

**Transcript of Interview with
Justice Randy J. Holland**

*Oral Legal History Project
October 11, 2000*

HARRISON: Good afternoon, my name is Katie Harrison. I am here with the Oral Legal History Project with the University of Pennsylvania. We are in the chambers of the Delaware Supreme Court with Justice Randy Holland. Today is October 11, 2000 at 2 p.m.

HARRISON: Justice Holland, can you tell me a bit about your childhood?

HOLLAND: When you say childhood, such as....

HARRISON: Such as where did you grow up.

HOLLAND: I grew up in Milford, Delaware, which is the southern part of the state. It is right on the border of Kent and Sussex counties.

HARRISON: While you were growing up the United States was involved in the Korean conflict. What effect did this have on you and your family?

HOLLAND: The Korean Conflict really didn't have much effect. I was born in 1947 so I was basically a pre-schooler then and my father had served in World War II so his serving in Korea wasn't a consideration.

HARRISON: When you were a child, what did you aspire to be?

HOLLAND: Oh, I thought for a long time about being a veterinarian. Oh that was an overriding concern until maybe the seventh or eighth grade and then I started thinking about being a lawyer and watching Perry Mason on television and stuff like that.

HARRISON: Besides Perry Mason, did any other childhood events effect your decision to go to law school?

HOLLAND: No, I always thought I'd like to go to law school and my family was of extremely modest means so I didn't have a family business to go into -- but I was always intrigued by the law.

HARRISON: Did you have any hobbies or play sports as a child?

HOLLAND: I did in Milford High School I was captain of the football team and captain of the baseball team. I played catcher and quarterback.

HARRISON: Were you involved in any extracurricular activities?

HOLLAND: Well I did probably a little bit of everything. I was in the Varsity Club and the student council. I was the president of the youth fellowship at church.

HARRISON: What is your fondest memory of high school?

HOLLAND: There was a very large group of people that were friends. I think my fondest memory was this large group of people, many of whom I've kept up with over the years. But it made high school a very pleasant experience.

HARRISON: You mentioned on the phone that you have recently celebrated an anniversary. Can you tell me about your wife and how you two met?

HOLLAND: We met in high school and we just celebrated our twenty-eighth wedding anniversary, so we dated for eight years until we both finished school and then we were married within a month of graduation. We were introduced by a mutual friend. It's a story that I think is humorous that is a little embarrassing to her. Since I was the captain of the football team, I gave a big speech at the opening pep rally, and I thought this would be a very good opportunity to walk up and introduce myself. I had a rabbit's foot around my neck and I was sure that she would make some connection. And after I introduced myself and we were walking back to the school, she asked me if I was going to the game. So I knew that my timing hadn't been perfect, but we have laughed about that ever since.

HARRISON: Your CV states that you have been involved in many civic activities, including the Milford High School Alumni Association. What values or experiences in your life have led you to perform so much civic service?

HOLLAND: Well as I mentioned, in my high school class was a group and I enjoyed doing things together. It is probably an extension of that. I always enjoyed working in groups and helping other people and it seemed like if you were in one group, some in that group would be involved in another group. I think that is true today even with my professional and civic activities.

HARRISON: Did you have any role models or mentors during your childhood or adolescent years?

- HOLLAND:** My teachers had a good influence on me and my Sunday school teachers – and some other adults in the community, like Boy Scout leaders. I think I had a lot of very positive examples.
- HARRISON:** What made you decide to go to college?
- HOLLAND:** My entire life I was encouraged to pursue my education because my father and grandmother had only finished the eighth grade and my step-mother had only finished the sixth grade. And they thought that they would like to see us, my brother and I, go to school because they hadn't and that getting a good education would make a difference in your life and the future. So, I was always told that I should think about going to college.
- HARRISON:** You attended Swarthmore College. How did you select Swarthmore?
- HOLLAND:** It was almost an accident because my family didn't have any money to pay my way to school. I applied to West Point and I was nominated by Senator John Williams and was moving in that direction when I took the final physical and they concluded that I had a problem with my back that had never bothered me, but precluded me from going to West Point. So I was a senior in high school and someone said, "Swarthmore College has a scholarship for people from the Delmarva Peninsula, why don't you apply?" And I did.
- HARRISON:** What activities were you involved in?
- HOLLAND:** I continued to play football and baseball at Swarthmore. I was in a fraternity and I did just a few other things. Sports and studying are about all you have time for at Swarthmore.
- HARRISON:** How did you choose economics as your major?
- HOLLAND:** I was accepted as an engineer and then I considered political science, thinking more than that I might like to go to law school. But again, because my family didn't have any money to pay my way to school, I thought if I majored in economics then if I didn't get to go to law school I might be able to do something in business with an economics degree. So it was kind of contingent planning on my part, just realizing I couldn't assume I could go to law school.

HARRISON: Was law the only career you considered by the time you were in college?

HOLLAND: Pretty much, if I could get a scholarship to law school, that is what I wanted to do. And then I assumed if I didn't, you know, I would apply to businesses.

HARRISON: When did you decide to go to Penn Law School?

HOLLAND: I would say during my senior year. By that time I was engaged to my wife and my brother was at Swarthmore College also and Penn was one of the top five schools in the country at that time. I was accepted at Duke and Columbia, I picked one school a bit little to the north of Philadelphia and one a little to the south, but I was hoping that I could go to Penn and stay in the Philadelphia area where my fiancé and brother were.

