Hague. Do you split your time between The Hague and Miami?

1700 JUDGE BARKETT: I do.

1701 HARRINGTON: Yeah.

1702 JUDGE BARKETT: I go back and forth and I have an apartment in

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1703 The Hague right in the middle of the Old Town, and it's a
1704 lovely city and it's a great lifestyle because you do a lot of
1705 01:36:06 walking, a lot of biking, and food seems fresher.
1706 HARRINGTON: Yeah.
1707 JUDGE BARKETT: I don't know what to tell you. Yes. And
1708 there's music all the time.
1709 HARRINGTON: That's great.
1710 JUDGE BARKETT: Yes.
1711 HARRINGTON: So we are filming this in 2022. We were
1712 01:36:22 supposed to film it in 2021. It was postponed because we're in
1713 the middle of a pandemic or maybe towards the end of the
1714 pandemic. I wonder how has the pandemic changed the work of
1715 the court or the tribunal?
1716 JUDGE BARKETT: We did work throughout the pandemic on Zoom and
1717 that was something new. It forced us, like it forced many
1718 other courts and businesses to prepare to work remotely.
1719 HARRINGTON: Yeah.
1720 JUDGE BARKETT: Because we had always—the rule had been that if
1721 you were sick and it was supposed to be a deliberation day,
1722 01:36:53 there would be no deliberation unless everybody was there. And
1723 this whole Zoom experience then has sort of solved that problem
1724 because if you cannot be there because of illness or some other
1725 reason, you can be there on Zoom and participate that way. So
1726 we did do a lot of our deliberations that way.
1727 HARRINGTON: Do you deliberate from Miami ever?
1728 JUDGE BARKETT: Yes, I did.
1729 HARRINGTON: Nice.

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1730 JUDGE BARKETT: Yes. Very nice.

1731 HARRINGTON: Yes.

1732 01:37:18 JUDGE BARKETT: Although I like living in The Hague part time.
1733 I like the ability to go back and forth.

1734 HARRINGTON: That sounds fun. So most recently, you've been an
1735 ad hoc judge on the International Court of Justice.

1736 JUDGE BARKETT: Yes.

1737 HARRINGTON: Can you tell us about that?

1738 01:37:32 JUDGE BARKETT: Well, that—I mean sort of a pretty great cap to
1739 a judicial career. The International Court of Justice, also
1740 known as the World Court, is the judicial arm of the United
1741 Nations and it has 15 judges from 15 different countries, and
1742 our American judge had to recuse on a new case that was filed
1743 by Iran against the United States. And they had appointed what
1744 they—a substitute judge is called— a *judge ad hoc*. They had
1745 appointed one, Judge Brower,²⁰ but he had resigned in June, and
1746 so they needed to replace him and they asked me if I would be
1747 willing to do that and of course who wouldn't want
1748 01:38:24 to serve on the World Court? It's like the World Supreme Court
1749 or something like that.

1750 HARRINGTON: Pretty cool.

1751 JUDGE BARKETT: Yeah.

1752 HARRINGTON: Yeah.

1753 JUDGE BARKETT: Very interesting also. Slightly different from
1754 the court that I'm on, on the tribunal. Here, they do require
1755 that you write a paper. They have oral argument, and then you

²⁰ [Charles N. Brower's](https://www.law.gwu.edu/charles-n-brower) biography is available at <https://www.law.gwu.edu/charles-n-brower>.

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1756 are required—every judge is required to write a paper
1757 expressing their views on all of the various issues. And then
1758 01:38:54 that's exchanged before deliberations, which is what I'm going
1759 back for now.

1760 HARRINGTON: Interesting. And I watched a video of the oral
1761 argument, and as we—

1762 JUDGE BARKETT: [Interposing] Yes.

1763 HARRINGTON: —discussed, you don't get to ask any questions—

1764 01:39:06 JUDGE BARKETT: [Interposing] No.

1765 HARRINGTON: —which is like, whoa, mind blowing, you know.

1766 JUDGE BARKETT: And they read to you.

1767 HARRINGTON: Yeah.

1768 JUDGE BARKETT: Well, that's not just this court. That's—the
1769 other court, the other tribunal that I'm on as well.

1770 HARRINGTON: Yeah.

1771 JUDGE BARKETT: They literally read for a week. The—two days
1772 or two-and-a-half days to one side, two-and-a-half days to the
1773 other side, and their lawyers will stand at the podium and read
1774 01:39:32 to you, and we also see it on live note as they're reading it.
1775 And you can ask questions, but the lawyers cannot answer—can
1776 choose not to answer because they have to go back to their
1777 countries because the ramifications of an answer might affect
1778 the country. So it's not like an exchange that you have back
1779 and forth as we do here in the states.

