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NEW YORK UNIVERSITY SCHOOL OF LAW –  
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Oral History of Distinguished American Judges

HON. DIANE P. WOOD  
U.S. COURT OF APPEALS FOR THE SEVENTH CIRCUIT  
An Interview  
with  
Steven Art, Loevy & Loevy  
Katherine Minarik, cleverbridge

September 27, 2018

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[START RECORDING]

MS. KATHERINE MINARIK: Judge Wood,  
00:00:17 thank you for meeting with us today.  
I'm Katherine Minarik and I'm here  
with another of your former law  
clerks, Steven Art, and we are  
pleased to conduct your oral history  
on behalf of the Institute of  
Judicial Administration for the NYU  
School of Law. We think the best  
place to start is at the beginning,  
so could you tell me where you were  
00:00:37 born and what took your family to  
Texas?

CHIEF JUDGE DIANE P. WOOD: Yes,  
thank you for being here. I was born  
in New Jersey, near Westfield, New  
Jersey, where I lived until I was  
almost 16 years old. At that time I  
moved to Texas because my father's  
job was transferred from New York  
City down to Houston. He came  
00:00:57 home one day and announced that we  
were moving.

MS. MINARIK: What memories of New

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Jersey and Texas from that era of  
your childhood stick with you?

00:01:05

CHIEF JUDGE WOOD: Well, a lot of  
nice memories from New Jersey. I  
really didn't want to move at all.  
One of the things I particularly  
enjoyed was our summers down on the  
New Jersey shoreline, a place called  
Long Beach Island which I absolutely  
loved. I had very good friends in  
school. I thought that I was really  
living in a wonderful place and hated  
to move.

00:01:25

MS. MINARIK: Were there any vivid  
events or anything about your life  
when you were young that stuck with  
you to this day?

CHIEF JUDGE WOOD: Well, a number of  
things, of course. I really enjoyed  
my friends, I enjoyed doing  
craftwork, I enjoyed reading, and  
different kinds of things that were  
fun to do; but, I think some of the  
dramatic things were things that  
happened to my older sister, such as

00:01:47

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00:01:58 the time she chopped her leg with an  
axe. She still has a very long 4-  
inch scar from that, and I remember  
the whole family, of course, had  
turned inside out to address this  
emergency. She was fine, nothing  
long-lasting happened, but it was a  
crazy time.

MS. MINARIK: I imagine that has  
given you a perspective on personal  
injury law.

CHIEF JUDGE WOOD: It did, indeed.

00:02:15 MS. MINARIK: So tell me, how do you  
think being a teenager during the  
1960s might have shaped the way you  
think about the world today?

CHIEF JUDGE WOOD: I think it had a  
very profound impact, because as I  
was moving through high school and  
early college, there were  
demonstrations about the Vietnam War,  
there were very important  
00:02:34 developments in the Civil Rights  
Movement, there was a tradition of  
engagement in public affairs that

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00:02:46 profoundly affected me. I remember when I was a senior in high school in Houston, Martin Luther King was assassinated, and my Government teacher (who everybody adored, he had just come back from the Peace Corps and we thought he was just the best) took it upon himself to go out and personally lower the flag to half-mast in the middle of the school day as the news came through. I so admired that he'd taken that step.

00:03:10 I think it may have startled the school administration to be honest, but that was the kind of thing people did. When I was in college the whole place shut down for a while when U.S. troops invaded Cambodia. So it was a very interesting, and I would say unsettling, time.

MS. MINARIK: You went to the University of Texas for college.  
00:03:30 What took you there and what did you study?

CHIEF JUDGE WOOD: The reason I went

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00:03:37 to the University of Texas for  
college as opposed to one of the  
northeastern schools, which I had  
thought about going to- my sister had  
gone to Mt. Holyoke- was really two-  
fold. First of all, the fact that we  
had moved to Texas changed the  
equation very much for us, and at the  
time, this is going to sound  
unbelievable, at the time the tuition  
for in-state residents at the  
University of Texas was \$50 a  
00:03:59 semester. 5-0-point-0-0 dollars a  
semester.

MS. MINARIK: That does sound  
unbelievable.

CHIEF JUDGE WOOD: So my parents  
basically said, "Boy that sounds  
pretty good to us". I had a younger  
brother. I had the older sister. I  
was in the middle. So there was  
that. That alone wouldn't have done  
00:04:17 it, but the University of Texas also  
had a terrific program called Plan

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00:04:28 II<sup>1</sup>, which they still have, which selectively admits 200 freshman a year. You don't have any class taught by anyone but a full professor; no class with more than 20 people in it; freshman seminars; all the help and mentoring that you could ask for; and, I was admitted into that program. So the combination of the affordability and the fact that it would be a first-rate opportunity is what brought me there.

00:04:49 MS. MINARIK: And what did you plan to do after college?

CHIEF JUDGE WOOD: Well, I started college with a lot of advanced placement credits, actually to the point where I essentially had placed out of the first year of college. So I graduated in three years and had planned at the time, based on my interests, to do Comparative

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<sup>1</sup> Plan II is a small honors program at the University of Texas offering a four year arts and science honors major with a core curriculum.

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Literature graduate work. I applied to a number of

00:05:12 graduate programs, was accepted into some terrific programs, and decided I would go to Yale to do Comparative Literature graduate studies. Then I went home for the summer

00:05:23 before I was supposed to go off to Yale. I was working at Rice University in Houston with some economists, and in the evenings, when I had time, I would browse in the Rice library and look at the journals that the Comparative Literature people put out. My heart sank every time I looked at one, because the articles were some bit of

00:05:46 esoterica that I was afraid maybe the person who wrote it and their two best friends had read, but it wasn't clear to me that anyone else had done so. And I thought, well, bless their hearts, I'm not standing in anyone's way of doing this, but it's not for me. So I changed my mind about 10



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00:06:06 days before I was supposed to go to  
Yale. [I] called them up. They were  
flabbergasted, but I said, I just  
don't want to do this. So I went  
back to Austin, hung out for a year,  
and started law school the next year.

MS. MINARIK: And how did you decide  
00:06:15 to go to law school instead?

CHIEF JUDGE WOOD: The reason I  
decided to go to law school as  
opposed to anything else had a lot to  
do with a dinner I had with a friend  
of mine who was in law school at the  
time. And he told me that law school  
was it. Law school was the answer to  
all my problems. I said, "Oh, I  
don't want to go. It'd be boring.

I've  
00:06:33 looked at people's law school books."  
And he said, "No, no, no, you don't--  
you really should do this."  
And I thought about it, and I  
thought, okay, I'll give it a try. So

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I took the LSAT<sup>2</sup>. The reason I went to Texas was for more personal reasons, but I did in fact choose law school.

00:06:53 MS. MINARIK: And tell me about your class at the University of Texas Law School. How many students were in your class and how many women were in your class?

00:07:01 CHIEF JUDGE WOOD: I have very good data on who was in my law school class and how many people were there. So the class itself was about 400-450 people. We were divided up into four sections, so one had all of one's classes with the same group of some 110, 120 people. And I found out the summer after my second year in law school when I was working in Washington, D.C. at the law firm of Covington & Burling,  
00:07:27 that Texas was very typical in its

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<sup>2</sup> Law School Admissions Test (LSAT) is the only test accepted for admissions purposes by American Bar Association (ABA) accredited law schools in the United States.

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ratio of women. So at the University of Texas Law School, my class was about 18% women, and I discovered from my friends at Covington that the same was true at Harvard, the same was true at Yale, the same was true at Berkeley, and on, and on. All the schools represented by these summer associates were just a bit below the 20% level.

00:07:48

MS. MINARIK: And was there any other diversity in the student body at Texas Law?

00:07:55

CHIEF JUDGE WOOD: Diversity in the student body at Texas Law was a very contested issue when I got there. One of the first things I remember seeing, literally before any classes, was a debate in an open area of the law school campus between a student, a third-year student named Sam Biscoe<sup>3</sup> who was the head of the Student Association and an African-

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<sup>3</sup> Sam Biscoe became the first African-American judge of Travis County in Austin, Texas.

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American student, and a law professor  
00:08:19 who was not African-American, a law  
professor who was debating the other  
side of this, and the issue they were  
debating was affirmative action. And  
Sam was making a strong argument for  
the necessity of affirmative action  
at a place like Texas, and the  
professor was arguing just as  
vociferously that affirmative action  
should play no role in law school  
00:08:44 admissions. It was a very active  
discussion. The University of Texas  
Law School in particular has a  
history going all the way back to the  
late 1940s with respect to the  
00:08:55 admission of diverse students of  
various kinds, and so I realized that  
Sam was quite right, that there  
wasn't much diversity at the time,  
but there was some effort to increase  
it.

MS. MINARIK: Do you think you were  
ever treated differently during law  
school because you were one of a

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handful of women there?

00:09:16 CHIEF JUDGE WOOD: I wondered when I was in law school whether women would be treated differently or not. I was very much on the lookout for this, and I think looking back on it the answer is probably yes, that women were not treated the same way. The most notorious story came from the very distinguished professor Charles Alan Wright, who had been criticized

00:09:40 by the women law students for not calling on them enough. Professor Wright thought that it was ungentlemanly to call on women students. His response to

00:09:51 criticism, the year before I took a federal courts class from him, was to say, well, fine, I'm not going to call on anybody, then. So he didn't call on women and he didn't call on men. He would introduce a topic- we're going to talk about diversity jurisdiction today- and if no one raised their hand within the next 60

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seconds he would move on to the next  
00:10:12 topic. People learned to intervene.  
But that said, he was pretty good at  
inclusiveness. The other place I  
noticed it, though, was in the more  
subtle mentoring-- who would write  
letters of recommendation, what were  
they willing to see-- that you were  
somebody who should be sponsored,  
basically.

MS. MINARIK: You were also an editor  
00:10:31 on the *Law Review* at Texas. What do  
you remember about being an editor?  
Do you remember anything about any of  
the scholarship that you helped  
publish?

00:10:41 CHIEF JUDGE WOOD: Well, while I was  
at the University of Texas Law School  
I was invited to be on the *Law  
Review*, and I became what's called a  
Note and Comment Editor there, which  
meant that my job was to edit student  
writing that was published by the law  
school, by the *Law Review*. One of  
the pieces that I did edit that I

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00:11:01 remember, it was a very lengthy piece  
on Title IX, the [federal] statute  
that prohibits sex discrimination in  
educational programs, so that was  
interesting. And I enjoyed the  
companionship of the other editors.  
MS. MINARIK: How many other women  
were editors with you? Was it the  
same 18% ratio or was it a little  
worse?

00:11:18 CHIEF JUDGE WOOD: It was worse;  
there was one other woman editor.

MS. MINARIK: Out of how many?

CHIEF JUDGE WOOD: Gee, that's an  
interesting question. It's got to be  
at least 15, if not 18.

00:11:29 MS. MINARIK: You were also one of  
the first women that Texas admitted  
as a member of the Friar Society.  
What is the Friar Society and how did  
you become a member?

CHIEF JUDGE WOOD: At the University  
of Texas there is a single honorary  
society that's designed to recognize  
people from all parts of the

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University. It's called the Friar  
00:11:47 Society, and at the time I started at  
the University of Texas as an  
undergraduate it was an all-male  
society. By the time I was in law  
school the all-male policy was coming  
under a lot of stress because the  
types of leaders that they normally  
picked were no longer all male. So,  
for example, the editor of *The Daily  
Texan*, the newspaper, who later went  
00:12:10 on to become a distinguished *Wall  
Street Journal* reporter, was a woman;  
the President of the Students'  
Association was a woman. So they  
debated and they finally decided,  
00:12:21 over some very serious dissents and  
resignations of alumni members, that  
they would stop the all-male policy  
and admit women. I was in the first  
group of women to be admitted; there  
were six of us. The image that I  
remember from that is at the  
breakfast that's held each time a new  
group is admitted; it's twice a year.



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00:12:45 The new members give a little speech to the alumni members about something they're interested in. So walking into the room with all of the alumni members sitting there and every last one of them being male, and knowing that many prominent people had quit in protest over the fact that there were women, was a very memorable experience.

MS. MINARIK: What was your speech about?

CHIEF JUDGE WOOD: I really don't even remember. What I remember is the setting.

MS. MINARIK: Now, let's talk a little bit about your professional steps. After law school you went to clerk for Judge Irving Goldberg<sup>4</sup> on the U.S. Court of Appeals for the Fifth Circuit. What was the process that you went through to get that

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<sup>4</sup> Irving L. Goldberg was one of the founders of the law firm now known as Akin, Gump, Strauss, Hauer & Feld. He served on the Fifth Circuit from 1966 till his death in 1995.  
<https://www.nytimes.com/1995/02/13/obituaries/i-l-goldberg-88-us-judge.html>

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clerkship?

00:13:32 CHIEF JUDGE WOOD: When I started law school I knew nothing about clerkships, about firms, about anything, so I benefitted greatly from advice from some of the professors that I had had. One professor in particular told me about clerkships and he said you should certainly apply for clerkships, so I sat down with him and came up with some names. Not like today, where the students come up with hundreds of names, but [rather] the names of some judges

00:13:54 that I thought would be good to apply to. One of them was Judge Irving Goldberg who was a member of the Fifth Circuit, as you said, and sitting in Texas. His chambers were in Dallas, Texas. And the professor thought that maybe Judge Goldberg would be interested. Now, there's a funny story associated with this. I sent off my application to Judge

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Goldberg. I was married at the time but I didn't use my husband's surname, so apparently when my application reached Judge Goldberg's chambers his secretary took one look at the application, saw that I wasn't using my husband's name, and dramatically tossed it into the waste basket. At that point the Judge's Clerk said, wait a minute, and retrieved it from the waste basket and said, "Maybe we should look at this". They gave it to the Judge, and then fast forward back to Austin, I was studying for exams and the phone rang on a

00:14:28

00:15:02

Saturday afternoon. I picked up the phone and said, "Hello," and I hear this voice at the other end of the phone saying, "Irving Goldberg here. When are you going to come see me?" [Laughter] So the Judge himself called, invited me to come for an interview, which, of course, I did. He then called--

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when I was actually interviewing at a firm. Some person at the firm came running over to me, found me in an office and said, "There's a phone call for you," and I thought, *who would be calling me here?* But it was Judge Goldberg who was calling to give me a clerkship offer.

MS. MINARIK: Did Judge Goldberg's approach to the law shape any of your own decisional processes about the law or your view of the law?

00:15:42 CHIEF JUDGE WOOD: Judge Goldberg was a wonderful judge, and I know I learned a huge amount from him. One of the things I learned from him was the value of as close as you can get to perfect preparation for the cases you have. I've never seen anyone who was faster at mastering a record and understanding legal arguments than he was. He loved talking through cases with his clerks. You'd get phone calls from him all hours of the day and night. He'd have a different

00:15:53

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idea about the case. He was very  
00:16:17 engaged with each case, and I  
certainly took that to heart.

MS. MINARIK: You then went to the  
chambers of Justice Harry Blackmun<sup>5</sup>  
on the U.S. Supreme Court; this was  
1976. How did you get there?

CHIEF JUDGE WOOD: After I worked for  
Judge Goldberg I went to clerk for  
Justice Blackmun. This is another  
thing I actually owe thanks to Judge  
00:16:39 Goldberg for, because he encouraged  
me to apply to the Supreme Court.