HARRISON: Do you recall what the admissions process was like when you applied to Penn?

HOLLAND: I remember that one of my political science professors and some other professors wrote essays and I was told that it was a combination of your grade point average and your LSAT scores, but I don't remember being interviewed by anyone.

HARRISON: First year of law school is said to be the most stressful. Do you remember what it was like being a 1L?

HOLLAND: Well it was stressful. I don't know if they still do it that way, but when I was there, we took six courses the whole year. We had no trial exams at mid-year, so consequently when we got to May you had six exams – Monday, Wednesday, and Friday, Monday, Wednesday, and Friday. They were five hours long and your grade was all or nothing on this one test for the whole year of work. To that extent there was a lot riding on one test and you had to manage your time during the year. I think the stress was compounded by the fact that you didn't get any feedback to know how you were doing.

HARRISON: What did you like most about law school?

HOLLAND: I really enjoyed the exchange and analytic approach the law took to problem solving. I thought that the whole thought process that you develop over the three years was very enjoyable.

pretty good but I seemed to have take the one perspective that I was advocating and that if I was really going to succeed as a lawyer, I would need to really be aware of the other side's point of view. And we had used his text and I remembered his letter and put it in my text book and then since that was the first year, I was on the Delaware Supreme Court sixteen years later and he was at Hastings by then, but I wrote him a letter with a copy of his letter and told him it was good advice.

HARRISON: Have you kept in touch with any other professors?

HOLLAND: Probably Professor Reitz more than anyone else. I have seen Leo Levin once in awhile. Another professor, Bernard Wolfman, was the dean of the law school. He left and has been teaching tax at Harvard every since and I have occasion to go to the Harvard Law School and when ever I am there I always stop in and see him. If fact once in a while he is practicing law; I had a tax question and my client and I flew to Harvard and Professor Wolfman was our tax consultant.

HARRISON: Were you involved in any extracurricular activities or any activities outside of the law school?

HOLLAND: No, not really.

HARRISON: Were you married during law school?

HOLLAND: No, my wife and I got married within a month of our graduation. I am three years older so she graduated from Swarthmore College within thirty days of when I graduated from Penn and then we got married a month later.

HARRISON: Did you find that a lot of other students were married?

HOLLAND: I think maybe twenty-five percent at that time.

HARRISON: You received the Henry C. Loughlin Prize for Legal Ethics while at Penn. Can you tell me a little about this award?

HOLLAND: It was a paper I wrote for Professional Responsibility. James Strazella was the professor, he is teaching at Temple now and I have seen him over the years several times. And I was always perplexed by what lawyers do when their clients are going to commit perjury or lie -- you know you often hear the question how can you represent a guilty person or what do you do when someone is not going to do the right thing. And

I wrote this paper basically analyzing a lawyer's professional responsibility when a client indicates to the lawyer that they want to testify falsely and I got the award based on that paper. It was very good because I couldn't type and there was a monetary prize attached to the award that covered the cost of typing.

HARRISON: What did you do the summer after your first year?

HOLLAND: I think the first summer I worked in a small law firm in Georgetown. I think I might have done that my second summer also. During the year I worked for Duane, Morris, and Heckscher, a large firm. That is why I didn't have time for many other activities, I was still paying my way through law school. And I also worked with the Attorney General of Delaware one day a week at a different time during law school.

HARRISON: You majored in Economics as an undergrad. Did you find that they offered classes such as Law and Economics when you were in law school?

HOLLAND: They didn't offer Law and Economics, but there was a possibility. I think they had just started the Joint MBA program with Wharton and I thought about that but again I had these financial constraints and having majored in economics I just decided not to pursue the joint program.

HARRISON: How have you applied your economic knowledge in your legal career?

HOLLAND: I think when I was practicing it was some advantage when I started out with a small law firm knowing a little bit about business. And then since I have been on the court, we frequently have corporate matters that have economic overtones.

HARRISON: You went to law school during the Vietnam War. Did you feel affected by the War and the draft?

HOLLAND: No, once I didn't go to West Point I wasn't really going to be drafted so it wasn't a consideration for me. My brother is two years younger than me so he went through the lottery system. Certainly a lot of my classmates had been drafted from college and law school and a couple of people that I went to high school with were killed. So, everybody that

lived through that era that was my age was affected by the war.

HARRISON: Did you notice a decrease in the student body?

HOLLAND: Not really, we saw people coming back and forth. I think the person that finished first in my class had really started with another class and had been drafted and came back to school.

HARRISON: What were the characteristics and attitudes of the student body during the Vietnam War?

HOLLAND: I think when I was at Swarthmore College, it is a liberal arts college, and like most small liberal arts colleges there were more protests at the college level. At the University of Pennsylvania I sensed it was the undergraduates that were primarily involved in the protests more than the law students.

HARRISON: Were there protests at the law school also?

HOLLAND: I don't remember any at the law school per se. Certainly on campus there were, but I don't remember any on the law school as such.

HARRISON: How are Penn Law students from the 1970's different from the law students in the 90's?

HOLLAND: I think that the law students now are very focused. I think that we all were probably interested in working and getting a job, I get the sense students now are more preoccupied with getting a job than we were. There is more emphasis on knowing where the jobs are and which firms are paying certain salaries. I think the students are incredibly smart now. I mean, I would like to think that we were smart, but everyone joked that if we applied to law school again we couldn't get in. I did teach one semester at Penn and having taught at other law schools I was very impressed with how quickly the Penn law students would grasp things. So I think they are very smart.