1780 HARRINGTON: And what is the point of having it done orally as
1781 opposed to just doing it with the briefs?

1782 JUDGE BARKETT: Yeah.

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1783 HARRINGTON: I'm sure you've asked this question. Is it
1784 01:40:04 just tradition, or?
1785 JUDGE BARKETT: It just is.
1786 HARRINGTON: Okay.
1787 JUDGE BARKETT: It's just the way they do it and they, and they
1788 are very loath—unlike many courts that I've been on that were
1789 willing to change things like administratively and other ways,
1790 these tribunals are very loath to change the
1791 01:40:26 way things are done.
1792 HARRINGTON: Yeah, interesting.
1793 JUDGE BARKETT: I mean, I—when I first got there, of course, I
1794 was very anxious till I get this thing over with and I thought,
1795 well, why do we have to have a two-hour lunch period? We could
1796 just have half an hour. And I was—they were appalled. The
1797 Europeans expect a two-hour lunch period, so we're going to
1798 have that.
1799 HARRINGTON: Might as well enjoy it, I guess.
1800 JUDGE BARKETT: Right. Well.
1801 01:40:49 HARRINGTON: So what is the next job you have in your sights
1802 on?
1803 JUDGE BARKETT: [Interposing] Oh my God, I don't think there is
1804 one. I think I will now have served on more types of courts
1805 than anybody ever else, I think. I mean the state court,
1806 federal court, trial court, intermediate appellate court,
1807 Supreme Court, International Tribunal and the World Court.
1808 HARRINGTON: Pretty cool.
1809 JUDGE BARKETT: What should I do, Sarah?

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1810 HARRINGTON: Yeah.

1811 JUDGE BARKETT: I could–

1812 01:41:14 HARRINGTON: [Interposing] Traffic court?

1813 JUDGE BARKETT: Yes, I could do that, I suppose.

1814 HARRINGTON: You mentioned when you're talking about your
1815 childhood, about how music was an important part of your life,
1816 too. Are you musical other than being a choir leader?

1817 01:41:29 JUDGE BARKETT: Well, you know, I play the guitar a little bit.
1818 I'm not very good. I wish I were talented. I would–that would
1819 have been a really fun career. But I played and entertain
1820 myself and my friends. We do sing-alongs, things like that.

1821 HARRINGTON: Yeah, that's fine. So you mentioned teaching, and
1822 I know you taught in elementary school and then later in upper
1823 grades, and you have continued sort of teaching even as you've
1824 been a judge.

1825 JUDGE BARKETT: I love teaching.

1826 HARRINGTON: Yeah.

1827 01:41:57 JUDGE BARKETT: I love trying to explain concepts in a way
1828 that's understandable. I do like it. I've taught at the
1829 National Judicial College. I did that for several years and of
1830 course doing this international work with the Rule of Law
1831 Initiative from the ABA²¹ involved lectures to different
1832 judiciaries and different kinds of audiences. And I like doing
1833 that, too.

1834 HARRINGTON: Yeah. And you have also taught here at the
1835 Institute for Judicial Administration–

²¹ Information about the American Bar Association's [Rule of Law Initiative](https://www.americanbar.org/advocacy/rule_of_law) is available at https://www.americanbar.org/advocacy/rule_of_law.

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1836 JUDGE BARKETT: [Interposing] Yes.

1837 01:42:30 HARRINGTON: –in the New Appellate Judges Seminar.

1838 JUDGE BARKETT: Yes.

1839 HARRINGTON: What do you think are like the most important

1840 lessons for new appellate judges to take into their work?

1841 JUDGE BARKETT: There are several. Probably the, the most–

1842 well, first of all, as I said before, I think it's really

1843 important to get along with judges and to see the best in them

1844 01:42:53 socially so that you can at least have a, a reasonable

1845 conversation when you're, when you're debating the cases. I

1846 think it's very important to write clearly and persuasively. I

1847 do remember Allison²² reminded me that I had co-taught with Tim

1848 Terrell,²³ who taught appellate writing here. And I think

1849 analyzing your writing skills and developing them and being

1850 clear is very important. But one of the most important things,

1851 I didn't teach it, but somebody else that was here at a time

1852 that I was here did. He talked about listening with an

1853 unrebutting mind²⁴ and I think, that's been huge for me.

1854 01:43:43 I keep trying to do that. I do not always succeed at it

1855 because there's a–

1856 HARRINGTON: [Interposing] Yeah.

1857 JUDGE BARKETT: –there's a natural—you know, communication is

1858 very difficult, period. And when you're—when someone is

1859 speaking to you, you are—they are first of all, they are

²² Reference is to the Executive Director of the Institute of Judicial Administration at NYU Law at the time of this interview.

²³ 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.

²⁴ 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.

