

Speaker 1:

Welcome to the Eye on the Cure Podcast, the podcast about winning the fight against retinal disease from the Foundation Fighting Blindness.

Ben Shaberman:

Welcome everyone to the Eye on the Cure Podcast. I am your host, Ben Shaberman with the Foundation Fighting Blindness. And for this episode of Eye on the Cure, I'm very privileged to have as my guest judge David Tatel, who has served on the United States Court of Appeals for the District of Columbia Circuit since 1994. And I'm going to quickly review some of the highlights of David's career in a moment. But first, welcome, David, it's great to have you on the podcast.

David Tatel:

It's a pleasure to be here, Ben. I'm a big fan of your podcast.

Ben Shaberman:

Well, thank you for saying that, and I'm delighted to have you as a guest. It's important to know that David has X-linked retinitis pigmentosa, but even more important, he's had an incredible career, really for any legal professional. But just all the things you've done are quite impressive, and I'm going to go through some of those things. So to start off, early in your career, you got your law degree from University of Chicago, then you taught at the University of Michigan Law School, so some Midwest activity there. And then you joined the firm, Sidley, Austin, Burgess and Smith in Chicago. And you were the founding director of the Chicago Lawyers Committee For Civil Rights Under Law, Director of the National Lawyers Committee for Civil Rights Under Law and Director of the Office for Civil Rights in the US Department of Health Education and Welfare, which is now HHS, if I understand correctly, Health and Human Services. And then in DC, you joined Hogan & Hartson before you were appointed to the US Court of Appeals. And when you were with Hogan & Hartson, you founded and directed the firm's education practice. Since you joined the Court of Appeals in '94, I presume it was President Clinton who appointed you?

David Tatel:

Yes, he appointed me to fill the seat that was created by Ruth Ginsburg's elevation to the Supreme Court.

Ben Shaberman:

Really? Very, very interesting. And was that a lengthy process? Did you have to go through interviews? What was that like?

David Tatel:

Yes. Not as likely as it's become today. I got the call from the White House in May, 1994. There were extensive interviews for the next month, including FBI investigation, ABA investigation, things like that. And then, I was formally nominated right around Memorial Day. And then, during the summer, I had more interviews, more questionnaires, I met senators. And then, in October I had my confirmation hearing before the Senate Judiciary Committee, and I was confirmed by the Senate shortly after that, and sworn in in late October. So it took about four months.

Ben Shaberman:

Well, that's a pretty intensive process. Was it emotionally for you to get appointed? That's such a-

David Tatel:

Well, I was thrilled to be appointed. I very much enjoyed my work at Hogan, my law practice was interesting to me. And I could have continued it, but this was just an opportunity of a lifetime for a judge to become not just a federal judge, but a judge on the US Court of Appeals, so I was thrilled.

Ben Shaberman:

Of course. It's such an important court and I wanted to let our listeners know that some pretty impressive judges and legal professionals have come out of that court. You mentioned Ruth Bader Ginsburg and our chief justice today, John Roberts came from that court. Merrick Garland, our US Attorney General came from that court. And Ketanji Brown Jackson, who is in a Senate hearing as we speak. I saw it on my Washington Post feed. She's getting interviewed, I'm sure that's pretty intense. She came from that court. So some very important people, judges, have come out of that court. For those of us, including me, who aren't that familiar with the legal system at the federal level, can you tell us about the types of cases that court hears?

David Tatel:

Yes. The DC circuit, there are 11 regional Courts of Appeals around the country, they all have numbers. The first Circuit is the Northeast, the ninth Circuit is the West, The Fifth Circuit is part of the south. So the country is divided up into 11 regional circuits. The DC circuit is generally viewed as the most important, even though we have the smallest geographic area, just the District of Columbia. But the reason the DC circuit is so important is that it essentially... Two reasons. One is, it essentially presides over the federal government. Almost all cases involving the federal government, whether they're regulatory or administrative, or political, are decided by the DC circuit. And also, unlike the other regional circuits, the DC circuit is as a national court. Our cases come from all across the country, so in a sense, the court looks like the Supreme Court, in the sense that it's national in scope, and it hears large numbers of highly controversial, important, regulatory questions, plus very, very complex and highly controversial, whole different questions.

Ben Shaberman:

Can you give us an example of something recent that you've heard that fits that?

