

Interview with **Robert Links**

Date: March 3, 1989

Interviewer: Jackie Shearer

Camera Rolls: 4096-4098

Sound Rolls: 441

Team: D

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Note: These transcripts contain material that did not appear in the final program. Only text appearing in ***bold italics*** was used in the final version of *Eyes on the Prize II*.

[camera roll #4096]

[sound roll #441]

00:00:12:00

Camera crew member #1:

Marker.

[slate]

Camera crew member #1:

OK.

Interviewer:

Hold on. Can you give me an OK, Sarah?

Camera crew member #2:

Yeah.

00:00:25:00

Interviewer:

OK. To many people, Allan Bakke is a symbol, but we need to know about the man behind the symbol. So, I'll be curious to hear when was the first time you met him, and what kind of guy is Allan Bakke?

00:00:37:00

Robert Links:

I first met Allan Bakke about two days before we tried his case [laughs] against the University of California. And if I could describe him without being overly dramatic, I don't think you would ever meet a quieter, more self effacing, more humble, more peaceful kinda guy in the world. And I think if ever there is anything which demonstrates the kinda guy he is, he never sought any publicity. He never granted any interviews. He never quote went public or went Hollywood. All he wanted to do was let the court decide the case and go on with his life. I guess the most fundamental way you could describe him is he was a young man of enormous talent who just wanted to be a doctor and who felt that he had been denied that opportunity because of his skin color. And he is also a man of principle. He wanted an answer to that question. And he got it.

00:01:46:00

Interviewer:

OK. Cut.

[cut]

[wild sound]

Robert Links:

Am I OK for you? I mean—

Interviewer:

Yeah.

Robert Links:

OK.

Interviewer:

Two—

Robert Links:

—louder, let me know. I mean—

Camera crew member #1:

OK.

[cut]

00:01:56:00

Camera crew member #1:

And marker.

[slate]

Camera crew member #1:

OK Jackie, it's all yours.

00:02:07:00

Interviewer:

OK. When you and your partner took on this case, did you understand its national significance? And if not then, when did you?

00:02:15:00

Robert Links:

I think from the day Bakke walked in our door, we knew what was at stake. We knew how vital the questions were. And above all else, we knew that it was gonna take good lawyering and not theatrics, not histrionics [sic], not yelling and shouting but some very deep thinking. And we tried to give that to the case, and I guess the most fundamental thing I could say was that from day one we knew this was the case of a lifetime. Not just for the lawyers, not just for the client, and not just for the court. This was a case for America to come to grips with itself, with its past, and with its future. And I think all three of those elements intersected when this case was decided and throughout every day that it was litigated.

00:03:20:00

Interviewer:

Now, the national debate around this case centered on affirmative action versus reverse discrimination. Do you think that that truly characterizes the, the pivotal issues around this case?

00:03:33:00

Robert Links:

Whenever the Bakke case is discussed, the two phrases you hear are reverse discrimination and affirmative action. I have to tell you that I don't know what either one of those things means. I know that the issues in the case go far deeper than any slogan. They cannot be discussed in a half an hour, and they can't be answered in a half an hour. They involve profound philosophical questions that go to the heart of our society and the kind of country that we are and the kind of a nation that we want to become. And a lot of people say on Bakke's side of the case, Well, it's a quota, and you can't have quotas. I happen to believe that's true, but I don't think that kind of phraseology begins to answer the question. On the other side of the case, on the University side, people say there has been racial injustice, and we have to correct it. I happen to agree with that, but that doesn't answer the question either. And at stake, you've got deep down and on the bottom line the question of whether the government should ever use race as a decision making factor. I believe the answer to that question is no. I believe the answer to that question must be no. Because if the answer is anything else, you have a Pandora's Box of problems that you can never ever answer, that you can never solve, and that will never end. And we can go into those if you want.

00:05:23:00

Interviewer:

OK. Let's go back though to the debate. I like the way that you framed it with affirmative action versus reverse discrimination.

Robert Links:

[clears throat]

Interviewer:

Give me your sense of how profound or how simple minded, however you choose to express it, the, the way that most Americans got to hear about these issues back then.