Other people at the firm I had worked  
for had also encouraged me to apply  
to the Supreme Court, including now  
00:16:49 First Circuit Judge Michael Boudin<sup>6</sup>.  
So I actually didn't think I had any  
chance at all. My co-clerks who had  
all gone to Harvard were saying, oh,  
so-and-so from Harvard, so-and-so  
from Harvard, but I finally thought,

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<sup>5</sup> Justice Harry A. Blackmun was appointed to the U.S. Supreme Court by President Richard Nixon in 1970.

[https://www.oyez.org/justices/harry\\_a\\_blackmun](https://www.oyez.org/justices/harry_a_blackmun).

<sup>6</sup> <https://www.cal.uscourts.gov/michael-boudin>.

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*oh well, it doesn't hurt to try. So*

00:17:10 I applied to about four or five of  
the Justices. I didn't bother to  
apply to anybody that I thought there  
was just no chance of taking me. And  
Judge Goldberg called a couple of  
them. I wound up with a few  
interviews and was terrified during  
the interviews, but a couple of weeks  
later the Justice called and after a  
long conversation, which, chat, chat,  
chat, how are you doing, and I was on  
edge, he finally said, "Well, are you  
still interested in working for me?"

00:17:36 And I thought to myself, *are you  
kidding?* But I said, "Yes, of  
course," and he offered me the job.

MS. MINARIK: What did it mean to you  
at the time to be a law clerk on the

00:17:46 U.S. Supreme Court?

CHIEF JUDGE WOOD: To be a law clerk  
on the Supreme Court was the most  
amazing thing that ever had happened  
to me, and actually, frankly, shaped  
the entire rest of my legal career.

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The opportunity was beyond  
description. The first day when you  
walk into work at the Supreme Court,  
when

00:18:05 you're in this giant marble building,  
it's rather intimidating. Then  
somebody gives you a huge stack of  
papers that are the CERT petitions<sup>7</sup>  
that you're going to go through, and  
you're thinking, *okay, I guess I'm  
going to work pretty hard*, which, of  
course, we did. But it was an  
amazing experience.

MS. MINARIK: Tell me a little bit  
00:18:23 about the other law clerks in Justice  
Blackmun's chambers.

CHIEF JUDGE WOOD: Well, I've  
remained friends with both my co-  
clerks with Judge Goldberg and my co-  
00:18:32 clerks with Justice Blackmun. My two  
co-clerks with Judge Goldberg are  
people I've kept in touch with, I

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<sup>7</sup> Petition for Writ of Certiorari, the document a party files requesting U.S. Supreme Court review of a lower court decision.

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still see frequently. The daughter of one of them wound up as my law clerk some years later. Obviously, I refrained from telling her during the interview that I had met her when she was two years old. My co-clerks with Justice

00:18:55 Blackmun are the same. They are people that I've remained very close to.

MS. MINARIK: Were there many other women law clerks at the Supreme Court that year?

CHIEF JUDGE WOOD: There were two other women at the Supreme Court that year, Judy Miller, who was clerking for Potter Stewart<sup>8</sup>, and Sue Block, who was clerking for Thurgood Marshall<sup>9</sup>.

00:19:09 MS. MINARIK: And do you know what they're doing now?

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<sup>8</sup> Justice Potter Stewart was appointed to the U.S. Supreme Court by President Dwight D. Eisenhower in 1958.

[https://www.oyez.org/justices/potter\\_stewart](https://www.oyez.org/justices/potter_stewart).

<sup>9</sup> Justice Thurgood Marshall was appointed to the U.S. Supreme Court by President Lyndon B. Johnson in 1967.

[https://www.oyez.org/justices/thurgood\\_marshall](https://www.oyez.org/justices/thurgood_marshall).



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00:19:16 CHIEF JUDGE WOOD: I have kept up  
very closely with them, it's our  
small little group. Judy is now  
retired from a very active law  
practice that included being a  
partner at Williams & Connolly, being  
the General Counsel for the  
Department of Defense, and being  
General Counsel of the Bechtel Group.  
Now she focuses on national security  
issues and is quite  
00:19:37 active in that respect. Sue Block  
went on to become a professor at  
Georgetown Law School, and her son  
Mike clerked for me.

MS. MINARIK: How would you describe  
Justice Blackmun's approach to being  
a judge?

00:19:56 CHIEF JUDGE WOOD: Justice Blackmun  
had a meticulous approach to being a  
judge, to the point that some people  
thought and criticized him for not  
being sufficiently theoretical. I  
always thought that was an unfair  
criticism. He too, like Judge

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00:20:06 Goldberg, although in a different way, would master the record in any case. The one thing about Justice Blackmun that I have tried to take forward in my own career as a judge, was to recognize that every case begins as the case between the parties to the case, whether it's an individual, whether it's a company, whether it's an organization; it's their case and you need to respect

00:20:29 them for their case, and that's what you are first and foremost resolving. You, of course, at a court like the Supreme Court or a court such as the Seventh Circuit, are creating precedent for the future, but it's not an intellectual game. You are changing people's lives with every decision.

00:20:50 MS. MINARIK: Can you share any stories from Justice Blackmun's chambers about a particular case or issue that stuck with you from that time?

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CHIEF JUDGE WOOD: Justice Blackmun

00:21:01 was a person who liked his routines, I will say, but one of them which was fascinating was after the Court would conference the cases that were orally argued, the clerks would all assemble in his chambers and he would go through justice by justice telling us what each person had said during the conference, what that person's views were, how it fit in with his views,

00:21:25 and it was just a remarkable opportunity, actually, to get a window not just into his thinking, but into the thinking of the Court as a whole. Sometimes, of course, he liked the results, and sometimes he felt that he was going to want to dissent, and did dissent, from the results. So all terms of a court have cases that are prominent. One

00:21:48 thing that was a new issue at the time I was clerking there was the question whether the public needed to fund abortions for women who are on

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00:22:00 Medicaid or women who are otherwise poor, and this was a big issue. Justice Blackmun thought yes, and I remember him telling me personally he was deeply concerned that if poor women couldn't get funding that they would go back to very dangerous practices, which he was very worried about. So those conversations really did stick with me.

00:22:20 MS. MINARIK: How did the Supreme Court handle the process of reviewing cases at the time?

00:22:42 CHIEF JUDGE WOOD: At the time I clerked at the Supreme Court, there were, I believe, five justices in what they call "the pool," so the cert petitions would be assigned primarily to one chambers; the law clerk in that chambers would write a memo that would go around to the pool of chambers. Then actually in Justice Blackmun's chambers if it was some other clerk who had written the memo, that memo would be assigned to one of

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his clerks and then you would,  
00:22:52 what he called "mark-up" the memo.  
You would write like a second memo on  
the bottom of the first memo, which  
led me to think that the pool was a  
waste of time, actually. I thought,  
*if I'm writing this anyway, maybe I  
should just write a memo to the  
Justice*, but that's the way he liked  
to do it, so that's what we did. My  
current

00:23:09 colleague Ken Ripple<sup>10</sup> was clerking at  
the time as the Senior Clerk for the  
Chief Justice Warren Burger<sup>11</sup>, so Ken  
was in charge of how the pool ran,  
what kind of paper we had to use to  
type our memos on, and what the  
Chief's expectations were.  
MS. MINARIK: During either of your  
clerkships did you ever think you

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<sup>10</sup> Kenneth Francis Ripple was nominated to the U.S. Court of Appeals for the Seventh Circuit by President Ronald Reagan in 1985. <https://www.fjc.gov/history/judges/ripple-kenneth-francis>.

<sup>11</sup> [Warren E. Burger](https://www.oyez.org/justices/warren_e_burger) was the longest serving Chief Justice of the U.S. Supreme Court (1969-1986). He was appointed to the Court by President Richard Nixon in 1969. [https://www.oyez.org/justices/warren\\_e\\_burger](https://www.oyez.org/justices/warren_e_burger).

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might want to become a judge someday?

00:23:30

CHIEF JUDGE WOOD: It's impossible during a clerkship not to think about how you might want to resolve a case, but I think taking the next step and thinking, *did I want to be a judge*, was

00:23:41

something that I just wasn't capable of doing. It seemed so far out of reach. It's nice work if you can get it; find a president to appoint you and a senate to confirm you and then you're in good shape. So I'm sure I thought it would be a good thing, but it wasn't something I was really aiming for.

00:24:01

MS. MINARIK: You finished your Supreme Court clerkship in 1977 and you went to the Office of the Legal Advisor in the U.S. Department of State. Tell me about your work there.

CHIEF JUDGE WOOD: After I finished my clerkship, I went directly to the State Department, to its Office of

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the Legal Advisor. I had always been interested in international affairs, 00:24:21 it was actually one of the things that caused me to like the idea of Comparative Literature, because I thought, *oh, what fun, learning lots of different languages and seeing* 00:24:27 *what people are writing;* but, that wasn't what the Comp Lit people were doing, so I didn't do that. But at the State Department one is right in the middle of the United States foreign affairs operation. The Legal Advisors office has lawyers that correspond to all of the divisions of the Department, so I wound up in the Economic and Business Affairs 00:24:48 Division, which I found very interesting.

MS. MINARIK: And then you went to the law firm Covington & Burling in Washington, D.C. What prompted the move from the State Department to the law firm and what did you do at the law firm?

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CHIEF JUDGE WOOD: While I was at the  
Legal Advisors' office there had been  
00:25:06 a little, I guess I'll say ambiguity,  
in what I was supposed to be doing.  
So on the one hand, as I just said, I  
was working with Economic and  
Business office on things such as  
00:25:17 transfer of technology negotiations,  
bilateral investment treaties,  
foreign corrupt practices, and a  
variety of issues of that sort. At  
the same time, the Legal Advisor was  
using me as his Special Assistant, so  
I found myself involved with the  
legal issues relating to the  
normalization of relations with the  
People's Republic of China and  
miscellaneous other  
00:25:42 topics that would come along. And I  
found that it was one of those half-  
and-half jobs that were actually  
80%/80%, and I was looking for some  
clarity, and I didn't really want to  
be his Special Assistant. I felt  
that I'd been a law clerk for two



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years and I was ready to do my own work. So I ultimately decided it would better just to leave the  
00:26:03 Department and go somewhere else. I had spent the summer working at Covington & Burling, so I actually just picked up the phone and called one day and said, "Hey, are you still  
00:26:14 interested in having me come work there? Because that sounds pretty good to me". And they said, "Sure", so over I went.

MS. MINARIK: And what was your practice area or your practice areas at the firm?

CHIEF JUDGE WOOD: At the firm I continued, actually, on more of a pro bono basis, keeping up with the  
00:26:29 international issues and bilateral investment treaties, in particular, and I had some very interesting international cases. But my primary area was in anti-trust and general commercial litigation.

MS. MINARIK: Were there any

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surprising or informative differences  
to you between being a lawyer in a  
government agency and being a lawyer  
00:26:47 in private practice?

CHIEF JUDGE WOOD: Being a lawyer in  
a government agency, it's a great  
thing to do, I encourage it for  
everybody, but it's a more complex  
00:26:59 role than a lawyer in a private firm

has. A lawyer in a private firm has  
a client, you know what you need to  
do for the client, you do it the best  
you can, maybe sometimes as happened  
to me, you have to give advice that  
the client isn't really particularly  
happy to hear, but you learn to do

that, too. At the government, and  
especially at the State Department,

00:27:20 you wind up in lots of very complex  
inter-agency negotiations and other  
things that are ... I would just say  
it's a different role.

MS. MINARIK: Well, and then from the  
law firm you went to academia, first  
at Georgetown Law, and then the

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University of Chicago Law School.

What prompted you to make that transition?

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CHIEF JUDGE WOOD: When I started at Covington & Burling I told them upfront that I thought I would be leaving at some point to join the academic world, and I said, if that's

00:27:51

a problem, I'm telling you right now. If you don't want to hire me under those circumstances, I understand, no hard feelings at all. They said, we don't care, that's fine. Indeed, as I had predicted, about ... actually about seven months after I started working at Covington & Burling, I was contacted by the University of

00:28:16

Chicago Law School and asked whether I was interested in throwing my hat in the ring. And I did wind up going to Chicago for a full round of interviews, but I decided at that time ... then they offered me a job, but I decided at that time that I was not interested in leaving practice

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because I was afraid I wouldn't get any benefit out of such a short period of time in practice, I

00:28:36 wouldn't really have a chance to see anything through. So I said, we'll just stay in touch, and if I do decide to start teaching someday, you'll know about it. So after

00:28:46 another year or so, probably about two years later, I did decide that I was interesting in starting to teach. Talked to Georgetown, actually agreed to go teach at Georgetown, because by that time I had a baby, and was well settled in Washington. But the University of Chicago called up and said, oh, we see you're teaching now. Maybe you should think of us again.

00:29:08 I guess my daughter was ... she was about one year old and I went out to Chicago and in fact did decide to go.

MS. MINARIK: Today the University of Chicago has a reputation for very philosophical discussions among the law faculty. What was it like among

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the faculty when you joined?

00:29:32 CHIEF JUDGE WOOD: The University of  
Chicago prides itself on being a very  
active intellectual place, a very  
active environment, to the point  
where some people joke that you have  
to put your batting helmet on in the  
morning when you go to work. They  
00:29:43 are very intense, although, I will  
say in the positive godfather sense  
there's a real distinction between  
business and personal. You can have  
a hard-hitting debate with somebody  
over lunch, at a work-in-progress, at  
a seminar, and it's just all  
understood to be on the merits, you  
give reasons for everything, and it  
was like that when I started there,  
00:30:03 too. Probably law and economics and  
its role was the biggest issue  
discussed, but there were many.

MS. MINARIK: Were there any other  
women on the faculty at the  
University of Chicago with you?

CHIEF JUDGE WOOD: At the time I

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started at the University of Chicago  
there were no other women on the  
faculty, so I was the only one.

00:30:21

MS. MINARIK: You mentioned that you  
had one child when you got to the  
University of Chicago and you later  
had more children. How did you  
navigate being the only woman on the

00:30:30

faculty and motherhood?

CHIEF JUDGE WOOD: Well, I had one  
child when I accepted the offer to  
teach at the University of Chicago,  
and then I discovered that I was  
expecting my second child. So

00:30:53

actually when I started teaching at  
the University of Chicago I had one  
child who was 19 months old and one  
was 2 weeks old. And it was pretty  
crazy, because I actually had also  
had some pretty serious medical  
complications after the birth of my  
second child, my son. So I'd only  
been out of the hospital about four  
days when classes started, and it was  
a difficult quarter, I will not lie,

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just trying to keep my head above  
water. I look back on it now and I  
think, if I had had any sense I would  
00:31:15 have told them I just need some time  
off. But I was brand new, I had  
never taught there before, they had  
no maternity leave policy, they had  
nothing. I thought, well, I can't  
00:31:25 afford not to have a job, so I  
somehow did it.

MS. MINARIK: Well, that's  
incredible. I know that at the  
University of Chicago you also worked  
on the sexual harassment policy  
there. Can you talk a little about  
that?