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1860 filtering it through their filters. And then when you're
1861 receiving it, you're filtering it through your filters. And
1862 there's a tendency when they say the first part of the
1863 syllogism, for example. You immediately want to jump in and
1864 01:44:16 say, but that's not, you know, instead of listening to the
1865 whole thing and trying to understand what their position is.
1866 So I think probably one of the most important things is to
1867 listen with an unrebutting mind until you understand the other
1868 person, and then you can move in and either agree or disagree
1869 with reasons.

1870 HARRINGTON: That's fascinating. That is not how
1871 01:44:39 lawyers are taught to think, right?

1872 JUDGE BARKETT: No.

1873 HARRINGTON: Yes.

1874 JUDGE BARKETT: No.

1875 HARRINGTON: That's fascinating. But I can see how that is—
1876 facilitates communication and teaching.

1877 JUDGE BARKETT: Right. I think all of that helped.

1878 HARRINGTON: Yeah. Would you ever imagine as a next phase of
1879 your career doing full-time teaching?

1880 JUDGE BARKETT: Maybe. I've taught—I taught at the University
1881 01:44:57 of Miami Law School, a summer or so ago. The, Introduction to
1882 American Law for the masters of laws program students who are
1883 primarily from out of the country.

1884 HARRINGTON: Yeah.

1885 JUDGE BARKETT: So I enjoyed that. It's a lot of work.

1886 HARRINGTON: Yeah.

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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.

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1912 Carolina" and Indiana, you know, something about Indiana, so
1913 forth. And then the following year, we had a lot of people
1914 from the JAG Corps coming, and so I didn't want to ask them to
1915 sing from their state, so I asked them to sing from their
1916 service and of course, they all got into a competition to see
1917 who could sing the loudest of their own songs.

1918 01:47:20 HARRINGTON: Fun.

1919 HARRINGTON: So that's how that happened. It was a lot of fun.

1920 HARRINGTON: That's a lot of fun. So in your life, you have
1921 traveled around the world and given lectures all over the
1922 world, including in Syria, where your parents are from.

1923 01:47:31 HARRINGTON: Can you tell us about your experience of going to
1924 Syria?

1925 JUDGE BARKETT: Well, the first time we went to Syria, my
1926 sisters and I went. Two of my sisters. So three of us went.
1927 The consul for Syria had an office in Detroit, and as my sister
1928 was a big deal—automobile dealer, she knew him, and so he kind
1929 of arranged for us to meet Asma Assad, Assad's wife. So we
1930 went to some event in Jordan, and then we got a driver and we
1931 drove into Syria and met with Assad's wife.

1932 HARRINGTON: Wow.

1933 01:48:10 JUDGE BARKETT: And it was a fascinating experience. I thought
1934 she was going to give us like 15 minutes, we were told. We
1935 were there for an hour and a half, mostly because my sisters
1936 were talking about their children to her. I was mortified
1937 again. But she was beautiful and lovely. It's just a shame
1938 what has happened in Syria. And then the second time was a

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1939 couple of years later when I went as part of an ABA delegation
1940 and the—it was a seminar over three or four days that had been
1941 co-sponsored jointly between the ABA and the British Syrian
1942 Society, which was run by Asma Assad's father, who was a doctor
1943 01:48:55 in London. And I remember we met Assad. He met with all of
1944 the presenters in the, in the program, and he had us sitting
1945 facing each other in a long line, and he sat in the middle
1946 facing us all and he would ask us questions: what do you think
1947 Syria needs more of? And there were exchanges and you—there's
1948 no way you could have predicted what was going to happen in
1949 Syria with him and—

1950 01:49:26 HARRINGTON: [Interposing] Yeah.

1951 JUDGE BARKETT: —and, you know, the people there, sadly.

1952 HARRINGTON: Did you have any family still in Syria?

1953 JUDGE BARKETT: I do.

1954 HARRINGTON: Okay. And you do now?

1955 JUDGE BARKETT: I do.

1956 HARRINGTON: Okay.

1957 JUDGE BARKETT: We saw them the first time when we went. We,
1958 we had a driver take us out to the village where my father's
1959 family grew up. And the one brother that was left had all of
1960 01:49:47 his family, so there was a huge number of people.

1961 HARRINGTON: Wow.

1962 JUDGE BARKETT: And they—it was really—it was great. They
1963 were—as soon as we—they didn't know we were coming. As soon as
1964 we arrived, all the pots came out and they started making the
1965 grape leaves and the kibbi and everything else.

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1966 HARRINGTON: Wow.

1967 JUDGE BARKETT: It was great.

1968 HARRINGTON: Were they a part of your life growing up, where
1969 your parents in touch with them?

1970 01:50:07 JUDGE BARKETT: No, not really.

