

JUDGE DAVID EDWARD ORAL HISTORY

Interview With Judge David Edward

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Session I: Early Family Life, University, Law School, National Service, Admission to the Bar

DS: This is the Judge David Edward oral history.¹ This is taping session number one.

I'm Don Smith.² I teach European Union Law & Policy at the University of Denver Sturm College of Law.³ I'll be the interviewer for these taping sessions.

We are with Judge David Edward in his home in Edinburgh, Scotland. In this first session, I will be asking Judge Edward about his early life, his time at school and university, his time in national service in the United Kingdom, and his involvement with the Scottish Faculty of Advocates.

Judge Edward, we are in the room in your home where you met clients when you practiced law in Edinburgh. This is where we will be conducting many of our interviews.

This room is quite interesting. It is full of law reports and legal treatises. Can you tell us about this room and how you used it?

DE: The tradition at the Scots Bar when I joined it was that an advocate – which is the equivalent of a barrister in Scotland – had to have a consulting room in what was called the Square Mile North of Princes Street in Edinburgh. Some people who lived outside that area clubbed together to have consulting rooms in a house together. Others of us followed the old tradition and actually had a house in the centre of Edinburgh.

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² Don C. Smith, (b. 1953), adjunct professor, University of Denver (USA) Sturm College of Law, 2002 - ; Bachelor of Science, University of Kansas (USA), 1976; Juris Doctor, Washburn University School of Law (USA), 1979; Master of Laws (European Union Law), University of Leicester (U.K.) Faculty of Law, 2001.

³ University of Denver (USA) Sturm College of Law, see <http://www.law.du.edu/>.

It was in that house that one prepared one's briefs and also consulted with clients. Solicitors brought clients to the house and the consultation was held here in my study.

DS: So this was your study where you worked?

DE: This was my study where I worked.

DS: How about now? Where do you do most of your work now?

DE: In fact since we have returned from Luxembourg, we've reorganized the house and this is now the dining room and I have a much smaller study upstairs.

DS: You have lived in this house and worked here for more than 40 years. I am wondering as we begin our conversation whether I could just ask you a few questions about your family. When and where did you meet your wife, Elizabeth?

DE: Going back again to the beginning of my career at the bar, at that time the Edinburgh law school was part time. So one went to lectures at 9 o'clock in the morning and 5 o'clock at night and in between one worked as a trainee in the office of a solicitor and that's where we met. She was also working in the same solicitor's office.

DS: And, then you were married in the early 1960s?

DE: We were married in 1962.

DS: How many children do you have?

DE: We have four children.⁴ They are all married.

DS: And, where do they live?

DE: The eldest now lives in Italy. The second one lives at the moment in Southampton. The younger two both live in Edinburgh.

⁴ The four children are: Giles, Anne, John, and Katherine.

DS: And how many grandchildren do you and Elizabeth have?

DE: We have eight grandchildren. The eldest has three and then two, two, and one.

DS: Now, I'd like to change topics slightly and ask you about your childhood. Judge, you were born in Perth,⁵ a small town in central Scotland. What can you tell us about Perth?

DE: Perth at that time was a very typical county town in Scotland, about 40, 45 thousand inhabitants very much living on the trade which went through the city as a market town.

But in addition, there was a very large insurance company – which is now part of the Norwich Union but in those days was the General Accident⁶ – and that as well as the whiskey distilleries, particularly Dewar's, they provided a lot of the employment in the city.

DS: Could you tell us about your family, for example your parents?

DE: My father was a travel agent, which was not a very good thing to be in the wartime because there was virtually no travel except on the trains. My mother had been an art teacher.

DS: Did you have any brothers or sisters?

DE: I had no brothers or sisters, no.

DS: What sorts of values do you remember learning from your parents?

DE: I would say that the thing that was the strongest in our family was the importance of education. That's a very Scottish thing, or used to be at any rate. They were very keen that I should have the best possible education that I could get, even though at that time my father didn't have any money. As I said, being a travel agent during the war and immediately after the war there was very little opportunity to travel.

DS: Where did you attend school?

⁵ See Perthshire, Scotland, at <http://www.perthshire.co.uk/>.

⁶ General Accident is now part of Aviva.