David Tatel:

Sure. For example, my court has heard all the cases involving efforts to gain access to former President Trump's financial papers. In fact, I wrote one of the major opinions called Trump versus [inaudible 00:06:22]. We're now hearing all the cases involving the congressional committee looking into the events of January 6th. We're hearing all of those cases involving Congress's efforts to enforce subpoenas for testimony. There's just so many other topics that when in the middle of Whitewater and Monica Lewinsky issues with Bill Clinton, my court heard all of those cases. It heard all of the political cases involving the Bush and Reagan administrations. The court hears cases involving most decisions of the Federal Communications Commission, the Environmental Protection Agency, all come to my court. I wrote all three opinions involving net neutrality a few years ago. It's a very big important court. It's a fascinating place to work and the cases we hear are pretty important.

Ben Shaberman:

That is quite impressive, just the visibility of these issues. And I can only imagine that the preparation for hearing and making judgments must be incredible. And you're doing it with obviously low vision. Can you talk about that? What it's like to prepare and perhaps what you do that's maybe different from a judge with vision to do that?

David Tatel:

Actually, Ben, it's with no vision. I have no vision at all. I prepare for these cases... And you're right, preparing to hear these cases can be very time consuming and complex because some of them are quite big. The smaller cases, I can prepare for one of these smaller cases that we have in a couple of hours, maybe if I'm lucky. But the big cases sometimes take days, and it involves reading the briefs that the parties submit. It involves reading the record, that is all the evidence from the lower court or the federal agency. It involves a lot of legal research and a huge amount of discussion. I have four law clerks, and my law clerks play a major role in helping me prepare for these cases. I also have a full time reader who reads materials to me. And I use a braille typewriter, a human where voice note for typing and reading some materials.

I use a braille typewriter because I never learned to type. When I was in the seventh or eighth grade, girls learned to type and boys went to shop. And so I never learned to type. I actually have a laptop right here next to me because I've decided maybe I should learn to type. It would be easier. I wouldn't have to use these devices that are clunky and difficult to use. But at the moment, that's the technology I use, is a reader... Although what's interesting about that, Ben, is that when I started on a Court of Appeals, I think the reader probably read 95% of the materials to me. Briefs, record opinions, correspondence, memos, everything. Now I think the reader doesn't read more than 20% to me.

Everything else I'm able to read on my own. And it's all because of this enormously valuable technology that has emerged in the past 15 years. But my court has gone completely digital, so there is no paper anymore, which means my computer, my braille computer, can read all of these materials to me directly. So it's been a real revolution for me. In terms of the way I prepare and do my work thanks to technology.

Ben Shaberman:

That's great. That's great. You mentioned you don't have any eyesight now, but when you started in '94, did you still have some vision?

David Tatel:

No, I haven't had any eyesight since the early seventies.

Ben Shaberman:

You've really been reliant on these technologies, whatever technologies have been available, or people to help you actually-

David Tatel:

Yes.

Ben Shaberman:

... get the audio. And would you say that because you rely on the audio and you don't have documents, or at least written documents you can refer to, that your memory is well developed or maybe better developed than somebody who's sighted?

David Tatel:

I think so. I think that's right. I can't prove it, but I think it's inevitable that the brain adjusts and compensates for the loss of one sensation and develops others. I don't have any doubt that my memory has developed significantly because of that. Years ago, before the braille computer came along and the other devices, when I would speak publicly I would memorize the speech, and I could memorize a half hour, 45 minute speech in no time, particularly if I'd written it myself I generally just knew it. But now I don't have to do that anymore. And I wonder whether my memory is getting atrophied a little bit, but I don't think so.

Ben Shaberman:

Well, that's interesting that you've memorized entire speeches, that's impressive. Speaking of technology, you are co-chair of the National Academy of Sciences Committee on Science, Technology and Law, and you're also a member of the National Academy of Education, and you seem to have a proclivity toward science and education. Do you feel like those are important areas for you professionally, as well in addition to using them as ways for you to do your job?

David Tatel:

Yes, definitely. But they have different origins. The interest in science and education have different origins in my life. The science comes from the fact that my father was a physicist. And when I was a kid, I spent a lot of time with him at his lab, and he took me on many scientific expeditions with him, including a three month trip to South America. And so science was deeply embedded in my DNA. In fact, in high school and the beginning of college, I went to the University of Michigan, I majored in physics and math, but my interest changed in the sixties because of the Civil Rights movement and the Kennedy administration and many other things. And so, I shifted and decided to go to law school, but I've always maintained deep interest in science. I read science fiction. I love to read biographies of scientists.