1971 HARRINGTON: Yeah.

1972 JUDGE BARKETT: And also, my father—my mother's sisters ended
1973 up going to South America. I mean, the exodus from Syria was
1974 partly to South America, partly to the United States—

1975 HARRINGTON: [Interposing] Yeah.

1976 JUDGE BARKETT: —and other places.

1977 01:50:23 HARRINGTON: What about your other international travels? At
1978 any place leave a big impression on you or surprise you?

1979 JUDGE BARKETT: Well, we went—I went to Tunisia shortly after
1980 their revolution, and I remember being very struck by one of
1981 the—one of the judges there. We started talking about marching
1982 in the in the, in the protests, and I said, what was that like?
1983 And she said I kissed my children goodbye in the morning and I
1984 knew that I had to be prepared to die.

1985 HARRINGTON: Wow.

1986 JUDGE BARKETT: And it was just like, oh my God.

1987 01:51:04 HARRINGTON: Right.

1988 JUDGE BARKETT: And it was, it was very—moving is not exactly
1989 the right word, but very impactful to, to actually talk to
1990 somebody who, who was that willing to die for her beliefs. It
1991 was incredible, and unfortunately things haven't stayed the
1992 same at all—in all of these places. Egypt—we went to Egypt and

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1993 drove by the square where there had been some protests. It's
1994 just—it's—it was a remarkable time and then now it seems to
1995 have regressed.
1996 HARRINGTON: Do you find that with your work on the
1997 01:51:47 Iran-U.S. Tribunal, that you are able to have dialogue with
1998 your Iranian counterparts? You said that you have dinner
1999 together.
2000 JUDGE BARKETT: Yes. I think we tend to stay mostly on neutral
2001 topics.
2002 HARRINGTON: Yeah.
2003 JUDGE BARKETT: I mean, I would love to ask them what is
2004 happening with the women in Iran right now.
2005 01:52:01 HARRINGTON: Yeah.
2006 JUDGE BARKETT: But I'm hesitant to, to do that.
2007 HARRINGTON: Yeah. You said they wouldn't be able to answer or
2008 you just don't want to—
2009 JUDGE BARKETT: [Interposing] I'm not sure.
2010 HARRINGTON: —put them on the spot?
2011 JUDGE BARKETT: But I am not sure. But it, but it would be
2012 putting them on the spot.
2013 HARRINGTON: Yeah.
2014 JUDGE BARKETT: On the other hand, they have no hesitancy in
2015 01:52:17 talking about our situation here in the United States.
2016 HARRINGTON: Really? That's interesting.
2017 JUDGE BARKETT: So—
2018 HARRINGTON: [Interposing] Yeah.
2019 JUDGE BARKETT: Yes.

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2020 HARRINGTON: Do they ask you about it or just tell you what
2021 they think about it?

2022 JUDGE BARKETT: Well, it's just general conversation, you know.
2023 An election occurs, everybody's talking about it. We all talk
2024 about it, and they join in.

2025 01:52:33 HARRINGTON: That's interesting. So one theme, as I've noted
2026 running through your career, is that you were the first or the
2027 only woman to hold several positions and I wonder if you can
2028 sort of tell us a little bit about what it felt like to break
2029 those barriers. You said that you it wasn't a goal you set out
2030 for yourself to do.

2031 JUDGE BARKETT: I don't—I just I'm not conscious of it as I
2032 01:52:53 said—

2033 HARRINGTON: [Interposing] Yeah.

2034 JUDGE BARKETT: —in a, in a specific way. I'm certainly
2035 conscious of it that I'm the only woman in the room a lot of
2036 the times.

2037 HARRINGTON: Yeah.

2038 JUDGE BARKETT: But, I mean, you sort of get used to that.

2039 HARRINGTON: Yeah.

2040 JUDGE BARKETT: And I mean to be honest. I, I want other women
2041 very, very much, but I also—I don't want ideologues, even if
2042 01:53:18 they're women.

2043 HARRINGTON: Right. We talked a bit about how this experience
2044 of saying something and having no one react, and then having a
2045 man repeat your idea and everyone—