DE: First of all I was at school in Perth. And then with the assistance of a kind of scholarship, I went to what was called a preparatory school which was at that time operating in the highlands of Scotland. The base was in Edinburgh, but that was thought to be unsafe so the school had been moved – as it was said evacuated – to a country house in the highlands.

After the war the school moved back to Edinburgh and from there I went with a scholarship to a school called Sedbergh in Yorkshire. And from there to Oxford.

DS: Now, when you were in school, were there any particular subjects that you enjoyed?

DE: I suppose in those days you were not expected to enjoy subjects in school. You were just assumed to get on with the work. From preparatory school at the age of nine, I started Latin. At the age of 10, I started Greek and continued that right through school in to university.

I suppose the subject I enjoyed most was English Literature because I had two particularly good teachers of English Literature both at the preparatory school and at Sedbergh.

DS: You were just a young boy during the years of World War II and I am wondering if you could share with us your recollections about the war.

DE: Perth saw very little of the war. I think two incendiary bombs dropped near Perth. The worst of the war for Scotland was the bombing of Glasgow and there was some bombing of Edinburgh as well.

But really in Perth, one saw very little of the war except the fact that my father was in the auxiliary police known as the Special Constables. He used to have to go out and guard our reservoir at night. In addition there were a large number of Polish soldiers who had come from Poland after the occupation by the Germans and the Russians, mainly from the Lvov, which is now in the Ukraine. And they were based in Perth. A lot of them were musicians and actors, and a number of them stayed with us in our house during the war.

But otherwise, apart from the general fact that there was very little food and that we had no car and the buses ran infrequently and had wooden seats, there really wasn't much consciousness of the war other than what one heard on the radio.

DS: Do you remember where you were and what you were doing when you heard that victory in Europe⁷ had been won by the Allies?

DE: Yes. It was just after I had gone to the school in the highlands. We knew it was coming, but I remember the room I was in and the head master came in and said that the Germans had surrendered. My recollection is that it was very clear that the victory in Europe was going to come; the only question was when.

Victory over Japan⁸ was a quite different thing. I was staying with my grandmother in Edinburgh at the time and I remember we heard about the dropping of the atomic bombs on Hiroshima and Nagasaki. And then very soon after that was the surrender of Japan. But until the atomic bombs were dropped there was no immediate expectation that the war with Japan would end. But I have to say that we knew nobody who was involved in the Far East at the time, so it wasn't very close to home.

DS: What was the situation in Scotland directly after the end of the war?

DE: The problem in Scotland, as generally in Britain, was what was called "austerity." There was a very serious food shortage and there was a very serious fuel shortage. So we had very little food at the time.

And I suppose the other thing that one remembers is the winter of 1947. I remember sledging in April 1947, when we went back to school for the summer term. So that's my clearest recollection of that time.

DS: As a child, who were the people who made the biggest impression on you?

DE: I suppose apart from the two school masters I've mentioned, I expect it was my aunt, my mother's sister, who was a head mistress and who really stimulated my interest in reading and always ensured that I had books to read. I think she was the person who perhaps had the greatest influence on me.

DS: Now, you say she stimulated your interest in reading. How did she do that?

DE: First of all telling me stories when I was very young and then giving me books to read to follow up the stories and discussing them with me.

⁷ Victory in Europe or VE Day, 8 May 1945.

⁸ Victory in Japan or VJ Day, 15 August 1945.

DS: You are a graduate in classics from Oxford University⁹ and I'd like to ask you a little bit about Oxford. How did you end up at university at Oxford?

DE: In those days, as I said, I studied Latin and Greek and ancient history right up to the age of 18 in school. At that time, if you were bright enough you were entered for the scholarship exams in Oxford.

There was no discussion with me as to what I would do. I was simply told that I would go down to Oxford to sit the scholarship exam in December 1952 and I went down and won a scholarship and went to Oxford. One was given a choice between Oxford and Cambridge,¹⁰ that was about the maximum degree of choice.

DS: Which college did you attend at Oxford and when did you graduate?