HARRISON: How is the entire law school experience then and now the same?

HOLLAND: I think there is still a lot of emphasis on the Socratic method. I think there is more emphasis recently on professional responsibility and I think that is good. While there is an

interest in getting a job, it is important for law students to know that it is a profession and not a trade and that your focus cannot just be on making money and I think that is very encouraging.

HARRISON: You were admitted to the bar in 1972, is Delaware the only bar you sat for?

HOLLAND: Yes

HARRISON: What was the bar like in 1972?

HOLLAND: The bar was small. Where I was in Georgetown when I started out there were less than forty lawyers and there were probably only slightly over than a thousand lawyers in Delaware -- so there was an opportunity to make or lose your reputation quickly. I think that is good and that is still the case in Delaware because many people like me have no connection to the law and if you worked hard and did a good job you could get clients and you know your career could move on.

HARRISON: In addition to taking the bar, you have had significant activity in the Delaware Bar by serving as Trustee of the Bar Foundation, a member of the Delaware Board of Examiners and Liaison Justice to the Board of Bar Examiners. From your perspective how has the bar changed since 1972?

HOLLAND: When I took the bar examination in 1972, it was all essay there was no multiple choice which was good for me. Going on the Board of Bar Examiners was an interesting experience because Chief Justice Hermann called me in 1978 -- I had only been a member of the bar six years and you don't usually get calls from the Chief Justice of the Supreme Court and when the receptionist told me Chief Justice Hermann was calling you immediately wonder if you are in trouble. And then he asked me to be on the Board of Bar Examiners and I explained to him that I wasn't even old enough to be a preceptor because I hadn't been admitted for ten years. He told me the Court was aware of that and that they wanted me to be an examiner anyway. So I did that for eight years until I was on the Court and during that time and subsequently since I have been on the Court we try to continue the tradition of having volunteers grade the exam. But we also now have a multi-state component -- we added the multi-state ethics, we added a performance component this year and in fact, bar results came out this afternoon and I am told

that 145 people passed which is a huge number. There are a lot of happy law clerks in Dover when I left today.

HARRISON: And do you know what percentage passage rate that is for Delaware?

HOLLAND: I don't. I had heard that there were close to 200 so that would be close to seventy percent. It would be pretty high, that is just a guess I don't know.

HARRISON: Do you think the bar exam is an effective mechanism for quality control?

HOLLAND: Well, the bar exam is intended to test minimum competence and I think to that extent it probably is a good barometer. There are a lot of subjective things that you can't test for. We have clerkship requirements, we have the preceptor requirement and I think we try to support lawyers in a lot of intangible ways and it is something the Court struggles with continuously. When we admit people every year we hope they are going to be sparkling successes, but you know lawyers are a cross section of the population and when they get into personal trouble you know, we're sad. So we are constantly trying to figure out what we can do to avoid that.

HARRISON: Before coming to the Delaware Supreme Court you were a partner at Morris Nichols Arsht and Tunnell. When did you start practicing there?

HOLLAND: I joined them in I guess January of 1981. I practiced with them from 81' until the end of 86'. From late 70 to 73 to then I with a small firm and then I was in charge of a small firm. At one time we had eight lawyers and a staff of twenty-five before I decided to join Morris Nichols Arsht & Tunnell.

HARRISON: And what was the name of that firm?

HOLLAND: It was Dunlap & Holland and then there were other names after that.

HARRISON: Can you tell me a little bit about Morris Nichols – the firm, its history and its practice?

HOLLAND: I think the law firm goes back to Judge Morris and Judge Steele. They have always had a very sophisticated practice within the state of Delaware. Sam Arsht, one of the name partners, was probably one of the earliest, most successful

corporate lawyers. He was involved in rewriting the corporate code several times, I think was instrumental in being a litigator that would cause people to rely on Delaware lawyers for advice. Judge Tunnell or Justice Tunnell was named to the first Delaware Supreme Court in 1951. He had practiced in Georgetown where I was but we weren't contemporaries. He left the court a few years later to run for the United States Senate and then when he didn't succeed he joined the firm and that is the Tunnell name in the firm. He was a very good litigator and it was a good combination between Morris Nichols and Arsht in doing corporate work and Tunnell doing litigation, although they all did a little bit of each. And then the firm developed after that. I think their biggest strength was mentoring. They hired a few lawyers and they trained them very well.

HARRISON: How large was the firm when you started there?

HOLLAND: I think probably less than thirty people.

HARRISON: What were some of the factors that motivated you to accept an offer?

HOLLAND: Well my practice in Georgetown was becoming more sophisticated and I had worked with the partners at Morris Nichols over the years when I needed help. Lou Black, Gill Sparks, and I did the first Delaware offering under the Delaware Securities Act. I mean they really did it, I knew I couldn't do it, but I had a chance to work with the two of them. I did other litigation with and against Walter Pepperman, Judge Tunnell, and other people and it just seemed as we worked together more and more, it might be logical to get together.

HARRISON: Had you ever considered going to New York to start your career?

HOLLAND: No, I really didn't. I always thought I would come back to Delaware.

HARRISON: And what type of law did you practice at Morris Nichols?