2046 JUDGE BARKETT: [Interposing] Yeah.

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2047 HARRINGTON: –saying that’s a great idea, which I think is a
2048 universal experience among professional women and maybe all
2049 women. Are there other ways in which you felt like you’ve been
2050 underestimated or discriminated against because of your gender?
2051 JUDGE BARKETT: I, I think so. I think that, that you are more
2052 01:53:48 prone to be discounted in, in a room full of actors, different
2053 people. But can I say that, you know, I haven’t gotten a job
2054 because of my gender or anything like that? No, I don’t think
2055 I can. Can I say that some people opposed me getting a job
2056 because of my gender? I’m sure there have been occasions when
2057 that has happened when I–I’ve been aware of it.
2058 HARRINGTON: Yeah.
2059 01:54:17 JUDGE BARKETT: So I just–I think I’ve just been very fortunate
2060 frankly.
2061 HARRINGTON: That makes a lot of sense. Have you, have you
2062 found a community in among other women judges?
2063 JUDGE BARKETT: Yes. In a sense, yes. I feel very strongly
2064 that you have to be supportive of women’s organizations and
2065 groups, even though sometimes it’s a little hard.
2066 HARRINGTON: Yeah.
2067 JUDGE BARKETT: But I think, I think you have to be supportive
2068 of other women’s groups to the extent that you can be, and so
2069 I–
2070 01:54:56 and I think, I think it's important to help other women. And
2071 most of the time, the only way to help is being inside one of
2072 these groups because people don't reach out to you on an
2073 individual basis.

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2074 HARRINGTON: Yeah.

2075 JUDGE BARKETT: But in the structure of a woman's group, for
2076 example, they're much more willing to come and tell you what
2077 they need and give you–

2078 HARRINGTON: [Interposing] Yeah.

2079 JUDGE BARKETT: –the opportunity to help. So I think there's
2080 01:55:18 a very big value in participating and being part of women's
2081 groups for that purpose.

2082 HARRINGTON: Yes, I think they're very supportive. I can
2083 remember when I was clerking, there was a meeting in Miami of
2084 the woman's–what is it? The women judges?

2085 JUDGE BARKETT: The women judges.²⁶

2086 HARRINGTON: And there was a hurricane. Remember?
2087 01:55:36 that–

2088 JUDGE BARKETT: [Interposing] Oh, yes.

2089 HARRINGTON: – came through Miami. So–that was quite an
2090 experience.

2091 JUDGE BARKETT: A couple of them had to go to my apartment and
2092 help me mop up the water.

2093 HARRINGTON: Yeah.

2094 JUDGE BARKETT: I think the, the lights all went out at the
2095 Loewe's hotel. They had to–

2096 01:55:48 HARRINGTON: [Interposing] Yeah.

2097 JUDGE BARKETT: –go up and down the stairs, right?

2098 HARRINGTON: Yes. That's quite an experience.

2099 JUDGE BARKETT: Yes.

²⁶ [The National Association of Women Judges \(NAWJ\). https://www.nawj.org/](https://www.nawj.org/)

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2100 HARRINGTON: You know, this is maybe a question that you've
2101 sort of answered in some ways, but I wonder how it has been,
2102 you know, being a woman and being an immigrant affected the way
2103 you approach—the way you sort of look at our legal system and
2104 our constitutional system?

2105 JUDGE BARKETT: Again, I think we are the sum of all of our
2106 01:56:14 experiences, and I don't know that you can separate out threads
2107 and attribute some view or something to a particular thread. I
2108 think you're—the totality of what you've seen, what you've
2109 experienced, what you've done. And so I, I think clearly, all
2110 of the experiences: my convent experience and the way people
2111 treated each other, my family experience and my—being an
2112 immigrant has, has had to have an effect in, in how
2113 01:56:52 specifically—I'm not sure I can say it except to say it's made
2114 me; it's made me care about people. It's made me understand
2115 more realistically what people go through than maybe somebody
2116 else who hasn't experienced it, although I think I—I think I
2117 have a sense of what people experience sometimes when I myself
2118 haven't experienced it.

2119 HARRINGTON: Yeah.

2120 JUDGE BARKETT: But I feel empathetic. Maybe the whole of all
2121 of those experiences helps make you more empathetic.

2122 HARRINGTON: That seems like an important trait in
2123 01:57:29 someone passing judgment on things.

2124 JUDGE BARKETT: Yes.

2125 HARRINGTON: Yes.

2126 JUDGE BARKETT: Yes.

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2127 HARRINGTON: What do you see as—just sort of looking forward to
2128 the next generation or so, as the big legal or cultural or
2129 societal issues that are going to be confronting these up-and-
2130 coming generations?

2131 JUDGE BARKETT: Ironically and sadly, I really think it's the
2132 same issues that keep confronting us.

2133 01:57:48 HARRINGTON: Yeah.

2134 JUDGE BARKETT: Justice and equality for all, manifested in a
2135 lot of different ways. I—you know, many of the speeches I give
2136 have to do with being open to correcting the mistakes we make.