DE: I went to University College Oxford,¹¹ which is the oldest college in Oxford. I was there doing the first part of the Classics degree which is Latin and Greek language and literature which I did from 1953 to 1955, then left and went to the Navy for national service then went back to Oxford to do the second part of the degree and I graduated in 1959.

DS: I'd like to come back to your national service in just a second. But another question about Oxford – what are some of your recollections from your days at Oxford?

DE: At the time when I went up to Oxford in 1953, there were still a considerable number of much older people at university who had either been in the war or had done national service already. In fact I would say at least half of my contemporaries had done national service. But we were still living the kind of life that Oxford undergraduates had lived in the period between the wars. So in those days you ate all meals in the college hall, breakfast, lunch and dinner.

The college gate closed at 10 and you couldn't get in after 11 o'clock and life was relatively simple. I suppose there were about four cinemas in Oxford at the time. There were the usual clubs. There was the Union and so on.

But it was very much the type of life that people like C.P. Snow¹² and so on wrote about college life in those days.

⁹ Oxford University, see <http://www.ox.ac.uk/>.

¹⁰ Cambridge University, see <http://www.cam.ac.uk/>.

¹¹ University College Oxford, see <http://www.univ.ox.ac.uk/>.

¹² Charles Percy Snow, 1905-1980, was an English author who wrote about English life in the 20th century.

It was during the late 50s and 60s that Oxford began to change from what it had been before the war. And one saw a little bit of the *Brideshead Revisited*¹³ side of Oxford as well.

DS: As you mentioned, after you had started at Oxford but before you graduated, you were in the national service as an officer in the Royal Navy.¹⁴ What years were you in the Royal Navy?

DE: I left Oxford in 1955 to go into the Navy. The first six months was training, initially basic training and then training to be an officer. The training ships were aircraft carriers. There were two of them and they were mainly moored in Portland Harbor.

While I was doing that training a problem blew up in Cyprus and our two carriers were sent from Britain round to Egypt to take troops out of Egypt and put them into Cyprus where there was a problem because Britain occupied Cyprus at the time. There was a problem because there was a nationalist movement led by a man called General Grivas.¹⁵ They needed more troops and the aircraft carriers were useful troop carriers. So I spent the latter part of my training on this aircraft carrier in the Mediterranean between Egypt and Cyprus.

DS: Judge, you and I have talked a little bit about your experience in the national service. You shared with me some of your observations about why you think that was an important experience for you and I was wondering if you could share that with us.

DE: After I had completed training as an officer then I was commissioned and I went into what were known as costal forces which were known in Britain as motor gun boats and motor torpedo boats – MGB's and MTB's and are known in the States as PT boats – there we were based in a base in Portsmouth and we did most of our activities out in the Channel.

But also on one occasion we went to Denmark. And in those days the channels round the north coast of the Netherlands and through into Denmark were all full of mines so it was quite important to keep to the channels. And also we went up to the north of Scotland. So it was quite exciting in those days.

Again, of course we were really seeing end of the Navy as it had been in

¹³ BRIDESHEAD REVISITED, a novel written by Evelyn Waugh, was published in 1945.

¹⁴ The Royal Navy, see <http://www.royal-navy.mod.uk/>.

¹⁵ General Georgeios (Theodoros) Grivas.

wartime. Portsmouth Harbor was full of big ships, many of which were, as they say, mothballed. But a number of big ships were still in operation. There was more than one squadron of destroyers. It was during my time in the Navy that they began to limit the size of the Navy and cut down. So the first thing to say is that I saw, if you like, the end of empire in the Navy.

I remember when we were out in the Mediterranean on an aircraft carrier, going into Grand Harbor, Malta, which in those days Britain commanded as well, and all being lined up on the upper deck and salutes and guns firing from the forts on the main land and whistles blowing and bands playing and so to that extent I saw the end of empire in the old Navy, if you like.

It was quite soon after that – about a year after that – that the Suez crisis blew up and I do have a recollection that the older officers who'd been in the war thought this was a mad escapade. It was really the younger officers that were gung ho and wanted to have a go, but the older officers said things that I've heard others say since that anybody who has actually been in war will not go to war lightly.

DS: After you graduated from Oxford, you studied law here in Edinburgh at the University of Edinburgh.¹⁶ What made you decide to go to law school in the first place?