HOLLAND: I did about half transactional work and half litigation. I did a lot of medical malpractice work for the Milford Hospital and by the time I went on the court I had appeared before virtually every judge in every court in the state.

HARRISON: What were your most and least favorite aspects of practicing law?

HOLLAND: I really liked helping people. I did a lot of things that might be objectively characterized as major, but the two things that really stick out in my mind are: one situation where I happened to be in the Family Court and someone I played football in high school with was sitting there in handcuffs and I said, "Buster, what are you doing here?" He said, "I have been brought to court for being delinquent on my child support but it is confused and I don't have a lawyer." I sorted it out and it was confusing and he went home. And he was happy, it just made you feel good that you were a lawyer. Another situation, I didn't take many clients that just walked in the door and this older black man came in and for some reason I agreed to talk with him. His name was John Mack, I will never forget that. He was sleeping in his car and he convinced me that he had a claim with the Industrial Accident Board for a work-related injury and his position prevailed and he didn't have to sleep in his car. So I think it is really rewarding to be a lawyer and to help real people -- not that helping corporations is not good but you know they don't get the smile quite as broadly.

HARRISON: Who were the dominate figures in the Delaware Bar during the 1970's?

HOLLAND: H. Albert Young. Certainly William Prickett continued to dominate for a long time. Andrew Kirkpatrick, Ned Carpenter I think are some of the names that come to mind. Irving Morris, Rod Ward.

HARRISON: Today there is a lot of concern among law students entering the work force about the long hours attorneys are expected to work. Was this the prevailing view in the 1970s also?

HOLLAND: Not as much. I think people were expected to work long hours. It didn't always involve going to midnight or the weekend work that you see now. It was certainly different in the lower two counties than it was in Wilmington, and certainly different in the major cities.

HARRISON: Can you describe the average day of a Delaware attorney in the 1970s?

HOLLAND: I think if you were down-state it was pretty much 9 to 5, although you would occasionally see people in the evenings if

you were going to zoning board hearing or town meetings. But it was pretty regular hours. Near the end of the 70s there was a lot of pressure to do real estate transactions that would take you into the weekend. It was somewhat difficult to disperse money on weekend because the banks weren't open on Saturdays then -- that has changed. But I think down-state the hours were fairly regular.

HARRISON: The majority of New York, Washington, and Philadelphia firms have set billable hour minimums for their associates. Many of the Delaware firms however, have refused to adopt these minimums. Do you think this is indicative of the difference in the practice of law in Delaware and these other cities?

HOLLAND: In part. I think there is also a culture that is trying to change how lawyers are compensated other than strictly on an hourly basis. You know some incentive for good results. I do think in Delaware having a small bar you have a closer relationship with everyone and I think the firms are sensitive to the fact that if individuals are happy at home and their family is happy, they are going to be more productive in the hours they do work, even if they are working less total hours. I think because of Delaware's size and the personal contact there is probably a culture here that makes it a little different.

HARRISON: This culture that you spoke about the change in the way attorneys are compensated. Do you think that is a positive change? Do you think we need to get away from the focus on billable hours?

HOLLAND: I think it is, because I think attorneys have found that clients may be willing to pay for a good expeditious result. And I think there are times when you may want to contract for a fixed fee and there is an incentive for a lawyer and the client know what the total cost will be. To that extent, a business attitude has permeated the profession, but I don't think it is all bad. But is certainly is better than just having straight billable hours.

HARRISON: Where there many women at Morris Nichols when you started?

HOLLAND: I can only think of two. Mary Graham was there and Peggy Conan was there. While I was at Morris Nichols, Peggy became the first partner and Mary Graham has subsequently

become a partner there and there are many more women there including some of my former law clerks.

HARRISON: Where there any women at Dunlap & Holland?

HOLLAND: Yes, in fact it is interesting. In 1978, I hired June West and she would be the second or third women attorney to practice in Sussex County. And 78' doesn't seem that long ago but I remember vividly having people tell me that I was making a mistake and that clients weren't ready to come and see women attorneys in Sussex County and I said, "Well, we'll see."

HARRISON: And how did it work out?

HOLLAND: It worked out fine and since then we have a lot more women but I do remember vividly that when we hired June as the third woman everyone thought that was really something that would be very unusual in Sussex County.

HARRISON: How have you seen the role and presence of women in the legal industry change from 1970 until now?

HOLLAND: It has been a great change. We celebrated the 75th anniversary of women in the Delaware Bar a couple of years ago. I organized that event and had Justice O'Conner come, and Roxanna Arsht, the third woman ever to be admitted to the Bar, who is a Penn graduate, was there. And her daughter who was admitted thirty years later as either the 9th or 12th women was there, so it was a poignant reminder that Delaware was slow in having women come to the Bar. But now every year more than half of the women, half of the people we admit are women. We have many women partners. The Attorney General is a woman and women in the Governor's cabinet who are members of the Bar. So I think it has been a great change for the better.

HARRISON: When you started practicing law were there computers in the firm?

HOLLAND: No, not really. Initially I think we had what were called mag-card machines, that was the first computer, and this was literally a magnetic card about the size of an envelope. And you would stack them up and I remember using them for standard wills or deeds where you could record a document electronically but you had to literally take this card and take it in and out of the machine physically. Then we later moved

to memory typewriters as a supplement to mag-cards but early on people had electric typewriters and that was it.

HARRISON: In 1983 Time Magazine named the computer the “Man of the Year.” How do you think computers and technology in general have changed the practice of law?