2137 I point out that the reason why I think America is so great or
2138 and has been so great is not because we've accomplished
2139 justice, because I think it's clear we have not in

2140 01:58:22 so many areas, but because every time we—I don't want to use
2141 the colloquial words, but anytime we make mistakes, we do
2142 eventually correct them. And it's this willingness to correct
2143 the mistakes that I think makes, makes us great. In racial

2144 justice, yes, we had *Brown versus Board of Education*,²⁷ but
2145 before we had *Brown versus Board of Education*, we had *Dred*
2146 *Scott*²⁸ and we had *Plessy versus Ferguson*,²⁹ and we had these
2147 horrible cases that actually validated—

2148 HARRINGTON: [Interposing] Yeah.

2149 JUDGE BARKETT: —slavery or, or separate and unequal.

2150 01:59:01 HARRINGTON: Yeah.

²⁷ [Brown v. Board of Education of Topeka](https://www.oyez.org/cases/1940-1955/347us483), 347 U.S. 483 (1954), available at <https://www.oyez.org/cases/1940-1955/347us483>.

²⁸ [Dred Scott v. Sandford](https://www.oyez.org/cases/1850-1900/60us393), 60 U.S. 393 (1857), available at <https://www.oyez.org/cases/1850-1900/60us393>.

²⁹ [Plessy v. Ferguson](https://www.oyez.org/cases/1850-1900/163us537), 163 U.S. 537 (1896), available at <https://www.oyez.org/cases/1850-1900/163us537>.

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2151 JUDGE BARKETT: And so—but then, but then we got Brown and
2152 we've fixed it, sort of. We obviously haven't fixed it yet,
2153 and we still have so much to do in racial justice, especially
2154 with police brutality and things of that nature. The same
2155 thing with women, you know. Yes, we got the amendment letting
2156 us vote, but you still couldn't serve on a jury and you still—I
2157 mean, there were so many things that you were still being
2158 unable to do as a woman.

2159 HARRINGTON: Yeah.

2160 01:59:30 JUDGE BARKETT: And then eventually, all of those things got
2161 undercut and we became more and more equal. Are we equal
2162 today? No.

2163 HARRINGTON: Yeah.

2164 JUDGE BARKETT: We still have these horrible—I don't know if
2165 you saw the, the lecture I gave here.³⁰ Had a lot to do with
2166 violence against women and—

2167 01:59:46 HARRINGTON: [Interposing] Yeah.

2168 JUDGE BARKETT: —how we have really messed up the law in that
2169 area and not given women protection from domestic violence and
2170 other kinds of gender violence. We still have to do a lot in
2171 in that regard. Immigration. So—I mean it, people do not
2172 understand that we have a treaty which requires that we grant
2173 asylum to people who are entitled to it, that we grant relief

³⁰ Judge Barkett delivered the 2015 Madison Lecture at NYU Law. The annual lecture series is delivered by a federal judge and designed to enhance the appreciation of civil liberty and strengthen the sense of national purpose. Judge Barkett's lecture was titled "*Bringing Human Rights Home? I Thought They Were Already Here! Human Rights and Our Constitution**". A [video of the lecture](https://www.law.nyu.edu/news/madison-lecture-judge-rosemary-barkett) is available here: <https://www.law.nyu.edu/news/madison-lecture-judge-rosemary-barkett>. The lecture was also published in Volume 91, Issue 3 of the [New York University Law Review](https://www.nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-91-3-Barkett.pdf) and is available for reading at <https://www.nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-91-3-Barkett.pdf>.

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2174 if they are going to have to be sent back to a place which is
2175 going to persecute them or kill them. We have treaty
2176 obligations and those treaty obligations have been
2177 02:00:30 passed into law as well.

2178 HARRINGTON: Yeah.

2179 JUDGE BARKETT: So it isn't a question of like, we don't have
2180 to do any of this stuff. We're obliged by law to do that.

2181 HARRINGTON: Yeah.

2182 JUDGE BARKETT: And we're not, we're not, I don't think,
2183 applying it correctly and fairly and evenly and specifically.

2184 HARRINGTON: Yeah.

2185 JUDGE BARKETT: So immigration is another area. Qualified
2186 immunity has to be reviewed again. We, we have to make people
2187 02:01:00 responsible for violating other people's constitutional rights.
2188 And when, when you read the opinion on qualified immunity from
2189 the very beginning, it makes a lot of sense. We don't want to
2190 hamstring police officers from doing their job. But it has
2191 gotten so out of kilter that now we say if a woman—if a woman
2192 comes into the police station showing or talking about being
2193 abused, the police officers can just ignore it according to
2194 02:01:28 the opinion that is presently guiding the law. That's just not
2195 right.

2196 HARRINGTON: Yeah.

2197 JUDGE BARKETT: So all of those things, I mean that's what I—I
2198 mean, those are all the things I think of sort of on the top of
2199 my head.