And my court hears many cases that fall at the intersection of law and science. Many of these cases we review are based on quite complex scientific records. And so, I've always kept in my interest in it. And as I said, it's very much part of the work of my court. Now, the National Academies Committee on Science, Technology and Law, it's a national academy committee made up of judges and scientific scholars around the country who meet and discuss twice a year some pretty big issues that involve both science, technology and law.

In fact, we have our meeting later today, we were supposed to meet at Caltech. My co-chair is David Baltimore, the former president of Caltech. And we meet there once a year, but because of COVID, we had to go over [inaudible 00:14:27]. That's my interest in science. Education is different. My wife, Edith, is a teacher. When I was in law school, she was teaching in an inner city high school in Chicago and I was fascinated with her work. And because of my work in Chicago, I got involved in a number of education cases. And so, education also became something that I've been very interested in. In fact, was the core of my law practice at Hogan & Hartson.

Ben Shaberman:

It's so interesting. You've had, as you were just saying, an interest in education, civil rights, during a time when civil rights was really paramount in our country. And then, so much on the science and technology side. That's such a wide ranging combination of interests over the years. And I would like to ask you a personal question, if this is okay, how did you meet Edith?

David Tatel:

Edith and I both went to the University of Michigan in the early sixties. I was one year ahead of her. We did not know each other, even though we had lots of friends in common. And I left Michigan, I graduated in 63 and went to Chicago to the law school and Edith graduated one year later and came to Northwestern to get her master's in English. And part way through the year, a mutual friend of ours from Michigan fixed us up. And the rest, as they say, is history. We've been married for 57 years.

Ben Shaberman:

Well, that is quite a great story, and congratulations on 57 years of marriage.

David Tatel:

And we have four children and eight grandchildren to show for it.

Ben Shaberman:

I know you really enjoy your kids and your grandkids. I wanted to go back to earlier in your life and just hear a little more about your journey with X-linked RP. Can you talk about when you realized that you had a vision issue and what that diagnostic journey was like?

David Tatel:

Sure. I actually don't remember a time when I didn't have a vision problem. As a little kid, I couldn't see well at night. And it was a big mystery to my parents. No one understood what was wrong with little David's eyes that I couldn't see well at night. They had me eating a lot of carrots when I was in elementary school, because they thought, at the time, that would make a difference. So nighttime vision was a problem. The other thing that was a problem for me is that I was a totally obsessed baseball kid, both watching it, I was a Washington Senator's fan, but I love to play it. Starting, I have memories that go all the way back to the third or fourth grade, having to position myself on the field so I could see the ball. I needed to have a dark background.

So I wanted to play a position, for example, where the batter would be between me and some dark trees or a dark building because I could see the ball better. And also, there were times when I would get hit by a ball because I just didn't see it coming from the side. So we knew something was wrong. At that time, no one knew what... We're talking early fifties, Ben, no one knew. My mother and father took me to ophthalmologists and they had no idea. I could read just fine and write, everything else was fine, wasn't any other problem except those two things. But finally, in 1957, when I was 15 years old, another ophthalmologist, who also had no idea what it was, referred us to the National Institutes of Health. And I went there in 1957 and that's where they diagnosed RP. Doc who did it, played a major role in the foundation in FFB way back at the beginning. And then went to Boston. Any idea of who am I thinking of?

Ben Shaberman:

Elliot Berson.

David Tatel:

Elliot Berson. Elliot was the doctor who diagnosed this in 1957. Now, of course, in 1957, they had no idea. Elliot said, "We think your eyesight will decline someday. We don't know when." This was 57, Watson had just discovered the genome and the double helix, so we didn't know much about this. They warned me,, and mostly my mother that I could lose my eyesight someday, but no one knew when. And also no one knew what the genetic consequences where. In fact, at that time, they all said, if I had children, the only children who would be at risk would be my sons, which turns out to be completely wrong. So anyway, I was diagnosed in 57, I'd say every year I went back to NIH for more tests. They wanted to follow the development of my RP. I also went to the Wilmer Eye Clinic a couple times.