HOLLAND: I think that they have been a positive change. With the ability to do things over and over again you can be more accurate. You can write better documents because you aren’t reluctant to redo it because it is easy to do. I think it has promoted communications to the extent that you can transfer things electronically. And now, with electronic research I think that is very helpful and I think it makes you more efficient. Although I still do my research the old fashion way and thus far I have been able to out research my clerks. When they find things quicker than I do then I will switch. But it has still been a positive change.

HARRISON: Aside from technology, how else has the practice of law changed since you started practicing?

HOLLAND: I think there is more price competition with law firms at certain levels. If you look at a practice in the city with the most sophisticated clients I don’t think price is as much of a consideration. But in most of the country and in most of this state there are smaller firms and realtors, banks, and other people, even insurance defense, try to negotiate on price and to that extent it accentuates the need to have volume. So, it really is a bad mix because it has people doing more work at a faster way and it inevitably involves more hours.

HARRISON: Have you noticed a difference in the quality of lawyers in the bar today as opposed to twenty-five years ago?

HOLLAND: In some respects, the good lawyers are really good and as good as ever. The young lawyers are really good, but they don’t seem to get as much training before they are sent to court, for example. Maybe people always learned on the job, although that is not my perception, and I think in some respects if you are in a small firm or you open your own practice you just have to go into court and learn on the job. But I think that would be my only perception – that there seems to be less mentoring and more learning on the job at some levels.

HARRISON: Was this mentoring twenty-five years ago occurring in law school or in the firm?

HOLLAND: Primarily within the firm and within the community. People would help each other. There is still a lot of that going on, but it is inevitable as the bar gets bigger that there would be less of it.

HARRISON: In 1986 you were appointed by Governor Carper to become a member of the Delaware Supreme Court. Can you explain the appointment process?

HOLLAND: Well I was re-appointed by Governor Carper a couple of years ago, but I was appointed originally by Governor Castle. In 1978, Governor DuPont entered in an executive order establishing a merit selection commission that is bi-partisan, half laymen and equally divided between the parties, and they recommend three names for a vacancy on any court in the state of Delaware – and that was the process in 1986.

HARRISON: Was your selection for the merit selection committee . . .

HOLLAND: Hold on a second, I am just going to get a drink. Okay.

HARRISON: Was this anticipated or was it a surprise?

HOLLAND: It was somewhat of a surprise and there were other judges sitting in Sussex County. Justice McNealy retired and there seemed to be a lot of interest on the part of a lot of people that I would leave practice and do that. So I was encouraged to do it on a lot of fronts. I was only thirty-nine years old and as a partner in Morris Nichols it was obviously a big decision to make a career change, but I was honored by the interest and encouragement and it seemed like a unique opportunity. The way the process works you have to submit your name. There is an application that is really not an application but it is an indication of your willingness to be considered, so I did indicate that I was willing to be considered.

HARRISON: When you were selected was there a lot of deliberation after the fact or had you already decided at that point?

HOLLAND: Oh no, once I put my name in I decided that if I was honored by an appointment I would certainly accept it.

HARRISON: You are the youngest person to serve on the Delaware Supreme Court, how has this affected you?

HOLLAND: I can't think of any that it has really affected me. Everyone was really nice when I came on the court. It was interesting, they joked that the average age of the court went down eight years. And Chief Justice Christy, who was Chief Justice at the time, graduated from Princeton the year I was born and my other colleagues were also significantly older. In fact, I had appeared before all of them as a lawyer. Now each of them, prior to my selection had encouraged me to come on the court, so I knew them and I was pleased that they would want me to serve with them. From day one you know they treated me as an equal notwithstanding the disparity in our age and it has just never been a consideration.

HARRISON: Today, clerking for judges is considered very prestigious. Was clerking as common when you graduated from law school as it is today?

HOLLAND: I don't think it was. It was equally prestigious but I don't think the law schools made the opportunity as well known as they do today. As I mentioned earlier, law students now seem more sophisticated with regard to job opportunities and career advancements and all law students today know that a clerkship is a good way to start your career. That was probably equally true when I was in school, it just wasn't as well known?

HARRISON: What is your favorite thing being on the court?

HOLLAND: I enjoy the collaborative process. I like being on a collegial court where you work together to make decisions. I mentioned I like law school because of the thought process and the exchange and the same is true on our court. Everybody works very hard. Under our own rules, we get prepared independently and then we really work hard in trying to decide the cases and then when it is over and one of us is asked to write an opinion for the majority, we write each others opinion, we correct grammar and make suggestions. So, I really enjoy the collaborative effort.

HARRISON: Do you have any judicial role models?

HOLLAND: I have always admired John Marshall, the Chief Justice. And I currently admired what Justice Sandra Day O'Connor does on the U.S. Supreme Court.

HARRISON: How would you describe your judicial philosophy?

HOLLAND: I don't know that I have a philosophy that you could categorize. I really try to understand the case, understand the prior precedents, and then once I know how we got to where we are and what the issue of the case is and somehow reconcile them. So, that has always been my approach to every case, no matter what the subject matter.

HARRISON: What judicial values to you hold most dear?

HOLLAND: Well I think that hard work is probably the most important value a judge could have. All lawyers hope that the judge is going to read their work and the cases they cite and try to understand it. And you know, fortunately in Delaware we have never had a problem with people's professional or personal integrity, I think that is a given. And I think that if you work hard and are intellectually honest and a person of integrity, everything else sort of falls into place.