2200 HARRINGTON: Yeah.

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2201 JUDGE BARKETT: I'm sure they're–

2202 HARRINGTON: [Interposing] That's a long list.

2203 JUDGE BARKETT: Yeah.

2204 02:01:48 HARRINGTON: You know, for people of my generation—I was born
2205 in the seventies. It felt like for a long—for the first few
2206 decades that there was this talking about acknowledging
2207 mistakes and changing the course of things. There was sort of
2208 a joint effort to move things in the right direction and in
2209 recent years, it maybe has felt like there's been a turn in a
2210 different direction. Do you see that sort of like two steps
2211 forward, one step back thing–?

2212 JUDGE BARKETT: [Interposing] Yes.

2213 HARRINGTON: –as part of the–

2214 02:02:09 JUDGE BARKETT: [Interposing] Yes. But that's been
2215 historically the way–

2216 HARRINGTON: [Interposing] Yeah.

2217 JUDGE BARKETT: –we, we—we've done that.

2218 HARRINGTON: The pendulum.

2219 JUDGE BARKETT: You know, I was thinking about it too—privacy
2220 and the internet. People do have an expectation of privacy,
2221 even
2222 02:02:24 though they put things on Facebook, for example, but they think
2223 it's only their friends and their family that are going to be
2224 seeing it. They don't think an employer is or somebody else
2225 and I think that we need to work at rethinking all of that.

2226 HARRINGTON: Yeah.

2227 JUDGE BARKETT: Marital law is another one. I mean we have a

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2228 lot of work to do.

2229 HARRINGTON: Yes.

2230 JUDGE BARKETT: As it were.

2231 HARRINGTON: Yes. I mean—so one thing I hope and I know is

2232 02:02:48 coming across in this interview is your sort of your warmth of

2233 spirit and your love of people, as you've said. One thing that

2234 goes along with that I've always admired about you is your

2235 sense of optimism. You seem—

2236 JUDGE BARKETT: [Interposing] Yes.

2237 HARRINGTON: —or at least that you project optimism. You seem

2238 very skilled at finding sort of the silver lining and the

2239 bright side and hope for the future. Do you have any tips you

2240 can share with the rest of us? Is it just your nature or do

2241 you work at that?

2242 02:03:12 JUDGE BARKETT: I think it is—I think it is my nature and

2243 that's why we—you know, everybody's so lucky to be born where

2244 they're born, to be born of the parents they're born to. They

2245 can't take credit for those things, to be—have the personality

2246 that they have.

2247 HARRINGTON: Yeah.

2248 JUDGE BARKETT: I may have gotten a lot of that from my parents

2249 02:03:35 as well, from my mother who—you know, we used to joke and say

2250 that if we were in a—if we, if we have rear-ended someone she

2251 would believe that the guy had backed into us instead of us.

2252 HARRINGTON: Yeah.

2253 JUDGE BARKETT: I mean she was very optimistic, I think, at

2254 least in—I came towards the end. I was the second youngest.

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2255 HARRINGTON: Yeah.

2256 JUDGE BARKETT: So she was older by the time she had me and
2257 then my sister.

2258 02:04:06 HARRINGTON: So we just have to try to be more like you, I
2259 guess?

2260 JUDGE BARKETT: I don't know about that.

2261 HARRINGTON: Yes.

2262 JUDGE BARKETT: No, you don't want to do that, but I'm, I'm
2263 grateful for how, how lucky I've been in so many ways.

2264 HARRINGTON: Yeah.

2265 JUDGE BARKETT: So I think that's very cool.

2266 HARRINGTON: So do you have any advice you would give to people
2267 who are just starting out in their legal careers, like
2268 02:04:31 how to pick a path?

2269 JUDGE BARKETT: Yeah, I'd say yes to everything.

2270 HARRINGTON: Yeah.

2271 JUDGE BARKETT: Every time you have an opportunity to volunteer
2272 for something or to be on a committee or to-whatever, something
2273 comes up and it's-with-comes within your attention or upon your
2274 attention or-I would say yes, say yes. Participate in as many
2275 02:04:58 things as you can participate in. It's going to make you a
2276 better human being because you'll understand more just about
2277 the world, if nothing else, but also how the world works. And
2278 secondly, it will expose you to a whole lot more people who-I
2279 mean, I didn't do these things in order to get a benefit from
2280 it, but you do get a benefit because then they know you and
2281 when you're being considered to be on this board, or that

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2282 board, on this court, on that court, at least there is a group
2283 of people that are making the decisions that have been exposed
2284 to you and understand you. So I would say, say yes.

2285 02:05:35 HARRINGTON: And you have, in describing your career, have
2286 described it in terms of gratitude to be presented with these
2287 opportunities—

2288 JUDGE BARKETT: Yes.

2289 HARRINGTON: —and of course, you have also earned these
2290 opportunities with your work and your intellect. Do you—
2291 looking back, do you regret any decisions you made, any things
2292 you didn't say yes to or things you did say yes to you that you
2293 wish you hadn't?