I went to Boston Eye and Ear a couple times, but we didn't really... And for quite a while I took vitamin A, I can't remember whether that was Berson who recommended it or whoever, but I took a lot of vitamin A. The big change for me came in the early seventies, when, I'd say in just six months, my eyesight declined dramatically, to the point where I couldn't read any longer and had the shift to using my secretary to read to me. And where it just became unsafe for me to travel by myself, this was 1972. And then from then on I've basically functioned without sight, since the early seventies.

Ben Shaberman:

You were dealing with RP at a time, as you said, when so little was known. I know when the foundation was founded in 71, we thought that very little was known, but I know George Wald won a Nobel in 72 just for understanding how the retina processed light. So I can imagine how little was known in 57. And my guess is, you talked about taking vitamin A, that was Elliot Berson's legacy, so I'm guessing it was he who prescribed that.

David Tatel:

I'm sure it was. By the way, I knew Ben Berman who started the original FFB, was called the Retinitis Pigmentosa Foundation. And Ben had two daughters, both who had RP. Ben was from Baltimore, and we knew Ben. And my mother was an active member of Ben's little foundation, the RP Foundation at the time.

Ben Shaberman:

Really? That's great. You go way back to the foundation's early days and even a little further.

David Tatel:

Even pre-foundation. Ben was a wonderful man. Ben was great. Ben was really devoted to this, and he worked really hard to create the foundation and start raising money for research. Ben was a real pioneer.

Ben Shaberman:

You've done so much in your career, it seems that really your vision loss hasn't been a barrier, but would you say that vision loss shaped your direction at all? Or had you adjusting and what career you decided to pursue? Or did you always know you wanted to be involved in law or education?

David Tatel:

I don't think it shaped anything, Ben. I was functioning as a sighted person up through 1970, 71, and by then my career was pretty much shaped. I'd gone to law school, I had been in a law firm, I was running a

civil rights organization, I was interested in education, nothing's changed since then. And I don't think my eyesight affected any of those decisions. Edith and I, we were young and optimistic, and sure we knew there was this risk, but when you're young, we just didn't sit around worrying about it at that point. And by the time my eyesight really declined, my career was baked in at that point. So I don't think blindness affected it one way or another.

Ben Shaberman:

And you've had an incredible trajectory. You've done some amazing work, and congratulations on-

David Tatel:

Thank you.

Ben Shaberman:

... doing so much. So to those things... I know we've talked recently about the new addition to your family, your guide dog. You're very excited about your guide dog. So I wanted to take a moment to hear about your guide-

David Tatel:

She's right here. Maybe I can get her to come say hello. Vixen, come here.

Ben Shaberman:

What's her name?

David Tatel:

Her name is Vixen, and she's a, now little over four year, old German Shepherd. She comes from Fidelco, the guide dog breeding and training program in Connecticut. I started using a mobility cane when I left HEW in 1979. And I got really good with my cane. I traveled all over the country in my law practice. I was really, really good with a cane. Beginning to use the cane was a huge step, it was very hard to decide to use a cane because it made me so visible as a blind person. But I'm so glad I did it, because it gave me an enormous amount of independence and also eliminated all the misunderstandings that occur when people don't know you're blind or can't see well. So the cane was liberating for me and I could have continued to use it forever, but for the past 10 years, or so, I felt like I wanted even more independence.

I was going back and forth. The traffic in Washington was bad. There were lots of plazas that were difficult to navigate with the cane. As good as I was, there are many people who are far better using canes than I am. And I was yearning for more independence. I didn't want to depend on my law clerks to get from the metro to the courthouse. I rode the metro myself with my cane, but traffic and the corners were pretty dangerous and I couldn't do them myself. And I did from time to time, but it was just easier to walk with a law clerk. And I wanted more independence, but I never thought I would get a guide dog because everything I read told me that to get a dog, you had to go to the facility for a month and learn to use a dog.

And there was no way I was going to be able to do that. Well, one day, our youngest daughter was visiting here with her two little boys, and they're dog people, and one of them, the then an 11, 10 year old maybe, brought along a podcast about guide dogs. In fact, they're from Berkeley. And so they know all about the program in Marin that trains guide dogs. And they see guide dogs in training in Berkeley all the time, the kids do. So Ruben, my grandson, asked me to watch this podcast with him, and we did.