CHIEF JUDGE WOOD: The University of  
00:31:41 Chicago not only did not have a  
maternity leave policy, for a long  
time I was the maternity leave  
policy. I would get phone calls from  
women here and there in the  
University to find out what my  
experience had been, because actually  
later I had a third child, and I

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remember telling the Dean shortly  
after I found out I was pregnant, he  
came to my office and I said, I'm  
00:32:00 taking the spring quarter off and  
you're going to pay me. And he said,  
okay. And I said, aren't you going  
to ask why? And he said, all right,  
why? And I said, because I'm going  
00:32:10 to have another baby, and I'm not  
going to go through that experience  
again, period. He said, that's fine,  
no questions asked. So I established  
a precedent there. Perhaps that  
encouraged me, because then not long  
after my third child was born, a  
group of students came to me and then  
another woman who was teaching at the  
University of Chicago, (by then we  
00:32:31 had added one), and they expressed  
concern that there was no formal  
policy on sexual harassment.  
Remember, this was the time in the  
mid-to-late 80s that Catharine  
MacKinnon's book about sexual



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harassment of working women<sup>12</sup> had come out. The Supreme Court was starting to recognize that this was really a form of sex discrimination, and the women

00:32:50 students, with the enthusiastic support of the other professor and me, felt that we needed to get this down in writing.

MS. MINARIK: You took some time away  
00:33:01 from academia to go back to the government and served in the U.S. Department of Justice (D.O.J.) in the 80s, and then returned to D.O.J. again in the 90s. How did those roles come about and what were you doing?

CHIEF JUDGE WOOD: In the mid-1980s, actually, I took a year to go visit at Cornell University Law School, and while I was doing that, I found out  
00:33:28 through various people that I knew that the Anti-Trust Division of the

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<sup>12</sup> McKinnon, Catharine A. *SEXUAL HARASSMENT OF WORKING WOMEN*: Yale University Press, 1979.

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U.S. Department of Justice was  
revising its guidelines for  
international operations. As I said,  
I was always very interested in  
international matters. I had worked  
on international anti-trust issues at  
the State Department. I had worked  
on them at Covington & Burling. I  
00:33:46 had continued from an academic  
standpoint to be teaching in that  
area. So I was invited to be a  
consultant, basically, to be somebody  
who would work on the revision of the  
00:33:57 guidelines, and I thought that was a  
great opportunity. So that was the  
mid-80s exercise. After that was  
over and I went back to the  
University of Chicago and continued  
teaching, it continued to be a real  
area of interest, and I was invited  
by the Organization for Economic  
Cooperation and Development, which is  
a Paris-based organization with 30-  
00:34:18 some countries, to work with an  
English law professor studying the

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impact of mergers that affect a number of countries. I think that work probably led in the early 90s to my being invited to be one of the Deputies in the Anti-Trust Division.

MS. MINARIK: So putting it all together, before you became a judge

00:34:38 you were a law clerk, you were a government attorney at the State Department and at the Department of Justice, you were an attorney in private practice, and a law

00:34:48 professor. This is a very rare combination of experience prior to becoming a judge. So how do you think having all of that experience impacts your perspective on the bench?

CHIEF JUDGE WOOD: Well, people accused me for a long time of not being able to hold down a job because I did change from one thing to the next, but they were each very rewarding in their own ways; and, in some of them, I'll single out the

00:35:09

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State Department especially, they were great learning experiences. I learned so much about the way not only our government works, but about the way that international law works, about the way the United States intersects with the domestic law of other countries. I thought that was all fascinating. I was a believer, even at the time, in the shrinking world theory, that we were moving toward a world in which national boundaries were going to matter less and less. As far as the other positions, I really like the practice of law; I think it's extraordinarily important. I like the way that legal theory intersects with the actual practice of law, so by spending some time in private practice, also spending some time especially during the early 90s at the Anti-Trust Division, I was able to put myself at that intersection, and that's what judges do every day.

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00:36:05

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Judges aren't allowed to say "what an interesting question." Judges have to say, "you win, you lose."

MS. MINARIK: Can you share a story about how one or more of these prior roles helped your thinking on the bench when tackling a particular legal issue?

00:36:28 CHIEF JUDGE WOOD: I will--it's very difficult to say one thing, but I will offer an example from when I was at the Department of Justice. Shortly after I got there, we decided

00:36:40 that it would be useful to have legislation passed that would authorize the U.S. anti-trust authorities, which is actually both the Department of Justice and the Federal Trade Commission, to cooperate with foreign legal authorities, if, for example, there is an international cartel in potash, or there's an international cartel in anything you can think of, because we

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were all going after the same thing and there's a risk of duplicative work. Even worse, there's a risk of duplicative remedies. We didn't have the authority under U.S. law at the time, unless there was a treaty to share especially grand jury material, because that has to be kept

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confidential. But the Securities and Exchange Commission had obtained that authority a few years earlier, so we worked up legislation, found some people in Congress who also thought

00:37:36

this was a good idea, got the Congress people to introduce the legislation, and ultimately it was passed. The process of getting that legislation through Congress left a very strong impression on me about legislative history, and left a very strong impression on me about how -- how legislation comes to pass.

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MS. MINARIK: If you could sum up your impression of how legislation comes to pass from that example, what

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would you say?

00:38:19 CHIEF JUDGE WOOD: I would say I'd be very careful with legislative history, because at one point our little bill, which was called the International Anti-Trust Enforcement Assistance Act<sup>13</sup>-- no one told us that you need consonants, so it was the IAEEA-- our little bill had the flaw of being uncontroversial, and so all sorts of other bills attached themselves to our bill. So everything from interracial adoption, 00:38:34 to subsidies for dairy farmers, to compensation, private bill compensation for a man in Florida who had been the subject of military medical experiments during the 1950s, had suddenly glommed onto our bill. So we needed to peel them off of our bill so that we could get our nice little uncontroversial bill back, and

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<sup>13</sup> 15 U.S.C. §§ 6201-6212.

<http://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title15-chapter88&edition=prelim>.

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00:39:01 get it passed on a voice vote, which  
was our goal. We weren't looking for  
some huge floor fight. We did  
finally get everything off, but it  
took some real doing.

MS. MINARIK: Judge, if you could  
boil it down, why did you become a  
judge?

00:39:21 CHIEF JUDGE WOOD: All right, I'll  
tell a story about why I actually  
decided that it was possible to  
become a judge, and then other things  
followed from that. So shortly after  
I started working at the Department  
of Justice, remember, I'm the Deputy  
Assistant Attorney General in the  
00:39:32 Anti-Trust Division, responsible for  
appellate, international, and legal  
policy work. It was actually my  
dream job at the time. One of the  
things that I did wearing my  
international hat was travel a lot.  
So I went to Japan, I went to Europe,  
I went to all sorts of places. And  
on one trip to Japan, which is an



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00:39:55           extraordinarily long flight, the  
Assistant Attorney General Anne  
Bingaman and I were sitting there  
just killing time, and I said to her  
rather idly at the time, boy, if I  
could get on the Court of Appeals  
that would be really great. I should  
pause and say that the fact that Bill  
Clinton was President made this much  
more thinkable to me than it ever had  
been before, because

00:40:17           I actually knew people in the  
Cabinet, I knew people here and there  
around the government because of  
various personal connections I had.  
So I kind of threw that out for Anne.

00:40:28           Anne was married to Senator Jeff  
Bingaman from New Mexico, and Anne  
looked at me and she said, "You'd be  
great as a judge. This is going to  
be my project". And you should never  
get in the way of Anne or anything  
Anne wants to do. Anne is a very  
determined person, and somebody who  
does, in fact, get things done. So

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we didn't talk about it that much  
00:40:50 more on the flight, but I started  
working at Justice in '93; in the  
summer of '94 rumors started swirling  
around that there was going to be a  
vacancy on the Seventh Circuit, and  
it actually turned out they were  
talking about a Wisconsin vacancy. I  
began to have conversations with  
people and met with people and was  
just sort of floating the idea,  
00:41:15 maybe this would be interesting. And  
Anne, true to her word, was  
invaluable in setting up meetings  
with people like Senator Simon, Paul  
Simon of Illinois. Then I guess Bill  
00:41:29 Bauer<sup>14</sup> announced that he was going to  
take senior status, so at that point  
there was actually an Illinois  
vacancy. I thought to myself, I  
don't have a prayer of a chance to  
get this because it's the first

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<sup>14</sup> William Joseph Bauer (1926- ) was nominated in 1974 by President Gerald Ford to the U.S. Court of Appeals for the Seventh Circuit. <https://www.fjc.gov/history/judges/bauer-william-joseph>.

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vacancy to be filled by a Democratic President since the Carter Administration, and we're talking about Chicago, here. I don't have the skills to navigate Chicago politics. But I'm chugging along, doing my work, and actually, because I was the International Deputy, I was over at the White House quite a bit, because I was the person that Anne had designated to do trade policy issues, and we were in the midst of big negotiations with the Japanese and other countries. So I meet with Senator Simon. I meet with other people, just kind of floating the possibility. I'll never forget, one day I was sitting in a Department of Justice car because I had sufficient status to have a D.O.J. car to drive me over to the U.S. Trade Representative's office, and the phone rings. And you have to understand, this is in the days before everybody had phones. I don't

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think anybody had phones at this point, but there were phones in cars. The driver answers the phone. He says, "It's for you". He hands the phone back to me, and I take the phone, and it's Senator Simon.

"Hello, this is Senator Simon", [laughter] and I said, "Yes?"

And he said, "I've decided to push you", meaning for the Seventh Circuit vacancy. So I blathered something like "thank you" and expressed my appreciation in as many ways as I could think of expressing my appreciation, got off the phone, and

00:42:11

I thought, this is amazing. This could happen. And I spent the next four months really just amassing support. I remember advice I got

00:43:26

from one woman I know who's very active in NGO<sup>15</sup> in Washington, and she said, "you know what, knowing you, you should do anything you can think

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<sup>15</sup> Non-governmental organization.

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of doing, because anything you can think of is so far short of over-the-top that you shouldn't even worry about it". [Laughter] So I took her advice to heart and called a bunch of people and had the White House Counsel's office peppered with recommendations

00:43:50 that I would be a good person for this position. Everybody from the Commissioner of the National Football League [laughter], to lawyers, to everyone else I could think of. In fact, in February, I got the call that President Clinton was going to nominate me.

MS. MINARIK: And from there, what was the process of your Senate confirmation to becoming a judge on the Seventh Circuit?

00:44:09 CHIEF JUDGE WOOD: The Senate confirmation process has changed over the years, but it doesn't ever seem to change for the better, in many ways. The time I was nominated, the

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Senate had just changed from Democratic control to Republican control. That had happened in the 1994 election. The Senate Judiciary Committee had announced that it was taking up one Court of Appeals nominee a month, in the order of nominations. They were creating packages of a Court of Appeals nominee, and maybe two or three District Court nominees. I dutifully filled out volumes of paperwork about my background, went through what by that time must have been my third full-field FBI background investigation, because I'd had one when I went to State right off the Court. I'd had another one when I started at the Department of Justice, and now this was number three; never mind we've just done this 18 months ago, let's just do it again. So I had that. Then there's the medical form which I called the "I promise I won't die soon" form.

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There were lots of forms. Then there were voluntary forms, various groups in Chicago, so you fill out all that stuff and then you wait, because then your name has to be formally transmitted to the Senate. That happened at the end of March; that was about two months after the White House told me that the President was choosing me. Then, to be honest, by modern standards, it went very quickly. I had a lot of friends on the Judiciary Committee staff because, as it happens, the Senate Judiciary Committee is the oversight committee for the Anti-Trust Division. So happily for me, I was living in Washington and I knew these people.

00:45:45

00:46:07

00:46:19

They would let me know if there was some roadblock somewhere and I could address it if I could. At the end of June, my hearing came up. Happily for me, I was paired with a district judge nominee from Utah.

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Since Senator Hatch<sup>16</sup> was chairing the committee, and he wanted to move her through, I clung to her coattails as hard as I could cling, and was confirmed, literally, I think, four days after my hearing.

MS. MINARIK: Did you prepare for any particular difficult questions for your hearing?

00:46:41 CHIEF JUDGE WOOD: I did prepare, for sure, for the hearing, and the people at the Department of Justice were very, very helpful in that. Now, one of the, let's say one of the advantages I brought to the table was that my primary field was anti-trust, and nobody could think of anything all that disturbing about anti-trust, and we were enforcing the anti-trust laws. I certainly did have to turn over all speeches, all comments I had ever made about anything else. The

00:47:02

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<sup>16</sup> Oren G. Hatch, a Republican Senator from Utah who served from 1977-2019.  
<http://bioguide.congress.gov/scripts/biodisplay.pl?index=H000338>.



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fact that I had worked for Justice  
Blackmun was something of a red flag  
00:47:16 in some people's minds, but we  
figured out appropriate ways to deal  
with those questions.

MS. MINARIK: Do you recall what the  
most difficult question that you  
actually had to answer was at your  
hearing?

CHIEF JUDGE WOOD: My hearing, in the  
end, was pretty short. It was very,  
very well attended; all my friends  
00:47:35 from D.O.J. came over and so we  
packed the hearing room. But in the  
end Senator Hatch just came up to me  
and he said, well, all my friends are  
saying I should bring you up and so I  
have, and I thanked him for doing  
that, for the opportunity. One  
person asked me a question about how  
we should solve the problem of cost  
and delay in the civil justice  
00:48:00 system, and I gave them a pretty  
general answer. I had been told this  
is not the time to give a long

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speech, this is the time to answer  
the question rather like a  
deposition, so

00:48:11

I was trying to stick with that.  
Well, I got a follow-up letter the  
next day about this from the same  
Senator, and so I thought, uh-oh, I  
better say a little more about it.  
So I wrote, I believe, at that point,  
a two-page response, ran up and  
showed it to Merrick Garland<sup>17</sup> who was  
in D.O.J. at the time, too; Merrick  
and I were friends. We agreed this  
would suffice. So I sent it over and  
apparently it did suffice.

00:48:33

MS. MINARIK: Were you asked any  
questions about your opinions of  
actual cases?

CHIEF JUDGE WOOD: I was not asked  
any opinion--I was not asked any  
questions about actual cases. One of  
my colleagues later on this Court,

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<sup>17</sup> Merrick Garland is the Chief Judge of the U.S. Court of Appeals for the D.C. Circuit, appointed by President Bill Clinton in 1997 to fill the vacancy left by Abner Mikva. <https://www.fjc.gov/history/judges/garland-merrick-b>.

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00:48:57 Judge Ann Williams<sup>18</sup>, now retired, was asked a question, to which she gave a great answer. Her question was, "would you have decided the *Dred Scott*<sup>19</sup> case the same way?" And Judge Williams, who happens to be African-American, said, I wouldn't have been on a court at the time of the *Dred Scott* case [laughter], and so that's not a question I can answer.

00:49:09 MS. MINARIK: Did you take any additional steps to prepare yourself for being a judge leading up to your confirmation or shortly thereafter?

00:49:32 CHIEF JUDGE WOOD: Knowing that I wanted to be a judge, I think the preparation was in two steps. The focus for your confirmations hearings has to be on your own record because that's what they're going to be looking at. The more important preparation, once you've got that

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<sup>18</sup> Ann Claire Williams was nominated in 1999 by President Bill Clinton to the U.S. Court of Appeals for the Seventh Circuit. <https://www.fjc.gov/history/judges/williams-ann-claire>.

<sup>19</sup> *Dred Scott v. Sanford*, 60 U.S. 393 (1856). <https://www.oyez.org/cases/1850-1900/60us393>.