2294 JUDGE BARKETT: I don't think so.

2295 02:05:56 HARRINGTON: Okay.

2296 JUDGE BARKETT: But again, it's—again, it's luck, Sarah. It's—
2297 I—my mind doesn't work that way. I don't think in terms of
2298 regret. I've, I've—and I am sure that in hindsight, your
2299 memory filters out the bad things, so I'm sure—

2300 HARRINGTON: [Interposing] Yeah.

2301 JUDGE BARKETT: —I don't remember whatever it is I would have
2302 02:06:18 regretted.

2303 HARRINGTON: That's great.

2304 JUDGE BARKETT: So I can't think of anything right—

2305 HARRINGTON: [Interposing] Yeah.

2306 JUDGE BARKETT: —right now. I mean, I think I've benefited in
2307 some way from every experience that I've had.

2308 HARRINGTON: So that brings us to our final question, which is

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2309 what is—

2310 JUDGE BARKETT: [Interposing] The final question?

2311 HARRINGTON: Yes, which is what is the question that you

2312 02:06:31 wish people would ask you when they interview you?

2313 JUDGE BARKETT: Well, let's see. You didn't ask me about

2314 walking on the Camino del Santiago de Compostela³¹.

2315 HARRINGTON: Tell me about that.

2316 JUDGE BARKETT: No, you didn't ask me about skiing in San

2317 Moritz and in Austria and other places in Europe. Those things

2318 would have been more fun to talk about. Well, we talked about

2319 my-playing the guitar badly, but fun. Those kinds of things.

2320 HARRINGTON: Yeah. The non-work parts of your life.

2321 02:07:06 JUDGE BARKETT: Yeah.

2322 The non-work parts of life.

2323 JUDGE BARKETT: Because I think you have to have that too.

2324 HARRINGTON: Yes.

2325 JUDGE BARKETT: I mean everything—and it's amazing that you can

2326 02:07:17 do a lot of both things.

2327 HARRINGTON: Have you had times in your life when you've had to

2328 work harder to sort of fence off the non-work things, to make—

2329 JUDGE BARKETT: [Interposing] Yes.

2330 HARRINGTON: —time for that?

2331 JUDGE BARKETT: I—yes. Right now, for example, I work with my

2332 law clerk. If I'm in in the states, she's in The Hague, and

2333 there's a six-hour difference. So I—if I get up in the morning

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.

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2334 and I go straight to my computer with a cup of coffee to call–
2335 02:07:56 because I work with her on FaceTime every day.
2336 HARRINGTON: Yeah.
2337 JUDGE BARKETT: If I start with that, I'll never get off the
2338 computer, and so I have to—I have to find ways not to start
2339 with that and call her like at like 10:00 instead of at 7:00.
2340 HARRINGTON: Yeah.
2341 JUDGE BARKETT: And try to get these other things in or done.
2342 HARRINGTON: Yeah.
2343 JUDGE BARKETT: But there—I mean—but then there are lulls, as
2344 you know, and so sometimes, you don't have to call everyday–
2345 02:08:18 HARRINGTON: [Interposing] Yeah.
2346 JUDGE BARKETT: –because there's a lull in the, in the pace of
2347 the deliberations or in the pace of whatever it is you're
2348 doing.
2349 HARRINGTON: Do you think you'll ever just retire, maybe when
2350 you're 100? You're only 83, so you got lots of time.
2351 JUDGE BARKETT: I don't know. I can't imagine retiring. What
2352 02:08:36 would I do? Just watch TV all day?
2353 HARRINGTON: I can't imagine you retiring either, but–
2354 JUDGE BARKETT: [Interposing] No. No, I don't have any plans
2355 right now. I mean, I plan to keep doing what I'm doing until I
2356 can't do it anymore.
2357 HARRINGTON: Yeah.
2358 JUDGE BARKETT: Unless something else comes up.
2359 HARRINGTON: Right. To say yes to?
2360 JUDGE BARKETT: To say yes to, right.

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2361 HARRINGTON: Nice.

2362 02:08:56 JUDGE BARKETT: Yes.

2363 HARRINGTON: All right.

2364 Well, that's the end of the questions. We really appreciate
2365 you coming here.

2366 JUDGE BARKETT: Thank you.

2367 HARRINGTON: That's wonderful to spend time with you.

2368 JUDGE BARKETT: Thank you, Sarah. It's been a great
2369 opportunity to come back to NYU.

2370 HARRINGTON: Yeah.

2371 02:09:05 JUDGE BARKETT: I really enjoyed coming back to New York and
2372 coming back to the campus.

2373 HARRINGTON: Thank you to IJA and NYU for having us here.

2374 JUDGE BARKETT: Yes, indeed. Thank you.

2375