00:05:44:00

Robert Links:

I think the way most people heard about the Bakke case and the way that most of the people who heard about it felt about it was that the University's policy was racial discrimination. It

was turned around, if you will, against the quote majority close quote. And that that was a reversal of discrimination against the quote minority unquote. And therefore people said, Well, it's discrimination in reverse. It's reverse discrimination. On the University's side, people felt that this was a quote affirmative action program. And that concept is something that I think all of us in one form or another endorse. And so people would say, I'm for affirmative action. And one of the problems is that just like the people who would say, I'm against reverse discrimination, it doesn't mean anything. Because to say you're for affirmative action doesn't mean anything unless you define what affirmative action is. And I think that, that people who tried to gain an understanding of the case through the editorial pages, and the newspaper articles, and what not, I think ended up with simply a very superficial discussion of the deeper issues.

00:07:08:00

Interviewer:

Great, OK. Let's go forward now to the day that oral arguments were heard before the Supreme Court. You told me a wonderful story about the cab ride that you took with the radio that the cab driver had on. And then what you found once you got to the Supreme Court. Can you—

Camera crew member #1:

I'm sorry, I have to cut for a second.

Interviewer:

OK.

Camera crew member #1:

I have a problem, a problem. I have a battery problem.

Camera crew member #1:

You want to cut, Sarah?

Interviewer:

Yeah. O—

[cut]

00:07:29:00

Camera crew member #1:

Marking.

[slate]

Camera crew member #1:

There we go.

00:07:38:00

Interviewer:

OK. OK. So, the, the cab ride on the first day, the, the day of the oral arguments.

00:07:47:00

Robert Links:

I think one of the things that will stay with me forever about the Bakke case, aside from the fact that it was the very first case that I ever worked on as a lawyer fresh out of law school, believe it or not, is the day we went to the Supreme Court to argue the case. I was the one who wrote all the briefs and did all the research, and my partner, Renny Colvin, who really was the lead lawyer in the case, argued it before the Court. And we were staying at the Jefferson Hotel in Washington DC. And we had to take a cab over to the Supreme Court building, and we hailed a taxi and got in. And we knew it was a big day. And as we drove to the Court, the cabbie had the radio on. And there was one news report after another about the big case at the Supreme Court, and we kind of looked at each other. And we knew who they were talking about and what they were talking about. The cabbie turns around and says, Geez, there's really something going on over there today. And where do you boys want me to let you out? And as we drove up to the Court, there they were, all those hundreds, probably thousands, of people who had stood in line, camping out over night to listen to that case and to watch that case be argued. And I don't think there is any bigger thrill for a lawyer than having started out in Yolo County where there are only about three people in the courtroom to go before the highest court in the land with the whole world watching. And it's something I'll never forget.

00:09:21:00

Interviewer:

OK. Now I'd like to have you tell me Archibald Cox's opening remarks and the impression that it made on you.

00:09:29:00

Robert Links:

One of the things that happens in an oral argument is you get to hear for the first time how your adversary is gonna put the case. And when the Bakke case was argued, the adversary was formidable indeed. The University's lawyers were, were fine and good. And they had some of the finest constitutional scholars on their briefs, and they had Archibald Cox, who is one of America's great lawyers, as their advocate that day. And I can remember still what he said. This case, which comes here on a writ of certiorari to the Supreme Court of California presents a single vital issue. The answer that this court provides will determine perhaps for decades whether minorities are going to have meaningful access to higher education. Or words to that affect. And it was a very dramatic moment. I also remember Renny Colvin's first words, which I think were equally if not more moving. When he said, The first thing I think I should tell this court is that "I am Allan Bakke's lawyer, and Allan Bakke is my client." And he proceeded to explain to that court who this man was. Because our feeling deep down was that America had to look him in the eye, and that court had to look him in the eye and say, Do we apply one standard to you and another standard to someone else because of your race and the other person's race, or do you both get judged by the same standard? And it was a very affective and dramatic way of framing a very important part of the case.

00:11:11:00

Interviewer:

OK. Cut.

[cut]

[camera roll #4097]

00:11:15:00

Camera crew member #1:

And marker.

[slate]

00:11:19:00

Interviewer:

Wait. Now, when you give us Colvin's opening lines, can you also give us a sense of what your strategy was?