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burden behind you, is really to  
prepare to be a judge. I had been  
very focused on anti-trust for two  
years, which in some ways was very  
00:49:55 good because at the Department of  
Justice there's both civil and  
criminal enforcement of the anti-  
trust laws. I was pretty comfortable  
with the criminal side of things, the  
00:50:05 sentencing guidelines, other kinds of  
criminal law issues, as well as the  
civil side. But of course there were  
vast areas of law that come before  
federal courts that I hadn't really  
had that much to do with. So I tried  
to make sure that I had read all of  
the Supreme Court's decisions for the  
last several years, I had them at my  
fingertips that I was going to be  
00:50:24 comfortable with; again, this huge  
variety of cases that comes before  
the Court of Appeals.

MS. MINARIK: Did you get any advice  
about judging that has turned out to  
be particularly wise?

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CHIEF JUDGE WOOD: Lots of people will give you advice about judging, and of course, I did have, as we've discussed, Judge Goldberg and Justice Blackmun as wonderful models to look back to. As I have been on the Court over the years, and especially in the earlier years, I have gotten advice and opinions from my colleagues here at the Seventh Circuit. I think one particularly astute piece of advice came from my friend and colleague Judge Joel Flaum<sup>20</sup>, who was talking about the problem that arises when a lawyer isn't really doing a good job at oral argument, which does happen. Some people will continue to pound that lawyer with questions even though the answers are not satisfying; they're not really addressing the question. There are a lot of problems that one could have

00:50:44

00:50:56

00:51:21

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<sup>20</sup> Joel Martin Flaum was nominated in 1983 by President Ronald Reagan to the U.S. Court of Appeals for the Seventh Circuit. <https://www.fjc.gov/history/judges/flaum-joel-martin>.

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with answers. But Judge Flaum said that his philosophy, and I thought this was the right philosophy, was that you could ask once to rephrase, and ask twice, but by the third try it's pretty clear there's just nothing to be gotten there, time to move on, let the person alone. You don't need to humiliate them.

00:51:42

MS. MINARIK: How was your first year on the bench? Did you have any role models or concerns or particular memories that stick out from that first year?

00:51:54

CHIEF JUDGE WOOD: My first year on the bench was basically a very good year. There was one other woman on the Court at that time, Judge Ilana Rovner<sup>21</sup>, who then and now has been a wonderful friend to me, somebody who has just been one of the great side-light pleasures- you don't expect

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<sup>21</sup> Ilana Kara Diamond Rovner was nominated in 1992 by President George H.W. Bush to the U.S. Court of Appeals for the Seventh Circuit <https://www.fjc.gov/history/judges/rovner-ilana-kara-diamond>.

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00:52:17 to meet such a wonderful person. So she was great in guiding me through that first year, even little things like when the three judges come on, it's the junior judge that has to knock on the door before they open it up; you don't know that before you come. So that was good. The hardest thing, I found, was figuring out which things I needed to do

00:52:42 personally, and which things I should or could delegate to clerks, to a judicial assistant, which things I should just let be, if another judge has done something. Because in

00:52:54 the nature of things, and I've kept pretty good records of this, if you're writing in excess of 100, as the foreigners would say, judgments a year, opinions and dispositive orders, that's one every three days more or less; and, a great many cases, probably the majority, could easily benefit from much more research than you have time to give

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them. So knowing

00:53:19 when to stop, knowing when to say I'm  
going to trust somebody else's  
research on this, I'm not going to  
run this down myself, is tough.

MS. MINARIK: Do you remember  
anything about the very first set of  
oral arguments that you heard as a  
judge?

CHIEF JUDGE WOOD: I do. In the very  
first set of oral arguments I heard  
00:53:37 as a judge, the panel was Walter  
Cummings<sup>22</sup>, who was at the time the  
most senior judge in the Court, Ilana  
Rovner, and myself. Walter was very  
interested in making sure that we got

00:53:48 a photograph of the three of us to  
memorialize this day and this panel,  
which was just great. He was  
somebody who was also a very  
distinguished person. He had been  
Acting Solicitor General for a while;

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<sup>22</sup> Walter Joseph Cummings, Jr. (1916-1999) was nominated to the U.S. Court of Appeals for the Seventh Circuit by President Lyndon B. Johnson in 1966.  
<https://www.fjc.gov/history/judges/cummings-walter-joseph>.



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00:54:08 he'd been General Counsel of  
Continental Bank, an old bank in  
Chicago. At one point I remember he  
had represented Maria Callas, the  
opera singer, in his private  
practice. So he was a very  
fascinating person. But he was the  
presiding judge in that first  
argument and it was just very  
interesting to see how he did it.

MS. MINARIK: How did you approach  
writing your first opinion as a  
judge?

00:54:27 CHIEF JUDGE WOOD: The first opinion  
I published as a judge, happily for  
me, was in the field of federal  
jurisdiction, which had always been  
one of my favorite fields. Believe  
it or not, it had to do with whether

00:54:38 the amount in controversy had been  
met for purposes of the diversity  
statute. Underlying it was the  
question whether a company called  
Wellness House Hinsdale could use the  
words "Wellness House" because there

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was also an international organization. So we had to think about whether the word "wellness" is just a word, or whether that was some made up thing. But they didn't prove the amount in controversy so we threw the case out on jurisdictional grounds, and Hinsdale people got to keep using the term "Wellness House" which I note now and then as I drive through Hinsdale<sup>23</sup>, they still use today.

00:54:59

MS. MINARIK: Because you're a federal judge you went through a confirmation process. A lot of state judges are elected. If you had had to run for election to become a judge, do you think you would have done it?

00:55:17

CHIEF JUDGE WOOD: Lots of state judges are elected, and my hat is off to them for running. I would not, almost certainly, have run for

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<sup>23</sup> Hinsdale is a suburban village of Chicago, located in Cook and DuPage Counties, Illinois.

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office. My colleague Diane Sykes<sup>24</sup> did run for office for the State Supreme Court of Wisconsin; she's now been on this Court since 2004 and I am confident that Judge Sykes is very happy she doesn't have to run anymore.

00:55:47 MS. MINARIK: Do you have any thoughts about the difference it makes to judging, or can make to judging, between appointed judges and elected judges?

CHIEF JUDGE WOOD: The difference between appointed judges and elected judges, I think, can be very significant, and there have been some troublesome examples of that in recent years. An appointed judge does have the confidence of judicial independence, and I'm assuming by appointed judge we mean for a significant number of years. If you

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<sup>24</sup> Diane S. Sykes was nominated in 2004 by President George W. Bush to the U.S. Court of Appeals for the Seventh Circuit. <https://www.fjc.gov/history/judges/sykes-diane-s>.



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00:57:15 think I could do the job by myself  
anyway, but it wouldn't be nearly as  
good. And so I've always chosen to  
take three law clerks. There are a  
couple of exceptions; one year I had  
four, one year I had five; but three  
is the usual number. The way I  
choose them in some ways has changed  
over the years, depending on whether  
there was a national plan to organize  
00:57:39 clerkship selection or not; sometimes  
there has been a plan and sometimes  
there hasn't. But in general, I get  
lots of applications. We have a  
posting online, *Source Now*, that  
explains what I'm looking for in the  
applications. I don't like  
exclusively online applications, I  
insist on paper ones so that we don't  
have to print everything out, which  
00:58:03 we probably would do. I rely a lot  
on professors that I know around the  
country to give me a candid reference  
on applicants, and happily because of  
my academic career, I do know quite a

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00:58:19            few professors in quite a few law schools, so I know who I can have some confidence in. I read the writing samples that they offer. A writing sample will reveal ... will tell me what you think your best writing is, I guess I'll put it that way. So if somebody's writing sample is full of grammatical errors I'm not likely to go any further with

00:58:44            that person, because if you thought that was your best then I'm not satisfied. Lots of writing samples are very straightforward, they've been edited. Maybe it's a law review note or comment, and those are fine, and they don't hurt you; they don't help you all that--it's like a check at that point. I certainly do look at grades. I look at prior

00:59:06            experience. I'm interested in somebody who did something other than sit in the classroom and churn out good grades over the years. So some sign of engagement with the world at

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00:59:17           large, and I'm very broad about that.  
  
It can be anything; I don't have any significant requirements. And I do like some assurance that you've got writing experience. Usually, although not always, that comes from law reviews, and I've hired clerks who have been professional reporters. I've hired clerks who have done other things that in my view are  
  
00:59:40           equivalent.

MS. MINARIK:   What role do you have your law clerks play in preparing you for oral arguments and helping to draft opinions?

CHIEF JUDGE WOOD:   So the role the law clerks play has evolved a little bit over the years, but in some instances it's stayed the same. If it's my usual three law clerks we  
  
01:00:00           usually have six cases in a day for oral argument, and I should add that the Seventh Circuit has more oral argument than any other court except the D.C. Circuit, and our caseload

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01:00:09 is quite different from theirs. So  
in terms of the non-D.C. Circuit  
Courts, we are highest in oral  
argument. Any case that has a lawyer  
on both sides will be orally argued.  
So the clerks are involved in a very  
big percentage of the docket. I  
think of them as my record experts.  
I expect the clerks to plow through  
the record, as I'm sure you  
01:00:31 remember. That's easier now, since we  
now just link the record to the  
District Court record. We don't have  
large boxes full of things, for the  
most part. I expect the clerks to  
fix whatever holes there are in the  
lawyers' arguments. I sometimes will  
say, "Obviously we can't create an  
argument for somebody", and "people  
can waive arguments", and they do. I  
01:00:57 don't like finding waiver, so if the  
lawyer has hit the side of the barn,  
basically, they've at least given me  
a sense of what argument they were  
thinking of making, then we'll see



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01:01:11            where we can go with that. But the lawyers sometimes don't notice that the Supreme Court is about to do something. Sometimes the lawyers don't notice that what the Seventh Circuit has said isn't compatible with what one or more other circuits had said. Those are facts that I'm very interested in knowing about as I go into argument. I ask the

01:01:31            clerks to write bench memos. I find that both the clerk and I are better prepared walking into the argument with a formal bench memo than just a conversation, although some of my colleagues don't use bench memos and they're perfectly well prepared, so I think it's a personal thing. But the reason I focus so much on that moment before oral argument is because

01:01:53            immediately after oral argument we retire to our conference room and we largely decide the cases. Sometimes the votes are a little tentative, if you think you need to look through

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01:02:04           the record more, or if something unexpected came up at oral argument. Most of the time, in excess of 90% of the time, that conversation immediately after oral argument represents what's going to happen to the case. My personal opinion is it is no use to figure out what the case is all about two weeks after the oral argument, because the die is

01:02:27           cast. I try to frontload it as much as I can and that is something that the clerks help with. In terms of drafting opinions, I now more often will look at a draft that a clerk has prepared, although sometimes it's just something that starts my own thinking and I sit down and I just write what I want to write.

01:02:50           Sometimes it looks fine and I'll play around with it and maybe decide which should be more of this or that, and I put it in.

MS. MINARIK: Do you think that now over the many years you've had many



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01:04:07           important. So I'll go back and I'll look at it again, and maybe I will agree that there's something more to it, and maybe I won't. I mean, that's fine, I'll come to my own decision. But it's that energy and a fresh approach that I think really improves my own thinking.

MS. MINARIK: Tell me a little bit about the work you do on the Court in any given month; how many oral arguments are you hearing? How many opinions are you issuing?

01:04:29           CHIEF JUDGE WOOD: The Court sits in regular term from just after Labor Day 'til the beginning of June, and that period of time is broken up into weeks when we're in session and weeks when we're in recess. So roughly speaking we take a couple of weeks

01:04:52           recess in October, we take another recess in December during the holiday season, we take a fairly long recess in March. The rest of the time at the Seventh Circuit, which has a

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01:05:03 relatively compact geographical  
makeup, we sit every week, one day a  
week, or sometimes two days a week.  
Up until the fall of 2018 we were  
more often sitting two days a week,  
because the Court was down four  
judges. We're just an 11-person  
court, so to have four vacancies is a  
significant hole. I was inviting  
district judges to come sit with us  
01:05:27 from time to time, both because we  
like getting to know them better, and  
frankly because they were helping us  
with the workload. During this past  
year, though, those four vacancies  
were filled: one of them in November  
of 2017, three of them in a ten-day  
period in May of 2018<sup>25</sup>. So we are  
now back up to full speed, and this  
means that we have gone  
01:05:52 back to a pretty reliable one-day-a-  
week, every week, when we're in

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<sup>25</sup> Judges Amy Coney Barrett, Michael B. Brennan, Michael Y. Scudder, and Amy J. St. Eve were appointed to the U.S. Court of Appeals for the Seventh Circuit by President Donald Trump.

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session. This week I sat on Monday,  
heard six cases, and then I did pick  
up an extra case on

01:06:02

Wednesday, so it was seven cases, but  
that's a pretty typical caseload. I  
spent a lot of time preparing for  
those cases. I'll read all of the  
briefs, I'll read the district  
court's opinion, I'll normally keep  
Westlaw<sup>26</sup> open while I'm reading so if  
I think there's a case I want to look  
at I can quickly look at it. The  
clerks are now hyperlinking decisions

01:06:24

in their bench memos. So again, I'll  
look at that and I'll think maybe I'd  
better look at the language of that  
statute again, and that's very easy  
to do. I've increasingly become  
reliant on my iPad when I travel to  
just load all the briefs on and I  
read them wherever I happen to be. I  
think I like actual paper better but  
paper briefs are a lot heavier, so

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<sup>26</sup> Westlaw, owned by Thomson Reuters, is one of the major  
online legal research platforms.

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it's nice to

01:06:50

have the iPad.

MS. MINARIK: How many opinions are you authoring in a year on the Court?

01:07:00

CHIEF JUDGE WOOD: I keep an Excel spreadsheet for myself of my own

assignments, and I include three different kinds of things on that.

One are the opinion assignments from regular argument days which I've just

described. One are the opinion

assignments from what we call short argument days, which are days when

the staff attorneys serve as our law clerks, and instead of hearing six

cases we'll hear nine cases, but

01:07:21

they're theoretically, not always,

but theoretically, relatively

straightforward, one-issue cases.

The third type are the cases that

don't get oral argument, where we

will sit in a conference with three

of us and we'll decide 9-12 cases

just in that conference with the

staff attorneys in the conference,

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and then we divide those  
01:07:42 up. Sometimes people write opinions  
with those cases. I saw one recently  
that was just issued where one of the  
judges wrote a 30-page opinion after  
that, which I have to say is unusual.  
01:07:53 But you write what you need to write  
to explain it. So how much I write  
depends a little bit on the process  
by which it got to me, but  
fundamentally it's really just what  
does the issue need. And if it's one  
of the cases where there's no lawyer,  
the other thing that will happen, and  
I think it happens about once every  
two conferences, is somebody will  
01:08:15 say, "I think there's some issues  
here, let's go find a lawyer". We  
need to appoint a lawyer and get this  
properly briefed and presented. Then  
it's orally argued.

MS. MINARIK: What type of  
discussions typically happen among  
the judges who sit together on a  
panel hearing a set of arguments?