And at the end of the podcast it said... It showed their lovely facility, up in Marin. But then it said, "If it's not possible for you to come here, we can bring the dog to you." That's the first time I ever heard that that was possible. So I started thinking about it, Edith and I began to think about it.

And the first person I called was Karen Petrou, who's on the FFB board, because I've just always been really impressed with Karen and her dogs and how independent she is. And Karen opened up all kinds of things to us, including most important Fidelco, which doesn't even have a facility. They always bring the dog to you. And so Edit and I applied and I got accepted, and six months later, my trainer, Pete, showed up with this magnificent German Shepherd named Vixen. And I then went through the hardest two weeks of my entire life to learn to work with this dog. And I would say a half a dozen times in that two weeks I was ready to quit. I didn't think I would ever be able to figure it out, but I worked at it and my trainer was really, really good.

The dog was really, really good. And then he left and there I was with just the dog. And it was still rough. I still, once in a while, Vix and I got lost on the metro platform. German Shepherds are very independent and sometimes she decided to go somewhere I didn't want to go, but I survived it and she survived it. And I'd say after about six months, nine months, I could feel the difference, I could feel the way we were working together better. And the rest has been great. Vixen has given me just a huge amount of independence. I haven't had this kind of independence in 40 years. We live here in rural Virginia, I mentioned to you, and she and I, we go on very long walks every day. In fact, when we're done here, we're going to go off on our shorter weekday walk, which is a three miler.

Weekends, it's a six miler. And Vixen and I just go off. She loves it, I love it. When we're in the city, she commutes to the courthouse with me. She loves the metro and the escalators. In fact, she's the only person I know who likes the Metro. And she's great. She takes me right to the courthouse and hangs out with me all day. We go for walks in the neighborhood. She travels with us. We just got back from Denver. She's just a magnificent animal who has become... Who Edith and I... In fact, our total family has completely fallen in love with this dog. But she's my independence, seriously Ben, I haven't had this kind of physical independence in 40 years. And Edith reminds me, looking back on it, I wish I had done it earlier, but I didn't know. You don't know, what you don't know. And until Ruben showed up with this podcast, I didn't know it was possible for me to get a guide dog. And I sure am glad I have one.

Ben Shaberman:

Well, it's great that your 11 year old grandson did that and you were able to learn something through him. And it sounds like you have this wonderful relationship with Vixen.

David Tatel:

It's great. I never understood this. We had dogs, when our children were small, we had Collies, but they were the kids dogs and Edith took care of them. My biggest issue with the dogs was avoiding tripping over the dogs. And so I was never much of a dog person, but I've become a hundred percent dog person. Edith bought me a little sign that now my desk at the courthouse, it says, "Ask me about my dog."

Ben Shaberman:

That's great.

David Tatel:

The dog and I have this unique relationship. Any guide dog owner knows this. He just developed this tight relationship with this dog where she knows me and I know her. She communicates with me in such

subtle ways that two years ago I had no idea about it. But now I pick up all of her signals and it makes me feel so good that I can respond to her needs just as she responds to mine.

Ben Shaberman:

That's a wonderful story. And it sounds like Vixen is as lucky as you, because she sounds like she really enjoys her role.

David Tatel:

It's really good, but she's still better trained than I am. I constantly am learning things from her.

Ben Shaberman:

That's great. Well, David, this has been just a fun and informative conversation. Learned a lot about our legal system and the court system, but I really appreciate you sharing your story. You've done so many interesting things, had a great career, and it's very inspirational. It's very inspirational. I just want to thank you for taking time out of your busy day for talking with us and being a guest on the podcast. I will let you and vixen get to your walk. It is a nice day here in the DC, Virginia area.

David Tatel:

Well, Ben, I'll just say I'm happy to do this. I've enjoyed the conversation, and as you know, I'm a big fan of the Foundation Fighting Blindness. I think it's an important, serious organization that's making huge strides towards dealing with inherited retina diseases. I am enormously impressed with this organization.

Ben Shaberman:

Well, thank you for being a member of our family. You've been with us for so many years and supported our mission very strongly, and we greatly appreciate that. Listeners, thank you again for joining the podcast. David, thank you again for being our guest today, and I look forward to having everyone back for our next episode. Thanks again.

Speaker 1:

This has been Eye on the Cure. To help us win the fight, please donate at foundationfightingblindness.org.