00:11:31:00

Robert Links:

As dramatic as Archibald Cox's opening was, I think Reynold Colvin's opening was equally dramatic and I think even more powerful. Because what he said was, The first thing I must say to this court is that "I am Allan Bakke's lawyer, and Allan Bakke is my client." And the strategy and the thinking was that the most affective way to present Bakke's case is to tell the court about him and make them look at him and look him in the eye. And make the court know that this wasn't some faceless nameless issue, some philosophical question. It was a human issue that the court had to deal with. And they had to say to a human being, to say to a person, a citizen either, You're gonna be judged by the same standard as someone else, or, You're not gonna be judged by the same standard, and will that standard be different according to race. And so his way of focusing the argument on Bakke was the strategy. Because fundamentally what you had in a legal sense was a debate as to whether the rights under the constitution that we all love, and enjoy, and cherish are rights that come to us as individuals, or are they rights that we get because we're members of particular groups. And the point we were trying to make and I think the point we drove home and the point the court hammered out in those six different opinions is that in America, rights belong to individuals. They do not belong to racial groups.

00:13:16:00

Interviewer:

OK. Now, can you give me a sense of how you think the public has misunderstood Bakke?

00:13:22:00

Robert Links:

I think in a technical sense the public has misunderstood Bakke by saying, Well, that's the case that just says no quotas. It clearly did say that. But it's much, much deeper than that. The court was so badly divided, I don't know that there was a clear ringing of the constitutional bell, if you will. We do have—and this is something I think is very important. It's almost as if that decision is a prism through which we look at refracted light. We can see some thinking starting to evolve. It wasn't intended to be, nor at least by me was it expected to be, the final word on these questions. We knew it was going to be important, and it was important. But it was a starting point. Because you see, until the Bakke case came along, America had been evolving in a way that I think historians can track, and you don't really even have to be a, a historian to track it. In 1954 when Brown versus Board of Education was decided—which I think for anybody who has studied and thought about constitutional and American history one of the great moments not just in American life, it's one of the great moments in human history because it was a day when a nation looked itself in the eye, and it said, For too long, we have kept people separated. And that's all gonna end. And it was a, it was a day that I think America really came into the twentieth century in terms of human rights. And it wasn't an easy struggle. Anybody who thinks that the plaintiff's lawyers in the Brown case had it easy, anybody who thinks that is wrong. Those were courageous people who fought not just tremendous odds, they fought against violence. They fought against attacks on themselves,

and their families, and their clients, and their clients' families. And they achieved a great victory. It was the achievement of a moral principle that had been too long in coming. And a lot of people felt then that all we had to do was open the doors. Even if you look at the 1960s, a movement that I think moved all of us, everybody had a common goal. Just take the barriers down. And once we do that, everything is gonna be all right. When we got into the '70s—and I know this is a generalization. But I, I think it's pretty close to what happened. When we got into the '70s, everything got a little more complicated. Everything wasn't all right. We found that integration, however we define that term, wasn't moving as fast as we wanted it to move. And the question became, How can we advance this process along? Well, the easiest way to change the numerical disparity is to do it by the numbers. It's to start a quota system and say, We want to have twenty percent of a group in a certain profession or in a certain job. Just hire people or let people in until you have twenty percent. That's pretty easy. And it's pretty fast, and it's pretty effective. And people I think started to do that. And everybody would think, Well, it's a good thing. It's a good cause. We all want to correct the problems of the past. And then the issues started to get a little more difficult because whereas you might talk in an economic arena about jobs with an open ended situation, you don't worry about the person that gets excluded. You figure there is enough room for everybody. But when you start taking these principles and these concepts and applying them to a fixed pool, say a medical school where you only have one hundred places, if you let one person in because of race, you're keeping another person out because of race. And that's when the issue started to get framed. And once it got framed, we had a whole host of questions that leads us into some very, very thorny constitutional thickets. And that's how we got to the Bakke case. Because it was right in the middle of that procedural and substantive sagebrush [laughs] that we found ourselves. And there were some precedents to help us, but there were very few clear answers.

00:18:02:00

Interviewer:

OK, cut.