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01:08:34 CHIEF JUDGE WOOD: It's fascinating sitting on a court where we have shifting panels, because every panel has a slightly different chemistry. So some panels will be people who are all very meticulous, they'll give you

01:08:48 a lengthy explanation of their thinking. We might conference for as much as an hour and a half on six cases, which would be a long conference. Some panels are people who are much more summary, or maybe the mixture of cases that day just doesn't lend itself particularly well to a lengthy discussion. It really depends on the panel and the

01:09:10 case, but on the whole, by and large, you get a good explanation from everybody, everybody's prepared, they know what they want to say, and sometimes people will surprise you. They'll come out a way that you weren't predicting. We don't have any discussion before argument amongst ourselves. Our theory is

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01:09:32 that we really want three independent understandings of the case and we'll see how well those blend.

MS. MINARIK: Is there any advice that you would share with lawyers who come before the Court for oral argument?

01:09:42 CHIEF JUDGE WOOD: My advice for lawyers who come before the Seventh Circuit for oral argument is to be prepared. The judges will know your case and they will expect you to know your case.

MS. MINARIK: What about advice for writing briefs to the Seventh Circuit?

01:09:59 CHIEF JUDGE WOOD: Advice for writing briefs is easy to give and hard to implement. We have a great resource on our public website, the Seventh Circuit Practitioner's Manual, which I recommend for all people who have not practiced before this Court before, and really any federal court of appeals. Most of the advice is

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quite transportable to any other  
circuit.

01:10:24 So for brief writing, remember that  
somebody's reading it. Maybe they  
don't want to read a witness-by-  
witness account of what happened

01:10:35 since you can't figure out what the  
facts of the case are. If somebody  
says, and then Witness A said  
something or other, it is hard to  
follow. I had a brief like that just  
the other day and eventually you get  
an idea. So tell a story, explain  
what your case is about. Another  
thing that's really important is to  
be careful with the issues that you  
select to take to the court of  
appeals. It's not

01:10:57 everything that went wrong at the  
district court. There's a standard  
of review we live with, and we are  
not likely to say that a jury's  
verdict was wrong, or that a judge  
was clearly erroneous. You can argue  
that, that's fine, explain why, and

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understand that you've got an uphill  
battle. So issue selection is  
critical for brief writers. Another  
01:11:23 thing for brief writers is to  
recognize that the word is 'brief,'  
it's not 'long'. So if the judge is  
reading 2,000 pages, as I do, for a  
day of oral argument, don't file a  
01:11:37 reply brief that drones on for 9,000  
words. It's not helpful, and it  
really doesn't sharpen the writer's  
own opinion to do that. So there are  
a lot of things people can do. I  
think people should just read out  
loud the brief they wrote and ask  
themselves does this actually make  
any sense? If I were having an  
English discussion with another  
01:12:01 person about this case, would they be  
able to follow it, or have I larded  
this up so much with jargon that I  
would get nothing but a blank stare  
back? [Laughter]

**Interview Part II- Interviewer:**

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**Steven Art**

MR. STEVEN ART: Thank you, Judge Wood. As you know, I'm Steve Art, one of your former law clerks. I'd  
01:12:33 like to ask you a few questions for the second half of your IJA oral history. Judge Wood, you're now Chief Judge of the Seventh Circuit, and you're the first woman to serve  
01:12:43 in that role. Tell us when you became Chief Judge and how a judge becomes Chief of the Seventh Circuit.

CHIEF JUDGE WOOD: I am Chief Judge of the Seventh Circuit. I took over that job from Frank Easterbrook<sup>27</sup> on October 1, 2013. I remember the day very well because it's the day the government shut down, and Judge Easterbrook thought that this was  
01:13:04 very funny, that my ascending to the Chiefdom had that effect. But maybe it didn't have that effect. In fact,

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<sup>27</sup> Frank H. Easterbrook was nominated in 1984 by President Ronald Reagan to the U.S. Court of Appeals for the Seventh Circuit where Easterbrook served as Chief Judge from 2006-2013.

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one becomes the Chief Judge by statute when the previous Chief Judge resigns and has served seven years in office. You can't become Chief Judge if you've reached the age of 65. You can't continue to be Chief Judge once you reach the age of 70. But

01:13:30 otherwise it's a seven-year term and I'm in year five of that seven-year term.

MR. ART: So tell us some of the responsibilities that you've taken on as Chief Judge.

01:13:39

CHIEF JUDGE WOOD: I didn't know what the responsibilities of the Chief Judge would be in their entirety when I took over. I did know, of course, that the Chief Judge presides over the full Court, whether it's just a panel or whether it's the Court sitting en banc, and the presiding judge has the power to make

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assignments of opinion writing, which can be a very interesting task. I always look to make sure that whoever

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I assign an opinion to is most likely to capture the sense of whatever the consensus on the Court is about a particular point. In addition to that, there's quite a bit of administrative work. The Chief Judge sits by statute on the Judicial Conference of the United States, which is the governing body for the federal courts. It's a body chaired by Chief Justice John Roberts with the 13 Chief Circuit Judges and one representative from each circuit. So it's a 26-person body plus the Chief Justice. We govern the federal courts, everything from budget to federal defender policies, to information technology, to security, to anything else you can think of. So that involves two meetings a year and lots of reading of committee reports in between. In addition, the Chief Judge is responsible for implementing the Judicial Conduct and

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Disability Statute<sup>28</sup>, so if anybody complains that a judge is engaged in either misconduct of some type, or is suffering from either a physical or a mental disability, the complaint goes to me first to screen it to see if there's any potential merit to the complaint. If I think that there are

01:15:14 disputed issues of fact I need to appoint a committee to look into it and find out what the situation is. Many complaints I can dismiss easily because it's just a disappointed

01:15:25 litigant who wishes she had won, and the quick answer to that is, it's not misconduct to rule for one side or the other; your remedy is an appeal there, so those are very quick. There's quite a bit of work screening these. Another thing a chief judge does is to review all Criminal Justice Act Vouchers for panel

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<sup>28</sup> The [Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351-364](https://www.uscourts.gov/judges-judgeships/judicial-conduct-disability) <https://www.uscourts.gov/judges-judgeships/judicial-conduct-disability>



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attorneys who are appointed to  
01:15:49 represent criminal defendants. If  
they exceed a certain amount, and the  
amount has been changing over the  
years, it's now about \$10,800, which  
to a private lawyer would not sound  
like a very big amount of money, but  
many criminal defense lawyers, maybe  
two-thirds of them, manage to stay  
within that budget. If it's a more  
complicated case, if it's a big wire  
01:16:11 fraud, if it's a multiple-defendant  
criminal case, and certainly if it's  
a death penalty case where there are  
different ceilings, it's going to be  
way in excess.

01:16:21 MR. ART: What are some of the  
challenges that you faced as Chief  
Judge?

CHIEF JUDGE WOOD: I've had a number  
of challenges as Chief Judge, both in  
the area of the Judicial Conduct and  
Disability, and also more recently in  
trying to develop a credible and  
user-friendly policy for workplace

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conduct and complaints about any type  
01:16:46 of misconduct that might appear in  
the workplace. So on the first, I  
would say not a year goes by that at  
least one judge in the circuit, and  
this is a circuit-wide  
responsibility, all the district  
judges, all the bankruptcy judges,  
all the magistrate judges and the  
court of appeals judges, that's  
several hundred people, somebody  
01:17:06 might be suffering from dementia;  
that's nobody's fault, no one wants  
that to happen. But on the other  
hand, you can't keep deciding cases  
if you've lost your mental abilities.  
01:17:18 So those cases need to be treated  
with a great deal of care and  
discretion, and we usually manage to  
resolve them short of any kind of  
formal proceeding, but a formal  
proceeding is possible if that's  
necessary. There have been the  
occasional case of misconduct where  
I've appointed a committee and the

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01:17:39 committee does its work, makes a recommendation to the Judicial Council, and the Council is the one, not I, the full Council takes the action. On the workplace conduct front, in the wake of the problems that came out when Judge Kozinski<sup>29</sup> resigned from the Ninth Circuit, I took a look at the Seventh Circuit's policy, realized that no one had seriously evaluated it since around 1993 or

01:18:02 '94, so I thought it was high time that we bring it up to date, make sure that people knew about it, and we actually conducted a survey.

01:18:13 Judge Hamilton<sup>30</sup> of our Court, David Hamilton, chaired my committee. We conducted a survey of all of the people who work in the Seventh

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<sup>29</sup> Alex Kozinski was nominated in 1982 by President Ronald Reagan to the U.S. Court of Appeals for the Ninth Circuit, where he served as chief judge from 2007-2014. He retired in 2017 after allegations of improper conduct towards law clerks. <https://www.fjc.gov/history/judges/kozinski-alex>

<sup>30</sup> David Frank Hamilton was nominated to the U.S. Court of Appeals for the Seventh Circuit in 2009 by President Barack Obama. <https://www.fjc.gov/history/judges/hamilton-david-frank>.

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Circuit, and a shocking number of them said that they had no idea what the policy was, one way or the other. Fortunately we did not hear about a shocking number of bad incidents, but I was very disturbed that people were not aware. We do now have a new policy; we're continuing to tweak it, we're continuing to work on it.

01:18:34

MR. ART: So let's talk about some of the practices and procedures at the Seventh Circuit. In your mind, what are the practices and procedures that the Seventh Circuit employs that are important to the Court's decision-making process?

01:18:54

CHIEF JUDGE WOOD: Every circuit has its own way of operating, and one of the first things I learned when I became a circuit judge was that every circuit likes its own way of doing business better than anyone else's

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way of doing business, and I plead guilty to that. I think the Seventh Circuit has a very good set of

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internal operating procedures. One thing we do that helps us stay together as a court, that helps us function as the kind of collegial body that we're supposed to be under the constitutional and statutory plan, is we change the panel every day. So

01:19:29 over the course of a month, over the course of a year, each one of us repeatedly sits with each other judge. We come to know those other judges, we come to understand their judicial philosophy, we come to understand that they're people, they're doing the best they can to decide these cases just as every one of us is doing. That kind of

01:19:53 personal relationship really helps weather some of the more difficult cases. So changing the panel every day is helpful. We don't announce the panel until the morning of the

01:20:04 arguments. Not a popular proceeding with the lawyers, but it helps us to

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the extent we can nudge the needle.

It helps us have arguments that are addressed to the Court as a whole, not idiosyncratic arguments to each of three people who may or may not represent the middle of the Court.

Lawyers preparing for the Seventh Circuit need to just imagine

01:20:28

what if it's A, B, and C on a panel, what if it's P, Q, and R on a panel, and they may be very different

panels. But they need to be prepared for anything, and I think it improves the quality of the arguments.

MR. ART: What was the relationship among the judges on the Seventh Circuit when you joined, and has the relationship among judges changed

01:20:51

since then?

CHIEF JUDGE WOOD: When I joined the Seventh Circuit, which was in the middle of 1995, it had not

01:21:00

experienced too much change over the years. George H.W. Bush had

appointed only one person, Ilana

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Rovner, and it had been a relatively stable court. I would say it was a very collegial court at that time, it was a court where disagreements could be expressed without people feeling that they'd been attacked in a personal way. It was a very high value for the court. The only difference now, and I think it's not going to turn out to be a big difference, is that out of our eleven authorized judgeships, we now have four new people. Four people who have been on the court for less than a year as of the time I'm speaking. My greatest goal as Chief, as these new people have come on the court, is number one, to make them feel welcome, to number

01:21:25

01:21:49

01:22:01

two, make them understand that this is our tradition, that you don't disagree by flatly saying, "I don't agree with you." You have to say, "because" and give a reason, and listen to the reasons others give.

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I'm very optimistic that that culture is in fact being embraced by the new judges.

MR. ART: So here's a broad question: what is your judicial philosophy?

01:22:23 CHIEF JUDGE WOOD: [Laughter] That's a hard question to answer because I don't stand outside of myself and look back in again at a judicial philosophy, but if I were to make a stab at it, I would say it begins with the notion that courts are a fundamentally important institution to the United States, although we are not law-making institutions. But that doesn't mean we don't make law, and the reason is because people seldom get to the Court of Appeals, and they probably almost never get to  
01:22:48 the Supreme Court unless the law is unclear. And so if you want to think of clarification as not law-making, then that's fine, but you are expressing a new thought about how  
01:23:03 the law applies to a particular



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situation when you have a case that is worthy of Court of Appeals or Supreme Court determination. When you have that, I try to take into account a number of things. What's the fundamental text of the law I'm being asked to apply? If it's a constitutional provision, I want to know which constitutional provision is it? I operate on the assumption that the people who wrote the Constitution and the amendments were bright and thoughtful people. So when they wanted to be very specific about something, they were. So they said the president has to be 35 years old. No one worries about interpreting that; 35 is 35. They said there will be no titles of nobility; nobody worries about interpreting that. They also said there will be no cruel and unusual punishment; well, that's not the same as saying 35, is it? And in that instance I think they wanted to, as

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01:23:48

01:23:59

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it were, create a standard, not a rule. They wanted to put a concept into the Constitution that they trusted later judges and later societies to implement. So for me it's not quite meaningful to say that you're "an originalist" or you think a living Constitution is the right thing. I think it depends; what are you trying to accomplish? Then you learn the answer. Now, obviously, if it's a statute, you've got purposes of the statute, which I think are important, (not all of my colleagues do), but you do have the language, the context, what's the statute about? I also think that the courts play a very important role in those areas where democracy doesn't work.

01:24:25

The

01:24:53

counter-majoritarian, whether you want to call it James Madison's factions, whatever you want to call it. There are instances in which maybe a majority of people don't

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01:25:03 think that there should be a mosque  
in their town, but there is a  
minority of Muslims who would like to  
be able to worship at a mosque.  
Well, you don't want the tyranny of  
the majority, so to speak, so I think  
that's another aspect of my  
philosophy.

MR. ART: When you vote on the en  
banc court, how does that differ?

01:25:22 CHIEF JUDGE WOOD: Voting on the en  
banc court is a little bit different  
because there are so many more voices  
that need to be heard, and one thing  
that we do to try again to operate  
more effectively as a court is we  
have a first round of discussion when  
people are explicitly encouraged not  
to state a vote, so that you can just  
listen to the viewpoints around the  
01:25:43 table.

MR. ART: And after each member of  
the Court has stated their position,  
what happens next?

CHIEF JUDGE WOOD: After each member

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01:25:49 of the Court has explained and the discussion is really finished, the Chief Judge will ask for the vote, and we'll go back around the table, junior to most senior, and vote. Although sometimes even just a vote saying "I vote to affirm," "I vote to reverse," isn't quite enough. You might say, "Please indicate which ground you prefer. Do you prefer

01:26:10 waiver or do you prefer that this defense worked?" Or whatever it may be. So you can ask for that kind of specificity which helps a lot in assigning the opinion, because you might discover that two of the affirms are for a strange reason, and another seven of them are all in a different direction, so that helps.

MR. ART: You've been viewed as a

01:26:32 consensus builder, as a judge that can forge a position attractive to all types of judges. Do you view yourself that way, and why is that important to you?

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01:26:43 CHIEF JUDGE WOOD: I try very hard as a member of the multi-member court to find common ground. So I certainly hope that I'm a consensus builder. We don't get anything done if we issue three separate opinions, and I've certainly heard plenty of lawyers complain about Supreme Court opinions that come in the form of four, five, six different opinions, where they're practically reading tea leaves to figure out what the Court means. I have found over the years that if you listen really carefully to what other people are saying and you try your best to find those common grounds, and you give them some room to move around, to change their mind if necessary, then they may be willing to rule your way, and I can think of cases where exactly that has happened. Not always, but it certainly has happened.