HARRISON: In 1992, you received the Judge of the Year Award from the National Child Support Enforcement Association. Can you tell me a little bit about this award?

HOLLAND: Well that award, I think was generated in part because of what I just explained to you about my judicial philosophy. I was asked to write an opinion for the court on child support. Delaware for years had used something in family court called the Melson formula and in this opinion we were called upon to construe and apply the Melson formula but there were no reported decisions even though the formula had been around for ten years as the creation of Elwood Melson. I basically just did independent research beyond the briefs and figured out where it came from, which was the Family Court Conference, and then I found out that the federal government was going to mandate child support guidelines and that the Delaware Melson formula was one of four recommended models. The Melson formula had been the subject of two different studies by the Delaware legislature and to make a long story short, when I figured out how child support worked at the national level and in Delaware and then reconciled it with the statute (which was our call whether the Melson formula was consistent with the statutory mandate) I wrote an opinion called Dalton v. Clanton. And as a result of that, I was asked to teach at the Judicial College of Reno several times and I was teaching

in the country practice in Wilmington, Delaware. And if you are good at one field you are probably good at other fields and it is just something that spreads. Good work encourages other people in the firm to good work even if it is a different subject matter.

HARRISON: We spoke about technology earlier. In addition to the practice of law, the judiciary has benefited from the advances in technology. The Supreme Court has recently started using a virtual docket and videoconferencing, can you tell me about these?

HOLLAND: I think that has become the trend around the country. The virtual docketing is a way to give people access throughout the state but also because of the national interest in our corporate opinions in particular, we now put all of our opinions on-line three days after they are issued to the parties. We have always sent them to Westlaw and Lexis but I think it is a public service to give people access to the information electronically very quickly.

HARRISON: And how do you feel about videoconferencing?

HOLLAND: The videoconferencing, I think, is good but I wouldn't do it on a regular basis. I think certainly for some matters that aren't case dispositive it is efficient not to fly across the country. I think on pre-trial matters scheduling there are a lot of advantages to videoconferencing. We have done some oral arguments once in a snow storm and it worked but it wasn't the same. I guess I really haven't decided in my mind if it would ever be a good way to do oral arguments. They do it in Australia and other countries where things are more remote, but here I would like to limit it to pre-trial non-dispositive uses.

HARRISON: How else do you think technology has affected the courts?

HOLLAND: I think it helps us being more efficient. We can certainly expedite things. My chambers are in Georgetown which is two hours from here and that is where my secretary will primarily do my word processing. If I am working on something, she can transfer it electronically to Wilmington. And if I have an order approved by the other justices it can be run out when I am here or in Dover, signed and issued. It really gives us a lot of flexibility.

HARRISON: You mentioned before that you thought technology advances were overall a positive. Have you witnessed any negative side effects in the legal industry?

HOLLAND: I think the only negative effect is probably only attributable to the users. If you lose things, or you can't get access to things because of a technological problem, it is frustrating but we had that – I didn't go back to the stone tablet – but you know we had that with other things too.

HARRISON: The Supreme Court recently held oral arguments at Widener University, this seems a radical step for the Court, what was the rationale and how do you feel about these changes?

HOLLAND: We did that in part by the initiative of the Chief Justices of the United States last year to promote public trust and confidence in the courts. Chief Justice Veasey, our Chief Justice, was the President of all fifty Chief Justices last year. And it is not as important in Delaware where we are small geographically to go outside and sit, but in more populous states like Iowa. For example, I know the Iowa Supreme Court sits at law schools in different parts of the states and it is an idea of making the courts more accessible first hand. The Florida Supreme Court only sits in Tallahassee, I am not sure that they would ever travel outside, but they do put their oral arguments on the Internet live every week. So if you went to the Florida homepage you could watch an oral argument and they do that for the same reason, to promote public trust and confidence. They encourage school children to watch the oral arguments and they have something called the Case of the Week, where the case is summarized and they have some people on their staff available to ask questions. And I think our trip to Widener was indicative of our support of trying to let people understand how the court worked and used it as an opportunity to invite leaders from the community and to also let the students see that what they were learning had practical applications.

HARRISON: Has the Court taken any other actions to further this initiative of public trust and confidence?

HOLLAND: We have done a lot of things. We recently contributed some money to establishing a permanent director under Attorney General Jane Brady's hospices in a separate organization dealing with law-related education. We had over a hundred lawyers participate in almost a hundred schools on Law Day in the last two years. We are going to continue to do that and

we are trying to do a lot of things in schools and with civic organizations just to let people understand how the law works.

HARRISON: Can you tell me a little bit more about Law Day?

HOLLAND: Law Day is May 1st of every year. The American Bar Association normally has a theme. Last year it was diversity, another year it may be the 4th amendment search and seizure. They have some pre-packaged programs that are age specific for elementary school, middle school or high school and then we have other things that we develop. And we write to all of the civic or social studies teachers in the state and we indicate that a judge or a lawyer would be willing to come and talk to an individual class on a subject and they basically teach the class and answer questions.

HARRISON: You were sworn in for a second twelve year term in 1999 and your term expires in 2011, what would you like to accomplish between now and then?