[cut]

00:18:05:00

Camera crew member #1:

Marker.

[slate]

00:18:13:00

Interviewer:

OK, so you've talked about Bakke, the case. What about Bakke, the man? How do you think the public misunderstood Allan Bakke as a person?

00:18:22:00

Robert Links:

I think the public misunderstood Allan Bakke as a person because many people, not all people but many, simply labeled him as a racist. I can remember reading articles where they spelled his name B-A-K-K-K-E. And it bothered me because it was so far from the truth that it was unfortunate. I mean, here is a guy who is thirty-two years old. He's got a wife and two children to support. And he wants to be a doctor. He works nights in an emergency room, volunteering. He goes to take all the classes. He takes the MCAT, the entrance exam, and scores exceptionally well. And he is just a hard working guy who wants to provide a service to humanity. That's what he wanted to do. And I think the greatest testament to his character is that he saw it through, he graduated, he now works back near the Mayo Clinic. And he is an accomplished fellow in more ways than one. And, and he did it very quietly and in a very peaceful way, and in a way that was not done for public media or public consumption. And I think it says something very special about him as a man.

00:19:44:00

Interviewer:

Now, you also mentioned in talking about what an emotional issue this is, the hate mail that you got.

00:19:51:00

Robert Links:

I think some of the scariest mail that I got in connection with the Bakke case was the mail I would get from people who thought they were supporting me, who would say, Yeah, let's keep all those niggers out of medical school. I got mail like that, and I threw it right in the trash can 'cause that isn't what this case was about. This wasn't about keeping anybody about of anything. It was about how we're gonna interpret the Fourteenth Amendment to the United States Constitution, which is designed to treat everybody equally. And it's, it's a little bit scary how people misconceive important questions and how they debase a lot of noble principles by rank hatred.

00:200:38:00

Interviewer:

OK, cut.

[cut]

[wild sound]

Camera crew member #1:

I'm, I'm not gonna make it.

Interviewer:

Well—

Camera crew member #1:

[inaudible]

Robert Links:

I'll do it again if we don't.

Interviewer:

Yeah.

Camera crew member #1:

OK. OK.

Interviewer:

We can try.

[cut]

00:20:50:00

Camera crew member #1:

And marker.

[slate]

Camera crew member #2:

Six. Take six.

00:20:57:00

Interviewer:

OK.

00:20:59:00

Robert Links:

I don't know the names of the sixteen people were admitted at Davis, and I don't care because it doesn't matter who they are, what their grades were. It doesn't matter. The fact that they graduated, it doesn't matter because those sixteen people have an asterisk next to their name. And what the asterisk says is they couldn't make it on their own. And that's unfair, and it's unfortunate. And think about the person who got in without the special program who is from a minority group. That person gets tagged with an asterisk, too. And that's the problem. When people graduate, the degree should mean the same thing for everybody with no questions asked.

00:21:35:00

Interviewer:

Great. Cut.

[cut]

[wild sound]

Robert Links:

Do you want, do you want me just to start and do the Cox thing for you?

Interviewer:

Yeah.

[cut]

00:21:45:00

Camera crew member #1:

And marker.

[slate]

Robert Links:

[clears throat] You, you give me a sign when you want me to go.

Interviewer:

OK. Wait. When Sarah is ready—

Camera crew member #2:

OK.

00:21:55:00

Interviewer:

OK.

00:21:55:00

Robert Links:

One of the things I am gonna remember until the day I die are the first words that one of my heroes, Archibald Cox, spoke to the Supreme Court in the Bakke case when he said, This case which comes here on a writ of certiorari from the Supreme Court of California presents a single vital issue, whether a state university is free under the equal protection clause of the Fourteenth Amendment to erect a special admission program to encourage the admission of members of disadvantaged racial groups. The answer which this court provides to these questions will determine perhaps for a decade whether minorities are going to have meaningful access to higher education. Those were powerful words.

00:22:39:00

Interviewer:

OK. Now, let's go on and have you give me as concise as, as you can a description of this, as you call it, Pandora's box of, of questions.