01:27:36 MR. ART: Over the time that you've

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01:27:46                    been on the Seventh Circuit, how has  
your approach to judging changed?

CHIEF JUDGE WOOD: I think I've  
gotten better at, over the time I've  
been on the Seventh Circuit, at  
discerning which issues really need  
to be decided, and understanding  
which kinds of differences of opinion  
may be very factually specific, and  
if I'm going to go to the mats on  
something it probably won't be that.

01:28:13                    But I've become much more comfortable  
just being a judge. I think in the  
early years when I was on the Seventh  
Circuit sometimes you would see both  
sides of the case so clearly, and  
it'd be very painful to be forced to  
come down on one or the other. But  
I'm pretty comfortable with that at  
this point.

01:28:33                    MR. ART: If you could go back to  
1995 and give yourself some advice as  
a new judge, what would that advice  
be, and I guess, would you follow it?

CHIEF JUDGE WOOD: [Laughter] Would I

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01:28:45 follow it? I think that advice would  
be just decide the case, get it down,  
send it around, see what other people  
think. Maybe they'll agree with you,  
maybe they won't. Probably most of  
the time they will. You already know  
at least tentatively what they think,  
and don't worry about that last  
tweaking of perfection. I was always  
as a kid accused of being a  
perfectionist, and I'd like to think  
01:29:06 that maybe being a judge was a good  
job for somebody who's a  
perfectionist, but you don't want to  
overdo it.

MR. ART: The Seventh Circuit is most  
often the court of last resort for a  
litigant. How do you as a judge  
weigh a decision's impact on society,  
on the public, and on our legal  
system?

01:29:25 CHIEF JUDGE WOOD: Well, the Seventh  
Circuit, as are the other Courts of  
Appeals, certainly is almost always  
the court of last resort. These days

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01:29:34 we're getting about 2,700 cases a year and the Supreme Court may be looking at four of them, so the ratio is obvious. You know other cases may be important, I don't deny that, but normally we're the end of the road. I approach every case as though this is it, because I think that's my responsibility. At a minimum, it gives the Supreme Court my best thinking, and at a maximum, I

01:30:01 probably am, along with my other two colleagues, the end of the line. So I think you want, of course, a legally correct result. Whatever the reasoning is needs to be clear so that the district judges, the lawyers, lawmakers, the sentencing commission, whoever it is, whatever the audience may be, needs to understand as well as possible why we

01:30:22 did what we did, especially if we're reversing. If we're reversing we need to tell the district judge what was wrong.



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MR. ART: Tell us about your  
01:30:33 preparation for oral argument and  
decision in a case.

CHIEF JUDGE WOOD: I prepare a lot  
for oral argument in cases. Now,  
some cases are easier to prepare than  
others; they're one-issue cases, they  
don't require as much reading, maybe  
I've seen the issue a lot of times.  
Maybe the standard of review is very  
deferential to the original  
01:30:55 tribunal, and so I am looking for  
something to make me think that there  
should nonetheless be a change in the  
result. But other than that, I just,  
as anybody who knows me would  
certainly verify, I just read and  
read and try to make sure I know what  
the facts are, try to understand the  
facts. I can sometimes get curious  
about the facts. I am not one who  
01:31:24 does a lot of independent internet  
research, although some people have  
been known to do that. But I'd like  
to understand at least vocabulary, so

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I may do some independent research  
01:31:24 just to get the full picture.

MR. ART: Why is it important to you  
to prepare to that extent?

CHIEF JUDGE WOOD: Because it relates  
back to the other question about  
building consensus. First of all, it  
means that I understand the case  
better. Maybe my first impression of  
the case is one where I think, oh,  
this is an obvious affirm. And then  
01:31:56 I look into it further and I think,  
oh, but maybe not. Here are some  
more details in this case that I  
hadn't quite appreciated, and maybe  
we need to reverse. So I can find my  
own view of the case changing and  
evolving as I go through the  
preparation. It certainly helps me  
understand where the other judges are  
coming from. Remember, we don't talk  
01:32:20 to one another before argument, so  
they may come out with a perspective  
that I hadn't thought of, but if I've  
prepared well it's pretty easy for me

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to see where it fits in.

01:32:30

MR. ART: You've now reviewed hundreds of lower court decisions. Can you reflect for us on the relationship between the Court of Appeals and the lower district courts?

01:32:46

CHIEF JUDGE WOOD: Courts of Appeals and the district courts are in two different businesses. The district courts have the responsibility as individual judges of developing a record in a case, changing a mass of facts into some kind of legal theory, deciding whether the person can move forward with that. If need be, although this is extraordinarily rare, holding a trial on a case. If it's a criminal case, moving things along through sentencing. We at the Court of Appeals get a record in a

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nice package with a bow on top, and that's about all we can look at. So we have the luxury of time, we're able to go back and really reflect on



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complete view of what's happening in  
01:34:13 our justice system.

MR. ART: Tell us about your most  
humbling experience as a judge.

CHIEF JUDGE WOOD: My most humbling  
experience as a judge? Perhaps it  
was this: I heard a case many years  
ago that was a habeas corpus case out  
of Wisconsin where a young man was  
complaining in the petition that he  
had been wrongfully convicted, that  
01:34:41 he had been accused of committing a  
sexual assault but in fact no such  
thing had happened. And something  
just didn't feel right to me about  
the facts of this case, and I really  
dug into it. And the panel, in fact,  
agreed with me, and we issued an  
opinion granting the writ for him.  
This is very unusual, I should say,  
empirically, and he was released. He  
01:35:07 then went on to move to Chicago to  
find a job, to go to law school. He  
is now a successful attorney. I saw  
him some years later and he told me

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01:35:26 that I gave his life back to him, and  
it was an amazing feeling.

MR. ART: I worked with him quite a bit. So let's talk about just a few of the many noteworthy cases that have crossed your desk during the time you've served on the Seventh Circuit. And I want to start with a case called *National Organization for Women (NOW) v. Scheidler*<sup>31</sup>, which considered the line between peaceful protest

01:35:50 under the First Amendment, and violent activities during protests. Can you describe the issue at stake in *NOW v. Scheidler* and talk about the decision in the case?

CHIEF JUDGE WOOD: Sure. You have well described the actual legal issue in the case, but the background facts affected a lot of people's view of this case, because the background

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<sup>31</sup> *National Organization for Women, Inc. v. Scheidler*, 267 F.3d 687 (7th Cir.2001). <https://casetext.com/case/national-org-for-women-inc-v-scheidler-2>.

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01:36:17 facts were not demonstrations by  
people for the ethical treatment of  
animals objecting to a fur store.  
The background facts were Operation  
Rescue, a pro-life organization,  
01:36:32 demonstrating against abortion  
clinics. So what I was dealing with  
was the question whether this  
organized campaign of violence, which  
had been found by the district judge,  
was something that could be reached  
under federal criminal and, actually,  
civil laws derived from the criminal  
law as a federal RICO case, Racketeer  
Influenced and Corrupt Organizations  
01:36:57 Act.<sup>32</sup> So there had been a trip to  
the Supreme Court<sup>33</sup> in which the  
Supreme Court had said, yes, this can  
go forward as a civil action under  
RICO. The case went back to the  
district judge who tried the case and  
made findings of fact, and his

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<sup>32</sup> Title IX of the Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 941 (Oct. 15, 1970), codified at 18 U.S.C. Ch. 96, §§1961-1968.

<sup>33</sup> *National Organization for Women, Inc. v. Scheidler*, 537 U.S. 393 (2003). <http://www.oyes.org/cases/2002/01-1118>.

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findings of fact very clearly stated  
that this was not a peaceful protest,  
this was not people walking around  
with signs

01:37:22 or pictures of aborted fetuses, or  
anything of the sort. This had  
spilled over, very unfortunately,  
into violence. People had been  
thrown through plate glass windows.

01:37:35 People had rampaged through clinics  
and destroyed all of the equipment in  
the clinics. A woman had been  
attacked and stitches from her  
hysterectomy had burst by the force  
of the attack, and she was left lying  
on the ground, bleeding. So in that  
opinion, on appeal from the District  
Judge's findings of fact and

injunction, the panel of this Court,  
01:37:58 for which I wrote, decided that these  
were indeed violent acts, and yes,  
RICO had been violated by Operation



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Rescue's commission of these acts.<sup>34</sup>

The case then went back up again to the Supreme Court<sup>35</sup>, which basically changed its mind from the earlier round and said, well, actually, we don't think this kind of violence is covered by RICO. It's not that

01:38:22 anyone applauded the violence; no one on the Supreme Court did, no one anywhere else did. But the question was really, was this type of activity under the federal statute, or were

01:38:31 you really looking at state tort actions? Were you looking at state prohibitions against violence? So back it went to us, but the case became very controversial, and I was criticized very much for this case, because instead of seeing it as a line as I did between whether protest needed to be peaceful or violent, it was seen as taking a position on

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<sup>34</sup> *National Organization for Women Inc. v. Scheidler*, 396 F.3d 807 (7th Cir. 2005). <https://caselaw.findlaw.com/us-7th-circuit/1050684.html>.

<sup>35</sup> *Scheidler v. National Organization for Women*, 547 U.S. 9 (2006). [www.oyez.org/cases/2005/04-1244](http://www.oyez.org/cases/2005/04-1244).

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01:38:58           whether abortion protestors should be able to do things. I still don't think it was; if you look at the opinion and the findings of fact there can be no questioning the fact that these were violent acts.

MR. ART: You've also decided a number of important cases on the subject of discrimination. Can you talk a bit about those cases, and in particular, the cases that have been particularly important to you?

CHIEF JUDGE WOOD: One of the things that federal law does, and I think a very important thing that the federal courts do, is it protects certain

01:39:29           groups from what we might call invidious discrimination; discrimination on the basis of race, discrimination on the basis of ethnic origin, discrimination on the basis of sex, sexual harassment, discrimination on the basis of religion, and then there are other things. So in the cases that I have

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01:39:52           decided, whether it's a case of a  
Hispanic steel worker in northern  
Indiana who was being called epithets  
relating to his background, which are  
unacceptable in the workplace, and  
the statute, Title VII of the Civil  
Rights Act of 1964 protects people  
against that. The District Judge a  
couple of times had granted summary  
judgment in that case, it was called  
01:40:20           *Cerros v. Steel Technologies*<sup>36</sup>, and  
both times I wrote opinions saying,  
no, he had stated a claim. Another  
more recent case dealt with the  
question, what does it really mean to  
01:40:32           talk about sex discrimination? In  
particular, does sex discrimination  
encompass discrimination on the basis  
of sexual orientation? So in an  
opinion for the en banc court a  
couple of years ago, a case called  
*Hively v. Ivy Tech College*<sup>37</sup>, I wrote

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<sup>36</sup> *Cerros v. Steel Technologies*, 288 F.3d 1040 (7th Cir.2002).  
<https://caselaw.findlaw.com/us-7th-circuit/1107188.html>

<sup>37</sup> *Hively v. Ivy Tech College*, 853 F.3d 339 (7th Cir. 2017).  
<https://caselaw.findlaw.com/us-7th-circuit/1855485.html>.

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the opinion for the en banc court  
saying, yes, sexual orientation can't  
be dissected away somehow from sex;  
01:40:58 it's really all one and the same  
thing, it's people of a certain sex  
behaving in a way that you don't  
think is proper for that sex. The  
Supreme Court had already said that  
the statute covered that, in earlier  
cases, that you couldn't, for  
example, tell a woman that you  
weren't making her partner that she  
didn't wear enough make up and  
01:41:18 wasn't wearing feminine clothes. So  
I thought that this fit quite  
comfortably in that line of cases.  
There have been many others, but  
those are two examples.  
01:41:31 MR. ART: You've also considered free  
exercise cases, and the one that  
comes to mind is *Bloch v.*  
*Frischholz*.<sup>38</sup> Can you tell us about  
that case?

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<sup>38</sup> *Bloch v. Frischholz*, 533 F.3d 562, 564 (7th Cir. 2008).  
<https://caselaw.findlaw.com/us-7th-circuit/1498717.html>.

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CHIEF JUDGE WOOD: Yes, I remember *Bloch v. Frischholz* very well. It was a case under the Fair Housing Act<sup>39</sup>, which is another statute that protects people against various forms of discrimination in their housing.

01:41:51 This case involved a Jewish family who lived in a condominium association in Chicago, and they followed the practice, which is practiced by many Jewish families, of having a little thing called a mezuzah on the side of their door frame. It's about up at almost shoulder level, maybe an inch wide, and maybe about 4.5, 5 inches long,

01:42:14 and you put little scrolls from the Bible into it and you touch the mezuzah on your way in. Everything was fine until the condo association decided that mezuzah were clutter in

01:42:25 the hallway, so they insisted that this family remove the mezuzah. I

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<sup>39</sup> Fair Housing Act, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-3619.

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thought that this was a form of discrimination against observant Jewish families who use this. It certainly didn't fit common sense notion of clutter, as far as I was concerned, because you can't even see it until you're standing in front of the door. It's not like your snow boots out in the hallway or something. And there were other indications in the record that it was a form of religious discrimination. So I dissented at the panel level; the panel didn't see this as being any different than saying "No Bears posters on the door." I didn't see it that way. But then the Court took it en banc and after a more full exploration of what was really going on, the en banc Court actually unanimously followed my view of the dissent and said, yes, this was indeed religious discrimination and took care of it.

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MR. ART: Another issue that's been

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important to you is access to courts.

Tell us why that issue is important to you and how you've seen it come before you in cases.

01:43:39 CHIEF JUDGE WOOD: Well, courts aren't going to do people any good if they can't file a lawsuit and pursue their lawsuit there. So there are a number of doctrines that exist that address the question, who is able to come to court? Some of them are under the rubric of standing doctrines, and the Supreme Court in recent years has insisted that people show that they were really injured by the practice in question, that the practice had some causal relationship, and that the court can do something about it. But there are many cases where it's much easier to describe that than to apply it. So what happens, for example, if your identity is stolen because there's a data breach at a major organization, maybe a big store where you do

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business? Well, identity theft can be very expensive. It can be a pain in the neck to begin with, because you've got to get new credit cards, and you've got to somehow monitor your accounts to make sure nobody's trying to drain your bank account.

But on the other hand, maybe

01:44:35

nothing's going to happen. So can you bring that lawsuit? My view is yes, you should be able to bring that lawsuit, because even though the harm is somewhat intangible, it's also quite real. It's indisputably there, and it is, to a degree, redress-able. People have credit monitoring

services, they have other kinds of things that will help in that

01:44:57

situation. So there are a lot of cases where this question of how do you insist that there really be an immediate injury come in. I think that we should leave the door

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open, especially if Congress has created a claim that people are



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trying to assert. Others, I think, would take a stricter view and reserve the courts for things that they think would be more judicially resolvable.

01:45:35 MR. ART: Another area in which access to courts plays out is federal habeas corpus law, and the federal statutes that provide for collateral attacks on convictions. Tell us about your cases applying federal habeas corpus law.

CHIEF JUDGE WOOD: Federal habeas corpus law is a procedural nightmare; it's very, very complex, and that's especially notable because the people who tend to try to use it are either state prisoners or people in the custody

01:46:02 of the federal government: either federal prisoners or sometimes just executive detainees. So I'll talk about state prisoners. State prisoners have an obstacle

01:46:17 course of barriers they've got to

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clear before they can present a claim that their conviction violated the federal Constitution. They've got to show that they complained in the right way to the state courts.