DE: I had been interested in the law actually since the age of 10 because at the age of 10 when I was living with my grandmother in Edinburgh, a friend of hers came to the door one morning and said, "Come with me. I'm going to show you where you are going to work when you grow up." He took me up to the law courts in Edinburgh, showed me round, sat me down in a courtroom, and from that really my interest in the law began.

When I was at Oxford, I thought I was probably going to go to the English bar, and I joined the Inner Temple¹⁷ and ate my dinners, as they said, in the Inner Temple. But after I finished at Oxford, I decided no I would come back to Edinburgh which was actually more difficult, or it took longer to get to the bar in Edinburgh than it would have done in London because in those days it was possible to qualify for the bar in England by doing a very short crash course.

In Edinburgh, you had to get a law degree and as I've said, the law degree in those days was a part time law degree so you went to lectures morning and

¹⁶ The University of Edinburgh School of Law, see <http://www.law.ed.ac.uk/>.

¹⁷ The Inner Temple is one of the four Inns of Court located in London near the Royal Courts of Justice. Students apply to join the Inn with the intention of training for the bar. See <http://www.innertemple.org.uk/home.html>.

evening and for the first two years in between worked in a solicitor's office. And in the third year did pupillage with an advocate, called devilling in Scotland.

DS: What were your favourite classes in law school?

DE: I don't know that I would say I had favourite classes. We began in the first year with Roman Law and Constitutional Law and Jurisprudence, which were very much like the kind of study we'd done at university in Oxford. After that, the classes were very practical classes.

They were teaching you the elements of Scots law, mercantile law, criminal law, conveyancing or land law, tax, accounting and so on, so it was a very down to earth practical degree. It wasn't really very academic after the first year.

DS: Who were some of the professors at that time?

DE: The professor of Roman Law was a man called Tom Smith who had come to Edinburgh very recently. He was a great enthusiast for the Roman Law tradition in Scots law, which he felt was being lost. He insisted on us studying the Roman Law not as a dead subject, so to speak, but very much as a part of the modern Scots law.

There was a professor, Archie Campbell, who taught Public International Law and Jurisprudence. A lovely man, very, very shy, but a very deep thinker in his way.

The professor of Constitutional Law was a man called Professor J.D.B. Mitchell, who had started as a lawyer after being a prisoner of war during the war. He started as a lawyer in London and was particularly interested in the control of nationalized industries and the regulation of nationalized industries. He then came up to Edinburgh as a professor of Constitutional Law of which he became a master. He wrote a very interesting but sadly neglected book¹⁸ on constitutional law.

But he developed, from the interest in nationalized industries, he developed an interest in the coal and steel community – the European Coal and Steel Community¹⁹ – when it was founded in 1952 and gradually his interest in

¹⁸ John David Bawden Mitchell, CONSTITUTIONAL LAW SECOND EDITION, Scottish Universities Law Institute (1968).

¹⁹ The European Coal and Steel Community (ECSC) was established by the Treaty of Paris, which was signed on 18 April 1951 and began operations in Luxembourg in June 1951. The ECSC was Europe's first supranational institution. The signatory countries were Belgium, France, the Federal Republic of Germany

European law overtook his interest in constitutional law and he later became professor of European Institutions in Edinburgh.

I suppose he was the person who had the greatest long term effect on my thinking, although I don't think so much at the time as later.

DS: Now, when you were in law school, what, if anything, in the curriculum related to European law?

DE: Nothing. You have to remember that in those days things that have become highly specialized were not specialized at all. For example, employment law was known as the law of master and servant and it was really a specialist, slightly specialized aspect of the law of contract and I suppose to some extent the law of delict or tort, but it wasn't a special subject. Public law or administrative law, was I suppose, the law of meetings, the law of water and sewage, local authority law and it was taught as a half course.

And, of course, public law has exploded as a subject in Britain in the years in between. Constitutional law, conventional British Constitutional law, was the law of the constitution as had been laid down by Dicey,²⁰ and the conventions of the constitution, the traditional approach to constitutional law, except that Professor Mitchell didn't teach it that way. In a sense he was so different from the traditional constitutional law and as he hadn't written his book at that stage it was really rather difficult to get a hold of it because it didn't fit the books which were available.