00:22:50:00

Robert Links:

Well, I think that the way you can assess and sense the difficulty of racial preferences in an American or democratic society is this, once you allow it to happen, even if it's any changing, whatever it is of the university's admission process to have a greater number of minority

people or a lesser number, any difference based on race, you open up a box of unanswerable questions and insoluble problems. Who gets the preference, which groups? How do you determine who is a member of which group? If you're half Asian, do you qualify? How do you determine what the percentage is gonna be? Do you tie it to the local population, the state, the nation, the world? How do you make that determination? How long is the preference gonna last, and who decides when it's gonna end? These are the types of issues, and these aren't all of the questions. But once you start pondering these things, you can realize what we're dealing with and how hard it is. Do you prefer a Black person over a Hispanic person? If so, why? And if not, why not? Do you treat every Black person the same? Would you treat a Black person who comes from a wealthy family the same as a poor Black kid from the ghetto? I don't think you should. I don't think they get the same number of points or the same size plus as Justice Powell would say. I think what you have to do and what the bottom line is in America, you have to look at people as individuals, and you have to listen to their story. And you have to address their problems and their needs on an individual basis. That's what affirmative action is all about.

00:24:40:00

Interviewer:

OK. Cut.

[cut]

00:24:43:00

Camera crew member #1:

Mark. [clears throat]

[slate]

Interviewer:

OK?

Camera crew member #2:

OK.

00:24:52:00

Interviewer:

OK.

00:24:53:00

Robert Links:

You know, when we were working on the Bakke case, I had a lot of friends who disagreed with me about having a colorblind constitution. And they'd say, What's so wrong about having this program? We're just gonna do it for a couple of years. Let's take care of business and then get on with it. And I think the thing that bothered me the most about that is anybody who thinks these programs are gonna be in place for five years, or ten years, or fifteen or twenty years is dreaming. It isn't gonna happen that way because we are gonna raise up a generation of Americans who will have ingrained in their psyches the proposition that legal rights and the benefits and rewards of society should be apportioned because of race. That is a very dangerous idea. And if I can continue, I think the real danger in the idea is when you start dealing with groups that quote, over qualify, unquote. You take a group of Jews who perhaps are in medical schools way beyond their numbers in the national, local, state population. And you start saying, You know, we don't have anything against Jews, but they're taking up too many places. And we've got to hold them back just a little bit so we can let these other people in. And I think anybody who thinks back to the 1920's when there were the quotas keeping Jews out of Harvard Law School doesn't need much of a, of a refresher course to know what's wrong with that. And that's the problem we're dealing with now and that we will be dealing with for a generation to come.

00:26:33:00

Interviewer:

OK. Cut.

[cut]

[wild sound]

00:26:39:00

Robert Links:

Wait, let me think of it before you start cranking it.

Interviewer:

[inaudible]

[cut]

00:26:46:00

Camera crew member #2:

Speed.

Camera crew member #1:

And marker.

[slate]

Camera crew member #1:

OK.

00:26:54:00

Interviewer:

OK.

00:26:55:00

Robert Links:

Back then, people said that these programs like the Davis program are great things because they include people and bring 'em into the class. And I think that the short coming of that analysis is they forget that when you bring in one person, you're keeping out another person. And the real problem that you get to philosophically if you will is that these programs don't work with over qualifying groups. If you get Jews, or Japanese-Americans, or whatever, groups that get into professional schools far beyond their percentage levels in the general population, then you confront the, the following kinda problem. You say, You know, we don't have anything against Jews, but they're taking up too many places, and we need to spread it around a little bit. So, what we're gonna do this year, we're gonna hold the Jews back a little bit. And we'll let some other people in. And any Jews who ever faced a quota knows that that is a system that results in injustice. It does not result in fair play. It does not result in equality. It doesn't move us forward, it moves us backward. And it says to people, You don't count as an individual. You only count as a member of a group. And I think the same would apply for any member of any group who has ever been kept out of anything because of the color of their skin. Whether they're Black, and they couldn't become a doctor or whether they're White and couldn't become a doctor. It's wrong from either perspective. Discrimination is discrimination. It's not reverse, and it's not positive. It's discrimination. It is morally and legally wrong.

00:28:38:00

Interviewer:

OK. I think we've got it. Cut.

[cut]

[end of interview]

00:28:44:00

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