HOLLAND: I really haven't thought about that any more in the future than I did in the past. You know my whole career I have just basically tried to do whatever is in front of me to the best of my ability and things keep coming in front of me and I keep doing them, but you know I have never really had an agenda. I never thought about being a judge or aspired to being a judge, so I don't have any goals except to keep doing my best.

HARRISON: Would you consider another term?

HOLLAND: Yes, I looked at going on the Court as career change. And I think that because I am still relatively young, by professional standards, there was some thought that maybe I wouldn't be interested in a second term, but that I would want to go into private practice or do something in the private sector. But I really did look at this as a career change and I think that if I am in good health and have the opportunity, I would just like to continue.

HARRISON: Have you consider running for public office?

HOLLAND: No.

HARRISON: Alright, one last question on this topic. William Prickett has been campaigning for Delaware lawyers to wear robes when they appear before the Supreme Court. You were the liaison

to the Bar Association on the robes matter. Mr. Prickett contends that wearing robes before the Supreme Court is a sign of dignity and tradition, do you agree?

HOLLAND: I think we haven't really had a problem historically with people being dignified in front of our Court. I think Mr. Prickett was intrigued by the experience in England and our Court felt that if it was an initiative it should come from the bar and the Bar Association has decided not to take it any further. They are content that the people that appear before the Supreme Court are aware of the fact that they are Officers of the Court and they have a responsibility and that they can discharge effectively by dressing in a tradition manner without the robes.

HARRISON: You received a LLM in the Judicial Process from the University of Virginia in 1998, can you tell me a little bit about your decision to return to school for this degree?

HOLLAND: This is a program that is available to judges only and it is primarily for appellate judges. And Judge Stapleton, who just became a Senior Judge on the Third Circuit, had gone through the program and Judge Quillen, who just retired and had served on all of the courts in Delaware, had gone through the program and they encouraged me to consider it. It is a two summer program where you take courses for six weeks, nine to three, you have blue book exams and you have to write a dissertation. All of your classmates are primarily state or federal judges. I thought it would be interesting to go back to law school twenty-five years later and I enjoyed it.

HARRISON: How have you used this degree?

HOLLAND: I think that I have used it primarily because of the historical emphasis. I enjoyed the history courses. I don't think that it really changed anything that you would do in discharging your judicial responsibilities but clearly when you are reading cases after twenty-five years of experience you look at them from a different perspective. And it rekindles some of the connections that you might not have had to make in a case before you. So I think it was, for an appellate judge, it was a very stimulating intellectual exercise that is a continuation of what you do anyway.

HARRISON: You are currently an Adjunct Professor at Widener University School of Law, what do you teach?

HOLLAND: In the fall I teach Appellate Practice and in the spring I teach State Constitutional Law.

HARRISON: In addition to your classes, much of your writing seems to focus on state constitutions. How did you become interested in this topic?

HOLLAND: A retired judge from New Jersey, Phillip Grucio, at Widener, called me and told me they were looking for someone to teach State Constitutional Law. And he asked if I would be interested and told me that a professor at Rutgers named Robert Williams was working on a case book – not the Delaware Constitution but you know an overview of the fifty states. And I told him that I always liked learning about things I hadn't studied in depth before and that teaching was always a good way to learn things and I would certainly be willing to give it a try. And I looked at the case book and started teaching the course.

HARRISON: What do you consider the role and significance of state constitutions?

HOLLAND: I think going back to the program at Virginia where you remake connections, it is a reminder that when we founded the country, the states basically gave enumerated powers to the federal government and reserved the rest to themselves. And to the extent that something is given to the federal government because of the Supremacy Clause, it is supreme, but to the extent the powers are reserved you really need a framework of government in the states to operate those reserved powers. And state constitutions are very different than the federal Constitution, most states rewrite their constitutions every few of decades. They have provisions in them that look like legislation because people think that if they constitutionalize something it is harder to overturn than it is as a statute. You have things about education that you don't find in the United States Constitution, so it is a whole new world that lawyers don't focus on just because state constitutional law isn't really taught.

HARRISON: Is state constitutional law something that is tested on the Delaware Bar?

HOLLAND: I don't know. You know there is a list of the subjects they test and I don't know if that is on the list or not.

HARRISON: If not, would you encourage it?

- HOLLAND:** No, I think there is enough to study for already.
- HARRISON:** Widener was not your first teaching experience. How did you originally get involved in teaching?
- HOLLAND:** Chief Justice Hermann retired and taught and he taught at Widener and he was teaching Appellate Practice and he determined that he should stop and he wanted me to start teaching and take over his course. Again, like most things, I had never thought about teaching but when someone like Chief Justice Hermann says "I would like you to do this", I said, "Sure." And I enjoyed it but I didn't think of it at all until he called me and asked me to take over his course.
- HARRISON:** How do you think your teaching style has changed over the years?
- HOLLAND:** I know that after I went to the Virginia program I reduced the length of all of my readings assignments. So I became very sympathetic having recently been a student. And I don't know of any real changes in my style.
- HARRISON:** What is your favorite thing about teaching?
- HOLLAND:** I like the interaction with the students. Being on the court is fairly isolated. We don't talk to lawyers or even trial judges that much for a variety of reasons, so it is nice to have the interaction. And I tell my class at the beginning of each semester, whether it is Appellate Practice or State Constitutional Law, my goal is by the end of the semester that they know everything I know. And it is just fun to see people learning things and applying them.
- HARRISON:** You mentioned earlier that you taught at Penn. You actually taught as an adjunct professor from 1993 to 1994, what did you teach at Penn?
- HOLLAND:** I taught Appellate Practice there. A different course than the one I teach at Widener. At Penn they have an abbreviated course, I don't know if they call it a module, there is name for it, but it is only about six or eight weeks, and the entire focus is on brief writing and oral argument. And it is still taught by Judge Tomas of the Family Court, who is teaching it now.
- HARRISON:** Do you see any difference between the students when you were there and the students that you taught today?