They've got to show they complained in time to the state courts. They've got to show that there was no independent state law ground that supports what the state courts did.

01:46:36

So there is doctrine after doctrine, and then once they get to the federal courts they have to show not only did the state court make a mistake;

that's not enough. What you have to show, is that the state court was

objectively unreasonable, which in modern cases is starting to look as

01:46:59

though the state judge just took

leave of his or her senses. It's a very, very high barrier. I've had

cases in which I have been convinced that the state courts were wrong, but

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they weren't so wrong that you could call them unreasonable. Like whether

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you could put a 14-year-old boy in a police station with no lawyer, no food, no call to his parent or other relative, and leave him there for hours, and say that that's a fair interrogation. State courts thought it was all right. I looked at it, I've been around 14-year olds, it

01:47:38 didn't look right to me at all, but there you are; you're bound by this comity-based respect for state courts, and we follow that. Other kinds of habeas: executive detention especially, are very important aspects of habeas corpus; that's, in a way, the original purpose. We see that in immigration cases, we see that in sometimes other kinds of pre-

01:48:06 trial detention cases, and I think people should have the ability to challenge the legitimacy of their confinement.

MR. ART: In 2015 you received the

01:48:19 U.S. Department of Justice John S.

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Sherman Award<sup>40</sup> for your lifetime contributions to the field of anti-trust. What do you think of as your biggest contributions to the field of anti-trust?

01:48:40 CHIEF JUDGE WOOD: I've been interested in anti-trust since I was in law school, actually. I learned about anti-trust in the summer after my first--after my second year of law school when I was working at Covington & Burling. I am sure that if you ask anybody else the question, my biggest contributions to anti-trust, they surely would say in the field of international anti-trust. Because from the very beginning, and especially when I was at the Justice Department right before coming here,

01:49:03 I was working with the anti-trust authorities. They would call themselves the 'competition

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<sup>40</sup> Established in 1994 in honor of Senator John Sherman, author of America's first antitrust law - the Sherman Act, the award recognizes individuals who have made "substantial contributions to the protection of American consumers and the preservation of economic liberty."

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01:49:14 authorities' of many other countries  
to see if we could develop a common  
view of what's a cartel, what kinds  
of practices are harmful to consumer  
welfare, what kinds of practices harm  
an economy? Maybe a monopoly-type  
practice where you're excluding  
others. What kinds of remedies make  
sense? And working with other  
countries all over the world. I've  
been able to take part in that  
general education effort, that  
01:49:42 general learning effort, and the  
learning goes two ways. The United  
States now takes a narrower view of  
the scope of competition law than,  
say, the European Union does at the  
moment, and many other countries. So  
it's a genuine two-way street  
dialogue.

MR. ART: What are some of the anti-  
trust decisions that have been  
01:50:04 important to you during your time on  
the Seventh Circuit?

CHIEF JUDGE WOOD: The most important

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01:50:12 anti-trust decision that I've written  
was for the en banc court in a case  
called *Minn-Chem v. Agrium*<sup>41</sup>, which  
involved two questions. One question  
had to do with how do we assess  
whether U.S. anti-trust law applies  
to a certain arrangement? Is this is  
a question of the subject matter  
jurisdiction of the federal court?  
Because if so, you can raise it any  
time you want to. You can have the  
thought float across your  
01:50:35 head when you're in the Supreme  
Court. The other possibility is that  
the anti-trust case might relate to  
whether a claim has been stated, in  
which case you have to raise that  
issue to the district court or you've  
lost it. So there's a big practical  
difference. There had been an  
earlier decision<sup>42</sup> of the Seventh

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<sup>41</sup> *Minn-Chem v. Agrium*, 683 F.3d 845 (7th Cir. 2012).  
<https://www.appellate.net/wp-content/uploads/2014/11/Minn-Chem-en-banc.pdf>

<sup>42</sup> *United Phosphorus, Ltd. v. Angus Chemical Co.*, 322 F.3d 942 (7th Cir. 2003).  
<https://openjurist.org/322/f3d/942/united-phosphorus-ltd-jc-v-angus-chemical-company-w-w-db>.

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01:50:58 Circuit about ten years before *Minn-Chem* came out; *Minn-Chem* was about 2015. So around 2005 our court had decided en banc that it was a subject matter jurisdiction problem. I had dissented from that en banc decision.

01:51:11 It was a close decision; we were only nine of us sitting, and it was a five-to-four decision, but I was on the dissenting side. Then the same issue came up again in the *Minn-Chem* case. By then the Supreme Court had decided quite a few additional cases on this question, jurisdiction versus stating a claim. So I plunged back into the battlefield and said,

01:51:37 whatever we may have thought ten years ago, it's now clear that I was right back in 2005 that this is an issue that goes to whether a claim is stated. The panel had not said that, but *Minn-Chem* itself had also gone en banc, and the en banc court agreed that in light of intervening Supreme Court decisions, it really was a

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statement of a claim situation. I  
01:52:02 would say that's an example of where  
giving people some room is very  
helpful, because I didn't just sit  
there and say to the panel, you got  
it wrong, I said, there's every  
01:52:13 reason why you might have followed  
this, except now here's Supreme Court  
case number 1, 2, and 3 that all are  
going in a different direction. So  
we now just have to follow these more  
recent cases, the most important one  
of which was a case called *Morrison*  
*v. National Bank of Australia*<sup>43</sup>. So  
that was the first half of *Minn-Chem*.  
The second half of *Minn-Chem*, which  
01:52:36 was in some ways even more important,  
had to do with this international  
cartel of a product called potash  
which is used in fertilizers, the  
number one user in the world is  
China, the number two user in the  
world is the United States, but the

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<sup>43</sup> *Morrison v. National Australia Bank*.  
<https://www.oyez.org/cases/2009/08-1191>.



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producers are in Russia, to a certain degree, and some other countries.

There was an

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international cartel in potash, and the way they operated is they would all raise the price in certain South American countries, and then they would use that fixed price as the

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benchmark price for the U.S., so it was a true international cartel.

There were different approaches, one of which would have said this was too indirect to be reached by U.S. law; the other one, which I favored, said, no, it is within the scope of U.S. law. To resolve that question was also a big deal.

01:53:28

MR. ART: You've worked on some fun cases as well. Tell us about the cases that have been most fun or funny on the Seventh Circuit.

CHIEF JUDGE WOOD: Well, there definitely are funny cases. This is the comic relief that we all need.

One of my favorite cases was brought

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by a hip-hop artist named Vince P., also known as Peters, against Kanye West.<sup>44</sup> Vince P. was

01:53:52 convinced that Kanye West had stolen a song that Vince P. had put together, because both of them involved use of the Nietzsche phrase "what doesn't kill you makes you

01:54:05 stronger," and they both had referred to the British model Kate Moss in one way or the other. I'm trying to think if there was any other similarity; those are the big similarities. But the thing is, Vince P.'s song was one which complained throughout the whole song about how difficult it is to break into the hip-hop market, and Kanye's

01:54:28 song was essentially a love song, if you want to think of Kanye West as into the love song genre. So after carefully reviewing the lyrics of [laughter] both of these songs, the

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<sup>44</sup> *Vince Peters, p/k/a "Vince P." v. Kanye West, et al.* No. 11 -1708, 692 F.3d 629 (7th Cir. 2012).

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Seventh Circuit ruled in Kanye West's favor. So that one was fun. Another one was a little off-color. I'll have to figure out how to describe it. It had to do with the sale of novelty items in truck stops, and this particular novelty item was a plush doll in the shape of kind of a middle-aged white man wearing a poorly fitting T-shirt sitting in an easy chair, and his name was Pull My Finger Fred, and you pulled his finger and Fred made an obnoxious sound and he said things. So, of course, somebody else thought, oh, what a good idea, and they copied Fred. They were very frank about it. They said, yeah, we saw Fred at a Singapore exposition or something. So it was a copyright and trademark suit about whether Fred had been copied, and we put pictures in the back of the opinion, and we said, yes, indeed. And I thought I would never get the dolls out of the office

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of my law clerk who had them spread across his table, but I did finally get the dolls returned to the record room.

01:55:50 MR. ART: As all of your law clerks know, you're a judge constantly on the move, and you've traveled internationally a tremendous amount. How has that travel influenced your view and your decisions in American law?

01:56:04 CHIEF JUDGE WOOD: I think it's a broad effect, it's not a specific effect. Obviously, American law is American law. But there are many ways in which it turns out you do need to have an appreciation of foreign legal systems and foreign law. You can have a case such as a case I had dealing with whether one type of French press coffee maker was infringing another company's French press coffee maker. Integral to that case was whether there had been a French adjudication on the point.

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Well, I defy anybody to make that assessment without paying some attention to French law, and the way the civil law systems work is actually significantly different from the way our common-law system works. Whether I've looked at that case, there's another case where on forum non-convenience grounds there had been a question about the safety of the blood supply during the period when HIV/AIDS was not as well under control as it is now. One of the questions was, does this case belong in the United States or is there an effective legal remedy in the courts of the United Kingdom? So again, you need to have some appreciation for that. A similar case with Bridgestone Firestone tires, can you sue in Mexico? So I feel that I've learned a lot about the foreign legal systems. I feel pretty comfortable making assessments like that, because I know enough about them to be able

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to assess the expert evidence myself,  
which of course federal judges are  
invited to do under the Federal Rules  
of Procedure; that's exactly what we  
are supposed to be doing. I'm always  
01:57:57 fascinated. I learn a huge amount  
every time I go to another country,  
no matter what kind of country it is:  
big, small, developed, not developed.  
It's very enriching.

01:58:08 MR. ART: When Justices Souter<sup>45</sup> and  
Stevens<sup>46</sup> retired from the Supreme  
Court, you were considered by  
President Obama as a potential  
replacement. Tell us about that  
process, if you would, and reflect  
for us on the [Supreme] Court as an  
institution today.

CHIEF JUDGE WOOD: Well, that's  
right. Both of those times I was  
01:58:28 informed by the White House that I

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<sup>45</sup> Justice David Souter was appointed to the U.S. Supreme Court by President George H.W. Bush in 1990.

[https://www.oyez.org/justices/david\\_h\\_souter](https://www.oyez.org/justices/david_h_souter).

<sup>46</sup> Justice John Paul Stevens was appointed to the U.S. Supreme Court by President Gerald Ford in 1975 and served until 2010.  
[https://www.oyez.org/justices/john\\_paul\\_stevens](https://www.oyez.org/justices/john_paul_stevens).

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was under serious consideration for the Supreme Court. So both times, it was one year and then the next year, I did fill out, again, just as I had for my confirmation for the Seventh Circuit, except even more so, voluminous forms and background checks. I do remember sitting at my table, speaking of foreign travel, with FBI agents, because they had asked me to list every country I had every visited, and I pretty much took a list from the U.N. and went through all of them. They wanted to know what's the purpose of your visit, did you meet with foreign government officials? To which, actually, the latter question the answer was, of course I did, that's why I was invited to begin with. Or back when I was at the Department of Justice that was actually my job, to go meet with foreign government officials. So very, very thorough vetting. There's only so much that's going to

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do though, because every President is going to take a variety of factors into account. I did talk to President Obama each time, and it was plain to me and plain to him that this was obviously a multi-factored decision for him. So I would say you wouldn't go through it a third time. It's fine, it was flattering to be thought of in that kind of company, but it didn't happen. The Court itself has become politicized in some ways, or at least the public perception of the Court; maybe I want to stress that more than the Court itself. I am increasingly of the view that it would be very good if we found some way to limit people's service on the Court to something. I've seen a 21-year proposal. Something long enough that would ensure judicial independence, which is very important, but which would take some of the political weight off of these appointments. If you

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thought you were bringing somebody on for the next 40 years, that requires a lot of foresight, and my crystal ball is not that great, and I don't know whose is. Every time someone's nominated by a President of any party, I think, do we really know what the hot issues of the day are going to be 10 years, 15 years, 35

02:00:52 years or 40 years from now? I don't, and I think it would be healthy for our system to have some kind of turnover.

MR. ART: What do you think are the  
02:01:02 biggest challenges facing the Federal Judiciary in the next decade?

CHIEF JUDGE WOOD: The Federal Judiciary, on the whole, I think is still working very well, but I'm concerned that it's become increasingly bureaucratic. Think of the statistics on who gets trials, both on the civil side and the criminal side; something well less  
02:01:29 than 2% of the civil cases, I've

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heard the number 1.2%, maybe it's all the way up to 2%, of civil cases get tried; that's vanishingly small. All the rest of them are resolved some other way. Same thing is true on the criminal side. We have a heavy reliance on guilty pleas, which in turn means that prosecutorial charging decisions are driving a lot of our criminal enforcement, not trials by a jury of one's peers for whatever the outcome may be. I am worried about that. I feel that the courts have responded because numbers of cases are very high. There are districts even within the Seventh Circuit that are in a state of judicial emergency because they just don't have enough judges. Judges are carrying 700, 750 cases per judge, which is the case in southern Indiana. And they're doing what they can, so I'm not criticizing them so much as saying the federal courts need to understand that this a

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challenge. Make sure that we are serving as courts, not just administrative processing agencies, and giving people what they deserve.

MR. ART: Well, what do you think are some of the solutions to that sort of problem?

02:02:54 CHIEF JUDGE WOOD: I have wondered about that, because I'm not a fan of thinking that we should just double the number of federal judges or something like that. I fear that would lead to different kind of bureaucracy problems. But it does occur to me that many disputes are actually rather small disputes, and many, let's say, employment discrimination disputes, or credit reporting disputes, or fair debt collection practices disputes, don't have vast numbers of dollars. They're important for people, for sure, but we might do something like create a small claims division of the federal court, which would replace

02:03:03

02:03:38

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what is the fading rule 23(b) (3)<sup>47</sup>  
class action. We used to think that  
maybe class actions would be a way  
for lots of people with similar small  
claims to get together, adjudicate  
their claims, but it's becoming very  
difficult to make a class action  
work. The reason for that is because  
there are, of course, differences  
02:03:53 among people in the class, and the  
Supreme Court is increasingly  
insisting on a real degree of harmony  
among class members that's not likely  
to occur very often.<sup>48</sup>

02:04:04 MR. ART: You have found time outside  
of your work on the Court for other  
interests, particularly music. Tell  
us about your interest in music and  
how you have stayed engaged in music  
over the years.

CHIEF JUDGE WOOD: Well, I love  
music. I'm a frustrated musician at

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<sup>47</sup> [https://www.law.cornell.edu/rules/frcp/rule\\_23](https://www.law.cornell.edu/rules/frcp/rule_23).

<sup>48</sup> For example, see *Walmart Stores, Inc. v. Dukes*, 564 US \_\_  
(2011). <https://www.oyez.org/cases/2010/10-277>.

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heart, and maybe speaking to others  
who understand that. [Laughter]

02:04:24

MR. ART: Yeah, indeed.

CHIEF JUDGE WOOD: But I, when my  
kids were little, I decided to take  
up the oboe. I'd always wanted to  
play the oboe. I was a piano player  
and a clarinet player up until that  
point, and actually a little bit of  
[a] guitar [player]. So I learned to  
play the oboe, and when I came to the  
Court in 1995 one of the other judges  
said to

02:04:46

me, "oh, there's an orchestra that  
the Bar Association runs: the Chicago  
Bar Orchestra. Maybe you'd enjoy  
playing with that?"