DS: Was there much time spent thinking at all about Europe at that time?

DE: Not that I can remember. No.

(i.e., West Germany), Italy, Luxembourg, and the Netherlands. The plan for what was to become the ECSC is largely credited to two Frenchmen, Robert Schuman who served as French Foreign Minister from 1948 to 1953, and businessman Jean Monnet. On 9 May 1950 Schuman, with assistance from Monnet, issued what was to become known as the Schuman Declaration. The aim of the Schuman Declaration was, among other things, to consolidate the French and German coal and steel industries. Schuman said, "Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a *defacto* solidarity." Neill Nugent, *THE GOVERNMENT AND POLITICS OF THE EUROPEAN UNION 5TH EDITION*, Duke University Press (2003), p. 34. For the full-text of the Schuman Declaration, see http://europa.eu.int/abc/symbols/9-may/decl_en.htm. In his memoirs, Monnet said, "The Schuman proposals provide a basis for the building of a new Europe through the concrete achievement of a supranational regime within a limited but controlling area of economic effort...The indispensable first principle of these proposals is the abnegation of sovereignty in a limited but decisive field." Jean Monnet, *MEMOIRS*, Collins (1978), p. 316. For full-text of ECSC Treaty, see http://europa.eu.int/scadplus/treaties/ecsc_en.htm.

²⁰ A.V. Dicey (1835-1922), a British constitutional theorist and former judge, who wrote *AN INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION* (1885).

In fact, I'm not really conscious of having taken any significant interest in the development of the European Community which, after all, began while I was going to Oxford and by 1962 when I graduated in law, Britain had made its first application to join the EEC.²¹ But I don't remember being particularly interested in it at that time.

DS: In 1962, you were admitted to the Scottish Faculty of Advocates.²² I'm wondering if you can tell us about that achievement and how you felt about that.

DE: The Faculty of Advocates is the Scots bar. It is the body of advocates who are attached to the Scottish Supreme Court and although there are differences, basically Scottish advocates are the same as English barristers.

The Faculty of Advocates, I suppose, is the nearest thing you could compare to the Inns of Court in London although it works in a quite different way and is much more like the bar of Paris, for example, than the bar in London. However, in order to join the Faculty of Advocates, one had to have a law degree and one had to have done pupillage or devilling with a practicing advocate.

In those days, one had also to present a thesis in Latin and be examined on the thesis in Latin. But that was a formality, in those days. And, thereafter, one was admitted and the tradition in Scotland always has been that once admitted an advocate has a box in which to keep his or her papers, a locker in the gown room, and a clerk. And with that, you are ready to practice. Then the question is when does the work come?

DS: What was the topic of your thesis?

²¹ The European Economic Community (EEC) was founded by the Treaty of Rome, which was signed on 25 March 1957 and came into force (along with the European Atomic Energy Community) on 1 January 1958. The signatory countries were Belgium, France, the Federal Republic of Germany (i.e., West Germany), Italy, Luxembourg, and the Netherlands. Peace and prosperity were underlying themes in the EEC Treaty preamble as well as the aspirational goal of achieving "an ever closer union among the peoples of Europe." The EEC Treaty is best known for its establishment of the European Common Market. In this regard, "The treaty proper included provisions for a customs union, a common commercial policy, a common transport policy, competition policy, limited monetary policy cooperation, and coordination of macroeconomic policy. A provision on social policy called for the establishment of the European Social Fund to contribute to retraining and other assistance to workers. The treaty also established a European Investment Bank...The treaty's provisions for the free movement of persons, services, and capital were tentative, reflecting the tension between what was theoretically desirable and politically practicable in the establishment of the common market." Desmond Dinan, *EUROPE RECAST: A HISTORY OF EUROPEAN UNION*, Lynne Rienner Publishers (2004), p. 77. For full-text of the EEC Treaty, see http://www.europa.eu.int/scadplus/treaties/eec_en.htm.

²² Scottish Faculty of Advocates, see <http://www.advocates.org.uk/>.

DE: I can't remember. I think it was....I don't think it was anything about slavery. I really can't remember.

DS: Judge Edward, thank you for sharing these memories with us.