HOLLAND: I told you I think they are all very smart. I don't think we were as smart as they are and they seem to work very hard. I think we worked as hard, so that is the same, but I am very impressed with how bright they are.

HARRISON: In what way, do you think Penn as an academic institution has changed?

HOLLAND: It is hard for me to tell. I think it is still a very strong school and they try to diversify their subject matter. And my interaction has been somewhat infrequent so I am not as immersed in it as I was, but I am encouraged by the things I read in the Bulletin – I think it is still a very strong school. A lot of faculty when I was there left. As I mentioned it was probably ranked in the top five schools in the country when I was there, and then Martha Field and Bernie Wolfman both went to Harvard, and Morris Cohen, the law librarian, went to Harvard. Bruce Ackerman went to Yale, Louis Schwartz and Paul Mishkin went to Hastings I think. A lot of good people got hired away, and I think they have had a lot of good people since then so I think they have really tried to keep the quality the same.

HARRISON: You were recently elected President of the American Inns of Court Foundation, can you tell me a bit about this organization?

HOLLAND: That was an organization that Chief Justice Warren Burger founded when he was a Chief Justice of the United States Supreme Court. He was impressed by the mentoring in England, there they have a bifurcated system of barristers that go to court and solicitors that don't go to court. It has changed a little bit recently but in the early 80s it was pretty divided evenly. And at the Inns of Court in England the senior judges and lawyers trained the younger lawyers about the best practices. And he thought that would be a good idea to bring here. It started in the early 80s and in 1985 really got going with the foundation that I am now the president of.

HARRISON: You touched on this a second ago, the American Inns of Court adopted the traditional English mode of legal apprenticeship, how do you see this approach fitting in with the changing profession?

HOLLAND: The way the American Inns work there are basically groups of ninety people. They are divided into thirds of senior

lawyers, middle lawyers and the youngest lawyers and they meet once a month and normally there is usually a dinner component because that was part of the Inn of Court experience. And the four principles that the Inns tried to perpetuate are legal ethics, excellence, civility, and professionalism and that is the theme of every monthly meeting. And I think that for people who are in smaller firms, or own their own, the chance to meet with other members of the bar once a month and talk about how to practice in the best way and in the most professional and ethical way is good. So it is a real service I think.

HARRISON: Your CV reflects a great deal of involvement both with professional and community organizations, do you advocate such involvement for legal professionals?

HOLLAND: I do. I think it is very important to be part of your community and I think lawyers do that. If you look at any civic organization or charitable organization you will always find lawyers throughout the country and they are normally giving of their time. And I think being part of the organized bar is important. I was on the Board of Bar Examiners, I was on Delaware Judicial Nominating Commission, I was on a lot of committees. And it was somewhat of a burden to travel up and down the state but I think that it was important and I think it is important for the bar to have widespread participation. Not only to have diverse participation in all of the ways that we characterize diversity, but people from throughout the state.

HARRISON: Do you see a difference in the willingness of young attorneys to get involved with these activities as compared to 25 years ago?

HOLLAND: I do. I think that years ago most people would never say no - I know because we call on people. We try to put them at ease because normally you don't think you can say no to a Supreme Court Justice and we normally tell them you know, if this isn't a good time for you or your family, or you have other commitments please feel free to say no. And we want them to do that, but we frequently have people who respectfully decline or defer the decision rather than rearrange what they are doing. And I think a lot of it has to do with economic pressure as much as anything else.

HARRISON: From the focus on billable hours?

HOLLAND: Yes.

HARRISON: In Sidebar you stated that as many as 40% of federal judges in Delaware belong to an Inns of Court chapter. You were quoted as believing that the Inn's popularity is growing because "lawyers are concerned about the direction of the profession." Where do you see the direction of the profession heading?

HOLLAND: I think it is heading in the right direction. For example, this year when the ABA decided not to go forward with the proposal on multi-disciplinary practice they basically said they wanted to preserve the core values of the profession and I think there was concern about client confidentiality and other things that traditionally are unique to lawyers. I see people who go into the law as being somewhat idealist and civic minded. And I think young lawyers in particular are very encouraged by this debate among younger lawyers that we shouldn't work seven days a week, that we should work these incredible hours and that we should really focus on what we as a profession can give back. So I think the current debate, I am very optimistic based on what everyone is focusing on.

HARRISON: You have done a lot with your law degree, are there other areas of the law you are still interested in exploring?

HOLLAND: No, I just- anything in law I haven't read about before I am always interested in reading because I just enjoyed learning about new things.

HARRISON: What do you regard as your greatest accomplishment thus far?

HOLLAND: I haven't really ever thought about anything I have done as being an accomplishment, I just feel very fortunate in the different things that I have gotten to do. I have never sought out with a goal in mind and I have never looked back as saying that was a good accomplishment. I am happy that I got to help people when I was a lawyer and you would like to think that you are helping people now on an institutional basis.

HARRISON: One final question, what advice would you give to law students today?