So in 1995, I, in fact, joined the  
orchestra where I continue

02:04:59

to play. I was in orchestra  
rehearsal last night, about to  
perform Brahms' Symphony #2. The  
orchestra plays very nice, standard,  
orchestral repertoire music. It  
keeps me going. I think I would not

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likely play the oboe very much if it was just a question of finding a chamber group here and there and doing it. It's the continuity and the fun of working

02:05:27 with other people who couldn't care less that I'm a federal judge. The question is, "am I holding up the oboe part?"

MR. ART: You've also found time for extracurricular activities that relate in some way to the law. Talk about those activities outside of your court work.

02:05:46 CHIEF JUDGE WOOD: I think it's important not to stay inside the Court, so I've always done several things. The first, and probably in some ways the most important, is that ever since I joined the Court I have

02:05:57 continued to teach at least one class a year at the University of Chicago Law School where I was on the faculty full time for many years before coming to the Court. So that's great

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as far as I'm concerned. Until I became Chief Judge I was often teaching a required first-year class in civil procedure. But grading 95 exams was more than I was up to after

02:06:20 I became Chief, so I've down-shifted to a seminar in federal courts. Federalism, judicial federalism, I call it: which cases go to the state courts? Which cases go to the federal courts? I usually teach that in the winter quarter. It is great to be in touch with the students, it's great to keep up my connections with the law school. In addition to the

02:06:40 teaching, I have been for many years a member of the American Law Institute [ALI]<sup>49</sup>, and I sit on the ALI's Council<sup>50</sup>. I learn something every time I go to an ALI meeting because

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<sup>49</sup> The American Law Institute (ALI), founded in 1932, is an independent organization that brings together preeminent legal scholars, practitioners and judges to produce scholarly works to clarify and update the law.

<sup>50</sup> The ALI is governed by its Council of 42-65 members who are elected to serve for five year terms.

<https://www.ali.org/about-ali/governance/officers-council/>.

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02:06:51 of the breadth of subjects that it covers, and since I have a job that requires knowledge of a breadth of subjects, it probably has some job justification. But it could be the law of American Indians which I'm working on right now. It could be consumer contracts. Do we really have a separate concept of contracts that are consumer contracts, not

02:07:11 commercial or business contracts? It could be the law relating to children. It could be the law relating to torts. Many, many different areas. So I'm very pleased with that work. Finally, this is enrichment on another level altogether, the American Academy of Arts and Sciences<sup>51</sup> is a place where I've really devoted a lot of time

02:07:34 lately. It is an organization that has people from all walks of life, and I'm working on an access to

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<sup>51</sup> The American Academy of Arts and Sciences.  
<https://www.amacad.org/>.



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justice project with them, but they do everything from global nuclear future to whatever you can imagine.

02:07:47 MR. ART: Tell us about your family and whether any of them have followed in your legal footsteps.

CHIEF JUDGE WOOD: Well, I'm married to a neurologist, an academic neurologist, Rob Sufit<sup>52</sup>, and Rob and I like to describe ourselves as the Brady Bunch<sup>53</sup>. I have three children, he has three children. I have two daughters and a son, and he has two daughters and a son. So we really are the Brady Bunch. My oldest is a lawyer; she is on the verge of joining the Texas Defenders Service doing capital habeas corpus work, and is very much looking forward to that

02:08:08 So I'm not saying I ever did that but she also went to the University of Texas Law School, so in that sense

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<sup>52</sup> Robert L. Sufit, MD, is a professor of neurology and surgery at Northwestern University Feinberg School of Medicine.

<sup>53</sup> The Brady Bunch was a popular American TV series of the 1970s about a man with three boys who marries a woman with three daughters

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02:08:31 has followed my footsteps. My son,  
my middle one, is also a lawyer. He  
is in Boston and has done a lot of  
commercial law litigation, although  
he's been

02:08:41 clerking on the First Circuit this  
year. My youngest daughter is a high  
school teacher. She teaches in the  
Chicago public schools, everything  
from human geography, to U.S.  
history, to art history this year.  
So she's got a wide portfolio. My  
stepchildren, as you might expect,  
the kids of the neurologist, are all  
in the sciences, one way or the

02:09:04 other. So we have arts and sciences.  
My stepson is an IT professional. My  
stepdaughter, the older one, is a  
chemical engineer and runs oil  
fields. I think her husband runs the  
gas fields for this big company. The  
youngest has her PhD in cancer  
biology.

MR. ART: When you reflect on your  
career, what do you think people will

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02:09:30 say about your impact on American  
jurisprudence, generally?

CHIEF JUDGE WOOD: If they are paying  
attention to what went on at the  
Courts of Appeals, I would hope that

02:09:42 they would say that I was able to  
make a difference in some areas of  
law that I care very much about,  
notably the anti-discrimination areas  
that we talked of earlier; I think  
*Hively* was one of the most important  
decisions I've written. Whether it's  
the notion of the place of the United  
States in the world as a whole, which  
*Minn-Chem* represents,

02:10:07 whether it's just a sense of basic  
fairness and playing by the rules in  
the criminal law area, those are all  
things that I really worked very hard  
for.

MR. ART: What do you value the most  
about American jurisprudence?

CHIEF JUDGE WOOD: At its best,  
American jurisprudence is open and it  
applies rules that people understand

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02:10:34 and can conform their conduct to. It  
does allow people to have access to  
courts and institutions to resolve  
their problems. Now, there are a lot  
of people for whom it's not yet at  
02:10:50 its best; that's the concern of the  
Access to Justice<sup>54</sup> Project. The  
terrifying statistic there is that  
the Legal Services Corporation [LSC]  
estimates that of the people who  
qualify for LSC aid, that's people  
who are 125% of the poverty line who  
have a civil problem which is not  
going to be addressed by a class  
action, they [LSC] can help one in  
five. They can help 20%  
02:11:15 and they turn away the other 80%  
because they don't have the  
resources. So that tells me that we  
have a problem that we are obliged to  
find a way to address. I'm not even  
sure the lawyers alone can do this.

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<sup>54</sup> The U.S. Department of Justice established the [Office for Access to Justice](https://www.justice.gov/archives/atj) (ATJ) in March 2010.  
<https://www.justice.gov/archives/atj>.

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I think lawyers need to stop being so stodgy and realize that there can be others who can assist in that process, even if it's not the final legal action, but maybe it's the point of entry, maybe it's triage, maybe it's something else. But we are not bringing that best home to enough people.

02:11:38  
MR. ART: During your career, what's the most significant change you've seen in American jurisprudence?

CHIEF JUDGE WOOD: Boy, a significant change. Well, a long time ago in the 80s, Judith Resnik at Yale wrote an article in the *Harvard Law Review* that she called "Managerial Judging,"<sup>55</sup> and I think she was really onto something. It's not that I agree

02:12:14  
with everything that Judith said in that article, but I think the

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<sup>55</sup> Resnik, Judith, "Managerial Judges", RAND (1982).  
<https://www.rand.org/content/dam/rand/pubs/reports/2007/R3002.pdf>.

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institutionalization of things has really accelerated, and we've lost a lot of the personal touch in this. I think a lot of people, if you were to ask them about the American judicial system, at best might think of traffic court or Judge Judy<sup>56</sup>, and we should be giving them a better

02:12:42

experience than that. We should be making them feel that this is their justice system, too, and I think we just, for size or resources or reasons that I don't know, we are not there

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yet.

MR. ART: What advice do you have for law students or lawyers who aspire to be on the bench?

CHIEF JUDGE WOOD: I think if somebody wants to be a judge someday, it's certainly possible to do that. It is still the case that the appointing authorities, if you're in

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<sup>56</sup> Judge Judy is an American reality TV show where former family court judge Judy Sheindlin adjudicates small claims.

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an appointing jurisdiction, or even  
02:13:16 the voters in a jurisdiction where  
they, if you're thinking of state  
court, are going to look at your  
court experience. I want to say  
court experience rather than trial  
experience, because trial experience  
has become so rare. But it's not  
non-existent. So I think if people go  
to places like prosecutors' offices  
or U.S. Attorneys' offices, they're  
02:13:38 going to find themselves in a  
courtroom. If they go to the  
defender services, they're going to  
find themselves in the courtroom.  
Many small firms deal with cases that  
02:13:46 may not be that glamorous, but you're  
in the courtroom, you're doing  
something. So you're not going to  
want to go to big law. I really am  
not at all convinced that that's the  
path to the bench. Maybe that can be  
a stop on the way if you've done some  
of these other things, but you're not  
going to get that kind of experience.

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02:14:10 I think if you're in the big-law-type firms you're going to be really good at computer-assisted legal research and document review, but -you're not going to do it just on the number of pro bono cases that they throw your way. So smaller firms, and getting a breadth of experience, and also there's--I was told when I was being considered for the Seventh Circuit by one who should know, Abner

02:14:35 Mikva<sup>57</sup>, the late Abner Mikva, once said to me, "You know, you can't just stand for this. You have to run a little," and he was right. You need to know people, you need to be

02:14:48 connected with your community.

MR. ART: What words would you like to share with a future generation about civic engagement and the American judicial system?

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<sup>57</sup> Abner Mikva (1926-2016) served as a Democratic Congressman from Illinois, as well as on the U.S. Court of Appeals for the D.C. Circuit (1979-1994), including as Chief Judge. <https://www.fjc.gov/history/judges/mikva-abner-joseph>; see also [https://issuu.com/nyuija/docs/final\\_ija\\_newsletter\\_highres/6](https://issuu.com/nyuija/docs/final_ija_newsletter_highres/6).



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CHIEF JUDGE WOOD: Civic engagement and the American judicial system. I would go all the way back to the reason I abandoned comparative literature and thought that law school was the right approach. My problem with comparative literature was not that I don't love literature. I do. I still read it all the time, and I actually will read it in a couple of languages. But it's not engaged in our society, it's not engaged in the world around us. For me, the legal profession was the best path into that. It was the path that enabled you to see the rules under which people are presently working, to see which ones seem right, which ones don't seem right, to know how to intervene, the most effective way to intervene. So I still think a legal background, if you, as I hope everybody does, are committed to civic engagement and making your world better, it's a really good way

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to do it.

MR. ART: One of the major issues that you have dealt with on the Seventh Circuit is Asian carp in the Great Lakes. Describe for us that set of cases.

02:16:08 CHIEF JUDGE WOOD: Well, I had two cases dealing with the Asian carp<sup>58</sup>, and I should clarify that they are really just an example of a big environmental problem that the United States faces from time to time, and that is the problem of invasive species. The Asian carp are not native to North America, they're yet another one of those stories like

02:16:28 kudzu and like other similar things where somebody brought them in on purpose to the United States to solve one problem, and they wound up

02:16:39 causing a much bigger problem. They were brought in to eat algae in

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<sup>58</sup> [Michigan v. US Army Corps of Engineers, 667 F.3d 765, \(7<sup>th</sup> Cir. 2011\)](#) and [State of Michigan v. United States Army Corps of Engineers, 12-3800 \(7<sup>th</sup> Cir. 2014\)](#).

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Mississippi, in the 1960s, and by now they have swum all the way up, almost to the Great Lakes. They've been kept from the Great Lakes by a set of electric barriers. They're monstrous fish; they're 80-100 lbs. They are

02:17:06 fish that would, when all is said and done, would strip the Great Lakes of all of the sports fish that are there. So a group of five states plus an Indian tribe sued the Army Corps of Engineers and the City of Chicago's Water Reclamation District, asking that we create a permanent barrier between the Illinois River, which leads, actually, all the way

02:17:32 down to the Mississippi River Basin, and Lake Michigan, the Great Lakes. Because it was their view that the carp were about to break through and ruin the entire Great Lakes system.

02:17:43 Well, I found this fascinating, just as a question of environmental law and policy, and I also thought it was fascinating from the point of view of

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judicial competence, because it was my strong feeling that I wasn't the right person in the United States to be solving the Asian carp problem. There is, in fact, a 22-agency international Asian Carp Commission, which includes Canadian members, lots of U.S. members from Minnesota all the way on over to Pennsylvania. You get the picture. But at oral argument I said to them at one point, "what exactly do you want us to do about these carp? Do you want us to have a big concrete barrier?" "Well, no, we don't want to do that," they said, "because we realize that that would have terrible flooding consequences for Chicago". Well, if not that, then what? Actually, at the end of the day the lawyers could not tell me what injunction they wanted us to enter. So simply as a judge it was a fascinating experience for me to see this major litigation effort, which

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in the end was unable to answer the most fundamental question out there. So I wrote first one opinion, then a few years later another opinion, basically saying, I get it, I know it's a problem. Maybe at some point an injunction of some kind is necessary, but you are asking the courts to do more than courts are capable of doing. So part of my judicial philosophy is I shouldn't intervene when I'm not the one who ought to be making the decision. I should leave this at this moment to the executive agencies to solve the problem. It's not because I want the Great Lakes overrun with Asian carp, it's because of what judges should be doing.

02:19:04

MR. ART: In your view, what are the most significant decisions you've written as a Seventh Circuit judge?

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CHIEF JUDGE WOOD: It's a small--it's a small list. The most significant decisions I've written as a Seventh

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Circuit judge are probably the times that I've been asked to write for the en banc court, because naturally that sets the rules. They often include criminal law or prison-related matters. One of them was a case that arose out of the federal death penalty called *Webster v. Daniels*<sup>59</sup>, where the real question was, even though this guy had run out of all chances under the statute that is usually used for federal prisoners to test the constitutionality of their convictions, and Mr. Webster was on death row, new evidence had shown up and the Fifth Circuit had identified this as new evidence. They said, but we can't do anything about it because it's outside the scope of our statute. So he tried what's called a 2241 petition, he tried a basic habeas corpus petition because he was incarcerated in Terre Haute, Indiana,

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<sup>59</sup> *Webster v. Daniels*, No. 14-1049 (7<sup>th</sup> Cir. 2015).  
<https://caselaw.findlaw.com/us-7th-circuit/1699674.html>

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which is where the federal death row is located, and he said, I need one more chance, because a critical part of the finding of his mental capacity was misunderstood because this evidence wasn't in the record. The state, or federal prosecutors had claimed that he asserted that he was of a very low I.Q. only at the trial, just to avoid liability, and it turned out that the Social Security Administration had had evidence in its files all along from long before the trial that he had a very low I.Q., so it wasn't brand new evidence, and there was lots of other evidence to show that he was extremely mentally limited. So the question was whether this safety valve in the statute was available to him, and at the en banc level we said, yes, it is. They need to have a hearing on this case. This wasn't the ultimate disposition, by the way, this was again getting back to access

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to justice, give the guy a hearing,  
let's see what the evidence is going  
to show about his mental capacity,  
and whether he actually had the  
mental wherewithal to understand the  
implications of what he was doing.

MR. ART: Thank you, Judge Wood, on  
behalf of the NYU Institute of  
Judicial Administration, for your

02:21:58

time and participation. It's been  
such an honor not just to conduct  
this interview, but to also have been  
a witness to your brilliant career on  
the bench.

CHIEF JUDGE WOOD: Thank you, Steve.

02:22:08

[END RECORDING]